

# **The right of accused to examination witnesses in polish criminal process as a fair trial standard (art. 6 § 3 l. d of European Convention on Human Rights)**

## **Summary**

European Convention on Protection of Human Rights, was ratified by Poland in 1993 and since then have implied on the sphere of polish legal system. One of most important provisions of Convention, influencing the sphere of criminal trial, must be considered its' art. 6 titled right to a fair trial. The subject of this doctoral paper will be description of right of accused person to examination witnesses in polish criminal process in light of art. 6 § 3 l. d ECHR, as one of a components building trial standards. Abovementioned provision is being described as reflection of known in *common law* system concept of right to confrontation with accusation witnesses. The meaning of that right will be defined by reference to acquis of European Court of Human Rights in Strasbourg. It developed and defined proper interpretation of art. 6 § 3 l. d of Convention and created universal doctrine, that may be applied as well in countries of common law and continental legal system. The base of ECHR judgements concerning that matter is quite huge, but it is not only criterion for my choice. On the ground of this part of strasbourgs' doctrine arose such questions as: the principle of adversarial, the necessity of respecting the right of accused as well as rights of victims, protection of children an sexual abused, protection of society from organized crime, terrorism, and effectiveness of justice.

It is worth to reason additionally, how the main research perspective in this work was chosen. The short view on convention as a legal binding international contract must resulted in assumption, that Poland still has an obligation to respect its provisions. The proper realization of agreed obligation to implement all provisions of Convention is not easy to achieve. Therefore, making declaration of accession to ECHR jurisdiction Poland approved to be examined from realizing these obligations. For that reason, it's worth to prevent judgements stating violation of art. 6 of Convention by our country, as well as it is worth to evaluate the level of realization of our obligations.

The main aim of this paper is to decide, if this right is fully realized in normative and practical aspect. Basis thesis that is to be verified states: the right of accused person to examination witnesses in polish criminal process was shaped as an important element of fair

trial. Despite of that, there can be identified some areas, that need change to reach strasbourgs' standards, in the area on legislation and domestic practice as well. To achieve this main goal, the several specific question shall be solved, as follow:

- 1) decoding the notion of fair trial standards and defining what position in hierarchy of art. 6 is taken by the standard normed in § 3 d) art. 6 ECHR (chap. 1)
- 2) explaining the essence and the scope of the right of accused to examination witness, shaped by jurisdiction of ECHR, which created the set of principles and informal regulations building and abovementioned standards and developing them from narrow text of art. 6 § 3 l d of convention, (chap. 2)
- 3) specifying current direction of strasbourgs' doctrine (chap. 3)
- 4) determining, if polish criminal procedure provisions guarantee in proper way the fairness in the sphere of securing the rights of accused, that are connected with the participation in act of examination, on the ground of general procedural provisions (chap. 4) and separately according to the specific categories of witnesses (chap. 5)
- 5) describing, what problems relating to chosen aspects of abovementioned right arises during application of criminal law provisions in Poland and what is the way of resolving them (epilogue)

These questions are reflected in the structure of this work, and where presented by the use of following methods: formal analysis, legal - comparative, historic, dogmatic.

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