THE LEGAL FRAMEWORK FOR THE ESTABLISHMENT AND FUNCTIONING OF A JOINT INVESTIGATION TEAM

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Introduction

the crucial factor in building up a democracy, whether it is on a national or international level, is also a state and efficiency in keeping organised crime controlled. If control fails, organised crime blossoms and then disrupts the basic pillars of democracy and nation's values. It destabilizes state authorities by its direct or indirect involvement in state's policies through corruption. Through all of this, it tries to cement its influence or secure its position above the law.

The term organised crime has also been connected to illegal migration, with regards to human trafficking across borders. This poses the biggest security threat to the EU from the outside borders. Illegal migration has a potential to be accompanied by terrorism (Jakabovič, 2017: 29). There can be only one response, which is cooperation, on the national level, cross border level and transnational level, including the international police and judicial cooperation in the criminal matters.

The subject of this paper is the analysis of the current national legislation which regulates the way of establishment and functioning of the Joint Investigation Team (JIT), both at the international and national level (legislation of the Slovak Republic).

In a decentralized system of international law, which lacks a fixed hierarchical and institutional structure, identifying its sources is more difficult because there is no central legislative body empowered to adopt legal norms binding on the subjects of international law, nor is there a compulsory jurisdiction of international judicial organs to find violations of those norms (Klučka, 2017: 101).

International treaties are the primary source of public international law that touches on the issue of JIT. International treaties became the main means of regulating new areas (branches) of international law during the 20th century.

As the legal framework for the establishment and functioning of the JIT necessarily derives from international or European efforts translated into the norms of public international law and EU law (EU criminal law) as fundamental sources of law, in this scientific article I have primarily focused on those norms.

The basic legal framework for the establishment and functioning of the JIT is expressed in *de lege lata* terms in:

1. Norms of public international law;
2. Council of Europe legal instruments;
3. EU law (EU criminal law), and
4. National laws.

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Theoretical and Legal Definition of the JIT from the Perspective of Public International Law

International judicial cooperation in the criminal matters is defined by the following international legislation:

- UN Convention against Transnational Organized Crime of 2000 (the so-called Palermo Convention) (Ministry of Foreign Affairs Notice No. 621/2003 Coll.);
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Federal Ministry of Foreign Affairs Notification no. 462/1991 Coll.), and
- United Nations Convention against Corruption of 2003 (UNCAC) (Communication of the Ministry of Foreign Affairs of the Slovak Republic no. 434/2006 Coll. on the adoption of the United Nations Convention against Corruption).

Further in the text, we analysed three important documents focused on the joint efforts of the contracting parties (countries) on the most serious forms and manifestations of criminal activity with a large impact on society:

1. Transnational organised crime;
2. Illicit trafficking in narcotic drugs and psychotropic substances, and
3. Corruption.

The more globalised the world becomes, the more intense and closer the cooperation between transnational organised crime and the more pressure there is to implement international cooperation, whether in the police or the judiciary. In my opinion, this international pressure and the creation of a basic legal framework is in order. From a formal point of view, the establishment of JIT in Europe is being used in precisely these cases, many, if not most, of which are aimed at investigating the activities of transnational organised crime, which is also becoming active in relation to drug trafficking, the laundering of the criminal proceeds, but also in relation to corruption. It is the JIT that is the instrument through which trust between judicial and law enforcement authorities (LEA) can be gained and deepened, because trust is a matter of gaining practical, i.e. empirical and not theoretical, experience.

UN Convention Against Transnational Organised Crime

The control of transnational organised crime is an individual and challenging issue. The activities or manifestations of transnational organised crime are manifested in the commission of a variety of serious and organised criminal activities, including the money laundering. Therefore, the prosecution of this most serious form of manifestation of the commission of crime is implicitly listed as a separate offence (for example, in the Slovak legal system, § 296 Establishment, organization and support of a criminal group of Act No. 300/2005 Coll. Criminal law; the organized group is, in turn, qualified as a special qualifying term listed in § 138 letter i) Act no. 300/2005 Coll. Criminal law). However, this does not preclude the prosecution of members of transnational organised crime for the commission of other offences.

Of the Convention in question, the most significant is Article 19 Joint Investigation:

> "States Parties shall consider the conclusion of bilateral or multilateral agreements or arrangements whereby, in relation to cases under investigation, prosecution or trial in one or more States, the competent authorities concerned may establish joint investigative bodies.

> In the absence of such agreements or arrangements, joint investigations may be carried out on the basis of an agreement concluded specifically for the individual case. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory the investigation is carried out is fully respected".

The legal analysis carried out on the article in question clearly emphasises national sovereignty. However, the provision in question does not apply to all crimes, but only to certain types of crimes that are the subject of a convention between state parties. This limitation is guided by Article 3(1) of the Convention. On the JIT legislation itself, just one remark. It is a very general and framework legislation. Of course, the very title of the article, labelled "Joint Investigation", is different in terminological meaning from the term JIT. Joint investigation is a broader term than JIT, which I consider to be a more narrowly defined term.

LEA are expected to take a very proactive (but ideally proactive) and team-based approach to their work.

UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

Transnational organised crime has long been involved in both the commission and trafficking of narcotic drugs and psychotropic substances. This is why there has been an upward international effort against drugs since 1961. These international efforts have resulted in the adoption of 3 international conventions and the subsequent adoption of protocols or annexes regulating drug issues at the global level:

1. 1961 United Nations Single Convention on Narcotic Drugs (Decree of the Minister of Foreign Affairs no. 47/1965 Coll., as amended by Federal Ministry of Foreign Affairs Notification No. 458/1991 Coll.);
2. United Nations Convention on Psychotropic Substances 1971 (Decree of the Minister of Foreign Affairs no. 62/1989 Coll.), and
3. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Federal Ministry of Foreign Affairs Notification no. 462/1991 Coll.).

These international conventions have brought about international unification and established a basic international legal framework for drug issues, which the contracting parties - countries have undertaken to implement in their national legislation, thus creating the basic legislative and institutional conditions for effective drug control.

Drug trafficking is characterised by its cross-border or international dimension (Jakabovič, 2016: 85). International cooperation is therefore an essential tool in the fight against drugs or can be considered as an element in the control of transnational organised crime targeting drug trafficking.

There is a provision in Article 9(1)(c) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances that affects JIT:

> "Where appropriate, and in so far as this does not conflict with national laws, they shall form joint teams, taking into account the need to protect persons and operations carried out and conducted in accordance with the provisions of this paragraph. The representatives of any Party in such teams shall act as agents of the competent authorities of the Party in whose territory the operation is to take place; in all such cases the Parties concerned

shall ensure full respect for the sovereignty of the Party in whose territory the operation is to take place".

The 2003 United Nations Convention Against Corruption (UNCAC)

It is not only in the case of transnational organised crime and drug trafficking that international efforts to combat these socially unacceptable forms of criminality exist and take shape.

Corruption may or may not involve transnational organised crime and drug trafficking. It can also be perpetrated independently. Knowledge to date suggests that corruption is one of the elements (DNA) of the functioning of transnational organised crime and drug trafficking. In both cases, the aim is to make a profit or secure an advantage, which may also consist of securing the acquiescence of law enforcement or other state authorities. This advantage is intended to ensure the group's establishment, the carrying out of illegal activities, its eventual growth or its transformation into a legal business.

Corruption acts not only as the DNA of transnational organised crime, but also as an insurance policy in the event that serious and organised crime is detected. This means using corruption to ensure that investigations have as little impact as possible on the perpetrators of crime, their profits, members of the group, etc. Of course, it is also important not to expose and identify other illegal activities, to establish the members of the group, to establish their hierarchy, or to identify the bosses of the group.

It is therefore not surprising that an international convention against corruption was also adopted in 2003.

Article 49 of the 2003 UN Convention against Corruption makes provision for joint investigations:

> "States Parties shall consider the conclusion of bilateral or multilateral agreements or arrangements whereby, in relation to cases under investigation, prosecution or trial in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be carried out on the basis of an agreement concluded specifically for the individual case. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory the investigation is carried out is fully respected".

Theoretical and Legal Definition of the JIT from the Point of View of Legal Acts of the European Union and Legal Documents of the Council of Europe

Two international organisations have had the most significant and fundamental influence on the field of criminal law as national law. The first is the European Union (EU) and the second is the Council of Europe. The Council of Europe is a separate, distinct international organisation from the EU. At the same time, however, all EU member states are also members of the Council of Europe. Therefore, the legal documents adopted by the Council of Europe have an impact on the criminal law of the EU member states and, at the same time, the contracting states of the Council of Europe. Many EU sources refer to a legal interconnection or starting point precisely with legal documents adopted by the Council of Europe.

In this legal space of the EU and the Council of Europe, I have established the most fundamental and important international norms that influence the theoretical-legal definition of JIT, its substantive and procedural implementation by national law enforcement bodies.

The basic sources of EU criminal law are:

1. Article 69g(2)(b) of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ L 306, 17.12.2007);
2. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Convention 2000) (OJ C 197, 12.07.2000);
3. Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA) (OJ L 162, 20.06.2002);
4. Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto (OJ L 26, 29.1.2004);
5. Convention on mutual assistance and cooperation between customs administrations (Naples II) (OJ C 24, 23.1.1998), and
6. Agreement on Mutual Legal Assistance between the European Union and the United States of America (OJ L 181, 19.7.2003).

The Council of Europe primary sources are:

1. European Convention on Mutual Assistance in Criminal Matters of 1959 (Notification of the Federal Ministry of Foreign Affairs no. 550/1992 Coll.), and
2. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 08.11.2001 (The Slovak Republic has applied a reservation to the non-implementation of Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters dated November 8, 2001. The General Prosecutor's Office has been trying for a long time to initiate the withdrawal of reservations, but as of June 1, 2023, this has been unsuccessful).

Another instrument for establishing a JIT outside EU and Council of Europe criminal law is:

- Convention on Police Cooperation in South-Eastern Europe (PCC-SEE) (The issue of JIT is regulated in Article 27 of the Convention on Police Cooperation in South-Eastern Europe, which is applied between several EU member states (Austria, Bulgaria, Hungary, Romania, Slovenia) and the Balkan countries (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia).

Convention on Mutual Assistance in Criminal Matters Between the EU Member States (the 2000 Convention)

In 2000, the Convention on Mutual Assistance in Criminal Matters between the EU Member States (the 2000 Convention, hereafter referred to as the 2000 Convention) was adopted by the Council in accordance with Article 34 of the EU Treaty. The 2000 Convention was transposed into the national legal order of the Slovak Republic by the Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 570/2006 Coll.

The explanatory memorandum (Explanatory report on the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (Text approved by

the Council on 30 November 2000) (OJ C 379, 29.12.2000) states that one of the main reasons for the adoption of the Convention was that the establishment of a basic legal framework for the establishment and functioning of the JIT should facilitate the investigation of cross-border crime, particularly as regards its organised elements or manifestations.

Convention 2000 is classified as public international law, and this area of law is characterised by a model of horizontal cooperation based on cooperation between the law enforcement units of two or more Member States. The horizontal cooperation, which is based on three basic models, is the request model. This model is characterised by the fact that it leaves to the discretion of the Member State whether or not to comply with the request (Ivor, 2017: 395).

The most important article of the Convention 2000 is Article 13.

The first paragraph states that "by common agreement, the competent authorities of two or more Member States may set up a joint investigation team for specific purposes and for a limited period of time, which may be extended by common agreement, to investigate criminal offences in the territory of one or more of the Member States which have set up the team. The composition of the team shall be specified in the agreement[2]".

Further, Article 13 of the Convention in question sets out the mandatory conditions for the creation of a JIT:

- Two or more EU countries;
- Specific Purpose;
- Limited time, and
- Agreement (for the Slovak Republic, this entity is exclusively the General Prosecutor´s Office).

The reasons for the composition of the JIT are:

- Conducting an investigation in one EU country is difficult and requires action in another or in other EU countries; and
- Several Member States investigate crimes whose circumstances require coordinated action.

The 2000 Convention is complementary to another international source, which in this case is an international convention adopted by the Council of Europe - the European Convention on Mutual Assistance in Criminal Matters of 1959 (Notification of the Federal Ministry of Foreign Affairs No. 550/1992 Coll.). The 2000 Convention is based on the principles of the 1959 European Convention on Mutual Assistance in Criminal Matters. This is the case with regard to the particulars of what the application for the establishment of an JIT should contain. In this case, the application must necessarily contain the elements set out in Article 14 of the European Convention on Mutual Assistance in Criminal Matters of 1959.

The application for the establishment of a JIT therefore includes:

- Identification of the authority making the request;
- Subject and reason for the request;
- If possible, details of the person to whom the application relates and his or her nationality;
- If necessary, the name and address of the person to whom something is to be served.

The application for the establishment of the JIT shall include a proposal for the composition of the team.

2 The agreement is the result of the negotiations between at least two parties/countries on the establishment and functioning of a joint investigation team.

JIT Activities

The team leader shall be a representative of the competent authority involved in the criminal investigation of the Member State in whose territory the team is operating. The team leader shall act within the scope of his/her powers under national law.

The members of the team shall act in accordance with the laws of the member country in whose territory they operate. Team members shall act under the direction of the person designated in the agreement establishing the JIT as the "Team Leader", taking into account the terms and conditions determined by their own authorities in the agreement establishing the JIT. It shall be the responsibility of the Member State in which the JIT operates to make the organisational arrangements necessary for its proper functioning.

Investigations conducted under an agreement on an established JIT shall be governed by the rules in the territory of the Member State in which the procedural acts are carried out. The procedural aspect of the investigation is therefore governed by the law of the State in whose territory the members of the JIT are operating. Simply put, it is the application of a territorial principle of law, derived from state power and state sovereignty. It follows from the above that the members of the JIT must therefore also be subject to the jurisdiction of the Member State in whose territory they operate.

The 2000 Convention is primarily aimed at judicial cooperation in criminal matters between the EU Member States. However, in practice, it is common for help to be needed from outside the EU, i.e. from a so-called third country. If legal assistance is needed from a non-EU state, the Convention provides for this possibility, as other international conventions that regulate or allow judicial cooperation in criminal matters are applicable.

Article 13(10) of the 2000 Convention also deals with the possibilities of obtaining and using information admissible as evidence in criminal proceedings under the following conditions:

- Solely for the purposes for which the JIT was established;
- With the prior consent of the Member State that was part of the JIT;
- To prevent an imminent and serious threat to public safety;
- For other purposes only if agreed by the Member States that created the JIT.

In terms of the fundamental sources of law relating to JIT, the 2000 Convention is one of the most fundamental in the establishment of JIT.

Council Framework Decision of 13 June 2002 on Joint Investigation Teams (2002/465/JHA)

The historical aspects of the creation of the Council Framework Decision of 13 June 2002 on Joint Investigation Teams (2002/465/JHA) (hereinafter referred to as "the Council Framework Decision on JIT") are linked to the terrorist attacks of 11 September 2001 in the United States of America (Ivor, 2013: 646). Therefore, in the immediate aftermath of the terrorist attacks, an initiative - the Proposal for a Council Framework Decision on JITs - came from Belgium, France, Spain and the United Kingdom (Initiative of the Kingdom of Belgium, the French Republic, the Kingdom of Spain and the United Kingdom with a view to adopting a Council Framework Decision on joint investigation teams (OJ C 295, 20.10.2001). Another reason for the adoption of a different and more effective legal instrument in the EU was the slow ratification of the 2000 Convention (Ivor, 2013: 647). As it happens in the EU, instead of building solid legal foundations, an ad hoc, non-systematic solution is reached, resulting in legal dualism or legal anarchy in the long term.

The Council Framework Decision on JITs is one of the two basic sources of law for the establishment of JITs between the EU Member States. The first is the 2000 Convention. The Council Framework Decision on JITs has not yet been implemented by several EU Member States: Denmark and Germany.[3] For this reason, too, Convention 2000 is used as the legal basis in practice.

Article 1(1) provides that "the competent authorities of two or more Member States may, by mutual agreement, set up a joint investigation team for a specific purpose and for a limited period, which may be extended by mutual agreement, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be laid down in the agreement".

Based on the analysis of the content of the two documents – Convention 2000 and the Council Framework Decision on JIT, it can be concluded that there is a high degree of matching in terms of the way of defining the purpose of establishment, conditions of establishment and the way of functioning of JIT.

Article 5 of the Council Framework Decision on JIT states that "this Framework Decision shall enter into force on the day of its publication in the Official Journal. It shall expire when the Convention on Mutual Assistance in Criminal Matters enters into force in all Member States of the European Union".

Convention on Mutual Assistance and Cooperation Between Customs Administrations (Naples II)

Another international source in which I have identified the JIT is the Convention on Mutual Assistance and Cooperation between Customs Administrations (Naples II), specifically in Article 24. Title IV of the Convention, which regulates specific forms of cooperation, is important, and Article 19 deals with principles. Naples II was transposed into the national legal order of the Slovak Republic by the notification of the Ministry of Foreign Affairs of the Slovak Republic no 245/2009 Coll.

Naples II differs from other sources regulating the JIT issue precisely by the subject, which in that case is the customs administration. Naples II thus regulates international cooperation between customs administrations in the EU. However, Naples II certainly does not replace international judicial cooperation in the criminal matters (negative definition). The adoption of the Convention in question was primarily aimed at strengthening international customs cooperation.

Article 24 of the Convention provides for "Joint Special Investigation Teams". So already here I see the first fundamental difference between the classic JITs, namely in the name itself.

The very text referred to in Article 24(1) of Naples II is as follows:

> "By mutual agreement, the authorities of several Member States may set up a joint special investigation team, based in one Member State and composed of officials with the appropriate specialisation".

The following outlines the tasks that such a special investigation team should perform:

- Carrying out complex and challenging investigations into specific infringements that require simultaneous and coordinated action in the Member States concerned;
- Coordination of joint activities to prevent and detect specific breaches of the law and to obtain information on the persons involved and their associates and the methods used.

Operation of joint special investigation teams

• Specific purpose and limited duration.

3 https://eur-lex.europa.eu/legal-content/SK/NIM/?uri=CELEX:32002F0465&qid=1688461327083. 04.07.2023

- The team shall be led by an official from the Member State in whose territory the activities of the team are carried out.
- Officials shall be bound by the national law of the territory in which the team's activities are carried out.
- The Member State in whose territory the team's activities are carried out shall make the organisational arrangements for the team's operation.

There is a certain analogy between JIT and Joint Special Investigation Teams. The fundamental difference between the two concepts is that Naples II does not regulate international judicial cooperation in the criminal matters and thus does not replace traditional forms of judicial cooperation. On the contrary, the purpose of the Convention was to fill the space and create a basic framework for closer and more intensive cooperation between the EU customs administrations, not in criminal proceedings.

Mutual Legal Assistance Agreement Between the European Union and the United States of America

The purpose of concluding a bilateral agreement between the EU and the United States of America (US) is to facilitate cooperation between the EU Member States and the US in the criminal matters. Article 5(1) of the Agreement deals with the issue of JIT:

> "The Contracting Parties shall, if they have not already done so, take such measures as may be necessary to enable the establishment and operation of joint investigative teams in their own territory of each Member State and the United States of America for the purpose of facilitating police investigations and prosecutions involving one or more Member States and the United States of America, as deemed appropriate by the Member State concerned and by the United States of America".

The purpose of establishing a JIT is to facilitate investigations or prosecutions involving the US and at least one or more EU Member States, and simultaneously if the US and, for example the Slovak Republic, deem it appropriate.

JIT Activities

The composition, duration, location, organisation, tasks, purpose and conditions of participation of members of a team from a State carrying out investigative acts in the territory of another State shall be agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, to be determined and communicated by the States concerned. No separate requests for legal assistance shall be necessary for the performance of acts in the States members of the team. Proceedings shall be governed by the law of the State in the territory of which the JIT is operating.

The agreement on the establishment of the JIT must contain (mandatory elements):

- Composition;
- Duration;
- Objective;
- Organization;
- Liability of members of the investigation team - criminal, civil;

- Conditions of carrying or using a weapon;
- Cost, and
- Technical or logistical issues that may arise in the operation of the JIT.

Theoretical and Legal Definition of the JIT from the Perspective of the Criminal Law of the Slovak Republic

The legal basis, based primarily on the EU law (EU criminal law) and legal documents adopted by the Council of Europe, has in principle been properly implemented in the national legal order of the Slovak Republic. Only in relation to some standards, the Slovak Republic, through its representatives, has made reservations in relation to certain provisions.[4]

The basic source for the issue of JIT at the national level is Act No. 301/2005 Coll., the Code of Criminal Procedure and its Section 10(9), which reads as follows:

> "For the purposes of this Act, a police officer shall be understood to include, within the scope of the delegation of the acts of investigation, a representative of a competent authority of another State, an authority of the European Union or an authority established jointly by the Member States of the European Union, who is included in a joint investigation team established on the basis of an agreement. A joint investigation team may be set up in particular where the investigation of a criminal offence requires complex acts to be carried out in another State or where the investigation of a criminal offence is carried out by several States and the circumstances of the case require that they act in a coordinated and joint manner. The head of the joint investigation team shall always be a representative of a law enforcement authority of the Slovak Republic; the other conditions of the joint investigation team shall be regulated by the agreement on its establishment. The body authorized to conclude an agreement on the establishment of a joint investigation team shall be the General Prosecutor's Office of the Slovak Republic (hereinafter referred to as "the General Prosecutor's Office") after prior discussion with the Minister of Justice of the Slovak Republic (hereinafter referred to as "the Minister of Justice")".

The above-mentioned legislation contains an unacceptable solution in the part concerning the authorization to conclude an agreement on the creation of a JIT. One redundant entity enters into this process, which is the Minister of Justice of the Slovak Republic. Before concluding the agreement on the establishment of the JIT, the law requires the Minister of Justice of the Slovak Republic to negotiate the agreement and the content of the proposal. This entity is in this case over and above. It is a highly formalized process. The result is that the whole process is unnecessarily and unjustifiably prolonged, which causes many problems in practice. In extreme cases, this can be one of the reasons why trust between the law enforcement and the police on the one hand and their counterparts on the other can be eroded, or it can even frustrate the criminal proceedings and the very purpose of the JIT. The identified shortcoming of the legislation is that it is too formalized and explicit to the detriment of the objective pursued. The impact can be seen at two levels:

1. The transnational dimension (not only the agreement on common interests of the criminal proceedings, communication with each other, but also the actual transformation of what the partners have agreed on has an impact on the actual course and purpose of the criminal proceedings).

4 For example regarding the Convention 2000.

2. National level (if there is an overly formalized procedure, it is logical that such a procedure, which realistically in practice means extra work or activity or delays, will not be popular, supported and used. The question of use and degree of effectiveness is therefore also relevant in terms of creating adequate conditions at the national level).

In terms of *de lege ferenda*, I therefore propose to delete the formalized step.

While the basic idea of the JIT was supposed to be to facilitate and simplify international cooperation between two or more countries, national implementation unnecessarily creates systemic obstacles to building trust between partners and to the use of this otherwise positive and massively promoted international judicial instrument.

While there is some international or European or other bilateral or multilateral legal framework governing JIT, this primarily deals with the fundamental issues of the establishment and functioning of JIT. Many key issues of functioning and operations are governed by national legislations. This ranges from the establishment, functioning, operation, obtaining or securing information and evidence to agreeing in which country key procedural acts will take place. In addition to the absence of case law from the Court of Justice of the EU (CJEU) on the issue of CJEU, our full understanding of this issue is limited by our knowledge of the national legislation of all EU Member States. Members of JITs from other states enjoy the same legal protection as state-domestic authorities. This statement is implicit in Article 128(1) of Act No. 300/2005 Coll. on Criminal Law, which provides a legal definition of "public official":

> "A public official is also [...] another responsible employee of a law enforcement agency of another state, of a body of the European Union or of a body created jointly by the Member States of the European Union, if in the territory of the Slovak Republic he/she performs acts of criminal proceedings of such state or body; for his/her protection, according to the provisions of this Act, it is required that he/she performs acts of criminal proceedings in accordance with an international treaty or with the consent of the authorities of the Slovak Republic".

According to the current legislation in force, a representative of the Slovak Republic in the position of a national member in EUROJUST can be a member of JIT. This possibility is regulated by Act No. 383/2011 Coll. on the Representation of the Slovak Republic in EUROJUST. Pursuant to Article 4(1) (h) of the aforementioned Act, a national member may participate in the JTS with the consent of the GP.

Another provision of the law regulates the relations and information obligation - prompt information by the LEA and the courts to the national member about:

- Establishment of a joint investigation team and the results of its work;
- Cases where a jurisdictional dispute has arisen or is likely to arise;
- Controlled deliveries involving at least three countries, at least two of which are Member States of the European Union, and
- Repeated refusals or difficulties in dealing with requests for judicial cooperation or implementing judicial cooperation decisions (§ 14 par. 4 letters a) – d) of Act No. 383/2011 Coll. on the representation of the Slovak Republic in EUROJUST).

In my view, this is a framework transposition of the EU criminal law into national law, without explicitly mentioning further details such as:

- Issues of concluding a JIT with a non-EU country,

- Rules for obtaining evidence from an JIT on the territory of another EU Member State, and
- The action of the so-called assigned members in participating in the performance of individual procedural acts.

Summary of the Basic Theoretical and Legal Knowledge on the Establishment and Operation of the JIT

Despite many legally binding documents adopted several years ago and the passage of time, the issue of JIT is insufficiently elaborated in both domestic and foreign literature. The causes and reasons for this can be debated and discussed. On the basis of such information, we have concluded that from a theoretical point of view, it is probably not a topical, important topic, or an instrument that would be considered and perceived in legal and security theory as an effective and efficient international instrument. Of course, this is a conjecture. Over the last five to ten years, there has been enormous pressure from the international, but especially from the European community, to use this instrument. This pressure has also been felt by some EU Member States, countries that have experience in the creation and use of JIT and whose national legislation is more flexible and operational in relation to their establishment and operation than that of other Member States.

Legislative Aspect

Theoretical and legal knowledge is necessarily based on international norms (public international law norms, legal documents of the Council of Europe, bilateral or multilateral agreements) and the EU law (EU criminal law). Therefore, I have carried out a legal analysis and legal comparison in selected documents in order to approach the current legal framework for the establishment and functioning of the JIT. As a result, it is recognised that this is not a coherent, comprehensive or unified issue. On the contrary, for a more theoretical understanding, it is necessary to look at a number of legally binding documents, many of which are not primarily focused on the issue of JIT as such, but contain provisions on the subject. Some of the legally binding instruments analysed are not primarily related to criminal law, but in a broader sense or understanding they are concepts of a non-criminal nature, expressed as a certain concept based on teamwork (cross-border or transnational). This is the case with the Naples II Convention, which is primarily aimed at closer, more intensive cooperation between customs authorities in protecting the economic interests of the EU and its Member States. So, the primary concern is to create the legislative conditions for a special entity, which is the customs administration, with a focus on the non-criminal section. The aim is thus to strengthen international cooperation in the economic field. The status of the special body - the customs administration - varies depending on the national legislation of the specific EU Member State. Whereas, for example, in the Slovak Republic or Hungary, the customs administration does not have investigative powers, in the Federal Republic of Germany the customs administration does have such investigative powers.

Many aspects of the establishment and functioning of JIT are not regulated at the supranational level and are governed by substantive and procedural rules based on the national law of each country. Thus, while there is a basic legal framework based on supranational law, the focus is on national law. The more important legal question is therefore the transposition of international and European law into national legal orders, or the results of bilateral or multilateral comparisons of national legal orders relating to the issue of JIT in the EU, in the case of certain third countries neighbouring the EU Member States.

National legislation, therefore, has a dominant influence on the establishment and functioning of JIT, and the motivation for JIT depends on it. The legislative factor is one of the key factors, but it is not isolated or the only one.

Other key factors are institutional considerations, the specific case and its individual assessment, the motivational factor, the capacity of the LEA, professional and personal prerequisites for international cooperation, capacity capabilities, the national security strategy and situation (on which priorities are based), etc.

Transposition of Supranational Law into National Law

The theoretical-legal definition has two basic levels, namely the transnational and the national perspective. Therefore, the perception of this issue must also be analysed through the transnational legal framework on the one hand, and its implementation and transposition into the national legal order, in each EU member state or third country separately. Since the use of this instrument is at a very low level, the application problems associated with it are only gradually being revealed and unpacked in practice. The fundamental obstacle is precisely national legislation, although the factors that influence the process of drafting, creating and implementing an agreement establishing a JIT are certainly more complicated and complex.

As many substantive and procedural issues are left to national legislations, there are in reality 27 different national laws in the EU.

At the very beginning, it is always a good intention or idea to create legislation that would be implemented in the field of a specific criminal procedure based on teamwork. This intention is further supported by the legal framework, but in the final phase of the decision-making process of establishing the JIT, the creation, implementation and the process of evaluating the activities and functioning of the JIT, the issue of rigorous and individual assessment of the criminal procedure, interest and objectives from the perspective of national interests is paramount. The national interest has the greatest stake in the creation and functioning of the JIT.

The idea of building a single internal market without permanent controls, in line with the Schengen acquis, has resulted in increasing tensions regarding the EU's internal and external security and the growth of transnational organised crime activities (Compare data in SOCTA 2013 and SOCTA 2017). Since it is not possible to deal with the ideal EU model (under the term ideal EU model, we imagine that the primary law of the EU would solve the issue of justice and order in the form of legal regulation of the legislative and institutional adequate framework for ensuring the internal and external security of the EU) in *de lege ferenda* (legislative and institutional) terms, we must start from a *de lege lata* perspective.

Principle of Individuality of the Case and Its Assessment

I have also concluded that it is not a universal instrument for international judicial cooperation in criminal matters. Joint investigation is not meant to be a block. On the contrary, it is based on a specific criminal or other administrative proceeding, which must be assessed on a strictly individual basis, taking into account the objective pursued and the interest of the specific party (the LEA) or the common objective, which depends on the purpose of the criminal proceeding (primarily it is the enforcement of the safeguarding and protection of one's own national security by means of criminal law, secondarily it is the enforcement of interests in the field of the protection and safeguarding of the internal or external security of the EU) (Jakabovič, 2019: 88). Although it is possible to understand the

term common in a broader sense, it is always for a narrowly pursued and specific objective or interest when assessing and creating a JIT.

The JIT is thus not a universal and general judicial instrument of international judicial cooperation. Its use presupposes a narrowly defined, concrete and specific objective.

Each criminal proceeding is individual and unique. It is, therefore, not appropriate to evaluate in advance the issues of the competence of the case in question of the assessment of the establishment of the JIT. That is why the focus is on communication between the partners (LEA), and the creation of a sufficient trustworthy platform, space and conditions for getting to know each other, building trust between each other. In the legal and security area of the EU, on the basis on *de lege lata* there are two EU agencies responsible for it (EUROPOL and EUROJUST).

Agreement on the Establishment of the JIT

The issue itself, as far as transnational law is concerned, is regulated only in a general way. Many aspects of the establishment, functioning, use of evidence, the operation of team members and other entities are left to the national legislation of the EU Member States. This means that, in reality, there are 27 different national legal arrangements. This factor may also have the effect of discouraging the use of the JIT as a tool. Despite progress, the use of JIT is still considered a rare judicial tool. However, identifying the causes and shortcomings requires much more than qualifying work. To objectively assess the causes and shortcomings, one would need to know the national legislations of all EU Member States. Such knowledge would, of course, have to be complemented by an examination from a non-legal perspective. Many of the practical matters that enter into or influence the process of establishing, operating and implementing the JIT are not elaborated. In my view, this is one of the reasons why there is a simplistic view of the JIT issue.

Subject Matter of the Agreement in Terms of the Type of Criminal Activity and Its Intended Use

The very theoretical and legal definition of the JIT issue implies that it is not a common tool that would be used on a daily basis. The very definition implies that by its very nature the subject matter of the agreement presupposes that, if established and operated, it will involve serious and organised crime committed across borders or transnationally. The theoretical and legal definition itself presupposes that the parties involved (LEA) agree with each other precisely in cases which, in their own way, are difficult to investigate, to secure and to obtain information and evidence from abroad.

The theory assumes that these will be transnational organised crime activities, which is simply not possible without trust between the parties. Although it should be noted here that in addition to co-operation in criminal matters (the primary purpose of establishing JITs), we have also identified the establishment of such forms of international cooperation in non-criminal sphere (e.g. cooperation between customs administrations).

The assumption of teamwork at international level, implemented in the form of an agreement, can be considered as a truly minimum framework for the fight against serious and organised crime or the protection of the European Economic Area (EEA).

My ambition was to elaborate an absolute and clear current supranational legal framework for the use of JIT in Europe, as it also concerns the Slovak Republic but even the third countries. This is of primary national security interest. It should also be added that the Slovak Republic's membership of

the EU strongly affects it not only economically (economic interdependence), but also security-wise. The state and development of the internal and external security of the EU and its Member States has a direct impact on the state and development of the security situation in the Slovak Republic. This is not to mention the ever greater, deeper and more intense globalisation, the result of which is the unification of the world, in which national borders are playing less and less of a role. This is leading to the suppression of nation states.

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