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**SUDSKA KONTROLA OPTUŽNICE U KAZNENOPROCESNIM ZAKONIMA
BOSNE I HERCEGOVINE**

Sažetak

Tema ovog doktorskog rada jest „Sudska kontrola optužnice u kaznenoprocenim zakonima Bosne i Hercegovine“. Korištenjem pojma optužnica u samom naslovu rada želi se naglasiti da je sudska kontrola optužnice obrađena kao sudska kontrola kaznenog progona i predstavlja *međufazu* redovitog kaznenog postupka koja slijedi nakon istrage, a prije glavne rasprave, koju tužitelj podnosi nadležnom sudu skupa sa svim dokazima, a što predstavlja sudsku kontrolu optužnice (sudska kontrola optužbe u „užem smislu“) i to je centralni dio rada. U radu je obrađena i sudska kontrola kaznenog progona, prevashodno u modelu tužiteljske istrage (kontrola optužbe u „širem smislu“). Jedan od bitnih kriterija u radu je, trenutak započinjanja prethodnog, odnosno istražnog postupka, trenutak obavještanja osumnjičenog o započinjanju istražnog postupka i njegovim ograničenim pravima u fazi istrage, te jamstvu na djelotvorna pravna sredstva od nezakonitog progona. Općenito, institutu *ex officio* sudske kontrole optužnice kao novom zakonskom rješenju u smislu normativnog uređenja malo se što ima prigovoriti. Prigovori se mogu uputiti sudskoj praksi i nejednakoj primjeni ovog instituta, što je u radu prezentovano kroz kritički osvrt praktičnih postupanja sudova, te se predlažu teorijski dosljedna i praktično uporabljiva rješenja, u prvom redu, za glavne subjekte redovitog kaznenog postupka i njihove uloge u stadiju istrage i postupka optuživanja. U radu je obrađeno i Europsko pravo na pošteno suđenje i sudsku kontrolu kaznenog postupka, kroz teorijski prikaz i kritički osvrt primjene ovog prava u Bosni i Hercegovini. Sudska kontrola optužbe u radu je obrađena i kroz pravni pregled u poredbenom pravu u Republici Hrvatskoj i Republici Srbiji. Osobita pozornost u radu je posvećena nedostatnosti primjene ovog instituta poglavito u dijelu koji se odnosi na sudsku kontrolu kaznenog progona, odnosno trenutka započinjanja i vođenja kaznenog postupka. Rezultati istraživanja u ovom radu će nedvojbeno doprinijeti pravnoj sigurnosti građana od nezakonitih kaznenih progona, ali i pomoći tijelima kaznenog progona djelotvornije otkrivanje kaznenih djela i njihovih počinitelja. Rezultati istraživanja u radu su dali kompletan teorijski prikaz postojećeg stanja u ovoj oblasti, koji će poslužiti i kao putokaz zakonodavcu u Bosni i Hercegovini da ubrza europeizaciju svog kaznenoprocenog zakonodavstva sa pravom EU, odnosno konvencijskim pravom, u prvom redu konvencijskim pravom Europe.

Ključne riječi: kazneni postupak, tužiteljstvo, sud, načelo sudske kontrole, sudska kontrola kaznenog progona, sudska kontrola optužbe, sudska kontrola optužnice.

JUDICIAL CONTROL OF THE INDICTMENT IN THE CRIMINAL PROCEDURES CODES IN BOSNIA AND HERZEGOVINA

Summary

The topic of this doctoral thesis is "Judicial Control of the Indictment in the Criminal Procedures Codes in Bosnia and Herzegovina". By using the term "indictment" in the title of this work, it is intended to emphasize that this thesis covers the inter phase in the regular criminal procedure which follows the investigation phase and precedes the trial phase, and during which the prosecutor submits the indictment to the competent court together with all the evidence. It is precisely this process that represents the judicial control of the indictment in so-called "strict meaning" and as such is the central part of this work. The thesis also examines the judicial control of criminal prosecution by way of controlling the prosecutor's investigation (so-called prosecution control in the "broader meaning").

Another important part of this work is the commencement of the preliminary, or investigative part of the criminal prosecution; when the accused becomes notified that the investigative procedure against him had been initiated, his limited rights at this stage, and the guarantee of effective judicial remedies against unlawful prosecution.

In general, there is little to object to the institute of *ex officio* judicial review of the indictment as a new legal solution in terms of its normative regulation. The main complaints, in fact, may be directed at judicial practice and the unequal application of this institute, which is hereby presented through a critical review of the court practice, and proposes theoretically consistent and practically applicable solutions, primarily for the main participants in the criminal proceedings and their role at the stages of investigation and the preliminary proceedings. The thesis also covers the European right to a fair trial and judicial review of the criminal procedure, through theoretical presentation and critical review of the application of this law in Bosnia and Herzegovina. The same issue was also discussed through comparative review of the relevant laws in the Republic of Croatia and the Republic of Serbia. Special attention has been given to the inadequacies in the application of this institute, especially relating to the judicial control of criminal prosecution, that is the commencement and conduct of criminal proceedings. The results of the research in this thesis will undoubtedly contribute to the strengthening of individual's safeguards against illegal criminal prosecutions, as well as helping the institutions of criminal prosecution to more effectively detect criminal offenses and their perpetrators. The research contained in this work will have provided a complete theoretical overview of the current situation in this field, which will serve as a guide to the legislator in Bosnia and Herzegovina to speed up the harmonization its criminal procedure legislation in line with European Union law, primarily with the convention law of Europe.

Key words: criminal procedure, prosecution, court, principle of judicial control, judicial control of criminal prosecution, judicial review of the charges, judicial control of the indictment.