

Tolerable risk

Abstract

The theme of this diploma thesis is a tolerable risk (or allowable risk) as one of the circumstances excluding illegality in the Czech criminal law. The introductory chapter is devoted to the general principles of the circumstances excluding illegality, related institutes and to the ultima ratio principle meaning that criminal liability is a last resort. Furthermore, the individual circumstances excluding illegality and their mutual relations are examined, as we can observe similar or even identical building blocks between the circumstances definitions, which make them very similar to each other so that lay people are sometimes unable to distinguish them from one another. The following chapter deals with the tolerable risk itself - its history in Czechoslovakia and later Czechia until its explicit inclusion in the Criminal code from 2009, analysis of the current legal definition and details of individual elements that the Criminal code requires for undertaking a risk. It is also compared with foreign countries (Slovak and Polish) law, as these two states penal codes include similar articles about tolerable risk. Finally, the thesis deals with two specific fields of human activity which are frequently associated with tolerable risk - sport and health care. Pointed out are their specifics, which must be dealt with and which often make it difficult to apply the institute, which is intended for a wide range of activities but the diction is quite brief. For the sake of clarity, the thesis refers to case law, which demonstrates the problems that the norm addressees and the courts have to deal with, even in other fields of activities. The thesis also contains thoughts about the possibilities which, based on more than ten years of experience with inclusion of the tolerable risk in the legal list of circumstances excluding illegality, can reflect these problems in a possible amendment to make the norm clearer and the legal practice does not have to rely heavily on case law.