

ACT

of 19 September 2007

**concerning trade in certain goods which could be used for capital punishment,
torture or other cruel, inhuman or degrading treatment or punishment**

The National Council of the Slovak Republic has adopted this act:

§1

Subject-matter

This act specifies competences of state administration authorities concerning trading with non-European Union countries (hereinafter “third countries”) in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment¹⁾ (hereinafter “goods”) and in related technical assistance, and the imposition of penalties for non-compliance with obligations stipulated by this act and by a separate regulation. ¹⁾

§2

State administration authorities competent for trade in goods

(1) A state administration authority competent for trade in goods is the Ministry of Economy of the Slovak Republic (hereinafter the “Ministry”).

(2) Other state administration authorities competent for trade in goods include:

- a) Ministry of Foreign Affairs of the Slovak Republic (hereinafter the “Foreign Affairs Ministry”),
- b) Ministry of Culture of the Slovak Republic (hereinafter the “Ministry of Culture”),
- c) Customs Directorate of the Slovak Republic and customs office (hereinafter the “customs authority”).

Export and import prohibition

§3

(1) Any export or import of goods, listed in a separate regulation²⁾, which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, irrespective of the origin of such goods, and related technical assistance shall be prohibited (hereinafter “goods for the purpose of public display”). Pursuant to a separate regulation¹⁾ the Ministry may grant consent to the export or import of goods for the purpose of public display if

¹⁾ Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L200, 30. 7. 2005).

²⁾ Annex II to Council Regulation (EC) No 1236/2005.

it has been approved by the Ministry of Culture and a representation has been delivered by a consignee that the goods will be used for the exclusive purpose of public display in view of their historic significance and that they will be secured against any use other than for the purpose of public display³⁾ based on an application submitted by an applicant in writing. ⁴⁾

(2) In an application for an authorisation referred to in paragraph 1 the applicant shall specify:

- a) business name, registered office or place of business of the applicant and, in the case of a natural person, an address of permanent or temporary residence⁵⁾ in the Slovak Republic;
- b) identification number of the applicant, if assigned, and in the case of a natural person a birth certificate number;
- c) business name, registered office or place of business of a third-country or domestic business partner;
- d) sub-item of the combined nomenclature of the Common Customs Tariff⁶⁾
- e) purpose of the use of goods;
- f) business name, registered office or place of business of an end-user of the goods;
- g) name and address of a museum in which the goods will be displayed.

(3) The following shall be attached to the application specified in paragraph 2

- a) a proposal to enter into a pre-purchase agreement⁷⁾ in respect of the goods, agreement on lending or borrowing of the goods, or a contract signed between an exporter/importer and its third-country business partner containing a detailed specification of the goods, including their quantity and related technical assistance necessary in order to put the goods into operation;

³⁾ §2(1) and §7 of Act No. 115/1998 Coll. on museums and galleries and protection of items of museum and gallery value as amended.

⁴⁾ Article 2(i) of Council Regulation (EC) No 1236/2005.

⁵⁾ §17 of Act No. 48/2002 Coll. on stay of aliens and amendments to certain acts as amended.

⁶⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (special issue of the Official Journal of the EU, chapter 2/vol. 2) as amended. Act No. 199/2004 Coll., the Customs Act, and on amendments to certain acts as amended.

⁷⁾ §289 through 292 of the Commercial Code.

- b) a confirmation by the consignee on the final use of the goods containing a representation that the goods will not be used for any other purpose than for public display in a museum;³⁾
- c) an officially authenticated copy of an extract from the Commercial Register where the applicant is a legal person, and an officially authenticated copy of a small trade licence or other business license where the applicant is a natural person - entrepreneur.

Export authorisation

§4

(1) Pursuant to a separate regulation¹⁾ the Ministry may grant consent to the export of goods, listed in a separate regulation⁸⁾, which could be used for restraining human beings, suppressing riots or self-defence and related technical assistance (hereinafter “goods designed for restraining human beings”) if approved by the Foreign Affairs Ministry based on an application submitted by an applicant in writing.⁴⁾

(2) In an application for an authorisation referred to in paragraph 1 the applicant shall specify:

- a) business name, registered office or place of business of the applicant, in the case of a natural person, exporter’s address of permanent or temporary residence⁵⁾ in the Slovak Republic and place of business;
- b) identification number of the applicant, if assigned, and in the case of a natural person a birth certificate number;
- c) business name, registered office or place of business of a third-country business partner who is a consignee of the goods;
- d) sub-item of the combined nomenclature of the Common Customs Tariff⁶⁾
- e) purpose of the use of goods;
- f) business name, registered office or place of business of an end-user of the goods.

(3) The following shall be attached to the application specified in paragraph 2

- a) a proposal to enter into a pre-purchase agreement⁷⁾ in respect of the goods or a contract signed between the exporter and its foreign business partner containing a detailed specification of the goods, including their quantity;
- b) a confirmation on the final use of the goods issued by a competent authority of the country of destination;
- c) an officially authenticated copy of an excerpt from the Commercial Register where the applicant is a legal person, and an officially authenticated copy of a small trade licence or other business license where the applicant is a natural person - entrepreneur.

⁸⁾ Annex III to Council Regulation (EC) No 1236/2005.

(4) When granting authorisations pursuant to paragraph 1, the Ministry shall take into account criteria laid down in a separate regulation. ⁹⁾

§5

Non-granting, revocation, modification of authorisation and suspension of export

(1) Pursuant to a separate regulation¹⁾ the Ministry may refuse to grant an export or import authorisation referred to in §3(1) or an export authorization referred to in §4(1), if

- a) criteria specified in §3(2) and (3) and in §4(2) and (3) are not met, or if an exporter has failed to meet the criteria laid down in a separate regulation;⁹⁾
- b) exporter or importer has breached a separate regulation¹⁾ in relation to the export or import; or
- c) the export of goods designed for restraining human beings may pose a threat to foreign policy and national security interests of the Slovak Republic or may put at risk human rights in third countries.

(2) The Ministry shall revoke an export or import authorisation referred to in §3(1) or an export authorization referred to in §4(1), if

- a) the line of business of the applicant has been deleted from the Commercial Register;
- b) the applicant notifies he has quit his activity;
- c) the application was granted based on untrue or incomplete information;
- d) justified by foreign policy and national security interests of the Slovak Republic;
- e) the criteria specified in the authorisation have not been met.

(3) In the cases referred to in paragraph 2(a), (c) and (e) the state shall not be held liable for any damage sustained by a holder of the authorisation due to revocation of that authorisation.

(4) The Ministry shall suspend export of the goods designed for restraining human beings or modify the authorisation granted pursuant to §4 until a foreign policy situation in the country of destination makes reception of the goods exported under the authorisation possible.

§6

Competences of the Ministry

(1) Pursuant to this Act, the Ministry shall

- a) within 30 days of a decision to refuse an authorisation or revoke the authorisation for export or import of goods already granted, notify to that effect competent authorities¹⁰⁾ and the European Commission;

⁹⁾ Article 6 of Council Regulation (EC) No 1236/2005.

¹⁰⁾ Annex I to Council Regulation (EC) No 1236/2005.

- b) cooperate with competent authorities of the states listed in a separate regulation¹⁰⁾ and with the European Commission and notifies them, upon their request, about national measures taken, in particular about granted or refused authorisations; information about granted and refused authorisations contains
1. grounds on which the authorisations were granted or refused;
 2. first names and surnames of consignees of the goods;
 3. names and addresses of end-users of the goods;
 4. specification of the goods exported or imported;
- c) keep a register of applicants for export and import authorisations;
- d) decide on granting, refusal to grant, revocation or modification of authorisations and on suspension of export;
- e) ask the Foreign Affairs Ministry to provide written opinions concerning a security situation in the countries to which the goods are to be exported, and reports on decisions delivered by competent authorities of the states listed in a separate regulation;¹¹⁾
- f) in cooperation with the European Commission, prepare an annual activity report which is published on its official website and contains information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions the Ministry has taken on these applications.

(2) Pursuant to a separate regulation¹⁾ the Ministry shall cooperate with the committee on common rules for exports of products set up by a separate regulation.¹¹⁾

§7

Competences of the Foreign Affairs Ministry

(1) Prior to issuing a decision to grant an authorisation for export of the goods designed for restraining human beings the Ministry shall request an affirmative opinion from the Foreign Affairs Ministry. When discharging its duties under a separate regulation¹²⁾ the Foreign Affairs Ministry shall submit its opinion to the Ministry within 30 days of reception of the request; where the Ministry also requests opinions on decisions adopted by competent authorities of the states listed in a separate regulation,¹⁰⁾ the Foreign Affairs Ministry shall also submit such opinions, if it has knowledge of them.

(2) A disapproving opinion by the Foreign Affairs Ministry concerning the granting of an authorisation for export of the goods designed for restraining human beings is binding upon the Ministry.

§8

Competences of the Ministry of Culture

(1) Pursuant to a separate regulation¹⁾ the Ministry of Culture shall provide a written opinion on export or import of goods for the purpose of public display within 30 days of reception of a request from the Ministry.

(2) A disapproving opinion by the Ministry of Culture concerning the granting of an authorisation for export or import of goods referred to in paragraph 1 is binding upon the Ministry.

§9

Provision of technical assistance

For the purposes of this act technical assistance pursuant to a separate regulation¹³⁾ is considered an export; if such technical assistance requires cross-border movement of natural persons, the Ministry shall not use the authorisation form specified in a separate regulation¹⁴⁾ to grant an authorisation.

Customs inspection

§10

(1) Where the Ministry is in doubts as to whether the goods exported or imported for the purpose of public display or the exported goods designed for restraining human being are really exported or imported for the purpose specified in §3(2) (e) and in §4(2)(e) the Ministry shall ask the customs authority to perform inspection.

(2) The customs authority performing the inspection shall notify the Ministry of its results not later than within 15 days of its performance.

(3) The customs authority shall also perform such inspection when so requested, through the Ministry, by a competent authority of the state of a supplier listed in a separate regulation¹⁰⁾; the Ministry shall notify the competent authority of the state of the supplier of the inspection results not later than 15 days after having received the inspection results from the customs authority.

(4) The customs authority shall inspect the compliance with the criteria set in an authorisation granted and compare the authorisation against an authorisation form issued under a separate regulation¹⁴⁾ at a place where the inspected goods are or may be located.

(5) If the customs authority ascertains that the no authorisation for export or import has been granted, it shall proceed in accordance with a separate regulation.¹⁵⁾

§11

In order to ensure the inspection activities, the Customs Directorate of the Slovak Republic shall keep records of exported goods designed for restraining human beings and

¹³⁾ Article 2(f) of Council Regulation (EC) No 1236/2005.

¹⁴⁾ Annex V to Council Regulation (EC) No 1236/2005.

¹⁵⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (Special issue of the Official Journal of the EU, chapter 2/vol. 4) as amended. Act No. 199/2004 Coll., as amended, Article 10(2) of Council Regulation (EC) No 1236/2005.

¹¹⁾ Article 15 and 16 of Council Regulation (EC) No 1236/2005.

¹²⁾ Act No. 460/2002 Coll. on the application of international sanctions ensuring international peace and security as amended by Act No. 127/2005 Coll.

provide, when requested, the Ministry and other state administration authorities with relevant information concerning the export of such goods within 15 days of reception of a request for information, provided no confidentiality obligation applies to such information.¹⁶⁾

§12

Offences and other administrative delicts

(1) A natural person who has violated obligations under a separate regulation¹⁾ and under this act commits an offence for which the Ministry shall impose a penalty in the amount of SKK500,000.

(2) Offences committed under this act and related proceedings are subject to a separate regulation.¹⁷⁾

(3) A natural person – entrepreneur or a legal person who has violated obligations under a separate regulation¹⁾ and under this act commits an administrative delict for which the Ministry shall impose a penalty in the amount of SKK1,000,000; paragraph 9 and 10 apply to the imposition of the penalty by the Ministry.

(4) A natural person – entrepreneur or a legal person commits an administrative delict if, without authorisation,

- a) it has exported goods for the purpose of public display from the territory of the Slovak Republic to third countries or imported such goods from third countries to the territory of the Slovak Republic, or
- b) it has exported goods designed for restraining human beings, or
- c) it has provided related technical assistance pursuant to §9 despite the fact that such an authorisation is required under a separate regulation¹⁾ or this act.

(5) In the case of an administrative delict referred to in paragraph 4,

- a) the customs authority shall impose a penalty in the amount of up to SKK1,000,000 or up to three times the price of such goods where the price is higher than SKK1,000,000, or
- b) detain the goods; the detained goods become the property of the Slovak Republic.

(6) The penalty or detention of the goods pursuant to paragraph 5(a) and (b) may be imposed separately or concurrently.

(7) The penalty pursuant to paragraph 5 shall be imposed by the customs authority in the form of a decision; decision-making concerning the imposition of the penalty, and administration and disposition of the goods for the purpose of public display which are the property of the state are governed by a separate regulation.¹⁸⁾

(8) An appeal against the decision of the customs authority to impose the penalty shall have no dilatory effect. The customs authority whose decision has been appealed may permit a dilatory effect of such an appeal provided that it will

not impair enforceability of the decision or that it is not prevented by public interest.

(9) Penalties referred to in paragraph 1 and 5 may be imposed within a period of three years from the date when the customs authority ascertained a breach of law, however in no case later than within five years from the date on which such a breach occurred.

(10) Penalties referred to in paragraph 1 and 5 shall be determined based on the gravity of the delict, the way in which it was committed, significance and duration of the threat to foreign policy, national security or economic interests of the Slovak Republic and the damage caused; the penalties constitute revenues of the state budget.

Common provisions

§13

(1) Authorisations under this act shall be non-transferable, non-assignable and shall be not subject to the transfer of rights or execution proceedings, decision enforcement, bankruptcy proceedings and inheritance proceedings.¹⁹⁾

(2) Along with the authorisation, the Ministry shall grant the exporter an international import certificate if an application for the certificate has been filed by a third-country supplier. The international import certificate shall contain data identical to those specified in the import authorisation.

(3) The customs authority shall validate, after the goods are imported, a delivery verification document for the importer, if such a document is required by a third country importer. If any discrepancies concerning the imported goods are ascertained, the customs authority shall notify, through the Ministry, a competent authority of the country of exporter to that effect.

§14

Proceedings under this act are governed by a general regulation on administrative proceedings²⁰⁾, except for a dilatory effect of an appeal filed against a customs authority decision pursuant to §12(8).

§15

This act shall enter into force on 1 November 2007.

¹⁶⁾ §59 of Act No. 652/2004 Coll. on state customs administration authorities and amendments to certain acts.

¹⁷⁾ Act No. 372/1990 Coll. on Offences as amended.

¹⁸⁾ Act No. 199/2004 Coll., as amended,

¹⁹⁾ Act of the National Council of the Slovak Republic No. 233/1995 Coll. on court executors and execution activity (Execution Code) and amendments to certain acts as amended.

Act No. 7/2005 Coll. on bankruptcy and restructuring and amendments to certain acts as amended by Act No. 353/2005 Coll. §460 through 487 of the Civil Code.

²⁰⁾ Act 71/1967 Coll. on Administrative Procedure (Code of Administrative Procedure) as amended.

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