

Abstract

The legal concept of formal burden of proof of public prosecutor has been discussed for more than 17 years of legislative work on the new Criminal Procedure Code and an increased attention was also paid to it before by the legal science, at the same time with the enforcement of adversary elements of court proceedings. The legal concept in question was established and developed as part of the Anglo-Saxon type of criminal proceedings where trial is based on a dispute between the parties. This involves the exclusive procedural responsibility of public prosecutor to clarify the facts relevant to the indictment filed. Although it is possible to give a brief description of the legal concept in question in a single sentence, its enactment would affect the overall nature of the proceedings before the court and would also be reflected in other stages of the criminal proceedings. The aim of the dissertation was to analyse the prerequisites and consequences of the enactment of the formal burden of proof of public prosecutor in the Czech criminal proceedings. Given the origin of the legal concept, the crucial question was whether its adoption would necessarily constitute a total departure from the legal principles which the existing Criminal Procedure Code is based on or whether it is possible and appropriate to adapt the related aspects to the local legal environment.

The theoretical basis of the dissertation is a general conceptual definition and classification of the legal concept of the burden of proof, as well as a description of the historical development of the position of prosecution, defence, and courts in our territory. It is also essential to study the relevant aspects of the continental and Anglo-Saxon type of criminal proceedings and the specific manifestations of the legal concept of the formal burden of proof of public prosecutor in England, Wales, the United States, and the Italian Republic. The enactment of the formal burden of proof of public prosecutor would be the result of tendencies to enforce the adversary nature of the proceedings before the court. At the same time, it would be a conceptual solution to the real risk of violating the impartiality of a judge as a result of his or her excessive probative activity, which is mentioned in the Czech case-law, the ECtHR case-law, and international documents. The legal concept in question cannot be equated with the *in dubio pro reo* rule which in criminal proceedings expresses the essence of an objective burden of proof which is not a procedural burden in the strict sense of the term.

The enactment of the formal burden of proof of public prosecutor and related legal concepts and procedural methods is possible in a form that does not interfere with the existing ideological set-up of the Criminal Procedure Code. The finding of facts without reasonable

doubt would, in particular, be warranted by the instructive duty of the court, a thorough review of the defendant's ability to defend himself or herself properly or of the effectiveness of assistance provided to him or her by the defence counsel, the taking of evidence by the court in the cases prescribed by law, and the final insurance in the form of a potential probative initiative of the court in favour of the defendant or the party to an action. The prerequisite for the optimal functioning of the formal burden of proof is a contradictory and adversary nature of the proceedings before the court, guaranteeing equal opportunities for the parties to clarify the relevant facts. From this point of view, the inequality of the instruments of prosecution and defence consisting in the missing equivalent of the indictment submission, in the unilateral possibility for the defendant to comment on every piece of evidence produced, and in the obligatory interrogation of the defendant or an attempt to interrogate the defendant at the beginning of the taking of evidence should be eliminated. The adversary nature of the proceedings before the court involves focusing attention on the contentious points at issue in the taking of evidence and a greater emphasis on the procedural activity of defence. The public prosecutor's responsibility to properly clarify the facts relevant to the indictment filed should not only arise after the end of the taking of evidence, but also in the context of the indictment review, in the indictment disposition options, and in the application of the legal concept of the joinder of proceedings as at the moment of the pronouncement of first-instance decision on the merit. The enactment of the formal burden of proof of public prosecutor would also be reflected in the grounds of appeal, the prerequisites for the reopening of the proceedings, and the obligatory participation of the public prosecutor in the public session on his or her petition to permit the reopening of the proceedings to the disadvantage of the accused.