

The principle of subsidiarity in a criminal law

Summary

The Master's degree thesis analyzes the principle of subsidiarity in a criminal law as an actual topic because this principle is included in the new czech penal code in art. 12 para 2: *„The crime responsibility and its consequences can be applied only in social harmful cases if an application of an other kind of a law responsibility is insufficient.“* However before the new penal code was passed the czech Constitutional Court and Supreme Court had dealt with the principle of subsidiarity in a criminal law in their judgments.

The first chapter reports on a general definition of the principle of subsidiarity and the ultima ratio principle and concludes that the phrasing in the cited art. 12 para 2 is too „thin“ because the criminal law should be subsidiary not only to the other law but also to the all social tools.

The second chapter deals with the principle of subsidiarity as a rule for an interpretation. In the new czech penal code this principle can be used only for the interpretation of these words describing crimes which are not expressed to unequivocal. The next chapter refers to the german „theory of law goods“ (Rechtsgutstheorie) and the term social harm. The judgements of the german Constitutional Court are taken into consideration.

The prohibition of criminalizing social harmful conduct is illustrated on a case of „abstract threatening crimes“ (the chapter n. 4).

The fifth chapter reports on the subsidiarity of criminal law to the private law and a role of a victim conduct for the interpretation of crime laws. This topic can be found in the judgments of the czech Constitutional Court.

The sixth chapter is focused on the subsidiarity of the criminal law to the administrative law, above at all to the law of offences.