

## **ABSTRACT**

### **PROTECTIVE TREATMENT AND SECURE DETENTION**

This thesis addresses the legislation governing protective treatment and secure detention, which in Czech criminal law is one of the protective measures that have become an integral part of Czechoslovak and Czech criminal codes since 1950. I focused on a detailed analysis of the current legislation of protective treatment in the form of either outpatient, or institutional and secure detention. The aim of the thesis was to evaluate whether the legislation of both measures would stand from the point of view of the principle of subsidiarity of secure detention in relation to protective treatment, not only in the interpretation of statutory provisions, but particularly in their application by the ordinary courts. I have examined the decisions of the ordinary courts regarding case law of the Constitutional Court and the European Court of Human Rights. To address this issue, I have used both standard and classical methods and techniques of criminological research, in particular document analysis and an analysis of available statistical data from the official departmental databases of the Czech Ministry of Justice and the Czech Prison Service. The legislation of these measures was also examined from the point of view of an historical analysis of legal documents. A comparative method of analysis was also used, namely in specifying individual regulations of the examined legal measures in selected European countries (Slovakia, Germany, the Netherlands, Switzerland, and Norway) and in the USA. Some of the findings have also been obtained based on an independent investigative visit to the Institute for Secure Detention in Brno, as well as from my own professional experience. The research carried out has highlighted that even though the existing legislation on protective treatment and secure detention is functional, I have identified not only several legal gaps in both substantive and procedural law but also other shortcomings in the absence of specific legislation for prescribing protective treatment, and the absence of a systematic register for those subject to protective treatment. The results of this work have led me to conclude on the overuse of secure detention arising from the erroneous modification to the provisions of Article 99 Paragraph 5 of Act No. 40/2009 Coll., on the Criminal Code, as amended. This has thus violated – in the sense of *ultima ratio* – the substance of secure detention within the criminal sanction system.

Key words: protective measures, protective treatment, secure detention.