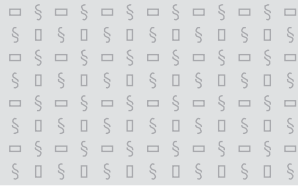




# MASARYK UNIVERSITY FACULTY OF LAW

## Selected Problems of the Czech Criminal Law - Introduction

### Criminal Liability in the Czech criminal law



# Criminal law reform after 1989

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

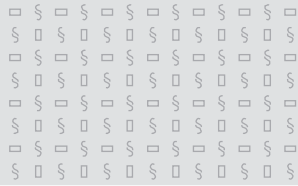
## ■ 2 phases of reform

- 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.



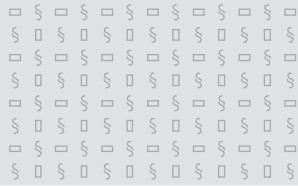
# Juvenile Justice Act

- 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 divided 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.



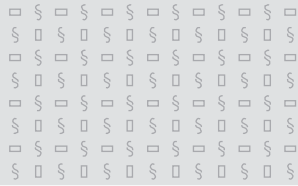
# General characteristic of the NCC

- introduction of a formal concept of a criminal offence (hereinafter „offence“)
- the binary categorisation of offences
  - misdemeanor and felony
- 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 felonies and plural criminal activity
- new systematic arrangement of the Special Part of Criminal Code following human rights attitude
- Introduction of new offences, 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 an offence 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, ***an offence 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.





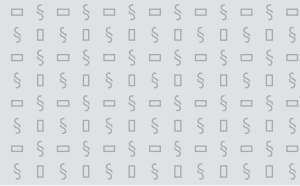
# The binary categorisation

- Offences are divided into misdemeanors and felonies.
- **Misdemeanors** shall be all negligent offences and these intentional offences with a maximal term of imprisonment not exceeding five years.
- **Felonies** shall be all offences which shall not be considered an offences.
- Particularly serious felonies - felonies with a maximal term of imprisonment of at least 10 years of imprisonment
  - particularly serious felonies are a subcategory of felonies, not a separate category
  - Juvenile Justice Act knows only one category - transgression



## 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 perpetrator 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.*



# The use of the *ultima ratio principle*

- At first problematic reception by the praxis
  - social harm = social danger vs. strict formal approach
- Disharmony even at the Supreme court
- Unifying opinion of its criminal division
  - *ultima ratio* as a principle of legislation
  - *ultima ratio* as a corrective of interpretation
  - direct application of the principle
    - the individual case does not reach even the lower boarder of criminality



## Body of an offence

- can be defined as a complex of formal elements (characteristics) which has to be accomplished
- object
- perpetrator
- objective part (aspect) -actus reus
- subjective part (aspect)-mens rea



# Object of an offence

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



# A perpetrator

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



## A cupable insanity

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





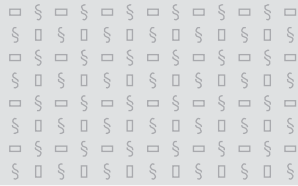
## Objective part

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



# Subjective part

- 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 perpetrator 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 perpetrator 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 perpetrator 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 perpetrator 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 offences

- According to Section 111 offence means also preparation for a criminal act, attempted offence (inchoate offences), organisation, abetting and assistance (complicity).
- Extension of criminal liability
  - it stems from a committed (completed) offence, i. e. from the fulfillment of all elements of the body of an offence
  - some of these elements are missing in respect to inchoate offences and



# Inchoate offences

- Attempt - § 21 CC
  - intentional offences only
  - the perpetrator started to fulfill the body of a particular offence, but hasn't finished yet
  - the perpetrator has removed the last obstacle to fulfill the body of a particular offence
  - there is nothing that prevents the perpetrator from committing the offence
- Preparation - § 20 CC
  - only particularly serious felonies where the CC explicitly states so
- Both attempt and preparation are punished in principle as committed offences



# Complicity - § 24 CC

- organizing
  - orchestrating or managing the committing of an offence
- abetting
  - instilling the idea of committing an offence in another
- assistance
  - enabling or simplifying of committing an offence by another
  - especially providing instruments, removing obstacles, luring out the victim to the crime scene, patrolling at the crime scene etc.
- all forms are punished in principle as committed offences



# Criminal Liability of Legal Persons

- Quite a new idea in the Czech Republic
  - historically the Czech criminal law followed the doctrine *Sociates deliquere non potest*, pressure from the EU and international community instigated a change
- § 6 of Criminal Liability of Legal Persons Act (hereinafter „CLLP“)
  - list of legal persons incapable of committing offences
  - the state, local government units in exercise of public powers + foreign states and international organizations
  - otherwise no exceptions (both private and public entities)
- § 7 of CLLP
  - exhaustive list of offences that cannot be committed by a legal person (e.g. maslaughter, infanticide by a mother, bigamy etc.)





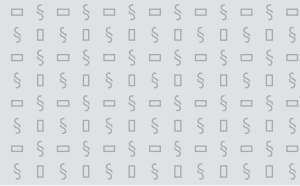
# How can a legal person commit a crime?

- always through a conduct of another person (§ 8/1 CLLP)
- could be another legal person, but it always ultimately is a natural person
  - statutory body or its member, another person in leading position with right to represent the legal entity, person exercising managing or controlling activity, person with decisive influence (e.g. in a holding)
  - employee in relation to his work assignment who was ordered or instructed to conduct in a particular way or who wasn't prevented from doing so



# Accountability principle

- quite strict
  - in principle, it is sufficient when some of aforementioned persons commits an offence on behalf of a legal entity or in the course of its activities
  - the criminal liabilities of this person and of the legal entity are independent and separable
- conditions for exclusion of criminal liability
  - the legal person must have previously made all the effort to prevent such an offence from happening which can be fairly required from it (§ 8/5 CLLP) - compliance programs
  - effective remorse (§ 11 CLLP) - some offences are excluded



# Other modifications

- succession of criminal liability (§ 10 CLLP)
  - on all of legal successors -> prevention from disposing of „toxic“ components to one successor
- different list of punishments
- modification of the scope of the act



**Thank you for your attention!**  
Now is a good time to ask any questions.