

RECODIFICATION OF SLOVAK CRIMINAL PROCEEDINGS: EARLY IDEAS, CONCRETE STEPS, AND ITS SUBSEQUENT IMPROVEMENT

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Abstract: The article deals with recodification of Slovak criminal proceedings. It is divided into three sections. The first section is focused on the early idea of recodification of Slovak national criminal law and the introduction of innovations of national criminal proceedings. While the second section is focused on adoption of new Criminal Proceeding Code No. 301/2005 Zb. and understanding of “redesigned” criminal proceedings, the third section is focused on necessary improvement of criminal proceedings in the light of the electronic monitoring of persons.

Keywords: Slovak national law; recodification of criminal law; criminal proceedings; Criminal Code No. 300/2005 Zb.

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INTRODUCTION

The Czecho-Slovak *Criminal Code*¹ and *Criminal Proceedings Code*² of 1961 were effective for over forty years. Even though they were amended many times, in the period after the establishment of the independent Slovak Republic – since 1 January 1993 – the need for their fundamental revision was evident. In principle, it was not the first recodification of criminal law, since above-mentioned codes were also a result of former recodification of criminal law decades ago.³

The article deals with the latest recodification of Slovak criminal proceedings in which resulted the adoption of the Criminal Proceedings Code No. 301/2005 Zb.

¹ Zákon Národného zhromaždenia Československej socialistickej republiky zo dňa 29. novembra 1961 č. 140/1961 Zb., Trestný zákon, v znení neskorších predpisov [Act of the National Assembly of the Czechoslovak Socialist Republic of 29 November 1961 No. 140/1961 Zb., Criminal Code, as amended by Later Legislation].

² Zákon Národného zhromaždenia Československej socialistickej republiky zo dňa 29. novembra 1961 č. 141/1961 Zb., o trestnom konaní súdnom (trestný poriadok), v znení neskorších predpisov [Act of the National Assembly of the Czechoslovak Socialist Republic of 29 November 1961 No. 141/1961 Zb., on Criminal Proceedings (Criminal Proceedings Code), as amended by later legislation].

³ See: BLÁHOVÁ, I. *Rekodifikace trestního práva procesního v letech 1948–1950* [Recodification of Criminal Procedural Law in 1948–1950]. Prague: Auditorium, 2017.

1. IDEA OF RECODIFICATION OF SLOVAK NATIONAL CRIMINAL LAW AND INTRODUCTION OF INNOVATIONS OF NATIONAL CRIMINAL PROCEEDINGS

On 31 May 2000, the Government of the Slovak Republic approved the legislative intention to recodify former Criminal Code and former Criminal Proceedings Code of 1961.⁴ In May 2002, the proposals of both new codes were submitted to the legislative process by the Ministry of Justice of the Slovak Republic, but the processes were not completed. The Deputy Prime Minister for Legislation and the Minister of Justice of the Slovak Republic therefore commissioned the Commission for the Recodification of Criminal Law to process new proposals. The Slovak Government approved the Proposal of new Criminal Code on 21 April 2004 and the Proposal of new Criminal Proceedings Code on 26 May 2004.

The objective of the recodification of criminal law, including recodification of criminal proceedings, was to streamline, simplify, accelerate, and economise the criminal process, which aimed to ensure more effective protection of the rights and legitimate interests of natural persons and legal entities, as well as the protection of the interests of society as a whole. The recodification assumed that there would be several *conceptual* and *structural* changes in a criminal proceeding compared to the previous proceedings. The *conceptual changes* were supposed to consist in the fact that the above-mentioned objective should be achieved by respecting fundamental rights and freedoms as thoroughly as possible, and at the same time, take into account the interests of society as a whole in the effective fight against crime (criminal offences). As regards the *structural changes*, they were supposed to consist in the transfer of competences between the law enforcement authorities (police officer and prosecutor) and the court, which as an independent state body is supposed to decide on the merits of criminal cases. The division of tasks between the police officer, who performs tasks in the pre-trial proceedings, and the prosecutor, who is supposed to make decisions in the pre-trial proceedings, and thus also carry out supervision and file an indictment, should enable the achievement of the indicated objectives.⁵

Madliak and *Porada* argue that the intention of the recodification of the criminal proceedings was to modernise the applicable process. In their opinion the proceedings based on former Criminal Proceedings Code, i.e., the Act No. 141/1961 Zb., was very complicated, cumbersome, and equally rigorous, regardless of whether it is a criminal prosecution of a factually and legally simple case, or a considerably demanding one.⁶ The necessity of effective of criminal proceedings was also highlighted by *Čentěš*.⁷

⁴ Uznesenie Vlády Slovenskej republiky č. 385 z 31. mája 2000 [Resolution of the Government of the Slovak Republic No. 385 of 31 May 2000].

⁵ Explanatory Report of the Draft Criminal Proceedings Code, version of 26 May 2004; KLÁTIK, J. *Zrýchlenie a zhospodárnenie trestného konania* [Speeding-up and Economising of Criminal Proceedings]. Banská Bystrica: Univerzita Mateja Bela, 2010, p. 10.

⁶ MADLIAK, J. – PORADA, V. Niekoľko poznámok k rekodifikáciám trestoprávných noriem v Slovenskej republike [A Few Notes on the Recodifications of Criminal Law Standards in the Slovak Republic]. *Humanum: Medzinarodowe Studia Społeczno-Humanistyczne*. 2009, Nr. 3, pp. 55–68.

⁷ ČENTĚŠ, J. *Prípravné konanie po piatich rokoch aplikácie Trestného poriadku* [Pre-trial Proceedings After Five Years of Application of the Criminal Proceedings Code]. In: KURUC, P. (ed.). *Rekodifikovaný trestný zákon a trestný poriadok – analýza poznatkov z teórie a praxe: zborník príspevkov z medzinárodnej*

As regards the most important changes and improvements of criminal proceedings, the intention of new legislation on criminal proceedings was:⁸

As regards the pre-trial proceedings, police officers under the supervision of the prosecutor shall independently and proactively clarify the criminal offences. The independence, initiative, but also the responsibility of the police for finding and processing evidence, were highlighted. At the same time, this should increase and emphasise the responsibility of the prosecutor under so-called *accusatory principle*, according to which only the prosecutor can lodge an indictment. It emphasises the importance of the prosecutor's supervision in the pre-trial proceedings. In addition, the responsibility of the prosecutor for the indictment lodged before the court was increased. If the prosecutor cannot "support" the indictment, or if they do not provide the necessary evidence for the court's decision on guilt of the concerned person, the court shall free them from the indictment.

As regards the pre-trial proceedings, moreover, so-called the pre-trial judge (Slovak: *sudca pre prípravné konanie*) was established, who shall decide on any interference with basic rights and freedoms – for example, detention, house search, and personal search.

In proceedings before the court, the district court was supposed to become the basis of the judicial system in criminal matters. Proceedings in the first instance on all matters were to be held in such a court. So-called "district court in the seat of the regional court" had to decide on certain criminal offenses in the first instance. The change in this concept was brought by the Act No. 458/2003 Zb., on the Establishing of the Special Court⁹ and the Proposal of the Criminal Proceedings Code, responded to this new law and to the perception of the special competence of the Special Court in criminal proceedings; it should be noted that the Special Court was replaced by Specialised Criminal Court, since the Act No. 458/2003 Zb., on the Establishing of the Special Court was cancelled; its new legal basis became the Act No. 458/2003 Zb., on the Specialised Criminal Court.¹⁰

In proceedings before the court, moreover, there is a significant strengthening of contradictory elements in proceedings. On the one hand, there was introduced a "lightening" of the work of the court, for example, during evidence. On the other hand, the criminal proceedings should be led by a judge who also shall decide on evidence, but the evidence itself should be carried out by the parties (namely prosecutor and person concerned). The defence attorney-at-law (advocate) at the main hearing can conduct the interrogations of persons who are interrogated at their proposal. As regards the injured party (or their authorised representative) can be active at proceedings as well.

A substantial part of criminal cases should be handled outside the main hearing, including the handling of so-called *criminal order* (Slovak – *tretný rozkaz*) as a known kind of

vedeckej konferencie konanej dňa 9. februára 2011 [Recodified Criminal Code and Criminal Proceedings Code – an Analysis of Knowledge of Theory and Practice: collection of contributions from the international scientific conference held on 9 February 2011]. Bratislava: Paneurópska vysoká škola, 2011, pp. 161–171.

⁸ Explanatory Report of the Draft Criminal Proceedings Code, version of 26 May 2004.

⁹ Zákon Národnej rady Slovenskej republiky zo dňa 21. októbra 2003 č. 458/2003 Z. z., o zriadení Špeciálneho súdu a Úradu špeciálnej prokuratúry [Act of the National Council of the Slovak Republic of 21 October 2003 No. 458/2003 Zb., on the Establishment of the Special Court and the Office of the Special Prosecutor].

¹⁰ Zákon Národnej rady Slovenskej republiky zo dňa 18. júna 2009 č. 291/2009 Z. z., o špecializovanom trestnom súde [Act of the National Council of the Slovak Republic of 18 June 2009 No. 291/2009 Zb., on the Specialised Criminal Court].

procedural decision (besides the judgment), but not effective as it could be. The handling of the case by conditional suspension of criminal prosecution and reconciliation should reach a significantly wider application, including in pre-trial proceedings. Another new procedural instrument, with common law origin¹¹ – so-called *plea agreement* (Slovak – *dohoda o vine a treste*) between the prosecutor and the accused – should also reach application. These forms of redesigned criminal proceedings should relieve the courts from hearing cases in the main hearing, which, however, remains the basic form of decision-making.

As regards appeal procedure, the revision principle and the principle of *beneficia cohaesionis* were expected to be limited. On the other hand, at the same time, the appeal principle was to be strengthened. The system of extraordinary remedies was changed, with the creation of two new extraordinary remedies – first, the annulment of valid decisions in preliminary proceedings (Slovak – *zrušenie právoplatných rozhodnutí v prípravnom konaní*) and, second, the appeal (Slovak – *dovolanie*).

As regards the area of legal relations with foreign countries, it was also incorporated into the Proposal of the Criminal proceedings Code, which reflected the increasing importance of international co-operation in the fight against organised crime.

2. ADOPTION OF NEW CRIMINAL PROCEEDING CODE NO. 301/2005 ZB. AND UNDERSTANDING OF “REDESIGNED” CRIMINAL PROCEEDINGS

The National Council of the Slovak Republic (Slovak Parliament) adopted a new legislation regulating criminal law – on 20 May 2004 the Criminal Code No. 300/2005 Zb.¹² and on 24 May 2004 the Criminal Proceedings Code No. 301/2005 Zb.¹³ Both these laws entered into force on 1 January 2006.

As regards Criminal Proceedings Code, criminal proceedings was “redesigned”. The very first version of this Code introduced its new understanding stating that “[t]he Criminal proceedings Code regulates the procedure of law enforcement authorities and courts so that criminal offences are properly detected and their perpetrators are fairly punished according to the law, while the fundamental rights and freedoms of natural persons and legal entities shall be respected”.¹⁴ (amended current version – “[t]he Criminal Proceedings

¹¹ ŠIMOVIČEK, I. Rekodifikácia trestného práva a zrýchlenie trestného konania [Recodification of Criminal Law and Speeding-up of Criminal Proceedings]. In: ZÁHORA, J. (ed.). *Aktuálne otázky trestného zákonodarstva: zborník príspevkov z medzinárodnej vedeckej konferencie konanej dňa 19. januára 2012* [Contemporary Issues of Criminal Legislation: Collection of Contributions from the International Scientific Conference held on 19 January 2012]. Bratislava: Paneurópska vysoká škola, 2012, p. 260.

¹² Zákon Národnej rady Slovenskej republiky zo dňa 20. mája 2005 č. 300/2005 Z. z., Trestný zákon [Act of the National Council of the Slovak Republic of 20 May 2005 No. 300/2005 Zb., Criminal Code]. Since its adoption, this act has been amended 42 times (at the time of the writing of the paper).

¹³ Zákon Národnej rady Slovenskej republiky zo dňa 24. mája 2005 č. 301/2005 Z. z., Trestný poriadok [Act of the National Council of the Slovak Republic of 24 May 2005 No. 301/2005 Zb., Criminal Proceedings Code]. Since its adoption, this act has been amended 54 times (at the time of the writing of the paper).

¹⁴ Article 1 of the Criminal Proceedings Code – original version. Slovak: “*Trestný poriadok upravuje postup orgánov činných v trestnom konaní a súdov tak, aby trestné činy boli náležite zistené a ich páchatelia podľa zákona spravodlivo potrestaní, pričom treba rešpektovať základné práva a slobody fyzických osôb a právnických osôb.*”

Code regulates the procedure of law enforcement agencies and courts so that criminal offences are properly detected, their perpetrators are fairly punished according to the law and the proceeds of criminal activity are confiscated, while the fundamental rights and freedoms of natural persons and legal entities shall be respected”¹⁵⁾

As seen, the legislature primarily emphasises the formal aspect of criminal proceedings. According to the Explanatory Memorandum of the Proposal of this Code, there is a self-evident duty of the law enforcement authorities and the court to organise their activities, first, in the spirit of strict compliance with the law in such a way as to strengthen citizens’ faith in the justice of the proceedings of the law enforcement authorities and, second, in the decisions of the courts in such a way as to lead them to strictly observe the laws and fulfil their obligations towards society and the state, as well as respecting the fundamental rights and freedoms of citizens, natural, and legal persons.¹⁶

According to the very first commentary of the Criminal Proceedings Code No. 301/2005 Zb., the subject matter of the Criminal Proceedings Code is closely related to the Criminal Code. Their interrelation lies in the fact that the Criminal Proceedings Code regulates the basic rules for the procedure of state authorities and other subjects of criminal proceedings, namely in deriving the criminal responsibility of perpetrators for committed criminal offences. This means that the Criminal Code and the Criminal Proceedings Code are interlinked and therefore if without the Criminal Proceedings Code, i.e., without regulation of criminal proceedings, the inference of criminal responsibility would not be possible. On the contrary, in absence of substantive regulation in the Criminal Code the procedural regulation in the Criminal Proceedings Code would be unnecessary.¹⁷ In the very first textbook on recodified criminal procedural law the Criminal Proceedings Code No. 301/2005 Zb. is considered as the most important source of criminal procedural law.¹⁸

Criminal proceedings in the light of the Criminal Proceedings Code No. 301/2005 Zb. recognises and respects democratic principles of criminal procedure, as stated in international treaties, which have been ratified and declared in the manner established by law, for example, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its protocols,¹⁹ as well as in the Constitution of the Slovak Republic.²⁰ For

¹⁵ Article 1 of the Criminal Proceedings Code – as amended by later legislation. Slovak: “*Trestný poriadok upravuje postup orgánov činných v trestnom konaní a súdov tak, aby trestné činy boli náležite zistené, ich páchatelia boli podľa zákona spravodlivo potrestaní a výnosy z trestnej činnosti boli odňaté, pričom treba rešpektovať základné práva a slobody fyzických osôb a právnických osôb.*”

¹⁶ Explanatory Report of the Draft Criminal Proceedings Code, version of 26 May 2004.

¹⁷ MĚNÁRIK, Š. et al. *Trestný poriadok: stručný komentár* [Criminal Proceedings Code: a Brief Commentary]. Bratislava: Iura edition, 2006, p. 24.

¹⁸ IVOR, J. et al. *Trestné právo procesné* [Substantive Criminal Law]. Bratislava: Iura edition, 2006, p. 38.

¹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe, European Treaty Series No. 5 [1950]. Rome, 4 November 1950. See, for example: GRABENWARTER, CH. *European Convention on Human Rights: Commentary*. München: C. H. Beck, 2014; SCHABAS, W. A. *The European Convention on Human Rights: a Commentary*. Oxford: Oxford University Press, 2015.

²⁰ Zákon č. 460/1992 Zb., Ústava Slovenskej republiky, v znení neskorších predpisov [Constitution of the Slovak Republic No. 40/1992 Zb., as amended by later legislation]. See, for example: DRGONEC, J. *Ústava Slovenskej republiky: komentár* [Constitution of the Slovak Republic: a Commentary]. 2nd ed. Bratislava: C. H. Beck, 2019; see also: BARANÍK, K. *Ústava na hviezdnom nebi: vzt'ah Ústavy Slovenskej republiky k medzinárodnému právu* [Constitution in the Starry Sky: the Relationship of the Constitution of the Slovak Republic to International Law]. Prague: Leges, 2020.

example, the right to a fair trial is the most important principle of criminal proceedings. The reason for criminal prosecution can only be a justified suspicion of the commission of a criminal offence, while the procedure established by the Criminal Proceedings Code shall be followed.²¹ This principle procedurally complements the substantive law principle “*nullum crimen sine lege*”, which represents the *principle of legality in criminal law*. As for its relationship to the objective of the criminal proceedings, it should be emphasised that the interest in ascertaining the facts must not be superior to the *principle of the legal process*, as this could lead to an effort to find out the truth for “each price”.

On top of that, international instruments and instruments of the European Union were also highlighted as relevant measures in criminal proceedings, for example:²²

- the European Convention on Extradition of 1957,²³ including its Additional Protocol of 1975,²⁴
- the Convention on a Simplified Extradition Procedure between the Member States of the European Union of 1995,²⁵
- the Convention relating to extradition between the Member States of the European Union of 1996,²⁶
- the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000,²⁷
- the Convention implementing the Schengen Agreement of 2000,²⁸
- the Framework Decision 2002/465/JHA on joint investigation teams of 2002,²⁹ and
- the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States of 2002.³⁰

²¹ BLAŽEK, R. Rekodifikácia Trestného poriadku – zmeny v zásadách dokazovania [Recodification of the Criminal Proceedings Code – Amendments in the Principles of Evidence]. *Justičná revue*. 2007, Vol. 60, No. 5, pp. 613–621.

²² See, for example: KLIMEK, L. *Základy trestného práva Európskej únie* [Fundamentals of the European Union Criminal Law]. Bratislava: Wolters Kluwer, 2017.

²³ European Convention on Extradition. Council of Europe, European Treaty Series No. 24 [1957], Paris, 13 December 1957.

²⁴ Additional Protocol to the European Convention on Extradition. Council of Europe, European Treaty Series No. 86 [1975], Strasbourg, 15 October 1975.

²⁵ Convention drawn up on the Basis of Article K.3 of the Treaty on European Union on a Simplified Extradition Procedure between the Member States of the European Union. Official Journal of the European Communities, C 78/2 of 30 March 1995.

²⁶ Convention drawn up on the Basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union. Official Journal of the European Communities, C 313/12 of 23 October 1996.

²⁷ Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union. Official Journal of European Communities, C 197/3 of 12 July 2000.

²⁸ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. Official Journal of the European Communities, C 239/19 of 22 September 2000.

²⁹ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams. Official Journal of the European Communities, L 162/1 of 20 June 2002.

³⁰ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Communities, L 190/1 of 18 July 2002.

It should be noted that adoption of another legislation was needed. For example, as seen, the *plea agreement* was introduced. Its basic provisions are regulated by the Criminal Proceedings Code No. 301/2005 Zb., but special “executive” provisions were needed. Indeed, the Decree No. 619/2005 Zb., on the Conditions and Procedure of the Prosecutor in the Proceedings on the Plea Agreement and Acceptance of Punishment,³¹ was adopted. These laws established the legal basis for real application of the plea agreements in Slovak national criminal proceedings. It should be noted that its introduction was questioned. For example, *Prokeinová* argued that the imposition of the type and amount of punishment should not be based on agreement.³² *Šramel* argues that negotiated justice is associated with the common law system and he is the opinion that it should remain there.³³ *Kolesár* argued that although the Slovak legal experts generally accepted plea agreements positively, the public does not perceive such trade with justice positively.³⁴ On the other hand, the practice reveals that in many cases a plea agreement is successful instrument of criminal proceedings.

3. NECESSARY IMPROVEMENT OF CRIMINAL PROCEEDINGS: ELECTRONIC MONITORING OF PERSONS

Some modern issues of criminal proceedings were missing. For example, the recodification of Slovak criminal law in 2005 introduced house arrest as alternative punishment, but without its modern aspect – electronic monitoring of concerned person.

The implementation of the electronic monitoring of persons in the Slovak Republic was a challenging task for the Ministry of Justice of the Slovak Republic. It started in 2013 when the Ministry of Justice launched the project entitled “*Electronic Personnel Monitoring System*” (Slovak – *Elektronický systém monitorovania osôb*, also known as ESMO). As a result, in 2015, the Slovak Republic adopted the *Act No. 78/2015 Zb., on Control of the Enforcement of Certain Decisions by Technical Instruments*. The Act entered into force on 1 July 2015, but the real application of the system launched in the following years.³⁵ The objective of the project was to implement the former intentions of criminal law recodifications of 2005, which introduced the system of control by technical means into the legal system of the Slovak Republic from 1 January 2006 as regards

³¹ Vyhláška Ministerstva spravodlivosti Slovenskej republiky z 20. decembra 2005 619/2005 Z. z., o podmienkach a postupe prokurátora pri konaní o dohode o uznaní viny a prijatí trestu [Decree of the Ministry of Justice of the Slovak Republic of 20 December 2005 No. 619/2005 Zb., on the Conditions and Procedure of the Prosecutor in the Proceedings on the Plea Agreement and Acceptance of Punishment].

³² PROKEINOVÁ, G. *Odklony v trestnom konaní* [Deviations in Criminal Proceedings]. Bratislava: Faculty of Law of the Comenius University, 2007, p. 61.

³³ ŠRAMEL, B. Dohoda o vine a treste vo svetle angloamerického “plea bargaining” [Agreement on Guilt and Punishment in the Light of the Angloamerican Process of Plea Bargaining]. *Právnik*. 2014, Vol. 153, No. 2, pp. 160–172.

³⁴ KOLESÁR, J. Dohoda o vine a treste – strašiak spravodlivosti? [A Plea Agreement – a Bogyman of Justice?]. *Bulletin slovenskej advokácie*. 2009, Vol. 16, No. 1–2, pp. 3–6.

³⁵ Details see, for example: KLÁTIK J. – KLÍMEK L. Implementation of Electronic Monitoring of Sentenced Persons in the Slovak Republic. *Sociopolitical Sciences*. 2020, No. 5, pp. 59–75; KLÁTIK, J. – KLÍMEK, L. Electronic Monitoring of Sentenced Persons in Slovak Legal Practice. *Sociopolitical Sciences*. 2020, No. 6, pp. 13–30.

to house arrest as alternative punishment. The project was focused on new legislation applicable in legal practice to establish an operational centre for electronic monitoring of persons as well as new technology (technologies). Last, but not least, it was focused on an integrated information system, which in practice would guarantee the work of probation and mediation officers more efficiently.

In addition to the abovementioned objective of the project, four specific objectives were defined within its implementation:

- to introduce an electronic service of the Ministry of Justice of the Slovak Republic, which would secure citizens;
- to build an integrated information system for the mediation and probation service, which would enable its employees (mediation and probation officers) to effectively perform their work, for example, to monitor concerned persons, to work with information, and its exchange with other bodies/agencies that co-operate with mediation and probation service – namely law enforcement authorities, courts and the Prison and Court Guard Service;
- to publish information on electronic services increasing the security of citizens; and
- to introduce electronic monitoring when imposing alternatives to a custodial sentence (imprisonment) or appropriate restrictions.

The project was designed primarily for *criminal law* purposes. In addition, its scope also covered *civil law* aspects. On the one hand, as regards criminal law, electronic monitoring was primarily focused on the control of concerned persons in the case of house arrest, etc.³⁶ On the other hand, as regards civil law, its use was focused on the protection of victims of domestic violence in case of special measures during civil proceedings, namely the ban on entering the dwelling and the prohibition of approaching the designated person.

The main reason for the implementation of electronic monitoring was the rapid increase of the number of accused and sentenced persons in the Slovak Republic over last 20 years. In a factual point of view, the introduction and implementation of the project was needed due to following reasons:

- an almost complete absence of electronic services within public security;
- imposition of alternative sanctions was rare; and
- a lack of places in prisons in the Slovak Republic.

In 2013, the Minister of Justice appointed members of a Working Group to prepare the legislation necessary for the implementation of the project. The working group included leading academic experts, representatives of courts the prosecution office, the Police Force of the Slovak Republic, advocacy, and the Ministry of Justice of the Slovak

³⁶ FERENČÍKOVÁ, S. Kriminologické a technické aspekty vybraných druhov monitoringu a možnosti ich uplatnenia [Criminological and Technical Aspects of Selected Types of Monitoring and Possibilities of Their Application]. In: ROMŽA, S. (ed.). *III. Košické dni trestného práva: kriminologické a organizačno-technické aspekty privatizácie trestného práva: zborník príspevkov z konferencie* [Košice Days of Criminal Law: Criminological and Organisational-Technical Aspects of Privatisation of Criminal Law: Conference Proceedings]. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2019, pp. 173–187; FERENČÍKOVÁ, S. Možnosti využitia technických prostriedkov pri výkone detencie [Possibilities of Application of Technical Means in Execution of Detention]. In: JÚDA, V. – ŠOLTYS, D. (eds.). *Nové horizonty v práve 2019* [New Horizons in Law, 2019]. Banská Bystrica: Belianum, 2019, pp. 301–315; FERENČÍKOVÁ, S. – MICHALOV, L. Criminal and Technical Aspects of the Imposition and Execution of a Home Prison Penalty in the Slovak Republic. *European Integration Studies*. 2019, Vol. 13, No. 1, pp. 122–130.

Republic. Moreover, also the Czech Republic, which had implemented such a system, provided co-ordination, and support the Slovak Republic.

The time schedule of the project consisted of, first, the *test phase*, which was launched in May 2015 and, second, the *pilot phase*, which began in July 2015. The project was completed and prepared for proper operation on 30 September 2015.

The launch of the project was co-financed by the European Union from the funds of the European Regional Development Fund³⁷ through the Operational Program Informatisation of Society. It was one of the most important projects in the history of the Slovak Republic as regards investments in criminal justice.³⁸

The Act No. 78/2015 Zb., on Control of the Enforcement of Certain Decisions by Technical Instruments, regulates the technical instruments and the conditions for their use in controlling the execution of certain selected types of decisions in criminal matters in criminal proceedings. As regards use of technical instruments in the case of the execution of a custodial sentence, at the place of imprisonment for the purpose of control of convicted persons shall be applicable the Act No. 475/2005 Zb., on the Enforcement of the Custodial Sentence. However, the provisions of Act No. 78/2015 Zb., on Control of the Enforcement of Certain Decisions by Technical Instruments, when using the technical instruments in this context, shall be used *appropriately*.

The objective of the Act No. 78/2015 Zb., on Control of the Enforcement of Certain Decisions by Technical Instruments, is to create the legal conditions for the effective application of the control of execution of certain selected decisions – in particular judicial decisions adopted by the courts – by technical instruments.³⁹ Such technical instruments should improve the use of alternative sanctions or alternative criminal proceedings. The preparation of the draft version of the Act was focused as well, among others, on the redefinition of probation in the Slovak Republic, a new understanding of the house arrest as a criminal sentence, and it introduced the possibility of turning the remaining portion of a prison sentence into house arrest.

Adoption of the Act No. 78/2015 Zb., on Control of the Enforcement of Certain Decisions by Technical Instruments, had an impact on Slovak national legal order. Besides its adoption, several relevant laws were amended, in particular, the Criminal Procedure Code No. 301/2005 Zb.⁴⁰

³⁷ The European Regional Development Fund aims to strengthen economic and social cohesion in the European Union by correcting imbalances between its regions. It focuses its investments on several key priority areas. This is known as “thematic concentration”, namely Innovation and research; The digital agenda; Support for small and medium-sized enterprises (SMEs); The low-carbon economy. See: European Regional Development Fund. In: *European Commission: EU regional and urban development* [online]. [cit. 2023-05-23]. Available at: https://ec.europa.eu/regional_policy/en/funding/erdf/.

³⁸ VROBELOVÁ, Ľ. Elektronický systém monitoringu osôb (ESMO) – zavádzanie moderných metód do slovenského väzenstva [Electronic Personnel Monitoring System (EPMS) – Implementation of Modern Methods into Slovak Prison System]. In: STRÉMY, T. (ed.). *Restoratívna justícia a alternatívne tresty v teoretických súvislostiach* [Restorative Justice and Alternative Punishments in Theoretical Perspective]. Prague: Leges, 2014, pp. 309–318.

³⁹ Article 1(1) of the Act No. 78/2015 Zb., on Control of the Enforcement of Certain Decisions by Technical Instruments.

⁴⁰ Details see, for example: KLÁTIK – KLIMEK, *Implementation of Electronic Monitoring of Sentenced Persons in the Slovak Republic*; KLÁTIK – KLIMEK, *Electronic Monitoring of Sentenced Persons in Slovak Legal Practice*.

CONCLUSION

In 2000, the Government of the Slovak Republic approved the legislative intention to recodify former *Criminal Code* and former *Criminal Proceedings Code* of 1961. The National Council of the Slovak Republic (Slovak Parliament) on 24 May 2004 adopted a new Criminal Proceedings Code No. 301/2005 Zb., which entered into force on 1 January 2006.

Criminal proceedings in the Slovak Republic was “redesigned”. The legislature primarily emphasises its formal aspect. The subject matter of the Criminal Proceedings Code is closely related to the Criminal Code. Their interrelation lies in the fact that the Criminal Proceedings Code regulates the basic rules for the procedure of state authorities and other subjects of criminal proceedings, namely in deriving the criminal responsibility of perpetrators for committed criminal offences. This means that the Criminal Code and the Criminal Proceedings Code are interlinked.

Slovak criminal proceedings in the light of the Criminal Proceedings Code No. 301/2005 Zb. recognises and respects democratic principles of criminal procedure, as stated in international treaties, which have been ratified and declared in the manner established by law, for example, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its protocols, as well as in the Constitution of the Slovak Republic. On top of that, international instruments and instruments of the European Union were also highlighted as relevant measures in criminal proceedings.

Some modern issues of criminal proceedings were missing. For example, the recodification of Slovak criminal law of 2005 introduced house arrest as an alternative punishment, but without its modern aspect – electronic monitoring of concerned person. The implementation of the electronic monitoring of persons in the Slovak Republic was a challenging task. It started in 2013 when the Ministry of Justice launched the project entitled “*Electronic Personnel Monitoring System*”. As a result, in 2015, the Slovak Republic adopted the Act No. 78/2015 Zb., on Control of the Enforcement of Certain Decisions by Technical Instruments, which entered into force on 1 July 2015, but the real application of the system launched in the following years.

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