

SUMMARY

Circumstances excluding punishability

1. The main purpose of this thesis is to analyze the nature of the circumstances, which are standardized in Czech criminal law, as circumstances excluding unlawfulness. Main focus is on two of them that, in both historical and international comparison, are not in all circumstances conceived as so-called justification (circumstance excluding unlawfulness), but also as a reason for excluding subjective criminal liability (excuse).

2. The concepts of criminality, criminal liability and anti-legality in their various concepts, which can be found in the theory of criminal law, are first analyzed. Thus, in particular, the concepts of formal and material criminality, formal and material unlawfulness, so-called criminal unlawfulness and special unlawfulness are clarified consecutively. The result of this investigation is the conclusion that unlawfulness is only one and expresses a contradiction with the whole legal order. This concept should be distinguished from the concepts of criminality (as attribute) and criminal liability. Unlawfulness is their condition. In this general part, the place of unlawfulness in the system of elements of crime, and its functions in that system are analyzed.

3. In the second part, the thesis focuses generally on the notion of circumstances excluding criminality, criminal liability and unlawfulness. Their nature is also analyzed and it is distinguished between objective circumstances excluding criminality (*in rem*) and the subjective circumstances excluding criminality (*in personam*).

4. The last part deals with the issues of necessity and necessary defense. In particular, it is examined the issue of cases that are treated as excitatory defenses that exclude criminality with the effect *in personam* and justificatory defenses with the effect of excluding criminality *in rem*. In particular, the impact of the process of subjectification of the necessary defense conditions is explored. This process is the reason why the concept of excitatory asthenic excess was definitively abandoned. The situation of necessity is different.

It is necessary to distinguish her nature whether it is circumstance excluding unlawfulness or just subjective criminal liability. Other questions of necessity and necessary defense are also explored. Particularly, their relationship across branches of law.

Keywords: criminality, criminal liability, unlawfulness