

Diversions in criminal proceedings with special focus on agreement on guilt and punishment

Abstract

The subject of the submitted rigorous thesis is diversions in criminal proceedings, with a special focus on the institution of the agreement on guilt and punishment. In general terms, it can be said that these procedural alternatives to the classical course of proceedings currently represent a very actual and dynamically developing issue, which, even though it often arouses controversy, is at the same time a means, through which the domestic criminal procedure is being modernised. Diversions do not only serve as a means of rationalisation of criminal proceedings, but also reflect the principles and ideas of restorative justice, which is increasingly mentioned as a direction in which the Czech criminal policy could develop in the future. The aim of the thesis is to provide a comprehensive view of these alternative ways of conducting criminal proceedings, with a detailed focus on the institution of the agreement on guilt and punishment, including a critical evaluation of it, a presentation of problematic aspects in theory and practice, and a proposal of possible changes *de lege ferenda*.

The first part of the thesis focuses on the introduction of the concept of restorative justice, i.e. its development, basic principles and forms in which it is used in foreign legislation and especially in domestic criminal law practice. This is an integral part of the topic discussed, as restorative justice can be described as the starting point for alternative solutions to criminal cases.

The second part of the thesis is devoted to the concept and basic characteristics of the institute of diversion, including its relation to the basic principles of criminal procedure. Although diversion as such cannot be unambiguously defined due to the fact that the concept is not legally introduced in any criminal statute and there is no agreement on its precise definition even in the doctrine, the thesis treats it in its most general concept as a procedural alternative to the classical course of criminal proceedings. In this vein, the concept can be subsumed under the conditional discontinuance of criminal prosecution, conditional postponement of the filing of a motion for punishment, settlement, the agreement on guilt and punishment, withdrawal from criminal prosecution and criminal order, all of which (except for the agreement on guilt and punishment) are briefly introduced and characterised in the second part of the thesis.

The third main part of the thesis deals first with the very nature, meaning and purpose of the institution of the agreement on guilt and punishment, including its inclusion in the system of diversion in the domestic criminal procedure. It also presents the rather turbulent development and several attempts to establish this type of consensual criminal proceedings. The most attention in

this part is devoted to a detailed analysis of the legal regulation of the institute of the agreement on guilt and punishment *de lege lata*, including the most significant amendments that have changed its character and the way it is used in practice quite significantly during the period of its functioning.

In the fourth part of the thesis, reflections are presented on how the institute of the agreement on guilt and punishment has been incorporated into the system of alternative solutions to criminal proceedings during its roughly ten-year functioning, i.e. how it is used in comparison with other diversions and what are its theoretical and application problems in practice. In particular, the author discusses in detail the possible conflict of the agreement on guilt and punishment with the basic principles of criminal procedure typical for the continental system of law, as well as the controversy over whether the institute is able to fulfil the purpose of punishment or what is its relationship with the concept of restorative justice. The specific problematic aspects that have arisen in the application of the principle in practice are accompanied by *de lege ferenda* proposals that could potentially contribute to making the legislation more effective.

In order to provide a comprehensive view of the whole issue, the last fifth part of the thesis focuses on a comparison with foreign legislation, in which the author gives a brief overview of the different types of conciliation proceedings in some European countries. Particular emphasis is placed on the institution of the agreement on guilt and punishment in Slovak criminal proceedings, especially due to the fundamental influence this legislation had on the Czech legislator.

Key words: [restorative justice, diversion, agreement on guilt and punishment]