

Regulation of unlawful waste deposition in the Republic of Slovenia²

Abstract

The Republic of Slovenia transposed its obligations outlined in Directive 2008/98 to the Environmental Protection Act through a legal order. Its first unlawful waste disposal regime was implemented in 2008. The responsibility for unlawful waste disposal is primarily placed on the polluter, while the subsidiary responsibility lies with the real estate owner. The owner of the real estate on which the waste is unlawfully disposed must arrange for proper disposal of the waste at his own expense if ordered by the inspection authority. The subsidiary responsibility of the real estate owner implies strong interference with the right to the property. To date, the Constitutional Court has not yet assessed the compatibility of this measure with the Constitution, as it has taken the view that it will not carry out an abstract assessment but will only make a decision through a constitutional appeal procedure. Despite several concerns, the regulations were maintained in the new Environmental Protection Act of 2022. In addition to the unlawful disposal of waste, this Act also regulates the legal consequences of littering; further, the Act imposes relatively high administrative fines, including on any landowner who fails to exercise his secondary responsibility. Notably, the unlawful disposal of waste is defined as a criminal offence that burdens and destroys the environment. The legal framework, in my opinion, fully meets the requirements of Article 36 of Directive 2008/98/EC.

Keywords: unlawful waste deposition, littering, property rights, polluter pay principle, Directive 2008/98

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1. Introduction

1.1. Systemic Regulation of Waste Management in the Republic of Slovenia

Through the Environmental Protection Act (*Zakon o varstvu okolja – ZVO-2*), a systemic regulation in the field of waste management, the Republic of Slovenia transposed Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives into its legal system; this was last amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.³

1.2. Fundamental Principles of Environmental Law

Slovenia's legal regulations for the environment are based on the following fundamental principles that also significantly impact waste management.

(a) The principle of sustainable development (Article 5 of the ZVO-2)⁴ means that the state promotes the economic and social development of society, which considers the same possibilities of meeting the needs of future generations when meeting the needs of the present generation. This is reflected in the adoption of policies, strategies, programs, plans, and general legal acts. Environmental protection requirements must be included in the preparation and implementation of policies and activities in all areas of economic and social development.⁵

(b) The principle of a circular economy (Article 6 of the ZVO-2) involves striving to prevent waste, reduce environmental pollution, and preserve nature by minimising the use of substances, energy, and materials, especially natural resources, and extending the lifecycle of products, materials, and substances as long as possible.

(c) The principle of integrity (Article 7 of the ZVO-2) means that when adopting policies, strategies, programs, plans, and general legal acts, their impact on the environment must be considered in a way that contributes to achieving the goals of environmental protection. In this context, the criteria considered include human health, well-being, and quality of life; survival; protection from environmental disasters; and the health and well-being of other living organisms.

(d) The principle of participation (Article 8 of the ZVO-2) means that the adoption of policies, strategies, programs, plans, and general legal acts related to environmental protection engages those causing environmental burdens, providers of

3 | Official Gazette of the Republic of Slovenia, nos. 44/22, 18/23 and 78/23.

4 | Article 5 of the ZVO-2.

5 | For more, please see: Hojpec & Malinowska 2023, 25–28, Bandy 2022, 18–73.

public environmental services, other entities engaged in environmental protection activities, and the public.⁶

(e) The principle of prevention (Article 9 of the ZVO-2) implies that the environment is minimally burdened. This principle is implemented by determining the emission limit values, environmental quality standards, best available techniques, rules of conduct, long-term recommendations, and other environmental protection measures.

(f) The precautionary principle (Article 10 of the ZVO-2) stipulates that the introduction of new technologies, production processes, and products should be allowed only when no unforeseeable harmful effects on the environment or human health can be expected, considering the state of science and technology and possible protective measures. Where there is a possibility that the environment will be irreparably destroyed or the environment's capacity to regenerate will be threatened, a lack of scientific certainty shall not be a reason for postponing an action.⁷

(g) The principle of the responsibility of the person responsible for causing a burden (Article 11 of the ZVO-2) means that such a person must implement all the measures prescribed to prevent and reduce the burden on the environment and shall be responsible for eliminating the source of excessive burden on the environment and its consequences. Pollutants are responsible for the prevention and remediation of environmental damage.⁸

(h) The principle of payment for causing a burden – the polluter pay principle (Article 12 of the ZVO-2) – means that the person responsible for causing a burden shall cover all the costs of the prescribed measures for the prevention and reduction of pollution and environmental risk, the use of the environment, and the elimination of the consequences of the environmental burden, including the costs of implementing preventive and remedial measures in the event of environmental damage.

(i) The principle of subsidiary measures (Article 13 of the ZVO-2) means that the state and municipalities shall provide for the elimination of the consequences of excessive environmental burdens and shall cover the costs of such elimination if the payment of costs cannot be imposed on the particular or identifiable persons causing the burden, if there is no legal basis for the imposition of responsibilities on the person responsible for causing a burden, or if the consequences cannot be otherwise eliminated.

(j) The principle of cooperation (Article 14 of the ZVO-2) stipulates that the state and municipalities, within their respective competences, shall promote environmental protection activities that prevent or reduce environmental burdens as well

6 | For more, please see: Stanicic 2024, 143–158.

7 | For more, please see: Olajos & Mercz 2022, 79–82.

8 | For more, please see: Hornyák & Lindl 2023, 40–41.

as activities and interventions in the environment that reduce the consumption of materials and energy and have a lesser impact on the environment.

(k) The public nature principle (Article 15 of the ZVO-2) ensures the availability of environmental data and participation of the interested public in all procedures related to environmental issues.

(l) The principle of permissibility (Article 16 of the ZVO-2) of interventions refers to interventions in an environment that must have an appropriate legal basis and must not cause excessive environmental burdens.

(m) The principle of the ecological function of property (Article 17 of the ZVO-2) obliges all property owners to ensure the preservation and improvement of environmental quality, the conservation of natural values, and the maintenance of biodiversity when exercising their property rights.

1.3. Waste Management Principles

Comprehensive point 7 of Article 3 of the ZVO-2 is devoted to the conceptual definition of waste. Fundamentally, 'waste' is defined as any substance or object that the holder discards, intends to discard, or must discard. Waste management primarily encompasses the collection, transportation, recovery (including sorting), and disposal of waste (point 7.12 of Article 3 of the ZVO-2). The holder of waste must ensure its processing either by processing it themselves, by handing it over to a legal or natural person who, in accordance with the law, collects, processes, or disposes of waste, or by arranging waste processing through a waste trader (Article 32 (1) of the ZVO-2).

When adopting policies, strategies, plans, programs, and general legal acts that regulate the prevention of waste generation and management, the following waste hierarchy should be prioritized: (1) Prevention of waste generation, (2) Waste preparation for re-use, (3) Waste recycling, (4) Other waste processing procedures (e.g. waste energy processing), (5) Waste disposal.

1.4. The Prohibition of Waste Dumping and Littering

Unlawful waste dumping stems from the general prohibition in Article 26 of the ZVO-2. The latter stipulates that throwing away waste and leaving it in the environment, as well as the uncontrolled handling of waste, including littering, is prohibited. Waste dumping is also prohibited by special regulations. The Water Act (*Zakon o vodah* –ZV-1)⁹ stipulates that it is forbidden to pour, deposit, or throw waste into water. The same applies to water and coastal lands (Article 68 of the ZV-1). Furthermore, owners of water and coastal land must ensure the disposal of

9 | Official Gazette of the Republic of Slovenia, nos. 67/02, 2/04, 41/04, 57/08, 57/12, 100/13, 40/14, 56/15, 65/20, 35/23, and 78/23.

waste and other abandoned or discarded objects and materials (Article 100 of the ZV-1). Article 5 (2) of the Road Traffic Rules Act (*Zakon o pravilih cestnega prometa* – the ZPrCP)¹⁰ stipulates that it is forbidden to throw any type of object (cigarette butts, paper, bottles, etc.) from a vehicle.

The main causes of littering and unlawful waste dumping or leaving waste in the environment are the absence of the collection and disposal of municipal and other waste, the low-quality collection and disposal of waste, the avoidance of waste management costs, a lack of education, and low environmental awareness among individuals. In the past, the main causes of unlawful waste dumping were the irregular collection of household waste – including bulky waste and waste from construction work, renovations, and building demolition – and inadequate resident awareness and information.¹¹

Unlawful waste deposition is a significant problem in Slovenia. The exact number of wild waste dump sites cannot be determined because of inadequate records; however, according to environmental organisations, the figures are very high.¹² Identifying the perpetrator of unlawful dumping is often impossible; therefore, it is also impossible to ensure proper waste management in accordance with the polluter pay principle. Consequently, Slovenia introduced a law to establish a special system of subsidiary responsibilities for landowners to ensure environmental relief. The law mandates specific actions for landowners or possessors regardless of whether their actions or omissions contribute to an unlawful situation. These measures directly affect (e.g. interfere with or impose legal restrictions on) landowners' property rights. In assessing the appropriateness of such measures, it is important to consider not only the interest in environmental protection, but also the interest in property rights as a fundamental individual economic right.

1.5. The Constitutional Regulation of Property Rights

The legal framework for addressing unlawful waste dumping and littering introduced a system of subsidiary responsibilities that mandates specific actions for landowners or possessors. Such an order of action undoubtedly interferes with the substance of property rights, a fundamental economic right of the individual that provides him with legal protection at both the international and constitutional levels.

The Constitution of the Republic of Slovenia¹³ is more recent and includes the right to property under fundamental rights and freedoms. The Constitution

10 | Official Gazette of the Republic of Slovenia, nos. 156/21 and 161/21.

11 | Program 2022, 223.

12 | The NGO's website lists the number as 15,000, which is huge for a small area like Slovenia.

13 | Official Gazette of the Republic of Slovenia, nos. 33/91-I, 42/97, 66/00, 24/03, 69/04, 69/04, 69/04, 68/06, 47/13, 75/16, and 92/21.

guarantees the right to private property and inheritance (Article 33). Article 67 of the Constitution stipulates that the manner in which property is acquired and enjoyed should be established by law to ensure its economic, social, and environmental functions. When discussing the economic, social, and ecological functions of a property, we primarily refer to the duties and limitations of the owner in acquiring and enjoying the property.¹⁴ These duties and limitations are provided for in the Constitution and detailed in the law. In this context, general interests should be considered, such as environmental protection; community interests (e.g. ensuring the efficient use of land, the possibility of expropriation); the protection of public goods, natural resources, and land; and restrictions due to neighbourly relations and the prohibition of economic activities contrary to the public interest. This understanding is essential for comprehending the social function of property. Second, an element of this social function is ensuring resources for the social functions of the state (e.g. social insurance) and financing the state. The novelty of the new Slovenian Constitution is its emphasis on the ecological functions of property.¹⁵

The ecological content of property encompasses nature with its substances, forces, connections, changes, and laws, serving as a basis for all living beings (e.g. animals, plants). Nature includes the biosphere and environmental elements refer to the management of nature, natural resources, and landscape protection. Soil, air, and water are the main elements. The fundamental goal is to normalize human behaviour that supports the preservation of the foundations of human life and opportunities for rest and recreation. One form of protection is to protect, nurture, and develop. The goals are also defined as: (1) keeping as many areas as possible unbuilt to protect natural resources; (2) rationally using goods, especially rare goods; (3) protecting at-risk assets (e.g. animal and plant species at risk of extinction); (4) facilitating fertile land; (5) protecting the landscape; (6) protecting vegetation, especially free-living flora and fauna; and (7) protecting water, air, peace, climate, and recreational conditions.¹⁶ Due to their interdependence, listed goods cannot be protected in isolation. The need to comprehensively protect the environment by considering such interconnections has been increasingly expressed.

To ensure this work, the State shall establish orders and prohibitions through law that order individuals to do, allow, or refrain from doing something. These obligations apply to everyone (prohibitions of certain behaviours with dangerous substances and emissions), specific protected areas (natural parks, reserves, monuments), and certain species of plants and animals; further, strict regimes are enforced for air and water (emissions) and special regimes for forests.¹⁷ The environment is increasingly burdened by traffic, industrial, and household emissions

14 | Ude 1994, 739.

15 | Ude 1992, 2.

16 | Šinkovec 1992, 569.

17 | Šinkovec 1992, 569.

and leisure-time population mobility; in particular, such activities have had severely negative effects on soil, water, and air – all of which are fundamental to life. It is necessary to protect plant and animal life to preserve ecological balance.¹⁸ Therefore, related state interventions are permitted if they pass a strict proportionality test, even if they restrict fundamental rights and freedoms.¹⁹ Notably, the fundamental constitutional definition of property freedom conflicts with the binding of property to its economic, social, and ecological functions. Weighing both interests must yield harmonisation. Specifically, such harmonisation can be realized by applying the principle of proportionality.²⁰

When a legislator intervenes in the constitutionally protected rights of individuals, it becomes a subject for further examination to determine whether the intervention is constitutionally permissible. The proportionality test prohibits excessive legal intrusion into individual rights and requires a proper assessment of whether the measures specified in the law are consistent with their purpose. This measure must be justified with a goal that minimally affects the rights and interests of affected subjects.

The measures must be suitable for the achievement of the legislators' goals, necessary for their implementation according to the objective interests of citizens, and must not be out of any reasonable relationship with the social or political value of these goals.²¹

This weighting should be based on the aforementioned provisions of Article 67 of the Constitution. Thus, this provision authorises the legislator to regulate the manner of acquiring and enjoying property while considering all three functions of property. The legislature is not required to specifically define the function that the restriction intends to safeguard. All three functions must be treated in a connected and interdependent manner. Significantly, legislators can intervene in property rights. If the legislature oversteps these boundaries, it no longer defines how property may be enjoyed and intrudes on the right to private property. This boundary depends not only on the nature of the property in question, but also on the obligations the legislator has imposed on the owner within the framework of defining the manner of enjoying property.²²

In Slovenia, property law is governed by the Law of Property Code (*Stvarnopravni zakonik*, SPZ),²³ which was adopted in 2002 and has been in force since 1 January 2003. Article 37 of the Law of Property Codes determines the concept of property and its substance. Property is the right to possess a thing, to use and enjoy it in the broadest possible way, and to dispose of it. Restrictions on use, enjoyment,

18 | Šinkovec 2001, 908–914.

19 | For more on the proportionality test, see Šturm & Avbelj 2019.

20 | Berden 2004, 187.

21 | Decision of the Constitutional Court no. U-I-77/93.

22 | Decision of the Constitutional Court no. U-I-70/04.

23 | Official Gazette of the RS, nos. 87/02, 91/13, and 23/20.

and disposal can only be determined by law, which interferes with the substance of property rights. The most comprehensive method of use is a relative term, as the owner must respect the legal restrictions on its use—even if these restrictions are contrary to their will, interests, economic needs, or the purpose for which they acquired property rights. Regarding public law restrictions, the owner has only a constitutional guarantee of the protection of the private property available to them.²⁴

2. Subsidiary Responsibility for Waste Discarded into the Environment

2.1. Subsidiary Responsibility of the Land Owner Pursuant to the ZVO-1

The Republic of Slovenia has adopted special regulations in its legal order for the action of state services in cases of unlawfully disposed waste. These special measures came into effect with the 2008 amendments to the ZVO-1.²⁵ This concerns the new Article 157a in the ZVO-1, which stresses that the owner or possessor of land is responsible for illegally disposed waste. Special measures differentiate between lands owned by the state and local communities and lands owned by other physical and legal entities. First, the responsibility of landowners is complexly regulated if it concerns land owned by the state or local community. If municipal waste is illegally disposed on land owned by the state or municipality, the competent inspection authority orders the public waste management service provider to remove the waste. Public utility service providers must remove waste in accordance with waste management regulations. The action may be accelerated given that the owner's appeal of the decision of the competent inspection authority does not suspend execution.

The cost of implementing the measure—that is, the cost to the public utility service provider who removed the waste—must be paid by the landowner or the person who possesses the land. The rules for managing real estate owned by state and local communities provide the possibility for state or local communities to transfer the management of real estate to public law entities.²⁶ The transfer of real estate management is carried out by legal acts of the government or the local community's competent body. A public law entity acquires the status of a real estate

24 | Vrenčur 2016, 218.

25 | Act on Amendments to the Environmental Protection Act (ZVO-1B), Official Gazette of the RS, no. 70/08.

26 | Physical Assets of the State and Local Government Act (*Zakon o stvarnem premoženju države in samoupravnih lokalnih skupnosti* – ZSPDLS-1), Official Gazette of the RS, nos. 11/18, 79/18 and 78/23.

manager and thereby acquires the right to use and possess real estate. The property manager is recorded in a public real estate cadastre.²⁷

The inspector, by decision, not only determines the manner and other conditions for the removal of unlawfully disposed waste but also determines who must bear all the costs of execution. Article 157a (4) of the ZVO-1 provides the possibility of exercising the right to recourse. If the police or inspection authority discovers the perpetrator of the unlawfully disposed waste, the municipality or state has the right and duty to recover the costs from it, as per the previous paragraph. This provision was undoubtedly deficient, as it was entirely irrelevant to how the waste generator of the unlawfully disposed waste was determined. The right to request reimbursement of costs from the actual waste generator ultimately arises from the general legal principles of property law, which, in any case, allow a claim for the reimbursement of costs paid by the payer instead of someone else.²⁸ Similarly, there is no reason to limit such claims to the state or the local community. The possessor of the land, who has paid the costs, should have the same right to request reimbursement from the waste generator – if, of course, they are discovered. However, such instances of waste generator identification are rare.

Interestingly, Article 157a (5) of the ZVO-1 prescribes the same method of action for privately owned land. Even if waste is unlawfully disposed of on privately owned land, a competent inspection authority can order its removal in a manner that ensures proper waste management at the expense of the landowner or possessor. Evidently, the law targets a person who exercises authority over property (the direct possessor), primarily referring to the lessee of the property or a person who holds a personal servitude of usufruct on the property. Although not specifically stated in the law, there is no doubt that an individual owner is also granted the right to demand reimbursement of all costs from the waste generator, should they be identified.

The method of action against an individual proceeds as follows: Based on the findings of the land inspection, the owner or possessor was instructed to thoroughly and completely clean the land of all discarded, left, and deposited items, substances, and waste within a suitable period from the delivery of the decision. Once an irregularity is rectified, the owner or possessor is obliged to inform the inspection authority in writing. If the owner or possessor fails to fulfil the imposed obligations within a specified period, removal at the expense of the plaintiff shall be employed as a coercive measure to rectify the irregularity.

Criminal sanctions were established in an unsystematic manner. The law and subordinate bylaws adopted under it (Decree on Waste²⁹) naturally prohibit waste deposition in the natural environment. For an individual who holds waste

27 | Juhart, Tratnik & Vrenčur 2023, 144.

28 | This is determined by Article 197 of the Code of Obligations (*Obligacijski zakonik – OZ*), Official Gazette of the Republic of Slovenia, no. 97/07. For more detail, see also Polajnar Pavčnik 2003, 57.

29 | Official Gazette of the Republic of Slovenia, nos. 37/15, 69/15, 129/20, 44/22 and 77/22.

and has left it in the environment, thrown it away, or handled it in an uncontrolled manner, the law stipulates a fine ranging from EUR 100 to EUR 300.³⁰ Clearly, the waste holder can only be penalised if he has been detected. If waste is unlawfully disposed of on land owned by a private legal entity, such as a forest, and the owner fails to ensure the removal of waste from the land, the inspection authority shall order and ensure appropriate waste management. When the inspection authority determines the method of enforcement for an inspection measure with forced waste removal, the financial penalty for an individual ranges from EUR 2,000 to EUR 10,000.³¹ This raises the question of the proportionality of the prescribed fines for natural waste. If an individual dumps garbage in a forest and is caught, they face a fine ranging from EUR 100 to EUR 300; however, the forest owner, who issued an inspection measure with enforcement, can be penalised with a fine at least 20 times higher.³²

The law also specifically regulates the position of the Republic of Slovenia regarding the costs of the inspection procedure and the fines imposed on the landowner owing to urgent action involving forced waste removal. In the Republic of Slovenia, there is a statutory law on the real estate of the person against whom the inspection procedure was initiated. This applies not only to the land where the waste is deposited, but also to all properties owned by such a person.

The system of measures that mandates landowners to assume, or at least deposit, the costs of dealing with unlawfully deposited waste has understandably elicited a variety of responses. While environmental, civil, and nongovernmental organisations have shown enthusiasm, experts have voiced several significant concerns regarding regulation. Setting aside criticisms related to the unclear demarcation of the competencies of inspection services – stemming from the poor organisation of the state administration – most of these concerns pertain to the issue of proportionality of interference in private property.

Experts first pointed out a significant systemic shift that transfers responsibility for unlawfully deposited waste from the waste generator to the landowner or possessor. This shift is inconsistent with the fundamental rules and principles of national and international legal systems. This conflicts with the principles of legal certainty, legal coherence, and proportionality, as the substantive provisions that would obligate the landowner to remove others' waste are not among the duties imposed by the law.³³ While it may be reasonably justifiable to impose obligations regarding the handling of unlawfully deposited waste on the state and local communities, this represents substantial interference with the ownership rights of individuals. The obligation of the state and local communities can be understood as a concretisation of the general principle of subsidiary action, as outlined in

30 | Article 61 (3) of the Decree on Waste in relation to Article 61 (1)(4) of the Decree on Waste.

31 | Article 157b of the ZVO-1.

32 | Weber 2019, 17.

33 | Knez 2013, 3.

Article 11 of the ZVO-1. The principle of subsidiary action is one in which the state is responsible for remedying the consequences of excessive environmental burden and covering the costs of this remedy when these cannot be attributed to specific or identifiable perpetrators, when there is no legal basis to impose the obligation on the polluter, or when the consequences cannot be otherwise remedied.³⁴ The municipality has the same duty because of the excessive environmental burden caused by the management of municipal waste.

As mentioned above, the Constitution of the Republic of Slovenia explicitly allows for the restriction of property rights to achieve the public interest in the field of environmental protection. However, even when property rights are restricted to achieve environmental protection goals, it is necessary to consider the general principles of the rule of law, particularly proportionality. Although it is legally permissible to expect a certain degree of due diligence from the owner and possessor of land and positive action in the interest of the ecological and other functions of the property, in the opinion of experts, the provision of Article 157a (5) of the ZVO-1 represents an excessive burden for landowners or possessors of certain land types.³⁵ This applies particularly to landowners and possessors of larger or more remotely located forest lands who, in accordance with the regulations governing forest management, are obliged to ensure public access to everyone and generally should not fence them to allow the free movement of animals. It is very difficult for owners or possessors of forestland to monitor their land. Further, they lack effective measures to prevent illegal activities by third parties. Perpetrators of unlawful waste deposition simply find more accessible and unmonitored lands to dispose of their waste. For owners of such lands, the law imposes a heavy burden in the interest of environmental protection. It remains unclear whether this burden is acceptable.

Knez thoroughly criticised a system that holds landowners or possessors subsidiarily responsible for unlawfully deposited waste.³⁶ He initially observed that such a regulation contradicts the broadly accepted principle of environmental law, which assigns responsibility for environmental damage to polluters. Therefore, this special arrangement is inconsistent with the objectives of Directive 2008/98. He also stated that this represented a disproportionate infringement on the property rights of the landowner, which is a fundamental human right. The executive and judicial branches of the government are bound to respect international and EU rules. Knez argued that the provisions of Article 157a of the ZVO-1, particularly those stating that the costs of managing unlawfully deposited waste should fall upon the landowner or possessor, contradict both Article 1 of the First Protocol of the European Convention on Human Rights (ECHR) and the established principle of

34 | Vrbica 2020, 2.

35 | Pucelej Vidović in the ZVO-1 Commentary, Article 157a.

36 | Knez 2013, 6.

polluter responsibility, as outlined in Directive 2008/98/EC on waste.³⁷ He further expressed the opinion that there is no foundation in the Constitution of the Republic of Slovenia for the regulation of the landowner's subsidiary responsibility, and that the principles of legal certainty (rule of law), legal coherence, and proportionality are not upheld.³⁸

It is interesting to note that the case law was significantly more favourable towards the regulation of special measures due to unlawful waste deposition. Courts have frequently expressed support for the subsidiary responsibility of the landowner or possessor. In one case, the competent inspection authority, based on Article 157a of the ZVO-1, imposed payment costs on the land possessor for dealing with unlawfully dumped waste. The land in question was owned by the Republic of Slovenia and managed by the Farmland and Forest Fund of the Republic of Slovenia, which had possession of the land.³⁹ Since waste was unlawfully dumped on land, the competent inspection authority ordered that it be removed and integrated into the waste management system at the expense of the Fund. The Fund filed a judicial remedy (lawsuit) against the Administrative Court's decision. In the lawsuit, the Fund argued that measures under Article 157a of the ZVO-1 should be interpreted in accordance with the purpose of the entire law, which clearly states that the consequences of unlawful actions should be borne by the perpetrator. This law primarily represents the principle that polluters should cover the cost of environmental damage; in particular, this principle is primarily applied to waste. The institution of subsidiary responsibility is justifiable only if it is based on the finding that the perpetrator cannot be identified. The Fund argued that the inspection authority had incompletely investigated the facts, as it failed to do everything necessary to identify the perpetrator who had unlawfully dumped waste on the property in its possession. The inspection authority, in its decision, failed to explain why the perpetrator could not be identified and what measures it had taken to locate them. The court upheld the inspection authority's decision, deciding that the fund was obliged to bear the costs of waste removal and management. In doing so, the court stressed the following:

From this provision (Article 157a (3) of the ZVO-1), the legislator's intention is clearly to have the cost of removing unlawfully dumped waste borne by whoever exercises possession of the relevant land, whether it is the landowner or someone else. Since the possessor has actual control over the object, meaning the ability to influence, use, enjoy, and dispose of it, only they have the possibility of preventing unlawful waste deposition. Therefore, the regulation that the costs of removing unlawfully deposited waste are borne by the possessor, as only they had the

37 | *Ibid.*

38 | *Ibid.*

39 | This is a fund established by a special law. The Fund manages all agricultural land and forests owned by the Republic of Slovenia.

opportunity to prevent unlawful waste deposition and did not do so, is logical and sensible.⁴⁰

The court confirmed this position in several similar cases.⁴¹ An interesting legal question has arisen regarding one of the most recent decisions. In this case, the person who was the waste generator could be identified; however, the perpetrator was found to be insolvent. The Court did not conclusively answer the question of whether the subsidiary responsibility of the landowner or possessor would apply to such a case; however, it showed an inclination towards such a solution, as evidenced below:

The first-instance authority was aware before issuing the contested decision of circumstances indicating that the waste generator could be identified. Regardless of the fact that the lawsuit should have been granted for this reason alone, the court adds for the case that in the repeated procedure, it will not be possible to impose payment of costs on the perpetrator, that the administrative body must, in such a case, more thoroughly investigate the position of the plaintiff in relation to the property on which the waste was deposited.⁴²

However, there are very few cases in which the court has ruled on matters in which the measure of removal and payment of costs was imposed on an individual. In some cases, the court merely repeated that the individual's responsibility as the owner or possessor of the land was a subsidiary.⁴³ However, the implications cannot be ascertained because of the small number of such cases. This could mean that unlawful waste dumps are mainly located on land owned by the state and local communities. This could also mean that inspection authorities are more lenient towards individual owners or possessors. Alternatively, due to the threat of enforced measures, individuals may take care of their own removal. However, studies to this effect have not yet been conducted.

The institution of the subsidiary responsibility of the landowner or possessor for unlawfully dumped waste represents a strong interference with the individual's property rights; therefore, it is not surprising that a procedure for the review of constitutionality was initiated. The petition for a review of constitutionality was initiated by a landowner who was ordered by the inspection authority to remove unlawfully dumped waste from her land. In her petition, she proposed that the Constitutional Court evaluate whether the regulation constitutes disproportionate interference with an individual's property rights. The Constitutional Court dismissed the petition on procedural grounds. During its dismissal, the court stated:

40 | Judgement of the Administrative Court of the Republic of Slovenia no. I U 582/2011 of 5 January 2012.

41 | Judgments of the Administrative Court of the Republic of Slovenia nos. I U 113/2013 of 10 December 2013, I U 1247/2015 of 23 August 2016 and I U 2010/2018-8 of 7 January 2020.

42 | Judgment of the Administrative Court of the Republic of Slovenia no. I U 723/2019-41 of 27 May 2021.

43 | Judgments of the Administrative Court of the Republic of Slovenia nos. I U 600/2012 of 25 September 2013 and I U 457/2018-7 of 23 May 2019.

Contested regulations did not have a direct effect. In such cases, a petition can only be filed after exhausting legal remedies against the individual act issued based on the contested regulation, concurrently with a constitutional complaint, under the conditions of Articles 50 and 60 of the ZUstS [the Constitutional Court Act].⁴⁴ This position of the Constitutional Court is explained in more detail in the decision of Constitutional Court No. U-I-275/07 of 22 November 2007. For the reasons stated in the cited decision, the petitioner does not yet demonstrate legal interest in reviewing the constitutionality of the contested legal provision.⁴⁵

Surprisingly, none of the individuals who issued a decision on waste removal used all the regular legal remedies and subsequently filed a constitutional complaint; that is, they did not meet the conditions for the Constitutional Court to substantively decide on the compatibility of the institute with the Constitution. In my opinion, the institution of subsidiary responsibility of the landowner or possessor for unlawfully dumped waste is inconsistent with the Constitution, as it excessively and disproportionately interferes with the individual's property rights. The responsibility for unlawfully dumped waste must primarily be borne by the waste generator, pursuant to the general principles of environmental protection law, and there can be no deviation from this solution. When the perpetrator of unlawful waste deposition remains unidentified, securing an effective method for removing waste from the natural environment is unquestionably in the public interest. However, the realisation of this public interest should not be imposed on individuals; instead, it is the responsibility of those who bear public duties. The subsidiary responsibility of the landowner or possessor can be acceptable if it concerns an owner or possessor who is a public law entity. This arrangement ensures that the financial burden of maintaining proper waste management is distributed among public law entities funded by state or local community budgets. Given this premise, the aspect of subsidiary responsibility regulation that imposes subsidiary responsibility on the landowner or possessor when the land is owned by the State or a local community could be considered acceptable. However, this distribution of the financial burden could also be problematic from the perspectives of public finances and transparency of budgetary funding. There is no reason to impose the burden of subsidiary responsibility for unlawfully dumped waste on individual landowners or possessors. In such cases, subsidiary responsibility specifically refers to responsibility for the unlawful actions of another person. Such responsibility could perhaps be justified if there was any connection between the waste generator and the landowner.

Knez cites Austrian law and the 2002 *Abfallwirtschaftsgesetz* as examples of appropriate subsidiary responsibility regulations. This law, in paragraph 74,

44 | The Constitutional Court Act, Official Gazette of the Republic of Slovenia, nos. 64/07, 109/12, 23/20, and 92/21.

45 | Decision of the Constitutional Court of the Republic of Slovenia no. U-I-228/08-4 of 6 November 2008.

establishes the landowner's subsidiary responsibility, but only in cases where they agree to waste deposition on their land or have omitted measures that could have prevented it. Such a limitation is permissible and in accordance with the Directive, as it places responsibility on the landowner (as well as the generator of unlawful waste) if the landowner agrees to the dumping of waste. Additionally, it is also permissible to impose reasonable and proportionate measures on the landowner to prevent unlawful waste. This permissibility arises from the positive duty of environmental protection, which implies not just abstaining from certain interventions, but also specifying active actions.⁴⁶ In my view, the mere general possibility of restricting property rights to fulfil their ecological function does not justify the measure of subsidiary responsibility.

Unlawful waste deposition is carried out entirely at random and is completely independent of the landowner's actions and how they exercise their property rights. The only connection between unlawfully dumped waste and land is the action of the perpetrator, who chose a specific piece of land for their unlawful behaviour. This action would have been carried out by the waste generator regardless of who owned the land on which the waste was dumped. In my opinion, assuming the burden of responsibility solely on this basis constitutes a disproportionate measure that the individual should not be obliged to bear for the realisation of the public interest and the welfare of the entire community. This is particularly pertinent given that the likelihood of a recourse claim is negligible because the condition for subsidiary responsibility is predicated on the fact that the waste generator cannot be identified prior to issuing the measure. The likelihood of identifying a waste generator at a later stage is even smaller. There is no justification for imposing such a burden on an individual; instead, it should be distributed equally across the entire community.

2.2. Subsidiary Responsibility of the Land Owner Pursuant to the ZVO-2

The specific provision for subsidiary responsibility for unlawfully dumped waste was maintained in the new the ZVO-2, which is governed by Article 248. Although there have been some modifications to the regulations, the core solutions have been retained, as have most concerns regarding such solutions.

The first novelty in the regulation and systematisation of subsidiary responsibility is its terminology. The new legal text no longer speaks of waste that has been 'disposed', but rather of waste that has been thrown away or left in the environment. The term 'landfilling' is now used to refer to landfill sites, which are facilities for the removal of waste by disposal or on the ground.⁴⁷ The use of the term 'landfilling' is associated with the lawful way of handling waste; hence, a different term is used

⁴⁶ | Knez 2013, 5.

⁴⁷ | Point 7.22 of Article 3 of the ZVO-2.

for unlawful practices. Another systemic novelty of this regulation is the introduction of a special legal arrangement that regulates the legal consequences of littering (see below). Pursuant to Article 248 (8) of the ZVO-2, the principle of subsidiary responsibility does not apply to waste disposed of in the environment through littering. Nevertheless, the regulation still distinguishes between lands owned by the state and local communities and those owned by private individuals.

In the regulatory framework for waste dumped on lands owned by the state or local communities, a new element is the variation in measures depending on the intensity of waste deposition. The law distinguishes between milder (Article 248 (1) of the ZVO-2) and more severe (Article 248 (2) of the ZVO-2) cases of unlawfully dumped waste. Milder intensity was considered when communal waste or smaller quantities of construction waste were dumped or left on land. Communal waste includes mixed waste and separately collected household waste—such as paper and cardboard, glass, metals, plastics, biological waste, wood, textiles, packaging, electrical and electronic equipment, batteries and accumulators, and bulky waste (e.g. mattresses and furniture)—as well as mixed waste and separately collected waste from other sources.⁴⁸ Construction waste and waste resulting from the demolition of structures are categorised as waste generated during construction activities in accordance with the regulations governing construction.⁴⁹ All other cases of waste dumped or left in the environment are more serious.

The measures under Article 248 of the ZVO-2 are defined as subsidiary mechanisms if the person who dumped or left waste in the environment cannot be identified or does not exist. These measures were imposed by a competent inspection authority. If the violation is mild, then the competent inspection authority orders the owner to ensure the removal of waste, which must be done in accordance with the regulations governing waste management. An appeal does not suspend the execution of the inspection authority's decision. In cases of more serious violations, the competent inspection authority orders the entity performing the public service to collect certain types of municipal waste in the area in which the land is located to ensure their removal. In this case, too, an appeal against the decision does not suspend its execution. In both cases, the landowner is responsible for the cost of waste removal. The state bears the costs if the waste is on the land plot owned by state and the local community bears the costs if the waste is on its land. Under the new regulation, unlike its predecessor, the role of the possessor as the responsible party, who would step in for the owner if the possessor was actively using the land, was omitted. However, the new regulation still upholds the right to recourse in cases where the police or inspection authorities identify the perpetrators of dumped or abandoned waste. This right of recourse encompasses the

48 | Point 7.4 of Article 3 of the ZVO-2.

49 | Point 7.5 of Article 3 of the ZVO-2.

full payment made by the state or local community, including all interest charges and costs.

Despite serious concerns, the new law retains an individual's subsidiary responsibility. Unfortunately, these changes have entrenched further ambiguities, and new uncertainties are expected to arise. The law now only specifies that if waste is dumped or left on land under private ownership, the cost of waste removal shall be borne by the person exercising possession. However, the Slovenian legal system does not explicitly define private ownership. The Constitution of the Republic of Slovenia uses this term in Article 33 to establish the right to private property as a fundamental right. This emphasis was justified at the time of the Constitution's adoption in 1991, when Slovenia transitioned from socialism to a market economy. An emphasis on private ownership was necessary because the system no longer wanted to protect socialist social property as a fundamental right. Since the transformation of socialist property, the legal system has uniformly regulated property rights, and there is no basis for distinguishing between public and private ownership. Therefore, the ZVO-2 can only be interpreted to mean that the term 'private land ownership' refers to all land owned by any entity other than the state or municipality.

Under the new regulations, the person with subsidiary responsibility is no longer the landowner in the context of private ownership, but rather its possessor – land ownership can only be based on property law. The Slovenian property law system establishes the objective concept of possession, modelled after the German Civil Code⁵⁰; specifically, 'possession' is defined as actual control over an object, and the possessor is anyone who exercises control. The legal basis, right to possession, or any other element of will has no significance in this regard. This type of possession is called 'direct possession' (Article 24 (1) of the Law of Property Code, *Stvarnopravni zakonik*, SPZ). Legal regulations for possession also define 'indirect possession'. A person also has possession if they have actual control over a thing through someone else who has direct possession under any type of legal title (Article 24 (2) of the SPZ). However, indirect possession requires an existing legal relationship between direct and indirect possessors. This legal relationship can be a contract (for example lease agreement), a right (e.g. a personal easement), or another suitable legal basis. According to the aforementioned regulations, the landowner is almost always the possessor. If the owner exercised actual control, then there is only a single possessor. However, if the landowner transfers the use and possession of the land to someone else, then a direct possessor has the land in their actual control and a landowner – the indirect possessor – exercises possession through the direct possessor. Both possess the status of possessors according to property law regulations.

50 | Juhart, Tratnik & Vrenčur 2023, 98.

It is not clear to whom Article 248 (6) of the ZVO-2 refers. It is most likely that the measure is directed against the direct possessor, who exercises control over the land and can execute the decision to order the removal of waste from the land. However, one could also argue that inspections can act against the landowner, who is an indirect possessor. In particular, if the owner derives economic benefits from a legal relationship with the possessor, it would be justified for them to bear the risks associated with property rights on the land. Thus, a lessee of land who has no connection to dumped waste would bear a double burden. They would have to pay rent to the owner and cover all costs associated with the unlawfully dumped waste. The relationship between the owner and lessee can also be assessed through the content of the lease agreement and the question of whether the dumped waste constitutes a defect in the leased item for which the lessor is responsible. The ambiguous and inadequately contemplated regulation of the ZVO-2 has given rise to numerous legal challenges that practitioners must confront. If inspection authorities increasingly issue decisions to the possessors of land owned by private individuals, then the highlighted legal issues are also likely to come to the forefront.

The designation of the possessor as the responsible party creates ambiguities, especially when multiple persons are associated with the land. This is often the case with forestland, which is subject to inheritance and co-ownership relationships. Meanwhile, common ownership has been established less frequently. However, direct possession does not necessarily correspond to an ideal co-ownership share. Typically, only some co-owners directly possess land, while others do so indirectly. In these situations, it is an open question to whom the inspection decision should be issued and how costs should be distributed among these actors (e.g. equally or based on the nature of their legal relationships with the land). If the obligation is joint and multiple, what is the nature of the recourse relationship among joint debtors? Again, this gives rise to more questions than answers.

A regulation stipulating that the responsible party is the possessor of the land rather than the owner is likely to pose considerable challenges to competent inspection authorities in their decision-making processes. Information about the landowner is entered into the land register under the principle of publicity of property rights (Article 11 of the SPZ).⁵¹ However, the possession of land arises from the exercise of actual control over the property, which is difficult to ascertain—especially when land is not intended for dwelling or cultivation. The landowner can transfer possession to the possessor through various legal transactions, most of which are not registered in the land register; therefore, the inspector does not have a reliable source of knowledge they can use to determine the responsible party. It can be expected that the inspection will proceed based on the assumption that the

51 | It is presumed that the owner of the immovable property is the person listed in the land register.

property owner is also its possessor, thus risking an appellate argument that the decision was issued against the wrong person.

An even greater flaw in the new regulation on individuals' subsidiary responsibilities is the absence of specific rules in the legal provision regarding the procedure for issuing an inspection decision. Therefore, the general rules on inspection measures from Article 247 of the ZVO-2 apply. This means that the inspection authority first issues an order for the removal of irregularities and sets a deadline for doing so (point 1 of Article 247 (1) of the ZVO-2). An individual against whom the decision is issued can appeal, as Article 248 of the ZVO-2 no longer stipulates that the appeal does not suspend the execution of the decision, as determined for decisions issued against the state or local community. If a decision is confirmed and the individual does not comply with its content, forced execution of the decision may occur (Article 249 of the ZVO-2). This implies that the inspection orders the removal of waste and the provision of appropriate management by the entity collecting certain types of municipal waste in the area in which the land is located; notably, this is done at the expense of the land possessor (Article 248 (6) of the ZVO-2).

The general rules of the ZVO-2 on inspection measures also stipulate that the issued inspection authority's decision is effective against the singular and universal legal successors of the inspection obligor. A universal legal successor is any person who acquires ownership or other rights over the land on which the removal measure must be carried out, based on which they can exercise possession (Article 247 (14) of the ZVO-2).

If the possessor fails to pay the costs of the inspection procedure, it can lead to the enforced recovery of all the costs of the inspection procedure and waste removal, along with all accrued interest. In the case of delay-in-payment, the default interest accrues from the due date. However, how the data should be collected has not been clearly defined. In particular, the law does not clarify the legal nature of the claim of the person who performed waste removal instead of the possessor. This could be a statutory claim under the general rules of property law relationships between individuals, which would mean that the creditor must demand payment through a lawsuit in regular proceedings if the debtor fails to pay. These costs could be temporarily covered by the inspection authority, thus having the legal nature of inspection procedure costs, and could later be collected according to the rules applicable to the collection of public obligations under tax procedure rules. The creditor's position on such a claim (i.e. the state or local community depending on which inspection authority issued the decision) is also secured by a statutory lien on the real estate (mortgage) of the person against whom the inspection procedure was initiated and the inspection measure ordered (Article 250 of the ZVO-2). The lien arises on all debtors' properties, not just on those where the measure was pronounced. The statutory line is a problematic measure in terms of the system of property and mortgage law. General mortgage rules to ensure the equal position of creditors are based on the principle of ranking, which is determined by the time of

entry into the land register. A mortgage based on law is not registered in the land register and can completely change the order of creditors' repayments, as indicated in the land register. This significantly affects mortgage transaction predictability. Therefore, property law theory strongly opposes statutory mortgages or states that it is acceptable only when the emergence of a statutory mortgage can be linked to a legal status registered in the land register.⁵²

The possessor who pays the cost of waste removal can demand reimbursement of all costs from the waste generator if they become known (Article 248 (6) of the ZVO-2). This is a derivation of the general rule on the possibility of demanding the reimbursement of what was paid due to the fulfilment of someone else's legal obligation (Article 197 of the Code of Obligations, *Obligacijski zakonik* – the OZ). There is no doubt that the possessor can demand both the reimbursement of their own costs incurred in removing dumped waste and the costs they had to pay based on the inspection authority's decision.

As no special statute of limitations is stipulated, there is no doubt that the general statute of limitations for five years under Article 364 of the OZ applies. However, it remains necessary to determine when the period begins. More specifically, the period can run from the date of the cost payment or the date the possessor and payer learn about the person who dumped the waste. Along with the possibility of demanding reimbursement, the law stipulates that the possessor should not bear the costs if the waste generator is discovered later. Again, it is not clear what this means if these costs cannot be collected from the waste generator because they are insolvent or have ceased to exist. In this case, the possessor may claim reimbursement from the state because a decision was issued against them but the conditions were not met because the person who dumped the waste was known. The myriad questions raised indicate that the legislator primarily focused on the measure itself but did not thoroughly consider the consequences of its implementation.

2.3. Littering

The specific arrangement for littering was incorporated into Slovenian law with the enactment of the ZVO-2, as a result of the implementation of Directive 2018/851. Littering refers to the pollution of land and water environments through the disposal of individual smaller pieces of waste into public and private areas where free access or movement of the population is allowed or into surface waters (sea, rivers, and lakes); additionally, littering can result from improper waste processing methods (Point 9.6 of Article 3 of the ZVO-2). Therefore, littering includes the disposal of waste (e.g. cans, bottles, cigarette butts) from a vehicle on or off the

52 | Tratnik 2016, 799.

road or in other public areas, as previously regulated by Article 5 of the Road Traffic Rules Act (see above).

It is important to stress that 'dumping' should not be equated with either 'landfilling' or 'littering'. While landfilling is a method of waste disposal, the act of dumping waste and leaving it in the environment is invariably a deliberate action by an individual seeking to dispose of a significant amount of waste, with the primary motivation for such behaviour typically being to avoid waste management costs. Littering, unlike waste dumping, can be intentional, unintentional, direct, or indirect and can occur in all environments. The littering of an area is not always a direct consequence of someone dumping waste there, but can also result from the spread of waste due to wind, the outflow of waste-polluted rivers into the sea, and lost items. Littering mainly involves smaller, more easily discarded items, such as cigarette butts, paper scraps, paper tissues, and bottle caps. Therefore, littering is the result of careless or consciously incorrect behaviour by individuals.

In the field of littering, the responsibility of local communities has been emphasised. Communities must prescribe measures to prevent littering with their acts, including preventing pollution due to the dumping of individual smaller pieces of waste onto external surfaces and remedying the consequences of littering (Article 24 (8) of the ZVO-2). These measures relate to public and private areas where, in accordance with regulations, free access or movement of the population is allowed. For example, Slovenian legal regulations that restrict property rights on agricultural land and forests define the right to innocent passage. Thus, these measures cover a large amount of land owned by individuals.⁵³

Tasks regarding littering prevention were also determined in the extended producer responsibility regulations. Producers are required to provide public information regarding the separate collection of waste from products and the prevention of littering, as well as environmentally efficient product waste management (point 4 of Article 35 (1) of the ZVO-2). Waste producers, for whom the extended responsibility system applies, may also be required to finance the implementation of measures to prevent littering. The national program addressing littering places particular emphasis on measures aimed at preventing and reducing litter from certain single-use plastic products. The main measure is the introduction of a PRO system for such products, which obligates producers to cover part of the costs of cleaning up litter and raising awareness to prevent littering. The environmental goal of the separate collection of waste bottles; the goal of reducing the consumption of plastic drink cups, plastic food containers, and lightweight plastic bags; and the prohibition of placing certain single-use plastic products on the market in Slovenia will prevent littering.⁵⁴ Notably, supervisory authority related to littering has been specifically allocated: besides inspection authorities, police and municipal

53 | For more detail, please see: Juhart, Tratnik & Vrenčur 2023, 52.

54 | Program 2022, 223.

wardens are also empowered to supervise littering, as stipulated in Article 243 (7) of the ZVO-2.

3. Criminal and Punitive Sanctions

The Criminal Code (*Kazenski zakonik* – KZ-1) specifies environmental criminal offences in its thirty-second chapter in Articles 332–347, which outline criminal offences against the environment, space, and natural resources. Amendment KZ-1-B also brought environmental criminal offences in line with the binding provisions of international acts.⁵⁵ As a result of these adjustments, provisions regarding the objects of protection, methods of execution, consequences, and sanctions were changed to supplement criminal offences. The purpose of these legislative changes was to achieve a higher level of protection under criminal law in the environment.⁵⁶ Despite these changes, environmental protection within the scope of criminal law remained relatively low. An expert group preparing the assessment report ‘Practical Implementation and Operation of European Policies for Preventing and Combating Environmental Crime’ for Slovenia,⁵⁷ found that the general system for detecting environmental offences does not work. Most notably, the system is failing to effectively address crimes of pollution and destruction of the environment in connection with waste of all types; specifically, the system has not adequately prosecuted such crimes.⁵⁸ Shortcomings in relation to environmental crime are also recognised by the Government of Slovenia, and action in this area is a major priority. The Government adopted special Programme, which summarises all 20 recommendations of the expert group.⁵⁹ Further, as a special measure of the Government of Slovenia, the Programme states that the handling of criminality in the field of waste management should be a national priority and that a strategy for preventing environmental crime should be developed accordingly. How seriously the state will approach this goal will be examined in the coming years.

Mulec analytically examined the reasons behind this inadequate state of affairs, highlighting that initial complications emerge when competent institutions are called upon to discern whether an incident is merely a minor offence identified by inspection or an act that could be classified as criminal.⁶⁰ Criminal investigations are not led by specialised prosecutors because no such specialists exist; however, such environmental crime specialists would be especially necessary when dealing with actions prescribed for more than a ten-year prison sentence. Nevertheless,

55 | Mulec 2020, 17.

56 | Ambrož & Jenull 2012, 219.

57 | Council of the European Union, no. 8065/1/19 REV 1, 23 May 2019.

58 | For data on the period from 2010 to 2018, see Mulec (2020), p. 18.

59 | Program 2022, 235.

60 | Mulec 2020, 19.

law enforcement agencies do not currently prioritise environmental crimes or take them seriously. In addition, no special units for environmental crimes have been established by the police, prosecution, or courts.⁶¹

The basic criminal offence covering various forms of illegal waste management activities is Article 332 of the KZ-1, which defines the criminal offence of burdening and destroying the environment. In this context, the first three (of six) points in the first paragraph of this article are particularly relevant.

Whoever violates regulations by: 1) discharging, emitting, or introducing quantities of materials or ionising radiation into the air, soil, or water, thereby endangering the life of one or more persons or causing the risk of serious bodily injury or actual damage to the quality of air, soil, or water, or to animals or plants; 2) collecting, transporting, recovering, or disposing of waste, or supervision of such processes or activities after the after-care of disposal sites, or trading in or brokering waste in such a way as to endanger the life of one or more persons or to cause the risk of serious bodily injury or actual damage to the quality of air, soil, or water, or to animals or plants; 3) sending non-negligible quantities of waste in a single shipment or in several shipments which appear to be connected, as defined in point 35 of Article 2 of the Regulation (EC) of the European Parliament and of the Council of 14 June 2006 on shipments of waste; [...]

As we can see, Slovenian legislation closely follows (and does not deviate from) Directive 99/2008/EC.⁶² This blind adherence to the directive is problematic: it introduces concepts into the law that differ from those in other parts of the legislation; ultimately, this results in a high degree of indeterminacy in the provisions. Therefore, it remains unclear whether the principle of *lex certa* is respected in defining the legal characteristics of criminal offences.⁶³

This is a blanket norm; that is, the first condition for all further methods of execution is established by the perpetrator and constitutes a violation of the laws or other regulations in the field of environmental protection.⁶⁴ In particular, dumping and leaving waste violates Article 26 of the ZVO-2, which contains a general prohibition on such behaviours applicable to all individuals involved in dumping and leaving waste and in managing uncontrolled waste. However, criminal law experts maintain that criminal offences can only be committed intentionally, with either direct or eventual intent.⁶⁵ Currently, case law pertaining to Article 332 of the KZ-1 is very limited. The only published decision available suggests that the alleged conduct was related to the disposal of construction waste on the ground.⁶⁶ Mean-

61 | Ibid.

62 | Directive 2008/99/EC of the European Parliament and the Council of 19 November 2008 on the protection of the environment through criminal law.

63 | Florjančič 2012, 19.

64 | Florjančič 2019, 733.

65 | Ibid, 736.

66 | Decision of the Ljubljana High Court no. II Kp 7762/2020 of 22 June 2023.

while, deficiencies in environmental criminal law have also been identified in the Waste Management Program and Waste Prevention Program of Slovenia (2022).

In addition to criminal law protections for the environment, monetary fines for offences can be imposed for unlawful dumping or waste deposition. From a substantive law perspective, offences due to violations of the prohibition of dumping and depositing waste in the environment are specified in the ZVO-2; further, the general rules of the Minor Offences Act (*Zakon o prekrških*, ZP-1) apply to imposing fines.⁶⁷ Violations of the prohibition in Article 26 of the ZVO-2 were sanctioned in Article 259. A fine ranging from EUR 75,000 to EUR 125,000 shall be imposed on a legal entity for an offence of dumping waste, leaving it in the environment, and handling waste in an uncontrolled way (point 7 of Article 259 (1) of the ZVO-2). For a minor offence, a fine ranging from EUR 3,500 to EUR 4,100 should also be imposed on the person responsible for the legal entity if it commits an offence (Article 259 (3) of the ZVO-2). However, fines can increase if there is a more severe form of prohibited conduct. These cases pertain to situations where, due to prohibited conduct, there is a need for waste removal and environmental cleaning that exceeds EUR 250,000 or the conduct was committed intentionally or for personal gain, as stated in Article 259 (4) of the ZVO-2. However, the law does not specify any consequences if the conduct is executed by individuals. It is uncertain whether this was an intentional decision by the legislature or merely an oversight.

Special penalties were set for minor offences due to the unlawful dumping of waste into water and coastal lands. Fines for legal entities are prescribed in the range of EUR 4,000 to EUR 125,000. For unlawful waste deposition, fines range from EUR 400 to EUR 1,200. Meanwhile, a specific minor offence was envisaged for littering; notably, this offence is the least severe minor offence that constitutes a violation of the ZVO-2. A legal entity that litters shall be fined between EUR 10,000 and EUR 20,000 (Point 1 of Article 262 (1) of the ZVO-2). Additionally, the person responsible for the legal entity shall be fined between EUR 1,000 and EUR 1,500. Individuals can also impose fines for littering; however, this fine is relatively low at EUR 40. Additionally, littering by throwing objects from a vehicle constitutes a special minor offence; for such behaviour, the Road Traffic Rules Act prescribes a fine of EUR 80 (Article 5 (4)).

4. Conclusion

In my opinion, the legal framework established by the ZVO-2 fully meets the requirements of Article 36 of Directive 2008/98/EC. The Republic of Slovenia has taken necessary measures to prohibit the abandonment and dumping of waste in

67 | Official Gazette of the Republic of Slovenia, nos. 29/11, 21/13, 111/13, 74/14, 92/14, 32/16, 15/17, 73/19, 175/20, and 5/21.

the natural environment. The most essential measure is the legal prohibition on dumping and leaving waste (Article 26 of the ZVO-2), which primarily attributes responsibility to the entity that generated the waste. The system of subsidiary responsibility comes into play only if the person managing waste unlawfully cannot be identified. Therefore, I disagree with the assessment that such an arrangement undermines the polluter pay principle. Meanwhile, landowners' subsidiary responsibility is intended to have a real effect. The focus is on the objective of removing waste from nature. This study makes a significant contribution to existing understandings of the fundamental principles of environmental protection.

However, I observed two serious problems with the arrangement of subsidiary responsibilities. The first is a legal problem. The arrangement of subsidiary responsibilities imposes the burden of removing unlawful waste from landowners. Here, the law distinguishes between lands owned by the state and local communities and those owned by individuals. The subsidiary responsibility of the state and local communities as landowners can be linked to the general principle of subsidiary action under Article 13 of the ZVO-2. The state and local community are obligated to bear the burden of subsidiary measures. Therefore, the provision of Article 248 of the ZVO-2 can be understood as a derivative of the general principle whereby the burden of subsidiary action is distributed among the persons responsible. However, there is no general basis for the subsidiary responsibility of individual landowners or possessors. The occurrence of unlawful waste on the possessor's land is often beyond the possessor's control and is not a consequence of their actions or omissions—in such cases, it is a random event that could not be prevented. Therefore, such a measure is a disproportionate intrusion on an individual's property rights. This measure is constitutionally questionable, and I believe that the Constitutional Court would likely annul it in a review of its constitutional compliance. In this regard, it is irrelevant whether the possession of land arises from property rights or from other rights that enjoy the same constitutional protection as property rights. The burden of unlawful waste should be distributed across the entire community and should not be imposed on random individuals. In its decision,⁶⁸ the Constitutional Court merely postponed the review of constitutional compliance to a time when an individual, after exhausting all legal remedies, could initiate substantive decision-making on this issue. I am convinced that the legislature must find a different way to deal with unlawful waste on land owned by individuals.

The second problem is practicality. Adequate legal regulations do not guarantee that measures are actually implemented. The high rate of unlawful waste dumping indicates the inefficiency of the competent national authorities. It is sad that Slovenia was ineffective in the area of the implementation of environmental legislation, as evidenced by several high-profile cases that Slovenia lost before the

68 | Decision of the Constitutional Court of the Republic of Slovenia no.U-I-228/08-4 of 6 November 2008.

European Court of Justice.⁶⁹ Some of these cases are related to unlawful landfilling in the natural environment, mainly concerning the problem of used car tires.⁷⁰ Despite ambitious plans, the situation has not yet improved. It is difficult to assess how successful the special arrangement of subsidiary responsibility is for unlawful waste deposition and the extent to which it has contributed to the reduction of unlawful waste deposition. No relevant analyses on this matter have yet been performed. Competent national authorities provide neither a comprehensive registry of unlawful waste deposits nor process data for their elimination. According to data from environmental organisations – especially the Ecologists Without Borders Association, which has established a system for recording and inventorying unlawful waste deposits – the number of such deposits has not significantly decreased due to the system of subsidiary responsibility. Annual voluntary clean-up campaigns organised by civil society contribute significantly more to reducing the number of unlawful waste deposits than state authorities' actions.

In my opinion, the other part of Article 36 of Directive 2008/98/EC was also transposed into Slovenian legislation. Penal sanctions have been set for both unlawful waste dumping into the natural environment and litter. Prescribed monetary fines are appropriate and proportional to the severity of the prohibited actions. However, no data are available on the number and amount of fines imposed. Somewhat stricter, but also unclear, conditions are elements of the criminal offence of polluting and destroying the environment under Article 332 of the KZ-1. Slovenia cannot be accused of failing to comply with the requirements of Directive 2008/99/EC; however, difficulties have arisen in its implementation, as indicated by the low number of processed cases.

69 | See, for example, C-140/14 European Commission v. Republic of Slovenia of 16 July 2015. For more details, please see: Vuksanović 2015, 39.

70 | C-153/16 European Commission v. Republic of Slovenia of 15 March 2017. For more details, please see: Skubic 2017, 39.

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