

## EFFECTIVE SANCTIONING OF ENVIRONMENTAL OFFENCES: COOPERATION BETWEEN THE SLOVAK INSPECTORATE OF THE ENVIRONMENT, THE PROSECUTOR'S OFFICE AND THE POLICE – A ROUND TABLE (BRATISLAVA, 5 MARCH 2026)

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On 5 March 2026, Comenius University in Bratislava, Faculty of Law (hereinafter as "**FL CU**"), organised a scientific event titled "*Roundtable - Effective Sanctioning of Environmental Offences: Cooperation between the Slovak Inspectorate of the Environment, the Prosecutor's Office and the Police*". The event was organised in the scope of the scientific project supported by the Slovak Research and Development Agency under Contract No. APVV-23-0645. The roundtable was attended by representatives of the General Prosecutor's Office of the Slovak Republic (hereinafter as "**GP SR**"), the Presidium

of the Police Force of the Slovak Republic (hereinafter as "PP SR"), and the Slovak Environmental Inspectorate (hereinafter "SEI").

The event was opened by prof. JUDr. Eduard Burda, PhD., dean of the FL CU, who welcomed the participants. In his speech, the dean addressed environmental crime, pointing out the alarming reality where it was often more favourable and profitable for perpetrators to violate environmental legal norms than to respect them. Furthermore, the dean emphasised that the waste management sector faced significant corruption-related challenges.

The introductory session continued with remarks from assoc. prof. JUDr. Radovan Blažek, PhD., from the Department of Criminal Law, Criminology and Criminalistics FL CU, and JUDr. Matúš Michalovič, PhD., from the Department of Administrative Law and Environmental Law FL CU.

Following the opening remarks, the first session titled "*On the Edge of Administrative and Criminal Prosecution*" was opened. The first speaker was JUDr. Branislav Delej, LL.M. (prosecutor, GP SR). His presentation focused on the mandatory application of the material corrective clause under Section 10(2) of the Criminal Code, as well as on the damage threshold, noting that, for certain environmental crimes, the damage caused must exceed 7,000 EUR.

Dr. Delej raised concerns about the lack of an on-call duty system among employees of the SEI and characterised their information system as insufficient. He further pointed out deficiencies in the process of establishing administrative liability in cases where prosecutor transfers a case from criminal proceedings to an administrative body for adjudication. He emphasised that, in practice, there was a lack of proper clarification of the facts of the case for such transferred offences, leading to ineffective sentencing. Finally, he highlighted application problems in criminal proceedings arising from the low number of forensic experts in environmental protection.

In terms of *pro futuro* considerations, Dr. Delej emphasised the necessity of legislative reform in the area of delegated state administration. He proposed a reassessment of municipal competencies in waste management, as the lack of professional qualifications within the personnel apparatus of local governments limits the proper fulfilment of statutory obligations.

The speech was continued by mjr. JUDr. Jana Janovcová (PP SR, Department for Detecting Dangerous Materials and Environmental Crime). She highlighted issues with the resolution of environmental offences by district offices which often failed to act in such matters. She saw the solution to this problem in strengthening communication between the relevant authorities.

Subsequently, RNDr. Beáta Múčková (SEI) delivered her presentation. She pointed out that, while environmental offences in criminal law were codified in a single act (the Criminal Code), including the investigative process (the Code of Criminal Procedure), the legal framework for this issue in administrative law was fragmented across multiple legal regulations.

According to her, another problematic issue was the vague definition of when the statute of limitations for a misdemeanour should be paused (from the "commencement of criminal proceedings"). In cases where criminal proceedings was closed, it was often no longer possible to prosecute the act as a misdemeanour or other administrative offence. At the same time, she pointed out the frequent use of the "prosecutor's protest" (a legal challenge), which, in her view, could complicate matters when district offices issue fines.

She also pointed out that district offices lacked sufficient competencies, and their lack of expertise is evident in their inability to navigate damage issues, even though

they represent the state as the injured party in criminal proceedings. Therefore, according to Dr. Múčková, the solution lies in a legislative change by which the state would be represented in criminal proceedings by a qualified representative – a specialised institution.

This was followed by a presentation by JUDr. Jozef Milučký, PhD. (SEI), who pointed out that the commencement and expiration of the statute of limitations in connection with the imposition of administrative liability are often unclear. He also highlighted the lack of cooperation between the SEI and law enforcement authorities. At the same time, he proposed that the GP SR should issue uniform guidelines on this matter. He also viewed as problematic the fact that law enforcement authorities had more tools to combat environmental crime than the SEI.

Prof. JUDr. Tomáš Strémy, PhD. (FL CU), delivered a presentation in which he noted that environmental crimes also affect legal entities and pointed out that, the threshold for establishing the elements of individual criminal offences required in Slovak Republic, causing significantly greater damage than at the level of the European Union. According to prof. Strémy, legal entities have no possibility of exculpation. Prof. Strémy criticised the fact that while the Czech Public Prosecutor's Office has a unified compliance program, no such program exists within the Slovak Republic. Regarding evidence in environmental crimes, prof. Strémy would welcome more experts on the subject, as he considered the current number insufficient, which, in his view, leads to a frequent need to call upon experts from abroad, particularly from the Czech Republic. At the same time, he proposed creating an expert institution to assess the environmental impacts of environmental crimes.

The second session was titled *"Evidence, Proof, and Procedural Obstacles"*. The first speaker in this session was JUDr. Denisa Michalovič, PhD. (District Prosecutor's Office in Galanta). According to her, the evidence is primarily based on expert opinions, and she agreed with prof. Strémy regarding the low number of experts in this field, which, in her view, often leads to the preparation of an expert opinion that takes at least a year, sometimes even two years. According to Dr. Michalovič, the evidentiary situation in administrative proceedings was weakened, whereas the unlawfulness of the conduct could be assessed earlier. She viewed as problematic the fact that, after a landfill is documented by law enforcement authorities, access to that landfill is not restricted, which meant the landfill might grow over time.

Next to speak was Dr. Janovcová (PP SR), who stated that the initial stage of criminal proceedings is particularly crucial in environmental crime cases. Evidence is often subject to weather conditions and to the actions of the perpetrator and other individuals. She also noted that the environmental police were not responsible for the safe removal of waste after the investigation concludes, leaving the waste on site. The imposition of an obligation to remove waste falls within the jurisdiction of the courts and administrative authorities. According to her, the issue is obtaining price quotes for waste removal from private companies. In this context, she pointed to the situation in Austria, where there is a limited liability company wholly owned by the state that focuses on waste removal, and she highlighted this situation as a model for the Slovak Republic.

Ing. Andrea Kubová PhD. (SEI) followed with the speech. Purpose of the inspection is to establish the material truth and not to establish the facts beyond a reasonable doubt, as is the case in criminal proceedings. She also criticised situations in which investigators ask employees of the SEI to testify as witnesses in cases that the Inspectorate has not yet concluded. She noted that the requirement to hand over unclosed case files to the police is also problematic. She also presented new problem, as several criminal proceedings were underway against particular employees of the SEI for

abuse of public office, as they participated in house searches and inspections of other premises and properties in the position of impartial persons, at the request of law enforcement authorities conducting such inspections, even though these employees were not, in fact, impartial persons.

The moderator, assoc. prof. Blažek, concluded that the Criminal Procedure Code does not permit the questioning of such persons in the capacity of another party to criminal proceedings unless they are expert witnesses, and that it would be possible to utilise the provision of Article 3 of the Criminal Procedure Code, which governs the provision of cooperation by public administration bodies, whereby the “written opinions” of these bodies would be stamped, based on which they would serve as documentary evidence, and thus the questioning of employees of the SEI would not need to be conducted.

At the conclusion Ing. Kubová argued that administrative penalties are better suited to ensuring the punishment of offenders and the removal of waste than criminal law measures.

A presentation by Dr. Jozef Milučký (SEI) followed this. He spoke against questioning employees of the SEI as witnesses and also objected to police officers overtaking the SEI's files what is sometimes inefficient.

Assoc. prof. JUDr. Zuzana Hamuláková, PhD. (FL CU) reiterated that there is no codified legal regulation in the field of waste management under administrative law. She stated that she saw hope in the potential to reach a consensus between law enforcement agencies and the SEI, for example, through established joint procedures. In conclusion, she also pointed out the possibility of using drones and other similar technologies.

In the third session, titled “*The New Generation of Environmental Crimes*” the first speaker was JUDr. František Eliaš, PhD. (prosecutor, GP SR), who commented on the upcoming amendment to the Criminal Code, which is based on Directive (EU) 2024/1203 on the protection of the environment through criminal law, which replaces Directives 2008/99/EC and 2009/123/EC. He also thanked to Mgr. Martin Lipták (Ministry of Justice of the Slovak Republic), for his professional and expert handling of the issue. Under the proposed amendment, the principle of *ultima ratio* will be strengthened, with administrative proceedings taking precedence over criminal proceedings. Penalties for environmental crimes will also be increased; however, even with these stricter penalties, alternative measures will remain available. He urged that representatives of the SEI should participate more actively in meetings with the GP SR and the PP SR, to which the SEI's representatives are invited, because if the prosecutor's office does not receive feedback from the SEI, it cannot resolve any potential issues.

Next to speak was Dr. Janovcová (PP SR), who noted that the transposition of this directive is particularly challenging. The upcoming amendment to the Criminal Code is very important, as environmental crimes have received very little attention since 2005. According to her, a turning point occurred in 2024, when the unauthorised disposal of waste began to be penalised even in cases where the waste was not hazardous. At the same time, she pointed out the very low penalties for these crimes, noting that most of these offences had already exceeded the statute of limitations. She highlighted the provision of Article 302(1) of the Criminal Code, which she argued was improperly drafted, as it covered a range of damages from 700 euros to 260,000 euros. She further highlighted the new criminal offences in the Directive.

Mgr. Lipták (Ministry of Justice of the Slovak Republic), who is responsible for transposing the aforementioned directive into Slovak law, noted that the most frequently committed environmental crimes were unauthorised waste disposal, poaching and animal cruelty. Specific changes include expanding the list of criminal offenses meaning

that there will be 20 in total, extending gross negligence to include environmental crimes, an emphasis on restorative measures aimed at contributing to environmental restoration, the addition of an obligation to restore the consequences of the crime to previous state or provide funds to the victim for such restoration, and the introduction of the possibility to conditionally suspend criminal proceedings even in cases of environmental crimes.

Mgr. Roman Antoška (SEI) expressed his approval that damages will also include the costs of restoring the property to its original condition. On the other hand, he believed it may be difficult to determine the benefit gained, which could pose an obstacle in identifying gross negligence. He welcomed the possibility of criminal sanctioning of repeating administrative offences against the environment, but viewed it as problematic in practice, as the SEI does not maintain a registry of such offences. He viewed the imposition of liability for damages on legal entities, as well as the application of diversion, as problematic, since not everyone has the financial means to pay damages.

Prof. JUDr. Jozef Čentěš, DrSc. (FL CU) stated that regarding the principle of *ne bis in idem* and the concurrent criminal and administrative proceedings, criminal proceedings takes precedence. Subsequently, prof. Čentěš responded to Mgr. Lipták and stated that while he approved of extending gross negligence to environmental crimes, this might lead to application problems. He pointed out that the definition of gross negligence will only be supplemented, not amended. At the same time, prof. Čentěš referred to a scholarly article by Mgr. Daniel Richter and JUDr. Maximilián Kiko, LL.M., from the Department of Criminal Law, Criminology, and Criminalistics FL CU, titled: "*Gross Negligence in Criminal Law as the Basis for Future Recodification of the Criminal Code?*",<sup>1</sup> in which the authors pointed out that the legislature has failed to sufficiently distinguish gross negligence from unconscious negligence. Prof. Čentěš welcomed the fact that the damage required to satisfy the elements of the offence will vary depending on the specific environmental crime. He also viewed positively the fact that the damage should include the costs of restoring the situation to its previous state. In response to Mgr. Roman Antoška stated that he agreed with him that, for all environmental crimes, it will be possible to conditionally suspend criminal prosecution or approve a settlement, which he viewed as highly problematic.

Finally, assoc. prof. Blažek closed the discussion and encouraged the guests present to continue the dialogue in a more informal setting.

The current state of environmental protection from the perspective of criminal and administrative law reveals a wide range of problems, ranging from the legislative fragmentation of administrative regulations to significant procedural barriers. The procedural barriers faced by both criminal justice authorities and administrative bodies impact the process of holding parties accountable for environmental offences. During the roundtable, experts from the field highlighted problematic areas of legal practice that they are seeking answers to or solutions for. In the closing discussion, participants outlined several practical avenues for addressing the identified challenges in the enforcement of environmental law.

Dr. Delej highlighted the need for unified procedures and a shared methodological framework for both law enforcement and administrative authorities. Several speakers emphasised that effective enforcement depends on improving operational cooperation between law enforcement authorities and administrative bodies.

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<sup>1</sup> Maximilián Kiko and Daniel Richter, 'Hrubá nedbanlivosť v trestnom práve ako základ budúcej rekodifikácie Trestného zákona?' [Gross Negligence in Criminal Law as the Basis for Future Recodification of the Criminal Code?] (2025) 108(6) *Právny obzor* 579.

In this context, Dr. Delej underscored the need to harmonise procedures and develop shared methodological guidance to reduce delays and improve consistency in practice.

A significant solution to the issue of questioning employees of the SEI as witnesses in criminal proceedings was presented by assoc. prof. Blažek during the second session of the roundtable.

During the roundtable, inspectors from the SEI repeatedly pointed out a problematic practice in which they are routinely summoned by members of the Slovak Police Force to participate in house searches to conduct expert assessments of items. From the perspective of criminal procedural law, in accordance with Section 100(1) of the Criminal Procedure Code, a search warrant is a necessary prerequisite for conducting such a search. Regarding the warrant requirements, it is important to emphasise that the warrant must include an exhaustive list of persons authorised to participate in the search. According to the inspectors' statements, however, their notification regarding cooperation is often carried out on an *ad hoc* basis, without proper procedural preparation. Inspectors raised concerns that *ad hoc* involvement in house searches, without their role being clearly reflected in the warrant, may create legal uncertainty regarding their procedural status and the lawfulness of their participation.

The key challenge that stands out across the spectrum of identified problems is the application of the *ne bis in idem* principle in the specific context of criminal and administrative proceedings. The purpose of the *ne bis in idem* principle is to ensure that an offender is prosecuted and punished only once for the same act. Speakers repeatedly referred to prof. Čentěš's scholarly article titled "*Concurrence of Criminal and Tax Proceedings and the Ne Bis In Idem Principle*",<sup>2</sup> which provides a fundamental theoretical and practical framework for addressing issues of the concurrence of these proceedings in accordance with the case law of the European Court of Human Rights. Prof. Čentěš emphasised that although criminal proceedings take precedence, following the landmark decision in *A. and B. v. Norway* permits concurrent prosecution in both proceedings. However, to apply this principle, it is essential to proceed in accordance with so-called Engel criteria, which assess whether a sanction in administrative (e.g., tax or environmental) proceedings has a *de facto* criminal nature, particularly with regard to its severity, repressive character, and preventive purpose. At the same time, in concurrent proceedings, it is essential to subject the given factual situation to a test of sufficient factual and temporal connection. Ultimately, the application of the *ne bis in idem* principle in concurrent proceedings requires a shift in practice from a formal to a substantive assessment of the identity of the offence and the penalty.

Regarding the possibilities of improving the level of the conference, in terms of its organisation, we believe it is appropriate to provide all active participants with the same amount of time to speak and respond to comments from other participants. During this conference, some participants were given more time at the expense of others. For this purpose, more time needs to be allocated to the conference as a whole. This step will ensure a dynamic, fair and balanced discussion for every participant.

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<sup>2</sup> Jozef Čentěš, 'Súbeh trestného konania a daňového konania a zásada *ne bis in idem*' [Concurrence of Criminal and Tax Proceedings and the Ne Bis In Idem Principle] (2017) 69(6–7) *Justičná revue* 759.