

## Stalking – the new phenomenon of the Czech criminal law

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*Abstract:* The article focuses on the problem of stalking, especially the capability of the new anti-stalking legislative to deal with the crime. The aim of this article is to outline, what kind of administrative and legal measures were taken to protect the victims. Also the comparison with the foreign anti-stalking legislation was drawn to accent the efficiency of particular solution. Qualitative research was done at the practical part, namely with analysis of concrete cases. The goal was to find out how effective the new legislation is and to specify the character of the perpetrators and victims.

*Key-Words:* administrative law, criminal law, stalking, victomology, offences, sanctions,

### 1 Introduction

Stalking was as a new criminal offence constituted by Act No. 40/2009 Coll., Penal Code, with effect from 1. 1. 2010, specifically in the provision § 354<sup>th</sup>. Even before that date we were able to affect the behaviour included the now in the body of the stalking crime, however, regulation of these sanctions was fragmented and inefficient.

Firstly the stalking was declared a criminal offence in California 1990 and the legislative expanded very quickly. The original meaning of stalking, a "chase, hunt wildlife" (Meloy, 1998) was a psychiatric diagnosis, that extended for the situation, when the victim is a person. (Dressing, 2002). Thus Austrian law defines stalking in § 107a StGB as "Beharrliche Verfolgung", the persistent persecution. It is a design crime, for which the offender threatens imprisonment of up to one year and possibly also prohibition of contacting victims etc.

German adjustment in the provisions of § 238 of the Criminal Code defines stalking as a "Nachstellung", which means pandering, laying traps. It is also a design crime. It is possible to give the stalker for the basic facts an unsuspended sentence of 3 years imprisonment or a fine. Interestingly, German Criminal Code contains provisions on the adjustment to the future, when

"other comparable conduct" includes also means of communication invented in the future.

Regarding the Italian regulation, there is also stalking a punishable offense design, albeit with exceptions, Article 612, of the Italian Penal Code. Italian regulation is stricter in terms of punishment, which are punishable by imprisonment for six months to four years.

For the French legislation in the Article 137-144 of French Penal Code is typical successful using of the institute precautionary measures that can be used also by the Czech law - see § 76b of Civil Procedure Code.

Czech criminal treatment itself defines the basic facts of stalking as " long-term persecution by

a) threatening another person with the assault or another harm to him or his close relatives,

b) seeking another's personal closeness or pursuits him

c) steadily contacting another person through the electronic communications, incl. writing or other types of contact

d) limiting another person in his/her usual way of life, or

e) misusing another's personal data to develop personal or other contact

and this conduct is capable of raising another person in fear for his/her life or health or life or health of persons close to him." It is punishable by

imprisonment up to one year or prohibition of some activity. The qualified merits are punishable by imprisonment from 6 months to three years. From these sanctions, it is clear that under all circumstances, stalking in the Czech Republic may be punished only as an offence, even it is a premeditated criminal act. The consequences associated with it include the possibility to use different types of alternative sentences, such as punishment of community service, a fine. Also, due to punishment permitted by law No. 141/1961 Coll. Criminal Procedure Code the cases of stalking are heard before a single judge and it is possible to make a decision in the form of a penal order. That means, that no evidence procedure is held in front of the single judge, so mostly no expert evidence in psychology or psychiatry are introduced. At the same time, unlike those foreign criminal codes, in the Czech law stalking is not a design crime so the aggrieved party does not have to initiate the criminal proceedings itself.

## 2 Materials and Methods

For the purpose of finding relevant data are used in legal texts, including the commentary literature, in conjunction with comparisons of individual decision-making activity of courts. In particular, the case law of the Supreme Court of the Czech Republic is applied, although a small number of decisions given yet. Of course, it should also work with the statistics processed with the help of legal documentation of individual cases. So the relevant statistics data is taken to account. Of course especially it is necessary to work also with decisions of competent authorities and literature.

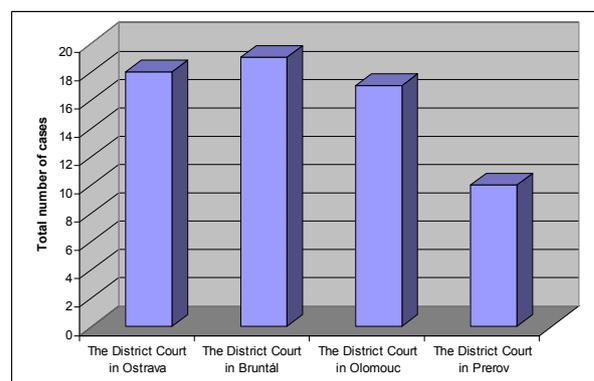
## 3 Results

The results are based on the statistics of stalking cases before district courts with local competence under the Regional Court in Ostrava, in the comparison with the case law of the Supreme Court of the Czech Republic, both from 1.1.2010 to 22.4.2012.

### 3.1 Proceedings

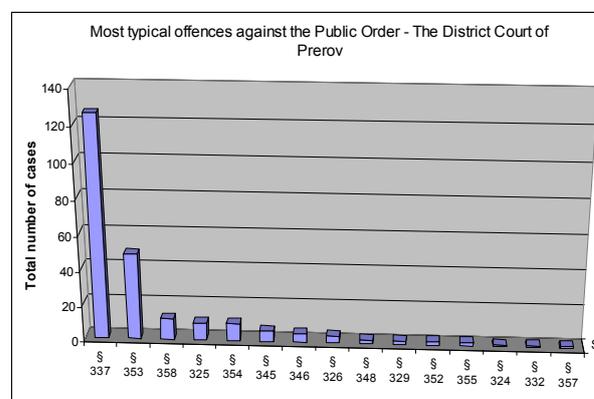
Although stalking was enacted fairly recently, the decision-making activities of courts, whose statistics were used for the purposes of this Article, demonstrated that it was quickly taken up in practice. The research also showed that stalking was prosecuted in the greater number of cases only in certain locally defined areas. Of course, this conclusion may be influenced by other factors such

as differing degrees of overloading in each prosecutorial district.



Graph n. 1 – own statistics based on legal documentation

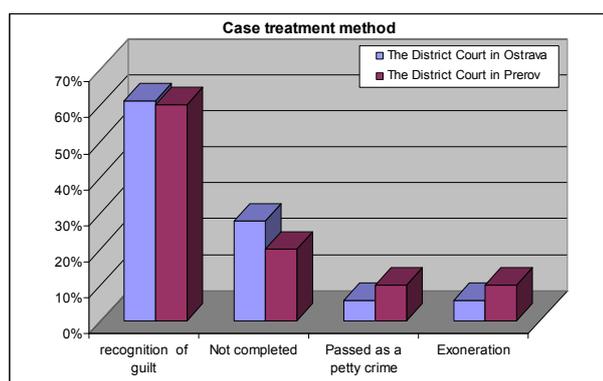
Thus one can conclude that most proceedings in the Regional Court in Ostrava conducted by the District Court in Bruntál, although the District Courts in Olomouc and Ostrava are significantly more local effect, also the number of proceedings in the District Court in Přerov, given the extent of local scope of this trial was significantly high. In the section of Crimes Against Public Order was stalking (§ 354) in the District Court in Přerov the fifth most-frequently solved crime.



Graph n. 2 - own statistics based on legal documentation

Regarding the outcome of proceedings, from the Graph 3 (also taking into account the fact that some cases still are unending) its is obvious, that most offenders were convicted of the stalking crime. For the offence of dangerous persecution it is also significant that the practice is still struggling with clear distinction between this offence and an offence of breaching of the peace under the provisions of § 48 paragraph 1 point. c) Act No. 200/1990 Coll. on misdemeanors, as follows

from relatively high number of cases assigned by the court as a misdemeanor/petty crime, see, inter alia, resolution of the Regional Court in Ostrava - Branch Olomouc from 01.13.2012, No. 421/2011-173, likewise with the Supreme Court of the Czech Republic from 23. 3. 2011, sp. No. 8 Tdo 282/2011. The difficulty to prove the behavior prosecuted as stalking and also the ambiguous interpretation of the described facts of this crime also indicates that 10-17% of cases resulted in returning a judgment of acquittal.

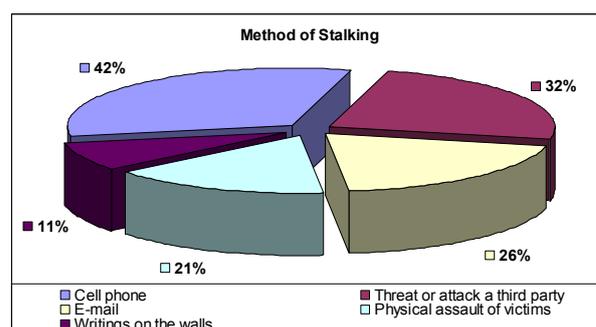


Graph n. 3 - own statistics based on legal documentation

In this context, the very problematic seems to be the interpretation of terms "long-term persecution" and "capability of raising another person in fear for his/her life or health or life or health of persons close to him." Long-term persecution was defined as a combination of attacks and number of weeks after which lasts. Generally 8-10 attacks for 4-6 weeks is sufficient. Similar frequency determines the commentar literature (Šámal, 2009). However, in some cases a shorter period is sufficient, but includes significantly more frequent attacks against the victim. The current practice shows that usually in prosecuted cases the persecution lasted much longer than 4-6 weeks. The problem in practice was far more the frequency of attacks, mainly to prove that in individual cases it was not a random encounter of the aggrieved person, justified as attending the same school (Supreme Court of the Czech Republic, no. No. 8 TDO 1082/2011), or contact with common children (District Prosecutor's Office, file no. No. 2 ZT 159 / 2011), but purposely committed persecution. In high profile cases argued before the District Court in Přerov it was found that in more than 80% of them during the time the intensity of persecution had been increased, both in terms of frequency and severity of symptoms.

Perpetrator usually did not care even about issued interim relief under § 76b of Civil Procedure, which he was ordered to refrain from contact with victim. All precautionary measures issued in the cases argued before the District Court in Přerov were violated.

To subordinate the behavior under the facts of a stalking it is sufficient if the offender is objectively capable of raising the reasonable fear. It is still in some cases questionable, whether the behavior of offender could be called stalking, when the victim does not take threats seriously and consider the offender as non-able to put them into practice. Also variable terms should be taken into account, e.g. age of victim, health or ability to fight back. Detrimental effects are taken in relation to all sub-attacks as a one stalking behavior together. Regarding the specific methods of stalking used in the examined individual cases before the District Court in Přerov, it was summarized in the following statistics.



Graph n. 4 - own statistics based on legal documentation

So far mostly the modern means of communication has been used to harass the victim, including a mobile phone and e-mail address (which is a manifestation of the cyberstalking). One reason may, that these methods are less time consuming for the perpetrators, and the fact, that the perpetrator does not need to know the time schedule of victim. What is more, there is no danger for perpetrator to get hurt physically or to be fined. In addition, we can not ignore the fact that the injured party has against these two modes limited capacity of defense. The only defense is to change the phone number or e-mail account, but that causes serious complications in private and working life of victim. Also the risks for perpetrators using these two methods are low. For all these reasons, it can be expected, that in future these two methods will be

the mostly used and the particular development of cyberstalking can be expected.

Observed cases in the District court in Přerov mostly ended in a suspended sentence of imprisonment. The unsuspended sentenced was given only once, due to the previous judgment for a violent offence against the same victim. Other obligations differed for each single judges included, inter alia, the prohibition of approaching the victim a short distance, the obligation to get through a psychological counseling, desist from certain activities, etc.

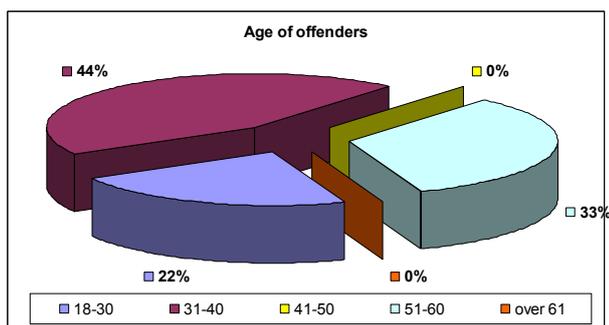
### 3.2 Stalker

In pending cases offenders were overwhelmingly male, as evidenced by statistics the cases in the District Court in Přerov.



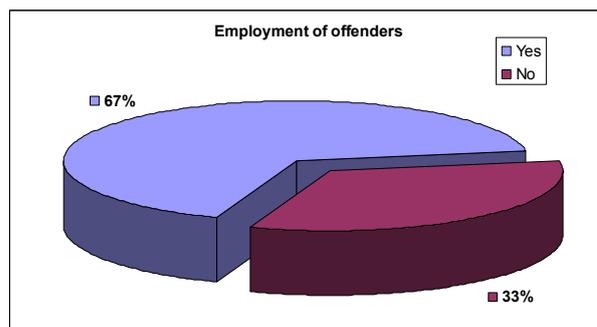
Graph n. 5 - own statistics based on legal documentation

Mostly the offenders were represented in the young or middle age, mostly 18 to 40 years. In contrast, over 61 years was not even one offender.



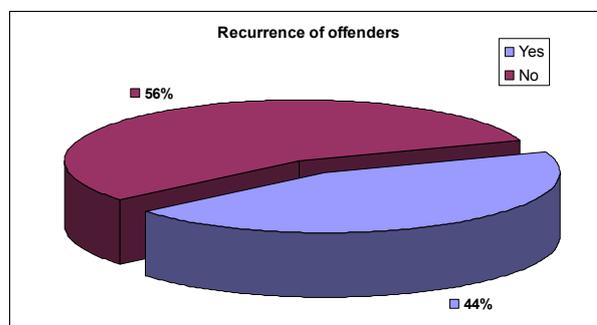
Graph n. 6 - own statistics based on legal documentation

Regarding the social status of offenders employed people prevailed. On the contrary, the number of people without a regular monthly income was only 33%.



Graph n. 7 - own statistics based on legal documentation

Regarding the first offenders with no criminal record, in cases before the District Court in Přerov they formed a tight minority, as evidenced by the following graph.



Graph n. 8 - own statistics based on legal documentation

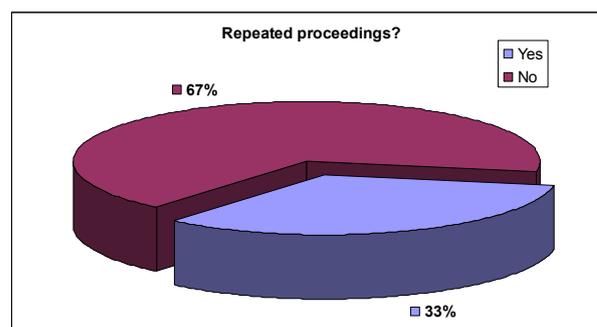
Habitual offenders were mostly convicted of violent crimes before, in several cases for violent crimes against the same person. It can therefore be inferred that the previous judgments did not improve their behavior to the aggrieved person. However, in cases examined, the intensity of interference in the personal sphere of the victim escalated during the time.

In addition it is from these facts obvious, that the violent crimes in connection with stalking should be captured as soon as possible. Early intervention can help to prevent from fatal consequences, especially when according to international research 4% of stalking cases end in the victim's death (Dressing, 2002). The anti-stalking legislative should be a solution to stalking cases like the murder of a young woman, Michaela Maličká in 2007. Her story is a classic "stalking story", the first one in the Czech Republic, that was highly publicized (e.g. <http://www.bkb.cz/aktuality/n111-z-tisku-proboha-at-uz-mi-da-pokoj/>). Her story began, when Michaela Maličká tried to help her colleague, Peter

Drápal (renamed Peter Hanuš). However, he began to chase her, sending her e-mails, gifts etc. The situation resulted in his violent behavior, including damage of her car and spitting in her face. The woman called for help at all possible institutions including Police. Drápal/ Hanuš was sentenced to 200 hours of community service, but he did not accept the punishment. Although the woman had a safety plan, he succeeded to catch her one day alone at night on the way home. He murdered her brutally, as signaled in advance. This story is a typical example of stalking behavior, which was not prevented in time. The offender was not psychologically examined, and the fatal escalation of violence came with the time. Examined in proceedings conducted by the District Court in Přerov, the personality of offenders was the subject of expert examination in only few of cases, which is enormously insufficient.

### 3.3 Person injured

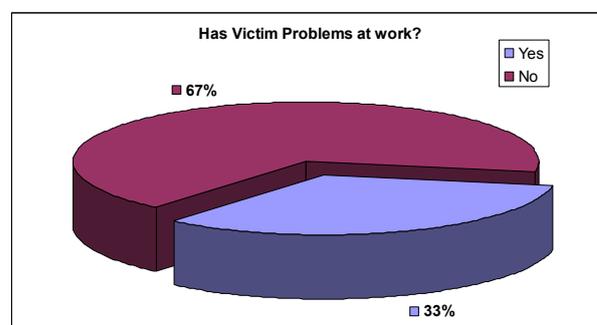
In cases examined by the District Court in Přerov 90% of victims were women. The Supreme Court case law is clear, however, that serious stalking cases are also committed against men (i.e. the decision of the Supreme Court of the Czech Republic of 30.11.2011, No. Tdo 1503/2011). But what can be considered from conducted research as proven is that the stalking is very often focused on former partners. In the District Court Přerov it was even 100% of cases, similar to the decision of the Supreme Court from 23.3.2011, No. 8 Tdo 282/2011 and the decision from 9.11.2011, No. Tdo 1378/2011. As regards other decisions, the aggrieved persons were mostly loved by the stalker, but they did not accept his feelings. It was as a classmate at the university (the Supreme Court of the Czech Republic from the 8.9.2011, No. 8 Tdo 1082/2011) or the boss employment (the Supreme Court decision from 30.11.2011, No. 8 Tdo 1503/2011). These findings correspond with international studies, according to which in Germany in 81% of cases stalker is man. In 49% of cases in Germany the victim is the ex-partner (Jurtela, 2009). In cases pending before the District Court in Přerov a relationship between the stalker and the aggrieved person was very often already damaged by litigation or infringement procedures, as illustrated by the following graph n. 9.



Graph n. 9 - own statistics based on legal documentation

Regarding the type of the proceedings that took place earlier between the stalkers and the victims, it was mostly about solving alimony for their children in several cases also the divorce. It can be also inferred that the stalking was the culmination of the conflict. In particular, this could be the reason for wider use of institute of mediation in difficult family disputes.

Stalking usually causes a devastating impact on the life of victim. According to statistics, the victims in cases before the District Court in Přerov stalking caused more than half of them serious troubles in their jobs.



Graph n. 10 - own statistics based on legal documentation

The job problems differed a lot - from the distractions at work, discourage clients in the waiting room, to rumors by a superior. In several cases the situation has come so unsustainable, that the victim had moved from the place of origin and changed the life completely. The research stated that also "non-violent stalking" significantly reduces quality of life of the victim, even for the future.

## 4 Discussion

These statistics and analysis can lead to some interesting conclusion.

Although stalking in the Czech Republic as a separate criminal offence is punished for a short time yet, from 1.1.2010, it became the very used fact of the crime. Czech anti-stalking legislative differs from other European modifications only in certain elements, among which can be highlighted lower requirements for a victim and also the possibility of using diversions or settlement in less serious cases.

Stalking in the Czech Republic is punished as the offence, which may be due to its boom at the time considered to be insufficient. Foreign jurisdictions in this regard are the same or stricter sentencing. Like problematic when using the new facts of this crime showed its interpretation. In particular, concepts such as long-standing persecution or reasonable fear will probably still be specified by case law.

Alternatively, it is also possible to refine them in an amendment of § 354 of the Penal Code. The practice also showed that the problem could be to define the offence of stalking against offences/petty crimes against peaceful coexistence, which resulted in relatively increased number of referrals to other authorities.

About the stalkers was found that the most frequently they are middle aged and with regular job. Mostly they committed stalking by harassment or threats, mobile phones or e-mails. Their personality mostly has not been the subject of expert examination of a psychologist or psychiatrist, which is a serious problem for the future prevention. If the relapse has been found, the offenders usually committed violent crimes in their past.

Victims of these violent crimes were in more cases the same persons as in the cases of stalking. The victims in the proceedings held were typically women, especially former partners. In most cases, the stalking was the next stage of the previous litigation or other proceedings. And what is typical for stalking, the longer it takes, the more violent it becomes.

It is established that stalking is a highly socially harmful, developed together with possibilities of computer technology and usually become the culmination of past disputes. If the offender is not timely prevented, it may lead to subsequent fatal result (such as the case of Michaela Maličká). In this

context it can be recommended to use the expert psychological/psychiatrist evidence to assess the potentiality of danger caused by the offender and the possible development of relations between him and the aggrieved person in the future. There is also a necessary to respond to stalking in time, to prevent the escalation of conflict.

Despite these recommendations, the new anti-stalking legislative could be only welcome. In practice this legislative has emerged as an effective tool that is being used by law enforcement authorities in criminal proceedings.

## References

- [1] L. Čírtková, Psychologické poznatky k nebezpečnosti pronásledování (stalking), *Kriminalistika*, Vol. 2004, No. 4, 2004, p. 274.
- [2] L. Drápal, J. Bureš et al. *Občanský soudní řád. Velký komentář*, Praha : C.H. Beck, 2009.
- [3] H. Dressing et al., Stalking behaviour – An overview of the problem and a case report of male to male stalking during delusional disorder, *Psychopatology*, Vol. 26, No. 35, 2002, pp. 313-318.
- [4] S. Jurtela, *Häusliche Gewalt und Stalking*, Innsbruck: Studien Verlag, 2007, p. 201.
- [5] J. R. Meloy, The psychology of stalking, in. J.R. Meloy ed., *The psychology of stalking*, San Diego: Academic Press, 1998, pp. 2-21.
- [6] Nejvyšší státní zastupitelství, *Zpráva o činnosti státního zastupitelství za rok 2010*, Brno, 2011.
- [7] F. Šámal et al., *Trestní zákoník. Velký komentář*, Praha : C.H. Beck, 2009, pp. 3004-3014.
- [8] H. Válková, Proč by neměl chybět v notém trestním zákoně “Stalking”?, in. M. Vanduchová, T. Gřivna, *Pocta Otovi Novotnému k 80. narozeninám*, Praha : ASPI, Wolters Kluwer, 2008.
- [9] H. Válková, Česká podoba stalkingu podle § 354 TrZ v širších než jen trestněprávních souvislostech, *Trestněprávní revue*, Vol. 2009, No. 9, 2009.
- [10] R. Visinger, Jak postihovat stalking? Zamyšlení nad novou právní úpravou, *Trestněprávní revue*, Vol. 2009, No. 11, 2009.
- [11] <http://www.bkb.cz/aktuality/n111-z-tisku-proboha-at-uz-mi-da-pokoj/>
- [12] M. Vitoušová, L. Čírtková, M. Kloubek, T. Durdík, *Pronásledování – hodnocení a řízení*

*rizika (metoda SAM) v poradenské praxi Bílého kruhu bezpečí, Praha: BKB, 2007.*