

The Issue of the Instrument of Criminal Custody

Abstract

The concept of criminal custody and the problems associated with it represent a relevant and important topic resonating in legal theory and application practice. On the one hand, custody is considered to be one of the most effective ways to ensure the successful course and purpose of criminal proceedings, since its essence lies in restricting the personal freedom of a person whose guilt and punishment have not yet been decided on the basis of conditions defined by law, but on the other hand, the question arises more and more frequently whether this traditional criminal procedural instrument can still stand up to the growing guarantees of fundamental human rights and freedoms established by both national and international law.

The aim of this thesis is to identify the problems related to the instrument of criminal custody, to find out what they entail and to try to find solutions to them by means of existing or own *de lege ferenda* proposals. Four chapters focusing on the problems of pre-trial detention serve this purpose. The first chapter of the present thesis defines the concept of criminal custody, its purpose and also the limits to the restriction of personal liberty by custody resulting from the most important national and international human rights documents. The second chapter discusses the historical development of this instrument from 1873 to the present day, highlighting selected important milestones in the perception of detention with regard to the development of society and law. In particular, the amendments of the last decade then permeate the rest of the text due to their importance. The material law of criminal custody, to which chapter three is devoted, opens up the actual research topics of this thesis, which include the problems of the legal prerequisites of detention, with an emphasis on the justification for criminal prosecution, the pitfalls of the custody reasons, including the distinct qualified custody reasons, and the problems of alternatives to custody. In the fourth and final chapter, I discuss in detail the equally important pitfalls of procedural custody law that arise from the issues of custody decision-making, detention sessions or the duration of custody, specifically decisions on the continued duration of custody or the maximum permissible duration of custody.

Key words: criminal custody, personal liberty, criminal proceedings