

## EUFJE Conference 2019

### Helsinki

#### The role of science in environmental adjudication – Slovak republic

##### Questionnaire

##### 1) Mandate of the court to review techno-scientific matters

a) The mandate of the court to review technical and scientific questions) According to the effective legislation in the Slovak Republic and the decision of the administrative court depends on the assessment of facts requiring scientific knowledge and due to the complexity of the questions the parties shall order expert evidence and appoint an expert or, as appropriate, several experts to draw up a joint opinion. The expert report shall be made in writing, unless the court decides otherwise, if appropriate, the court may hear the expert on the facts stated in the expert report. The legislation also permits the submission of a private expert opinion prepared before or during the proceedings. Under the Expert Act, the expert has the opportunity to recruit a consultant from the relevant department to assess partial questions. A petition for the provision of expert evidence by an expert institute shall be admissible only in particularly serious cases requiring specific scientific judgment or where conclusions of the expert are obviously contradictory. Experts and other competent persons are not part of the court (chamber).

b) The administrative authority is obliged in administrative proceedings to investigate precisely and completely the actual state of the matter and, to this end, to obtain the necessary documents for the decision, it is not bound only by the parties' submissions. If an expert opinion is required for the professional assessment of the facts relevant to the decision, the administration shall appoint an expert. The issue of assessing professional issues is dealt with in a number of specific environmental legislation. The assessment of professional issues falls within the competence of public authorities, which decide on the basis of the legal order of the Slovak Republic and EU law.

c) The Supreme Court of Slovak Republic as the Court of Cassation decides on the basis of facts and evidence contained in the court and administrative file. It takes evidence only in exceptional cases, for the sole purpose of clarifying the terms of the cassation complaint procedure. Facts raised in the cassation complaint are inadmissible.

d) Evidence from geospatial technologies (GIS) shall be evaluated and taken into account as documentary evidence in court decision-making. The GIS improves and accelerates the decision-making activities of administrative bodies in the field of environmental protection and creation by obtaining data from databases of information on certain territories, which provide an overview of the occurrence of living organisms, plants and biodiversity.

##### 2) When do you gather expert advice?

a) When you receive professional advice in court proceedings, the judge is not authorized to deal with scientific questions, even if he has the necessary professional qualifications. The role of the judge is to assess the case on the basis of the taking of evidence. The court has the right to verify the correctness and completeness of the facts on which the expert based his opinion.

b) The law of the Slovak Republic provides that expert evidence must always be carried out in cases where the decision depends on the assessment of the facts for which scientific knowledge is required.

c) The Administrative Court is not authorized to evaluate the expert conclusions of the expert in terms of their factual accuracy. The court assesses the complexity of the opinion, the completeness of the answers to the questions of the court and the relation of the opinion to other evidence provided. Reference is also made to point 2b).

### **3) Rules of expert appointment**

a) Rules for appointing an expert) In the administrative and court proceedings, the status of experts and the performance of their activities. is regulated by a special law. Expert is a physical or legal entity authorized by the state to carry out expert's activities, entered in the list of experts maintained by the Ministry of Justice of Slovak Republic, or appointed by the public authority for a specific case (ad hoc). The Ministry shall enter a physical or legal entity (expert organization) in the list on the basis of a written application if it meets the statutory requirements for registration. A physical person must attain a second degree higher education degree in a field or field of study, receive specific education on the way of pursuing an activity under the Expert Act, after gaining a field degree, practice for at least seven years, pass professional examinations and end specialized education, if provided for by generally binding legislation.

b) If an expert opinion is required in the administrative procedure for the professional assessment of the facts relevant to the decision, the administration shall appoint an expert. It is possible to make an appeal against the decision to appoint an expert. In court proceedings, expert opinion from a professionally qualified person is preferred to expert evidence. The court may also request an expert opinion from a person other than an expert, and the fulfillment of the conditions of professional competence for the submission of expert opinion is assessed by the court itself. The court shall appoint an expert only at the request of a party, in the event that an expert opinion is not sufficient. An expert may be excluded from proceedings if, having regard to his / her relationship to the dispute, the parties, their representatives or persons involved in the proceedings, there can be reasonable doubt as to his impartiality.

c) The court evaluates the expert opinion as any other evidence, it does not evaluate the factual accuracy of the expert conclusions.

### **4) Evidentiary issues: standard and burden of proof**

a) Evidence in environmental cases:

- according to the Code of Civil Procedure (including administrative cases): When reviewing the legality of a decision of an administrative authority, the facts of the case which existed at the time of the contested decision are decisive. The court may provide the evidence necessary to examine the contested decision. If the decision depends on an assessment of the facts for which expertise is required, it shall appoint an expert after hearing the participants. The expert opinion may be reviewed by another expert, scientific institute or other institution. He may use the certificate or expert's opinion of the competent authority instead of the expert's opinion. The court assesses the evidence at its discretion, each evidence individually and all evidence in their mutual relationship, taking into account everything that came to light in the proceedings, including what the parties have stated.

- according to the Code of *Criminal Procedure*:

If expertise is required to clarify a matter relevant to a criminal proceeding, the President of the Senate will request an expert opinion, in simple cases, a written confirmation from an organization specialized in activity contained in a professional statement or written confirmation. In a more complicated matter, the President of the Senate shall recruit an expert to give an expert opinion. In exceptional and particularly serious cases requiring a specific scientific assessment or review of the expert's opinion, the court may recruit an expert institute to submit the expert's report. In highly demanding cases, the court may use the assistance of a professional consultant. The court assesses evidence obtained lawfully according to its internal conviction based on careful consideration of all the circumstances of the case, individually or in aggregate, regardless of whether it was obtained by the court, law enforcement authorities or any of the parties.

b) The burden of proof is the party's procedural responsibility for the outcome of proceedings. Each participant must bear the burden of proving his / her claim. In factual and legally complex proceedings, account must be taken of the fact that it is not within the capacity of the party to prove his claim. The burden of proof is the party's procedural responsibility for the outcome of proceedings. Each participant must bear the burden of proving his / her claim. In factual and legally complex proceedings, account must be taken of the fact that it is not within the capacity of the party to prove his claim. This is called negative evidence theory that a participant cannot be fairly required to prove that there is no factual legal fact.

#### **5) Rules of evaluating expert evidence: standard (intensity) of review**

a)+b) The taking of evidence does not explicitly include the possibility of reviewing an expert opinion by another expert in the form of control expert report. However, this shall not prevent a Party from submitting further expert opinions to assess the same facts. If the conclusions of the experts are in clear contradiction or in particularly serious cases requiring special scientific judgment, the court may order the provision of expert evidence by expert institutes.

c) The Administrative Court shall evaluate *the factual* correctness of the expert findings in relation to the assignment and its consistency with other evidence performed.

#### **6) The role of science and technology in the courtroom - overall assessment**

a) According to the effective legislation in the Slovak Republic and if the court's decision in environmental matters depends on the assessment of the facts for which expertise is needed, the court will request expert opinion from a professionally qualified person. If scientific knowledge is required, it shall, at the request of a Party, order expert evidence and the court appoints an expert. The list of experts, maintained by the Ministry of Justice of the Slovak Republic, currently includes 90 experts in the field of environmental protection, of which 44 in the field of nature and landscape protection, who are knowledgeable to assess the issue.

b) I consider the national rules for the participation of experts in ensuring judicial review in environmental disputes appropriate. I do not take the view that the judge should control the scientific findings of the experts more, because the judge may not be adequately educated in the matter.

c) The Slovak legal order contains rules for judicial review of decisions of administrative bodies within the administrative judiciary based on the rules of Union law. In environmental matters, judicial protection can be sought at national level (administrative courts,

Constitutional Court of the Slovak Republic) and supranational level (European Court of Human Rights, Court of Justice of the European Union)

d) Judges of the Slovak Republic participate in educational events organized by the Judicial Academy of the Slovak Republic and the European Commission in the area of environmental law. However, I think that the role of the judge is not to deal with highly technical scientific questions, but to assess the matter legally and decide on it on the basis of the facts established by the evidence.

**7) Case study (optional)**

a) The administrative authority's decision to authorize the operation of the production plant shall be annulled by the administrative court and the matter returned to the administrative authority for further proceedings. The administrative authority misjudged the matter and failed to ascertain the facts. The authorization of an activity is contrary to Article 6 (1). 3 of Council Directive 92/43 / EEC of 21 May 1992 on the conservation of habitats and of wild fauna and flora, as amended by Council Directive 2013/17 / EU of 13 May 2013 and with decisions of the Court of Justice of the European Union. The Authority has given its consent without assuring that the consent will not adversely affect the integrity of the NATURA 2000 site. In order to assess whether an activity that significantly affects the site can be authorized, the presumption that there are not negative effects it has not been sufficient, but to be the evidence undisputed that such effects would not occur. The administration will follow the EIA Act.

b) It is an offense against the environment, in particular Section 305 of the Criminal Code - Violation of the protection of plants and animals. The decision is taken in criminal proceedings. The law enforcement authorities and the court carry out the taking of evidence in accordance with the Code of Criminal Procedure.