

EUFJE Conference 2015

Protection of the environment through criminal law: the implementation and application of the Eco-crime Directive in the EU Member States

Bolzano, 30 and 31 October 2015

REPORT ON SLOVAKIA

1/ Who can be held criminally liable in your country?

a/ According to the Section 4 of the Act No. 300/2005 Coll. Criminal Code (hereinafter “**Criminal Code**”) this Act is applied to determine the criminality of an act committed outside of the territory of the Slovak Republic by a Slovak national or a foreign national with permanent residency status in the Slovak Republic as well as under Section 19 (2) of Criminal Code a natural person can be a perpetrator of crime. But since the 1st October 2010 Criminal Code has partly applied to legal persons. Till August 2015 the Parliament has commenced a legislative procedure with a goal to pass entire criminal liability for legal persons.

b/ The Section 21 of Criminal Code stipulates the conditions for persons inciting, aiding and abetting the actual perpetrators of a crime. The Criminal Code designates such persons as a abettors. Under the above mentioned section an abettor to a completed or attempted criminal offence is any person who intentionally

- a) masterminded or directed the commission of a criminal offence (organiser)
- b) instigated another person to commit a criminal offence (instigator),
- c) asked another person to commit a criminal offence (hirer),
- d) assisted another person in committing a criminal offence, in particular by procuring the means, removing the obstacles, providing an advice, strengthening the determination, making a promise of post crime assistance (aider).

It is important to stress that unless the Criminal Code provides otherwise, the criminal liability of an abettor shall be governed by the same provisions as the criminal liability of an offender. As regards the mechanism of determining the type and amount of punishment, the criminal court considers in the case of an abettor the importance and character of his participation in the commission of the criminal offence.

2/ Are the Art. 3 offences criminal offences in your country?

Firstly, an evaluation of Slovak criminal law is very difficult because I am judge specialised for administrative justice. Hence I am not able in detail to appreciate whether there are some gaps in the transposition of Article 3 of the directive.

Secondly, the basic provision for criminal environmental protection is the Section 300 of Criminal Code under which any person who intentionally creates the danger of smaller environmental damage by violating generally binding legal environmental protection regulations or the rules of protection and management of natural resources including natural healing resources and natural resources of mineral table water shall be liable to a term of imprisonment of up to three years (or up to ten years depending up an extent of that environmental damage).

Further I produced following list for the comparison reasons as follows:

	Article 3	Slovak Criminal Code – correspondent provisions
1.	a)	Section 300 - Endangering and Damaging the Environment (intentionally) Section 301 - Endangering and Damaging the Environment (negligible) Section 302 - Unauthorised Handling of Waste Section 298 - Illicit Manufacturing and Possession of Nuclear Materials, Radioactive Substances, Hazardous Chemicals and Hazardous Biological Agents and Toxins (direct) ¹ Section 299 - Illicit Manufacturing and (indirect) ²
2.	b)	Section 302 - Unauthorised Handling of Waste (only intentionally)
3.	c)	Section 301 - Endangering and Damaging the Environment
4.	d)	Section 284 - Endangering Public safety (intentionally) ³ Section 285 - Endangering Public safety (negligible)
5.	e)	Section 298 - Illicit Manufacturing and Possession of Nuclear

¹) Any person who, without having a license, manufactures, imports, exports, transits, purchases, sells, exchanges, modifies, uses, has transported or otherwise procures for himself or another, or has in his possession nuclear or other similar radioactive material or hazardous chemical, or hazardous biological agent or toxin, or paraphernalia designed for their manufacturing, shall be liable to a term of imprisonment of one to five years.

²) Any person who manufactures, procures for himself or another, or has in his possession paraphernalia designed for illicit manufacturing of nuclear or other similar radioactive material or hazardous chemical, or hazardous biological agent and toxin, shall be liable to a term of imprisonment of one to five years.

³) Any person who intentionally

a) exposes a group of people to the danger of death or grievous bodily harm, or exposes the property of another to the danger of large-scale damage by causing fire or flooding, or malfunctioning or accident of a means of public transportation, or harmful effects of explosives, gas, electricity, radioactivity or other similarly dangerous substances or forces, or commits other similarly dangerous act (general endangerment), or

b) increases general endangerment or frustrates the efforts designed to prevent or mitigate it, shall be liable to a term of imprisonment of four to ten years.

		Materials, Radioactive Substances, Hazardous Chemicals and Hazardous Biological Agents and Toxins (direct) Section 299 - Illicit Manufacturing and (indirect)
6.	f)	Section 305 (1) - Breach of Plant and Animal Species Protection Regulations ⁴
7.	g)	Section 305 (3) - Breach of Plant and Animal Species Protection Regulations ⁵
8.	h)	Section 300 + 301 - Endangering and Damaging the Environment
9.	i)	Section 300 + 301 - Endangering and Damaging the Environment

3/ *How were the Art. 3 offences implemented?*

a/ Only in the Criminal Code because a criminal offence is any unlawful act which is describes in the Criminal Code and meets the elements set out in this Code. There are a number of environmental torts and they are stipulated some environmental laws.

b/ The Slovak legislator tries to avoid a method “copy - paste” and mostly inserts the legislative text of EU secondary legislation (e.g. directives) into various acts or governmental decree.

c/ As regards the requirements of the Article 3 (a), 3 (b), 3 (d) and 3 (e) it means the text: *or (..) likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants”* the legislator uses the term - Acting in a More Serious Manner. Above mentioned term contains the use of violence, the threat of imminent violence or the threat of other grievous harm. The main approach of the Slovak legislature is to underline intentional, it means non-negligible conduct of any offender. So

⁴) Any person who, in breach of generally binding legal regulations on nature and landscape protection, or generally binding legal regulations on specimen protection through the regulation of trade in them on a larger scale,

- a) damages, destroys, uproots, digs up or picks a protected plant, or damages or destroys its biotope,
 - b) kills, injures, catches or replaces a protected animal, or damages or destroys its biotope and habitat,
 - c) damages or destroys a tree or shrub, or cuts them down, or
 - d) endangers protected animal or plant species,
- shall be liable to a term of imprisonment of up to two years.

⁵) Any person who, in breach of generally binding legal regulations on nature and landscape protection, or generally binding legal regulations on specimen protection through the regulation of trade in them on a larger scale,

- a) acquires for himself or procures for another a protected animal or a protected plant, or to a large extent procures for another their specimen,
 - b) cultivates, breeds, processes, imports or exports protected plants or protected animals or specimens, or trafficks in them, or otherwise misappropriates them, or
 - c) deliberately removes, falsifies, alters or otherwise unlawfully uses a unique identification mark of protected animal species or specimens,
- shall be liable to a term of imprisonment of between six months and three years.

these requirements do not hamper me when I and my colleagues hold a criminal case concerning an environmental protection.

4/ What about the availability of criminal sanctions to punish environmental offences?

a/ The principal criminal sanctions are based on an imprisonment sentence. The pecuniary penalty (not less than 160 € and not more than 331930 €) is imposed by the court only if

- the offender committed an criminal offence intentionally and
- the offender committed it with intention to gain or try to gain property benefit.

The legal minimum and maximum levels of imprisonment sentences are regulated as follows:

	Slovak criminal provision	minimum	maximum
1.	Section 284 - Endangering Public safety	4 years	25 years/ for life
2.	Section 298 - Illicit Manufacturing and Possession of Nuclear Materials, Radioactive Substances, Hazardous Chemicals and Hazardous Biological Agents and Toxins	1 year	25 years/ for life
3.	Section 300 - Endangering and Damaging the Environment	0	10 years
4.	Section 302 - Unauthorised Handling of Waste	0	8 years
5.	Section 302a - Unauthorised Release of Polluting Materials	6 months	8 years
6.	Section 303 - Breach of Water and Air Protection Regulations	1 year	8 years
7.	Section 305 - Breach of Plant and Animal Species Protection Regulations	0	8 years
8.	Section 306 - Breach of Trees and Shrubbery Protection Regulations	0	8 years
9.	Section 307 - Spreading on a Contagious Disease of Animals and Plants	0	5 years
10.	Section 309 - Escape of Genetically Modified Organisms	0	20 years
11.	Section 310 – Poaching	0	10 years

As regards an impact on sanction levels if the crime is committed by an organized criminal group, the activity of the above mentioned organized criminal group creates acting in a more serious manner.

b/ The forfeiture of illegal benefits is possible sentence in Slovak criminal law. According Section 58 taking account of the circumstances, under which the criminal offence was committed and the personal situation of the offender, the court may order the forfeiture of property of the offender whom it sentences to life imprisonment or to unconditional imprisonment for a

particularly serious felony, through which the offender gained or tried to gain large-scale property benefits or caused large-scale damage.

c/ As regards possibility to impose remedial sanctions (for instance order the removal of waste, the closure of an illegal facility etc.) the court can impose only the sentence of Prohibition to Undertake Certain Activities. Under the Section 61 the prohibition to undertake certain activities shall mean that, during the execution of this sentence, the sentenced person is not allowed to perform a certain job, profession, or hold a specific office, or perform an activity, which is subject to special authorisation, or whose performance is governed under a separate regulation. Because of impossibility to impose a sentence to legal person, it cannot order to close an illegal facility.

There is also possibility of injured party to impose an obligation to refund damages.

5/ What about the actual use of criminal sanctions to punish environmental offences?

a/ Environmental offences are very rare brought to Slovak courts. It means up to number of 10 cases. The cases concerning Endangering Public safety (Section 284) and Poaching (Section 310) prevail in such structure of cases.

b/ What are the penalties inflicted to convicted offenders?

An imprisonment sentence is very often used by the Slovak courts. But it does not mean that every convicted offender will have to stay in prison. The court may impose a suspended imprisonment sentence if the imprisonment sentence does not exceed two years and if,

- considering the personal situation of the offender, in particular his previous life and work circumstances and the circumstances of the case, the court reasonably believes that it is possible to protect the society, and guarantee the rehabilitation of the offender even if the sentence is not executed, or

- the court accepts the guarantee of the offender's rehabilitation, and believes that no imprisonment sentence needs to be served in view of the educational influence of the person who has offered such guarantee.

Under Section 51 the court may, under the above mentioned conditions impose a suspended imprisonment sentence if the imprisonment sentence does not exceed three years, if it simultaneously issues a ruling on a probationary supervision over the conduct of the offender imposed for the probationary period. When imposing the probationary supervision, the court decides on the probationary period of one to five years. It means that there is no special category of offences under Article 3 to which my reply refers.

i) How high are the fines that are imposed in practice? Is forfeiture of illegal benefits used as an additional monetary sanction?

The pecuniary penalty is very seldom imposed by the courts. Although statistics of these data are not presented in public at Slovakia any serious crimes concerning an environmental protection has not been prosecuted during last 10 years.

- ii) Do criminal courts also impose remedial sanctions?
Only refundation of damages.

c/ What is, to your opinion, the main reason why environmental offences would not reach a criminal court? Not enough inspections? Practical difficulties to prosecute environmental offences successfully (e.g. lack of training or specialization, lack of time, lack of financial resources, difficulties of proof, unclear criminal law)? Is there a tradition to rather sanction such offences with administrative sanctions? Or are environmental rules simply not, or nearly not, enforced?

It is combination of all above mentioned consequences. Since 2005 the Slovak Police Corps created new subdivision with aim to investigate environmental crimes. The total number of specialised staff is 5 policemen and this number is evaluated as very low. According internet the main reasons why environmental offences did not reach a court are as follows:

- obviously it is very sophisticated agenda, where perpetrators are in massive advance of the police,
- lack of experiences and experts,
- low punishment, especially fines and other pecuniary sentences for perpetrators,
- high profits contra “mini” risks,
- serious number of these crimes belongs to international business, in particular these criminal activities are committed by organized criminal groups without creation of long lasting gang of criminals,
- there has not been yet created a functional system of cooperation of competent state bodies,
- absence of active environmental crime investigation,
- underestimation and lack of interest by prosecutors and other parts of Police corps as well as
- high level of a corruption.

Please provide, if available, empirical data of summaries of interesting cases that illustrate your answer.

The statistical dates are not available.

6/ As to structure of prosecuting environmental crime

There are no specialised prosecution or court procedure for environmental crimes and specialized prosecution offices/ courts or specialized divisions within prosecution offices/courts therefore has not been created yet in Slovak republic. The Office of General Prosecutor is only divided into criminal and non-criminal divisions.

7/ What about the availability of administrative sanctions to punish environmental offences?

a/ Is it possible in your country to punish environmental offences by administrative fines?

Punishment of environmental offences (administrative torts) through imposing administrative fines is very frequent means of solution these situations. There are hundreds and hundreds fines imposed by environmental inspection or other competent authorities by reason of infringement of environment.

- i) could they be applied alongside criminal sanctions or only instead of them and at which point in the procedure has a decision to be made which “route” to follow:

The Slovak system of administrative punishment is based on the Roma principle “ne bis in idem”. So administrative proceedings cannot carry out alongside criminal procedure in the same matter. The investigator (specialised policeman) must transfer the case to another body if the findings of the pre-trial criminal proceedings indicate that it is not a criminal offence but an act which another pertinent body would evaluate as a tort or disciplinary offence. The accused person and the injured party shall be notified of the ruling to transfer the case; a copy of investigator's ruling has also to be delivered to the prosecutor within 48 hours. A complaint against that decision is admissible and it has a suspensive effect.

- ii) what are the legal minimum and maximum of those administrative fines:

There are a huge number of administrative fines aimed at the environmental protection. In general the principal legal measure is Act on environment and this act grants to environmental authorities a competence to impose administrative fine up to 33.340 €. On the other hand the amount of fine for infringement of water protection is for example calculated as a water quantity multiplies a sanction rate (1 or 2 € per m³). The fine for infringement of air protection is up to amount of 331.000 €. There are many different alternatives of fine amount in other legal areas of environmental protection.

- iii) which are the administrative bodies who can inflict such fines?

In general the administrative bodies that can inflict such fines are first level environmental inspection. Also the urban and building bodies, municipalities or district authorities are competent to impose fine.

The problem of an administrative authority definition is solved both in Code of Administrative Procedure and the Code of Civil Procedure. This term only takes into account those state administration authorities, territorial self-government authorities, professional interest organisations and other legal entities and natural persons authorised by law to decide on the rights and obligations of natural persons and legal entities in the area of public administration. The above suggests that only those authorities, including natural persons and legal entities, which have a direct prescriptive power, can be considered administrative authorities under Slovak law. So it is not a surprise that a fishing guards or forest patrol fall into group of administrative authorities.

Nevertheless, there are many other authorities who do not have a direct prescriptive power, yet they can, by means of their factual acts, indirectly affect the rights and obligations of a builder, for example, by not providing him with

- a required opinion or statement (Fire protection authority),
- approval or permission (Heritage protection authority) or
- inspection report (authorised electrician),
- access to a public database (Land Register Office) or
- failing to assign an identification number to the building (Municipal authority)

and as a result make it impossible to complete a construction or other activity which is infringing upon environmental protection that is subject to approval by a public administration authority. Under Slovak law procedure and its outcome of these authorities are subject to court review.

There is also a special group of official persons in whom partial public authority is vested, such as vehicle testing station, labour inspectors, notaries, private court executors, expert witnesses, interpreters and translators.

Lastly, I would like to emphasise the important role of professional interest organisations, especially the various professional chambers (for instance the Slovak Bar Association or Slovak Chamber of authorised civil engineers and architects etc.) exercising powers in the area of control of the activities of their members by means of disciplinary proceedings.

b/ Which administrations can impose remedial sanctions to end environmental offences and remediate to the damages they caused? And which are the remedial sanctions they can impose? Can they give remedial orders? Can they themselves clean-up the damages and oblige the offender to pay the bill? Can they order to stop an illegal conduct? Can they suspend permits until the cause of the pollution of offence was remediated? ...

Any administrative body can lay down an interim relief according to the Code of Administrative Procedures. The boundary for the interim relief is stipulated in very broad manner to lay down participants something to do, to avoid some activities or to tolerate something. The possibility to order the cleaning, liquidation or removal of environmental negative consequences e.g. crash tank truck or construction without building licence it depends on involved authority. The polluter is responsible for immediate reparation of environmental impairment. If polluter

does not act in such manner involved authority exercises appropriate measures and it burdens the polluter by incurred expenditure.

8/ *What about the actual use of administrative sanctions against environmental offences?*

a/ Are environmental offences sanctioned by administrative authorities? Does this happen rather often or only exceptionally? In what kind of cases?

Answers for these questions are written in point 7 letter a).

b/ What are the administrative sanctions that are used in practice? Is fining used? How high are the fines that are imposed in practice? Are remedial sanctions used frequently, are rather seldom? Are they effective?

There are two fundamental sanctions. Beside the pecuniary fine an administrative injunction of delinquent activities is very strong sanction. For example an administrative injunction to drive a lorry is an existential decision for that professional driver.

Suspension of administrative decision is joint with the topic of remedial sanctions. The filing of a claim (or administrative appeal to court) does not on its own generate suspense effect. The claimant (appellant) may request interim relief in order to make a suspension of effect of contested administrative decision. The claim for the suspension of the execution of a decision is not charged and can only be submitted together with a claim (appeal).

Such a procedural request is heard only by the president of the panel before which the claim or appeal is pending. Due to the nature of the procedural request, it is dealt with preferentially, without unnecessary delay and without public hearing. Interim relief is only granted if the claimant proves to be under threatening of damage and have urgent interest.

The interim relief is effective until giving the final disposal of the matter. It can be cancelled if the reasons for which it was issued cease to exist. The real execution of a decision can be suspended at any stage of the court review proceedings, even in appeal proceedings before the Supreme Court.

Please provide, if available, empirical data of summaries of interesting cases that illustrate your answer.

I am sorry but I am not able to provide an empirical data because the Documentary division of Slovak Supreme Court has not worked still.