

## CONFERENCES AND REPORTS

### Report from the conference “Sentencing and sanctions’ execution”

Sentencing has been long neglected by Czech academia as evidenced by last monographs on sentencing being published in the 1960's. The conference on sentencing and on the execution of sanctions that took place on June 4<sup>th</sup> 2020 is together with recent re-emerging scholarship on sentencing one of the signs of increased attention paid to this area of law. The interest in sentencing was indicated not only by the presence of the main criminal justice players – three current or former constitutional judges, the Supreme Prosecutor, heads of probation and prison services, the primary author of the 2009 penal code, legislators or leading academics – but also by wide attendance by practitioners. It was the first legal conference in the Czech Republic held after the Covid-19 lock-down and it was one of the first Czech legal conferences to be live-streamed while providing the online audience to also pose questions. Such format attracted further attention beyond the large attendance: Its broadcast, still available on Youtube<sup>1</sup>, was viewed over 1600 times. The conference was co-organized by the Faculty of Law at Charles University and by the Union of the Defense Attorneys of the Czech Republic.

One of the main takeaways of the conference was that there are many problems with sentencing in the Czech Republic: Almost every speaker pointed out problematic issues – either more theoretical or practical ones – with several speakers providing detailed suggestions as to how a reform could be achieved. The centrality of legislative reforms in the area of sentencing was emphasized also by the presence of several members of the Lower House of the Czech Parliament specializing on criminal justice issues, who provided insight into the debates over reforms currently discussed in the Parliament. Several topics emerged over the course of the conference: One was of excessively punitive sentencing rules. Former constitutional judge and a professor of criminal law **Jan Musil** criticized the lack of sentencing rules for uncompleted offenses: Especially if the minimum sentencing range is high – such as in the case of a murder – uncompleted attempt should not be sanctioned within the same sentencing range as the original offense according to his opinion. On contrary, an attempt might be subject to a sanction of one third or one half of the original sentence that would be imposed, had the offense be completed. Constitutional judge **Kateřina Šimáčková** confronted the often proclaimed principle of rehabilitation with the real-life application of various sentencing rules. Namely, she criticized the practice of the cumulation of sentences, wide use of suspended prison sentences or insufficient quality of decisions on parole in which the judges do not sufficiently investigate the possibility of the offender to lead law-abiding life.

Supreme Prosecutor **Pavel Zeman**, the head of the prison service **Petr Dohnal** and the head of the probation service **Andrea Matoušková** all put increased emphasis on the necessity of working with the offenders: The concept of the offenders and prisoners being our current or future neighbors was repeatedly mentioned. Pavel Zeman focused mainly on the criminal policy: He mentioned that certain offenses should be decriminalized and sentencing rules should be relaxed: The sentencing ranges needs to be in his opinion decreased (especially the sentencing minimums) and the practice of cumulation of sentences needs to be limited. He pointed out that if the Czech Republic decides to limit its prison population, it needs to be a result of a structured strategy, which currently does not exist. Heads of two criminal justice services pointed out the importance of working with offenders and lamented the insufficient funding which complicates hiring of professionals.

The importance of legislative reforms was further underlined by presentations of **Helena Válková**, **Marek Benda**, **Pavel Šámal** and **Libor Dušek**. The first two, MP's, presented and discussed current drafts of amendments debated in the Parliament with Helena Válková focusing also on current problems in the criminal justice system following Covid-19 crisis. **Pavel Šámal** presented in detail the new option of

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<sup>1</sup> Channel of the Faculty of Law, Charles University: <https://www.youtube.com/watch?v=wXG08-8b45c>.

undergoing driving training for specific group of offenders and showed how complicated and time-consuming might be an adoption of a single new measure. **Libor Dušek**, leading law and economics expert, presented tool “Prismod” allowing us to predict prison population and to predict impacts of various reforms on prison population. He showed that several suggested – well-meant – reform ideas might actually lead to an increase prison population. **Tomáš Gřivna**, an academician and an attorney, drew attention to the collateral consequences of being found guilty: Such – often invisible – consequences might play more important role for the future life of the offender, yet the legislator rarely deals with them systematically and judges rarely consider the consequences of being found guilty for specific groups of offenders, such as for policemen.

Other contributions were more theoretical, reacted to specific questions or reported results of empirical research. **Jana Hulmáková** from the Institute of Criminology and Social Prevention presented new findings on the use of probation reports by the courts. One of the findings was that judges imposed the sanctions of community service or of home detention in 32 % of cases without having a probation report, even though probation report is necessary for the imposition of these sanctions. **Jakub Drápal**, researcher at the Institute of State and Law at the Czech Academy of Sciences, summarized findings on a justification of imposed sentences by Czech judges, whose quality is very low – in only 10 % of the representative sample of studied decisions the judges weighted all circumstances relevant to the imposition of a sentence allowing anyone else to understand why a specific sentence was imposed. Based on these findings, he suggested a new way how reasons for sentences should be provided so that there would be at the same time larger oversight over the way judges use their discretion and that it would be easier for the judges and prosecutors to provide reasoning for their choice. A similar topic was discussed by the director of one of departments of the Supreme Prosecution’s Office **Miroslav Růžička**, who discussed in larger detail the new obligation of prosecutors to recommend specific sanctions starting from January 2020.

**Gabriela Kabátová** presented the work of the Czech branch of the Prison Fellowship International she leads. She emphasized the need for restorative justice and presented the meetings of offenders and victims. **Zdeněk Koudelka** focused on a specific topic of taking into account upon sentencing the time spent in pre-trial custody in a different criminal proceeding which concluded in acquittal. Several attorneys – **Lukáš Duffek**, **Ondřej Bláha**, **Michal Doležal** and **Aleš Váňa** – then discussed various aspects related to sentencing legal entities, uncovering various problematic issues such as sentencing of a legal entity who filed for bankruptcy.

The final section of the conference had clear rehabilitative focus: **Kamil Nedvědický** from the Ministry of Justice discussed to what extent the effort to employ prisoners is viewed as a mean to lower the rate of recidivism or only as formal fulfillment of the legal requirement. **Martin Adamec**, an attorney, argued that courts often do not take into account circumstances of the offender and for this reason cannot fully individualize the imposed sentence. **Gabriela Podzimeková** and **Karol Hrádela** then critically discussed sentencing rationales and the extent of criminalization of various offenses. **Tereza Dleštíková** from Police Academy discussed the implications of recently put-into-practice electronic monitoring from the viewpoint of victims.

Conference “Sentencing and sanctions’ execution” put sentencing once again into the spotlight of researchers and practitioners: Its message is that there are many problematic and under-researched topics in the area of sentencing. Yet it also left the participants with positive impressions: There are many academicians, legislators and practitioners interested in it and many are willing to dedicate time to identify problematic issues within sentencing and develop new interesting ideas. The conference thus served as a perfect starting point for further research on sentencing. The conference proceedings will be published in 2020.

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