

CRIMINAL RESPONSIBILITY AND THE SYSTEM OF SANCTIONING JUVENILE OFFENDERS IN THE CZECH REPUBLIC AND HUNGARY

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Summary: The criminal responsibility and the system of sanctioning juvenile offenders is one of fundamental criminal law issues. Individuals who start a criminal career early on are usually not easy to reintegrate into normal life. That is one reason why it is necessary to discuss the problem of juvenile justice in depth. The legal literature in the Czech Republic is devoted to this topic on a large scale, however Hungarian legislation has not yet been analysed for purposes of comparison. The Czech Republic and Hungary fall under the United Nations categorization to Eastern Europe and therefore certain similar features can be assumed. On the other hand any identified differences may be the basis for future changes of the legislation.

Keywords: juvenile offender, criminal responsibility, sanctions, penalty, measures, Hungary, Czech Republic.

1. Introduction

Criminal offenders are mostly those who have committed an offense in their adulthood, i. e. after reaching the age of 18. In a few percent of cases, however, the offender becomes a child.¹ In such cases, it is necessary to legislate whether the person is responsible for committing a criminal offense, and if it is possible to impose a criminal sanction for this person or not. Children usually commit property crimes (thefts, etc.), but it is no exception that serious violent crimes also occur. In both cases, the issue needs to be addressed, not only from the point of view of social, educational, etc., and also from the point of view of criminal law. Appropriate access to this category of perpetrators can ensure that their behavior will be correct in the future.

1 For example: according to the statistical survey of crime, the total percentage of sentenced juvenile offenders in the year 2016 was 2,14 % – <https://cslav.justice.cz/InfoData/statisticke-rocenky.html>.

The basis for understanding this issue is the definition of basic terms. Legal sources for these definitions are: czech Criminal Code no. 40/2009 Coll. („CC 2009”), czech Act no. 218/2003 Coll. on youth responsibility for offenses and on juvenile justice („Act 2003”), hungarian Criminal Code no. C/2012 („HCC 2012”), hungarian Act no. XXXI/1997 on the protection of children and guardianship administration („Act 1997”).

- *young adult*: adult person who has not completed his 24th year (it is defined in section 5 of the Act 1997). In CC 2009 not in HCC 2012 there is no definition of this term. The CC 2009 (section 41) defines only age close to the age of juveniles (it is a mitigating circumstance), but there is no detailed specification of this age.
- *child*: Section 126 of CC 2009 defines that as a child shall be understood a person under 18 years of age, unless the Criminal Code provides otherwise. Section 2 of Act 2003 defines that a child under fifteen years of age who, at the time of committing an offense other than the criminal, can not be criminally responsible.
- *Juvenile*: the person who when committing an offense committed before 1 July 2013, 14 years of age, for the offense committed after 30 June 2013, the age of 12 years (§ 5 Act 1997). HCC 2012 (section 105) defines juvenile offenders as any person between the age of twelve and eighteen years at the time of committing a criminal offense. In the czech criminal law the definition of juvenile offender can be found not in CC 2009 but in the Act 2003 and that in section 2. According to this provision, the juvenile offender is understood the one who, at the time of committing the offense, completed the 15th year and did not exceed the eighteenth year of his age.

2. The conditions for criminal liability of juvenile offenders – history and present

2.1 Czech Republic

Historically it is necessary to state that the question of criminal responsibility of juveniles and the judiciary in the field of youth can be regarded as a relatively modern criminal law institute, since it was first introduced in the Act 48/1931 Coll. (Criminal Judicial System). However, even before the adoption of this legislation, it was necessary to solve the situation where a juvenile juvenile committed a certain socially harmful act. For example, *Constitutio Criminalis Josephina* 1707 does not regulate the punishment of juveniles, but the age appears to be a mitigating circumstance, with the age being set for the 18-year-old boys and 15-year-old girls. *Constitutio Criminalis Theresiana* 1768 distinguished between 3 age categories: childhood (up to 7 years), adolescence (up to the age of 14) and

juvenile age (up to 16 years).² The General Code on Crimes and Punishments for them from 1787 (Emperor Joseph II) excludes criminal responsibility until the age of 12.

De lege lata there is special law on juvenile offenders, the Act no. 218/2003 Coll. on youth responsibility for offenses and on juvenile justice („Act 2003”). This act is in a special relationship with the Criminal Code and the Criminal Procedure Code and stipulates conditions of responsibility of juvenile offenders for their unlawful acts specified in the criminal law, measures taken as punishment for such unlawful acts, procedures, decisions and implementation of justice in the matters of young people. The Act applies to two age groups of young people – to children under fifteen (who are not responsible for their acts from the point of view of criminal law) who committed an act which is otherwise a criminal offense, and to juvenile offenders (i.e. persons who had completed the age of fifteen but had not turned eighteen at the time when the wrong act was committed). Juvenile offenders are already responsible for criminal offenses.

The Act stipulates principles of so-called restorative justice which emphasises a balanced and just reaction of society to a wrong act of a young person and which does not waive its joint responsibility for his/her failure and it infers consequences from it not only for the young person but also for solving of problems of other involved persons and groups connected with the act. Responsibility for criminal acts is constructed as so-called relative responsibility for criminal acts. According to this conception of responsibility for criminal acts, juvenile offenders should be responsible for their criminal acts depending on the achieved degree of their moral and intellectual development, not only by simply turning a certain age. Apart from turning the determined age at the moment when a criminal offense is committed, the responsibility for criminal acts constructed in this way is also conditioned by achievement of a certain degree of intellectual and moral maturity.

The conditions for criminal liability of juvenile offenders are therefore following:

- a. age
- b. sanity
- c. intellectual – moral maturity

Ad a) The criminal law of European countries regulates the minimum age for criminal responsibility differently. There are two different trends for the moment in Europe. One is to reduce the age of criminal responsibility and to lock up more children at younger ages and for more offenses. The other trend is – in the spirit of the UN Convention on the Rights of the Child – to avoid criminalisation and to seek family-based or other social alternatives to imprisonment. For exam-

2 ZEZULOVÁ, Jana. *Trestní zákonodárství nad mládeží*. 1. vydání. Brno: Masarykova univerzita, 1997, p. 16.

ple in Germany no one who was younger than 14 at the time an alleged offense was committed can be held criminally responsible.³ Children aged 14 to 18 can be criminally responsible where at the time of the offense, he or she was mature enough to see the injustice of the act and to act upon this knowledge. In Poland any person aged 17 or over is liable to be tried for any criminal offense under the Criminal Code.⁴ For offenses specifically listed in section 10(2) children can be tried from the age of 15. In Slovakia any person under the age of 14 upon committing what would otherwise be a criminal offense may not be held criminally responsible. No one may be held criminally responsible for sexual abuse if he or she has not reached the age of 15.⁵ In England and Wales children can be held liable for criminal offenses from the age of 10.⁶

The CC 2009 defines that anyone who has not reached the fifteenth year of age at the time of committing an offense, shall not be criminally responsible.⁷ The same age limit for the emergence of criminal responsibility depending on the age of the perpetrator was also governed by the previous Criminal Code (Act no. 140/1961 Coll). The original version of the CC 2009 set the age limit to 14 years. However, this lowering of the age limit has caused a wave of criticism. It was criticized that the lowering of the age limit would not only lead to the possibility of early punishment of the juvenile, but mainly to reduce its protection against criminal offenses (e.g. sexual offenses etc.) Therefore, the Act was amended before it became effective and the age limit returned to 15 years. In 2016, it was again proposed to reduce the age limit to 13 years for committing serious felonies with possibility to impose exceptional sentence of imprisonment. However, the proposal was not accepted.

De lege lata the age for criminal responsibility is therefore 15 years. Children under fifteen years are not responsible for their acts from the point of view of criminal law. Reaching 15 years begins criminal responsibility, but it is only relative responsibility because this is conditional on meeting two other requirements: sanity and intellectual and moral maturity.

Ad b) The sanity of perpetrator is presumed. The insanity is a condition different from normal and must be proven. The CC 2009 defines insanity in section 26: Anyone who due to a mental disorder can not identify the illegal nature of an act at the time of its commission or control his/her conduct, shall not be criminally responsible for such an act. The provisions of § 26 shall not apply to whoever induces to him-/herself, even negligently, a state of insanity by ingestion

3 Section 19 of Criminal Code of Germany (Strafgesetzbuch).

4 Section 10 of Criminal Code of Poland.

5 Section 22 of Criminal Code of Slovak Republic.

6 Section 50 of Children and Young Persons Act 1933.

7 Act no. 40/2009 – Criminal Code of the Czech Republic, section 25.

or application of addictive substances (section 360). The CC 2009 also defines diminished sanity but this mental state does not exclude criminal responsibility.⁸

Ad c) The condition of intellectual and moral maturity is required only for criminal responsibility of juvenile offenders. Section 5 of the Act 2003 defines that a juvenile who at the time of committing an act has not reached such intellectual and moral maturity to recognize his illegality or to control his actions is not criminally responsible for this act. It does not impose criminal responsibility in specific cases where a juvenile's maturity is caused by his late social development and therefore leads to committing a crime that would not have occurred for example for one year. This condition is similarly as sanity of offender presumed and lack of intellectual and moral maturity must be proven. An expert in the field of health care, psychiatry specializing in pediatric psychiatry and expert in the field of health or pedagogy, a branch of psychology, specializing in child psychology, will be included in the examination of the mental state of the juvenile (section 58 of the Act 2003).

Criminal offense committed by a juvenile is called a **transgression**. It is not a new category of criminal offense.⁹ A transgression is therefore a form of delinquency of juvenile offenders corresponding to the criminal offenses of adults. For their assessment, the criminal act applies, with the exceptions stipulated by law. According to an explanatory report to the Act 2003 the inappropriateness of the use of the term criminal offense in the category of juvenile offenders results from the fact that it does not express precisely the nature of the juvenile behavior when the society is at least jointly responsible for such actions because it failed to create a suitable substitute educational environment (in cases where the juvenile had to face a broken family to grow up in constitutional facilities, which, unfortunately, often contributed to his deceptive manifestations) or lacked appropriate and timely educational interventions in his disturbed family environment. The juvenile is therefore more than just a crime of mere transgression, which does not contain such a severe condemnation and thus stigmatizing elements as the term of the offense. "The concept of transgression is therefore the same as that of

8 Anyone who due to a mental disorder suffers from a substantially diminished capacity to recognise the illegal nature of an act at the time of its commission or to control his/her conduct, is in a state of diminished sanity.

9 A criminal offence is an illegal act identified as criminal by the Criminal Code, which shows the characteristic stated in this Code (section 12 of CC 2009). Criminal offences are divided into misdemeanours and felonies. Misdemeanours are all negligent criminal offences and such intentional criminal offences for which the Criminal Code stipulates a sentence of imprisonment with the upper limit of up to five years. Felonies are all criminal offences that are not classified as misdemeanours under the Criminal Code; especially serious felonies are those intentional criminal offences for which the Criminal Code prescribes a sentence of imprisonment with the upper limit of at least ten years (section 14 of CC 2009).

the criminal offense; called „formal concept with the interpretative principle of subsidiarity of criminal repression or materialized formal concept“.¹⁰

2.2 Hungary

In Hungary there is no independent law on juvenile offenders, neither is there a separate statutory definition for young adults. Provisions differing from the general rules are regulated in separate chapters within the Criminal Code (XI.) and the Criminal Procedural Law (XC.)¹¹. The special provisions have primacy to the general rules. The general rules can be applied in the absence of special provisions or with their appropriate alteration.

The criminal justice on juveniles is based generally on the Fundamental Law of Hungary (with the Fourth Amendment), on the Hungarian Criminal Code (Act C of 2012 hereinafter HCC) and on the Hungarian Criminal Procedure Act (Act XC of 2017 hereinafter HCP). The Hungarian Prison Act (HPA) is the Statutory Rules on Execution of Penalties and preventive Measures no. 11 of 1979. In some aspects, the codices of civil law contain also relevant rules, so the Act XXXI of 1997 on the protection of children and on the guardianship administration (APC) and the Hungarian Civil Code (HCiv).

The here cited legal norms lay down the age categories with legal relevancies for the entire legal system:

According to Hungarian law, minor is the person who has not turned eighteen, unless he/she is married. The marriage has a constitutive effect as regards adulthood in the Hungarian legal system. If the juvenile gets married with the permission of the parents or of the guardianship authority (at the age of at least 16), the law considers him/her as an adult from then on. However there is one exception of the mentioned constitutive effect: marriage does not bring majority for offenders according to criminal law. The category of minor is an umbrella term because it contains both the category of child and juvenile.

The demand for the regulation of legal actions against juveniles first arose at the end of the 18th century. The draft criminal code of 1792 came up with the idea that criminal procedure should not be initiated against children less than 7 years of age and it was also planned to introduce differentiated punishment depending on the age. The principles of this draft were incorporated into the Hungarian jurisdiction with the introduction of the first Criminal Code (Code Csemegi) as Law no. 5 of 1878. This act ordered the establishment of reformato-

¹⁰ The principle of subsidiarity of criminal repression is defined in section 12/2 Act no. 40/2009 Coll. as follows: Criminal liability of an offender and criminal consequences associated with it may only be applied in socially harmful cases where application of liability according to other legal regulations does not suffice.

¹¹ In Hungary there is new Criminal Procedural Act no. XC/2017 which is in force from July 2018.

ries for juvenile delinquents, though it did not say anything about the organization, equipment and operation of the institutions. But it provided that no public proceeding can be started against children less than 12 years of age. The 1908 amendment to the Criminal Code kept the lower age-limit of criminal liability, saying those who have not reached their twelfth years of age at the time when the crime or offence was committed cannot be prosecuted or placed under criminal procedure, but the higher age-limit was determined at 18 years of age. These changes are probably related to the interest in children which began in the late 19th century. With the appearance of the children-study movement, besides legal aspects, psychological and pedagogical aspects also appeared when dealing with juvenile delinquents. Until the middle of the 20th century the viewpoint of the criminal justice concerning juveniles was the following: between the ages of 12 and 18, juveniles must be treated differently from adults, and thus besides penal enforcement, pedagogical aspects also appeared. In the legal practice there was a discernible intention to 'correct' and to educate, which is one of the reasons for the appearance of reformatories and the increase in the number of inmates. After World War II there was no significant change in the judicial practice, until 1961 the age-limit was 12 and 18 years of age, though they were continuously planning to raise the age-limit. This only occurred with the enactment of Act no. 5 of 1961, in which § 20 provided that criminal procedure cannot be started against those who have not reached 14 years of age. Act no. 4 of 1978 about the Criminal Code did not change the provisions of the 1961 law concerning age-limits and educational procedures."

The conditions for criminal responsibility of juvenile offenders are therefore following:

- a. age
- b. sanity
- c. mental – moral maturity.

Ad a) Persons under the age of fourteen years at the time the criminal offense was committed shall be exempt from criminal responsibility, with the exception of homicide [Subsections (1)-(2) of Section 160], voluntary manslaughter (Section 161), battery [Subsection (8) of Section 164], robbery [Subsections (1)-(4) of Section 365] and plundering [Subsections (2)-(3) of Section 366], if over the age of twelve years at the time the criminal offense was committed, and if having the capacity to understand the nature and consequences of his acts. From the 1st of July, 2013 the age of criminal responsibility has been reduced from 14 to 12 years in case of serious crimes (manslaughter, assault, robbery and despoilment) and if the child is able to assess the consequences of his/her actions.

The decrease of the age limit faced with general rejection both in the academic debates and among practitioners. In May 2012 the Commissioner for Fundamental Rights in Hungary expressed his concerns over this new rule. According

to his opinion this may result in the deprivation of the child's liberty if she/he is found guilty.¹²

So, *de lege lata* reaching the age of 14 and in cases of exhaustively defined serious crimes the age of 12 is a condition for criminal responsibility. Juvenile offender shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offense (section 105 of HCC 2012). This category of offenders is criminally responsible subject to other conditions (sanity and intellectual and moral maturity).

Ad b) The sanity of perpetrator is presumed. The insanity is a condition different from normal and must be proven. The HCC defines insanity in section 17: any person who has committed a criminal act in a state of impairment of the mind of a character such that it is impossible for the person so afflicted to understand the nature and consequences of his acts, shall not be prosecuted. The penalty may be reduced without limitation if the state of impairment of the perpetrator's mind is of a character such that it is difficult for him to understand the nature and consequences of his acts. The provisions of section 17 shall not apply to persons who engage in criminal activity under self-inflicted influence by alcohol or narcotic drugs.

Ad c) Only the perpetrator who has turned twelve and is capable of recognizing the consequences of his/her conduct could be criminally responsible for his action. The examination of this capacity requires special expertise; the investigating authorities shall order a special expert to investigate whether a child could be introduced as a person of interest/suspect in relation to the listed offenses. Criminal responsibility of children between the age 12–14 is based upon two criteria: committing exhaustively defined criminal offenses (objective criterion) and capability of recognizing the consequences of his/her conduct (subjective criterion: "mental-moral maturity").

The Hungarian Criminal Code does not have its own terminology for a crime committed by juvenile offender. From this point of view, the same applies as for adult offender. Criminal offense means any conduct that is committed intentionally or – if negligence also carries a punishment – with negligence, and that is considered potentially harmful to society and that is punishable under this Act. An 'act harmful to society' means any activity or passive negligence which prejudices or presents a risk to the person or rights of others, or the fundamental constitutional, economic or social structure of Hungary provided for in the Fundamental Law (section 4 of HCC 2012). Criminal offenses may be classified as felonies and misdemeanors. Felony is a crime committed intentionally which

12 Report on the Activities of the Commissioner for Fundamental Rights of Hungary in the Year 2012, Budapest, 2013. 64.p.

is punishable under this Act by imprisonment of two or more years. Every other criminal offense is a misdemeanor (section 5 of HCC 2012).

3. A brief overview of sanctioning of juvenile offenders

3.1 *The Act no. 218/2003 Coll. on youth responsibility for offenses and on juvenile justice*

Legal consequences of transgressions committed by juvenile offenders are measures. The Act 2003 is based on the monism of criminal sanctions imposed on juveniles.¹³ These measures are divided into educational measures, protection measures and punitive measures.

Educational measures can be imposed by the juvenile court in the preparatory proceedings by the prosecutor with consent from the young person already in the progress of these proceedings, latest until it is completed legitimately. The consent from the young person is necessary here due to presumption of innocence – if the education measure is imposed already in the progress of the criminal proceedings against the young person.

Educational measures are:

- supervision of the probation officer
- probation program
- educational duties
- educational limitations
- warning.

The purpose of the protective measure is to influence the mental, moral and social development of a young person in a positive way and to protect the society against wrong acts committed by juvenile offenders.

Protectiv measures are:

- protective therapy
- protective detention
- forfeiture of a thing
- forfeiture of a part of the property
- protective education

The Act 2003 has a special legal regulation only for the protectiv education because it is the only measure imposed on juvenile offenders. The legal regulation of the other measures is included in the CC 2009, however when imposing them, the purpose of the measure laid down in the Act 2003 must be observed.

13 The Act no. 40/2009 Coll. (Crimnal Code) is based on dualism of criminal sanctions imposed on adult offenders: penalties and protective measures.

Punitive measures can only be applied if special ways of proceedings and measures, mainly those restoring the disturbed social relations and contributing to prevention of unlawful acts, would probably not lead to achievement of the purpose of this act. The punitive measures imposed pursuant to this Act in connection with the Criminal Code must, in view of the circumstances of the case and of the person and the circumstances of the juvenile, assist in the creation of suitable conditions for further development of the juvenile; by the execution of a criminal act must not be degraded human dignity.

Punitive measures are:

- community service work
- financial measure
- financial measure with a conditional suspension of the measure
- confiscation of a thing
- prohibition of activity
- expulsion
- house confinement
- prohibition of entering sport, cultural and other social events
- suspended sentence of imprisonment
- suspended sentence of imprisonment with supervision.¹⁴

3.2 *The Act no. C/2012 (Criminal Code)*

Due to the absence of a separate legal regulation for juveniles, Hungarian criminal law has no specific system of sanctions. Provisions differing from the general rules are regulated in separate chapter, chapter XI., within the Criminal Code. The HCC 2012 is based on dualism of criminal sanctions imposed on juvenile offenders: penalties and measures. The principle objective of any penalty or measure imposed upon a juvenile is to positively influence the juvenile's development to become a useful member of society, and such penalty or measure should therefore have as a primary consideration the juvenile's guidance, education and protection. A penalty shall be imposed upon a juvenile when the application of a measure appears to be impractical. Only measures may be imposed upon a person who has not reached the age of fourteen years at the time the criminal offense was committed. A measure or penalty involving the deprivation of liberty may only be imposed against a juvenile offender if the aim of the measure or penalty cannot otherwise be achieved. That means the duty of courts to analyse the suitability of the sanction for achieving the mentioned aims. Important to see, that the sanctioning of the juvenile offender has its upper limit in the proportionality between the severity of the offence and the level of the guilt. Below this limit, the judge can move to the "preventive" threshold (lower limit). This

¹⁴ The juvenile offender can not, as opposed to the adult, be punished with prohibition of stay, confiscation of property, loss of honorary titles or decorations, loss of military rank.

means that the imposed sanction shall follow the aim of the penalty between the objective proportionality and the preventive minimum.¹⁵

Penalties are:

- a) imprisonment
- b) custodial arrest
- c) community service work
- d) fine
- e) prohibition to exercise professional activity
- f) driving ban
- g) prohibition from residing in a particular area
- h) ban from visiting sport events
- i) expulsion

Deprivation of civil rights may be imposed as a form of additional penalty. A juvenile may be deprived of his civil rights only if sentenced to a term of imprisonment over one year.

Measures are:

- a) warning
- b) conditional sentence
- c) work performed in amends
- d) probation with supervision
- e) confiscation
- f) confiscation of property
- g) irreversibly rendering electronic information inaccessible
- h) involuntary treatment in a mental institution
- i) measures against legal persons imposed pursuant to the Act on Criminal Sanctions in Connection with the Criminal Liability of Legal Persons.
- j) placement in a reformatory institution

3.3 The specifics of selected sanctions

Imprisonment

Both legal regulations make it possible to impose this sanction on juvenile offenders. The Act 2003 (section 31) defines that the penalties provided for in the Criminal Code are reduced by half in the case of juveniles, but the upper limit of the penalty may not exceed five years and the lower limit is one year. If a juvenile has committed an offense for which the Criminal Code allows the imposition of an extraordinary punishment and the nature and severity of the offense is extremely high due to the particularly reprehensible manner in which the act is

¹⁵ Nagy, Ferenc: About the need of reforms in juvenile criminal law. Magyar Jog 1994/5 285–293.p.

committed or to a particularly despicable offense or to a particularly difficult to repair offense, the court can impose sentence of between five and ten years if it considers that the deprivation of liberty within the range above-mentioned is insufficient to achieve the purpose of the criminal measure.

The minimum term of imprisonment to be imposed upon juvenile offenders in Hungary shall be one month for all types of criminal acts. The maximum term of imprisonment that may be imposed upon a juvenile offender over the age of sixteen years at the time the crime is committed shall be:

- a) ten years for a crime that carries a maximum sentence of life imprisonment;
- b) five years for a crime that carries a prison term of more than five years. The maximum term of imprisonment that may be imposed against a juvenile offender over the age of sixteen years at the time the crime is committed shall be:
- c) fifteen years for a crime that carries a maximum sentence of life imprisonment;
- d) ten years for a crime that carries a prison term of more than ten years;
- e) five years for a crime that carries a prison term of more than five years (section 109).

Community service work

Section 26 of the Act 2003 defines that the upper limit of the rate of this criminal measure for a juvenile may not exceed one half of the upper limit laid down in the Criminal Code. It means that this sanction may be imposed within the range 50–150 hours.

According to the Hungarian legislation community service work may only be imposed against juvenile offenders over the age of sixteen years at the time of sentencing. The duration of community service work shall be defined in hours; it may not be less than forty-eight hours and may not be more than three hundred and twelve hours (section 47, 112).

Fine

Czech courts impose the fine in daily units which are within the range 10–365. The amount for one daily unit shall be minimum one hundred and maximum five thousand Czech crowns (section 27).

According to the section 113 of HCC 2012 a fine may be imposed on a juvenile offender if he has independent earnings, income or sufficient assets. In the case of juvenile offenders the fine expressed in daily units shall be not less than

15 and not more than 250 days. The amount of fine for one daily unit shall be minimum five hundred and maximum fifty thousand forints.¹⁶

Protective education/ placement in a reformatory institution

As mentioned above the Act 2003 has a special legal regulation for the protective education because it is the measure imposed only on juvenile offenders. Protective education will last as long as it requires its purpose, but no later than the eighteenth year of juvenile; if the juvenile's interest requires, the juvenile court may extend the protective education to the end of its nineteenth year (section 22).

The HCC 2012 (section 120–122) defines that the placement in a reformatory institution may not be ordered against a person over the age of twenty years at the time of sentencing. The duration of placement in a reformatory institution may be between one year to four years. In ordering placement in a reformatory institution the court shall establish that the juvenile offender may be released from the reformatory institution temporarily after half of the duration of placement as ordered:

- a) having spent at least one year in the institution, and
- b) if there is reason to believe that the aim of the measure may also be achieved without further confinement in the reformatory institution.

The duration of temporary release shall be the remaining part of confinement, but at least one year. The court shall terminate the temporary release if the juvenile is sentenced to any term of imprisonment during the temporary release – with the exception set out in Section 122 – or to placement in a reformatory institution. If the court imposes another penalty or measure against the juvenile, temporary release may be terminated. In case of the termination of temporary release the period spent on temporary release may not be included in the term of placement in the reformatory institution.

If the juvenile offender is sentenced to an executable term of imprisonment for a crime committed after being sentenced to placement in a reformatory institution during the period of placement in a reformatory institution or temporary release, the imprisonment shall be carried out. In that case the remainder of the duration of placement in a reformatory institution shall be substituted to imprisonment, with two days of placement in a reformatory institution substituted by one day of imprisonment.

4. Conclusion

The issue of criminal responsibility of juveniles and their sanctioning is identical in the terms of the Czech Republic and Hungary in many respects, but on

¹⁶ The current exchange rate is 100 HUF/7, 94 CZK.

the other hand, the two legal regulations differ considerably at certain points. The basic common feature is that in both countries it is considered necessary to adapt the issues in question differently for juvenile offenders and adult offenders. The difference, however, lies in the form and extent of this modification. Since 1 January 2004, the Czech Republic has adopted a special legal regulation in the form of Act no. 218/2003 Coll., which newly regulated issues of criminal responsibility, sanctions and proceedings against juvenile offenders. The Act uses special terminology, defines a specific system of sanctions imposed on juvenile offenders, and also sets out a specific approach to juvenile justice. On the other hand, Hungarian criminal law defines the specifics relating to juvenile offenders under the Criminal Code and only in one of the chapters. In essence, these are just some exceptions to the general rules applicable to adult offenders. This has the effect that terminology and institutes are de facto identical, with only a few exceptions, such as the age of the perpetrator or the imposition of certain types of sanctions.

A significant difference compared to the Czech legal regulation is in determination of the age for criminal responsibility. While the Czech criminal law sets the required age for 15 years (subject to the conditions of sanity and intellectual and moral maturity), the Hungarian regulation is based on two age limits. The general age limit for the occurrence of criminal responsibility is 14 years, however, in the case of the exhaustive list of criminal offenses, this limit is 12 years.

Another significant difference is the determination of the condition of intellectual and moral maturity. While the Czech criminal law regulates this condition for all juvenile offenders (15–18 years), so in Hungary it is condition only for criminal responsibility of offenders between the years 12–14.

The system of criminal sanctions is essentially the same for young and adult offenders. The penalties and measures are imposed on juvenile offenders and the HCC 2012 only specifies differences for certain types of sanctions (for example: community service work, imprisonment etc.). It can be said that the types of criminal sanctions that can be imposed under Hungarian law are in many ways identical to Czech law. However, there are also sanctions, which are unknown to Czech criminal law – custodial arrest, work performed in amends, irreversibly rendering electronic information inaccessible. On the other hand, the Czech system of sanctions regulates house confinement which Hungarian criminal law knows only as procedural measures to secure the person for the purposes of criminal proceedings.

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