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Problematika zabezpečovací detence

The issue of security detention

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Summary

Security (custodial) detention is a type of protective measure intended for perpetrators of serious criminal activity. Courts in the Czech Republic have been able to impose this on offenders since January 2009. The actual serving of security detention is now embedded in the law, as are the rights and duties of the people on whom it is imposed. The idea of introducing this type of protective measure is based on many years of criticism of the insufficient conditions for institutional protective in-patient treatment of problem/dangerous persons carried out in psychiatric institutions. This applies in particular to dangerous aggressors or sexual deviants who, in light of examinations of their mental state, can be expected to commit serious criminal acts again in the future. Security detention is a protective measure that tries to deal with difficulties with patients that are dangerous, that do not cooperate or that sabotage, aggressive patients and patients that are practically unaffected by treatment. Psychiatric diagnoses that allude to serious personality disorders or paraphilia will in all likelihood appear for such persons, in that such persons are often diagnosed with a number of disorders at the same time (for example antisocial personality disorder, low intellect and sexual deviance). Health workers at psychiatric institutions have often made reference to the fact that, thanks to progressive humanisation and liberalisation, medical facilities are not fit to deal with such patients, something that is witnessed in serious cases in which patients have attacked the attending staff and in the repeat escape of dangerous sexual deviants and aggressors and their dangerous- criminal activity on the run.

In spite of the fact that the nature of security detention means that it is closest to protective in-patient treatment, its purpose is slightly different – in this case the safety and protection of society is given precedence over treatment. It is the task of security detention to protect society from offenders to have committed serious crimes and whose mental state permanently or temporarily caused the committal of these crimes. The fundamental condition for imposing security detention is its subsidiarity to protective in-patient treatment. Detention is imposed on an offender in the event that protective in-patient treatment has either failed or had no chance of success – there was not any great likelihood that typical protective in-patient treatment would be effective but, by contrast, a high probability of reoffending.

Courts impose security detention on offenders only in the event that it cannot be expected that protective in-patient treatment would fulfil its purpose given the circumstances in question, meaning that it would not protect society to the required extent. Although the condition of ineffective protective in-patient treatment is enough, this must be substantiated with an evaluation of all important circumstances, in particular the nature of the mental disorder, the likelihood of having an influence on the offender and his attitude towards protective in-patient treatment. Naturally, long-term stays in security detention are not able to fully prevent the committal of serious offences again after release, even though all risk factors are carefully assessed. However, experts have it that the rate of reoffending by such delinquents is considerably lower.

In this study we attempted to map out the situation in imposing protective measures / security detention and to describe the set of offenders on whom security detention has been imposed since January 2009. The opening section briefly outlines the reasons leading to discussion and the subsequent incorporation of security detention in the Criminal Act. One of the conditions that an offender must meet is that he is stated as being dangerous. For this reason we included the criminologist perspective on the concept of dangerousness in the opening chapter. The next part of the paper is devoted to protective in-patient treatment and security detention as these institutes are determined in the Criminal Act. Courts impose security detention for the same reasons as they impose protective in-patient treatment if, however, the offender commits a wilful crime with a maximum sentence of over 5 years, whose remaining free is dangerous and for whom protective in-patient treatment would not protect society to a sufficient extent (according to the nature of the mental disorder and the likelihood of actually having an influence on the offender). Courts impose security detention on offenders only in the event that it cannot be expected that protective treatment would fulfil its purpose given the circumstances in question, meaning that it would not protect society to the required extent. The fundamental condition for the imposition of security detention is therefore its subsidiarity to protective in-patient treatment in all cases in which the court must impose security detention and in cases in which it may impose it. Security detention is an extreme solution used when other measures, including protective in-patient treatment, no longer come into consideration and society cannot be protected using means other than security detention in institutional conditions. The dangerousness of the offender and the nature of his mental disorder are both assessed. The court considers this based on an expert report (expert witness), concentrating mainly on what illness is the cause of the mental disorder that was evident when committing the crime, whether this was a regular or isolated

manifestation of such an illness and so on. All these circumstances are invariably considered with regard to the nature and seriousness of the crime (or extremely serious crime) committed. Recommending the imposition of security detention would appear to be a little problematic for forensic experts/psychiatrists when the criterion for security detention is not predominantly the judicial-medical perspective (as with protective in-patient treatment), but the legal perspective (the offender must have acted in a manner that matches the elements of an “extremely serious crime”).

In such cases the court considers the likelihood of having an influence on the offender, again based on an expert report. This is aimed at identifying whether protective in-patient treatment had any effect on the offender in the past, how he behaved under such treatment, whether he complied with requirements or whether, by contrast, he frustrated or refused treatment. It is also important why the offender was again involved in criminal activity in spite of the imposition of such protective in-patient treatment. The condition of ineffective protective treatment must be substantiated with an evaluation of all important circumstances, in particular the nature of the mental disorder, the likelihood of actually having an influence on the offender and his attitude towards protective treatment. Nonetheless, the previous imposition of protective in-patient treatment and the failure of the offender in such previous treatment are not actually conditions for the imposition of security detention.

Security detention is employed in the event of an offender who committed a crime in a state of diminished sanity or in a state brought about by mental disorder and it cannot be expected that the imposition of protective in-patient treatment would protect society to a sufficient extent given the nature of the mental disorder and the likelihood of actually having an influence on the offender. The court also imposes security detention on an offender who because of not being of sound mind is not criminally liable and who committed an offence which matches the elements of an extremely serious crime, if his remaining free is dangerous and if it cannot be expected that the imposition of protective in-patient treatment would protect society to a sufficient extent given the nature of the mental disorder and the likelihood of actually having an influence on the offender. The category of offenders on whom the court may impose security detention includes persons who committed a crime in a state brought about by mental disorder whose remaining free is considered dangerous and for whom it cannot be expected that the imposition of protective in-patient treatment would protect society to a sufficient extent given the nature of the mental disorder and the likelihood of actually having an influence on the offender. In contrast to previous legislation, the Criminal Code broadens the circle of people on whom security detention may be imposed to include reoffenders who repeatedly commit crimes and abuse addictive substances – therefore, if an

offender indulging in the abuse of addictive substances again commits a very serious crime, even though he has already been sentenced to an unconditional sentence of imprisonment of a minimum 2 years for an extremely serious crime committed under the influence of an addictive substance or in relation to the abuse of such a substance and it cannot be expected that society would be sufficiently protected by the imposition of protective in-patient treatment with regard to the attitude previously shown by the offender to protective in-patient treatment. A separate chapter in this study is also devoted to the actual carrying out, duration and ending of security detention, with information provided about the Institute for the Enforcement of Security Detention (Ústav pro výkon zabezpečovací detence).

The section that follows concentrates on the terms that are significant in this area from the forensic perspective: not of sound mind, diminished sanity, cognitive and control abilities and mental disorder, which is newly-defined in the Criminal Code (the key point being the use of the term “disorder” and not “illness”). For this reason we also look at forensically significant disorders, such as personality disorders, disorders of sexual preference or paranoid schizophrenia. An evaluation of the mental state of an offender in an expert report for the court and an evaluation of the dangerousness of the offender when free are among the most important tasks here.

We endeavoured to outline the group of people for whom detention is intended from the perspective of law, medicine (psychiatry) and society / the public. We also delved into official statistics and records, where we were able to find information about offenders and the number of measures imposed since January 2009. The final part of this study therefore offers a view of a group of 23 offenders on whom security detention was imposed in the Czech Republic. At the time of writing the paper eight persons (inmates) were placed in the Institute for the Enforcement of Security Detention in Brno and 15 offenders were serving a prison sentence for the time being. It comes as no surprise to learn that featuring prominently among the crimes committed by these offenders are rape and murder.

Protective measures - security detention – are undoubtedly a necessary and long-expected positive step, particularly with regard to the priority interest of protecting society. It has become a hope for solving problems involved in the enforcement of institutional protective in-patient treatment for certain groups of highly dangerous persons. Security detention is designed to protect society from persons to have committed serious crimes whose mental state causes them to act as such and who it can be considered will commit serious crimes again in the future. The circle of offenders on whom security detention is imposed is united by the assessment of such people as highly dangerous to society. The type and

diagnosis of the offender (an offender not of sound mind or a person with a serious mental disorder, a sexual aggressor, a drug addict, a reoffender) should not matter as much as how dangerous he is and his incapacity to undergo treatment. Security detention is not yet used as much as perhaps the legal public might have expected given the intensity of pushing through this measure by sexologists and psychiatrists. However, this takes nothing away from its significance and necessity. Such measures are of great importance, for example, in the case of sexual delinquents who are not capable of (or willing to provide) proper cooperation in protective sexuological treatment.

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