

# **Abstract**

## **I. Preview**

The recent adoption of the new Penal code in Czech republic has entailed a range of new approaches, including new conception of the notion of the crime – a crucial institution of the penal law itself, stretching from the fundamental questions of criminal liability via the institution of an attempt to the field of penal procedure. This has give rise to multiple juridical questions, that this work aims to analyse.

## **II. Subject of analysis**

One of the principal objectives of this diploma thesis is to be seen in the delineating of conclusions of the positive school of penal law and evaluating the measure to which they influenced the Czechoslovak legislation in the realm of criminal law, examining the role of the phenomenon of the social dangerousness in relation to the particular questions on the field of substantial as well as procedural law.

## **III. Prior research**

Due to its extensiveness and position in the point of intersection of multiple disciplines , the points at issue have been continuously subject to academic works of numerous authors, stretching from the ancient philosophers, religious authors, canonic jurists, on shoulders of whom the modern jurisprudence had elaborated several conceptions that influenced the modern codifications and have been a significant source of inspiration to the legislature till present days.

## **IV. Objective**

**IV.I** To outline the features of the two most influential concepts of criminal liability – the concept proposed by the classical school of penal law and the conclusions of penal juridical positivism and trace the impact of the aforesaid conceptions onto the legal regulation provided by the abrogated Penal code as well as the view introduced by the new Penal code.

**IV.II** To lay out the implication resulting from the changeover in the conception of the notion of a crime for selected institutions of penal substantial as well as processional law

## **V. Methodology**

The basis for the analysis is constituted by summary of the précis of the relevant ideas presented in the works of most influential authors the works of whom have crucial reference to the modern conceptions of criminal liability. This information is subsequently used to demonstrate the crucial ideological differences between the two most common models of criminal liability and to summarise their pros and cons. Subsequently we attempt to identify the key elements of the aforesaid models of the criminal liability in the structure of the abrogated Penal code and the legislation in force. Lastly we try to adumbrate the perspectives for the solution of legal questions that might arise on the basis of the legislative changes in question.

## **VI. Résumé**

After the examination of the matter we have come to the following conclusions:

The abrogated Penal code (act n. 140/1961 Sb.) was substantially influenced by the ideas proposed by the Italian school of juridical positivism, mainly by its concepts of social responsibility and the role of the person of the accused with relevance to the subsumption of the relevant facts of the case under the notion of crime. We are in the conviction, that the concept of social dangerousness is a derivative of a concept of temibility proposed by one of the key figures of the Italian positive school of criminal law – Raffaele Garofalo. On the basis of our analysis we are persuaded, that the element of social dangerousness enabled the magistrates to detach in a considerable extend, from the act of a delinquent and take into extensive consideration his personality which finds its justification in the jurisprudence relating to the phenomenon of an impossible attempt.

Secondly, after the examination of the provisions of the new Penal code, accompanied by a sizable literature, we have come to a conclusion that the new institution of social prejudicialness coupled by the requirement of subsidiary role of penal repression does not, in all probability, constitute - in accordance with the postulate of formal conception of a crime – one of the legal elements of a crime and its absence cannot lead neither to the verdict of acquittal nor to the abatement of prosecution within the meaning of the articles of the effective Code of the penal procedure.