Unconditional sentence of imprisonment from perspective of theory and practice

Dissertation

JUDr. Jiří Pleva

Abstract

Author tried to express his opinions to contemporary theory and practice concerning the unconditional sentence of imprisonment and provide some impulses to an appropriate change in his thesis. The basic motto of the introduced discourse was the statement that the prime sign of the imposed sentence is the loss (evil) caused to the criminal. Author wanted to prove the ineffectiveness of the imposed sentences in the cases when the subsequent execution of the punishments will not be for the criminal appreciable enough, whereas the factual appreciability of the punishment is only ad hoc to be stated regarding to the situation of the particular offender. Generally extended statement was disproved, that the unconditional sentence of imprisonment was always the strictest form of punishment, by the chosen cases from the court room and also from the prison practice.

In thesis author tried to emphasize the importance of all basic purposes of the punishment, until now modified in § 23 of the Criminal code (1961) which cannot be left out at considerations either about imposing sentence or after the coming into force of the new Criminal code (2009). In spirit of the mixed theory of punishment he expressed afterwards the persuasion about the unsuitability of sentencing of imprisonment at that time, if it was possible to draw the conclusion about its incompetence, to punish and amend the offender, thanks to which this punishment could never protect the society effectively.

Author also reflected the fact how the conception of unconditional sentence of imprisonment as the strictest sort of punishment (specific theory of the principle of subsidiarity of stricter sanction) does not reflect real needs of the practice and complicates the choice of effective

punishments in their system. The mentioned principle should be applied in complex on all sorts of punishments and not exceptionally to the only sort of punishment. It would be possible to reach among others the mentioned situation, if the use of imprisonment as the so called secondary one would be limited, so if e.g. by non-fulfillment of the conditions in the frame of trial period of the suspended sentence, community service, house arrest or pecuniary punishment we enable the court instead of automatic change on the imprisonment the choice from other alternative punishments, if there are conditions given to it.

Author came to the conclusion in the frame of expert literature and appropriate judicature study, also thanks to the findings from his own practice that the more essential criterion for the determination of the appreciability of the imprisonment is not its length, but the way of its execution. That's why the proclamation to the wider application § 56 sec. 3 of new Criminal code (2009) is expressed in this work, because through the stricter choice of the mode of the execution of the imprisonment the length of its lasting can be at the same time shortened. It still will concern a punishment by its appreciability adequate to the consequence of the committed criminal activity. Thanks to shorter time spent in prison however the risk of prisonization will be reduced by the convict and the devastation of his social relationship out of prison need not occur. At the same time not only the individual preventive purpose but also protective and isolation purpose must play fundamental role at decisions about changes in the establishing of convicts.

Views often appear in recent literature that the prison service undergoes the crisis. Partly it is referred to high percentage of already-punished deliquents, partly to problems connected with keeping of the inmates' rights, next to financial difficulty or the general overfilling of prisons. An opinion to possible reasons of the convicts' recidivism was stated at work that a lot of convicts commit the criminal activity, because they see in the resulting stay in prison the improvement of their rank. This

situation was reached by gradual humanization of prison service which reached mainly in last decades such level when some convicts have better living conditions, wider rights and fewer duties than the persons at liberty. Regarding to the stated it is therefore necessary, so that the convicts would not be privileged to the others in that way that their punishment will be changed into reward. On the other hand it is necessary to emphasize that, though the convicts were limited on certain rights, others are kept without limitation and as such they deserve a quite equivalent protection as free people enjoy. The employees of Prison Office of Czech republic and not only they must therefore thoroughly check the fulfillment of the imposed convicts duties and eventually afflict their non-performance quite in keeping with the text and sense of the law, whereas they should delay all interventions to the rights of the prisoners, which oppose the interpretation of the law.

The discourse about unconditional sentence of imprisonment was primarily focused on the legal issues. At this stage, however, the criminal law is not the stand-alone science. Therefore author deals with issues in the field of penology, marginally psychology or philosophy, in order to provide a comprehensive picture of the issue. Theoretical interpretation was subsequently supplemented by the results of the questionnaires aimed at improving the perception of severity of essential restrictions related to the execution of imprisonment by the convicts.

July 2011