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# The Effect of the Roman Law on Punishment[1]

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***Abstract:*** *The laws of advanced democracies are often inspired by the Roman law. The Slovak Republic is no exception. In the area of punishment, it is even one of the most important institutes. The institute of necessary defence is based on the principle of vim vi repellere licet and creates conditions for the protection of life, health and property in cases where these are not capable of being ensured by the state authorities. The principle of ne bis in idem provides protection against repeated punishment of the offender for the same act and is one of the greatest guarantees of maintaining legal certainty.*

***Key Words:*** *Roman Law; Administrative Punishment; Punishment; Principles; Necessary Defence; Presumption of Innocence; the Slovak Republic.*

## Introduction

The Roman system of punishment of an unlawful conduct can be easily summed up into two key words: punishment and deterrence. To render someone liable through litigation was very fast and the enforcement of the punishment even faster. Punishments were often public and cruel in order to fulfil their deterrent effects, although this was not a general rule and did not apply to everyone. In some cases, upper class members were allowed to commit suicide, instead of public punishment.

In the Roman system, punishment of individual crime depended on civil status and social class of the offender. During the era of Republic and at the early beginnings of Empire, punishment for a citizen (civic) was less severe than for a foreigner (peregrinus). Moreover, citizens had the right to appeal, whereas foreigners did not. Punishments were most severe for slaves.

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Modern laws regulating criminal liability and administrative liability departed from the Roman methods, mainly in differentiation of sentences based on social status of offender; however, even today it is possible to find some institutes or principles which have origins in the Roman law and still apply nowadays.

## 1 Criminality of conduct and *vim vi repellere licet*

The purpose of the state apparatus is, besides others, to maintain internal order of a state in order to ensure protection of society as a whole. Objectively speaking, it has never been possible to ensure protection of an individual and that is why every individual is forced to protect his/her life, health and property of himself/herself as well as the life, health and property of his/her relatives. However, in the case of prevention of one's own life, health and property or the life, health and property of his/her relatives from being harmed, it is highly possible that life, health and property of someone else will be harmed. In such scenario, this person hypothetically gets himself/herself into very inconvenient position in the eyes of the law; such conduct has merits to be specified as a certain type of an offence or a crime. For instance, if there is a physical attack present where one person – an aggressor attacks other person – a defender and the defender would in the effort to protect his/her life, health or property head off the attack by harming health of the aggressor by several fist punches into the face area causing injuries and, therefore, harming his/her health. By this conduct, both parties could commit a battery under the Article 156 of the Act of the National Council of the Slovak Republic No. 300/2005 Coll. Criminal Code, as amended (hereinafter referred to as the "Criminal Code"), which states that a person commits a tort of battery if this person intentionally harms the health of other person. The aim of an aggressor to harm health of a defender is in this case obvious and foreseeable. The aim of a defender is to head off the possible or continuous attack and so protect his/her health or life; the defender does not intend to harm the aggressor. However, we may take into consideration provisions of the Article 157 of the Criminal Code, according to which a person can commit a crime if by a negligent conduct this person seriously harms one's health. In the case of less severe harm of health this may be specified as the tort of battery. According to the Article 49 paragraph 1b) or 1d) of the Act of the Slovak National Council No. 372/1990 Coll. Code of Offences, as amended (hereinafter referred to as the "Code of Offences"), a person commits an offence if by a negligent act this per-

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son harms health of others or intentionally disturbs coexistence of citizens by making threats of bodily harm or battery, false accusations, spite-like actions or other disrespectful behaviour.

Based on the abovementioned description of factual and legal situation, it can be concluded that defender's effort to protect his/her life, health or property may be treated as an unlawful conduct which can be specified as a tort or a crime. By such legislation, the state may press on people to tolerate violence against them from the part of other citizens with the aim to harm their life, health or property and forces them to refrain from whatever kind of self-defence, yet the state did not ensure protection of such victim either. This situation may play very convenient role for the aggressor, because the only protection for the defender is the deterrent factor of possible criminal or administrative sanctions for the aggressor.

In the eyes of law, this situation is very inconvenient for the defender, so that legislature had to develop legal conditions allowing the defender – potential injured party to protect his/her life, health and property efficiently. The Roman law is a proper place for legislature to look for the inspiration. *Vim vi repellere licet* is the principle which allowed immediate defence in cases when life, health or property of the attacked person were endangered. It is the principle which laid basis for the modern legal arrangement of the institute of necessary defence, which is not considered as a criminal act.

According to the Code of Offences, the use of reasonable defensive force to head off a possible attack for purposes protected by law is not treated as an offensive conduct.

According to the Article 13 of the former Act No. 140/1961 Coll. Criminal Code, a conduct which is under usual circumstances considered as a delict is not categorised as a delict if its purpose was to head off possible or continuous attack, as specified by this law. We cannot categorise an act as a necessary defence unless it is adequate to the nature and severity of an attack. The criminal law laid provision that conduct which is under usual circumstances considered as a delict by which person tried to head off attack to democratic people's republic, its socialist nature, best interests of working public or an individual is not a delict if there was a risk of an immediate or continuous attack and defence was adequate to the severity of such attack.

From these quotations of the provision, it implies that legislation takes into account the necessity of the right to defend one's life, health and property. The legislation also takes into account the fact that person who is the subject of the possible attack and person who will eliminate the attack does not have to be one and the same person. Let us picture a situation where after the first hit the injured party loses consciousness and a random passer-by becomes the defender. The same applies if the injured party is not objectively able to eliminate the attack by himself/herself due to the obvious outnumber of attackers. Due to this fact, any person who is a witness of the attack or possible attack is entitled to act in necessary defence under the protection of law.

To prevent a misuse of this right, legislation has to set regulations under which a criminal conduct is not categorised as criminal. First condition is that act is really an attack, which means a conduct with the intention to cause harm or jeopardy. The attack must be happening or be highly possible to happen at the time of defender's effort to eliminate it. At this very moment, a rationally thinking person can, based on current circumstances, conclude that offender is about to cause harm or jeopardy. Risk must be at such a high level that the defender has grounds to assume that the attacker will finish this harmful act.

It is also necessary to make an objective assessment of the duration of the attack. A person cannot be acquitted if the act of defence happens in the time when the attack was not happening or there was not continuing risk of the attack, for example when the aggressor has already left the defendant. In such case, this can be categorised as an attack from the side of the defender and so that the defender can be held liable. If the offender gets hold of injured party's possessions, the attack continues, until the offender keeps possessions. The attack also continues if the aggressor stops violence for a short period of time due to the lack of energy. The attack continues, until the offender keeps infringing the interest protected by law.

The Code of Offences does not expressly state that there could be an elimination of a continuous attack, but, through logical argumentation or rules of law interpretation, it can be concluded that a concerned person does not fulfil conditions for a criminal offence by such conduct if this person defends oneself in adequate manner from an attack which is continuing, which means defending from a continuous attack. It arises from the very nature of the necessary defence and the extreme urgency law

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that legislation intended to create such conditions which allow a person to provide protection of interest protected by law and that is the reason for necessity to interpret the quoted regulations of offences in a broader sense, in respect of factual development of the attack and to apply them not only on a risk of possible attack, but also on a continuing attack.

To prevent a misuse of the right to necessary defence, the intensity of defence has to be clearly set out, so that the conduct of a defender can be categorised as a necessary defence. Under the Article 25 paragraph 2 of the Criminal Code, a conduct cannot be considered as a necessary defence if the defence was not adequate to the severity of the attack and mainly to its manner, place, time and circumstances concerning both the aggressor and the defender. The Code of Offences provides that the act of necessary defence has to be carried out in an adequate manner. Notwithstanding that the Code of Offences does not clearly set out what is the appropriate and adequate manner, *per analogiam* it is possible to apply the rule of interpretation under the Article 25 paragraph 2 of the Criminal Code and so to regard the adequacy in relation to the manner of the attack, place and time, circumstances concerning the aggressor or the defender. It is necessary to point out the fact that in majority of cases, the only way to make the defence effective is if it is of greater intensity than the attack and that is why it is not possible to *a priori* assume that it can be categorised as a delict if the conduct of the defender is of greater intensity than the conduct of the aggressor. On the contrary, the defending conduct is usually of greater intensity than the conduct of the aggressor, because the purpose of a defence is to head off or to eliminate the intention of the aggressor to carry on in the act of attack or to repeat it.

Over the time, application of the theory into practice proved that the act of necessary defence evokes excessive actions caused by emotional distress of the person who protects one's rights guaranteed by law, which causes that this person is not able to estimate the adequate level of intensity of the defensive act and protects one's rights inadequately. Legislation governs under the Article 25 paragraph 3 of the Criminal Code that the person who heads off an attack in an inadequate manner will not be guilty if the act happened under the pressure and emotional distress caused by the attack, especially due to the disorientation, fear or fright. These are the circumstances under which a person is acting within the law if the defender was facing strong emotional distress during the attack, which made him/her react inadequately to the threat or attack itself. Legislation also takes into account the so-called putative necessary

defence, which means supposed defence or defence against supposed attack. Under the Article 25 paragraph 4 of the Criminal Code, if somebody's presumption of an attack is false, the possibility of a criminal liability for the act of negligence is not excluded if the incorrect presumption has its basis in the act of negligence.

In relation to the institute of necessary defence, it is important to state that provision of legislation concerning offences is very brief, so that it is necessary to *per analogiam* also apply provision of criminal law relating to excessive necessary defence, which means, it is necessary to perceive the intensity of an attack and defence, and provision concerning putative defence. Private defence is a right which enables defence against an attack or threat of one's best interests without the risk of a legal liability. However, there is no possibility to assess whether the conduct will be classified as a crime or an offence at the time when the attack is happening and, for this reason, the person acting in defence should have uniform rules how to act in private defence, regardless the later legal qualification of that conduct.

Finally, it is important to highlight the fact that in the case of subsuming the conduct under the law of necessary defence, this conduct lacks one of the aspects of criminal liability or administrative liability and that is the illegality of the conduct.

## 2 *Ne bis in idem*

The first historical basis of the doctrine *ne bis in idem* is to protect an individual from arbitrariness of judging the individual several times for the same act, based on different qualifications. The first mention of this doctrine comes from the Roman era where Praetor's prohibition created this definite form – *"bis de eadem re ne sit actio"*. There is no possibility to cast doubt that this doctrine is one of the basic citizen's rights towards jurisdiction. It became the fundamental principle of criminal law.[2]

In private law, this procedure is known under the term *res iudicata*, as a reflection of a decision which is relatively unchangeable, understood

[2] See the proposal of Advocate General Yves Bot in *Criminal Proceedings against Piotr Kossowski* [2016-06-29]. Judgement of the Court of Justice of the European Union, 2016, C-486/14.

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in a broader sense as reassurance through an act of predictability of a decision, in terms of pre-existing settled case-law.[3]

*Ne bis in idem* and *res iudicata* are in their essentials instruments to maintain legal certainty for the party to the proceedings in the case that the legal matter has been already judged. Obviously, these principles in their essentials also pose a barrier in procedure to other involved authorities. In this case, we can talk about barrier of *lis pendens*.

The aim of the above-mentioned principle is to prevent government to prosecute someone more than once for the same crime, which means that a person cannot be sentenced for a conduct which he/she has already been convicted for, or sanctioned for, or presumed innocent or authorities has already judged differently in the given case. To decide whether the principle *ne bis in idem* was not breached, the relevant authority has to examine, whether the conduct is identical from the factual point of view (development of action), the circumstances of the case were the same, and usually also the personal aspects (the same persons or legal entities involved).

The procedural regulations state several alternatives for how should authorities act to respect the *ne bis in idem* principle.

According to the Article 9 paragraph 1e) of the Act of the National Council of the Slovak Republic No. 301/2005 Coll. Criminal Procedure Code, as amended (hereinafter referred to as the "Criminal Procedure Code"), prosecution cannot be initiated if it has already started, cannot be carried on and has to be stopped, if it concerns person who has already been prosecuted for the same conduct and prosecution was completed with a legally valid judgement, or if it was legally discontinued, suspended on condition and the defendant proved himself/herself, or if prosecution was settled, if the judgement was not set aside.

Under the Article 215 paragraph 1d) of the Criminal Procedure Code, the prosecutor drops proceedings if prosecution is inadmissible under the Article 9 of the Criminal Procedure Code. The court will stay off proceedings on the same grounds.[4]

[3] See MACH, P. Ne bis in idem – aktuálne variácie starej zásady. In: V. VLADÁR, ed. *Verejné právo na Slovensku a v Európe: Aktuálne problémy a rímsko-kánonické súvislosti*. 1. vyd. Praha: Leges, 2019, p. 158. ISBN 978-80-7502-424-4.

[4] See the Article 281 paragraph 1 of the Criminal Procedure Code.

Similar provision reflecting the principle *ne bis in idem* is contained in the Code of Offences. Under the Article 76 paragraph 1g) of the cited Act, an administrative body will terminate proceedings if it is found out that the conduct has been validly judged by an administrative body or a competent law enforcement authority.

The law concerning administrative proceedings (administrative law) in the Article 30 paragraph 1, as amended, lays down that administrative authority terminates proceedings if it establishes that different administrative authority has already started proceedings of the case, unless both authorities decided otherwise, or if proceedings have already begun at the court, if separate law does not lay down differently or if the valid judgement has been already given and the factual situation did not change significantly.

Diction of the quoted provisions implies that the acting authority is obliged to terminate proceedings if the case has been lawfully closed or if proceedings of the mentioned case have already started. In this case, it is a mandatory obligation to terminate proceedings. It implies from the imperative form "shall terminate".

In practice, an apparent collision is common in which case competent authorities hold legal proceedings with the aim to held criminal liability or administrative liability and on many occasions parties claim alleged breach of the *ne bis in idem* principle, which means the legal certainty of the party is also breached. The first one is proclaimed collision of disciplinary action and dismissal from service under the Article 192 paragraph 1e) of the Act No. 73/1998 Coll., as amended, concerning civil service of members of the Police Forces, the Slovak Information Service, members of the Judiciary Guards and Prison Wardens Corp and the Railway Police. The second collision is criminal penalty and dismissal from service under the Article 192 paragraph 1e) of the cited Act.

The doctrine *ne bis in idem* is expressed in the Constitution of the Slovak Republic under the Article 59 of the Act No. 73/1998 Coll. laying down that disciplinary measure cannot be imposed if member of civil service has been already convicted. In the case that disciplinary measure has been already imposed before, it will be cancelled coming into force by the day of imposition. At the same time, provision *expressis verbis* states that imposition of disciplinary measure for disciplinary misconduct or for conduct which has features of an offence does not exclude the possibility of dismissal from service for such conduct if after imposing

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disciplinary measure new circumstances have been revealed, reasoning the dismissal of a member from civil service. The Article 59 in connection with the Article 192 paragraph 1e) was a subject of many disputes when applied into practice.

The Regional Court in Bratislava during proceedings under file number 5 Sž 110/2002 stated: *"Based on defendant's objection that he has been already disciplinary sanctioned, the Court states that imposition of disciplinary measure itself does not exclude a possibility for his superior to also take personnel action under the Article 192 paragraph 1e) of the Act No. 73/1998 Coll."*[5]

It is important to also point out another legal opinion of the Regional Court in Bratislava which stated during proceedings under file number 1 S/2/2007: *"The Court identifies with opinions of defendant that legal action concerning his dismissal from civil service under the Article 192 paragraph 1e) of the Act No. 73/1998 Coll. cannot be artificially associated with criminal proceedings themselves or disciplinary action itself. The aim of criminal proceedings or infringement procedure is to establish if facts of the case comply with the definition of criminal conduct or law of offences. Competent superior decides, whether member of civil service should be dismissed from the service or not, based on his/her own opinion in compliance with law, and decides in a separate personnel action independently from result of criminal proceedings or offence proceedings. Aforementioned procedure complies with the Article 238 paragraph 4 of the Act* […] *Law contains the competence to act in personnel matters separately, without obligation to wait for the result of criminal proceedings or offence proceedings. Only decision of competent authorities whether criminal conduct or offence or other type of delict was committed is legally binding for competent superior. However, even not guilty verdict does not mean that member of civil service did not breach oath of office* […] *Conduct of applicant in separate personnel procedure was not categorised as an offence but as a breach of the oath of office and as such was also proved in personnel procedure* […] *The Court states that the question of guilt of criminal conduct and also offence is not a preliminary question to which answer does not affect dismissal of applicant under the Article 192 paragraph 1e) and that is why simultaneous criminal proceedings or offence proceedings against applicant do not affect personnel action. Therefore, the defendant is not*

[5] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 5 Sž 110/2002*.

*obliged to terminate action and to wait for the final judgement of competent authorities."*[6]

In the context of the second collision, it is necessary to state that these are two separate independent proceedings. Question of guilt does not have characteristics of preliminary question and does not condition the final result of personnel action. The Supreme Court of the Slovak Republic came to the same conclusion as abovementioned in proceedings under file number 1 Sž-o-NS 24/2004: *"The Court of Appeal identifies with legal opinion of the defendant that question of quilt of criminal conduct is not a preliminary question and dismissal of applicant under the Article 192 paragraph 1e) of the Act No. 73/1998 Coll. does not depend on the answer to the question of guilt. That is the reason why simultaneous criminal proceedings against applicant do not affect personnel action. Therefore, defendant was not obliged to terminate action and to wait for the final judgement of competent authorities acting in this case."*[7] There is also stated in proceedings under file number 7 Sž 63/2003: *"If defendant acted against applicant without regards to result of legal proceedings, the correct procedure was followed, because legal proceedings do not affect dismissal from civil service in relation of the claimant and the defendant."*[8]

The principle *ne bis in idem*, however, does not apply absolutely. It can be overruled by retrial. It is a special correctional procedure included in both the Criminal Procedure Code and the Administrative Procedure Code. Due to the fact that this is a significant interference with concerning persons, the Criminal Procedure Code and the Administrative Procedure Code set strict regulations when to allow retrial.

It often happens that police officer dismissed from civil service due to the breach of oath of office or duty appeals for retrial and termination of judgement based on acquit and so new circumstances and evidence were established in addition, which neither police officer nor his/her superior were aware of at the time of proceedings and so could not have been applied, but which could have had major effect in the decision making process.

In the abovementioned case, we cannot come to conclusion that criteria for retrial are automatically met, as there are different circumstances considered at legal proceedings than at the personnel action concern-

[6] See *Judgement of the Regional Court in Bratislava Ref. No. 1 S/2/2007*.
[7] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 1 Sž-o-NS 24/2004*.
[8] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 7 Sž 63/2003*.

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ing dismissal. Verdict of acquittal cannot automatically result in presumption that police officer did not seriously violate service discipline or oath of office either and that he/she did not breach law regarding relevant legal provisions. The above-stated legal opinion has been agreed upon also by the Supreme Court of the Slovak Republic under proceedings file number 1 Sž-o-NS 152/2005.[9]

In proceedings under file number 8 Sžo 48/2013, the Supreme Court of the Slovak Republic stated that *"Question of criminal liability does not have to be identical with circumstances which create basis for personnel action. The serious breach of oath of office or duty cannot be conditioned by committing a crime. Due to these reasons, verdict of acquittal submitted by claimant itself is not evidence that claimant did not commit criminal conduct in the examined decision of defendant."*[10]

Verdict of acquittal in the subject matter can pose a reason for retrial, but it is not guaranteed. It is a duty of competent authority to examine if circumstances which led to the acquittal lay legal basis for retrial.

## 3 *Praesumptio boni viri* and *in dubio pro reo*

Presumption of innocence is one of the most important rights guaranteeing suspect of criminal conduct that a person is innocent, until competent authorities do not declare his/her guilt in accordance with law.

It is one of the basic guarantees for an accused or convicted individual that authorities will act in compliance with law and rights. This right is recognised by many international conventions, as for instance by the Universal Declaration of Human Rights, the Charter of Fundamental Rights and Freedoms (Article 40 paragraph 2), Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6 paragraph 2).[11]

Presumption of innocence is guaranteed by the Constitution of the Slovak Republic which states in the Article 50 paragraph 2 that every person against which are brought proceedings is considered innocent,

[9] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 1 Sž-o-NS 152/2005* [2006-04-27].
[10] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 8 Sžo 48/2013* [2014-09-18].
[11] See *Universal Declaration of Human Rights* [1948-12-10]; and *Convention for the Protection of Human Rights and Fundamental Freedoms* [1950-11-04].

until the court finds this person guilty. The Code of Offences and the Criminal Procedure Code follow up the constitutional law.

The Code of Offences in the Article 73 paragraph 1 constitutes that citizen is accused of an offence after competent authorities start first procedural act against him/her. This citizen is considered innocent, until the court finds this person guilty. The Criminal Procedure Code in the Article 2 paragraph 4 states that any individual subject to proceedings is considered innocent, until the court finds this person guilty.

Following the abovementioned information, it is necessary to note that proceedings concerning offences and criminal proceedings are based on same principles, because their substance is the same, to clarify circumstances of unlawful conduct, to subsume them under respective elements of an offence, to establish identity of perpetrator, to assess the relevant legal regulations and to held perpetrator accountable for criminal conduct. The Constitutional Court of the Slovak Republic came to the same conclusion that in important characteristics these proceedings are the same, as stated in proceedings under file number II. ÚS 133/2013: *"From the point of view of the Constitutional Court, the Court agrees with complainant who pointed out during both the administration proceedings and the court proceedings that proceedings concerning offence should be, in fact, considered as criminal proceedings with application of rules indispensable for criminal proceedings. The main factor is presumption of innocence and the right of tried person to decide freely about the manner of defence during respective stage of proceedings. Part of this right is also a free decision if and to what extent will defendant comment on accusations which he/she is facing. Decision of defendant in these matters is also part of procedural rules and defendant is liable for the result of proceedings. That is to say, it is responsibility of defendant to decide what defence will be the most convenient and efficient, but, at the same time, defendant is responsible for these decisions even if they show to be inefficient."*[12]

Person accused of an offence or a crime is considered innocent if his/her guilt is not proved in compliance with law, which means final decision of one of the competent authorities or the court that defendant is guilty. Not proved guilt has equal legal value and effect as proved innocence, which means that it is not defendant's duty to prove his/her inno-

[12] See *Decision of the Constitutional Court of the Slovak Republic Ref. No. II. ÚS 133/2013* [2013-02-14].

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cence, because burden of proof is on the competent authority or the court.[13]

The Supreme Court of the Slovak Republic in proceedings under file number 10 Sžd 23/2011 stated that *"The Code of Offences under the Article 73 paragraph 2 provides basic procedural rights and duties of accused individual. In comparison with administrative proceedings which is provided in administrative body of law, it gives defendant broader scale of procedural rights. Realisation of presumption of innocence means that competent authority has legal obligation to prove guilt of defendant beyond any doubt, otherwise authority has to issue judgement in favour of plaintiff."*[14] In another proceedings under file number 6 Sžo 34/2007 (R 11/2014), the Supreme Court of the Slovak Republic also stated that *"Realisation of presumption of innocence in proceedings means that competent authority is legally obliged to prove that defendant is guilty beyond reasonable doubt, otherwise authority has to issue judgement in favour of plaintiff (in dubio pro reo)."*[15]

In the context of the quoted opinion of the Supreme Court of the Slovak Republic, it is necessary to point at the fact that presumption of innocence is closely connected with the principle *in dubio pro reo*, meaning "when in doubt, for the accused". This formulation has been known since the medieval period, although the principle is based on ideas of the Roman law, appearing mainly in works of Ulpian, but in different formulations. Substance of this principle is obligation of authorities or the court to decide in favour of defendant if circumstances of conduct and identity of culprit were not clearly established beyond any doubt. The Supreme Court of the Slovak Republic stated in proceedings under file number 3 Sžo 35/2011 that *"... Merits of an offence are characterised by four obligatory features which are subject, subjective side, object and objective side. For clarification of an offence and sanctioning, these have to be compulsorily fulfilled and established cumulatively. If even one aspect of merits has not been clarified, it cannot be classified as offence. If existence of any*

[13] See SPIŠIAKOVÁ, H. *Zákon o priestupkoch: Komentár*. 1. vyd. Bratislava: Wolters Kluwer, 2015, p. 447. ISBN 978-80-8168-187-5.
[14] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 10 Sžd 23/2011* [2012-04-25].
[15] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 6 Sžo 34/2007* [2007-11-27]. R 11/2014.

*part of merits is doubtful and was not clearly proved beyond any doubt, the principle in dubio pro reo is applied (when in doubt, for the accused).”*[16]

## Summary

From the above-stated analysis of the mentioned principles applied in proceedings, for the imposition of a sanction for an infringement shows the important role the Roman law playing in the creation and application of modern legal codes. Although the individual legal norms that incorporate the Roman law principles into the legal order of the Slovak Republic underwent a development that reflected the needs of application practice, the essence of these principles always forms an immanent part of the legal regulation of punishment. Some of the institutes are so important for preserving the rule of law that they are enshrined directly in the Constitution of the Slovak Republic. When drafting legislation, the legislator and the relevant state body must take into account the constitutional norms in question when applying the law, which guarantees the persons concerned protection against abuse of the law.

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[16] See *Judgement of the Supreme Court of the Slovak Republic Ref. No. 3 Sžo 35/2011* [2012-01-17].

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