
EU Internal Security: Terrorism and Criminality

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Abstract: *This research examines the main concepts involving terrorism and criminality having as scope the European Union territory and its singular characteristic such as supranational legal entity compounded by Member-States without borders. Considering the rule of law upon the EU members, which demand to provide collective security, adds up to the fact that the movement of people and data around the world has increased exponentially, the European Union legal framework comes developing measures to enhance a deep integration in order to provide security to its citizens. This paper highlights the legal sources inside the European Union Constitutional Law and EU Law, as well as its recent amendments defining the Euro-crimes involving transnational criminality as borderless crimes. Besides, we analyze through this paper the concept of terrorism according to the European Union Criminal Law doing a correlation between domestic and international terrorism and the fact that the European Union has the liability to provide personal security and also dealing with the surging of nationalism due to globalization and migration problems. The EU legal system comes advancing to a supranational law structure capable of creating robust cooperation to provide internal security combating terrorism and the borderless criminality.*

Keywords: *Internal security, borderless crimes, terrorism, mutual cooperation.*

INTRODUCTION

Internal security means domestic problems and these problematic situations sometimes are directed towards to people which we most care about or a place that we use to know as home. This subject makes us point fingers to ourselves and start to wonder about failures. The enemy infiltrated and undercover now are capable of creating instability, fear, and insecurity. If we observe societies affected by terrorism and criminality, their actions turn to be becoming heading towards these extreme situations implementing an agenda for the government and increasing the tasks for law enforcement agencies.

Hence, terrorism and criminality call for everyone responsibility into this scenario bearing in mind that the enemy can be living in the next door or coming quietly through the borders as a tourist or even as another citizen coming back home, it implies there are no armies involved using different uniform colors and bringing an explicit menace. We are not exaggerating towards a state of exception explained by Professor Giorgio Agamben¹ as a desperate situation where the fundamental rights foreseen by law are bent for the purpose to restore the constitutional order. Foremost, internal security is something constant which needs to be thought outside and before times of crisis. Nevertheless, the countries, and talking about the European Union, the member states have to establish a definition of security and its policies to achieve a minimum standard based on stable, structured cooperation.

Our aim with this research paper is to explore these two sensitive variables able to begetting new concerns relating to how to provide internal security for a supranational entity as the European Union. On one segment the terrorism emerges as a form of protest, a way to pay back for something undesirable, an extremist method to impose fear and pain striking innocent people which one will live with constant uncertainty about safeness. The terrorism will appear when political arguing and diplomacy reach the failure converting into a situation that nations are targets and groups are involved in which agreements are no tools to negotiate, and extreme measures have to be taken in order to control the situation.

¹ Agamben, Giorgio. *State of exception* (Chicago: University of Chicago Press, 2005) 5.

Under other circumstances, a sensitive increase of criminality can make a place uncomfortable spreading insecurity what can address people to pressure the government or try to solve the problem by their own hands. It is a common view that crime is a social problem intrinsic tie to human behavior consequently possible to soar among social inequality and lack of education and stability what can be read as an incomplete application of welfare state taking a narrow view "often confined to health, housing, income"². Moreover, some individuals deliberately decide to commit crimes before the results that it can bring especially if the internal law and the prosecution system are inadequate to provide effectiveness against organized criminality and white-collar crimes. Likewise, nowadays several crimes are committed without the necessity of people crossing borders just using the virtual field known as cyberspace.

The European Union is continuously changing to expand its borders by bringing new states, and these fresh members imply more problems to handle internally. In particular, the free movement of persons offered a vast field to issues such as terrorism and criminality spread over the Member States, because people are engaged in crime and terrorism, they are the tools to perpetrated these crimes. Also, we could mention that some European countries have easy requirements to grant citizenship based on *jus solis* criteria, giving free access to the European area. With that in mind, solutions cannot come separately, and as a community it has must always be thought to have the ideals from the past acting like guidance light to the future avoiding misconceptions.

1. BORDERLESS CRIMINALITY AND COLLECTIVE SECURITY

According to Article 3(2) of the Maastricht Treaty, officially known as Treaty on European Union - TEU, one of the fundamental aims of the Union is to offer security to its citizens without internal frontiers. Also, complementing the sense of individual security Article 3(5) brings the directive in which the Union will address its external relations in order to promote the protection of its citizens. Observing these aspects, we can see that security is turning to individuals rather than to the Member States representing a singularity within the Union. Hence, this brief analysis is capable of defining that in a narrow concept the individual is the center of security concerns, on the other hand, taking an extensive insight the State is what matters³.

Accordingly, the TEU incorporate into the primary law, as its constitutional structure of the European Union, a common foreign, security and defense policies. Moreover, we should also remark the Treaty on Functioning of European Union - TFEU, which reproduces in its Article 67(1) the constitutional guarantee of security with the strict compliance for fundamental rights, despite differences of the legal systems and traditions of the Member States. It is import to remember there are no internal borders to enforce control for persons which it claims to be a common area for security issues. Each one of the States, being a member of the Union, remaining with its sovereignty to establish a criminal law. In contrast, the constitutional framework assigns an approximation of the criminal laws to avoid substantial differences which could be resulting in relative leniency of the law applied to similar cases ruled by different courts from some the Member States which must observe an interpretation uniform under EU Law principles and European Court of Justice case-laws. Additionally, the new wording of Lisbon Treaty provides to the European Constitutional System a new framework to develop a European Union criminal law bringing the following rule in Article 83:

² Cousins, Mel. *European Welfare States: Comparative Perspectives* (London: Sage Publications, 2005) 7.

³ Marczuk, Karina Paulina. *Towards the EU's internal security strategy: a new paradigm of internal security?* ResearchGate.com Website: https://www.researchgate.net/publication/327545113_Towards_the_EU%27s_Internal_Security_Strategy_A_New_Paradigm_of_Internal_Security. Accessed on 10 November 2018.

"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 areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament."

Concerning to EU criminal law, under that article, the TFEU set up the directives to European Union criminalize such giving offenses known as transnational crimes, precisely because of these crimes are a borderless dimension which requires special attention and uniform enforcement of the law. Despite this, the Member States remaining its sovereignty regarding other crimes, even though it could be regarded as a twofold criminal system inside the EU. It is equally essential to consider that the exhaustive roll aforementioned transferred the law-making competence from de Member States to EU represented by The Council and European Union Parliament. Notwithstanding the citizenship guarantees provided for in Article 20 et seq. of TFEU, and Articles 309 et seq. of Chart of Fundamental Rights of European Union, the free movement of persons can suffer restraint regarding the protection against expulsion granted for in Article 28(3) of Citizens' Rights Directive 2004/38/EC - CRD⁴. Due to the wording of that law, it can happen exceptionally "if the decision is based on imperative grounds of public security," those borderless offenses provided in Article 83(1) of TFEU are considered especially leading organized criminality, and they are connected with this particular concept of public security, according to the European Court of Justice -ECJ ruling of law in Case C-348/09, P.I. v. Overbürgemeisterin der Stadt Remscheid (May 17, 2013):

"In the light of the foregoing considerations, the answer to the question referred is that Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is open to the Member States to regard criminal offences such as those referred to in the second subparagraph of Article 83(1) TFEU as constituting a particularly serious threat to one of the fundamental interests of society, which might pose a direct threat to the calm and physical security of the population and thus be covered by the concept of 'imperative grounds of public security', capable of justifying an expulsion measure under Article 28(3), as long as the manner in which such offences were committed discloses particularly serious characteristics, which is a matter for the referring court to determine on the basis of an individual examination of the specific case before it."⁵

In the face of that interpretation, the ECJ adequately ensured the abstract concept concerning public security to the Member States setting what sensitive spots might usually be considered heinous, which calls for uniform reprehension by EU law. Nevertheless, the European Union competence to typify crimes and to determine sanctions is not taking out the liability of the States to enforce the law within their borders. A legal system with powerful competencies, especially in the criminal ground, is essential to provide effectiveness for responding and producing adequate and proportional measures to cohabit criminality.

1.1. A new vision of integration to enhance internal security

Since the Lisbon Treaty came into force, the EU criminal policy has to increase its sense of cooperation not only based on agreements between surrounding countries but creating particular

⁴ Mitsilegas, Valsamis, "EU Criminal Law Competence after Lisbon: From Securitized to Functional Criminalisation", in *EU Security and Justice Law: After Lisbon and Stockholm*, eds. Murphy, Cian C., & Acosta Arcarazo, Diego (Oxford: Hart Publishing, 2014) 115.

⁵ European Union, European Court of Justice (website), Reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen. Freedom of movement for persons, accessed November 19, 2018, <http://curia.europa.eu/juris/liste.jsf?num=C-348/09&language=EN>

bodies inside this supranational entity to handle with dimensional issues. In the prosecution system, two agencies have to perform strength cooperation, and these agencies are:

The European Police Office - Europol working as a law enforcement agency providing a host between police departments around EU, although that agency has no power to enforce the law and its officers are not able to execute policing tasks⁶. The Europol acts being a core offering support such as database exchange, forensic analyses, and training which demonstrates conventional forms of cooperation⁷.

Another significant form of mutual assistance is the European Union's Judicial Cooperation Unit - Eurojust. Acting on the bases of Article 85 et seq. of TFEU, this agency performances its duties establishing a framework of cooperation between two or more Member States to investigate, and prosecute felonies. Nevertheless, the said Article 83(1) of TFEU brings these atrocious crimes on a list not exhaustive once the definition of organized criminality still has an open concept inside EU. Recently, in November of 2018, the relations between these two agencies were set by Regulation (EU) 2018/1727 of the European Parliament and of The Council, and according to Annex 1 that brings a wide array of crimes is listed as:

- terrorism,
- organized crime,
- drug trafficking,
- money-laundering activities,
- crime connected with nuclear and radioactive substances,
- immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder and grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- robbery and aggravated theft,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud,
- crime against the financial interests of the Union,
- insider dealing and financial market manipulation,
- racketeering and extortion,
- counterfeiting and product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of money and means of payment,
- computer crime,
- corruption,
- illicit trafficking in arms, ammunition and explosives,
- illicit trafficking in endangered animal species,
- illicit trafficking in endangered plant species and varieties,
- environmental crime, including ship source pollution,
- illicit trafficking in hormonal substances and other growth promoters,

⁶ European Union, Europol (website), Activities and Services, accessed November 19, 2018, <https://www.europol.europa.eu/activities-services/services-support>

⁷ Cornell, Anna Jonsson, "EU Police Cooperation Post-Lisbon", in European Police and Criminal Law Co-operation, eds. Bergström, Maria, & Cornell, Anna Jonsson (Oxford: Hart Publishing, 2014) 147.

sexual abuse and sexual exploitation, including child abuse material and solicitation of children for sexual purposes,
genocide, crimes against humanity and war crimes.

After analyzing the legal framework showed in this chapter, we can conclude that the European Union comes strengthening its structure of cooperation against transnational criminality which constitutes means capable of menace the internal security and destabilizes the regular order. These borderless crimes not only affect the EU citizens directly but also the institutions causing weakness to them leading to a scenario where States are not able to afford protection and defense. The European integration with the free market and free movement of goods, services, and persons means also sharing common problems to which must coexist in harmony towards a well-functioning of public services⁸, remembering that one of the natural needs of the human being is to feel safe. An intergovernmental system needs to be ruled by singular criminal law in matters of common interest to avoid discrepancies, especially regarding severe crimes. Moreover, the Member States remain with their competences to enforce the EU Criminal Law and also the jurisdiction in criminal proceedings. EU criminal law is trying to prevent that one Member State establishes severe sanctions to a crime differently for the other one which could beget a criminality migration.

2. DEALING WITH TERRORISM, AN UNPROFITABLE CRIME

According to the European Union Criminal Law, terrorism is typified as a criminal behavior what means that exists sanctions and perpetrators will be charged before the law. Thus, differently from others crimes, when people commit terrorism, they are not expecting monetary compensations. Conversely, they will expend money to achieve, and their goals and targets are nations, its private or governmental institutions, and society in general. As an unprofitable crime, organized groups acts supporting this crime appearing as a third sponsor. So, one of combating is exhausting the usual sources of money which finance this criminality what justifies the intense struggle to prevent money laundering. It is a premeditated crime whose purpose is not only hit specific targets but to spread fear and panic to the whole society.

Studying the simple classification of terrorism, basically, we find two classes: domestic terrorism and international terrorism and both of them base their motivations in extreme political ideologies such as nationalism in which we found "the most potent of social forces."⁹ However, in the first case, the criminals are the own citizens from the States, and in the second situation, the perpetrator comes from outside¹⁰. So, bringing those definitions into European Union, observing the right to free movement of persons joined to the context of the citizenship rights, things become clear to understand why this menace can affect each Member State. Cooperation inside the Union is crucial to struggle against terrorism. Historically, EU has a link with many countries around the world and adopting the *jus sanguinis* right attached to citizenship many people become citizens but without the sense of loyalty to the States and European values which

⁸ Davies, Gareth, "Free Movement, the Quality of Life and the Myth that the Court Balances Interests", in *Exceptions from EU free movement Law*, eds. Koutrakos, Panos, Shuibhne, Niamh Nic & Syrpis, Phil (Oxford: Hart Publishing, 2016) 222.

⁹ Nairn, Tom; James, Paul (2005). *Global Matrix: Nationalism, Globalism and State-Terrorism* (London and New York: Pluto Press, 2005) 33.

¹⁰ Purpura, Phillip. *Terrorism and Homeland Security: An Introduction with Applications* (Butterworth-Heinemann homeland security series, 2007) 17.

implies that a backdoor is open to international terrorism. In a similar situation, but without people crossing borders, the cyberterrorism preaches the same harm. The last conclusions reported by The Council, in the meeting occurred on 18 October 2018, the terrorism and its international and regional ramifications and the theme discussed received the following review:

The last conclusions announced by The Council, in the meeting occurred on 18 October 2018, were about the terrorism and its international and regional ramifications and the theme discussed received the input on its report, drawing the attention to EU adopts measures in order to "strengthen the capacity to prevent and respond effectively to radicalisation and terrorism, in full respect of fundamental rights. The Commission proposal on preventing the dissemination of terrorist content online should be examined as a matter of priority."¹¹ Another passage calls attention to "strengthen our crisis management capacity and the coherence and effectiveness of the EU and national crisis response mechanisms. Negotiations on the EU civil protection mechanism proposal should be concluded by the end of the year"¹².

This concept of civil protection keeps alive the idea of personal security on behalf of EU residents which has the basis on a prompt answer to potential threats to stop the harm and damages caused. Equally the investigation, prosecution and the ruling of law have to follow the same concept. Therefore, besides strengthening of the Europol and Eurojust, EU launched in 2017 the Permanent Structured Cooperation - PeSCo, in reliance on Articles 42(6) and 46 of the TEU this new body came to improve the military and civilian assistance working closely with European Defense Agency. Consequently, it means that the European Union is in constant developing of its internal security and the warfare against terrorism find places inside and outside of the borders.

CONCLUSION

As shown in this brief study, the problem of internal security in the European Union goes beyond the dilemmas faced for its Member States. It occurs because as supranational entity EU has to deal with multiple concerns and get ready to attend these needs. Regarding this, providing security of person following the definition imposed by the Charter of the Fundamental Rights of EU is not an easy task. The new concept of "Euro-crimes"¹³ adopt under Article 83 of the Treaty on the Functioning of the European Union proved to be a useful and necessary method to uphold the internal protection which passed to adopt an EU Criminal Law as independent legal order directly applicable to the Member States. At the same time, international terrorism increase in EU territory as a result of an extreme sense of nationalism due to globalization phenomena, free movement of persons and migration problems, coupled with the issue of radical external groups that attack European Union Member States in response to their actions in the global scenario. Notwithstanding these facts, the Union is developing tools to keep standing its principles.

Hence, there is a legal framework to enhance the cooperation in the criminal matter, which in addition to the list of international agreements increase the liability of the Member States to take actions towards internal security. The EU legal system advances gradually and only through the uniform of the supranational law is possible to create a safe zone for the European Union. Nonetheless, as we know EU law has no direct impact in the resident citizens and has to be implemented by each Member State which can be seen a weak spot inside the system. On the other hand, at least the national courts have an extra instrument to apply to trial proceedings.

¹¹ European Union, The European Council (website), European Council meeting (18 October 2018), accessed November 20, 2018, <https://www.consilium.europa.eu/media/36775/18-euco-final-conclusions-en.pdf>

¹² Ibid.

¹³ Chalmers, Damian, Davies, Gareth & Monti, Giorgio. *European Union Law* (Cambridge: Cambridge University Press, 4th ed, 2011) 613.

Another issue involving internal security is taxation, and it occurs because enhancing local safety in EU territory results in increasing of expenses, especially when it involves external operations which imply in tax increases based on the solidarity principle.

Giving these points, our analyze had the aim to highlight the legal structure of the European Union to provide internal security combating terrorism and the borderless criminality. We could observe that internal security involves constant efforts whereas that sometimes these actions conflict with other fundamental rights such as freedom and private life requiring proportionality and rationality to uphold these rights.

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