

Abstract

The Master's thesis provides a comprehensive analysis of possible alternatives to imprisonment. It is indisputable that incarceration is the most severe penalty that can be applied to law-breakers in the Czech Republic. To use this punitive measure in cases where it might not be appropriate would be in breach of humanitarian principles and of proportionality. For this reason, it is incumbent on states to reflect on how their correctional system might be improved. The main aim of this Master's degree thesis is to examine non-custodial sentences in the Czech Republic and briefly compare them to those in operation in other countries. It also analyses whether the Czech correctional system is satisfactory. The author explores the question of whether an improvement in this area of the penal system would result in a corresponding reduction in the prison-rate. The text focuses on house-arrest, community service orders, suspended sentences, and fines, since they are the most common non-custodial sanctions. The thesis is composed of an introduction, six chapters and a conclusion. The initial two chapters are introductory and define the basic terminology used in the text.

The first chapter, which considers the concept of punishment, is subdivided into four parts. Firstly, it describes what punishment actually is and explains that this is a legal consequence of a crime committed which is intended to inflict pain on the wrong-doer. The next section looks at the rationale underlying the justification of punishment in terms of both retributivism, which justifies punishment as a tool that simply repays the wrongdoer for his or her misdeed, and utilitarianism which sees the objective of punishment as the protection of society. The third part of the chapter concentrates on the main functions of punishment – retribution, deterrence, rehabilitation, compensation and isolation of the convicted perpetrator of a crime. The last part then deals with the notion of restorative justice, which provides a different approach to crime than classical retributive justice.

The purpose of Chapter Two is to evaluate alternative measures in general. After first discussing incarceration and the negative effects this has on the condemned individual and on the wider society, the chapter continues by sketching the development of other options. In so doing, the range of judicial choices available where a custodial sentence is not deemed necessary is reviewed, and the chapter concludes by detailing various schemes that have sought to modify rather than replace imprisonment. This chapter goes on to describe the sanctions in the Czech Republic. In addition, the leading principles which apply to the

practice of chastisement in the Czech lands are enumerated. This is followed by an analysis of alternatives measures in operation in the state.

Chapter three addresses the issue of house-arrest, a system whereby the person convicted is confined to a specific place for a certain period of time. The chapter is divided into four sections. The first is introductory and, as well as defining basic terminology, looks at how house-arrest is carried out in the United States of America, the United Kingdom of Great Britain and Northern Ireland, and in New Zealand. The next two parts focus on the legal framework for this measure in the Czech Republic and how this might be amended, where appropriate, and brought into line with prevailing practice in the English-speaking countries mentioned. The chapter closes with a discussion of the merits and demerits of the legislation currently enacted and of house-arrest in general.

The fourth chapter is mainly concerned with the issue of suspended sentence orders. A suspended sentence is one that will not be executed as long as the offender fulfils a specified set of conditions. This chapter, too, consists of four parts. Firstly, it explains the basic terminology and then outlines the use of probation and suspended sentences in the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Republic of Ireland, and the State of Victoria in Australia. Furthermore, the text provides an analysis of Czech substantive and procedural law and suggests some changes that might be made to improve legislation in this area. Part four of the chapter analyses the benefits that would be derived as a result.

Chapter five looks at community service orders, a punitive arrangement which involves the performance of unpaid work for a prescribed number of hours. In like manner, this Chapter falls into four parts. Part one provides an introduction to the topic and examines the implementation of community service in the United Kingdom of Great Britain and Northern Ireland, the Republic of Ireland, New South Wales in Australia, and also in New Zealand. Parts two and three look at similar measures in the Czech Republic and propose some changes that might be looked at favourably when Czech legislation in the area is compared with foreign law. Part four summarizes the advantages and disadvantages of community service.

Chapter six examines the imposition of fines, a financial penalty that is employed in the Czech Republic. Again, the chapter consists of four parts, with Part One elucidating the terminology and illustrating how the system operates in Germany, the Republic of Ireland, and the United Kingdom. The second and third part concentrate on Czech substantive and procedural law and suggest some changes. The last part of this chapter deals with some problems that can arise when fines are inflicted.

The final section of the thesis is devoted to the drawing of appropriate conclusions. In so doing, the main aim of the thesis has been accomplished - the author has analysed the practice of non-custodial sentences and how Czech usage compares to that in other countries. She has also demonstrated that the correctional system in operation in the Czech Republic is adequate. Nevertheless, the author suggests some minor amendments that might be made to the legislation in the area. A case in point would be the author's recommendation that the stipulation of the incompatibility of suspended-sentence orders, community service orders, and house-arrest be revoked. The author also concludes that a high prison-rate cannot be changed merely by improving the correctional system.