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The Connection Between Harmonising Criminal Law and the Occurrence of an Error in Law – Presented Through Criminal Offenses Against the Natural Environment

I Introduction

European integration is deepening cooperation in criminal justice, which leads to a continuously increasing amount of community and national legislation that has to be known. Not only the maze of national legislation requires awareness but also the developing European legislation system, with directives, frameworks, decisions and regulations. There are also several criminal offences that are filled with content by an EU rule. It is sometimes hard even for specialists to cope with the complexity in this legal environment, so this raises whether a lack of awareness of the legislation can be accepted as an error in law.

This is also confirmed by regulating cases of a preliminary ruling when a national court is not sure of the legal rules. In the notorious 'Vajnai case,' initiated on whether wearing a red star to a political event is a criminal offence, the Hungarian court of appeal asked the Court of Justice of the European Union (CJEU) whether the national provisions – according to which using symbols of dictatorships, e.g. red star or swastika is a criminal offense – are compatible with the European standards of fundamental human rights and freedom of expression. As a result, it was established that the Hungarian court had violated the freedom of expression of the person concerned.[1] This case clearly shows that even the court was uncertain whether the defendant has to be sentenced or not.

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[1] Koltay András, 'A Vajnai ügy. Az Emberi Jogok Európai Bíróságának ítélete a vörös csillag viselésének büntethetőségéről' (2010) 1 Jogesetek Magyarázata 77–82.

II Legal Harmonisation of Criminal Law in the European Union

In the present day, the European Union and EU law influence essentially all areas of the law in member states. Criminal law is no exception. The European Union can require member states to criminalise certain defined behaviours, can determine the opinion on criminal sanctions that will punish perpetrators, and can oblige the states to apply measures in certain areas of criminal law and laws on criminal procedure. As such, the harmonisation of substantive and procedural norms in the member states' criminal law falls within the EU's scope of authority.[2] When interpreters of national criminal law explore the intent of national criminal legislation, it is not possible to disregard the meaning and goals of the underlying EU legal act.

In 2001, Professor Ferenc Nagy did not yet regard the expression 'European criminal law' as signifying a particular branch of law in the classic sense, but rather as an umbrella term that referred to the developmental processes that were underway in European law as well as the process of Europeanisation and cross-border cooperation in criminal law.[3] Likewise, Krisztina Karsai notes that the term 'integration of European criminal law' did not refer to a well-defined area of law until the *Lisbon Treaty* took effect. Legal scholars used it as a blanket term to cover the extraordinarily heterogeneous results of the developmental processes that were occurring in the subsystems of member states' criminal statutes.[4]

Cooperation in matters of criminal law between member states of the European Communities entered a new phase when the *Lisbon Treaty* entered into force on 1st December 2009. A massive new area of law, generated by a supranational organisation, took shape in the form of 'European criminal law'. Today, this expression is generally accepted and is understood to mean the (existing and evolving) regulatory and institutional systems in the European Union's substantive and procedural criminal law. This new area of law is transforming approaches to international as well as 'traditional' criminal law.[5] Karsai currently defines 'European criminal law' as simply an independent area of law that derives from the body of EU criminal legislation that came to life through the *Treaty on the Functioning of the European Union* (TFEU).[6]

In the European Union, 'legal harmonisation' means dismantling certain differences in national (member-state) legal systems in the interest of achieving a common goal without introducing unitary rules. Legal harmonisation is clearly never an end in itself; it always takes place in support of some common goal. Through the process of legal harmonisation, national

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[2] Udvarhelyi Bence, 'Büntető anyagi jogi jogharmonizáció az Európai Unióban' (2018) 36 (2) Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica 295–315.

[3] Nagy Ferenc, 'Az európai büntetőjog fogalmáról' (2001) 1 Európai Jog 5–7.

[4] Karsai Krisztina, *Alapelvi revolúció az európai büntetőjogban* (A Pólay Elemér Alapítvány Könyvtára 2015, Szeged) 15–16.

[5] Farkas Ákos, 'Az európai büntetőjog fejlődésének irányai a Lisszaboni Szerződés után' in Juhász Zsuzsanna, Nagy Ferenc and Fantoly Zsanett (eds), *Ünnepi kötet Dr. Cséka Ervin professzor 90. Születésnapjára* (Szegedi Tudományegyetem Állam-és Jogtudományi Kar 2012, Szeged 139–158.).

[6] Karsai (n 4) 15–16.

law is being transformed in a manner that allows EU objectives to be realised through the introduction of identical or similar legal institutions and measures.[7]

The obvious goal of harmonising criminal law is to create a legal environment where all member states adjudicate certain unlawful behaviours in an identical manner and punish perpetrators with sanctions of equal measure. By extension, legal harmonisation can become a tool for eliminating 'forum shopping' – the practice by which perpetrators exploit the differences between member states' criminal laws by choosing to have their case heard in the country where the regulations are most favourable to their particular circumstances.[8]

The *Lisbon Treaty* authorises the harmonization of definitions of criminal offences and sanctions only when they fall in the 'extraordinary' category. Although some EU harmonisation norms do address certain questions pertaining to definitions of criminal offences in the 'general' category, we can hardly speak of a unitary, harmonised 'general' category. There is also little justification for harmonising the definitions of 'classic' offences (e.g. murder, rape, theft) in the 'extraordinary' category. Here, harmonisation is not appropriate because there may be significant cultural and historical differences between member states' criminal-punishment norms; moreover, legal regulations are often the product of centuries-old national traditions.[9]

The Treaty contains several provisions that convey the concept of *ius puniendi*. Article 79 of the TFEU gives authority to the EU in the field of human trafficking, while Articles 82–83 grant powers in relation to shared competences and Article 325 with respect to financial crime and fraud.[10]

> TFEU Article 83 (1) states:
> The European Parliament and the Council may, by means of Directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These crimes are the following: terrorism; human trafficking and sexual exploitation of women and children; trafficking of illegal weapons; money laundering; corruption; trafficking of illegal narcotics; counterfeiting of money and other financial instruments; computer-related crime; and organized crime.

As criminal activity develops, the Council may pass resolutions establishing that other kinds of criminal acts fulfil the criteria defined in this article. These must be passed by

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[7] Karsai Krisztina, 'A jogharmonizáció általános tanai' in Kondorosi Ferenc and Ligeti Katalin (eds), *Az európai büntetőjog kézikönyve* (Magyar Közlöny Lap- és Könyvkiadó 2008, Budapest) 432–433.

[8] Ligeti Katalin: 'Bevezetés' in Kondorosi Ferenc and Ligeti Katalin (eds), *Az európai büntetőjog kézikönyve* (Magyar Közlöny Lap- és Könyvkiadó 2008, Budapest) 24.

[9] Karsai (n 7) 34.

[10] Karsai (n 4) 26.

unanimous decision in the Council and require prior approval from the European Parliament.[11] This sphere includes acts related to racism and xenophobia, inasmuch as they constitute violations of the central principles of freedom, security and justice; they also represent components of the prohibition of discrimination, a fundamental right.[12]

Since community law regulates certain legal relations, it may have a priori influence over the construction of definitions of certain crimes, and hence – in a given sphere – community law can determine indictable behaviours and the boundaries of criminality. The European Court of Justice's partial acknowledgement of competence for making criminal law allows the Community legislator to deem a human behaviour to be a crime and require member states to build prohibitions against such behaviour into their own law. Community law may also hold sway over punishments, since criminal-law sanctions can play a role in denying rights that community law guarantees as fundamental freedoms; in such cases, the standards of community law supersede the member states' sanctions.

Criminal regulations may not engender discrimination if community law, with respect to a given case, acknowledges the principle of equal footing. The adoption of national rules that are stricter than Community law and, in some cases, the limitation of Community fundamental freedoms are allowed (in the absence of a specific provision stating otherwise) depending on whether the common rules provide a minimum level or a maximum extent of protection with respect to the matter in question. This principle applies to criminal-law provisions as well. It follows that a member state's internal law, and thus the application of internal criminal law, may not result in a restriction of freedoms that are guaranteed by the Community.[13]

The adoption of the minimum rules, as laid out in the *Lisbon Treaty,* may relate to criminal offences and punitive sanctions. The harmonisation of components of criminal offences entails an obligation for member states to designate the various offences defined in EU legal acts as crimes. The national legislator may not supplement its criminal offence definitions with additional components that would narrow the scope of culpability.[14] However, since the Treaty can only prescribe minimum harmonisation, it is possible for member states to apply stricter rules than those outlined in the Directive.

The EU legislator can prescribe the nature and scope of the punishment as well. EU norms prescribe efficient, proportional and dissuasive sanctions – in most cases, imprisonment lasting for a determinate period. They often stipulate other kinds of sanctions, such as monetary fines, confiscation of property, expulsion orders or disqualifying perpetrators from practicing their professions. A monetary fine is the most common sanction applied against legal entities. It is also possible to bar perpetrators from receiving state benefits and subsidies, forbid them to conduct a certain business activity on a temporary or permanent basis, place

[11] TFEU Article 83 (1).
[12] Osztovits András, *Az Európai Unió Alapító Szerződéseinek magyarázata 2* (Complex Kiadó 2008, Budapest) 1957–1958.
[13] Ibid, 1950–1951.
[14] Karsai (n 7) 443.

them under court supervision, apply a court-ordered liquidation, or order the temporary or permanent closure of facilities used in the commission of a crime.

With respect to the European Union's secondary sources of law, Regulations facilitate the consolidation of laws while Directives (and the former Pillar III framework resolutions) serve the purpose of legal harmonisation. Regulations have a general effect; member states are obliged to apply them directly and in their entirety. Member states must also adopt Directives and framework resolutions but, in their case, it is up to national authorities to determine the form of the law and the tools employed to achieve the legislation's goals. The *Lisbon Treaty* cites Directives as the primary tool for achieving harmonisation in criminal law.[15] However, the EU is entitled to issue Regulations in relation to the fight against financial crime.[16]

A Regulation is directly applicable in all member states with no need for any additional internal legal action. Where a punishable behaviour is sanctioned by Regulation, the perpetrator may be held accountable on the basis of EU law directly. When criminal-law norms are specified in Directives, national legislators must take action to transplant the rules into their internal law so that perpetrators who engage in behaviours defined as sanctionable under the Directive can be held accountable under national law. Thus, in the case of Directives, the national legislator determines the text of the criminal-law norm – that is, the normative sanction that may be applied to perpetrators who engage in a crime or behaviour that is designated as punishable. In so doing, the legislator must abide by the provisions of the Directive.[17]

The professional literature no longer disputes whether the EU has the competence to create criminal law under the wording of Articles 82 and 83 of the TFEU. The EU legislator, in the normal course of law creation, may define limitations to given articles and may prescribe norms with punitive content in the form of Directives.[18] A 'direct vertical effect' comes into play when national legislators fail to incorporate a Directive into domestic law by the given deadline. At such a time, a person on trial may invoke the Directive and its content in his defence against the state, even though the Directive is not yet part of national law. The converse is not true: Failure to incorporate a Directive by the deadline means the state cannot enforce the Directive's provisions against defendants.

When certain criminal offences were created under Act C of 2012 on the Criminal Code (hereinafter referred to as the Hungarian Criminal Code), the legislator had to devote particular attention to conforming with international conventions and recommendations in addition to European Union law. When interpreting and applying the definitions of the criminal offences examined in this study, knowledge of EU legal acts is indispensable for those charged with applying the law.

[15] TFEU Articles 82–83.
[16] TFEU Article 325.
[17] Udvarhelyi (n 2) 295–315.
[18] Karsai (n 4) 31.

III The Appearance of European Environmental and Nature Protection Law

The environmental protection movements existing in parallel to European integration resulted in the appearance of environmental criminal policy and criminal law.[19]

At the beginning, environmental legislation in the EU aimed to establish fair competition; the protection of the environmental heritage was only secondary.[20]

Community law is strongly attached to the economic sector as a result of the internal market and economic integration, and the harmonisation of economic legal rules through community legislation has had a significant influencing force towards economic and environmental criminal law. Crimes against the environment are often committed through economic activities in connection with production process, as a result of a concrete technological solution. According to some legal positions, crimes against the environment have to be regarded as a kind of the economic crime.[21]

Kőhalmi also emphasises that the creation of environmental law has not been provided against the intensity or the cross-border nature of environmental problems, but for economic reasons.[22]

Directives and Regulations (EC) are the fundamental regulatory instruments in the field of environmental protection within the Community.[23] Directives mainly regulate general environmental management issues on every area of environment protection and special provisions on environmental compartments or sectors such as air quality protection, waste management and nature protection.[24]

One of the best-known institutional conflicts brought before the Court was exactly over the regulation of environmental protection. The Council accepted the Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law

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[19] Görgényi Ilona: 'A környezetvédelmi büntetőjog aktuális fejleményei Európában' (2002) 10 Belügyi Szemle, 39–50.

[20] Kőhalmi László: 'Az európai környezeti büntetőjog fejlődési irányai és problémái' (2009) 1 Rendészeti Szemle, 42–63.

[21] Görgényi (n 19) 40.

[22] Kőhalmi (n 20) 42–63.

[23] See Directives and Regulations related directly to the chapter of nature and environmental protection in the Criminal Code:
– 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 [2008] OJ L328/28.;
– Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [2009] OJ L20/7.;
– Council Directive 92/43/EEC of 20 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206/7.;
– Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [1996] OJ L61/1.;
– Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer [2009] OJ L286/1.;

[24] Laczi Beáta: 'Irányelv kontra kerethatározat. Környezetvédelmi büntetőjogi szabályozás az Európai Unióban' (2006) 10 Magyar Jog 577–587.

as initiated by Denmark. However the Commission's legal perspective was that this type of regulation was not appropriate for prescribing that the member states establish national criminal sanctions against environmental crimes. Accordingly, the Commission brought an action before the Court. As a result, the Court of Justice annulled Framework Decision 2003/80/JHA on 15th April 2005.[25] The Framework Decision had formally infringed the procedural rules of harmonisation legislature as it usurped the Community's competence. In the view of the Court, the criminal protection of the environment should have been regulated by a Directive.[26]

Karsai considers that a part of *ius puniendi* thus appeared in Community law, that is to say among the supranational competences. The decision facilitated the process of criminal integration and the Commission drew up a programme for exchanging Framework Decisions with Directives.[27]

Directive 2008/99/EC provides criminal regulation in order to establish more effective protection of the environment. The starting point was the recognition that administrative penalties are not enough to fulfil the law on environmental protection. Criminal sanctions have to be formulated in order to ensure compliance with the law. This expresses a different form of disapproval from society compared to an administrative penalty or civil claims for damages.

In order to ensure effective environmental protection, there is a particular need for more dissuasive criminal sanctions against environmentally harmful activities causing or that may cause significant damage to the air – including the stratosphere –, soil, waters, animals or plants, – including the conservation of the species.

The Directive raises the states' awareness that failure to comply with a legal duty to act may have the same result as an activity; therefore, an omission also has to be sanctioned. The Directive emphasises that intentional and grossly negligent acts have to be classified as criminal offences.

In accordance with the international and European agreements dealing with the protection of the environment and nature, the Hungarian Constitution sets out the rights and obligations regarding the protection of the environment and nature more widely, compared with the previous Hungarian Constitution. The Avowal in the Fundamental Law states that we bear a responsibility for our descendants, so therefore we protect the future generations' living conditions by the careful usage of material, intellectual and natural resources. It states that the environmental resources – especially agricultural land, forests and the water sources –, biodiversity – especially native plant and animal species –, and cultural values are the elements of the national common heritage; its protection, sustenance and conservation for the future generations are the obligation of the state and all citizens.

[25] C-176/03, *Commission of the European Communities v Council of the European Union* [2005].
[26] Kőhalmi (n 20) 42–63.
[27] Karsai (n 4) 25–26.

Incorporating crimes against nature and the environment in a separate chapter is a key innovation in the new Hungarian Criminal Code.[28] Crimes under the umbrella of this chapter are very diverse, although they have common features that justify their presence in this chapter. A common feature, for instance, is that their aim is to protect the environment, nature and also their elements.[29]

IV An Overview of Crimes Against the Environment and Nature

Damaging the environment as a crime is provided in Section 241 of the Hungarian Criminal Code. This crime is regulated as a framework, which means that other legal regulations give the concrete substance. Section 241 divides this crime structurally, the first part is about the protection of the elements and the second part lists the penalties for such crimes.

It needs interpretation to decide whether a Hungarian citizen commits the crime of destroying nature if he commits it abroad; for instance if a hunter brings down a protected or a specially protected animal during a hunt, if it is allowed by the national legislation for the location of the hunting. According to the Hungarian Criminal Code, its rules unequivocally have to be used for crimes that are committed abroad by a Hungarian citizen,[30] but the text mentions only the Criminal Code. In light of this, the exact rules on protecting nature are not contained by the Criminal Code. However, international agreements also aim to protect endemic species. That is why the Criminal Code criminalises activities such as importing or transferring protected or specially protected animals, or products made therefrom (for instance a trophy).

The Hungarian Criminal Code categorises the objects harmed by environmental crime on the basis of the underlying law, especially the Nature Protection Act[31] and in the view of Hungary's membership of the European Union.

Damaging the environment as a crime can be committed against specially protected living organisms or protected living organisms. These latter objects are only protected by criminal law if the protected living organisms' monetary value reaches the lowest monetary value of specially protected living organisms. Decree 13/2001. (V. 9.) KöM of the Hungarian Ministry of Environmental Protection sets out the monetary values of protected plant species and animal species listed in Annexes No 1 and 2 of the decree. The lowest value of any specially protected animas is HUF 100,000 HUF.

The crime can also be committed against the living organisms listed by the Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and

[28] Sinku Pál, 'Crimes against the nature and the environment' in Polt Péter (ed), *Új Btk. kommentár 5. kötet, különös rész* (Nemzeti Közszolgálati és Tankönyvkiadó 2013, Budapest) Chapter XXIII., 309–311.

[29] Elek Balázs, *Vadászok, halászok a büntetőjog hálójában* (HVG-ORAC 2015, Budapest) 281.

[30] Hungarian Criminal Code s 3 para 1 item *c)*.

[31] Act LIII of 1996 on nature protection.

flora by regulating trade therein, listed in Annex A and B. This Regulation (EC) lays down detailed rules on the import, export and also the trade in these plant and animal species.

Article 16 of the Regulation (EC) obliges Member States to take appropriate measures in order for infringements against the Regulation to be punished. However, the Regulation (EC) gives discretion to the Member States in applying administrative sanctions or criminal sanctions against the infringer.[32]

The Annex to the Regulation (EC) can be amended by the Commission of the European Communities. Such an amendment was Commission Regulation (EU) No 101/2012 of 6 February 2012 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. This Commission Regulation contains the plant and animal species covered by the Council Regulation. In the light of this, the crime can be committed against the living organisms listed by the Commission Regulation and can also be committed against the living organisms covered by Annex A and B of the Council Regulation itself.

The definition of living organisms is set out in the Hungarian Criminal Code by an explanatory note considered the underlying law.

The crime can be committed by acquisition, keeping, placing on the market, import, export, trade, damage and destruction.

A qualified instance of the crime of damaging the environment is destroying the specially protected or protected living organisms to a level that results in damage, the monetary value of which reaches double the highest monetary value of the specially protected plant or animal species.

Significantly, destroying living organisms not protected by the State of Hungary but covered by the Regulation (EC) is also a qualified instance.

The base instance can be only committed intentionally; however, the qualified instance can also be committed by negligence.[33]

Section 243 of the Hungarian Criminal Code regulates damaging nature related to the environmental heritage and protected areas. The crime can be committed on Natura 2000 sites, protected caves, protected natural sites and also the community or the habitat of protected living organisms.

The category of Natura 2000 sites was implemented into Hungarian law by Decree 275/2004. (X. 8.) Korm. of the Hungarian Government. Natura 2000 sites had to be demarcated on the basis of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and Council Directive 92/43/EEC of 20 May 1992 on the conservation of natural habitats and of wild fauna and flora. This section ensures the protection of these areas.

The main aim of the Directive is to promote the conservation of biodiversity, taking economic, social, cultural and regional needs into account and to support the common aim

[32] Laczi (n 24) 577–587.

[33] The explanatory memorandum of the Hungarian Criminal Code s 242.

of sustainable development, as conserving biodiversity requires certain human activities to be promoted and continued. The aims of measures taken in accordance with the Directive are to conserve and restore natural habitats and establish the conservation status of wild animals and plants of community interest.

The conduct of the crime is an alteration that has to cause significant damage or loss; that is to say, every activity infringing the Nature Protection Act. Alteration is a broad definition, which even contains changing the scope of the area. The determination of what is significant requires an expert. The crime can also be committed through negligence.

V Misunderstanding as Grounds for Denying Criminality in Offences Against Nature and the Environment

If there is a misunderstanding, a notion may develop in the perpetrator's mind that is different from reality, or the perpetrator might not know anything about the actual rules. Misunderstanding affects intent. In accordance with the previous Code, the Hungarian Criminal Code sets out two types of misunderstanding, one is an error in facts and the other is an error in assessing the danger to society. Misunderstanding is relevant if it has a connection with a fact that has to relate to the intention.

We can talk about an error in facts if the perpetrator's mind doesn't cover all of the necessary facts on the prohibited activity. The result is that these facts have to be considered as non-existent.

Intent is characterised by the fact that the offender's mind covers all of the elements of the crime. Misunderstanding excludes criminality if the offender errs in a fact about the crime. Misunderstanding is relevant if it relates to any objective element of the offence. If misunderstanding is caused by negligence and the specific type of offence due to negligence is not punishable by the law then criminal liability is excluded.

However, if misunderstanding is caused by negligence and negligence is also punishable under the law then the perpetrator must be considered responsible for the crime.

It cannot be considered a crime if a hunter shoots a protected ferruginous duck by negligence during a wild duck hunt. However it can be considered as a crime if a hunter shoots a large number of protected birds, and negligence can be excluded under specific circumstances. A defence of an error may be acceptable regarding a wild duck hunt at twilight; however, it can be excluded after several ferruginous ducks were shot. Shooting eight ferruginous ducks is a qualified instance of the crime so therefore committing the crime, whether intentionally or negligently, is punishable. Committing the crime negligently can be stated if the perpetrator himself, as a professional hunter, failed to pay attention and exercise due care.[34]

[34] Elek Balázs, *A vadászszenvedély bűncselekményei. Vadászbalesetek, vadorzás, vadvédelem* (Magyar Közlöny Lap- és Könyvkiadó 2008, Budapest) 168.

An error in the danger to society occurs when the offender is not aware of the disapproval of society.

There is no clear dividing line between the two types of misunderstanding and an error in law. An error in the danger to society can occur due to ignorance of the law or also a significant misunderstanding of the facts. It is therefore important to analyse their interaction with each other.[35] According to the latest judicial practice '[…] the awareness of the illegality, immorality and the disapproval of society, or any of these, precludes an error in assessing the danger to society'.[36] 'The awareness of its danger to society can be discovered from criminal law, other areas of law, morality or the appraisal of society.'[37]

Wiener predicates that a relevant and irrelevant error can be distinguished through their moral content. That's why an error in assessing the danger to society can be considered differently than administrative rules and basic regulations in international law that give the concrete substance to a framework-type crime. Administrative rules don't have a moral content but international law has, so stating an error in assessing the danger to society cannot be accepted.[38]

On the contrary, I consider that an error in assessing the danger to society can occur due to ignorance of international law. Adopting international and European legislation is usually preceded by serious debates. The Member States of the European Union often have different opinions; we therefore cannot refer exclusively to common moral values.

István László Gál predicates that an error in law is when the offender does not know that the activity is prohibited by law, the legal status of the activity or an error occurs regarding the quantum of the penalty.[39]

However, for us to abide by the phrase *'ignorantia iuris neminem excusat'* the law must be available for legal entities. The date of entry into force should be chosen in such a way that allows enough time for legal entities to prepare for the new regime.[40]

Do we think whether the average-educated citizen is able to access legal databases, search them and find the appropriate European legal act? Ferenc Nagy also emphasises that above Latin dictum has gradually disappeared in some European countries.[41]

Some people identify an error in law with an error in assessing the danger to the society while others separate them. Ignorance of the law can lead to an error in assessing the danger to society in several cases. József Földvári states it in the following:

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[35] Hati Csilla 'A társadalomra veszélyességben való tévedés' (2012) 3 Büntetőjogi Szemle 1–11.

[36] BH 2015. 92.

[37] Gellér Balázs, Ambrus István, *A magyar büntetőjog általános tanai I.* (ELTE Eötvös Kiadó 2019, Budapest) 315.

[38] Wiener A. Imre 'Elméleti alapok a Büntetőtörvény Általános Része kodifikálásához' (2000) MTA Jogtudományi Intézete Közlemények 1992–2009, 94. Wiener A. Imre, *Büntetendőség, büntethetőség* (KJK – MTA Állam- és Jogtudományi Intézet 1999, Budapest) 212–214.

[39] Gál István László, *Gazdasági büntetőjog közgazdászoknak* (Akadémiai Kiadó 2007, Budapest) 41.

[40] Rácz Attila 'A jogszabályok kötelező ereje – érvényessé válása, időbeli hatálya és alkalmazhatósága' (1996) 1–48 Acta Universitatis Szegediensis: acta juridica et politica 493.

[41] Nagy Ferenc, *A magyar büntetőjog Általános része* (HVG-ORAC 2010, Budapest) 173.

> Awareness of the law isn't a prerequisite for declaring intent. An offender who doesn't consider the activity to be dangerous for society because of being unaware of the law can't be punished. However, the reason is not an error in the law but error in the danger to society, as long as it is based on a justifiable reason.[42]

According to a different approach 'an error in the law isn't regulated by the Hungarian Criminal Code; it has to be judged under the umbrella of an error in the danger to society'[43].

S 81 of the first Hungarian Criminal Code (Act V of 1878 on the Criminal Code) explicitly stated that 'Ignorance of the law or an incorrect interpretation does not exclude criminality' although the defendant could prove his unawareness of the rules of private or other law if it was a relevant fact.[44]

An error is irrelevant if the offender commits a crime while believing it is just an administrative offence. This situation can occur in particular when an activity has been transposed to the Criminal Code from the Code of Administrative Offences[45]. In this case, the offender knows about the danger to society, an error occurs regarding the legal status, which does not exclude criminality.[46]

An error in the administrative regulation's content typically occurs as an error in the danger to society.

The Hungarian Supreme Court acquitted a defendant of the charges of damaging nature by applying these rules about misunderstanding.[47]

The defendant arrived at Ferihegy Airport, Budapest, from the United States on 7th January 2005. He attempted to follow the green channel when a customs clearance was initiated against him. It turned out that packed in his luggage was a prepared alligator head, which he had bought as a present. Alligators are marked as 'Aligator mississippiensis' in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and in the Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein. According to these regulations, a special prior permit is needed to import an alligator or its parts, which has to be shown when crossing the border. In the absence of this prior permit, the alligator head, as a prepared element, cannot be brought into the country.

In the first instance proceedings, the defence submitted by the defendant was that he did not know that taking a prepared alligator – bought as a present for a small amount – is prohibited as he was not aware of the legal regulation. The court of first instance did not consider this defence, just stated that a person travelling abroad or arriving back has to 'find out the rules on whether exporting or importing needed a permit or other special conditions.'

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[42] Földvári József, *Magyar Büntetőjog Általános rész* (Osiris Kiadó 1998, Budapest) 164–165.

[43] Elek Balázs, 'A tévedés' in Polt Péter (ed), *Új Btk. Kommentár 1. kötet általános rész* (Nemzeti Közszolgálati és Tankönyv Kiadó 2013, Budapest) 137–147.

[44] Bernolák Nándor *A tévedés tana a büntetőjogban* (Kassai Kir. Jogakadémia 1910, Kassa) 59.

[45] Act II of 2012 on offences, the procedure in relation to offences and the offence record system.

[46] Elek (n 43) 137–147.

[47] Hungarian Supreme Court Bfv.II.360/2007/5.

Who commits a crime on a false assumption that the activity is not a danger to society and has a justifiable reason for it cannot be punished. According to this, the defence of the defendant should not just be examined in the light of gathering information in general.

The defendant failed to gather the required legal information before committing the crime. It means that the defendant's crime is a result of negligence. If the defendant errs in assessing the danger to society of the activity because of being negligent then the offence is negligent instead of intentional. That is to say, the defendant can be held accountable if the crime can be committed due to negligence according to the law. In this case, only the qualified instance of the crime can be committed negligently.

The activity committed by the defendant infringed a regulation that can be accessed and studied with greater difficulty compared to generally known information. The extensive list of protected and specially protected plant and animal species or those which are protected under international treaties require expertise in order to understand the relevant legal background.

It might be difficult to find and compare the relevant national and international law; moreover, these lists change from time to time. It can be clearly noted from the circumstances that the defendant had not planned to buy the alligator head before he travelled to the United States. He bought it as a souvenir for a small amount from a public shop. Considering these circumstances, it is unrealistic to hold his lack of knowledge of the necessary legal regulations against him.

The legal literature takes it for granted that if the offender is aware that the activity is prohibited by law, immoral or dangerous, it means awareness of its danger to society. If, contrary to that, all of these conditions are missing, the offender is unaware of the danger to society. It is particularly common when the offender infringes an administrative rule that give the concrete substance to a framework-type crime. To be aware of a regulation with an administrative nature can be expected from people who are dealing with them regularly or of their own motion. However, those who infringe these kinds of regulations occasionally and randomly can make an error regarding their danger to society.

Considering these circumstances the Hungarian Supreme Court deemed the defence to be admissible.

The defendant who acquired and held a prepared alligator head protected under international treaties had a justifiable reason for assuming the lack of danger to society.

Its result was no punishment was ordered on the basis of the Hungarian Criminal Code.[48]

Increased requirements must be placed against people with specific experience when considering the content of the law and in relation to this, the error in assessing the danger to society. [49] To state such an error depends on the person of the defendant, because of their current level of awareness, and it may change over time, especially if a less known regulation enters into the public consciousness. Regulations on the danger to society require the concrete activity to be considered in every case.

[48] Elek (n 34) 1–176.

[49] Elek (n 43) 137–147.

In a similar case, the court did not accept the error in assessing the danger to society as a defence, because the perpetrator was a hunter, who even took part in hunts abroad, and should have known the legal regulations on hunting as part of his profession.[50]

The perpetrator took part in a pre-arranged hunt in Bosnia-Herzegovina on 30th March 2007, where he brought down a grey wolf. The perpetrator attempted to import its skull and flayed skin to Hungary at the border crossing point in Röszke on 1st April 2007. Grey wolf is listed in Annex 'A' of the Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein. Art 4(1) of the Regulation states that a special CITES authorisation – regulated by the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) – is required to import species listed in Annex 'A' to the European Community's area. According to art 15 of the Commission Regulation (EC) No 865/2006 of 4 May 2006, this authorisation cannot be issued subsequently. The defendant did not have such authorisation.

Annex 4 of Decree 13/2001. (V. 9.) KöM of the Hungarian Ministry of Environmental Protection sets out that grey wolf is a specially protected species; to own any part thereof requires authorisation from the nature conservancy authority – according to Section 43 para 2 of the Nature Protection Act – and it is only permitted in the public interest.

The argument of the defence was that the perpetrator was unaware of the obligation to obtain authorisation and that it cannot be issued subsequently; the crime regulated in section 281 (1) c) of Act IV of 1978 on the Criminal Code (hereinafter referred to as the previous Criminal Code) cannot be committed negligently.

The Hungarian Supreme Court (today the Curia of Hungary) has set out that the case-law is consistent on the irrelevance of an error regarding prohibition under criminal law. There may be an exception from this principle if an error occurs regarding the administrative legislation that provides the content of the framework criminal legislation, which can be considered as an error in assessing the danger to society in view of the special circumstances and the expected knowledge. However, this shall not apply to this case. The defendant was an experienced hunter who also took part in hunts abroad (he was also invited to the mentioned hunt in Bosnia-Herzegovina), he – by his own admission – knew that the specially protected grey wolf is listed in the CITES agreement. The person, whose profession is hunting, had to be aware of the rules and legislation – including prohibitions. In the light of this, the defendant was not able to claim that he was not aware – so he was negligent – of the legislation that set out the obligation to obtain the CITES authorization. The defendant's intent extended to importing the skull and flayed skin of the grey wolf – without the required authorisation – which he committed. In the light of this, the defendant had committed the crime of destroying the nature according to section 281 (1) c) of the previous Criminal Code – in view of section 285 (5) item c).[51]

[50] Hungarian Supreme Court Bfv.III.843/2008/5.
[51] Hungarian Supreme Court Bfv.III.843/2008/5.

VI Conclusions

Awareness that an activity is against the law, immoral and dangerous means awareness of its danger to society, which can even be stated about people with a low level of education. Criminal authorities however must not ignore the defendant's knowledge of the legal regulations that are realistically available to him. Examining the area of environmental protection it may be concluded that the amount and complexity of the related administrative rules are almost incomprehensible to a layperson.

In a wider context, it may lead to the possibility of a misunderstanding of the legal rules because not only national but also European law must be taken into account.