

Knocking on prison's door: *Quasi* criminal liability of corporations in the Slovak Republic

Introduction

After many years of political and academic debate, the Slovak Criminal Code introduces a fundamentally new legal concept of *quasi* criminal liability of corporations with effect from September 2010. Under the Slovak Criminal Code protective measures may be imposed on corporations for offences committed by an individual in close connection with the business of the corporation. A key mantra in the government's explanation of the introduction of the *quasi* criminal liability of corporations was the Slovak Republic's obligations under international treaties and the need for recognition and enforcement of foreign criminal law judgments.

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The *quasi* criminal liability of corporations

Under the legal concept of *quasi* criminal liability of corporations, corporations may not be held criminally liable. It is the individual who commits an offence in close connection with the business of the corporation who may be held criminally liable for the offence. In connection with the offence of the offender, corporations may, however, be subject to certain protective measures under which money or property of corporations may be confiscated.

Importantly, under the *quasi* criminal liability of corporations, the protective measures may be imposed irrespective of whether the offender has been identified in the criminal proceedings. Consequently, proving that the respective criminal offence has been committed in close connection with the business activity of the corporation forms a sufficient basis for the protective measures to be imposed on the corporation.

The protective measures imposable on corporations

Under the Slovak Criminal Code, the following protective measures may be imposed on corporations:

(a) Confiscation of money

The court may confiscate up to EUR 1.6 million from a corporation if an individual officially acting on its behalf and in close connection with its business after 31 August 2010 commits (or attempts) or participates in any criminal offence set out in the Slovak Criminal Code;

(b) Confiscation of property

The court is obliged to confiscate the property of a corporation which acquired property in consequence of certain criminal offences set out in the Slovak Criminal Code (such as bribery) committed (or attempted) or participated in by an individual officially acting on its behalf and in close connection with its business after 31 August 2010. The corporation whose property is to be confiscated is declared bankrupt as a matter of Slovak insolvency law. The property of the estate, however, remains unaffected by the confiscation and the creditors' claims will have priority over the confiscation.

As the confiscation of property constitutes a serious and devastating intervention to the rights of corporations, the Slovak Criminal Code allows it only in exceptional cases. Thus, the confiscation of property shall not be imposed

if the protection of the society would be achievable without it. In such a case, however, the confiscation of money would be imposed.

Application of the *quasi* criminal liability of corporations

To our knowledge, the concept of *quasi* criminal liability of corporations has not yet been tested in the Slovak courts. Given the absence of available court decisions or authoritative views, it is difficult to determine how the Slovak courts would construe and apply the relevant provisions of the Slovak Criminal Code. Therefore, it remains to be seen what impact the *quasi* criminal liability of corporations will have in reality.

Black sheep goes alone: criminal liability of corporations in the Czech Republic

There have been a number of attempts to enact criminal liability of corporations into Czech law so far none has fully succeeded. The Czech Republic thus remains the only EU member state which does not punish criminal offences of corporations, though it is otherwise bound by the EU and EC law. There is, however, light at the end of the tunnel: in late December 2010, the Czech Ministry of Justice submitted to the Czech Government a bill on criminal liability of corporations and proceedings against them, together with a number of provisional bills, which should come into force in the future. The bill is only at the stage of governmental debate and has not reached the Parliament yet. However, given the pressure from the EU, there is more than a decent chance that it will be passed this time.

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