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**Institute of Security Detention**

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## **Summary**

### **The Institution of security detention**

The Institute of Criminology and Social Prevention was authorised by the Czech Ministry of Justice at the beginning of 2004 to prepare a document on the institution of security detention. Security detention is to be included in the recodification of criminal law in the new Criminal Code under preparation as a new type of protective measure. This study, which proceeded from the available text of the new Criminal Code in the state in which was submitted to the Legislative Council of the Government, had the task of gathering information available on the institution of security detention. For these purposes the researchers conducted an analysis of the relevant provisions of the proposed Criminal Code, related legislation in force, literature sources available and foreign sources, including criminal law regulations abroad. They also conducted an expert inquiry among specialists who have been dealing with this issue in the CR for a long time, in the form of round table discussion and individual consultation face to face and by correspondence.

Although the proposed institution would be a new protective measure in Czech criminal law, similar provisions have been applied in a number of other states for many years, including countries of the European Union. However, it is not an unknown issue in the Czech Republic. On the contrary, this issue has been discussed in the specialist literature for many years. Already before 1990, requests for the creation of a new type of protective measure appeared, which would be executed by a special institution in which offenders would be placed who in view of their mental condition were highly dangerous to society and for whom it could not be expected that protective treatment would fulfil its purpose in its current form. In this institution, following the example of European states where similar institutions are in operation, security would be assured (a combination of human guards, mechanical elements and electronic security) to preserve the safety of personnel and also the persons placed there and preventing escapes. In view of the usual attitude to treatment of persons placed there, behavioural training, psychological and pedagogical elements would prevail in dealing with them, rather than medical treatment (which of course would not be abandoned). Qualified personnel should above all lead offenders to become aware of their mental disorders and learn to live with them so that their danger to society would be reduced or eliminated. The mutual permeability of the new protective measure and protective treatment should also contribute to this. Offenders would be encouraged in the new institution *inter alia* to overcome their negative attitude to treatment, which could result in transfer to a regime of institutional protective treatment with the prospect of later change to outpatient treatment.

These requests and proposals were granted by the Czech Ministry of Justice's Committee for the Recodification of Criminal Law by including the institution of security detention as a new protective measure in the draft of the new Criminal Code. According to this draft a court could impose security detention in addition to a sentence or also separately (in the case of discharge or if the offender is not criminally responsible because of

insanity). It would be imposed upon fulfilment of stipulated conditions on persons who committed more serious criminal offences, whose remaining at liberty would be dangerous and who committed the act in a condition induced by a certain mental disorder, or who abuse addictive substances and repeatedly committed criminal offences in connection with this. A condition for imposing security detention would be that in the opinion of the court adequate protection of society against these offenders could not be achieved by imposition of protective treatment. The study contains an analysis of the proposed legal regulation of imposition and enforcement of security detention.

For comparison, criminal law regulation in selected European countries whose legal order contains a similar institution is given, specifically in the Federal Republic of Germany, Austria, Switzerland, the Netherlands, Norway and Portugal. It can be stated that the concept of security detention is in fact only somewhat different from that of similar measures abroad. Generally speaking, the proposed regulation structures the system of protective measures vertically, whereas abroad it is more usually structured more horizontally. This means that regulation abroad divides measures according to the type of offender upon whom they are imposed (to put it more simply: persons who are insane or seriously mentally disturbed, persons abusing addictive substances and recidivists). So in these types of measure the particular facilities in which they are executed are also divided into categories, depending on the level of security. Proposed regulation conceives security detention as a subsidiary measure to protective treatment, in other words does not depend directly on the type of offender but on how dangerous he/she is and how susceptible he/she is to treatment. The type of offender is taken into consideration in this context when a specific type of protective treatment is imposed. Despite these differences it can be stated that the group of offenders who should be covered by a system of protective measures together with imprisonment is more or less the same in the Czech Republic as in the European countries concerned.

Security detention is to be executed in a detention institution with special security and with treatment, psychological, pedagogical, rehabilitation and activity programmes. Under the draft of the new Criminal Code, detention institutions are to be set up by the Czech Ministry of Justice. The study deals with the possible form of a future detention institution, where it is to be located, its funding and organisation. It also deals with the issue of the internal regime of the institution and ensuring security. The researchers came to the conclusion that for a detention institution to work successfully it will be necessary to adopt a law on execution of security detention. As a source of possible inspiration the study contains examples of facilities in which similar measures are executed in the Federal Republic of Germany and the Netherlands.

In summarising their findings, the researchers came to the conclusion that a special type of measure designed for this type of offender is a beneficial institution that has proved successful abroad. So it is desirable to incorporate the proposed institution in the future Criminal Code; the reasons for this include the following facts:

- Health facilities in which protective treatment is currently carried out are unsuitable for dealing with highly dangerous offenders with a negative attitude to treatment. Health facilities, including personnel, are designed to treat patients. Their security equipment for this reason is not and cannot be adapted to be a protection against such offenders. The health and lives of staff and other patients are constantly threatened.

- A condition for successful treatment would be the interest and cooperation of the patient. A number of offenders on whom protective treatment was imposed reject treatment programmes or are unable to participate in them in view of their mental condition. These persons are not only unwilling to undergo treatment but are also capable of disrupting the potentially successful treatment programme of the whole department. So they frustrate the purpose of protective treatment not only for themselves but for others as well.
- Health facilities are not capable of preventing escapes by persons who are receiving protective treatment in them. It should be noted that with every escape of a dangerous aggressor or sexual deviant people's health and lives are immediately endangered. In the Czech Republic the escape of an offender in protective treatment has resulted even in loss of lives. Though the regime of the detention institution would be an attempt to change offenders' behaviour by treatment, it should also be able to ensure effective protection of society against offenders where there can be a reasonable concern that they will commit serious crimes in future.
- It can be anticipated that exercise of protective detention will be much harsher for offenders than undergoing protective treatment. So there could also be a motivational element in their decision whether to participate actively in particular programmes, including any treatment. The possibility of subsequently changing detention to protective treatment should also contribute to this.
- Implementation of secure detention could also contribute to a certain limiting of repressive tendencies on the part of the public, particularly where there are calls to bring back capital punishment. Even in the absence of specific results from relevant thorough research into public opinion, it can be seen from the sources available that imposition of protective treatment is not perceived by the public as sufficient deprivation for offenders or adequate protection against them. The existence of a protective measure consisting in security detention, imposition of it in suitable cases and due exercise of it could also represent in the eyes of the public an effective means of protection against the most dangerous offenders with some mental disorder.