

# **The Concept of a Criminal Offence in the Czech Criminal Code**

## **Abstract**

The presented thesis deals with the matter of the concept and particularly of the conception of a criminal offence. Committing a criminal offence is an exclusive requirement for establishing criminal liability. Despite its significance for substantive and procedural criminal law, there are still both some academic and practical uncertainties concerning its conception in the criminal code in force. This thesis aims to thoroughly explore the conception of the criminal offence in the criminal code, starting from the basic theoretical questions, current legislation in force including its historical development and finally to highlight some legislative issues and its possible solutions through *de lege ferenda* proposals.

The first chapter of this thesis concerns with the matter of defining basic concepts that the criminal offence is based on. It further deals with the theoretical models of conception and concept of the criminal offence that might be used by the legislator while creating the law and describes its strengths and weaknesses. Furthermore, it deals with its combinations.

The next part of the thesis focuses on how the legal regulation of the concept and conception of a criminal offence evolved in modern codes of criminal law in our country, deals with both drafts of the Criminal Code created in 1926 and 1937 during the First Czechoslovak Republic, that were never adopted, and both criminal codes adopted in 1950 and 1961 respectively. In those criminal codes this thesis focuses on analysing the conception of the criminal offence and comes to the conclusion of the material-formal concept *lato sensu*.

In the third chapter the thesis follows by describing the effort on recodification proposals of the new code of substantive criminal law including both considered alternatives of the concept of the criminal offence – the formal concept followed by procedural correction of criminal lawlessness in the form of the principle of opportunity as well as returning to the former material-formal concept regulated in the criminal code adopted in 1961.

The fourth chapter of this thesis addresses the concept of the criminal offence itself, its definition, essential features and categorization in the criminal code in force. It concludes that the concept of the criminal offence in the law in action can be

described as formal, as opposed to the criminal code Act No.140/1961 coll., and is critical of the concept of misdemeanours.

The following part of the thesis describes the conception of the criminal offence in the criminal code in force, compares it with the previous legislation regarding discussed matter, analyses both of the corrections of criminal lawlessness, focuses on their theoretical and applicational weaknesses and provides an example examining the extent of their application.

The final part of the thesis deals with analysing recent decision of the Constitutional Court and deduces further consequences concerning the use of material correction in practice.

**Key words:**                    **conception of a criminal offence**  
   **concept of a criminal offence**  
   **subsidiarity of criminal repression**