Summary

The basis for this disertation thesis was a fairly frequent critisism, pointed at the subject of expert evidence in criminal proceedings in the Czech Republic. The aim of this work was a detailed analysis and evaluation of legislativ governing an expert evidence in criminal proceedings, which may also serve as a modest contribution to the discussion on recodifying Criminal Procedure Code. The author's goal wasn't trying to bring another "commentary "of selected provisions TŘ, but to deliver a detailed analysis of existing legislativ while paying attention to the different views of literature and avoiding repetition of already highlighted opinions. All the gained knowledge was subsequently synthesized into, according to the author's opinion, reasonable conclusions while specific suggestions *de lege ferenda* were provided in each chapter.

The thesis is also conceived in such a way that it can also be a source of knowledge for those who want to get acquainted with the issue of expert evidence. For this purpose the bibliography includes both titles of the current legal literature and the publications, reflecting the old and purely historical legal regulations.

The introductory part thoroughly maps the development of the expert evidence as it gradually derived from witness testimony, while in the second chapter is followed by a summary of the theoretical concepts that were gradually asserted in regard to this means of proof.

In the third part, the expert acquiring process is described in detail, describing the most frequent cases of excessive acquirement . Very detailed attention is also paid to the institute of expert opinion, where the most obvious legal deficiencies are identified. It is pointed out that the institute is not adequately regulated in the ČR, which raises the embarrassment especially when it is now the preferred way of using expertise in criminal proceedings. Inconsistent rulings concerning the method of interrogation of expert opinion's processor is specifically pointed out as well as the inability to influence the selection of a processor by a person that criminal charges are brought against and also the absence of regulation removing any defects from expert opinion etc. Also, in terms of legislative and technical it

would probably be better if this institute was no longer covered by the same provision as an expert opinion, its separate regulation would ideally go before that.

An important issue is the more precise legal criteria for assessing the degree of complexity of the clarified question in order to distinguish more clearly between instances where professional expertise is not sufficient and expert knowledge is at stake. This would undoubtedly have a positive influence not only on the speed and economy of criminal proceedings, but also on the issue of the right of defense, because the extent of the complexity of the question under consideration (the term relatively vague) also determines, among other things, what extensive rights the accused has in choosing the person of the expert. The multiplicity of possible related problems can not, of course, be embedded in the general rule, so jurisprudence (as it is so far) will be of considerable significance, yet it can be encouraged to provide as much guidance as possible to distinguish the level of complexity.

The author points out that the provision of the first sentence of § 105 (4) is obviously inaccurately formulated because it requires the two experts to add the necessity to clarify another particularly important fact, while the teleological interpretation of the relevant provision leads to a clear conclusion that the real criterion is not an "importance", but rather "complexity", i.e. its' level. In the author's opinion, it is also legitimate to consider whether the possibility of adding two experts - whether depending on the degree of importance or complexity of the question being considered - is not to be completely deleted from the text of the Act as essentially obsolete.

Following passage, which I consider to be very important deals with the form of acquiring an expert, where, among other things, the comparison with the current modification of the Slovak TP is used. The concrete outcome here is recommendation to consider the possibility of returning to the acquiring of the expert by means of a resolution, because in my opinion, the positives of this possible modification slightly outweigh the negatives.

Considerable attention is paid to the issue of the impartiality of an expert, when one of the specific proposals is the legalization of the obligation of an expert body to report on which specific employee (s) will be responsible for processing the opinion i.e. who will be involved in its processing. Although the TŘ extends the application of the provisions of § 105 (3) TŘ to constitutional expert witnesses, i.e. against the processors of the constitutional expert's

report, objections within the scope of § 105 (3) TŘ of the Criminal Code may be raised, however, insufficient conditions are created for the accused to use this right fully, because he can actually influence the selection of the particular processor of the report only ex post when the expert's opinion is drawn up.

The thesis also takes an opinion on some topical issues related to the principle of contradictory proceedings, which is inevitably reflected in expert evidence. In connection with the current considerations on the possible deletion of § 127a of the o.s.ř., the pros and cons of the analogous wording of § 110a of the Criminal Procedure Code are assessed, concluding that despite all the negatives listed, it is an important guarantee of the principle of equality of arms in criminal proceedings and as such, has it's place in Criminal Code. I also oppose the possibility of introducing a confrontation of experts, while pointing to inconsistent jurisprudence and the views of the professional public.

This thesis further analyzes the limits of the competence of the expert in criminal proceedings, the most frequent causes and consequences of their overrun while pointing at related jurisprudence. Possible consequences of overcoming limits of the expert competence in relation to Article 38 of the LZPS are analyzed as well.

The above chapter is also related to the consequences of defects in the expert opinion and their removal. Attention is paid, for example, to the extent to which an expert can draw from the official records of explanations submitted pursuant to § 158 (6) of the Criminal Procedure Code or whether, in the case of requesting further opinion on the same matter, the newly acquired expert should be informed of the previously submitted opinion.

The author proposes that the regulation of the activities of expert institutions in the TŘ should be more closely connected with ZnalZ. In particular, he refers to a different wording of § 110 (1) of the TŘ and § 21 (3) of ZnalZ. TŘ furthermore does not reflect the division of expert institutions into institutes listed in Section I of the List of Expert Institutes and Constitutions registered in II. Section, in fact, it only counts with an expert - a natural person and, exceptionally, in difficult cases with the expert institutions enrolled under the regime § 110 TŘ.

Concerning the questioning of the expert, the author proposes in particular that the provisions of Section 108 (1) be brought into accordance with the case-law R 13/2000, so that the content of the opinion is always communicated by repeating the verbally.

As regards the evaluation of the expert opinion, the author defines, on the basis of the case-law, two different approaches to this issue - formal and material - with a clear approval of the latter. He also elaborates on the probability of expert conclusions and the possibilities of using computer programs in an expert opinion in the context of the approach to their evaluation.

If the introduction of this qualification thesis as the main objective was to establish whether the actual regulation of expert evidence in criminal proceedings is satisfactory, the author concludes that the current legal regulation of expert evidence in the TŘ can be described as satisfactory in principle. Except for the large legislative debt in the form of absent more detailed modifications to the institute of expert opinion, it does not show major shortcomings. From the point of view of maintaining the right to a fair trial, the defendant has a relatively large means of intervening in the selection of an expert, defining the expert's task and making that evidence before the court. It can be concluded, therefore, that in the light of the forthcoming recodification of criminal procedural law it will probably not be necessary to make any fundamental changes, as finally emerges from the wording of the substantive intent of the new TŘ, elaborated by the Ministry of Justice. In the future, care should be taken to ensure that the relevant provisions of the TŘ are well connected with the new adaptation of the Act on Experts (whatever the exact title of the Code), which we hope will finally succeed in accepting in the not too long time. However, the submitted work brings a number of partial suggestions aimed at improving the legal regulation.