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Evidence dat o ochranném léčení a zabezpečovací detenci v ČR – nedostatky a možná řešení

Recording data on quasi-compulsory treatment and security detention in the Czech Republic – shortcomings and feasible solutions

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Summary

In its research work, the Institute of Criminology and Social Prevention has long and consistently focused on the treatment of dangerous offenders. An important part of this dedicated research is the topic of protective measures that are imposed as criminal sanctions, either in addition to punishment or on their own, on offenders suffering from a mental disorder compounding their delinquent behaviour. Specifically, these measures comprise quasi-compulsory (“protective”) treatment and security detention. These measures are primarily intended to protect society from the perpetrators of often very serious crime who, because of their state of mind, pose an enduring threat. Consequently, the efficient use of such measures is instrumental, among other things, in preventing damage to the life, health or property of the population. In the performance of research on these protective measures, the researchers have repeatedly encountered the problem that the statistical data officially reported on their use is manifestly imprecise and unreliable, for example in comparison with statistics on the imposition and execution of punishments. This experience has led to the conclusion that at present, reliable data on the utilisation of quasi-compulsory treatment and security detention can only be obtained from ministerial (or other) information systems to a limited extent, if at all. With this in mind, in 2017-2019 the Institute of Criminology and Social Prevention researched shortcomings in the existing system used to record the use of both types of protective measures. Research also focused on how to improve that system.

The research focused on the system for collecting and reporting data on the application of quasi-compulsory treatment and security detention in the Czech Republic, and on opportunities to improve it. Attention was also paid to individuals on whom protective measures are imposed and to the crimes they had committed. The main objective of the research was to **draft new procedure for collecting and reporting data on the imposition and execution of quasi-compulsory treatment and security detention (methodology) in order to get a sufficient overview of all stages in the application of such**

measures and to facilitate the use of information gathered to check and enforce compliance with the obligations imposed on offenders. The research involved the use of standard criminological research methods and techniques, especially document analysis, descriptive statistics and expert survey. The project proceeded in accordance with relevant legislation, including regulations on the protection of personal data, and respected the ethical principles of scientific research work.

The research started with a **thorough analysis of the current situation**, both in terms of the extent of data currently being collected and reported and in terms of the accuracy and reliability thereof. In order to verify, clarify and supplement the observations made, an expert survey was carried out in the form of interviews with representatives of organisations operating the relevant information systems within the justice department and/or contributing to the collection of relevant data. In addition, consultations were held with representatives of other organisations that also play a role in the recording of data on the use of quasi-compulsory treatment and security detention. On the basis of the results obtained from the analysis of the existing system, the expert survey and the consultations, the Court Administration Information System ISAS (ISVKS, respectively) was identified as a source of primary data suitable for systematic and comprehensive monitoring and control of the use of quasi-compulsory treatment and security detention. This system was singled out because it is the only one to record all major decisions concerning the imposition and enforcement of both types of measures. In the next stage, the procedure for recording data on the imposition and enforcement of protective measures in the ISAS (the data structure, the values of individual items, etc.) was analysed in detail. Subsequently, guidelines for entering data into the ISAS were drafted, making maximum use of its current form, along with procedure for reporting data on individual indicators/variables from the information system, including the draft format of standardised output reports. In the final stage of research, a draft version of the methodology was piloted to verify that it worked when data on quasi-compulsory treatment and security detention was entered into the ISAS, and that standardised overviews of data entered into the system using the draft procedure could be compiled. The findings from this piloting stage were incorporated into the final version of the methodology, which was subsequently certified at the Czech Ministry of Justice.

The treatment of offenders found to have a mental disorder (a personality disorder, paraphilia, psychosis, etc.) is a complex challenge for the criminal justice system. When deciding on the criminal sanction to be imposed on offenders suffering from a mental disorder at the time of the crime, in addition to or instead of punishments the law also provides for two

special types of protective measures – quasi-compulsory (“protective”) treatment and security detention. These protective measures are purely preventive in nature. They can be imposed not only on criminally liable individuals, but also on persons who are not criminally liable on grounds, for example, of insanity. The main **purpose of quasi-compulsory treatment is to protect society from offenders whose mental state, were they to remain on the loose without appropriate treatment, would pose a danger.** Individuals may receive this treatment as outpatients, in psychiatric hospitals, or in prisons while they are serving a prison sentence. Conditions for the imposition of quasi-compulsory treatment are laid down in Section 99(1) and (2) of the Criminal Code, while conditions for the imposition of security detention can be found in Section 100(1) and (2) thereof. Quasi-compulsory treatment can take two forms: depending on the nature of the illness and treatment options, the court will impose either inpatient or outpatient quasi-compulsory treatment. A core feature of security detention is that it is subsidiary to quasi-compulsory treatment, i.e. a court will impose detention (subject to the fulfilment of other conditions) only if – taking into account the nature of the mental disorder and the possible effect on the offender – quasi-compulsory treatment cannot be expected to provide society with sufficient protection. The court may subsequently make the switch from inpatient quasi-compulsory treatment to outpatient treatment and vice versa. Statutory conditions also enable a court to change inpatient quasi-compulsory treatment to security detention and vice versa. Quasi-compulsory treatment generally lasts for as long as required to achieve its purpose. Inpatient quasi-compulsory treatment is administered for a maximum of two years. If treatment has not been completed in this time, a court will decide, prior to the end of this period, to extend it, and may do so repeatedly, but for no longer than the next two years at any one time. Otherwise, the court will decide to release the offender from quasi-compulsory treatment or to replace inpatient treatment with outpatient treatment, unless the offender is to blame for the court’s inability to take a decision at that time. **Security detention is intended for offenders who, on account of their state of mind, pose a highly danger to society, but are unable or unwilling to undergo therapy within the scope of quasi-compulsory treatment.** Security detention takes place at a detention facility with special security and with medical, psychological, educational, pedagogical, rehabilitation and activity programmes. Security detention lasts for as long as it is required for the protection of society. At least once every twelve months, and for juveniles once every six months, a court examines whether grounds remain in place for security detention to be continued.

In terms of the **analysis of the system for recording data on the application of quasi-compulsory treatment and security detention**, the jurisdiction of the court to decide on the

imposition and execution of such protective measures is a matter of great importance. Decisions on quasi-compulsory treatment and security detention are taken at different stages of criminal proceedings and in different procedural situations. The court conducting criminal proceedings in a particular case always has the jurisdiction to impose both types of protective measures. Determining the jurisdiction of a court to take decisions in execution proceedings is more complex. Certain decisions or measures are taken by the court seised of the case at first instance. This applies primarily to the ordering of quasi-compulsory treatment or security detention, or to decisions waiving the execution thereof. The Code of Criminal Procedure entrusts further decisions, within the scope of execution proceedings, to the district court whose district hosts the medical facility in which quasi-compulsory treatment is to be provided (in cases of quasi-compulsory treatment) or the district court whose district hosts the detention facility where security detention is to be carried out (in cases of security detention). These include, in particular, decisions to change the form of quasi-compulsory treatment, to change inpatient quasi-compulsory treatment to security detention or vice versa, to extend inpatient quasi-compulsory treatment, to release an offender from quasi-compulsory treatment, to terminate quasi-compulsory treatment (accompanied, where appropriate, by a probation order), to extend security detention, to release an offender from security detention, etc.

The research included an analysis of the relevant **information systems** of the Ministry of Justice, the Penal Register, the Prison Service and the Probation and Mediation Service to gauge their usefulness for collecting and reporting data on the imposition and execution of quasi-compulsory treatment and security detention. This analysis found that **existing official sources of data on the criminal justice system, usually used within the justice department, paint only a very limited picture of the situation and trends in the imposition and execution of the quasi-compulsory treatment and security detention.**

At the Ministry of Justice, the basic source of data on crime and the criminal justice system's response to crime is the Ministry-operated **Central Statistics Sheets and Reporting** information system (CSLAV). This is a web application used to remotely enter, view and edit reports and statistical sheets from all ministerial organisations so that they can be processed centrally. Data on criminal offences and individuals against whom criminal proceedings are conducted is collected at prosecutors' offices and courts via "crime statistics sheets". The basic statistical unit of the database created with data from crime statistics sheets is the individual against whom criminal proceedings are conducted. Summary reports (statistical overviews), sorted by crime statistics sheet items, can be searched and generated in the

CSLAV database. Certain data on criminal cases that have been concluded with finality in pre-trial proceedings, such as a decision by the prosecutor or police authority to terminate the case, a decision by the prosecutor to discontinue a prosecution, etc., may be obtained from the crime statistics sheets for a particular prosecutor's office. No entries are monitored to determine whether a main decision has been supplemented by a prosecutor's application for the imposition of quasi-compulsory treatment or security detention, nor, of course, how the court has subsequently decided on such an application. The crime statistics sheet for courts includes so called protective and educationale measures as the separate item 49. This item allows you to fill in up to three different protective or educational measures that have been imposed on an offender according to the attached code list. The sheet has been structured so that the imposition of quasi-compulsory treatment and security detention can be recorded separately for adult and juvenile offenders, and, in cases of quasi-compulsory treatment, can be broken down by form (outpatient/inpatient) and "type" of treatment (alcohol addiction, drug addiction, sexological, pathological gambling, or other).

However, the **use of data collected via crime statistics sheets for courts** in order to record data on the use of quasi-compulsory treatment and security detention **is severely restricted by the fact that only some of the cases imposing such protective measures** (primarily those in which they are imposed in the main trial or in the proceedings on an appeal) **are actually entered in the judicial database in this way**. These cases then appear in officially published statistics of the Ministry of Justice. However, quasi-compulsory e treatment and security detention are also imposed in procedural situations where crime statistics sheets are not filled in. An example of this would be a decision by the prosecutor, in pre-trial proceedings, to discontinue the criminal prosecution on grounds of the accused's insanity at the time of the offence pursuant to Section 172(1)(e) of the Code of Criminal Procedure, and the court's subsequent imposition of quasi-compulsory treatment or security detention on the accused in a public session further to an application by the prosecutor pursuant to Section 239(1) of the Code of Criminal Procedure. Data on important moments during the execution of quasi-compulsory treatment or security detention – a change in the form of quasi-compulsory treatment, a change from inpatient quasi-compulsory treatment to security detention or vice versa, or release from quasi-compulsory treatment or security detention – is not collected at all via crime statistics sheets.

The Ministry of Justice's information system for the central processing of statistics sheets and reports also offers, in its web application, the option of displaying output reports processed from reports on the activities of district and regional courts. **However, at present**

no relevant reports allow for the acquisition of comprehensive and reliable data on the use of quasi-compulsory treatment and security detention.

The **database of the Penal Register** is another official source of data on convicted offenders. The main problem in terms of the potential usability of data on the use of quasi-compulsory treatment or security detention from this database for statistical and analytical purposes is the fact that it is primarily data on criminal convictions that is recorded in the Penal Register. Consequently, data on cases where quasi-compulsory treatment or security detention is imposed other than as part of a conviction (e.g. if a prosecution is discontinued or the perpetrator is acquitted on grounds of insanity) is not entered in the Penal Register. In addition, information relating to the execution of protective measures, communicated by the courts to the Penal Register via reports, is not entered in the form in a standardised way. It is up to the court clerk what words to use when communicating the information to the Register. Such inconsistent records are, of course, completely unsuitable for compiling aggregated overviews from the Penal Register.

The Prison Service of the Czech Republic records data on individuals in pre-trial custody, serving prison sentences and undergoing security detention in the **Prison Information System**. The usability of data on quasi-compulsory treatment from Prison Service records is fundamentally restricted by the fact that it only applies to individuals in prison (or in custody) or in security detention. Quasi-compulsory treatment can be imposed separately or in addition to an alternative sanction, and these cases do not feature in the Prison Information System. Nor is it possible to obtain, for analysis, a ready-made aggregate statistical overview of cases where security detention (including commonly used data, such as the date of the decision imposing such measures) was imposed from the Prison Service information systems, mainly because those information systems are not intended for this purpose.

Selected data on the application of the quasi-compulsory treatment is also included in the database of the **Probation and Mediation Service** of the Czech Republic. The usability of Probation and Mediation Service statistics to obtain information on the use of quasi-compulsory treatment is essentially limited by the fact that they only cover cases in which the Probation and Mediation Service has been entrusted with probation in execution proceedings, or has prepared underlying documentation on offenders for law enforcement agencies, where so instructed, so that a decision can be taken on a diversion, on the imposition of an alternative sanction or on conditional release. There are also cases where – with the agencies’ consent – the Probation and Mediation Service has mediated similar alternative procedure in

criminal proceedings. However, the cases cited above concern only a small minority of cases on which criminal proceedings are conducted in the Czech Republic.

In the next part of the research, **data files containing data on the use of quasi-compulsory treatment and security detention**, obtained from several different sources in the course of – and for the purposes of – the research, **were combined and compared**. These were publicly available official statistics, non-standard anonymised data files generated on special request for research purposes from official databases, data collected from open sources, and data from previous research by the Institute of Criminology and Social Prevention. These datasets came from various sources and were compiled for different purposes. This is evident in their different and incompatible structure and the fact that they partially overlap. Therefore, in order to work on them further, it was necessary to manually sort and clean them and to remove duplicate records. This technically demanding and time-consuming activity resulted in data files representing comprehensive overviews of available data on the use of the quasi-compulsory treatment and security detention in the Czech Republic, as collected within the justice department. The resulting data were then compared with the data presented as statistics on the use of these protective measures in official sources intended for this purpose.

According to data from the official Central Statistics Sheets and Reporting (CSLAV) judicial database, security detention was imposed on a total of 67 individuals over the ten-year period from its introduction until the end of 2018. According to that database, the numbers of individuals on whom this protective measure was imposed appeared to range from 2 (in 2018) to 11 (in 2010) annually; on average, security detention seems to have been imposed on 6-7 persons per year. However, the data obtained by combining multiple sources paints a much different picture. A thorough analysis of all available data sources led to the conclusion that, over the past decade security detention, for example, has been imposed on 174 persons, almost three times the number obtained from the official CSLAV database (data from crime statistics sheets). Security detention was imposed on fewer than ten individuals in only one year of the monitored period (2009-2018), specifically in 2014 (9 persons). Conversely, in 2016 the courts imposed this measure on almost 30 offenders. On average, security detention was therefore imposed on 17-18 individuals per year, i.e. more than one person per month. At the time this book was being finalised, the current capacity of both detention facilities was 95. As early as January 2019, 85 detainees were being held in security detention, and by October 2019 the capacity was almost full, specifically there was room for one detainee. According to data from the Prison Service database, in January 2019 there were 49 persons serving prison

sentences who had been ordered to undergo security detention, which was to be undertaken after they had served their sentence. The average age of offenders placed in security detention during the reporting period ranged from 30 to 40 years at the time when the decision was taken.

According to the Ministry of Justice's officially published statistics, approximately 600-700 quasi-compulsory treatments were ordered annually in 2014-2017. An analysis of the various data sources available led to the finding that it is currently impossible to obtain, from existing information systems, a sufficiently accurate and reliable overview, for example, of the actual numbers of persons ordered to undergo quasi-compulsory treatment, currently receiving treatment, or released from quasi-compulsory treatment. With outpatient forms of quasi-compulsory treatment, in particular, where the offender is not confined in a facility (i.e. a psychiatric hospital or prison), the availability of reliable information is highly problematic.

According to Prison Service data, as at 14 July 2017, 881 individuals serving prison sentences in Czech prisons had been ordered to undergo quasi-compulsory treatment but had yet to receive this treatment. As at 27 January 2019, that figure was 1,242 prisoners, 40% up on the situation eighteen months earlier. This is a striking increase, and, assuming it is not a mistake in the statistical records, the possible causes (and possible consequences) need to be contemplated. For the sake of comparison, there were 20,772 convicted individuals serving prison sentences in the Czech Republic as at 14 July 2017, and 19,761 as at 25 January 2019. Of the 881 prisoners on whom quasi-compulsory treatment had been imposed in July 2017, 95 (11%) were ordered to receive quasi-compulsory treatment while serving their sentence. Of the 1,242 prisoners on whom quasi-compulsory treatment had been imposed in January 2019, 195 (16%) were meant to receive such treatment while serving their sentence. In 2017, there was a prevailing number of prisoners who had been ordered to undergo inpatient quasi-compulsory treatment (54%) during their sentence, whereas in 2019 most of our statistical population of prisoners were ordered to undergo quasi-compulsory treatment as outpatients (52%).

The analysis carried out as part of the research revealed that, in its current form, none of the existing information systems of the relevant departments of the Ministry of Justice can be used for the systematic collection and reporting of reliable data on the imposition and execution of these protective measures. Each of them contains data only on some of the cases in which quasi-compulsory treatment or security detention is employed, and, due to their different primary purposes and the attendant differences, this deficiency cannot be overcome even by combining data from multiple sources.

In order to produce reliable aggregated overviews of the imposition and execution of protective measures centrally, appropriate and accurate primary data at the level of individual courts must be collected. There are two interrelated steps here. The **solution drafted to create an efficient system for the recording of quasi-compulsory treatment and security detention application that overcomes these constraints** (and that is the main output of this research) therefore focused initially on **devising a standardised procedure at the level of courts for the entry of data** (DATA COLLECTION) concerning decisions issued in connection with the imposition and execution of both types of protective measures which has not yet been available to the extent proposed. The second part of the proposal is to come up with procedure for **creating aggregated overviews** from this comprehensive and uniformly collected data **that are logically and factually well structured and provide clear and reliable information on the use of quasi-compulsory treatment and security detention**, both at court level and, in particular, centrally (DATA REPORTING). This proposal is contained in the **methodology that, at the beginning of December 2019, was certified by the Ministry of Justice** and was made available to the Ministry, as the intended user, for implementation. In view of the need for the practical applicability of this methodology, one of the basic principles underpinning the work on its creation was the effort to pinpoint procedure that would require as little intervention as possible in the existing information systems in the justice department. Consequently, after a thorough analysis, a solution was selected that draws on the information system used in the administration of district and regional courts, i.e. the ISAS and ISVKS, for the collection of primary data on the use of quasi-compulsory treatment and security detention. The proposed solution should not lead to an increase in the volume of recorded facts, nor should it fundamentally change the established method for entering data into court information systems. This would only place an even greater burden on the administrative staff of the courts, which would not be a desirable situation. The proposed procedure aspires to the efficient use of data that is already being entered (or at least should be) in the system, both by individual courts and centrally. **The aim is for exported reports and overviews of the use of quasi-compulsory treatment and security detention to offer accurate and reliable data reflecting the current status of relevant indicators (variables).** This should be achieved by using the existing forms created for court information systems and without significantly increasing the amount of data entered.

The proposed solution should deliver the following **benefits**:

1. It will make it possible to obtain statistical data on the status of and developments in the imposition and execution of quasi-compulsory treatment and security detention on a level

comparable to the data currently available on other criminal sanctions of similar importance. Reliable statistics on the imposition and execution of both types of protective measures will be available *inter alia*:

(a) in the formulation of penal policy (e.g. the approach to dangerous perpetrators of serious crime or offenders suffering from mental disorders in a legal sense, in the setting of sanctions policy – the relationship between punishments and protective measures, the types and specific forms of protective measures, when identifying (determining) groups of offenders with special mental needs, etc.);

(b) when evaluating the effectiveness of the application of individual criminal sanctions and of the sanctions policy as a whole;

(c) in the planning of quasi-compulsory treatment and security detention capacities (the outpatient clinics of quasi-compulsory treatment providers, psychiatric hospitals, specialised quasi-compulsory treatment units in prisons, security detention facilities);

(d) when raising public awareness of penal/sanctions policy; or

(e) in the professional training of judges, prosecutors, probation officers, and prison staff.

2. It will provide the courts with an up-to-date and comprehensive overview of the individuals who have received quasi-compulsory treatment or security detention and of how the execution of these measures is progressing. This can serve as a basis for decision-making in execution proceedings or decisions on punishment or protective measures in other criminal cases.

3. It will offer the option of using the above data (in the stated scope and form) to other agencies specialising in working with offenders so that these can perform the tasks required of them (e.g. the Probation and Mediation Service in the supervision of individuals on whom quasi-compulsory treatment has been imposed).

4. It will secure a reliable source of statistical data for scientific, research and educational purposes in the areas of criminology, penology, law and criminal justice.

Quasi-compulsory treatment is a traditional instrument under Czech criminal law, whereas security detention has only existed for ten years. Nevertheless, both protective measures are now important fixtures in our criminal sanctions system. In the handling of offenders who, because of their state of mind, pose an increased risk to society, these measures are a highly desirable therapeutic alternative or complement to punishment. Security detention has been introduced as a protective measure subsidiary to quasi-compulsory treatment. The established system of quasi-compulsory treatment can sometimes work very efficiently with offenders who are capable of treatment and adhere, at least to some extent, to the treatment regime. The

existence of outpatient and inpatient forms of quasi-compulsory treatment creates ample room for a different approach to individuals who may remain out of prison or another facility at liberty subject to compliance with treatment conditions, and to those who need to be treated as inpatients in order to protect society. Because of security-based characteristics, security detention can effectively protect society from truly dangerous offenders, for whom professional staff can do very little in the way of treatment. It might be worth discussing the search for an optimal form of sanctions for offenders with a mental disorder who do not pose a very high risk in terms of the seriousness of the offences they commit but who refuse or sabotage conventional therapy within the scope of quasi-compulsory treatment, e.g. by escaping from a psychiatric hospital.

However, if any revision of the system for handling offenders with a mental disorder is to have a chance of success, it requires a thorough knowledge of the situation and trends in the imposition and execution of quasi-compulsory treatment and security detention. This research confirmed the assumption that the Ministry of Justice (and other ministries) does not yet possess this knowledge. The current system for collecting and reporting data on the use of both types of protective measures does not allow for the automated generation of aggregated overviews (such as are available in relation to the imposition of punishments). As a result, the available statistics are at best patchy and their reliability is highly questionable. Getting accurate data, even by manually processing data from multiple sources, is very difficult for security detention and virtually impossible for quasi-compulsory treatment. It is therefore questionable whether a revision of the system of protective measures for offenders with mental disorders could achieve the desired outcome in the absence of a reliable description of the baseline situation.

The main outcome of this research is methodology serving as a proposal for new procedure in the collection and reporting of data on the imposition and execution of quasi-compulsory treatment and security detention. The proposed procedure should, if implemented in the future, help to obtain comprehensive and reliable data on the use of both types of protective measures in a clear, understandable and meaningfully structured form. **The methodology has been certified by the Ministry of Justice and is therefore ready for use at the Ministry if it is so interested.** However, the introduction of new procedure for the collection and reporting of data on these protective measures is at least a medium-term matter. Considering the current situation (and bearing in mind the urgency of addressing the situation, in particular with regard to security detention capacities), it can only be hoped that significant

reserves of existing statistics on the use of both types of protective measures will be taken into account in future crime policy considerations.

Translated: Presto