| Chapter 7 |

Slovakia: National Regulations in the Shadow of a Common Past

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ABSTRACT

This chapter is devoted to the basics of substantive criminal law and criminal procedural law in Slovakia. Its aim is to define criminal law in the Slovak legal system and to specify the basic areas of its regulation. The chapter focuses on the criminal law itself, its development, and the subject of regulation. Within the scope of substantive criminal law, it focuses on the concept of criminal liability of natural and legal persons and on the system of criminal sanctions, including alternative sanctions. Within the framework of criminal procedural law, it focuses on criminal proceedings, their purpose, basic principles, stages, and alternative punishment in the form of diversions. It also addresses enforcement proceedings, in which it refers to the basic principles of enforcement. It pays special attention to the issue of the prison system. Finally, the legal acts of the European Union, which determined the wording of Slovak criminal law, are discussed. Finally, it evaluates the criminal legislation in the context of the state's criminal policy. The Slovak Republic is known for the strictness of its criminal codes, which is reflected, in particular, in the definition of antisocial behavior and its subsequent designation as crimes for which the Slovak legal system, in comparison with other legal systems in Europe, imposes some of the most severe penalties.

KEYWORDS

Slovakia, criminal law, criminal liability, criminal proceeding, criminal policy

1. The criminal law in the Slovak Republic

Criminal law in the Slovak Republic has long been one of the traditional branches of *public law.* The concept of criminal law depends on its perception – whether it is perceived as a branch of law, a scientific discipline, or a field of study. It is most effective to consider it a branch of law. *Criminal law as a branch of law* is internally divided into substantive criminal law and procedural criminal law. *Substantive criminal law* is a branch of law that protects important social relations by determining what is a crime and which sanction can be imposed for its commission. *Procedural criminal law* is a branch of law that regulates criminal proceeding that act as the procedure

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of law enforcement and judicial authorities in identifying and clarifying crimes and their perpetrators and in punishing those perpetrators fairly.[1]

Based on the concept of criminal law as a branch of law, the *object* of its *regulation* can also be defined. *The object of substantive criminal law* is the regulation of the basis of criminal liability, types of punishments, protective measures, the conditions of their imposition as well as the regulation of various crimes. *The object of procedural criminal law* is the regulation of the procedure of law enforcement authorities and courts as well as other persons involved in the criminal proceedings, in detecting crimes and their perpetrators, in deciding on crimes, in enforcing these decisions, in clarifying the causes of the crime, and in adjusting their rights and obligations.[2] *Criminal protection is a subsidiary (ancillary, supportive)* because it only complements the protection provided to individual protected interests by other non-criminal branches of law, which expresses *the ultima ratio* principle. This principle must be respected when creating the factual elements of criminal acts.

Substantive criminal law and procedural criminal law are inseparably connected. A perpetrator can be punished and the sanctions can be enforced only in the criminal proceedings. Substantive criminal law can only be implemented in a way that establishes procedural criminal law. Criminal policy and legislative activities must provide for compliance among the norms of substantive and procedural criminal law because they come from the same constitutional and criminal-political principles and they have a common goal, a common terminological apparatus, and common institutions. An independent examination of institutions of substantive and procedural law is legitimate only for pedagogical and scientific reasons; however, in terms of legislative and application practice, it is necessary to consider the complexity of solving problems in criminal law.[3]

Via its norms, criminal law regulates the relations that arise from the commission of a crime. These are so-called criminal relations of both a substantive and procedural nature. *A criminal (substantive) relationship* arises between the perpetrator of a crime and the state on the basis of the commission of the crime.[4] *A criminal procedure relationship* arises between law enforcement and a court on the one hand and the person being prosecuted on the other on the basis of a criminal charge (absolute certainty is not needed; reasonable suspicion of the commission of a crime is sufficient).[5] Notably, these relations are established at national, European, and international levels. *The structure of the sources of the criminal law* also corresponds to this. This includes national sources, European sources (primary and secondary law of the European Union), and international sources (primarily international treaties).

1 Ivor, Polák and Záhora, 2021a, p. 22.
2 Ivor, Polák and Záhora, 2021a, pp. 28–29.
3 Ivor, Polák and Záhora, 2021a, p. 23.
4 Madliak, Mihaľov and Štefanková, 2010, p. 35.
5 Ivor, Polák and Záhora, 2021a, p. 24.

Criminal law belongs to the most dynamic branches of law in terms of the quantity of legislative changes. The legislative changes determine both the needs arising from the trends of the state's criminal policy and the needs arising from the harmonization of criminal law with European Union law.

1.1. Development of criminal law in Slovakia

As in the case of the entire legal system, criminal law *has evolved* naturally. In Slovakia, as well as in other post-communist countries, this evolution was influenced by many factors. The codification of criminal law in Czechoslovakia took place via the issuing of Criminal Code no. 86/1950 Coll., Criminal Procedure Code no. 87/1950 Coll., and Criminal Administrative Act no. 88/1950 Coll., while the codification was ideologically focused. The formation of the criminal legislation was determined by the Constitution of the Czechoslovak Socialist Republic from 1960, and after its adoption, new criminal codes were adopted – Criminal Code no. 140/1961 Coll. and Criminal Procedure Code no. 141/1961 Coll – which brought the establishment of new institutes as well as the modification of existing ones. The fundamental changes in criminal law were brought about by the economic and the political transformation in the 1990s associated with the requirement of deideologization of the Criminal Code. The basic factor determining the form of criminal law in the broadest sense was recodification of the criminal law approved by the government of the Slovak Republic in May 2005, resulting in the current criminal codes, such as Criminal Code no. 300/2005 Coll. and Criminal Procedure Code no. 301/2005 Coll. Another factor, European integration, which culminated in Slovakia's integration into the European Union, must also be mentioned.

1.2. The criminal legislation

The basic national source of criminal law is the Constitution of the Slovak Republic, which refers to some basic principles of criminal law, both substantive and procedural. However, the most important sources are *the Criminal Code* and t*he Criminal Procedure Code.* As criminal codes in a concentrated form, they regulate the conception of criminal liability, the system of the criminal sanctions (for natural persons), and the conception of criminal proceedings, both pre-trial and court. In 2016, direct (true) criminal liability of legal persons was introduced into the legislation of the Slovak Republic, specifically by *the Code of the Criminal Liability of legal persons.* This code has become a special code in relation to the Criminal Code and regulates the basics of criminal liability and the system of criminal sanctions only in relation to legal persons as perpetrators of the crime. The Criminal Code applies the subsidiary to issues that the Code of the Criminal Liability of Legal Persons does not regulate. Among the national sources of the criminal law are presidential amnesty decisions as well as the findings of the Constitutional Court of the Slovak Republic that were adopted in the plenary and that annul the criminal law norms. Generally, it is necessary to mention the legislation that regulate the organization of criminal proceedings and the enforcement of the criminal sanctions.

1.3. Institutions and their roles

Criminal theory distinguishes between *the entity in the criminal proceedings* and the side in the criminal proceedings, which is determined by the different procedural positions the parties hold. The entities of the criminal process are factors (state authorities, natural persons, legal persons) who have their own influence over the course of the criminal proceedings and on whom the Criminal Procedure Code imposes certain procedural rights and obligations in order to exercise their influence.[6] It is entirely possible to include the law enforcement authorities and a court among the entities.

The law enforcement authorities are the prosecutor and the police officer.[7] The mission of law enforcement authorities focuses on the inquisitorial, that is, the investigative function. The essence of their activity lies in the detection of the crimes and the identification of their perpetrators in the pre-trial portion of the criminal proceedings.[8] *The prosecutor* in the court proceedings becomes a side and represents the prosecution in the criminal proceedings, while in the pre-trial portion of the criminal proceedings, the prosecutor is the dominus litis (the master of the dispute). *The prosecutor's office* can be considered to be a universal body for the supervision of legality. It is a hierarchically organized system of the state authorities headed by the Attorney General, wherein the relations are governed by the principle of subordination. A special section of the office of the Attorney General is the Special Prosecutor's office, which has a certain degree of autonomy with jurisdiction in matters belonging to the generic jurisdiction of the Specialized Criminal Court.

The Criminal Procedure Code specifies exactly who is considered to be *a police officer* as a law enforcement authority with procedural status. The institution whose members take part in fulfilling the tasks of the criminal proceedings is the *Police Force*. The basic legal framework of the activities of the Police Force and its members is regulated by a separate legal regulation, the Police Force Act. This Act uses the word police officer when discussing members of the Police Force; however, this is synonymous with a police officer as defined by the Criminal Procedure Code. The members of the Police Force – the police officers according to the Criminal Procedure Code – are procedurally independent in matters that they investigate, and they are bound only by the constitution, constitutional acts, acts, generally obligatory legislation, international treaties by which the Slovak Republic is bound, and instructions and commands of the court and the prosecutor to the extent specified in the Criminal Procedure Code.[9]

The court is an independent and an impartial state authority that decides on guilt and punishment, restrictions on fundamental rights and freedoms, remedies

6 Ivor, Polák and Záhora, 2021b, pp. 139–140.

7 In matters belonging to the European Public Prosecutor's Office, the prosecutor is also the European chief prosecutor, the European public prosecutor, the European delegated prosecutor, and the Permanent Chamber (matters of the Attorney General belong to the European Public Prosecutor's Office established by a special regulation or to the European chief prosecutor).

8 Ivor, Polák and Záhora, 2021b, p. 178.

9 Ivor, Polák and Záhora, 2021b, p. 212.

and protective measures. *The system of criminal courts* consists of general courts and a Specialized Criminal Court. The general courts consist of the Supreme Court of the Slovak Republic, the regional courts, the district courts, and the district courts in the seat of the regional court for the purposes of the criminal proceedings. The district courts, including those in the seat of the regional court as well as the Specialized Criminal Court, are the courts of first instance. The regional courts are considered the courts of second instance, that is, courts of a higher degree. The court of higher instance relative to the Specialized Criminal Court is the Supreme Court of the Slovak Republic, which is the superior court for all courts in the Slovak Republic. The courts act as arbitrators in the dispute between the prosecution and the defense. The current legislation favors the management function of the court's activities in the criminal proceedings, including the retention of making decisions. The inquisitorial function in the activities of the courts is significantly reduced, which is reflected in the fact that the court leaves the matter of proving to the sides and itself enters this matter only in the case of facts foreseen by the law.[10]

The probation systems are defined by a relatively wide range of features, with two main probation systems within Europe – one is typical for common law countries (Anglo-American legal system), and one typical for continental legal systems.[11] The birth of probation is connected with the entry of the Slovak Republic to the European Union, while a unique world (together with the Czech Republic) was created, namely the creation of probation and mediation, which are connected under the responsibility of one person – the probation and the mediation officer.[12] The basic legal framework for probation and mediation is Act no. 550/2003 Coll. regarding probation and mediation officers. In the Slovak Republic, a model of integration of probation into the judiciary was chosen.

1.4. Substantive criminal law

The basic principles of substantive criminal law are certain legal principles that form the basis on which the concept of criminal liability and the system of criminal sanctions are based. The Criminal Code does not explicitly define the basic principles in a straightforward form. Rather, they are reflected in the content of individual provisions and institutes of the Criminal Code, especially its general part. The principles can generally be divided into the principles of criminal liability and the principles of punishment. From a general perspective, a relevant principle is *the principle of subsidiarity of criminal repression*, which is based on the status of criminal law as a means of the last instance (ultima ratio) and *the principle nullum crimen sine lege*, which essentially states that there is no crime without a law. This principle includes four partial requirements: 1) the requirement of the legal form of a criminal law norm, 2) the requirement of certainty of the criminal law norm, 3) a prohibition of analogy to

10 Ivor, Polák and Záhora, 2021b, p. 177.
11 Ďurkechová, 2021, p. 126.
12 Ďurkechová, 2021, p. 129.

the detriment of the perpetrator, and 4) a prohibition of retroactivity (a retroactive effect) of the criminal law norm. *The principle ne bis in idem* in its substantive form means the prohibition of the double addition of the same fact in favor of or against the perpetrator.

The basis of criminal liability in the Slovak Republic is committing a crime. *A crime* is legally defined directly in the Criminal Code, while the definition applies equally to natural persons and legal persons. A crime is an illegal act, the signs of which are specified in the Code, unless the Code provides otherwise. It is based on a formal understanding of the crime, when it is sufficient for the occurrence of the criminal liability if the proceedings fulfills the elements of a crime. The legislation comes from *dual division of crimes into misdemeanors and crimes. Crimes* refer only to intentional crimes; they are purely formal, and at the same time, they represent a category of more serious and severe criminal proceedings. *A misdemeanor* is an exception from the formal understanding because in the case of a misdemeanor, the seriousness, which we understand as a material corrective; the material corrective must be assessed. For the formation of criminal liability, the seriousness must be greater than slight in terms of adults and greater than low in terms of juvenile perpetrators. The Criminal Code also exhaustively regulates *the criteria for assessing seriousness.* This can be assessed not only during the pre-trial proceedings but also during the court proceedings. The dual division of crimes determines an application of substantive legal institutes (such as the imposition of sanctions or the modification of criminal rates) as well as application of procedural legal institutes (such as the use of diversions in the criminal proceedings and the forms of investigation).

The perpetrator of the crime is the person who commits the crime. This definition differentiates an individual perpetrator from the accomplices and participants of the crime. The perpetrator of the crime may be a natural person or a legal person according to the conditions determined by a special regulation.

The conditions of the criminal liability must be differentiated depending on whether the perpetrator of the crime is a natural person or a legal person. In the conditions that apply in the Slovak Republic, *the principle of an individual criminal liability* and *the principle of a liability for culpable illegal act* apply to a perpetrator who is a natural person. According to these principles, it is necessary to fulfill the conditions of criminal liability when considering a perpetrator who is a natural person. The conditions required by the law are *age* (generally 14 years; in certain cases of the crime of the sexual abuse, the Criminal Code requires the ages of 15 years and 18 years) and *sanity* (a person can recognize the illegality of their actions and can control theme); sanity is proved by expert evidence (an expert psychiatrist). Only the consequences caused by the perpetrator themselves can be attributed to them. The Slovak law distinguishes between two types of fault: intentional and negligent. The conditions of criminal liability, age and sanity are the obligatory signs of the entity of the crime. They are referred to as circumstances precluding criminal liability according to the Criminal Code; therefore, their negative definitions are regulated in this Code. If any of these conditions is missing, criminal liability does not arise. According to the Criminal

Procedure Code, age is a circumstance of the inadmissibility of criminal prosecution. Sanity must be proven in the criminal proceedings. The establishment of insanity in the pre-trial portion of the criminal proceedings is a reason to stop the criminal prosecution; in the judicial portion of the proceedings, insanity is a reason for acquittal. Criminal theory distinguishes *three categories of perpetrators* according to the factual elements of criminal acts: a general, a special, and a specific perpetrator.

The criminal law differentiates four *categories of the perpetrators in terms of the age*. The first category consists of *the persons under 14 years* (or 15 years). These persons are not criminally responsible for the acts that otherwise show signs of the crime. However, they may be punished by a criminal sanction because protective education can be imposed on them in civil proceedings. The second category consists of *the juvenile perpetrator,* a person from 14 years to 18 years (or from 15 years to 18 years). In relation to the criminal punishment of the juvenile perpetrators, special provisions apply that regulate the differences from the adult perpetrator. These special provisions, which apply to juvenile perpetrators, are regulated in both criminal codes. The criminal liability for a juvenile perpetrator younger than 15 years old (but older than 14 years old) is connected to obtaining a level of intellectual and moral maturity that allows them to recognize the illegality of their act and to control it. This conception is called *conditional (relative) responsibility* and depends on the level of intellectual (a level of thinking) and moral development (personal and moral qualities, a value system) of a juvenile perpetrator at the time the crime was committed.[13] In such cases, the mental state of the juvenile must be examined in the criminal proceedings by an expert in the field of child psychiatry. Insufficient intellectual and moral maturity leads to the cessation of the criminal prosecution. Criminal liability is fully (general criminal liability) acquired by reaching the age of majority – 18 years of the age, at which point a perpetrator becomes *an adult perpetrator.* The fourth and final category consists of *a person close to the age of juvenile* (from 18 years to 21 years) and *an elderly person* (over 60 years). In these cases, age is generally a mitigating circumstance if the person's recognition and control skills are affected by their age.

The principle of the criminal liability of a legal person under the conditions regulated by the law is based on the Code of the Criminal Liability of Legal Persons and means that a legal person may be responsible for exhaustively defined crimes. In the Slovak Republic, a minimum model applies – *Limited criminal liability* – in the determination of the extent of criminalization of a legal person, wherein a legal person is responsible only for exhaustively regulated crimes.

The fault institution for legal persons replaces the institution of attribution. *The conception of the attribution of the criminal liability* of a legal person means that the perpetrator of the crime is a legal person to which a criminally relevant consequence of the natural person is attributed. *The criminal liability of the legal persons* comes from the theory of identification, which is based on the idea of personification of a legal person. In the criminal context, the personification of a legal person indicates that

13 Ivor, Polák and Záhora, 2021a, p. 147.

at the time of the intention to commit the crime and at the time of its commission, the authority of the legal person in question is also a legal person. According to this theory, a legal person may be responsible for the actions of its authorities and representatives. The most significant problem in this theory is determining the criteria for assessing whether a person is the authority of a legal person. According to case law, a delegation of the jurisdiction of the authorities of a legal person to other components of a legal person does not preclude the application of this theory.[14]

To prosecute a legal person as a perpetrator of the crime, several conditions must be cumulatively fulfilled: 1) a crime has been committed for which a legal person may be responsible; 2) a crime is committed in favor of a legal person, on its behalf, within its activities, or through it (alternatively given); 3) a crime is committed by the actions of one of the persons defined in a special regulation (four categories mentioned below)[15] or by the negligence of the supervision or of the control activities of these persons (such as a member of the board, a CEO, an executive manager, or an employee); 4) this is not a legal person whose criminal liability is excluded[16]; 5% a crime is attributable to a legal person. Natural persons may make a legal person criminally liable because the natural person's actions must be carried out on its behalf, through or in its favor, or within its activities. Therefore, the legal person's fault is derived from the natural person's fault, which can be divided into the following categories:

1. *The first category* – the action of the executive manager or the action of a member of the statutory body
2. *The second category* – persons who supervise activities even if they have no other relationship with the legal person
3. *The third category* – the action of a person who is authorized to act on behalf of a legal person (on the basis of contractual representation, such as a procurator or an agent)
4. *The fourth category* – the action of a natural person acting under the authority of a legal person, wherein, by insufficient supervision or control, which were the duties of the legal person, the persons listed in the first three categories enabled such persons to commit a crime, although through negligence[17]

In terms of the fourth category of natural persons, a legal person may be *exculpated* and can thus remove the criminal liability, specifically in two cases: a) a legal person shows that it has a functioning *Compliance program,* and it thus did not neglect any control or supervisory obligations, and b) the so-called *material corrective* is applied if the negligence of the duties of a legal person's authority is negligible.

The system of punishments may be defined as an arrangement – a hierarchy of individual types of punishments according to their severity as well as the affected

14 Ivor, Polák and Záhora, 2021a, p. 499.
15 Article 4 para (1) a) – c) of the Code of the Criminal Liability of the Legal Persons.
16 Article 5 of the Code of the Criminal Liability of the Legal Persons.
17 Ivor, Polák and Záhora, 2021a, pp. 506–507.

interests and mutual relations and bonds between individual punishments.[18] In the Slovak Republic, the *dualism of criminal sanctions* is applied. A criminal sanction is a punishment and a protective measure as two separate categories of sanctions that are equally important and significant.

The catalog of punishments for perpetrators – natural persons is regulated in the Criminal Code[19] and contains 12 types of punishments that can be distinguished according to the affected interests: imprisonment, house arrest, compulsory work, a monetary punishment, forfeiture of property, forfeiture of thing, a ban on activity, a residence ban, the loss of honorary titles and honors, the loss of military and other ranks, and expulsion. *The catalog of punishments for perpetrators – legal persons* is regulated in the Code of the Criminal Liability of Legal Persons[20] and contains nine types of punishments, which can also be distinguished according to the affected interests: the dissolution of a legal person, forfeiture of property, forfeiture of thing, monetary punishment, a ban on activity, a ban on receiving subsidies, a ban on receiving help and support from the funds of the European Union, a ban on participating in the public procurement, and the punishment of publishing a conviction. *The catalog of protective measures* is regulated only in the Criminal Code: protective treatment, protective education, protective supervision, detention, confiscation of property, and confiscation of a portion of property.

Among these punishments, a group of *alternative punishments* can be generated, which, without being connected with an imprisonment, guarantee the fulfillment of the purpose of the punishment in the same way as an unconditional imprisonment. The alternative punishments strengthen the principle that an unconditional imprisonment is an ultima ratio, which should only be applied if other means, that is, punishments without imprisonment, have failed.[21] These may include house arrest, compulsory work, monetary punishment, conditional suspension of a punishment, and conditional suspension of a punishment with probation supervision. The alternative punishments are based on the conception of restorative criminal policy. Their introduction into criminal codes reflected the need for society to react to the failing retributive form of punishment, which proved to be ineffectual due to insufficient results in the areas of the resocialization and correction of the perpetrators. The statistics do not indicate that they have a high degree of applicability.

1.5. Criminal proceedings

The goals of criminal proceedings are essentially the same in all modern states and their legal systems: to duly detect a crime and to punish its perpetrator fairly. The facts must be ascertained via methods that correspond to current scientific knowledge, enriched by the empirical knowledge of law enforcement and the judiciary, taking

18 Szabová, 2021, p. 151.
19 Article 32 of the Penal Code.
20 Article 10 of the Code of the Criminal Liability of the Legal Persons.
21 Ivor, Polák and Záhora, 2021a, pp. 374–375.

into account social interests and needs, but also with respect for the rights, interests, and freedoms of individuals, which are guaranteed by the constitution and international agreements and which are also respected by Slovak law enforcement agencies and courts.[22]

The basic principles of criminal procedure are leading legal ideas to which this status is granted by law. The entire criminal process, the entire organization of criminal proceedings, and the division of functions in criminal proceedings, that is, all systemic and structural criminal relations, are built on them.[23]

The constitution for the establishment of the principles of criminal procedure has extraordinary importance in a democratic society, as it seeks to regulate criminal procedure, which, by its very nature, always affects the fundamental rights and freedoms of citizens. The basic constitutional principles are then further defined and specified by the relevant provisions of the Criminal Procedure Code. The following groups of principles are traditionally distinguished:

a) Principles common to all criminal proceedings (principle of due process, principle of proportionality, principle of ensuring the rights of defense, principle of audi alteram partem, principle of fair trial, principle of publicity, principle of cooperation with citizens' associations, principle of protection of the injured party's rights)
b) Principles of the initiation of proceedings (principle of officiality, principle of legality, principle of ne bis in idem, principle of opportunity, principle of indictment)
c) Principles of evidence (principle of the presumption of innocence, principle of search, principle of immediacy, principle of orality, principle of at liberty evaluation of evidence, principle of finding the facts of the case without reasonable doubt)[24]

In the various stages of criminal proceedings, the principles in question are applied differently, depending on their purpose.

Criminal proceedings are proceedings pursuant to the Criminal Procedure Code. In the Slovak republic, it has the character of a continental criminal process, which, in essence, means that it is divided into two basic parts. The first represents *pre-trial proceedings,* and the second represents *proceedings before the court*. In terms of the nature, order, and diversity of the task's performance by individual subjects of criminal proceeding, the criminal proceedings may but is not required to move through all six stages within these two basic portions.[25] The pre-trial portion of the proceedings has two stages: 1. the pre-prosecution procedure and 2. the preparatory proceedings. Within the judicial part of the proceedings, we distinguish four stages: 1. examination

22 Ivor, Polák and Záhora, 2021a, p. 51.
23 Ivor, Polák and Záhora, 2021a, pp. 53–54.
24 Jalč, 2021, p. 41.
25 Ivor, Polák and Záhora, 2021a, p. 18.

of the indictment and preliminary hearing of the indictment, 2. the main hearing, 3. the appeal procedure, and 4. the enforcement procedure.

The first stage the pre-*prosecution procedure* has a facultative character. Its essence lies in the receipt of criminal reports and complaints concerning the facts indicating the commission of a crime.[26] The second stage, *the preparatory proceedings*, is the obligatory stage. Its role is to provide the basis for deciding whether to bring a charge or a proposal for an agreement approval on guilt and punishment to the court that further deals with the case or whether to issue another decision on the merits.[27] The relevance of preparatory proceedings also lies in the fact that its proper execution is often decisive for the outcome of the entire criminal proceedings. The preparatory proceedings are carried out in the form of an investigation and an abbreviated investigation. The third stage, the examination of the indictment, is obligatory, and its essence lies in the fact that a single judge examines the content of the indictment, its justification, the content of the file, the completeness and legality of the preparatory proceedings, and the possibility of diversions and decides on further action. *The preliminary hearing of the indictment* is facultative, and its essence lies in the fact that the Senate examines the merits of the indictment, the legality of the evidence, and the possibilities of applying diversions and decides on the procedure to pursue further. Whether an examination or a preliminary hearing is applied depends on the category of the offense committed as well as the rate.[28] The fourth stage, *the main hearing*, is the crucial portion of the criminal proceedings, in which guilt and punishment are decided, as are other related issues, such as damages or the imposition of a protective measure. The main hearing is usually public and is held orally in the personal presence of the parties. At the main hearing, the principle of publicity, orality, and immediacy and the principle of audi alteram partem are fully reflected, which becomes evident during the evidence phase.[29] Stage five, the *appeal / appeal proceedings,* is only possible if the beneficiaries have taken the opportunity to lodge a proper appeal (correctly and in a timely manner). The essence of this stage lies in the examination of the previous proceedings and the issued decision: factual errors, legal errors, and procedural errors. The purpose is to remedy the incorrectness of the decision in the interests of the parties to the proceedings, which increases the guarantees of the legality and fairness of court decisions (as well as of law enforcement authorities). Decisions of higher courts (usually the Supreme Court) issued in appeal proceedings form an important part of the case law unifying and guiding the interpretation and application of legislation.[30] The sixth stage, the enforcement procedure, is possible if the final decision contains a statement imposing a sentence or protective measure.

Alternative punishment can be described as one of the possibilities for fulfilling the purpose of restorative justice. It is prerequisite for faster and more efficient and

26 Ivor, Polák and Záhora, 2021a, pp. 18–19.
27 Jalč, 2021, p. 187.
28 Ivor, Polák and Záhora, 2021a, p. 19.
29 Deset, 2021, p. 216.
30 Ivor, Polák and Záhora, 2021a, pp. 203–204.

cost-effective solutions in criminal cases and creates alternatives in procedural law. *Procedural law alternatives* are decisions, including special procedures, that precede these decisions. Their specificity lies in the following fact: if the legal conditions, such as those set out in the Criminal Procedure Code, are met, the criminal proceedings – that is, the prosecution of the accused – will be legally terminated even without a court ruling on guilt and punishment and even in the application of some of these procedural law alternatives including cases of criminal prosecutions conducted for particularly serious crimes. Decisions of this nature include conditional cessation of prosecution, conditional cessation of prosecution of the cooperating accused, and conciliation. All of these decisions can be applied only with the consent of the accused, while in theory, as well as in court practice, they are included among the so-called *diversions*. In the SR, diversions also include an agreement on guilt and punishment – proceedings as well as the subsequent court decision on this agreement in the form of a judgment – although some authors also consider a court decision by a criminal order to be a diversion. In both cases, however, unlike the diversions mentioned above, the decision – judgment or criminal order – can only be made by a court, and these decisions are always of the nature of a conviction declaring a person guilty and imposing a penalty.[31]

The system of penalties and the principles by which penalties are imposed are based on the idea that punishment should be proportionate to the seriousness of the offense for society and should be individualized and differentiated according to the nature of the offense being committed and the character of perpetrator as well as fair and lawful.[32] The principles of sentencing constitute aspects that relate to and constitute the imposition of penalties as certain limits in carrying out the work of courts and judges. From a practical perspective, they represent a concrete reflection of the protective function of criminal law in the legislative text. Here as well, the connection between theory and practice is extremely important, as principles, if we perceive them as rules of punishment, will be applicable in practice only if they become sufficiently abstract.[33] From the perspective of the application principles, it should then be the case that penalties are imposed precisely in light of the principles in question, specifically regarding the question of the legality and proportionality of such penalties.[34]

Punishment of offender is primarily based on the principle *of nulla poena sine lege*, that is, the principle of the legality of punishment, according to which only such type of punishment and only to the extent provided in the Penal Code can be imposed on the offender. Punishment should only punish the offender in such a way as to ensure the least possible impact on their family and those close to them, which is a manifestation of *the principle of personality of punishment*. In determining the type

31 Čopko, 2020, pp. 250–251.
32 Mencerová et al., 2015, p. 292.
33 Mihálik and Vincent, 2020, p. 306.
34 Čič, 1983, p. 19.

of punishment and its imposition, the court shall consider, in particular, the way in which the act was committed and its consequences, fault, motivation, aggravating circumstances, and mitigating circumstances as well as the perpetrator, their circumstances, and the possibility of their successful treatment. The law forces the court to consider the individual peculiarities of each individual crime, thus fulfilling *the principle of judicial individualization of punishment*, which determines the specific degree of the sentence. However, judicial individualization of punishment is preceded by *statutory individualization of punishment*, which determines the modification of the penalty rates of imprisonment specified in a separate part of the Penal Code for each crime. Effective January 1, 2021, the judicial individualization of the sentence was extended. When determining the type of sentence and its imposition, the court will also take into account whether the offender gained a property benefit from the crime; if the property or personal relations of the offender do not prevent it or it is not to the detriment of liquidated damages, in addition to another punishment, it shall – taking into account the amount of this property benefit – also impose punishment on their property, which will affect them, unless such punishment is imposed solely on them.

The principle of individualization of punishment (together with the principle of personality of punishment) is the most reflected in application practice and affects the type and scope of punishment imposed, namely judicial individualization of punishment. However, statutory individualization of punishment has a more general character. The purpose of judicial individualization can be seen not only in terms of setting the basis of proportionality of the sentence, but also, for example, in terms of whether alternative punishments can be also considered.[35] *The principle of proportionality of punishment to the committed crime* is relevant in application practice. In this context, proportionality means the impossibility of imposing a punishment that would be stricter than the severity of the crime. Judicial individualization of the sentence plays an important role in the requirement of the proportionality of the sentence, which enables the fulfillment of this requirement in specific cases. The individualization of punishment is a tool to achieve the adequacy of punishment.[36] The principle of justice of punishment is related to the principle of individualization and proportionality of punishment, and the justice of the punishment is determined by its purpose.

1.6. Enforcement of criminal sanctions

To fulfill the primary purpose of the Penal Code and Criminal Procedure Code, which is to protect social relations from crimes, issuing decisions in criminal proceedings is not sufficient; it is also necessary to enforce these decisions. This fact determines the relevance of the enforcement procedure, which usually follows the issuance of a court decision (possibly a body active in criminal proceedings). The *enforcement procedure* regulates the procedure of the court, bodies active in criminal proceedings,

35 Mihálik and Vincent, 2020, p. 307.
36 Judgment of the Supreme Court of the SR, sp. zn. 4To 7/2013.

and other public authorities by implementation of the issued decision.[37] The Criminal Procedure Code regulates procedural acts focused on enforcing criminal sanctions so that their purpose in criminal law is fulfilled.

First, there must be a court decision imposing the sanction, and second, that decision must be enforceable. An enforceable decision should be enforced immediately, reflecting the principle of urgent enforcement. This principle also allows legal exceptions. These exceptions cause either the suspension or the interruption of the sanction enforcement. Other principles of enforcement of sanctions include *the principle of enforcement of sanctions without interruption*. The enforcement of the sanction must correspond to the decision. The purpose of that principle is that only that type of sanction can be enforced and only to the extent specified in the decision. The execution of sanctions is carried out ex officio. The court that issued the decision and sent it be enforced shall be responsible for ensuring that its decision is correct and enforceable. *The enforcement of sanctions is entrusted to the court.* The authority that issued the decision is responsible for its enforcement or shall authorize another authority for the enforcement. This provision provides a general rule regarding the decision's enforcement in criminal proceedings. It applies to all decisions that require enforcement, regardless of whether a penalty is imposed and which authority issued the decision. Finally, the supervising and controlling of enforcing sanctions is also important.

In the area of custody and imprisonment, the Prison and Judicial Guard Corps (hereinafter referred to as the "Corps"), who are armed security corps, perform the tasks. The Corps consists of the General Directorate and institutions for the execution of custody, institutions for the execution of imprisonment, the institution for the execution of imprisonment for juveniles, and the hospital for the accused and convicted in Trenčín. The General Directorate and related Institutions are established and abolished by the Ministry of Justice of the SR. The Directorate-General manages and controls the institutions. The Corps reports to the Minister of Justice. The General director is head of the Corps, and the head of an institution is its respective director.

The basic principles of sentence enforcement are regulated by the Act on the Execution of Sentences of Imprisonment.[38] The enforcement of a sentence shall respect the human dignity of the convicted person and shall not use cruel, inhuman, or degrading treatment or punishment. The principle of equal treatment applies to convicts. The enforcement of the sentence shall support such attitudes and abilities that will assist the convicted person in reintegrating into society and respecting the rule of law. The punishment is carried out differently. The movement, social contact, and way of securing and exercising of the convict's rights may vary according to the different security levels of the prison. To increase the effectiveness of the execution of a sentence, internal differentiation is carried out, and specialized sections are created.

37 Minárik et al., 2010, p. 966.
38 Article 3 of Act on the Execution of Sentences of Imprisonment No. 475/2005.

The purpose of the sentence formulated in the Penal Code partly differs from the purpose of imprisonment enforcement, which is formulated in the Act on the Execution of Sentences of Imprisonment. Achieving the purpose of a custodial sentence is linked to the number of subjective and objective facts as well as to the specific conditions of the imprisonment enforcement. It is not only the treatment program itself and its tools individualized for each convict but an entire set of conditions of imprisonment enforcement that affect the nature, extent, and *possibilities of resocialization* of convicts in specific institutions for the execution of sentences. *An individual treatment program* is set for each convict. In the treatment program, it is possible to see standard elements with resocialization potential: inclusion in the work performance, method of rewarding, disciplinary responsibility, and system of leisure activities. Even the most effective systems and methods of serving a custodial sentence do not lead to the achievement of the purpose of serving the sentence if the convict themselves has a negative and damnatory attitude toward the possibilities of self-correction and re-education. For this reason, there is no demand for redress*, re-education of convicts,* or ensuring that they will actually lead a decent life; it is sufficient that conditions are objectively created for these purposes in the context of imprisonment.[39] Forms and methods of pedagogical and psychological activity, methods of social work, constitutional order, disciplinary authority, employment, education, and cultural-educational activities are used in the treatment of convicts.[40]

Regarding *reintegration*, it is necessary to emphasize the connection between penitentiary and post-penitentiary care. The current pilot project *"Chance to Return"* can be considered a milestone in the above intentions. The main goal of this national project is to reduce the risks of social exclusion for persons serving imprisonment and to increase their competencies when entering the labor market. This project creates spaces for the output departments of partner institutions for imprisonment enforcement to create a pilot-tested innovative system of comprehensive support for convicts for a smooth transition to civic life. The project links separate penitentiary and post-penitentiary care policies (post-penitentiary care thus begins during the enforcement of imprisonment), reducing the risks of re-offending and limiting the emergence of possible crisis situations in the immediate vicinity of persons returning from imprisonment. The evaluated results of the national project will be incorporated into generally binding legal regulations and internal governing acts of the beneficiary and partners. The meaningfulness of the funds spent on the national project is based on three basic functions of the enforcement purpose of imprisonment and their innovations, namely the protective function.

Within the current *problems of prisons* resonates the question of a constant increase in the number of accused and convicted persons in prisons. For this reason, the need for systemic changes in the prison system is emphasized in the area of alternative punishment rather than unconditional imprisonment as well as in the area of economy

39 Tittlová, 2021, pp. 99–102.
40 Article 16 of the Act on the Execution of Sentences of Imprisonment No. 475/2005.

and economics and in the area of post-penitentiary care. Changes regarding prisons as well as all of the other changes in public administration are essentially dependent on the economic conditions of a particular state as well as on the social and political priorities that are currently recognized.[41] The basic problem of ensuring adequate conditions of imprisonment has long been considered the increasing number of prisoners and the associated exceeding of accommodation capacities, unfavorable technical conditions and structure of prisons and facilities, and many other issues (such as insufficient regional coverage of institutions within Slovakia). The index of the Slovak prison population occupies very low ranks among other European countries.[42] The long-term unsustainable situation of Slovak prisons is also based on the conclusions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

2. Relevant European Union documents

The key provision for the area of substantive criminal law is the provision of Article 83 of the Treaty on the Functioning of the EU, which states that the European Parliament and the Council may, in accordance with the ordinary legislative procedure, lay down, by means of directives, minimum rules concerning the definition of criminal offenses and sanctions in particularly serious crime with a cross-border dimension due to their nature or consequences or the special need to combat them on a common basis. It then identifies the areas of crime in which the EU has legislative powers: terrorism, trafficking of human beings and sexual abuse of women and children, drug and arms trafficking, money laundering, corruption, counterfeiting of means of payment, and computer and organized crime. Relevant in this area was *Council Framework Decision 2002/475/ JHA on combating terrorism*, the implementation of which introduced the criminal offense of terrorism into Slovak law. *Council Framework Decision 2002/629/ JHA on combating of human trafficking* was reflected in Criminal Code no. 300/2005 Coll., which was the result of extensive recodification work. It was later replaced by *Directive 2011/36/ EU of the European Parliament and of the Council on Preventing and Combating Trafficking of Human Beings and Protecting Victims of Trafficking*, which was transposed into Slovak law by *Directive 2011/92/ EU on combating sexual abuse and sexual exploitation of children and against child pornography*. These directives defined the definition of child, child pornography, and child prostitution in our legislation, introduced the concept of child pornography, extended the features of the crime of trafficking human beings, changed the crime of child trafficking to the crime of entrusting a child to another, introduced new sexual abuse of child (so-called grooming), and expanded the features of the crime of possession of child pornography. *Council Framework Decision 2008/913/ JHA on*

41 Fábry, 2012, p. 213.
42 Koncepcia väzenstva Slovenskej republiky na roky 2011–2020.

combating certain forms and expressions of racism and xenophobia by means of criminal law was also important; it was also transposed into the Slovak legal order and which introduced definitions of extremist groups, extremist material, and extremist crimes and introduced a new qualification feature, "extremist special motive," which has become a feature of qualified facts. Finally, new crimes affecting this issue were introduced.[43]

Judicial cooperation in criminal matters within the EU is cooperation that takes place exclusively among EU Member States, namely between judicial authorities, courts, and prosecutors' offices. Its basic aim is to ensure mutual recognition of the decisions taken by the individual Member States and their related enforcement. A key provision for the area of criminal procedural law is the provision in Article 82 of the Treaty on the Functioning of the EU, in particular, Paragraph 3, according to which the Union seeks to ensure a high level of security through the above-mentioned mutual recognition of criminal convictions (and other judicial decisions) or through approximation of criminal law (harmonization). These can be considered basic elements of judicial cooperation in criminal matters. One of the key documents in the field of judicial cooperation is *Framework Decision 2002/584/ JHA on the European arrest warrant and surrender procedures among EU Member States*, the implementation of which, in the form of Special Act no. 403/2004 Coll., took place in the Slovak Republic with no major complications. Based on the evaluation of its application, serious shortcomings were detected, the elimination of which resulted in the adoption of the new Act no. 154/2010 Coll. Equally relevant are Framework Decision 2009/829/ JHA on the application of the principle of mutual recognition to decisions on supervision measures as alternative links among EU Member States *(Framework Decision on the European supervision order) and Directive 2011/99/ EU on the European protection order,* which the Slovak Republic fully respected and transposed by special law no. 398/2015 Coll.[44]

The most up-to-date institution is the *European Public Prosecutor's Office*, which began its activities effective June 1, 2021. The legal basis for its existence is *Council Regulation no. 2017/1939* implementing enhanced cooperation for the establishment of the European Public Prosecutor's Office. Its basic task is to investigate and prosecute perpetrators of crimes affecting the EU's financial interests, as set out in EP and *Council Directive 2017/1371 on the fight against fraud to the EU's financial interests by means of criminal law*. Its competence also includes offenses concerning participation in a criminal organization within the meaning of *Council Framework Decision 2008/841/ JHA on combating organized crime*. In the Slovak Republic, in connection with the creation of this institution, Act no. 286/2018 Coll. on the selection of candidates for the post of European Prosecutor and European Delegated Prosecutor in the European Public Prosecutor's Office was accepted.[45]

43 Szabová, 2021a, pp. 236–251.
44 Szabová, 2021b, pp. 362–385.
45 Janko, 2021, pp. 123–125.

3. Conclusion and evaluation

Criminal policy as part of general policy focuses on crime as a social category; it is part of public policy, which focuses on crime and other anti-social phenomena and their solutions and control, as well as on prevention while also taking into account its political dimension. The current socio political situation forces us to consider the variability of criminal policy, the stability and effectiveness of criminal law, whether criminal policy responds flexibly to the need to change criminal law resulting from applied practice, and whether law enforcement authorities are able to respond flexibly to changes in the direction of criminal policy and thus changes in criminal law. Finally, the current socio political situation forces to consider the need to create a separate independent institute dealing with crime and criminological research.

Legitimate questions also arise in relation to the *subject of criminal policy regulation* (criminal justice, i.e., courts, prosecutor's office, police, and prisons)[46] because in relation to courts (so-called court map), the prosecutor's office (change of traditional internal organizational structure) as well as the police forces in terms of the conditions of the Slovak Republic, reform is being prepared, which has provoked discussions and a wave of non-acceptance in wider professional circles. The role of criminal policy is also to create recommendations for the reform of criminal law for legislation,[47] but it is absent in the current conditions in the Slovak Republic. The role of criminal policy is to identify the current state of social consensus on basic criminal policy principles. The logical part of this process is the formulation of the principles and guidelines of criminal policy.[48] The Slovak Republic is known for the strictness of its criminal codes, which is reflected, in particular, in the definition of anti-social behavior and its subsequent designation as crimes for which the Slovak legal system, compared with other legal systems in Europe, imposes one of the most severe penalties.

46 Strémy, Balogh and Turay, 2020, p. 2.
47 Zuobková, 2018, p. 314.
48 Zuobková, 2018, p. 312.

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