

Selected Problems of Czech Criminal Law

The System of Criminal Sanctions in the Czech Criminal Law

The philosophy of criminal sanctions

- ***Classical school*** – retributivism (just deserts)
 - *punitur, quia peccatum est*
- ***Positive school*** – consequentialism
 - *punitur, ne peccetur*

Goals of punishment

- **Prevention**
 - **individual**
 - **positive** (re-socialisation)
 - **negative** (deterrence, elimination)
 - **general**
- **Repression**
- **Satisfaction**
- **Rehabilitation**

The System of Sanctions

- ***Punishments*** - can be imposed by a criminal court on an offender of an criminal act.
- ***Protective measures*** – can be imposed by court in criminal or civil proceedings on an offender of an criminal act or an act otherwise classified as criminal.

Fundamental principles

- the principle of legality – *nulla poena sine lege* – „*only the law shall determine what penalties may be imposed on offender of a criminal offence.*“ *Criminal sanctions shall be imposed only in accordance with the law.*
- the principle of humanity – cruel and disproportionate sanctions may not be imposed. The execution of a criminal sanction must not undermine human dignity.

Fundamental principles

- the principle of adequacy of punishment – *general principles of sentencing guidelines*
 - nature and seriousness of a criminal offence (importance of the protected interest, manner in which act was committed and its consequences, the circumstances, person of the offender, the extent of his/hers fault and his motives)
 - personal situation of an offender (family, property, situation, health, high age)
 - rights and interests of an injured party (namely compensation of the damage)
 - passed time and length of criminal proceedings

Personal situation of the offender - example

- Finding of the Constitutional Court file no. II. US 2027/17
- DUI (1,54 ‰), death of driver's wife and child
- District Court – negligent manslaughter, prohibition of driving for 7 years and house arrest
 - reasoning – remaining little child of the driver would have to be placed in a custody of another person or institution
- Regional Court – deprivation of liberty for 4 years
 - reasoning – District Court's punishment was too lenient
- Constitutional Court – best interest of the child shall be the primary consideration even here – quashed the decision

Punishments - Section 52 of CC

- a sentence of imprisonment
- house arrest
- community service
- forfeiture of property
- a pecuniary penalty
- forfeiture of a thing
- prohibition to undertake activities
- prohibition of residence
- prohibition of entering of sport, cultural and other social events
- deprivation of titles and awards
- deprivation of a military rank
- banishment

Protective Measures – Section 98 of CC

- protective medical treatment
- protective detention
- confiscation of a thing or another property value
- confiscation of a proportion of property
- protective custody

Statistics – Sanctions in General

- total count of criminal offences „in the system“ 2016 – 107.199
- total count of sentenced people in 2016 – 61.423
- 9.485 unconditional imprisonment (cca **15,5 %**)
- 39.251 suspended imprisonment (cca **64 %**)
- 106 house arrests (cca **0,17 %**)
- 7.143 community service (cca **11,6 %**)

Sources:

https://cslav.justice.cz/InfoData/servlet/FileServlet?tabulka=ccav_dokument_sestavy&sloupec=obsah_dokumentu_pdf&where=id_dokumentu=1265165&typSloupce=pdf&fileName=null

Statistics – Imprisonment Sentence 2017

- 22.159 convicts serving prison sentence
- 208,8 prison population rate (191,4 Estonia; 118,9 Armenia; 252,2 Georgia; 235 Azerbaijan; Moldova 215 vs. 56,5 Sweden; 54,4 the Netherlands; 77,5 Germany, 51,1 Finland; 103,5 France; 126,7 Spain)
- average: 123,7; median: 102,5

Sources:

http://wp.unil.ch/space/files/2019/06/FinalReportSPACEI2018_190611-1.pdf

Sentence of imprisonment

- an unconditional sentence of imprisonment
- a suspended sentence of imprisonment
- a suspended sentence of imprisonment with supervision
- exceptional punishment

An unconditional sentence of imprisonment

- A maximum term of imprisonment as a regular penalty shall be twenty years.
- A uniform minimum term is not provided.
- The term of imprisonment shall be served in prisons in accordance with another Act – Prison Act.

Exceptional punishment

- *a sentence of imprisonment of twenty up to thirty years*
 - very high seriousness or
 - the possibility of reforming the offender is regarded as remote
- *life imprisonment*
 - extremely high seriousness and
 - the imposition is required for the effective protection of society or
 - there is no hope that the offender can be reformed by a prison sentence of twenty up to thirty years

Suspended sentence of imprisonment

- a maximum term of imprisonment of three years
- probation period of one to five years
- appropriate restrictions and duties
- supervision:
 - a regular personal contact between the offender and probationary officer
 - cooperation in creating and implementing the probation plan
 - monitoring adherence to the conditions imposed on the offender

Conditional Release

- After a certain period has been served
 - 2/3 with selected particularly serious felonies
 - 1/2 with particularly serious felonies or if the convict serves imprisonment sentence repeatedly
 - 1/3 felonies
 - even before – misdemeanors
- The convicts proves he/she has been corrected
- The convict can be expected to lead an orderly life in the future or the court accepts guarantee over his/hers correction
- A parole period of 1-5 years + certain obligations and restrictions

Conditional Release – Life imprisonment

- Requirement of ECHR's case-law
 - rehabilitation as a necessary part of imprisonment; „right to hope“
- After 20 years
- When imposing, the court may decide that time spent in maximum security prison is not included
- The convict may request transfer to normal security prison no sooner than after 10 years

House arrest

- misdemeanors only
- up to two years
- obligation to stay home during time defined in the judgment
- written promise to follow all conditions is required
- if the offender fails to respect all conditions, the court shall commute it to term of imprisonment: 1 day of house arrest = 1 day of imprisonment
- two form of control are presupposed
 - *electronic monitoring*
 - *control of a probation officer*

Community service

- misdemeanors only
- term of 50 up to 300 hours
- offender's attitude and his health conditions
- obligation of the offender to perform work for the public benefit in person, free of charge and in his free time at least within the period of one year
- if the offender fails to perform community service order due to his own fault, the court shall commute it either to a house arrest, or to pecuniary penalty or to term of imprisonment
- 1 hour = 1 day

Forfeiture of property

- If:
 - the offender has been sentenced to an exceptional length of imprisonment or
 - to unconditional imprisonment for particularly serious felony by which the offender acquired, or attempted to acquire, a property benefit.
 - if it is envisaged for individual crimes in the special part of CC
- A court may order the forfeiture of all property belonging to a particular offender, or only a part of his property
- The forfeited property shall become the property of the State.

Pecuniary penalty

- imposed in day rates – from 20 to 730
- A day rate is at least 100 CZK (app. 3,9 EUR) and at most 50.000 CZK (app. 1968 EUR)
 - specifics for juveniles and legal persons
- if the offender profited or attempted to profit by an intentional criminal act
- As an alternative punishment (in place of imprisonment) in case of a minor offence
- an alternative punishment of imprisonment of up to four years in the event that the pecuniary penalty is not paid by the set deadline

Forfeiture of a thing

- The court must impose forfeiture of a thing which is direct proceeds of a crime
- The court may impose forfeiture of a thing which
 - a) was used for the commission of a crime,
 - b) is indirect proceeds of a crime, save for cases in which the value of direct proceeds is neglectable compared to the the value of indirect proceeds
- The thing has to belong to the offender.
- The forfeited thing shall become the property of the State.

Prohibition to undertake activities

- for a period of one to ten years
- a criminal act committed in connection with such an activity
- job or profession or a certain office or activity which requires a special licence or performance of which is regulated by law

Prohibition of residence

- for a period of between one year and ten years
- an intentional crime if this is in the interest of the protection of public order, family, health, morality or property in the view of the offender's way of life and the place where the crime was committed
- not possible to prohibit residence in the district where the offender has his permanent home address
- appropriate restrictions and duties

Prohibition of entering

- sports, cultural and other social events
- up to ten years
- an intentional criminal offence committed in connection with such an event
- cooperation with probation officer
- possibility to order to stay at the Police station during the time of event

Deprivation

- **of titles of honours and awards**
- **of a military rank**
- may be imposed by the court on an offender who has committed an intentional crime with especially condemnable motivation and on whom the court imposes an unconditional sentence of imprisonment of at least two years
- in addition to other punishment if it is required for the sake of maintaining discipline and order in the armed forces or the armed corps.
- these sentences are subsidiary and may never be imposed as a single punishment.

Banishment

- from the territory of the Czech Republic
- on a person who is not a citizen of the Czech Republic
- if this is required for the safety of the people or property or some other public interest
- either for a period of between one and ten years, or for an indefinite time.

Punishments for legal entities

- cancellation of the company,
- confiscation of property
- pecuniary punishment
- confiscation of a thing or some other property value
- a ban on activities
- a ban on performance of public contracts or participation in public tenders
- a ban on acceptance of subsidies
- the publication of the judgment

Pecuniary punishment

- the most important sanction for legal entities
- principally required by EU Framework Decisions as well as EC Directives
- used in all countries that have introduced corporate criminal liability
- may be imposed for all criminal offences that a legal entity may commit
- imposed in daily rates – from 20 to 730 (the precise number is set according to the nature and seriousness of the criminal offence)
- the daily rate is no less than CZK 1,000 (398 EUR) and no more than CZK 2,000,000 (78 709 EUR) - (the precise amount is set with view to the offender's property)

Dissolution of company

- the strictest penalty that can be imposed upon a legal entity
- applicable only to legal entities that, while having their registered offices in the Czech Republic, perform such activities that entirely or predominantly consist of committing criminal offences
- the purpose of this punishment is to ultimately prevent the legal entity from performing any further activity that consists in the continuous commission of crime

The publication of the judgement

- is a new type of punishment in Czech law
- penalty intended exclusively for legal entities
- a strong preventive nature of this punishment: it *„can be imposed where it is necessary to inform the public of a judgment of conviction, mainly because of the nature and the seriousness of the criminal offence, or where required by the interest of protecting the safety of people, property or society“*
- forces the legal entity to publicize, at its own cost, the final and conclusive judgment or some part thereof determined by the judge in some public medium channel determined by the judge

Protective measures

- only two
- confiscation of a thing
- confiscation of a proportion of property

Thank you for your attention!

JUDr. Jan Provazník, Ph.D.

Assistant Professor

Department of Criminal Law

Office: room no. 226

Consultation hours: Wednesdays 13:30 - 15:00

E:mail: jan.provaznik@law.muni.cz