

Omissive offences

Abstract

This diploma thesis addresses the issue of omissive offences in the Czech criminal law with regard to the legislation of Germany. Given the little attention paid to this topic in the Czech Republic, the aim of this thesis is to provide the reader with a comprehensive view of the omission in Czech criminal law in the context of contemporary legal literature, case law, and relevant legislation, including critical review of the most controversial aspects of the current regulation. In the beginning, the thesis focuses on the characteristics of the offence and its individual features with an emphasis on the objective aspects of the offence, which is essential for determination of the form of action. This is followed by a detailed historical excursion into the antecedent legislation of omissions in our country, from the time of Austria-Hungary, to the unsuccessful efforts to reform the criminal law during the First Republic, followed by methodically elaborated criminal codes from the period of totalitarianism to the fine government draft of the Criminal Code from the turn of the millennium. The core of this thesis is the third chapter dealing with the valid regulation of omission and categorization of omissive offences to the authentic (genuine) and the inauthentic, while interpreting the difference between the general and special obligations to act. Among the group of genuine omissive offences, the most typical representatives are characterized by offenses of failing to provide assistance in all three categories and offences of failing to prevent and reporting offenses. In the case of inauthentic omission, attention is paid especially to the sources of special duty to act and its analysis. The thesis also deals with the German regulation of omissions and compares its individual aspects with the Czech one. First, the thesis describes the different views on the concept of behaviour and some theories that are discussed in the German environment. Furthermore, the German regulation of genuine omissive offenses equivalent to those dealt with in the part on the Czech legislation is outlined, namely the failure to provide assistance and the failure to report planned crimes. The second part of this chapter explains the so-called functional theory of omission, which emphasizes the character of the guarantor as the bearer of a special duty and not the source of this obligation, which is thus rather

a complementary attribute, while in the Czech environment on the contrary, the greatest emphasis is put on the sources of special duty. The last chapter reviews some of the other views on the modification of omissions and makes suggestions for potential improvements to the current Czech regulation. In conclusion, I summarize the findings that I have made during the writing of this work and evaluate the fulfillment of the goals that I have set at the beginning.

Key words: act, omission, omissive offence, general and special duty to act, failure to provide assistance, failure to prevent an offence, failure to report an offence