DOI 10.7251/GOD2042007S- UDK 343.13:343.14/.15(410)

ORIGINAL SCIENTIFIC PAPER

THE MAIN CHARACTERISTICS OF CRIMINAL PROCEEDINGS IN ENGLAND

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Abstract: *The thematic concept of the Paper consists of legal issues related to criminal proceedings in England, which are the so-called pure adversarial proceedings. These proceedings differ from the law of the continental European countries and are characterized by archaisms and continuity, original common law (judicial) character, and the absence of major codifications. In this context, the paper analyzes the meaning of common law and equity law, and procedural criteria for the categorization of criminal offenses. Regarding the issue of rules and procedures for establishment of the facts, the authors pay special attention to the consideration of determining the factual background of the dispute, the burden of proof and procedural rules on the presentation of evidence. Clearly emphasizing the different classifications of evidence that can be presented before the court, the authors point out that English law treats all hearings in the same way, i.e. it also brings the testimonies of the defendant and the expert witness under the witness examination regime. Starting from the fact that an important feature of legal principles is that in English law there is an obligatory exclusion of illegally obtained confession of the defendant from the evidence, it is concluded that the exclusion rule is essentially a relatively exclusive rule with a large discretionary assessment of the judge. In conclusion, the authors assess that the entire evidentiary procedure, types of evidence, the manner of their collection, presentation and evaluation in English law, to a greater or lesser extent, differs from the continental criminal proceedings.*

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***Key words**: criminal proceedings, England, evidence, adversarial proceedings, common law, burden of proof, assessment of evidence.*

1. TYPE OF PROCEEDINGS, FORMALISM, ARCHAISM

The English criminal proceedings are the so-called pure adversarial proceedings, constructed in the form of a dispute between the two parties before a neutral and impartial tribunal, which must settle that dispute.[3] Formalism[4] and archaism are the qualities that are *a priori* assigned to it.

What marked the development of English law[5] was the intertwining and opposition of the norms of German, Roman[6], canonical and Danish law, and the law that emerged in practice through the unification of the royal courts. Its basic features, which distinguish it from the law of the continental European countries, are archaism and continuity, originally customary (judicial) character, absence of large codifications, and small influence of Roman law.[7]

An important characteristic of English law is that it does not recognize the termination of application of a legal norm by long-term non-application in practice (d*esuetudine, disuse*). Modern English law is less characterized by traditionalism, but it is definitely one of the elements of the English legal mentality.

2. RELATIONSHIP BETWEEN PROCEDURAL AND SUBSTANTIVE LAW

Unlike the continental legal system where there is traditionally a separation of substantive (material) and procedural law, which is mostly separated in the regulations themselves, substantive and procedural law are mostly intertwined in English law. The reasons can be found in the historical development of the English legal system. In a significant part of the English legal system, especially from the aspect of a continental lawyer, the real decision-makers in the English judicial apparatus were lay people - either justices of the peace or ju-

3 Davor Krapac*, Engleski kazneni postupak* (Zagreb: Pravni fakultet, 1995), predgovor.

4 See Johan Steyn, „Does legal formalism holds way in England?“, *Current Legal Problems*, *Volume 49, Issue 1*, Oxford Academic (1996): 43–58; Brian Leiter, „Legal formalism and legal realism: what is the issue?“, *Cambridge University Press*, *Volume 16, Issue 2* (2010): 111-133.

5 See Jeremy Horder, „Criminal law between determinism, liberalism and criminal justice“, *Current Legal Problems*, *Volume 49, Issue 1* (1996): 159–186.

6 See George Mousourakis, „The Survival and Resurgence of Roman Law in Western Europe“, chap. 7 of *Roman Law and the Origins of the Civil Law Tradition*, Springer (2015): 233–286.

7 Krapac*, Engleski kazneni postupak,*1.

rors.[8] Because extremely important powers were entrusted to the lay people, the English judicial apparatus failed to develop a number of characteristics related to bureaucratic power structures. It was not until the second half of the 19th century that professional civil service experienced a rise. In addition, this is one of the explanations why there is no clear differentiation between substantive and procedural law.

The English legal system is generally a mixture of three historical layers of legal norms that have been formed over the centuries in court practice: the system of so-called common law, equity law, and admiralty, mercantile and ecclesiastical law.[9] Although formally this division no longer exists, its consequences are still felt today in legal terminology, principles and procedures.

2.1. Common law

Common law is a term that has several meanings. First, in the time of Edward I (1239-1307), it was used as a designation for a right that was common to all of England, modeled on canon law, which was *ius commune*[10] for the whole community. It generally owes its origin to the practice of royal courts in the 12th century.[11] Later, it usually meant a part of English law not passed by the Parliament and which, due to the legislative supremacy of the Parliament, was of a lower rank than the law.

Common law is mostly uncodified. This means that there is no comprehensive compilation of legal rules. Although the common law relies on some scattered rules that are the product of legislative activity, it mostly relies on precedent.

2.2. Equity law

The "equity law"[12] is a corrective to the strictness of common law. It sought to introduce a kind of flexibility into the law, as common law was a rigid system where the documents governed the system of adjudication. Common law allowed the initiation of court proceedings before the royal court only on the basis of a certain written order of the king. The chancellery courts introduced equity law in order to fill gaps to which common law could not respond.

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8 Mirjan Damaška, *Lica pravosuđa i državna vlast, Usporedni prikaz pravosudnih sustava* (Zagreb: Globus, 2008), 25.

9 Krapac*, Engleski kazneni postupak,* 4.

10 See David Ibettson, *Common Law and Ius Commune* (London: Selden Society, 2001), 17-27.

11 Krapac*, Engleski kazneni postupak,* 4.

12 See Stephen N. Subrint, „How equity conquered common law: the Federal rules of civil procedure in historical perspective", *University of Pennsylvania Law Review*, *Vol. 135, No. 4* (1987): 909-1002.

3. PROCEDURAL CRITERIA FOR CATEGORIZATION OF CRIMINAL OFFENSES

What is specific for English law and different from continental law is that procedural criteria alone are used to classify criminal offenses. Admittedly, this form of division is newer and dates from the period after World War II. Thus, criminal offenses in English law are divided into two basic groups regarding: a) police powers in the application of coercive measures against their perpetrators, or b) the manner of trial.[13]

The first group includes the so-calledarrestable offenses. In essence, these are criminal offenses for which police arrest is possible without a court order. In practice, these would be offenses punishable by a fixed sentence or offenses punishable by imprisonment for more than five years. This criterion has been applied since 1967.

Criminal offenses based on the second criterion are divided into "indictable" and "summary" offenses. This division highlights the historical difference between trials for criminal offenses committed under the common law system and trials for criminal offensesprescribed under the laws passed by the Parliament. In the first case, the judges judged in the presence of a jury at the so-called quarterly sessions. In the second case, the judges also judged, but without a jury and the trialswere quite short. Because of their short duration, these trials were called summary convictions (offenses punishable on summary conviction). In addition to these two groups, there is a third one, which is essentially a mixed type, i.e. offenses triable either way. The judge will decide which type of proceedings will be applied to the accused after hearing the parties, assessing the gravity of the criminal offense.

If the judge decides for regular proceedings, the preparatory proceedings continue. If, on the other hand, it decides for summary proceedings, the accused must give his consent because a trial before a jury is a right guaranteed under the Constitution.

13 Procedural criteria for distrinction of criminal offenses are not the only ones. After XIII Century an idea on categorization of offenses according to their severity occurred, which depends on the degree of perpetrator's intention. Therefore, there is treason of a kind, as the most severe offense, and than there are other felonies and misdemeanours.

4. RULES AND PROCEEDINGS FOR ESTABLISHMENT OF FACTS

The basic principles regarding the establishment of facts in English criminal proceedings are: the facts in issue[14]are determined exclusively by the parties to the proceedings; the burden of proof is solely on the plaintiff; the facts can be established before a court only on the basis of presentation and assessment of evidence; the presentation of evidence at the hearing, which is conducted in a strictly contradictory manner, is supervised by a judge who decides on logical issues of relevance of individual evidence and legal issues of their admissibility; the assessment of evidence before a jury, with some exceptions, is free from legal rules that would regulate their value.[15]

4.1. Determination of facts in issue

The plaintiff in the intial act by whih he intiates the proceedins (depending on its type) determins the factsin issue. To put it simply, the plaintiff in the indictment already determines the factsin issue, which he later intends to prove. The factsin issue can relatively be determined earlier by some other act - application, court summons, arrest warrant, etc.

Sometimes the range of legally relevant facts in issue is extended to the initiative of the defendant. Namely, by raising objections and introducing evidence that refutes the plaintiff's evidence, he necessarily expands that range of facts. As the accusation must be proven "beyond any reasonable doubt"[16], the plaintiff is obliged to refute their truthfulness.

However, there are certain exceptions (*exemptions, exceptions, excuses of qualification*) when the burden of proof is actually "shifted" to the defendant. The reason for this is expediency: since these are incriminations containing a general prohibition of certain behaviorsor actions, except for situations in which it is permissible, it is more practical to require the defendant to prove that such situations are in question.

There is another situation in which the burden of proof may be on the defendant, and that is when during the proceedings the question is asked whether some evidence can be used as evidence in criminal proceedings (admissibility of evidence). The party proposing such evidence bears the burden of proof in terms of procedural rules that it is evidence that can be used as evidence in

14 See Jerzy Wróblewski, „Facts in Law", *Archives for Philosophy of Law and Social Philosophy Vol. 59, No.* 2, (1992): 161-178.; Lee Loevinger, "Facts, Evidence and Legal Proof", *Case Western Reserve Law Review*, *Volume 9, Issue 2* (1958): 154-175.

15 Krapac*, Engleski kazneni postupak,* 10.

16 Stanard of proof beyond reasonable doubt is inextricably intertwined with fundamental principle for all criminal trials – presumption of innocence.

criminal proceedings. If the party fails to prove this, the so-called exclusion rule shall be applied.

4.2. Burden of proof

The burden of proof in criminal proceedings in English law lies with the plaintiff. The reason is that he is the one who raises the indictment.[17] After the initiation of the proceedings, the plaintiff primarily proves the allegations from the indictment (facts in issue). The evidence presented to the court in this regard is evidence sufficient to establish the disputed facts (*prima facie evidence*). If the plaintiff does not submit prima facie evidence, the defense has the right to seek immediate release because it is „nocase to answer".

4.3. Procedural rules for presentation of evidence

In English criminal proceedings[18], the parties present evidence, while the court moderates the proceedings. When presenting evidence, the principle of contradiction is fully applied - which means the possibility of the opposing party to present all evidence and allegations, and examine them in substance. The principle of contradiction is mostly pronounced in the examination of witnesses.

The witness is obliged to take the oath before the examination. He is then questioned by the calling party (examination-in-chief). The witness is then examined by the counterparty (cross-examination). English law allows a counterparty to use various interrogation tactics designed to reveal inconsistencies and deficiencies in testimony, and to cast doubt on the credibility of testimony, and even to cast a shadow over the identity of witnesses (impeachment methods). Finally, the party who proposed the witness – is given the opportunity to re-examine him once again.

During the examination-in-chief, the witness is forbidden to ask leading questions. The ability to "refresh" a witness's memory is limited, and cross-examination of one's own witness for the purpose of discrediting is also prohibited. In cross-examination, the counterparty is not bound by the subject matter of the examination-in-chief, but is by the rules of relevance. Cross-examination also has limitations: questions that violate the witness's honor and dignity must not be asked, unless there is a valid reason and permission from the court - in which case only one such question can be asked.

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17 *The Criminal Procedure Rules 2015,* part 10: Indictment, accessed od 11. November 2019, *https:// www.legislation.gov.uk/uksi/ 2015/1490/ contents/made*, accessed on 11. November 2019.

18 Procedural rules of procedure are regulated by „The Criminal Procedure Rules 2015", accessed on 12 November 2019, *http://www.legislation.gov.uk/uksi/2015/1490/contents/made*.

5. TYPES OF EVIDENCE

In English law, there are different classifications of evidence that can be presented in court. In this sense, the basic division is as follows: oral evidence[19] - testimony of persons; real evidence[20] - objects that serve as evidence, and documentary evidence[21] - different types of documents. Computer printouts have a special status.

There is, in addition, a division into evidence in the narrower and broader sense. The first group includes testimonies of persons (defendant, witnesses and experts), and documents and technical recordings of facts. Actual evidence falls into the second group. English law treats all hearings in the same way, i.e. it also brings the testimonies of the defendant and the expert witnesses under the regime of hearing witnesses.

5.1. Witness testimony

Until the end of the 19th century, in criminal proceedings before English courts, English law excluded certain categories of persons from the possibility of testifying. The reasons were age, intellectual abilities, and reasons of religion and morality. In the meantime, a large number of particular laws related to evidence (so-called Oath Acts, Evidence Acts, Criminal Evidence Act, Police and Criminal Evidence Act) were introduced as well as free evaluation of evidence, thus abandoning the general categorization of witnesses into credible and unreliable, and left it to the court for assessment as a *questio facti*.

Today, in principle, everyone can testify, and whether a person is capable of testifying - the judge assesses in each individual case. He examines the so-called competence of witnesses, which consists in the judge having to be assured that the person is mentally mature to be able to understand the subject matter of proving. According to this understanding, children can also be witnesses, with the difference that the judge can decide that the child gives testimony without an oath, if he assesses that it is a so-called tender years.[22]

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19 See „Witnesses and oral evidence *"*, UK Parliament, accessed on 9.5.2020, https:// beta. parliament. uk/ articles/CnhtfyB1. Yock Lin Tan, "Weight of oral evidence in criminal proceedings", *Singapore Journal of Legal Studies,* Faculty of Law, National University of Singapore (2000): 443-482.

20 See Sidney L. Phipson, „Real evidence", *Yale Law Journal*, *Volume 29, Issue 7* Article 1 (1920): 706-717.

21 See Yock Lin Tan, „Making sense of documentary evidence", *Singapore Journal of Legal Studies*, Faculty of law, National University of Singapore (1993): 504-537.

22 See Barry Nurcombe, „The Child as Witness: Competency and Credibility", *Journal of the American Academy of Child Psychiatry*, 25 (1986): 4473-480 and Mice McGrath, Carolyn Clemens, „The Child Victim as a Witness in Sexual Abuse Cases", *Montana Law Review*, *Volume 46, Issue 2*, Article 1 (1985): 3-15.

5.2. Testimony of the accused as „witness in his own matter“

The defendant in criminal proceedings under English law has no obligation to testify. Giving testimony is his right[23], not his duty. Therefore, the prosecutor never calls him as a "witness in his own matter", but he offers himself if he wants to give testimony or if he wants to testify against an accomplice.

The choice of the accused not to be a "witness in his own case" is his right to be silent, or a privilege against self-incrimination. If, on the other hand, he decides to testify against an accomplice, the prosecution may offer him as a witness only after the proceedings against him have been completed, i.e. if he was sentenced immediately after the confession upon being read the charges, or if the jury acquitted him.[24] However, the "Queen's evidence" consisting of the testimony of such a witness (sometimes obtained by prosecutors through "trade" - in which a person's willingness is rewarded with a milder qualification in the charges) had to be substantiatedby other evidence until 1994.

The 1994 Criminal Justice and Public Order Act[25], although it does not deny the right to remain silent, nor does it create an obligation for the accused to testify, or does not provide for a sanction for him if he refuses to do so - creates some pressure on the accused to cooperate with the prosecution authorities and to present his own defense. These provisions unequivocally turn "privilege against self-accusation" into *privilegium odiosum*.[26]

Finally, if the defendant decides to "testify in his own case", he is subject to the same regime as the defense witness. He will be exposed to the main examination, but also to the cross-examination by the prosecutor.

5.3. Expert witness testimony

Although in English law experts[27] are subject to the same examination regime as witnesses, the experts are generally required to have a greater degree of objectivity and impartiality. This is very important to emphasize having in mind pure adversarial proceedings, where parties hire and pay experts. However, an expert witness as an expert in a certain non-legal field should give an expert and objective opinion on the disputed facts in a specific criminal case. The expert witness should explain to the court and the jury, in a clear and understandable way, the conclusions reached through his expertise. Due to the competence of

23 This right has been enjoyed since 1898.

24 See *Wilson v. Police* [1992] 2 N.Z.L.R. 533.

25 Accessed on 6.5.2020, *http://www.legislation.gov.uk/ukpga/1994/33/contents*. Articles 34-39 fall under section *„Inferences from accused's silence"*.

26 Krapac*, Engleski kazneni postupak,* 70.

27 Provisions of procedural law on expertise and hearing of witnesses see: *The Criminal Procedure Rules 2015*; part 19: Expert evidence.

the expert witness, his opinion will have greater evidence value in relation to the disputable facts, which the expertise referred to, but whether the faith will be given to that opinion is again decided by the court, i.e. the jury.[28]

5.4. Documents and technical recordings

The 1984 Police and Criminal Evidence Act defines the term document in such a way that it covers not only all categories of records, such as writings, printed material, drawings, sketches, plans, notes, etc. but also technical recordings of facts (photographs and films, magnetic tapes with sound or optical recording, discs and similar media).[29] Interestingly, English law is skeptical towards documents, and prefers the author of the document is heard at the hearing - about what he himself noticed on that occasion, instead of reading it.

In order for a party to be able to present evidence with a document, two preconditions must be met: its authenticity must be proved and its presentation in court must be admissible. If he does not have the original, the party may use a copy of the document for this purpose in certain cases only: if e.g. he proves that the original cannot be obtained because it has been lost or destroyed; if it is a certified copy of a public document, etc. Minutes containing statements of some persons who are reasonably considered to have their own knowledge of a particular matter may be used as evidence in criminal proceedings, provided that they have been made by an official and if that person cannot be heard directly, i.e. if these are information provided by an unidentified person, and all "reasonable steps" taken to establish his identity remained unsuccessful.[30]

The Police and Criminal Evidence Act also deals with computer printouts as evidence in criminal proceedings (evidence form computer records). If the original computer operation is used, such a printout can be used as evidence. However, if the printout is a product of a database created by a person, then that printout may be used as evidence, *inter alia*, if the party proposing that evidence does not prove that there are no reasonable grounds to believe that the information is incorrect due to mishandling of the computer.

5.5. Assessment of evidence, control of relevance and admissibility

Before the beginning of the presentation of evidence, in English law, the so-called control of relevance and admissibility, have to be taken into account. The purpose of this is primarily preventive action, in order to prevent misconceptions in the conclusions of jurors. As jury decision-making is in fact secu-

28 *The Criminal Procedure Rules 2015*; part 26: Jurors.
29 See Part II Powers of Entry, Search and Seizure.
30 *Police and Criminal Evidence Act* 1984, art. 68.

lar, the risk of misleading the jury, due to ignorance of legal principles, is high, and, therefore, the judge conducting the hearing has the primary task of supervising the presentation of evidence and deciding on its relevance and admissibility before it is presented.

The jury is in principle not subject to any legal rules on the assessment of evidence, other than the legal standard of proving guilt "beyond any reasonable doubt". All evidence presented to jurors, they judge on a free assessment. There are two exceptions to this principle in the most serious three-part criminal offenses under the old common law system. Namely, in the case of treasons, a conviction can be rendered only based on direct evidence, namely the testimony of two eyewitnesses or the confession of the accused at a public hearing. In other criminal offenses, there are cases when the testimony of one witness is not sufficient, but it is necessary that the testimony be corroborated[31]with some other evidence.

The judge presents the jury the rules on substantiation at the end of the hearing. In this regard, three scenarios are possible if the prosecution does not provide corroborating evidence: (1) it will be deemed not to have complied with the burden of proof rule, (2) the judge must warn jurors of the possibility of wrongful conviction, and (3) the judge may or may not warn jurors to the possibility of wrongful conviction.

Relevance. Only evidence that points to the actions and consequences of the committed criminal offenses (*actus reus*), i.e. subjective circumstances on the part of the perpetrator (*mens rea*), circumstances under which the crime was committed and other disputable facts may be presented at the hearing. There is a possibility that certain evidence is logically related to the commission of a criminal offense, but will not be presented at the hearing because it is not legally relevant.

Admissibility. Although the proposed evidence may be logically related to the facts to be proved in the criminal proceedings and are relevant as well, there is another criterion that they must meet, and that is admissibility. In the event that the judge considers certain proposed evidence inadmissible, he will exclude such evidence immediately, before the start of the hearing. This is primarily because it is important to "protect" the proceedings from the secular perception of inadmissible evidence, as exists in the jury trial system. The criterion for the admissibility of evidence is defined by some authors[32]in such a

31 See Article 13 *Perjury Act* 1911.; Article 89 paragraph 2 *Road Traffic Regulation Act* 1984.; Article 32 *Criminal Justice and Public Order Act* 1994.; Article 77 Police and Criminal Evidence Act 1984. and Article 34 *Criminal Justice Act* 1988.

32 For example, Adrian Zuckermann, *The Principles of Criminal Evidence* (Oxford: Clarendon Press, 1989), 49.

way that, in addition to relevance, this evidence must contribute to the elucidation of the disputed facts, without wasting time and causing other "troubles" that their presentation could cause.

One of the fundamental rules of English criminal proceedings is the prohibition of hearsay. Thus, only a person who has testified about an event (an eyewitness, *testis de scientia propria*) or the circumstances to which he or she testifies are directly known to him or her, can be heard as a witness in English criminal proceedings, but not a hearsay witness (*testis de auditu, de scientia aliena*). The reason for this prohibition lies in the danger that jurors may give too much importance to unreliable testimony of witness, who cannot be adequately subjected to direct and cross-examination on these circumstances.

6. APPLICATION OF EXCLUSION RULE

In terms of inadmissible evidence, in English law there is an obligatory exclusion of illegally obtained defendant's confession from the evidence. The prosecution is required to prove beyond a reasonable doubt that the confession was not acquired under oppression[33] or conduct by the examiner in any other way that would make such confession unreliable.[34]

If the prosecution fails to prove this, the judge will exclude such a confession from the evidence without the presence of a jury, which is called a "trial within a trial". Although an absolute exclusionary rule applies to such a confession, other evidence arising from such confession remains in the case file.

Likewise, a judge may exclude from the file any evidence that he or she characterizes as "unfair evidence".[35] This evidence should be such that it would have such a negative effect on fairness in proceedings[36]that it should not be accepted.

The exclusion rule, as we find in English criminal proceedings, is essentially a relative exclusion rule with a large discretion of the judge, where the exclusion occurs by observing the circumstances of each individual case, and not automatically. On the other hand, in the English criminal proceedings, the scope of violations to which the exclusion rule applies is not large either. Finally, the application of the exclusion rule in English proceedings also depends on the type of evidence. The mere fact of improper collection of evidence is

33 See Tim Goddard, Randolph R.Myers, „Against evidence-based oppression: Marginalized youth and the politics of risk-based assessment and intervention", *Theoretical Criminology, Florida International University USA*, *Volume 21, Issue 2* (2017), 151-167.

34 See Article 76 *The Police and Criminal Evidence Act* 1984.

35 See Article 78 paragraph 1 *The Police and Criminal Evidence Act* 1984.

36 The fairness of the entire proceedings is observed. *Ratio* of such conducts greatly reminds of the decision-making of the European Court of Human Rights.

not in itself sufficient to exclude a particular piece of evidence.[37] English law starts from the assumption that the illegal way of collecting material evidence usually does not affect the relevance of the evidence.

7. CONCLUSION

For a continental lawyer, the English criminal proceedings are quite distant and often very complex. The entire evidentiary procedure, the types of evidence, the manner of their collection, presentation and evaluation, differ to a greater or lesser extent, from the continental criminal proceedings. Therefore, the issue of assessmentof legality of evidence and procedure after establishing that it is an evidence collected in an illegal manner is an issue that is difficult to deal with without first presenting the concept of evidence law and evidence proceedings in general. The question of the application of the exclusion rule, absolute or relative, therefore, also differs in relation to the continental proceedings, and often in relation to the American model of criminal proceedings. Generally speaking, relative exclusion rule applies in English criminal proceedings, with certain rare examples of an absolute exclusion rule. Furthermore, the scope and types of violations differ in order for the exclusion rule to be applied at all. What we can generally say is that the concept of English criminal proceedings is more pragmatic when it comes to exclusion of evidence than the American criminal proceedings, and in a way it reconciles the application of important principles of criminal procedure law - the right to fairness and the principle of material truth.

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37 Adrian Keane, *The Modern Law of Evidence* (Oxford: Oxford University Press, 2008), 62-63.

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ОСНОВНЕ КАРАКТЕРИСТИКЕ КРИВИЧНОГ ПОСТУПКА У ЕНГЛЕСКОЈ

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Апстракт: *Тематску концепцију рада чине правна питања везана за кривични поступак у Енглеској који представља тзв. чисти акузаторски поступак. Тај поступак се разликује од права земаља континенталне Европе и карактерише га архаичност и континуитет, изворно обичајноправни (судски) карактер, те одсуство великих кодификација. У том контексту у раду се анализира значење common law и equity law, те процесни критерији за категоризацију кривичних дјела. У вези са питањем правила и поступака за утврђивање чињеница, аутори посебну позорност посвећују разматрању одређења чињеничне основе спора, терету доказивања и процесним правилима о извођењу доказа. Јасно истичући различите класификације доказа који се могу извести пред судом, аутори наглашавају да енглеско право сва саслушања третира на исти начин, односно исказе окривљеног и вјештака такође подводи под режим саслушања свједока. Полазећи од тога да је битно обиљежје правних начела то што у енглеском праву постоји облигаторно искључење незаконито добијеног признања окривљеног из доказног материјала, износи се закључак да је ексклузијско правило у суштини релативно ексклузијско правило са великом дискреционом оцјеном судије. Износећи закључке, аутори оцјењују да се цјелокупан доказни поступак, врсте доказа, начин њиховог прикупљања, извођења и оцјењивања у енглеском праву, у мањој или већој мјери, разликује од континенталног кривичног поступка.*

Кључне ријечи: *кривични поступак, Енглеска, докази, акузаторски поступак, common law, терет доказивања, оцјена доказа.*

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38 Судија Уставног суда Босне и Херцеговине, редовни професор Правног факултета Универзитета у Бањој Луци и редовни члан Академије наука и умјетности Босне и Херцеговине, *miodrag.simovic@ustavnisud.ba*.

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