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Differentiation of convicts in prison with security.

In the context of unconditional imprisonment, there is a historically evident effort to influence convicts so that they reintegrate back into society upon release and do not deviate from it in a pathological manner according to the norms of the time. The legal terminology has evolved; in the previous period it was amenable to socialist ideology. There have also been changes in the differentiation of convicts; the form we know today comes mainly from Act No 169/1999 Coll.³⁵ The effort to differentiate prisoners is not only a Czech specificity, but a generally addressed issue. Currently, various types of Risk and Needs Assessments tools are used to assess the criminogenic risks and needs of the offender, which have also evolved and are now referred to as the fourth generation.

The current form of the prison system, which has been reduced from four types to two (maximum security and high security) since 1 October 2017, and the related role of the Security Service to decide on the placement of convicts in the first type of prison in three wards differing in the degree of security, was already anticipated by strategic documents from 2005 (Concept for the Development of the Czech Prison System until 2015). However, this state of affairs was only achieved during the validity of the follow-up document, the Concept of the Prison System until 2025.

We have approached the topic from several different angles. A qualitative analysis of stenographic records of legislative debates of the Chamber of Deputies helped to describe the nature and extent of the change. We also followed the reflection of the changes among the professional public through expert questionnaire surveys among prison staff, namely social workers, special educators and secretaries of professional committees. We obtained further views of practitioners through semi-structured interviews with judges and prosecutors. To complement the expert surveys, we conducted a public opinion survey.

A qualitative analysis of the records of legislative debates of the Chamber of Deputies of the Parliament of the Czech Republic, which took place in the framework of the adoption of Acts No. 169/1999 Coll. and No. 58/2017 Coll., was carried out using the Atlas.ti software. The result of the legislative process in 1999 was a new pillar of the prison system, based on the rule of law and introducing completely new, until then unknown institutes, such as the execution of imprisonment of mothers with children under three years of age (which aroused a huge wave of heated discussions among deputies). In contrast, the more recent prison change under review brought about a significant difference only in the area of differentiation of convicts within a secure prison. In connection with it, deputies pointed out during the debates a possible contradiction with the proposed amendment and the view of the Constitutional Court of the Czech Republic on the conditions of execution of sentences, which constitute punishment as such, the imposition of which, according to the legal system, belongs only to the court (see Constitutional Court No. 8/1995 Coll.). A similar concern was also expressed by the Office of the Public Defender of Rights, but it did not materialise and the Constitutional Court confirmed, for example, in its decision ÚS 1280/22, that the placement of convicts by the Prison Service within a secure prison is not contrary to Czech law.

35 The last change/as of the date of completion of the publication was as of January 1, 2022.

According to the Concept of Prison System until 2025, a situation should have been achieved where prisoners are classified according to their degree of deprivation and the possibility of resocialization. This objective has been reflected in one of the instruments at the disposal of the penal policy, namely Act No. 58/2017 Coll. The explanatory memorandum to the act elaborates on this objective, pursuing a differentiation of convicts that reflects their personal factors and risks.

The change, consisting not only in the reduction of the number of prison types but also in the placement of convicts within a secure prison, was therefore a partial change in the context of the development of the Czech prison system. By its very nature, it represents a shift in the prison system in line with global trends, i.e. an evolution, rather than a transformation as such. It affected not only convicts, but also prison staff, supervising prosecutors and judges who have the area of imprisonment on their agenda.

In the interviews conducted, both prosecutors and judges mentioned certain expectations they had in connection with the change, especially the wave of protests by convicts who were „switched“ from the existing prisons with supervision, surveillance and guarding to individual wards of a prison with security on 1 October 2017 by an administrative act³⁶. No such thing happened, nor did the convicts even defend themselves en masse through legal instruments, i.e. complaints against the placement decision. The new differentiation of convicts, including the initial flip-flopping, in the form of an increase in complaints, had no impact on the activities of the judicial agenda in the field of imprisonment or on the supervisory activities of the prosecutors. This was confirmed both by the interviews carried out and by statistics on the activities of the institutions in question.

There was also consistency between the statistics and the findings from the interviews in the area of prosecutors' complaints, with medical care being the most frequent subject of complaints from convicted prisoners. The seriousness of the issue was not lost on the judges, who recommended strengthening the availability of psychiatric professional help in particular, the absence of which can have fatal consequences.

Compared to the original transfer of convicts from the three types of prisons to the individual wards of a security prison, the distribution of the prison population is changing, with a trend of „opening the scissors“. Convicts are more likely to be placed in the low and high security levels, at the expense of the medium level. There are also differences in the distribution of males and females, with females being more represented in the low security tier.

Of course, the observed prison change has affected the prison staff themselves, as the questionnaire survey of special educators and social workers showed. They feel it mainly in terms of the increase in their agenda. Especially those special educators who have been entrusted with the role of secretary of the specialised committee. The activities associated with its operation take up a significant part of their working time. Considering the fact that the average number of convicts entrusted to the care of a special educator is 93, and that this work has reduced his time for professional work even further, this is

36 § 17 of the Order of the Director General of the Prison Service No. 40/2017.

not a positive finding. The administrative increase in connection with the new method of assigning convicts to the secure prison was also noted by those special educators who were not assigned to the post of secretary and by social workers. However, according to them, the actual working conditions were not affected by the changes. It is a positive finding that, according to the special educators and social workers, the primary purpose of the reduction of types has been fulfilled and that the convicts are assigned to the various wards of the security prison according to the degree of personality disorder and the related possibilities for resocialisation.

The prison change also left a similar impression on judges and prosecutors. Nevertheless, some judges believe that the initial system, where there were four types of prisons and convicts were assigned to them exclusively by the court, was better and more able to consider the individuality of each case.

Another finding is that prisons have taken different approaches to the establishment of individual wards of the prison with security, using the premises of the previous three types of prisons (supervision, surveillance, security). However, it is not the case that the former premises of a prison with supervision are used for the current low-security wards, etc. This is not even logically possible, for example, in cases where the prison did not originally have all three types of prisons, but has now opened all three wings of the prison with security. As a result, there are then different structural and technical forms of the same wards of a secure prison, which fundamentally affect the conditions of imprisonment. This is in significant contradiction to the requirement of equality of convicts before the law, where there should be uniform conditions for the design of the different wards of a secure prison.

It is also noteworthy that the secretaries of the expert committees are not automatically acquainted with the decision of the court that decided to review the placement of the convicted person. It is worth considering whether this should be addressed by a methodological guideline in order to streamline the decision-making activities of the expert committee, enhance the legal certainty of convicts and ultimately reduce the volume of complaints by convicts against the prison's initial decision.

As the results of our analyses suggest, we can observe some shifts in public opinion in the area of punishment and punishment. The trend seems to be a more sceptical view of the effect of severe punishments than a decade ago and a clear perception of the problematic aspects of unconditional sentences. Thus, not only can we observe a shift in the prison system in line with global trends, but also a slight shift in public opinion away from a punitive approach to punishment.

Very important are the clear signals of the gradual settling in of the whole system of placing convicts in the individual wards of the prison with security, with the individual actors acquiring the appropriate skills, including the convicts. This is evidenced both by the increase in the number of complaints made by them and by the statistical data on their handling. This is confirmed by the reflection of the experts interviewed.

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