

Abstract

Dissertation: Criminal Legal Regulation of Fraudulent Conducts against Property

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Protection of property has been settled as one of the interests protected by criminal law, but the formulation of facts of criminal acts sanctioning fraudulent conduct has always interfered with some specific aspects of this type of crime, chiefly consisting in the diversity of methods of how to conduct the fraud. Taking a comprehensive view of criminal legislation sanctioning the fraud against property in the Czech criminal law in terms of the most basic facts of the crime the author of this dissertation depicts to what extent this legislation is unsettled and ambiguous even - while dealing with partial problems, which however have the same principles - inconsistent. By creating a common ground, putting accepted conclusions and assumptions from the literature and judicial practice in context, so far unsolved problems are drawn. These come especially with newly formulated and fundamentally altered facts of crime within the analyzed area, where the conclusions often appear as outdated or even unconvincing. Some of these problems are formulated in this thesis, sometimes followed by outlines of proposals for possible solutions, either in terms of legislation, interpretation or recommendations for law enforcement authorities.

The work is systematically designed so that after a brief, purely interpretative historical passage it passes to the polemical interpretation of current legislation with the reflection of the legislation in force until December 31st 2009. It addresses the very general concept of the criminal offense, emphasizing the issues of fraud, which is typical for its private-law basis. It is here where the author emphasizes the principle of subsidiarity of criminal repression in particular - the concept of which in the legislative process, theory and practical application has not yet been clarified - although the importance of this principle has repeatedly been emphasized by the Constitutional Court in relation to "fraudulent" conducts in particular.

Then the basic features of the selected relevant facts of crime (the offense of fraud under § 209 Criminal Code. Act., Insurance fraud under § 210 Criminal Code. Act., Credit fraud under § 211 Criminal Code. Act., Grant fraud under § 212 Criminal Code. Act). In relation to the theoretical definition the practical examples and appropriate judicial decisions are given. The author points at some problems occurring in practice or problems that - in the opinion of the author - will arise. They often result from a systematic interpretation applied to specific practical situations. The author then takes subjective opinions according to the nature of the problem, theoretical proposals *de lege ferenda* or specific recommendations to law enforcement authorities.

These sections are based primarily on teaching aids, technical articles, relevant judicial decisions and relevant explanatory memoranda. Certain problems are - due to the scope of the solution - placed in separate subchapters. These cases are by the author highly current and either in theory and/or practice unresolved, or where are existing solutions considered to be inadequate or unsatisfactory and therefore requiring more polemics (eg issue of sufficiency of applying the liability under noncriminal laws in cases of private-law based proceedings in relation to the principle of subsidiarity of criminal repression, the issue of fraud in cases property dispositions secured by a pledge, issue of relationships among facts of crimes involving specific cases of fraud in relation to the merits of the "general fraud" and many others). These cases are based primarily on the actual decision of the Supreme Court of the Czech Republic or sometimes - used as an inspiration and example - reports in the media (especially in matters not yet resolved in theory nor practice). In order to make a proper subjective opinion the author draws from relevant criminal law textbooks, comments to the criminal law or code, technical articles, explanatory memoranda, several hundred published and unpublished judicial decisions, but also from foreign legislation.

A separate chapter is also dedicated to the issue of fraud in the EU law, primarily due to the embedding of the facts of crime of damaging the financial interests of the European Union to § 260 of the Criminal. Act . This is not systematically included among the crimes against property, however, within international terminology, this kind of proceeding is regularly regarded as fraudulent proceedind against the financial interests of the EU. Moreover, the wording of the facts of this crime clearly indicates proximity to fraudulent crimes against property (namely for crimes of grant and loan fraud). The analysis of the facts leads the author to the conclusion that it is rather an example of improper transposition of EU legislation without taking appropriate into account the traditions and principles of the Czech criminal law

theory and practice. Also in terms of the proper legal classification is case of potential ideal concurrence with other facts of crime from the current Czech catalog of crimes which are - due to object to this crime - obvious, might be problematic (it cannot be overlooked that in addition to multi-resource grant management the EU's main source of income are for instance VAT or customs duty payments).

Comprehensive view of criminal legislation sanctioning the fraud against property in the Czech criminal law including thorough analysis basic facts of crimes depicts, how difficult is to find an adequate criminal law consequences of evolving crimes consisting in fraudulent conduct. However the dissertation concludes that the Czech legislator often prefers extensive enumeration of all possible conducts in various facts of crimes to in depth considered formulation based on deeper analysis of their real necessity and consequences of their application, especially with respect to the systematics of Criminal Code, i. e. relations to other provisions from its general as well as from its special part.