

# **Principle of subsidiarity of criminal repression**

## **Abstract.**

This thesis deals with the principle of subsidiarity of criminal repression, one of the most important principles in criminal law, which is a prerequisite for the functioning of a democratic state based on rule of law. This principle is primarily implemented in the Czech legal system by the provision of Section 12(2) of the Criminal Code, which requires social harmfulness of the conduct and the inadequacy of the application of liability under another legal provision for the criminal liability to be applied, but it is also applied in procedural law through the principle of opportuneness.

The thesis is divided into five chapters. The first chapter provides an insight into the historical development of the principle, primarily in the past legislation of 1961, but also touches on the perception of the principle in the older legal literature. The following chapter examines the concept of the offence and its formal and substantive concepts. It includes examples of these conceptions in the law and reflects on the advantages and disadvantages of each conception.

This is followed by a doctrinal perspective on the subsidiarity of criminal repression. In this part of the thesis, the different dimensions of the principle are addressed. In relation to the legislative dimension of the principle, the thesis seeks to answer the question of whether the legislator respects the principle in their work. This part of the thesis also deals with the procedural corrective of criminal repression, which it compares with the substantive corrective.

Subsequently, the text of the thesis analyses the use of the principle of subsidiarity of criminal repression in the current legislation. Here, attention is paid to the already mentioned provision of Article 12(2) of the Criminal Code, specifically to the two conditions of criminality and the problems associated with their application and interpretation. From this perspective, the thesis assesses whether this is an appropriate way of implementing the principle of subsidiarity of criminal repression into the legal system. It also compares the concepts of 'social harmfulness' and 'social danger'. The last part of the thesis is devoted to the development of the use of the principle in case law. The gradual development of the use of the principle is illustrated in individual court decisions and the current judicial interpretation of the principle is compared with the initial one.

**Key words:** Principle of subsidiarity of criminal repression, concept of crime, social harmfulness, corrective of criminal repression.