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Criminal law protection of security interests in the context of defense assets of the state and cybercrime

Abstract

The article presents the issue of protection of the security interests of the state with an emphasis on the protection of information, which is a key challenge in the digital age. It has an irreplaceable place, especially in matters of national security of the state. The article respects national knowledge and practice in the context of the agenda of international organizations.

Key words: education, technology, training, military pilots.

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Introduction

The protection of persons, property and security interests by the substantive criminal law rules are among the key, legally protected interests. Today's social empiricism confirms us that the security is a significant multidimensional factor of the quality of society and citizen's life, which we must systematically examine, forecast and secure by the legal and criminological means. We can contribute to the fulfilling one of the basic functions of the state, which is undoubtedly to ensure the security of the state and the security of the citizen.

One of the educational tools for examining the issue is also the study and scientific field of the Protection of People and Property, which is a related study and scientific field to the Law, Criminology, Criminalistics... and belongs to the science and technology departments of the legal science subgroup. The graduate is responsible for the management of institutional security structures, economic and business organizations and the systems used for the protection of persons and property, has knowledge of principles of technical means and legislation, is ready and able to effectively manage systems in the fight against the offenders who use state-of-the- in the area of organized crime or terrorism. Providing the staff training in the area of protection of persons and property is essential to protect the society (the state) from the negative anti-social phenomena, against various types of crime. In the field of concept, analytical activity, organization, control and security activities, graduates are able to analyze the security situation and propose optimal solutions aimed at the protection of persons and property, based on a scientific and creative approach. legally protected interests in the public and private sectors¹.

Protection of security interests

The protection is the prevention of an adverse effect that can damage or destroy the protected subject (protected interest) by the applying preventive and/or repressive means (measures, standards). The protection processes are the starting platform for the complex security processes, the protection of security interests.

1 <https://www.portalvs.sk/sk/studijne-odbory/zobrazit/80301>.

The protection of individuals means the active use of preventive and repressive instruments (measures, standards) for the protection of rights in relation to the physical status of persons defined and regulated under the public and private law. The legislation and protection of persons is thus ensured by the standards of several legal disciplines at the national and international level. Their starting points are the fundamental human rights and human freedoms enshrined in the Second Chapter of the Constitution of the Slovak Republic and other laws (legal regulations) in our legal system, for everyday practical implementation and the specific legal circuits.

The property protection is, in the principle, the process of securing the security of a subject (protected interest) by the using of safeguards and standards aimed at the eliminating the security risk of an illegal activity or event that is contrary to the laws and the interests of the “possessor” of the protected interest. Regarding property, it should be noted that it may be tangible or intangible. The tangible assets include, for example, buildings, computing, transport, and so on. The intangible assets include, for example, software, licenses, patents, etc. Beyond the basic allocation of assets for the accounting purposes, we perceive the protected information and other legally protected security interests as the significant intangible assets. The protection of tangible property is realized within the so-called “physical and object security“. The protection of intangible assets is, as a rule, implemented within the framework of a number of legal disciplines and legislation.

The physical and object security is a system of measures to protect an object (classified information, etc.) from the unauthorized persons and against the unauthorized manipulation in the objects and protected areas. The protection is provided by the mechanical barriers, technical security devices, physical protection, regime measures and their combination in accordance with the safety standards (set standards) of the physical security and object safety. The method, conditions and extent of the proposed measures are determined by their supervisors on the basis of an assessment of the risks of possible threat to objects and protected areas².

However, our focus is on the intangible assets, such as the safeguarding of protected information and other legally security interests protected by the law.

2 <http://www.nbusr.sk/ochrana-utajovanych-skutocnosti/povinnosti-a-moznosti/fyzicka-a-objektova-bezpecnost/index.html>.

The information resulting from the physical and mental integrity of a person or systems (technologies, technologies) created by him and having the character of a protected interest (protection of classified information, protection of personal data, business secrets, espionage/industrial espionage and related unlawful activities) are implemented mainly within the so-called information security (with the emphasis on protecting classified information, in line with the state/EU cyber security concept). Cybernetics is a new operating domain, so we perceive the protected information as part of the security interests of the state. The National Authority in the Slovak Republic and the Central State Administration for the Protection of Classified Information, the Cipher Service, Cyber Security and Trusted Services (for electronic transactions in the internal market, electronic signatures and stamps) is the National Security Authority, based in Bratislava.

The Protection of classified information means the creating of conditions for the personnel security, administrative security, cryptographic information protection, physical security and object security, security of technical means, including the protection of foreign information. The obtaining a Certificate of Disclosure of Classified Evidence of an Appellate Degree is not a basic prerequisite for the performance of their function but is accompanied by a number of obligations and procedures that lead to the security of classified information prior to their misuse³. The Office has a significant competence since 2016 for the cybernetic security, in coordination with the European Cyber Security Organization European Cyber Security Organization ESCO, based in Brussels.

For the purpose of the Act, the classified information is the information or matter designated by the originator of a classified information which, in view of the interest of the Slovak Republic, must be protected from being divulged, misused, damaged, improperly reproduced, destroyed, lost or stolen and which may arise only in the areas established by the Government of the Slovak Republic by its regulation⁴. According to the law, the information may be the content of a document, drawing, drawing, photograph, graph, or other record, content of the oral expression, content of electrical, electromagnetic, electronic or other physical transport medium. It can be a mass media with information, product, device, real estate.

3 <http://www.nbusr.sk/ochrana-utajovanych-skutocnosti/povinnosti-a-moznosti/index.html>.

4 <https://zakony.judikaty.info/predpis/zakon-215/2004>.

The protection of persons and property, the primary safeguarding of protected information and other security interests is perceived in a wider and narrower sense as: 1) the protection of interests in the entire societal dimension, implemented and analyzed at the local, national, regional and the international level of security and the application of relevant standards of the criminal substantive law; 2) and the exercise of the protection of interests in an individual dimension, implemented and analyzed at an individual level of security and the application of relevant standards of the substantive criminal law (to ensure the safety of a citizen, the protection of a particular private or corporate property, another law protected interest, etc.).

The protection of persons and property, primary the safeguarding of protected information and other security interests are carried out at home and abroad through: 1) the state security management by the building and developing the capabilities of defense, protection and state rescue), and/or 2) private security organizations; 3) institutions under the subordination of the Ministry of Internal Affairs and Justice, as well as the protection in the proceedings before the international legal institutions (by applying the legal norms).

The basis of the successful study of criminal law in relation to this issue is the already acquired knowledge of legal subjects whose teaching is preceded by the criminal law⁵.

The selected national sources of rights for the protection of persons, property and other legitimate interests: 1) Constitutional Act no. 460/1992 Coll. Constitution of the Slovak Republic, Second Chapter, Art. 12–54; 2) Constitutional Act no. 227/2002 Coll. Constitutional Act on the State Security in Time of the War, War, Exceptional Condition and Emergency Status; 3) Act no. 387/2002 Coll. Act on the State Governance in Crisis Situations Out of Time of the War and War Condition; 4) Act no. 319/2002 Coll. Law on the Defense of the Slovak Republic; 5) Act no. 129/2002 Coll. on an integrated rescue system; 6) Act no. 473/2005 Coll. The Act on Providing Services in the Field of Private Security and on Amendments to the Certain Acts; 7) Act no. 215/2004 Coll. on the Protection of Classified Information and on Amendments to the Certain Acts as amended; 8) Act no. 154/2010 Coll. The European Arrest Warrant Act.

5 D. Mašľanyová, *Trestné právo hmotné: všeobecná a osobitná časť*, Plzeň 2016, s. 13.

Selected international sources of the law: 1) Council Decision EU No. 2013/488/EU on the security rules for the protection of EU classified information; 2) The Rome Statute of the International Criminal Court is the international treaty that founded the Court, 1998; 3) The NATO founding treaty, 4 April 1949; 4) Document C-M (2002) 49 Security within the NATO; 5) the Hague Convention (1907), the four Geneva Conventions (GCs) (1949); 6) the Additional Protocol I (AP I), governing international armed conflict, and Additional Protocol II (AP II), governing non-international armed conflict.

The examples of international cooperation on the protection of persons, property and the safeguarding of other protected interests of the European Communities and the Member States:

European Border and Coast Guard Agency⁶ (Frontex)

Frontex does not have its own equipment or the border guard. When coordinating the joint operations, it relies on the EU countries to provide the border guards, vessels, aircraft and other resources. In all its areas of activity – operations, risk analysis, training, R & D and return of migrants, Frontex fulfills the role of coordinator and establishes the specialized networks between the border authorities. The aim is to develop and share the best practices between the EU border authorities and the countries associated within the Schengen area.

European Police Office⁷ (Europol)

Europol uses its central position in the European security architecture and provides a unique range of services such as: support for the on-site law enforcement operations, crime information exchange center, law enforcement expertise center.

International Organization for Criminal Cooperation⁸ (Interpol)

The main role of Interpol, according to the International Statute of the Organization, is to ensure the effective international exchange of criminal information in order to support the elucidation and the prevention of criminal offenses. At the national level, the Interpol National House functions as a liaison between the operational activities of departments of various police services whenever these activities contain an international element.

6 https://europa.eu/european-union/about-eu/agencies/frontex_sk.

7 https://europa.eu/european-union/about-eu/agencies/europol_sk.

8 <https://www.minv.sk/?interpol> Národná ústredňa Interpolu MV SR, Bratislava.

European Anti-Fraud Office⁹ (OLAF)

OLAF's mission is to protect the financial interests of the European Union and to fight against the fraud, corruption and any other illegal activities, including the serious offenses within the European institutions, related to the drawing of EU funds with a financial impact.

Criminal law protection of security interests

The Slovak Republic in the process of guaranteeing security, building the security strategy, building its security policy and creating an adequate security system is based on the historical experience, available scientific analyzes and the forecasts of the security situation in the world, the Europe and on its own territory.

The attention of society has always focused on the two basic areas of security, namely the internal security and external security, and the corresponding sources of threats that have been basically presented by the natural and civilization sources of threats or the combinations of them. It is precisely the area of civilization threats associated with the armed violence that has become a region of great development in the mankind's historical development and has provided the humanity with the instruments of self-destruction, destruction of the world, and human civilization. The state uses the available tools of the security system to eliminate them, in the context of collective defense and safeguarding of protected interests, in the individual security sectors¹⁰.

The protection of state security by the standards of criminal law is one of the key, legally protected interests. Today's empirical empowerment confirms that the security is a significant multidimensional factor of the quality of society and citizen's life, which we have to systematically examine, forecast and ensure.

The Slovak Republic is currently experiencing a new stage in the definition of security interests from its independence, which reflects the newly formed Security Strategy of the Slovak Republic under the authority of the Ministry

⁹ <http://www.olaf.vlada.gov.sk/olaf/> Centrálny kontaktný útvar pre OLAF, Úrad vlády SR, Bratislava.

¹⁰ M. Kelemen, *Vybrané problémy ochrany osôb, majetku a zaistenia ďalších chránených záujmov v sektoroch bezpečnosti*, Bratislava 2014, s. 9.

of Foreign Affairs and the European Affairs of the Slovak Republic and their implementation in the parallel strategic documents such as the Defense Strategy of the Slovak Republic and the Military Strategy of the Slovak Republic, in the Ministry of Defense of the Slovak Republic.

Up to now, starting situation.

We perceive the security strategy as the theory and practice of the functioning of the State – the Community of State, aimed at achieving the general and long-term security objectives. The previous approaches and opinions as well as the basic postulates of security and defense are contained in the Security Policy Documents, discussed and approved by the National Council of the Slovak Republic in September 2005 – the “Security Strategy of the Slovak Republic” and the “Defense Strategy of the Slovak Republic”¹¹. The country Strategy Papers were in the process of updating to respond to changes in the security environment by all available means of the Slovak Republic, based on the “Strategic Defense Assessment” in 2011 and a broad professional and layout debate. A key pillar of our direction was the “Strategic Concept of Security and Defense of North Atlantic Treaty Organization Members” adopted by the Heads of State and Government in Lisbon in 2010 to replace the 1999 Strategic Alliance concept. “The strategic concept must offer freedom with regard to the foreseeable development, with sufficient precision to be useful to Allied officials responsible for implementing the policy”¹².

The security interests of the Slovak Republic are based on the principle of guaranteeing the security of the citizen in accordance with international legal standards and constitution, and the basic civil and democratic values. The Slovak Republic recognizes and protects the values of freedom, peace, democracy, the rule of law, law, and justice, pluralism, prosperity, solidarity, respect for human rights and freedoms¹³.

The Slovakia’s security interests are based on the following values: 1) guaranteeing the security and protection of the fundamental human rights and freedoms of citizens; 2) the guarantee of territorial integrity, sovereignty, the integrity of borders, political independence, identity; 3) the democratic state establishment, legality and market economy; 4) the economic, social, environmental and cultural development of society; 5) Transatlantic Strategic Partnership, allied security; 6) the effectiveness of the international

11 Bezpečnostná stratégia SR 2005, Obranná stratégia SR 2005.

12 P. Nečas, M. Kelemen, *War on insecurity: calling for effective strategy!*, Kiev 2010, s. 44.

13 Art. 4 a 5 Bezpečnostná stratégia SR 2005.

organizations to which the Slovakia is a member, supporting the expansion of the NATO and the EU; 7) developing the good partnerships and the forms of cooperation with the countries with which we share common the interests; 8) promoting the spread of freedom and democracy, respect for human rights, legality, international order, peace and stability in the world; 9) confirm the cyberspace as a new operating domain.

Conclusion

The new Security Strategy defines the security interests of the Slovak Republic, the basic objectives of the SR's security policy and the ways of their implementation in the various areas of the Slovak security. Strengthening the interconnection of security interests with the expression of objectives, procedures and tools of the Slovak Security Policy in the key areas of security in their enforcement, in line with a comprehensive approach to security (integrated action of a wide range of instruments). It also takes into account the limits of international organizations to address the current issues, giving the greater importance to the regional organizations based on a common value basis and the capacity development of the SR¹⁴.

The expert community notes that, in the view of the continuation of the SR 2017 Security Strategy proposal to the 2005 Slovak Republic Security Strategy, there has been no significant shift in security interests. Almost identical in the terms of text and order, the preservation of state existence, the sovereignty and integrity, the development of democratic foundations and the rule of law, sustainable development and security remained. Compared with the 2005 Slovak Republic Security Strategy, a good environment, cultural development and safe cyber space have been added. The security, stability and capability of the EU and the NATO as a security interest have remained (this has brought about the continuation of the integration core – the response to the changes in the EU). If the Transatlantic Partnership in the 2005 Slovak Republic Security Strategy was fifth, the 2017 document is the penultimate one, placed in the area of security and stability in the European Neighborhood¹⁵.

¹⁴ <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=25849>.

¹⁵ <http://stratpol.sk/wp-content/uploads/2017/08/BSSR-2017-SVK-v-final-OND-final.pdf>, s. 5.

According to the current decision of the Ministry of Defense of the Slovak Republic, a new Security Strategy will be submitted by the end of 2020.

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Przewidziana w przepisach prawa karnego ochrona interesów w dziedzinie bezpieczeństwa w kontekście aktywów obronnych państwa i cyberprzestępczości

Streszczenie

Artykuł dotyczy interesów państwa w dziedzinie bezpieczeństwa, ze szczególnym uwzględnieniem ochrony informacji, która stanowi zasadnicze wyzwanie ery cyfrowej. Zajmuje ona wyjątkowe miejsce, zwłaszcza w kontekście zagadnień dotyczących bezpieczeństwa narodowego państwa. W artykule omówiono wiedzę i praktykę stosowaną na szczeblu krajowym w odniesieniu do agendy organizacji międzynarodowych.

Słowa kluczowe: edukacja, technologia, szkolenia, wojskowe projekty pilotażowe