

# CHAPTER 13

## INTERNATIONAL COOPERATION IN THE FIELD OF CRIMINAL JUSTICE

### 13.1. INTRODUCTION

Criminal accountability is a state monopoly, a right and obligation at the same time. The state has the right to exercise the so-called punitive power against the citizens (individuals), and may enforce its power by force in accordance with the laws – and citizens shall abide. Also, it is an obligation in all cases where injury has been suffered due to the violation of the legal order (the rules of social coexistence), if e.g. there are natural person victims as well (assault, robbery, theft, homicide, etc.). In these cases neither the victims or their families, nor the community cannot legally exercise punitive power against the offender, since there is no legal revenge, and vigilantism or vigilante justice is punishable by law. Therefore, victims of a violation are „in need” of receiving protection. Consequently, it is an obligation to exercise punitive power – this rule cannot be ignored in the case of unlawful acts punishable under the criminal code. Punitive power and the several rights that are parts of it are exercised by state organs, such as the authorities acting in criminal matters (investigative authority, prosecution service, courts of law, penitentiary institutions). In a democratic rule-of-law state, the **punitive power** is: the state’s – constitutionally limited – public power to hold the perpetrators of a crime accountable under criminal law.

Under our modern circumstances, the types of criminal activities, the movement of perpetrators are not bound by country borders; in many cases, the crime committed shall *ab ovo* affect more countries (smuggling of narcotic drugs). Sometimes, due to escape, the perpetrator should most certainly be tracked down in a foreign country. The right and practice of **criminal cooperation** define those forms, in which the states concerned can ask for help from each other in these cases (see in Subchapter 4).

There are incidents or events, which – due to their extraordinary (negative) significance – are not restricted to one state, we could say that these violate the values of a larger geographical region (Europe) or the whole civilized world. Their prevention and tackling are also such questions, which require the cooperation and joint, synchronized action of the states. These issues are considered regulatory issues by **international criminal law** (see in Subchapter 3).

In this chapter, in addition to the above, we will also deal with the position of the joint fight against transnational crime in the European legal framework, thanks to the Union’s development (see in Subchapter 5).

### 13.2. THE CHARACTERISTICS AND NATIONAL NATURE OF CRIMINAL LAW

One fundamental characteristic of criminal liability is the principle of legality (see Textbox 1). The philosophic-moral fundament of this is that criminal liability is typically guilt-based, i.e. the perpetrators deliberately chooses between “right and wrong”, by making a choice about their criminal action. If that is the case, so they know the crimes and their punishments, it is to be expected that they choose the “right”, but if not, they shall bear responsibility for their actions.

In modern rule-of-law democracies, the legislator (parliament) representing the people decides what constitutes a crime, and accordingly, this entity also makes a decision on the applicable punishments.

This also embodies the so-called criminal demand: i.e. if any conduct is declared to be punishable, then the state's criminal demand is expressed thereby.

**Principle of legality:** the most important and generally recognized principle of criminal law, included in numerous state constitutions. It means that criminal law accountability may occur only for such action, which was declared to be a crime by law at the time it has been committed, and that only such punishment may be imposed, which was provided by law at the time of the commission of the crime. Another name used for this principle is the principle of substantive law legality. The two essential elements are normally indicated with Latin expressions: *nullum crimen sine lege* and *nulla poena sine lege*.

Therefore, **what constitutes a crime** in a country, could, in principle, paint a very diverse picture in the different countries, but it still can be declared that the violation of the most important and fundamental rules of the people's peaceful coexistence is similarly a crime everywhere, such as taking a life (homicide), assault, libel, violation of private property, violation of sexual self-determination, but, e.g., counterfeiting legal tender (forgery of a legal payment instrument) as well.

In addition, there may be such interests, value approaches rooted in social past, cultural traditions, which, in case they are violated, are met by the given society choosing the instrument of criminalization to prevent or sanction them. Such typical issue is, even today, the culpability of prostitution, use of narcotic drugs, abortion, suicide—we can see quite significant differences in this field even in Europe. As for our topic, the details bear no significance, but it is clear that there is a (small) part of criminal prohibitions, which thus demonstrates a so-called cultural dependency. Those culpability rules should be treated as a further category, which – contrary to the above two points of origin – are justified by considerations of rather political nature; such as, the provisions punishing homeless people or those assisting refugees in Hungary.

Also, it is important to briefly mention that the scope of culpability varies over time as well, and as the **social value system** along with the mindset of the people living in it, and the interests of the ones in need of protection change as well, so must criminal law also be transformed: today, adultery is no longer punishable, neither are sexual relations between couples of the same sex, and, *mutatis mutandis*, earlier the intrusion into IT systems, the “forgery” of electronic money, the falsification of a tax return, or cloning human tissue were not punishable, while these are now considered crimes based on the legislator's decision. If we continue this train of thought, we need to ask the question, whether we should connect criminal law liability to those actions, which cause injury through the application of automation, robotization or artificial intelligence (e.g. when an autonomous self-driving car kills a human, a factory robotic arm causes permanent disability to a human due to malfunction).

Likewise, the legislator decides what kind of **sanctions** (punishments) should the judge apply against perpetrators, and while imprisonment and fines are considered as generally applicable punishments, work or labor punishment or the “variety” of other deprivation punishments is quite colorful.

Criminal law regulation and the operation of the criminal justice system are necessarily and traditionally connected to the territory of the country, to the social organization (state) that exercises supreme public power thereon, and the country borders enclose the administration of justice as well: in that very moment, when a **foreign element** appears in the criminal justice system, e.g. an evidence needs to be acquired from abroad (i.e. from another country, from its territory), or the escaped perpetrator needs to somehow be brought back from abroad, then the given country's justice system is, basically, in need of the other state's assistance, if it wants to enforce its criminal demand. This “help” by the other state could be achieved through complicated legal procedures and political-diplomatic negotiations (international criminal cooperation, see below in Subchapter 4).

### 13.3. INTERNATIONAL CRIMES AND THE ACCOUNTABILITY OF PERPETRATORS

It was in the aftermath of World War II (WWII), when for the first time in world history an attempt was made to hold the **war criminals** – not just politically – accountable. The work of the international military tribunals in Nuremberg and in Tokyo, and the actual results of their administration of justice could be interpreted in many ways, but it is beyond doubt that by their action the paradigm of individual liability was consolidated, and the conceptual clarification of the crimes against peace, against humanity and war crimes finally happened. War crimes were substantially on-going at that time, when – first separately, then – in 1943, the later victorious allied powers (USA, the USSR, and the UK) issued the Moscow Declaration, in which, basically, they forecast legal accountability and instead of the former war practices, neither mass executions, nor politically-based retaliations took place, but justice was administered by international tribunal.

*“The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in many of the countries they have overrun and from which they are now being steadily expelled. The brutalities of Hitlerite domination are no new thing and all people or territories in their grip have suffered from the worst form of Government by terror. What is new is that many of these territories are now being redeemed by the advancing armies of the liberating Powers and that, in their desperation, the recoiling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by the monstrous crimes of the Hitlerites on the territory of the Soviet Union which is being liberated from the Hitlerites and on French and Italian territory. Accordingly the aforesaid three Allied Powers, speaking in the interests of the 32 United Nations, hereby solemnly declare and give full warning of their declaration as follows: At the time of the granting of any armistice to any Government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the Free Governments which will be erected therein. Lists will be compiled in all possible detail from all these countries having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxembourg, France and Italy. Thus, Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in the territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged. Let those who have hitherto not imbued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to the accusers in order that justice may be done. The above declaration is without prejudice to the case of the major criminals whose offences have no particular geographical location and who will be punished by a joint decision of the Governments of the Allies.”*

Excerpt from the Moscow Declaration, October 1943;  
Three Allied Powers Declaration on Atrocities

Exactly this preemptive warning established a significant obstacle for the defendants of the Nuremberg cases to refer that there were no rules, which would have declared their actions as crimes, before their commission.

**International crime** is every crime that violates or endangers the interests of international community, and the culpability of which is based directly or indirectly – i.e. through internal law – on international law. There are two groups: international law crime is the crime that endangers or violates the most fundamental values or interests of the community of nations, and the peace of human societies. Classifying an action as such a crime does not depend on national law, but its culpability is based directly on international law, and the perpetrator's (individual) criminal liability derives directly from the rules of international law (e.g. crimes against humanity, war crime, aggression, piracy etc.). The other group includes the so-called transnational crimes (e.g. trafficking of narcotic drugs), in this case, the obligation to criminalize a given conduct by the states is based upon an effective international treaty, customary law or other source of international law.

Therefore, the issue of **international-law-based criminal law liability**, obviously, is the most important development of the recent decades, and with it the regimes that exercise otherwise unlimited supreme public power on their own territories are subject to certain limitations: the perpetrators are to be held liable for committing the most severe crimes against humanity and war crimes (e.g. genocide, slavery etc.) even if some power groups commit these in “traditional” armed conflict; for state purposes; in civil war; under military invasion, or maybe under revolution. This issue is dealt with by the so-called law of armed conflicts and the international humanitarian law, which will be not discussed in this chapter.

The most important station of this development was, in 1998, the incorporation of the Statute of the (permanent) **International Criminal Court (ICC)** into an international treaty signed by the UN Member States in Rome, on 17<sup>th</sup> July 1998. The Court started the preparation of its work in 2002, and the first case was the procedure against the leader of the Congolese Militia, Thomas Lubanga (with the judgment delivered in 2012). Except the Criminal Court established by the treaty, there are other international criminal tribunals as well, but these concern violations committed in geographically specific or time-specific conflicts and operate as ad hoc or temporary tribunals (e.g. actions committed in the territory of the former Yugoslavia, actions committed during the genocide in Rwanda). The ICC proceeds if the national courts are unable or unwilling to proceed in high profile crimes (this is the so-called principle of complementarity). The work of the court is burdened by many difficulties, because there are still some great powers, which are not members of the treaty (e.g. USA, China, India), but still, more than 120 countries of the world – including Hungary – ratified it, and after several conflicts, its activity is necessary to hold the criminals accountable and to mitigate the victims' injuries, and in general, to curb global violence. In the last 20 years since the signing of the Statute, 86 million civilians died and more than 170 million people became victims in more than 250 conflicts.<sup>1</sup> There is a Hungarian judge at the ICC, seated in the Hague, Péter Kovács, former constitutional court judge.

#### *Child Soldiers – The Lubanga case*

In April 2002, the Democratic Republic of the Congo (DRC) ratified the Rome Statute (thereby contributed to its entry into force in July 2002), thus the case could be brought before the ICC and the investigation could be commenced. Pursuant to this, several people were accused, including *Thomas Lubanga Dyllo*, the leader of the armed group exercising power in Congo. The charge was **enlisting** and using **children** under the age of 15 years. The ICC examined the guilt of *Lubanga* between 1 September

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<sup>1</sup> Coalition for the ICC: [www.iccnw.org](http://www.iccnw.org)

2002 and 13 August 2003. According to the charges, in the mentioned period, the organization was responsible for the voluntary and forced joining and use of many youths under the age of 15 years, which is considered as a war crime under the ICC's jurisdiction. One of *Lubanga*'s enlistment methods could be mentioned as an example, according to which families living in the territory under his control were obliged to hand over one cow, money or one child to the armed group. Therefore, if a family had no such animal or enough fortune, they were forced to "submit" their child. The trial was opened in January 2009. A total of 67 witnesses were heard and 1373 items of evidence were presented. On 14 March 2012, the Court found *Lubanga* unanimously guilty, and on 10 July 2012, sentenced him to 14 years of imprisonment, as co-perpetrator, for the felony of forced and voluntary enlistment and use of children under the age of 15 years. The verdict does not mean that *Lubanga* is not guilty in other crimes, he has committed several others as well, such as the killing of nine UN peacekeepers in Ituri in February 2005 or the felony of sexual violence. These were not part of the charges brought by the ICC, because the jurisdiction of the Court has a so-called **complementary characteristic**, so it only proceeds if the national authorities of the defendant's home state are unable or unwilling to proceed. Since the national (Congolese) rules had no provisions regarding child soldiers, and *Lubanga* was already in custody at the national level for other crimes – e.g. killing peacekeepers –, he only had to face the charges of enlistment and use of children before the international forum. Evidence was found that children in *Lubanga*'s organization received hard training and in the case of disobedience severe punishment was imposed. Mostly girls were used for housekeeping and sexual purposes. However, sexual violence was not part of the accusations. The enlistment of children, happening in any way, and their use as soldiers is a permanent, continuous violation of international criminal law, which ends if the child attains the age of 15 or gets out of ranks of the armed force or group. Until mid-2007, approximately 34,000 children were released from different armed forces in Congo.<sup>2</sup>

#### 13.4. INTERSTATE COOPERATION IN THE FIELD OF CRIMINAL MATTERS

The oldest form of tackling internationally mobile perpetrators and international crimes is **cooperation** between the respective countries' law enforcement (justice) authorities. Its original purpose was to prevent the perpetrator from avoiding criminal law accountability, thus cooperation was exercised against the interests of the person concerned. Since the middle of the 20<sup>th</sup> century, the importance of resocialization (reintegration into their own social environment after the prison life) of the perpetrators (convicts) has increased as well; therefore, today, in most forms of international criminal cooperation the interests of the person concerned are taken into consideration. Consequently, three interests prevail in international cooperation: the state asking for help, the state providing it, and the person concerned.

However, pursuant to the general principles of international law and the universally acknowledged doctrines of sovereignty, states – when exercising their right to hold someone criminal accountable, the so-called *ius puniendi* – have, in principle, unlimited jurisdiction, so it is possible that several states have **jurisdiction** regarding the same action (so-called positive jurisdictional conflict). Nonetheless, the criminal law rules exactly determine the jurisdiction as well. May the relevant provisions of the first Hungarian Criminal Code, the so-called Codex Csemegiensis, be presented here as an example to this, along with the similar provisions of currently effective criminal law. However, one rhyme by *Doctor Deodatus* is an interesting curiosity, who, in 1884, rhymed the then effective Criminal Code. Herein, we present here those lines (translated), which dealt with jurisdictional issues.

<sup>2</sup> Description of the case: MOLNÁR–TÓTH 2016, 66–76.

<b>Act V of 1878 (Codex Csemegiensis, the first Hungarian Criminal Code)</b>	<b>Legal rhymes of Doctor Deodatus (1884)</b>	<b>Act C of 2012 (effective CC) and other Acts</b>
<p>5. § The scope of this Act shall apply to the whole territory of the Hungarian State, with the exception of Croatia and Slavonia.</p> <p>Felonies and misdemeanors committed in this territory by either native Hungarians, or aliens shall be punished under the provisions of this Act. (...)</p>	<p>5. § This present Bill shall lay out the law of the whole land, Not for Croatia and all Slavonic-held land. And this shall be it all, On this land we own, For those who sinned in here, Regardless of their home. (...)</p>	<p>3. § (1) Hungarian criminal law shall apply</p> <p>a) to crimes committed in Hungary,</p> <p>b) to crimes committed on watercraft sailing or aircraft flying under Hungarian flag outside the territory of Hungary,</p>
<p>8. § Native Hungarians, who committed any felony or misdemeanor defined herein abroad shall be punished according to this Act.</p>	<p>8. § If Hungarians native act against this Bill, Even if abroad (the law does apply still) We'll only use this law against all of them (If their luck turns bad and they end up back home then.)</p>	<p>3. § (1) Hungarian criminal law shall apply (...)</p> <p>c) to any act of Hungarian citizens committed abroad, which are criminalized in accordance with Hungarian law.</p>
<p>9. § Under the provisions of this Act the alien who committed any (...) felony or misdemeanor abroad – if his extradition has no contractual or customary ground, and the minister of justice thereby ordered the initiation of criminal procedure, shall be punished according to this Act.</p>	<p>9. § We also punish foreigners, if they indeed did the crime, Even if our peoples don't agree to extradite. But process can only and only then be called to open, If said so by those, who surveil law and order.</p>	<p>3. § (2) Hungarian criminal law shall apply</p> <p>a) to any act committed by non-Hungarian citizens abroad, if</p> <p>aa) it is punishable as a crime under Hungarian law and in accordance with the laws of the country where committed (...)</p> <p>(3) In the cases described in Subsection (2) criminal proceedings are initiated by order of the Prosecutor General.</p>
<p>11. § In case of felony or misdemeanor committed abroad, criminal procedure under §§ 8 and 9 shall not be initiated if the act is not punishable under the law of the country where it was committed neither under Hungarian law; or it ceased to be punishable under any of the above; or if the punishment was released by the competent foreign authority.</p>	<p>11. § For felonies and misdemeanors committed abroad, There is no proceedings by anyone to be brought: If under these here rules, or those in forum delicti commissi, It's already been punished, exempted or dismissed.</p>	<p>(no such rule)</p>



Act V of 1878 (Codex Csemegiensis, the first Hungarian Criminal Code)	Legal rhymes of Doctor Deodatus (1884)	Act C of 2012 (effective CC) and other Acts
14. § If such punishment shall apply under the alien law to any felony or misdemeanor committed outside of the territory of the Hungarian State, which is not accepted by this Act: it shall then be changed to a type of punishment in this Act, which is most suitable to it.	14. § If need be for a punishment Not known to us here, We'll look into our law, Till there's one that fits the bill.	According to the second sentence of Article 48 Subsection (2) of the Act XXXVIII of 1996 on international mutual legal assistance in criminal matters: If a punishment or measure imposed by a foreign court judgment does not fully comply with the Hungarian law, the court, in its final order, shall determine the applicable punishment or measure under the Hungarian law in a way that it complies the most with the punishment or measure imposed by the foreign court (...).
17. § Native Hungarians cannot be subject to extradition to another state's authority. Natives of another state of the Monarchy can be subject to extradition only to his own state authority.	17. § Hungarian natives We shall never extradite To another country, But we'll let Austrians be returned home in a round-trip.	Article 13 (1) of the Act XXXVIII of 1996 on international mutual legal assistance in criminal matters: Except this Act provides otherwise, Hungarian citizen can only be subject to extradition if, a) the person subject to extradition is simultaneously a citizen of another state, and b) has no address in the territory of Hungary.

Interstate cooperation fortified by traditional international treaties or so-called reciprocity provides the framework for classic forms of criminal cooperation, and the specific procedure is determined by the **request principle**, i.e. wherein the requesting state applies to the state requested with a request for mutual legal assistance, and the state requested will decide under its internal law rules of criminal cooperation. According to international law, the requesting and the requested states are equals, their sovereignty applies equally.

If following their acts, perpetrators successfully flee to another country or anytime escape during an ongoing procedure against them (with them being “on the loose”), it is a highly important question for the given state to get them back to successfully conduct the criminal procedure and impose punishment. Since, in a physical sense, none of the states can reach for the person sought after, i.e. it is legally not allowed to e.g. send police officers to the territory of another state to capture the person concerned, the states are both forced to and need cooperation with the other state. A classic institution of this is **extradition**. It is worth to mention that in many cases, extradition – even though it means a legally established procedure – serves as a political-diplomatic tool, in case of an important person or case,

states set aside their law enforcement interests without hesitation, if they might count on any benefit on their part on the stage of world or bilateral politics. A situation, when a sentenced person is transferred back to his/her home country to continue the execution of punishment there could be considered as a similar tool: in a professional (i.e. resocialization) aspect, it is more efficient if somebody serves out the punishment in their home country, but it is beyond doubt that political-diplomatic considerations may be primary in the background of such decisions. Let's look at some examples.

#### *Transfer of Sentenced Persons – the Ramil Safarov case*

In 2004, a brutal homicide was committed whereby an Armenian soldier attending an English language course held by the Zrínyi Miklós National Defense University died in Budapest. An Azerbaijani soldier, *Ramil Safarov*, was accommodated in the next room to the Armenian officer (*Gurgen Margarjan*), who decapitated *Margarjan* with an ax one night. In 2006, for this action of felony homicide committed deliberately with premeditation, with particular cruelty and malice aforethought, the Hungarian courts sentenced him to life imprisonment (subject to review no earlier than after 30 years – pursuant to the criminal laws effective at that time) and expulsion from Hungary for 10 years. Azerbaijan requested the **transfer of the inmate**, who has already been serving his sentence in a Hungarian prison, from the Hungarian Government under a 1983 (Council of Europe) Convention. The transfer took place on 31 August 2012. With the solidified Azeri-Armenian conflict in the background, *Safarov* was celebrated as a hero in his country and upon his return, he received Presidential pardon and was promoted instead of continuing the execution of his imprisonment.

Armenia immediately interrupted the diplomatic relations with Hungary, which are still not reestablished on the level as they were before the case transpired. According to the joint statement of the then Ministries for Public Administration and Justice, and Foreign Affairs “*Hungary acted in a transparent manner, respecting the relevant rules. Hungary respects the international law concerning every State and expects from its international partners to do the same. Hungary keenly appreciates Christian Armenia, and the culture and traditions of the Armenian people. Hungary considers the Armenian party's steps regarding diplomatic relations regrettable.*” (1 September 2012)

#### *Interpol*

**Interpol** is an international organization (*International Criminal Police Organization*), which was established in 1923 with a purpose to facilitate the work of national police forces in the fight against transnational (cross-border) crime. Currently, 192 countries are members, its headquarters is located in Lyon, and Hungary was among the founders (even though, left for political reasons, and rejoined in 1981). The most important activity of Interpol is the operation of a global wanted persons system that allows any country's police authority to request wanted person (red notice) or wanted object notice applicable to all member states. “Interpol notices” are very effective tools in looking for fugitive criminals, stolen artifacts or counterfeit documents all over the world. Moreover, the Interpol staff can provide effective help to national authorities with data and legal assistance, work supporting criminal cooperation, but it is important that – contrary to the popular, but misguided belief – they cannot autonomously investigate in any state's territory.

**International police cooperation:** international crime prevention and law enforcement, i.e. the cooperation of state police authorities has great significance in the field of crime prevention, crime detection and investigation, when procedural actions need to be carried out in the territory of more countries amounting to a subsequent accountability for a crime, or gathering evidence (searching, collecting, recording, eventual analysis thereof). However, the international mutual legal assistance in criminal matters is the legal framework of the international coordination of the so-called justice authorities’.



### 13.5. THE REGIONAL ACHIEVEMENTS OF THE EUROPEAN UNION

The need for **joint action to combat crime** as part of European integration, essentially and in a legally relevant way, appeared in the '90s, more precisely with the creation of the European Union (1993), when the Member States (MS) determined it a so-called common concern. In the past twenty-five years, there has been a significant development of law in this field as well, including, in general, the followings: it is a key question to the MS, how much of their punitive power deriving from sovereignty and how exactly will they transfer to the organization they established for the sake of progress, with particular attention to the fact that in many cases, combating transnational crime is more effective and more successful at the EU level. The protection of sovereignty is guarded by the balancing system of mutual guarantees and principles, which not only sets up a framework, but also excludes effective cooperation in urgent cases, or when the case concerns more than two states. However, in Europe and in the European Union, the development of law is going through a **fundamental change of approach** regarding the system of rules in criminal cooperation. Even though community integration, originally, did not extend to criminal cooperation, the European Union established by the Maastricht Treaty opened room for it as well, and it could be said that the EU MS tightened the web of EU legal protocols in the field of criminal cooperation.

As a general characteristic of the relevant regulation it may be mentioned that the conventions and treaties concluded by the MS, on the one hand, reflect and reinforce the former agreements – mostly adopted under the aegis of the Council of Europe –, but on the other hand, operating with such **novel** and hitherto desirable tools, which truly show the commitment of the states to develop a more effective criminal cooperation, and its introduction is verified by the slowly ubiquitous European integration.

For these reasons, the development basically proceeds with baby steps. It has **two directions**: political consensus precedes legal changes, which are then reflected in some legislative act being enacted, the execution of which will strengthen the change. The other way of development is when change becomes a necessary consequence, as a result of the existing legal situation, primarily due to the activity of the Court of Justice of the European Union and the courts of the MS. The landmark decisions of the courts indicate the path of this development, but these innovations and changes only apply to a small section of law (to a specific type of case, to a specific legal institution). As an example, the earlier battle of the Council and the Commission may be mentioned on whether EU law regarding crimes damaging the environment should be issued by so-called directive or framework decision. The problem is easy to understand without a detailed explanation: considering that the EU policy on environmental protection is an EU competence, the question was, whether this power includes criminal law as a means of protection and the establishment of its frames at the EU level. Not a political consensus was necessary here, but the interpretation of one provision of the EU Founding Treaty, which was done by the Court of Justice by declaring that in the interest of implementing EU policy, criminal law as a regulatory system is applicable, such regulation does not behave differently.<sup>3</sup>

In the **establishment of the legal framework** evolving along the above two lines, we may see the following substantial key points:

- facilitating and legalizing criminal cooperation between the MS (legal assistance type of cooperation and police cooperation as well),
- working on achieving the joint European justice region (e.g. development concerning jurisdictional conflicts, prohibition of double jeopardy, *ne bis in idem*, etc.),
- approximation of the facts and sanctions of crimes,

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<sup>3</sup> C-176/03 Commission v Council, on 13 September 2005; ECLI:EU:C:2005:542

- legal approximation in criminal procedure, primarily by introducing the same standards in the fundamental rights context,
- strengthening the obligation of EU-conform interpretation of criminal law rules.

Below, we will provide a sneak peek into the results of this development: some significant achievements will be briefly introduced to present the dynamics and some important directions of development.

### 13.5.1. THE EUROPEAN ARREST WARRANT

Extradition, in the traditional sense, is conceptually excluded between the European Union MS, as they eliminated the difficult system full of political constraints in their relations, and introduced the institution of the **European Arrest Warrant** (EAW, 2002). The arrest warrant is such a justice decision, which obliges the authorities of the MS regardless of their place of operation, and concerns the arrest and transfer of the person wanted. Therefore, essentially, the extradition is replaced by the so-called **transfer procedure** that has lost its political characteristic, functions as a purely legal process, and it is a very successful EU “project”. Instead of the former, average 18-24 months long extradition procedures, today the transfer of wanted persons takes place within 90 days between EU MS.

### 13.5.2. ONE CRIME, ONE CONVICTION?

The unique legal development represents a particularly important achievement of the EU cooperation regarding judgments in criminal matters. If someone committed a crime and was held accountable for it (for instance, already served the imposed imprisonment), this accountability, essentially, is only linked to the given state. This means that the criminal judgment is the ultimate embodiment of the given state’s criminal demand (more precisely, the final criminal judgment consumes the criminal demand), but it has no relevance in relation to other states. Therefore, if a case emerges, which invokes the criminal demand of more states, a judgment delivered in one state does not satisfy the criminal demand of another state. For instance, we could mention a case where a Hungarian citizen would become a victim of a homicide or robbery in Spain, committed by a German citizen perpetrator. In the case at hand, all three countries’ criminal demand (and jurisdiction) apply to the act, and most likely, first, the Spanish criminal procedure would be conducted against the perpetrator (in case he was apprehended there), but the traditional rules and customs do not exclude that following the first criminal procedure the other countries may also proceed against the perpetrator. There is a right to free movement in the European Union, which is applicable to EU citizens and, on certain conditions, other people as well, however it caused a paradigm-shift in this field, since there is the **mutual recognition** based on mutual trust between the EU states: if the perpetrator was already punished in one state and served its sentence, he does not need to expect that another EU state will enforce its criminal demand against him.

**Principle of transnational *ne bis in idem*:** this principle means the prohibition of double (two-times) conviction or punishment. Currently, respecting this prohibition is a legal obligation for the European Union states, and Article 5. of the Charter of Fundamental Rights of the European Union declares that “[n]o one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.”

### *13.5.3. THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE*

In 2020, the European Public Prosecutor's Office (EPPO) will be established and will start its work as a new institution, its most important task being to investigate crimes against the EU's financial interests (e.g. corruption, fraud, money laundering etc.) that affect more MS, within its own jurisdiction with the territorial competence over the whole of Europe (the territory of EU countries), and to coordinate and to provide assistance in similar investigations for the authorities of MS. The EPPO will be established under a special legal framework (so-called enhanced cooperation), which means that only those MS may participate, which explicitly declare it. For now, Hungary does not participate in the enhanced cooperation.

### *13.5.4. THE EUROPEAN POLICE OFFICE*

**Europol** is the law enforcement agency of the European Union, with its task being to assist the MS law enforcement and the work of police and other authorities with similar tasks. As part of this task, it coordinates and provides on-site support in transnational law enforcement operations, promotes the exchange of information between MS authorities and conducts forensic science work for them. Europol does not deal with wanted persons or objects. Europol officials are typically police officers delegated by any MS, but they have no right to directly investigate in the territory of MS. It is seated in The Hague.

## QUESTIONS FOR SELF-CHECK

1. What is criminal law accountability and what is its connection with punitive power?
2. What is the general definition of legal order?
3. What is the general characteristic of criminal liability?
4. Define the principles of *nullum crimen sine lege* and *nulla poena sine lege*!
5. What does it mean that criminal liability is guilt-based?
6. On what basis does the legislator classify an act as a crime?
7. What does it mean that criminal law has a culture-dependent aspect?
8. What does it mean that culpability changes over time as well?
9. What states adopted the Three Allied Powers Declaration? What was its essence and significance?
10. When (and how) the ICC was established, since when does it operate?
11. What cases are administered by the ICC?
12. What does the principle of complementarity mean?
13. Introduce the essence of the *Lubanga* case!
14. What is the purpose of international criminal cooperation?
15. Look for contemporary press releases (2012-2013), which suggest possible political reasons regarding the *Safarov* case!
16. Examine under the Convention adopted in 1983 (Act XX of 1994, adopted in Strasbourg on 23 March 1983 on the promulgation of the Convention on the transfer of sentenced persons), whether the legal requirements were met to transfer the Azeri citizen?
17. What is the most important conceptual difference between the states' traditional criminal cooperation and the EU countries' criminal cooperation?
18. What is the EAW?
19. What is the difference between extradition and transfer procedure?
20. What will be the task of the EPPO?
21. What is the difference between Europol and Interpol?

## RECOMMENDED LITERATURE

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