

Possibilities for reform of a mixed model of criminal procedure - some proposals for theoretical starting points of a new model of Slovene Code of Criminal Procedure

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Slovene theory of criminal procedure has not yet developed a comprehensive and in-depth theoretical debate on questions, connected with theoretical models of criminal procedure (accusatorial, inquisitorial, mixed), what will soon turn out to be a considerable shortcoming. This field of criminal law science seems to be at the present moment very important, due to envisaged reforms of the code of criminal procedure. It is evident that Slovenia will also opt for the abolishment of the current mixed (continental) model and decide for a more or less accusatorial model of procedure. This one is, due to its orientation towards a conflict between an individual and the state, more equipped for deciding in criminal law relations in stratified post-modern ("western") societies, characterised by a multitude of interests. A state must thus abandon its paternalistic views on relations in criminal procedure and also its active participation in criminal matters, what necessary means the abolishment of "instruktions maxime" as well as the abandonment of the principle of finding material truth.

Both mentioned institutes provide that a judge as a state official is that subject of procedure, who can most properly decide what should be done to meet the legal interests of all parties involved. Accusatorial model takes in larger extent account of (different) interests of parties in criminal law conflict and gives them thus the most important role in taking decisions about the beginning, course and termination of criminal procedure. Of course, this model is not without shortcomings, which are mainly the result of the glorification of the conflict between parties as the only way to ensure democracy, fairness and adversariness of criminal procedures. With the abolition of these "adversary excesses", the accusatorial model would be the most appropriate platform for the construction of the new Slovene Code of Criminal Procedure; however, lawmakers should be fully aware that any successful reform of criminal procedure must be necessarily accompanied by the reform of entire criminal justice system, which must become a firm guardian of a rule-of-law-state and not an extended hand of the state repression.

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