

## **Reduction of Process of Evidence in Specific Forms of Criminal Proceeding: Problems and Risks**

**Authors :** Filip Ščerba, Veronika Pochylá

**Abstract :** Performing of the acts within criminal proceedings usually takes too long and thus this phenomenon can be regarded as one of the most burning problems which have plagued the criminal justice not only in the Czech Republic but at least all over Europe for the last few decades. This problem obviously has to be dealt with and thus the need to tackle this issue has resulted in the trend which is sometimes called Criminal Justice Rationalization, i.e. introducing and enforcing methods supporting the increase in efficiency of the criminal justice in order to make the criminal proceedings shorter and administrative procedure easier. This resulted in the introduction of institutes such as e.g. diversions in criminal proceedings or other forms of shortened pre-trial proceedings, which may be used primarily for dealing with less serious crimes. But also the institute, which was originally mentioned in connection with the system of criminal law in the countries belonging to the Anglo-Saxon legal order where it is frequently called of plea bargaining, has been introduced into the criminal law of many European countries, and it may be applied also in cases of serious crimes. All these special and shortened forms of criminal proceedings are connected with limited extent of process of evidence; in fact, some of these specific forms of criminal proceedings are designed for the purpose to simplify the process of evidence. That is also the reason, why some of these procedures are conditioned with the defendant's confession. Main hypothesis: Limited process of evidence represents also a potential conflict with certain fundamental principles upon which the criminal proceeding in the Continental legal system is based. (A conflict with principle of material truth may be considered as the most important problem. This principle states that the bodies in criminal proceedings must clarify the facts of the case beyond reasonable doubt to such extent that a decision can be made; the defendant's confession does not mean that these bodies are freed from the duty to review all the circumstances and facts of the case. Such principle is typical for criminal law in Central European region.) Basic methodologies: The paper is going to analyze such a problem of weakening of the principle of material truth in modern criminal law. Such analysis will be provided primarily on the base of the Czech criminal law, but also other legal regulations will be taken into consideration, and its result may have some relevance for all legal regulations belonging to the Continental legal system, so the paper offers also a comparison with legal systems of other Central European countries.

**Keywords :** burden of proof, central European countries, criminal justice rationalization, criminal proceeding, Czech legislation, Czech republic, defendant, diversions, evidence, fundamental principles, plea bargaining, pre-trial proceedings, principle of material truth, process of evidence, process of evidence

**Conference Title :** ICCJ 2016 : International Conference on Criminal Justice

**Conference Location :** Paris, France

**Conference Dates :** June 20-21, 2016