



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

TRAINING AND SPECIALISATION OF MEMBERS OF THE JUDICIARY IN ENVIRONMENTAL LAW

In preparation of our first Annual Conference in The Hague, in December 2004, a questionnaire on these issues has been developed and our members have been invited to send in national reports. 19 such reports were received and the results were used to produce a general report, consisting of three parts, that you can find on our website:

<http://www.eufje.org/index.php/en/conferences/the-hague-2004>

Since 2004 much has happened and new member states have joined the EU. The time has come to take stock again and to assess the progress that has been made. The questionnaire has been modified only slightly in comparison with the 2004 questionnaire. Feel free to take the 2004 national report, if available, as a starting point and update it as appropriate. The candidate member states are also invited to submit a report.

You are invited to send in the national reports at the latest on **September 15th** to **eufje.bogos@gmail.com** so that we can prepare the general report that will be presented at the Sofia Conference.

I. INTRODUCTION

What is the general nature of the system of law in your country (e.g. civil, common law, codified etc.)?

Does it include -

- constitutional protection of the environment
- a general law protecting the environment
- a code or compilation encompassing all or a substantial part of the laws relating to provisions on environmental protection?

Answer:

It is well known truth that legal systems in all countries we can divide into common law systems and civil law systems. The general nature of the system of law in Slovak Republic falls into civil law system because the codified statutes is predominated and we have accepted the Ancient Roman law principles in decision-making procedure. As regards historical development, it had been influenced by the Austrian and the German legal ideas and tradition

and can thus be grouped within the Germanic continental legal culture. It has been strongly influenced by socialist legal thinking in particular a Soviet Union philosophy during the Communist period ranging from 1948 until 1989. As of the 1990s, it has been also largely reshaped by the reception and implementation of EU law.

As a civil law jurisdiction, Slovak law recognizes only written law as a formal source of law. Based on their legal force, those formal written sources of law are assorted in a pyramidal-type structure (the Kelsen's judicial theory of norms). The lower levels of the pyramid have to be compatible with the higher.

The substantial areas of law are codified. The main codes are:

- The Civil Code from 1964 year – is the basic code, providing foundations for the entire area of private law and the legal system generally, containing provisions on legal personality and subjects of legal relations, property rights and obligations, types of typical civil contracts, unjust enrichment, civil liability or succession,

- The Commercial Code from 1991 year – regulates the relationships between businessmen and enterprises including commercial activity generally, types of commercial contracts and obligations, etc., and

- The Criminal Code from 2005 year – defines the types of behaviour constituting a criminal offence, contains enumerative list of criminal offences and types of punishment.

The principle of civil law is very firmly incorporated into domains of civil and commercial law where the Slovak Civil Code and Slovak Commercial Code play the fundamental role. However, this statement is not changeless and both the Slovak state authorities as well as legislature use a mix of principal elements from civil and common-law systems. Especially case law of upper courts (it means the courts on the top of judicial pyramid as the Court of Justice of EU, European Court for Human Protection or domestic constitutional court) is very powerful for case management.

In the sphere of the Slovak public law is a different situation and each legally binding measure (law) creates a legal autonomy for both application of substantive and procedural part of such a law. For example, the environmental law is atomized into a great number of laws and decrees without possibility to codify this legal domain. It is therefore reason why there is no general law protecting the environment or a compilation encompassing substantial part of law relating to provisions of environmental protection. The main legal frame of environmental protection creates the Slovak Constitution. According the Article 44 (1) of the Slovak Constitution everyone shall have the right to favourable environment. As regards the positive obligation to protect environment everyone shall have a duty to protect and improve the environment and to foster cultural heritage [Article 44 (1)]. On the other hand, there is an imperative obligation for anyone not imperil or not damage the environment, natural resources and cultural heritage beyond the limits laid down by a law. The Slovak State is responsible to care for economical exploitation of natural resources, for ecological balance and on effective environmental policy, and it must secure protection of determined sorts of wild plants and wild animals. However, the right to favorable environment is not absolute right but only limited by Slovak legislature. For that reason, the EU law plays significant role.

II. TRAINING AND INFORMATION

A - Training

1. General training arrangements

(a) Please describe the arrangements which exist in your country for training judges –

- for initial training before taking office?

Answer:

The words “initial training before taking office” is linked with the possibility to be selected and appointed to the judicial post. There are three possibilities to be appointed as a judge and the obligatory initial training is organised by state institutions only for two events as follows. Firstly, if a judicial candidate is in the post of judicial aspirant he/she is educated obligatory by the Judicial Academy of the Slovak Republic. Secondly, there is a same situation for court bailiffs who assist the judges. Thirdly, the advocate is also a potential judicial candidate but the Slovak Advocate Chamber is responsible for his/her private training.

- for continued training?

Answer:

In general view all judges including judges of administrative divisions have an obligation to use opportunities for training throughout their career. In principle, this training is provided in four directions:

- a) training organised by the Slovak Judicial Academy,*
- b) self-study (using available library resources and periodicals or by participating in seminars),*
- c) training through internships at public administration authorities or other courts, and lastly*
- d) training of judges through the study of court files, including the exchange of experience within divisions or at meetings of administrative divisions with members of the academic community.*

The Judicial Academy provides training in a variety of areas on the basis of an approved training plan. The lecturers at the training activities are judges themselves or experts from the

The Judicial Academy of the Slovak Republic (hereinafter also “Judicial Academy” or simply “Academy”) is a central body responsible for continuous training of judges, prosecutors and court bailiffs. It has been in existence since 1 September 2004. Before this date, there was the Slovak Association of Judges who realized the need of having an independent judicial educational institution. The Executive and Legislative Committees of the Association supported by several international institutions like the Council of Europe, European Commission, International Association of Judges, Netherlands Helsinki Committee, ABA CEELI, and the British Know-How Fund, prepared a draft act on the Judicial Academy of the Slovak Republic and submitted it to the Ministry of Justice.

The Judicial Academy is an educational institution with nation-wide coverage. It is an independent legal entity, a non-profit state budgetary organization under the Ministry of Justice of the Slovak Republic. It manages funds specifically allocated in the state budget for the purpose of education of judges, prosecutors and court bailiffs.

The legal seat and the administration of the Academy is situated in a small Slovak city, just 30 kilometres away from the Slovak capital, Bratislava. However, the courses themselves

are hosted in a different location in the Slovak countryside. The supreme body of the Academy is the Board. It manages, besides other matters, the training and educational activities of the Academy from the professional point of view. The Board has 10 members. The statutory body of the Academy is the Director nominated and removed by the Minister of Justice of the Slovak Republic upon a proposal of the Board.

The Ministry of Justice carried out training mainly in the field of European law and EU legislation in co-operation with international institutions in the past.

The Academy ensures, organises and performs continuing education of judges as well as prosecutors and court officials too. The court officials as specified in act on court officials are:

- the higher court officials (they assist judges in court and after 3 years and 30 years old, can take the exam for becoming judges),
- the probation and mediation officials and
- court secretaries.

Furthermore, in addition to organizing of lifelong training of judges, prosecutors and court officials the Judicial Academy prepares and subsequently verifies the professional knowledge and assumptions of future judges, future prosecutors and higher court officials necessary for the exercise of the position of a judge or a prosecutor by organizing a professional judicial examination.

The Academy also creates, administers and protects the database of the files from the field of criminal law, administrative law, labour law, family law, commercial law and civil law for the purpose of written part of the selection for judge vacancy in accordance with the principles for the selection procedure approved by the Judicial Council of the Slovak Republic as well as for the written part of professional judicial exam.

There are Departments of law at the Academy. After the organizational changes the original 4 departments were transformed into 3 current departments:

- Department of public law - consists of criminal law, constitutional law, financial law and administrative law
- Department of private law - consists of civil law and commercial law
- Department of the International and European law, initial education and social science disciplines.

(b) How is initial training arranged?

Where and by whom is it conducted, for example –

- universities,
- other specialised training establishments
- organised by government or by judicial bodies?

Answer:

The Judicial Academy of the Slovak Republic is a central body only responsible for continuous training of judges, prosecutors, judicial aspirants or/ and court bailiffs. Beside this institution, the higher courts can provide short or long-term stages in extraordinary moments. The universities are not at all touched by training procedure of candidates for a judicial post. However, university professors, senior lecturers or another university staff as well as high civil servants as outside lecturers of the Judicial Academy can give lessons to candidate for a judicial post.

It means that the Academy ensures education by means of the pedagogical staff according to the approved annual academic plan. The pedagogical staff comprises of heads

of departments as well as external members. The external members are mainly long experiences judges, prosecutors and experts from academia who are chosen by the Board of the Judicial Academy according to the criteria established by the Board.

Does it include *stages* or similar arrangements (e.g. internships, pupillages, apprenticeships) -

- with courts
- with lawyers
- with government departments
- with other agencies?

Answer:

The candidate for judicial post (judicial aspirants or court bailiffs except advocates) are employed at the time before they could be nominated as a judge. Their principle obligation is to educate themselves. As were above mentioned the Judicial Academy of the Slovak Republic is a central body responsible for continuous training.

(c) How is *continuing training* organised? For example –

Where and by whom is it conducted?

Answer:

Any judge has the right for systematic and cost-free education throughout the entire period of exercising his/her function, to cost-free provision of legal norms and regulations, professional literature and documents necessary for the correct and proper exercise of judicial function.

National and/or international training institution provides education of judges. The domestic or international judicial bodies could insure a judicial training with time limitation for 1 year. During this period, the judge is suspended from decision-making.

Judges who participate in the organization of education and in lecturing activities for judges and employees of court administration have the right to compensation for such activities if they do so outside of their duties in decision-making activities.

Is it compulsory (for all or some categories of judges), or voluntary?

Answer:

According the Art. 30 (7) of Act on judges a judge shall be responsible for update of his/her specialist knowledge and, according to circumstances, for using offered possibilities for training by way of develop his/her knowledge (increasing a qualification). A judge is obliged to contribute through his/her own expertise and skills to the professional preparation of apprentice judges and working younger judges. These uses of his/her expertise and skills in professional preparation towards raising and deepening the professional level of the judiciary, of apprentice judges and other court employees is only with his/her consent and if it does not interfere with his/her duties in performing judicial function.

The deepening of qualifications is comprised of the systematic professional education of judges with the goal of continuous maintaining, improving and completing the required expertise and abilities necessary for the exercise of the function of a judge in the pertinent branch, or in the performance of lecturing activities. A judge shall be entitled to a study leave in the needed extent for deepening his/her qualifications; he/she shall be entitled to his/her function salary for this period.

On the other hand, the increasing of qualifications is comprised of the acquiring of knowledge and expertise necessary for the exercise of the function of a judge of higher degree, for the performance of individual specializations, or for the performance of regular function in court administration. The increasing of qualifications is further comprised of further university study in the branch necessary for the performance of the function of a judge, viva voce examinations as well as other specialized studies in universities or other training/education facilities in the Slovak Republic or abroad if they are recognized as such.

Is there a regular programme of continuing training? If so, how often? What is the average period in a year? Are there special requirements, for example on a change of office?

Answer:

The director of Judicial Academy of the Slovak Republic is responsible person for a creation of proposed training program and realisation of approved training program during the following year. The Slovak Judicial Council with cooperation with the Board of Judicial Academy approves annual academic plan according to the scope of education of judges determined by the Judicial Council in consent with the Minister and the scope of education of prosecutors determined by the General Prosecutor. Nevertheless, it is not possible to confirm that there is a regular programme of continuing training. The Slovak Judicial Council selects training topics more broadly and voluntarily according the particular requirements of judges.

Beside this institution, the higher courts can provide short or long-term judicial or another stages.

Is it supervised? If so, by whom? Who determines the content of the courses (e.g. government, judicial bodies, individual judges)?

Answer:

The Judicial Council evaluates the annual academic plan of judicial education and its consequences. The departments with a cooperation with lecturers specify a content of the particular courses or trainings. The higher courts prepare the program of short or long-term stages independently.

Are the training fees paid for? Are judges entitled to leave from work for the training?

Answer:

Any judge has the right for systematic and cost-free education throughout the entire period of exercising his/her function, to cost-free provision of legal norms and regulations, professional literature and documents necessary for the correct and proper exercise of judicial function.

National and/or international training institution provides education of judges. The domestic or international judicial bodies could insure a judicial training with time limitation for 1 year. During this period, the judge is suspended from decision-making. Moreover any judge is entitled to a study leave in the needed extent for deepening his/her qualifications; he/she shall be entitled to his/her function salary for this period. On the other hand a judge is also entitled to a study leave based on confirmation from the educational facility on the place and length of the study programme

a) in the extent necessary for participation in the programme,

- b) 2 days for preparation and the sitting of each examination,
- c) 10 days for preparation and sitting a final exam,
- d) 10 days for preparation and defence of a diploma or other graduation work.

Is such training given weight in decisions on career choices or appointments to particular responsibilities?

Answer:

The choice of particular training depends on judge. The Judicial Academy only proposes the annual program and there is no official obligation for judges to participate in a stipulated number of courses. However, if the qualification and competence of particular judge is questioned the disciplinary body will exercise the approach of judge to be educated.

2 Training in environmental law

Do the training arrangements for judges include special arrangements for training in environmental law –

- for initial training

Answer:

There is no requirements for initial training in environmental law.

- for continuing training?

Answer:

The Judicial Academy of the Slovak Republic prepared in the past a number of continuing training for judges in a field of environmental protection. These courses were not successful and they were not popular. The judges in particular argued that they are overcrowded by a quantity of pending and new cases and lack of time for education activities.

If so, please describe the arrangements, covering the same points as for general training.

In particular –

- is such training in environmental law given to all judges or only those with specific functions in that field?
- on average, how many judges receive such training in every year?
- what form does it take and for what periods?

Answer:

The education and training courses concerning environmental law are open to all judges or prosecutors as well as bailiffs without specialization and the level of court. However, the reality is that only administrative judges and their bailiffs participate at these trainings. Sometimes prosecutors performing their post in the field of non-penal supervision of legality also take participation in those events. It is very difficult to estimate a number of judges participating in such trainings per year. The annual plan of education does not contain this type of training during some years.

Is there a mechanism for assessing the training needs of judges and periodically reviewing this?

Answer:

There is not such an appropriate mechanism. Each judge, prosecutor and bailiff are responsible for his/her education activities. If the level of judicial competence and practice of judge is decreasing he/she should be disciplinary prosecuted. It seems to be very exceptional affair and the disciplinary proceedings was initiated by the President of the Slovak Supreme Court just once.

Have you already made use of training material prepared at EU level (e.g. within the framework of DG ENV programme for cooperation with national judges and prosecutors: <http://ec.europa.eu/environment/legal/law/judges.htm>). Do you have any suggestions for improvements?

Answer:

Both regional judges and Supreme Court judges do not speak and read in majority materials and documents in foreign languages. They prefer read these materials in Slovak. So that many documents are available only in another languages the effort of Slovak judges as well as prosecutors is minimal. However, they can use IT means for good communication.

B – Availability of Information on environmental law

(a) Are there any specialised collections of national or EU case law relating to environmental law -

- in paper form

Answer:

No, there are no specialised collections of national or EU case law relating to environmental law. Only some judges try to publish private collections of domestic or EU case law with cooperation with great publishing houses e.g. Wolters Kluwer or C.H.Beck. The ministry of justice has tried to create unified electronic collection of judgments and other judicial decisions but the collection is not effective and operational. It is very difficult job for experienced individual to search particular judgment in the electronic collection.

- on the Internet?

Answer:

Every visitor in Slovak web official pages verifies lack of domestic legal information and case law in another language as Slovak. There is no specialised collection concerning environmental law. As was mentioned the approach to the common electronic collection is not very easy.

(b) Are judges equipped with computers giving them free access to databases (with case law and literature) on environmental law, including

- national databases
- European databases
- international databases?

Answer:

Slovak judges are equipped with computers that give them free access to domestic as well as international databases according to their free choice and without limitation. Only databases with dangerous content e.g. some pages or advertising concerning terrorism, pornography or another improper subjects are blocked. Majority of judges use private commentaries to the procedural codes or substantial codes. They also utilise the biggest private Slovak electronic law collection for their daily decision-making procedure. It was above mentioned that minority judges are capable to understand articles e.g. in English or French languages so they are not frequent visitors at the international law web pages.

C – Proposals for training or improving availability of information

(a) In what areas would it be helpful to develop training materials and organise training sessions, for example -

General principles of law, e.g. –

- International environmental law
- European environmental law
- Comparative environmental law

Particular aspects of environmental law, e.g. –

- Environmental Impact Assessment
- Sustainable Development
- Access to Justice and Standing (Aarhus Convention)
- Administrative and civil liability in environmental law
- Criminal Liability of Corporations
- The role of NGOs

Role of environmental inspectors, police officers and others on evidence collection
Language training (e.g. judicial terminology)?

Technical issues, e.g. -

- Evaluation of ecological damage, including use of forensic methods
- Measures to restore the environment

Specific topics, e.g. -

- Freshwater Pollution,
- Protection of the Seas
- Nature Protection
- Landscape and Monuments – Natural Sites
- Air pollution
- International trade in protected species
- International transfer of waste
- Genetically modified organisms
- Polluting or Dangerous Industries

Environmental procedural requirements, in particular impact assessments relevant for spatial planning, energy and transport

Other topics?

Common answer:

It should be given common answer. The above-mentioned topics are very interesting for majority of judges as well as prosecutors without their specialisation. However, the Academy creates a real concept of annual plan of education. Some proposals from judges are accepted sometimes.

III. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES

A – Courts or tribunals responsible for environmental law

(a) Please describe the arrangements in your country for determining environmental law disputes, criminal, administrative and civil. In particular -

Are there separate courts or tribunals for civil and criminal matters?

Are there special constitutional or administrative courts or tribunals (for litigation involving government agencies or public bodies)?

Answer:

The Slovak ordinary court system is in general based on a three-tier system of general courts without any specialization, integrated into which is the unique Special Criminal Court with criminal jurisdiction of a regional court for the prosecution of especially serious crime and crimes of public officials.

This court system consists approximately of 55 district courts. They have general jurisdiction over three “typical” areas (civil, commercial and criminal areas) as well as in administrative justice. Nine regional (higher) courts (eight general courts and one Special Criminal Court), which, with the exception of the Special Criminal court have general jurisdiction over four areas (administrative, civil, commercial and criminal), and the Supreme Court of the Slovak Republic on the top of a judicial hierarchy, which also has supreme jurisdiction over four areas (civil, commercial, criminal and administrative). The Slovak Supreme Court is divided into four autonomous parts – divisions (civil, commercial, criminal as well as administrative). Therefore, there is no specialised Supreme Administrative Court.

The Constitutional Court of the Slovak Republic stands outside of this general court system.

The Slovak administrative justice secures judicial oversight of the administrative authorities. It means the administrative justice guaranties the Rule of Law principle and the protection of citizens. There is no dualism of ordinary and administrative jurisdiction (e.g. French judicial model). The first jurisdictional tier consists of a specialist section of an ordinary jurisdiction in Slovakia. As the above suggests, the court review of administrative decisions (administrative cases) at the first-instance level is only conducted by judges with specialisation for administrative disputes at eight regional courts and, at the appellate level, only by judges concentrated in the Administrative Division of the Supreme Court. The

Supreme Court of the Slovak Republic has the position of the Court of Cassation in the administrative justice system.

Judges in charge of administrative cases are appointed for this purpose according an annually created Court Assignment Docket. At regional courts, these judges handle

a) appeal proceedings as single judges or

b) act on administrative claims in three-member panels.

Judges of the Supreme Court deal with administrative cases partially in specialised three-member panels, or in a large five-member panel as well as in seven-member grand chamber (legal questions of principal importance).

Proceedings on majority of administrative justice matters are dealt almost at the first-instance level with by the Regional Courts, with the exception of cases that are manifestly placed by law under the jurisdiction of the Slovak Supreme Court. Par example, the Slovak Supreme Court is the first-instance court for cases related to decisions of the National Security Authority as well as in specific electoral matters and claims against liquidation of political parties or movements.

Are there specialised courts or tribunals for environmental law (or particular aspects of environmental law, including town and country planning, energy, or transportation)?

Answer:

There are no specialised courts or tribunals for environmental matters. The current situation for Slovak judges who deal with administrative cases is as follows. They rule on a tax evasion case in the morning, then they decide a social case concerning old-age pension and later they review a legality of internal act of municipality (e.g. bye-laws). This daily case timetable is very divergent and judge many times has no influence for case-law unification or spread his/her findings among colleague.

What powers are available to the different types of court, for example -

- criminal penalties
- orders or injunctions to remedy environmental damage
- awards of financial compensation or compensation in kind?

Answer:

The legal base that enables to challenge the measures taken by public authorities is mentioned in the Article 46 of the Constitution of the Slovak Republic as follows:

„(1) Every person may claim his or her right by procedures established by law at an independent and impartial court of law or other public authority of the Slovak Republic in cases specified by law.”

Judges in charge of administrative cases have judicial powers of review only administrative penalties. It means that the criminal courts are responsible for making criminal penalties. There is a possibility to bring an action against a failure to deliver an act (action against inactivity) or an action against a failure to act without competence (action against public activism). Then the court can make an order or injunction to remedy e.g. environmental damage. To declare awards of financial compensation or another type of compensation ta claimant must bring an action before a civil court.

Others?

(b) Please give examples of typical environmental law cases handled –

(i) By civil courts or tribunals;

- (ii) By criminal courts or tribunals;
- (iii) By administrative courts or tribunals;
- (iv) By the constitutional court
- (v) By specialist environmental tribunals.

Answer:

The right to judicial and other legal protection (the right of access to courts) belongs any person regardless of his /her citizenship or nationality, it is included among the fundamental rights, and freedoms that are regulated in Part II of the Slovak Constitution.

The cases concerning damages are typical cases that are handled by civil courts. The legal expert evaluates a price of damages.

The Code of Criminal Procedure regulates the right to objections in the course of criminal proceedings. Decisions of authorities involved in criminal proceedings have the form of a ruling. In cases concerning decision-making on the merits, the courts decide in the form of a judgement and a penal order. Each decision includes also instructions on remedies. The remedy against decisions that are not final is a complaint (against the ruling), an appeal (against the judgement) and protest (against a penal order). The remedy in case of a final decision is the re-opening of the case and a complaint against law violation. There are some criminal cases concerning environmental protection. The Criminal Code recognises group of eight crimes against environment including unlawful handling of waste, threatening or damaging of the environment, and breach of protection of plants and animals.

According the Slovak criminal Act in case of criminal offences against the environment, damage shall mean the combined environmental harm and property damage; property damage shall also comprise the costs of restoring the environment to its original state. As regards the criminal offence of illegal handling of waste, the scope of the offence shall be determined on the basis of customary price charged at the time and place of the offence for the collection, transport, export, import, recycling, disposal or dumping of waste, and the price charged for the removal of waste from the site that is not designated for dumping.

The Slovak Constitutional Court has not limited its powers still to review judgments and another decision of ordinary Slovak courts.

(c) Are there available statistics on environmental cases handled by the different categories of court and tribunal? If so, please summarise the figures for the most recent year available.

Answer:

There is a problem with a definition of environmental case for purpose of judicial statistics in Slovak courts. A procedure of allocation of a case is subject to a strict division of administrative cases into more than ten various groups (social, election, cadastral, asylum, financial and others cases). The group into which is environmental case inserted is a combination of academic, prosecutors and health protection cases. It is also impossible to separate cases concerning building permissions and «clear environmental cases.

B – Specialised jurisdictions

(a) If your system has specialised courts relevant to environmental law, please describe the nature of their jurisdiction (so far as not covered under A above), for example –

- how is the extent of the jurisdiction defined?
- is it exclusive, or concurrent with that of the ordinary courts?
- how, and by whom, are conflicts of jurisdiction resolved?
- are they independent of the executive?

Answer:

There is no specialised courts relevant to environmental law in Slovak Republic. Nowadays the Ministry of Justice has declared that the specialisation of judges is suitable and eligible and initiate the discussion on future development of Slovak judiciary.

(b) How, and by whom, are members of such courts recruited? Is knowledge or experience in environment law a specific requirement?

Answer:

The same answer as above.

(c) What powers do the specialised courts have, for example -

- annulment of regulations or individual acts
- orders to enforce environmental laws
- power to substitute a decision for that of the government agency
- orders for financial compensation or compensation in kind
- other (e.g. granting environmental licences or consents)

Answer:

The same answer as above.

(d) How and by whom are conflicts of jurisdiction with other courts resolved?

Answer:

The same answer as above.

C - Criminal violations

(a) In your country which agency or agencies have responsibilities for investigating and prosecuting criminal violations of environmental law –

- the police, or a particular branch of the police (national or local)
- customs authorities
- local authorities
- one or more specialised environmental agencies
- other bodies (public or private)

Answer:

A) Police and investigating authorities:

The Slovak General prosecutor proposed the creation of a specialized police body in 2017 year. The Department for Detection of Hazardous Substances and Environmental Crime as a special part of Criminal Police Office (hereinafter also “natural police”) started its work

in the beginning of 2018. The natural police dedicates its work to investigating environmental crimes. Par example in 2016, 302 people were prosecuted of crimes against the environment, and 185 persons of them were charged. The majority of the accused committed the crime of poaching or violation of plant and animal protection.

B) Enforcement and scientific authorities:

Enforcement authority for environmental protection is the Slovak Environmental Inspectorate (hereinafter also "SIE") as a major executive body that was founded by the Ministry of the Environment of the Slovak Republic in 1991. Slovak Environmental Inspectorate carries out qualified supervision with legal powers to impose sanctions. It also exercises the municipal administration in the field of integrated pollution prevention and control. There are two principal departments of SIE.

- The first department for the area of biosafety, where SIE acts as an authority of state administration supervision in the field of the use of genetic technologies and genetically modified organisms*
- and the second department for the area of integrated prevention and control, where as stipulate in the Integrated Pollution Prevention and Control Act (Act on IPPC), SIE has also decision-making competences in addition to the supervisory ones, it means SIE is a permitting authority over the bodies subjected to this act.*

Current spheres of SIE activity include:

- Integrated pollution prevention and control*
- Waste management*
- Water protection*
- Air protection*
- Nature and landscape protection as well as*
- Biosafety*

C) Specialised environmental agencies

The Slovak Environmental Agency (hereinafter "SEA") is a state agency with activities focused on environmental protection, environmental policy development and landscape creation on the principles of sustainable development. It employs more than 200 employees.

Main tasks and areas of SEA responsibility are as follows:

- fulfilment of selected international obligations of the Slovak Republic in the field of environmental protection,*
- environmental management,*
- waste management, packaging waste and chemical substances in the environment,*
- landscape, mainly its creation and protection as well as landscape planning,*
- care for the environment and environmental risk assessment,*
- environmental impact assessment and environmental regional planning,*
- environmental monitoring and informatics and another duties.*

In the above areas SEA provides professional supervision over application of environmental legal regulations and expert activities focused on fulfilment of commitments of the Slovak Republic resulting from international conventions, such as World Heritage Convention, European Landscape Convention, Aarhus Convention, Stockholm Convention and others. It also cooperates with concerned international and domestic expert institutions.

SEA has an important role also in the field of legal regulations implementation concerning the access to environmental information and it therefore publishes many publications and magazines.

All state institutions, agencies or authorities are obliged to announce or report to Public Prosecution Offices any suspicions that a crime or any criminal offence has been committed.

(b) What special arrangements do the police or customs have for ensuring that those involved have expertise in environmental law? Do they have specialised units, organised locally or nationally?

Answer:

The police authority is competent to appoint a legal expert for produce an experts' opinion. It also may cooperate with experts of the legal Slovak Environmental Agency.

(c) If a specialised environmental agency is responsible for prosecutions –
- how is it organised, and under what authority
- is it independent of government
- how are its officers recruited and trained
- does it have similar powers to those of the police for investigating and prosecuting?

Answer:

No, there is no competence for a specialised environmental agency to prosecute the crimes or offences concerning the environment.

(d) Which courts have power to impose criminal sanctions in environmental cases?

Answer:

The district courts, regional courts or the Special Criminal Court are competent to held criminal cases. District courts act as courts of first instance (trial court) in criminal cases unless otherwise stipulated by rules governing court procedure. Regional courts can also act as courts of first instance in criminal cases if it is stipulated by rules governing court procedure. Especially a regional court shall act as a first-instance court in respect of criminal offences punishable by imprisonment sentence of minimum eight years or by exceptional punishment. A regional court shall also act as a first-instance court in respect of criminal offences of terrorism, diversion, sabotage, tax evasion under section 148 paragraph (5) of the Penal Act, criminal offences under separate legislation and criminal offences under the law on the safeguarding of peace even if the minimum imposable sentence is lower. Extremely the Special Criminal Court hears criminal cases (murder, bribery or general threaten) which are secondly connected with violation of environment.

(e) Are there available reports or statistics of criminal sanctions imposed in environmental cases? If so, please give examples from recent cases.

Answer:

There is no publicly available list or report for statistical data of criminal sanctions imposed in environmental cases. The Slovak Public Prosecutor's Office administers internal statistics but they are not available.

(f) The role of the public prosecutor's office

Does the public prosecutor's office have services specialising in environmental area ?

Is this specialisation created by law or by internal organisational rules?
Is its jurisdiction national or local?
Does it relate to all environmental law violations or particular violations only?
Is it exclusive or concurrent with the office's general jurisdiction?

Answer:

The Public Prosecutor's Office in the Slovak Republic (hereinafter "Public Prosecution") is an independent governmental authority that defends the rights and interests protected by law of individuals, legal entities and the state. The Public Prosecution is obligated to take measures to prevent, find out and eliminate the law violation, restore the violated rights and lay appropriate charges. According to law, the Public Prosecution of the Slovak Republic has decision-making, supervising and control powers.

Individual prosecutors carry out the powers of the Public Prosecution particularly as follows:

a. the pursuit of criminal proceedings conducted against individuals suspected of having committed crimes and through overseeing compliance with laws in the pre-trial proceeding;

b. overseeing compliance with laws in all the establishments where the individuals deprived of their personal freedom or the individuals whose personal freedom was limited upon a decision made by a court of law or by any other competent authority are kept;

c. exercising their powers in the court proceeding;

d. overseeing compliance with laws on the part of public administrative agencies;

Only the public prosecutor is entitled to bring an action against a person, order the property seizure of the accused, give an exhumation warrant and carry out a preliminary investigation in proceedings connected with extraditions.

As regards the Office of General prosecutor since 2008, specialists in crimes against the environment have worked in every structure of the prosecution. They keep an eye on the legality of preparatory proceedings, and attend Slovak and international congresses aimed towards legal protection of the environment.

How are conflicts over jurisdiction resolved?

Answer:

The above-mentioned answer describes that there is no conflicts over jurisdiction.

Do members of the public prosecutor's office who specialise in environmental law have assistance from civil servants or experts appointed on a permanent basis to provide them with technical assistance?

How are these assistants recruited?

Answer:

Members of the Public Prosecution can only appoint legal experts on a permanent basis to elaborate an expert's opinion. Any natural person may be registered in the list of experts maintained by the Ministry of Justice of the Slovak Republic (hereinafter only the "Ministry") mainly if he/she

a. has obtained education in a field falling within the scope of the written application for registration;

b. completed a specialized education programme aimed at the activities of an expert, interpreter or translator;

- c. *has been working in a field falling within the scope of the respective activity for at least five years and, in the event of experts, for at least seven years;*
- d. *passed an professional examination.*

The purpose of a professional examination is to examine whether the applicant has sufficient knowledge and practice to duly perform expert activities e.g. in the field of environmental protection.

Specialised training is provided by expert institutes and interpreter institutes authorised by the Ministry. The minimum duration of specialised training is 300 hours. Specialised training covers mainly the application of theoretical knowledge in the given field.

D. Administrative violations/cases

See the questions in the previous section. Who and how decides on the choice of administrative vs criminal enforcement?

Answer:

It is obvious true that the criminal prosecution and administrative procedure can be initiated simultaneously by an infringement of law. For this reason, the criminal prosecution is predominant and an administrative authority must stay its procedure. Only if the findings of the pre-trial proceedings indicate that it is not a criminal offence but an act which another pertinent body would hear as a misdemeanour, administrative infraction, disciplinary offence the investigator and/or prosecutor transfers the case to competent authority. The accused and the injured party must be notified of the ruling to transfer the case.

Regional inspectorates of the Slovak Environmental Inspectorate plays the main role for administrative penalizing in the sphere of environmental protection. Especially the principal activity of the regional inspectorates is the supervision of observation of the environmental legal provisions, imposing of fines and introduction of corrective measures. Imposing fines is subjected to this aim. It means that the fine should motivate, i.e. it must be an impulse to strict observation of legal provisions and in turn this would guarantee elimination of faults and a decrease of their negative impact on the environment.

E. Civil cases

In what circumstances are civil courts involved in environmental law cases?

Answer:

The civil courts can be involved in environmental law cases from various reasons but common feature of civil proceedings is an application for damages. The main principle is polluter pays. It means that claimant can sue those who produce pollution to compensate him/her the costs of restitutio in integrum. For instance, a Slovak factory that produces a potentially poisonous air substance as a byproduct of its activities or its operation is very noisy is usually held responsible for pecuniary compensation. This principle influences most of the neighbour's relation affecting land, water and air.

Can they award remedies other than orders for damages ?

Answer:

It is possible to ask anyone for to stop for any activities impairing environment. If addressee of that requirement do not meet or continue in his/her abusive conduct the injured person can bring an action to order defendant to stay in negative activities.

Are there civil courts specialised in environmental law ?

Answer:

The judges in Slovak civil courts are not at all specialised in environmental law and they rarely participate in such trainings.

F. Standing

Do environmental NGOs have standing in the different courts?

- What requirements apply for the grant of standing?
- Must they have obtained formal recognition or accreditation by the authorities, or is the right to standing assessed on a case by case basis ?

Answer:

After the Slovak Brown Bear judgment was made, the Slovak Ministry of Environmental Protection has partly changed its strict approach to standing of environmental organisations. Primarily, in light of art. 14 para. 1 of the Act on administrative procedure, the party to the proceeding is also a person whose right, legally protected interests or obligations can be directly aggrieved by the decision. Both the Court of Justice and the Slovak Supreme Court have created new approach to standings of environmental protection organisations. It is clear that proceeding, in which it is decided about the interventions to the environment, can directly affect rights of such organization or can directly affect a legally protected interest and protection of environment in light of the objective of art. 9 para. 3 of the Aarhus Convention.

Following this idea the Ministry has changed its strict approach to standings and produced therefore amendment of the Nature Protection Act, effective from 1st May 2010. It modified participation provision in proceedings according to this Act as follows: “Party to the proceedings as stipulated by this act is any natural or legal person, which has such position guaranteed by the special legal provision“. It is beyond any doubt that the mentioned interpretation of the term “party to the proceeding” is, under the conditions of the Slovak Republic, applicable for the fulfilment of the obligation resulting from the above-mentioned case law of the Court of Justice.

Only proof of the goal of NGO, it means environmental protection is required by courts acting in administrative cases for grant of standing. It means that another requirement, e.g. to ask for formal recognition or accreditations by the authorities is not compulsory.

Bratislava, 2nd august 2018

presiding judge
Miroslav Gavalec