

# Selected Problems of Czech Criminal Law

*Probation and Mediation Service  
Diversions in the Criminal Procedure*

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# History

- Origins in the first half of 19th century
  - private organizations
  - mostly religious or moral motives and purposes
- Work with convicts and released convicts
  - effort to improve conditions – e. g. John Howard
- Development related to the advancement of alternative sanctions
  - 19th/20th century, adopting suspended sentences etc.

# John Augustus – “The Father of Probation”

- First half of 19<sup>th</sup> century, Boston
  - successful businessman - shoemaker
  - philanthropist – endeavor to tackle petty criminality
  - member of Washington Total Abstinence Society
- First probation experiment
  - personal promise to look after the defendant if the delivery of the sentence was postponed for three weeks → the defendant came back changed
- Successful probation career –almost 2.000 cases

# John Augustus' legacy

- Creating the investigation process
  - finding and assessing suitable cases for probation
  - John Augustus was really good at this – only cca 10 of all his clients failed
- Today's probation principles
  - investigation
  - intake – the involvement of the client, motivating her or him to take an active approach toward hers or his re-socialization
  - supervision – monitoring his or hers efforts

# Probation - term

- A system of expert activities and services focused on ensuring the execution of certain decisions of the criminal court or the public prosecutor
  - *usually convicting judgments*
  - *+ certain procedural decision of the quasi-substantive nature (diversions) – not a convict, still defendant*
  - *the decision doesn't impose incarceration on the convict or defendant*

# Probation - means

- Requires professionally trained personnel who is in regular contact with the convict
  - *social workers, psychologists*
- Formal acting
  - *preparing reports for the court or the prosecutor*
- Informal acting
  - *social counseling, help with taking measures to reintegrate again*

# Parole - term

- Conditional release from imprisonment on certain conditions for a probation period
  - *if there is a good prospect that the convict will lead an orderly life (not only reoffending, but also having an honest source of income, normal social relations etc.)*
- If the convict fulfills the conditions of the parole in the probation period, rest of the sentence is excused
  - *in the opposite, he/she needs to serve the rest*

# Parole - purpose

- To relieve the prison systems
  - *financially – average costs of 1 prisoner is app. 16.340,- EUR p. a. in the CZE (total count app. 20.000 prisoners)*
  - *materially – the more prisoners there are, the less can the expert personnel attend each of them*
- To give them chance to reintegrate
  - *to help him/her continue their extramural relations*
  - *to help him/her become financially independent again, find a place to live, etc.*

# Parole - means

- Very similar to probation
  - *regular contact with the probation officer*
  - *monitoring of the behaviour, social assistance*
- Difference is the gap in the life of the convict
  - *their normal life was interrupted*
  - *the fact of incarceration leads to isolation*
  - *the convict need bigger help to rebuild what he/she lost*

# Mediation - term

- A dialogue between the perpetrator and the victim or sometimes a trialog with the community as well
  - *led informally – no court, prosecutor or law enforcement included*
  - *usually in the initial phase*
- It should lead to mending the relations broken by the crime
  - more of a negotiation and facilitation than of a legal process

# Mediation - purpose

- Ideal outcome:
  - *the perpetrator accepts his/hers responsibility*
  - *the victim deals with his/hers negative experience of being a target to a crime*
  - *there is a legally binding arrangement of compensation or reparation*
  - *there is a solid ground for a swift and effective criminal trial (if needed)*
- Reality is usually far from that

# Mediation - means

- Supervised and hosted by a professional
  - *form of a mediated dialogue*
  - *no formal rules*
- Strictly voluntary
  - *both for the victim and the defendant*
  - *if the parties want, there can be an agreement of compensation as a result*
- The result is reported to the court/prosecutor
  - *motivation for the defendant to attend*

# Institutions of probation

- In Europe, many models
  - *historically done by volunteers (still strong influence in Austria, Italy, the Netherlands, Scandinavian countries)*
  - *during socialist era tasks conducted by the police officers*
  - *today most typically a specialized public institution*
- The scope also differs
  - *probation and parole only (e.g. Hungary, Romania)*
  - *mediation included ( e.g. CZE, Austria, Slovakia, Poland)*

# Principles of probation work

- Mutual trust
  - *no executive authority - probation officer doesn't punish or enforce, everything is voluntary*
  - *no bias or prejudice, rather unconditional acceptance of client*
- Mutual respect
  - *client respects the obligations of the probation officer (e.g. having to report breach of conditions)*
  - *the officer respects his client's autonomy*

# Principles of probation work II

- Effective intervention
  - *timely and minimal*
  - *restraint especially in the case of mediation*
- Realistic goals
  - *careful assessment of each case, guiding the client from unrealistic expectations*
- Transparency, legality, cooperation with other relevant institutions etc.

# Other tasks of probation officers in the criminal procedure

- Monitoring of defendant as a surrogate for procedural custody
  - the probation officer randomly checks the defendant and reports eventual shortcomings
- Monitoring of the abidance of the preliminary measures
  - almost the only form of control
- Monitoring of the execution of the punishment of house arrest
  - random checks as well

# PMS and victims

- Victim
  - a natural person, who suffered a material damage or immaterial harm from a crime or on whose account did the perpetrator unjustly enriched himself or herself
  - also bereaved person
- Especially vulnerable victims
  - victim of violent or sexual crimes, minors, seniors (in the near future), victims of human trafficking, victims with disabilities

# PMS as provider of care for victims

- Legal information
  - victim's rights, procedural rights, course of the criminal procedure, providers of other services for victims, how to claim compensation and how to collect it etc.
- Psycho-social support
  - immediate intervention, assistance with psychological and social recovery from the inflicted trauma
- Restorative programmes
  - mediation

# Diversion in the criminal procedure

- Procedural aberration regarding the merits
  - *diverting the proceedings from the standard course ending with the decision on guilt and punishment*
  - *usually ends in a quasi-substantive procedural decision*
  - *usually requires cooperation of the defendant*
  - *comes to place only where there are no factual or legal doubts about the case*

# Closely connected to the concept of restorative justice

- Another paradigm of criminal law
  - the crime is perceived as a conflict between the perpetrator and the victim rather than a conflict between the perpetrator and the whole society
  - the involvement of both parties and their community is required
  - see Howard Zehr's *Changing Lenses*
- Today seen as a complementary model to retributive justice
  - modern criminal law combines both approaches

# Diversions in the Czech republic

- Conditional stay of proceedings
- Settlement
- Withdrawal from the criminal proceedings
- Agreement on guilt and punishment (plea bargain?)

# Conditional stay of proceedings

- Prerequisites:
  - *misdemeanor*
  - *defendant's confession and consent*
  - *discretion of the public prosecutor or judge (never police officer)*
- Consequences
  - *the proceedings is stayed for a probation period of up to five years*
  - *additional obligations can be ordered*
  - *if the conditions are met, the stay becomes permanent – there will never be a conviction*

# Settlement

- Prerequisites:
  - *misdemeanor*
  - *defendant's declaration of committing*
  - *discretion of the public prosecutor or judge (never police officer)*
  - *consent of both the defendant and the victim*
  - *an agreement between defendant and the victim*
- Consequences
  - *the proceeding is permanently stayed*
  - *the victim's claim is enforceable*

# Withdrawal from criminal proceedings

- Prerequisites:
  - *proceedings against juvenile*
  - *misdemeanor punishable max up to three years*
  - *lack of public interest*
  - *discretion of the public prosecutor or judge*
  - *ineffectiveness of the criminal proceedings*
  - *no need for punishment to prevent reoffending*
- Consequences
  - *the proceeding is permanently stayed*
  - *the juvenile can contest the withdrawal in three days*

# Agreement on guilt and punishment

- Prerequisites:
  - *not a serious felony*
  - *declaration of committing*
  - *consent of the defendant and the prosecutor*
  - *approval by a court*
  - *adequacy to the factual state*
- Consequences
  - ***convicting judgment***
  - *therefore it is not a proper diversion*

Questions?

*Thank you for your attention!*