Summary of the Dissertation “Criminal proceedings in absentia”

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The purpose of the present work is to examine not all, but only some basic problems of criminal proceedings in absentia.

From the point of view of factual situation, the trial in absentia is perceived as the absence of the accused during the procedural actions; from the point of view of the law, it is understood as appearing of some deficiencies in these actions and especially in final judicial act, as a consequence of this absence.

First are presented the legal issues of participation, presence and absence of the accused person. These three points are at the heart of the understanding of the trial in absentia, insofar as they relate to the different influence of the accused’s contribution – or lack of it – to the development of the proceedings and to the essence of the final decision. The various consequences of these three types of the accused’s contribution (participation, presence and absence) are thoroughly examined.

Secondly, it is studied how the trial in absentia affects procedural actions and procedural acts. It is accepted that only those procedural actions could be called made in the absence of the accused, which relate to the collection of evidence or influence on the decision-making body to what decision should be taken. On the basis of this acceptance is the concept of legal interest as a criterion for assessing whether some procedural action, done without the accused, could be called done in absentia or not. Not all procedural acts, but only the decisive ones could be perceived as taken in the absence of the accused – and only if it resolves important and distinct procedural or substantive issues. Special attention is paid to the remediation – which means

taking new actions in the presence of the accused after the previous actions already done in his or her absence, as a result of which the harmful effects of the last ones are remedied and the procedural actions, taken all together, are not done in the absence of the accused.

Thirdly, the provisions of art. 269 of Code of Criminal Procedure is examined. This article stipulates the situations when the trial could be conducted in absentia. The more important is the condition of para 3 item 2 – the trial could be hold in absence of the accused when he or she does not appear and after thorough search is not found. The condition of item 3 is also discussed – namely, the accused, been regularly summoned and notified of the possibility the trial to be hold without him or her, voluntarily does not appear. The problems that arise from this legal disposition are also discussed.

This work aims also to examine the issue of the trial in absentia in the light of the law of the EU, in particular Directive 2016/343 and Framework Decision 2009/299, as well as the concept of fair proceeding under art. 6 ECHR. It tends to interpret the domestic law in such a way to make it consistent with the European Law.