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Table of Contents

Introduction

by Dr TRUSCHEL Andrej, editor
in partnership with Mondo International Academy Bratislava / Slovakia

We are pleased to introduce you to our Editorial, Autumn LaRevue 2019 edition.

Our publication is published on a quarterly basis and is of a scientific nature.

In order to reach the widest possible Slovak and international speaking audience, our publication is available free of charge.

LaRevue is intended to serve readers, teachers, students and all those who are interested in new information.

You will find various scientific and research works of authors from Slovakia. All university title holders have the opportunity to post articles: post-graduate students, post-graduate students as well as graduates of master's degree programs.

In this issue of LaRevue, we have selected 5 articles of different nature to provide readers with enriching information from law, international trade and the functioning of the European Union.

In particular, I would like to thank JUDr. Vladimir Urban, who offers a new perspective on the procedure of public authorities in investigating, conducting, examining and evaluating records with a view to determining administrative responsibilities for crimes and other misdemeanors in public.

Dr. Urban promised to extend the article he provided, which we published in this issue, and we hope to learn even more in the next article.

The editorial team responsible for reviewing publications, thank you for your loyalty and wish you a pleasant reading.

Article 1:

JUDr. Vladimír Urban

Substantiation in administrative punishment

Annotation: *In his contribution, the author deals with the procedure, how the agencies of public administration should proceed by investigation, execution, examination and evaluation of evidence material in respect to drawing administrative responsibility for offences and other public delinquencies. It analyses the condition of legal regulations in the Slovak Republic in terms of administrative proceedings, further it deals with division of evidence, analyses the phases of substantiation and also is concerned with explanation of the terms evidence and evidence material. The topic of administrative punishment resonates in juristic circles more and more often and we can say that currently we can without larger doubt acknowledge the existence of administrative criminal law. The accessible literature, however, does not deal complexly with the topic of substantiation in administrative proceedings, therefore in this article the author seeks to approach all of what the administrative agency should bear in mind when investigating, executing, examining and evaluating evidence and evidence material.*

Key Words*: substantiation, charter, administrative punishment, right to privacy protection*

Introduction

Resulting from the knowledge of applicational practice, it is possible to declare that besides infringement there are no legal regulations for proceedings on other administrative delinquencies. In substantiation, it is necessary to proceed on the ground of general legal form, which is encompassed in § 34 of the Act No. 71/1967 of the Administrative Code subsequently amended. However, this Act does not sufficiently make provisions for the specifics of administrative punishment. Therefore, it would be desirable to adopt a distinctive legal formulation in the form of an Act on Administrative Punishment, which would bear in mind the specifics of administrative criminal process, but unfortunately, this Act has not been adopted yet

Substantiation as an activity of administrative agencies

The process of substantiation is a significant part of the decision-making process in the field of administrative punishment. Neither the Act No. 71/1967 on Administrative Proceedings subsequently amended, nor the Act No. 372/1990 on Infringement subsequently amended does not include any specific definition of the term substantiation, neither do they

specify the course of substantiation, or the individual stages, resp. phases of substantiation. The Act No. 71/1967 on Administrative Proceedings in its provision § 34 includes more or less general provisions on substantiation, in which substantiation is understood rather as a part of proving obtained information on the fact of the matter, that happened in the past and in a way, that it clarifies each sign of the subject-matter of the infringement. [1]

Neither the Act No. 71P1967 on Administrative Proceedings, nor the Act on Infringement define the term "evidence". As we listed above, the Act No. 71/1967 on Administrative Proceedings subsequently amended in its provisions § 34 section 2 exemplificative enumerate, what can serve as evidence. Pursuant to this Act, evidence can have the form of all means, by which it is possible to determine and clarify the subject-matter and which follows legal regulations. The Act 71/1967 on Administrative Proceedings subsequently amended, in its provision § 34 section 2 does not taxatively state a sufficient list of evidence. These are acts, which are applied most often in administrative law. Administrative agencies, however, can also use other means, through which it is possible to determine and clarify the subject-matter, i. e. video records, news published in media, radio, television, if they can contribute to determining the material truth etc. As a substitution for evidence, the administrative agency can also take into consideration declarations on oath, defined in § 39, and that especially because of the flexibility of administrative proceedings. The equality among the participants of the proceeding, though, must not be violated. [2]

From a juristic-theoretical point of view, examination of witnesses, expert testimonies, charters and inspections are rather evidence material than evidence. Evidence material are, from a procedural aspect, characterized as procedural acts, through which the administrative agency obtains knowledge important for clarifying the subject-matter. Evidence material are instrumental to learning about the facts significant for the proceeding in the matter of the infringement and from them, it is possible to draw evidence. In other words, we can say that in respective evidence materials we detect facts, which establish the object of evidence. The object of evidence is the fact to be determined by substantiation. That means that the terms evidence and evidence material cannot be identified, although they are very tightly connected. [3]

That means, that evidence material is a means used by administrative agencies in administrative proceedings, also by participants of administrative proceedings in learning facts, that are the object of the evidence. Evidence is then direct knowledge, which was

[1] MOLITORIS Peter: Zborník Studia IUridica Cassoviensia. Vzťah medzi zákonnosťou a prípustnosťou dôkazov vo veciach správneho trestania, str. 34. ISBN 1339-3995, issue 6/2018, number 1.

[2] KUČEROVÁ Erika: Správne konanie – Komentár. Vydalo vydavateľstvo Heuréka v.r. 1997, str. 71, ISBN 80-967653-0-2

[3] PROKEINOVÁ Margita: Dokazovanie a jednotlivé dôkazné prostriedky v trestnom procese str. 22. Vydala Univerzita Komenského v Bratislave, Právnická fakulta, Vydavateľské oddelenie ako svoju 217. Publikáciu v r. 2009, ISBN 978-80-7160-279-8

obtained from evidence material by substantiation (e.g. hearing of the accused is evidence material and the deposition of the accused is evidence).

In the cited provision of the Act on Administrative Proceedings, the difference between evidence and evidence material is overlapped, but as it was suggested, procedural theory differentiates between the listed terms on the ground of settled criteria. Basically, it is possible to determine that evidence material is a procedural act or procedure, by the means of which evidence is gained from the source of the evidence. The realisation of evidence material by itself does not essentially lead to obtaining evidence yet. Evidence has to lead to determination and clarification of the subject-matter and has to follow legal regulations. [4]

The circle of evidence materials, which the Act No. 71/1967 on Administrative Proceedings subsequently amended exemplificative enumerates in its provisions § 34 section 2, and which it designates as evidence, is necessary to be seen as basis for decision in terms of § 32 section 2 of the cited Act. The term basis for decision is a wider term than evidence, as it covers all materialised or unmaterialised knowledge, which the administrative agency has by decision-making at disposal. Among the differences between the terms evidence and basis for decision we could mention, that evidence should have a materialised form, for example, hearing record, register, expert testimony, thus it should be at disposal in a form, so that also the member of the proceeding, an expert or agency, which will examine the decision within the proceeding about the proper or extraordinary legal remedies, could become acquainted with it. Basis for decision could also be knowledge which does not have to have a materialised form, e.g. generally known facts, facts well-known by the administrative agency by its activity. Evidence should concern factual circumstances of the issue, eventually personal relations of the accused or witness, but not legal evaluation of the issue. Other bases for decision can have a form of legal argumentation, e.g. declaration of participants, positions of respective authorities, etc. [5]

As it was mentioned above, as evidence can serve all means that **allow determination and clarification of reality**. Substantiation via particular evidence materials is of concern only in that extension, in which it can contribute to obtaining information truly necessary for decision-making. In this sense, concepts on the necessity of further substantiation can differ between the participants of the proceeding and the administrative agency. Here it is possible to point out practice of courts, specifically the ruling of the Supreme Court of the Slovak

[4] MOLITORIS Peter: Zborník Studia Iuridica Cassoviensia. Vzťah medzi zákonnosťou a prípustnosťou dôkazov vo veciach správneho trestania str. 35. ISBN 1339-3995, issue 6/2018, number 1

[5] MOLITORIS Peter: Zborník Studia Iuridica Cassoviensia. Vzťah medzi zákonnosťou a prípustnosťou dôkazov vo veciach správneho trestania str. 34. ISBN 1339-3995, issue 6/2018, number 1

Republic from February 5th 2008, sp. zn. 1 Sžo 145/2007, with regard to which non-performance of evidence proposed by the accused cannot be regarded as violation of her/his procedural rights, and that especially if it concerned demonstration of obviously unnecessary or redundant facts.

Object and scope of substantiation

The object of substantiation in administrative criminal proceedings is **a circle of facts, which directly or indirectly predicate on elementary circumstances of committing an offence or other administrative delinquency and on the wrongdoer, so thus they are important in the decision-making on the matter.**

The scope of substantiation results from the object of substantiation and determines the number and quality of evidence, which is necessary to be executed in order to decide in the respective matter. The subject and scope of substantiation in administrative punishment arise from the principles of administrative punishment, hence, even though neither infringement law, nor administrative law have demonstratively listed circumstances, which shall be determined in administrative punishment, it is essential to adequately apply the principles of criminal law and criminal procedure. In administrative punishment, an administrative agency should therefore essentially, in an inevitable scope, examine mainly:

- whether the deed happened,
- whether the deed was committed by the accused,
- **the circumstances testifying filling the material attribute of the infringement**,
- the character of consequences and the amount of damage caused by the infringement,
- personal status of the accused, which are adequate to be considered by awarding a sentence,
- motivation and incentives of the accused, which lead to the offense.

In the issue of the scope of the executed substantiation, the administrative agency is in its procedure led by the principle of **material truth and proper determination of the subject-matter without reasonable doubt** in order to completely determine every substantial circumstance. Fundamentally, in the proceeding, the administrative agency does not deal with the substantiation of notorieties and facts known by the administrative agency by its activity, considering that they are to a great extent regarded as probative and undisputed, though jurisprudence does not entirely exclude the possibility of a member of the proceeding to dispute them and make them also and object of substantiation. [6]Resulting from the principle

[6] Rozsudok NSS ČŘ zo dňa 14. 05. 2009, č.j. 7As 28/2009 In: CODEXIS (právní informační systém). Atlas

iura novit curia, national law also cannot be an object of substantiation in front of the court, as it is believed that the court is familiar with it, however, this principle does not refer to the knowledge of foreign law. The same should apply to the administrative agency acting in the respective matter.

Division of evidence

In criminal proceedings, the division of evidence mitigates the clarification of significant facts in the process of substantiation, further it mitigates the adequate definition of the object and scope of substantiation and the place of each piece of evidence among the others. The theory of criminal procedural law divides evidences according to different criteria, which can be applied also by drawing administrative responsibility for offences and other administrative delinquencies.

Proofs are divided followingly:

a. according to the relationship towards **the object of indictment**:

- positive
- negative

a. according to the relationship of **the source of law towards the substantiated fact**:

- primary
- secondary

a. according to the relationship toward **the substantiated fact**:

- direct
- indirect

a. according to **the source of evidence**:

- personal
- material

a. in terms of **inefficiency of evidence, resp. the level of illegality** we divide evidence as:

- absolutely ineffective
- relatively ineffective

Positive proofs: agencies, which conduct the proceeding, prove with them circumstances which verify the indictment against the person, against whom the proceeding is conducted. It can be for example a documentary evidence, fabricated by the accused.

Consulting (cit. 23. 06. 2013)

Negative proofs: prove circumstances, which testify in favour of the accused, contest the indictment, acquit the accused of guilt either completely or they only mitigate the indictment.

This division has importance especially on the ground of adequate definition of the scope of substantiation, as the administrative agencies executing administrative punishment have to clarify the circumstances proving in favour of or against the accused, also without the proposal of parties with the same concern.

Primary proofs: they are drawn from a direct source of substantiated fact, for example testimony of a witness, who describes the course of events she/he personally saw, the original documents etc.

Secondary proofs: these proofs are drawn from secondary sources, e.g. deposition of a witness on the respective case she/he only heard someone talk about, transcript of documents etc. That means that these are proofs obtained mediately from another witness, who reproduced only what she/he heard from another person, and thus she/he was not in in direct contact with the substantiated fact, resp. with the event under investigation etc.

The informational value of primary proofs is definitely of priority. Secondary proofs serve especially for determining and examining the credibility of original proofs. Administrative agencies, just as law enforcement authorities, should however concentrate on searching and applying primary evidence, which directly prove or contest a certain fact important for issuing proper decision on the respective issue. Each mediating segment bears the risk of weakening the informational value of the evidence, e. g. forgetting, deformation, misinterpretation in case of witnesses etc. The significance of secondary proofs consists in that via them it is possible to determine primary proofs, e. g. on the ground of a copy of a document it is possible to get to the original of the fabricated document etc.

Direct proofs: are pieces of evidence that directly prove or detest the substantiated fact. Direct proofs enable the realisation of direct knowledge on the substantiated fact, about the fact, whether it happened or not, whether it exists or not. It can be for example a deposition of a witness on that she/he saw the accused on the crime scene acting illegally.

Indirect proofs: these are so-called circumstantial evidence, thus proofs, with the help of which the agency acting in the respective issue proves another fact, and thus, from which it is possible to understand, if the fact, the substantiation of which is in concern, happened or not. That means that with an indirect proof the fact to be clarified is clarified through another fact. An indirect proof cannot be a fact that is not connected with the substantiated fact. Indirect evidence do not prove directly against the accused, or directly in her/his favour, and cannot be

regarded as less credible or less reliable. If they are well executed, indirect proofs can be equally reliable as direct proofs. [7]

Personal proofs: e.g. hearing of the accused.

Material proofs: can be e.g. documents, things, objects etc.

Absolutely ineffective proofs: these are proofs that show a substantial legal defect. That means that by executing evidence, there was a breach of legal regulations, which had the character of substantial proceeding defect. In administrative proceedings, these could be proofs obtained e.g. by coercion or threat of coercion, proofs obtained e.g. by illegal search or examination, or usage of knowledge obtained from evidence which was not negotiated in verbal proceeding, or from the deposition of the accused with the application of intentional or suggestive questions. This means, that those proofs are regarded as absolutely ineffective proofs, which cannot be applied in the proceeding, as by their obtainment or execution there has been a breach of legal enactments, which had a character of substantial proceeding defect, which is non-removable. Whether it is this kind of defect, the administrative agency has to judge itself from case to case on the ground of specific circumstances, especially regarding the character of proceeding defect, its impact on the respective proof and significance of this proof in the proceeding.

Relatively ineffective proofs: these are the consequence of the existence of substantial defect, which is removable. Relatively ineffective proofs show removable defects and cause inapplicability of evidence only until this defect is removed (e.g. examination of a witness bound by the obligation of silence, who was acquitted of secrecy only after the execution of the hearing). Legality of obtaining evidence is a substantial criterium of evidence admissibility in the proceeding in front of the court.

Considering that neither Act No. 301/2005 Code of Criminal Procedure, nor Act No. 71/1967 Code of Administrative Procedure does not have any provisions, which would deal with absolute or relative ineffectiveness of evidence (except for the case listed in provision § 119 section 4 of the Code of Criminal Procedure). It is necessary to search for certain clues (legal principles) for adequate examination of legality, or procedural applicability of evidence in criminal proceedings, but also in administrative proceedings in the practice of courts. In this sense, it is therefore inevitable to be familiar with the approach of court practice by evaluating particular evidence material.[8]

The Phases of Substantiation

[7] JALČ Adrián: Teoretické a praktické otázky dokazovania v trestnom konaní. str. 23 – 24. Vydal Eurounion spol. s.r.o. Bratislava v r. 2008. ISBN 978-80-893374

[8] JALČ Adrián: Teoretické a praktické otázky dokazovania v trestnom konaní. str. 23 – 24. Vydal Eurounion spol. s.r.o. Bratislava v r. 2008. ISBN 978-80-893374

The process of substantiation can be divided into several time intervals, which result from its logical time sequence. Individual phases of substantiation mutually fade into one another. [9] However, it would be deceptive to think that after the commencement of the following phase, the previous one is definitely closed. Exactly on the contrary, in infringement proceedings, as well as in administrative proceedings on other administrative delinquencies, holds the principle of uniformity of proceedings, from which the diffusion of the respective phases of substantiation results.

Search of Proofs

By search of proofs we mean identifying the existence and availability of relevant sources of evidence and their acquisition takes place during the whole infringement proceeding. Only block proceeding is regarded as an exception in infringement law. In accordance with the examining principle, the administrative agency is required to act all the time, whereas without further it should not take the claims of the participants for probative, nor consistent. Moreover, confession of the accused does not acquit the administrative agency of the obligation to examine the subject-matter and verify the truthfulness of the confession. The examining principle certainly does not prevent the accused and other participants of the proceeding from proposing, examining and submitting their own proofs.

Execution of Proofs

The execution of proofs and procedural documentation of proofs – has to take place on the ground of an exactly defined process, so that the absolute or relative invalidity of proofs does not occur.

In infringement proceedings, oral proceeding in the matter is obligatory. In proceedings on another administrative delinquency, court jurisprudence refers to the analogy of administrative criminal proceedings with infringement proceedings and states that oral trial is an obligatory part of proceedings in all administrative delinquencies. This argumentation is based on the article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in which the right to fair trail is regulated. From this idea arises also the ruling of the Constitutional Court of the Slovak Republic, sp. zn. III ÚS 231/2010 from 25th August 2010. The Constitutional Court in this ruling decided that the verbal, public and admissibility principle in negotiating at least at one level of the proceeding in front of administrative agencies in conformity with settled Strasbourg jurisprudence, holds also for other

[9] PROKEINOVÁ Margita: Dokazovanie a jednotlivé dôkazné prostriedky v trestnom procese, str. 30-31. Issued by Univerzita Komenského v Bratislave, Právnická fakulta, Publishing department as their 217th publication in 2009. ISBN 978-80-7160-279-8

administrative delinquencies. The respective ruling constitutes substantial change in administrative proceedings on other administrative delinquencies and administrative agencies, as well as administrative courts have to use them as basis in their decision-making practice. Appellate administrative agency then can execute the examination of the original decision also without ordering an oral proceeding. There is a condition, though, that the oral proceeding was executed at least on one level. However, if the appellate administrative agency in the secondary proceeding executes new evidence, which was not executed in the original proceeding, it has to give the accused a chance to get to know them. In the sense of the provision § 44 section 2 of the Act No. 71/1967 on Administrative Proceedings subsequently amended, if the administrative agency cannot execute a procedural act in the circuit of its competence, or if it is effective for other reasons, it is entitled to require its execution by another administrative agency of the same or lower level.

A participant has to be properly notified about the commencement of the administrative proceeding. In the summons, the participant has to be in the sense of provisions § 41 section 2 of the Act No. 71/1967 on Administrative Proceedings subsequently amended, warned about the legal consequences of her/his failure to appear. Negligence of this warning and the execution of oral hearing in the absence of the accused can be a reason for abolishing the decision by an appellate agency or an administrative court.

If the accused were not to appear without a proper apology or for important reasons, oral hearing can be executed also in her/his absence, or she/he could be brought to court. A person accused of committing an administrative delinquency can be brought to court if the summons to oral hearing was demonstrably delivered to her/him twice. The Act logically cannot enumerate every possible situation, when it is possible to pardon the absence of the accused in the oral hearing, this consideration rests in the administrative agency. The administrative agency should by judging the reasons of non-participation consider:

a) the total amount of excuses in the respective proceeding, the more apologies, the more rigorously they watch out for their justness, resp. finality. [10]

b) in case of medical reasons, these have to objectively make it impossible for the accused to participate in the oral hearing. An acceptable excuse can be hospitalisation in the hospital, ordered calm abed, or unrecommended travelling by a doctor. [11]

[10] Rozsudok NSS ČŘ zo dňa 14. 05. 2009, č.j. 7As 28/2009 In: CODEXIS (právní informační systém). Atlas Consulting (cit. 23. 06. 2013)
[11] Rozsudok NSS ČŘ zo dňa 20. 10. 2011, č.j. 7As 121/2011 In: CODEXIS (právní informační systém). Atlas Consulting (cit. 23. 06. 2013)

c) acceptable can be also an excuse on the ground of an official trip or scheduled holiday, if the accused finished their preparation already before the notice on the place and time of the oral hearing. The good will of the accused should be shown by proposing a sufficient amount of further proper dates, when she/he could participate in the hearing.

The excuse does not need to be submitted always in advance, as sometimes, circumstances do not allow it, an urgent excuse therefore suffices. If the administrative agency realises oral hearing in the absence of the accused, minutes have to be drawn up from the hearing, where this fact is mentioned, as well as the reasoning of this decision, where the administrative agency executing in the respective matter has to consistently deal with this fact.

In the sense of the provisions § 22 of the Act 71/1967 on Administrative Proceedings, the administrative agency draws up minutes on oral traditions and important evidence, on declarations of the participants of the proceeding, on oral negotiations and on voting. Minutes are a public document and interpret evidence on what is presented in them. In case that the minutes are in conflict with the obtained facts, the administrative agency is not bound by the content of the minutes. Facts, which are caught up differently, e.g. by a copy of the letter by decision etc., do not need to be recorded. Individual minutes are drawn up on each act. However, if there were acts within the oral hearing, all of them are drawn into one set of minutes, and that into the minutes on oral hearing. Thus, it is the only evidence material on what was said in the oral hearing by the participants of the proceeding, what the witnesses testified, what kind of expert opinion was provided and what was determined in the search of premises etc. [12]

Verification of Proofs

It is executed in order to determine the quality of sources and, at the same time, it verifies different facts, e.g. whether the witness could actually see from the place, where she/he was at the incriminated time etc.

Evaluation of Proofs

The process of proof evaluation takes place during the whole proceeding and its aim is to evaluate, from time to time, the credibility of evidence, determine the detection rate of the subject-matter and on this ground supply and execute further proofs. At the end of the infringement proceeding or proceeding on another administrative delinquency is the phase of evaluating evidence the last one before the actual decision on the matter. Loose evaluation of evidence does not mean self-will of the decisive subject, as it would not provide the

[12] KUČEROVÁ Erika: Správne konanie – Komentár. Vydalo vydavateľstvo Heuréka v.r. 1997, str. 55. ISBN 80-967653-0-2

possibility of determining the objective truth. Subjective recognition of examined proofs enables to construct an inner persuasion of the employee of the administrative agency in relation to the object of decision. The reflection of the outside world, objective reality in the mind of a person, in concurrence with subjective examination is a precondition of establishing an accord of ideas with reality, the object to be examined. The institute of loose evaluation of evidence is a complicated mental process, which requires the ability of logical thinking, specialised knowledge and experience and knowledge in procedural principles. Employees of administrative agencies are therefore required to be responsible, conscientious, legal conscience and subjective quality. Loose evaluation of evidence enforced administrative agencies to carefully and thoroughly access the issuing of individual administrative acts – decisions, whereas to bear in mind the specifics and uniqueness of each negotiated case. [13]

The evaluation of evidence is a rational and logical activity of the administrative agency with the aim to evaluate the obtained information, which have significance for issuing meritorious decision from the aspect of truth and credibility. In this phase of substantiation, the principle of naturalness and loose evaluation of evidence is realised (§ 2 section 12 and 19 of the Act No. 301/2005 of the Criminal Code subsequently amended). The administrative agency has to proceed rationally and logically in a way, that its decision is properly argumented and viewable. By evaluating evidence, the administrative agency should follow especially three important characteristics, such as:

a) **Relevance of evidence**, thus its correlation with the facts to be proven. In case the administrative agency does not regard the proposed proof as relevant, it does not have to execute it, but in the reasoning of its decision it has to take a stand towards why the respective proof was not executed. In terms of relevance is further evaluated, what evidence power does the proof have for obtaining the subject-matter, about what there are no unfounded doubts. Extraordinary significance is devoted to adjudicating credibility and truth of the evaluated evidence, whether its content is in conformity with the objective reality.

b) **Legality of evidence,** the way of its obtainment and execution has to be in accordance with legal enactments.

c) ultimately also **truthfulness of evidence,** whereas potential doubts about the credibility of evidence cannot be itself a reason to reject their execution.

In administrative punishment, the principle of concentration should not hold, but from relevant jurisprudence results that the administrative agency should bear in mind when the accused, within the proceeding, applied the claims and proofs at her/his own defence. If the

[13] PROKEINOVÁ Margita: Dokazovanie a jednotlivé dôkazné prostriedky v trestnom procese, str. 30-31.
Issued by Univerzita Komenského v Bratislave, Právnická fakulta, Publishing department as their 217th publication in 2009. ISBN 978-80-7160-279-8

accused did this relatively lately (not until the appellate proceeding), it can be on the ground of NSS ČR a reason to doubt the credibility of the proposed proof. [14]

In the legal orders of individual states, we can see two methods of applying evaluation of evidence. It is the theory of legal evaluation of evidence and the theory of loose evaluation of evidence. In legal evaluation of evidence, it is defined by law which proofs cannot be regarded as credible and which proofs can be regarded as sufficiently credible for view formation on the facts important for clarifying the storyline of the infringement and issuing meritorious decision. By applying the theory of loose evaluation of evidence, the administrative agency – the exploratory, comes out from its own consideration. In the provisions § 34 section 5 of the Act 71/1967 on Administrative Proceedings subsequently amended, it is claimed that the administrative agency shall evaluate proofs on the ground of its own consideration, and thus each proof individually and all proofs in their mutual coherence.

Under the term loose evaluation of evidence, we mean evaluation of proofs in the respect of their truthfulness, resp. credibility, whereas it is inevitable to examine each proof, claim from the position of expert experience of the employee of the administrative agency. Truthful and credible are only those claims, he truthfulness of which is not possible to reasonably doubt from a rational and legal aspect. [15] In the course of evaluating evidence various methods are used as analysis or synthesis, induction and deduction, the method of formal or dialectical logics.

Evidence material

According to the provisions of § 34 section 1 of the Act No. 71/1967 on Administrative Proceedings subsequently amended, for substantiation can be applied all means, with the help of which it is possible to determine and clarify the subject-matter and which follow legal enactments. In the sense of the provisions § 34 section 2 of the Act No. 71/1967 on Administrative Proceedings subsequently amended, evidence in administrative proceedings means especially hearing of witnesses, expert opinions, deeds and search of premises.

Hearing – is one of the methods of criminalistics activity, which is determined by active action of the examiner with the aim, that the deposition of the examinee obtains complex and credible knowledge on the event (act, case) to be determined and clarified.

The hearing has a certain sequence of steps:

[14] JELÍNEK a kol.: Trestní právo procesní, 5. Vydání Praha: Linde, 2007, str. 342 – 343.. ISBN978-80-7201-630-3

[15] ČERKALA Emil: Zborník z XIII. Medzinárodnej vedeckej konferencie . 18 -19. apríl 2013, Bratislava, Edícia ESE – 141, Dokazovanie str. 3. ISBN 978-80-89281-90-9

1. **Introduction**
2. **Monologue**
3. **Dialogue**

Introduction of the hearing sets for its aim to tie up contact between the examiner and the examinee. It concerns verification of identity, getting to know the examinee with the subject of the hearing, determining the relationship of the examinee towards the negotiated issue and towards the individuals interested in the formation of a negative event or case, which had the consequence of filling the signs of subject-matter of an administrative delinquency. In the introduction of a hearing it is necessary to accomplish also a briefing on the rights and duties of the examinee.

Monologue is characteristic by the fact that the examinee describes her/his knowledge on the incriminating events continually, without interventions from the examiner. It is an important step within the hearing, as the examiner can sometimes come to know from the examinee such facts, which the examinee would not by direct questioning present truthfully. The examiner can verify the psychical condition of the examinee during the hearing, as well as her/his tendency of truthful deposition or lie, the examiner determines her/his abilities, interests and other facts.

Dialogue results from the essence of what has been said in the monologue by the examinee and is a step of asking questions and obtaining answers to them. The examiner determines and specifies the ambiguities, time or space inconsistency, presence of individuals etc., which were not sufficiently clarified in the process of monologue. The examiner has to avoid asking suggestive and captious questions during the dialogue. By suggestive questions we mean questions which temp the examinee towards a response. Captious questions are those, the aim of which is to bring the examinee into an error. Asking captious questions is prohibited by criminal procedure. ***For the hearing it holds that the examiner has to ask questions in a way that the examinee has to draw answers to them only from her/his own memory***. From these results a requirement of thorough preparation for the hearing on the part of the examinee. Minutes are made from the hearing, and that continually in parts, registering word by word or all at once after finishing the hearing, eventually an audio record is made (with a Dictaphone).

Special attention has to be paid to the tactics of the hearing, especially when it comes

to children or adolescents, and that in respect of their psychical, social and physical maturity. Before the single hearing, it is necessary to arrange contacts, determine the circle of interests, relations towards family environment, after-school activity, life idols, authorities etc. It is required to bear in mind especially these facts:

Questions cannot be suggestive, children are able to persist in the original false deposition, they are less accessible to logical counterarguments, phantasy and plot manifest themselves etc. At the hearing of children, it is necessary to notice used gestures in relation to their mental level, which can suggest that they were influenced by other individuals. In case of need, it is necessary to add more people to the hearing. These people could be a teacher, a psychologist, educator, potentially parents. It is necessary to bear in mind that in some cases, the presence of parents can negatively reflect on the course and the result of the hearing (fear for parents, shame etc,). Hearing of children should be executed from a contextual aspect in that way, that it should not be repeated.

Hearing of the accused – the term of accused is explained in § 33 of the Act No. 301/2005 Criminal Code subsequently amended, on the ground of which as accused is regarded someone, who is suspicious of committing a crime, whereas the means against her/him defined by this Act can be used against her/him only if there was a charge brought against her/him. In the infringement proceedings, according to provisions § 72 section 1 of the Act 372/1990 on Infringement subsequently amended, an individual becomes accused of an infringement in the moment of executing the first procedural act by an administrative agency, if it concerns infringement, where the proceeding begins ex officio, i.e. by virtue of his office. If it concerns a proposed infringement, the proceeding begins the day, the submission of the plaintiff arrives at the administrative agency, competent to decide in the matter. A person becomes guilty of infringement, or other administrative delinquency only after acquiring legal force of the decision in the matter of the delinquency, in which she/he is found guilty.

The accused receives the summons to the hearing personally. If the accused was properly subpoenaed to the hearing and she/he did not appear in the hearing without an excuse or a serious reason, the administrative agency can act in the absence of the accused or it can send the accused a new subpoena. In the notice on the commencement of the proceeding, with which the administrative agency also subpoenas the accused to the oral hearing, the accused has to be warned about the legal consequences of non-appearance. This explicitly results from the provisions § 41 section 2 of the Act No. 71/1967 on Administrative Proceedings subsequently amended. Omission of this legal obligation can be a reason to annul the decision by an appellate agency or administrative court. If the administrative agency has unambiguous proof that the subpoena was delivered to the accused and despite of this she/he did not make an appearance without serious reason or without excuse, the administrative agency can bring

her/him forward, eventually in the sense of § 45 section 1 of the Act No. 71/1967 on Administrative Proceedings subsequently amended, impose her/him a disciplinal fine onto € 165, and that repeatedly.

The accused receives the summons to the hearing personally. Before the first hearing it is necessary to determine the identity of the accused. Before the hearing, the accused should receive guidance, which is expressly defined in § 121 section 2 of the Act Np. 301/2005, but it has to be adjusted to the administrative proceeding. Then it proceeds to the hearing alone, at which the accused is at the earliest enabled to coherently testify on the facts, which she/he is blamed guilty of. After that, the examiner can ask questions for supplementing, explaining or pacifying the testimony and eliminating ambiguities.

In case of more accused, each of them has to be heard in the absence of others, yet not heard accomplices. The accused, who is about to be heard, has the right to get to know the content of the testimony of other accomplices, who testified in her/his absence.

In case, that there occur ambiguities in serious circumstances at the hearing of the individuals, these can be eliminated by confrontation. It is a special type of hearing, the basis of which relies in the testimonies of two people, who are confronted face to face. By confrontation, fundamental discrepancies in the testimonies are eliminated. The confronted people have the chance to mutually ask questions with consent of the examiner. Firstly, however, each confronted person is questioned apart on the circumstances, because of which the confrontation is being executed. Confrontation can be executed only if in the previous hearings the testimonies of the members of the proceeding thoroughly differ and the arose serious disaccords cannot be eliminated differently, e.g. by hearing of their witnesses etc.

The accused, by contrast to a witness, can tell also untruth within her/his right to defence. This means that the accused cannot be prosecuted because of the fact that she/he did not testify truthfully for the crime of perjury. The accused cannot be criminally liable for a potential perjury, not even, if in the same proceeding before there was a charge brought against her/him, she/he testified in the matter of accomplice as a witness.[16]

Hearing of a witness – ***Testimony of witnesses*** is an oral testimony on the facts which the witness got to know with her/his own senses. A witness cannot be a member of the participant, nor an employee of the administrative agency, which acts in the matter. Submitting a testimony of a witness is a civil and also legal obligation, the witness has to testify truthfully and must not conceal anything. The administrative agency ***instructs the***

[16] PROKEINOVÁ Margita: Dokazovanie a jednotlivé dôkazné prostriedky v trestnom procese, str. 30-31. Issued by Univerzita Komenského v Bratislave, Právnická fakulta, Publishing department as their 217th publication in 2009. ISBN 978-80-7160-279-8

witness before the hearing about the possibility to refuse testimony and about her/his obligation to testify truthfully and not to conceal anything and about the legal consequences of untruthful and uncomplete testimony. As a witness cannot be heard someone, who breaks official, economic or business secret or obligation of secrecy legally imposed or recognized, besides the case, if she/he was acquitted of this obligation by the respective agency or someone, in interest of whom she/he has this obligation. [17]

Employees of administrative agency often make mistakes by questioning statutory representatives of legal entities in infringement proceedings or in proceedings on other administrative delinquencies. The statutory agency is often wrongly heard as a witness, what is in the sphere of administrative punishment in conflict with the **principle of right against self-incrimination - nemo tenetur**. The statutory representatives of legal entities are necessary to be questioned as members of the proceeding, and that because of the fact that members of the proceeding, in contrast with witnesses, do not risk sanctions for untruthful or uncomplete testimony, there they are not forced to self-incrimination. This has to also agree with different content of instructions for a member of the proceeding and a witness, which the administrative agency provides them at the commencement of the hearing. If witnesses were to be questioned, they would be disadvantaged compared to physical entities, what would be in conflict with the **principle of equal status** of respective people by enforcing their procedural rights. It would not be fair, if a witness could reject testimony in accordance with the principle nemo tenetur, in order to defend herself/himself and her/his relatives, but on the other hand, we could force her/him against her/his business company, which she/he built by her/his own effort.

Documentary Proofs – in the sphere of criminal law, there is for example a limited applicability of a record on submitting an explanation, if facts listed in it are in conflict with the facts listed in the testimony of a witness questioned in oral proceeding. In this context it is necessary to note that according to relevant jurisprudence of courts, official record on the issued explanation is not an evidence material and in criminal proceedings, it cannot be used as documentary evidence. If the person, who issued an explanation into official records, questioned later than the witness or the accused, the recording cannot be read to her/him and cannot be stated that from the content of the official recording results such or else evidence, as the principle of proximity would be violated. That means that on the ground of the principle of proximity, the court can rest its decision only on those proofs which were executed in front of him on the in the main proceeding, as well as public or private proceeding, if the law does not state otherwise. From this results that evidence executed in the preparatory proceeding has

[17] ČERKALA Emil: Zborník z XIII. Medzinárodnej vedeckej konferencie . 18 -19. apríl 2013, Bratislava, Edícia ESE – 141, Dokazovanie str. 2. ISBN 978-80-89281-90-9

to be once more executed in a proceeding in front of a court, in order to form a basis for decision. In administrative proceedings, an equivalent of preparatory proceedings is clarification of offences, or typing official records or minutes on the oral proceeding. Recordings on submitting explanation executed in the preparatory phase of the proceeding, i.e. in the phase of clarifying offences, need not then need to be read in infringement proceedings.

In administrative criminal proceedings, ambiguous facts listed in the recordings on offering an explanation or other official records were not adjudicated as rigorously. Proceeding on administrative delinquencies has always differed from criminal proceedings by its higher speed, economic efficiency and also by smaller formality and a prohibition to present the witness or the accused an ambiguity with her/his testimony with the record on offering an explanation does not result from any provision of the Act No. 71/1967 on Administrative Proceedings subsequently amended. This Act does not prohibit the possibility to read official records on offering explanations of the witness or the accused written according to the provisions § 60 of the Act No. 372/1990 on Infringement subsequently amended, or other official records, as in administrative punishment this procedure was regarded as admissible. In older jurisprudence, official records were accepted as documentary evidence able to fully substitute also a testimony of a witness. In the last years we have seen a development in the decision-making of the courts, which lean towards the idea that official records have only a character of **primary information on the matter**, but cannot be regarded as evidence. An official record is still recognised as basis for decision. The strength of this basis, however, equals in administrative proceedings the strength of **supporting evidence**. This means, that the accused cannot be theoretically found guilty only on the ground of official recordings, resp. records on offering explanations. It is necessary to add to this a testimony of an official person (e.g. a policeman), who wrote the official recording or the record on offering explanation.

This means that information from official recordings or records on offering explanation, should be verified by the administrative agency by obtaining and executing evidence resulting from the official record, e.g. witness testimony of policemen or further relevant individuals, whereas the official recording should not be read during the questioning of witnesses, as it could negatively influence the credibility of witness testimony. In case of ambiguities between the testimony and the recording, during the testimony it is possible to ask questions, clarifying these ambiguities.

For illustration we can use a citation from relevant jurisprudence: "*Official record written before the commencement of criminal prosecution is not possible to be used as evidence in the proceeding in front of a court (**ÚS 165/2004**)*". If we were to relate this to administrative

punishment, then official recordings written before the commencement of an administrative proceeding are not able to be used as evidence in oral proceeding. This means that a witness, or accused have to be unambiguously subpoenaed to the oral proceeding, which takes place only after telling the accused about the commencement of the proceeding and the execution of their hearing.

In case of protocols on the outcome of revision written by the execution of official expert supervision, it is necessary to note that these can be also used as evidence material in administrative or infringement proceedings and the administrative agency acting in the respective matter can read the individual revising findings to the accused or the witness. However, it is important to note that the protocol on the outcome of revision should not be the only evidence material, it is necessary to begin a proceeding and execute oral hearing in the matter of the infringement or other administrative delinquency and the accused has to be informed about that which revising findings from this protocol on the outcome of revision are a subject of proceeding, and for the violation of which legal enactments administrative responsibility is drawn against her/him. Then the questioning of accused, potentially witnesses should begin.

Official records or recordings on offering explanation are applicable also as bases for issuing an injunction according to the Act No. 372/1990 on Infringement subsequently amended or other specific acts, e.g. according to the Act No. 474/2013 etc. Injunction proceeding is a shortened form of proceedings, the outcome of which is an injunction on issuing sanctions. After opposing, the injunction is annulled from the outset (ex tunc) and a classical proceeding on infringement, resp. on other administrative delinquency begins. In this proceeding, the injunction is the first act, thus we cannot talk about a formalised substantiation and the application of the principle of proximity in the injunction proceeding. However, in an ordinary proceeding, which follow after issuing an opposition towards the injunction, an oral proceeding has to take place, and that without a difference, whether an infringement or another administrative delinquency is concerned according to the above listed Acts.

Conclusion

In conclusion I would remark that the demandingness of the work of employees in Civil Service and self-administration grows. In the process of judicialization of administrative law and the penetration of the principles of criminal procedure and substantive law into administrative punishment, the demands on the employees of administrative agencies, who realise administrative proceedings and issue decisions in the matter of administrative punishment, are increasing. Besides infringement, there is no special legal form for

proceedings on other administrative delinquencies, and that also holds for the field of substantiation. In substantiation, we proceed according to general legal regulations, which are included in the provisions § 34 of the Act No. 71/1967 on Administrative Proceedings subsequently amended. This Act, however, does not sufficiently make provision for the specifics of administrative punishment.

Considering that neither the Act No. 71/1967 on Administrative Proceedings subsequently amended, nor the Act No. 372/1990 on Infringement subsequently amended, do not include any specific definition of the term substantiation, nor do they define the process of substantiation or the individual phases of substantiation, in this article I have sought to lay down the procedure of employees of administrative agencies in the field of substantiation.

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Article 2 :
Jozef Kišš, MA

International transportation and its specific features

Introduction

The importance of the international transportation has increased greatly in recent years, especially as a result of the increase in the volume of international goods exchanges and the tourism growth.

Production, trade and consumption cannot exist without transport. From the transport a separate sector of the national economy was created as a result of the social division of labour. The basic transport function is to overcome spatial and time differences. Almost all countries of the world are currently involved in international trade. (Schneider, 1991).

In the transport economy we distinguish two terms: transport and transportation. Transport can be characterized as an activity, which ensures the transport of goods and passengers by means of transport vehicles by road. It takes place in space and time. The transport operator is the carrier as one of the transport relationship participants - the transport intermediary. He/she is usually the owner of the means of transport and provides transportation services (creates offer).

By the transportation, we mean the activity by which goods (or things) are moved by means of transport vehicles from the departure place to the destination place. The carrier is the owner of the transported goods. He/she creates demand, purchases transport services. He/she may be the sender or the recipient. (Michník, 1998).

Intermediaries are an important part of international transportation. Depending on the functions and responsibilities of these intermediaries, we distinguish different types of transportation intermediaries. These entities are usually organized in national and international organizations. On the territory of the Slovak Republic, it is the Association of Logistics and Freight Forwarding of the Slovak Republic, which was established in 1993 and brings together the individual Slovak freight forwarding companies. The international freight forwarding organization is also the International Federation of Freight Forwarders Associations FIATA. Within the international transport organizations, IRU, UIC, IATA, WACO, IMCO and others ones are also involved in the freight forwarding.

The basic terminology of this chapter represents the terms transport, transportation and transportation services in connection with the adjective's public, foreign and international and therefore it is necessary to give their clear content definition.

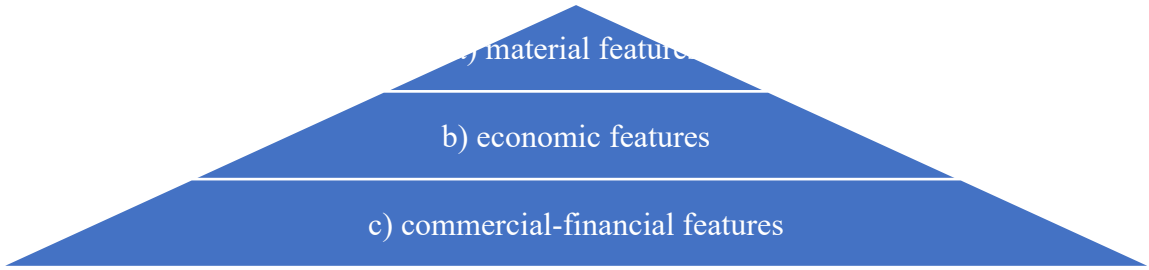
The term transport can have two slightly different economic meanings, both of which are

correct. In the first case, transport means a sector, a branch, a means of transport in relation to national economy and macroeconomic context. In the latter case, it is the organized movement of transport vehicles along transport routes, that is to say, a business economy sector with microeconomic links. It represents a commercial part of the transport, which means the organized movement of transport vehicles with paying passengers in the passenger transport or the movement of loaded vehicles on the road for the remuneration in freight transport. The terms transport and transportation are the basic terms of the sectoral economy.

Public transport is a passenger or freight transport realized on the basis of a transport contract under the Commercial and Civil Code.

The term **transportation service** is, in terms of substance content identical to the term of transportation, economically it belongs to the category of services and is used with regard to the market, market mechanism and trade.

The characterization and assessment of the foreign and international transportation and transportation services can be done on the basis of:



Picture: The features of the international transport

Source: Svatoš, 2009

a) Material features, which represent the fact, that passengers or objects are transported in domestic or foreign transport vehicle across the border of at least one country, moving from the domestic transport network to a foreign and international transport network.

Foreign transportation or transportation service has a place of departure or destination usually in the domestic territory and international transportation, or international transportation service is always associated with transit.

Public international transport is a transport by a transport vehicle from a place in the domestic territory to a place abroad, from a place abroad to a place in the domestic territory and from a place abroad through the domestic territory on the basis of international transport contracts and conventions.

b) Economic features arising from the need to relocate goods within the trade.

c) Commercial-financial features which ultimately determine the position of the transportation service in the trade and payment balance sheets.

Based on previous statements, we can state that a foreign transportation service is:
- export, if it is a product of a domestic transport company (foreign carrier),
- import, if it is a product of a foreign transport company (foreign carrier),
- transit, in the case of transport under customs control, whereas the transit procedure is being treated as a special customs transit procedure for each transport department separately,
- re-export, if it is incurred by the importation and subsequent exportation of a transportation service and it a product of a domestic or foreign trader with that service. (Svatoš, 2009).
The basic business operations in international transport are the export, import, re-export and transit of the transportation service.

The provision of the public international transport is carried out on the basis of:
- an international contract on the transportation of goods,
- contracts on the lease of transport vehicles,
- contracts on the operation of the transport vehicle

The basic structure of the international transport contract consists of:
transport conditions for the realization of transportation service, transportation time-limits, transportation costs, payment method and complaints

Picture: The structure of the international transport

Source: Hansedová, 1997

Selected important characteristics of the international transportation contract are:
- the carrier always concludes the transportation contract with the transporter as a consignor directly or indirectly through the forwarder, mediator or intermediary,
- in the transportation contract the carrier undertakes to transport the goods with professional care in accordance with the agreed transport conditions and transport times at the agreed transportation price,
- the carrier undertakes to deliver the goods under the agreed transportation conditions, to pay the transportation fee and to ensure the receipt of the goods at the destination place,
- the transportation contract does not have to be concluded in writing, the proof of the conclusion of the transportation contract is the transportation document. The only contract, that has to concluded in writing is the Charter Party,

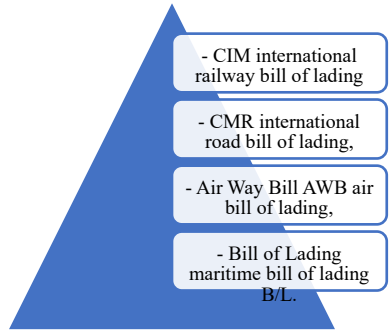
- the transportation contract originates either at the time of receipt of the shipment by the carrier (proof according to the date of issue of the transportation document), by the future transportation agreement (booking and binding reservation) or by implicit action (for example, by the arrival of transport vehicles by the carrier to the loading point)
- in order to secure claims arising from the implementation of the transportation contract, the carrier has a lien to a shipment to be transported. If there are multiple liens on the shipment, the lien that originated latter has a priority over the earlier lien, while the liens of the carrier have priority over the liens of the sender (occurring in the case of issuing B/L on the basis of C/P)
- for the individual transports the international (multilateral) transport contracts to which the Slovak Republic is a signatory apply,
- special transport regulations for each transport department also apply - transport rules which regulate very the transportation condition in detail, transportation rates, transportation time-limits, responsibilities and complaints,
- each transport department has its own conditions of transportation and transportation contract drawn up, which needs to be studied. (Hansed, 1997).

In international transport, documents play a very important role. They have not only informative, but also legitimation and evidentiary value.

1 Transportation documents

International transport is carried out on the basis of a transportation contract concluded between the carrier and the transporter. The proof of its conclusion is a transportation document - a bill of lading. It is a form of a given pattern and dimensions according to the concluded international agreements or treaties. The subject of a transport contract is a shipment - all the goods that are shipped on a single transport document. In the maritime transportation, the marine bill of lading is issued. The transportation document is at the same time the proof of receipt of goods for transport.

Documents in international transportation:



Picture: Documents in international transport

Source: Beneš, 2004

By the confirmation of the bill of lading begins the carrier's responsibility for the goods accepted for transportation. The responsibility ends with the confirmation by the recipient on the duplicate, that he has received the goods.

Evidentiary function belongs in the legal sense to all documents used in foreign trade. Thus, foreign trade documents are always the evidence documents or only the evidence documents. Thus, for example, a weight certificate proves a certain account (proof sheet), warehouse certificate proves the storage period (also the evidence document).

Transportation documents represent the basic documents for securing the delivery of goods. They contain a confirmation from the carrier on the receipt of undamaged, full shipment to a specific date and place. On this basis, the carrier will provide a promise to transport the shipment as stated in the document. Thus, the transportation documents become the evidence documents. The inner nature of the shipment is not a subject to evidence.

All the documents used in foreign trade has the function of fulfilling the contract in the economic sense. This is documented either by the proper fulfilment of the contract, a bill of lading or a maritime bill of lading, or the fulfilment of special contract terms, such as the origin of goods, degree of speed or chemical composition.

Some evidence documents have a blocking function, because only the owner of the document may require a certain fulfilment from the debtor.

The blocking function of the transportation documents prevents the sender from affecting the shipment when the original (their document version) has already been handed over. If he/she uses the document in the context of the payment system, he/she will also transfer his/her copy to the buyer or the bank and loses the dispose right of the shipment. Thus the owner of the bill of lading may for example predispose the goods, while the ownership of the commercial invoice does not yet entitle him/her to a payment claim.

Legitimate function cannot be confused with the blocking function, although their boundaries are not always recognizable. The legitimate function represents the claim to deliver things, the blocking function, on the other hand, only the possibility of limiting those dispositions.

The function of a bankable paper has the documents that attribute all of the guaranteed rights from the document to the owner. Thus, for example, the only person entitled to transportation insurance is the transportation insurance owner only, the sole right of disposal of the goods belongs to the owner of the maritime bill of lading, the bill of lading or the warehouse certificate. Not all bankable papers in foreign trade are also traditional papers, which are also referred to as the disposal papers. The transfer of a movable thing requires the handover of that thing. If there comes to a handover of a paper instead of the handover of a movable thing, that paper is represented in that case by a movable thing. Bankable papers that always guarantee the right to issue goods are called traditional papers. A maritime bill of lading, a bill

of lading and a warehouse certificate have traditional function. (Benes, 2004).

The use of transportation and forwarding documents in international trade is intended to simplify international business activities as well as to minimize the risks associated with this activity.

In particular, the risks are related to the:

a) delivery of the goods in due time (compliance with the delivery time), in the proper quality (not damaged) and good (complete) – delivery risk,

b) the sending of the goods by the seller to the third place when the goods have already been paid – delivery risk,

c) control of the transport conditions – delivery risk,

d) the payment of the agreed purchase price – payment risk,

e) simplification of the transfer of ownership,

f) allowing of the funding.

When determining the origin of the goods, the goods originating in a particular country are considered to be wholly obtained in that country. For example, raw materials harvested in this country, crops produced and animals born and grown in that country and the alike. In a simplified way, we can say, that those are the goods at the production of which only one country participates. The original goods can also be considered to be the goods which were manufactured from raw materials, semi-finished products and components imported (originating) from other countries. In this case, the country of origin will be the country in which the last (final) processing operation was carried out.

For the imports of goods with non-preferential origin the certificate is not usually required. If it is required, the facts that prove the origin of the goods must be stated in it and it must be issued by the competent authority of the country concerned (e.g. the trade or economic chamber of the exporting country). The goods with non-preferential origin are the subject to customs duties under the General Agreement on Tariffs and Trade (GATT).

The preferential origin of EU goods is attributed unilaterally or on the basis of the international treaties. These are preferences exceeding the Most Favoured Nation range. The preferential rules of origin are set out in each preferential agreement or unilateral decision.

The preferential rules of origin of the goods are basically the same as non-preferential rules, but they are supplemented or specified by sufficiently processed or machined products that meet the origin criterion when changing the tariff classification (the so-called tariff leap, which means that the imported component or product was included in another commodity classes on the basis of the first four digits as an exported product) or the value added criterion

or the specific operations criterion.
In the case of preferential rules, the cumulation of the goods origin may also be used. Raw materials, semi-finished goods, finished products can also be imported from another country or countries for the production of that product.

We distinguish the following types of cumulation:

- bilateral, on which 2 partner countries participate,
- diagonal or "pan-European", which is used between the countries of the European Union, the European Free Trade Association (EFTA) and Turkey,
- full, which is implemented within the European Economic Area (EEA), between the EU, the overseas countries and the territories of the EU and the developing countries in accordance with the relevant agreements.

A well-arranged orientation in the rules of international trade in the delivery of goods and the related transfer of the duties that was adopted by the International Chamber of Commerce in Paris is a set of international interpretative rules for the delivery clauses INCOTERMS.

Delivery clauses represent short formulations that govern the mutual rights and obligations of the seller and the buyer.

The clauses clearly specify:

1. the place where costs are passed from seller to buyer, where the seller is obliged to deliver the goods at his own expense.
2. the place where the risks pass - the danger of possible damaged goods from the seller to the buyer (the risk of responsibility for material damage).
3. who is responsible for the procurement of transport and documents, or the insurance?
4. who is responsible for the procurement of import or export formalities (e.g. obtaining a license, payment of customs duties)?

All Incoterms clauses are based on the same principle. The danger of loss or damage to the goods passes from the seller to the buyer when the seller has fulfilled their obligation to hand over the goods. Similarly, the cost sharing takes place at the moment of delivery. The costs that were incurred before the seller fulfilled their obligation to deliver the goods shall be borne by the seller. The costs incurred after this time shall be borne by the buyer. In general, the following principle applies: the "longer" the delivery condition is, the greater part of the

costs paid by the seller are, the higher the price can be achieved.

In the overview you can see three columns. The first column shows the country of export, the third column shows the country of import. The column between them represents the main transportation. The vertical lines are imaginary boundaries. The first one is the border of the exporting country and the other one represents the border of the importing country. At each entry, you can see a pair of arrows. The full arrows pointing from left to right indicate the obligations of the seller. Outline arrows pointing from right to the left indicate the obligations of the buyer. The place where the arrows meet indicate the place where the goods are handed over, where the risks pass, who pays the transportation and who arranges the export and import formalities.

If the full arrows end up beyond the seller's boundary, the seller is required to arrange the export formalities (customs negotiations for export). If the full arrows end up beyond the boundary of the buyer, the seller is obliged to arrange at his own risk and cost the import formalities (customs negotiations for import). Under the export and import formalities, we understand the licenses or other official permissions and all customs formalities associated with the exportation and importation of goods, possibly with transit through another country. This means securing the customs clearance, payment of the customs duties, taxes and other official charges, as well as the costs associated with customs clearance, payable on the export and importation of goods.

There is a single clause in group E: out of the plant. The seller only gives the goods available to the buyer in his plant.

The translation of the word "Free" means single, on the loose, unpaid. For group F clauses, the seller only pays for the shipment transportation until its handover to the carrier (paid to the carrier), from that point he/she neither pays for the main transportation nor is responsible for any risks (they are free - free of risk and costs). He/she provides export-related customs procedures.

Letter C means that the seller bears some "Costs," the transport costs even after the critical point in which the transfer of the risks takes place. He/she undertakes export-related obligations.

Letter D means that the goods must reach the "destination", that means the designated place of delivery. These are delivery clauses - delivering the goods to the agreed place/point. In addition to the DDP clause, the customs formalities for import are arranged by a party located in the country of import, i.e. the buyer.

The transition of the risks and costs

For each clause, there are full arrows shown in two rows. The first row represents the

risks (dangers), the second one represents the costs. In addition to group C clauses, full arrows end at the same point. This means that at the same time there is a transfer of risks and costs between the seller and the buyer. The situation is different for the case of Group C clauses.

The first arrow ends at the point, where the transfer of risks takes place (handover of the goods for the transportation).

The second arrow ends at the point where the transfer of costs takes place. To this point, the seller is obliged to pay the costs resulting from the transport contract. The transfer of risks takes place sooner than the transfer of costs.

A customs procedure is an irreplaceable part of the international transport.

Every importer is obliged to ensure the customs procedure of the imported goods after its arrival in the customs territory of the state. If the importer arranges the customs clearance in his/her name and on his/her behalf, he/she shall be the declarant. His/her task is to fill in the form of the uniform customs declaration and to attach the relevant documents: foreign supplier's invoice, bill of lading – depending on the type of transport used (road, rail, air, etc.), certificate of origin of goods, certificate of health hazards and quality of goods for the food products, Phyto pathological certificate or rather veterinary certification for selected agri-food commodities and live animals, or other documents. In addition, the importer is obliged to allow the customs authorities to inspect the imported goods. (Smreková, 2007).

The customs inspection bodies will assess and report to the declarant the amount of the customs debt. The customs debt will be calculated on the basis of the price actually paid or payable for the goods to which the costs of transport, insurance and handling of goods, brokerage commissions, etc. are added. The price provided in a foreign currency should be converted to Euro. At the end, the customs authority places the goods in customs regime. Only after the goods are put into free circulation they can be freely disposed of.

Another case occurs when for some reason the goods are not released for free circulation but stored in a customs warehouse. This may happen if the importer has not provided all the required documents for the imported goods or it is not clear from the documents who is the importer of the goods.

The importer must, in his/her own interest, acquire and submit the relevant documents as soon as possible or fulfil the prescribed conditions for the release of the goods. In the customs warehouse, a fee is payable according to the length of storage of the goods on the basis of the tariff laid down by the Decree. (Korčmáros, 2003).

International trade operations involve at least two customs procedures, one for the export and one for the import. An export license may be required when the export occurs. Taxes and duties must be paid when importing. When implementing the Incoterms, we have identified who is responsible for export and import formalities when selecting a particular

business condition.

One of the tasks of the customs authorities is to ensure that only the products which fulfil the technical requirements are released to our market. The importer is therefore required to demonstrate that the imported product meets these requirements. He/she can do so by writing a statement of compliance, obtaining a certificate of conformity (issued by a licensed test facility) or a conformity mark (C STN). In the case of irregularities, the customs authorities will inform the relevant institutions (the Office for Standardization, Metrology and Testing, the Slovak Trade Inspection, the State Food and Veterinary Administration, etc.) and will not release the goods to the market.

In order to make the handling at the border customs office quicker, the customs clearance procedure begins at the inland customs office. An exporter may apply for customs clearance outside the customs territory. It should specify the approximate quantity of goods, the combined nomenclature type and the time and place of the procedure.

The declarant is obliged to provide the necessary documents, to prepare the goods and the means of transport in which the goods will be transported.

The declarant submits an export declaration JCD, from which he/she uses the sheets 1, 2, 3 – export JCD.

The transport of goods by rail is currently the main continental international transport mainly because of its mass, regularity, reliability, continuity and adaptability. Rail transport carries out cost-effective transportation for the parties involved and can be suitably combined with other modes of transport. The transition between the two countries' railways is usually smooth, even though there is sometimes a need for transhipment to the so- transit stations due to the disruption of the neighbouring railways.

On the territory of the Slovak Republic, such a transit station is for example Čierna nad Tisou in the direction to Ukraine. If the crossing of state borders takes place without losing the character of national transport and the partner railway ensures the transport operation continuously without interruption, we call it privileged (continuous) traffic. Another transportation is the so-called money transport, which only takes place in part in the territory of a foreign country and returns to its home territory. In the cases mentioned above, the shipment is carried out on the basis of specific agreements between the states concerned.

The international organization for the coordination of international railway transportation is the UIC (Union Internationale des Chemins de Fer), i. e. The International Union of Railways, which started its activity on December 1st, 1992. At present, it is the world's most important rail transportation organization. It is a non-governmental organization whose members are the railways of all the states of Europe, the states of the

Middle East, the Maghreb and the states of North and South America and Japan. In addition to the railways, some international railway companies which operate for example the transportation in sleeping carriages, transport companies providing urban or suburban services are also affiliated members.

The purpose of this organization is above all to:

- promote mutual co-operation and normalization,
- provide a framework for the development of international rail transport,
- apply railway positions at the international level.

In its activity, the UIC develops strategic documents on transport policy and rail transport, framework agreements for international transport, standards and rules, statistical materials and documentation, reference publications. Other UIC activities include sponsorship of technical research conducted by the **Office for Research and Experimentation (ORE),** which became the **European Railway Research Institute (ERRI)** in 1991 and the organization of international conferences.

Like other types of international transport, rail transport has its own international arrangement that unifies the procedures for its implementation. Basic standards governing the international transport of goods include:

- **International Agreement on the Carriage of Goods by Rail - CIM,**
- **Convention on International Carriage by Rail - COTIF**: which entered into force on May 1st 1985 and, by its adoption, certain CIM articles have been amended or supplemented according to the current needs of the international rail transportation.

This mode of transportation is one of the youngest and its development is closely linked to the development of individual and bus transport and the associated road network development. This type of transport is particularly advantageous due to its operability and its ability to combine with other types of transport, especially rail and water. In connection with international road transport, we mean especially the international truck transportation.

Truck transportation

The course of truck transportation is organized by the **International Road Transport Union (IRU)**. It was founded in 1948 in Geneva. This organization became the UN consultative body in 1949. According to the statute of this organization, its main goal is to concentrate and represent the trade interests and the interest of the agricultural, combined and international road transport of passengers and goods. In its beginnings, IRU's work has been cantered on

defending the interests of some European countries, but has gradually expanded and is now globally active. The IRU has approximately 150 active members (national carrier organizations) and affiliates in 55 countries. As a spokesman for road transport, the IRU maintains close links with other international organizations such as the European Union, the Council of Europe, the **European Conference of Ministers of Transport (CEMZ)** and other international organizations. In addition, it is the international guarantor organization in the TIR system (under the United Nations Conference on International Transport under the TIR Carnet) that was established in 1959 under the auspices of the EEC OSN. The first tasks that this organization has set up to simplify customs formalities in international road transport, resulting in the TIR Carnet Convention.

International conventions on international truck transport have been developed through the IRU, the most important of which are:

- the Convention on the International Carriage of Goods by Road – CMR of May 1956, under which a separate transport contract, the so-called " CMR Bill of Lading must be issued for each shipment,
- single accompanying and customs document for the transportation of goods by road – TIR Carnet,
- ATA Carnet,
- ESC Carnet.

Air transportation

Air transportation is one of the youngest transport sectors. Its boom is not only a matter for airlines, because besides the new demands for development of own transport vehicles and for increasing the capacity and economy of the fleet, the demands for equipment of airports, mechanization, automation of loading and unloading equipment, construction of containers, pallets and other transport resources also grow. The attention is focused on the effective engagement of air transportation into the effective implementation of multimodal transportation in relation to land or maritime transport vehicles.

The main advantage of air transportation compared to other transport sectors is speed. This is important for these transport cases:

- goods, its value for use is reduced or totally impaired by longer transport, such as commercial and technical documentation, printing, film records, emergency documentation, food, flowers, fruits and vegetables,
- when delivering the goods that are physically unstable but whose value is backed by an immediate, timed delivery such as supply to fairs, sporting events, or fashionable samples,

- in the supply of spare parts, medicines, transplants, live animals, fish, rescue materials and equipment for natural disasters, etc.

The part of the air transportation in the total transportation is the lowest. Thanks to its speed, it is very convenient for the transport of fast-pouring foods, medicines, spare parts, works of art, as well as for transportation to distant consumer markets. However, transport costs are the highest. The successful development of international air transportation is closely related to the knowledge and timeliness of national regulations and tariffs. The basic resource for air carriers is the set of rules and procedures known under the **TACT - The Air Cargo Tariff**, where a separate section is devoted to information on charges for export, transit or import shipments.

2 Modern Transport Systems

The increase of efficiency and speeding up of the transport of goods requires the use of various means of transport. This fact becomes even more important because of the congestion of transport lines and the pollution of the environment. The starting point is the integration of the road and rail transportation, inland waterways, maritime and air transportation. In this context, we are talking about the combined transport.

Combined transport can be characterized by:

- the speed of delivery of the goods from the manufacturer to the consumer at its minimal damage while preserving the quality of the products,
- the regulation and high reliability of the transportation process,
- minimalization of the demands for hard and manual work in the preparation of goods for transportation in the selected companies,
- intensification of transhipment in the transport of goods in larger transportation units given as pallets, bundles, standard ISO containers, etc.

The prerequisite for the successful combined transport is the coordination of transport work on the following types of transport, the improvement and organization of the transportation process, the transhipment work on the basis of knowledge of the combined transportation participants, the growth of responsibility, the implementation of the concluded agreements by the clientele and the economic interest in the regularity of the transhipment and the regularity of production, i.e. the coordination and regularity in the relationships of all participants in the combined transportation systems, i.e., production – transporter – subsequent means of transport – consumer.

Conclusion

The provision of import and export is associated with a range of different activities that are a prerequisite for the successful course and completion of foreign trade operations. Among them the international transportation has a significant place. Its mission is to deliver the goods to the customer under the terms that were agreed in the purchase contract (at the specified time and place). At present, specialized intermediaries, i.e. forwarders, who provide also other services related to foreign-trade operations, ensure the transportation.

The creation and imposition of the customs duties is linked to the development of trade. We can characterize the customs duty as a levy collected when the goods cross the customs border of the country. In the past, it has been associated with a toll. The toll was a charge levied for the use of roads, bridges, harbours and markets. Fees were also paid for the goods carried and the protection of the buyers. They were originally only of financial significance, that means they served as a source of state revenues or royal treasury. Over time this importance has fallen, and the importance of the protective function of duty has increased.

Uniform duties in today's understanding have evolved in the United Kingdom in the 17th Century and have progressively been introduced in several countries. With the development of the economy, liberalist tendencies are promoted in international trade, trying to remove barriers to trade. The role of the customs duty as a tariff has been decreasing and the role of non-tariff barriers is increasing.

In the context of integration, the European Union has entered the sphere of a free trade, that is to say a cancellation of duties between the individual member states, to the customs union, which means common duties vis-à-vis non-member countries and the monetary union, the single currency. This has increased trade between the member states. Customs duties are not levied on goods from EU countries. When it comes to the import of the goods from outside the EU, the uniform customs rates of the European Community tariff are applied. This means that all EU countries apply the same custom duties on imported goods from non-member countries.

The aim of the final paper was to explain and approach the terms of the international transportation and its specifics in customs procedures. The aim of the final paper was therefore fulfilled**.**

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Article 3 :
Norbert Polievka, MA

International trade, legislation and customs policy

Introduction

Nowadays, there is no country, which would not import or export goods. This is one of the most important aspects of the economy. For each country it is important that the export prevails over the import so that the trade balance is applied.

International trade also ensures enough goods that can be imported by a country, in which the particular commodity is not available.

The aim of this article is to look closer at the legislation that is closely related to international transport and logistics as well as to clarify the issue of customs and customs policy.

Another aim of this article is to approach the functioning and division of state administration bodies in the field of customs in the Slovak Republic.

International trade as part of the reproduction process has an irreplaceable place in the economy of every state.

The more economically developed the country is, the greater prerequisites it has to engage in international labour distribution via international trade. Involving the country in the international division of labour extends its export and import possibilities, which ultimately results in the saving of national labour in economic growth.

Nowadays almost every country in the world depends on the international division of labour, which is reflected in the specialization and production cooperation. International trade is the result of an international division of labour. The extent of the country's involvement in the international division of labour depends on natural, historical, technical, economic and political conditions. Countries are economically dependent on each other more and more. Mutual economic co-operation between countries results in economic interdependence.

The essence of economic interdependence is the mutual dependence of states from economic cooperation. The consequence is that even unilateral measures and changes in the international position of a particular country affect other countries either in a positive or negative way and vice versa.

Another consequence of the international division of labour is integration. We understand it as joining, uniting elements, parts, into one larger unit. International economic integration is the process of gradual interconnection, adaptation and convergence of individual national economies (within the individual business entities), their economic structures to a new economic structure of the emerging regional economic complex.

The international trade includes the activities of all business entities, legal entities and natural persons who carry out the export and import of commercial goods.
International trade statistics generally include the goods that enter the Slovak Republic and are imported for domestic consumption as well as for processing with a subsequent re-export. The total export includes the goods that permanently leave the territory of the Slovak Republic or the goods that leave its territory in order to be processed and are subsequently imported back.
Since the accession of the Slovak Republic to the European Union (EU), i.e. since May 1st 2004, the foreign trade statistics consist of the data from EXTRASTAT and INTRASTAT systems. The EXTRASTAT system provides information on the exchange of goods with non-EU countries (EXTRA EU) on the basis of the documents which are required for customs clearance. The INTRASTAT system contains information on exchange of goods with the EU Member countries (INTRA EU) as partner countries, that are obtained via statistical surveys. (Šupín, 2007)

The foreign-economic policy of the state is part of the state's economic policy and forms a set of principles and measures by which the state directs the foreign trade.
The foreign trade policy of the state has specific goals in each period that are based on the internal and external conditions in the particular type of trade. The set goals of foreign trade policy are the guiding instruments that the state keeps at its disposal.
The goal of the foreign trade policy of the Slovak Republic is to win recognition of our products on the markets of the European Union. This, of course, requires the realization of structural changes in manufacturing companies. In the context of the import policy, it will be desirable to direct the import of the companies towards importing advanced machinery and technology by the means of which the structural changes in the economy are realized. (Kretter, 1997).

International trade and legislation.

Irreplaceable parts of the international trade are the rules established in various legislation and international conventions. In the following article we present the selected legislation that deals with the international transport and logistics.

Integrated Tariff of the TARIC Community - Tarif Integre communautaire

It represents a summary of the tariff (customs) and non-tariff trade legislation applied by the EU for the import and export of goods at the external borders of the EU with non-member countries. These are autonomous measures applied within GATT/ WTO, preferential agreements (e.g. Generalized System of Preferences), anti-dumping measures. Non-tariff

measures include quantitative restrictions, surveillance, restrictions on the movement of goods, control, special confirmations, certificates.

TARIC contains a complete EU customs code, but is not a separate legal regulation. In the event of a dispute, only the Common Customs Code will be accepted by the court as evidence for the determination of the amount of the customs duty. Within the frame of the EU's Common Commercial Policy the individual EU member countries participate on setting the TARIC by participating in specific working groups within the European Commission. It is administered by the Directorate-General for Taxation and Customs Union with the seat in Brussels.

Council Regulation (EC) No. 3285/1994

- on common rules for imports from the third countries, regulates the procedure for the investigation and the introduction of safeguard measures against excessive imports. The initiative for investigation complaint is undertaken by domestic producers whose excessive imports cause or are likely to cause serious damage. The European Commission will perform the investigation. It analyses the development of import volumes and import prices as well as their impact on the economic situation of the domestic producers.

Depending on the seriousness of the disclosed facts, the EC may, at the end of the investigation:

- cancel the investigation without the adoption of any safeguard measure,
- propose monitoring of the imports (statistical monitoring ex post or ex ante)
- propose the introduction of safeguard measures if the products are imported into the EU in such increased quantities and under such conditions that this causes or may cause serious damage to domestic producers. In the case of the imports from WTO member countries, the regulation will be adopted against all of them (erga omnes). Such a measures are quotas:

Monitoring of the imports

The European Commission may propose the introduction of an import monitoring system towards the member states, either after import (ex-post) or before the import (ex-ante import). Monitoring will be introduced if the import trend indicates a threat to domestic producers of certain products. These are the methods of monitoring:

- Simple monitoring – a license is required for the imported goods. In the Slovak Republic, the business entity can obtain it on the basis of a request submitted on the relevant form and together with other required documents at the Ministry of Healthcare of the Slovak Republic.

- Double monitoring – an import license is required. In addition to the standard documents, the export balance sheet and the original of the certificate of the goods origin issued by the competent authority of the exporting country must be attached to the application. This is the monitoring of goods both in the exporting country and in the importing country.

- Triple monitoring - an import license, an export license (from the exporting country) are required and the exporter is also required to electronically report all data from the export license to Brussels.

A safeguard measure is introduced when the imports are made in such increased quantities and under such (price) conditions, that they cause or may cause serious damage to EU producers.

Safeguard measures against non-WTO members

Council Regulation (EC) No. 519/1994 on the common rules for imports from non-member countries of the WTO regulates the procedure for introducing protection measures against excessive imports. These are specific rules that apply on the imports from some non-market economies (i.e. state-owned foreign trade monopoly). In the investigation of the occurrence of damage the specificities of the management of the economies of these countries are taken into account. The requirements for the issue of import licenses may be more strict, the period of validity of the license may be shorter or where appropriate, additional restrictive requirements may be laid down. (Svatoš, 2009).

Customs policy and customs

The imports from non-EU member countries and the exports to these countries are primarily subject to the EU customs legislation. Customs regulations are special EU regulations, international treaties, laws and other generally binding regulations governing legal relations in relation to import, export or transit of goods.

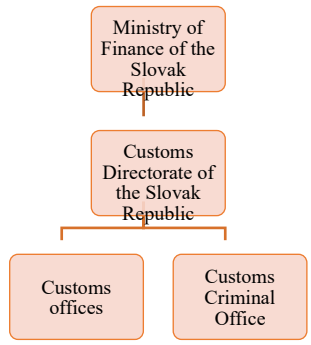
The volume of the goods passing through the customs boundaries of the countries is increasing as the result of the development of the foreign trade activity of the companies. Each state seeks to secure its records, control and protect its economic interests. These activities form the basis of the customs policy, which is governed by the customs regulations. The customs legislation in the Slovak Republic, which is a member state of the European Union, is regulated by the European legislation and by the Slovak laws. The most important of these are: EU Customs Code, EEC Council Regulations and Act No. 199/2004 Coll. Customs Code as amended.

1

2 Customs government bodies in the field of customs in the Slovak Republic

The state implements the customs policy through the state administration bodies which are responsible for the application of the customs legislation. The competences of the customs bodies are defined in the Act no. 652/2004 Coll. on customs government bodies.

Customs government bodies:



Picture 12 Customs government bodies

Source: Šupín, 2007

MF SR - is the central authority of the state administration for customs, which:

- develops the concept of customs policy and customs,
- prepares draft laws and other legislation,
- develops drafts for international treaties and agreements on customs.

CD SR - is a budgetary organization with the seat in Bratislava, which:

- manages and controls customs offices and Customs criminal office,
- performs and completes the tasks for the fight against the illegal import, export and transit of high-risk materials,
- coordinates the activities of the customs offices in the application of the rules of the goods origin, ensures the collection and processing of information for the customs statistics.

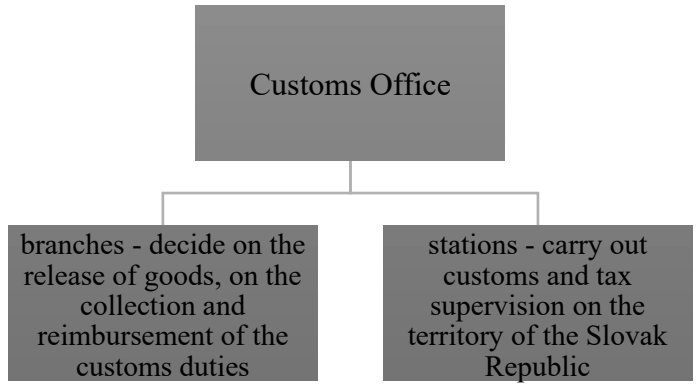
CO – carry out their activities throughout the territory of the Slovak Republic, while:

- decide and perform the tasks in the customs supervision,,
- decide on the securing of the goods, on its confiscation, security and to forfeiture,
- decide to reimburse customs duty or to forgo customs duty,
- assess, collect and record customs duty and perform other tasks.

CCO – carry out their activities throughout the territory of the Slovak Republic, while:

- fulfils the tasks of the central coordination unit,
- provides information systems with the information on facts and persons who have committed offenses in connection with a breach of the customs legislation, it fulfils and performs the tasks in combating the illegal import, export and transit of high-risk materials,
- secures and carries out customs supervision.

The customs office is divided into customs office branches and customs office stations.



Picture 13 Customs Office

Source: Šupín, 2007

The customs office may exercise its competence at railway stations, in ports, at airports, at post offices and at other places, if it carries out entry and exit customs supervision. This is the border customs office. Other customs offices are considered to be inland customs offices.

Picture 14 Customs office division

Source: Šupín, 2007

The Customs Directorate, the customs offices and the Customs Criminal Office form customs administration. The customs administration carries out the supervision of the observance of laws, special regulations, international treaties, at the circulation of goods. It performs tasks in customs policy and customs formalities. It takes measures to prevent unlawful conduct in the import, export and the transit of goods. The area that passed into the competence of the customs administration after the accession of the Slovak Republic to the EU is the area of excise tax administration. The customs administration levies excise taxes on those goods that

are burdened by such taxes (e.g. diesel and petrol, spirit drinks, beer, wine and tobacco products) for the state budget. (Šupín, 2007).

Customs procedure

The customs procedure is based on the customs control. All the goods that are exported, imported or transported through the territory of the Slovak Republic shall be, together with the accompanying documents, submitted for the performance of the customs procedure. The customs procedure consists of the goods identification, the verification of the submitted paper documents that were submitted to the goods, the determination of the customs rate, the payment and the subsequent decision on the release of the goods to the customs regime.

Customs rate

The EU is a customs union. This means that no customs rates or other restrictions apply to the trade within the member countries. In relation to third countries, the same tariffs of customs duty apply. This includes the EU Common Customs Tariff, which is prepared annually by the European Commission. It contains a list of goods and customs rates.

Customs tariff quotas

Customs tariff includes the contractual customs quotas for selected goods. Similarly, to the conventional tariff rates, they are used at the import goods that originates in a country, which the EU provides with the most favoured nation clause.

Customs suspensions

The companies which use at their production imported raw materials, components, products that are not produced in the EU at all or only in limited quantities may apply for the inclusion of this commodity in the list of customs quotas or customs suspensions.

Import payments

In addition to the customs duty rate, value added tax or excise tax is also levied to the customs authority. The sum of the custom duties and taxes forms import payments. The basis for calculating VAT is the sum of the invoiced amount and the customs duty (or the cost of delivering the goods to the place in the particular country).

Securing the customs debt

Securing a customs debt is a necessary requirement at the transit. The customs office may require the customs debt to be secured in several ways: the cash deposit, submitting a

document confirming the deposit of the cash deposit to the bank account of the customs office (so-called deposit immobilisation) through the guarantor. The guarantor may be a bank or other person (authorized by the customs authorities), who undertakes in writing jointly with the debtor to pay the debt up to the amount of the guaranteed amount. If the customs debt is not voluntarily paid within the given term, the above-mention financial means will be used to pay the customs debt, any remaining balance will be returned. The amount of the customs debt for the purposes of the collateral will be calculated from the total amount of customs debt which may be incurred in the transit operation.

Import and export licenses

You surely know the concept of a license as one form of property. Import and export licenses (official import and export permissions) are used as non-tariff means. They represent measures that affect the extent of imports and exports. They are a common way used to protect and control the country's economy.

Import extra charge

It is used as a significant and very effective tool (customs barrier). Its height is determined by percentage (e.g. 10%), the basis for its calculation is the goods customs value. It is usually set for all types of imported goods. It has only temporary character. In our country it was applied between the years 1997 and 2000. Its purpose was to limit the import.

Embargo

It is the toughest measure in import that completely prohibits the import. It may apply to certain countries or certain types of goods.

3 Exemption from the custom duty

The detailed adaptation of the exemption from the custom duty is contained in the **Council Regulation (EEC) 918/83 as of 28th March 1983**, that establishes an EU system for exemption from the custom duty, as well as **§44- §51** of the **Customs Code**. The customs office decides on the exemption from the custom duty. The main requirement is to file an application. In practice, this requirement is mostly oral and is part of the oral customs declaration. Since the list of items covered by the exemption is too extensive, we mention only some examples.

4 The impact of sanctions and embargos on international trade

As an example, we can mention the recent embargo between the European Union and the Russian Federation. By a government decree, the Russian Federation restricted imports of food and agricultural products from the countries that imposed economic sanctions against the Russian Federation, that means from the EU, the USA, Canada, Australia and Norway. The reason for the economic sanctions against the Russian Federation was the annexation of the Crimea as well as the later activities of Moscow in connection with the fights in the east of Ukraine. The Moscow mitigation measure concerned the ban on imports of fruit, vegetables, meat, fish, milk and dairy products from the EU, the USA, Canada, Australia and Norway. From that it is clear that this was not a complete embargo on food imports but a selective ban on imports aimed at the products that were imported into the Russian market mainly from the countries which were affected by the embargo.

The importance of the international trade can also be seen in the fact, that the greater the economic interdependence of two or more countries is, the more stable the relations of these countries are. It is therefore possible to refer to international economic relations as a form of relationships that strongly support peaceful cooperation and reduce the risk of conflict. They also contribute to education growth.

Various sanctions and prohibitions, whether they are partial or complete, directly or indirectly affect the countries concerned, their economies as well as their economic and political relations. In the first place, a large proportion of the embargoed products that are originally placed on the market where an embargo is in force remain on the market of that country. This increases the offer and the country is forced to reduce the prices of those goods. The consequence is that the market is exaggerated with the particular commodity and the need to create new ties and possibilities to export that commodity to another, new market. However, that requires a lot of money, market research and subsequent successful entry into a new market as well as winning the recognition and all these mean other necessary expenses.

Conclusion

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In the individual chapters we describe the important terms. This is primarily the international trade and customs regulations for the individual transactions. The article also mentions the activities of bodies which are important or which are possibly inevitably involved in this topic.

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Article 4 :
Mgr. Martin Zmeko

Forms of Economic Relations, the Development of the European Communities and the European Union (EU), the Character and Features of the European Union

Forms of Economic Relations

The European Union adopted, in 1991, binding principles for the recognition of the new states of Eastern Europe and the Soviet Union, where the basis was formed by reference to the right of nations to self-determination (29).

The followingly established relations had a consequence of foreign trade development, direct foreign investment and the transfer of scientific-technological knowledge. As economic relations and convergence to market economy had been enhancing, it led to a discussion on EU enlargement. Consequently, this process ended in creating conditions and institutional framework for the admission of Central and Eastern European Countries into the EU. The development of economic relations with the Western Countries differed in the particular states. Transformation took place in the economies and in political life specifically. The states of Central and Eastern Europe either successfully went over to market economy and were admitted to the EU as full member states, or they did not have interest in accession to the EU, or they did not meet the conditions of the accession to this integrational unit. Diverse economic relations were established, specific for the respective country, with specific form and course. We differentiate 5 forms:

- International trade – international movement of goods – export, import
- Trade with services – export and import of services
- International movement of capital – international investment
- International movement of labour (migration of labour) – movement of people, who seek employment in another country
- International movement of information and scientific-technological knowledge – information exchange into another country

The world economy gradually began to form and came into being at the end of the 19th century, followed by a phase of fastening relations (1900 - 1918), the interwar phase (1918 -1945), the post-war phase (1945 - 1990) and the current phase (1990 - the present). The methods of phase analysis – each phase can be analysed – the structure of the world economy in that respective phase, fundamental changes towards the previous phase, development of international economic relations.

- The phase of world economy formation and creation – the world economy had been forming since the 16th century (overseas journeys were culminating, overseas trade was developing, the steam engine was invented, manufactures were replaced by machinery). Gradually it came to a situation, that each national economy could produce more, than its population consumed. Conditions of the world economy creation – constitution of states and their national markets, development of international distribution of labour, technical factors (development of transport etc.). The colonial system – at the end of the 19th century, the world economy already existed and it was formed along with the colonial system. The world was divided into advanced countries and colonies.
- The phase of fastening relations – it is not possible to find a territory in the world, which would not belong to anybody. A rapid development of the countries' position in the world economy arises. The world was divided unequally (Great Britain, Portugal, Spain had large colonies and Germany and Russia had less colonies). Disputes about the redistribution of the world arose, as well as national problems – First World War.
- The interwar phase – rapid development in the 20th century. The Soviet Union – centrally planned economy – the world economy is not a united market economy. Gradually, further 15 states joined the Soviet Union (it was a new state unit, where a process of transferring market economy into centrally planned one began). The Soviet Union was the first country, where the centrally planned economy began to be generated, and this represented 1/6 of the world (the Soviet Union + 15 states) + Mongolia, which also changed over to centrally planned economy. The world economic depression arose in the USA (1929-1933). It had catastrophic impacts on all countries, unemployment rose – it was an impetus, why the state should interfere into the economy – diverse studies were thus created: J. M. Keynes – in the 30th he published his General Theory of Employment, Interest and Money. F. D. Roosevelt – New Deal – he presented his economic programme.
- The post-war phase had two stages: 1. stage: 50th and 60th and the 2. stage: 70th and 80th. The first stage was characterised by the creation of two world economic systems – after the pattern of the Soviet Union, centrally planned economies began to be established also in other states – within Europe on territories, liberated by the Soviet Union – they created a whole economic system = system of states with centrally planned economies and with market economies. Bulgaria, Romania, Yugoslavia, Hungary, Czechoslovakia, Poland, 15 states of the Soviet Union, in 1949 the German Democratic Republic, during the upcoming years, in 1949 the

People's Republic of China, North Korea, the Socialist Republic of Vietnam, Cuba. It was a change that had an impact on the further development of the world economy. A disintegration of the colonial system occurred.

Year 1960 – the year of Africa, when a large amount of African states gained its political independence, they were not politically dependant, but there was a kind of economic dependence – neo-colonialism (the economies were dependant on their metropoles). Structure of the world economy: market economies – centrally planned economies – developing economies. These were the three types of the economies.

Three centres of world economy were forming – a triad. In the world economy, states operate in different conditions, diversely strong economies were created. The oldest economic centre is Great Britain – the most significant world economy until the First World War. Followingly, the USA became, and after the Second World War they still have been, the strongest economy. The third centre was Japan (it is said that there is a Japanese economic miracle). Triad – definition of 3 centres of the world economy, rapid economic growth.

The factors of rapid growth of the world economy in the 50th and 60th can be characterised as post-war reconstruction by the chosen economy and the beginning of scientific-technical revolution. This had an impact on the development of new knowledge, improvement of branches, chemical industry, engineering and other fields – pharmaceutics, automobile industry. Impetus for the creation of new production – a growth of work productivity occurred.

Integrational processes in Western Europe are connected with the creation of a new integration of the European Economic Community – it was a direct forerunner of the European Union. States eliminated custom duties; the internal market was enhancing. International monetary system – includes national and international monetary relations, which create two relatively independent units, mutually tightly connected and influencing each other. The historical character of the international monetary system leads to its development – it was created under certain conditions in a certain stage in human society. As society was developing, the monetary system has been developing as well. This means, that each stage in the development of world economy constituted also changes in the international monetary system. Each state has its own currency and regulations. Most national currencies are involved in the international monetary system. The aim is to maintain the exchangeability of the respective currency. The development of international trade – custom duties war eliminated, the International Monetary

Fund helped the trade and states were not interested in getting engaging in international relations. It concerned market economies.

Development in centrally planned economies in this period – states showed a positive economic growth, high employment of women, sufficient labour force and cheap raw materials – they were supplied from the Soviet Union. In all countries, a trouble-free growth was in progress, with the exception of China, as there was famine at that time.

In the next phase, new phenomena occurred in the world economy, which had not existed so far, a structural crisis began – food, oil, raw material and energetic. Until then, there had never been any structural crisis. A structural mistake is a defect, which concerns a certain economic field, a crisis, which does not have cyclic character. It can be activated by political, climatic, economic factors – the economic decisions are those which cause problems.

The year 1972 was characterised by a food crisis and lack of agricultural products. It lasted until 1974 and affected mainly the developing world. In 1973, the oil crisis began, and thus due to political reasons. Since the 60th, disputes between Israel and the Arab emirates persisted and the Arab states decided to reduce oil exploitation as a protest towards Israel. That caused a rapid growth of prices, which increased 5 times. An oil shock arose, which lead to a rapid increase of prices of further products (chemical, pharmaceutical industry, rise in price of transport services, similarly as the inflation rates started to rise).

A manifestation of this raw and energetic crisis was a temporary lack of raw materials and energies, a high price of these raw materials and energies. This had a consequence of a panic from raw material exhaustion, but afterwards, the situation calmed down. A high rise in price began, followed by inflation, lack of sources, stagnation of economies and in the economy, new phenomena occurred, as: stagflation (inflation + stagnation of the economy) and slumpflation (inflation + decrease of economy). Countries did not have the tools for influencing inflation, it hit all countries and led to a crisis of the economic policy.

The monetary crisis took place at the end of the 60th and 70th, in connection with it occurred that in these conditions, the rules of the established monetary system cease to work. A disruption of the Bretton-Woods system arose, as these rules were not maintainable any more. A need to create a new monetary system was established, which was created in the half of the 70th. Moreover, a new type of economic policy was created and global problems began, as e. g. food problem in

the developing world, rapid population growth in developing countries and ecological problems.

It concerned mainly pollution of the environment and world oceans and eliminating forests. A credit crisis of the developing countries began. At its beginning stood the food crisis (credits for buying food). The problem was worsened by that the financial institutions has sufficient financial tools and lent them to fiscal countries. The oil countries limited the exploitation, the oil prices were increasing. Developing countries thus needed the money. The oil countries were getting rich and banks provided credits to developing countries. A structural crisis began, which was manifested by inflation, rise in prices and increasing interest rates. Developing countries were getting in a situation, when they were not able to pay back the loans. No poor country can arrange with their credits by itself.

The current phase, with its beginning in 1990, began to express itself by the dissolution of the world socialistic economic system. The main characteristics were free elections, by which a transformation process began. The states are marked with the label as states with a transforming economy, thus countries, which are undergoing a change from centrally planned economy into a market one. The aim was to create a capable market economy and the world economy thus repeatedly became a united market economy.

The globalisation of the world economy began in the 90th, as the development of all economic relations, a rise in trade and the implementation of internet electronic trade began. Trade started to grow quickly, which has become the main factor of economic growth, stock-markets were created and as a consequence, international migration was increasing heavily. Financial crises began mainly in the 90th and occurred very often and with a deep course. There was a necessity of international cooperation by solving global problems. There were international meetings of the member countries of the WTO and EU, but the developing countries had the most problems.

The Structure of the Current World Economy

Currently, we can divide the economies of the states into:

- advanced market economies – Western Europe, North America, South African Republic and part of Asia
- developing countries
- transforming economies – from the Slovak Republic further to East

The year 2004 meant a new term, as the so-called “young market economies” entered the

European Union.

Development of the European Communities and the European Union

Europe has never been a united states in the Middle Ages and in modern times. Attempts to unite Europe by force ended tragically (Napoleonic wars, the Nazi idea of united Europe under the hegemony of Germany). Despite of this, the European thinking has always included the idea of unification on the basis of common cultural and civilizational traits (Antic legacy, Christianity, Renaissance, Enlightenment). Purposes and movements of European unification have always existed, and therefore, also the idea of European Integration has a long history.

Causes of European integration after the Second World War

Joining of Western European states after 1945 was an answer to contemporary threats and challenges, especially the danger of recidivism of aggression in Germany, beaten in the two world wars, rise in power of the Soviet Union, then controlling the states of Central and South-eastern Europe, as well as the struggle to mitigate the economic preponderance of the United States of America.

Instruments of international organisation

International governmental (state) organisations and structures became the tool of integration. In spite of the ideas of many individuals, “the United States of Europe” did not come into being as a federation. Each state maintains its statehood and individual participation in the international community.

More organisations of European integration

The European integration was and has been realised besides European Communities and European Union also via further continental international organisations and structures with a diverse circle of members. European states can thus choose the scope of their participation. The European Union then does not guarantee some agenda, if these are ensured by these organisations.

The North Atlantic Treaty Organisation (NATO)

In 1949, the North Atlantic Treaty Organisation (NATO) was established, thus the North Atlantic Alliance became a key military pact, which relies on the global military-political engagement of the United States of America. The basis is formed by the commitment of military help by one of their member states getting attacked. The majority of Western

European states became member states, after 1990 also the former socialistic states of Central and Eastern Europe. The organisation has currently 28 members. Most of the European Union member states are as well members of the Alliance. A tighter Western European Union (WEU) was created and operated in the long-term (1954-2011) for military cooperation of Western European states.

The Council of Europe

The Council of Europe, which was created in 1949, is an organisation for administrative, economic, social and cultural cooperation of member states. A part of its activity is establishing and enforcing European standards of fundamental rights. All is expressed in international acts agreed by member states on the ground of the Council of Europe. The member states thus, by their contract policy, themselves determine the scope of their contractually defined cooperation. The Council of Europe has currently 47 members. Membership in the Council of Europe is an unwritten condition of getting membership in the European Union.

The Organisation for Security and Cooperation in Europe (OSCE)

A permanent conference, which firstly took place in the years 1973-1975 in Helsinki and afterwards in 1995 was transformed into an organisation, serving to peace, security and democracy preservation in the Eurasian space. This way, it is a continental addition to the world-wide UN. Members are all European states (besides the miniature ones) including all member states of the European Union, the United States of America, Canada and the states of the former Soviet Union.

Economic integration in the European Free Trade Association

The Western European states, which did not take part in the creation of the European Communities, established in 1959 the European Free Trade Association (EFTA). This international organisation created a free trade area of goods among the member states. However, most member states followingly trespassed into the European Communities, or into the European Union.

Organisation for European Economic Cooperation and its transformation

For the implementation of the plans of post-war reconstruction, the Western European states established in 1948 the Organisation for European Economic Cooperation (OEEC). This was renamed in 1961 onto the Organisation for Economic Cooperation and Development (OECD), merging advanced countries from the whole world, among them also most of the

European Union member states.

Three European Communities for general and sectoral economic integration

On the basis of the Treaty of Paris, agreed upon in 1951, firstly in 1952 the European Coal and Steel Community was established, for the integration of the then crucial field of economy, that could be abused to armament and necessary for post-war reconstruction and ensuring energy. Integration of further fields of economy was then ensured by European Economic Community, established by the Treaty of Rome in 1957 and functioning since 1958. Then, a further sectoral European Community for Atomic Energy (Euratom) was also created. The European Economic Community was then, since 1993, called only European Community. The attribute "economic" was left out as an acknowledgement of its engagement in other fields by the Treaty of Maastricht.

The aim of the European Communities and bound membership in them

The main objective of the European Communities was to create a common, afterwards an internal market, on the basis of free movement of goods, services, people and capital and common policies. An economic and monetary union has become a part of economic integration, which, however, has not included all member states by now. From this kind of arrangement, a higher economic efficiency and welfare of the population is expected. The circle of the member states of all European communities has always been the same, the membership is bound. The European Coal and Steel Community was created for a definite period of time for 50 years, in 2002 it was not revived and its agenda was passed over onto the European Community.

The European Union as an addendum to the European Communities

A need of political and administrative-juridical cooperation of tightly economically integrated member states of the European Communities led in 1993 to establishing the European Union (the Treaty of Maastricht from 1992). The European Union included further agenda: common foreign and security policy (the so-called second pillar of the European Union) and judicial and internal cooperation, followingly limited by the Treaty of Amsterdam onto the field of criminal law (the third pillar). The European Communities further served to economic integration of member states (the first pillar). Membership was bound, all member states were, at the same time, members of the particular European Communities. However, the European Union, compared to the European Communities, did not have international legal

personality.

Alliance of the European Communities and the European Union

After 2000, there was a strong belief that the current arrangement does not respond to the needs of further integration of the increasing amount of member states. In 2004, thus a Treaty Establishing a Constitution for Europe was agreed on (briefly "European Constitution"). This, however, was not ratified by all member states due to negative referenda and expectations of decline in further member states, and thus it never became effective. The aim to interconnect the European Community and the European Union was realised in 2007 by a substitution agreed upon by the Lisbon Treaty in 2009 and its entering into force. The European Community thus does not exist anymore. The European Union, on the other hand, gained international legal personality and took over all activities of the European Community. Henceforth, however, the European Community of Atomic Energy operates separately.

Founding member states and states, which became member in the 20th century

The founding members of the three European Communities were Germany (in the scope of the "Western" Federal Republic of Germany), Belgium, the Netherlands and Luxembourg, France and Italy. The "Northern" enlargement in the 70th included Great Britain (the United Kingdom), Ireland and Denmark, advanced Western European states, which had beforehand refused a supranational model of economic integration. Two "Southern" enlargements in the 80th included Greece, Spain and Portugal, which had only in the 70th overcome an authoritative regime and economically were behind Western Europe. The fall of the Iron Curtain then enabled the accession of advanced European states, which had previously insisted upon neutrality or had been forced to one. In 1995, member states of the European Communities and the European Union became politically and economically advanced states as Austria, Sweden and Finland.

Even before, (by the dissolution of the German Democratic Republic and by the accession of new federal states into the Federal Republic of Germany), the territory of the European Communities was expanded even without the accession of a new state.

Western European states, which did not become a member

The model of European Communities and the European Union was not adopted by advanced Western European states as Norway (accession agreed by the government in the 70th and 90th was rejected in referenda), Iceland and Switzerland. These states, however, participate in the European economic integration via the European Economic Area, or via bilateral contracts. The miniature Andorra, San Marino, Monaco and the Vatican are neither a

member of the European Union. Nevertheless, they participate in economic integration via their large neighbours (Spain, France, Italy), which carry out a patronage over them.

Member states accepted in the 21st century

In 2004, the numerously largest enlargement of the European Union and the European Communities took place. The former socialist Central European and Baltic states acceded, and thus Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Estonia, Latvia, Lithuania, as well as two Mediterranean states as Malta and Cyprus. In 2007, they were complemented by Bulgaria and Rumania, two Balkan states, which were economically and administrative-politically behind. In 2013, Croatia joined, which had been delayed mainly due to political reasons.

Candidate countries and potential candidate countries

Candidate countries – these countries are in the process of "transporting (or integrating)" legal regulations of the European Union into their internal legal regulations: Albania, Montenegro, Northern Macedonia, Serbia, Turkey.
Potential candidate countries – do not fulfil conditions of the European Union for membership at the moment: Bosna and Hercegovina and Kosovo.

Geographical and political limits of enlargement

On the ground of the founding treaties and prevailing ideas of the politicians, any European state can seek membership. Belorussia and Russia do not have interest in membership, however, their potential membership is occasionally considered. Similarly, economically and culturally proximate Israel has not shown any interest in a membership yet. Morocco, which had once shown interest, was rejected as a non-European state. The last enlargement of the European Union and the world-wide economic recession from 2008 significantly decreased the will of the EU member states to further enlarge the Union.

Reforms as an answer to enlargement and doubts about them

The connection of the European Community and the European Union was followed by changed of structure and functioning of the institutions of the EU, and is also an answer to the rapid rise in the amount of member states after 2000. The success of these reforms, however, is not sensible in the light of the world-wide economic recession, which led to a crisis of the common currency since 2010 up till now. The current state of the European Union invokes large doubts.

The Character and Features of the European Union

The actual European Communities were an international organisation. They were created by states by an international act, similarly as other governmental international organisations. They had international legal personality, on the ground of which they could, within their competences, make international contracts with other states and other international organisations. The European Union was established by member states, also by an international contract, however, they did not provide it with international legal personality. The European Union thus only externally represented in accordance acting member states.

Only after adopting the Liston Treaty, the European Union gained international legal personality, as the European Community (originally European Economic Community) had, with which it merged. Thus, it similarly enjoys, as other international organisations, privileges and immunities in the international community. It is also a subject of national law in all member states, so it can acquire assets, give orders, employ and is responsible for harm caused by its activity.

By their character and functioning, the European Communities differed from other international organisations. They were in charge of a wider circle of issues as common international organisations. They were enforcing their own policy and established their own legal order, sometimes against the will of the minority of member states. Key institutions of the European Communities, which have a supranational character, are: the Court of Justice, the (European) Commission, the European Parliament – gradually they cast off the impact of the member states and established independent positions. The European Communities managed to promote their rights and policies against member states more than other international organisations. They were enforcing this right even against individuals. A direct relationship between the citizen of a member state and the European Communities and the European Union has been afterwards covered by implementing the citizenship of the European Union. These features have been in 2009 adopted by the European Union, which expanded them onto further agendas.

The European Communities were, due to the above-mentioned differences from common international organisations, marked differently. Since 2009, the European Union as a whole can be marked like that. Currently, there is no other comparably connected group of states in the world. Therefore, an appropriate generally adopted label is missing. The European Communities and the European Union were marked and have been marked as a super-state, a supranational organisation or structure, alliance, association or confederation.

A comparison of the European Union with federations as e.g. the United States of America, Germany, Austria, Switzerland, India, Russia, Australia, Canada, Brazil, Malaysia or

Nigeria is not possible, as the European Union lacks many key competences and agendas and we cannot expect their acquirement.

The European Union, similarly as federations, ensures the operation of the single market by political-organisational and financial tools and exercises a united external trade policy, whereby it has a unified currency in the majority of states. Its law has the ambition of a federal law, it is enforced against individuals and is preferred potentially to the incompatible domestic law.

However, the European Union does not have a united foreign policy and neither does ensure defence. It does not have its own power in the narrower sense of the word. Member states preserve international legal personality, they do not become only partial states of a federation. The realisation of the law and policies of the European Union depends on the loyalty of member states. The execution of the European Union law is ensured mainly by member states. The European Union does not have a developed structure of agencies and courts. It does not have any armed forces, nor the authority to enforce by coercion the observance of its law by member states. The European Union has, in comparison to the central power of a federation, a limited budget. It does not have its own taxes, nor social policy. As the basis of the European Union law remains international acts agreed upon by member states, not a federal Constitution. Only a part of the European Union law effects directly individuals. The priority of the European Union law is denied only exceptionally, but is overlooked anytime.

The founding treaties have not, until recently, included a catalogue of competences of the European Union and the European Communities. However, these could be outlined by examination. Only the Lisbon Treaty clarified the circle of competences of the European Union by competence catalogues. Even before, however, competences were usually divided into exclusive, shared, supportive, co-ordinational and supplementary. In the issues of shared exclusive competences, member states cannot create law without the consent of the European Union, although they do exercise this law. In issues of shared competences, they have to adjust themselves to the arrangement of the European Union, if this is established. In the defined other issues, the European Union can adopt only supportive, supplementary or co-ordinational measures.

The European Union has exclusive competences in the issues of customs union, economic competition on the internal market, monetary policies in member states, who have the euro as their currency (Eurozone) and common trade policy. The most extensive are the shared competences of the European Union, which concern the single market, defined social policy, economic, social and territorial coherence, environmental protection, consumer protection, transport, trans-European networks, energetics, space of freedom, security and

justice or the common relevance to health protection. Co-ordinational competence concerns economic policies of the member state, especially the member states of the Eurozone. Supplementary and supportive competence includes research and development, expansion cooperation and humanitarian aid, health protection, industry, culture, tourism, education, issues of youth and sport, civil protection and administrative cooperation.

There is a principle of subsidiarity, thus that the non-exclusive competences can be realised by the European Union only when it is necessary on an all-European level. The founding treaties define procedures for judging, whether these causes exist. Nevertheless, commonly a redundancy or inadequacy of European engagement is pointed out.

A strengthened cooperation has arisen, which means flexibility. Due to unwillingness or unpreparedness of some member states to adopt an adjustment requested by other member states, the European Union, or European Communities, particularized conditions of expanded cooperation of only a part of member states.

Gradually, there occurred discussion about federalisation. The last changes of the European Union strengthened its federative elements. However, the Lisbon Treaty does not constitute an actual change of the European Union into a federation. Nor the Treaty on the Constitution for Europe would constitute one. Further direction of the entity is an object of disputes among the member states, political parties, politicians and groups of population. Some are convinced about the possibility of federalising the European Union and are calling for one. Others are worried about this step and regard it as something impossible. We believe that the European Union does not have the preconditions for federalisation. The traditions of statehood (awareness of the state) of some member states is considerably longer, often century-old or more centuries-old. Their statehood is thus understandably more solid. The European Union does not have a population, which is made of a political nation and which would be able to administer a common democratic state. An obstacle of creating that kind of political nation seems to be especially the absence of common language, given by linguistic diversity of Europe.

There were also discussions about the possibility of withdrawal of a member state, whereby the founding treaties did not assume the possibility of withdrawal for member states. This was thus regarded as legally inadmissible. The absence of state power at the European Union level would, however, hardly enable a member state to disable the withdrawal. The Lisbon Treaty legally clarified this situation by defining the possibilities of withdrawal after the expiration of the period of cancellation and prefers making a contract on the conditions of the withdrawal.

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Article 5 :

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International movement of labour, employment and personal entrepreneurship in the European Union, social security of immigrants, settlement of business companies and cooperatives with the aim of doing business in the European Union, free provision of services.

On 1st May 2019, Slovakia celebrated the 15th anniversary of joining the European Union. Exactly on 1st May 2004, the Slovak Republic, along with other nine countries, became a member of the community, in which, since its establishment, the longest period of peace in Europe obtains. Slovakia became an equal partner of countries, which currently along with it, create the largest trade great power in the world and share common values, as freedom, democracy or solidarity. Thanks to membership in the EU, we have conveniences, as for example:

- doors wide open – thanks to entering the Schengen Area, 94% of border controls dropped out on our borders, free movement of labour and goods has been facilitated. The fact, that we are a part of the EU, helped Slovakia to gain visa-free connection with the absolute majority of countries in the world, including the USA and Canada.
- brigade in Austria, studying in Germany, holidays in Italy – Slovaks have more freedom in the EU. They can travel, work, study and do business freely in the whole European Union. This means, that not on the market with five, but with 500 million of people. We are no longer divided by borders, but we are connected by common interests, friendships and values.
- we do not need labour permit to work in the Union, we enjoy guaranteed equal rights in employment as citizens of the respective member state.
- thanks to the European Health Insurance Card, we have right, for example during holidays or research fellowships, to necessary healthcare.
- more products, better prices – Slovakia is a part of the single market, which enables us trouble-free export of our products. Since our entrance into the EU, this has tripled and currently constitutes one of the main pillars of the Slovak economy, whereby approximately 85% of the Slovak export goes exactly onto European markets.
- joining the EU helped Slovakia also to attract foreign investment. Almost 90% of

foreign direct investment comes from EU countries. Foreign firms brought along top-level technologies, which helped us substantially enhance labour productivity

- solving dual quality of goods – at EU level, clear rules have been determined, which precisely define, that products cannot be sold in many member states, if they are identical, if they have markedly different structure or features. These protect consumers, but also companies from unfair business practices.
- The consumer is more protected – in the EU, consumer rights are better protected. If the seller does not adhere to the conditions by purchasing or travelling, we have right to compensation. Within the single market, we have unified guaranty for 2 years, a product bought on the interned can be returned in 14 days from buying. Prices of products can be more easily compared and contracts have to fulfil European standards. Savings of Europeans are also better protected. We also have a better warning system against dangerous products or food. The EU brought along elimination of roaming charges, also ensured lower bank charges and charges for using credit cards.
- the largest economic boom in the history of Slovakia – Slovakia noticed the largest economic growth exactly after joining the EU. We belong among the most rapidly growing countries in the EU and we are catching up with the advanced ones. In 2004, thus in time of our entrance into the EU, GDP per capita was at the level of 57% of EU average and in 2016, it was already at 77% level of the European average. European support helps us increase economic growth and to create new jobs. The standard of living of the population has been increasing and wages have been increasing substantially as well. What is more important – wages were increasing more rapidly than prices, so today we can buy more goods and services from our income than before joining the EU.

Source: Úrad vlády SR. 15 rokov v Európskej únii. 2019. Available on the internet : <https://www.partnerskadohoda.gov.sk/15-rokov-slovenska-v-europskej-unii/>

International movement of labour, employment and personal entrepreneurship in the European Union

Free movement of workers is one of the four fundamental freedoms of the Union. The EU celebrated in 2018 the 50th anniversary of the founding regulation on free movement of workers. It includes elimination of any kind of discrimination of member states on the ground of nationality, as far as it concerns employment, reward for work or other labour conditions. In 2015, lived in an EU member state, which is not the country of their nationality, 11,3 million mobile employees from the EU-28 in productive age. This responds to 3,7% of the whole population of EU in productive age. The European Court of Auditors observed that

instruments implemented by the Commission ensure free movement of labour, but they would deserve larger publicity. Due to similarity of particular aims, mutual supplementary of two EU funds, which support the mobility of workers (ESF and EASI), by challenge and drawbacks in the monitoring system, limit the elaboration of financial measures. The portal of job vacancies in the European Union, EURES, has become a real European means for placing employees only when the drawbacks are resolved, as low standard of job vacancies, which are published in it. It has been judged, what way the Commission ensures free movement of labour, as well as the effectivity of EU measures facilitating the mobility of labour. Audit was exercised from October 2016 till July 2017 in the Commission and in five member states with the largest influx of workers with the nationality of other states and with the largest outflow of workers into other countries (Germany, Luxembourg, Poland, Romania and the United Kingdom).

Source: Európsky dvor audítorov. Osobitná správa č. 6/2018. Available on the internet : <http://publications.europa.eu/webpub/eca/special-reports/eu-labour-mobility-6-2018/sk/>

By analysis, it has been observed that:

- the Commission provides EU employees information on their rights via some channels, but there are opportunities to enhance awareness on these rights.
- Obstacles preventing migration into another country and working in it (for example, recognition of scholarly diplomas) are long-term. The Commission and the member states have indeed adopted some measures on their elimination, but these obstacles still remain.
- Member states are at diverse levels, when it comes to data on imbalances in abilities and labour forces at regional and national level. The Commission cooperates with the member states on enhancing these data.
- The EU supports the mobility of labour via ESF in member states, which labelled it as their necessity. Mobility of labour, however, has not been defined as a particular investment priority and this activity has not been monitored during the process of confirming the current programming period of the ESF. The scope, in which the ESF is used for this purpose, is therefore unknown.
- The main source of known financing to support mobility of labour is the Programme of the Commission in the field of Employment and Social Innovations (EaSI) with EUR 165 million for years 2014-2020. The part EURES of the EaSI Programme has similar policy aims as the aims of the ESF in the field of labour mobility, which means, that the requested supplementary of both EU funds is a challenge.
- 23 EURES projects were examined, which were managed by cross-border

partnerships and supported by EaSI. Only a few projects had determined outcomes (e.g. job candidates, who found a job) and shortages in project monitoring caused that it was not possible to consolidate outputs and outcomes and programme level.

- The Portal for labour mobility, EURES, is the main instrument at EU level, which facilitates labour mobility, however, it has significant drawbacks, last but not least for a significant part of jobs offered by national public services of employment and published at the EURES Portal. The analysis of job vacancies placed at the Portal showed that the offers are often insufficient for effective search of jobs, for example 39 from 70 offers, which had been looked into, did not include a deadline for submitting applications.
- Measuring jobs occupied thanks to the EURES Programme EaSI is a basic measuring tool of the effectivity of the Programme. According to Commission data, in 2016, the support of EURES advisors designated to job applicants administered 28 394 jobs to be occupied. This data represents only 3,7% of contacts among job applicants and EURES advisors. Besides that, the majority of public employment services, among which the survey has been executed, stated that they are not able to measure the number of actually occupied job positions or that they had stopped to measure this coefficient.

Source: Európsky dvor audítorov. Osobitná správa č. 6/2018. Available on the internet : <http://publications.europa.eu/webpub/eca/special-reports/eu-labour-mobility-6-2018/sk/>

In the European Union, partnership is seen especially in the context of drawing structural funds, which are to help in overcoming the limitations resulting from internal problems of particular partners. According to the Regulation No. 1260/99, Article 8 of the Council, moves of the Community prepared in tight cooperation “in partnership” between the Commission and the member states in conjunction with agencies and subjects, which are appointed by the member state on the ground of national rules and common praxis. According to Article 265, section 1 of the Treaty on establishing the European Community, the European Commission supports partnerships of the public and private sector by realising projects, which is reflected in the Position of the Committee of Regions to this particular topic. Globalisation of the economy and the intensification of competence among businesses of public and private sector connected with it, which is one of the aims the Lisbon Strategy should have solved, requires tight cooperation between public and private sectors in the form of public-private partnerships, which are beneficial for both sides and especially for the public, which uses the provided services.

Via public-private partnerships

- partners from the public sector (national, regional or local agencies) and
- partners from the private sector

participate in mutually beneficial common activities using their own means not only for commercial goals, but also for achieving social goals of the project, especially providing quality services.

Source: KAČÍRKOVÁ, M. Partnerstvá a spolupráca medzi sektormi. Bratislava : Ekonomický ústav SAV. 2003. ISSN 1337-5598. Available on the internet : <http://www.ekonom.sav.sk/uploads/journals/WP05.pdf>

Social security of immigrants

Social policy of the European Union is based on the vision of a common social space characterised by an integrated system of minimal social standards valid simultaneously in all member states. The sense of the EU social policy is to establish a basic system of social protection and to ensure equal conditions of competition among economic subjects operating in particular states. It respects the principle of subsidiarity, which means maintaining the diversity of European societies and the system of dividing competencies and power between the EU and the member states. It arises from the principle that actual steps are taken at that level, which is the most appropriate and which ensures ultimate assets for the citizens.

From the field of social protection, legislative norms concerning the transfer of rights in the field of social security by migration of labour force within the Community (employment and entrepreneurship in the European Union, support free movement of labour, but do not, at the same time, require full harmonisation of national systems of social security.

Source: https://www.euroekonom.sk/socialna-politika-a-socialny-dialog-v-europskej-unii/

In the field of wages, EU integrational policy results from enforcing the agreed principles of formalising wages:

- principle of protecting the weaker contracting party
- principle of equal remuneration of men and women
- principle of social dialogue of partners
- principle of guaranteeing minimal height of reward for work in the European Union

Despite the fact that the countries of the EU respect common principles of social policy, there are substantial differences among them in the form of social system, model of creating wages, distributive and redistributive mechanisms and in the form of industrial democracy and social dialogue. Social dialogue has been developing positively in the EU, and a significant landmark for the mechanism of realising social dialogue at European level was

adopting the Maastricht Agreement on Social Policy. Currently, social dialogue is regarded as a part of the legal "acquis" of the European Community. The interdepartmental social partner representing the party of employees is the European Trade Union Confederation – ETUC – connecting 66 national organisations from 29 European Countries and 12 European sectoral federations. Interdepartmental social partners representing the party of employers are:

- the Union of Industrial and Employers' Confederation in Europe – UNICE
- the Centre of European Enterprises of providing Public Services – CEEP
- the European Confederation of Executives and Managers Staff – CEC
- the European Association of Craft, Small and Medium-Sized Enterprises – UEAPME

At EU level, social dialogue takes place in two forms:

1. in the form of negotiations
2. in the form of consultations

Source: https://www.euroekonom.sk/socialna-politika-a-socialny-dialog-v-europskej-unii/

Agreement on withdrawal determined the rules concerning coordination of social security in relations to whom the benefits resulting from the part of the Agreement on citizens concern and further people, who at the end of the transition period, are going to be in a situation including United Kingdom and a member state in terms of cooperation in the field of social security.

These people maintain their right to healthcare, pension and other benefits of social security and if they have right to financial benefits from one state, they will be entitled to get it also in case they decide to live in another country. Provisions of social security of the Agreement on withdrawal, will concern citizens of EU and citizens of the United Kingdom in cross-border situations of social security, which include the United Kingdom and (at least) one-member state at the end of the transition period. These provisions can be extended on "three-party" situations in the field of social security, including:

- a member state (or some member states)
- the United Kingdom
- any EFTA state (Iceland, Lichtenstein, Norway and Switzerland).

In practice, this means that until the end of the transition period (31st December 2020) the situation regarding social security will not change. Citizens of the Slovak Republic, who are in the United Kingdom and work there, will have right to count in the worked period into their right to all benefits including pension, they will have right to draw all benefits and social payments exactly as British citizens (unemployment benefits, maternity benefits, child

benefits). Pensions, but also other paid benefits, which are exportable, will be paid also in case that they decide to live in another country. Until the end of the transition period, the EU and the United Kingdom will seek common language in order to achieve satisfiable durable solution into the future and that presumably in the form of a universal bilateral agreement on social security and healthcare between the EU and the United Kingdom. Also, in case of a withdrawal of the United Kingdom from the EU without an agreement, at the level of social security practically nothing changes and the British government commits itself that during the transition period, until 31st December 2020, the protection of social security will continue at the same level as up to now.

Source: https://www.mzv.sk/cestovanie-a-konzularne-info/brexit/socialne-zabezpecenie

Citizens of the Slovak Republic retain their right to social security and healthcare, pensions and other benefits of social security and, if they have right to financial benefits from one country, they will be able to gain it also in case they decide to live in another country. Provisions of social security will furthest concern the EU citizens and citizens of the United Kingdom in cross-border situations of social security, which include the United Kingdom and (at least) one-member state at the end of the transition period. These provisions can be extended at "three-party" situations in the field of social security including a member state (or some member states), the United Kingdom and any EFTA state (Iceland, Lichtenstein, Norway and Switzerland). In practice, this means that until the end of the transition period (31st December 2020) the situation regarding social security will not change. Citizens of the Slovak Republic, who are in the United Kingdom and work there, will have right to count in the worked period into their right to all benefits including pension, they will have right to draw all benefits and social payments exactly as British citizens (unemployment benefits, maternity benefits, child benefits). Pensions, but also other paid benefits, which are exportable, will be paid also in case that they decide to live in another country. Until the end of the transition period, the EU and the United Kingdom will seek common language in order to achieve satisfiable durable solution into the future and that presumably in the form of a universal bilateral agreement on social security and healthcare between the EU and the United Kingdom.

Source: https://www.mzv.sk/cestovanie-a-konzularne-info/brexit/socialne-zabezpecenie

At the official website of the Ministry of Foreign Affairs of the Slovak Republic is an offer of information, which can be useful for the citizens living in the United Kingdom. This concerns for example the information that if they permanently live in the United Kingdom and receive British social benefits, they will receive them also after the exit of the United Kingdom from the EU. By whatever scenario of the withdrawal of the United Kingdom from

the EU, the citizens of the SR will be treated equally as British citizens, and therefore they will be able to henceforward exercise the same social advantages as British citizens, and that at least until 31st December 2020. Even after Brexit, the rights of Slovak citizens remain unchanged and the worked period will further be considered by calculating pension in accordance with the European, as well as Slovak legal enactments. The period of working in the United Kingdom will be considered by calculating pensions in Slovakia. In case that the citizen of the SR moves to the United Kingdom in the scope between Brexit and 31st December 2020, pension levies in Slovakia will be made provision for by calculating pensions in the United Kingdom on basis of mutual agreement with the British side. The worked years will be considered in accordance with pension calculations in Slovakia and in the United Kingdom, as the current rules determine, which are henceforward applied and will be applied during the transition period until 31st December 2020. Slovak and British pensions will be further payed on the basis of "exportability", which remains preserved. These provisions are going to be further exercised during the transition period, thus until the end of 2020. The period, for which the citizen of SR worked for in the United Kingdom, will be considered by calculating the right on daily compensation connected with maternity leave in Slovakia, as the current rules determine, which are further exercised also during the transition period, thus until 31st December 2020.

Source: https://www.mzv.sk/cestovanie-a-konzularne-info/brexit/socialne-zabezpecenie

Freedom of settling business companies and co-operatives with the aim of doing business in the European Union

In the literature, but also in praxis, we meet a lot of diverse attitudes to division and naming of public-private partnerships. Fields of using partnerships of public and private sector are wide and include support of economy, development of infrastructure, research and development, but also transfer of technologies, services of public interest, urbanism and urban development, environmental protection, cultural activities, educational sector, tourism and social policy.

The change of economic system in the countries of Central and Eastern Europe at the beginning of the 90th of the last century, had the consequence of large requirements on investment, connected with the necessity of building and reconstruction of most infrastructure, telecommunication, highways, airports and water service. Requirements on investments were determined by changes in the demand for infrastructure, as by political pressure, when the governments of the Central and Eastern European countries tried to decrease differences between them and Western Europe. Integration into the European and world economy brought about also acute need of investment also for achieving international quality and security standards.

Source : KAČÍRKOVÁ, M. Partnerstvá a spolupráca medzi sektormi. Bratislava : Ekonomický ústav SAV. 2003. ISSN 1337-5598. Available on the internet : <http://www.ekonom.sav.sk/uploads/journals/WP05.pdf>

Labour law and law of social security of the Slovak Republic create social law and operate within international labour law and international law of social security, of which the European Union law and the European Community law is also a part of. In factual terms, the mentioned law branches regulate a complex of social rights and economic rights, which in their mutual relations with civil rights and political rights create a part of human rights.

European social law, in its widest manifestation, creates social law:

- of the European Union
- of the European Communities
- of the Council of Europe
- social and legally relevant decisions of the Western European Union
- social and legally relevant decisions of the Nordic Council
- social and legally relevant decision of the Organisation for Economic Cooperation and Development
- of the European Free Trade Association

  of the European Economic Commission of the United Nations.

In the sense of international law, European social law operates in the social law system of the United Nations and the International Labour Organisation, its components are also legal branches of labour law and social security law in all European states and multilateral and bilateral international treaties in the social field, international collective treaties etc. Social law of the European Union, however, has direct and indirect impact also on the legal subjects from other European and remaining states.

The law of the European Union and the law of the European Community is currently without a valid and unifying Proposal of a Treaty establishing a Constitution for Europe a complicated system, which creates in the so-called first pillar communitarian law, in the second pillar legal issues of Common Foreign and Security Policy and in the third pillar, adjusted issues of cooperation in fields of justice, internal and criminal issues. In practical terms, this system is seen as a united system of European Union law.

Source: TKÁČ, V. Európska únia, sociálne právo a prax. 2007. Available on the internet : < http://www.epi.sk/odborny-clanok/Europska-unia-socialne-pravo-a-prax.htm>

As partnership is seen a horizontal relation of two and more subjects, which can be business subjects, civil service and self-administration agencies, social, cultural, educational, research and other non-profit organisations, professional associations, as well as other legal and natural persons, participating on the realisation of business. A partner is a subject, which

agreed on a specific relationship with other subjects. The subjects, in the form of agreement, define the scope of cooperation, risks and advantages, whereby both sides have their rights and obligations in this relationship. They have the same effort to achieve the common goal and, by defining responsibility and competences, they cooperate as partners.

Source: Európska komisia (2003): Smernica pre úspešné Verejno-súkromné partnerstvá – PPP (Public-Private Partnerships). GR Regionálna politika.

Free service provision

Free movement of services is one of the four fundamental freedoms guaranteed by the Treaty on the Functioning of the EU. The freedom of free movement of services ensures citizens of EU member states a right to enter contractual relations on the territory of other member states without regarding their activity as entrepreneurship in the sense of the Commercial Code and the Trades Licensing Act. It is necessary to see the difference between cross-border provision of services and doing business of a foreign person via a company or an organisational component of the company of a foreign person. In case of entrepreneurship of a foreign person, it concerns provision of services on the ground of business authorisation of the host state, whereas the cross-border provider of services is entitled to provide services in the host state only on the basis of the business authorisation granted to him by the respective authorities of the home state.

Source : JÁNOŠKOVÁ, N. Cezhraničné poskytovanie služieb. E-pravo.sk. Available on the internet : <https://www.epravo.sk/top/clanky/cezhranicne-poskytovanie-sluzieb-2946.html>

In practice, it concerns free decision of people about where, by what means and in what form they will provide services in the EU. Entrepreneurship of a foreign person of a member state on the territory of another member state via a company or an organisational entity of the company of a foreign person is the enforcement of the right to free movement of labour and right to reside, whereby cross-border provision of services is the enforcement of the right to free movement of services.

In the interest of each business is to exercise business activity in a way that they profit as much as possible from it, therefore many seek to expand their activities on foreign markets. As it is complicated to assess beforehand, whether the activities of the business become successful also abroad, and therefore, the establishment of a company or an organisational component of the company of a foreign person is connected with administrative and financial obstacles, it is appropriate to consider the possibility of cross-border provision of services without the need to undergo a whole series of procedures to gain business authorisation and without the obligation to establish a company or an organisational component in the respective state.

Source: JÁNOŠKOVÁ, N. Cezhraničné poskytovanie služieb. E-pravo.sk. Available on the internet : <https://www.epravo.sk/top/clanky/cezhranicne-poskytovanie-sluzieb-2946.html>

As help in this field, a guide-book *Free Provision of Services* has been designed in questions and answers. It was prepared by 4 Euro Info Centres (EIC-Centre) from 4 different countries of the EU – from the Czech Republic (EIC Prague), from Germany (EIC Nurnberg), from Poland (EIC Gdaňsk) and from the Slovak Republic (EIC Prešov) in tight cooperation with SOLVIT centres. This guide-book is dedicated to small and medium-sized businessman in the whole EU 25 (resp. 27), beginning with self-employed up to companies employing maximally 250 employees. On the ground of the Treaty establishing the European Community (EC), all aspirations and activities, are realised at EU level, as well as at national levels, the aim of which is to ensure proper functioning of the Single European Market, which is characterised by 4 fundamental freedoms:

- free movement of goods
- free movement of capital
- free movement of services and right to reside
- free movement of labour.

Source: Euroinfocentre. Voľné poskytovanie služieb v otázkach a odpovediach. 2006. Available on the internet : <http://www.sbagency.sk/sites/default/files/volne_poskytovanie_sluzieb_eu.pdf>

Legal regulation in the field of cross-border service provision is regulated by the Regulation of the European Parliament and the Council on Services on the Internal Market 2006/123/ES from 12th December 2006 (further only "Regulation on Services"), the task of which is especially to ensure providers of services seated in EU member states the right to free movement of services, and that by eliminating legal and administrative obstacles, which often unnecessarily limit the possibility of service provision. In the Regulation on Services, the possibility given by the Treaty on the functioning of the EU was not used, to expand the validity of provisions on free provision of services on nationalities from third countries, in consequence of which the personal scope of the Regulation is concentrated only on EU citizens. It is necessary to differentiate EU member states from contracting parties of the Agreement on the European Economic Area (Norway, Lichtenstein and Iceland) and also from the states associated in the OECD, as the rights, or advantages and obligations derived from the Regulation on Services, do not apply to the citizens of these states.

The process of ensuring the realisation of the principle of free provision of services on the territory of the Slovak Republic at the level of national legislation, was concluded by the Act No. 136/2010 on Services on the Internal Market and on modification and completion of some Acts (further only "Act on Services"), which transposed the Regulation on Service into

the legal order of the Slovak Republic. The Act on Services guarantees equal accession to possibilities and conditions of service provision on the territory of the Slovak Republic irrespective of the way and form of their provision. The Act regulates cross-border provision of services by natural and legal persons, which have nationality or residence in one of EU member states, or they are seated in one of them and which were established in accordance with the legal regulations of the home member state.

Source: JÁNOŠKOVÁ, N. Cezhraničné poskytovanie služieb. E-pravo.sk. Available on the internet : <https://www.epravo.sk/top/clanky/cezhranicne-poskytovanie-sluzieb-2946.html>

Right to reside means that a person has the right to create a company (disregarding its legal form) in another member state (in the so-called country of destination) at equal conditions as a citizen of the respective member state (i.e. the country of destination). It concerns parallelly executed economic activities of a person in another member state.

Free movement of services means that a person has right to temporarily provide services in another member state (i.e. country of destination) than the country, in which he has its seat (i.e. country of origin) at equal conditions as citizens of the respective other member state (i.e. country of destination) on the basis of an authorisation, which has been issued to him in the member state, where he has its seat (i.e. country of origin).

Both freedoms mean that citizens of the European Community have full right to be treated on the territory of another member state without any indication of discrimination. The member state has to enable the citizens of another member state to establish a company or provide service on its territory at equal conditions as it enables its own citizens, mostly without requesting any additional charges, documents, measures, etc. There are, however, some exceptions, by which this rule does not have to be abided. The member state can enable access on the market only to its own citizens in case of activities connected with the execution of central agencies (Articles 45, 55 of the Treaty on establishing the EC). Both freedoms are not inevitable to be abided in case of national provisions for providing special treatment with foreign citizens of other member states in the field of public policy, public security or public health (Articles 46, 55 of the Treaty on establishing the EC).

Source: Euroinfocentre. Voľné poskytovanie služieb v otázkach a odpovediach. 2006. Available on the internet : <http://www.sbagency.sk/sites/default/files/volne_poskytovanie_sluzieb_eu.pdf>

Regulation of the European Parliament and the Council 2014/23/EU from 26th February 2014 on granting licences discusses that non-existence of unambiguous rules at Union level, by which granting licenses is regulated, invoked legal uncertainty, creates obstacles for free provision of services and violates the operation of the single market. Economic subjects, especially small and medium enterprises (SME), are therefore disseised

their rights on the internal market and lose important business opportunities, whereby public agencies do not have to find the best usage of public financial means, so that the citizens of the Union could use quality services at the best prices. On the basis of adequate, balanced and flexible legal framework for granting licenses, an effective and non-discriminative access on the market and legal certainty would be ensured to all economic subjects in the Union, by which public investment into the infrastructure and strategic services for citizens would be supported. This legal framework would, at the same time, provide larger legal certainty to economic subjects, and it could be basis and means for even more opening of markets for international public procurement and enhancement of world trade. Special attention should be paid to enhancement of opportunities for the access of SME on the markets with licences in the whole EU.

Source: Smernica Európskeho parlamentu a Rady 2014/23/EÚ z 26. februára 2014 o udeľovaní koncesií. Available on the internet : <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=OJ:L:2014:094:FULL>

Rules of the legal framework applicable on granting licenses should be clear and easy. They should properly reflect the individual character of licenses in comparison to public offers and they should not create excessive administrative burden. Public procurement plays a crucial role in the Europe 2020 strategy determined in the announcement of the Commission from 3rd March 2010 with the title Europe 2020 – Strategy for smart, sustainable and inclusive growth (further only "Europe 2020 Strategy"), as it is one of the market orientated means, which should be used to reach a smart, sustainable and inclusive growth and for ensuring the most effective usage of public financial means. Licenses represent, in this context, significant means of long-term structural development of infrastructure and strategic services, by which they contribute to the development of economic competition on the single market, enable to use expertise of the private sector and help to achieve effectivity and innovations.

Source: Smernica Európskeho parlamentu a Rady 2014/23/EÚ z 26. februára 2014 o udeľovaní koncesií. Internet : <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=OJ:L:2014:094:FULL>

A company with seat in one EU member state has the right to temporarily send out its employees, with whom it has arranged labour relation into another member state in order to provide service within an agreement concluded between the company and a foreign subject. In legal sense, the position of such dispatched employee is different from the situation of a migrant employee seeking employment in another member state, i.e. by an employer from another member state. Dispatched employees remain employees of the dispatching company during the whole period of their delegation abroad and after that, they return into their home country, thus they do not become a part of the labour market of the country, into which they were dispatched. By consequence of that, rules of free movement of labour within the rules

enforced in the EU, including transitional periods for new member states, do not relate to the dispatched employees. Also, in spite of that, specific transitional periods exist for diverse sectors for the field of dispatching employees from new member states on the territory of Austria and Germany.

Source: Euroinfocentre. Voľné poskytovanie služieb v otázkach a odpovediach. 2006. Available on the internet : <http://www.sbagency.sk/sites/default/files/volne_poskytovanie_sluzieb_eu.pdf>

The main rule concerning the payment of healthcare and social insurance within the EU says that in general, insurance is paid in the state, in which the citizen works or does business. However, one exception exists within this rule, which relates to the free provision of services and dispatching employees. In these cases, insurance is paid in the country of origin, if the period of providing these cross-border services or dispatching employees is no longer than 1 year. This period can be prolonged for maximally 2 years.

As long as income taxes within the EU are concerned, all EU member states signed a mutual agreement on preventing double taxation. These agreements include also general taxation principle of self-employed people. According to this principle, a natural person, who does not provide cross-border services in the host country for longer than 183 days during the last 12 months within one accounting year, pays this tax in the country of origin. In case that it concerns a period longer than this mentioned one, it is necessary to pay income tax in both countries, however, the income cannot be taxed twice. Anyone, who provides services abroad, has to also consider issues regarding value added tax (VAT). VAT tariffs differ in particular countries.

Source: Euroinfocentre. Voľné poskytovanie služieb v otázkach a odpovediach. 2006. Available on the internet : <http://www.sbagency.sk/sites/default/files/volne_poskytovanie_sluzieb_eu.pdf>

Licences are recompensing agreements, via which one or more public procurers or fund-raisers entrust one or more economic subjects with realising building labour or providing and managing services. The object of such agreements is to obtain building labour or services via licences, the consideration of which is the right to use the building or services or this right along with payment. These agreements can, but necessarily do not have to, include transmission of ownership on the public procurers or fund-raisers, but public procurers or fund-raisers always obtain benefits resulting from the respective building labour or services.

Fund-raisers can grant licences for the purposes fulfilling the requests of some activities, onto which diverse legal regimes can relate. It should be particularized that to the legal regime applicable on a particular licence, which should include some activities, rules applicable on the activity at which it is especially determined, should refer. Determining the activity, at which the licence is mainly aimed, can arise from the analysis of requests, which

the particular licence has to fulfil, which is executed by the fund-raiser for the purposes of determining the anticipated value of the licence and elaborating competition documents for the licence. In some cases, it can be objectively impossible to state, at which activity the licence is aimed. In these cases, applicable rules should be defined.

Source: Smernica Európskeho parlamentu a Rady 2014/23/EÚ z 26. februára 2014 o udeľovaní koncesií.
Available on the internet : <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=OJ:L:2014:094:FULL>

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