

## European Criminal Law after the Lisbon Treaty, or Europeanization of European law, under the co-responsibility of the Member States

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### Abstract

Same as EU Law, that presents a new area of law and that it is still in progress, the EU Criminal Law is developing. The development of EU criminal law, of course, is dictated by the development of European Law itself, or the EU itself. Depending on it, the EU will be a supranational structure, or will undergo changes and become a Federal State, or another unified form. Taking into consideration the importance of this area of law, which is created for cooperation among states to combat organized crime, and especially terrorism, we can have a Criminal Code European and a European code of Criminal Procedure certainly in the near future, namely, a codification of European criminal field. This paper aims to discuss the development of European criminal law, until the Treaty of Lisbon.

**Keywords:** *Union, Community, The Criminal Code, Treaty, Europeanization.*

### Introduction

In every country of the world one of the most important parts of the justice system represents criminal law. The process of globalization and technological development have led to extended criminal cooperation in many countries, it has imposed the same time, inter-state cooperation in combating crime and other forms of release.

In this context, European integration and, without doubt, the criminal law will make its unification in the EU. This area it is new, and is presented quite late, and this is natural when we consider the birth of the EU.

Creating a law depends on what the state needs to regulate a specific legal matter, with its extraction rates. In our case the EU is a relatively new organization, and the European Law was born with the first formation of the European Community, or the first European Community Coal and Steel Community (ECCS). The creation of the new state of course is meaningless without creating the necessary legislation for the new state; therefore, the EU depends on the internal situations that forced to issue regulations which made a functional EU.

The first serious attempts to create a EU criminal law were in 1996 under the leadership of Professor Mireille Delmas Marty and in 1997 the same project was published in and German. It was rather obvious - the realization of the idea of a common market also had a negative implication that people are even criminal behavior that went beyond borders (Rozmus & Marcin & Topa & Walczak, 2010, 14). In 1999 in (Florence) at the request of the European Commission, this project was elaborated further and

in September 1999, was presented to the European Parliament. This Corpus iuris had 39 articles, focusing especially on fraud against the interests of financial EU, money laundering, organized crime, theft, bribery, corruption, abuse of official position (Hamran & Ladislav & Szabova, 2013, 40-58). In December 2001, the Commission submitted a Green Paper on European criminal law, which later was introduced in the European Constitutional Treaty.

After the failure of the attempt to derive a European Constitutional Treaty, the European Council began in 2005 a reflective stage for the future of the EU. As a result of this meeting the Treaty of Lisbon entered into force, signing a new era in the EU. With the entry into force of the Lisbon treaty, the European Criminal Law was blocked.

Precisely because of these changes the constitutional courts of the member countries were required to see the new treaty (Lisbon) as a new solution. This happened in Germany and the German Constitutional Court found that the entry into force of this Treaty and the harmonization of national provisions made enough room for the application of national law although this court has concerns particularly with the Article 83 TFEU. This concern of the German Constitutional Court has a positive meaning, because urges member states to exercise caution when it comes to article 83, therefore, the fight against organized crime, corruption and terrorism (Kiiver, 2010, 578-588).

Also, with the Lisbon Convention and the European Criminal Law is filed in a higher degree. European Criminal Law is an instrument for ensuring "peace - legal peace" or "social control", but there is no "legal technical instrument for effective international cooperation". But, however the Criminal Law of the Lisbon Treaty has reached a higher level.

The Primary Law attaches importance to determine the criminal policy, enforce criminal law, the institutional development of Eurojust.

### **Criminal policy determinant of European criminal law**

Lisbon Convention responds to issues regarding criminal policy in matters of European criminal law and that:

Space of freedom and security of law, the policy agendas crystallized content of European criminal law (Article 67 of the Convention on the Functioning of the EU). European Criminal Law was designed being directed primarily at the request of Union citizens to provide space and security union rights. Therefore, the Union has transformed a single economic space that was previously in a supranational settlement. Article 63 and 82 ff of the Treaty of Lisbon can be seen the development of European criminal law.

The Lisbon Treaty includes the development of European criminal law linking with the part V of the Treaty on the Functioning of the EU under Article 67, 82 including twenty-four Union's internal policies. So were not included randomly all criminal matters.

According to Article 67 of the TFEU, the Union made efforts to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia,

and through measures for coordination and cooperation between police authorities and judicial and other competent authorities, as well as through mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

European Commission based on Article 85, 86 of the Convention on the Functioning of the EU, in its communiqué issued in May 2011 built the necessary legal infrastructure and administrative measures to combat fraud against the entire EU, and equally from all countries.

**European Public Prosecutor** - is an independent institution established under Article 86 of the Treaty on the Functioning of the EU to combat financial crime / economic, which is against the interests of the European Community, as the European Constitutional Treaty failed (Efforts to extract a European constitutional treaty failed because of a negative referendum in France and the Netherlands). In July of 2013 it was proposed by the European Commission Vice-President competent for legal council asked the member states and the European Parliament to support this project and on January 1, 2015 to commence the work of the European Public Prosecutor. In particular, it was also determined that European public prosecutor should have a collegial structure (Panel shall consist of a Chief and each member state will have a public prosecutor). The European Parliament (EP) on 21 February 2014 issued a report first temporary which had authorized the Council (formerly of Ministers) is unanimously him, issued a regulation, where again the Council published the next report and on November 28, 2014, more later published a second draft interim report has been prepared by the EP on 16 January 2015. Nevertheless, negotiations for the establishment of a European prosecution are ongoing but so far there is still no result. However, the legal basis of the EU's efforts to create a European Prosecution is the proposal of the regulation of the European parliament and Council of 2012.

### **European Criminal Law under the Treaty on the Functioning of the EU**

Treaty on the Functioning of the EU has further advanced the field of European criminal law. Here it is foreseen in a special way in the fourth chapter of judicial cooperation in criminal matters, and in the fifth chapter provided police cooperation. Regarding judicial cooperation in criminal matters Treaty has foreseen that the "Union based on the principle of mutual recognition of judgments and judicial decisions and include approximation of the laws and regulations of the Member States" (Article 82.1 of the Treaty on the Functioning of the EU). In the same article (Article 82), the treaty has provided rules and procedures for ensuring recognition of judgments and decisions, as well as preventing the clash of jurisdiction between Member States, the training of judges and judicial administration, cooperation between judicial authorities or authorities equivalent other member states as regards the proceedings in criminal matters and enforcement of judgments (Article 82.1 of the Treaty on the Functioning of the EU), and for the realization of these it provided that the European Parliament and the Council to adopt measures under the ordinary legislative procedure.

Regarding police cooperation, the treaty has provided that "The Union shall establish police cooperation involving the competent authorities of the Member States,

including police, customs and other services specialized law enforcement related to the prevention, detection and investigation of criminal offenses" (Article 87.1 of the Treaty on the Functioning of the EU). As in judicial cooperation, police cooperation in the European Parliament and the Council under the ordinary legislative procedure, may adopt measures concerning:

- a. the collection, storage, processing, analysis and exchange of relevant information;
- b. support for personnel training and cooperation for the exchange of personnel and equipment for research work in the field of detection of crime;
- c. common investigative techniques concerning the detection of serious forms of organized crime; (Article 87.2 of the Treaty on the Functioning of the EU).

It is important to note that the "Lisbon Treaty introduces the possibility of accelerated procedures for detainees. Article 267 TFEU provides that, if an allegation is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court shall act with a minimum of delay. This is obviously a very important change and reflects speedy justice debate in Europe. However, despite the reform of the Court's jurisdiction sought by the Lisbon Treaty, Article 276 TFEU makes clear that the Court still does not have the power to review the validity or proportionality of operations carried out by the police or other agencies enforcement law of a Member State or the exercise of the responsibilities remain the task of the Member States relating to the maintenance of law and order and safeguarding internal security" (Ester, 2011).

Criminal law in the spirit of the Charter of Fundamental Rights of the EU and the Declarations attached to the Final Act of the Intergovernmental Conference which approved the Treaty of Lisbon - In the spirit of the treaties have been adopted important documents in different fields of justice in this case are also provided important issues of criminal justice. In this context it is worth mentioning the Charter of Fundamental Rights of the EU, which are provided some important principles of criminal justice as claimed are: Principles of legality and proportionality of criminal offenses and penalties (Article 49), the right not to be judged or punished twice in criminal proceedings for the same offense (ne bis in idem principle, Article 50). These are important already mentioning statements accompanying final act of the intergovernmental conference that adopted the Treaty of Lisbon, dealing with treaty provisions. Thus, it is worth noting the statement to article 8 of the Treaty on the Functioning of the EU which states that: "*The Conference agrees that, in its efforts overall to eliminate inequalities between women and men, the Union in its policy different aims fight all forms of domestic violence. Member States shall take all necessary measures to prevent and punish these criminal acts and to support and protect victims*". Then, the next statement that relates to the protection of personal data in the areas of judicial cooperation in criminal matters and police cooperation, where "*The Conference agrees that the need may arise for specific rules for the protection of personal data and the free movement of these data in the areas of judicial cooperation in criminal matter and police cooperation based on Article 16 of the Treaty on the Functioning of the EU, due to the specific nature of these fields*". And finally that it is worth notable is the statement on Article 85 (1), second subparagraph of the Treaty on the Functioning of the EU where "*The Conference considers that the regulations referred to in the second subparagraph of Article 85 (1) of the Treaty on the Functioning of*

the Union EU must take into account national rules and practices regarding the initiation of criminal investigations". These and other tell us that the European Criminal Law gradually takes place in the legal order of the EU, and in a not too distant future and be a separate codification.

## Conclusions

The development of European criminal law has dictated own developments within The EU. The EU is continuously progressing towards the unification and greater cooperation, and in this context, there is a need for new legislation. In this way gradually move to the issuance of the special rates in the criminal field, or more precisely, the further deepening of cooperation in the field of criminal justice. As was seen in the treatment of this theme of European Criminal Law is in development, and is just the first steps in the legal regulation of criminal matters, within the EU. In fact, set principles are essential in this field, and future developments can be detected codification of criminal and legal norms of the EU, therefore, in a Penal Code and the Code of Criminal Procedure. When they are taken into account the goals proclaimed in treaties (as well as the recent Lisbon Treaty) that the EU "aims to promote peace, its values and its people's welfare. Union offers its citizens an area of freedom, security and justice without internal frontiers in which the free movement of people together with appropriate measures with regard to border control, asylum, immigration and the prevention and fight against crime " (Article 3 paragraph 1 and 2), it gives us to understand that the realization of these goals obviously imposes enacting adequate legislation, in this context of that criminal. How much is really necessary to create a European criminal law shows the statement of OLAF (Authority for combating abuses within the EU) that only in 2015 were over 888 million euros, but however a unifying code of European criminal law does not exist yet.<sup>1</sup>

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<sup>1</sup> <http://orf.at/stories/2342175/2342174/> 31.05.2016.