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Research Article

HARMONISATION OF THE CRIMINAL LAW OF THE SLOVAK REPUBLIC WITH THE LAW OF THE EUROPEAN UNION IN THE FIELD OF INTERNATIONAL CRIMINAL OFFENCES

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ABSTRACT

Background: *This paper addresses key issues related to the tools used to approximate the definitions of selected crimes within specific areas of the fight against organised crime. Despite the pursuit of communitarisation, some legal constitutions have remained rooted in an intergovernmental approach. Accordingly, this article examines individual international documents that served as the basis for selected international criminal offences incorporated into the Slovak Criminal Code. As with any process of harmonisation involving the legal regulations of individual states, aligning European Union law with Slovak Criminal Law was not easy, and many application problems arose. In this article, we focus on these challenges and explore possible solutions.*

Methods: *In this contribution, standard methods commonly employed in the processing of scientific and professional texts focused on "European" criminal law were applied. The dominant method was the so-called analytical method, mainly used to examine current legislation related to the discussed issue. Additionally, a content and functional analysis of the most important institutes, which were contained in relevant international documents and important court decisions, was carried out. In the case of comparisons between Slovak and European legislation, a comparative method was used. Subsequently, conclusions were formulated using the synthetic method, the aim of which was to present proposals to eliminate shortcomings and improve the current legislation.*

Results and Conclusions: *Through the analysis and comparison of relevant legal frameworks, several findings emerged. Specifically, we have found that the Slovak Criminal Code understands the concept of "organised criminal group" significantly more broadly than the relevant Framework Decision. This fact could cause problems in the recognition of decisions by other states. Additionally, the absence of a uniform definition of the concept of "terrorism" within the European Union is problematic as it may lead to inconsistencies that interfere with fundamental human rights and freedoms. In the field of drug trafficking, while no significant application problems were found in connection with the application of European Union law and the Criminal Code, disparities across the entire European Union, particularly in the criminalisation/decriminalisation of selected types of drugs and the varying severity of sanctions imposed by Member States. For arms trafficking, flaws were identified in the implementation of the relevant protocol into Slovak law, particularly in the definition and treatment of firearms parts and components. In cases of trafficking in human beings committed by a legal entity, the Criminal Code fails to meet the requirements of the relevant directive regarding the punishment of legal entities. Finally, the directive on environmental crimes contains vague terms which may cause application problems when approximating the provisions of the directive in relation to other states.*

1 INTRODUCTION

International organised crime represents the highest form of criminal activity within the entire European Union. The commission of international crimes can be considered an unprecedented threat to the fundamental principles and values of the European community, jeopardising its security, financial stability, and integrity of both its external and internal markets. Members of organised, criminal or terrorist groups commit a large number of the most serious crimes such as terrorism, drug smuggling, illegal arms and arms trafficking, human trafficking and sexual abuse of women and children, corruption, cybercrime, hybrid crimes, chemical, biological and nuclear threats, as well as environmental crimes.

This contribution focuses on the most critical areas of concern highlighted above. To combat these serious crimes, the European Union must provide its Member States with the necessary financial, personnel and technical means and tools to enhance the detection, clarification and investigation of such offences.[1] In other words, addressing these challenges requires legislative action not only at the national level but also at the supranational or European level. This calls for the Europeanization of criminal law or the harmonisation of the legal systems of individual Member States.

1 *František Čakrt*, 'Nástin komunitarizace v rámci III pilíře' (2007) 1 Trestněprávní revue 4.

However, in this case, we are faced with the fragmentation and inconsistency of national legal regulations. These inconsistencies arise from variations in social values, traditions, ethnic, cultural, historical or religious differences of individual Member States. The Europeanization of criminal law is a long-term process grounded in substantive and procedural aspects of the European Union's foundational criminal law principles.[2]

Overall, it is not a question of eliminating differences in criminal law provisions but only of minimising them and trying to approximate some agreed factual bases. The primary anchoring of harmonisation tendencies can be found in primary law. The EU Treaty refers to Art. 31(1e), while the Treaty establishing the European Community[3] (hereinafter referred to as the EC Treaty) includes relevant provisions such as Art. 280, as amended by the Treaty of Nice.[4] The primary instruments used to approximate the laws of the Member States, particularly in defining elements of selected criminal offences, were Framework Decisions. These instruments, similar to directives adopted under the first pillar of the EU, bind Member States only as so-called to the result to be achieved. However, Framework Decisions are not supranational but intergovernmental legal acts.[5]

However, the Lisbon Treaty does not provide for their adoption or existence in its appendix.[6] Therefore, regulations regarding the adoption of Framework Decisions are no longer included in the consolidated version of the EU Treaty.[7] With the adoption of the Lisbon Treaty, this duality no longer applies, and all measures fall under the ordinary legislative procedure and are adopted in the form of secondary community acts.[8]

The new legal regulation, therefore, provides for the adoption of EU legal acts to approximate national substantive criminal laws. Some scholars regard the substantive nature of certain criminal offences as an essential instrument for achieving the objectives set by the EC. The general regulation in the field of approximation of substantive criminal law can be found in Art. 83(1) and (2) of the Treaty on the Functioning of the European Union[9] (hereinafter referred to as the TFEU), where in para. 1, the ten categories of

2 Stanislav Šišulák and Lýdia Gladišová, *Europeanisation of Criminal Law in the Slovak Republic as a Necessity to Ensure Effective Fight Against International Organised Crime* (Právnická fakulta Univerzity Komenského v Bratislave 2024) 68-70.

3 Treaty Establishing the European Economic Community (signed 25 March 1957) <http://data.europa.eu/eli/treaty/teec/sign> accessed 10 July 2024.

4 Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts [2001] OJ C 80/1.

5 Jindřiška Syllová, Lenka Pítrová, Helena Paldusová a col, *Lisabonská smlouva: Komentář* (CH Beck 2010) 934-50.

6 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (signed 13 December 2007) [2007] OJ C 306/1.

7 Treaty Establishing the European Community (consolidated version) [2002] OJ C 325/33.

8 Bohumil Pikna, *Evropský prostor svobody, bezpečnosti a práva: Prizmatem Lisabonské smlouvy* (2 vyd, Linde 2010) 62-75.

9 Treaty on the Functioning of the European Union (consolidated versions) [2016] OJ C 202/47.

particularly serious criminal offences with a cross-border dimension. These offences are exhaustively defined based on their nature or impact or specific requirements, and they are addressed on a common basis. Furthermore, minimum rules for determining these criminal offences and sanctions may be established.[10]

In the Slovak Republic, harmonisation efforts to at least minimally specify the factual nature of criminal offences and criminal sanctions in defined areas have been continuously reflected in the legal order of the Slovak Republic after the recodification of substantive law in Act No. 300/2005 Coll. of the Criminal Code.[11] The aim of the EU is to harmonise internationally protected interests and their protection at the European level. Most of the effects of communitarisation have been taking place gradually within the framework of gradual development at the European level and have been reflected in the current amendments to the Slovak legal order, given that they respond to current requirements. The entry of the Slovak Republic into the EU was influenced by the need to harmonise and unify the factual basis of certain criminal offences, which was also reflected in the amendment to the new Criminal Code adopted on 1 January 2006.

2 RESEARCH METHODOLOGY

In this study, we adopted an in-depth analytical approach to examining the legal texts governing "European" criminal law. As inferred, the European Union does not have a separate criminal branch that is common to all Member States. For this reason, our analysis focused on individual legal acts, especially international treaties, agreements, regulations, and directives.

The analytical method served as a primary tool, enabling us to accurately and clearly define the foundational elements of the regulatory "criminal policy" applied by the European Union. Complementing this, we employed the comparative method to juxtapose criminal acts addressed in international conventions or legal acts of the European Union with those outlined in the Slovak Criminal Code. It should be noted that we focused only on specific crimes that have an international scope and a high degree of seriousness, such as crimes committed within an organised criminal group, terrorism, arms and drug trafficking, human trafficking, and environmental crimes.

Lastly, the synthetic method was applied to "select" the most important but also different elements embedded in "European" and Slovak criminal law. Proposals and recommendations were subsequently submitted to eliminate the identified shortcomings and to improve the current wording of the relevant legal regulations.

10 It is important to note that with the adoption of the Lisbon Treaty, the pillar structure ceased to exist and the concept of community law also ceased to exist, being replaced by the concept of European Union law.

11 Act no 300/2005 coll of 20 May 2005 Criminal Code 'Trestný zákon' (amended 2024) <https://www.zakonypreludi.sk/zz/2005-300> accessed 10 July 2024; Jozef Čentéš a jiní, *Trestné právo procesné: Osobitná časť* (2 vyd, Heureka 2022) 358.

3 THE FIGHT AGAINST ORGANISED CRIME – PARTICIPATION IN A CRIMINAL ORGANISATION

The basic framework for approximating criminal law regulations in the field of judicial cooperation in criminal matters was outlined in the Treaty on European Union[12] (hereinafter referred to as TEU). It emphasised the gradual adoption of measures to approximate the facts of certain criminal offences. A notable area of focus was organised crime, given its particularly dangerous nature. Criminal organisations represent one of the most severe forms of criminal activity, often involving several people, e.g. due to its conspiratorial criminal activity or a branched structure involving a large number of people, whether directly involved in committing the crime or only affiliated and cooperating intermediaries.[13] This form of crime, often transcending the borders of one state, necessitated the creation of a clear legal framework that would classify and address such conduct as a criminal offence.[14]

Earlier Slovak legislation referred to the activity of such a group as "criminal organisations". However, the recodified Criminal Code redefined them as "organised criminal groups," reflecting the serious threat. The Criminal Code also introduced detailed regulations regarding perpetrators of crimes committed for the benefit of organised criminal groups. It established three forms of crime for the benefit of a given group and specified the imposition of criminal sanctions by these perpetrators, taking into account the increased criminal danger posed by organised crime, including increasing the upper limit of penalties and ensuring sentencing is within the upper half of the range. Another modification clarifies the concept of organised criminal groups, regulating participation and stipulating effective damages for crimes committed by these entities, as regulated in Section 125 of the Criminal Code.

The EU instrument to harmonise the merits of the offence of participation in an organised criminal group is the Council Framework Decision of 24 October 2008.[15] However, the specifics of organised crime have been included in the Slovak legal order since the adoption of the recodified Criminal Code of 2006, when some of the aforementioned provisions on

12 Treaty on European Union (signed 7 February 1992) (consolidated versions) [2016] OJ C 202/13.

13 They can cooperate, for example, to perform certain tasks and activities ensuring the operation of the organization, such as logistical or financial support, obtaining information or, conversely, covering and concealing the activities of the organization. In addition, this activity is very crucial for the functioning of the criminal organization. Michal Tomášek a jiní, *Europeizace trestního práva* (Linde 2008) 219.

14 We will clarify the division of crimes into offences and crimes in Section 14 of the Criminal Code, the defined crime then in para. 3 of the provision, see: Act no 300/2005 coll (n 11); Pavel Šámal a jiní, *Trestní zákoník I § 1–139: Komentář* (2 vyd, CH Beck 2012) 187.

15 Council Framework Decision 2008/841/JHA of 24 October 2008 on the Fight Against Organised Crime [2008] OJ L 300/42.

participation in a criminal organisation were incorporated into the Slovak law. Yet, the later amendment responded to the gradual development of EU efforts and transposed the Council's joint action.

In addition to addressing organised crime, the Council Framework Decision on Combating Terrorism was also implemented.[16] This Decision distinguished two types of criminal organisations (now essentially organised criminal groups): those aimed at committing general crimes and those committing a terrorist attack or terror on the other. The UN plays an important role in harmonising factual sub-states in this area, which helped specify national criminal laws by approving the UN Convention against International Organized Crime of 15 November 2000, referred to as the so-called Palermo Convention.[17]

Even after the implementation of the harmonisation provisions resulting from Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism,[18] no uniform arrangement has been achieved, and there are still differences in the definition of the merits of the crime in question in the individual EU Member States according to the adoption of a concept based on the principles of common law or the continental principle of law.[19]

Minor problems may arise in the mutual recognition of decisions between EU Member States because the Slovak legal system is regulated by organised criminal groups in a broader sense than provided for in the above-mentioned Framework Decision on the fight against organised crime. In other words, the provisions set out in the Criminal Code do not require the targeted crime of an organised criminal group to reach a particular threshold of danger, which, on the contrary, is foreseen by the Framework Decision above. The Slovak criminal law regulation could thus be an obstacle to the recognition of a decision by another state, which could invoke the general principles of *nullum crimen sine lege*, provided that, according to the law of that state, it has a regulation different from the Czech legislation.[20] In addition, the Government of the Slovak Republic is currently developing a concept for

16 Council Framework Decision 2002/475/JHA of 13 June 2002 on Combating Terrorism [2002] OJ L 164/3.

17 *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (UN Office on Drugs and Crime 2004). The Palermo Convention is followed by three additional protocols, which are: Protocol for the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children; Protocol against the Smuggling of Immigrants by Land, Sea and Air and Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Works and Shooting.

18 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA [2017] OJ L 88/6.

19 Tomášek a jiní (n 13) 219-38.

20 Jaroslav Fenyk, Ladislav Smejkal a Irena Bílá, *Zákon o trestní odpovědnosti právnických osob a řízení proti nim: Komentář* (3 vyd, Wolters Kluwer ČR 2024) 100-10.

the fight against organised crime. The measures contained in the concept follow other strategic materials such as Government Strategies in the Fight against Corruption, the National Strategy on Drug Policy, and the National Strategy on Counter-Terrorism.[21]

4 COMBATING TERRORISM

The fight against terrorism is crucial and remains one of the fundamental areas of international policy in which the EU is actively involved. Since the early efforts to harmonise legislation in this criminal domain, several problems have emerged, including the lack of a consistent general definition of terrorism or the absence of legislation altogether. Until 2002, only six EU Member States had laws addressing terrorism, and these laws were based on different political and legal traditions resulting mainly from the definition of the facts and criminal rates.

Before the EU responded to the need for counterterrorism treaties, the Council had adopted the European Convention on the Suppression of Terrorism.[22] However, this convention provided only a general definition of terrorism, listing specific forms of terrorist acts and stating that for the purpose of extradition between Contracting States, a terrorist act would not be considered a political crime, although Contracting States could make reservations against it.

At the EU level, the initial regulation of the joint fight against terrorism was enshrined in Art. K.1 of the TEU, as amended by the Maastricht Treaties, as one of the objectives of cooperation in criminal matters falling under the competence of the third pillar of the EU, specified as a matter of common interest of police cooperation for the purpose of prevention.[23] Similar to the fight against organised crime, the fight against terrorism was further addressed by primary legislation, specifically Art. 31 para. 1(e) of the TEU, as amended by the Treaty of Amsterdam.[24]

A general definition recognised at the international level was not given to the EU until the Framework Decision was adopted in 2002. This definition, based on the 2001 Common Position, identifies three key elements: how they are used or the threat of using violence, whether by groups or individuals, against the country, its institutions, population or individuals; the so-called specific motivational moments, which are further specified as "separatist goals, extremist ideological beliefs, religious fanaticism or the desire for material

21 For more information, see the website of the Office of the Government of the Slovak Republic: *Úrad vlády Slovenskej Republiky* <https://www.vlada.gov.sk> accessed 10 July 2024.

22 European Convention on the Suppression of Terrorism (adopted 27 January 1977) ETS 90.

23 Jiří Kmec, *Evropské trestní právo: Mechanizmy evropeizace trestního práva a vytváření skutečného evropského práva* (CHBeck 2006) 65-80.

24 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (signed 2 October 1997) [1997] OJ C 340/1.

gain"; and the intention to evoke a sense of fear, which may occur among the general public, individuals, groups or official representatives of the state. It must also involve an intentional act that may seriously harm a country or an international organisation, unlawfully compel a government or an international organisation to act in a certain way or to refrain from acting, or seriously destabilise or destroy the basic political, constitutional, economic or social structure of countries or an international organisation.[25]

In relation to terrorism, the Council adopted resolutions concerning the protection of victims' rights,[26] in particular in criminal proceedings, and the compensation of crime victims.[27] The latest act regulating the issue of terrorism is Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism, replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.[28] Namely, the main objective of the 2017 Directive was to prevent terrorist attacks, in the form of various activities, not only by committing a terrorist attack. In other words, Member States, including the Slovak Republic, had to incorporate forms of conduct into their criminal codes, such as training and travel for terrorism, organising or facilitating such travel, and financing terrorism. The Directive also strengthens the exchange of information gathered in ongoing criminal proceedings between Member States relating to terrorism. However, the fact remains that this Directive does not further define terrorism.[29]

In Slovak law, the concept of a terrorist attack was derived from the previous Act No. 140/1961 Coll. of the Criminal Code, effective until 31 December 2005.[30] This Act had to be recodified after the accession of the Slovak Republic to the EU to fulfil the obligations it had assumed upon joining. As part of this process, the existing legislation had to be harmonised, incorporating the definition of terrorism outlined in Art. 1 of the Framework Decision into Slovak law. The criminal rates for the offence of a terrorist attack (and other forms of "supporting" terrorism) are designed in a way that allows the possibility of imposing a special punishment on the offender under specified conditions.

25 Council Framework Decision of 13 June 2002 on Combating Terrorism [2002] OJ L 164/3, art 1. This article also defines eight specifics for a terrorist act directed against human life and freedom, the physical integrity of persons, public authorities or public security (transport systems, infrastructure, information systems, etc.).

26 Pavel Šámal a jiní, *Trestní zákoník I § 140–421: Komentář* (2 vyd, CH Beck 2012) 3049-67.

27 Resolution of the Council of 10 June 2011 on a Roadmap for Strengthening the Rights and Protection of Victims, in Particular in Criminal Proceedings [2011] OJ C 187/1, measure E; Council Directive 2004/80/EC of 29 April 2004 Relating to Compensation to Crime Victims [2004] OJ C 261/15.

28 Directive (EU) 2017/541 (n 18).

29 Ivan Šimovček a Adrián Jalč, 'Financovanie terorizmu – trestnoprávne a kriminalistické aspekty' in Marek Fryšták e Eva Brucknerová (eds), *Nové jevy v ekonomické kriminalitě: sborník příspěvků z mezinárodní konference* (Masarykova univerzita 2020) 69-70.

30 Act no 140/1961 Coll of 29 November 1961 Criminal Code 'Trestný zákon' (repealed) <https://www.zakonyprolidi.cz/cs/1961-140> accessed 10 July 2024.

Thus, in the field of terrorism, Slovak criminal law was harmonised with EU legislation adoption under the Third Pillar. However, we are of the opinion that the non-existent uniform definition enshrined in the European Union may have an undesirable impact on various areas of life. In other words, the individual documents regulating and generally defining the term "terrorism" provide a certain degree of legal protection, but greater emphasis is placed on national legal norms. In the case of the Slovak Republic, this primarily refers to the Criminal Code.

We find this "reliance" on national law undesirable, as it provides greater scope for interference with fundamental human rights and freedoms. We are aware of the complexity of this task, but it would be appropriate to introduce a uniform definition that would apply equally to all Member States.

5 ILLICIT DRUG TRAFFICKING

Along with the creation of the Single Market in Europe, illicit trade in all its forms has also grown. The protection of citizens in the EU area is a socially important priority also, including the fight against drug and arms trafficking, which threatens the European Union's protected interests. In addition, drug trafficking is one of the most widespread forms of organised crime in the EU.

The high importance attached to this area is also reflected in the TEU, where illicit drug trafficking is set out in Art. 29 TEU as one of the EU's objectives in the context of ensuring an area of freedom, security and justice. Given the already outlined importance of the above-mentioned area of drug trafficking, a large amount of legislation regulating the issue has been adopted. To name just a few key examples, even before the creation of the EU, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, the so-called Vienna Convention, and the European Parliament resolution on drug trafficking of 27 February 1989[31] recommended that states comply to basic principles of cooperation, such as issuing regulations, combating money laundering and forfeiture of revenues or monitoring banking systems.

At the EU level, one of the fundamental legal acts is the European Parliament and the Council Regulation (EC)[32] on drug precursors, which sets the rules for monitoring the trade in precursors between the EC and third countries. The Council Framework Decisions also established minimum provisions concerning the constituent elements of criminal offences and penalties in the field of illicit drug trafficking.[33] These decisions

31 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (signed 20 December 1988) [2001] UNTS 1582/95.

32 Jaroslav Ivor, Peter Polák a Jozef Záhora, *Trestné právo hmotné II Osobitá časť* (2 vyd, Wolters Kluwer SK 2021) 85; Regulation (EC) no 273/2004 of the European Parliament and of the Council of 11 February 2004 on Drug Precursors (Text with EEA relevance) [2004] OJ L 47/1.

33 In the Criminal Code No. 300/2005 Coll., drug crime is enshrined in Ss. 171 to 173.

specify in more detail which intentional offences are punishable and impose effective, proportionate and dissuasive penalties.[34]

The international provisions in question are designed in accordance with international obligations and are based on conventions, in particular, the Single Convention on Narcotic Drugs,[35] the Convention on Psychotropic Substances,[36] and the aforementioned Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. An extensive amendment of the Criminal Code separated hemp from other drugs and made slight changes in the regulation of the basic facts under Sections 171(1) and 172(1) of the Criminal Code, focusing on different methods of handling substances (offers, mediates, supplies) and the objects of such handling (preparations containing a narcotic or psychotropic substance). Therefore, the biggest change involved distinguishing between ″cannabis″ and ″ other drugs″, considering their health and social severity, and creating a further division of the determination of the number of drugs possessed for own use into ″more than small″.[37]

EU agencies, such as the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol, play a crucial role in addressing drug trafficking. Europol's original task was to exchange information between Member States on illicit drug trafficking, and over time, its powers were extended.

We must state that the harmonisation of European Union law with the Slovak Criminal Code has occurred consistently and without major problems. However, problems arise in harmonising European Union law with other member states for various reasons.[38] For example, some states have decriminalised specific types of drugs. This means they cannot be considered illegal in a given country. Another problem we see is a relatively different approach to imposing sanctions in the case of drug crimes. Some Member States punish drug crime with relatively high prison sentences, while other states, on the contrary, perceive drug offenders as a ″disease″ that needs to be cured and impose milder types of punishment on them.

While there are many contentious areas, for the purposes of this contribution, we consider the above calculation to be sufficient. Based on this, we conclude that the European Union, or rather its competent authorities, could promote a more uniform approach to the perception of drug crime. It would be necessary to establish basic principles for the

34 Council Framework Decision 2004/757/JHA of 25 October 2004 stipulating n minimum provisions on the facts of criminal offences and sanctions in the field of illicit drug trafficking [2004] OJ L 335/8.

35 Single Convention on Narcotic Drugs (31 March 1961) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-15&chapter=6> accessed 10 July 2024.

36 Convention on Psychotropic Substances (21 February 1971) [1976] UNTS 1019/175.

37 Šámal a jiní (n 26) 2860-906; or Tomášek a jiní (n 13) 269-87.

38 Jindřiška Syllová, Lenka Pítrová, Magdaléna Svobodová a kol, *Ústava pro Evropu: Komentář* (CH Beck 2005) 526-40.

perception and punishment of drug crime, which would have to be accepted by all Member States without exception. In our opinion, this would at least partially unify the legal regulation of drug offences among EU Member States.

6 ARMS TRAFFICKING

The arms trade is governed by a considerable body of conventions and legal acts at the international and European level, spanning both the I and III pillars of the EU. The basic document is the UN Arms Trade Treaty,[39] which aims to establish global control over the international arms trade. The United Nations held a conference in New York in 2013 that resulted in the adoption of the Arms Trade Treaty. Its purpose is to establish clear and binding provisions on the transfer of arms between states; it is in the interest of the EU to promote its effectiveness at the global level. This is illustrated, inter alia, by Council Decisions on EU activities in support of Arms Trade Treaties in the Framework of the European Security Strategy.[40]

Key EU acts related to the arms trade include, in chronological order, the Council Directive 91/477/EEC of 18 June 1991,[41] on control of the acquisition and possession of weapons. This Directive explicitly states that it does not affect the right of Member States to take measures to prevent illicit trafficking in arms. Later, Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008,[42] amending the previous Directive, includes in its amendments the definition of "illicit trade" in Art. 1 para. 2(b). Furthermore, the Common Position 2003/468/CFSP of the Council on 23 June 2003,[43] addresses the control of arms trafficking. The last document we want to mention is the Regulation of the European Parliament and Council 258/2012/EU of 14 March 2012.[44]

39 The Arms Trade Treaty (signed 2 April 2013) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26> accessed 10 July 2024.

40 Council Decision 2013/768/CFSP of 16 December 2013 on EU Activities in Support of the Implementation of the Arms Trade Treaty, in the Framework of the European Security Strategy [2013] OJ L 341/56.

41 Council Directive 91/477/EEC of 18 June 1991 on Control of the Acquisition and Possession of Weapons [1991] OJ L 256/51.

42 Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 Amending Council Directive 91/477/EEC on Control of the Acquisition and Possession of Weapons [2008] OJ L 179/5.

43 Council Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering [2003] OJ L 156/79.

44 Regulation (EU) no 258/2012 of the European Parliament and of the Council of 14 March 2012 Implementing Article 10 of the United Nations' Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and Establishing Export Authorisation, and Import and Transit Measures for Firearms, their Parts and Components and Ammunition [2012] OJ L 94/1.

The Protocol on Firearms (i.e. the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition)[45] is one of three protocols that are part of the United Nations Convention against Transnational Organized Crime.[46] This protocol complements the Convention, alongside other protocols concerning trafficking in human beings (in particular women and children) and smuggling of migrants.[47]

In response to the adoption of the above protocol, Slovak legislation, namely Act No. 300/2005 Coll. on the Criminal Code, introduced Section 294. This provision is drafted relatively broadly in the Criminal Code, which, in our opinion, contributes to the punishment of a wide range of perpetrators' actions. However, attention must be drawn to the definitions related to the criminal offence under Section 294. Specifically, the special Act No. 190/2003 Coll. on Firearms and Ammunition provides a definition of a firearm, which can subsequently be applied to Section 294 of the Criminal Code.

However, in our opinion, the problem arises in the case of punishment for the trafficking of firearm components and parts, as Section 294 of the Criminal Code also punishes this offence. The Protocol on the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition deals with both concepts, but neither the Criminal Code nor the Firearms and Ammunition Act nor any other Slovak law regulates these two specific concepts. In our opinion, it would be appropriate to incorporate concepts such as ″components″ and ″parts of a firearm″ into the Firearms and Ammunition Act. This would reduce the risk of future ambiguities and problems in application practice.

7 HUMAN TRAFFICKING AND SEXUAL EXPLOITATION OF WOMEN AND CHILDREN

There is no doubt that society seeks to protect not only interests such as the trafficking of arms and drug trafficking but also the highly dangerous phenomenon of human trafficking, particularly the exploitation of women and children, who are among the most vulnerable beings in society. Some of the relevant legislation has been mentioned in the previous subchapters. The UN Convention against Transnational Organized Crime is also a key document, along with its additional protocols, to which the Council has also acceded.

45 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Components and Arms and Ammunition UN Convention against Transnational Organized Crime (31 May 2001) <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xviii-12-c&chapter=18&clang=_en> accessed 10 July 2024.

46 United Nations Convention against Transnational Organized Crime (n 17).

47 Miroslav Scheinost (ed), *Dokumenty OSN ke korupci a organizovanému zločinu* (Institut pro kriminologii a sociální prevenci 2008) 4-5.

However, from the point of view of harmonising the facts of trafficking in human beings, the earlier Council Decision supplementing the definition of the form of crime, "trafficking in human beings", is more important.[48] Art. 1 defines the trafficking of human beings as the subjection of a person to real and illegal captivity using violence, winning or abusing power, in particular for the purpose of exploitation in the form of prostitution or sexual abuse and violence against minors, trafficking in abandoned children or the production and distribution of child pornography.

Additional legal acts that regulate measures for combating trafficking in human beings include the Council Decision on the conclusion of the Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, in particular women and children.[49] Under this Protocol, the EC has competence in relevant matters.

Also significant is the Directive on preventing and combating trafficking in human beings and protecting its victims,[50] which establishes the minimum rules for defining criminal offences and determining sanctions for their commission in the field of trafficking in human beings.

Other UN conventions on human trafficking must not be forgotten, namely the Slavery Convention,[51] the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others[52] and the Convention on the Rights of the Child.[53]

In addition to the above, the Council's Framework Decision on the fight against sexual abuse,[54] which repeals the Council's Framework Decision 2004/68/CFSP on the fight against the sexual exploitation of children and child pornography, is also important for the fight against the exploitation of people. Together, these legal instruments outline the purpose and methods to combat illegal human trading.

48 Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA {SEC(2009) 358} {SEC(2009) 359} (25 March 2009) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52009PC0136> accessed 10 July 2024.

49 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (15 November 2000) [2005] UNTS 2237/319.

50 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA [2011] OJ L 101/1.

51 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (7 September 1956) [1957] UNTS 266/3.

52 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (2 December 1949) [1951] UNTS 96/271.

53 Convention on the Rights of the Child (20 November 1989) [1990] UNTS 1577/3.

54 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, and Replacing Council Framework Decision 2004/68/JHA [2011] OJ L 335/1.

From case law, the judgment of the ECtHR of 7 January 2010 in *Rantsev v. Cyprus and Russia*[55] is notable. The Court ruled that trafficking in human beings falls under Art. 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits slavery and forced labour. The judgement imposes positive obligations on states to protect victims of exploitation and take appropriate measures to protect potential victims.

Trafficking in human beings can be described as a "very serious crime" as well as a "serious crime" of a non-political nature. The anchoring of the area of trafficking in human beings can be found in the recodified Criminal Code No. 300/2005 Coll, which implements not only the obligations arising from the above-mentioned international treaties but also the obligations of EU law.

Specifically, we can talk about Section 179, which states that "*whoever, by using fraudulent conduct, deceit, restriction of personal freedom, kidnapping, violence, threat of violence, threat of other serious harm or other forms of coercion, acceptance or provision of monetary payment or other benefits to achieve the consent of a person on whom another person is dependent, or abuse of his position or abuse of a defenseless or otherwise vulnerable position, lures, transports, harbors, transfers or takes over another person, even with his consent, for the purpose of his prostitution or other form of sexual exploitation, including pornography, forced labor or forced service, including begging, slavery or practices similar to slavery, servitude, forced marriage, exploitation for the commission of a crime, removal of organs, tissues or cells or other forms of exploitation, shall be punished by imprisonment for four to ten years. years.*"[56]

Furthermore, the Criminal Code extends the definition of trafficking in human beings to act involving children. It specifies that an offender who "*lures, transports, harbors, transfers or receives a child, even with his or her consent, for the purpose of child prostitution or other forms of sexual exploitation, including child pornography, forced labour or forced service, including begging, slavery or practices similar to slavery, servitude, forced marriage, exploitation for the purpose of committing a crime, illegal adoption, removal of organs, tissues or cells or other forms of exploitation.*"[57]

Both cited provisions represent basic facts that ultimately differ only in the material object of the attack (i.e. the object on which the offender directly acts when committing the crime). Paragraph 1 applies when the material object of the attack is an adult, while paragraph 2 pertains to cases where the material object of the attack is a child, i.e. a person under the age of 18.

Turning to Art. 6 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting

55 *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) <https://hudoc.echr.coe.int/eng?i=001-96549> accessed 10 July 2024.

56 Act no 300/2005 coll (n 11) s 179, para 1.

57 ibid, s 179, para 2.

its victims, we note that it obliges Member States to adopt measures that affect exclusively legal persons committing the crime of trafficking in human beings. At this point, we must draw attention to a specific legal regulation, namely Act No. 91/2016 Coll. on the criminal liability of legal persons, which, in the conditions of the Slovak Republic, regulates the punishment and sanctions imposed exclusively on legal persons).

Art. 6 of the Directive further states that Member States impose effective, proportionate and dissuasive criminal sanctions, as well as sanctions of a non-criminal nature. This is a demonstrative list of sanctions such as exclusion from entitlement to public benefits or assistance, temporary or permanent ban on business activities, judicial supervision, court-ordered dissolution of a legal person, and temporary or permanent closure of establishments used to commit a crime.[58]

Under Slovak law, Act No. 91/2016 Coll. on the Criminal Liability of Legal Entities outlines a wide range of penalties for legal entities found guilty of human trafficking. These include the penalty of dissolution of the legal entity, forfeiture of property, a fine, prohibition of activity, prohibition of receiving subsidies or subsidies, prohibition of receiving assistance and support provided from EU funds, prohibition of participation in public procurement, and publication of a conviction.

Based on the above, we can conclude that the penalty of temporary or permanent closure of establishments used to commit a crime cannot currently be imposed in the conditions of the Slovak Republic since it is not included in the exhaustive list of Act No. 91/2016 Coll. on the Criminal Liability of Legal Entities.

Therefore, it is worth considering an amendment to the relevant provision of this special law, which would complete the process of harmonisation in this area.

8 ENVIRONMENTAL CRIME

With the development of civilisation and the increasing population in individual countries, environmental pollution has risen significantly. Perpetrators of environmental crimes have often tried to exploit the shortcomings of a particular Member State's legal regulation to cover up their illegal actions.[59] The European Union and its competent authorities have long been aware of these facts.

The first legal document adopted on the territory of the European Union was the Council Framework Decision Responding to Environmental Crimes,[60] which aimed to define

58 Directive 2011/36/EU (n 50) art 6.

59 Jaroslav Fenyk a Ján Svák, *Europeizácia trestného práva* (Bratislavská vysoká škola práva 2008) 12-20.

60 Council Framework Decision 2003/80/JHA of 27 January 2003 on the Protection of the Environment Through Criminal Law [2003] OJ L 29/55.

certain environmental crimes warranting criminal sanctions. However, the European Court of Justice annulled this Framework Decision, ruling that it interferes with the area of environmental competence conferred on the EC by the EC Treaty. This interference distorted the reciprocal position between the TEU and the TEC, as no provisions of the TEU affect the founding Treaties and the Treaties amending them.[61]

Currently, the criminal law protection of the environment is regulated by a directive of the European Parliament and the Council.[62]

This Directive replaced the annulled Council Framework Decision on environmental crime with Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on protecting the environment through criminal law. This Directive is now the most significant legal instrument protecting the environment within the European Union. It contains an exhaustive list of actions that Member States must consider as criminal offences in their national legislation. Due to their large number, it is not necessary to list them all in this contribution, but some examples can be given. Thus, according to the Directive, an environmental crime must be considered an unlawful act of the perpetrator (whether a natural person or a legal person) that is caused intentionally or is caused by at least gross negligence and represents "*the discharge, emission or introduction of a quantity of substances or ionizing radiation into the air, soil or water which causes or is likely to cause death or serious injury to health, or substantial damage to air quality, soil quality, water quality or animals or plants; the collection, transport, recovery or disposal of waste, including the supervision of such operations and the subsequent care of waste disposal facilities and including action carried out by traders or intermediaries (waste management), which causes or is likely to cause death or serious injury to health, or substantial damage to air quality, soil quality, water quality or animals or plants.*"[63] and others.

From the above, it can be concluded that the subjective side of the above-mentioned actions requires intentional fault or fault consisting in so-called gross negligence. However, the legal system of the Slovak Republic does not recognise the concept of gross negligence. Other Member States facing this issue have addressed this fact by introducing and defining this concept as a completely new type of fault into their legal system or drawing the definition of gross negligence from the case law of the Court of Justice of the European Union.

61 *Commission of the European Communities v Council of the European Union* Case C-440/05, Opion of advocate general Mazák delivered (Court of Justice, 28 June 2007) [2007] ECR I-9100.

62 Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the Protection of the Environment Through Criminal Law and Replacing Directives 2008/99/EC and 2009/123/EC [2024] OJ L 1203/1.

63 Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the Protection of the Environment Through Criminal Law (Text with EEA relevance) [2008] OJ L 328/28, art 3, paras (a), (b).

However, the Slovak Republic has not followed either of the above paths. Instead, it subsumes the concept of gross negligence under the broader term "negligence", which Slovak law recognises and uses in several places.

As regards the legal order of the Slovak Republic, the Criminal Code includes environmental crimes in the sixth chapter of the special part entitled General Dangerous and Environmental Crimes. It is necessary to note that environmental protection does not only follow from Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law but also from the Constitution of the Slovak Republic, which is located at the imaginary summit of the legal order.

Environmental crimes are exclusively regulated in the Criminal Code, specifically from Sections 300 to 310. We must state that the actions listed in Art. 3, a) to i) can also be found in the relevant provisions of the Criminal Code relatively precisely and clearly incorporated. However, we see a problem in the Directive's reliance on vague terms,[64] which may cause certain application problems when it is incorporated into national legislation.

For example, the terms "substantial damage" (mentioned in Art. 3, a) and b) of the Directive), "not insignificant amount" (referred to in Art. 3, c)) and "dangerous activity" (noted in Art. 3, d)) are not defined in the Criminal Code or in any other legal regulation. These ambiguities may lead to inconsistencies in interpretation.

In our opinion, when approximating the provisions in question, the terms mentioned in the Directives must also include the interpretation itself. Providing clear guidelines would facilitate the process of approximation and harmonisation in this area across Member States.

9 CONCLUSION

There is no doubt that the Europeanization of substantive—procedural—criminal law plays a significant role in detecting and clarifying serious criminal activity with an international element. In practice, perpetrators of criminal acts often try to camouflage their illegal actions through cross-border action, exploiting the diversity of legal regulations of individual Member States. Recognising this growing issue, the European Union was obliged to act. The only possible and effective solution was to harmonise (i.e. approximate) the legal systems of the Member States in the criminal field. In other words, the competent authorities approximate/harmonise the legal regulations governing criminal law exclusively by issuing directives that are intended for individual Member States. These directives can regulate both substantive and procedural aspects of criminal law.

64 Branislav Cepek, 'Implementácia smernice o ochrane životného prostredia prostriedkami trestného práva do právneho poriadku Slovenskej Republiky' (2015) 61(1) Acta Universitatis Carolinae Iuridica 100-1.

Given the focus and title of this contribution, we have drawn attention to the substantive aspects. Using analysis, comparison and synthesis, we identified challenges that arise in implementing and transposing directives into the Slovak Criminal Code. Specifically, we observed discrepancies in the very definition of an organised group between an EU directive addressing organised criminal activity and the Slovak Criminal Code. At first glance, this difference may seem insignificant to a legal layman. However, definitions are important for lawyers, and even such a small difference can cause significant complications in application practice due to the application of the *ne bis in idem* principle.

In the case of terrorism and terrorist crimes, we reviewed relevant documents regulating this issue and found that neither the European Union nor its Member States have adopted an official, uniform definition of terrorism. Each directive or other legal regulation defines this concept similarly, but not in the same way. This fact is, in our opinion, also undesirable. Namely, with such a serious criminal activity as terrorism, it is necessary— and even desirable— that all Member States adopt a uniform definition of this concept to ensure uniform protection of fundamental human rights and freedoms across the European Union.

In examining the acts of the European Union and their subsequent transposition into the Criminal Code, our research did not identify significant differences or shortcomings. However, we observed inconsistencies in how some states classify certain substances as narcotic and psychotropic. For example, substances deemed narcotic and psychotropic in one state may not be classified as such in another, resulting in varying sanctions. In one country, possession might be treated as a criminal offence, while in another, it could be penalised "only" with a financial fine. For this reason, we appeal to the European Union authorities to be "tougher" and more resolute in the case of harmonisation of drug crimes. Greater consistencies in this area would have a positive impact on both the commission and punishment of drug crime.

Regarding arms trafficking, we identified issues with the Slovak legal system's implementation of the relevant directive. While the Slovak Criminal Code undoubtedly punishes trafficking in weapons, parts and components (as mandated by the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition), its definition of ″firearms″ is missing. The definition of a firearm is provided for in Act No. 190/2003 Coll. on Firearms and Ammunition, but it does not extend to ″parts of a firearm″ or ″components of a firearm″. We therefore propose that these two important concepts be incorporated into the Criminal Code or the Act on Firearms and Ammunition to address this gap.

Another serious crime with international implications, to which we have drawn attention, is trafficking in human beings. The relevant EU directive, which regulates this type of crime and was intended for the Slovak Republic, lists in its provisions a calculation of sanctions that can be imposed on a legal entity, such as the temporary or permanent closure of

establishments used for criminal activity. However, this penalty is not included in the special Act No. 91/2016 Coll. on the Criminal Liability of Legal Entities. This omission is, in our opinion, erroneous, as such a penalty could significantly enhance the effectiveness of sanctions against legal entities involved in human trafficking.

Lastly, we examined environmental crime, i.e. criminal activity based on environmental damage, with reference to Directive 2008/99/EC of the European Parliament and the Council of 19 November 2008 on protecting the environment through criminal law. While this directive was transposed into the Slovak Criminal Code without major shortcomings, it contains several vague terms that lack clear definitions within the Slovak legal system. For example, terms such as "dangerous activity" or "non-negligible quantity" are particularly problematic. In our view, the use of such imprecise language should be avoided, as this may cause significant application problems in the future transposition of another directive.

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RIGHTS AND PERMISSIONS

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ГАРМОНІЗАЦІЯ КРИМІНАЛЬНОГО ЗАКОНОДАВСТВА СЛОВАЦЬКОЇ РЕСПУБЛІКИ ІЗ ЗАКОНОДАВСТВОМ ЄВРОПЕЙСЬКОГО СОЮЗУ У СФЕРІ МІЖНАРОДНИХ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ

Адріан Вашко*, Ярослав Клатік та Роберт Чуха

АНОТАЦІЯ

Вступ. *У цій статті розглядаються ключові питання, пов'язані з інструментами, які використовуються для наближення визначень окремих злочинів у конкретних сферах боротьби з організованою злочинністю. Незважаючи на прагнення до комунітаризації, деякі правові конституції залишилися вкорінені в міжурядовому підході. Відповідно, у цій статті розглядаються окремі міжнародні документи, які стали основою для окремих міжнародних кримінальних правопорушень, що містяться в Кримінальному кодексі Словаччини. Як і в будь-якому процесі гармонізації правових норм окремих держав, узгодження законодавства Європейського Союзу з кримінальним правом Словаччини було непростим, і викликало багато питань щодо його застосування. У цій статті ми зосередимося на цих проблемах і дослідимо можливі рішення.*

Методи. *У цьому дослідженні застосовано стандартні методи, які зазвичай задіюються під час обробки наукових і професійних текстів, присвячених «європейському» кримінальному праву. Домінуючим методом став аналітичний, який використовувався переважно для вивчення чинного законодавства, що стосується обговорюваного питання. Крім того, було здійснено змістовний та функціональний аналіз найважливіших інститутів, які містяться у відповідних міжнародних документах та важливих судових рішеннях. У випадку зіставлення словацького та європейського законодавства використовувався порівняльний метод. У подальшому синтетичним методом були сформульовані висновки, метою яких було внести пропозиції щодо усунення недоліків та вдосконалення чинного законодавства.*

Результати та висновки. *Завдяки аналізу та порівнянню відповідної правової бази було зроблено декілька висновків. Зокрема, ми виявили, що в Кримінальному кодексі Словаччини поняття «організована злочинна група» трактується значно ширше, ніж у відповідному Рамковому рішенні. Цей факт може спричинити проблеми з визнанням рішень іншими державами. Крім того, відсутність єдиного визначення поняття «тероризм» у Європейському Союзі є проблематичною, оскільки це може призвести до неузгодженостей, які порушують основні права та свободи людини. У сфері незаконного обігу наркотиків, незважаючи на те, що не було виявлено значних проблем із застосуванням законодавства Європейського Союзу та Кримінального кодексу, існують розбіжності в межах усього Європейського Союзу, зокрема, щодо криміналізації/декриміналізації окремих видів*

наркотиків та різного ступеня покарання, що накладаються державами-членами ЄС. Що стосується торгівлі зброєю, були виявлені недоліки в імплементації відповідного протоколу до словацького законодавства, зокрема у визначенні та поводженні з частинами та компонентами вогнепальної зброї. У справах про торгівлю людьми, вчинену юридичною особою, Кримінальний кодекс не узгоджується з вимогами відповідної директиви щодо покарання юридичних осіб. Нарешті, директива про екологічні злочини містить нечіткі терміни, які можуть викликати проблеми під час застосування положень директиви в інших державах.

Ключові слова: *комунітаризація, Європейський Союз, організована злочинність, екологічні злочини, торгівля людьми, сексуальна експлуатація жінок і дітей, незаконна торгівля зброєю.*