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Historical Development of Interception Legislation in the Slovak Republik

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Historical Development of Interception Legislation in the Slovak Republic

In the period before 1989 interception was not regulated by any legislative enactment in the Slovak Republic. Employees of the Ministry of Interior carried out interception tasks by "intelligence service technology", based on internal normative acts. Such internal normative acts were secret and made available only to a limited number of individuals. Interception was not performed in conformity with any law, and its results could not be used as evidence in criminal proceedings[1]. Interception legislation was introduced only in the post-1989 period.

Historical Development of Interception Legislation in Criminal Proceedings

The development of interception legislation was influenced by social, political, and economic changes in Slovakia and also by changes in its legal system. In the context of these changes shaping the transformation of Slovakia to a democratic society respecting fundamental rights and freedoms, however, some negative effects occurred, as well. The negative impact in the area of criminal law was connected with the new forms of criminal activities, organized crime and penetration of international organized crime into the country. Legislators responded to this situation by introducing the new institutes of law. One of them was "telephone interception", that was first defined in § 88 of Act 178/1990 Zb., amending the Code of Criminal Procedure (hereinafter: Act 178/1990), entering into effect on 1 July 1990[2].

[1] For details see D. Povolný, Operatívní technika v rukou StB, Praha, [online] <www.mvcr.cz/udv/cystavy/vystava 1/1 odp.html>, (quoted 2012-08-18).

[2] T. Sokol, *Odposlech*, „Státní zastupitelství" 2008, VI, č. 10, p. 16.

Legal requirements of telephone inteception included the following:

a) instigation of criminal prosecution,

b) specifying the extent of criminal acts,

c) special regime for granting interception orders,

d) determination of the time limit for lawful telephone interception,

e) fact-finding significant for the prosecution.

Under the provisions of § 88 (1) of Act 178/1990, telephone interception was possible subject to the instigation of criminal prosecution. Under the then legislation, instigation of criminal prosecution was the funadamental condition for taking evidence in compliance with Title Five of the Code of Criminal Procedure. It needs to be noted here that telephone wiretapping was not a lawful procedure before the instigation of criminal prosecution.

Another stipulation concerning interception was the limited scope of criminal offences defined as especially serious intentional crimes (§ 41(2) of the Criminal Code) or other criminal ofences in which prosecution was required by a promulgated international treaty. Under § 88 (3) of Act 178/1990, telephone interception was lawful also in other criminal offences, provided that the telephone subscriber consented, and that criminal proceedings were already being conducte for such other criminal offence.

Telephone interception could be ordered by the presiding judge, and during preliminary proceedings, by the prosecutor. Under the provisions of § 88 (3) of Act 178/1990, telephone interception could be ordered by the bodies active in criminal proceedings[3] only with the consent of the subscriber of the intercepted telephone line in case of criminal offences other than those stipulated in § 88 (1).

The provisions of § 88 (2) of Act 178/1990 specified the particulars of a written order to intercept telephone communications, namely: written form, justification, determining the time limit for interception (with the duration not precisely specified by the Act). The interception was secured by the national police (called the National Security Corps). The mandatory condition of a telephone interception order was the existence of reasonable cause for establishing the facts significant for the criminal proceedings. Under the Code of Criminal Procedure interception of telephone communications between the defence counsel and the accused person was not permitted.

Using the record of intercepted telephone communication as a piece of evidence was subject to several conditions laid down in the Act. A report was required containing the information of the place, time, legal grounds and contents of the record, and the record provider.

The provisions of § 88 were amended by **Act 558/1991 Zb. amending the Code of Criminal Procedure and the Act on the protection of**

[3] The bodies active in criminal proceedings defined by § 12 (1) of Act 178/1990 included the court, the prosecutor, the investigator and the police.

state secrets (hereinafter: Act 558/1991), entering into effect on 1 January 1992. The Act expressly excluded interception of telephone communications between the defence counsel and the accused as inadmissible. The Act introduced the duty to inform the organization in charge of the telecommunications network operation in the district in which the interception was to be effected, of the order and the time limit for interception. Iterception was made by a police authority.

Lawful interception under § 88 was further amended by **Act 247/1994 Z.z., amending the Code of Criminal Procedure** (hereinafter: Act 247/1994), entering into effect on 1 October 1994.

This amendment brought several changes to § 88 of the Code of Criminal Procedure. First of all the range of interception was extended also to other forms of telecommunications services in addition to telephone interception, e.g. to telefax services. Legislatively this change found its reflection in changing this institute into "intercepting and recording telecommucations operation"; and accordingly, the term "interception of telephone communications" formerly used in § 88 of the Criminal Code was replaced by "interception and recording of telecommunications operation".

At the same time, the provisions of 88 (1) extended the range of criminal offences in which interception was permissible in criminal proceedings. More specifically, in § 88 (1) a reference was made in footnote No. 2 to § 2 to **Act of the National Council of the Slovak Republic No. 249/1994 Z.z. on combating legalization of the proceeds of most serious crime, organized crime, in particular, and amending some other laws** (hereinafter: Act 249/1994)[4].

In relation to changes in § 88 (1) of the Code of Criminal Procedure, the term "criminal prosecution" was replaced by the term "criminal proceedings".

Another change stipulated by Act 247/1994 limited lawful interception and recording telecommunications operation by the term of not more than six months. This time limit could be extended by another six months by the presiding judge of a panel, and in case of preliminary proceedings, by the prosecutor.

By a further change it was possible to order and to effect interception and recording of private communications in criminal offences other than those defined in § 88 (1) by a body active in criminal proceedings (with the consent of the telephone subscriber).

Act 247/1994 also stipulated the conditions of lawful use of the recording as evidence in criminal matters other than those for which the interception

[4] Under § 2 (1) of Act 249/1994, the Act was applicable in cases serving to prevent, detect and penalize the conduct of individuals or legal entities intending to legalize the proceeds of crimes defined in para. 2 and other crimes, where the value of the subject matter of such legalization was very high and it was intended or used for the purpose of committing a crime.

was ordered. It was admissible where the criminal proceedings were conducted also in the criminal matter for an offence defined in § 88 (1) of the Code of Criminal Procedure, or where the subscriber of the intercepted telephone line so agreed.

At the same time, this Act also provided for the conditions under which the record of intercepted communication was to be destroyed. Such procedure applied to cases where the interception and recording did not produce any facts relevant to the ctriminal proceedings. The recording so obtained was to be destroyed in accordance with the shredding regulations binding on the relevant body active in the criminal proceeding.

By Act 272/1999 Z.z. amending Act 141/1961 Zb. governing criminal procedure (the Code of Criminal Procedure) as amended, entering into effect on 1 November 1999, the provisions of § 88 (4) were reformulated as for the person making the report.

The provisions of § 88 of the Criminal Code were also amended by **Act 366/2000 Z.z., amending Act 141/1961 Zb. on criminal proceedings (the Code of Criminal Procedure) as amended** (hereinafter: Act 366/2000), entering into effect on 3 November 2000.

Generally it may be mentioned that one of the reasons for amending the Code of Criminal Procedure was the adoption of Act No. 367/2000 Z.z. on the protection against legalization of the proceeds of crime, amending also some other laws (hereinafter: Act 367/2000), entering into effect on 1 January 2001. This Act repealed the provisions of § 2 of Act 249/1994 listing the criminal offences in which the bodies active in the criminal proceedings could apply some of the institutes defined in the Code of Criminal Procedure in detecting crime and prosecuting the offenders. Interception and recording of telecommunications operation was one of such institutes. As of the effective date of Act 367/200, the application of interception and recording of relecommunictions operation by the bodies active in criminal roceedings could be limited because Act 367/2000 did not contain any provisions similar to those of § 2 of Act 249/1994. Therefore, this institute was restated by Act 366/2000[5], which also extended the list of criminal offences in which interception and recording of telecommunications operation could be ordered, more specifically, e.g. in cases of corruption and abuse of power by public official (under § 158 of the Criminal Code).

These changes also concerned the entity entitled to issue an order to intercept and record telecommunications operation. In case of the procedure under § 88 (1) of the Code of Criminal Procedure such order could be issued by the judge, or the presiding judge of a panel, and in preliminary proceedings, the judge on the prosecutor's proposal.

[5] P. Štift, *Posledná novela Trestného poriadku – zákon è. 366/2000 Z. z.*, „Justičná revue" 2001 (53), č. 1, p. 54.

From the legislative point of view, it may be noted that this enactment was marked by legislative inconsistencies. More specifically, as of 3 November 2000, when Act 366/2000 came into effect, the prosecutor lost the authority to issue orders to intercept and record telecommunications operation under § 88 (1) of the Code of Criminal Procedure. On the other hand, however, the prosecutor could order interception and recording of telecommunications operation with the consent of the subscriber of the telephone line under interception or recording surveillance (§ 88 (3) of the Code of Criminal Procedure).

This legislation was not in agreement with the case law of the European Court of Human Rights, under which interception of communications with the consent of the subscriber of the intercepted telephone line without a court order was in conflict with the Convention[6].

Another change introduced by Act 366/2000 concerned justification of the order to intercept and record telecommunications operation. Reasons needed to be given for each telephone line, and the order was required to specify the person to which the order applied. Such orders were considered classified documents containing matters of state secret. This legislative eneactment emphasized the need to secure secrecy in cases of interception and recording of telecommunications operation in conformity with Act of the National Coucil of the Slovak Republic No. 100/1996 Z.z. on the protection of state secrets, service secrets, cryptographic security of information, and amending the Criminal Code, as amended. By reasons of ensuring efficiency of this institute and its secrecy, the results of interception could be lawfully used only after all the technical measures securing interception and recording of telecommunications operation have been accomplished.

Under Act 366/2000, the conditions for recording the telecommunications operation to be used as evidence in criminal proceedings were more precisely defined. A written report was required to be attached together with the information concerning the place, time and legal ground of interception. Verbatime record of the telecommunication message, which was not kept confidential, was included into the files of the case. This report was signed by the authority that made the record. As assessed by expert literature concerning the Amended Code of Criminal Procedure, the list of the means of evidence was supplemented by the conditions under which evidence could be obtained in a lawful manner. It was only with this Act, that "the fruits from the poisonous tree doctrine" known from the Anglo-American legal system[7] was introduced into our legal system.

[6] See A. v. France of 23 November 1993 and M.M. v. the Netherlands of 8 April 2003 as appropriate.

[7] I. Ivor, *Obrazovo zvukový záznam ako dôkazný prostriedok v trestnom konaní*, [in:] *Zborník príspevkov z celoštátnej konferencie s medzinárodnou súèasťou Teoretické a praktické problémy dokazovania konanej dňa 15.12.2008*, Bratislavská vysoká škola práva, Bratislava 2008, p. 71. See § 88 (4) of Act 336/2000 and § 89 (2) of Act 422/2002.

At the same time, the Code of Criminal Procedure specified in greater detail the conditions in relation to the entity carrying out interception and recording of telecommunication activities as the relevant body of the Police Corps (Office of the Cirminal and Financial Police Administration of the Presidium of the Police Corps).

The provisions of § 88 of the Code of Criminal Procedure further then amended by **Act No. 422/2002 Z.z., amending Act No. 141/1961 Zb. on criminal proceedings (the Code of Criminal Procedure), as amended, amending some other laws** (hereinafter: Act 422/2002), entering into effect on 1 October 2002.

Act 422/2002, § 12 (13) of the Code of Criminal Procedure laid down "in intercepting and recording telecommunication activities, the means of information technology used for the purposes of criminal proceedings shall mean electronic, radiotechnical, phototechnical, optical, mechanical, chemical and other technical devices and equipment or their sets used in a covert manner". This was for the first time that the lawful operative technology was defined that could be used as a means of evidence in criminal proceedings (§ 89 (2) of the Code of Criminal Procedure)[8].

By Act 422/2002 the term "telecommunications operation" was changed to "telecommuniactions activities". Under § 2 of Act 195/2000 Z.z. on telecommunications telecommunication activities mean "establishing and operating telecommunications equipment, establishing and operating telecommunications network and providing telecommunications services".

A significant change resulting from Act 422/2002 was that an order to intercept and record telecommunications activities could be issued already before the instigation of criminal prosecution. In this context, it may be noted that this legislative enactment did way with with the differing views as for the application of § 88 (1) of the Code of Criminal Procedure which was inconsistent with § 88 (2) of the Code of Criminal Procedure[9].

In essence the problem rested in the fact that the provisions of § 88 (1) of the former Code of Criminal Procedure provided for the application of this institute in full throughout the entire criminal proceedings. On the other hand, the úprovisions of § 88 (2) of the Code of Criminal Procedure authorized the prosecutor to propose to the judge to issue the order to intercept and record the telecommunications operation only during preliminary proceedings (and not throughout the entire criminal proceedings). Other reasons for impossible application of the procedure under § 88 (1) of the Code of Criminal Procedure throughout the entire criminal proceedings (thus also

[8] J. Ivor, *Moderné dôkazné prostriedky odhaľovania a dokumentovania kriminality*, „Karlovarská právní revue" 2010 (6), č. 4, p. 66.

[9] Cf. for example: E. Valko, M. Timcsák, *Odpočúvanie a záznam telefonických rozhovorov a otázky s tým súvisiace*, „Justičná revue" 2002 (54), č. 5, p. 46.

before before starting criminal prosecution), existed due to the provisions of § 158 and § 26 of the Code of Criminal Procedure.

Under § 158 (4) of the Code of Criminal Procedure "To verify the information concerning the facts that indicate the commission of a criminal offence and other motions for criminal prosecution, a prosecutor, an investigator and a police body shall secure the necessary materials and explanations, identify and secure the clues of criminal offences; however, they are not be entitled, before the instigation of criminal proceedings, to enagage in any acts defined under the Title Four and Title Five of the Code of Criminal Procedure except in cases of urgent or unrecurring acts or acts under § 113, 113a and 114". Interception and recording telecommunications operation[10] were not included among such acts.

In addition, reference should be made to the provisions of § 26 of the Code of Criminal Procedure defining jurisdiction of the courts and procedures within preliminary proceedings (however, not before the instigation of criminal prosecution). Due to legislative absence of court procedures before the commencement of criminal prosecution, the procedure under § 88 (1) of the Code of Criminal Procedure was, in fact, inapplicable in this stage of criminal proceedings.

On these grounds, the provisions of § 88 (2) of the Code of Criminal Procedure had to be changed by Act 422/2002 so that the order to intercept and record telecommunications activities could be issued in writing prior to criminal prosecution or during preliminary proceedings by a judge acting on a proposal by a prosecutor or, in the proceedings before the court, by a judge or by the presiding judge of a panel also in absence of such proposal.

Through this Act also the subject-matter jurisdiction in relation to the judge in criminal proceedings was established. Under § 26a of the Code of Criminal Procedure, the order to intercept and record telecommunications activities prior to the instigation of criminal prosecution and during the preliminary proceedings was within the juritsdiction of the relevant Regional Court or the Higher Military Court in the district within the jurisdiction of the prosecutor who made the relevant proposal. In addition, the Code of Criminal Procedure made it possible for the prosecutor to issue such order in urgent cases. The order issued by the prosecutor required confirmation by the judge within 24 hours, otherwise the order became void. The information obtained upon the order issued by the prosecutor but not confirmed by the judge was inadmissible as evidence in criminal proceedings and had to be destroyed without delay in the proescribed manner.

It may also be mentioned that under Act 422/2002, interception and recording of telecommunications activities between the defence counsel and

[10] Cf. for example: ibidem.

the accused were permissible under different circumstances. Generally, where it was found that during interception and recording of telecommunicationc activities the accused communicated with his/her defence counsel, the information obtained in this manner could not be used for the purposes of criminal proceedings and had to be destroyed without any delay. Such information could only be used in a different matter in which the defence counsel was not representing the accused[11]. Before applying this procedure, the body active in criminal proceedings had to make careful considerations on whether the conditions required by law were satisfied so that the information obtained in this manner could be used as evidence.

The next important change concerning § 88 of the Code of Criminal Procedure as a result of the effects of Act 422/2002 was that interception and recording of telecommunications activities were permissible with the consent of the subscriber of the intercepted or recorded telecommunications equipment.

Legislative provisions contained in the Code of Criminal Procedure before the adoption of Act 422/2002 (before 1 October 2002) allowed the body active in criminal proceedings (i.e. the prosecutor, investigator or the police body) to order, during preliminary proceedings, interception and recording of telecommunications operation with the consent of the subscriber of the intercepted or recorded telephone line if the criminal proceedings were held for the criminal offence not listed in § 88 (1) of the Code of Criminal Procedure.

Through Act 422/2002, the legal situation changed. For the purposes of promoting judicial supervision concerning respect for fundamental rights and freedoms, it was provided that in criminal proceedings conducted for intentional criminal offences other than those defined in § 88 (1) of the Code of Criminal Procedure, the judge was authorized to issue, upon proposal by the prosecutor, (before instigation of criminal prosecution and during preliminary proceedings), an order to intercept and record telecommunications ativities. This procedure was possible only with the consent of the subsctiber of the intercepted and recorded telecommunications equipment. In the proceedings before the court, the judge or the presiding judge in a panel could issue such order also in absence of such proposal[12]. By this change, the Slovak legislation became harmonized with the case law of the European Court of Human Rights[13].

Interception and recording of telecommunications activities as such were carried out by the relevant body of the Police Corps (hereinafter the "relevant police autority"), for the purposes of all bodies active in criminal proce-

[11] J. Čentéš, *Právna úprava odpočúvania a záznamu telekomunikačných činností po novele Trestného poriadku*, „Justičná revue" 2003 (55), č. 2, p. 174.

[12] See § 88 (1) of the Code of Criminal Procedure.

[13] See A. v. France of 23. November 1993 and M.M. v. the Netherlands of 8 April 2003.

edings. The Code of Criminal Procedure imposed on the relevant police authority the duty to continuously review the grounds for issuing the order to intercept and record telecommunication activities under § 88 of the Code of Criminal Procedure. Where such grounds ceased to exist, interception and recording of telecommunication activities had to be discontinued, also before the expiry of the set time limit. The relevant police authority had to notify this fact to the entity which issued the order to intercept and record telecommunication activities.

From the point of view of the changes in § 88 of the Code of Criminal Procedure resulting from Act 422/2002, it is also important that interception and recording of telecommunications activities could be used as evidence in another criminal case only if the criminal proceedings were conducted for a criminal offence defined in § 88 (1) of the Code of Criminal Procedure. It was possible to use evidence in such other case after a criminal offence was reported or found by the police authority, the inverstigator of the Police Corps or the prosecutor. For the purpose of using the recording of telecommunicatios activities as evidence in another criminal case, its written record and the information concerning the place, time and legal grounds of interception was required to be attached.

The legislative enactment governing the use of recording telecommunications activities as evidence brought by Act 422/2002 was in conformity with the nature and imporatance of the institute set forth in § 88 of the Code of Criminal Procedure.

In the interest of dealing with urgent matters it was provided that the prosecutor could issue the order to intercept and record telecommunications activities, provided the following cummulative conditions were met:

a) the procedure was necessary before instigating criminal prosecution,

b) the mater could not be delayed,

c) a prior written order by the judge could not be obtained,

d) interception and recording of telecommunications activities was not connected with entering into a dwelling.

Such order had to be confirmed by the judge within 24 hours otherwise it became void and the information so obtained could not be used for the purposes of criminal proceedings, but had to be destroyed without delay in the prescribed manner. In addition, it was also stipulated that the judge's approval was necessary where interception was carried out with the consent of the subscriber of the intercepted telephone line, as this interfered with fundamental rights and freedoms of the other person participating in the telephone conversation.

Moreover, Act 422/2002 imposed a duty on the authority in charge of the interception to review continuously the existence of legal grounds for which the order to intercept and record telecommunications activities was issued.

Where it was not the case, the authority was obligated to terminate interception.

The provisions of § 88 of the Code of Criminal Procedure were also amended by Act No. 457/2003 Z. z., amending Act No. 141/1961 Zb. on criminal proceedings (the Code of Criminal Procedure) as amended, and amending some other laws (hereinafter: Act 457/2003), entering into effect on 1 December 2003.

Current legislation of interception procedure in criminal proceedings

The conditions and the purpose of interception are set forth in the first sentence of § 115 (1) of the Code of Criminal Procedure: "In criminal proceedings in cases of felony, corruption, abuse of powers of a public official, legalization of the proceeds of crime, or in case of another intentional criminal offence in which criminal proceedings must be instigated as stipulated by an international treaty, an order to intercept and record telecommunications operation may be issued, where it may be reasonably expected that the facts significant for criminal proceedings could be found".

The above provisions of the Code of Criminal Procedure set the existence of legal conditions for the application of this institute as follows:

a) the existence of criminal proceedings,

b) the existence of a criminal offence being the subject-matter of the criminal proceedings,

c) reasonable cause to believe that the facts significant for the criminal proceedings may be found[14].

Under § 115 (5) of the Code of Criminal Procedure interception and recording of telecommunications operation is possible **for an intentional criminal offence other than** those specified in § 115 (1). The provisions of § 115 (5) may apply subject to the following cumulative conditions:

a) the existene of the criminal proceedings,

b) the existence of intentional criminal offence as the subject-matter of the criminal proceedings,

c) reasonable cause to believe that some facts significant facts may be found,

d) consent of the user of the intercepted or recorded telecomuminications equipment.

The Code of Criminal Procedure lays down as the first condition for the application of this institute the **existence of criminal proceedings**, defi-

[14] J. Čentéš, a kol., *Trestný poriadok s komentárom*, Eurokódex, „Poradca podnikateľa" 2006, p. 215.

ned by § 10 (15) of the Code of Criminal Procedure, i.e. the proceeding as the most general term meaning the entire proceedings regulated by the Code of Criminal Procedure. In regard of its fundamental nature, interception may be considered mainly in pre-judicial proceedings (procedures before the instigation of criminal prosecution, preliminary proceedings).

The other condition for the application of this institute is **the existence of criminal offence** as the subject-matter of criminal proceedings. The Code of Criminal Procedure deals with ths conditions in two ways: by taxative listing of criminal offences stipulated in the Code of Criminal Procedure (felony, corruption, abuse of power by a public official, legalization of the proceeds of crime), and by reference to international agreements. Interception is permissible in such cases, but it does not apply to all types of criminal offences. Criminal negligence is excluded from such offences.

The material condition for an interception order is the reasonable cause to believe that by intercepting telecommunications operation **the facts significant for criminal proceedings will be established.** These facts mean the facts defined especially in § 119 (1 a-c) of the Code of Criminal Procedure which are material for the criminal proceedings[15].

In the procedure under § 115 (5) of the Code of Criminal Procedure, compliance with the legal condition concerning the consent given by the user of the intercepted or recorded telecommunications equipment is stipulated. This is a specific application of this institute, as one the the parties to the telecommunicatios operation is aware of interception, and thus has an advantage over the other party. This is a sensistive issue, because in this manner, the method and the form of the use of information technology means are being disclosed. For these reasons, a possible use of such interception requires extraordinary considerations.

Under the Code of Criminal Procedure it is excluded to use the results of intercepted telephone communications between the accused and his/her defence counsel. This connected with the fact that there are specific relations between the defence counsel and the accused based on mutual trust. Therefore, the client may address the lawyer without any risks that his/her criminal activity will be reported. The contents of the communication between the defence counsel and the accused are to be kept secret between these two persons. The reason is obvious. The information concerns the criminal activity and the entire defense strategy.

Interception is conditioned by an order to intercept and record telecommunications operation. Such order is issued by the presiding judge in a pa-

[15] Under § 119 (1) of the Code of criminal Procedure "The facts to be proved in criminal proceedings include, in particular a) whether the offence ocurred and whather the act contains the elements of a criminal offence, b) who committed the offence and on what motives, c) seriousness of the offence including the reasons and conditions of its commission".

nel before the instigation of the criminal prosecution, or in preliminary proceedings by the judge in charge of the preliminary proceedings acting upon the prosecutor's proposal. In maters of urgency, where the prior order cannot be obtained from the judge, such order may be issued before the instigation of criminal prosecution or during preliminary proceedings by the prosecutor, provided that such interception is not related with entering into a dwelling. The order by the prosecutor must be confirmed by the judge in charge of preliminary proceedings within 24 hours, otherwise the order becomes void, and the information so obtained may not be used for the purposes of the criminal proceedings and must be destroyed without delay in the prescribed manner. In practice this power is rarely used by prosecutors.

Conclusion

Interception by a public authority represents a serious limitation of fundamental rights and freedoms of individuals, particularly the right to privacy. Limitation of such rights must respect the values generating the concept of the rule of law. Where any fundamental rights and freedoms are in conflict with the public interest, or with other fundamental rights and freedoms, it is necessary to consider the purpose (aim) of interference as far as the means to be used concerns. The necessary preconditions in such cases include forseeability, reasonableness and proportionality of such intervention, especially with regard to the aim which should be achieved and to the scope of limitation of a fundamental right or freedom. When applying the provisions limiting fundamental rights and freedoms, the essence and reason must be considered to avoid any misuse for the purposes other than those for which they have been set. Alongside with the formal and material conditions of interference with privacy, the conditions adopted for the protection of this right must be complied with. Any failure to comply with such conditions will result in interference inconsistent with the international agreements on civil rights, the law of the European Union and the Constitution.

Summary

Historical Development of Interception Legislation in the Slovak Republic

Key words: basic rights and freedoms, the right to privacy, correspondence, conveyed messages, interception, interference.

Public intervention into the right to privacy is a subject of interest to experts and the general public as well. In recent years in the Slovak Republic the protection of correspondence and confidentiality of messages in relation to the interception has been a discussed issue. Eligible interception on the one hand represents a means to perform the tasks of the state to ensure the safety and elimination of security threats. The task is performed by the state at different levels-international, national, as well as in relation to individuals. On the other hand, interception means a significant interference with the fundamental rights and freedoms, notably the right to privacy, which is permissible within a fair balance between protecting the right to privacy and the public interest, which is serious enough to justify restrictions on that freedom. In view of these facts in the following text the attention is paid to the Historical Development of Interception Legislation in the Slovak Republic

Streszczenie

Rozwój historyczny prawa do prywatności w Republice Słowacji

Słowa kluczowe: podstawowe prawa i wolności, prawo do prywatności, korespondencja, poufność wiadomości, ingerencja w prawo do prywatności.

Ingerencja publiczna w prawo do prywatności jest przedmiotem zainteresowania doktryny, orzecznictwa, jak też opinii publicznej. W ostatnich latach na Słowacji poddano pod dyskusję kwestie dotyczące tajemnicy korespondencji i poufności przekazywanych wiadomości. Z jednej strony ingerencja w prawo do prywatności stanowi niewątpliwie środek służący wypełnianiu podstawowych funkcji przez państwo tj. ma na celu zapewnienie bezpieczeństwa i eliminację zagrożeń. To zadanie jest realizowane na różnych szczeblach: międzynarodowym, krajowym i w odniesieniu do poszczególnych jednostek. Z drugiej strony przedmiotowa ingerencją pozostaje w kolizji fundamentalnymi prawami i wolnościami, a w szczególności z prawem do prywatności. Ingerencja państwa w tę sferę jest możliwa tylko w ramach

sprawiedliwej równowagi pomiędzy ochroną prawa do prywatności a interesem publicznym, którego istotne zagrożenie usprawiedliwia nakładane na jednostki ograniczenia. Niniejszy artykuł, mając na względzie doniosłość i aktualność tej problematyki, naświetla rys historyczny przepisów prawnych zezwalających na ingerencję państwa w prawo do prywatności.