

WASTE MANAGEMENT

(Slovak contribution)

SECTION A)

General Issues of Case Law & Implementation

- it is hoped that everyone will be able to respond to this section by providing details of a national case of interest which has involved issues of waste. Reference may be made to the more detailed guidelines and questions in Section B.

SECTION B)

Specific Issues of Case Law & Implementation

This section gives more detailed guidelines on the types of waste issues which are of particular relevance with specific reference to Directive 75/442/EC – waste framework Directive. Please respond as you are able, focusing on any issues raised in your jurisdiction.

Article 1(a) – definition of Waste

1. Special meaning of Discard/Uncertainty

The definition of waste contained in article 1(a) is based on the discard test as interpreted by the Court. Designation as waste results in a substance being subject to regulation. Determining whether a substance is or is not waste according to this test can be difficult and there are sometimes complaints that the definition is not clear enough.

- *waste means (for the purposes of Waste framework Directive) any substance or object which the holder disposes of or is required to dispose (it means the collection, sorting, transport and treatment of waste as well as its storage and tipping above or under ground) of pursuant to the provisions of national law in force*

Please give examples of cases where a national court has been asked to determine whether a substance is waste in your jurisdiction. How have ECJ judgements concerning the question of when something becomes waste been applied (in particular C-417/98 Arco Chemie) ? Have courts had any difficulty interpreting the definition or applying the ECJ case law ?

Answer :

The Slovak republic has been member of the European Union since 1 May 2004. For this reason the Slovak courts of law have not decided any case concerning especially waste or interpreted “in gremio legis” determination what the term “waste” means in the Slovak legal

order in accordance with EU legislation. Slovak courts in connection with the above mentioned interpretation only adjudicated who is party to proceedings concerning waste management.

The relevant statute relating to waste management is Act No. 223/2001 Coll. on Waste. Under Section 2 of this Act **waste** shall mean *a movable thing specified in Annex 1, which the holder discards, or wishes to discard, or is obliged to discard pursuant to this Act or special regulations*. It is apparent that Slovak legal definition is “rather” different from EU one.

For instance the Act of the National Council of the Slovak Republic No. 272/1994 Coll. on Human Health Protection as amended, Section 43 of Act No. 140/1998 Coll. on Medicaments and Medical Aids as well as the Regulation of the Ministry of Health of the Slovak Republic No. 12/2000 Coll. on Requirements for the Provision of Radiation Protection fall within scope of previously mentioned special regulations.

Under Annex 1 of Act on Waste wastes are as follows

1. Production or consumption wastes not otherwise specified below
2. Off-specification products
3. Products whose date for appropriate use has expired
4. Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap
5. Materials soiled or contaminated as a result of planned actions (e.g. waste from cleaning operations, packing materials, containers)
6. Unusable parts (e.g. rejected batteries, exhausted catalysts)
7. Substances which no longer perform satisfactorily (e.g. contaminated acids, contaminated solvents, exhausted tempering salts)
8. Residues of industrial processes (e.g. slags, still bottoms)
9. Residues from pollution abatement processes (e.g. scrubber sludges, baghouse dusts, spent filters)
10. Machining/finishing residues (e.g. lathe turnings, mill scales)
11. Residues from raw materials extraction and processing (e.g. mining residues, oil field slops)
12. Adulterated materials (e.g. oils contaminated with PCBs)
13. Any materials, substances or products whose use has been banned by law
14. Products for which the holder has no further use (e.g. agricultural, household, office, commercial and shop discards)
15. Contaminated materials, substances or products resulting from remedial action with respect to land
16. Any materials, substances or products which are not contained in the above categories.

In case of doubt the Regional Authority in question will decide whether a thing is or is not waste. This will not apply if it is necessary to determine in case of trans-boundary traffic whether the goods in disputed cases are waste or not. In these cases the Slovak Environment Inspection will decide.

2. Disproportionate regulation / Barriers to use

The application of regulation is usually not welcomed by those subject to it. This is particularly the case where waste is being used as a substitute for non-waste where it is often claimed the level of regulation applied is disproportionate and acts as a disincentive to find uses for these substances. The purpose of waste regulation is of course to ensure that the disposal and recovery of waste is conducted in circumstances which ensure protection of the environment.

Has the application of ECJ case law on the definition of waste resulted in complaints that it is interpreted too widely or too narrowly ?

Answer :

Because it was pointed out the Slovak courts of law have integrated to scheme of European judicial co-operation since 1 May 2004 and there has been no knowledge with EU process of preliminary ruling yet I am not able to answer the above mentioned question.

3. Products, by-products and residues

The majority of case law on the definition of waste at Community level is concerned with the question of whether materials resulting from a production process which are not primarily sought by the operator should be considered waste or not. This may be due to the variety of circumstances to which it is applied – from manure on a farm to leftover rock from a quarry. Despite the amount of case law, there remain complaints that the case law is unclear.

Have national courts in your jurisdiction applied the ECJ case law concerning by-products and residues ? Have they had any difficulty applying the principles laid down by the ECJ ? Have they developed additional criteria ?

Answer :

Because it was pointed out the Slovak courts of law have integrated to scheme of European judicial co-operation since 1 May 2004 and there has been no knowledge with EU process of preliminary ruling yet I am not able to answer the above mentioned question.

4. Complete recovery operation

One area where it is said that there is uncertainty in ECJ case law relates to the concept of a complete recovery operation. This is a key part of the “end of waste” debate – if you apply a complete recovery operation to a substance, does it cease to be waste? If it ceases to be waste controls are no longer applied and hence any subsequent use will not be regulated as a recovery operation.

Have national courts applied the idea of a “complete recovery operation” in your jurisdiction to find that substances have ceased to be waste ? In doing so have they compared the waste derived material with raw materials ?

Answer :

I have not heard that any Slovak court would applied the above mentioned idea of a “complete recovery operation”. Hence I am not able to answer this question.

5. Substitute fuels and complete recovery operations

A particular example of the end of waste debate concerns the status of waste derived fuel. If it ceases to be waste before it is burnt none of the controls in the Waste Framework Directive or the Waste Incineration Directive apply. On one hand, energy is recovered from the waste and it is only at the stage of burning that this is realised. Any operations carried out before that stage are liable to simply prepare the waste for burning and hence be regarded as pre-treatment. The recovery operation is burning as a fuel. The contrary argument is that where a complete recovery operation is carried out on the waste, it possesses similar characteristics to a primary raw material used as fuel and hence there is no reason to apply waste controls.

Have national courts accepted that it is possible for waste derived fuel to cease to be waste prior to its use as fuel ? What criteria have they applied to distinguish complete recovery operations from simple pre-treatment in these case ?

Answer :

The same answer like in previous question - I am not able to answer the above mentioned question.

6. End of waste and recycling

The need for greater clarity in this area has been recognised by the Commission in the proposal for a revised Waste Framework Directive. This is one mechanism to help deal with claims that regulation should not apply where substances are being used without the need for special precautions.

At what point do national courts consider materials are recycled within the meaning of the Packaging Waste Directive ? Do different considerations apply in assessing the point at which substances which are sent for recycling than for those which are not (e.g. scrap metal) ?

Answer :

Because it was pointed out the Slovak courts of law have integrated to scheme of European judicial co-operation since 1 May 2004 and there has been no knowledge with process of preliminary ruling yet I am not able to answer the above mentioned question.

7. Lawyer driven not policy driven

A common complaint over waste legislation is that regulation turns on legal interpretation and not on the basis of policy. This may reflect the lack of guidance given by the legislation.

Have national regimes which transpose the EU legislation set down criteria for the Courts to apply in determining what is waste or has it been left to the Court ?

Answer :

As I outlined in my previous answers in case of doubt the Regional Authority in question will have to decide whether things in question are or are not waste. This process will not apply if it is necessary to determine in case of trans -boundary traffic whether the goods in disputed cases are waste or not because the Slovak Environment Inspection will decide in these cases.

Both decisions of administrative bodies subject to administrative review exercising by administrative justice whose is performed by courts of law.

Act No. 223/2001 Coll. on Waste in general sets down criteria for determination what is waste.

Under Section 2 of this Act **waste** shall mean a movable thing specified in Annex 1 (e.g. products whose date for appropriate use has expired, unusable parts, residues of industrial processes, residues from pollution abatement processes etc.), which the holder discards, or wishes to discard, or is obliged to discard pursuant to this Act or special regulations.

Article 2(1b) – Other legislation

Even if a substance is waste, it will not be controlled under the Directive if it is excluded under article 2(1)(b) of the Directive. Certain waste streams are excluded if they are covered by “other legislation”. Case C-114/01 *Avestapolarit* found that national legislation could be “other legislation” for these purposes if it relates to the management of that waste as such within the meaning of Article 1(d) of the Directive, and if it results in a level of protection of the environment at least equivalent to that aimed at by that Directive, whatever the date of its entry into force.

Community legislation may also be “other legislation”.

- waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries shall be excluded from the scope of Waste Framework Directive)

Have national courts made any decisions as to what constitutes “other legislation” for these purposes both at Community and national level ? What criteria do they apply ?

Answer :

As I pointed out the relevant statute relating to waste management is Act No. 223/2001 Coll. on Waste. Under Section 1 of this Act this Act on Waste regulates the operation of state administration bodies and municipalities, the rights and obligations of legal entities and individuals while preventing waste generation and in waste handling, the accountability for failure to comply with the obligations in the field of waste management and the establishment of the Recycling Fund.

On the other hand the following is excluded from the scope of this Act:

- a) Handling of waste waters and special waters and storage of waste in sludge lagoons (Act No. 138/1973 Coll. on Waters /Water Act/, as amended)
- b) Handling of air-polluting substances (Act No. 309/1991 Coll. on Air Protection against Polluting Substances /Act on Air/, as amended)
- c) Handling of waste generated in precious metal processing (Act No. 539/1992 Coll. on Hallmarking and Precious Metals Testing /Hallmarking Act/)
- d) Handling of radioactive waste (§ 17 of Act No. 130/1998 Coll. of Laws on Peaceful Exploitation of Nuclear Energy and on amendment of Act No. 174/1968 Coll. on Government Professional Supervision of Labour Safety, as amended by Act of the National Council of the Slovak Republic No. 256/1994 Coll., as amended by Act No. 470/2000 Coll.)
- e) Handling of waste from mining activities (Act No. 44/1988 Coll. on Preservation and Exploitation of Mineral Wealth /the Mining Act/, as amended by Act of the Slovak National Council No. 498/1991 Coll., Act of the Slovak National Council No. 51/1998 Coll. on Mining Operations, Explosives and State Mining Administration, as amended)

f) Handling of discarded explosives and rests from production of explosives (Section 35 of Act of the Slovak National Council No. 51/1998 Coll. on Mining Operations, Explosives and State Mining Administration, as amended)

(3) Unless special regulations (Act No. 337/1998 Coll. on Veterinary Care and on amendment of certain other Acts, as amended by Act No. 70/2000 Coll.) stipulate otherwise, the Act shall also apply to handling of waste of animal origin (Section 51 par 2 of Act No. 337/1998 Coll. on Veterinary Care).

Under Section 2 of this Act waste shall mean a movable thing specified in Annex 1, which the holder discards, or wishes to discard, or is obliged to discard pursuant to the Act or special regulations. For instance the Act of the National Council of the Slovak Republic No. 272/1994 Coll. on Human Health Protection as amended, Section 43 of Act No. 140/1998 Coll. on Medicaments and Medical Aids as well as the Regulation of the Ministry of Health of the Slovak Republic No. 12/2000 Coll. on Requirements for the Provision of Radiation Protection fall within scope of previously mentioned special regulations.

Definition of recovery

The Commission has identified difficulties with the distinctions made between disposal and recovery operation. Several consequences flow from this distinction (eg under the Waste Shipments Regulation 293/93/EC where there is free trade in recovery of waste but not disposal, targets set in Producer Responsibility legislation and a requirement to encourage recovery in the Waste Framework Directive).

Is there any national case law on the concept of recovery ? Is this based on any national criteria to distinguish between disposal and recovery ?

Answer :

There has not been any experience with this concept in Slovak republic.

Article 4 – General objective of the Directive

This article imposes a high level obligation on Member States to ensure that waste is disposed of without causing harm to the environment or human health. It is not sufficiently precise to give rise to individual rights (Case 236/92 *Lombardia*) but it is still possible for Member States to be held to account for failing to meet its requirements (C-365/97 *San Rocco*).

Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment, and in particular:

- *without risk to water, air, soil and plants and animals,*
- *without causing a nuisance through noise or odours,*
- *without adversely affecting the countryside or places of special interest.*

Is there any case law in your jurisdiction on a failure to meet Art. 4 requirements in particular circumstances ? Or have national standards been seen as disproportionate ? Have differences in the way Member states transpose created any difficulties ?

Answer :

There is no relevant example in the Slovak republic.

Article 7 – Waste plans and permits

Article 7 of the Directive requires competent authorities to draw up waste management plans to attain the objectives in articles 3,4 and 5 of the Directive. In turn the implementation of these management plans is meant to be carried out by issuing individual permits consistent with those plans (Case C-53/02 *Biffa-Tilleut*). Plans are not the only factor which determines the location of waste disposal sites, inasmuch as the final decision concerning location in some circumstances depends on the relevant rules relating to land-use planning and, in particular, the consultation and decision-making procedures implemented pursuant to Council Directive 85/337/EEC.

Member States shall take the necessary measures to ensure that any holder of waste

- *has it handled by a private or public waste collector or by a disposal undertaking,*
- *or disposes of it himself in accordance with the measures taken pursuant to Article 4 of Waste Framework Directive.*

Have your national courts been asked to consider the relationship between individual permits and national waste plans ?

Answer :

There has not been any example in Slovakia.

Waste (management) plans are stipulated in Part two of Slovak Act on waste. The waste plan lays down the objectives in waste management of the Slovak Republic, of a territorial unit, a part thereof or a waste generator and the measures for meeting the same in compliance with the Act. The waste plan must be prepared only for wastes listed in the Waste catalogue.

The waste plan contains

- a) the name of the body issuing the same,
- b) basic data concerning the territory to which the waste plan applies,
- c) basic data concerning the waste generator and the municipality preparing the waste plan,
- d) characteristics of the present situation in waste management, a waste management budget,
- e) its obligatory part and
- f) target part.

There are three kinds of waste plans in Slovak republic :

- the Waste plan of the Slovak republic
- regional or district waste plans and
- plans of waste generator and plans of municipality

The Waste plan of the Slovak republic is prepared by the Slovak Ministry of Environment based in particular on source materials of both regional and district authorities, and adopted by the Slovak Government. This kind of waste plan is published by the Slovak Ministry of Environment in its Journal.

Both regional and district authorities issue the obligatory part of the Regional or the District waste plan by a generally binding ordinance covering a period stipulated in the Waste plan of the Slovak republic, five years as a rule.

A plan issued by a subordinate state administration body in waste management must comply with the obligatory part of the plan issued by its superior state administration body in waste management.

The obligatory part of waste plans contain the target trend in handling of specified waste types and quantities (so called waste streams) at a defined time, and measures to minimise the quantity of bio-degradable waste deposited in landfills.

The target part of the Waste plan of the Slovak republic includes the intentions for building installations of higher than regional importance. The target part of a regional or a district plans contain intentions for building new installations for waste recovery, waste disposal as well as installations for other handling of waste.

Both regional and district authorities is obliged to make their draft of waste plans publicly accessible in the place of their seat in the usual way for a period no less than 30 days

to allow the public in the territory concerned to familiarise itself therewith. Drafts of waste plans are also submitted to the state administration authorities concerned by special statutes and those prepared by district authorities also to municipalities in the territory concerned. The public, the state administration bodies concerned and the municipalities have the right to submit written comments to the competent authority within the period 30 days during which the draft plan is available to the public.

No later than 30 days from the above mentioned deadline the regional and the district authority are obliged to hold a public hearing of the draft plan and – while finalising the waste plan – take into account the written comments submitted. On the agreement of competent authorities, waste plans may be exceptionally issued jointly for a number of districts or their parts. The plan shall be the baseline for measures to minimise waste generation, for waste handling and for the preparation of territorial planning documents.

The decisions and opinions of state administration bodies in waste management issued under this Act may not contradict the obligatory part of the respective regional and district waste plan.

Should facts vital for the scope of waste plan change radically after the plan issuance, the Slovak Ministry of Environment, regional or district authority are obliged to update not only the Waste plan of the Slovak republic but also regional and district plans in question.

The Slovak Ministry of Environment, regional and district authorities or persons that they have been empowered are entitled to seek information necessary to prepare and update a waste plan from anyone in the possession of, or anyone handling waste without any prejudice to data security under special regulations (e.g. Commercial Code).

Plan of the Waste Generator and Plan of the Municipality

A waste generator that is a legal entity or an individual – entrepreneur and produces annually over 50 kg of hazardous wastes or 1 tonne of other wastes shall prepare its own plan. The waste generator's obligation to prepare a plan relating to municipal waste as well as to waste from common maintenance works performed by an individual – entrepreneur¹⁴⁾ (hereinafter the “minor construction waste”) shall be complied with by the municipality, in which the waste is generated.

¹⁴⁾ § 55 paragraph 2 letters b) and c), § 56 letter h) of Act No. 50/1976 Coll. on Territorial Planning and the Building Order (Building Act).

Waste generators that prepare plans under the Act may agree with one another or together with the municipality and prepare a joint plan.

The obligatory part of a waste generator or municipality waste plan contains measures to minimise waste generation. The target part of a waste generator or municipality waste plan contains above mentioned data.

Both waste generator and municipality are obliged to submit its prepared waste plan for approval to the competent state administration body in waste management and comply with the plan approved. A new waste generator or municipality is obliged to submit a plan for approval within three months from its establishment.

Within four months from the issuance of a district or a regional waste plan waste generator or municipality is obliged to prepare a new waste plan and submit the same to the competent state administration body in waste management for approval. Unless stated otherwise in the decision, the previous waste generator or municipality waste plan expires on the approval of the new plan.

Where a state administration body in waste management stops the proceeding of the approval of a waste generator or municipality waste plan due to inconsistency with the obligatory part of a district plan, the waste generator or municipality is obliged to re-submit waste plan harmonised with and modified according to the district waste plan for approval without any delay.

In the preparation of its waste plan, the generator of other than municipal waste and minor construction waste is obliged to take into account the plan of the municipality, to which the plan relates. Prior to the submission of its plan for approval to the competent state administration body in waste management, the waste generator shall be obliged to submit its plan to the municipality, to which the plan relates, for its opinion. Where the number of municipalities exceeds 30, the waste generator may send a notification to the municipalities that a plan has been prepared and information where the plan may be inspected and the deadline for the submission of opinions to the same without any prejudice to data security pursuant to special regulations (e.g. Commercial Code). In drafting and updating its plan, a municipality is entitled to request that anyone who is a municipal waste holder or who handles municipal waste in the municipality provide for free information necessary to draft and update

the plan without any prejudice to data security pursuant to special regulations (e.g. Commercial Code).

End of contribution.