УДК 343.1

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CRITICAL EVALUATION OF THE SLOVAK RULES OF INTERCEPTIO AND RECORDING OF TELECOMMUNICATIONS IN THE CRIMINAL PROCEEDINGS (AFTER THE LAST AMENDMENT)[1]

1. The nature of the interception and recording of telecommunication operations

Interception and recording of telecommunications in criminal proceedings is one (first) of the information-technical means, which regulates the Slovak Criminal Procedure (Act no. 301/2005 Code of Criminal Procedure, as amended, hereinafter referred to as "TP"). It can be characterized as a modern means of implementing intelligence and highly offensive tool used in the process of detecting and proving in the process of serious crime. Account should be taken as a criminal-procedural arrangements, that in criminal proceedings (on the basis of TP), as well as independently of him, on the basis of special regulations. In criminal proceedings it regards the use of this institution on the basis of § 115 TP.

Power interception and recording of telecommunications traffic in criminal proceedings in the conditions of Slovak Republic entrusted department of the Police Force who have special, for efficient design these devices. It is a device which interferes heavily in basic human rights. In addition to the right to privacy and the right to family life it is necessary to mention the right of maintaining secret verbal notification, private messaging and a range of rights relating to the performance of this institution affected. In addition to the relevant Article 16 sec. 1 and 2 of the Constitution (Act № 460/1992 Coll.) it is necessary to point out to the European and international dimension of these rights, specifically Article 8 of the Convention for the Protection of Human Rights and Freedoms. Here, the rights guarantee, but also indicates that some actions are available to them, because it is not an absolute right. Accurately determine the conditions under which it is possible interference with these rights be considered justified and completely legal. In order to allow national authorities to this right to intervene, it must be complied with, that it is the actions that are in accordance with law and are necessary in a legal and democratic society in the interests of preserving or maintaining national or even international security, economic well-being, prevention of unrest and crime, for the protection of health or morals, or even if it is necessary for the protection of the rights and freedoms of others [8, p. 119].

The protection of these rights and the possible interference of state authorities to the rights guaranteed and have been frequently the subject of decision-making of the ECHR. In its relatively abundant case law on these issues is possible to see how the court originally advocated for absolute protection of these rights, but gradually, mainly under the influence of the development of organized forms of crime that began to

[1] This work was supported by the Slovak Research and Development Agency under the contract № APVV-15-0272.

threaten Europe and its citizens are inclined to the fact that still some changes made to this law are possible. It is possible, but it is important that all conditions have been met, which in turn in the case law of the ECHR and interpreted in principle it can be said that judge. Interpretation that gave to them, but very strict interpretation and strict when a court or such treatment, such as Germany and the UK are not considered sufficient to meet the conditions of Article 8 of the Convention and therefore to interference with these rights could be considered consistent with the following adaptations [14; 15]. In connection with possible interference with the rights under Article 8 of the Convention Court stated that if these interventions are to be allowed, it must be a clear limits and conditions as well as the legal framework for the use of those funds [7, p. 748].

2. Slovak criminal-procedural regulation interception and recording of telecommunication operations and its limits

In criminal proceedings, it is one of informational and technical resources and at the same time one of the detention institutions in relation to the information relevant to criminal proceedings. In the literature sometimes also it referred to as small as a phone or speakerphone. Very handy and you will inevitably be used in the process of detecting and proving serious crime. Its nature is called information-technical means, although it is only concrete action – the interception and recording of telecommunications and the operation is performed using special and for these purposes made techniques, using information-technical means. Even so, these institutions themselves sometimes referred to as information and technical resources (although it is only a specific activity performed by using them).

Using this concept, it is possible to gain valuable, more or less objective information that will be important for the criminal proceedings, since it has the nature of evidence. This is in view of the performance of the method intelligence [2, p. 168]. The persons are not, nor cannot have at the time of application knowledge that these funds in relation to them are used. Such direct performance of the device is assumed by law. If they had knowledge of its use at a particular time and a particular place, obviously they adapt the nature of their actions so that the criminal proceedings have found a common information that suggests a completely legal activity and communication relationships [8, p. 120]. Now how to use intelligence it allows gaining valuable and objective findings that are relevant for criminal proceedings.

"Interception and recording of telecommunications institute a process enabling to record telephone conversations and other facts communicated through electronic communications networks, if their content relevant to criminal proceedings" [2, p. 168]. This is not a resource that would apply only to the facts communicated through fixed or mobile communications (telecommunications) networks. It also covers the facts communicated by fax, text message, the information communicated by e-mail and radio. It's institute aimed at ensuring information relevant to criminal proceedings.

In terms of actual criminal-procedural arrangements with difficulty we can discuss how this legislation ECHR evaluated in terms of fulfilling the conditions laid down in Article 8 sec. 2 of the Convention and the terms of the existence of safeguards-misuse of such funds and guaranteed protection of human rights [1, p. 68]. Our criminal pro-

cedure at issue is not sufficient in many ways. In our treatment to address important aspects of the use of the device when it sets [8, p. 120]:

– range of crimes in which detection and evidence can be used;

– stage when you can take advantage of this resource;

– entities at certain stages of criminal proceedings allow the use of the device;

– a proposal for use of the device;

– order authorizing the application and its requirements (including time horizon and the possibility of extending the use of);

– use of information obtained as evidence in criminal proceedings;

– informing the persons concerned.

It is the criteria by which to assess the legal regulation of these funds for compliance with the European legislation with regard to possible infringements of the fundamental human rights and freedoms. This applies to the detection of crimes, but the process of using information obtained with the help of such devices within the crime proofing. In both cases it is necessary to consider the problematic nature of our criminal-procedural regulations and the right in more ways than one [5, p. 177].

The provisions of § 115 sec. 1 TP defines a range of offenses in detecting and proving that it is possible to use these funds. The enforcement of these offenses it is possible to achieve an order for use of the device for crimes of corruption crimes, the crime of extremism, the crime of money laundering activities, on the crime of abuse of power by a public official of another intentionally crime, the management of which the Slovak Republic agrees to an international treaty by which the Slovak Republic is bound, if at the same time for these (above) case, while it may be reasonable to assume that this will be the information relevant to criminal proceedings and at the same time as follows the objective pursued cannot be achieved otherwise, or if the purpose of achieving a different way much more difficult [3, p. 357]. At the same time, even in cases where the criminal proceedings concern other intentional crimes, but only with the consent of the user wiretapped and recording equipment.

Criminal-procedural regulation differentiates also possible to use this resource in terms of stages of criminal proceedings, and modifies and class of subjects, respectively. entities that have the ability to issue an order to use this resource. The intensity of intervention in the issue of human rights can be seen in the fact that the device can be used in the pre-prosecution (i.e. at the stage when it was still not joining a particular accused, it commenced even criminal prosecution), in pre-trial proceedings and in court [4, p. 73].

Depending on the stage of criminal proceedings in which the informational and technical means used is different and the entity that issues the command to use them. In the proceedings before the court it is clear. President of the Chamber and the pre-trial and in the pre-prosecution is the judge for preliminary proceedings. Thus largely weakens the public prosecutor (Slovak Republic in relation to the prosecutor), which is in pre-trial characterized as *dominus litis*. In preliminary proceedings the prosecutor should be master of this procedure, but decisions about interventions in human rights, the most serious intervention is not in its competence. In relation to issue such an order only has the design authority. For an order thus always even throughout the pre-trial

judge decides to pre-trial proceedings. The requirement for the issuance of the order being court (judge for pre-trial proceedings and in court President) ensures that the need and necessity of the use of this institute will always consider impartial and independent court. Just such an assessment is to ensure a truly rigorous design review and the conditions to be met for issuing a decision on an impartial and independent court. Especially in the pre-prosecution is the informational and technical means of a very important institute by which suggestions are reviewed and specifically criminal complaint. It allows you to get valuable information that can determine the next steps in the matter and a decision will then be adopted. It may happen that the matter cannot be delayed and in such a short period of time constraints, it will not be achieved by granting the order by the judge for preliminary proceedings. In these cases it is possible to issue a provisional order prosecutor, but only under the following conditions [9, p. 134]:

– is a case typical time constraints it is not possible in terms of time obtaining an order by the judge for preliminary proceedings;

– regard to cases where the met conditions for granting the order and therefore, if it is sought judges can be assumed that the judge would order issued;

– it is a unique situation, not at the classical approach;

– interception and recording of telecommunications cannot be associated with entry into the dwelling;

– within 24 hours since the order the prosecutor is required to issue upheld the judge for preliminary proceedings; Otherwise, the evidence respectively information that is obtained using this device, not be used in criminal proceedings, they would be destroyed in the prescribed manner and regardless that could identify potentially valuable information for criminal proceedings.

In the criminal procedural provisions is not solved no minimum range requirement, the proposal should contain the prosecutor addressed the court. Definitely you agree with the view that these elements determine the content of the order and therefore the application should be formulated so that it contains all the elements that would later translate in order to use the informational and technical means [7, p. 748]. Circuit design requirement here is not specifically addressed. For example, in the Privacy Act against eavesdropping (Act № 166/2003 as amended legislation), the provisions of § 4 sec. 3 lists the requirements that the proposal should (in this case the request) contain. In concrete terms, a written request should include:

– description Information-technical means to be use;

– instead of using, if the nature of the device;

– the proposed use of time;

– details of the person or persons to whom it is applied;

– information about the previous process that was inefficient and hampered in detecting and documenting the specific crimes to which the request relates;

– the reasons for the use of that instrument.

Directly it provides that if no application's requirements, the judge cannot decide on it and return it to the applicant. In a way it strengthens the responsibility of the entity submitting the application for an order to use informational and technical resources and this can also welcomes in criminal proceedings. The Prosecutor does not

provide any circuit requirements that the proposal should have. Determination of a similar range of requirements would, to some extent strengthened the prosecutor responsible for the form and content of the proposal and facilitate decisions of judges on the petition. So introduction of such or similar calculation can only recommend. It is also necessary to point out the problem application, as well as Perhács [6, p. 698] states that the proposals are not precisely defined requirements, often causing their various assessed by the examining judge. Benevolent judge shall issue an order on the basis of proposals for the issue to another judge would be regarded as insufficient and on the basis of the command has gone before. Often, by the proposing entities directly it waits until the service carry out benevolent judge, in which the issue of the order achieved easier way. The introduction of the at least the minimum requirement calculation and design to the criminal procedural provisions, by way of judges when deciding to issue a command to facilitate and consolidate.

Command as a form of decisions in criminal proceedings, are obliged to issue in writing and shall in any case justified. While the general provisions of the order as a form of decisions in criminal proceedings sometimes justification or are not required when using the informational and technical means to directly calls this command was written and reasoned. It must be justified for each subscriber line or equipment specially. Among other things, the statement shows an indication of the duration of use of the device. This is not a one-time use, i. e. in terms of the time it takes a few weeks, usually monthly. Most can use this medium, respectively, permit its use for 6 months. The command is given a specific length, specific time use of the device. It is also possible to extend it this time, again on the basis of an application entity that originally decided, always the next two months. The problem with this provision is in more ways than one. First, it does not provide the maximum possible length of time that would allow a person to intercept and record their communications and, second, that provision is not dealt with in terms of deadlines. In the first case, the point is that it is not possible, a maximum allowed time of the interception and recording of telecommunication operations and not the maximum number of requests for an extension. In principle, only it is said that it intercepts can last for years and their length is limited only by the existence of the reasons for using this composition. In principle, indefinitely, on the proposal of the extension could eavesdrop on people. It is possible to ask a question when there are still reasons to use this information-technical means? If within a few months does not detect the facts important for criminal proceedings, why should apply for an extension command to use, repeatedly and over again?

Thus we come to the fact that use of the device is essentially unlimited and limited only by the existence of the reasons for its use. In addition, in terms of deadlines it is not a solution at all to the period within which services should the intercepting and recording apply for an extension. Obviously, the force can only extend, in what it maintains. But the solution is not in what time frame before the expiry of the period of use of the device. For example, in connection with this process is handled. In the case of authorization renewal information-technical means do not. So that departments can happily ask for an extension of a few days before the deadline for bugs in the original order and the judge is put in a very difficult position when in a short time will have to

assess the justification for the requirements for an extension command. Or his proposal to the relatively early and therefore may not contain current data and information. In both cases the position of a judge much more difficult, and as in relation to it will infer liability for any non-renewal of the order or extension when it was not needed and necessary, it would be proper ground to this provision for the competent authorities a period in you should ask for an extension, so that the judge should have enough time to explore this proposal for a decision on it.

On the other hand, the authorities are implementing interception obligation at any time during the term of the order for interception and recording of telecommunication operations, consistently consider whether they are still filled with the reasons for which it was ordered to use this resource. If at any time during the duration of this command to ensure that there are no longer those reasons, it must terminate and listening to notify the body which issued the order to use this resource, in pre-trial proceedings is entitled to prosecutor. In connection with the order as a form of decisions in criminal proceedings, it must indicate that it is problematic, too impossible for appeals against the decision [10, p. 7].

As already mentioned, the interception and recording of telecommunications is informational and technical means and also locking Institute in relation to the information relevant to criminal proceedings. Its use is very valuable due to the rapporteur method of implementation. It is not possible to use such information to determine from interviews with defense attorneys and the accused (defendant). These records and no information on them is not recorded in the criminal proceedings. The condition is that:

– in terms of communication with his defense counsel accused (defendant), which the lawyer as advocate represented in the criminal proceedings;

– it is communication in cases in which defense counsel representing the accused in criminal proceedings;

– information relating to events that have generally happened in the past, that is not the case planned crime, upcoming activities in the future.

First, the accused (defendant) has the right to consult with his lawyer, even without the presence of a third party and also advocate has a duty to maintain the confidentiality of facts which are within their profession learned. The only exception to this obligation, the other legal duty – a duty to report criminal offenses of which reliably communicate with the accused (defendant) know. He should thus learned that the plan or preparation of certain crimes, the defense attorney has a reporting obligation in respect of such offenses within the meaning of the relevant facts of [3, p. 358]. The problem is that if the departments carrying out the interception and recording of telecommunications really assess the communication of people and, moreover, its nature, so they must still become familiar with its contents and a fairly well (to know whether it is really a conversation in the cases the advocate representing the accused). Although such information or records and cannot be used in criminal proceedings are still finding some already have, which thus gained and who can focus their activities in a particular direction, which would not lead, if not this knowledge.

In the last sequence of amendments to the criminal law of the obligation to inform the persons concerned about the use of this means to them, making them significant-

ly better ensure the right to seek protection of their legal rights and other means. A corollary is that if you use this device does not detect the facts important for criminal proceedings, law enforcement or control bodies of the Police Force immediately destroy such records and minutes of destruction based on the file. Persons affected interception and recording of telecommunication operations will be the destruction of records to inform, if known. The obligation to inform is a police officer or prosecutor whose decisions matter finally ended up in court, the presiding judge's court of first instance before which the case finally ended. This information is realized, of course, after the destruction of records, and after a final end of things. This information must include the following information:

– designation of the court which issued (confirmed) order to use this resource;

– the length of the interception;

– the date of termination of the interception;

– advice on the right (on the right) application to review the legality of the order (within two months of receipt) Supreme (Supreme Court of the Slovak Republic).

Such information must give the person authority whose decision has finally ended the matter within a period of 3 years from the finality of the decision by which this thing is over. Does not feed when it comes to people who have the right of access by the Code of Criminal Procedure, or if it results in a criminal case of a particularly serious crime, for crimes committed terrorist, criminal or organized group, or if the offense involved more people and even in relation to at least one of them was the prosecution finally terminated (completed), or where disclosure of this information could lead to defeat the purpose of prosecution. This arrangement entered into force on 1 January 2016, which was an amendment to Act № 397/2015 Z.z. Further to the possibility of the persons concerned to bring an action to the Supreme Command has introduced new provisions concerning that procedure. § 362f TP which states that if the person is given such a proposal, the Supreme reviewing closed session this command. Before deciding to seek the opinion of the judge who ruled on the issue or confirmation of the order, if he discovers that the warrant is issued or made in violation of the law, through a resolution pronounced violation of the law.

This decision is final and not against it possible to bring an appeal. As well, but even if the Supreme stated that there was no violation of the law, declare that laws were violated, nor against this decision cannot be appealed. It is therefore a final decision [7, p. 748]. This modification replaces the original treatment, according to which the records are not relevant for criminal proceedings must be destroyed in the prescribed manner. The persons concerned should inform you of this if you do not have the right to inspect files and beaten if discovered facts that are important for the criminal proceedings. It was problematic formulation that thus discovered facts important for the criminal proceedings and the person will not have the right to inspect files. It is debatable what the legislator understood by combining *detect the facts relevant to the criminal proceedings.* Search within the meaning of the principle in criminal proceedings obligation equally found evidence in favor and against the accused. If the use of this information-technical means possible to refute the suspicion of a crime, the person will not even suspect, but found the facts important for criminal proceedings, so that

the person will be advised. That it finds evidence refuting the suspicions, the facts important for criminal proceedings, as this knowledge is necessary to establish further procedure and decisions in it (rejection of a complaint, prosecute, etc.). As they find information relevant to criminal proceedings, the person who will not even suspect there is no need to use this resource to inform. In that provision that wording again uses, although it clearly can recommend a change.

The legislature had apparently referring to cases where it is established fact that confirm suspicions convict a person of the relevant criminal proceedings, etc. In addition, law enforcement proceedings are equally in terms of search principles responsible for identifying evidence to support and against the accused. Finally, the object of the provisions concerning information for persons concerned, it is a breach of the right to privacy of those persons. Regardless of what actually use this resource found in the right to privacy it was hit. The persons concerned would have the right to seek judicial and other protection of their rights against unlawful interference with them regardless of the fact what this intervention is detected. Regardless of the nature of the facts, the right to privacy has been affected and this is a fact that justifies the need for information of the persons concerned. This is therefore more controversial aspects of the criminal procedural regulations which would, together with the above, requires a thorough review and subsequent changes in the process of being amended. All these aspects of the use of interception and recording of telecommunications traffic does impact negatively on the possible applicability of the information gathered as evidence in criminal proceedings, which can in some cases fail detection and evidence of serious crime.

3. Conclusion

Interception and recording of telecommunications (§ 115 TP) is an important criminal-procedural institute, whose place in the process of detecting and proving serious crime is irreplaceable. Development of crime, including the most severe forms, in recent years clearly indicates that detecting and proving a serious crime directly requires the use of modern, offensive and to basic human rights strongly intervening institutions. It is this way the news of their performance allows obtaining objective, unbiased and criminal proceedings very valuable information. Given the intensity of the conflict means the basic human rights is clearly possible to agree with the requirement that on several occasions in its case law and the ECHR, with the requirement of legality and the necessity or even the necessity of the use of funds. At the same time it must be a guaranteed non-misuse of this institution and guaranteed protection of fundamental human rights and freedoms unauthorized, inappropriate or even illegal use of this resource. The above described theoretical and application shortcomings mainly criminal-procedural regulation has the consequence that the assessment rules interception and recording of telecommunication operations is ultimately not at all positive. This treatment can be assessed as very problematic. Definitely we can recommend that the sequence of the next amendment to the criminal law of the procedural treatment adjusted to the intentions outlined in order to complicate the future usefulness of the information obtained using this device as evidence in criminal proceedings.

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Summary

Tittlová M. **Critical evaluation of the Slovak rules of interception and recording of telecommunications in the criminal proceedings (after the last amendment).** – Article.

Interception and recording of telecommunication is one of the very busy information technology equipment, which is used in the Slovak proceedings and adjusts the current and effective Criminal Procedure. The law in the Slovak republic must be consistently and well that in many cases is very problematic, as the negative impact on the possibility of using the information thus obtained as evidence in criminal proceedings. The present technical paper focuses on the problematic aspects of the Slovak criminal procedural regulations of the Institute and outlines opportunities for tackling them.

Key words: right to privacy, interception and recording of telecommunications, command, time of use, inform the person concerned.

Анотація

Тітлова М. **Критичне оцінювання словацьких положень щодо прослуховування та запису засобів зв'язку в кримінальному судочинстві (після останньої поправки).** – Стаття.

Прослуховування та запис засобів зв'язку є популярними інформаційними методами, що використовуються в словацькому судочинстві та регулюють чинне кримінальне судочинство. Закон у Словацькій республіці має бути послідовним і правильним, що здебільшого є проблематичним через негативний вплив на можливість використання інформації, що отримана як доказ у кримінальному провадженні. Ця технічна стаття зосереджена на проблематичних аспектах словацьких кримінальних процесуальних положеннях цього інституту та окреслює можливості їх вирішення.

Ключові слова: право на недоторканність приватного життя, прослуховування та запис засобів зв'язку, наказ, час використання, повідомити зацікавлену особу.

Аннотация

Титлова М. **Критическое оценивание словацких положений о прослушивании и записи средств связи в уголовном судопроизводстве (после последней поправки).** – Статья.

Прослушивание и запись средств связи являются популярным информационным методом, которые используются в словацком судопроизводстве и регулируют действующее уголовное судопроизводство. Закон в Словацкой республике должно быть последовательным и правильным, что во многих случаях является проблематичным из-за негативного воздействия на возможность использования информации, полученной в качестве доказательства в уголовном производстве. Данная техническая статья сосредоточена на проблемных аспектах словацких уголовных процессуальных положениях этого института и определяет возможности их решения.

Ключевые слова: право на неприкосновенность частной жизни, прослушивание и запись средств связи, приказ, время использования, сообщить заинтересованное лицо.