

# **The defence by the defence counsel during the trial**

## **Abstract**

The aim of the thesis is not only to analyze both the position of the defence counsel and the accused in criminal proceedings, including their rights and obligations arising from this position, but in particular to define the limits in which both the accused and the defence counsel can exercise the right of defence.

The content of the thesis is divided into an introduction, six chapters and a conclusion. The introduction summarizes the aims to be achieved in the thesis. It emphasizes the importance of the right to a fair trial, which includes the right of defence and which is an integral part of the rule of law concept. The first part deals with a brief historical excursion into the history of the position of the defence counsel and the accused in criminal proceedings, with particular emphasis on the legislation applicable in the territory of the present Czech Republic. In the second chapter, the rights and obligations of the accused are analyzed, especially but not only in the trial. Emphasis is placed on defining the limits of the accused's right of defence and the reasons why such restrictions exist in the legal system. The third and fourth chapters are then devoted to the defence counsel, his rights and obligations arising from his position in the criminal proceedings and the defence in the trial as such. These chapters reiterate the emphasis on defining limits of conducting a defence. The fifth chapter analyzes the basic differences in the exercise of the right of defence in special criminal proceedings, i.e. in criminal proceedings against a juvenile, in criminal proceedings against a legal entity and in criminal proceedings against a fugitive. The last sixth chapter deals with the comparison of the right of defence in the Czech legal system with the right of defence provided for in the legal system in the territory of England and Wales.

The results of the analysis are then presented at the end of the thesis, where the importance of understanding of the position of a defence counsel is emphasized, which is a basic prerequisite for fulfilling the purpose and meaning of the actual regulation of the role of defence counsel and his participation in criminal proceedings in the Czech legal system. Last but not least, proposals for changes in the legal regulation *de lege ferenda* are presented. These changes are then proposed in two areas. The first one is a completely missing application of the compulsory defence in criminal proceedings against a legal entity, where the author of the thesis sees the necessity of compulsory defence in cases where the concept of agreement on guilt and

punishment is used. The second area is a new offence of obstructing justice, namely criminalizing acts consisting of presenting a forged or altered documentary or factual evidence. The author argues whether it is necessary to criminalize these possible actions, whether it achieves such intensity at all, in order to limit the right of the accused to defence in this way and whether the legislation that was effective before the adoption of this amendment to the Criminal Code was insufficient.

**Key words: defence, defence counsel, trial**