

BURDEN OF PROOF IN CRIMINAL PROCEEDINGS

Abstract

The presented doctoral thesis is mostly a theoretical discussion of the fundamentals, importance and applicability of the concept of burden of proof in criminal proceedings.

Emphasis is placed on the analysis of admissibility and legitimacy of shifting a certain form of such burden to the accused / the defence, seen through the prism of certain basic principles of the country's criminal procedure: the principle of presumption of innocence, the principle of *nemo tenetur se ipsum accusare*, the principle of officiality including the principle of investigation and the principle of material truth.

The introductory part of the thesis analyses the current concept of the Czech criminal proceedings and taking of evidence in such proceedings, focusing on the concepts that are crucial in terms of resolving the above-specified research question: the related terminology and its readiness to work with burdens of proof, the principles with which the concept under review can potentially collide, the identification of differences between the adversary proceedings relying on burdens of proof and the continental proceedings entrusting procedural responsibility for the outcome of the taking of evidence to the court.

This is followed by a summary and critical review of the existing knowledge of the Czech and Czechoslovak legal doctrine in relation to the issue at hand and an analysis of the relevant case law of the country's highest courts.

The next section presents the manner in which the concept of burden of proof is used in the field of 'competitive' branches of law: civil law, administrative law, including infractions, and tax law. The analysis includes, among other things, the rules for allocating the burden of proof and exceptions thereto, the assumptions and limits of the burden of proof on the part of the accused of an infraction, or shifting the burden of proof from a tax entity to the tax administrator and back in tax proceedings.

The model of taking of evidence in an adversary criminal procedure is described separately; in such procedure, the burden of proof of the parties (including the accused) is typical: for the purposes of further expert discussions, the terminology of that particular field is presented, translated and clarified; it is explained how the Anglo-American criminal procedure works with the burden of proof and cases in which the accused bears the burden of proof are identified. An overview of opinions on conformity of that model with the principle of presumption of innocence is also presented.

The thesis also presents the burden of proof in the European context – both in the case law of the European Court of Human Rights and the Court of Justice of the European Union and

in selected foreign legal systems: it offers an insight into the German, Austrian, French, Belgian, Dutch, Hungarian and Romanian legislation, partly using a questionnaire survey conducted among foreign researchers.

The thus-obtained findings are reflected in the chapter representing the burden of proof from the author's point of view – with emphasis on issues that have not been given much attention in the Czech Republic so far or, on the contrary, prove to be highly debatable: the burden of proof placed on the accused to prove (in)sanity, the proof of truth in the criminal offence of libel, proving the conditions for the application of the exculpatory provision of Section 8 (5) of the Corporate Criminal Liability Act, the burden of proof in the area of sanctions and enforcement proceedings or the burden of proof in certain procedural issues. That chapter also includes research focusing on practical application of the above-mentioned Section 8 (5) of the Corporate Criminal Liability Act, probably the most controversial concept of the national legislation in terms of the issue at hand.

The author answers 'yes' to the basic research question of whether the burden of proof can be shifted to the accused in criminal proceedings, while she identifies the areas of the legislation in which such a step seems to be justified, and specifically formulates the prerequisites for its implementation.

Keywords:

burden of proof • criminal proceedings • taking of evidence • accused • presumption of innocence