

# **Criminal custody as a means of ultima ratio**

## **Abstract**

This diploma thesis deals with a custody in criminal proceedings as an institute which should, due to its strong intervention to personal liberty, be used in the uttermost cases. Although this conception has been enforced to the legal theory and also to the czech legislation for many years, it is necessary to state that practice has considerable reserves in this respect. With respect to planned recodification of criminal procedural law which could reflect needs of application, this thesis tries to look at custody in a broad scope focusing on options of substitution of custody.

Due to the fact that the custody cannot be perceive only within the limits of criminal law, the first chapter is devoted to guaranteed freedom on the constitutional level, i. e. personal freedom. To understand a context, the development of this fundamental freedom is briefly described. This thesis also submits its conception on the international and national standards. In relation to the custody, this chapter includes the solution of whether detention restricts personal freedom or deprives individuals of it. It also summarizes three fundamental principles of criminal proceedings which are strongly connected with the custody.

The second chapter deals with custody directly. First it contains description of custody's character, how it is necessary to perceive it and how it is not, and further conditions without which the custody cannot be imposed to the accused. According to the classical division which results from law, single parts focus on the flight risk, collusive and preventive custody. The diploma thesis tries to create a complete image for those types including substantial case law. The significant aspect of duration of the custody is also not missing.

With regard to the gist of this thesis, the third chapter deals with individual possibilities of substitution of the custody from Act No. 141/1961 Sb., Criminal Procedure Code as amended. In addition to their legal regulation, including the procedural side of the work, it contains practical examples, expert's opinions and eventual suggestion for change *de lege ferenda*. The possibility of electronic monitoring in the Czech Republic is briefly described next to the guarantee of citizens' associations or trusted person, a written promise of the accused, supervision of the accused by a probation officer and one of the preventive measures. This chapter is closed with the institute of financial guarantee.

The final chapter briefly presents formal custody law, therefore deciding on custody in the sense of the relevant authorities, forms and their procedures. The diploma thesis focuses especially on the most frequent initiatives leading to deciding on custody.

In the end, the findings of the author of this work are repeated. There is also a brief reflection on the direction of the institute of custody in the future, especially regarding the greater use of its surrogates.

**Key words: personal freedom, custody in criminal proceedings, substitution of custody**