

**Countdown to Impunity:**

**Corruption-related Statutes of Limitation  
in the Slovak Republic**

**Research  
of Corruption-related Statutes of Limitations**

**Pavel Nechala, TI Slovakia**

**August 2010**



With support from the Prevention of and Fight against Crime Programme of the European Union  
European Commission - Directorate-General Home Affairs.

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## 1. Introduction

Statute of limitation for corruption offences in criminal proceedings is not problematic from the perspective of legal regulation and experience of the law enforcement authorities. Rather, the causes of discontent of the public concerning the resolution of corruption-related scandals lie in different areas. These include in particular a low level of citizens' confidence in the law enforcement authorities and the resulting unwillingness to report criminal offences. Another cause is the fact that politically sensitive cases end without conviction of offenders, while the justification of such decisions is not sufficiently convincing for the public.

Only an in-depth analysis and confrontation of legal regulations with changes in political leadership of the state reveal certain shortcomings. Such shortcomings may fully come to light in the case attributed to the Slovak Prime Minister Robert Fico. The disclosed information raises suspicion that the political party Smer-SD led by R. Fico sold positions on its list of candidates for the 2002 elections. Legal qualification of such action does not allow for a period of limitation of more than 5 years, while the suspension of the period of limitation does not solve the question of extension of the period of limitation in the case of discharge of the function of a member of the government. Currently, the case has only come to light, and only its settlement may also call for the need of modification of reasons for the suspension of the SoL or modification of the legal definition of corruption-related offences.

The respective details of the legal regulation of the SoL, and also the experience from its practical application can be found in the text below.

## 2. Overview of specific rules and concrete periods of SoL applicable to corruption

### a) General legal regulation of statutes of limitations

Statute of limitation is one of the reasons of expiration of culpability and punishment appearing upon the lapse of the defined period of limitation, unless the reasons defined by law for its interruption or non-lapse have appeared. The Criminal Code distinguishes between the SoL for criminal prosecution and SoL for the punishment. This analysis is focused exclusively on the SoL for the criminal prosecution.

SoL for criminal offences is regulated by the Criminal Code<sup>1</sup>, while the culpability of certain criminal offences does not expire even after the lapse of the period of limitation. These offences include crimes against peace, against humanity, and war crimes, crimes against peace, against humanity<sup>2</sup>, while they do not include corruption-related criminal offences.

The period of limitation commences from the moment of completion of a criminal offence. In the case of continuing and lasting criminal offences, where the time of completion and the time of completion of the criminal offence do not match, the period of limitation shall only commence from the moment of completion of the criminal offence. For continuing criminal offences, the criminal offence shall be completed upon the performance of the last attack (partial act). In the case of completed criminal offences, the period of limitation may not lapse prior to the occurrence of consequences of the criminal offence.<sup>3</sup>

Corruption-related criminal offences may be also committed as continuing criminal offences, among other things, if they have a unifying intention. The respective acts of corruption must be objectively interconnected (e.g. in the same period of time, the same motive of the offender).

It should be mentioned in this connection that although the Criminal Code defines no moment of the commencement of the period of limitation whatsoever (it is a mistake that the legislator omitted the regulation of such important issue in the new Criminal Code), the judicial practice and academic writing hold the view that the period of limitation commences from the committing of a criminal offence, i.e. from the moment of completion of the criminal offence or from the moment of completion of the criminal activity in the case of continuing, lasting, and collective criminal offences. The time of termination of action is decisive, however, if the consequences or more serious consequences represent the element of the facts of the case, then the period of limitation shall commence from the occurrence of the consequences or more serious consequences. At the same time, the calculation of the period of limitation must be based on the wording of the provisions of Section 136 of the Criminal Code<sup>4</sup>, whereas the period of limitation commences on the day following the day of occurrence of the event substantial for its commencement.<sup>5</sup>

Legal consequences of the lapse of the period of limitation shall only occur in the case if the lapse of the

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<sup>1</sup> Act No. 300/2005 Coll., the Penal Code, as amended

<sup>2</sup> It means the following criminal offences: Threats to peace (Section 417), Genocide (Sec. 418), Terrorism, and certain forms of participation therein (Sec. 419), Torturing and other non-human or cruel treatment (Sec. 420), Production of extremist materials (Sec. 422a), Spreading of extremist materials (Sec. 422b), Possession of extremist materials (§ 422c), Incitation, defamation and threatening persons on the grounds of their affiliation to certain race, nation, nationality, color of skin, ethnic group or kin (Sec. 424a), Inhumanity (Sec. 425), Use of forbidden means of combat and forbidden conduct of combat (Sec. 426), Plundering in the area of military operations (Sec. 427), Abuse of internationally recognized identifications and national emblems (Sec. 428), Assault on a parliamentarian (Sec. 429), Abuse of the right to requisition (Sec. 430), War cruelty (Sec. 431), Persecution of population (Sec. 432), War injustice (Sec. 433), Endangering the cultural values (Sec. 434),

<sup>3</sup> Samaš O., Stiffel H., Toman P.: *Trestný zákon Stručný komentár (The Criminal Code, A Brief Annotation)*, Iura edition, 2006

<sup>4</sup> Sec. 136 of the Penal Code: Where the Act links the lapse of a certain period counted in days to a certain effect, the day of occurrence of the legal fact defining its commencement shall not be included.

<sup>5</sup> ŠAMKO, P.: Prerušenie premčania trestného stíhania. (*Interruption of Statute of Limitation in Criminal Prosecution*). *Justičná revue*, 58, 2006, Vol. 11, p. 1599 – 1610.

period of limitation has not been interrupted.

SoL in criminal prosecution shall be interrupted

- a) upon the bringing of a charge for a criminal offence subject to the SoL, and also upon the subsequent measures taken by a law enforcement authority, by a judge for the pre-trial proceedings or by a court, and leading to criminal prosecution of the offender; or
- b) if the offender has committed a deliberate criminal offence within the period of limitation.

A new period of limitation shall commence upon the interruption of the SoL.

The period of limitation in criminal prosecution shall not be regarded as interrupted even in the case if, by the effective date of the new Criminal Code<sup>6</sup>, the defendant has committed a criminal offence which is less serious than the criminal offence subject to the SoL.<sup>7</sup>

Ad a/: The phraseology of the Act shall be interpreted to the extent that the bringing of a charge must relate to the same action which is subsequently subject to the judgment on the merits. This follows from the fact that the substance of the decision on the bringing of a charge (and also of the entire criminal prosecution) shall be the description of the action which constitutes the *actus reus* of the offence, however, in contrast to legal qualification, the identity of the action cannot change within the entire duration of the criminal prosecution (the action may be modified in various ways, however, the identity of the proceedings or the identity of consequences must remain unchanged). The fact that it is the bringing of a charge for a particular action rather than for a particular criminal offence which is substantial for the interruption of the lapse of the period of limitation may be deduced from the fact that the Rules of Criminal procedure allow for a change in legal qualification within the entire duration of the criminal prosecution, and therefore we cannot perceive the change in legal qualification as the only obstacle hindering the interruption of the SoL. Otherwise, it would be necessary to always bring a charge upon a change in legal qualification in order to interrupt the lapse of the period of limitation for a particular criminal offence.<sup>8</sup>

From the procedural-legal point of view, pursuant to Sec. 10, Par. 15 of the Rules of Criminal Procedure, each single partial attack of a continuing criminal offence shall be regarded as a separate action, and therefore the provision concerning the bringing of a charge requires a decision on bringing a charge for each single partial attack of a continuing criminal offence. In the light of this, it is necessary to bring a charge for all partial attacks during the lapse of the period of limitation which (as already mentioned above) shall be calculated from the moment of completion of the continuing criminal activity. Therefore, the bringing of a charge for one partial attack shall not interrupt the lapse of the period of limitation for another partial attack.<sup>9</sup>

In addition to the bringing of a charge itself, the lapse of the period of limitation is also interrupted by acts<sup>10</sup> of the law enforcement authorities and court which often follow after the bringing of a charge (this follows from the used wording "subsequent acts"), from which it is evident that the acts performed prior to the

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<sup>6</sup> The New Penal Code effective as of January 1, 2006.

<sup>7</sup> Samaš O., Stiffel H., Toman P.: *Trestný zákon Stručný komentár (The Criminal Code, A Brief Annotation)*, Iura edition, 2006

<sup>8</sup> ŠAMKO, P.: Prerušenie premlčania trestného stíhania. (*Interruption of the Statute of Limitation in Criminal Proceedings*), *Justičná revue*, 58, 2006, No. 11, p. 1599 - 1610.

<sup>9</sup> ŠAMKO, P.: Prerušenie premlčania trestného stíhania. (*Interruption of the Statute of Limitation in Criminal Proceedings*), *Justičná revue*, 58, 2006, No. 11, p. 1599 - 1610.

<sup>10</sup> Acts causing interruption of the SoL must follow not only chronologically after the bringing of a charge but at the same time, must also lead to criminal prosecution of the offender, while such acts must be performed within the meaning of provisions of the Rules of Criminal Procedure (acts performed e.g. pursuant to Act on Police Forces would not interrupt the lapse of the period of limitation). In practice, the acts leading to criminal prosecution of the offender include e.g. a subpoena or summons of the accused, hearing of the accused, prosecutor's proposal for the issuance of a warrant for arrest of the accused, a warrant for arrest, confrontation with the accused, reconstruction, investigative attempt, issuance of a decision to include experts to examine the mental state of the accused, indictment, criminal order, decision on the discontinuation of criminal prosecution of the accused, decision on the submission of the case for the decision on jurisdiction, decision on forfeiture and eviction, decision on the joining of cases, decision on the exclusion of the accused to separate proceedings, and the like.

bringing of a charge do not cause the interruption of the SoL (thus, the interruption of the SoL is not caused by the issuance of a decision on the commencement of criminal prosecution or by acts performed from the moment of commencement of criminal prosecution until the bringing of a charge).<sup>11</sup>

Ad b/: And thus, only the committing of a new deliberate criminal offence during the lapse of the period of limitation (in such case, the lapse of the period of limitation shall be interrupted in at all times) shall be substantial for the interruption of the SoL, irrespective of whether such new criminal offence is more serious, as serious as or less serious than the criminal offence subject to the SoL. On the other hand, the committing of an unintentional criminal offence never results in the interruption of the SoL, not even in the case of a criminal offence more serious than the offence subject to the SoL.<sup>12</sup>

The length of the period of limitation is defined depending on the seriousness of the committed criminal offence. The Slovak law does not recognize absolute length of the period of limitation. Likewise, a special period of limitation for the end of investigation or initiation of prosecution is not regulated.

Culpability of an action ceases to exist upon the expiration of the period of limitation which represents:

- a) 30 years in the case of a crime for which the Act allows for the imposing of life imprisonment;
- b) 20 years in the case of a crime for which the Act in its special section allows for the imposing of a sentence of imprisonment with the upper limit of at least 10 years;
- c) 10 years in the case of other crimes;
- b) 5 years in the case of an offence for which the Act in its special section allows for the imposing of a sentence of imprisonment with the upper limit of at least three years;
- e) three years for other offences.<sup>13</sup>

By applying the above-mentioned rules, we can calculate the length of the period of limitation for corruption-related criminal offences as shown in the following table.

Criminal offences	Legal Source	Period of Limitation (years) until end of prosecution or sentence
offence of bribery (accepting a bribe)	Sec. 328 - 331 of the Criminal Code	5 years – Sec. 328, Par. 1;
		10 years - Sec. 328, Par. 2; Sec. 329 Par. 1;
		20 years - Sec. 328 Par. 3; Sec. 329 Par.. 2; Sec. 328 Par.. 3; Sec. 330 Par.. 1; Sec. 330 Par.. 2; Sec. 331 Par.. 1;

<sup>11</sup> ŠAMKO, P.: Prerušenie premlčania trestného stíhania. (*Interruption of the Statute of Limitation in Criminal Proceedings*), Justičná revue, 58, 2006, No. 11, p. 1599 - 1610.

<sup>12</sup> ŠAMKO, P.: Prerušenie premlčania trestného stíhania. (*Interruption of the Statute of Limitation in Criminal Proceedings*), Justičná revue, 58, 2006, No. 11, p. 1599 - 1610.

<sup>13</sup> Sec. 11 of the Penal Code: A crime shall mean deliberate criminal offence for which the Act lays down in its special section a sentence of imprisonment with the upper limit exceeding five years. Definition of crime also applies when the upper limit of sentence exceeding five years is established in the more strict facts of a deliberately committed offence.

Sec. 10 of the Penal Code: An offence shall mean a negligent or deliberate criminal offence for which the Act lays down in its special section a sentence of imprisonment with the upper limit not exceeding five years.

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		Sec. 331 Par.. 2
offence of bribery (offering a bribe)	Sec. 332 - 335 of the Criminal Code	5 years – Sec. 332 Par. 1; Sec. 332 Par.. 2; Sec. 333 Par.. 1; Sec. 333 Par.. 2; Sec. 334 Par.. 1; Sec. 335 Par. 1
		20 years - Sec. 332, Par. 3; Sec. 333, Par. 3; Sec. 334, Par. 2; Sec. 335, Par. 2
offence of indirect corruption	Sec. 336 of the Criminal Code	3 years - Sec. 336, Par. 2
		5 years – Sec. 336, Par. 1
offence of embezzlement	Sec. 213 of the Criminal Code	3 years - Sec. 213, Par. 1
		5 years – Sec. 213, Par. 2
		20 years - Sec. 213, Par. 3; Sec. 213, Par. 4
offence of abuse of functions	Sec. 326 of the Criminal Code	5 years – Sec. 326, Par. 1
		20 years - Sec. 326, Par. 2; Sec. 326, Par. 3; Sec. 326, Par. 4
offence of obstructing or perverting the independence of courts	Sec. 342 of the Criminal Code	10 years - Sec. 342, Par. 1; Sec. 342, Par. 2
		20 years - Sec. 342, Par. 3
offence of obstructing or perverting the course of justice	Sec. 344 of the Criminal Code	10 years - Sec. 344, Par. 1; Sec. 344, Par. 2;
offence of laundering of the proceeds	Sec. 233 and 234 of	5 years – Sec. 233, Par. 1;

of crime	the Criminal Code	10 years - Sec. 233, Par. 2; Sec. 234, Par. 1
		20 years - Sec. 233, Par. 3, Sec. 233, Par. 4

Extension of the lapse of the period of limitation by means of a court decision based on the request of the investigating bodies is not possible under the Slovak law.

On the other hand, suspension of the lapse of the period of limitation may occur, i.e. a certain period defined by law is not included in the calculation of the total period of limitation.

The following shall not be included in the calculation of the period of limitation

- a) the period during which it has not been possible to bring the offender before the court due to a legal obstacle;
- b) the period during which the offender has been abroad with the intention of avoiding criminal prosecution;
- c) probationary period in the case of conditional discontinuance of criminal prosecution;
- d) the period during which the bringing of a charge has been temporarily postponed; or
- e) the period during which criminal prosecution has been suspended.

A legal obstacle means e.g. the immunity of Members of Parliament.

Pursuant to Art. 78 Par. 3, first sentence of the Constitution of the Slovak Republic: "No Member of Parliament shall be prosecuted, sanctioned by any disciplinary measure or held in pre-trial detention without approval of the National Council of the Slovak Republic." The subject matter of the regulation of this rule of the Constitution is the procedural exemption within criminal proceedings. The legal effect of the regulation of Art. 78 Par. 3 is the conditioning of the application of the power of the relevant law enforcement body by the approval of the Parliament with a prospective suspension of liability of a member of the National Council of the Slovak Republic for the time when he/she stops to fulfill his/her mandate. The constitutional rule quoted above allows for temporary protection of a Member of Parliament against criminal prosecution and taking into pre-trial detention without the approval of the National Council of the Slovak Republic. A Member of Parliament is not granted impunity. He/she is only awarded the right that the National Council of the Slovak Republic decides on the suspension of the commencement of criminal prosecution against the person of the Member of Parliament; however, criminal prosecution of such Member of Parliament is not excluded even during the period of fulfillment of his/her mandate.<sup>14</sup>

- b) Other provisions that may limit the length of criminal proceedings (e.g. termination of proceedings due to unreasonable delay in prosecution, limited length of pre-trial investigation)

The law does not contain other provisions affecting the length or lapse of the period of limitation. Potential delay in the proceedings constitutes grounds for separate proceedings before the Constitutional Court of the Slovak Republic or European Court of Human Rights in Strasbourg.

- c) Definitions of corruption-related offences and applicable sanctions

<sup>14</sup> Drgonec J.: The Constitution of the Slovak Republic, Annotation. 2<sup>nd</sup> edition, Heuréka, 2007

Definitions of corruption-related offences reviewed in this analysis are specified in detail, including the qualified facts of the case, in Annex 1 hereto. In the following section we will only introduce the general definitions of such criminal offences.

A person commits the offence of **bribery (accepting a bribe)** when he/she directly or through a mediator accepts, requests or permits him/herself to be promised, for himself/herself or other person, a bribe in order to act or refrain from acting so that he/she breaches his/her obligations resulting from his/her employment, profession, position or function. Such person shall be punished by imprisonment of two up to five years.

A person commits an offence of **bribery (offering a bribe)** when he/she directly or through a mediator offers, gives a bribe to other person in order to act or refrain from acting so that he/she breaches his/her obligations resulting from his/her employment, profession, position or function or for that reason, directly or through a mediator promises, offers or serves a bribe to other person, shall be punished by imprisonment of up to three years.

A person commits an offence of **indirect corruption** when he/she directly or through a mediator accepts, requests or permits him/herself to be promised, for himself/herself or other person, a bribe for applying his/her influence to affect the discharge of powers of a person specified in Sections 328, 329, 330 or 331 or for already having done so, shall be punished by imprisonment of up to three years.

A person who unlawfully assumes the use of a foreign item entrusted to him, and thereby causes a minor damage on foreign property shall be punished by imprisonment of up to two years. That is the definition of **embezzlement**.

The offence of **abuse of functions** is defined as follows:

A public official who with the intention of causing damage to other person or to gain for himself/herself or for other person illegitimate benefit

- a) discharges his/her powers in a way contrary to law;
- b) acts beyond his/her powers; or
- c) fails to fulfill his/her duty resulting from his/her powers or from judicial decision; shall be punished by imprisonment of two to five years.

A person commits the offence of **obstructing or perverting the independence of courts** when he/she exerts influence on a judge so that the latter fails to comply with his/her obligation within judicial proceedings or who acts with the aim of obstructing the rights of the parties to the judicial proceedings or of the defendant shall be punished by imprisonment of one to six years.

The offence of **obstructing or perverting the course of justice** is defined as follows

A person who within judicial or criminal proceedings:

- a) submits evidence with the knowledge that such evidence has been forged or modified for the purpose of using it as authentic evidence;
- b) forges, modifies or obstructs evidence or hinders the gathering of evidence;
- c) obstructs or hinders the presence or testimony of a party to criminal proceedings, party to judicial proceedings, witness, expert, interpreter or translator; or
- d) applies violence, threat of violence or threat of other serious harm or promises, offers or grants illegitimate advantage in order to influence a party to criminal proceedings, party to criminal proceedings, witness, expert, interpreter, translator or law enforcement bodies; shall be punished by imprisonment of one to six years.



**Offence of laundering of the proceeds of crime:**

A person who:

- a) transfers to himself/herself or other person, lends, borrows, transfers in a bank or in a branch of a foreign bank, imports, transits, brings along, displaces, lets for rent or otherwise acquires for himself/herself or other person; or
- b) holds, keeps, hides, makes use, uses up, destroys, modifies or damages; the proceeds or other assets from crime with the intention to conceal the existence of such proceeds or item, to cover the fact that such proceeds or items originate from crime, are intended or used for the committing of a criminal offence, to obstruct the caption thereof for the purposes of criminal proceedings or forfeiture or confiscation thereof; shall be punished by imprisonment of two to five years.

For the committed criminal offences a court may only punish an offender being a natural person by imprisonment, house arrest, convict labor, fine, forfeiture of property, confiscation of a thing, prohibition to undertake professional activities, prohibition of residence, loss of honorary titles and awards, loss of military and other ranks, deportation.

**d) Specific regulations on SoL applicable to corruption-related offences**

The Slovak legal system provides no special regulation for periods of limitation in criminal prosecution or reasons for interruption or suspension thereof for corruption related offences. As follows also from the above-mentioned, the periods of limitation in criminal prosecution depend on the upper limit of the sentence of imprisonment for individual facts of criminal offences. The reasons for interruption of the SoL in criminal proceedings, and also for the suspension thereof, are common for all criminal offences.

**e) Periods of SoL applicable to corruption-related offences**

As it also follows from the above-mentioned, the duration of the period of limitation is the same for all criminal offences<sup>15</sup> and depends on the upper limit of the sentence of imprisonment for individual facts of criminal offences.

**f) Regulation of prescription period in civil proceedings with respect to claims for damages**

The issue of the SoL is relevant in connection to corruption-related offences in particular in the case of compensation for the resulting damages incurred by the aggrieved party. The aggrieved party may successfully bring such claim before court prior to the expiration of the period of limitation. Depending on the circumstances of the case, a claim for damages may arise vis-à-vis the perpetrator of a criminal offence or vis-à-vis the state.

**Compensation for damages vis-à-vis the perpetrator of a corruption offence**

Within the meaning of the Civil Code<sup>16</sup> a right shall become statute-barred if not enforced within the period laid down therein. A court will only consider the SoL upon a plea lodged by the debtor. If the debtor successfully seeks reliance on the SoL before court, such statute-barred right may not be granted to the creditor.

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<sup>15</sup> With the exception of criminal offences to which no SoL applies.

<sup>16</sup> Act No. 40/1964 Coll. the Civil Code, as amended

The general period of limitation represents three years and shall commence from the day when the right might have been enforced for the first time. However, the right to compensation for damages shall already become statute-barred after two years from the day when the aggrieved party has become aware of the damage and of the identity of the responsible party.

The right to compensation for damages resulting from any of the corruption offences pursuant to the special law<sup>17</sup> shall become statute-barred after three years from the effective date of the judgment of conviction concerning the committing of any of corruption offences, however, at the latest after 10 years from the day of the committing of such offence.

Both of these periods of limitation are objective, however, their commencement is conditioned by two different moments:

- a) the coming into force of the judgment of conviction
- b) the committing of any of the corruption offences

If the creditor exercises his/her right within the period of limitation before court or other competent body, and duly continues in the commenced proceedings, from the moment of such exercising of the right the period of limitation shall not lapse during the period of the proceedings. The same applies to the right which has been lawfully recognized and in respect to which enforcement of the decision has been proposed before court or other competent body.

This case represents the suspension of the period of limitation; therefore, two cumulative conditions must be fulfilled in order to achieve the suspension of the period of limitation:

- a) claiming of the right before court – e.g.: a motion to commence proceedings for performance, mutual motion, but also collateral proceedings within the criminal proceedings;
- b) due continuation of the proceedings.

In order to prevent the claim for damages incurred in connection with the committing of corruption offences from becoming statute-barred, the aggrieved party may sue such claim before a civil court even before the effective date of the judgment of conviction. This will provide for the suspension of the period of limitation of the right to compensation for damages caused by any of the corruption offences.

### **Compensation for damages vis-à-vis the state**

The civil liability also includes the liability for damages caused by discharge of public authority which is provided for by a special law.<sup>18</sup>

The state shall be responsible for damages caused by public authority bodies during discharge of public authority.

- a) in result of unlawful decision;
- b) by unlawful arrest, detention or other deprivation of personal freedom;
- c) by decision on punishment, protective measure or decision on custody; or
- d) incorrect official procedure.

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<sup>17</sup> Implemented by the amendment to the Civil Code effective as of January 1, 2003. This includes exclusively the offence of bribery (accepting and offering a bribe) and offence of indirect corruption.

<sup>18</sup> The Act No. 514/2003 Coll., on Liability for Damages Caused by Discharge of Public Authority, and on the amendment to certain acts, as amended

Damages caused in this way may also result from corrupt behavior of a representative of the state or public authority. Upon fulfilling the conditions specified in the act, the aggrieved party may put the claim for damages before court.

The right to damages shall become statute-barred after three years from the day when the aggrieved party has become aware of the damages. If the exercising of the right to damages is conditioned by the cancellation or modification of the final and conclusive decision, the period of limitation shall lapse from the day of the delivery (notification) of such decision.

The commencement of the subjective period is linked to the moment when the aggrieved party becomes aware of the damage. The moment of commencement of the period of limitation in the case when the right to damages is conditioned by the cancellation or modification of the final and valid decision is linked to the moment of the delivery (notification) of the decision.

The right to damages shall become statute-barred after ten years from the day when the decision causing the damage has been delivered (notified) to the aggrieved party, at the latest.

This case represents the objective period which commences at the moment of delivery (notification) of the decision causing damage to the aggrieved party.

During the preliminary hearing of the claim the period shall not lapse from the day of the filing of the request until the completion of the hearing, however, not longer than for six months. Thus, the period for the exercising of the right to damages shall be suspended from the moment of the filing of a written request for preliminary hearing of the claim for damages by the aggrieved party until the completion of the preliminary hearing, however, it may not be suspended for longer than six months.

The right of the state or local authorities to **compensation as a result of recourse** shall become statute-barred after one year from the day of the settlement of entire damages; however, not earlier than one year from the day of the coming into force of a criminal judgment or disciplinary measure against the person who has committed a criminal offence or disciplinary offence by means of wrong official procedure or in causal relation therewith or has committed a criminal offence or disciplinary offence in result of or in causal relation with which such person has issued an unlawful decision.

The period of limitation for the claiming of the right of the state or local authorities to compensation as a result of recourse shall be one year; such period shall commence:

- a) on the day of the settlement of entire damages;
- b) in the case of disciplinary or criminal proceedings in accordance with the occurrence of damage against the person who has caused the damage, the period of limitation shall commence from the day of validity of the decision (criminal/disciplinary).<sup>19</sup>

g) Does the law provide criminal liability for legal persons for corruption-related offences?

A so-called pseudo criminal liability of legal persons has been implemented in the Slovak law by the amendment to the Penal Code No. 224/2010 Coll. This amendment has been in force since May 25, 2010, however, it will only become effective as of September 1, 2010.

The amendment to the Penal Code has allowed for the imposing of protective measures on legal persons in the form of seizure of property or confiscation of money for certain criminal offences.

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<sup>19</sup> Wáclavová L.: Inštitút „premlčania“ pri zodpovednosti za škodu spôsobenú verejnou mocou. (*The Institute of the Statute of Limitation in the Liability for Damages caused by Public Authority*), *Notitiae ex Academia Bratislavensi Iurisprudentiae II*, 2009, p. 86 - 93.

## Confiscation of money

(1) Confiscation of money may be imposed by a court on a legal person in the case of the committing of a criminal offence, even at the stage of an attempt or in the case of participation in a criminal offence in connection with

- a) the execution of authorization to represent such legal person;
- b) the execution of authorization to make decisions on behalf of such legal person;
- c) the execution of authorization to exercise control within such legal person; or
- d) the negligence of supervision or due diligence in such legal person.<sup>20</sup>

## Seizure of assets

(1) Seizure of assets may be imposed by a court on a legal person in the case of the committing of a criminal offence, even at the stage of an attempt or in the case of participation in a criminal offence specified in Sec. 58, Par. 2, and if the legal person has acquired property or a part thereof through criminal activity or by proceeds from criminal activity, in connection

- a) with the execution of authorization to represent such legal person;
- b) with the execution of authorization to make decisions on behalf of such legal person;
- c) with the execution of authorization to exercise control within such legal person; or
- d) with the negligence of supervision or due diligence in such legal person.<sup>21</sup>
- h) Regulation of SoL in administrative proceedings (mostly relevant in cases where the law does not provide criminal liability for legal persons for corruption-related offences)

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<sup>20</sup> (2) Protective measure pursuant to Par. 1 may not be imposed on a legal person whose property situation as a debtor may not be settled according to a special regulation providing for the bankruptcy proceedings or if the implementation of the protective measure would affect the property of the State or of the European Union, on the bodies of a foreign state and international public law organizations. It may not even be imposed in the case of expiration of criminality of the action specified in Par. 1 by the application of the SoL of criminal proceedings or based on effective repentance.

(3) A court may impose the confiscation of money from EUR 800 to EUR 1,660,000 . When specifying the amount of the financial amount to be confiscated, the court shall consider the seriousness of the committed criminal offence, its scope, the benefits gained, damages caused, circumstances of the committing of the offence, and consequences for the legal person. The court shall not impose the confiscation of money if it imposes on the legal person the protective measure in the form of forfeiture of assets pursuant to Sec. 83 (b).

(4) In the case of a merger, fusion or splitting of a legal person, the court shall impose the protective measure pursuant to Par. 1 on the legal successor of the perished legal person.

(5) The financial amount paid or enforced shall become property of the State, unless the court rules out otherwise based on a declared international treaty binding for the Slovak Republic.

<sup>21</sup> (2) Protective measure pursuant to Par. 1 may not be imposed on a legal person whose property situation as a debtor may not be settled according to a special regulation providing for the bankruptcy proceedings or if the implementation of the protective measure would affect the property of the State or of the European Union, on the bodies of a foreign state and international public law organizations. It may not even be imposed in the case of expiration of criminality of the action specified in Par. 1 by the application of the SoL of criminal proceedings or based on effective repentance.

(3) The court will not impose a protective measure pursuant to Par. 1 if with regard to the seriousness of the committed criminal offence the benefit gained, damages caused, circumstances of the committing of the criminal offence, consequences for the legal person or important public interest, the protection of the society may be assured even without the seizure of assets of the legal person. If the court fails to impose the seizure of assets, it shall impose on the legal person the protective measure in the form of confiscation of money pursuant to Sec. 83 (b).

(4) Seizure of assets is applied in the scope belonging to the legal person during the execution of the protective measure by the seizure of assets after the completion of bankruptcy proceedings

- a) proceeds from the realization of assets;
- b) assets excluded from the inventory of the bankruptcy estate;
- c) assets subject to bankruptcy, in case no realization of assets has occurred.

(5) In the case of a merger, fusion or splitting of the legal person, the court shall impose the protective measure pursuant to Par. 1 on the legal successor of the perished legal person.

(6) State becomes the owner of the seized assets, unless State court rules out otherwise based on a declared international treaty binding for the Slovak Republic."

### **Public procurement<sup>22</sup>**

The Public Procurement Office imposes a fine on the contracting authority or contractor at the amount of 5% of the contract price, if it has failed to comply with any of its obligations pursuant to Sec. 32 or 35, Par. 2, i.e. the definition of the conditions for participation or criteria for the evaluation of tenders.

The Office shall impose a fine on the contracting authority or contractor at the amount from EUR 300 up to EUR 30,000, if

- it failed to evaluate the fulfillment of the conditions for participation in the public procurement pursuant to Sec. 33 or if it failed to evaluate the tenders pursuant to Sec. 42, if such acting has affected the result of the public procurement;
- if it has breached the principle of transparency, the equal treatment principle or the non-discrimination principle except for administrative offences pursuant to Par. 1 and (a) to (i), and such breach has or might have substantially affected the result of the public procurement.

Proceedings concerning the imposition of the fine may commence within one year from the day when the Office has learnt of the breach of law, and not later than within three years from the day of occurrence of the breach. If the Office has learnt of the breach of law by means of an inspection, the proceedings concerning the imposition of the fine may commence within one year from the day of discussion of the protocol on the performance of such inspection.

### **Protection of competition<sup>23</sup>**

The Anti-Monopoly Office of the Slovak Republic may impose fines pursuant to the relevant legislation within four years from the commencement of the proceedings. However, the Office may impose such fines not later than within eight years from the day of breach of the provisions of the Act, provisions of the special regulation, 5 (b) (Art. 81 and 82 of the Treaty Establishing the European Community), non-fulfillment of a condition or breach of duty or obligation imposed by a decision of the Office; in the case of continuing administrative offence or lasting administrative offence, the period shall commence from the day of the last breach.

i) Regulation of SoL in disciplinary proceedings (only concerning disciplinary liability of civil servants):

### **Civil servant<sup>24</sup>**

The service shall place a civil servant out of active civil service in the case he/she has been convicted of committing a deliberate criminal offence and his/her further discharge of civil service would pose a threat to an important interest of the civil service.

The placement of a civil servant put out active civil service shall last

- a) in the case of temporary civil service not longer than for the duration of such civil service, however, not longer than for two years;
- b) until the coming into force of the judgment of conviction for a deliberate criminal offence issued within criminal proceedings or until the coming into force of a decision on a conditional discontinuation of criminal prosecution or until the coming into force of a decision approving conciliation; however, not longer than for two years.

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<sup>22</sup> Provided by Act No. 25/2006 Coll., on Public Procurement, and on the amendment to certain acts, as amended

<sup>23</sup> Also provided in Act No. 136/2001 Coll., on Protection of Competition, and on the amendment to Act of the Slovak National Council No. 347/1990 Coll., on the Organization of Ministries and other Central Authorities of the State Administration of the Slovak Republic, as amended

<sup>24</sup> Legal regulation of status of civil servants is also included in Act No. 400/2009 Coll., on Civil Service, within the wording of Act No. 550/2009 Coll.

During the placement out of active civil service, the civil servant is entitled to the amount of 40% of the salary linked to the function the servant received prior to the placement out of active civil service. The amount pursuant to the first sentence shall be raised by 10% for each dependant, up to the maximum amount of 60% of the salary linked to the function the servant received prior to the placement out of active civil service.

The service may serve the civil servant a notice of dismissal, if

- a) the civil servant has repeatedly breached the service discipline in a less serious manner and has been notified in writing of the possibility of termination of employment in the civil service within previous six months in connection with a breach of service discipline;
- b) there is a reason for immediate termination of the employment in civil service with regard to the civil servant.

The service may immediately terminate the employment in the civil service with regard to an employee, if the civil servant has seriously breached the service discipline. The service may immediately terminate the employment with the civil service only within the period of two month from the day when the service has learnt of the reason for immediate termination, and in the case of a serious breach of the service discipline abroad also within two months from the return of the civil servant from abroad, in any case not later than within one year from the day of occurrence of such reason.

The employment within the civil service shall terminate on the day of

- a) the coming into force of the approved conciliation or on the day of the coming into force of the decision on the conditional discontinuation of criminal prosecution, if the civil servant has been placed out of active civil service pursuant to Sec. 42, Par. 1;
- b) the coming into force of the judgment sentencing the civil servant for a deliberate criminal offence;
- c) the coming into force of the judgment sentencing the civil servant for a negligent criminal offence, if the serving of the sentence has not been conditionally postponed.

A civil servant may not

- a) perform activity which is not dignified from the perspective of discharge of civil service;
- b) accept gifts or other advantages from a natural person or legal person in connection with the discharge of civil service except for the gifts or other advantages awarded by the service and gifts awarded during official negotiations or meetings;
- c) request gifts or other advantages or incite other person to offering gifts or other advantages in connection with the discharge of civil service;

### **Employee in the public administration<sup>25</sup>**

An employee is obligated to observe the Constitution of the Slovak Republic, constitutional laws, laws, other generally binding legislation, and **internal regulations** and to apply these to the best of his/her knowledge and consciousness, to respect and protect human dignity and human rights.

An employee may not request or accept gifts or other advantages or to incite other person to give gifts or other advantages in connection with and during the performance of work in public interest; this shall not apply in the case of gifts or other advantages usually awarded during the performance of work in public interest or based on law or from the employer.

The employer may only serve an employee a notice of dismissal for reasons, if there are reasons with regard to the employee based on which the employer may immediately terminate the employment or for less serious breach of the work discipline; for a less serious breach of the work discipline an employee may be served a

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<sup>25</sup> Legal regulation of the status of civil servants is also included in Act No. 552/2003 Coll., on the Performance of Works in Public Interest, by means of subsidiarity, the labor relations of employees during the performance of works in public interest are subject to Act No. 311/2001 Coll., the Labor Code, as amended

notice of dismissal if the employee has been notified in writing of the possibility of termination of employment within the previous six months in connection with a breach of the work discipline.

The employer may only serve an employee with a notice of dismissal for a breach of the work discipline or for a reason based on which it is possible to immediately terminate employment **within the period of two months** from the day when the employer learns of the reason for termination of employment, and in case of a breach of the work discipline abroad, also within two months after the return of the employee from abroad, **in any case not later than within one year from the day of the occurrence of the reason for termination of employment.** In the case that the acting of the employee which might show signs of breach of the work discipline becomes, within the period of two months, a **subject matter of proceedings of other body**, the notice may still be served within two months from the day when the employer becomes aware of the result of such proceedings.

The employer may immediately terminate the employment exceptionally, and only when the employee

- a) has been lawfully sentenced for a deliberate criminal offence;
- b) has seriously breached the work discipline.

The employer may only immediately terminate employment within the period of two months from the day when he has learnt of the reason for immediate termination, however, not later than within one year from the day of the occurrence of such reason.

If there is a just suspicion that an employee has seriously breached the work discipline and further performance of work by such employee would pose a risk to an important interest of the employer, the latter may, after consultations with the employees' representatives, temporarily suspend the performance of work by such employee, however, not longer than for one month. During the temporary suspension of work performance, the employee shall be entitled to salary compensation at the amount of his/her average salary.

### 3. Brief overview of implementation of SoL in corruption-related criminal proceedings

Based on the conducted meetings or information provided in other forms from the contacted persons and institutions the list of which forms Annex 2 hereto and available statistics, we can draw the following conclusions concerning the application practice in the area of the SoL.

Respondents agree that there is generally a very low number of cases where criminal prosecution has been discontinued due to the SoL. This fact results in part from the length of periods of limitation<sup>26</sup>, and also from the suspension of the SoL after the bringing of a charge against the particular offender.

Year	Total number of discontinued cases due to SoL
2005	220
2006	137
2007	123
2008	219
2009	193
<b>Total</b>	<b>892</b>

Source: Written opinion of the Attorney Generalship as of 25.6.2010

<sup>26</sup> For more information see Section 2 of this analysis



This situation is also acknowledged by the following table which discusses the discontinued criminal offences prior to the bringing of an action.

Discontinued criminal prosecutions pursuant to Criminal Code effective as of 31.12.2005										
Year	Accepting a bribe	Offering a bribe	Indirect corruption	Embezzlement	Abuse of functions	Obstructing or perverting the independence of courts	Obstructing or perverting the course of justice	Laundering of the proceeds of crime	Failure to notify the offence of laundering of the proceeds of crime	Total
2005	0	0	0	14	0	0	0	1	0	15
2006	3	0	0	7	2	0	0	0	0	12
2007	1	0	0	5	3	0	0	0	0	9
2008	6	1	0	5	6	0	0	0	0	18
2009	0	1	0	10	0	0	0	0	0	11
Total	10	2	0	41	11	0	0	1	0	
Total										65

Discontinued criminal prosecutions pursuant to Criminal Code effective as of 01.01.2006										
Year	Accepting a bribe	Offering a bribe	Indirect corruption	Embezzlement	Abuse of functions	Obstructing or perverting the independence of courts	Obstructing or perverting the course of justice	Laundering of the proceeds of crime	Failure to notify the offence of laundering of the proceeds of crime	Total
2005	0	0	0	0	0	0	0	0	0	0
2006	0	0	0	1	0	0	0	0	0	1
2007	0	0	0	0	0	0	0	0	0	0
2008	1	0	0	2	0	0	0	0	0	3
2009	0	0	0	1	0	0	0	0	0	1
Total	1	0	0	4	0	0	0	0	0	
Total										5

Transparency International Slovensko

	2005	2006	2007	2008	2009	Total
Discontinued criminal prosecutions in total	15	13	9	21	12	70

Source: Written opinion of the Attorney Generalship as of 25.6.2010

Discontinued criminal prosecutions pursuant to Criminal Code effective as of 31.12.2005										
Year	Accepting a bribe	Offering a bribe	Indirect corruption	Embezzlement	Abuse of functions	Obstructing or perverting the independence of courts	Obstructing or perverting the course of justice	Laundering of the proceeds of crime	Failure to notify the offence of laundering of the proceeds of crime	Total
2005	0	0	0	34	0	0	0	0	0	34
2006	1	2	0	28	0	0	0	0	0	31
2007	0	1	0	13	0	0	0	0	0	14
2008	0	0	2	12	0	0	0	0	0	14
2009	0	0	0	7	0	0	0	1	0	8
Total	1	3	2	94	0	0	0	1	0	
Total										101

Discontinued criminal prosecutions pursuant to Criminal Code effective as of 01.01.2006										
Year	Accepting a bribe	Offering a bribe	Indirect corruption	Embezzlement	Abuse of functions	Obstructing or perverting the independence of courts	Obstructing or perverting the course of justice	Laundering of the proceeds of crime	Failure to notify the offence of laundering of the proceeds of crime	Total
2005	0	0	0	0	0	0	0	0	0	0
2006	0	0	0	2	0	0	0	0	0	2
2007	0	1	0	2	0	0	1	0	0	4
2008	0	3	0	5	0	0	0	0	0	8
2009	0	2	0	7	2	0	1	0	0	12
Total	0	6	0	16	2	0	2	0	0	
Total										26

	2005	2006	2007	2008	2009	Total
Discontinued criminal prosecutions in total	494	517	572	578	589	2750

Source: Written opinion of the Ministry of justice of the Slovak Republic as of 26.07.2010

The conducted research has also shown that periods of limitations have no serious impact on criminal prosecution of corruption-related offences. It shows, that a larger obstacle lies in the unwillingness of citizens to report criminal offences, and subsequent lengthy and fruitless investigation which is often completed by an unconvincing decision of a court establishing innocence of the accused.

An assessment of sufficiency of the length of periods of limitation must be based on the basic principles of the imposition of sanctions. The purpose of punishment can only be achieved by its early imposition and execution. However, if a longer period of time has already elapsed from the committing of a criminal offence, and the offender has not committed a new criminal offence during such period, it can be assumed that the offender is no longer dangerous for the society or that his/her dangerousness has significantly decreased, and therefore it is not necessary to prosecute and impose punishment on such offender. In direct proportion to seriousness of the criminal offence, also the interest of the society in the punishing of the offender diminishes in the course of time. Likewise, from the procedural point of view, the power of proper evidence weakens or even disappears with time.



Transparency International Slovensko

Indicted criminal offences pursuant to Criminal Code effective as of 01.01.2006										
Year	Accepting a bribe	Offering a bribe	Indirect corruption	Embezzlement	Abuse of functions	Obstructing or perverting the independence of courts	Obstructing or perverting the course of justice	Laundering of the proceeds of crime	Failure to notify the offence of laundering of the proceeds of crime	Total
2005	0	0	0	0	0	0	0	0	0	0
2006	5	48	0	107	6	0	7	1	5	179
2007	10	57	2	359	8	1	27	3	2	469
2008	20	78	2	481	18	0	24	9	0	632
2009	22	92	1	621	23	0	37	4	0	800
Total	57	275	5	1568	55	1	95	17	7	2080
Total										2080

	2005	2006	2007	2008	2009	Total	
Criminal offences in total	2365	922	899	869	945	6000	6000

Source: Written opinion of the Attorney Generalship as of 25.6.2010

Convicted criminal offences pursuant to Criminal Code effective until 31.12.2005										
Year	Accepting a bribe	Offering a bribe	Indirect corruption	Embezzlement	Abuse of functions	Obstructing or perverting the independence of courts	Obstructing or perverting the course of justice	Laundering of the proceeds of crime	Failure to notify the offence of laundering of the proceeds of crime	Total
2005	10	33	3	1520	69	0	2	8	0	1645
2006	7	38	1	646	40	0	1	5	0	738
2007	27	22	2	314	28	0	0	4	0	397

Transparency International Slovensko

2008	8	49	0	180	18	0	1	7	0	263
2009	6	3	0	120	20	0	2	5	0	156
Total	58	145	6	2780	175	0	6	29	0	
Total										3199

Convicted criminal offences pursuant to Criminal Code effective as of 01.01.2006										
Year	Accepting a bribe	Offering a bribe	Indirect corruption	Embezzlement	Abuse of functions	Obstructing or perverting the independence of courts	Obstructing or perverting the course of justice	Laundering of the proceeds of crime	Failure to notify the offence of laundering of the proceeds of crime	Total
2005	0	0	0	0	0	0	0	0	0	0
2006	7	33	0	130	1	0	4	0	18	193
2007	1	74	0	265	1	0	7	3	1	352
2008	5	72	4	150	5	0	8	3	0	247
2009	13	101	1	512	6	0	18	3	2	656
Total	26	280	5	1057	13	0	37	9	21	
Total										1448

	2005	2006	2007	2008	2009	Total
Convicted criminal offences in total	27 729	25 764	27 067	28 651	30 953	140 164

Source: Written opinion of the Ministry of Justice of the Slovak Republic as of 26.07.2010

Based on an analysis of media from the last 10 years, we have identified several cases discontinued for the SoL of criminal offences. Certain case were directly related to corrupt behavior.

The media informed of the cases of corrupt behavior on the part of football referees. However, it was impossible to investigate the cases due to the SoL of such criminal offences.<sup>27</sup> Another case was the conduct by the Minister of Economy Ľubomír Jahňátek (Smer) who was suspected of the offence of fraud. Allegedly, such conduct occurred when he was in the position of a director of a private company. However, the case was discontinued in 2007 due to the SoL applicable to the criminal offence.<sup>28</sup> Another case is the questioned decision-making of a judge in several inheritance proceedings. The irregularities were detected by an inspection commission finding out that approximately 50 files were not kept at the court but at the judge's home instead. A series of suspicions was investigated by the police on the grounds of suspicion of abuse of functions and accepting of a bribe. However, the prosecution of Judge Cimerman was eventually discontinued by the prosecutor due to the SoL, since the deeds had allegedly happened already in the middle of 1990's. The judge was not allowed to discharge his function for seven years. In 2006, when he applied to the Judicial Council for the cancellation of the decision, his colleagues have asked the Council in writing to carefully consider the issue.<sup>29</sup>

Statute of limitation may be one of the reasons why serious accusations against the Prime Minister of the Slovak Republic will eventually not be investigated. This case together with its legal qualification in relation to the SoL is analyzed in more detail on the blog of the former investigator Jozef Šatek. The blog forms Annex 3 hereto.

The law of the Slovak Republic allows for deciding on the compensation for damages already directly within the criminal proceedings by using the so-called collateral proceedings. However, based on the replies from respondents it has shown that courts rarely make use of this instrument and refer the aggrieved party to new civil proceedings. In general, it is possible to observe that there are few cases of claiming damages incurred by criminal activity. Hence it follows, that the SoL, the length of the period of limitation, and other conditions laid down by law do not appear to represent as a substantial obstacle in claiming such damages.

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<sup>27</sup> Musí sa nájsť niekto spravodlivý a čestný (*There must be someone fair and honest*), Šport, p. 06, 13.12.2006

<sup>28</sup> Stopy z Plastiky vedú k Harvardom (*Leads from Plastica Lead Harvard Funds*), SME, p. 04, News Service, 12.5.2010

<sup>29</sup> Sudca s minulosťou chce byť predsedom (*A judge with the past wants to be a chairman*), [www.sme.sk](http://www.sme.sk), p. 00, SME Online, Home Affairs, 9.10.2009

#### 4. Best practices, weaknesses, and recommendations

With regard to the above-mentioned, no distinct shortcomings or positive experience may be identified within the judicial practice. However, several recommendations have followed from the conducted meetings and analysis.

Suspension of the period of limitation occurs during the period during which it has not been possible to bring the offender before court due to a legal obstacle. A legal obstacle means e.g. the immunity of Members of Parliament. A Member of Parliament is not granted impunity. He/she is only awarded the right that the National Council of the Slovak Republic decides on the suspension of the commencement of criminal prosecution against the person of the Member of Parliament; however, criminal prosecution of such Member of Parliament is not excluded even during the period of fulfillment of his/her mandate.<sup>30</sup> However, the same principle is not applied e.g. to the members of the government for whom the period of limitation also lapses during the discharge of their functions. In fact, the holding of a high position within the state administration practically precludes the investigation of criminal offences, and therefore should also be the reason for the suspension of duration of the period of limitation.

Definitions of criminal offences of accepting and offering a bribe are linked to other conditions criticized in the long term by Greco. Non-fulfillment of these conditions does not allow for the using of qualified facts of the case and thereby also indirectly influences the length of the period of limitation which is linked to the upper limit of the severity of sentence.

Therefore, GET recommends (i) to re-evaluate Sec. 328 and Sec. 332, and also Sec. 329 and Sec. 333 of the Penal Code, so that corruption in the public sector is also criminalized in situations where there is no breach of obligations or where it does not concern “the procurement of a thing of general interest”, in order to assure the compliance with the Criminal Law Convention on Corruption (CETS No. 173), and (ii) to consider, in the interest of comprehensibility, the criminalization of corruption in the public and private sectors in separate provisions in accordance with the Convention.<sup>31</sup>

Another problem is the absence of linking of the period of limitation for the compensation for damages pursuant to the Civil Code with the completion of criminal proceedings. The legal regulation allows for<sup>32</sup> the SoL with regard to the compensation for damages prior to valid completion of the criminal proceedings and conviction of the offender.

However, it appears to be problematic to prove the intent to avoid criminal proceedings by staying abroad. It is practically impossible to prove that a perpetrator of a criminal offence staying abroad has done so with the intention to avoid criminal proceedings, also with regard to the fact that in majority of cases the perpetrator stays abroad legitimately or legally. Therefore, the condition for the suspension of the period of limitation should not include the proving of the fact that the offender has had such intent. In this respect, the change of the legal regulation leading to the legal situation prior to 1.1.2006 has been more effective, i.e. that the perpetrator’s staying abroad itself would represent a reason for the suspension of the period of limitation without the need to prove he/she has done with the intent to avoid criminal proceedings.<sup>33</sup>

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<sup>30</sup> Drgonec J.: *Ústava Slovenskej republiky Komentár (The Constitution of the Slovak Republic, Annotation)*, 2<sup>nd</sup> edition, Heuréka, 2007

<sup>31</sup> Report on the Assessment of the Slovak Republic with regard to the Issue of Criminalization (ETS 173 and 191, GPC 2), Adopted by GRECO at its 36<sup>th</sup> Plenary Session (Strasbourg, February 11-15, 2008)

<sup>32</sup> Unless the claim is exercised which would result in the suspension of the period of limitation.

<sup>33</sup> Opinion of the Attorney Generalship as of 25.6.2010



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## Annex 1:

Definitions of corruption-related criminal offences monitored in this analysis:

**The offence of bribery (accepting of a bribe) pursuant to Sec. 328 - 331 of the Penal Code:**

### Section 328

(1) A person who directly or through a mediator accepts, requests or permits him/herself to be promised, for himself/herself or other person, a bribe in order to act or refrain from acting so that he/she breaches his/her obligations resulting from his/her employment, profession, position or function shall be punished by imprisonment of two up to five years.

(2) The offender shall be punished by imprisonment of three to eight years if he/she commits the offence mentioned in Par. 1 by more serious way of conduct.

(3) The offender shall be punished by imprisonment of seven to twelve years if he/she commits the offence mentioned in Par. 1 in a large scope.

### Section 329

(1) A person who in connection with the procurement of a thing of general interest directly or through a mediator accepts requests or permits him/herself to be promised, for himself/herself or other person a bribe shall be punished by imprisonment of three up to eight years.

(2) The offender shall be punished by imprisonment of five to twelve years if he/she commits the offence mentioned in Par. 1 as a public official.

(3) The offender shall be punished by imprisonment of ten to fifteen years if he/she commits the offence mentioned in Par. 1 or 2 in a large scope.

### Section 330

(1) A person who as a foreign public official directly or through a mediator accepts, requests or permits him/herself to be promised, for himself/herself or other person a bribe in connection with the discharge of official duties in order to acquire or maintain an undue advantage in the execution of international trade shall be punished by imprisonment of five up to twelve years.

(2) The offender shall be punished by imprisonment of ten to fifteen years if he/she commits the offence mentioned in Par. 1 in a large scope.

### Section 331

(1) A person who as a member of a foreign parliamentary assembly, judge or official of an international judicial body recognized by the Slovak Republic or as a representative or employee of an international, global, intergovernmental organization or body having a contractual relationship with the Slovak Republic or as a person holding a similar position, directly or through a mediator accepts, requests or permits him/herself to

be promised, for himself/herself or other person a bribe in connection with the discharge of his/her function shall be punished by imprisonment of five up to twelve years.

(2) The offender shall be punished by imprisonment of ten to fifteen years if he/she commits the offence mentioned in Par. 1 in a large scope.

**The offence of bribery (offering a bribe) pursuant to Sections 332 - 335 of the Penal Code:**

#### Section 332

(1) A person who directly or through a mediator promises, offers or gives a bribe to other person in order to act or refrain from acting so that the latter breaches his/her obligations resulting from his/her employment, profession, position or function or for that reason, directly or through a mediator promises, offers or serves a bribe to other person shall be punished by imprisonment of up to three years.

(2) The offender shall be punished by imprisonment of one to five years if he/she commits the offence mentioned in Par. 1 by more serious way of conduct.

(3) The offender shall be punished by imprisonment of four to ten years if he/she commits the offence mentioned in Par. 1 in a large scope.

#### Section 333

(1) A person who in connection with the procurement of a thing of general interest directly or through a mediator provides, offers or promises or based on that reason provides, offers or promises a bribe to other person a bribe shall be punished by imprisonment of six months up to three years.

(2) The offender shall be punished by imprisonment of two to five years if he/she commits the offence mentioned in Par. 1

a) by more serious way of conduct; or

b) against a public official.

(3) The offender shall be punished by imprisonment of five to twelve years if he/she commits the offence mentioned in Par. 1 in a large scope.

#### Section 334

(1) A person who directly or through a mediator provides, offers or promises a bribe to a public official or other person in connection with the discharge of official duties of a foreign public official with the intention to acquire or maintain an undue advantage in the execution of international trade shall be punished by imprisonment of two up to five years.

(2) The offender shall be punished by imprisonment of five to twelve years if he/she commits the offence mentioned in Par. 1 in a large scope.

### Section 335

(1) A person who provides, offers or promises a bribe to a member of a foreign parliamentary assembly, judge or official of an international judicial body recognized by the Slovak Republic or as a representative or employee of an international, global, intergovernmental organization or body having a contractual relationship with the Slovak Republic or to a person holding a similar position in connection with the discharge of his/her function or based on that reason provides, offers or promises a bribe to other person shall be punished by imprisonment of two up to five years.

(2) The offender shall be punished by imprisonment of five to twelve years if he/she commits the offence mentioned in Par. 1 in a large scope.

### The offence of indirect corruption pursuant to Section 336 of the Penal Code

### Section 336

(1) A person who directly or through a mediator accepts, requests or permits him/herself to be promised, for himself/herself or other person, a bribe for applying his/her influence to affect the discharge of powers of a person specified in Sections 328, 329, 330 or 331 or for already having done so, shall be punished by imprisonment of up to three years.

(2) A person who directly or through a mediator promises, offers or serves a bribe to other person for applying his/her influence to affect the discharge of powers of a person specified in Sections 332 or 333 or for already having done so, or based on that reason provides, offers or promises a bribe to other person shall be punished by imprisonment of up to two years.

### The offence of embezzlement pursuant to Section 213 of the Penal Code

### Section 213

(1) A person who assumes the use of a foreign item entrusted to him/her, and thereby causes a minor damage on foreign property shall be punished by imprisonment of up to two years.

(2) The offender shall be punished by imprisonment of one to five years if he/she commits the offence mentioned in Par. 1

a) and thereby causes damage of larger scope;

b) based on special motif;

c) as a person which specifically assigned duty to protect the interests of the aggrieved party or as a trustee in bankruptcy; or

d) by more serious way of conduct.

(3) The offender shall be punished by imprisonment of three to ten years if he/she commits the offence mentioned in Par. 1 and thereby causes substantial damage.

(4) The offender shall be punished by imprisonment of ten to fifteen years if he/she commits the offence mentioned in Par. 1

a) and thereby causes damage of large extent;

b) as a member of a dangerous group; or

c) during a crisis.

### **The offence of abuse of functions pursuant to Section 326 of the Penal Code**

#### Section 326

fails to fulfill his/her duty resulting from his/her powers or from judicial decision; shall be punished by imprisonment of two to five years.

(1) A public official who with the intention of causing damage to other person or to gain for himself/herself or for other person illegitimate benefit

a) discharges his/her powers in a way contrary to law;

b) acts beyond his/her powers; or

c) fails to fulfill his/her duty resulting from his/her powers or from judicial decision shall be punished by imprisonment of two to five years.

(2) The offender shall be punished by imprisonment of four up to ten years if he/she commits the offence mentioned in Par. 1

a) by a more serious way of conduct;

b) on a protected person; or

c) based on a special motif.

(3) The offender shall be punished by imprisonment of seven up to twelve years if he/she commits the offence mentioned in Par. 1

a) and thereby causes a serious bodily harm or death;

b) and thereby cause substantial damage; or

c) in order to obstruct or make more difficult the exercise of fundamental rights and freedoms of other person.

(4) The offender shall be punished by imprisonment of ten up to twenty years if he/she commits the offence mentioned in Par. 1

a) and thereby causes a serious bodily harm to or death of several persons;

b) and thereby causes damage of large extent;

c) during a crisis.

### **The offence of obstructing or perverting the independence of courts pursuant to Section 342 of the Penal Code**

#### Section 342

(1) A person who exerts influence on a judge so that the latter fails to comply with his/her obligation within judicial proceedings or who acts with the aim of obstructing the rights of the parties to the judicial proceedings or of the defendant shall be punished by imprisonment of one to six years.

(2) The offender shall be punished by imprisonment of two up to eight years if he/she commits the offence mentioned in Par. 1

a) based on a special motif;

b) in order to obstruct or make more difficult the exercise of fundamental rights and freedoms of other person; or

c) by publicly denouncing the judge in connection with the latter's decision-making with regard to a specific case.

(3) The offender shall be punished by imprisonment of three up to ten years if he/she commits the offence mentioned in Par. 1 with the intention to acquire for him/herself or for other person a substantial benefit or to cause a substantial damage or other particularly serious consequences.

**The offence of obstructing or perverting the course of justice pursuant to Section 344 of the Penal Code**

#### Section 344

(1) A person who within judicial or criminal proceedings

- a) submits evidence with the knowledge that such evidence has been forged or modified for the purpose of using it as authentic evidence;
- b) forges, modifies or obstructs evidence or hinders the gathering of evidence;
- c) obstructs or hinders the presence or testimony of a party to criminal proceedings, party to judicial proceedings, witness, expert, interpreter or translator; or
- d) applies violence, threat of violence or threat of other serious harm or promises, offers or grants illegitimate advantage in order to influence a party to criminal proceedings, party to criminal proceedings, witness, expert, interpreter, translator or law enforcement bodies; shall be punished by imprisonment of one to six years.

(2) The offender shall be punished by imprisonment of three up to eight years if he/she commits the offence mentioned in Par. 1

- a) with the intention to acquire for him/herself or for other person a substantial benefit or to cause a substantial damage or other particularly serious consequences;
- b) in order to obstruct or make more difficult the exercise of fundamental rights and freedoms of other person; or
- c) based on a special motif.

**The offence of laundering of the proceeds of crime pursuant to Sections 233 and 234 of the Penal Code**

#### Section 233

(1) A person who

- a) transfers to himself/herself or other person, lends, borrows, transfers in a bank or in a branch of a foreign bank, imports, transits, brings along, displaces, lets for rent or otherwise acquires for himself/herself or other person; or
- b) holds, keeps, hides, makes use, uses up, destroys, modifies or damages; the proceeds or other assets from crime with the intention to conceal the existence of such proceeds or item, to cover the fact that such proceeds or items originate from crime, are intended or used for the committing of a criminal offence, to obstruct the caption thereof for the purposes of criminal proceedings or forfeiture or confiscation thereof; shall be punished by imprisonment of two to five years.

(2) The offender shall be punished by imprisonment of three up to eight years if he/she commits the offence mentioned in Par. 1

- a) based on a special motif; or
- b) and thereby acquires a larger benefit for him/herself or for other person.

(3) The offender shall be punished by imprisonment of seven up to twelve years if he/she commits the offence mentioned in Par. 1

- a) as a public official;
- b) and thereby acquires a substantial benefit; or
- c) by a more serious way of conduct.

(4) The offender shall be punished by imprisonment of twelve up to twenty years if he/she commits the offence mentioned in Par. 1

- a) and thereby acquires a benefit of large extent for him/herself or for other person;
- b) in relation to things coming from the trafficking of in narcotic, psychotropic, nuclear or extremely hazardous chemical substances, weapons and people trafficking or from other particularly serious crime; or
- c) as a member of a dangerous group.

#### Section 234

(1) A person who fails to notify or report, despite the fact that such duty follows from his/her employment, profession, position or function

- a) facts suggesting that other person has committed the offence of laundering of the proceeds of crime pursuant to Section 233; or
- b) unusual business operation; shall be punished by imprisonment of two up to eight years.

(2) The action mentioned in Par. 1 shall not be a criminal offence if the offender has not been able to serve the notification or report without exposing him/herself or related party to the risk of criminal prosecution.



## Annex 2 Contacted Persons and Institutions

Name and surname	Workplace	E-mail	Evaluation
Mgr. Katarína Kudjaková	Specialized Court – Spokeswoman	<a href="mailto:katarina.kudjakova@justice.sk">katarina.kudjakova@justice.sk</a>	Two refusals to meet; have sent a written opinion
JUDr. Dušan Kováčik	The Special Prosecutor's Office of the SR – Special Prosecutor, Director of the Special Prosecutor's Office		No reply
Mgr. Vladimír Turan	Attorney Generalship of the SR – Prosecutor	<a href="mailto:Vladimir.Turan@genpro.gov.sk">Vladimir.Turan@genpro.gov.sk</a>	Have sent a written opinion and statistics
Tibor Gašpar	The Anti-Corruption Office at the Presidium of Police Forces of the SR, Director	<a href="mailto:korupcia@minv.sk">korupcia@minv.sk</a>	Meeting, they have sent a written opinion
Eva Škvareninová	The Office of the Government of the SR - OLAF; Director of the Unit	<a href="mailto:afcosr@vlada.gov.sk">afcosr@vlada.gov.sk</a> ; <a href="mailto:sekretariat.skbpk@vlada.gov.sk">sekretariat.skbpk@vlada.gov.sk</a>	Meeting
Erika Gajdošíková	The Office of the Government of the SR - OLAF; Director of the Unit		Meeting
Doc. JUDr. Jozef Čentéš, Phd.	Attorney Generalship of the SR – Deputy Director of the Criminal Department	<a href="mailto:jozef.centesh@genpro.gov.sk">jozef.centesh@genpro.gov.sk</a> ; <a href="mailto:jozef.centesh@flaw.uniba.sk">jozef.centesh@flaw.uniba.sk</a>	Two refusals to meet and answer
Doc. JUDr. Pavel Kandrác, CSc.	Ombudsman of the SR	<a href="mailto:sekretariat@vop.gov.sk">sekretariat@vop.gov.sk</a>	Two refusals to meet; have sent a written opinion
JUDr. Lucia Gazáreková, Phd.	Department of Criminal Law, Criminology, and Criminal Science at the Comenius University; The Institute of State and Law of the Slovak Academy of Science	<a href="mailto:lucia.gazarekova@flaw.uniba.sk">lucia.gazarekova@flaw.uniba.sk</a>	Meeting
JUDr. Marek Števček, Phd.	Department of Civil Law at the Comenius University, Academy of Justice of the SR	<a href="mailto:marek.stevcek@flaw.uniba.sk">marek.stevcek@flaw.uniba.sk</a> (PF UK), <a href="mailto:marek.stevcek@justice.sk">marek.stevcek@justice.sk</a> (JA SR)	Meeting
Mgr. Zuzana Čaputová	Advocate	<a href="mailto:caputova@caputova.sk">caputova@caputova.sk</a> , <a href="mailto:caputova@changenet.sk">caputova@changenet.sk</a>	Refused to meet
Peter Wilfling	The Open Law Portal (Via iuris project); editor and lawyer	<a href="mailto:wilfling@changenet.sk">wilfling@changenet.sk</a>	Via telephone

Transparency International Slovensko

Martin Giertl, Renáta Záhoráková, Andrej Šabík	The Charta 77 Foundation – advocating of human rights (all the three are lawyers)	<a href="mailto:charta77@rainside.sk">charta77@rainside.sk</a>	No response
JUDr. Ondrej Laciak	Department of Criminal Law, Criminology, and Criminal Science at the Comenius University; advocate	advokatska.kancelaria@post.s, ondrej.laciak@flaw.uniba.sk	No response
Doc. JUDr.Mária Srebalová, Phd.	Department of Administrative, Environmental Law at the Comenius University; advocate	maria.srebalova@flaw.uniba.sk	No response
JUDr. Ján Havlát	Attorney of Gabriel Karlin	<a href="mailto:havlat@havlat.sk">havlat@havlat.sk</a>	No response
JUDr. Peter Filip	Attorney of Pavol Bielik	peter.filip@akhif.sk	Refused to meet
JUDr. Dušan Ivan	Attorney of Pavla Bielika	<a href="mailto:dusan.ivan@akhif.sk">dusan.ivan@akhif.sk</a>	Meeting
JUDr. Peter Vačok	Advocate	<a href="mailto:kancelaria@attorney.sk">kancelaria@attorney.sk</a>	Refused to meet
The Ministry of Justice of the SR	Criminal Law Section	<a href="mailto:ms.stp.sek@justice.sk">ms.stp.sek@justice.sk</a>	Will send opinion additionally but we do not know when
Attorney Generalship of the SR	Criminal Department	<a href="mailto:GPSR@genpro.gov.sk">GPSR@genpro.gov.sk</a>	Have sent a written opinion and statistics
The Ministry of Interior of the SR	Communications Department		No response
	Public Administration Section – Director General: Ing. Jozef Liška	<a href="mailto:svs@mvsr.vs.sk">svs@mvsr.vs.sk</a>	
Public Procurement Office	Communications Department	<a href="mailto:helena.fialova@uvo.gov.sk">helena.fialova@uvo.gov.sk</a>	We have their opinion
Anti-Monopoly Office of the SR	Communications Department	<a href="mailto:pmusr@antimon.gov.sk">pmusr@antimon.gov.sk</a>	No response
Supreme Audit Office of the SR	Communications Department	<a href="mailto:info@nku.sk">info@nku.sk</a>	We have their opinion

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**Annex 3**

In the case of proving of the information published in the media concerning the methods of financing of the political party SMER, and the illegitimate advantage granted to private persons, the level of intensity of breach of these standards would be so high that it justifies requesting the Prosecutor General to file a proposal at the Supreme Court of the Slovak Republic for the dissolution and suspension of political activity of SMER. At the same time, we shall keep in mind that political corruption occurred prior to elections in 2002 (sponsorship agreement between Ľ. Blaško and F. Flašík) and has not been detected and offenders have not been brought before court, such practice has in similar way and certainly in larger extent also continued in 2006, and I assume that it continues even today. From the perspective of criminal law, what has actually happened by the performance of the suspicious "sponsoring" of the political party? If a representative of a political party has accepted a financial amount equal to SKK 32 mil. which has not been entered in the books within the meaning of Act on Political Parties and Movements (Act No. 424/1991 Coll.) as an income from donations (Sec. 17, Par. 7 (b) and he has used this money out of the accounting books (the so-called Black Fund) for the purposes of financing of his political activities (e.g. parliamentary elections), he has committed the criminal offence of distortion of information of economic and trade registration pursuant to Sec. 125, Par. 1 (a), Par. 4 (a), (b) (the Penal Code No. 140/1961 Coll. applicable at the time of the committing of the offence) by concealing the compulsory information concerning significant acts in the statement intended for the supervision over the management and thereby has caused other particularly serious consequences (he has raised actual doubts of the public concerning the purity of political competition) and has breached the special obligation resulting from the Act on Political Parties and Movements. There was an imminent threat of imprisonment of the offenders for 1 up to 5 years, while the criminality of this offence expired upon the lapse of the period of limitation equal to 5 years, i.e. in 2007. The chairman of and other official of a political party were not holding positions within the meaning of Sec. 89, Par. 9 of the Penal Code No. 140/1961 Coll. And since the criminal liability of public official requires that the criminal offence is committed in connection with their powers and responsibility which must exist at the time of the committing of the offence, then in the given case the chairman or other official or authorized representative of a political party was not such special entity, and might have not committed the offence of abuse of functions pursuant to Sec. 158 of the Penal Code No. 140/1961 Coll. The results of elections were not in accordance with the expectations of political representatives of SMER and their alleged "sponsors", and therefore they have had no objective opportunity to practically fulfill the agreed upon allocation of positions in state institutions and subsequently have not gained the positions of public officials and associated powers and responsibility. Unless it is proven by investigation that Ľ. Blaško has drawn off financial means from his business companies later provided to the political party SMER, and has substantiated the withdrawal of those financial means e.g. by forged tax documents and thereby has committed the crime of fraud or embezzlement, then there is only a small chance of documenting, by the subsequent transfers and use of such financial means by the representative of the political party, the laundering of the proceeds from crime pursuant to Sec. 252 of the Penal Code No. 140/1961 Coll. In relation to the offence of accepting a bribe and other undue advantage pursuant to Sec. 160a and offence of offering a bribe pursuant to Sec. 161a of the Penal Code No. 140/1961 Coll., first of all, the offender must accept or permit him/herself to be promised a bribe for him/herself or other person, while such person can also be a political party and "to procure a thing of general interest". The term "thing of general interest" is not identical with regard to content with the fulfillment of tasks falling under the power of public officials. This term is broader and contains the fulfillment of all tasks in the interest of the whole society or at least of a larger group of citizens. Thus, the procurement of things of general interest does not represent only the decision-making activity but also the activity related to the fulfillment of socially important tasks. It is evident, that such tasks important for the whole society include the elections of member of the

National Council of the Slovak Republic and afterwards, also the possible assignment of functions within the Government of the SR with the possibility to also define the assignment of functions in the control and audit bodies of important business companies with the participation of the State. In this particular case, also the connection between the accepting of a bribe and promised specific activity which has the nature of a thing of general interest (personal allocation of the functions of a member of parliament, member of the government, member of the control or audit body of a business company) is evident. On the other hand, without the provision of a bribe, the person providing the bribe would not have the possibility to put his personnel intention into practice. This offence of accepting a bribe has been already completed by the request for a bribe itself or by the promise of a bribe, i.e. the preparatory phase has been promoted to a completed criminal offence. Therefore, it will be sufficient for the evidence if it is proven that there has been an oral agreement where both parties have promised certain performance; the provision of a bribe on the one side and the commitment to allow the proposing of persons for the specified functions. With regard to the completion of this criminal offence, it is irrelevant whether the performance of the agreement has occurred or even whether objective opportunity (victory in the elections) enabling to implement the initial intention has arisen. The offender of the mentioned criminal offence faces a threat of imprisonment of 1 up to 5 years, while the criminality of this offence expired upon the lapse of the period of limitation equal to 5 years, i.e. in 2007. The offender who has offered, promised or already provided a bribe in connection with the procurement of "a thing of general interest" has committed the offence of offering a bribe pursuant to Sec. 161a of the Penal Code. In the event that such offender has deceased in the meantime, the criminal prosecution is inadmissible and the case must be discontinued (Ľ. Blaško). In the event that such criminal offence has also been committed by other persons who mediated (concluded a written agreement) or subsequently performed (submitted a portion of the bribe on a monthly basis) the provision of a bribe and it is proven by investigation that the given action has happened and has been committed by a specific person, than the criminal prosecution must be discontinued on the grounds of expiration of its criminality by the lapse of the period of limitation equal to 5 years, i.e. in 2007. Political parties and political movements are exempted persons within the meaning of Act on Income Tax. Also based on this reason, but in particular because of the fact that accepting of a bribe represents illegal activity and the offender may not be forced to disclose such bribe in his accounting or possibly pay the resulting taxes, the case does not represent a suspicion of the committing of the crime of tax and premium evasion pursuant to Sec. 148 of the Penal Code. However, the law enforcement body may not discontinue the complaint filed by the representatives of KDĽH by merely stating that criminal prosecution is inadmissible on the grounds of expiration of criminality of the criminal offence by the lapse of the period of limitation. The law enforcement body is prevented from doing so by the condition imposed by law in this connection on law enforcement bodies to investigate and exclude that the **statute of limitation of the criminal proceedings** has not been interrupted because "the offender has not committed a deliberate criminal offence during the period of limitation." (Sec. 87, Par. 3 (b)). In the event that investigation shows that the offender has committed a deliberate criminal offence during such period, then a new period of limitation would commence upon the completion thereof. It can be reasonable assumed that the persons suspected of criminal offences committed in 2002 might have also committed similar criminal offences in connection with parliamentary elections in 2006 and perhaps also prior to this year's elections.<sup>34</sup>

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<sup>34</sup> Šátek J.: Vláda slovenskej finančnej oligarchie (*The Rule of the Slovak Financial Oligarchy*), blog.sme.sk, 26.5.2010