


## Reform Forum Note

# LEGISLATIVE DEVELOPMENT OF CRIMINAL PROCEEDINGS AND EVIDENCE IN THE SLOVAK REPUBLIC (1993-2021)

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**Summary:** – 1. Introduction. – 2. Legislative Development of Criminal Proceedings and Evidence in the Slovak Republic. – 3. The Slovak Republic After the Recodification of Criminal Law (From 1 January 2006). – 4. Information and Technical Means. – 5. Concluding Remarks.

**Keywords:** criminal proceedings, evidence, means of evidence, information and technical means, information technology.

## ABSTRACT

**Background:** In this article, the author focuses on the legislative development of criminal proceedings and evidence after the establishment of the Slovak Republic. This article pays special attention to the issue of evidence and means of proof. It also deals separately with the legal regulation of using information and technical means. It briefly suggests possible directions of development in the field of evidence, reflecting the current state of development of science and technology, as well as changes in the security situation.

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**Methods:** The scientific methods of historical analysis and legal comparison were used to process the research data.

**Results and Conclusions:** Developments in this area are constantly advancing, and the area of evidence in criminal proceedings in the Slovak Republic will inevitably be subject to updating.

## 1 INTRODUCTION

With the establishment of the independent Slovak Republic, the legislative regulation of criminal procedural law valid in Czechoslovakia was taken over on 1 January 1993. Specifically, Act no. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) was amended.<sup>2</sup> This legislation then underwent additional amendments several times.

## 2 LEGISLATIVE DEVELOPMENT OF CRIMINAL PROCEEDINGS AND EVIDENCE IN THE SLOVAK REPUBLIC

In accordance with the focus of our article, it is necessary to mention the amendment made by Act no. 247/1994 Coll. amending the Criminal Procedure Code with effect from 1 October 1994.<sup>3</sup> This amendment introduces significant changes to the legal order of the Slovak Republic – one might even say these changes are groundbreaking.

The first change we will mention is the new regulation of the definition of bodies active in criminal proceedings, where ‘search authorities’ are replaced by the term ‘police body’, and these are defined in S. 12(2) as follows:

“Police authorities” means the authorized bodies of the Police Force. The authorized bodies of the Military Police have the same status in proceedings on criminal offenses of members of the armed forces, in proceedings on criminal offenses of members of the Prison and Judicial Guard Corps of the Slovak Republic and on criminal offenses of persons serving a custodial sentence or bodies of this Force authorized in prisons, criminal offenses of members of the Railway Police of the Slovak Republic and on criminal offenses committed in the area of railways and sidings authorized by the bodies of the Railway Police of the Slovak Republic, customs authorities, in case of criminal offenses committed in connection with customs violations, and captains of long-distance ships engaged in criminal proceedings relating to crimes committed on those ships.

The amended wording of S. 88 with the new title ‘Eavesdropping’ and recording of telecommunication traffic also contains fundamental changes. In the interest of a more effective guarantee of the fundamental human rights and freedoms that were interfered with by this instrument, the legislator stipulates the period of interception of six months, as specified in para. 2 of the Section.

The fourth chapter of the Criminal Procedure Code is supplemented by Chapter 7, S. 88a, entitled ‘Controlled Delivery’ and S. 88b, entitled ‘The Agent’. The amendment also changes

2 Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1961/141/20050415>> accessed 15 October 2021.

3 Act no 247/1994 Coll. amending Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1994/247/19941001>> accessed 15 October 2021.

the provisions of Chapter 5 of the Criminal Procedure Code (Evidence). The wording of S. 89(1) was newly conceived as follows:

- (1) In criminal proceedings, there must be proof of
  - a) whether an act that shows signs of a criminal offense has occurred,
  - b) whether the act was committed by the accused and on what motives,
  - c) the significant circumstances that affect the assessment of the danger of the act,
  - d) the essential circumstances for assessing the personal circumstances of the offender,
  - e) the material circumstances enabling the determination of the consequence and amount of damage caused by the criminal offense,
  - f) the circumstances which led to the crime or enabled it to be committed.

It is necessary to state that the legal definition of evidence in S. 89(2) of the Criminal Procedure Code. It underwent a substantial amendment, emphasising the aspect of the lawful acquisition of evidence. The exemplary calculation of evidence was extended as follows:

- (2) Evidence may be anything that can contribute to a proper clarification of the case and what has been lawfully obtained, in particular testimony of the accused, witnesses, experts, opinions and expert opinions, recognition, inspection, audio and video recording, things and documents important for criminal proceedings.

A new provision of S. 89(3) specifies that:

The fact that the evidence was not obtained by a law enforcement authority but was submitted by one of the parties is not a reason for its rejection. The costs of obtaining and securing such evidence shall be borne by the party submitting them in the proceedings.

In accordance with the focus of our contribution, it is necessary to mention one of the other amendments, namely Act no. 272/1999 Coll. amending Act no. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code), as subsequently amended.<sup>4</sup> The amendment in question, in the provision of S. 12(12), *inter alia*, introduces the definition of an agent as follows:

An agent is a member of the Police Force who, on the order of a competent law enforcement authority contributes to the detection, finding and conviction of perpetrators of crimes specified in a special law and crimes listed in Chapter 3 of Title III of a special part of the Criminal Code ("Corruption"); a person appointed by the Ministry of the Interior of the Slovak Republic may also be an agent in detecting, identifying and convicting perpetrators of corruption.

In this context, the original wording of S. 88b 'The Agent' has been replaced by a new wording.

The wording of the provisions of S. 12(12) of the Criminal Procedure Code was subsequently amended by Act no. 173/2000 Coll., inserting the words 'and in S. 158 of the Criminal Code' after the words 'crimes listed in Chapter 3 of Title III of the special part of the Criminal Code (*corruption*)'.<sup>5</sup>

4 Act no 272/1999 Coll. amending Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1999/272/19991101>> accessed 15 October 2021.

5 Act no 173/2000 Coll. amending Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1961/141/20050415>> accessed 15 October 2021.

In our opinion, the amendment implemented by Act no. 366/2000 Coll. amending Act no. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code), as subsequently amended,<sup>6</sup> was also relevant.

In S. 12(12) 'Definition of the Agent', the words 'criminal offenses specified in a special law<sup>2</sup> and criminal offenses listed in Chapter 3 of Title 3 of the special part of the Criminal Code (hereinafter referred to as the "Corruption") and in S. 158 of the Criminal Code' are replaced with the words 'particularly serious criminal offenses, corruption and a criminal offense pursuant to S. 158 of the Criminal Code'.

The wording of S. 88 and S. 88b. was also amended, which, after modifications, read as follows:

With regards to our goals of this Article, the Act no. 422/2002 Coll. amending the Act no. 141/1961 Coll. on Criminal Procedure (*Criminal Procedure Code*), as subsequently amended, and on changes and amendments to certain acts with effect from 01/10/2002 meant another significant change.<sup>7</sup>

For the first time in the history of the Slovak Republic, a definition of information-technical means and means of operational-search activity is incorporated into the wording of the Criminal Procedure Code. Namely, the following wording was added to S. 12:

(13) For the purposes of this Act, information-technical means mean electrotechnical, radiotechnical, phototechnical, optical, mechanical, chemical and other technical means and equipment or their sets used in a secret manner in interception and recording of telecommunication activities (S. 88) or making video images, sound or other recordings (S. 88e), if their use violates fundamental human rights and freedoms. Special regulations apply to the processing of information obtained through the use of information and technical means, its registration, documentation, storage and disposal, unless otherwise provided by this Act. Operators of public telephone networks, providers of public telecommunications services, providers of other telecommunications services and their employees shall, upon request and free of charge and without delay, provide the necessary cooperation in the use of information technology; they may not refer to the obligation of confidentiality laid down by special laws.

(14) For the purposes of this Act, the means of operational search means a controlled delivery (S. 88a), an agent (S. 88b), a mock transfer (S. 88c) and the monitoring of persons and things (S. 88d).

The legal regulation of S. 88 'Interception and Recording of Telecommunication Activities (formerly Telecommunication Operations)' was also substantially amended.

The Criminal Procedure Code was further supplemented at the same time by a new Chapter 9 in Title 4 entitled 'Mock transfer, surveillance of persons and things and making of visual, audio or other recordings' (Ss. 88c-88e).

At this point, it should be recalled that the legislator foresaw the results of the use of individual means in the evidentiary process when adopting this legislation. In specific provisions, it defined the procedure and requirements that must be met in order for facts and information to be used as evidence in criminal proceedings.

<sup>6</sup> Act no 366/2000 Coll. amending Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/366/20001107>> accessed 15 October 2021.

<sup>7</sup> Act no 422/2002 Coll. amending Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/422/20060501>> accessed 15 October 2021.

In this context, it is necessary to state a fundamental change in the wording of the provisions of S. 89(2) of the Criminal Procedure Code, which read as follows after the amendment was made:

Anything that can contribute to the proper clarification of the case and what was lawfully obtained from the means of evidence may serve as evidence. The means of evidence are, in particular, the examination of the accused, witnesses, experts, opinions and expert opinions, examination of the statement on the spot, recognition, reconstruction, investigative attempt, inspection, cases and documents important for criminal proceedings, notification (S. 59(2)), the use of information and technical means (S. 12(13)) and means of operational-search activity (S. 12(14)).

This is a demonstrative list of evidence – others are not explicitly excluded.

This definition clearly implies that the exemplary calculation of evidence was supplemented by an on-the-spot check of the statement, reconstruction, an investigative attempt, notification (S. 59(2)), the use of information and technical means (S. 12(13)), and means of operational-search activity (S. 12(14)).

Another amendment to the Criminal Procedure Code was implemented by Act no. 457/2003 Coll. amending Act no. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code), as subsequently amended, and on amendments to certain acts with effect from 1 December 2003.<sup>8</sup>

The Act in question added, *inter alia*, paras. 9 and 10 to the legal regulation of interception and recording of telecommunications activities in S. 88 as follows:

(9) If, in order to clarify a fact relevant to criminal proceedings concerning an intentional criminal offense, it is necessary to identify data on telecommunications activities which are the subject of telecommunications secrecy or covered by the protection of personal data or mediation data, proceedings of a judge on the motion of the prosecutor, in court proceedings without such a motion by a judge or the chairman of the senate, that their legal entity or natural person performing telecommunications activity notifies the judge or chairman of the senate in court proceedings and in preparatory proceedings to the prosecutor, investigator or police authority.

(10) An order to ascertain and report data on the telecommunications activity carried out must be issued in writing and must be substantiated.

An exemplary list of facts proved in criminal proceedings in accordance with S. 89(1) was completed by the provision as follows: 'Proceeds of crime and the means of committing it, their location, nature, legal status and price'.

From the point of view of legal regulation, it is necessary to include the amendment of Act no. 141/1961 Coll. implemented by Act no. 403/2004 Coll. on the European Arrest Warrant and on changes and amendments to certain laws.<sup>9</sup> This Act replaced the wording of S. 88a(1) on controlled delivery with effect from 1 August 2004 as follows:

Controlled delivery means the monitoring of the movement of a consignment from consignor to consignee on import, export or transport where the circumstances of

8 Act no 457/2003 Coll. amending Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/457/20060101>> accessed 15 October 2021.

9 Act no 403/2004 Coll. on the European Arrest Warrant and on the amendments and supplementations of certain laws as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/403/20091101>> accessed 15 October 2021.

the case justify the presumption that the consignment contains drugs, psychotropic substances, poisons, precursors, nuclear or other similar radioactive material without appropriate authorization; or high-risk chemical, counterfeit or altered money and counterfeit or altered securities, counterfeit, altered or illicitly produced stamps, postage stamps, stickers and postage stamps, electronic means of payment or other payment card, firearms or mass-effective weapons, ammunition and explosives, cultural monuments or other items for which a special permit is required, or items intended to commit a criminal offense, or items derived from a criminal offense, for the purpose of identifying persons involved in the handling of this consignment.

It is appropriate to state that Act no. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) was amended directly or indirectly during its validity between 1 January 1962 and 31 December 2005. Despite these changes, it no longer met the needs of the current level of development and was replaced by a new law as of 1 January 2006 after many years of preparations. Specifically, in the conditions of the Slovak Republic, this is Act no. 301/2005 Coll. on Criminal Procedure Code with effect from 1 January 2006.<sup>10</sup> We address the legal regulation of evidence and partly also the preparatory proceedings in the next part of our article. The Criminal Procedure Code was also amended quite often when it was prepared.

To be precise, we would like to state that the Czech Act no. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) has, of course, been amended many times.<sup>11</sup> The work on the recodification has been going on for a relatively long period of time, and the date of acceptance of the recodified criminal case is still impossible to determine precisely.

### **3 THE PERIOD OF THE SLOVAK REPUBLIC AFTER THE RECODIFICATION OF CRIMINAL LAW (FROM 1 JANUARY 2006)**

Unlike the substantive legislation in the Criminal Code, the Criminal Procedure Code regulates the procedure of bodies active in criminal proceedings and courts so that criminal offences are duly detected, and their perpetrators are punished fairly by law. The intention of the recodification of criminal procedural law was, according to its authors, to modernise the process applied so far.

The process based on Act no. 141/1961 Coll. was very complicated, cumbersome, and rigorous, regardless of whether it was a prosecution of a factually and legally simple case or a very demanding case. In addition, the Criminal Procedure Code valid and effective until 31 December 2005 did not sufficiently ensure respect for fundamental human rights and freedoms in criminal proceedings (while respecting the legitimate interests of society) but instead allowed for lengthy and ineffective proceedings. The negative features of the so-called old criminal proceedings were mainly due to the fact that, as a rule, all evidence was to be ordered in a procedurally prescribed (demanding) manner and carried out in the preparatory proceedings, and the court hearing only took place afterwards. According to its authors, the new criminal trial was constructed taking into account the Slovak or Czechoslovak legal traditions, as well as the existing legal knowledge and legal culture. It is intended to be a synthesis of continental criminal proceedings with elements of Anglo-American law in areas where these often constructive elements will contribute to the achievement of its objectives.

10 Act no 301/2005 Coll. on Criminal Procedure Act, as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/301/20211201>> accessed 15 October 2021.

11 Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1961/141/20050415>> accessed 15 October 2021.

With regards to the above, significant elements of the adversarial nature of the proceedings were transferred to the Criminal Procedure Code. The adversarial role is intended to speed up and streamline proceedings.

The so-called diversions, enabling either the settlement of the case in the preparatory (pre-trial) proceedings or the settlement by the court outside the relatively procedurally demanding main hearing, are supposed to achieve the goal (speeding up or streamlining the procedure). With reference to the above, the clear purpose of the new code was to seek a faster, more flexible, and effective process of detecting and prosecuting perpetrators while fully respecting fundamental human rights and freedoms, streamlining the fight against growing organised crime cases, and expanding hearings. Following this intention, the new Criminal Procedure Code respects the regulation of human rights contained in international documents, such as the International Covenant on Civil and Political Rights of 1966 and the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, as well as the Constitution of the Slovak Republic. Based on the regulation in question (and in an effort to concretise it), the new Criminal Procedure Code also brings new basic principles of procedure, such as the basic legal ideas on which or criminal proceedings are to be established as a whole, as well as the activities of its individual entities. In addition to the existing basic principles of criminal procedure and related procedural institutes, the Criminal Procedure Code emphasises the principles of equality of parties, the right to a timely and fair trial, the adversarial principle, the right to active defence, and the modification of the principle of legality by the principle of opportunity.<sup>12</sup>

The criminal procedure in the Slovak Republic Act no. 301/2005 Coll. as subsequently amended is currently valid and effective and regulates the area of evidence in Chapter 6 'Evidence' with the provisions of Ss. 119-161.<sup>13</sup>

In comparison with the previous Criminal Procedure Code (Act no. 141/1961 Coll.), dating back to the period of socialist Czechoslovakia, the legal regulation of evidence and the means of evidence itself was substantially expanded.<sup>14</sup>

The subject of evidence is regulated by S. 119(1) as follows:

In criminal proceedings, there must be proof of

- (a) whether the act which has the particulars of a criminal offense has really occurred,
- (b) whether the act was committed by the accused and on what motives,
- (c) the seriousness of the offense, including the causes and conditions of its commission,
- (d) the personal circumstances of the perpetrator to the extent necessary to determine the type and extent of the punishment and the imposition of a protective measure and other decisions,
- (e) the effect and amount of the damage caused by the offense,
- (f) the proceeds of a criminal act and the means of committing it, its placement, nature, status and cost.

From our point of view, the legal characteristics of the evidence stated in S. 119(3) are of substantial importance. According to the provision in question:

It shall be possible to use as evidence anything that may contribute to properly clarifying the matter and that has been obtained in a lawful manner from the means of evidence or under special law.

12 J Madliak, V Porada, *Niekoľko poznámok k rekonštrukciám trestoprávných noriem v Slovenskej republike*. (Humanum: medzinarodowe studia społeczno-humanistyczne. Iss. 3 2009) 55-68.

13 Act no 301/2005 Coll. on Criminal Procedure Act, as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/301/20211201>> accessed 15 October 2021.

14 Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1961/141/20050415>> accessed 15 October 2021.



The means of proof are in particular:

- 1) Interrogation of the accused
- 2) Examination of witnesses
- 3) Interrogation of experts
- 4) Papers and expert opinions
- 5) Verification of the notice on the spot
- 6) Recognition
- 7) Reconstruction
- 8) Investigative attempt
- 9) Inspection
- 10) Matters and documents relevant to criminal proceedings
- 11) Notification
- 12) Information obtained through the use of information and technical means
- 13) Means of operational search.

This is a demonstrative list of evidence – other types are not explicitly excluded.

In the context of the focus of our contribution, it is extremely important that, for the first time, the legislator explicitly enshrined the phrase ‘or according to a special law’ in the wording of the provision in question. In our opinion, this is a historic breakthrough in the legal regulation of evidence, which created the preconditions for increasing the efficiency and effectiveness of criminal law protection of society.

The provision of S. 119(4) regulates the possibility of obtaining evidence by the parties at their own expense. According to S. 285(a, b/ or c/), the state shall reimburse the costs expediently incurred to the accused in the case of acquittal.

At this point, attention should be drawn, *inter alia*, to the legislator’s statement that: ‘Evidence obtained by unlawful coercion or threat of such coercion may not be used in proceedings unless it is used as evidence against a person who has used such coercion or threat of coercion’ (S. 119(5)).

## 4 INFORMATION AND TECHNICAL MEANS

In the next part of our article, we will focus on information and technical means. We will address the legal regulation of their use in accordance with the Criminal Procedure Code and Act 166/2003 Coll. on the protection of privacy against unauthorised use of information and technical means and on the amendment of certain laws (the Act on protection against eavesdropping).<sup>15</sup>

The Criminal Procedure Code defines the information and technical means in S. 10(21):

For the purposes of this Act, information and technical means mean electrical, radio, phototechnical, optical, mechanical, chemical and other technical means and devices or their sets used in a classified manner for interception and recording of traffic in electronic communication networks (hereinafter referred to as the “interception and recording of telecommunications traffic”), video, audio or video-audio recordings or in the search, opening and examination of consignments, where their use infringes fundamental human rights and freedoms. Special regulations apply to the processing of information obtained through the use of information and technical means, its

<sup>15</sup> Act no 166/2003 Coll. on the Privacy Protection against Unauthorized Use of Information and Technical Means and on the amendments and supplementation of some laws, as subsequently amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/166/20160101>> accessed 15 October 2021.



registration, documentation, storage and disposal, unless otherwise provided by this Act. Operators of public telephone networks, providers of electronic telecommunications networks, providers of electronic telecommunications services, the postal undertaking, carriers and other forwarders and their employees are obliged to provide the necessary cooperation in the use of information technology; they may not refer to the obligation of professional confidentiality under special laws.

Specific conditions for the use of individual information and technical means are regulated by the provisions of Chapter V of the Criminal Procedure Code – Provision of Information (Ss. 114-117).

The legal order of the Slovak Republic regulates the issue of the use of information and technical means in a special law as well, namely, Act no. 166/2003 Coll. on the Protection of Privacy against unauthorised use of information and technical means and on the amendment of certain laws (the Act on Eavesdropping Protection). The law in question regulates the conditions for the use of information technology without the prior consent of the person whose privacy is invaded by the state authorities using the information technology. It is the use of information and technical means outside criminal proceedings for the performance of the tasks of the relevant state authorities arising from a special law. In the practice of police and security authorities, cases of using information and technical means are relatively frequent, especially in connection with organised crime and violent crime.

Pursuant to provisions of S. 2 of Act no. 166/2003 Coll., information and technical means are:

Information and technical means for the purposes of this Act are, in particular, electrical, radio, phototechnical, optical, mechanical, chemical and other means and devices or their sets used in a secret manner to

- a) Search, open, examine and evaluate postal items and other transported items,
- b) Obtain the content of messages transmitted via electronic communication networks, including interception of telephone communications,
- c) Make video, audio, video-audio, or other recordings.

Information and technical means may be used by the Police Corps, the Slovak Information Service, Military Intelligence, the Prison and Judicial Guard Corps, and the Customs Administration (meaning the Financial Administration of the Slovak Republic) to the extent specified in special regulations. The use of information and technical means for the Prison and Judicial Guard Corps and the Customs Administration is technically ensured by the Police Corps after submitting the written consent of a legal judge granting the use of information and technical means provided to the state authority. Using information and technical means according to para, 1b) of the Military Intelligence Act on the basis of a written request and with the submission of the written consent of a judge, the Police Corps shall provide technical support.

When intercepting and recording a telecommunications service, the only type of information technology that may be used is that which allows immediate identification of the telecommunications terminal equipment used to intercept and record the telecommunications service and does not allow the data identifying that equipment to be erased and does not allow the time of eavesdropping and recording services to be erased.

In accordance with the provisions of S. 2(7) of Act no. 166/2003 Coll., the local self-government authorities, private security services, or other natural or legal persons may not hold or use information technology.<sup>16</sup>

<sup>16</sup> Act no 166/2003 Coll., on the Privacy Protection against Unauthorized Use of Information and Technical Means and on the amendments and supplementation of some laws, as subsequently amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/166/20160101>> accessed 15 October 2021.

Information technology can be used only if it is necessary to ensure, in a democratic society, the protection of the constitutional order, internal order, and foreign policy interests of the state, security and defence of the state, obtaining information from foreign sources, preventing and clarifying crime, or protecting rights and the freedoms of others, and if achieving this purpose would otherwise be ineffective or substantially hampered. Within the scope of the Slovak Information Service and Military Intelligence, information and technical means may also be used outside the territory of the Slovak Republic within the scope of tasks according to special regulations. The data obtained by information technology may be used exclusively for the purpose of fulfilling the tasks of the state if it meets the conditions specified in the law.

The conditions for using the information technology are regulated by the Act in S. 4.

We believe that from the point of view of the topic at hand, the most important provision is S. 7(2) of the Act quoted on the use of information obtained (conditions, reasons) in criminal proceedings when such information can become evidence. Such procedure is inadmissible, for example, in the Czech Republic on the basis of a judgment of the Constitutional Court of the Czech Republic.

In Judgment no. I. ÚS 3038/07 of 29 February 2008 in the matter of a constitutional complaint of Ing. JH against the resolution of the Public Prosecutor of the Regional Public Prosecutor's Office in České Budejovice of 16 October 2007, file number KZV 48/2007, and against the resolution of the Police Forces of the Corruption and Financial Crime Detection Unit of the SKPV Police of the Czech Republic, České Budějovice Branch of 20 August 2007, ČTS: OKFK- 22/4-2007, initiating criminal proceedings against the complainant and against the inclusion in the above-mentioned records of interceptions among the evidence, connected to the motion to remove the records of these interceptions from the file and their subsequent destruction, the Constitutional Court of the Czech Republic stated quite explicitly that the use of intelligence interceptions was inadmissible since they were carried out in a different legal framework and not for the purpose of obtaining evidence in criminal proceedings. As evidence in criminal proceedings, it is not possible to use records of tapping telephone calls made in any other way than the one provided for in S. 88 of the Criminal Procedure Code of the Czech Republic.<sup>17</sup>

Intelligence interceptions (in accordance with Act no. 67/1992 Coll. on Military Defense Intelligence<sup>18</sup> or Act no. 154/1994 Coll. on Security Information Services<sup>19</sup>) and criminal interceptions have a completely different legal regime and purpose defined by law. The purpose of criminal proceedings is the proper detection of criminal offences and fair punishment of their perpetrators. The purpose of intelligence services is to provide information on intentions and activities posing a military threat to the Czech Republic, intelligence services of foreign powers in defence, intentions, and activities aimed at ensuring the defence of the Czech Republic, and activities threatening state and official secrets in the field of defence of the Czech Republic.

The Act on Intelligence Services of the Czech Republic stipulates that: 'Intelligence services transmit ... to police authorities information on findings that fall within their field of competence; this does not apply if the provision would jeopardise an important interest pursued by the relevant intelligence service' (S. 8(3) of Act no. 153/1994 Coll.).<sup>20</sup>

17 Judgment no I. ÚS 3038/07 of the Constitutional Court of the Czech Republic of 29 February 2008 as amended <<http://nalus.usoud.cz/Search/GetText.aspx?sz=1-3038-07>> accessed 15 October 2021.

18 Act no 67/1992 Coll. on Military Defense Intelligence as amended <<https://www.zakonyprolidi.cz/cs/1992-67>> accessed 15 October 2021.

19 Act no 154/1994 Coll. on Security Information Services as amended <<https://www.zakonyprolidi.cz/cs/1994-154>> accessed 15 October 2021.

20 Act no 153/1994 Coll. on Intelligence Services Czech Republic as amended <<https://www.zakonyprolidi.cz/cs/1994-153>> accessed 15 October 2021.

A different legal purpose limits the range of usability of information obtained by the intelligence services of the Czech Republic.

## 5 CONCLUDING REMARKS

As mentioned above, it is clear that in the historical context, there is a gradual expansion of the amount of evidence accepted in criminal proceedings. We believe that nowadays, both in terms of the intensive development of information and digital technologies and new security threats and challenges, particularly organised crime and terrorism, it will gradually be necessary to introduce and admit new means of gathering sources of evidence.

In our opinion, the following can be inspiring:

- 1) The European Investigation Order (Act no. 236/2017 Coll. on the European Investigation Order in Criminal Matters and on changes and amendments to certain acts)<sup>21</sup>
- 2) The European Parliament and Council Directive (EU) 2016/681 of 27 April 2016 on the Use of Passenger Name Record (PNR) for the purpose of preventing, detecting, investigation and prosecution of terrorist offenses and serious crime<sup>22</sup>
- 3) Satellite imagery
- 4) Dash cameras
- 5) GPS location data
- 6) The eCall system (for M1 and N1 vehicles, implied by the Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 on type-approval requirements for the deployment of the on-board eCall system using the 112 emergency service and amending Directive 2007/46/EC ( hereinafter referred to as the 'Regulation (EU) 2015/758')<sup>23</sup>

We believe that monitoring by a camera system and technical means working on similar principles is very close to a witness statement in its content. The camera system can record the course of the committed crime, its perpetrator, and other important circumstances for clarifying the matter if they took place in the monitored area. Camera systems and the recording obtained from it, providing information on various criminal activities, are becoming increasingly common types of technical evidence in applied criminal practice.<sup>24</sup>

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- 21 Act no 236/2017 Coll. on the European Investigation Order as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2017/236/20171015>> accessed 15 October 2021.
  - 22 European Parliament and Council Directive (EU) 2016/681 of 27 April 2016 on the Use of Passenger Name Record (PNR) for the purpose of preventing, detecting, investigation and prosecution of terrorist offenses and serious crime <<https://eurlex.europa.eu/legalcontent/SK/TXT/PDF/?uri=CELEX:32016L0681&from=EN>> accessed 15 October 2021.
  - 23 Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 on type-approval requirements for the deployment of the on-board eCall system using the 112 emergency service and amending Directive 2007/46/EC <<https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:32017R0079&from=EN>> accessed 15 October 2021.
  - 24 M Lisoň, A Vaško a kol., *Teória kriminálno-polícajného poznania* (Wolters Kluwer 2018).

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3. Act no 301/2005 Coll. on Criminal Procedure Act, as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/301/20211201>> accessed 15 October 2021.
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7. Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1961/141/20050415>> accessed 15 October 2021.
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11. Act no 422/2002 Coll. amending Act no 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code) as amended <<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/422/20060501>> accessed 15 October 2021.
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