FIGHT WITH THE "WHITE HORSES" IN SLOVAKIA AND THE DISQUALIFICATION REGISTRY

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Abstract: The author focuses on the topic of the position of the companies´ statutory bodies in relation to the current trends of the legal science and judiciary. The article is specifically dedicated to fight with the "white horses" in Slovakia and with the disqualification registry. The author analyses current situation with the executive directors and the tools for fighting against the abuse of the position of the executive directors/ statutory bodies of the company. Author brings closer view to relatively new institute of the disqualification registry in Slovakia and analyses the establishment of the disqualification registry in Slovakia with possible impact of criminal law on the position of the statutory bodies of the business companies in Slovakia.

Keywords: statutory body, discretionary power of the statutory body, "whitehorse", disqualification registry, criminal liability.

1 Introduction

Limited Liability Company became the mostly used corporate vehicle in Slovak legal environment for the performance of many entrepreneurial plans of Slovak businessmen. Limited liability of the company and relatively low amount of initial capital needed by the members (shareholders) to establish the company plays very important role for Slovak businessmen when it comes to starting a business. That means that more than 90% of the business companies within Slovak Republic are represented by limited liability companies.[1]

In every fictitious legal person there are natural persons standing behind the legal person that "vitalize" the company itself. In case of limited liability company, these natural persons are company members (shareholders), who contribute to the entrepreneurial activity with their initial monetary or non-monetary contribution and executive directors who represent the "brain" of the company. The executive director acts within the law and its legal boundaries including the boundaries set in the Articles of Association of the company. Executive directors make fundamental decisions connected with the day-to-day business linked with the entrepreneurial activities of respective companies.

Executive directors are considered to be a neuralgic part of the limited liability company and are the subject of many academic debates initiated by legal scholars including attorneys practicing law. The person of the executive director is subject to severe and tight legal regulation as for his performance as the executive director and for the liability connected therewith. Slovak legislator is aware of executive directors´ importance and therefore limits them with the duty of care and loyalty. Executive directors are obliged to exercise their powers with professional care, in accordance with the interests of the company and all of its shareholders while having sufficient information base. Executive director does not enjoy an advantage of the limited liability as the shareholders but he might be held liable for the harm caused to the company and to be obliged to compensate the company also by using his personal assets.

2 Comparison of Slovak legal regulation with foreign legal regulation

In terms of Slovak Civil Code[2], legal acts in the name of the company are executed by its statutory body. Legal regulation set forth in Slovak Civil Code is considered to be the general legal regulation related to all types of the legal persons. This legal regulation is supplemented with an Article 133 of the Slovak Commercial Code which stipulates that the company's statutory body consists of one or more executive officers and that the executive director within this company may only be a natural person. Exact specification of the statutory bodies´ position is further stipulated in Article 13, section 1 of the Slovak Commercial Code which sets forth that a legal person (legal entity) shall act through its statutory body or its representative.[3] Legal persons might act either in person or in representation. Acting in person is deemed to be acting of the company´s statutory body on behalf of the company. Doctrine of "ultra vires" shall not be applied within Slovak legal regulation. This legal regulation means that the statutory body might act on behalf of the company in full scope of the company´s legal personality granted by law. Legal acts executed by the statutory bodies of the legal persons are deemed to be the legal acts of the legal persons themselves. We distinguish direct and indirect acts of the company itself, while direct acts of the company are considered to be the acts executed by its statutory body. Acts executed by the company´s representative are considered as indirect acts of the company. The acts are executed on behalf of the company and at its expense.

Slovak Commercial Code expressly stipulates who is the statutory body of respective business companies. It is very important to mention that these provisions are imperative (not optional) which means that the parties cannot stipulate otherwise in the Articles of Association, Agreement of Association or bylaws. According to Slovak legal system, acts of the statutory body are considered to be acts of the company itself. Such direct acts of the executive director represent different situation when compared to the situations when proxy[4], legal representative[5] or agent (attorney) acts on behalf of the company. Slovak legal view mentioned hereinabove completely differs from most of the foreign countries legal regulation. Those foreign legal rules are based on the fact that the acts of the company´s statutory body are the acts of the company´s attorney or proxy and therefore they are not considered to be the direct acts of the company itself.[6]

The executive director of the limited liability company may only be a natural person. Legal regulation that does not allow legal persons to be the executive director of the company is rather rare. For instance Dutch or British legal regulation allows the legal persons to be the statutory body of the companies. Except for the legal requirements stipulated for the executive directors by law, the companies in their Articles of Association or bylaws are allowed to prescribe more various requirements for the executive directors to comply with. In practice, the companies modify their Articles of Association or bylaws and stipulate stricter requirements for the executive directors in the queries concerning gained knowledge (degree) of the executive directors or experience in the field of company´s business activities.[7] Executive directors shall be aware of such specific regulation in the companies´ internal documents. Special requirements are inserted into these documents as for the fact that the shareholders have strong incentives for their company to be managed by the persons who adhere to all the necessary requirements and who will be able to govern the company properly in order to make profit. While performing as executive director of the company, the director is obliged to act with due care which is aligned with certain standard of knowledge. From my point of view, it is

[1] Other types of companies in Slovak Republic are represented by an unlimited company, a limited partnership and a joint stock company.
[2] Article 20, Section 1 of Slovak Civil Code

[3] See more: LUKÁČKA, P.: Aktuálne otázky výkonu funkcie konateľa s.r.o. In Sborník příspěvků 5. mezinárodní vědecké konference doktorandů a mladých vědeckých pracovníků Karviná : Obchodně podnikatelská fakulta, 2012, p. 192-198, ISBN 978-80-7248-800-1
[4] Article 14 of Slovak Commercial Code
[5] Article 15 and 16 of Slovak Commercial Code
[6] VÍTEK, J.: Odpovědnost statutárních orgánů obchodních společností. Praha: Wolters Kluwer ČR, 2012, s.65, ISBN 978-80-7357-862-6
[7] LUKÁČKA, P.: Zodpovednosť štatutárneho orgánu spoločnosti s ručením obmedzeným za škodu spôsobenú pri výkone svojej pôsobnosti. In: Miľniky práva v stredoeurópskom priestore 2011. Zborník z medzinárodnej vedeckej konferencie doktorandov a mladých vedeckých pracovníkov. 1. Vyd. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2011, p. 177

significantly important for the executive director to get proper education and to educate himself continuously as well as to gain information from respective business area of expertise.

3 Roots of Establishment of the disqualification registry

According to previous lines related to position of the executive director in the limited liability company I assume that it is really necessary to address developing legal regulation of disqualification registry in Slovak Republic and at least partially approach the functioning system of such registry.

Legislative Intent of Act on Disqualification Registry[8] introduced the legislator´s activity as the legal regulation which shall not constitute another administrative burden for the entrepreneurs, but this regulation intends to emphasize enforcement of already-existing duties of executive directors. Such intent has been transformed into law as we will disclose later. After making short analysis of actual and valid Slovak legal framework related to liabilities of statutory and supervisory bodies of limited liability companies, I conclude that current legislator´s solutions in this area shall be seen as insufficient for the long-term viewpoint. Such conclusion is based on a fact that hereinabove mentioned legislation shall serve as the protective mean for the creditors of the business companies, but fails to meet the purpose of such legislation. Protection of creditors should be enhanced by the doctrine of minimal capital requirements of the capital companies. Truth to be said, the institute of minimal capital requirements pursued and supported by the European Union does provide only illusion of the protection for the creditors.

4 Minimal capital requirements

Minimal capital maintenance is currently being discussed by many scholars within European Union. Current trends following these discussions tend to lower the minimal amount of capital that shall be initially invested into the company as for the amount of 1€. On the one hand, there is even slighter protection of creditors by lowering the minimal capital requirements and the satisfaction of the creditors might be endangered. On the other hand, high capital requirements for national companies are seen as a competitive disadvantage when compared to other types of companies established under other member-state law, which allows the companies to be established while using minimal capital funds. High capital requirements are seen as extra costs for the companies trying to move the company into another legislative regime within European Union free market.[9]

Based on aforementioned, we can say that legal regulation of statutory and supervisory bodies liabilities seems as the most vital tool for creditors´ protection. To conclude, the legislator is entitled to enact stricter legal requirements for supervisory and statutory bodies of the company as for their liability for the harm incurred by the company. Slovak Commercial Code does not specifically stipulate legal requirements for the person that intend to become members of statutory or supervisory bodies. On the other hand, every company that runs a business based on the Trade Certificate issued by the Trade Registry of Slovak Republic shall comply with certain minimal legal requirements related to statutory bodies of the company that are contained in the Trade Licencing Act and in other particular legal acts related thereto.[10] General requirements according to Article 6 of the Act on trade law include[11] impeccability, which is proved by an extract from the police record. Another requirement for statutory body is to be at least 18 years old and to have his residence in Slovak Republic or in any European Union member state. The same applies for OECD members. Moreover, there is a incompatibility restriction based on the Slovak Commercial Code meaning that the member of statutory body of the company shall not simultaneously be a member of the supervisory board.[12] Even though I will address the liability of executive directors in the last chapter of my monograph, I find it necessary to address the basics of this doctrine in the following lines. Clarification of basic executive director´s liability principles and principles related to drawing the consequences of illegal behaviour and sanctions imposition is necessary for better understanding of the topic.[13]

Concerning the capital character of the limited liability company there is more detailed legal regulation concerning the executive director liability when compared to other non-capital personal companies, limited partnership for example. Standards of executive director´s performance are legally stipulated by general obligation to act on behalf of the company while maintaining certain level of expertise and due care. Standards of such care consist of two elements which are professional care and loyalty towards the company and her members.

5 Professional care and potential actions against executives

Article 135a of Slovak Commercial Code pointedly enumerates obligations of the executive director of the limited liability company. There is a liability of executive director arising in case of breach of these obligations. Liability of the executive director might also arise when breaching other obligations than pointedly enumerated in the Commercial Code because of the fact that executive director is liable for breach of every obligation that is vested into statutory body scope of action.[14] Breach of obligation occurs in case of violation of obligations stipulated by law, Articles of Association, bylaws or obligations stipulated by company´s general meeting decisions.[15]

When reviewing the statutory bodies liability for damages incurred by the company there is a significant importance of the Article 261, section 6, subsection a) of Slovak Commercial Code. This article stipulates that the relationship between the statutory body and the company itself shall always be considered as commercial law obligation. Therefore, the liability of company´s statutory body will always be reviewed and governed by the Commercial Code as for the nature of the relationship between the statutory body and the company. In Slovak law, the relationship that will always be governed by Commercial Code rather than Civil Code is called an "absolute commercial relationship". Moreover, article of Commercial Code stipulating that such relationship is always governed by Commercial Code is imperative which means that the parties might not stipulate otherwise and they always have to adhere to such regulation. Due to the aforementioned facts, an executive director of Limited Liability Company bears objective liability for the harm/damages incurred by the company when he is acting on behalf of the company.

In practice, there are some discrepancies when it comes to enforcement of the company´s claims against the statutory body

[8] See: https://lt.justice.gov.sk/Material/MaterialWorkflow.aspx?instEID=-1&matEID=403&langEID=1

[9] Proposal on the regulation related to the European Company; COM (2008) 396/3; Explanatory report, 7th explanation of the In order to facilitate start-ups, the Regulation sets the minimum capital requirement at €1. The proposal departs from the traditional approach that considers the requirement of a high minimum of legal capital as a means of creditor protection. Studies show that creditors nowadays look rather at aspects other than capital, such as cash flow, which are more relevant to solvency. Director-shareholders of small companies often offer personal guarantees to their creditors (e.g. to banks) and suppliers also use other methods to secure their claims, e.g. providing that ownership of goods only passes upon payment. Moreover, companies have different capital needs depending on their activity, and thus it is impossible to determine an appropriate capital for all companies. The shareholders of a company are the best placed to define the capital needs of their business.
Available at: http://ec.europa.eu/internal_market/company/docs/epc/proposal_en.pdf, http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=sk&DosId=197172

[10] Such conditions are stipulated by an Act 483/2001 Z. z. on banks, Act No. 95/2002 Z. z. on insurance companies, Act No. 594/2003 Z. z. on collective investments, Act No. 429/2002 Z. z. on stock exchange functioning etc..

11 Act No. 455/1991 Coll. on trade law as amended

12 Article 139, section 2 of Commercial Code

13 For criminal sanctions see: MEZEI,M.: System of criminal sanctions In Corporate criminal liability : (in the Czech Republic, Slovakia and Poland) Brno : Masaryk University, 2016. p. 125-143, ISBN 978-80-210-8382-0

14 As for the term liability, see: LUKÁČKA,P.: Teoretické východiská pojmu zodpovednosť v slovenskom právnom poriadku In Zodpovednosť za vady diela: Wolters Kluwer, 2016, s. 60-67, ISBN: 978-80-8168-416-6.

[15] For the closer view on the potential claims against the executive directors see: LUKÁČKA, P.: *Vybrané aplikačné problémy uplatňovania zodpovednosti voči konateľom s.r.o.* In: Bratislavské právnické fórum 2013 [elektronický zdroj]. Bratislava : Univerzita Komenského, Právnická fakulta, 2013.

of the company. Commercial Code intends to maintain and support the right of the company for indemnification against the statutory body of the company when the company is harmed. Therefore, there are the company law institutes that broaden the liability of the executive director company not only in relation to company itself and company´s shareholders but also in relation to the third parties. There is a so-called "shareholder action" according to an Article 122 of Commercial Code that allows the shareholder himself to bring action against the statutory body in the name of the company. There is another special institute called "the creditor action" stipulated by the Article 135a of the Commercial Code.

The basis for bringing hereinabove mentioned creditor action against the statutory body of the company is the existence of the creditor´s claim against the company where the statutory body is performing. Another prerequisite for the creditor action is the fact that the claim cannot be satisfied from company´s assets because of the fact that they are insufficient for setting the claim. If these two mentioned criteria are met, the creditor is entitled to bring a legal action against the statutory body of the company (debtor). Creditor action is brought in the name of the creditor and on his own account. The amount of money that is cause of the creditor action is legally limited. The limitation of money to be sued from the company´s statutory body is set as the exact amount of the creditor´s claim including the claim accessions.

The creditor action (lawsuit) may be successfully filed only in case that the statutory body of the company failed to perform within due and professional care and therefore the damage was incurred by the company itself. Even though the institute of creditor action seems as a solid protective measure for the creditors, the creditors still face difficulties while lodging for their claims. The position of the creditor in the court proceedings is complicated as for the fact that the creditor is obliged to prove the company´s claim against the statutory body (the creditor de facto bears the burden of proof), to prove the existence of the creditor´s claim against the company concurrently with the fact that creditor´s claim cannot be satisfied from company´s assets which are insufficient for setting the claim. Failure to bear the burden of proof by the creditor means that the creditor action will be unsuccessful. From my point of view, the institute of "creditor action" does not really serve as efficient protective manner for the creditors. From the creditor´s position, there is a huge difficulty to prove the director´s failure to perform with due care and causal connection with the harm incurred by the company. Moreover, potential court hearing fees and costs in connection with the length of such court hearing in Slovak Republic are the main reasons for lack of an interest to file the creditor action and initiate court proceedings. In case that the company has ceased to exist or the shares have been transferred to a person that "can´t be traced" [16], the creditor´s claim in fact becomes unenforceable. In practice, nothing prevents the former shareholders and members of the statutory bodies from continuing with the dubious business activities by using newly-created business entity.

From the general point of view we can say that the term professional care of company´s executive director is not defined by law. The same applies to the terms "honest business relations" or "good manners". I share the same opinion as Vítek[17] that such rules, which lawmaker intentionally does not define, lay down advanced demands on judges. On the other hand, it offers bigger discretion for judges to make a decision pursuant to specific circumstances of the case and also to take into account current situation of both parties to the case. The basic element of professional care in a sphere of Slovak legal system is that law prescribes only indefinite legal provisions relating to executive director´s duty of professional care while performing on behalf of the company. It means that law prescribes main standard of care which statutory body or its member is obliged to adhere to when fulfilling duties given by law or company´s Articles of Association.

Allow me to stress slightly more precise and appropriate legal regulation of executive directors´ liability. My aim is not to criticise Slovak legal regulation, but I would like to point at Czech legal regulation which consistently distinguishes between the terms "care of the prudent treasurer" and professional care". The Czech Commercial Code stipulates for statutory body members to perform actions on behalf of the company with care of the prudent treasurer. In other words, executive director, while performing on behalf of company, should act with due care such as prudent administrator while performing his own affairs. The explanatory report of the Czech Commercial Code mentions that the standard of care should be reasonable. Such care shall be defined as due, proper and preferring the interests of the company itself. There is no need to be professionally qualified when it comes to care of the prudent treasurer for executive directors, while acting on behalf of a company. On the other hand, there is a necessity to handle company´s affairs as efficiently as possible. It is presumed that executive director who is properly acting on behalf of company is able to recognize when professional help from qualified authority is necessary. Furthermore, in such cases he is capable to provide such qualified authority to help for the company. [18]

6 Criminal law consquences[19]

The difference between terms professional care and care of the prudent treasurer can be illustrated by decision issued by Supreme court of Czech Republic, identification number 5 Tod 875/2009, which dealt with reasonable care of executive director, while acting on behalf of a company. Supreme Court stipulated that according to care of the prudent treasurer, the executive director performs legal acts concerning the business company responsibly and studious. He is also required to keep and maintain the property of the company equally as his own property. Such care undoubtedly contains care of company´s assets not just in the sense to prevent damages on such property by its decrease or devaluation but also in the sense in which assets are invested and valorised as much as possible in current market conditions. Performance of the executive director with care of the prudent treasurer does not presume executive director to have all the professional skills, which are connected to position of the statutory body of the company. The basic element of care of the prudent treasurer is the ability to recognize potential damages for the company and to prevent damages from occurring. Moreover, care of prudent treasurer includes duty of statutory body member to recognize when professional help of specially qualified entity is needed and to supply the company with such help. The proceedings with the statutory body were held in front of criminal court so the court reviewed the actions of the executive director also from criminal law aspects.

If the executive director fails to comply with the standards of care of the prudent treasurer while administering the assets of the company (the entrusted assets), the executive director might be found guilty according to the respective articles of the Criminal

[16] A person who can´t be traced shall be understood as socially weak person that is willing to acquire a company. Such person obtains small amount of money in order to acquire the company with the debts amounting to millions of euros. Such person also becomes an executive director of the company. Such person does not continue in the entrepreneurial business of the company. It is very common that such person is he shareholder and the executive director in more than company at the same time. Next type of these persons is represented by persons that are in position of the executive directors of the companies but they act in accordance with the instructions of the third persons (shadow directors, shadow shareholders). Such situation established the violation of Slovak law as the law forbids the situations related to the shadow directors.

[17] VÍTEK, J.: Odpovědnost statutárních orgánů obchodních společností. Praha: Wolters Kluwer ČR, 2012. s.137, ISBN 978-80-7357-862-6

[18] Decision of the Supreme Court of Czech Republic marked 5 Tdo 1224/2006 says that the executive director shall act with act of the prudent treasurer. This means that the executive director does not have to be gifted with all the professional characteristics. The executive director shall have at least basic knowledge sufficient to recognize the harm that might occur. The care of the prudent treasurer entails the duty of the executive director to recognize that the professional help is needed. Therefore, executive director shall be capable of ensuring such professional help for the company.

19 For further specification of criminal liability see: LACIAK, O.: Some notes about criminal law in the Slovak Republic In Shizuoka law journal no. 4 (March 2012), p. 107-114, ISSN 1882-7306.

Code. The Criminal Code protects the standards of the relationship between the company as the legal person and the executive director as a natural person who is entrusted with the company´s assets. The Court expressed that the executive director of the limited liability company is the person entitled to deal with the company´s assets in order to maintain the assets and to valorise them but despite these facts, he cannot administer them arbitrarily as his own property. If the executive director fails to comply with the duty of careful maintenance of the company´s assets and causes damages to the third persons (creditors for instance), under certain circumstances he might be found guilty under the Article 239 of the Slovak Criminal Code, which criminally punishes damages caused to the creditors.[20] According to new legal regulation also the legal entity itself may be held liable for conducting the crimes.[21] [22]

The duty of the executive director to perform with care of the prudent treasurer is stipulated by law and the law itself stipulates minimal standards of care for the executive director to comply with. This legal duty may not be limited or excluded in the written agreement on performance of an office or by subsidiary application of mandate agreement. Article 135a, section 4 stipulates that agreements between the company and its executive officer that exclude or limit the executive officer's liability are prohibited; neither the agreement of association nor articles of association may limit or exclude an executive officer's liability. It is therefore unambiguous that the standards of executive director´s performance and duties are imposed directly by imperative provisions of law and the parties to the contract (the company and the executive director) might not deviate from these standards and stipulate other provisions in their mutual contracts or agreements.

I do agree with those legal scholars that the aforementioned statement is fully valid and applicable for the situations concerning the lowering and decrease of the professional care (care of prudent treasurer in Czech Republic) standards. Such limitation or exclusion would be "ex lege" invalid. On the other hand, it is questionable whether the company itself can increase legally imposed standards of executive director´s duties and whether the company may demand that the executive director complies with the standards even stricter that the standards of professional care in Slovak Republic (or standards of care of prudent treasurer in Czech Republic). There are the scholars stating that such contractual provisions imposing higher standards for executive directors of the companies shall be seen invalid due to the conflict with imperative provisions of Commercial Code. The other part of scholars (including myself) can imagine the rationale behind the imposing stricter standards of care than those imposed by law for the executive directors. If the executive director himself (in most cases due to his professional education and experience) agrees to be subject to higher standards of his performance (higher standards of his performance are usually bound with higher remuneration of the executive director); I personally think that such higher standards shall be seen as acceptable and therefore admissible in the agreements on performance of an office.

7 Establishment of disqualification registry

I assume that the establishment of disqualification registry will have positive effect on the members of statutory and supervisory bodies of the company. From my point of view, the existence of such registry might discourage these persons from conducting illegal behaviour harming the creditors. The disqualification registry shall have been available online via official governmental website (www.orsr.sk), but in contrary with the legislative intent such registry is not public yet. Registry ought to contribute to efficient enforcement of legal rules related to statutory bodies of the company. Enactment of the registry shall simplify the simplicity and smooth process when it comes to punishment of the executive directors (statutory bodies) who fail to comply with legal standards of professional care, in correlation with the company´s interests and the interests of all of its shareholders. As stated in the legislative intent for the disqualification registry enactment, the registry should enhance the business culture in the Slovak Republic and clarify the relationships between the statutory bodies, shareholders, company and the third parties as a whole. Moreover, the government would dispose with more information about the acts of the statutory bodies and therefore the increase in successful claim enforcement against the statutory bodies shall occur.

Punishment of disqualification shall be understood as an injunction and prohibition of further business activity that is imposed by court. Such punishment would be granted not only in criminal proceedings but also within civil proceedings in case that violation of director´s duties arising from commercial and insolvency law is proved in court hearing. Disqualification should not be only seen as a similarity to a criminal law punishment. In current practice, punishment by injunction (similar to disqualification) is imposed very rarely and only within the criminal proceedings. In this case the criminal proceedings are initiated only in connection with illegal business activities falling into the scope of Slovak Criminal Code. Except for the provisions regarding the injunction under the Criminal Code, the legislator also intends to punish the passivity (failure to comply with the duty to perform actively and cautious) regarding the legal standards of professional care of the limited liability company´s executive director.

The biggest problem concerning the issuance of injunction under the Criminal Code when intending to punish business activities is in the length of the trial and the scope of the criminal evidence and proving the illegal intention of the director. All of that shall be done in order to issue a criminal injunction. When granting a punishment by disqualification under intended new legal regulation there would be a possibility to grant such punishment without proving the intentional behaviour of the executive director and the intention of such conduct will be presumed. It is caused by the fact that the professional care is integral and inseparable part of executive director´s performance and being passive and negligent does not meet the standards of professional care. Moreover, if the court does not issue an injunction in the criminal proceedings for the executive director´s failure to comply with duty to act with professional care as for the lack of his intent, court in civil proceedings might issue a punishment of disqualification, provided that the violation of professional care is proved. [23]

If the executive director does not comply with imposed punishment by disqualification, such conduct shall be considered as a crime according to the Criminal Code. The legislator intended to create new body (subject) of the criminal offence to be called "deviation from disqualification". However, such new criminal offence has not yet been introduced in the Criminal Code.

On the one hand, I am not certain that extension of the criminal offences as for the executive directors´ failure to comply with professional care and loyalty is necessary. Current Criminal Code entails many examples of criminal offences which cover the abovementioned failure to comply with the executive director´s duties. Embezzlement, violation of the prohibition of competition, abuse of participation in tenders or misuse of information in commercial relations are the examples of current criminal offences in valid Slovak Criminal Code. On the other hand, with reference to creditors´ and shareholders´ protection, I consider broadening of the criminal punishments of the

[20] Executive director may be held criminally liable also for money laundering, see more in: ČENTÉŠ, J.: Legalizácia príjmov z trestnej činnosti, Ars notaria No.2/2004, p. 41-46, ISSN: 1335-2229

[21] See: ČENTÉŠ, J.: Specifics of criminal proceedings against legal entities In Corporate criminal liability : (in the Czech Republic, Slovakia and Poland) Brno : Masaryk University, 2016. p. 145-160, ISBN 978-80-210-8382-0

22 For corporate criminal liability see: ĽORKO,J.: Fundaments of corporate criminal liability In Corporate criminal liability : (in the Czech Republic, Slovakia and Poland) Brno : Masaryk University, 2016.p. 97-123, ISBN 978-80-210-8382-0

[23] In relation to the professional care of the executive director see: MAMOJKA,M. in Obchodný zákonník. Veľký komentár. 1 zväzok.Bratislava: Eurokódex, 2016, p.538, ISBN: 978-80-8155-065-2.

executive directors quite acceptable as these acts cause significant harm to the company, shareholders, creditors and a society as a whole.

Literature:

1. ALLEN, W. T.: *The Corporate Director´s Fiduciary Duty of Care and The Business Judgment Rule*. In HOPT, K. A kol. Comparative Corporate Governance – The State of the Art and Emerging Research. Oxford: Claredon Press, 1998.
2. ČENTÉŠ, J.: *Legalizácia príjmov z trestnej činnosti*, Ars notaria No.2/2004, p. 41-46, ISSN: 1335-2229.
3. ČENTÉŠ, J.: *Specifics of criminal proceedings against legal entities* In Corporate criminal liability : (in the Czech Republic, Slovakia and Poland) Brno : Masaryk University, 2016. p. 145-160, ISBN 978-80-210-8382-0.
4. ELIÁŠ, K.: *K některým otázkám odpovědnosti reprezentantů kapitálových společností*. Právník, 1999, No.4.
5. KNEPPER,W.E., BAILEY, D.A.: *Liability of corporate Officers and Directors.* New York: Lexis Nexis, 8. Issuance , 2009.
6. LACIAK, O.: *Some notes about criminal law in the Slovak Republic* In Shizuoka law journal no. 4 (March 2012), p. 107-114, ISSN 1882-7306.
7. LUKÁČKA, P.: *Aktuálne otázky výkonu funkcie konateľa s.r.o.* In: Sborník příspěvků 5. mezinárodní vědecké konference doktorandů a mladých vědeckých pracovníků Karviná : Obchodně podnikatelská fakulta, 2012.
8. LUKÁČKA, P.: *Vybrané aplikačné problémy uplatňovania zodpovednosti voči konateľom s.r.o.* In: Bratislavské právnické fórum 2013 [elektronický zdroj]. Bratislava : Univerzita Komenského, Právnická fakulta, 2013.
9. LUKÁČKA, P.: *Zodpovednosť štatutárneho orgánu spoločnosti s ručením obmedzeným za škodu spôsobenú pri výkone svojej pôsobnosti*. In: Míľniky práva v stredoeurópskom priestore 2011. Zborník z medzinárodnej vedeckej konferencie doktorandov a mladých vedeckých pracovníkov. 1. Vyd. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2011, p. 177
10. LUKÁČKA,P.: *Teoretické východiská pojmu zodpovednosť v slovenskom právnom poriadku* In Zodpovednosť za vady diela: Wolters Kluwer, 2016, s. 60-67, ISBN: 978-80-8168-416-6.
11. ĽORKO,J.: *Fundaments of corporate criminal liability* In Corporate criminal liability : (in the Czech Republic, Slovakia and Poland) Brno : Masaryk University, 2016.p. 97-123, ISBN 978-80-210-8382-0.
12. MAMOJKA,M. in *Obchodný zákonník. Veľký komentár.* 1 zväzok. Bratislava: Eurokódex, 2016, p. 538, ISBN: 978-80-8155-065-2.
13. MEZEI,M.: *System of criminal sanctions* In Corporate criminal liability (in the Czech Republic, Slovakia and Poland) Brno : Masaryk University, 2016. p. 125-143, ISBN 978-80-210-8382-0
14. PETROV, J.: *Odpovědnost členů představenstva akciových spololečností v česko –americko - nemeckém srovnání.* Brno: MIKADAPRESS, 2007, ISBN 978-80-210-4386-2.
15. STRAPÁČ, P.: *Ustanovenie, postavenie a zodpovednosť člena představenstva akciovej spoločnosti.* Bratislava: EUROUNION, 2012, ISBN 978-80-89374-19-9.
16. VÍTEK, J.: *Odpovědnost statutárních orgánů obchodních společností.* Praha: Wolters Kluwer ČR, 2012. ISBN 978-80-7357-862-6

Primary Paper Section: A

Secondary Paper Section: AG