

Selected Problems of Czech Criminal Law

*Probation and Mediation Service
Diversions in the Criminal Procedure*

Jan Provazník

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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 restraint from crimes, 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 – as of 2016, average costs of 1 prisoner were app. 15.403,- EUR p. a. in the CZE (total count app. 22.000 prisoners)*
 - *materially – the more prisoners there are, the less can the expert personnel attend to 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 on 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, 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.

Probation and Mediation Service in 2016

- 29 787 cases total
- 940 „direct“ mediations
- 3476 reports on defendant cooperation
- cca 6446 cases of facilitating for the victim
- 5166 statements on suitability of community service
 - also the most numerous agenda during the execution proceedings
- 426 employees (app. 70 cases p. c.)

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*

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 a 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!