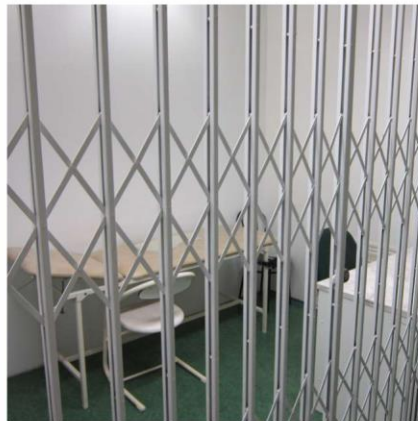




**ombudsman**  
Public Defender of Rights

# SECURE PREVENTIVE DETENTION



**EXTRACT OF THE REPORT**  
ON SYSTEMATIC VISITS CARRIED OUT BY  
THE PUBLIC DEFENDER OF RIGHTS IN 2018



## Summary

1. Practically all contact between specialist and medical staff and the inmates was conducted from behind bars, both in individual and group therapy sessions.
2. Even if they participated in all the offered activities, the inmates spent approximately 16 hours a day (20 hours on weekends) in their cells.
3. Especially due to insufficient staff, the inmates did not have enough activities available in the afternoons and on weekends.
4. The environment in the institutions was not sufficiently distinguishable from a prison.
5. An analysis of the decisions did not show any significant effect of legislative changes on the number of persons placed in secure preventive detention. However, there are an increasing number of cases where forensic treatment is changed into secure preventive detention.

## Systematic visits and their purpose

Based on provisions of the Public Defender of Rights Act<sup>1</sup> implementing the principles of the Optional Protocol to the Convention against Torture,<sup>2</sup> the Public Defender of Rights carries out the tasks of the national preventive mechanism. The Defender or the Defender's authorised employees **perform systematic visits to places (facilities) where persons restricted in their freedom are or may be present.** The restriction results either from a decision of a public authority or dependence of the person on the care provided. The aim of the systematic visits is to strengthen the protection of persons restricted in their freedom against all forms of ill-treatment. Secure preventive detention institutions are one of the places visited by the Defender.

Separate reports and a summary report on systematic visits performed in the individual institutions in late 2017 and early 2018 are available on the Defender's website and in the Defender's Opinions Register (ESO).<sup>3</sup> This text contains only extracts from the aforementioned documents. Further details are included in the individual reports and in the published responses of the secure preventive detention institutions.

Aside from the Public Defender of Rights, prevention of ill-treatment of inmates is also ensured by the regional public prosecutor's offices, which carry out inspections of the

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1 Section 1 (3) and (4) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

2 Article 17 *et seq.* of the Memorandum of the Ministry of Foreign Affairs No. 78/2006 Coll. of International Treaties) Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3 The report on the institution in Brno is available at <http://eso.ochrance.cz/Nalezene/Edit/5970> and the report on the institution in Opava is available at <http://eso.ochrance.cz/Nalezene/Edit/6426>.



institutions' compliance with legal regulations,<sup>4</sup> and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

## Use and implementation of secure preventive detention<sup>5</sup>

Within the Czech law, the so-called *protective measures* (in Czech: *ochranná opatření*) are a form of punitive sanction, but not a punishment. Their purpose is to protect society from perpetrators of serious criminal offences or acts that would, under normal circumstances, be subject to criminal punishment. Protective measures also include so-called *forensic treatment* (in Czech: *ochranné léčení*) performed in psychiatric hospitals, *protective education* (of young offenders) and *confiscation of a thing*. Secure preventive detention was introduced into Czech legislation in 2009 in response to certain problems arising within performance of forensic treatment in psychiatric hospitals (e.g. inmates escaping or attacking the staff). From the beginning, it was meant to serve as a protective measure against extremely dangerous offenders. As the analysis of the decisions on imposition of secure preventive detention shows, later legislative changes introduced the option to use this form of detention even in less serious cases and this has been used relatively often in practice.

The court may thus impose secure preventive detention immediately after a crime or an offence that would otherwise be punishable has been committed – obligatorily in two cases and optionally in another two cases. Secure preventive detention can be ordered by the court as an independent measure or alongside a prison sentence, which means that after the offender completes the term of imprisonment, he or she commences secure preventive detention. The court may also change ongoing forensic treatment into secure preventive detention.

A basic condition common to all the below-mentioned conditions for imposition of secure preventive detention is the **subsidiarity of secure preventive detention** in relation to forensic treatment, and therefore, we do not mention it in the further text. Secure preventive detention can thus only be imposed if forensic treatment would not result in sufficient protection of society.

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4 Section 40 of Act No. 129/2008 Coll., on secure preventive detention, as amended.

5 This list of conditions for using this legal provision is simplified. For more details, see: ŠKVAIN Petr. Zabezpečovací detence v systému trestních sankcí (*Secure Preventive Detention within the System of Penal Sanctions*). In Scheinost M., Válková, H. *et al.*: Sankční politika a její uplatňování. (Teoretické a trestněpolitické aspekty reformy trestního práva v oblasti trestních sankcí IV.). Prague: Institut pro kriminologii a sociální prevenci, 2015. S. 132 *et seq.* ISBN 978-80-7338-154-7 [retrieved on: 24 August 2018]. Available at: <http://www.ok.cz/iksp/docs/429.pdf> (in Czech).



### OBLIGATORY direct imposition (Section 100 (1) of the Criminal Code)<sup>6</sup>

- |   |  |
|---|--|
| (1)   | (2)  |
| a) criminal offence   | a) an offence otherwise punishable with features of a felony |
| b) diminished sanity or a condition caused by a mental disorder | b) insanity  |
| c) sentence waived (Section 47 (2) of the Criminal Code)        | c) offender dangerous if left at large                       |

### OPTIONAL direct imposition (Section 100 (2) of the Criminal Code)

- |  |   |
|--|---|
| (3)                                      | (4)                                     |
| a) criminal offence                      | a) criminal offence                     |
| b) condition caused by a mental disorder | b) dependency producing substance       |
| c) offender dangerous if left at large   | c) prior sentence of at least two years |

### Change of ongoing forensic treatment into secure preventive detention (Section 98 (5) of the Criminal Code)

- (5) under the conditions applicable to direct imposition of secure preventive detention (see above)
- (6) forensic treatment is not effective or does not ensure a sufficient degree of protection of society (e.g. due to escape attempts, violence, refusal to be examined or treated)

Secure preventive detention lasts as long as necessary to protect society. At least once in 12 months in the case of adult offenders (or 6 months in the case of minors), the court reviews whether the reasons for detention continue to apply.<sup>7</sup>

Secure preventive detention is usually discontinued when it is changed into forensic treatment or the offender is released.<sup>8</sup>

Secure preventive detention is performed in the Czech Republic in specialised institutions administered by the Prison Service of the Czech Republic. There are currently two institutions for secure preventive detention, one in Brno and one in Opava. The former is a part of the Brno Remand Prison, the latter of the Opava Prison. The capacity of the institutions is constantly being increased and can currently accommodate

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<sup>6</sup> Act No. 40/2009 Coll., the Criminal Code, as amended.

<sup>7</sup> Section 100 (5) of the Criminal Code.

<sup>8</sup> Section 100 (6) of the Criminal Code and Sections 355 and 357 of Act No. 141/1961 Coll., on criminal court proceedings (the Code of Criminal Procedure), as amended.



95 inmates.<sup>9</sup> There have been initiatives to open a new institution with the capacity of up to 200 inmates.<sup>10</sup>

## Findings from the visits

### 1. Use of bars in contact with the inmates

Therapeutic rooms and examination rooms are equipped with separation bars. The bars were extended to separate the professional staff from the inmates during activities taking place in these rooms; in other cases prison guards were present.

Already in its 2014 report, the CPT criticised the fact that all contact of the psychiatrists and psychologists with inmates, be it in an individual or group therapy sessions, was conducted through metal bars, which the CPT considered unhelpful in terms of forming a genuine therapeutic relationship and found it potentially degrading.<sup>11</sup>

The Brno institution responded to the report by noting that the dangerousness of the inmates would be assessed on a case-by-case basis. Inmates evaluated as particularly dangerous would be monitored by CCTV or directly by a guard based on a decision of a specialist. During activities with inmates evaluated as dangerous, metal bars would be put in place or a guard would be present, again based on the decision of a specialist.

The Opava institution noted that the danger posed by the inmates was assessed on a case-by-case basis and metal bars are not used indiscriminately. The institution also noted that the risks posed by its inmates were very considerable.

### 2. Locking up inmates in cells

Cells in both institutions are locked all day. Inmates can leave their cells as part of their scheduled activities, outdoor exercise and watching TV. They also leave the cells during morning community sessions.

The time of being locked up in cells depends on the scope of an inmate's participation in the offered activities. Nevertheless, it is clear from the time schedule and the weekly activity plans of the institutions that even with maximum participation in activities, inmates are locked up in their cells for 16 hours on a regular day or even up to 20 hours on weekends.

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9 Czech Prison Service statistics [retrieved on: 11 March 2019]: <https://www.vscr.cz/wp-content/uploads/2019/03/TSH-6.-3.-2019.pdf> (in Czech).

10 Detencí pro nebezpečné pachatele je nedostatek, v Brně ji rozšířili (*Insufficient Detention Capacity to be Enlarged with New Spaces in Brno*) [online]. Česká justice. Last updated: 17 August 2018 at 3:53 p.m. [retrieved on: 20 August 2018]. Available at: <http://www.ceska-justice.cz/2018/08/detenci-nebezpecne-pachatele-nedostatek-brne-rozsirili/> (in Czech).

11 Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to the Czech Republic from 1 to 10 April 2014, CPT/Inf (2015) 18, para. 122 [retrieved on: 27 April 2018]. Available at: <https://rm.coe.int/168069568d>.



After receiving the report, the Brno institution noted that after the ongoing reconstruction works were complete, the inmates would be allowed to roam freely based on their daily schedules.

The Opava institution responded that it would determine whether inmates would be locked up in their cells on a case-by-case basis.

### 3. Insufficient therapeutic activities

Inmates should have access to meaningful activities, employment and education.<sup>12</sup> In addition to protecting society, secure preventive detention pursues therapeutic and education goals with regard to the inmates.<sup>13</sup>

The ECtHR noted that in view of the indefinite duration of preventive detention, particular endeavours are necessary in order to support the detainees, who, as a rule, will be unable to make progress towards release by their own efforts.<sup>14</sup>

The Defender found shortcomings especially in terms of providing activities in the afternoons and on weekends, which was caused chiefly by the lack of available staff.

In response to the report, both institutions made a credible promise to boost activities.

### 4. Insufficient difference from a prison environment

Given the fact that secure preventive detention is a *protective measure* and not a *punishment*, its conditions should be substantially different from that of a prison sentence.<sup>15</sup>

Some inmates had a shelf fixed to their cell's wall or a small picture hanging on the wall. By and large, however, the inmate's cells were austere. Only the inmates who had arranged for an exchange of clothes externally were allowed to wear their own clothes, and this was difficult to organise.

Allowing in other items, including electronics, could help distinguish secure preventive detention from a prison sentence and ensure better quality free time for the inmates.

The Brno institution decided to beautify the environment by having it repainted, allowing the inmates to bring in their own bed linen, table cloth and plants. The Opava institution

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12 Recommendation CM/Rec(2014)3 of the Committee of Ministers to Member States concerning dangerous offenders.

13 Section 1 (2) of the Secure Preventive Detention Act.

14 Judgement of the European Court of Human Rights of 17 December 2009, M. v. Germany, No. 19359/04, para. 129.

15 The need for qualitative difference between preventive detention and a punishment was also identified by the German Federal Constitutional Court (*Bundesverfassungsgericht*). Judgment: 2 BvR 2365/09, 2 BvR 740/10, 2 BvR 2333/08, 2 BvR 1152/10, 2 BvR 571/10 [retrieved on: 1 March 2018]. Available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2011/05/rs20110504\\_2bvr236509en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2011/05/rs20110504_2bvr236509en.html), also mentioned by CPT in: Council of Europe. Report to the German Government on the visit to Germany carried out by the CPT, CPT/Inf (2014) 23. S. 6 *et seq.* [retrieved on: 1 March 2018]. Available at: <https://rm.coe.int/168069633f>.



noted that it did allow inmates to bring in other items. Both institutions now enable the inmates to wash their own clothes directly in the institution.

## 5. Other findings

The Defender recommended that both institutions extend the period of outdoor exercise and to improve the relevant premises. She criticised the persisting rule that inmates had to stand up when an institution employee entered the room. The Defender also recommended adding curtains to showers to increase privacy. Thorough body searches should only be conducted in justified cases, not indiscriminately. The Defender also recommended allowing the inmates to use a complete set of cutlery, with the exception of those where the risk was too high.

## 6. Summary of decisions analysis

The Public Defender of Rights also carried out an analysis of the court decisions on imposition of secure preventive detention. The analysis shows that secure preventive detention is used increasingly often and that there is a growing number of cases where it is imposed as a change from ongoing forensic treatment. If imposed, it involves a long-term detention where only a few persons are released in any given year.

- As of 1 January 2018, there were 79 inmates placed in secure preventive detention, of whom a majority were in Opava (59 %), and a vast majority were men (92 %). The average age of the inmates was 40; the usual duration of detention as of the end of 2017 was four years (for current and previous inmates). Six persons over 60 are currently in secure preventive detention.
- From 2009 to 2017, there were a total of 100 persons in secure preventive detention (inmates who are currently still detained or have already been released). Approximately 10 persons are placed in secure preventive detention each year, where the fact that the number is increasing indicates that this form of *protective measure* is used increasingly often. According to the statement of the General Directorate of the Prison Service, secure preventive detention was also imposed on another 48 persons who will be moved into this form of detention after they serve their prison sentence.
- Direct imposition of preventive detention concerns 53 out of the 100 persons placed in secure preventive detention from 2009 to 2017. As concerns the offences leading to the inmates' detention, these most often included an act that would otherwise be considered a criminal offence (49 %) and a crime (47 %). In most cases, these were violent (57 %) offences and sex "crimes" (25 %).
- There are an increasing number of persons placed in secure preventive detention by means of a change from the ongoing forensic treatment (up to 80 % of cases in 2017) – this was the case of 47 out of 100 persons placed in secure preventive detention from 2009 to 2017. Secure preventive detention was most often preceded by psychiatric (60 %) and sexological (40 %) forensic treatment. The reasons for changing the ongoing forensic treatment into secure preventive detention consisted mainly in violent (38 %) and non-violent (34 %) frustration of the forensic treatment.



As concerns the frequency in which the change was proposed, there were significant differences between the individual psychiatric hospitals.

- When a person is placed in secure preventive detention, it is likely that the detention will be long, possibly even indeterminate – between 2009 and 2017, only 21 persons out of 100 were released from the preventive detention. Only very few persons leave secure preventive detention each year; some years, no person was released at all. Most persons released from secure preventive detention (17 out of 21) continued with forensic treatment, only one person was completely freed. The number of cases where secure preventive detention was re-imposed after release was very low – out of 22 released inmates, only three (14 %) were again placed in preventive detention.