



# MASARYK UNIVERSITY FACULTY OF LAW

## Selected Problems of the Czech Criminal Law - Introduction

## Criminal Liability in the Czech criminal law

Zápatí prezentace



# Criminal law reform after 1989

The reform of criminal law started in 1990, after the „Velvet Revolution“ in November 1989

## ■ 2 phases of reform

- phase of amendments - numerous amendments to Penal Code a Code of Penal Procedure reflecting the democratic and social changes and also the fact that Czech Republic became a Member State of EU in 2004 have been accepted since 1990
- phase of recodification - the concept of three penal laws (codes) was introduced



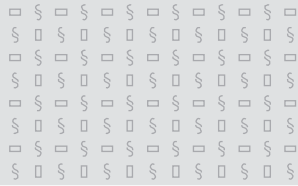
# The most important changes

- abolition of death penalty 1990 + introduction of new conception of exceptional punishment: imprisonment over 15 to 25 years and life imprisonment
- abolition of 33 criminal offences based on on the ruling ideology of the Communist party (for example Leaving of the Republic, Dishonouring of the Socialistic State, Subversion of Republic, the extended protection of socialistic property...)
- the new conception of criminal liability in the case of the culpable insanity
- introduction of new criminal offences responding new social phenomena and changes (especially in the area of economic crimes, for example Insider Trading, new forms of fraud, crimes connected with public tenders, ....)
- the idea of alternative punishment: introduction of probation, community service, diversions in the criminal proceedings (conditional suspension of the criminal prosecution, settlement)



# Recodification

- the concept of three criminal laws
  - Criminal Code - since January 1, 2010
  - Juvenile Justice Act - since January 1, 2004
  - Criminal Liability of Legal Persons Act - since January 1, 2012.



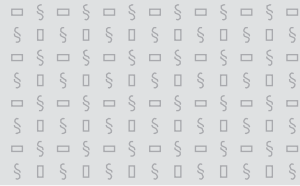
# Juvenile Justice Act

- This act gives coherent legal regulation of criminal liability and punishment of juveniles (persons between 15 and 18 years of age) together with the legal regulation of criminal proceedings in cases of juvenile. It is related to the matters of minors (children under 15), as well.
- This law extended the application of the new principle of restorative justice into Czech criminal law
- The system of sanctions for juveniles is based on the united system of measures, which are separated into educational, protective and criminal measures. The purpose of these measures is to create conditions for sociable and personal development of the juvenile with respect of his/her mental and moral level, personal character, family background and protection from the negative effects and prevention from committing other transgressions.



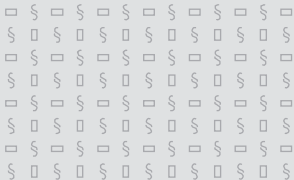
# General characteristic of the NCC

- introduction of a formal concept of a criminal act
- the binary categorisation of criminal acts into crimes and offences
- extension of the system of sanctions (new alternative punishments - house arrest, prohibition of entry to sporting, cultural and other social events, protective detention)
- stricter punishment in cases of the particularly serious crimes and plural criminal activity
- new systematic arrangement of the Special Part of Criminal Code following human rights attitude
- Introduction of new criminal acts, for example new type of a murder, manslaughter, harm to health out of excusable motives,...



# The principle of legality

- *nullum crimen, nulla poena sine lege* - „only the law shall determine which acts constitute a crime and what penalties or other detriments to rights or property may be imposed on them“ (Charter of Fundamental Rights and Freedoms, Article 39)



## Criminal Act in the NCC

- According to Section 13 para 1 of the NCC, ***a criminal act shall be an unlawful act which is described as criminal in the Criminal Code and the features of which are laid down in this Code.***
- This definition expresses formal concept of the criminal act.





# The binary categorisation

- The criminal acts are divided into offences and crimes.
- **Offences** shall be all negligent criminal offences and these intentional offences for which the Criminal Code stipulates a maximum term of imprisonment of five years.
- **Crimes** shall be all criminal offences which shall not be considered an offences.
- Particullary serious crimes - no less than 10 years of imprisonment



# Criminal Act in the previous CC

- According to Section 3 para 1 of the previous Criminal Code, ***a criminal offence shall be an act which is dangerous to the society and the features of which laid down in this Code.*** According to Section 3 para 2, an act whose degree of danger to society is negligible shall not be considered a criminal offence, even though it may otherwise have elements of a criminal offence.
- According the Juvenile Justice Act, an act whose degree of danger to society is small shall not be considered a criminal offence.....
- The degree of danger to the society shall be determined in particular by the significance of the protected interests affected by such an act, the manner in which the act is committed and its consequences, the circumstances under which the act is committed, the person of the offender and the degree of his culpability and motives.



# The ultima ratio principle in NCC

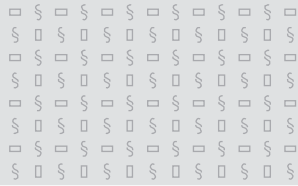
## ■ Section 12 para 2

*the criminal liability and its legal consequences may be only applied in socially harmful cases if application of liability under another legal regulation is not sufficient.*



## Body of criminal act

- can be defined as a complex of formal elements (characteristics) which has to be accomplish
- object
- offender
- objective side (aspect) -actus reus
- subjective side (aspect)-means rea



# Object of a criminal act

- Interests, relations and values protected by criminal law
- Life, health, freedom, property, family, humanity, public order, economics etc.



## An offender

- *Age* - a person who has not reached fifteen years of age at the time a criminal offence is committed shall not be criminal liable (CC, Section 25)
- *Sanity* - a person who was not able, due to his mental disorder, to recognize the illegality of his acting or control it, he shall not be criminally liable for his act (CC, Section 25)
- Special character or position of an offender



## A cupable insanity

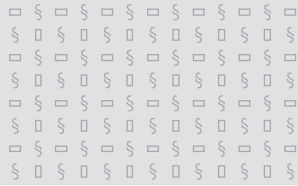
- Drunkenness: *insanity caused by application of addictive substance + committing an act otherwise classified as criminal*
- Actio libera in causa dolosa: *insanity caused with intention of committing a criminal act*
- Actio libera in causa culposa: *committing a criminal act out of negligence consisting in entering into an insanity.*



## Objective side

- acting - act of commission or act of omission
- consequence - violation or endangering of an interest protected
- causality
  
- Manner in which the crime was committed, the place and time of committing





# Subjective side

- Culpability
- *the intention is required as a regular condition of punishability, unless the Criminal Code expressly provides that the negligence is sufficient for committing a crime*
- Motive



# Intent

- *Direct intent* - the offender was aware that he (she) could violate or endanger an interest protected by the Criminal Code and wanted to cause such violation or endangering.
- *Indirect intent* - the offender was aware that he (she) could to violate or endanger an interest protected by the Criminal Code and, if he (she) caused such violation or endangering, he (she) agreed with its result



# Negligence

- *Wilful negligence* - the offender knew that he (she) could violate or endanger an interest protected by the Criminal Code, but without adequate reasons he (she) believed he (she) would not cause such violation or endangering.
- *Unwilful negligence* - the offender did not know that his (her) acting could violate or endanger an interest protected by the Criminal Code, although, with respect to the circumstances and his (her) personal situation, he (she) should and could have known



## Other forms of criminal act

- According to Section 111 criminal act means also preparation for a criminal act, attempted criminal act, organisation, abetting and assistance.



Thank you for you attention.