

# **Nemo tenetur se ipsum accusare principle**

## **Abstract**

The thesis deals with the nemo tenetur se ipsum accusare principle, which represents one of the fundamental procedural rights in criminal proceedings. The European Court of Human Rights considers it an inseparable part of the right to a just trial. Especially considering the problems arising in connection to interpretation and application of the said principle, the thesis tries to \_ the most problematic areas of the principle's application and the different opinions as to what it entails.

The first chapter contains the history of the principle's application, both on the European continent in civil law and in common law in both the United Kingdom and the United States.

The second chapter summarizes the evolution of rulings of the European Court for Human Rights. Attention is paid to the relation between the nemo tenetur principle and the right to a fair trial contained in the Article 6 of the European Convention on Human Rights and also to the relation of other right contained in the same treaty, especially focusing on freedom from torture in order to obtain an evidence of a criminal act.

The third chapter summarizes the Czech legislation on the topic, both on Constitutional level – especially focusing on those articles of the Charter of Fundamental Rights and Freedoms detailing the general right to remain silent – and the right to remain silent specific to the accused person. The chapter also deals with the individual provisions of the Criminal Procedure Code (law no. 141/1961 col.) in which the right not to accuse oneself needs to be applied.

The fourth chapter deals with the right of the accused to refuse or provide a testimony and the situations in which those rights might be limited under the provisions of law. Here is also included the obligation of the witness to provide or the right to withhold testimony.

The last, fifth, chapter analyzes the individual types of evidence, where the public interest in solving the case often clashes with the rights of the accused not to incriminate oneself. Specifically, these issues are recognition, identifying tasks and removal of a specific item.

Throughout the thesis, crucial rulings of the Constitutional Court and the European Court for Human Rights which caused the implementation of this principle into Czech legislation, are analyzed. The problematic aspects of the nemo tenetur principle are analyzed with regard to the conclusions of these cases, academic literature and legislation.

**Key words: right against self incrimination, accused, evidence**