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THE USE OF ALTERNATIVE MEASURES IN THE CZECH REPUBLIC

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ABSTRACT

This article deals with Czech legal regulation of alternative measures and their use in practice within the Czech criminal justice system. Attention is focused on procedural alternative measures, i.e. diversions in criminal proceedings, as well as on alternative punishments. The development of Czech criminal law has been strongly influenced by the conception of restorative justice, which was the base for the effort to spread the scope of alternative measures and to reduce the number of the imprisoned. But the introduction of new measures (diversions, community service, house arrest, etc.) was accompanied by some problems regarding their use in practice; some of them were connected with legal regulation, other ones were caused by incorrect use. The article identifies these problems (also through analysis of statistical data) and also describes solutions to the problems.

KEYWORDS

Alternative measures, alternative punishment, diversion, community service, house arrest

INTRODUCTION: NEW TRENDS OF SANCTIONING IN CRIMINAL LAW

One of the greatest problems in current criminal law – not only in the Czech Republic – includes sanctioning of offenders of criminal acts. For a long time criminal law was focused very restrictively on the range of sanctioning, and the main sanction used for offenders was imprisonment. But long-term experiences with imprisonment have proven that imprisonment has many disadvantages. First of all, it is a very ineffective sanction, because of its very low social rehabilitation effect. Many offenders return to committing crimes after they have served time in prison, because often they do not see any alternative for their lives.

This crisis of imprisonment has led to the foundation of a new conception of sanctioning – so called *restorative justice*, which comprehends the criminal act (in contrast to the traditional school of criminal law) as a conflict between the offender and the victim.[1] In the field of sanctioning, this attitude turns the purpose of the punishment primarily to the remedy and correction of the offender. This purpose is easier to reach when this offender is not imprisoned, and when it is possible to affect him while he is at liberty. This idea is the basis for the effort directed to the establishment and use of alternative punishments (or community sanctions), which means sanctions not connected with limitations of personal freedom in prison.[2]

Of course, there are also other strong and important influences supporting the idea for the reduction of imprisonment through the use of alternative punishments. High costs of imprisonment or overcrowding of prisons represent burdensome problems, which are felt even by the political representatives. This is the reason that the effort for modernization of system of criminal law sanctions, which would be more effective in the field of social rehabilitation of the offender is – among other factors – typical for development of Czech criminal law during last twenty years.

Nowadays we can identify a complex system of alternative measures in the Czech criminal law, which means a system of measures that should substitute the imprisonment. This system is very similar to the sanctioning systems that exist in

[1] To the characteristics and principles of restorative justice *see*, *e.g.*, Alexander Sotolář, František Púry, and Pavel Šámal, *Alternativní řešení trestních věcí v praxi* (Praha: C. H. Beck, 2000), p. 9-15; Helena Válková and Alexander Sotolář, "Restorativní justice – trestní politika pro 21. století," *Trestní právo* 1 (2000): 4-11; Shari Tickell and Kate Akester, *Restorative Justice*: *The Way Ahead* (London: Justice, 2004); Joanna Shapland, "Victims, the Criminal Justice System and Compensation": 265-283; in: Paul Rock, ed., *Victimology* (Darthmouth: Aldershot, 1994).

[2] *See*, *e.g.*, Wolfgang Ludwig, *Diversion: Strafe im neuen Gewand* (Berlin: De Gruyter, 1989), p. 1; Oto Novotný, Adolf Dolenský, Jiří Jelínek, and Marie Vanduchová, *Trestní právo hmotné*, 3rd edition (Praha: Codex, 1997), p. 229; Oto Novotný and Josef Zapletal, *Kriminologie*, 3rd edition (Praha: ASPI – Wolters Kluwer, 2008), p. 240; Vladimír Čečot, "Alternatívne tresty – jeden z moderných prostriedkov trestnej politiky demokratického štátu (Legislatívna súčasnost a perspektívy)," *Justičná revue* 12 (2000): 1281; Anton M. van Kalmthout, "Realizace alternativních trestů, některé zkušenosti západoevropských zemí," *Právní rozhledy* 12 (1997): 626.

other European countries, and it includes both the procedural measures, as well as measures existing within the substantive criminal law.

1. DIVERSIONS IN CRIMINAL PROCEEDINGS

Procedural alternative measures are usually called *diversion* in criminal proceedings. It is a group of measures of a very specific character, because when diversion is applied, the criminal prosecution is discontinued, which means that the accused is not formally sentenced and punished (a court does not pronounce him guilty); however, the accused person is sanctioned in some way: typically s/he has to respect specified conditions of probation period, s/he is obliged to do some community service, etc. This is the reason why the diversion in criminal proceedings may be considered a special form of sanction measure.[3]

The fact that the accused is sanctioned in spite of the fact that he is not pronounced guilty by court may produce a conflict with the principle of the presumption of innocence. This potential conflict is solved through the consent of accused person with application of diversion. As a result, diversion cannot be applied against the accused's will; the accused must voluntarily accept his guilt and sanctioning, if diversion should be applied. Also, the accused's confession may be considered a standard condition for using a diversion.[4]

Diversion in criminal proceedings is connected with some important advantages not only for the accused person, but also for victim as well as for the system of criminal justice. Through diversion a victim may reach much easier satisfaction of his or her claim for reparation of damage caused by a criminal act. The victim may also reach some moral satisfaction, because some types of diversions are conditioned not only by consent of the accused but also by consent of the victim, which means that offender must apologise to victim. For the whole system of criminal justice diversions are useful because it is a very fast way of solving a criminal case, since it may be applied in some early phase of criminal proceedings, and also before the moment when court stage of criminal proceedings (trial) begins. Thus, criminal proceedings need not be executed in the standard, long and expensive form.[5]

Czech Criminal Procedural Code (Act No. 141/1961 Coll.) describes two basic kinds of diversions in criminal proceedings: *conditional discontinuance of criminal*

[3] *See* Filip Ščerba, "Odklon jako sankční opatření," *Trestněprávní revue* 2 (2009): 33-36.
[4] Frank Höpfel, "Das Freiwilligkeitselement bei der Diversion": 333-334; in: Reinhard Moos, Rudolf Machacek, Roland Miklau, Otto F. Müller, and Hans Valentin Schroll, eds., *Festschrift für Udo Jesionek zum 65. Geburtstag* (Wien and Graz: NW Verlag, 2002).
[5] *See*, *e.g.*, Freda Adler, Gerhard O. Mueller, and William Laufer, *Criminology* (New York: McGraw-Hill, 1991), p. 356-357; Jiří Nezkusil, "Odklon v trestním řízení," *Karlovarská právní revue* 2 (2005): 37-39; Jan Rozum, Petr Kotulan, and Jan Vůjtěch, *Výzkum institutu narovnání* (Praha: Institut pro kriminologii a sociální prevenci, 1999), p. 9.

proceedings (see § 307 and 308 of Criminal Procedural Code) and *settlement* (see § 309 and next of Criminal Procedural Code). There are also some special forms of diversion determined for using in shortened proceedings (see § 179g and 179h of Criminal Procedural Code) and in proceedings against the juveniles (see § 70 and 71 of the Act No. 218/2003 Coll., Juvenile Justice Act).

The Czech Criminal Procedural Code also describes other instruments which are sometimes included in the group of diversions in criminal proceedings. The first of them is the *criminal order* (see § 314e of Criminal Procedural Code); it is a special form of court's decision, when the court is sentencing the accused person without a hearing (just on the basis of evidence gained during preliminary proceedings). The second one is called *agreement upon the guilt and punishment* (see § 175a and § 175b of Criminal Procedural Code), which was originally mentioned in connection with the system of criminal law in the countries belonging to the Anglo-Saxon legal order where it is frequently called *plea bargaining*. However, both of these measures represent some special form of formal sentencing of the accused person and a punishment is imposed, so the basic characteristic feature of the diversion, the discontinuation of criminal proceedings (see above), goes unfulfilled. That is the reason why the criminal order as well as agreement upon the guilt and punishment (plea bargaining) should not be included into the group of diversions.[6]

Conditional discontinuance of criminal proceedings may be applied for the category of less serious criminal offences, which are called misdemeanours (originally "přečiny"); this category includes all negligent criminal offences, and intentional offences which may be (according to the Criminal Code – Act No. 40/2009 Coll.) punished by imprisonment of up to five years (see § 14 section 2 of Criminal Code). Besides the consent of the accused person with conditional discontinuance of criminal proceedings and his/her confession to committing a crime (which are common requirements for diversion, as it was mentioned above), the next condition for using of conditional discontinuance of criminal proceedings comes in compensation of damage. The accused person has to compensate for the damage caused by his criminal offence to an injured person, but under the Czech Criminal Procedural Code it is acceptable for the accused to simply make a contract with the injured person for compensation; in such a case, the accused is obliged to fulfil this contract during a prescribed probation period.

If the criminal proceedings is conditionally discontinued, the state attorney or court determines a probation period from six month up to two years. During this

[6] Closer *see* Filip Ščerba, *Alternativní tresty a opatření v nové právní úpravě* (Praha: Leges, 2011), p. 59-60; Filip Ščerba et al., *Dohoda o vině a trestu a další prostředky racionalizace trestní justice* (Praha: Leges, 2012), p. 19.

period the accused is obliged to behave properly, he must respect the imposed duties or restriction, and he must fulfil a contract of compensation of damage. If the accused fulfils these duties, his criminal proceedings are definitely finished; if not, his criminal proceedings continue.

There is also a special variation of conditional discontinuance of criminal proceedings, which has existed since 2012 in the Czech criminal law. This variation is based on the fact that the accused person voluntarily accepts a special restriction – not to perform an activity, whose performance was cause of the criminal act (see § 307 section 2 of Criminal Procedural Code). This measure is primarily directed to the solution of crimes committed in road traffic (negligent bodily injury, driving under alcohol influence etc.). It should be emphasised that this category of offences represents a large share of all criminal cases solved by system of criminal justice, so the fast performance of criminal proceedings dealing with these offences is the goal, which is very important to reach.

In such cases it is often necessary to forbid the offender from driving a car for some period, which is a basic and effective penalty for sanctioning of this specific category of crimes. If the prohibition of an activity (e.g. the prohibition of driving a car) may be imposed just in the form of punishment (i.e. as measure imposed strictly by the court as a part of the condemnation), it is necessary to realize the criminal proceeding in its full and often long form. So the opportunity to impose this restriction within the diversion in criminal proceedings also represents a way to perform the criminal proceedings in such cases in a shortened, cheaper and more effective form.

This form of diversion may also indicate an interesting trend, which is typical not only for the Czech criminal law, but commonly for modern continental criminal law. The sanctioning of criminal offences lays no more in exclusive jurisdiction of courts, but it is partially shifted to the jurisdiction of prosecution (state attorneys). In some way it may be considered a breach of basic dogma that only an independent court may decide regarding the committing of a crime and determining punishment for the crime. But it is necessary to repeat and emphasize the basic common condition of diversions based on consent of the accused person with using of diversion, i.e. voluntary acceptance of the sanctioning through some form of diversion. This acceptance is also an important precondition of the success of sanctioning, i.e. its guarantee that the offender will not commit another crime in the future.

A settlement is considered a typical kind of diversion and its essence is the agreement between the accused and the injured person. As the conditional discontinuance of criminal proceedings, the settlement may also be approved when

a misdemeanour is prosecuted. But main advantage of settlement lays in reparation of the conflict state between the offender and the victim, so the settlement is suitable to apply primarily to offences which present some interpersonal conflict, such as theft, bodily injury, and so forth.

Additionally, the settlement is conditioned by compensation for the damage caused by the criminal act, but in contrast to conditional discontinuance of criminal proceedings, it is not possible to approve the settlement just on the base of a contract of compensation between the accused and the injured person, because the settlement is connected with immediate discontinuance of a criminal proceedings; therefore, the realization of such a contract could not be sanctioned by criminal law measures.

There are two specific conditions for approval of a settlement required by the Czech Criminal Procedural Code. Primarily, not only the consent (and confession) of the accused person, but also the consent of the injured person with settlement must be given. Finally, if the accused person aims towards settlement, he is obliged to pay an adequate amount for financial help to the victims of the criminal act(s) (it is a special help provided by state to victims under special Act No. 45/2013 Coll.). The specific amount is not determined by the court or state attorney, but the accused person determines it himself, as a manifestation of his remorse. However, if the money amount is not sufficient, the court or state attorney do not approve the settlement.

Conditional discontinuance of criminal proceedings and the settlement may be applied as in the stage of preliminary proceedings (pre-trial stage of criminal proceedings), when such a decision is made by state attorney, as in the stage of trial when the court may decide in this way. It should be emphasised that the accused person has no legal claim for approving a particular type of diversion. In other words, although all noted legal conditions of conditional discontinuance of criminal proceedings or the settlement are fulfilled, the state attorney or court need not use these diversions. They have to judge if the diversion is an adequate way of solving of the concrete criminal case.

Table 1. Share of using of diversions in criminal proceedings[7]

Year	Decisions of state attorneys		Court's decisions	
	Conditional discontinuance *	Settlement	Conditional discontinuance **	Settlement
1994	2509 **(2,92%)**	-	1149 **(1,55%)**	-
1995	3400 **(3,13%)**	-	2206 **(2,71%)**	-
1996	3891 **(3,56%)**	64	2864 **(3,34%)**	-
1997	4537 **(4,19%)**	51	2787 **(3,14%)**	-
1998	3114 **(2,92%)**	7	1735 **(2,21%)**	-
1999	4641 **(4,30%)**	14	2715 **(3,20%)**	-
2000	6166 **(5,56%)**	25	3294 **(3,83%)**	-
2001	7704 **(6,97%)**	31	3589 **(4,35%)**	-
2002	6744 **(7,22%)**	45	3763 **(4,35%)**	342
2003	7047 **(7,58%)**	49	3554 **(4,08%)**	249
2004	7251 **(8,12%)**	39	2623 **(2,94%)**	198
2005	6892 **(7,92%)**	53	2455 **(1,91%)**	166
2006	7387 **(8,99%)**	38	2279 **(2,56%)**	168
2007	7172 **(9,13%)**	78	2150 **(2,17%)**	121
2008	7459 **(7,74%)**	148	1903 **(1,86%)**	90
2009	5762 **(7,46%)**	182	1732 **(1,74%)**	87
2010	4125 **(6,30%)**	158	1624 **(1,27%)**	79
2011	3692 **(7,53%)**	143	1709 **(1,36%)**	69

* Data mentioned in brackets express the percentage of state attorneys' decisions of conditional discontinuance of criminal proceedings in relation to total amount of persons prosecuted in standard preliminary proceedings.

** Data mentioned in brackets express the percentage of courts' decisions of conditional discontinuance of criminal proceedings in relation to total amount of offences effectually decided by courts.

This statistical data suggests that the conditional discontinuance of the criminal proceeding is a type of diversion that is relatively frequently used in practice by Czech state attorneys and courts. Its share has been declining during the last years, but the main reason relates to the fact that many less serious criminal offences are prosecuted in shortened version of criminal proceedings, where it is impossible to use conditional discontinuance of criminal proceedings. But

[7] Data assumed from *Statistické ročenky kriminality* (Statistical Yearbook of Criminality), available on www.justice.cz a http://cslav.justice.cz/InfoData/uvod.html.

such shortened proceedings may be solved through another kind of diversion, whose conditions of use are very similar for conditional discontinuance of criminal proceedings (see § 179g and 179h of Criminal Procedural Code). It may be expected that use of conditional discontinuance of criminal proceedings will increase a little bit because of the aforementioned new form of these diversions connected with prohibition of driving a car.

Settlement is a form of diversion that is used only sporadically in the practice of Czech criminal justice. This fact needs to be evaluated critically, because settlement may be considered a typical representative of the conception of restorative justice. Its essence is based on the agreement between the offender's and the victim's response to the basic goal of restorative justice: to eliminate the conflict caused by criminal offence and to a restore peaceful state.

Reasons for the very low use of settlement relate primarily to the condition based on payment of adequate money to financial help for victims of criminal acts. The accused are often not ready to fulfil this condition (because of various reasons), and state attorneys and courts consider these requirements for settlement as a disadvantage for those accused who are less wealthy. State attorneys also claim that preparation for approval of the settlement is administratively demanding, so the settlement is an unpopular measure also for state attorneys.

2. NEW KINDS OF ALTERNATIVE PUNISHMENTS

Alternative punishments represent the most important group of alternatives to the imprisonment existing within substantive criminal law. The scope of alternative punishments has been gradually extended and new modern kinds of punishments have been introduced into Czech criminal law during last twenty years: e.g. Czech courts have been allowed to impose punishment of community services for less serious crimes since 1996;[8] there exist also some typical probation measures in the Czech criminal law since 1998,[9] i.e. measures connected with activities of probation officer (primarily conditional sentence with probation). This development culminated in 2009 when the process of re-codification of Czech criminal law was finished. The new Czech Criminal Code (Act No. 40/2009 Coll.), which came into force in 1. 1. 2010, contains other modern alternative punishments, such as house arrest and prohibition of entry to sport, cultural and other social events.

The punishment of *community service* (see §§ 62–65 of Criminal Code) may be imposed in the category of misdemeanours, as well as conditional

[8] *See* amendment to the Criminal Code, No. 152/1995 Coll.
[9] *See* amendment to the Criminal Code, No. 253/1997 Coll.

discontinuance of criminal proceedings or settlement (see above). The court may impose community service, when it is not necessary to impose other (more severe) punishment, primarily imprisonment. It means that community service may not be imposed together with the imprisonment, so these two kinds of punishments are incompatible.

Community service may be imposed from fifty to three hundred hours. The offender is obliged to do determined amount of hours of community service in his free time, free of charge and in benefit for municipality or some general welfare institution. Concrete service is determined by the court's decision during execution procedure.

If the offender breaches the conditions of punishment of community service, the court transforms this punishment into the imprisonment. In doing so, every hour not executed is transformed into one day of imprisonment, so the community service may be transformed into three hundred days of imprisonment at maximum.

Czech Criminal Code also allows the transforming of the punishment of community service (if it is not executed properly) into house arrest or into a money penalty. Nevertheless, these options are not very useful, because they weaken the authority of the punishment of community service, because authority of alternative punishment is closely dependent on the possibility of imposing a strict penalty on the convicted person if this person breaches condition of alternative punishment. Replacement of one alternative sanction (community service) by another one (house arrest or money penalty) could represent an appropriate solution only in extraordinary circumstances.

The punishment of *house arrest* (§§ 60 and 61 of Criminal Code) may be considered a very modern type of alternative sanction, and it represents some compromise between imprisonment and absolute freedom of the offender. Its essence lies in the offender's duty to stay in his/her residence for the time that the court specifies in the sentence, depending on the circumstances of the case. House arrest may be imposed for a maximum duration of two years.

This punishment may be imposed for the same group of criminal offences as the punishment of community service, so it is only a person who has committed a misdemeanour (see above) that can be punished by house arrest. There is one more condition for imposing of house arrest: the written consent of the offender with the imposing of this punishment; nowadays, the house arrest is the only punishment which is impossible to impose against the offender's will.[10]

[10] For imposition of punishment of community service it is necessary to get statement of the offender, but – contrary to legal regulation in other countries, offender's disagreement with community works does not represent an absolute obstacle for imposing of this punishment.

If the offender breaches his duty to stay in his residence in determined hours, the court transforms house arrest into imprisonment, and every unexecuted day of house arrest is transformed into one day of imprisonment, so it is the same system as was described in connection with the punishment of community service.

The fundamental current problem connected with the punishment of house arrest on the field of Czech criminal law relates to the control of adherence of this punishment, which should be provided with using of electronic monitoring. Because of the absence of technical equipment for electronic monitoring (see above) it is necessary to provide the control of house arrest only through random visits of the probation officer (see § 334b of the Criminal Procedural Code). However, this manner of control is very ineffective, since the possible breach of conditions of house arrest may be detected only randomly.

3. PROBLEMS WITH THE USE OF ALTERNATIVE PUNISHMENTS

Together with the traditional alternative punishments, i.e. money penalty, conditional sentence or prohibition of an activity, all these new measures create a really rich and relatively sophisticated system of alternative measures. But the mere creation of this system itself cannot guarantee more effective sanctioning of the offenders and consequently a lowering of the recidivism rate. Achieving this goal is complicated by some other factors.

The first of these factors is connected with providing for execution of some modern alternatives. The Czech legislator has repeatedly made a serious mistake, when he implemented a new kind of alternative punishment into the Czech legal regulation, but did not create conditions for its reliable and effective execution.

The first time this problem appeared was in 1996, when the punishment of community service was introduced into Czech criminal law. At that time there was no specialized body that could have provided proper and effective control of this punishment. The second time was in 1998, when the probation measures were implemented within Czech criminal law. These measures cannot be factually realized without probation service, because the essence of these measures is in the cooperation between the convicted person and the probation officer.

The solution of both problems came in 2001, when the Probation and Mediation Service of the Czech Republic (as a consolidated body) was founded,[11] because this body provides both the control of community services, as well as realization of probation measures. But there was a period when the punishment of community

[11] *See* Act No. 257/2000 Coll. of Probation and Mediation Service of the Czech Republic.

services and probation measures could not have been factually and effectively used.

Lastly, the third case of legislator's fault came in 2009, when the new Criminal Code was adopted. As previously mentioned, this new Criminal Code also contains the punishment of house arrest. If such punishment should be considered a full-fledged and effective sanction, it has to be necessarily connected with control made by so called electronic monitoring. But at the moment of adopting of the new Criminal Code, necessary technical equipment for electronic monitoring was not available in the Czech Republic, and this status persists up to now, because the Czech government still has not provided this equipment. As a result, the punishment of house arrest is factually almost unusable in practice.

Problems connected with the execution of community services and probation measures has already been solved (through establishing of Probation and Mediation Service, as it has been noticed), but, naturally, these mistakes and consequent initial problems with the application of these measures partially weakened the judges' trust in these new measures, which in turn negatively influenced the rate of their use. Currently this is still a problem of application of house arrest in the Czech Republic, because the non-existence of equipment for electronic monitoring represents an essential barrier for its use as a sanction.

The Czech legislators unfortunately did not take into account experience with procedure of founding of new punishments in the Czech Republic practising in other countries (Switzerland, Germany, Netherlands, Sweden etc.),[12] where at first *experiments* of application of the house arrest were organised and the change of the legal regulation was made consequently, on the basis of experiences with this experimental operation of house arrest.

The next reason, which is lowering the efficiency of alternative punishments, involves the the frequent incorrect application of these punishments by courts. The first problem we may identify through analysis of statistical data is the so-called *net-widening* effect, which is a phenomenon well-known all across the Europe, when judges impose one alternative punishment instead another one.

[12] *See* Jaromír Hořák, "Domácí vězení a elektronická kontrola odsouzených," *Trestní právo* 12 (2005): 8-10.

Table 2. Share of using of alternative punishments and imprisonment (percentage of all condemned persons)[13]

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Imprisonment	22,33	20,83	14,84	14,81	14,89	15,18	14,40	13,03	13,54	14,14	16,73	16,72
Imprisonment up to 1 year	14,82	13,97	8,95	8,96	8,94	9,52	9,10	8,65	9,14	9,69	10,88	9,90
Conditional sentence	56,35	54,53	53,68	53,95	52,84	55,66	60,28	57,51	55,64	54,95	62,85	65,25
Community service	11,21	14,68	20,62	20,55	19,04	18,52	17,67	16,5	14,77	15,25	10,50	9,28
Money penalty	5,65	5,52	5,38	4,45	4,26	3,97	3,87	6,02	7,00	7,15	4,90	4,39

The net-widening effect may be detected primarily in connection with the punishment of community service. Share of this punishment was progressively increasing after its introduction into the Criminal Code in 1996 and five years later, in 2001, reached this share almost 15 percent of all imposed punishments. However, unfortunately, it does not mean that the share of imprisonment imposed by courts was 15 percent lower; the share of imprisonment was pushed only mildly and a larger decrease was monitored at share of conditional punishment.

This means that in many cases courts were imposing the community service in cases that were solved through conditional punishment earlier. In other words, one alternative punishment (community service) was applied instead of another one (conditional punishment). This phenomenon represents a very serious problem, because its existence is a clear signal that alternative punishment does not fulfil its purpose, i.e. to substitute for imprisonment.

A partial solution to this problem was paradoxically realized through one change of procedural legal regulation. The amendment to the Criminal Procedural Code, which was made by the Act No. 265/2001 Coll., disabled the imposition of imprisonment through a so called *criminal order*; criminal order is a specific form of court decision, which has the effect of a condemning sentence, when the court is sentencing the accused person without hearing, just on the basis of evidence gained during preliminary proceedings (see § 314e of Criminal Procedural Code).

This shortened form of criminal proceedings is often used in easier cases, so the impossibility to impose imprisonment in the form of criminal order causes

[13] Data assumed from *Statistické ročenky kriminality* (Statistical Yearbook of Criminality), available on www.justice.cz a http://cslav.justice.cz/InfoData/uvod.html.

courts to impose an alternative punishment, specifically community service in many cases.

Another frequent reason for incorrect application of alternative punishments is connected with insufficient information about the accused person. During criminal proceedings, courts, state attorney and the police, focus on the clarification of the act, which is prosecuted, because it is their main task in criminal proceedings, so these bodies do not give sufficient attention for finding out of information about the accused person, about his family and social situation and about reasons for committing the crime. As a result, some alternative punishment is often used in cases when it is probable that the convicted person will not respect this punishment and that he will breach conditions of its execution. In these cases, of course, an alternative punishment cannot fulfil its educative purpose and it is not a sufficient means for recidivism prevention.

In the field of the Czech criminal justice, this problem again relates primarily to the punishment of community service and it appeared first of all in cases, when court was imposing such punishment through criminal order. During this shortened proceedings, the court has no chance to personally meet the person who has been accused and directly get an idea of his personality and situation. If this information is not gained during preliminary proceedings, their absence increases danger of imposing of incorrect sanction.[14]

The fundamental role played in the solution of this problem is the Probation and Mediation Service. A probation officer may be authorized to get information about the person accused and about his family and social environment [see § 4 odst. 2 písm. a) of the Act No. 257/2000 Coll.]. The probation officer may give much more time and attention to this purpose than the prosecutor, or court, and he also has greater experience with this activity. But courts and prosecutors do not use this way of getting information about accused person sufficiently, because it may be connected with some delays in criminal proceedings. Additionally, the personnel cast of Probation and Mediation Service represents some limitation of possibility to do this specific activity.

The Czech legislator realized the usefulness of this activity of probation officers and through an amendment to the Criminal Procedural Code (made by Act No. 41/2009 Coll.) determined an important duty to the court, tha when imposing community service through criminal order, the probation officer must be asked for a report containing information about the statement of accused regarding punishment and about the possibilities of its execution (see § 314e section 3 of Criminal

[14] *See* Lucie Háková, Petr Kotulan, Jan Rozum, "Několik poznámek k trestu obecně prospěšných prací," *Trestní právo* 4 (2005): 11.

Procedural Code). In other words, the probation officer's report is nowadays an obligatory condition for imposing community services through criminal order. It may be considered an effective way of preventing the most serious cases of incorrect imposing of alternative punishments.

Another problem that may be identified through analysis of the statistical data mentioned above relates to the use-of-money penalty. This kind of punishment is very suitable for sanctioning of property delinquency, because the penalty related to the offender's property may have very positive educational effect, if the offender tried to enrich himself through criminal offence.

However, the money penalty is not a favoured sanction in the point of view of Czech courts, and that was the reason why the new Czech Criminal Code lays down the obligatory imposition of some sort of property sanction if the offender gained wealth himself or tried to do so. In this new provision the share of money penalty did not increase; on the contrary, it declined. The reason for this phenomenon is probably connected with another change of the legal regulation of the money penalty: when the role of so-called substitute imprisonment was weakened. Earlier, before the new Criminal Code came into a force, if the condemned person did not pay the imposed money penalty, courts ordered execution of substitute imprisonment (which was determined in the judgement for this case). But under the current Criminal Code, if the money penalty is not executed (paid), it is necessary to primarily enforce the payment through standard civil proceedings, which is often lengthy and sometimes unsuccessful. As a result, the authority of a money penalty was weakened and courts partially lost trust in its efficiency.

CONCLUSION

An effort directed towards modernization of sanctioning in criminal law and its higher efficiency, which has been made in the Czech Republic during the last decades, brought some important and interesting experiences. They primarily prove that introducing new forms of alternative sanctions may be counterproductive, if it is made without timely providing of all instruments necessary for effective control of such sanction(s). Insufficient control or other incorrect execution of an alternative punishment causes weakening of authority of alternative punishments and a weakening of the court's trust in these measures.

Efficiency of sanctioning through alternative punishments is directly dependent on gaining sufficient information about the accused person and about his circumstances. Such information is a necessary condition for choosing an adequate sanction and for individualization of punishment. Effort for getting this information

must be made regardless of the possible moderate delay of criminal proceedings. Early procuring of this information is extremely important, if sentencing and imposing of the punishment are to be made without a hearing, in a shortened form of proceedings, typically in the form of criminal order.

Both aforementioned goals may be achieved through activities of the probation service (or other similar body). Experience has clearly demonstrated that probation service is an effective instrument for creating a high-quality prognosis about the efficiency of a considered sanction, as well as for providing the effective execution of alternative punishments and other measures (for example conditional release). Thus it is necessary to secure adequate material support for the activity of probation service and its development.

These findings may be – at least partially – considered as some inspiration also for the criminal law of other countries; either it may be an impulse for introduction and/or improving of some measures, or it may be understood as a confirmation of measures that have already been put into practice. These partial improvements may be an important way to achieve the final goal, which is an increase in alternative punishments' efficiency and a lowering of the risk of recidivism.

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