

# Legal error

## Abstract

The aim of this thesis is to critically analyse the legal regulation of the institute of legal error, which undoubtedly involves a description of legal error and a comparison with the concept of legal error in foreign legal systems. The thesis is divided into an introduction, nine chapters dealing with various aspects of legal error, and a conclusion.

The first chapter provides a general definition of error, which the criminal law envisages both on the part of the perpetrator and on the part of the victim. The second chapter deals with the subjective aspect of the offence, focusing on culpability as its obligatory feature, with which legal error is closely related. The third chapter is devoted to the establishment of legal error in our legal system. Sufficient attention is given to the process of adopting the statutory provision as well as to the historical development of the concept of legal error.

The fifth chapter deals with the objective and subjective aspects of the possibility of avoiding a legal error. The sixth chapter covers selected issues of legal error that are rather rarely addressed by science. These include, for example, the concurrence between a negative error of fact and a negative legal error, or the question whether an official may commit the offence of abuse of official authority under section 329(1)(a) of the Criminal Code in a negative excusable legal error.

The seventh chapter focuses on case law, both under the effectiveness of Act No. 140/1961 Coll., the Criminal Code, and under the effectiveness of Act No. 40/2009 Coll., the Criminal Code. The eighth chapter presents the regulation of legal error in the German and Austrian legal systems. These legal regulations are similar, but have some specific features that can be used as inspiration. The ninth chapter concludes the thesis with *de lege ferenda* considerations.

**Key words:** error in criminal law, legal error, culpability