

Participation of the defense attorney in the preliminary proceeding

Abstract

The right of defense is one of the most important fundamental rights of a person against whom criminal proceedings are conducted. It can be defined as a set of rights which the law gives to a person in order to enable him or her to defend himself or herself effectively against the charges brought against him or her and to protect his or her rights and interests in criminal proceedings. The person against whom criminal proceedings are brought must be clearly informed of his or her rights at every stage of the proceedings and must be able to exercise them fully. The right of defense consists of several components. It includes the right to defend oneself in the proceedings by the means of one's own choice, the right to choose a defense attorney and to consult him on the manner of defence, and the right to require the criminal proceedings authorities to proceed in such a way as to establish the facts of the case beyond reasonable doubt and to the extent necessary for a decision.

This diploma thesis is divided into an introduction, three parts and a conclusion. The first part of the diploma thesis deals with the legal regulation of the right of defense and the content of the principle of the right of defense. The second part of the diploma thesis deals with the position of the defense attorney in the preliminary proceeding. Pursuant to section 35 subsections 1 of the Criminal Procedure Code, only barrister may be a defense attorney in criminal proceedings. It is presumed that the accused chooses the defense attorney himself. If the accused fails to choose a defense attorney, although he is required by law to have one, he shall be appointed one without delay for the period during which the grounds for necessary defence continue. The Criminal Procedure Code is based on the priority of the choice of the defense attorney, which means that the defense attorney chosen by the accused has priority over the defense attorney appointed by the court. The obligations and rights of the defense attorney in criminal proceedings are in section 41 of the Criminal Procedure Code. The third part of the diploma thesis deals with the defence in preliminary proceeding. Preliminary proceeding is the first stage of criminal proceedings and can be divided into a pre-prosecution stage (screening) and a post-prosecution stage (investigation). The second chapter of part three examines the defence of the detained suspect and the legal assistance of the barrister during giving explanations. In the following chapter of part three and its individual paragraphs, the defence of the accused after the initiation of the criminal prosecution and the specific means of defence are discussed in more detail, which are the right of the accused to consult with his defense attorney and to express his views on all facts, the right to state circumstances and evidence in

support of the defence, to seek, present and propose evidence to be taken, the right of the defense attorney to participate in the investigation and the right of the defence to inspect the criminal file.

Keywords: right of defense, defense attorney, preliminary proceeding