

Selected Problems of Czech Criminal Law

Juvenile Justice

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Historical Overview

- app. mid 19th Century
 - *Houses of Refuge – delinquent and endangered children*
 - *Thomas Eddy and John Griscom*
 - *delinquency as a result of social conditions*
- app. end of 19th Century
 - *specialized courts for juveniles*
 - *USA, Canada, in the first half of 20th Century most of the developed world*

Current Approaches

- the welfare model
 - closely connected to the positivistic theory of criminal law
 - juvenile criminality as a result of unculpable factors
- the justice model
 - closely connected to the classical theory of criminal law
 - juvenile as an autonomous actor responsible for hers or his actions

Basic Ideas

- Juveniles are much more open to external influences
 - *they are much more dependant on their parents, social environment, etc.*
 - *negative: they have fewer options to prevent or resist criminogenic pressure*
 - *positive: the reforming effect of criminal-law instruments has greater effect on them*
- They need to be treated differently and separately from the adults

Art. 3 § 1 of the CRC

- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child** shall be a primary consideration.

Different Approach

- In general
 - *accent on reformative and therapeutic treatment*
 - *less retribution, more prevention and restoration*
 - *more involving approach [parents, schools, child protection service etc.]*
- In particular
 - *different regulation by substantive criminal law*
 - *different regulation by procedural criminal law*

Differences in the Czech Criminal Law

- Both substantive and procedural aspect in one statute
 - *law no. 218/2003 Coll., on liability of the youth for criminal acts and on juvenile justice, as amended*
- Substantive aspects
 - *additional conditions of criminal liability*
 - *differences in criminal sanctions*
- Procedural aspects
 - *many modifications aimed at protection of the juvenile defendant and his/hers reform*

Differences in Substantive Criminal Law

- Different terminology
- Modification of age
- Additional condition of an offender
- Modification of conditions excluding illegality
- Different system of sanctions

Different Terminology

- Youth - children and juveniles
- Child - A person who hasn't reached 15th year of age
 - *starting the day after the day of birth*
- Juvenile - A person who has reached 15th but hasn't reached 18th year of age
 - *the same rule applies*
- Wrongdoing - A crime committed by a juvenile
 - *there is no division of wrongdoing*
- Measure = A sanction imposed on a juvenile

Modification of Age

- Absolute criminal non-liability of a child
 - *no matter how serious act the child under 15 committed* (European standard – 14-16)
- Relative criminal liability of a juvenile
 - *a juvenile can be liable for every crime an adult can, only the conditions of liability, sanctioning and procedure differ*
- Absolute criminal liability of an adult
 - *standard conditions of liability, sanctioning and procedure*

Additional Condition of an Offender

- An offender is a person who committed a criminal offence
 - *together with object, subjective aspect and objective aspect it creates the body of a criminal act*
- Age + sanity + sufficient level of intellectual and moral maturity
 - *mental development – intellectual capability to identify an act as a criminal one*
 - *moral development – volitional capability to act properly*

Difference Between Insanity and Sufficient Level of...

- Insanity
 - *mental condition, given by psychiatric pathology*
 - *one's cognitive or volitional functions don't work as they should*
- Level of intellectual and moral maturity
 - *rather social condition, given by the advancement of one's psycho-social development*
 - *one's body works as it should, but due to the lack of experience or slower development [compared to peers] the juvenile can't process the information he/she gets properly or make a right judgment*

Conditions Excluding Illegality – Effective Remorse

- Adults:
 - *only enumerative list of criminal acts*
 - *the offender prevented the consequence or repaired it*
- Juveniles
 - *if statutory maximum doesn't exceed five years, it is sufficient:*
 - *if the juvenile voluntarily removed or repaired the consequence*
 - *expressed effective effort to change by his behavior*
 - *the deed didn't have any permanent negative consequences*

Conditions Excluding Illegality – Limitation Period

- Adults:
 - *20 years if the criminal act is punishable by extraordinary punishment*
 - *15 if the statutory maximum is at least 10 years*
 - *10 if the statutory maximum is at least 5 years*
 - *5 if the statutory maximum is at least 3 years*
 - *3 years by other criminal acts*
- Juveniles:
 - *10, 5, 3 years depending on the statutory maximum*

System of sanctions

- Three kinds of sanctions of juveniles
 - *corrective measures*
 - *protective measures*
 - *criminal measures*
- Children:
 - *no criminal liability = no punishment*
 - *special corrective measures are applicable*

Corrective measures

- Along with other measures or alone
- Should help to reform the life of a juvenile
- Kinds:
 - *supervision of a PMS officer*
 - *program of probation*
 - *corrective obligations*
 - *corrective restraints*
 - *notice with warning*

Protective measures

- Protective care
 - only specific form for juveniles
 - if the child is not treated properly, was neglected or doesn't guarantee his/hers proper upbringing
 - up to 18th year of age, can be prolonged to 19th
- Protective treatment
- Security detention
- Confiscation of an object

Criminal measures

- *community service*
- *fiscal measure*
- *fiscal measure with conditional suspension*
- *forfeiture of an object*
- *prohibition of an activity*
- *deportation*
- *house arrest*
- *ban on entry to a sport, cultural or other social event*
- *deprivation of liberty with conditional suspension*
- *deprivation of liberty with conditional suspension and supervision*
- *deprivation of liberty*

Procedural aspects

- Accented protection of juvenile defendant
 - *effort to prevent his/hers stigmatization*
 - *effort to maximize the therapeutic influence of the criminal process*
 - *effort to compensate his/hers inability to defend himself/herself*

Effort to prevent stigmatization

- Accented protection of juvenile's privacy
 - *the trial is not public*
 - *the judgment is always pronounced publicly*
 - *protection of juvenile's personal data is stricter*
 - *stricter conditions to custody*

Effort to maximize therapeutic influence

- Greater possibilities to work with the juvenile
 - *withdrawal from prosecution*
 - *correctional measures in the course of the process*
 - *greater involvement of the injured party*
 - *broader involvement of the Probation and Mediation Service*

Compensation of the capacity to defend himself/herself

- The juvenile is not able to defend himself/herself properly
 - *compulsory defense attorney from the begging*
 - *involvement of the Social-legal Child Protection Service*
 - *prohibition of certain procedural instruments*
 - *e.g. the plea bargaining*

Questions?

Thank you for your attention!