

Principle of legality and its application in criminal proceedings

Abstract

This diploma thesis focuses on the principle of legality and its application in criminal proceedings. Based on this principle, the prosecuting attorney is obliged to prosecute all crimes about which s/he learns unless the law or declared international treaties stipulate otherwise. It is one of the basic principles on which criminal proceedings in the Czech Republic are based.

The introduction deals with the definition of the term “criminal proceedings” and its basic principles and their importance from the point of view of professionals in the field of criminal law. Next part of the thesis is devoted to the concept of the principle of legality in criminal codes valid on our territory from the year 1918 until today. It mainly concerns the changes in criminal proceedings and the motion of the principle of legality including the exceptions which were gradually introduced.

The following chapter deals with the comparison of the principle of legality and the principle of opportunity and with other related principles on which the criminal proceedings are based. Special attention is paid to the application of the principle of legality in preliminary proceedings and breaching this principle in favour of the opportunity principle. Based on these reasons, the subsequent part of the thesis deals with the cases of not proceeding with the case due to purposelessness, or not proceeding with the case when the purpose of the proceedings has been reached. The provision allowing temporary suspension of the proceedings is also mentioned including the explanation of this procedure. Next part of the thesis focuses on the institute of immunity from criminal prosecution and the individual circumstances that justify this procedure.

Commencement of criminal prosecution of the accused is another important chapter. It is followed by an analysis of cases when criminal prosecution can be initiated and continued for an exhaustive list of crimes with the consent of the injured that is in family or similar relationship to the offender.

In addition, the work focuses on obligatory and mandatory reasons for the discontinuation of criminal prosecution of the accused by the prosecuting attorney in preliminary proceedings and termination of the criminal proceedings because of application of institutes of diversions.

The conclusion of the diploma thesis is devoted to the prepared recodification of the rules of criminal procedure focusing on basic principles in the new rules of criminal procedure, position

of the prosecuting attorney and the most important expected changes connected with substantial breaching of the principle of legality in favour of the principle of opportunity.

Key words

Criminal proceedings Principle of legality Prosecuting attorney