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The significance of accurate damage assessment in criminal offences of illegal waste management*

Abstract: The article deals with the substantive aspects of the criminal offence of unauthorised waste management under Article 302 of the Criminal Code in the Slovak Republic. It analyses its basic and aggravated forms, the meaning of fault and the distinction between a minor offence and an offence depending on the seriousness of the act and the amount of damage caused or its scale. The text discusses the concept of damage and scale, explaining their content in terms of ecological and property damage, as well as the definition of the boundaries of small, greater, significant, and large-scale damage. The article also focuses on the legal definitions of waste and waste management and the specifics of individual activities, as well as the possibility of committing this crime by a legal entity under the Act on Criminal Liability of Legal Entities. The article presents particular practical cases and pitfalls in determining the amount of damage on the basis of these cases.

Keywords: criminal offence, unauthorised waste management, damage, sanction, legal entity

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Introduction

The issue of unauthorised waste management represents a significant area of environmental criminal law and is among the frequently committed crimes in environmental criminality.[1] It is an act that directly interferes with the basic components of the environment, and its consequences are often manifested not only as immediate damage, but also as long-term ecological damage with serious social consequences. The Slovak Criminal Code regulates this crime in Article 302 of Act No. 300/2005 Criminal Code, as amended (hereinafter: Criminal Code or CC), which also consists of several aggravated forms depending on the extent of the crime, the amount of damage caused and the severity of the consequences. A significant role in application is played by the correct assessment of guilt, the determination and calculation of the amount of damage and the extent of the crime, which are crucial for the classification of the act as a basic or aggravated form of the crime and for determining an appropriate penalty. Examples from practice show that determining the amount of damage can appear to be very difficult, in some cases almost impossible, thus creating an obstacle to the successful completion of an investigation and bringing the perpetrator to justice.

"Within the European Union, the issue of environmental protection is given great attention. Environmental protection is one of the fundamental objectives of the Union. The importance of environmental protection is also highlighted in the preamble to the Treaty on European Union."[2] Therefore, the protection of environment in Slovak Republic by the means of criminal law is incorporated in the Criminal Code, special part, sixth chapter, labelled "Criminal offences against public safety and against environment." Overall 14 crimes protecting the environment respect the EU standards and adapt the Slovak legal order to norms prescribed by EU law. "Through EU directives, Slovakia is obligated to transpose European environmental norms into its national legal framework, thus facilitating the integration of EU environmental policies into domestic

[1] In the year 2024, there were 124 cases of this crime in Slovakia. In the year 2023 there were 104 cases. In the year 2022 there were 90 cases. These numbers represent high volumes of crime out of all environmental criminality. The second most widespread and committed crime is that under Article 305 CC – Breach of Plant and Animal Species Protection Regulations. With the number of cases at 55 (2024), 63 (2023) and 49 (2022), it is well behind the crime of illegal waste management. Source: Statistical overview of criminal and non-criminal activity for 2022, 2023 and 2024, www.genpro.gov.sk [accessed 10 October 2025].

[2] E. Burda, J. Čentéš, J. Kolesár, J. Záhora et al., *Trestný zákon II*, C.H.Beck, Praha 2011, p. 978.

law."[3] Environmental crimes in Criminal Code have been frequently amended to align with the EU goals and to comply with the EU policy. For example, there were amendments in the year 2020 (the Act No. 288/2020 Coll.) introducing new environmental crimes "neglect of animal care" (Article 305b CC) and "organizing of animal matches" (Article 305c CC) or amendment in the year 2023 (the Act No. 117/2023 Coll.) introducing the crime of "killing a social animal without reasonable cause" (Article 305aa CC). Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (hereinafter: Directive 2008/99) states: "In order to achieve effective protection of the environment, there is a particular need for more dissuasive penalties for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, to soil, water, animals or plants, including to the conservation of species."[4] However, there is a question of whether Slovak legislation is sufficient to make the sanctions dissuasive enough, when the system of damage assessment is not properly applied and thus the qualification of the "seriousness of the crime" is lowered and it becomes impossible to impose "dissuasive" penalties.

1. Substantive aspects of the crime of unauthorised waste management in the Slovak Republic

The crime of unauthorised waste management is one of the crimes against the environment defined according to type of object in the Sixth chapter, Second part of the Special Part of the Criminal Code: "Any person who breaches generally binding legal regulations when handling a small amount of waste shall be liable to a term of imprisonment of up to two years."[5]

"From a substantive point of view, the concept of damage affects many provisions of the Criminal Code, especially the classification of individual criminal acts that involve causing damage, because causing damage is an obligatory

[3] M. Michalovič, M. Maslen, *Advocating for environmental law – grounds for its status as an independent branch of law in Slovak legal doctrine*, "Prawne Problemy Górnictwa i Ochrony Środowiska" 2024, no. 2, p. 18, https://doi.org/10.31261/PPGOS.2024.02.06.

[4] Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, recital 5.

[5] Article 302(1) CC.

feature of the objective aspect of the factual basis."[6] This also applies to the crime of unauthorised waste management, which is regulated in Article 302 CC and distinguished into basic form (Article 302(1) CC) and three qualified forms of crime (Article 302(2,3,4) CC). The fulfilment of the basic form occurs when the perpetrator, even by a negligent act, handles waste on a small scale in violation of generally binding legal regulations.[7] The second paragraph requires, in terms of damage, the commission of the act referred to in the first paragraph and the exposure of the environment to a risk of greater damage. The third paragraph already requires that the act referred to in paragraph 1 be committed on a significant scale and the fourth paragraph on a large scale. Depending on the amount of damage caused or the severity of the consequences (causing serious bodily harm or death), the penalties are, of course, graduated.

"In the 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. In case of the criminal offence of illegal handling of waste pursuant to Section 302, the scope of the offence shall be determined on the basis of a 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 a site that is not designated for dumping."[8] In this definition we can see the legislator's effort to specify the damage on environment differently in comparison to general determination of the amount of damage which is stated in Article 124(1) CC. The general determination of the amount of damage is based primarily on the property harm, that is, material harm. The importance of environment is highlighted by the prescription of compensation also of immaterial loss that is incurred to society and public by the deterioration of quality of environment.

"Property damage to the environment represents the property value by which individual components of the environment have been devalued. […] Environmental property damage is therefore determined according to the usual criteria for determining damage and must always include the costs of restoring the environment to its previous state."[9] The second part of the damage is the

[6] M. Lévai, M. Čelár, *Pojem škoda podľa Trestného zákona*, in: *Míľniky práva v stredoeurópskom priestore 2022*, (eds.) M. Pavlovič, M. Mydliarová, Collection of Papers from the International Academic Conference organised by the Comenius University in Bratislava, Faculty of Law, on 24 June 2022, Comenius University, Faculty of Law, Bratislava 2022, p. 456.

[7] The crimes in question have a so-called blanket disposition, because they refer to other generally binding legal regulations. This is primarily Act No. 79/2015 Coll. on Waste and on Amendments and Supplements to Certain Acts, as amended, and Act No. 17/1992 Coll. on the Environment, as amended.

[8] Article 124(3) CC.

[9] E. Burda, J. Čentéš, J. Kolesár, J. Záhora et al., *Trestný zákon I*, C.H.Beck, Praha 2010, pp. 816–817.

"ecological damage." We cannot find the definition of ecological damage in Criminal Code. This term is, however, defined in special Act No. 17/1992 Coll. on the Environment: "Ecological damage is the loss or impairment of the natural functions of ecosystems resulting from damage to their components or disruption of internal links and processes as a result of human activity."[10] This concise definition often translates into a very complicated legal practice, wherein the following questions arise: How to asses if the loss (or deterioration) of natural functions really occurred and how to calculate the "ecological harm"? The legislator reflected this practical problem, when he introduced the legal way to calculate "ecological damage" in Act No. 543/2002 Coll.: "The social value of protected plants, protected animals, selected animal species, selected plant species, woody plants, biotopes of European importance and biotopes of national importance expresses mainly their biological, ecological and cultural value, which is determined taking into account their rarity, vulnerability and fulfilment of non-production functions. The social value of woody plants is also used to quantify the social value of forest stands growing in areas with the fourth or fifth level of protection and protected trees."[11] Thus, the strictly "legal" value of ecological harm caused on different animal or plant species could also cause problems in practice, because it does not mirror the specific conditions on particular place where crime happens. The value of certain animal or plant could differ in reality depending on number of species in the specific region and their capability of surviving the loss caused by the crime committed. The legal formulation of "ecological value" could help criminal agencies by determining the particular damage in environmental crime proceedings, however, does not help the environment too much. This solution is to solve practically the necessity of speed and possible complications in criminal proceedings. We can find possible better option for environment in legal obligation to restore it to previous state.

For the purpose of "restoring the environment to its previous state" the explanation we find in Act No. 17/1992 Coll. on the Environment, as amended, is: "Anyone who has caused ecological damage by damaging the environment or by other unlawful actions is obliged to restore the natural functions of the disturbed ecosystem or part thereof. If this is not possible or for serious reasons not expedient, he is obliged to compensate for the ecological damage in another way (compensation); if this is not possible, he is obliged to compensate for this damage in money. The simultaneous nature of these compensations is not excluded. The method of calculating ecological damage and other details shall be established by a special regulation." Even such formulation leaves huge scope for avoiding the fulfilment of obligation of restoring the environment

[10] Article 10 of Act No. 17/1992 Coll. on the Environment, as amended.

[11] Article 95(1) of Act No. 543/2002 Coll. on Nature and Landscape Protection, as amended.

in previous state. The possibility of subsidiary obligation to compensate the ecological damage in money could be in some cases for perpetrators more valuable than restoring the previous state. The state agencies very often do not insist on restoring the environment in previous state because also for them is easier to accept the sum of money and to close the case, than use the complicated legal tools to push the perpetrator to fulfil his/her obligation in restoring the previous state. Money compensation could be thus easier for both sides. The environment as the victim remains on last place.

In case of illegal waste management, damage is incorporating also the third part – price of processing the waste. The seriousness of a specific crime of illegal waste management is therefore determined by the cumulative value of all the above-mentioned parts of the damage. "At the same time, the price that was spent in a specific case for removing the waste from the place where it is located, if this place is not legally designated for its storage, or for its recovery or disposal, is added to the scope of the crime of unauthorised waste management."[12] Therefore, the amount of damage caused by the crime of illegal waste management is a decisive factor when it comes to the seriousness of crime and its aggravated forms. For the perpetrator, in turn, it is very important whether the criminal agencies could count all the abovementioned damages and if they ensure to incorporate all of them as crimes.

For the crime in Article 302(1) CC, the penalty is imprisonment for up to two years, in paragraph 2 six months to three years, in paragraph 3 one year to five years, in paragraph 4 three years to eight years. Depending on the severity of the crime, these are therefore minor offences, even in the case of paragraph 4, provided that the act was committed through negligence, because all negligent criminal acts are minor offences.[13] An intentional crime is also an offence if the Criminal Code in its special part provides for a prison sentence with a maximum sentence not exceeding five years.[14] Such a sentence should be understood as a sentence specified for individual crimes in the special part of the Criminal Code. The legal formulation of guilt "including negligence" allows for the commission of a crime intentionally and, alternatively, also through negligence, whereby intent is always first established, and if it cannot be proven, negligence will be attributed to perpetrator as the result of principle in dubio pro reo, thus the option more favourable to perpetrator. Assuming intentional commission of the crime of unauthorised waste management under paragraph 4, it is an offence because the maximum sentence exceeds five years.[15] Although the previous paragraphs also involve minor offences, there is no obstacle to the fourth paragraph involving an offence. This is permitted by Article 11(2) of the Criminal Code.

[12] E. Burda, J. Čentéš, J. Kolesár, J. Záhora et al., *Trestný zákon I...*, p. 819.

[13] Article 10(1) letter a) CC.

[14] Article 10(1) letter b) CC.

[15] Article 11(1) CC.

It can be noted that only in one case is the term "damage" mentioned, whereas "scope" is used in others. In relation to the crime of illegal waste management, the scope of a crime is understood to mean the price at which waste is usually collected, transported, exported, imported, recovered, disposed of or deposited at the time and place of detection of the crime, and the price for removing waste from a place not designated for its deposit. As for damage, in the case of criminal acts against the environment, it is understood to mean the sum of ecological damage and property damage, with property damage also including the costs of restoring the environment to its previous state.[16] Ecological damage can have not only immediate visible consequences, but also long-term cumulative impacts on the environment and human health. An example of ecological damage in connection with the crime of unauthorised waste management can be when someone illegally exports and stores several tonnes of construction waste and hazardous chemicals in an illegal landfill near a water source, thereby contaminating the soil and groundwater, thus endangering biodiversity and causing health risks for residents living near the affected area. From that point of view, it is difference for causing ecological damage, if the same waste is stored on different places (warehouse at the city centre, warehouse on the countryside, waste stored outside of the hall in the city, waste stored outside of the hall in the countryside), counting in the account also the possibility of vicinity of other biological areas (forests, lakes, meadows, rivers, etc.). The criminal agencies are usually not capable of answering this complex question in their own competence. "Determining environmental damage, including ecological damage, is a complex issue that, in criminal law practice, must be resolved by expert statement (Section 141 of the Criminal Procedure Code), but more often by expert opinions (pursuant to Section 142 et seq. of the Criminal Procedure Code)."[17]

The individual types of damages, as well as the determination of their amount, are contained in Article 125 of the Criminal Code. Small damage is an amount exceeding 700 EUR; greater damage is damage exceeding 20,000 EUR; significant damage is in an amount exceeding 250,000 EUR, and the large-extent damage is in an amount exceeding 650,000 EUR. These considerations will also be applied for determination of the scale of the act. The specified limits on the amount of damages have not been in effect for a long time; they were changed by the amendment to the Criminal Code No. 40/2024 Coll., effective from 6 August 2024, which significantly increased their threshold value.

Within the qualified facts of the criminal offence of unauthorised waste management in the second paragraph, letter a) is sufficient for its fulfilment when the perpetrator, by committing the act referred to in paragraph 1, exposes

[16] Article 124(3) CC.

[17] E. Burda, J. Čentéš, J. Kolesár, J. Záhora et al., *Trestný zákon I*..., p. 820.

the environment to the risk of greater damage. The same applies to letter b) with a threatening consequence of serious injury to health or death. The law therefore does not require the occurrence of a harmful consequence here; the mere risk of its occurrence suffices. "Environmental crimes are predominantly threatening crimes. For criminal liability, it is sufficient to endanger a protected interest or cause a disturbance to a protected interest (causing damage to the environment is usually punished as a circumstance that conditions the application of a higher penalty rate)."[18] This issue is connected with the abovementioned practical problems of proving that the real ecological harm occurred. In practice, at times the consequences of crime are visible only after years. That way the environmental crimes must be punished on the principle of presumption of future harm that might occur or even would not, but the perpetrator is punished even for creating the danger that such consequences would be uncovered in the future. Causing of real damage (that could be proven in the time of investigation of criminal activity) is then punished with higher penalty rates.

"The fundamental problem regarding environmental law is waste production and the resultant pollution of the environment."[19] Thus the crime of illegal waste management is the logical consequences of the society to regulate the natural human desire to get rid of the waste. "Waste is often seen merely as an unwanted byproduct of human activity."[20] In connection with the fundamental factual basis of the crime in question, it is necessary to focus on the concepts of "waste" and "waste management" from the viewpoint of structure of the crime and fulfilment of all legal conditions for criminality of certain act. The legal definition of waste is contained in Article 2, paragraph 1 of the Waste Act,[21] according to which it is "a movable thing or substance that the holder disposes of, wants to dispose of or is obliged to dispose of in accordance with this Act or special regulations." The Act also states in paragraph 2 what is not waste. It does not include a by-product, an item that has reached the end of its life, a recycled product or waste handed over for household use. The definitions are in line with Directive 2008/98/EC of the European Parliament and of the Council on waste.[22]

[18] E. Burda, J. Čentéš, J. Kolesár, J. Záhora et al., *Trestný zákon II*..., p. 978.

[19] A. Zemanová, *Sanction Mechanism in Waste Management. Comparative Analysis between the Slovak Republic and the Republic of Austria*, in: *Míľniky práva v stredoeurópskom priestore 2024*, (eds.) V. Ťažka, Comenius University, Faculty of Law, Bratislava 2024, p. 846.

[20] B. Cepek, *Environmentálne právo. Všeobecná a osobitná časť*, Publishing House Aleš Čeněk, Plzeň 2015, p. 353.

[21] Act No. 79/2015 Coll. on Waste and on Amendments and Supplements to Certain Acts, as amended (hereinafter: Waste Act).

[22] See Article 2(1,2,4) of the Waste Act, Articles 3 and 5 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

The term waste management, in addition to the Waste Act, is also included in Article 131(2) of the Criminal Code, according to which "for the purposes of this Act, waste management shall be considered to be the collection, transport, export, import, recovery, disposal and storage of waste."

Taking over of waste is the taking over of waste from another person, including its preliminary sorting and temporary storage for the purpose of transport to a waste treatment facility.[23]

Waste collection should be understood as the temporary deposition of waste by the waste holder before further management, which is not waste storage.[24]

Waste recovery is an activity whose main result is the beneficial use of waste in order to replace other materials in production activities or in the wider economy or ensuring the readiness of waste to fulfil this function.[25]

Waste disposal is not considered recovery, even in cases when its side effect may be the recovery of substances or energy.[26]

We have already mentioned that when considered from the viewpoint of the seriousness of the criminal act of unauthorised waste management, these are minor offences in the first three paragraphs. Therefore, what needs to be considered in each case is the so-called material corrective of the offence under Article 10(2) of the Criminal Code in relation to the administrative delict alternative under Article 45(1) of Act No. 372/1990 Coll. on Misdemeanours, as amended (hereinafter: Misdemeanour Act).[27] The so-called material corrective therefore applies only to minor offences and forms the boundary between misdemeanours[28] and minor offences, and it is the key aspect of how to conclude whether the seriousness of the act already meets the level of a criminal act or not. The material corrective is regulated in Article 10(2) of the Criminal Code, which stipulates that if the seriousness of the offence is insignificant in view of the manner of committing the act and its consequences, the circumstances under which the act was committed, the degree of culpability and the motive of the perpetrator, it is not a crime. These elements must be assessed individually and also together. In practice, this means that even if a certain act meets all the elements of the factual nature of a minor offence, the perpetrator may not automatically bear criminal liability for it because the degree of its seriousness

[23] Article 3(5) of the Waste Act.

[24] Article 3(4) of the Waste Act.

[25] Article 3(13) of the Waste Act.

[26] Article 3(16) of the Waste Act.

[27] "A person who, by violating generally binding legal regulations on environmental protection in a manner other than that resulting from the provisions of Articles 21 to 44, deteriorates the environment shall commit an offence."

[28] "A misdemeanour is a culpable act that violates or threatens the interests of society and is explicitly designated as a misdemeanour in this or another law, unless it is another administrative offence punishable under special legal regulations, or a criminal offence" (Article 2(1) of the Misdemeanour Act).

was not sufficient from the point of view of the material corrective. In this context, we present the legal decision of the Supreme Court of the Slovak Republic (hereinafter: SC SR): "When resolving the question of whether the unlawful conduct of the complainant can be assessed under the provisions of administrative law as an administrative offence or under the provisions of criminal law as a criminal offence, it is necessary, in the opinion of the court of cassation, to fundamentally proceed from the assumption that each unlawful conduct must be subordinated as a priority to the legal regulation that affects the most serious form of antisocial conduct. When determining liability for unlawful conduct, each such act must be assessed according to all legal provisions, whether administrative or criminal law, the characteristics of which the conduct may meet. Therefore, if the body acting in the case concludes that the committed act is subject to regulations in different areas of law, the legal regulation, legal qualification that describes the factual essence of the most serious form of this conduct always has priority. After the defendant began to act in the case, he should, at the latest before the issuance of the merits of the decision in the case, thoroughly examine and take into account the extent of the real costs at which it is possible to remove the illegal landfill. However, if the proper procedure had been followed, the defendant could have arrived at a reasonable suspicion, on the basis of the above, of committing the crime of unauthorised waste management under Article 302, paragraph 1 of the Criminal Code. Despite the removal of the landfill in question by the complainant, such unlawful conduct, which meets all the formal elements of a crime, is not subject to effective remorse within the meaning of the relevant provisions of the Criminal Code."[29]

The perpetrator of the crime of illegal waste management can even be a legal entity, as permitted by Article 3 of Act No. 91/2016 Coll. on the Criminal Liability of Legal Entities and on Amendments and Supplements to Certain Acts (hereinafter: ZoTZPO). In connection with the provision in question, it is also appropriate to point out Article 4 of the ZoTZPO, which regulates the criminal liability of a legal entity:

> (1) A criminal offence under Article 3 is committed by a legal entity if it is committed for its benefit, on its behalf, within the scope of its activities or through it, if it was committed by
> a) a statutory body or a member of a statutory body,
> b) a person who carries out control or supervision activities within a legal entity, or
> c) another person who is authorised to represent a legal entity or make decisions on its behalf.

[29] Judgment of the Supreme Court of the Slovak Republic of 27 April 2018, file no. 10Asan/5/2017.

> (2) The criminal offence under Article 3 is committed by a legal entity even if the entity referred to in paragraph 1, through insufficient supervision or control which was its duty, although through negligence, allowed the commission of the criminal offence by a person who acted within the scope of the authorisations entrusted to him/her by the legal entity.

The paragraph that follows (paragraph 3) regulates the grounds for exemption in relation to the inference of criminal liability of a legal entity for the actions of an employee. Pursuant to paragraph 4, in turn, the inference of criminal liability of a natural person is not required for the inference of criminal liability of a legal entity, and at the same time it is regulated that the criminal liability of a legal entity is not conditioned by the determination of which specific natural person acted on behalf of the legal entity. Paragraph 5 lists cases of the emergence of legally important facts according to special regulations, which, however, do not affect the criminal liability of a legal entity. Paragraph 6 lists other legal prerequisites, upon fulfilment of which the provisions of Article 4 on the criminal liability of a legal entity are also applied.[30]

Article 4 of the ZoTZPO was amended by Act No. 40/2024 Coll. A new provision was added (paragraph 7), according to which the actions of the perpetrator cannot be attributed to a legal entity if it has made all efforts that can be fairly required of it, taking into account the latest knowledge in the field of control of management, decision-making or control processes taking place within legal entities, in order to prevent or hinder the commission of criminal offences.[31]

2. Practical cases of unauthorised waste management in the Slovak Republic

In this section, two particular offenses committed in the district Malacky in Slovakia are analysed. The problematic aspects of damage assessment are presented on the basis of these two cases.

[30] Explanatory report to the Act on Criminal Liability of Legal Entities, https://zakony.judikaty.info/document/dsnr/4334 [accessed 10 October 2025].

[31] Ibidem.

2.1. Case No. 1 – dangerous chemical waste

In this case the perpetrator illegally stored dangerous chemical waste (colours, paints, lacquers and other liquids sourced from the car industry) in one storage building where perpetrator held around 900 barrels, cans and other containers with different shapes and different amount of volume from an uncertain date until October 2020.[32] These barrels were not fully filled, so the real amount of substance was smaller than the volume of the particular cans and barrels, without possibility to assess the exact amount of substance in each of them during the first inspection on the crime scene. Upon the inspection of the crime scene, each item needed to be numbered and measured and the amount of volume in it noted. It was not possible with the crime scene inspection to ascertain immediately what kind of waste was in each item, so the police officers and other co-workers (e.g., firefighters, the workers form Environmental Office) needed to come and work in special equipment designed for work with hazardous substances. The crime scene inspection thus took 7 consecutive days. Everything needed to be noted and photo documented. Samples of the substances inside had to be taken from each of the 900 items. After this inspection, the 900 samples needed to be evaluated from the viewpoint of what kind of substance it was and how dangerous this substance was for the environment; then for each item the "cost of waste processing" needed to be calculated. However, the samples could be evaluated only in terms of the category of the waste and its dangerousness. The cost of "waste processing" could be calculated per 1 tonne of waste. However, the real "amount" of each substance needed to be measured using the reports from the "crime scene inspection" and mathematically calculated using values from crime scene inspection report.

The first problem that occurred was impossibility of finding a controlled testing facility where the samples could be evaluated. Waste management is very special field of economic activity, so there are not numerous such specialised facilities in Slovak Republic and in criminal proceedings the criminal agencies are obliged to take the facility from the "list of expert witnesses" administered by the Ministry of Justice of Slovak Republic.[33] For environmental cases, the situation could occur in which there is no expert witness available for such activity. A person who is not registered in the list may also be an expert witness in criminal proceedings, if:

a) there is no person registered in the relevant field or sector or

[32] Case No. PPZ-148/NCK-ENV-BA-2022, District Office of the Prosecutor in Malacky, Slovak Republic.

[33] Article 2(1) letter a) and Article 4(1) of Act No. 382/2004 Coll. on Experts, Interpreters and Translators, as amended (hereinafter as: Act No. 382/2004 Coll.).

b) a person registered in the list cannot perform the act or performing the act would involve unreasonable difficulties or costs.[34]

This was also the situation in this case because there were no competent expert facilities available and because registered expert witnesses – natural persons have no technical and material resources to evaluate so many samples. Thus, a legal company working in the field of similar chemical substances, which could have evaluated the samples, was sought after. One of the universities established in the Slovak Republic was chosen as the adequate working place, as the university is a "scientific" working place with laboratories and practical material and technical equipment for such evaluation. However, after almost 14 months, the university sent the samples back (January 2022) with the answer that it is not possible for them to evaluate the submitted samples because the current financial situation at the university does not allow it to evaluate them. After another two months (March 2022), the samples were sent to a private company, which was to make the evaluation. However, this company only managed to produce the results of the samples evaluation after additional 20 months (in November 2023). The result was that it was impossible to evaluate the samples because with the lapse of time they had already deteriorated and were unsuitable for evaluation.

The impossibility of assessing the samples caused that the type of waste and the hazardous nature thereof remained uncategorised, which in turn made it impossible to indicate correctly the extent of damage or to classify the act as a certain crime according to Article 302 CC (paragraphs 1 to 4). The principal investigator in this case stated that new "sample collection" needed to be made for submitting it for new expert evidence, which means a new team of technicians would come to crime scene in "hazardous substances suits" and that this sample collection would cost another 50,000 EUR. Due to the lack of time and resources in the "state budget," a new categorisation of waste in the containers from the old crime scene investigation was made, and the volume of waste in each item was measured. Then the "cost of waste processing" was calculated on the basis of the less valuable and less hazardous substance (the most favourable alternative for the suspect – *in dubio pro reo* principle) instead of the real value and real damage. The principal investigator formally accused the perpetrator with charges against him by the end of the year 2024, four years after the commission of the crime. Thus, in this case because of the lack of expert witnesses, time, and resources for the investigation of this particular crime, "justice" had to suffer, and the situation became more favourable for the defendant, even when this was not mirroring the real seriousness of the crime. This case was not the only one in Slovak Republic, but there exist much more crime investigations where the situation was similar. "However, establishing the extent

[34] Article 2(1) letter b) and Article 15(1) of Act No. 382/2004 Coll.

of the crime is sometimes not possible at all, or it is only very difficult to establish. This is especially the case in situations where (I.) the waste is mixed with other material, for example, soil or material that is not waste or (II.) waste that is, however, disposed of in accordance with generally binding legal regulations. In applied practice, in such cases, the usual procedure is to calculate the extent of the 'cheapest material' found at the crime scene that was disposed of in violation of the law, and this is then blamed on the perpetrator."[35] As we can conclude from this recent scientific article, the practice of "underestimation of caused damage" is quite obvious problem in the Slovak Republic and the investigators resigned in many cases for the pursuit of justice and the justice was exchanged for usefulness.

The final damage in this case was stated at 1,300,000 EUR.

Finally, a second problem occurred – the items, barrels and containers, still stored at the same place, started to leak because a couple of them were damaged and already in bad conditions due to the lapse of time since the crime scene investigation. So, the problem occurred that the danger of the waste stored became not "theoretical" but "real," because pollution of the soil, water, and possibly the air, by the chemical substances had already started. However, the "damage" in this case was calculated according to the Slovak legal order only based on the "cost of waste processing," namely, only the "economical part" of the damage. There was no presumption that the illegally stored waste would cause further damage due to its being stored at this particular place. The Slovak Criminal Code states in the Article 124(3) CC: "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. *In case of the criminal offence of illegal handling of waste pursuant to Section 302, 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* [emphasis added]."

For illegal waste management, the "damage" is regularly based only on the second part of the definition. The "damage" is in practice calculated only as the "economic cost" of the waste processing. However, the evaluation of "environmental damage" is not usually taken into consideration, nor is the "cost of restoring the environment to its original state." The reason why this situation occurs repeatedly is the fact that courts deciding in the environmental cases do not require the proof of any other types of "damage" and they are satisfied with economical part of damage when convicting the perpetrator. Thus, this

[35] M. Lévai, *Trestný čin neoprávnené nakladanie s odpadmi v aktuálnej aplikačnej praxi*, "Policajná teória a prax" 2022, vol. 30, no. 4, p. 137.

judicial simplification incentivizes the investigators not to prove the other parts of damage, because it doing otherwise would consume more of their time and resources. "Various courts have found the perpetrator guilty 'only because' he illegally disposed of waste, especially soil or excavated soil. When considering the operative clauses, it is necessary to focus our attention on the fact that the established decision-making practice of the courts is to prove exclusively the illegal disposal of waste, while the impact on the environment has not been proven. […] According to the established practice of criminal authorities and courts over the years, it can be seen that the impact of illegal waste management on the environment is not proven in criminal proceedings. This is proven in cases where there is reasonable suspicion that the waste may endanger or damage any of the components of the environment. Reasonable suspicion arises in particular if hazardous waste is being managed."[36] From the cited article it is clear that only in very few cases when hazardous waste is in question, criminal agencies try to prove also other parts of damage, for example, ecological damage. But in most of the cases of general waste the ecological part of damage remains unaddressed.

In this particular case, the state has no legal instruments to compel the perpetrator to remove the waste from its current place, process the waste and to pay the entire costs of these operations. Usually, the state would do that via the Environmental Office, but when we look in this case into minutes of the interrogation from the representative of Environmental Office, the answer was that the "state does not have the resources to remove and process such amount of waste."[37] So, during the investigation neither the perpetrator nor state removed and processed the waste. The real cost of "restoring the environment to its original state" is impossible to calculate, since the latter has not been done yet. Because of the danger of the statute of limitation and the lapse of time, the "criminal proceedings" cannot wait until the waste would be removed and processed, and it is necessary to prosecute the perpetrator with the "theoretical" damage calculation instead of a realistic one. This usually results in using the more favourable paragraph from the Article 302 CC than would have otherwise happened had the damage been calculated correctly.

2.2. Case No. 2 – dumped soil

In this case the perpetrator from an unspecified time until the end of November 2024 dumped several trucks filled with soil and waste from a construc-

[36] Ibidem, p. 145.

[37] Case No. PPZ-148/NCK-ENV-BA-2022, District Office of the Prosecutor in Malacky, Slovak Republic.

tion site to a place where perpetrator was not allowed to do so, that is, the trucks were unloaded without administrative permits.[38] The criminal proceeding were initiated, and because of the amount of the illegally stored waste (almost 250,000 tonnes), the amount of damage was presumably calculated at 7,200,000 EUR, which is the qualification for an offence under Article 302(1), (4) letter b) CC. In this case, the quality of the waste investigated was similar to a "by-product" that could be used again for field works. According to Denis Bede, in Directive 2008/98/EC of the European Parliament and of the Council on waste, the terms "by-product" and "end-of-waste status" are defined and the said legal act "sets out the criteria that an object or substance must meet in order to cease to be considered waste. Although the Waste Framework Directive does not require confirmation of compliance with these criteria by public authorities, for reasons of legal certainty, the Slovak legal norm transposing this Directive – Act No. 79/2015 Coll. on Waste, as amended – requires such confirmation for by-products."[39] From that viewpoint, the Slovak legislation is stricter than the Directive prescribes because in Slovak Republic it is not enough that the waste factually meets the criteria of by-product, the owner of the waste must also meet the administrative criteria and receive all necessary documents issued by respective bodies and authorities. However, in this case the perpetrator failed to produce the required certificates and mandatory administrative permits.

The second problem in this case was that the region where the soil was unloaded was in part specially protected, that is, even a "by-product" and "non-hazardous waste" could not legally be stored (unload) there. This caused, or could have caused, particular damage to the environment, to protected plants, animals, and particular animal species. However, nobody could assess the "real" impact on these species now. For such an evaluation, the longitudinal assessment of this region would be necessary and maybe even some observations, research, counting of particular numbers of animals or plants, etc. This could have been relatively easy with mammals, but quite complicated regarding insects and small land and water species. Thus, the criminal proceedings could not wait until these all circumstances and impacts are researched, and again the "amount of damage" could only be calculated on the basis of the "cost of processing the particular type of waste." We are thus in a similar situation as in Case No. 1, in that the particular classification of the crime could be downgraded, and the penalties made more favourable for the offender.

[38] Case No. PPZ-1483/NCK-ENV-BA-2024, District Office of the Prosecutor in Malacky, Slovak Republic.

[39] D. Bede, *Balancing Public and Private Interests in Waste Management Law*, in: *Bratislava Legal Forum 2023: Balancing Public and Private Interests in Environmental Protection*, (eds.) M. Michalovič, T. Garžík, V. Ťažká, Collection of the papers from the scientific conference organised by Comenius University Bratislava, Faculty of Law, 11–12 September 2023, Comenius University, Faculty of Law, Bratislava 2023, p. 59.

2.3. Lessons learnt from the practical cases

Regarding the abovementioned cases, it is remarkable that according to the legal standards prescribed for the evaluation of waste processing, that is, also for the damage assessment, the damage in the case of "chemical waste" caused by 900 barrels and cans was assessed at 1,300,000 EUR, but the harm caused by "soil, concrete, and stones" was assessed at 7,200,000 EUR. We need to acknowledge that the amount of "chemical waste" in the former case was lower than the amount of "constructions waste" in the latter one, but when we consider the real danger for the environment, it could be concluded that the amount of "chemical waste" in former case was more dangerous to the environment than the amount of "construction waste" in the latter case. In the latter case, the construction waste factually satisfied the criteria of a by-product and it was considered as "waste" for the purpose of criminal proceedings only due to the administrative burden and not receiving a particular certificate. As Bede concludes: "This situation is certainly not helped by the absence of clear criteria for end-of-waste status."[40] From this conclusion it is clear that Slovak legislation has some substantial gaps and shortenings in its definition of "waste," which needs to be addressed in the future. Also the paragraphs dealing with damage assessment need to be more precise. We need to think about the correct evaluation of "damage to the environment" by the crime of illegal waste management and not resign to a "financial" evaluation of waste processing that does not address the true dangers for the environment. On the other hand, the administrative "burden" could not be the ground for criminal prosecution in cases where the "waste" does not create a real danger for the environment. The criminal responsibility needs to mirror the seriousness of the conduct and the danger for environment. A couple of legislative changes should be introduced in this way, as Bede stated in his article: "It is therefore more than necessary to bridge the gap between the product on the one hand and the waste that needs to be disposed of."[41] After we make the necessary changes in legislation, maybe we will punish stricter the 900 barrels of hazardous chemicals than tonnes of soil and stones.

3. Conclusions

Even though damage evaluation in the criminal law of Slovak Republic is a quite complex system and there are clear provisions on how to assess the damage

[40] Ibidem, p. 59.
[41] Ibidem.

to the environment by an environmental crime, practice shows, on the one hand, that the prescribed "mechanism" for damage evaluation could be "disrupting" the real impact on environment, while on the other hand, there are many practical problems regarding how to evaluate damage in large extent cases, where a huge number of samples need to be examined. There is a dearth of expertise and a lack of resources and material and financial support for such cases. The investigation usually takes long time; perpetrators are found guilty for less serious crimes and without obligation to "restore the environment to previous state," and in the final outcome, there is nobody who can remove the illegal waste, because the state does not have an effective mechanism and the facilities for such actions. Current legislative and factual situation creates the scope where insufficient legal and practical tools encourage the perpetrators to commit the crimes against environment. Legislative shortcuts and insufficient application practice lead to undermining the criminal responsibility in cases of illegal waste management. If the perpetrators assess in advance consequences of their illegal activity and potential risk of criminal responsibility, they could conclude that in fact the criminal responsibility for illegal act is more valuable for them than the legal conduct. "If waste is handled illegally, it can be financially more advantageous, because the entity handling the waste does not have to meet strict legislative requirements, is not under state supervision and thus gains a huge competitive advantage."[42] After all these, the perpetrators face very mild penalties, often in form of financial sentence, where they are imposed sentence in thousands euros, but with illegal activity they saved the costs of hundreds of thousands euros.

We can ask whether criminal responsibility is an effective tool for protection of the environment, in case when at the end the perpetrator is punished, but nobody can "force" him to remove the illegal waste. As Matúš Michalovič and Ján Jenčo concluded in their article, the system of responsibility for illegal acts in Slovak republic remains only on the paper: "Act No. 17/1992 Coll. on the Environment, as amended by later regulations, imposes on persons who have caused ecological damage a primary obligation to restore the natural functions of the disturbed ecosystem or its part, and only subsequently, if this is not possible or for serious reasons expedient, an obligation to compensate for the ecological damage in another way, and as a third option, it states that such damage should be compensated in money. However, due to several facts, the institute of liability for ecological damage is almost never applied in the conditions of the Slovak Republic."[43] Even when we have legal tools and provisions that should secure the effective protection of environment in case of commission

[42] M. Lévai, *Trestný čin*…, p. 148.

[43] M. Michalovič, J. Jenčo, *Koncepcia environmentálnej protiprávnej činnosti ako základný kameň revízie starostlivosti o životné prostredie v podmienkach Slovenskej republiky*, in: *Bratislava Legal Forum 2022: Zefektívňovanie boja proti nelegálnej činnosti v oblasti starostlivosti*

of crime against environment, the real application practice is simpler than the legal prescriptions. The state agencies do not insist on fulfilling the prescribed obligations thus help the perpetrators to escape their real responsibility. The representatives of Slovak penal policy already proclaim for some years the precedence of restorative justice over retributive justice. In accordance with that said theory has also been drafted the Act No. 17/1992 Coll. on the Environment, as amended. Preference of restoration over the retribution (restoration environment instead of monetary compensation). As Tomáš Strémy, Lucia Kurilovská and Miroslava Vráblová stated, "While the basis of retributive justice is to punish the perpetrator of a wrongful act and satisfy the interests of the state, restorative justice emphasises the repair of the harm caused or discovered by the wrongful act."[44] The current practice of state bodies is not following this elegantly formulated theory. Therefore, the theory proclaimed in many legislative and scientific documents remains void. Money are still good enough also for the state to compensate the cost of other state expenses in different fields and the "restitution of environment into previous state" remains not on the first but on the last place. The final question remains, namely: How to "fix" this ongoing problem? Maybe the authors Matúš Michalovič and Ján Jenčo have found the answer in their article: "A worthy addition to the current system would be the establishment of a mechanism that would clearly establish a strict obligation for the perpetrator of an environmental crime to compensate for damage to the environment, with this damage being compensated similarly to what is provided for in the case of ecological damage; i.e., the primary emphasis should be placed on in-kind restitution – restoration of the state prior to the commission of the environmental crime."[45] From that point of view it is clear that the legislator needs to create additional mechanism that would prevent the perpetrator from choosing the option to pay instead of restitution. There must be introduced new mechanisms to push the perpetrator to do that without possibility to redeem oneself from this obligation by "payment of certain sum of money," which for perpetrator could be more economic.

There is no effective tool for ascertaining the real protection of the environment against illegally stored waste today in the Slovak legal practice, because the waste remains usually at the same place where it was kept by the perpetrator and the environment remains endangered. The only factor that changed, however, is that now the environment is endangered with the knowledge and actually with the consent of state bodies, because the state does nothing to accomplish the final "waste processing" and "waste removal." Matúš Michalovič and Ján Jenčo indicated one of the problem why the final waste removal fails. This problem

o životné prostredie, (eds.) V. Novotná, M. Durec Kahounová, Comenius University, Faculty of Law, Bratislava 2022, p. 17.

[44] T. Strémy, L. Kurilovská, M. Vráblová, *Restoratívna justícia*, Leges, Praha 2015, p. 28.

[45] M. Michalovič, J. Jenčo, *Koncepcia environmentálnej…*, pp. 17–18.

is hidden in wrong legislation that puts this obligation on the municipalities and other regional structures (local self-governments) that have not enough financial resources from state budget for fulfilling this task: "In approximately 90 percent of cases the perpetrator was not identified, and so the responsibility for the removal of illegally deposited waste was transferred either to the municipalities – in cases where it concerns municipal waste or small construction waste – or to the district authorities, if it concerns waste other than municipal or small construction waste. This often represents an unbearable financial burden for the municipalities and, in our opinion, this situation needs to be resolved legislatively."[46] The state budget for each year is usually structured for all municipalities and local self-governments to fulfil their regular tasks and there is only little space for irregular or extraordinary duties, such as removal of illegally stored waste. Thus municipalities and self-governments have no finances to pay these activities because they need the assigned financial resources for fulfilling more important tasks. From the point of view of some experts, the state should not bear the costs of "waste procesing" in any form: "Responsibility for the generation of waste – and for the consequences associated with it – always lies primarily with the producer Therefore, no 'superior' solutions, interventions by the state or local governments are always an appropriate solution – their role should be more to create conditions and motivate waste producers to reduce its production."[47] This opinion is in accordance with opinions of Michalovič and Jenčo, that at the end, in all cases the perpetrator should be the one who will restore the environment and who will bear all costs connected with waste processing and waste management.

The question of how to deal with illegally stored waste thus remains unclear, because there is not unity about the final answer who should be the final bearer of the obligations and costs connected with waste management. As Bede concluded, "Despite the consensus that there is a public interest in protecting the environment, implementing particular legally binding measures seem to be challenging."[48] Sometimes the politicians pass the law that imposes only general obligations and duties rather than impose particular targeted obligations which will lead to creation of part of unsatisfied voters. And all adopted legislation must be considered also in the view of future elections. Thus, the task of how to draft legislation better remains not only the question of fact, but rather the question of will. As mentioned above, there exist some proposals and formu-

[46] Ibidem, p. 21.

[47] Ľ. Máčaj, *Úlohy obce pri znižovaní vzniku odpadov*, in: *Bratislava Legal Forum 2021: Waste management and climate change during corona crisis*, (eds.) M. Michalovič, M. Dufala, J. Šmelková, Collection of Papers from the International Academic Online Conference Bratislava Legal Forum 2021 organised by Comenius University Bratislava, Faculty of Law, on 22–23 April 2021, Comenius University, Faculty of Law, Bratislava 2021, p. 43.

[48] D. Bede, *Balancing Public and Private Interests*…, p. 56.

lations on how to structure the norms and rules of responsibility in the scope of environment, however there must be the will to adopt such rules. In that way, maybe the environmental legislation should be more targeted and more addressed to be not on the border of interest but in the centre of interest: "As environmental issues continue to evolve and intensify, the significance of environmental law as a specialised legal discipline is likely to grow, emphasising the need for ongoing research, legislative reforms and collaborative efforts to ensure environmental sustainability."[49] An optimal response of the society through a combination of civil law, criminal law, and administrative law needs to be found to the problem of how to deal with this complicated issue. Otherwise, we cannot fulfil the prescribed challenges that are current under the new Directive 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law,[50] which should be implemented until 21 May 2026.[51]

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[49] M. Michalovič, M. Maslen, *Advocating for environmental law…*, p. 23.

[50] Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (hereinafter as: Directive 2024/1203).

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Znaczenie dokładnej oceny szkód w przestępstwach nielegalnego gospodarowania odpadami

Streszczenie

Artykuł omawia materialne aspekty przestępstwa nielegalnego gospodarowania odpadami z art. 302 Kodeksu karnego w warunkach Republiki Słowackiej. Analizuje jego podstawowe i kwalifikowane formy, znaczenie winy oraz rozróżnienie między wykroczeniem a przestępstwem w zależności od wagi czynu oraz wysokości wyrządzonej szkody lub jej rozmiaru. W tekście omówiono pojęcie szkody i jej rozmiar, wyjaśniając ich treść w kontekście szkód ekologicznych i majątkowych, a także definicję granic szkody małej, większej, znacznej i wielkoskalowej. Artykuł koncentruje się również na prawnej definicji odpadów, gospodarowania odpadami i specyfice poszczególnych rodzajów działalności, a także na możliwości popełnienia tego przestępstwa przez osobę prawną w rozumieniu ustawy o odpowiedzialności karnej osób prawnych. W artykule przedstawiono konkretne przypadki praktyczne i pułapki w określaniu wysokości szkody na podstawie tych przypadków.

Słowa kluczowe: przestępstwo, nielegalna gospodarka odpadami, szkoda, sankcja, osoba prawna

Радован Блажек, Маргита Прокеинова

Значение точной оценки ущерба в преступлениях, связанных с незаконным обращением с отходами

Резюме

В статье рассматриваются существенные аспекты преступления, связанного с незаконным обращением с отходами, предусмотренного статьей 302 Уголовного кодекса, в условиях Словацкой Республики. Анализируются его основные и квалифицирующие формы, понятие вины и разграничение правонарушения и преступления в зависимости от тяжести деяния, размера причиненного ущерба или его масштаба. В тексте рассматривается понятие ущерба и его масштаба, раскрывается их содержание с точки зрения экологического и имущественного ущерба, а также определяются границы ущерба малого, крупного, значительного и крупного размера. В статье также рассматриваются правовые определения отходов, обращения с отходами и особенности отдельных видов деятельности, а также возможность совершения данного преступления юридическим лицом в соответ-

ствии с Законом об уголовной ответственности юридических лиц. В статье рассматриваются конкретные практические случаи и подводные камни при определении размера ущерба по данным делам.

Ключевые слова: уголовное преступление, несанкционированное обращение с отходами, ущерб, санкция, юридическое лицо

Radovan Blažek, Margita Prokeinová

L'importanza di una valutazione accurata del danno nei reati di gestione illegale dei rifiuti

Sommario

L'articolo affronta gli aspetti sostanziali del reato di gestione illegale dei rifiuti ai sensi dell'articolo 302 del Codice Penale nel contesto della Repubblica Slovacca. Analizza le sue forme fondamentali e qualificate, il significato di colpa e la distinzione tra reato lieve e reato a seconda della gravità dell'atto e dell'entità del danno causato o della sua estensione. Il testo discute i concetti di danno ed estensione, spiegandone il contenuto in termini di danno ecologico e patrimoniale, nonché la definizione dei limiti di danno di lieve entità, maggiore, significativo e su larga scala. L'articolo si concentra inoltre sulle definizioni giuridiche di rifiuto, gestione dei rifiuti e sulle specificità delle singole attività, nonché sulla possibilità di commettere questo reato da parte di una persona giuridica ai sensi della Legge sulla responsabilità penale delle persone giuridiche. L'articolo presenta casi pratici specifici e insidie nella determinazione dell'entità del danno sulla base di tali casi.

Parole che: crimine, gestione non autorizzata dei rifiuti, danno, sanzione, persona giuridica