

# **The principle of legality and opportunity in criminal proceedings**

## **Abstract**

The submitted diploma thesis deals with the initiation principles of criminal proceedings, specifically the principles of legality and opportunity. The aim is to analyze the gradual erosion of the leading initiation principle in criminal proceedings in the Czech legal system. It also examines selected aspects of the current legal framework related to these principles, which may pose challenges in practice. Finally, it determines whether the exceptions to the principle of legality can be classified as manifestations of opportunity, distinguishing between absolute and relative opportunity.

An analysis of criminal procedure codes from 1873, 1950, 1956, and 1961 shows that criminal proceedings in the Czech lands were historically based exclusively on the principle of legality. However, elements of opportunity have always existed and gradually expanded.

The thesis further examines the concept of public interest, which is safeguarded in criminal proceedings by the public prosecutor, and how this concept is reflected in various legal institutions. It explains the unsystematic duplication of corrective measures for criminal unlawfulness and analyzes both statutory and judicial interpretations of the so-called procedural corrective. The study also addresses the problematic application of the principle of legality in prosecuting legal entities, particularly so-called "empty shells." Therefore, it presents a proposed legal amendment introducing a new discretionary ground for terminating the prosecution of such legal entities. The thesis also discusses control mechanisms ensuring compliance with the law in prosecutorial decisions regarding non-prosecution, as provided by the Criminal Procedure Code. It includes possible *de lege ferenda* proposals.

The final chapter presents exceptions to the principle of legality at international, European, and statutory levels. These exceptions are divided into cases where prosecution is prohibited and cases where it is discretionary. Special attention is given to diversion measures and the temporary suspension of criminal prosecution. None of the cases in which prosecution is prohibited, nor any of the diversion measures, constitute manifestations of opportunity. The only exceptions classified as opportunity are the discretionary termination of prosecution under § 172(2)(c) of the Criminal Procedure Code (absolute opportunity) and under § 172(2)(a), (b) of the Criminal Procedure Code (relative opportunity). The thesis also presents a proposed amendment introducing an additional discretionary ground for terminating prosecution due to insufficient evidence.

The conclusion states that the regulation of opportunity exceptions in criminal proceedings will continue to be subject to legislative changes. The extent to which legality is eroded by opportunity depends not only on the number of statutory exceptions but also on the defined perception of both principles.

**Key words**

principle of legality, principle of opportunity, exceptions to the principle of legality, public interest, procedural corrective of criminal injustice, basic principles of criminal proceedings, public prosecutor