

The Principle of Subsidiarity of Criminal Repression

Abstract

This Master's Thesis deals with the principle of subsidiarity of criminal repression, one of the basic principles of substantive criminal law, which was first enacted in the Czech criminal law as lately as in the new 2009 Criminal Code. The principle of subsidiarity of criminal repression is expressed by the fact that the means of criminal law can be applied only in socially harmful cases where the application of criminal liability is not sufficient under another legal enactment. Simultaneously, this principle of subsidiarity of criminal repression expresses the nature of criminal law as a means of the *ultima ratio*, i.e. the ultimate solution.

After the introduction of the functions and purpose of the criminal law itself in terms of historical development and present, an analysis of the valid legal regulation of the principle of the subsidiarity of criminal repression is presented.

Adoption of the principle of the subsidiarity of criminal repression into the new Criminal Code has led to an unprecedented wide-ranging discussion of its importance in criminal law, especially its impact on the issues of the basis of criminal liability. The problems often mentioned in this discussion are in particular dealt with in the chapter on the concept of crime, the chapter on social harm criteria and the chapter on procedural consequences of application of the principle of subsidiarity of criminal repression.

Furthermore, this Thesis brings the analysis of the valid legal regulation of correctives of criminal lawlessness, simultaneously presenting considerations *de lege ferenda*.

At the same time, the relationship of so-called diversions in criminal proceedings with the principle of subsidiarity of criminal repression is also examined. In this section, the author also examines selected modern approaches in criminal law and formulates some of the considerations *de lege ferenda*.

The legislative aspect of the principle of the subsidiarity of criminal repression has also been taken into account in this Thesis, in sense of which the principle undertakes legislators their criminalization considerations. The Thesis then at least brings a brief assessment whether the

current state of the legal regulation is consistent with the legislative requirements of the principle of subsidiarity of criminal repression.

Key words: principle of subsidiarity of criminal repression, ultima ratio, criminalisation