

Applying formal defense in the pre-trial phase of criminal proceedings

Abstract

This rigorous thesis deals with the application of the formal defense in the pre-trial phase of prosecution. The thesis circumscribes the defense in the terms of the defense lawyer in the investigation phase, i.e. after the initiation of the prosecution, while the focus is apart from other things on the important and unneglectable instruments of the defense, particularly on the petition against the resolution of prosecution initiation, the inspection of the court file, also on the participation of the defense lawyer on the investigation, the evidence procurement by the defense lawyer, the study of the court file and the suggestion for completion of the investigation, and the suggestion for the preliminary discussion of the defense. The thesis also shows the peculiarities of the defense during the prosecution of the defendant in detention, while the emphasis is put on the defendant in detention defense execution itself with the focus on the personal visits in the detention center and the matter of demanding release from the detention and utilizing the measures substituting detention. The focus is also on the address of the defense lawyer, or more precisely on their professional limits in relation to the ethical prescriptions and regulations and on the disciplinary liability of the defense lawyer.

The rigorous thesis does not omit even the general introduction to the topic concerning the right to defense and to the defense lawyer in the prosecution through whom the formal defense is performed. The text deals with the legislation of the right to defense, the historical recourse of this right, its content and subject, and finally also the comparison with the general right to the legal assistance of an attorney. The thesis is concluded with the overall assessment of the legislation and proposals *de lege ferenda*.

The aim of this rigorous thesis is the complex analysis of the matter of the formal defense application in the very beginning of the prosecution in the non-public pre-trial phase of the legal procedure, namely the right to defense free from special forms of proceedings from the point of view of the valid legislation and the jurisprudence of the national and also international courts, and finally also from the point of view of the application practice regarding the current interpretation problems.