

## **Crime of fraud, credit and loan fraud pursuant to section 209,210, 211 and 212 of the Criminal Code**

Criminal code, No. 40/2009 Coll., contains the criminal offence of a fraud (Section 209) and its special cases such as the insurance (Section 210), loan (Section 211) and subsidy fraud (Section 212), in total of four separate offences dealing with fraudulent delinquency. The author of the thesis deals with the characterization of facts of fraud. Property fraud (Section 209) is a damage crime, but the special forms of fraud have features of pre-accomplished crime (preparation of crime). Fraudster's criminal liability for insurance, loan or subsidy fraud is rather larger than criminal liability for general type of fraud.

Analysis of the judicial decisions of the Supreme Court and the Constitutional Court of the Czech republic is one part of the diploma thesis. From the results of the analysis the author concludes that there is a personal criminal liability for fraud when the perpetrator sues for a fake debt. This kind of deceptive activity is an attempt of crime of the fraud.

The difference between special type of fraud (insurance, loan or subsidy Sec. 210 – 212 Criminal code) and general fraud (Sec. 209 Criminal code) is evident also in the level of evidence. Culpability of fraud must comprise of the intent to cause the damage, the intent to unjustified enrichment and the culpability must also contain causality between act of the fraudster (misleading somebody by false, use someone's mistake or concealing essential fact) and the result of the crime (damage impact). When only the one of these fraudulent elements is missing (for example damage), the perpetrator is not guilty. The liability for special frauds requires providing false information, eventually concealing essential fact. The intention includes in this situation only acts of perpetrator and not the result of the crime (causing damage) or no causality between act and result. The criminalization of the pre-accomplished crime eliminates the need for precise evidence, however it places increased demands on the application of the subsidiarity of criminal repression principle, especially when person introduces false information during applying for a consumer loan.

The subsidiarity of criminal repression principle is not only the criminal law principle. The Constitutional Court of the Czech republic approved several times the importance of this rule. The rule of subsidiarity of criminal repression is an implicate part of democratic state principle contained also in the Bill of rights and freedoms. This rule can significantly eliminate criminal liability of fraudsters.

The diploma thesis contains the passage of comparison of the merits of property frauds in the Czech republic, Slovakia, Netherlands and Russia.

### **Key words:**

criminal offence, fraud, subsidiarity of criminal repression principle, culpability, judicial decision