

The principle of contradictory in Criminal Proceedings

Abstract

The diploma thesis deals with the principle of contradictory in criminal proceedings, which is considered by the case law of the European Court of Human Rights as one of the essential elements of a fair hearing within the meaning of Article 6 para. 1 of the European Convention on Human Rights, and also as a part of the wider concept of the right to a fair trial. The definition of the principle of contradictory is not entirely clear in jurisprudence, which is mainly due to its different conception in the continental model of the criminal process and in the adversarial model. Although the principle of contradictory in criminal proceedings is not explicitly mentioned in Article 2 of the Code of the Criminal Procedure, over time it was established as one of the basic principles of criminal proceedings, particularly under the influence of case law of the European Court of Human Rights and the Constitutional Court of the Czech Republic.

The aim of the thesis is to introduce possible concepts of the principle of contradictory, to analyse the aspects of this principle in criminal proceedings with an emphasis on the preliminary proceedings and on the stage of proceedings before the court, while at the same time to point out the exceptions to this principle. With regard to the planned recodification of criminal procedural law, the thesis outlines considered institutes, which are supposed to strengthen the adversarial nature of criminal proceedings. The diploma thesis is divided into four chapters.

The first chapter of the thesis mainly deals with the theoretical definition of the principle of contradictory and its possible concepts. This chapter also focuses on the key decisions of the European Court of Human Rights and the Constitutional Court of the Czech Republic regarding the definition of the adversarial principle.

The second chapter focuses on some of the contradictory elements in preliminary proceedings, which mainly include the court's decision on the detention of the accused, the participation of the accused and the defence counsel in some investigative acts, the right to inspect the files, the right to study the file at the end of the investigation and the right of the accused to comment and to be informed of the substances of the charges. At the end of the chapter, there is attention paid to the much-discussed issue of urgent and non-repeatable actions.

The third chapter analyses various manifestations of the principle of contradictory proceedings in procedure before the court, in which this principle, unlike in preliminary

proceedings, is fully applied. Firstly, the attention is paid to the role of the court and the position of the parties in the stage of criminal proceedings before the court. Subsequently, the chapter deals with the principle of contradictory in the field of evidence. The chapter also focuses on the elements of this principle in argumentation, which is particularly evident in closing statements and in the defendant's last word. The chapter also points out some cases of limitations to the this principle, for example in the case of statements of anonymous witnesses, the applicability of the records of earlier statements of witnesses made in pre-trial proceedings and, lastly, the court's decision-making in the absence of the accused.

The last chapter deals with the planned legal definition of the principle of contradictory proceedings and its manifestations in connection with the upcoming recodification of the criminal procedural law.