

European Criminal Law

Definition & Relation to National Criminal Law

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Term “European Criminal Law” (1/3)

- **European criminal law** (ECL) **does not exist** as branch of international or European law:
 - in the context of the European Union (EU)
 - in the context of the Council of Europe (CoE)
 - in the context of the United Nations (UN)
- on the other hand, there exist **Europeanisation of criminal law**
 - in 70s of 20th century in Europe started procedures of Europeanisation of selected areas of criminal law, **for example:**
 - fight against terrorism
 - fight against trafficking in drugs
 - fight against money laundering
- it means that **there is Europeanisation of criminal law, which creates ECL**

Term “European Criminal Law” (2/3)

- however, ECL in this sense **today is not** and probably **in the future will not be united for all European States**
- reason: in all States it is not possible to have in all States united:
 - crimes (elements of crime)
 - rules on criminal responsibility
 - procedural rights in criminal proceedings
 - investigation
 - main hearing
 - sanctions and their enforcement
 - etc.

Term “European Criminal Law” (3/3)

ECL is a **complex of criminal law legislation and case-law of the EU, CoE and UN** in special areas:

- **substantive criminal law** – in particular harmonisation of euro-crimes (elements of crime)
 - **examples:** terrorism, corruption, computer crime, trafficking in drugs, trafficking in human beings
- **procedural criminal law** – in particular procedural rights (and their strengthening), protection of victims of crimes
- **co-operation in cross-border criminal matters between European States**
 - **examples:** Schengen co-operation, mutual recognition of judicial decisions
- **objectives, tasks and competences of European units facilitating co-operation of European States in criminal matters**
 - **examples:** Europol, Eurojust, OLAF, European Judicial Network

International (European) Organisations and ECL

As seen, **ECL** is a complex of criminal law legislation and case-law of:

- European Union (EU)
- Council of Europe (CoE)
- United Nations (UN)

Note: all 28 Member States of the **EU** are Member States of the **CoE** as well as of the **UN**

European Union (EU)

- majority of ECL is adopted by the EU
- the **role of its top institutions in the area of ECL**:
 - **European Council** – introduces strategic documents with ideas for new legislation
 - **examples**: Tampere conclusions of 1999, Hague Programme of 2005
 - **European Commission** – introduces proposals for legislation
 - **Council of the EU** as "*Justice and Home Affairs Council*" – adopts legislation and establishes European units facilitating co-operation of European States in criminal matters, for **examples**: Europol, Eurojust, OLAF, European Judicial Network
 - **European Parliament** – adopts legislation
 - **Court of Justice of the EU** – interpretation of EU law and confirms the validity of legislation

Council of Europe (CoE)

- **in the area of ECL** the CoE introduces **international agreements** for its Member States
- very important is **case-law** of the European Court of Human Rights (ECHR) – it protects rights in criminal law, in particular rights of accused and convicted persons in national criminal cases

United Nations (UN)

- **in the area of ECL** the UN introduces **international agreements** for its Member States

Relation between ECL and National Criminal Law (1/2)

- **ECL is not superior to national criminal law** of European States
- ECL does not represent federal legislation in the EU, CoE and UN for European States!
- as seen, ECL “only” regulates selected areas of national criminal law
- **ECL is a complex of legal requirements addressed to (for) European States**
 - **examples:**
 - requirements to harmonise euro-crimes
 - obligation to co-operate in cross-border criminal cases
 - obligation to mutual recognise judicial decisions

Relation between ECL and National Criminal Law (2/2)

- in principle, requirements of ECL are shall be implemented in national criminal law legislation and practice
- European States implement these requirements by national legislation adopted by national legislator (parliament)
- **national implementing legislation is:**
 - **new**
 - **examples:** the Czech Republic – the *Act No. 140/2013 Coll. on the International Judicial Co-operation in Criminal Matters*
 - the Slovak Republic – the *Act No. 154/2010 Coll. on the European Arrest Warrant*
 - **amending existing legislation**
 - **examples:** *Criminal Code, Code of Criminal Procedure*
 - Germany – *Act on the International Judicial Assistance in Criminal Matters* of 1982