

SLOVAK REPUBLIC

REVIEW OF IMPLEMENTATION OF THE CONVENTION AND 1997 RECOMMENDATION

A. IMPLEMENTATION OF THE CONVENTION

Formal Issues

The Slovak Republic signed the Convention on December 17, 1997. On February 11, 1999, the Slovak Parliament approved the Convention, and the instrument of ratification was deposited with the OECD on September 24, 1999.

The necessary changes in the Slovak legislation mainly encompass amendments to the Criminal Code and the Law on Banks. A first amendment of the Criminal Code was approved by the Parliament on July 6th, 1999 and entered into force on September 1, 1999. A further, complete re-codification of the Criminal Code is still in the legislative process. A minor amendment of the Law on Banks was approved on September 16, 1999, and entered into force on October 11, 1999.

Convention as a Whole

The Convention was implemented into Slovak legislation by amendment of the Criminal Code and - as far as Article 9.3 of the Convention is concerned¹ - by an amendment of the Law on Banks. The amendment of the Criminal Code is not limited to the issue of bribery, but also deals with other offences, such as organised crime, trafficking in drugs, etc.

The OECD Convention was implemented together with the Criminal Law Convention of the Council of Europe by introducing a separate chapter on bribery. It includes the offences of active and passive bribery from the original version of the Criminal Code together with the implementing provisions of the OECD Convention and the Criminal Law Convention of the Council of Europe.

The provision implementing the Convention is section 161b of the Criminal Code. It contains the specific offence of active bribery of foreign public officials. A further amendment of this provision is necessary in light of the requirements of the Convention (see below). The legislative process has already started. The Slovak authorities expect that the revision will enter into force on 1 January 2002 at the earliest. Furthermore, a new section 89, paragraph 10, of the Criminal Code has already been introduced that defines the term "foreign public official".

Furthermore, the Slovak authorities provide article 11 of the Slovak Constitution, which states as follows:

"International instruments on human rights and freedoms ratified by the Slovak Republic and promulgated under statutory requirements shall take precedence over national laws provided that the international treaties and agreements guarantee greater constitutional rights and freedoms".

1. ARTICLE 1. THE OFFENCE OF BRIBERY OF A FOREIGN PUBLIC OFFICIAL

Section 161b of the Slovak Criminal Code establishes the offence of bribery of a *foreign* public official. In addition, section 161c of the Criminal Code deals with the offence of bribery of a member of a foreign

¹ This refers to the issue of bank secrecy.

public assembly, foreign parliamentary assembly, judge or official of an international court, or employee or representative of an intergovernmental organisation.

The offence of bribery of a *domestic* public official is dealt with separately in section 161a, paragraph 2, of the Criminal Code.

Furthermore, section 163 of the Criminal Code - which applies to the offence of bribery of both domestic and foreign public officials - deals with the issue of "effective regret". According to this provision, bribery is not considered an offence if the offender was asked to bribe and reports the crime to the competent authorities.

Finally, section 89, paragraph 10, of the Criminal Code defines the terms "foreign public officials".

The relevant provisions read as follows:

Section 161b

1. "Who offers, promises or gives a bribe or other undue advantage, whether directly or through intermediary, to a foreign public official in order that the official act or refrain from acting in relation to the performance of official duties with the intention to obtain or retain business or other improper advantage in the conduct of international business, shall be punished by the imprisonment up to two years or a monetary sanction.
2. The offender shall be punished by the imprisonment for one to five years, if he commits the offence referred to in para. 1 as the member of an organised group or if he obtains the advantage of large extent through such offence."

Section 161c

1. "Who, whether directly or through intermediary, to a member of a foreign public assembly, foreign parliamentary assembly, judge or official of international court whose jurisdiction is accepted by the Slovak Republic or to the representative or employee of intergovernmental organisation or body, the Slovak Republic is a member of or has the relationship following from the treaty, or to a person in the similar function, offers or promises the bribe or other undue advantage, to act or refrain from acting in performing his function, shall be punished by the imprisonment up to two years or by the monetary sanction.
2. The offender shall be punished by the imprisonment for one to five years, if he commits the offence referred to in para. 1 as the member of an organised group or if he obtains the advantage of large extent through such offence."

Section 163

"Giving the bribe under sections 161, 161a, 161b and 161c and trading in influence under section 162 para. 2 is not considered as the offence if the offender has given the bribe or other undue advantage or the promised thereof only because he was requested to do so and he reported it voluntarily without delay to the prosecutor, investigator or police; a soldier can instead of this report to his commander or chief."

It appears that section 163 provides for a defence that goes beyond general defences included in the Criminal Codes of the parties, thereby presenting a potential for misuse.

According to the Slovak authorities, the purpose of section 163 is to make the fight against corruption more effective. For nearly forty years, it has been helping the Slovak authorities to detect cases of corruption of public officials. Without this provision, people would worry about criminal prosecution under section 161 of the Penal Code. The Slovak authorities are not aware of a possible abuse for false defence.

Section 89, paragraph 10

“Foreign public official means any person holding the function

- a) in the legislative or judicial body or in the body of public administration of a foreign country;
- b) in an enterprise in which a foreign country exercises a decisive influence or in the international organisation established by the states or other subjects of the public international law,

if the power to manage the public affairs is connected with this function and the criminal offence was committed in connection with this power.”

In addition, the Slovak authorities intend to introduce a new section 89, paragraph 11, of the Criminal Code that would provide a definition of the term “corruption”. It would mean “the bribery and any other behaviour in relation to persons with entrusted powers in the public or private sector, which contradicts the duties resulting from their position of public official, state employee, private employee, independent agent or other relationship of this kind and is aimed at obtaining an undue advantages of any kind for themselves or other persons.”

According to the Slovak authorities, section 89, paragraph 11, was already part of a package of proposed amendments to the Criminal Code, but did not yet enter into force. The Slovak authorities declare that it will be included in the general re-codification of the Criminal Code by 1 January 2002.

1.1 The Elements of the Offence

1.1.1 any person

Section 161b of the Criminal Code applies to anybody “who offers, promises, etc.” a bribe. According to the Slovak authorities, this terminology relates to any natural person.

1.1.2 intentionally

Pursuant to the Slovak authorities, section 4 of the Criminal Code deals with the issue of “intent”. The Slovak authorities point out that the offender acts intentionally if he/she (i) in a manner described in the Criminal Code wanted to infringe or threaten the interest protected by the Criminal Code, or (ii) knew that his/ her acts can cause such infringement or threat, and accepted it. According to section 5, the criminal offence shall be considered as committed by negligence if the offender (i) knew that by acting in the way described in this Act he/she could breach or threaten an interest protected under this Act but he/she was satisfied, without sufficient reason, that he/she would not cause such breach or threat, or (ii) did not know that acting in such a way he/she could give rise to such breach or threat although, given the circumstances and his/her personal situation, he/she could and should have known about it. The Slovak authorities confirm that these provisions include that the offender at least earnestly considers the possibility of acting in a way to commit the offence and resigns himself/herself to it (*dolus eventualis*).

1.1.3 to offer, promise or give

Section 161b applies to a person who “offers, promises or gives” a bribe, etc. However, there is no punishability if the offender effectively regrets that he/she has bribed (see section 1 above).

1.1.4 any undue pecuniary or other advantage

Section 161b prohibits the giving, etc. of “a bribe or other undue advantage”. The Slovak Criminal Code currently does not define the term “undue advantage”. The Slovak authorities refer, however, to the explanatory notes to section 160 of the Criminal Code - which deals with passive bribery. They define “bribery” as an undue advantage in the form of a pecuniary or natural performance, or any other advantage (e.g. mutual service or assistance). Any advantage needs to be provided in relation to the performance of duties of common interest.

According to the Slovak authorities, this includes, but is not limited to pecuniary advantages. It comprises anything that can be defined as a benefit, including, for instance, the dealing with a case in a shorter time as usual, the offering of a better carrier perspective or promotion, or the granting of additional holidays.

There is the issue of how the Slovak Criminal law deals with "socially acceptable gifts". Pursuant to the Slovak authorities, the Supreme Court of Czechoslovakia gave the term “socially acceptable gift” a similar meaning than the expression "very small gift, or gift of very small value"². Such gifts - for example, a bunch of flowers or a pen offered during business negotiations - are not considered as a bribe.

The Slovak authorities point out that the social context in which the act has been committed is important. In particular, the Slovak legal system does not know "socially acceptable gifts" in relation to state bodies, municipalities, the school system, health and insurance system, or the area of work relations.

The Slovak authorities confirm that “gifts of very small value” are meant to cover facilitation payments as defined in paragraph 9 of the Commentaries.

The Slovak authorities intend to introduce a new section 89, paragraph 12, of the Criminal Code that would provide a definition of the term “undue advantage”. It would cover an “advantage which the recipient is not entitled to accept or receive under the law, except advantages permitted by law or administrative rules and minimum gifts, gifts of very small value or socially acceptable gifts”.

According to the Slovak authorities, section 89, paragraph 12, was already part of a package of proposed amendments to the Criminal Code, but did not yet enter into force. The Slovak authorities declare that it will be included in the general re-codification of the Criminal Code by 1 January 2002.

1.1.5 whether directly or through intermediaries

Section 161b of the Criminal Code applies to a person who “directly or through intermediary” offers a bribe.

1.1.6 to a foreign public official

Article 1, paragraph 4a, of the Convention defines a “foreign public official” as “any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected”.

² See Opinion No. 17/1978 relating to the offences of bribery and corruption.

Section 89, paragraph 10, of the Criminal Code defines the term “foreign public official” as “any person holding a function

- c) in the legislative or judicial body or in the public administration of a foreign country,
- d) in an enterprise in which a foreign country exercises a decisive influence, or in an international organisation established by states or other subjects of public international law,

if the power to manage public affairs is connected with his/her function and the criminal offence was committed in connection with this power.”

The Slovak authorities confirm that the term “public administration of a foreign country” includes all kinds of administration of a foreign country, irrespective of whether it is state administration, territorial self-government or any other kind of administration.

The Slovak authorities confirm that the above definition covers all foreign public officials, whether appointed or elected, as well as any public agency or public enterprise of a foreign country, including an enterprise over which a government may indirectly exercise a dominant influence. They also confirm that the above definition covers any international organisation, whatever the form of organisation and scope of competence.

Section 161c of the Criminal Code establishes a separate offence relating to the bribery of a member of a foreign public assembly, foreign parliamentary assembly, judge or official of an international court, or employee or representative of an intergovernmental organisation.

Section 161c applies only to those members of a foreign public assembly, foreign parliamentary assembly, judge or official of international court *whose jurisdiction is accepted by the Slovak Republic* or to the representative or employee of an intergovernmental organisation or body, *the Slovak Republic is a member of or has a treaty-based relationship*.

It appears that this is narrower than the definition under the Convention - which applies to any public official, irrespective of the relationship between a foreign court or an international organisation on the one hand, and a party to the Convention on the other hand³. On the other hand, section 163 does not require that the bribe is given in the conduct of international business.

According to the Slovak authorities, section 161c is “lex specialis” vis-à-vis section 161b. In case that section 161c does not apply, the Slovak authorities can revert to section 161b. There is therefore no loophole concerning the coverage of members of a foreign public assembly, etc.

1.1.7 for that official or for a third party

Section 161b includes only the words “for that official”. The term “for a third party” exists only with regard to bribery of a domestic public official. It therefore seems that section 161b falls short of the requirements of the Convention.

According to the Slovak authorities, the inclusion of the term “for a third party” was already part of a package of proposed amendments to the Criminal Code, but did not yet enter into force. The Slovak authorities declare that it will be included in the general re-codification of the Criminal Code by 1 January 2002.

3 . A further discrepancy between the Convention and section 163c is discussed in section 1.1.8 below.

1.1.8 in order that the official act or refrain from acting in relation to the performance of official duties

Section 161b explicitly covers the two alternatives “act or refrain from acting in relation to the performance of official duties”.

There is the issue of whether or not section 161c of the Criminal Code - which deals with bribery of foreign parliamentarians - might be in contradiction to the Convention. It requires that the bribed person acts or refrains from acting in “performing its function”. It does therefore not entirely mirror the Convention that talks about acts *relating* to official duties. In view of the Slovak authorities, the term “performing its function” covers the expression “relating to official duties”.

1.1.9/1.1.10 in order to obtain or retain business or other improper advantage/in the conduct of international business

Pursuant to section 161b, the offence of bribery of a foreign public official requires that the bribe be given “with the intention to obtain or retain business or other improper advantage in the conduct of international business”.

1.2 Complicity

Article 1.2 of the Convention requires Parties to establish as a criminal offence the “complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official”.

Pursuant to section 9, paragraph 2, of the Criminal Code, if the offence was committed in conjunction by two or more persons, each of them is responsible individually as if the offence was committed by one of them alone. This means that each of them is considered as an accomplice irrespective of the way and degree of his/her involvement. Complicity may exist in the stage of preparation, attempt or commission of the offence.

Section 10 of the Criminal Code deals with the punishability of the intermediary. According to its paragraph 1, a participant to a completed or attempted criminal offence is any person who wilfully

- a) instigates another person to commit a crime (instigator),
- b) asks another person to commit a crime (abettor),
- c) aids to commit a crime, mainly by procuring the means, by removing the obstacles, by advice, by strengthening the determination, by a promise of acting as an accessory (aider).

Pursuant to section 10, paragraph 2, of the Criminal Code, unless the law provides otherwise, the same provisions as criminal liability and culpability of offenders shall govern criminal liability and culpability of abettors.

The Slovak authorities confirm that criminal liability of instigators and aiders is the same than those of abettors.

If the intermediary is intentionally involved in the offence he/she might be punishable for bribery itself pursuant section 9 of the Criminal Code. According to section 9, paragraph 1, the offender is the person who committed the criminal offence himself/herself.

1.3 Attempt and Conspiracy

Article 1.2 of the Convention further requires Parties to criminalise the conspiracy and attempt to bribe a foreign public official to the same extent as they are criminalised with respect to their own domestic officials.

Conspiracy

Slovak law recognises the offence of preparation of a criminal offence. According to section 7, paragraph 1, of the Criminal Code, “preparation for committing a criminal offence is an act dangerous for society and comprises the wilful organisation of a very serious criminal offence, procurement or adaptation of means or instruments for its commission, associating, grouping, abetting or aiding in such crime, or other deliberate actions designed to create conditions for its commission, if neither an attempt nor a criminal offence have been completed. Pursuant to paragraph 2, preparation of committing a criminal offence shall carry the same punishment as the offence for which it has been intended unless the Special Section of the Criminal Code provides otherwise.

There is the issue whether bribery of a foreign public official would be considered as a “very serious criminal offence” for the application of section 7 of the Criminal Code. According to the Slovak authorities, section 41, paragraph 2, and section 62, paragraph 1, of the Criminal Code define the term “serious criminal offence”.

According to section 41, paragraph 2, serious crimes are offences referred to in section 62 of the Criminal Code. Pursuant to the Slovak authorities, these are offences for which the Criminal Code sets up a maximum penalty of at least eight years (e.g. terror, sabotage, murder, etc.). The offences of bribery of domestic and foreign public officials are therefore not covered by section 62 of the Criminal Code. This means that the preparation, including conspiracy, of bribery of a domestic or foreign public officials is not punishable under Slovak criminal law.

Attempt

Section 8 of the Criminal Code deals with the attempt of a criminal offence. According to section 8, paragraph 1, “an attempt of a criminal offence is an act dangerous for society and means an action directly leading to the commission of a criminal offence and performed by an offender intending to commit a criminal offence which he does not complete.” Pursuant to paragraph 2, an attempted criminal offence shall give rise to the same punishment as an accomplished criminal offence.

The Slovak authorities confirm that they consider an attempted bribery of a foreign public official as an “act dangerous for society”.

2. ARTICLE 2. RESPONSIBILITY OF LEGAL PERSONS

Article 2 of the Convention requires each Party to “take such measures as may be necessary, in accordance with its legal principles, to establish liability of legal persons for the bribery of a foreign public official”.

2.1 Criminal Responsibility

Slovak law does not recognise the concept of criminal responsibility of legal persons. This implies that Slovak law does not allow imposing non-financial sanctions on legal persons for committing the offence of

bribery of foreign public officials. Only natural persons acting on behalf of the legal person carry criminal responsibility for their behaviour.

According to the Slovak authorities, a re-codification commission, consisting of representatives of the Ministry of Interior, the Office of General Prosecutor and the Ministry of Justice, is currently working on the preparation of a revision of the Criminal Code and the Code of Criminal Procedure. The revision will introduce the principle of corporate criminal liability of legal persons. The new legislation is expected to enter into force by 1 January 2002.

2.2 Non-Criminal Responsibility

The Slovak authorities point out that the Slovak legal system contains more than 120 administrative acts that allow imposing administrative sanctions on legal persons. In administrative law there exists the so-called “administrative offence” - which shall be sanctioned by a fine from SKK 1.000 to SKK 50.000.000. The Slovak authorities refer as an example to Act No. 130/1998 of the Collection of Laws as amended on the Peaceful Exploitation of Nuclear Energy. As further instances for an administrative sanction, the Slovak authorities refer to section 14 of the Act No. 188/1994 of the Collection of Law as amended on Protection of Economic Competition, and the Act No. 263/1993 of the Collection of Law as amended on Public Procurement of Goods, Services and Public Works. In each case, it is required that the legal person has violated the administrative act. The imposition of a sanction leaves the criminal liability of natural person untouched.

Administrative proceedings against a legal person are permitted irrespective of criminal proceedings against a natural person⁴ (for further details see section 3.8. below).

3. ARTICLE 3. SANCTIONS

The Convention requires Parties to institute “effective, proportionate and dissuasive criminal penalties” comparable to those applicable to bribery of the Party’s own domestic officials. Where a Party’s domestic law does not subject legal persons to criminal responsibility, the Convention requires the Party to ensure that they are “subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions”. The Convention also mandates that for a natural person, criminal penalties include the “deprivation of liberty” sufficient to enable mutual legal assistance and extradition. Additionally, the Convention requires each Party to take such measures as necessary to ensure that the bribe and the proceeds of the bribery of the foreign public official are subject to seizure and confiscation or those monetary sanctions of “comparable effect” are applicable. Finally, the Convention requires each Party to consider the imposition of additional civil or administrative sanctions.

3.1/3.2 Criminal Penalties for Bribery of a Domestic and Foreign Official

Natural Persons

Pursuant to section 161b, paragraph 1, of the Criminal Code, the offence of bribery of a *foreign* public official is punishable by imprisonment for at most two years or by monetary sanction. According to section 161b, paragraph 2, punishment is imprisonment for one to five years if the offender acts as member of an organised group or if he/she obtains an advantage “of large extent” through the offence.

⁴ See, for instance, section 36, paragraph 9, of Act No. 130/98 of the Collection of Law as amended on Peaceful Exploitation of Nuclear Energy.

The term “advantage of large extent ” is defined in section 89, paragraph 13, of the Criminal Code. It reads as follows:

“Non-negligible damage is understood as damage at least double the minimum monthly earning, minor damage is damage at least six times the minimum monthly earning, substantial damage is damage at least twenty times the minimum monthly earning, considerable damage is damage at least hundred times this earning, and damage of large extent is damage at least five-hundred times this earning. These points of reference may be applied similarly to identify the maximum level of gain or advantage, value of an asset and extend of an act.“

The Slovak Statistical Bureau calculates the average salary every year on the basis of the actual economic situation. The minimum monthly earning is defined by Act No. 346/1999 of Coll. as amended. For the purposes of criminal and civil law proceedings, it is currently SKK 4000 (approximately USD 95).

This leads to the conclusion that the term “advantage of a large extent” means the advantage of an amount of SKK 2.000.000 (approximately 47.600 USD).

According to section 161a, paragraph 2, of the Criminal Code, the offence of bribery of a *domestic* foreign official is punishable by imprisonment for up to three years. Pursuant to section 161b, paragraph 2, punishment is imprisonment for one to five years if the offender acts as member of an organised group or if he/she obtains an advantage “of large extent” through the offence.

Except for cases of aggravated bribery, punishability is therefore more severe in case of bribery of a domestic public official than with regard to foreign public officials. This does not meet the requirements of the Convention calling for comparable penalties.

In view of the Slovak authorities, the higher penalties for offences of bribery of domestic public officials are justified because such crimes are more dangerous to society than bribery of foreign public officials. Nonetheless, the Slovak authorities intend to establish equal penalties for both offences in the planned re-codification of the Criminal Code.

There are no guidelines for determining the applicable penalties. Courts have discretion in their decision.

The corresponding penalties for comparable offences such as fraud and theft are as follows: For a theft involving negligible damage, the sanction is imprisonment up to two years. In case of a minor, considerable or large damage, maximum imprisonment is three, eight or twelve years respectively according to section 247. For a fraud involving negligible damage, the sanction is imprisonment up to two years. In case of a minor, substantial, considerable or large damage, maximum imprisonment is three, five, eight or twelve years respectively according to section 250.

The Criminal Code allows the imposition of both imprisonment and a fine at the same time. Sections 53, 54 of the Criminal Code deal with fines. According to section 53, paragraph 1, the court may impose a fine ranging between SSK 5.000 and SKK 5.000.000 if the offender gained or tried to gain a property benefit by his/her wilful criminal activity. Pursuant to section 54, paragraph 1, when imposing a fine, the court shall consider the personal circumstances of the offender. It not shall impose a fine if it is evident that it could not be enforced.

Legal Persons

As explained above (see section 2), Slovak law does not provide for *criminal* sanctions against legal persons in connection with the offence of bribery.

3.3 Penalties and Mutual Legal Assistance

Treaty-Based Legal Assistance

According to the Slovak authorities, bilateral or multilateral treaties on mutual legal assistance to which the Slovak Republic is a party do not require deprivation of liberty for providing mutual legal assistance.

The Slovak Republic has bilateral treaties on mutual legal assistance in criminal matters with Afghanistan, Algeria, Belgium, Bulgaria, Cyprus, Czech Republic, France, Greece, Netherlands, Yemen, Yugoslavia, Croatia, FYROM⁵, Bosnia and Herzegovina, North Korea, Cuba, Luxembourg, Hungary, Monaco, Mongolia, Poland, Portugal, Austria, Romania, Russia, Slovenia, USA, Syria, Spain, Italy, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, Vietnam.

The following multilateral treaties apply: European Convention on Extradition, European Convention on Mutual Legal Assistance in Criminal Matters, and European Convention on Transmission of Criminal Proceeding.

Non-Treaty-Based Legal Assistance

According to section 384 of the Code of Criminal Procedure, legal assistance to courts and authorities of foreign countries shall be governed by regulations applicable for relations with other countries in civil law matters as appropriate, provided that international treaties do not provide otherwise.

The Slovak authorities declare that they may render non-treaty based legal assistance on the basis of reciprocity. The requirement of reciprocity derives from the general and uncodified principle that legal assistance may be rendered on the basis of good will, good international relationships, and according to international customs. Slovak domestic legislation does not require deprivation of liberty as a condition for providing legal assistance.

3.4 Penalties and Extradition

According to the Slovak authorities, extradition under the European Convention on Extradition is based on the definition of extraditable offences in that Convention. It defines them as those which are „punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty“.

The Slovak authorities confirm that the same requirement exists in respect of bilateral treaties to which the Slovak Republic is a party, except for the early treaties with the USA and Canada. The latter contain an enumerative list of extraditable offences. Bribery is not included in such list.

⁵ Former Yugoslav Republic of Macedonia.

In the absence of a treaty, section 379, paragraph 1, of the Code of Criminal Procedure deals with extradition to a foreign country. It is permitted if, in particular, the offence is a criminal offence pursuant to the laws of both countries, the extradition for such an offence is admissible, the criminality of the offence has not expired and the person is not a Slovak national. The Slovak authorities consider dual criminality to exist if the offence for which extradition is sought is within the scope of the Convention. Furthermore, the Slovak authorities point out that the requirement of reciprocity must be met.

3.5 Non-criminal sanctions applicable to legal persons for bribery of foreign public officials

The Slovak authorities may impose administrative sanctions on legal persons (see sections 2.2. and 3.8).

3.6 Seizure and Confiscation of the Bribe and its Proceeds

According to section 55 of the Criminal Code, a court may order the forfeiture of any asset that was (i) used to commit the crime, (ii) determined to be used to commit the crime, (iii) obtained by the crime or as a remuneration for committing the crime, or (iv) obtained by the offender in exchange for the asset mentioned in (iii). The court may impose the forfeiture only in relation to the asset that the offender possesses. The forfeited asset becomes the property of the state.

In case that the asset mentioned in section 55 is not forfeited, the court may order its confiscation according to section 73 of the Criminal Code. This is permitted if (i) the offender who cannot be prosecuted or sentenced possesses it, (ii) the offender on whom the sanction was not imposed according to the decision of the court possesses it, or (iii) it is necessary with regard to the security of the people, property or other similar general interest, in particular if the circumstances of the case give reason to suppose that the asset has been obtained by the offence.

3.8 Civil Penalties and Administrative Sanctions

Pursuant to section 451 of the Civil Code, a civil court may order that the offender return the illegal gains. Section 451, paragraph 2, defines “illegal gains” as assets gained without legal basis, by an invalid act, on a legal basis that has ceased to exist, or assets gained from illegal sources. The Slovak authorities confirm that they regard proceeds from bribery as “illegal gains”.

In case that the offender caused damage by committing a crime, the injured person has also the right to participate in criminal proceedings, including, inter alia, the right to claim compensation, to make statements, and to apply for legal remedies pursuant to section 43 of the Code of Criminal Procedure.

According to section 53 of the Commercial Code, persons whose rights have been violated or jeopardised by unfair competition can file a lawsuit in the civil courts with the aim that the perpetrator abstains from his conduct and to rectify the situation. They can further demand appropriate pecuniary compensation, damages and the forfeiture of illegal gains.

Section 44, paragraph 2, of the Commercial Code considers bribery as one form of unfair competition. Section 49 of the Commercial Code establishes a separate definition of “bribery” in the context of the Commercial Code. Accordingly, “the following mode of conduct shall be considered bribery:

(a) a competitor’s promising or rendering - directly or indirectly - of any benefits to a person who is a member of another competitor’s statutory body (or a similar body), or is another competitor’s employee (or has a similar status), in order to gain - by means of unfair conduct - an advantage or an

unauthorised benefit for his own entity or for another competitor in economic competition to the detriment of other competitors; or

(b) a person, mentioned in paragraph (a) above who directly or indirectly requests or induces to promise, or accepts, any benefit for the same reason.”

Section 49 does therefore not apply to bribery of foreign public officials.

The Slovak authorities are aware of only a few court cases relating to section 53 of the Commercial Code. The amount of damages accorded in such proceedings ranged from some hundred thousands to millions of Slovak crowns. The court usually assesses the amount from the accounting books and records of parties to the proceedings.

The Slovak authorities also refer to section 20 of the Civil Code. Pursuant to its paragraph 1, “acts of a legal person in all matters are made by the persons entitled to do so in the contract establishing the legal person, establishing deeds or by the law (statutory bodies).” Such acts are binding on the legal person. According to section 20, paragraph 2, other employees can also act on behalf of the legal person, if the internal regulations of the legal person say so or if it is common with regard to their working position. In case that these persons exceed their competence, the legal person shall acquire the rights and obligations only if the act concerns the area of activity of the legal person, and the other party could not know about this excess. Such excess would occur if the employee commits the offence of bribery.

Section 18, paragraph 2, of the Civil Code defines “legal persons” as associations of natural or legal persons, objective associations of property, units of territorial self-administration, and other subjects established by law.

There is the question whether the Slovak *administrative* bodies may impose sanctions for infringement of duties under Slovak administrative law if the legal person obtained a “wrongful” permit through the offence of bribery of a foreign public official⁶. According to the Slovak authorities, the administrative bodies have the possibility to revoke the unlawful administrative decision.

No other administrative sanction may be imposed in connection with bribery. In particular, exclusion of the company from public procurement contracts is not permitted.

4. ARTICLE 4. JURISDICTION

4.1 Territorial Jurisdiction

Article 4.1 of the Convention requires each Party to “take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory”. Commentary 25 on the Convention clarifies that “an extensive physical connection to the bribery act” is not required.

Pursuant to section 17, paragraph 1, of the Criminal Code, Slovak law applies to offences committed on Slovak territory. According to section 17, paragraph 2, of the Criminal Code, a criminal offence is considered to be committed on the territory of the Slovak Republic if

6 Situation described in paragraph 5 of the Commentaries.

- a) the offender performed the action on the territory of the Republic, even if the actual breach of or threat to an interest protected under this Act took place or was intended to take place, in whole or in part, in a foreign country, or
- b) the offender violated or threatened an interest protected under the Criminal Code on the territory of the Republic or if such effect was intended to take place, in whole or in part, on the territory of the Republic although he performed the action in a foreign country.

The Slovak authorities confirm that a telephone call, a fax, or an e-mail originating from the domestic territory would be sufficient to establish jurisdiction.

4.2 Nationality and other Extraterritorial Jurisdiction

Article 4.2 of the Convention requires that where a Party has jurisdiction to prosecute its nationals for offences committed abroad it shall, according to the same principles, “take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official”. Commentary 26 on the Convention clarifies that where a Party’s principles include the requirement of dual criminality, it “should be deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute”.

Jurisdiction over Nationals and Permanent Residents

Pursuant to section 18 of the Criminal Code, it shall apply to offences committed abroad by a national of the Slovak Republic, or a stateless person with permanent residency on the territory of the Slovak Republic, or a foreign national with permanent residency on the territory of the Slovak Republic. According to the Slovak authorities, the principle of nationality jurisdiction requires that the offence is also punishable in the country where it has been committed.

Jurisdiction over Non-Nationals

According to its section 20, the Criminal Code shall also apply to a criminal act committed abroad by a foreign national or by a stateless person who does not have permanent residency on the territory of the Slovak Republic if

- a) such an act gives rise to criminal liability also under the legislation effective on the territory where the act was committed, and
- b) the offender was apprehended on the territory of the Slovak Republic and was not extradited to a foreign State for criminal prosecution purposes.

Pursuant to section 20, paragraph 2, it is not permitted to impose a more severe punishment than the punishment allowed by the law of the State on the territory of which the criminal offence was committed.

4.3 Consultation Procedures

Article 4.3 of the Convention requires that where more than one Party has jurisdiction, the Parties involved shall, at the request of one of them, consult to determine the most appropriate jurisdiction for prosecution.

Section 383a of the Code of Criminal Procedure deals with the transfer of a criminal case *from* abroad. Accordingly, the Prosecutor General’s Office shall decide on a motion by the competent foreign authority to take proceedings against a Slovak national for offences committed on the territory of another country. In case of a favourable decision it shall immediately suggest to the authority that has subject-matter territorial jurisdiction to commence prosecution under the provisions of this Code.

The decision whether or not to start legal proceedings in the Slovak Republic shall be taken in accordance with sections 160, 163 of the Code of Criminal Procedure. It is therefore required, *inter alia*, that the established facts indicate the commission of a criminal offence. Furthermore, there have to be reasonable grounds to believe that a specific person has committed the criminal offence.

Section 383b covers the transfer of a criminal case *to* a foreign country. Accordingly, if criminal prosecution is conducted against a foreign national for an offence committed on the territory of the Slovak Republic, the Prosecutor General's Office, or after indictment the Ministry of Justice, may decide to transfer the case for prosecution to the competent authority of the country whose national is the offender.

According to the Slovak authorities, various conditions need to be fulfilled in order to transfer criminal proceedings abroad. They include that the offence is punishable under the laws of both countries, the transfer is in the common interest, protects society, and contributes to the efficiency of criminal procedures. Furthermore, it is required that the offender is not on the territory of the Slovak Republic or has returned to his/her home country after the crime has been committed. The legal situation is the same if the request comes from the country where the offence has been committed, and the offender is a national of a third country⁷.

In view of the Slovak authorities, the practical experience with transfer cases demonstrates that "jurisdiction" conflicts in cases where more than one country may exercise jurisdiction are rare. Usually, the country in whose territory the offence has been committed exercises its primary jurisdiction. The country of the nationality of the offender normally exercises its secondary jurisdiction only if the first country asks for a transfer of proceedings.

4.4 Review of Current Basis for Jurisdiction

Article 4.4 requires each Party to review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials, and if it is not, to take remedial steps.

The Slovak authorities see no need to review their existing principles for jurisdiction over cases of bribery of foreign public officials. They refer to the broad interpretation that they give to their territorial and extra-territorial jurisdiction.

5. ARTICLE 5. ENFORCEMENT

Article 5 of the Convention states that the investigation and prosecution of the bribery of a foreign public official shall be "subject to the applicable rules and principles of each Party". It also requires that each Party ensure that the investigation and prosecution of the bribery of a foreign public official "shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved".

5.1 Rules and Principles regarding Investigations and Prosecutions

The Slovak authorities confirm that in the case of bribery of a foreign public official the same rules and principles apply as in other criminal proceedings under the Criminal Procedure Code. The investigators of the Police Force are responsible for investigating the offence under the supervision of the public prosecutors concerning the observance of the rule of law in the pre-trial proceedings. The investigators act independently; they are only bound by law and the instructions of the prosecutor and the court.

7. See section 5 of the Code of Criminal Procedure.

After investigation procedures are terminated, and if the investigation findings are sufficiently strong to justify the beginning of the trial, the public prosecutors shall file an indictment (accusation) with the competent court⁸. They have an exclusive right of prosecution, and are independent of the judiciary and executive branch. The court decides on guilt or innocence of the accused person and the respective penalty.

The Slovak authorities confirm that the principle of mandatory prosecution applies in respect to all offences included in the Criminal Code that are “dangerous for the society”, i.e. which menace the interests protected by the Criminal Code. The Slovak authorities confirm that they consider the offence of bribery of foreign public officials as “dangerous for society”.

The conditions for staying and suspending of prosecution are set forth in section 172 and 173 of the Code of Criminal Procedure. According to section 172, paragraph 1, the investigator shall stay criminal prosecution if, inter alia, it is beyond any doubt that the act did not occur or is not a criminal offence. Pursuant to section 173, paragraph 1, criminal prosecution may be suspended if, inter alia, the case cannot be duly clarified because of the absence of the accused or injured party.

The Slovak authorities confirm that a decision to suspend a criminal prosecution may be challenged by a “victim” according to section 43 of the Code of Criminal Procedure.

5.2 Considerations such as National Economic Interest

The Slovak authorities confirm that investigation and/or prosecution of the offence of bribery of a foreign public official must not be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal person involved.

6. ARTICLE 6. STATUTE OF LIMITATIONS

Article 6 of the Convention requires that any statute of limitation with respect to the bribery of a foreign public official provide for “an adequate period of time for the investigation and prosecution” of the offence.

According to section 67 of the Criminal Code, the statute of limitations for offences of bribery of both domestic and foreign public officials is three to five years, depending on the severity of the penalty imposed. The statute of limitations of five years applies for offences where the upper limit of punishment is imprisonment of three to ten years. This applies to cases of aggravated bribery of foreign public officials (see section 3.1. /3.2.). The statute of limitations of three years applies to other offences where the upper limit of punishment is imprisonment for less than three years. This is relevant for the other cases of bribery of foreign public officials. The commitment of the offence triggers the running of the statute of limitations.

Pursuant to section 67, paragraph 2b, the statute of limitations shall, inter alia, not include periods when the offender stayed abroad. According to the Slovak authorities, the courts consider such periods to be a legal obstacle to the continuation of criminal proceedings. When the offender returns to the Slovak Republic, criminal proceedings continue and the time of the stay abroad is not taken into account in calculating the expiry of the statute of limitation.

⁸ See sections 160, 163 of the Code of Criminal Procedure.

7. ARTICLE 7. MONEY LAUNDERING

Article 7 of the Convention requires that where a Party has made bribery of a domestic official a predicate offence for the application of money laundering legislation, it must do so on the same terms for bribery of a foreign public official, regardless of where the bribery occurred.

The Slovak authorities refer to the Law No. 249/1994 Coll. as amended to Prevent Laundering Proceeds of Most Serious Crimes, Particularly of Organised Crime. According to its section 1, the purpose of the Act is to establish a set of regulations for the prevention, detection and penalisation of transactions conducted by legal entities and natural persons with the aim of laundering proceeds from the most serious, particularly organised forms of criminal activity.

Pursuant to section 2, paragraph 1, the Act applies to laundering proceeds from criminal offences listed under paragraph 2, and from other unlawful activities, in the case of large proceeds or assets of considerable value that are intended or have already been used for the commission of crimes.

The offence of money laundering pursuant to section 252 of the Criminal Code is included in paragraph 2. According to section 252, punishability depends, inter alia, on the value of the laundered money. Section 252, paragraph 1, reads as follows:

“Whoever

- (a) transfers to himself/herself or to another person, hires, loans, disposes at bank accounts, imports, exports, moves, lends or otherwise, to himself/herself or to another person, acquires, or
- (b) holds, hides, conceals, uses, consumes, destroys, alters or damages,

an income from crime of a minor value or an asset of a minor value that is income from crime, with the intent to hide the existence of this income or asset, to conceal the origin of a crime or the intent or purpose thereof to commit a crime, or to frustrate its seizure for the purpose of criminal proceedings, or forfeiture or confiscation shall be punished by imprisonment for up to three years or by prohibition of business activity or by confiscation or pecuniary penalty.”

Pursuant to paragraph 2, the offender shall be punished by imprisonment for a term of one to five years if he/she made by an act defined in paragraph 1 for himself/herself or, for another person, substantial profit. According to paragraph 3, imprisonment shall be two to eight years if the act defined in paragraph 1 was committed as a member of an organised group or if by such an act the offender made for himself or for another person, considerable profit. Pursuant to paragraph 4, the offender shall be punished by imprisonment of five to twelve years if he/she commits the act as a public official or as a member of an organised group that is operating in several states or in junction with such a group. According to paragraph 5, the same punishment as in paragraph 4 shall be imposed if the offender made for himself, or for another person, a profit of large extent.

“Income” or assets derived from bribery of foreign public officials are covered by section 252, paragraph 1, if they are at least of a “minor value”. The term “minor value”, as well as “substantial profit”, “considerable profit” and “profit of large extent” are defined in section 89, paragraph 13, of the Criminal Code⁹. Accordingly, section 252, paragraph 1, applies if the amount of laundered money is at least 24.000 SKK (550 USD). Section 252, paragraphs 2, 3, and 5 apply if the amount of laundered money or assets is at least 80.000 SKK (substantial profit), 400.000 SKK (considerable profit), or 2.000.000 SKK (profit of large extent) respectively.

⁹ The wording of section 89, paragraph 13, is reproduced in section 3.1/3.2 above.

A draft amendment of the Law No. 249/1994 Coll. has been prepared to extend the application of the money laundering legislation to all offences irrespective of the value of the proceeds. The Slovak authorities regret that this draft has not yet passed the Legislative Council of the Government. The great number of proposed changes have resulted in a recommendation to introduce an overall re-codification of the Act No. 249/1994 Coll. in the first half of 2000.

8. ARTICLE 8. ACCOUNTING

Article 8 of the Convention requires that within the framework of its laws and regulations on the maintenance of books and records, financial statement disclosures and accounting and auditing standards, a Party prohibits the making of falsified or fraudulent accounts, statements and records for the purpose of bribing foreign public officials or of hiding such bribery. The Convention also requires that each Party provide for persuasive, proportionate and dissuasive penalties in relation to such omissions and falsifications.

8.1 Accounting and Auditing Requirements

According to section 7, paragraph 1 of the amended Law on Accounting No. 563/1991 Coll., the accounting units¹⁰ “shall keep their accounts in a complete, open and correct manner so that they fairly report all events that are subject to accounting”. Paragraph 2 requires that all events subject to accounting be recorded. They have to be proofed by adequate accounting documents. Pursuant to section 33, paragraph 6 of the same Law, all accounting documents, including financial accounting reports, shall be protected against misuse, damage, destruction, or loss. Further specific duties are laid down in particular in sections 6, 7, 11-16, 29 and 33 of that Law.

The Slovak authorities confirm that section 7, paragraph 1, of the Law on Accounting prohibits, inter alia, the making of false or incomplete statements as described in Article 8 of the Convention. They also confirm that the financial statement of companies /accounting units has to disclose the full range of material contingent liabilities.

Pursuant to section 20, paragraph 1, accounting units covered by special legislation shall have their financial statements audited and shall publish certain information from their financial statements. According to paragraph 2, business companies to which the provisions of paragraph 1 shall not apply and for which it is mandatory to establish basic capital, as well as co-operatives, shall have their financial statements audited if in the preceding year

(a) their net turnover (revenues less value added tax or turnover tax, if these taxes are included in revenue) exceeded SKK 40,000,000; or

(b) their net business assets exceeded SKK 20,000,000.

Section 3 of the Act No. 73/1992 Coll. on Auditors as amended ensures the independence of auditors. Accordingly, auditors pursue their activity individually and independently.

Pursuant to section 2, paragraph 5, of the amended Law on Auditors No. 73/1992 Coll., the auditors are exempt from the requirement of professional secrecy in cases where a duty to report an offence is imposed by law. Such a duty exists under Law No. 249/1994 Coll. to Prevent Laundering Proceeds of Most Serious Crimes as amended. According to its section 6, governmental authorities, municipalities and other legal or physical persons carrying on business under specific statutory regulations are obliged to inform without

¹⁰ For a definition of this term see section 8.2. below.

delay a prosecution or police authority of any facts obtained within the limits and duties of their office whenever laundering of proceeds of a crime is suspected. Auditors have no other duty to report to police bodies or to investigation agencies. Auditors are likewise not obliged to report the discovery of illegal acts to the management or other corporate monitoring bodies.

According to the Slovak authorities, a duty to report does not exist concerning cases of bribery of foreign public officials.

8.2 Companies Subject to the Accounting and Auditing Requirements

Pursuant to its section 1, the Act on Accounting No. 563/1991 Coll. applies to all legal and natural persons involved in business or other profit-earning activity under special legislation as far as such persons are required to document for tax purposes those of their expenses spent for generating and maintaining their income. According to the Slovak authorities, this covers private and state-owned companies, entrepreneurs (natural persons), municipalities, and non-profit organisations. All natural and legal persons are covered who account in single-entry and double-entry bookkeeping systems.

The Slovak authorities declare that the auditing requirement according to section 20, paragraph 1, of the Law on Accounting relates to public limited companies, limited partnerships, limited liability companies, joint-stock associations, state enterprises, syndicates (co-operatives) and entrepreneurs that are registered on business register. The basic condition is double-enter bookkeeping of their accounts.

8.3 Penalties

Section 37 of the Law on Accounting states that the authorities may impose penalties “in accordance with the special legislation”, which in this context is the Tax Authorities Act No. 84/1991 Coll., as amended. The Tax Authorities Act imposes fines of up to 500.000. -SKK upon accounting units for any breach of their duties under this Law that results in incomplete or incorrect accounting. If this breach of duties prevents the proper determination of the tax base, the fine may be increased to up to 1.000.000. - SKK.

The Slovak authorities point out that such behaviour is also punishable under section 125 of the Criminal Code. Paragraph 1 punishes the use of false or distorted data in connection with the keeping of economic and commercial records with imprisonment from six months to up to three years. Furthermore, the court can ban future business activities, order the forfeiture of the property, or impose a monetary sanction. Pursuant to paragraph 4b, punishment is imprisonment from one to five years if the offender infringes a specific duty resulting from the law, his/her employment, position, function or duty that he/she promised to respect.

9. ARTICLE 9. MUTUAL LEGAL ASSISTANCE

Article 9.1 of the Convention mandates that each Party co-operate with each other to the fullest extent possible in providing “prompt and effective legal assistance” with respect to the criminal investigations and proceedings, and non-criminal proceedings against a legal person, that are within the scope of the Convention.

In addition to the requirements of Article 9.1 of the Convention, there are two further requirements with respect to criminal matters. Under Article 9.2, where dual criminality is necessary for a Party to be able to provide mutual legal assistance, it shall be deemed to exist if the offence for which assistance is sought is within the scope of the Convention. And pursuant to Article 9.3, a Party shall not decline to provide mutual legal assistance on grounds of bank secrecy.

9.1 Laws, Treaties and Arrangements Enabling Mutual Legal Assistance

According to the Slovak authorities, legal assistance in criminal proceedings may be provided either on a treaty or on a non-treaty basis. In the first alternative, the European Convention on Mutual Assistance in Criminal Matters or bilateral treaties on mutual legal assistance apply (see section 3.3 above).

As far as non-treaty based mutual legal assistance is concerned, it may be provided under the Code of Criminal Procedure on the basis of reciprocity. The Slovak authorities declare that the provisions on mutual legal assistance are the same for legal and natural persons.

9.1.1/9.1.2 Criminal Matters/Dual Criminality

The Slovak authorities declare that Slovak law does not require dual criminality in order to provide mutual legal assistance in criminal matters, except for extradition purposes (see section 3.4.).

9.1.2 Non-Criminal Matters

According to the Slovak authorities, mutual legal assistance in civil proceedings may be provided either on the basis of the Act on Private International Law and the Procedure Relating Thereto, the pertinent Hague Conventions¹¹, or bilateral treaties on mutual legal assistance. The Slovak authorities confirm that mutual legal assistance be granted with regard to proceedings concerning seizure and forfeiture.

9.3 Bank Secrecy

The Slovak authorities confirm that Slovak law does not allow denying mutual legal assistance in criminal matters on the ground of bank secrecy. Section 38 of the Law on Banks No. 21/1992 as amended contains exceptions from the principle of bank secrecy. According to section 38, paragraph 2, a bank is obliged to provide the persons entrusted with the exercise of bank supervision with the report on all matters which are subject to bank secrecy. Pursuant to paragraph 3, the bank shall report on matters concerning a client, which are subject to bank secrecy without his/her consent on the basis of a written request. This request may be made by, inter alia, a court for the purposes of civil proceedings, the respective body in relation to criminal proceedings, or financial bodies in tax proceedings if the client is a party to such tax proceedings.

According to the Slovak authorities, these requirements are also applicable to requests by foreign countries requesting access to bank records with respect to criminal matters.

A separate obligation to provide such information may be established in international treaties to which the Slovak Republic is a party. An example is the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

10. ARTICLE 10. EXTRADITION

10.1/10.2/10.5 Extradition for Bribery of a Foreign Public Official/Dual Criminality

Article 10.1 of the Convention obliges Parties to include bribery of a foreign public official as an extraditable offence under their laws and the treaties between them. Article 10.4 of the Convention states that where a Party makes extradition conditional on the existence of dual criminality, it shall be deemed to exist as long as the offence for which it is sought is within the scope of the Convention.

11 . On Civil Procedure, Service of Documents Abroad and Taking of Evidence Abroad.

The Slovak authorities confirm that bribery of a foreign public official is an extraditable offence under Slovak law. Dual criminality is a condition for extradition. The requirement of reciprocity must be met. They also confirm that they consider the Convention as a legal basis for extradition in respect of the offence of bribery of a foreign public official.

10.3 Extradition of Nationals

Article 10.3 of the Convention requires Parties to ensure that they can either extradite their nationals or prosecute them for the bribery of a foreign public official. And where a Party declines extradition because a person is its national, it must submit the case to its prosecutorial authorities.

Pursuant to section 21 of the Criminal Code, nationals of the Slovak Republic may not be extradited to a foreign State for criminal prosecution or for the execution of a sentence. In this case, according to the Slovak authorities, the Prosecutor General's Office may decide to take over criminal proceedings already instituted in another country upon the request of the foreign country's authorities. It may also decide to institute criminal proceedings against such person if information concerning the crime committed abroad has been submitted, for instance pursuant to Article 21 of the European Convention on Mutual Assistance in Criminal Matters.

11. ARTICLE 11. RESPONSIBLE AUTHORITIES

Article 11 of the Convention requires Parties to notify the Secretary-General of the OECD of the authority or authorities acting as a channel of communication for the making and receiving of requests for consultation, mutual legal assistance and extradition.

On 25 February 2000, the Slovak authorities notified that the responsible authorities are the following:

- Prosecutor General's Office for the purposes of Article 4, paragraph 3;
- Prosecutor General's Office before the case is submitted to the court, and the Ministry of Justice after the case is submitted to the court for the purposes of Article 9;
- Prosecutor General's Office for receiving the requests, and the Ministry of Justice for filing the requests for the purposes of Article 10.

B. IMPLEMENTATION OF THE REVISED RECOMMENDATION

3. TAX DEDUCTIBILITY

On 1 January 2000, a new Law No. 366/1999 Coll. on Income Tax came into force. Section 25 defines as expenses deductible for tax purposes those that have been incurred „to generate, ensure and maintain income“. Section 25 also includes a list of expenses that must not be deducted. Among them are expenses that „exceed the limits established by this Law or by other special Laws, expenses created in contradiction to this Law or other special Laws, and expenses offered to obtain an undue advantage“. ¹² In view of the Slovak authorities, this implies that it is not permitted to deduct a bribe for a foreign public official as an expense from the taxable income.

¹² See section 25, paragraph 1, subsection j.

The Slovak authorities confirm that conviction by a court is not a prerequisite for denying tax deductability.

The Slovak authorities also refer to section 12, paragraph 10, of the Law on Income Tax. According to this provision, a natural person may deduct the value of donations provided to municipalities and legal entities with a registered office in the Slovak Republic to finance science and education, culture, schools, protection of animals, social, health, environmental or humanitarian purposes, charity, churches and religious societies recognised by the state, physical education and sports, if the total value of donations in a tax period exceeds SKK 500. The total maximum deductible amount from the tax base is 10 %.

According to section 20, paragraph 7, of the Law on Income Tax, a legal entity may deduct the value of donations of monetary and non-monetary value, including services provided to municipalities and legal entities with a registered office in the Slovak Republic, to finance science and education, culture, schools, fire-prevention, support of youth and security of the people, for social, health, environmental and humanitarian purposes, charity, churches and religious societies recognised by the state, physical education and sport, if the value of the donation exceeds SKK 2.000. The total maximum deductible amount from the tax base is 2 %.

There is the issue of how section 12, paragraph 10, and section 20, paragraph 7, relate to section 25, paragraph 1, subsection j. According to the Slovak authorities, donations may not be deducted if they constitute a bribe.

The Slovak authorities confirm that the Income Tax Law applies both to natural and legal persons.

EVALUATION OF THE SLOVAK REPUBLIC

General Remarks

The Working Group complimented the Slovak authorities for their efforts to implement the Convention into Slovak legislation. Delegates appreciated the co-operation of the Slovak authorities in the evaluation process, including their complete and speedy replies to questions that had been raised.

The Working Group considered in light of the available documentation and explanations provided by the Slovak authorities that the Slovak legislation does not yet fully conform to the standards of the Convention. In particular, the Working Group identified deficiencies with regard to the the inclusion of an advantage for a third party in the offence of bribery of a foreign public official, the legal concept of “effective regret”, the responsibility of legal persons, the equality of sanctions for bribery of domestic and foreign public officials, and the statute of limitations.

The Working Group took note of the intention of the Slovak authorities to introduce a further amendment to the Criminal Code and other relevant legislation in order that the Slovak legislation complies fully with the requirements of the Convention. The Working Group urged the Slovak authorities to take remedial action as soon as possible.

Specific Issues

1. “For that official or for a third party”

Section 161b includes only the words “for that official”. The term “for a third party” exists only with regard to bribery of a domestic public official. This is in contradiction to the requirements of the Convention.

The Slovak authorities plan to introduce the term “for a third party” in section 161b in the context of a general re-codification of the Criminal Code by 1 January 2002¹³.

2. Non-punishability in case of “effective regret”

According to section 163 of the Criminal Code, bribery of a domestic or foreign public official is not considered an offence if the offender has promised or given the bribe or another undue advantage only because he/she was requested to do so and he/she reported it voluntarily without delay to the prosecutor, investigator or police.

Although the Convention does not exclude the application of general defences as general provisions of the Criminal Codes of the parties, the general feeling of the Working Group was that the defence of “effective regret” presents a potential for misuse.

The Slovak authorities pointed out that in their view the conditions for invoking section 163 are narrowly defined. Furthermore, they consider the provision as a useful tool to detect cases of bribery.

¹³ Following the examination of the Slovak Republic, the amendments to sections 161b and 161c of Criminal Code came into force on 1 August 2001, which effectively extend the coverage of the offence to bribes for third party beneficiaries.

Nonetheless, the Working Group remained concerned that this defence may go beyond the general defences mentioned above, and that its application may lead to a loophole in the implementation of the Convention.

The Working Group considers this issue to be of a broader nature. It agreed to revert to it in Phase 2 in order to examine the practical effects of such a provision.

3. Responsibility of legal persons

Slovak Criminal Law does not know the concept of criminal responsibility of legal persons. There is also no possibility to impose fines on legal persons for their criminal behaviour. There is only a liability under civil law relating to unfair competition.

The Working Group considered that this situation falls short of the requirement of the Convention that parties at least establish effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for the offence of bribery of foreign public officials (Articles 2, 3.3).

The Slovak authorities plan to introduce criminal responsibility for legal persons in the context of the general re-codification of the Criminal Code by 1 January 2002.

4. Sanctions for bribery of domestic versus foreign public officials

Pursuant to section 161b, paragraph 1, of the Criminal Code, the offence of bribery of a *foreign* public official is punishable by imprisonment for at most two years or by monetary sanction. By contrast, according to section 161a, paragraph 2, of the Criminal Code, the offence of bribery of a *domestic* foreign official is punishable by imprisonment for up to three years. Only in cases of aggravated bribery, punishability is the same in respect of both domestic and foreign public officials. The maximum penalty in this case is imprisonment of five years.

The Working Group considered this situation to be in contradiction with the requirements of the Convention. It is also concerned about the relatively low sanctions for cases of aggravated bribery. It welcomed the intention of the Slovak authorities to establish equal sanctions for the offence of bribery of domestic and foreign public officials in the context of the general re-codification of the Criminal Code¹⁴.

5. Statute of limitations

According to section 67 of the Criminal Code, the statute of limitations for offences of bribery of both domestic and foreign public officials is three to five years, depending on the severity of the penalty imposed. Pursuant to section 67, paragraph 2b, the statute of limitations shall, inter alia, not include periods when the offender stayed abroad.

¹⁴ Following the examination of the Slovak Republic, the amendments to sections 161b and 161c of the Criminal Code came into force on 1 August 2001, which raise the imprisonment term for the foreign bribery offences to 6 months-3 years. The discrepancy of imprisonment sanctions between the domestic and foreign bribery offences is effectively eliminated.

The Working Group expressed concern that the statute of limitations of three years is relatively short. It recommended to the Slovak authorities considering an extension in the planned re-codification of the Criminal Code¹⁵.

6. Money laundering

Law No. 249/1994 Coll. as amended to Prevent Laundering Proceeds of Most Serious Crimes, Particularly of Organised Crime applies to laundering proceeds from criminal offences, including the offence of bribery of domestic or foreign public officials. However, it is required that proceeds are large or assets that are intended or have already been used for the commission of crimes have a considerable value.

A draft amendment of the Law No. 249/1994 Coll. has been prepared to extend the application of the money laundering legislation to all offences irrespective of the value of the proceeds.

The Working Group considered that the current provision leaves a gap in the application of money laundering legislation. It encouraged the Slovak authorities to speed up the legislative process in order to close it¹⁶.

7. Accounting/Auditing

Section 37 of the Law on Accounting imposes fines of up to 500.000. -SKK upon accounting units for any breach of their duties under this Law that results in incomplete or incorrect accounting. If this breach of duties prevents the proper determination of the tax base, the fine may be increased to up to 1.000.000. -SKK.

The Working Group considered that these fines are comparatively low. It invited the Slovak authorities to consider an increase of such fines.

Pursuant to section 6 of the amended Law on Auditors No. 73/1992 Coll, auditors, amongst others, are obliged to inform without delay a prosecution or police authority of any facts obtained within the limits and duties of their office whenever laundering of proceeds of a crime is suspected. Auditors have no other duty to report. The Working Group invited the Slovak authorities to consider establishing a duty of auditors to report the discovery of illegal acts to the management of the company or other corporate monitoring bodies.

¹⁵ Due to the increase in sanctions, the statute of limitations for the foreign bribery offence increased to 5 years as of 1 August 2001.

¹⁶ Following the examination of the Slovak Republic, the amendment to section 252 of the Criminal Code came into force on 1 August 2001, which eliminates the requirements of large or a considerable value. Furthermore, on 1 January 2001, the new Law no. 367/2000 came into force, which applies to money laundering of proceeds from all criminal offences.