English summary

This dissertation engages in fraud and its special kinds. If we omit the formal relevancies we can speak about the division of the thesis into 5 chapters which have got different length depending on the importance of relevant topic.

The first chapter is called « The criminological aspects of fraudulent delinquency ». The author has decided to include it into thesis because of the necessity to respect the material sources of law by the creation of legal rules.

Next to thefts and bodily injuries the fraudulent criminality represent the most frequent kind of delinquency. We can considerate frauds for crimes without any violence, physical constraints or psychological compulsion. The consequences of the acts aren´t any health injuries or death. The offender doesn´t use any weapons, explosives or other dangerous materials, doesn´t pursue a course of action under influence of alcohol, drugs or other matters with effect on intellectual capacity.

The legal science has produced several divisions of fraudulent delinquency. We must mention for example general and special frauds (sections 250 / 250a and 250b of the Czech Criminal Code), frauds as property and economic offences or the internal and external frauds. As for as the last highlighted division it´s constructed on the relation between offender and aggrieved person (member of staff or extraneus).

Reader can find some circumstances of fraudulent delinquency in 1990s (after the end of communism) in the first chapter, too. The so called coupon privatization during the 1990s then the desire to have a property as a symbol of succesful life, the absence of moral wisdom as a heritage of totalism, etc. are linked with many fraudulent criminal acts.

We should designate the second chapter « Fraud and its special kinds de lege lata » as the most important part of the thesis. The author both describes the normative elements of the merits of crime and criticize it when he finds it inappropriate.

The general fraud commits whoever, with the intent of obtaining for himself or a third person an unlawful material benefit, damages the assets of another, by provoking or affirming a mistake by pretending that false facts exist or by distorting or suppressing true facts. Our criminal law permits to punish the offender with imprisonment or a fine or a prohibition of activity. The height of punishment depend on several circumstaces such as acts as a member

of a gang, loss of great magnitude, etc. For illustration the most severe punishment should be imprisonment for not more than twelve years.

In the development of fraudulent act four persons can feature – perpetrator, person who obtains an illegal benefit, injured person and person who acts in mistake. The author points out the absence of legal definition of « mistake » in the General Part of Czech Criminal Code in comparison with criminal codes in other European countries.

As regards the insurance fraud it´s commited when some of these circumstances exist: offender damages, destroys, impairs the usefulness of, gets rid of or gives to another a thing which is insured against destruction, damage, impairment of use, loss or theft; by the entering into insurance contract announces false representation or makes fraudulent misrepresentation. We should accordingly distinguish delinquency pertaining the contract and the insurance events. There isn´t conditio sine qua non in a form a harm on property, in that fact we discover the main difference between general and insurance fraud.

The credit fraud lies in making incorrect or incomplete statements about facts relevant to a credit, subsidy or grant for himself or another, that are advantageous for himself or the other, to a public authority competent to approve a subsidy or to another agency or person (credit or grant giver) which has intervened in the subsidy procedure.

In the second paragraph of section 250b Czech Criminal Code the legislator expresses its intendment of law to impose the criminal reaction in relation to abusing of limited performances. Perpetrator will be punished if he uses an object or cash benefit, the use of which is limited by legal provisions or by the credit, subsidy, grant giver in relation to such credit, subsidy or grant, contrary to the use-limitation.

Similarly to insurance fraud the harm on property isn´t necessary for the fulfilment of crime in both first and second paragraph. On the contrary in following paragraphs the height of loss influences the rate of punishment.

Under the term « subsidy » we comprehend a benefit from public funds under law for businesses or enterprises, which, at least in part: a) is granted without market-related consideration; and b) should aid in stimulating the economy. Likewise credits given by bank or other private entity (consumer credits) subsidies can be marked as an instrument of support

of market economy system. Hence the Czech legislator decided to protect the social relations in this area (1997).

The author notices that in the Czech Criminal Code could be traced fraudulent nature in the frame of other crimes. We can´t forget infringement on other people´s rights (section 209 of Criminal Code) or injury against consumer (section 121). Between general fraud and other relevant crime from other chapters of Criminal Code the relation of speciality predominates with the exclusion of concurrence of crimes.

The small chapter 3 « Fraud and its special kinds in the proposal of Criminal Code » informs about the changes pertaining the regulation of fraudulent criminality in the project of new Czech Criminal Code. From the main differencies in comparison with actually legally binding code it´s important to mention at least the requierement of harm on property by insurance and credit fraud (sections 189 and 190 of considered proposal). The crime « subsidy fraud » was singled out into separate provision of proposal. The author doesn´t regard it as a good step. There´re some changes in the development stages of fraudulent delinquency and in the approach to relapse. All round the transformations can´t be perceived as fundamental.

The chapter 4 acquiants the reader with legal wording of fraudulent crimes in German criminal code. The author compares it with Czech Criminal Code and makes several recommendations for Czech legislator.

The last chapter focuses on fraudulent delinquency in judicature both of the Supreme Court and the Constitutional Court. More then 20 cases are presented with author´s interpretation including the so called Vážný´s Collection (the first Czechoslovak republic) and judicature from the communist epoch.