

The principle of contradictory in Criminal Proceedings

Abstract

The diploma thesis deals with the principle of contradictory of criminal proceedings, its various concepts and characteristics, especially its practical manifestations in Czech criminal proceedings. The aim of the work is to provide an insight into possible concepts of this principle, an overview of individual contradictory elements in criminal proceedings and then to draw attention to those elements that rather weaken the principle of contradictory. The work is divided into four chapters.

The first chapter deals with the definition of the principle of contradictory. It offers several possible conceptions of this principle presented mainly by Czech authors. The chapter also contains a selection from the case law of the European Court of Human Rights, which ranks the principle of contradictory among the foundations of the right to a fair trial. The case law of the Czech Constitutional Court, which defines principle of contradictory following the example of the Strasbourg court, also corresponds to this. Finally, the chapter deals with the enshrinement of the principle in the current Criminal Procedure Code, but mainly the role of the principle in recodification work on the new Criminal Procedure Code.

Chapter two describes some contradictory elements of pre-trial proceedings, which are rather in the minority in non-public pre-trial proceedings. Attention is paid to the participation of the accused and his lawyer in the pre-trial proceedings, complaints against the resolution to prosecute, inspection of files and finally the decision on custody, which was quite problematic in terms of contradictory in our legislation before the introduction of special regulation of custody hearing in our legislation.

The third chapter deals with the main trial, the phase of criminal proceedings, which should be a phase characterized by contradictory to a large extent. The chapter contrasts the position of the court as an independent arbitrator, the position of the public prosecutor and the accused, including his lawyer. An amendment to the Criminal Procedure Code, implemented by Act No. 222/2020 Coll., which affected the position of the accused and also the overall contradictory character of the main trial, is also elaborated.

In the last chapter, the thesis points out the institutes of criminal proceedings, which are not characterized by a high degree of contradictory, and for some of them it is up to the

defendant to decide how much contradictory process he wants and to what extent he is willing to exchange contradictory proceedings for less severe punishment if he admits his guilt.