Abstract

The crime of breach of regulations on rules of economic competition

This thesis deals with the crime of breach of regulations on rules of economic competition under section 248 of the Criminal Code. This section consists of four separated crimes, where the author focuses only on the crime of unfair competition and the crime of conclusion of cartel agreement.

In the first chapter the author concisely describes the historical background which is notable especially for legislation from period of the First Czechoslovak Republic. The author considers its significance mainly since the then Unfair Competition Act has been a source for the current provisions on unfair competition in the Civil Code. Moreover, the author intended to point out a very different rationale and approach to cartels under the then Act on Cartels in comparison with contemporary legal situation.

After a general description of the elements of the crime in question in sense of systematic classification and introduction of its main issues the author presents two criminal law principles, i.e. subsidiarity of prosecution in criminal law and requirement of *nullum crimen sine lege certa*. The author examines both crimes in the light of these two principles throughout his whole thesis.

In the third chapter the author inquires into legal analysis of unfair competition where he puts emphasis on existence and importance of so-called general clause of unfair competition. The author firstly introduces provisions of other legal branches, i.e. civil provisions which serve as the basis for the Criminal Code and then he thoroughly assesses criminal provisions on unfair competition by subsequent analysis of all elements of crime. Furthermore, the author points out a different approach to unfair competition in foreign legal systems, in particular he compares German and Austrian Unfair Competition Act. Previous conclusions are then applied on detailed analysis of the current judgement by the Highest Court of the Czech Republic. Finally, the author comes to intermediate conclusion that despite of existence of certain marginal discrepancies, for which he also provides solution under *de lege ferenda* consideration, the current Czech provisions on unfair competition are sufficient and stand the test of the requirements laid down by the two principles mentioned above.

In the fourth chapter the author adopts a similar approach to the crime of conclusion of cartel agreement under Section 248 (2) *alinea* 1 of the Criminal Code. Even in this chapter he considers as important to explain and aptly describe the basis of non-criminal provisions and then he inquires into a thorough analysis of this crime. In case of competition law, the author emphasises large body of case law that has originated from practise of European and Czech
competition authorities and which is essential basis for interpretation and application of competition rules. Furthermore, the author enumerates number of legal institutes that diverse between standard competition law and criminal law. Mere application of these competition law concepts on criminal cases thus results in practical and theoretical problems. Interpretation of “agreements” belongs between these essential issues since a substantial number of legal scholars from criminal law area tend to interpret this concept extensively. The author puts forward many legal arguments that disapprove this extensive approach, e.g. again also in light of *nullum crimen sine lege certa* requirement. Fact that legal persons are not liable for this crime is by the author considered as another imperfection of the current legal provisions. Moreover, the author is concerned with leniency and its connection with criminal law provisions. Finally, the author attempts to find a suitable solution for given issues by draft of new wording of the crime of cartel agreements.

**Key words:** rules of economic competition, unfair competition, cartel agreement.