

PROTECTION OF INDIVIDUAL RIGHTS IN THE FIELD OF CRIMINAL LAW OF SLOVAK REPUBLIC¹

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Summary. If we want to talk about the issue of protection and respect for fundamental human rights in the legal environment of the Slovak Republic from the point of view of criminal law, I believe that the right which deserves special attention in this regard is the right to personal freedom and also the related right – right to health and life. I have decided to deal with this right and with the issue of its violation in the context of a specific criminal-law legal tool, namely pre-trial detention (custody). The reason for analyzing this legal measure is relatively simple. I believe that the custody represents one of the most radical interference with the personal freedoms and rights of the individual. The importance of this measure and its impact on the life and health of the persons can be demonstrated on the number of suicides committed during stay at custody. It must be noted that pre-trial detention is, in the comparison with the custodial sentence, only a temporary restriction of personal freedom, but in this regard it is necessary to emphasize that while in the case of imposed sentence we are talking about a person in respect of whom the court has already adopted the decision about his or her guilt on the basis of sufficient amount of evidences, in the case of pre-trial detention the principle of presumption of innocence is still applied. In other words, the person placed in custody is still regarded as innocent under the principle in question. The pre-trial detention cannot replace the prison sentence, even though such a punishment will probably be imposed on the accused at the end of the criminal proceedings. Custody does not have a sanctioning character in the sense of the Criminal Procedural Code, because it is explicitly only an act of detaining character and in comparison with the punishment of imprisonment it is a completely different independent criminal-law tool². In addition, it is appropriate to emphasize that criminal prosecution against an accused placed in custody is very often ended with an acquittal decision. Because of this reason I consider the issue of respecting for the right to personal freedom in the context of pre-trial detention as a very sensitive problematic that deserves a special attention.

Key words: right to personal freedom, pre-trial detention, criminal law, alternative measures, European Court of Human Rights, European Convention on Human Rights and Fundamental Freedoms, Supreme Court of Slovak Republic, Constitutional Court of Slovak Republic

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² Decision of the Supreme Court of Slovak Republic adopted at 17th June 2003, no. 6 Tz 3/2003.

INTRODUCTION

At first place of this article it is necessary to point out the basic attributes of national and European nature, which are associated with the analyzed criminal law legal tool. First of all, it is necessary to emphasize that the pre-trial detention that is contained in the provisions of sections 71 to 84 of Act No. 301/2005 Coll., The Criminal Procedural Code, is characterized primarily by its exceptional character, which can also be deduced from its facultative nature. In this connection, it is possible to point out the decision-making activities of the Supreme Court of the Slovak Republic, which states that custody must be understood as an exceptional mean of detaining the accused for the purposes of criminal proceedings if the facts established by law justify the necessity of its use for timely and appropriate clarification of criminal offenses and fair prosecution of offenders³.

In the light of the abovementioned facts, it may be added that when the fundamental rights and freedoms are restricted their substance and their meaning must be taken into account, and such restrictions may only be used for the established purpose. It is therefore desirable that the restriction of the individual's personal liberty by law enforcement state bodies should only be made when this process is legally justified and this restriction can be made only in the necessary range regarding the particular circumstances of the case even if the legal conditions are fulfilled⁴. It can be said that pre-trial detention is understood as the tool with *ultima ratio* character. Its application can only be taken into consideration when it is not possible to achieve the purpose pursued by the custody through other more lenient criminal-law measures, or by means of other branch of law (e.g. by applying labor law rules)⁵. National authorities should therefore always consider applying other less stringent measures⁶. The statement in question also reflects the principle of proportionality because the custody cannot be used if it is not proportionate, or in other words, if it would present a disproportionate strict procedural measure in view of the importance of the case and the expected sanction or,

³ Decision of Constitutional Court of Slovak Republic adopted at 18th October, no. II. ÚS 55/1998.

⁴ *Ibidem*.

⁵ Decision of the Supreme Court of Slovak Republic adopted at 26th August 2008, no. Tošs 26/2008.

⁶ Case *Ladent v. Poland*, application no. 11036/03, § 56.

if it is expected that criminal prosecution will be stopped⁷. In this regard, it should be stressed that such insight into the legal tool of detention is not only applied in the conditions of the Slovak Republic, but it also can be seen in the decision-making process of the European Court of Human Rights. According to the relevant jurisprudence of the Strasbourg court, the custody must be an appropriate measure through which the stated aim can be achieved⁸.

From the European and international point of view it can be said that issue in question is governed also by European convention on human rights and fundamental freedoms. The right to personal freedom is formulated in its art. 5 in a following way:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a) the lawful detention of a person after conviction by a competent court;
- b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

⁷ Decision of the Supreme Court of Slovak Republic adopted at 7th October 1993, no. 2 Ntv 382/1993.

⁸ Case *Ladent v. Poland*, application no. 11036/03, § 56, § 55–56.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation”.

OVERCROWDING OF DETENTION INSTITUTIONS IN REGARD WITH THE RIGHT TO PERSONAL FREEDOM

In connection with the described nature of the custody as a measure of the ultima ratio, I want to point to a problem in relation to which it cannot be said that there is a clear violation of the right to personal freedom but in the context of which a fundamental question arises. It is a question whether respecting of the legal conditions formulated by the legislator in the provisions of § 71 of Criminal Procedural Code, so the conditions for the taking of a person into a custody, is sufficient to conclude that the right to the personal freedom of the person concerned is not infringed. More specifically said, it is a problem of too frequent placing of the accused persons in custody. This problem is typical not only for the Slovak Republic but also for many other EU countries. This problem finds its concretization in the form of the overcrowding of the Institutions for the execution of the imprisonment and for the exercise of detention.

Nowadays the overcrowding of penal system is one of the most serious problems not only in Slovak Republic, but also in other European countries. This fact can be demonstrated through pointing to the annual report, which is drawn up every year by the Council of Europe on the basis of data submitted by individual European countries. The report highlights in the particular way the real situation of prison overcrowding in the monitored countries. In another words this report analyzes the situation, in which number of persons that are located in prison is higher than number of places in penal institutions. According to the recent report that was published by the Council of Europe on 14. March 2017 (data have been gained up to 1. September 2015)

penal institutions were overcrowded in fourteen European monitored countries. It should be noticed that this report collected not only information about states that are member states of European union, but also about the countries that are outside European union, but that can be at least partially considered as European state. However, if we look at the report with the intention of assessing the situation only in the EU Member States, we would have come to a rather overwhelming fact, which has emerged from the last report of the Council of Europe for the EU – out of the total number of states, which may be related to the overcrowding of penal institutions (it is the number eleven), ten States are members of the EU⁹.

Slovak Republic hasn't taken the place in the mentioned group of these eleven countries. However this fact doesn't mean that problem of the same nature cannot arise very easily also in our state. If we look at the development of the number of persons in custody and imprisonment institutions in the SR from the available statistic data, it is clear that the number of these persons is relatively high. The maximum value according to the *Statistical Yearbook of the Prison and Judicial Administration Corps* was recorded in the year 2012, where the total number of persons placed in these institutions was 10 956. The total capacity of these institutes in the Slovak Republic is 11 300 places. In this respect, however, it is necessary to point to a fact that is often forgotten in the assessment of the analyzed problem – it is the number of persons who were ordered to serve a sentence of imprisonment, but who did not come to prison institution to serve the sentence. Their number is 1600 per year. If, on the basis of the above mentioned facts, we imagine a scenario that the number of persons actually registered in the penal institutions 2015 would be increased by the number of persons who did not come to prison institution to serve the sentence, we would have to say that the SR would not have real places for 467 persons¹⁰.

In the context of report of Council of Europe it is necessary to mention, that Slovakia and the Czech Republic also got some placement according this report, because they were placed between the states with the highest number of prisoners for 100 000 inhabitants, concretely between the first seven¹¹.

⁹ Council of Europe, *Annual Penal Statistics SPACE I – Prison Populations Survey 2014*, p. 36.

¹⁰ *Yearbooks of Corps of Prison and Court Guard for year 2015*.

¹¹ Council of Europe, *Annual Penal Statistics SPACE I*, p. 36.

The fact that the pre-trial detention is one of the major causes that lead to the overcrowding problem is undoubted can be demonstrated on many specific documents adopted by European Union (below only „EU”), in which the competent authorities of EU sought to identify the key reasons causing this negative situation. So the bodies of EU created several documents of non-legislative nature, in which they highlighted the problem of too frequent taking persons to the custody, so in another words the problem of violating the principle of proportionality, violating the principle of ultima ratio of custody, where the question about respecting the right of personal freedom is raising. These documents are mainly:

1) Green paper on the application of EU criminal justice legislation in the field of detention¹² – its aim was to create an EU debate with Member States in this area, mainly solve the problems of pre-trial detention and also detention applied during the proceedings before the court;

2) Analysis of the replies to the Green paper on the application of EU criminal justice legislation in the field of detention;

3) White paper on prison overcrowding – this document was adopted in September 2016. The Committee of Ministers approved the White Paper on prison overcrowding aimed at inciting member states to open a debate at national level regarding their penal system and to take decisions based on clear needs and objectives to be met in shorter and longer time-spans.

These documents have proved the existence of a clear link between the problem of prison overcrowding and the pre-trial detention. These documents identified two key issues that cause the problem in the form of prison overcrowding and that are tied with pre-trial detention:

a) poor implementation of the alternative measures, which is often caused by the lack of knowledge of judges about the negative aspects of the custody, and also by their reluctance to use alternatives to detention in a wider range, and

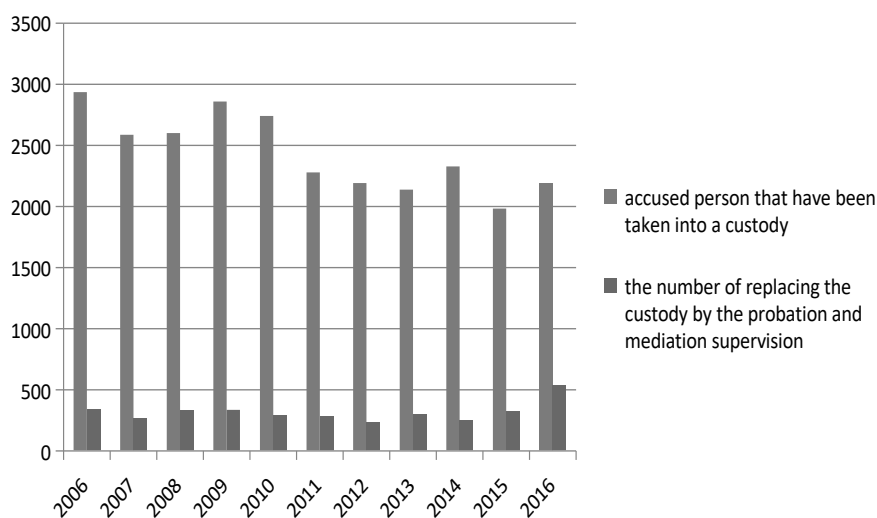
b) problem of frequent (in most Member States almost automatic) placement of non-residents in detention.

¹² European Commission, Strengthening mutual trust in the European judicial area – *A Green paper on the application of EU criminal justice legislation in the field of detention*, Brussels, 14 June 2011, COM(2011) 327 final.

ALTERNATIVE NON-CUSTODIAL MEASURES
AND MORE SUFFICIENT RESPECTING THE RIGHT
TO PERSONAL FREEDOM

Because of the reason that the aim of this article is to deal with the problem of violating the principle of proportionality and the principle of *ultima ratio* nature of custody that, from our point of view, lead to insufficient respecting for right to personal freedom, in the following text we will deal only with the issue of poor application of the alternative measures. I am of the opinion that reluctance of Slovak courts to apply these tools can be understand as insufficient respecting for the right of personal freedom, because the judges take accused persons to the custody in spite of the fact that all legal conditions for applying alternative measure, formulated in Criminal Procedural Code, are met.

This negative situation can be demonstrated on the following graph, which shows, on the one hand, the number of persons for whom the court accepted the prosecutor's proposal for their detention and, on the other hand, the number of court decisions which replaced the custody by the supervision of probation and the mediation officer – this is only alternative measure that is registered in the relevant Slovak statistics¹³.



¹³ These data are contained in the *Yearbooks of Corps of Prison and Court Guard for years 2006 to 2016* and the *Yearbooks of Ministry of Justice of Slovak Republic for years 2006 to 2016*.

From the graph it is clear that the current use of alternative measures is actually very low. This condition exists despite the fact that in connection with this group of measures we could speak about significant positives which arise from the application of these measures not only for state but especially also for accused person. Because of the fact that this article focuses its attention particularly to the rights of accused person, it is important to describe positives that arise from alternative measures for this person.

By applying these measures the accused continues to practice their profession, employment, family care, it also allows him to preserve social relationships until time the person's guilt is finally shown in a final conviction of a court¹⁴. On the other hand we can mention the negatives of pre-trial detention, especially in the cases of persons who are convinced about their innocent. Many organizations that are active in this field highlighted serious impacts of situation when accused is placed into pre-trial detention. In this context, it is emphasized especially the negative impact of this situation on family life of the accused, and the consequences of a financial nature, which are caused by the fact that such person is deprived of real opportunities to acquire or procure salary, funds. Another problems and difficulties in this field have been identified in the sphere of preparation of the defence of an accused person placed in detention in comparison with a person who is prosecuted in a non-custodial way. In this context particularly significant consequences were identified in the group of these persons who felt innocent, on the basis of which they bear very hardly their "stay behind bars". According to the Fair Trial International for this group of people is very often diagnosed with diseases of primarily psychic origin and even with an increased risk of suicide¹⁵.

In this context I want to highlight the statistical data gained by the Corps of Prison and Court Guard of the Slovak Republic. When we look at the number of suicide and suicide attempts realized in Institutes for the Execution of Custody and Punishment of Imprisonment we can found out that in year 2016 there was recorded totally 6 suicides and 34 attempts of suicide. But totally stunning character has the fact that from that numbers there was four suicide and 19 attempts of suicide committed by accused person who

¹⁴ *White paper on prison overcrowding*, Document prepared by the Directorate General Human Rights and Rule of Law, Strasbourg, 24 September 2015, PC-CP (2015) 6 rev 2, p. 15.

¹⁵ Analysis of the *Green paper on the application of EU criminal justice legislation in the field of detention*.

were executing a pre-trial detention¹⁶. In another words suicides or attempts of suicide are more often realized by persons who are executing custody than by the persons who are already convicted. I am of the opinion that this fact is the evidence that frequent taking accused to the custody is really big problem and that we must talk about huge and urgent necessity of solving this issue through any available solution. In this context it is important to say again that the most appropriate and the simplest solution in question is just a solution in the form of alternative non-custodial measures through which we can totally easily replace custody with some another criminal-law tool and through which it is possible to achieve the same aim as on the basis of the pre-trial detention.

Despite the existence of the above described positives that arise from alternative measures, it is necessary, as indicated in the introduction of this paper, to highlight their very weak application in practice. The reason for this situation is not the failure to meet the legal conditions for the use of these tools replacing the detention of accused person, but the absolute reluctance of the judges to reach wider use of these alternative tools. This fact is true not only in the Slovak Republic but also in many EU Member States. On the basis of these facts, there is a need to find some effective ways to achieve a more frequent use of alternative measures in practice of courts. As the first solution appears an obligation to deal with the question of the possibility of using an alternative means, which can be laid on the shoulders of judges in respect of each single custody deciding. In this connection, it must be pointed out that the concept of formulating of this kind of obligation was adopted by the French legislator. French legislative on detention, particularly legislation on the conditions of detention, is formulated in such a way that one from the conditions that must be met in order to decide about detention of accused person is a condition of a negative nature. Namely it is the condition that the purpose of the detention cannot be achieved by any means called judicial oversight (there are a total of seventeen tools of this nature) or by electronic monitoring of the accused movement. Accordingly, the judge is required, under the relevant provision of the French Code of Criminal Procedure, to examine the possibility of using the alternative non-custodial measure in every case, in which he want to order custody, and he is doing it without the

¹⁶ *Yearbook of Corps of Prison and Court Guard for 2016*, p. 16.

need for the application made by the person concerned. In other words, the judge in France realizes this examination *ex officio*¹⁷.

In spite of the fact that the legislation on the conditions of detention that is in force in the territory of the Slovak Republic does not recognize the negative condition of the above-mentioned nature, it is necessary to point out that certain conformity with the French legal environment can be identified. Conditions in the form of obligatory examining the possibility of using the alternative non-custodial measure isn't explicitly provided by Slovak Criminal Code, but its formulation passes from decision-making activities of the European Court of Human Rights (hereinafter: ECtHR), as well as the Slovak Constitutional Court. In the light of this fact, it is necessary to refer to the case-law of the ECtHR, which, in a number of its judgments, said that art. 5 (3) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) requires national courts to consider and take into account alternative non-custodial measures laid down by national law when deciding about detention. He emphasized the existence of the duty of the courts to justify why, in the specific case, the use of alternative tools in a question is consider not to be suitable and the lack of such justification may, according to the ECtHR, establish the violation of art. 5 (3) ECHR.

The case-law of the European Protection Commissioner was followed by the decision of Constitutional Court of the Slovak Republic that adopted in 2013 a relatively fundamental decision for the analyzed area. This court has explicitly judged the duty of the court to investigate whether the purpose of the custody (detention) cannot be achieved by the alternative means in the form of probationary and mediation supervision. The Constitutional Court of the Slovak Republic emphasized that the judge carries out this task *ex officio*. In other words, in the legal environment of the Slovak Republic the judge should not wait for a proposal of accused person, but the court should act on its own initiative¹⁸.

However, it should be noted that neither ECHR case law nor the formulating of the "investigative" duty of judges by the Constitutional Court of the Slovak Republic has not led in the sphere of application of the alternative measures to results. It is more than clear that existing alternatives to detention are not among the judges who decide about detention to the "most popu-

¹⁷ Fair trial international. Communiqué issued after the meeting of the Local expert group (France), *Pre-trial detention in France*, 13 June 2013, p. 3.

¹⁸ Decision of Constitutional Court of Slovak Republic adopted at 5th June 2013, no. II. ÚS 67/2013-41.

lar” criminal law tools. The reason of this situation is probably caused by the fact that implementation of alternative measures are spoiled with large difficulties regarding controlling their true respecting by the accused persons¹⁹. On the basis of this fact, it is needed to state that it is more than necessary to think about other ways through which we can achieve a more frequent use of alternative means and through which we can ensure real fulfillment of a requirement which is formulated in several legislative or political documents of EU – the requirement that detention is considered to be a measure of an exceptional nature and that the criminal courts should, as far as possible, apply non-custodial measures²⁰. Similar requirement was also formulated by ECtHR, which, in its recent decision adopted on 10 March 2015 in the case *Varga and others v. Hungary*²¹, explicitly urges on the reduction of the number of persons in custody that should be achieved through the minimization of pre-trial custody and more frequent use of alternative measures to this kind of custody²².

In order to achieve the status foreseen by European Union and the ECtHR, many EU Member States currently come with the idea of a significant role that can be played in this area by system of electronic monitoring²³. Similarly, the EU itself has the same direction – EU constantly emphasizes that the rapid development of modern technologies creates realistic space and the possibility that the monitoring of the accused person without the necessity of his or her detention becomes more and more simple²⁴. These ideas have found their reflection in the form of concrete steps in several EU Member States. An electronic monitoring system as a means of replacing pre-trial detention is already well established and used in several EU countries. These are France, Germany, Great Britain, Ireland, Netherlands, Portugal, Spain and, as of 2012, also Romania.

¹⁹ Analysis of the *Green paper on the application of EU criminal justice legislation in the field of detention*, p. 20.

²⁰ Explanatory report to the Proposal for a Council framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union [SEC(2006)1079] [SEC(2006)1080], p. 2.

²¹ *Varga and Others v. Hungary* (application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13), ECHR 077 (2015), 10 March 2015.

²² *White paper on prison overcrowding*, p. 9.

²³ Analysis of the *Green paper on the application of EU criminal justice legislation in the field of detention*, p. 20.

²⁴ *White paper on prison overcrowding*, p. 15.

Ideas of a similar nature that have arisen in the above mentioned EU Member States has started to emerge also in the Slovak Republic. The ideas in question not remain only at the level of academic debates but, on the contrary, their reflection has been already found in the concrete steps taken in this sphere by the relevant criminal law enforcement agencies.

In this context, it is necessary to point out the fact in the form of the adoption of Act no. 78/2015 Coll. on the control of the enforcement of certain decisions by technical means as amended, which entered into force on 1 January 2016 and which regulates the conditions for exercising the control of the punishment of domestic prisons by technical means. The law in question has been long awaited, especially in connection with the application of the domestic prison sanction laid down in the Criminal Procedural Code, specifically in its provisions of § 53. When this act was adopting and when an electronic system of monitoring persons (ESMO) was introducing, ideas about the possibilities of using this system also in the area of replacing the detention belong. However, these ideas haven't been analyzed in more detailed way. For this reason, I believe that it is currently very important to point out whether in Slovak Republic is a real space for realizing the idea of using an electronic monitoring system in connection with replacement of pre trial custody.

In this context, I would like to assume that the Slovak Republic already has real possibilities for replacing custody with the electronic monitoring system. However, this option is not explicitly formulated within the legal framework of Criminal Procedural Code or within some provision of a special legal act. In this context it is therefore necessary to state that there are still four forms of alternative non-custodial measures explicitly provided by the Criminal Procedure Code. These are supervision of probation and mediation officer, the written promise of the accused, the guarantee of the civic association or a trusted person, and a monetary guarantee (bail). Therefore there is no doubt that the electronic monitoring *de lege lata* does not constitute a separate form (possibility) of the substitution of the custody in the Slovak law. However, I believe that the adoption of Act no. 78/2015 Coll. create a space for its perception as a sort of byproduct complementing the court's decision on replacing the custody. Within court's deciding on the replacement of the detention, the court is entitled, within the meaning of provision § 82 para. 1 of Criminal Procedural Code, to impose to accused one or several reasonable limitations and obligations to achieve the reinforcement of the purpose that would otherwise be achieved through the custody that is being replaced. Among the obligations in question is also an obligation in the form

of a prohibition to leave the place of residence of the accused person. The subsequent section no. 4, which was added to the provision of § 82 on the basis of the aforementioned Act no. 78/2015 Coll., stated that the control of the imposed appropriate limitations or obligations can be carried out by technical means, provided that the technical conditions specified in the act are met and provided that it will be subsequently ordered by the court.

SUMMARY

On the basis of the all facts and information stated in this article it can be concluded that through the abovementioned provisions and possibilities that are although indirectly offered by the current legislation of the Slovak Republic, it is possible to eliminate the undesirable phenomenon, which occurs in the sphere of the right to personal freedom. On the basis of these possibilities it is possible to prevent not only the negative consequences connected with the frequent placement of the accused persons in the custody that arise on the site of these persons, but at the same time it is also possible to achieve respecting of the abovementioned decision of the ECtHR and also of the Constitutional Court of Slovak Republic, which unequivocally talk about the requisite and necessity of replacing the pre-trial custody and avoiding too frequent adopting the decisions about taking accused to this type of detention.

OCHRONA PRAW INDYWIDUALNYCH W DZIEDZINIE PRAWA KARNEGO REPUBLIKI SŁOWACKIEJ

Streszczenie. Jeśli chcemy mówić o kwestii ochrony i poszanowania podstawowych praw człowieka w środowisku prawnym Republiki Słowackiej z punktu widzenia prawa karnego, wierzę, że prawem, które zasługuje na szczególną uwagę w tym względzie jest prawo do wolności osobistej, a także związane z nim prawo do życia i zdrowia. Postanowiłam podjąć się analizy tego prawa i jego naruszenia w kontekście konkretnego narzędzia prawnokarnego, mianowicie tymczasowego aresztowania. Przyczyna analizowania tego środka prawnego jest stosunkowo prosta. Uważam, że areszt stanowi jedną z najbardziej radykalnych ingerencji w wolności osobiste i prawa jednostki. Znaczenie tego środka i jego wpływ na życie i zdrowie osób może zostać wykazana poprzez liczbę samobójstw popełnianych podczas pobytu w areszcie. Należy zauważyć, że tymczasowe aresztowanie jest w stosunku do kary pozbawienia wolności, jedynie tymczasowym ograniczeniem wolności osobistej, ale wymaga podkreślenia to, że o ile w przypadku zasądzenia kary chodzi o osobę, w stosunku do której sąd wydał już decyzję o jego winie na podstawie wystarczającej ilości dowodów, natomiast w przypadku tymczasowego aresztowania zasada domniemania niewinności nadal jest stosowana. Zgodnie z tą zasadą, osoba tymczasowo aresztowana nadal uważana jest za niewinną. Wstępne aresztowanie nie może zastąpić kary pozbawienia wolności, choć taka kara może zostać nałożona na oskarżonego po zakończeniu postępowania karnego. Instytucja ta nie posiada charakteru

sankcjonującego w rozumieniu Kodeksu postępowania karnego, ponieważ jest to tylko akt zatrzymania i jego charakter, w stosunku do kary pozbawienia wolności, jest zupełnie inny, jako niezależny instrument prawa karnego. Ponadto, należy podkreślić, że postępowanie karne przeciwko oskarżonemu umieszczonemu w areszcie bardzo często kończy się jego uniewinnieniem. Z tego powodu uważam, że kwestia poszanowania prawa do wolności osobistej w ramach instytucji tymczasowego aresztowania jest bardzo wrażliwa i problematyczna, dlatego zasługuje na szczególną uwagę.

Słowa kluczowe: prawo do wolności osobistej, tymczasowe aresztowanie, prawo karne, środki alternatywne, Europejski Trybunał Praw Człowieka, Europejska Konwencja Praw Człowieka i Podstawowych Wolności, Sąd Najwyższy Republiki Słowackiej, Trybunał Konstytucyjny Republiki Słowackiej