

Report of scientific research

Topic of research:

Comparison of the Czech criminal legislation on the statute of limitations for continuing crimes with the legislation of the state of Queensland (Australia).

Researcher:

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Enclosure:

Mgr. Vaclav Slavicek – written lecture: „*Extinction of criminal responsibility under Czech criminal law*“

I. Introduction – sources of Australian criminal law

Australian criminal law derives from three main sources:

- The law of individual states and territories
- Federal law
- International law

In general, the main legislative power in the area of criminal law lies with the individual states of the federation (New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia) and the two territories (Australian Capital Territory and Northern Territory). The Commonwealth Parliament has only very limited legislative powers, which are limited mainly to fisheries, customs, trade, foreign affairs, etc.

In a historical context, the original criminal law of the Australian colony was common law. It was a reflection of British law, which at the time was based on judicial interpretation of common law and was not codified. Today, the term "common law jurisdictions" covers the jurisdictions of the states of New South Wales, South Australia and Victoria, which have not yet comprehensively codified their state criminal law. On the contrary, other states and territories such as the Northern Territory, Queensland, Tasmania, Western Australia and, recently, the Australian Capital Territory have enacted their criminal codes, which largely abolished the original common law. This, however, does not mean that the norms of criminal law in individual states and territories are in mutual harmony, on the contrary, they are represented by diversity and service institutions.

II. Queensland and Czech Criminal Codes

Criminal law in Queensland is today largely codified in the Criminal Code Act (Qld). The common law was almost entirely removed from the sources of Queensland's criminal law. On the contrary, the so-called "Case Law", or the law of precedents, continues to be used to understand and interpret criminal law, but the courts are no longer authorized to define new criminal acts. In other words, the role of the courts is limited to the application and interpretation of written criminal law.

Queensland Criminal Code Act from 1899 has since been amended for several times, notably by adding some new offenses and removing old ones. However, its structure and system remain the same. It is worth noting that a new Criminal Code (Qld) was presented to Parliament for approval in 1995 and subsequently in 1996, but was not adopted. However, this failed proposal is still a guide to critical analysis of Queensland criminal law and a source for its recodification.

Former Czech Criminal has been used in practice since 1 January 1962 and has undergone almost 70 amendments. From 1 January 2010, after 47 years of effectiveness, it has been replaced by a new Criminal Code (Act No. 40/2009 Coll.), which significantly changes and modernizes Czech criminal law.

The new criminal code means a significant change (recodification) of the Czech substantive criminal law, which reflects a fundamental change in the value system of Czech society after 1989.

III. Offences breakdown and continuation of a criminal offence

Criminal offenses according to the Czech Criminal Law are divided into misdemeanors and felonies. Misdemeanors are all negligent crimes and those intentional crimes for which the criminal law stipulates a prison sentence with an upper limit of the criminal rate of up to five years. Felonies are all criminal acts that are not misdemeanors under the Czech Criminal Code; especially serious crimes are those intentional crimes for which the criminal law stipulates a prison sentence with an upper limit of the criminal rate of at least ten years.

According to topic of my research – except simple offences, the Czech Criminal Code regulates three special types of offences. These are continuing, collective and lasting offences. In relation to the subject of my research, I will deal below with a comparison of the elements of a continuing criminal offense according to Czech law and the depiction in Australian criminal law, and finally the question of the statute of limitations according to both regulations.

In the Czech Criminal Code, the continuation of a criminal offense is defined as such conduct, the individual sub-attacks of which are carried out with a single intention, even in the aggregate, fulfill the factual wording (facts) of the same criminal offense, are connected by the same or a similar method of execution and are closely related in time and in subject of matter attack. From the professional literature, it can be inferred that the continuation of a criminal act and a continuing criminal offence refer to the same institution. Thus, the continuation of a criminal offense is only one of the marks of a criminal offense whose mandatory features must be met in order for it to be a continuing criminal offense. At this point, however, it would be appropriate to mention that the question of the dangerousness of the act for society is not a mandatory feature of an continuing criminal act, as it is assessed for separate acts forming the resulting set separately, and that, when determining whether the conditions of the same factual basis of a separate specific criminal act are met.¹

From the above, it can be deduced that the basic features of a continuing criminal offense are:

- Two or more attacks characterized by the factual nature (facts) of the same criminal act
- Subjective consequence (common intention)
- The same or similar method of execution
- Objective consequence (temporal, possibly also local and context in the subject of the attack)

In the Queensland criminal code, I did not find the special regulation of continuing, collective and lasting crimes, however, Australian criminal law theory contains only common definitions of collective and lasting offence the definition of which is similar to that described in the Czech Criminal Code. At the same time, I did not find there any systematic regulation of the statute of limitations or the extinction of the criminal responsibility of the offenders. To clarify, the Criminal Code contains provisions on the statute of limitations for some so-called Summary Offences, i.e. less serious crimes, for which the law imposes a prison sentence of a maximum of two years.

¹ Mgr. Vaclav Slavicek: Text of Lecture – *Extinction of criminal responsibility under Czech criminal law*, 19.9.2022, (see enclosure)

As above mentioned, Australian criminal law does not recognize the concept of a continuing offence. One of the reasons for this absence, from my point of view, is the non-existence of a statute of limitations for so-called "Indictment offences".

It should be noted that for the second part of crimes, so-called "Summary offenses", which are crimes of a lighter nature, e.g. violation of road traffic rules, for which the Criminal Code of the State of Queensland imposes mostly monetary penalties or community service penalties, but also imprisonment for up to two years. Queensland Criminal Code states for some Summary Offenses limitation period of six to twelve months, which begin to run from the day the offense was committed. It is precisely for these (weaker) crimes that one can notice a fundamental difference in the approach to the offender's past, compared to the Czech regulation. In Queensland, Summary Offenses are time-barred within the above-mentioned periods, and due to the fact that Australian law does not recognize the special type of series criminal offense as it is defined according to Czech criminal law as continuing offence, series of Summary Offenses (multiple individual attacks) cannot be here included to one special type of offence, which fulfill the same factual essence of the crime, were committed by the same offender in the same or similar manner and in the related time context, but which also could be time-barred as a whole. This is the another difference between Czech criminal law and Australian one from the perspective of one of the topics of my research.

As a conclusion, regarding the issue of the regulation of series of criminal offense in Australian criminal law and its comparison with Czech criminal law, it can be concluded that Australian criminal law does not recognize continuing crime as a special type of crime (see above). From the perspective of the statute of limitations for criminal offences, it can be stated that criminal offenses for which a prison sentence of two years or more (so-called Indictable Offenses) are not statute-barred, and lighter crimes, i.e. those for which a prison sentence of up to two years can be imposed (so-called Summary Offenses) are statute-barred in a six-month or twelve-month statute of limitations.

On the contrary, the theory of Australian criminal law is analogous to the Czech Collective and Lasting crimes. Again, the statute of limitations only applies in Queensland for so-called Summary Offenses.

From a historical perspective, written regulation of the statute of limitations for serious criminal liability in Queensland and also Australian law has been absent since the beginning of the 20th century, when criminal codes were gradually adopted in most Australian states and territories, respectively during the entire development of the so-called Common Law which has been based among other on the principle – „Time doesn't run against the Crown“.

IV. Conclusion

Through my research during my stay, I have come to the preliminary conclusions that Australian criminal law recognizes both the concept of collective offences and lasting offences. A continuing offense is unknown to Australian law, partly because Australian criminal law does not operate with a statute of limitations (except for summary offences).

Statute of limitations in Czech criminal law is comprehensive area and includes above all the principle of individual responsibility of offender for the committed crime, which is similar as in Australia. The difference in approach to the matter lies (from substantive law point of view) in a different understanding of the intensity of social harm of the committed crime over the time.

While Czech and Australian criminal law are based, among other things, on the principle of the humanity of law and punishment, Czech criminal law extends this principle even further by the attribute of gradual decreasing of the social harmfulness of the committed crime. This is an emphasis on the psychological side of the offender, when his correction, in other words the process of self-reflection, with regard to the committed crime and the resulting effort to atone for its consequences, as well as moral rectification,

has its time dimension. Therefore, taking into account the seriousness of the crime committed (different limitation periods depending on the seriousness of appropriate crime), the Czech law works with the hypothesis of the extinction of criminal responsibility in the given time horizon. Finally, even from a procedural-evidential point of view, the quality of evidence decreases with increasing time since the crime was committed.

On the other hand, a main principle „*nullum tempus occurrit regi*“ – time doesn't run against the Crown – is applied in Australian criminal law, according to which, there is no legal possibility of limitation of criminal liability or preclusion for indictment offences. In the other words, the Crown prosecutor is approved to bring an indictment against the accused at any time without any risk of losing his right (and obligation to prosecute indictment offenses of which he becomes aware) due to passage of time. Of course, it is still true that with the increasing time that has passed since the crime was committed, the applicable scope and quality of evidence decreases. However, the absence of a statute of limitations, or the preclusion of criminal liability excludes the theory of possible mental correction of the offender in the course of time since the commission of the crime.

Thanks to the absence of a statute of limitations, respectively preclusion of the criminal liability of the offender of indictment offenses, as well as the special provisions for the continuing criminal offense in written Australian criminal law, it is not possible to make a main comparison of such two corresponding legislations - Czech and Australian. I am convinced about necessity of further detail research of differences between Queensland criminal procedure law, especially the Queensland Justice Act and related regulations and the Czech criminal procedure regulations, especially from scope of duties and responsibilities of Crown prosecutors, as well as methods of determining punishment for serial offences (corresponding to Czech continuing offence by its definition) point of view.

My research, due to time constraints, mainly concerned on substantive criminal law. However, I am convinced that the very absence of a statute of limitations on the criminal liability of offenders does not exclude the possibility of procedural legal methods, made especially by Crown prosecutors and judges, to assess each summary or indictable offence in its complexity, means including age of the case aspects. The basic assessment of the current level of social danger of a specific crime (especially from the point of view of the period of time that has passed since its commission) and the resulting further procedure will probably lie mainly on the side of the Crown prosecutors - either the suspension of the case or, on the contrary, the indictment. Based on my discussions with academics, I am of the opinion about relevant role of the judge, who, despite the jury's guilty verdict regarding the entire series of crimes, can take *inter alia* the elapsed time aspect of each attack of entire series into account in the form of the final amount of the sentence. These procedural legal powers of Crown prosecutors and judges can, in my opinion (and I emphasize that this is an assumption, not based on a deeper examination of the criminal procedure regulations in Queensland (Australia)) at least partially replace missing element of the statutory limitation of criminal responsibility, however dependent on the personal opinion of the Crown prosecutor or the judge is quite obvious.

I would like to continue the research on the above topic, especially from the procedural point of view, also in the future. In case of mutual interest, for a purpose of complete my existing research, but also in collaboration on other issues of comparative law (possibly also from the field of civil, commercial, financial law or from the field of out-of-court dispute resolution) it would be pleasure to develop mutual co-operation with T.C. Beirne School of Law for me also in the future.

It was a pleasure for me to prepare a written lecture for the students of T.C. Beirne School of Law, led by Dr. Enshen Li on the topic of „*Extinction of criminal responsibility under Czech criminal law*“.

Finally, I would like to thank Associate Professor Ann Black, Dr. Enshen Li, Dr. Joseph Lelliot and Associate Professor Rian Liivoja for the opportunity to discuss detailed parts of my research topic with them. At the same time, I thank to the University of Queensland, T.C. Beirne School of Law and its management, especially to Associate Professor Ann Black and Professor Andreas Schloenhardt as my research supervisors, Professor Anthony Cassimatis and Ms. Bev Forrest for the opportunity to conduct my research, as well as for creating excellent conditions for my research work.

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