

Gintaras ŠVEDAS*
Paulius VERŠEKYS**

THE TENDENCIES AND ISSUES OF TRANSPOSING EU LAW TO THE GENERAL PART OF LITHUANIAN CRIMINAL CODE

(Summary)

This article¹ deals with the theoretical and practical issues of transposing European Union law to the General Part of the Lithuanian Criminal Code, as well as certain aspects of the European Union criminal law that make serious influence on the Lithuanian criminal law and may create problems in the future.

Keywords: EU law; criminal law; Lithuanian Criminal Code

1. The Amendments and other Peculiarities of the General Part of the Criminal Code of Lithuania

Lithuanian substantive criminal law is a branch of law, which is very closely related to the State. Criminal law is the State's instrument to defend constitutional values of particular individual, society and the State. This is no coincidence that the national criminal law is being treated like an expression of the sovereignty of the State. On the other hand, the criminal law is also a branch of law of

* Habilitated doctor of law sciences, Professor, Head of the Criminal Justice Department, Law Faculty, Vilnius University; e-mail: gintaras.svedas@tf.vu.lt

** Doctor of social (law) sciences, Lecturer at Criminal Justice Department, Law Faculty, Vilnius University; e-mail: paulius.versekys@tf.vu.lt

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repressive nature – it has the strictest sanctions, that most of all limit the rights of the perpetrator. That is why criminal liability is *ultima ratio* measure, limited by the special principles of its application.

Lithuanian criminal law has gone through a number of reforms after the Re-Establishment of the State of Lithuania on 11 March 1990. The codification of Lithuanian criminal laws is the most important reform amongst them. The new Criminal Code of Lithuania (Official Gazette *Zinios* 2000/89–2741) (hereinafter – the CC, Criminal Code) has been adopted on 26 September 2000, and came into force on 1 May 2003, along with the new Code of Criminal Procedure (Official Gazette *Zinios* 2002/37–1341) and the Punishment Enforcement Code (Official Gazette *Zinios* 2002/73–3084). These codes were the first mutually approximated and codified national laws in the legal framework of the Republic of Lithuania that reinforced the national legal fundamentals underpinning the criminal and punishment enforcement (penitentiary) policy of our state². They sought to reflect the goals and priorities of a modern criminal and punishment enforcement (penitentiary) system as well as to implement effectively the principles of lawfulness and justice.

The main new feature of the CC is a complete classification covering all criminal acts. According to the CC, all criminal acts are divided into misdemeanours and offences. Offences are committed with intent and through negligence. Premeditated offences are divided into minor, less serious, grave and very grave offences. The concept of a subject of a criminal offence has been broadened because legal entities may also be the subjects of the criminal offences specifically provided for in the Special Part of the CC. The administrative prejudice has been abolished from the CC. The system of penalties has been supplemented by new non-custodial sentences, for example, community service, restriction of liberty. In addition to penalties, the CC also provides for the institution of penal measures that may be imposed on adult offenders who are released from criminal liability or penalty. It is now possible to ensure the principle of imminent liability for one's guilt in the commission of a criminal offence. The penalty system of the CC starts from the most lenient penalty, consistently followed by other more stringent penalties. In fact this principle has also been applied in the design and structure of the sanctions of the Articles in the Special Part of the CC. It shows the position of the legislator: when selecting a penalty or penal sanction for the

² Lietuvos Respublikos baudžiamojo kodekso komentaras, Bendroji dalis (1–98 straipsniai), Vilnius 2004, p. 11.

offender, one should seek to apply the most rational, economic and, at the same time, effective penalty or penal sanction³.

Currently, the Lithuanian substantive criminal law is an integrally codified branch of law (the only such branch of law in the national legal system) and the CC of Lithuania is an entire criminal law. No other legal act may establish the rules of criminal law. Otherwise it would go against the basic principle of *nullum crimen sine lege*⁴. According to Article 1 of the CC, only Criminal Code defines which acts are crimes and misdemeanours and prohibits them; establishes penalties, penal sanctions and compulsory medical treatment; establishes grounds for and conditions of criminal liability and the grounds for and conditions of releasing the persons who have committed criminal acts from criminal liability or a penalty.

Codes are legal acts that have internal unity and interconnected set of rules. The rules of law of the CC are being arranged in a logical sequence, based on the same grounds, hence, forming a unified system. This system consists of two parts – General and Special. The Special Part of the CC is twice bigger than the General Part. It consists of 32 Chapters, including entirely new ones, for example, Chapter XV “Crimes against Humanity and War Crimes”, Chapter XVI “Crimes against the Independence, Territorial Integrity and Constitutional Order of the State of Lithuania”, etc. The Special Part of the CC is more specific; its structure and classification is based on more precisely and specifically defined group objects (legal goods) and on the groups of criminal offences distinguished on the basis thereof. Furthermore, the classification of norms and their division into separate chapters in the Special Part of the CC is also underpinned by the value criterion revealing the importance, significance and value of the specific object of criminal offences, i.e. protected public (social) relations. Therefore, the system of the CC Special Part starts from the chapters joining together the provisions of criminal law that prohibit criminal offences threatening the principal and most valuable legal goods⁵. This design of the CC Special Part also reveals the directions and priorities of the criminal policy of the State, and forms the strategy and tactics of this policy.

However, the application of the articles of the Special Part would be impossible without the articles of the General Part. The articles of General and Special

³ See the explanatory note of the CC, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.89840?jfwid=-1co146xzcz>; access: 8.04.2016.

⁴ In general it means that “there can be no crime committed without a criminal law” (*translated from the Latin*).

⁵ Lietuvos Respublikos baudžiamojo kodekso..., p. 13.

Part are being directly related. Most articles of the Special Part have thereof the inner structure of the disposition and sanction, the remaining part presents the definitions (e.g. Article 212 of the CC – “Interpretation of the Concepts”).

The General Part of the CC consists of 14 Chapters: I – “General Provisions”; II – “Validity of a Criminal Law”; III – “Crime and Misdemeanour”; IV – “Stages and Forms of a Criminal Act”; V – “Circumstances Eliminating Criminal Liability”; VI – “Release from Criminal Liability”; VII – “Penalty”; VIII – “Imposition of a Penalty”; IX – “Penal Sanctions and Imposition thereof”; X – “Suspension of the Execution of a Sentence and Release from a Penalty”; XI – “Features of Criminal Liability of Minors”; XII – “Statute of Limitations of Criminal Liability”; XIII – “Previous Conviction”; XIV – “Compulsory Medical Treatment”.

Chapters VIII “Imposition of a Penalty” and XI “Features of Criminal Liability of Minors” are the biggest in the CC – 14 articles in each. On the contrary – Chapters XIII (“Previous Conviction”) and XIV (“Compulsory Medical Treatment”) have only one article in each. The General Part of the CC⁶ has been supplemented by 33 entirely new articles: criminal liability for the crimes provided for in international treaties (Article 7 of CC), types of criminal acts (Article 10 of CC), diminished capacity (Article 18 of CC), discharge of professional duties (Article 30 of CC), performance of an assignment of a law enforcement institution (Article 32 of CC), justifiable professional or economic risk (Article 34 of CC), release from criminal liability on bail (Article 40 of CC), community service (Article 46 of CC), restriction of liberty (Article 48 of CC), imposition of a penalty upon a repeat offender for the commission of a premeditated crime (Article 56 of CC), purpose and types of penal measures (Articles 67–74 of CC), peculiarities of criminal liability of minors (Articles 80–94 of CC), etc.

The purpose of the General Part is to establish the main conditions of criminal liability; imposition of a penalty; release from criminal liability and (or) penalty; sectoral principles of criminal law; stages and forms of criminal act, etc. The rules of the General Part have been created to help realize the rules of the Special Part.

During the 13 years of validity of the code, four articles of the General Part (Articles 44, 45, 77 and 94) have been repealed and eight articles have been supplemented (Articles 9¹, 39¹, 64¹, 68¹, 68², 72¹, 72², 72³). After the new CC had come into force, 47.2% of articles of the General Part have been amended (at least

⁶ Although the sequence ends with the Article “98”, there are a total of 102 articles in the General Part at the moment. Several articles have a badge of ^{1, 2, 3} (e.g. Articles 9¹, 72¹, 72², 72³).

once) and 52.8% of articles have remained the same as in the original wording of the CC. From a comparative perspective, it should be noted that the Special Part of the CC has been modified more than the General Part (68 % of articles have been amended at least once).

There have been adopted 65 amendments of the new CC during the 13 years of its validation (1 May 2003). 32 of these amendments have been directly related to the General Part of the CC. The amendments have been mainly related to the Chapter II (“Validity of a Criminal Law”) – 13 amendments; Chapter VII (“Penalty”) – 10; Chapters VIII (“Imposition of a Penalty”) and IX (“Penal Sanctions and Imposition thereof”) – 7 amendments to each. Only one change per chapter during that period has been made to the Chapters I (“General Provisions”), V (“Circumstances Eliminating Criminal Liability”) and XIV (“Compulsory Medical Treatment”).

The statistical data reveals the essential tendencies. It should be emphasized that the articles of the General Part related to the regulation of the criminal act and its forms are more stable than the articles linked to the regulation of penalty. This tendency can also be based on analysis of amendments of the Special Part – the changes of sanctions are more common than the changes of dispositions. In the opinion of the Authors, there can be some reasons explaining such statistical data. On the one hand, the amendments that increase sanctions and penalties often become the first instrument to the legislator, who stereotypically believes in preventive effect of strict punishments. On the other hand, it is easier technically to make the changes of sanctions than dispositions.

The second tendency revealed – the “stagnation” in the legislation sphere of the largest Chapter of the CC – “Features of Criminal Liability of Minors” (Chapter XI). There can be excluded only the amendment of 5 July 2004 (Official Gazette *Zinios* 2004/108–4030). The most important changes linked to this law have been the possibility to apply confiscation of property against minors; and the correction of the system of penalties against minors (e.g. possibility to apply the restriction of liberty), etc.

Nevertheless, the statistical data shows the third and the brightest tendency. This is a fact that a significant part of the CC amendments have been stipulated by the implementation of the European Union (hereinafter – EU) legislation. This tendency can be proven by the Annex of the CC “Legal Acts of the European Union Implemented by this Law”, adopted by the Law of 27 April 2004 (Official

Gazette *Zinios* 2004/72–2492). Since the year 2004, the Annex of the CC has had 17 new wordings and now consists of 30 paragraphs⁷.

⁷ There have been implemented these legal acts of EU by the CC (data of the 1st of May 2016): **1)** Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 2004 Special edition, Chapter 15, Volume 03, p.136); **2)** Council framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ 2004 Special edition, Chapter 19, Volume 01, p. 187); **3)** Council Framework Decision 2001/888/JHA of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ 2004 Special edition, Chapter 19, Volume 04, p. 182); **4)** Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ 2004 Special edition, Chapter 15, Volume 06, p. 123); **5)** Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ 2004 Special edition, Chapter 19, Volume 04, p. 158); **6)** Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ 2004 Special edition, Chapter 19, Volume 06, p. 18); **7)** Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2004 Special edition, Chapter 19, Volume 06, p. 34); **8)** Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ 2004 Special edition, Chapter 19, Volume 06, p. 52); **9)** Council Directive 2002/90/C of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ 2004 Special edition, Chapter 19, Volume 06, p. 64). **10)** Council framework Decision 2002/946/JHA of 28 ovember 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ 2004 Special edition, Chapter 19, Volume 06, p. 61); **11)** Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector(OJ 2004 Special edition, Chapter 19, Volume 06, p. 182); **12)** Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (OJ 2004 Special edition, Chapter 19, Volume 07, p. 10); **13)** Directive 2004/23/ C of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (OJ 2004 Special edition, Chapter 15, Volume 08, p. 291); **14)** Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8); **15)** Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49); **16)** Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems (OJ 2005 L 69, p. 67); **17)** Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (OJ 2005 L 255, p. 164); **18)** Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ 2005 L 255, p. 11); **19)** Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course

Following the new requirements of the international and EU legal acts, the Lithuanian criminal law has established the criminal liability of a legal entity (Article 20 of CC), laid down the grounds and conditions for the surrendering of persons under the European Arrest Warrant (Article 9(1) of CC), expanded the content of confiscation of property, also, expanded universal jurisdiction⁸, etc.

It should be stated that nevertheless the influence of the EU legislation commonly occurs through the corrections of the particular dispositions and sanctions, not a lower effect is being made to the General Part of the CC in terms of quality. After having adjusted a single article in the General Part, the impact is being felt

of new criminal proceedings (OJ 2008 L 220, p. 32); **20**) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ 2008 L 300, p. 42); **21**) 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 (OJ 2008 L 238, p. 28); **22**) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24); **23**) Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ 2008 L 328, pp. 55–58); **24**) Council Framework Decision 2008/919/HA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (OJ 2008 L 330, p. 21); **25**) Council Framework Decision 2009/299/HA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24); **26**) Directive 2009/123/C of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/C on ship-source pollution and on the introduction of penalties for infringements (OJ 2009 L 280, p. 52); **27**) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ 2009 L 168, p. 24); **28**) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ 2011 L 101, p. 1); **29**) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ 2011 L 335, p. 1); **30**) Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ 2013 L 218, p. 1).

⁸ One of the key features of the principle of universality is that the person who has committed an international or cross-border crime (Art. 7 of the CC), shall be liable under the CC of the Republic of Lithuania regardless that the act committed is not the subject to punishment under laws of the place of commission of the crime.

in the whole Special Part. Because of that reason every amendment of the General Part must be discussed in detail and systematically matched. In the opinion of the Authors, the biggest issues (directly linked to the General Part of the CC) of the EU law transposition to national law are the following: 1) the content of the EU law formulations and definitions; 2) the problem of the repeated act (repetition) as aggravated circumstance; 3) stages (preparation and attempt) of a criminal act; 4) complicity; 5) criminal liability of a legal entity; etc.

2. Theoretical and Practical Issues of Transposing European Union Law to the General Part of Lithuanian Criminal Code

2.1. General Tendencies of the EU Law Influence on National Criminal Law

Lithuanian Criminal Code is an integral criminal act and the national legislator has the exclusive right to enact crimes and penalties for them⁹. However, Lithuania is a member state of different international organisations and the EU, and has to follow their obligations and agreements, e.g. even in construing the compositions and the sanctions of the criminal acts. It is worth to notice that EU legal acts on the issues of criminal law, as a rule, are not legislation of direct application and should be implemented in the national law by enacting, amending or supplementing the criminal law and/or other legal acts. Moreover, the EU legal acts often describe such offences in minimalistic definitions and/or grant the discretion to the member states to make reservations (declarations).

The criminal law scholars from European countries (the Manifesto Group) presented their proposal for the European criminal policy in 2009. The Manifesto Group stated that Europe needs a balanced and coherent concept of criminal policy based on a system of fundamental principles of the criminal law. These principles should be recognised as a basis for every single legal instrument that deals with or which could influence criminal law. The Manifesto Group pointed out that this system includes the following principles: (1) the requirement of a legitimate purpose, which means that European legislation can be regarded as legitimate and proportionate only if criminal law is used in order to safeguard the fundamental interests of its citizens; (2) *ultima ratio* principle, which means that an act may be criminalised if it is necessary in order to protect a fundamental interest, and if all other measures have proved insufficient to safeguard that interest; (3) the

⁹ Ruling of the Constitutional Court of the Republic of Lithuania, 24th of January 1995 (Official Gazette *Zinios* 1995/9–199).

principle of guilt, which means that criminalisation of certain acts must be based on the principle of individual guilt; (4) the principle of legality, which includes (a) *lex certa* requirements (the offence must be defined in a strict and unambiguous way); (b) *lex mitior and non-retroactivity* requirement; (c) *nulla poena sine lege parlamentaria* requirement; (5) the principle of *subsidiarity*, which means that the EU legislator may take action only on the condition that the goal pursued cannot be reached more effectively by measures taken at the national level and due to its nature or scope can be better achieved at the European level; (6) the principle of coherence, which requires that the European legislator should pay special attention to the coherence of national criminal law systems¹⁰.

Meanwhile, on the 20th of September 2011 the European Commission presented a framework for the further development of EU Criminal Policy under the Lisbon Treaty: the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions (COM (2011)573 final) “Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law”¹¹. On the one hand, the Communication should be appreciated for the recognition of the fact that European criminal policy has not been particularly cohesive¹². On the other hand, the European Commission has admitted in this programme document that it is important to ensure that EU legislation on criminal law should be consistent and coherent with national criminal law systems; it has also underlined that criminal law should always remain a measure of last resort (*ultima ratio*). In this light, the European Commission has pointed out that the EU can adopt criminal law legislation only if the goal cannot be reached more effectively by measures at national or regional and local level, but rather due to the scale or effects of the proposed measure can be better achieved at the Union level.

The EU legislator should follow two steps when taking decisions on criminal law measures aimed at ensuring the effective implementation of the EU policies that are the subject to harmonising measures. The first step is to decide whether

¹⁰ European Criminal Policy Initiative. The Manifesto on European Criminal Policy, *Zeitschrift für Internationale Strafrechtsdogmatik*, www.zis-online.com, 12/2009, pp. 707–709; access: 5.03.2016.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions “Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law”. Brussels 2011, COM(2011)573 final, pp. 1–12.

¹² A. Klip, *European Criminal Law. An Integrative Approach*. 2nd Edition, Intersentia, Cambridge–Antwerpen–Portland 2012, p. 219.

a criminal law measure should be adopted at all; and the second – what kind of criminal law measures should be enacted¹³. The Communication also sets out the principles to guide the EU legislator in adopting a criminal law measure: subsidiarity, respect for fundamental rights, necessity, proportionality and legal certainty¹⁴.

Regarding the impact of EU law on national criminal law, one can distinguish two ways through which influence is exerted: (a) law-making and (b) judicial. Influence through law-making means the transposition of provisions of EU legislation into the national law, whereas the judicial way means the enforcement of preliminary rulings of the European Union Court of Justice, which could have a twofold effect: preclude application of those provisions of national law recognised as incompatible with the requirements of the EU law, and to require that such provisions in the national law should be amended, supplemented or annulled.

Although the law-making method is undoubtedly predominant, one judicial case can already be mentioned in the Lithuanian context. On 11 July 2008, the European Union Court of Justice delivered judgment in the case C-207/08 regarding Article 265 of the CC that provides for criminal liability for cultivating hemp. Reference for preliminary ruling in this case was made by the Panevezys Regional Court in criminal proceedings where E. B. was accused of carrying into Lithuania, after a legitimate purchase in France, 300 kg of hemp seeds (CN code 53021000) that he intended to use for the cultivation of hemp and the production of paper. The pre-trial investigation commenced after the sowing of the hemp had begun and a major part of the crop harvested. The expert of the court of appeal instance noted that the hemp cultivated by E. B. was grown for fibre and did not entail any danger to health, that it was impossible to derive chemically any narcotic substances from the hemp, and that the hemp was dangerous to health when the amount of the narcotic substance was 0.5–5%. The European Union Court of Justice was called to consider whether Article 265 of the CC that imposes criminal liability unconditionally for the cultivation of any type of hemp without exception, irrespective of the amount of active substance in it, was contrary to provisions of the European Union. The European Union Court of Justice stated in its preliminary ruling that the provisions of Article 265 of the CC imposing criminal liability for the cultivation of any type of hemp without exception are contrary to Council Regulation (EC) No. 1782/2003 of 29 September 2003, which establishes common rules for direct support schemes under the common agricultural policy and establishes certain support schemes for farmers, therefore, the provisions of Article 265 were to be precluded from application.

¹³ Communication from the Commission..., pp. 7–8.

¹⁴ *Ibid.*, p. 7.

2.2. Transposition of Definitions

From the perspective of the law-making method, notice should be taken that one of the main issues for the national legislator is the correct implementation of formulations and definitions of the EU legal acts. It should be noted that EU legislation regarding the definition of criminal offences and sanctions is limited to “minimum rules” under Article 83 of the Treaty on the Functioning of the European Union. This limitation precludes the harmonisation of criminal law of EU Member-States. At the same time, the principle of legal certainty requires that the conduct that is considered criminal should be defined clearly. However, an EU directive on criminal law does not have any direct effect on a citizen, since it first has to be implemented in the national law, and the requirements for legal certainty are therefore not the same as for national criminal law legislation. The key issue is the clarity for the national legislator as to the results to be achieved in implementing EU legislation¹⁵. In order to deal with this problematic issue, some authors (e.g. L. Kuhl, B.-R. Killmann) claimed that:

an offence should be defined precisely and clearly [...], prohibiting any application of analogy, therefore, the content of the Community law should be as extensive as possible [...] leaving to the national legislator the only option – to adopt a national legal act that would be identical to the content of such Community legal act¹⁶.

Usually, the terms and formulations in the Directives are very abstract in order to satisfy the interests of all Member States. There are no argues that a literal and exact amendment of abstract formulations can be a very convenient way for a legislator. However, this method can cause considerable trouble to the institutions, who apply the law.

In the opinion of the Authors, the most issues have raised the implementation of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ 2009 L 168, p. 24) (hereinafter – Directive 2009/52/EC). In defining criminal offences, there are being used some abstract terms like ‘*particularly exploitative working conditions*’, ‘*infringement continues or is persistently repeated*’ or ‘*significant number of illegally staying third-country nationals*’ in the Directive 2009/52/EC.

¹⁵ *Ibid.*, p. 7.

¹⁶ L. Kuhl, B.-R. Killmann, *The community competence for a directive in criminal law protection of the financial interests*, Eucrim 2006/3–4, p. 101.

Their transposition to the Lithuanian Criminal Code was very different. For example, *'particularly exploitative working conditions'* has been transposed literally into the Paragraph 1 of Article 292¹ ("Employment of Third-Country Nationals Illegally Staying in the Republic of Lithuania"). Nevertheless, it should be noted that only the formulation itself have been transposed, but not its definition¹⁷ that provided in the Paragraph (i) of the Article 2. That is why the national judges applying this *corpus delicti* can interpret it differently.

There are contrary examples on transposing abstract terms to the national law in Lithuanian law-making practise. It should be mentioned, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ 2011 L 101, p. 1) (hereinafter – Directive 2011/36/EU) and its wording. There are also being used a few abstract terms like *'serious violence'* or *'particularly serious harm'* in the Paragraph (d) of the Article 4 of Directive 2011/36/EU. Although exact formulations do not exist in the CC of Lithuania, these terms have not been transposed to it literally, but matches have been found in the CC for them.

It should be noted that abstract terms are not some kind of novelty in the Criminal Code of Lithuania. The abstract terms not specified in criminal codes are not being avoided to? use. One of such methods of legal technique is called *evaluative features*. The origin of the term *'evaluative feature'* has come from Russian Criminal Law doctrine. Lithuanian Criminal Law doctrine as the majority of the doctrines of Post-Soviet countries has also adopted the term of *evaluative feature*. The normative content of *evaluative feature of corpus delicti* cannot be identified directly from the body of the criminal act and depends on the *ad hoc* evaluation of facts¹⁸. Whether and how these aspects of *evaluative feature* correspond with the principle of *nullum crimen sine lege*: that is the question, which still has not been precisely answered in the Criminal Law doctrine.

According to that, abstract terms from the EU legal acts usually become evaluative features after their transposition to the national law. Moreover, the survey has shown that the usage of *evaluative features of corpus delicti* in the CC

¹⁷ *'Particularly exploitative working conditions'* means working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity.

¹⁸ P. Veršekys, *Vertinamieji nusikalstamos veikos sudėties požymiai*, Socialiniai mokslai: teisė (01 S), Vilniaus universitetas, Vilnius 2013, p. 301.

is rapidly increasing. Recently this tendency is determined by the implementation of EU legislation¹⁹.

It is worth to mention that the other abstract term of Directive 2009/52/EC '*significant number of illegally staying third-country nationals*' has been transposed to Paragraph 1 of Article 292¹ of the CC by formalizing it. The Lithuanian legislator has decided that '*significant number*' is equivalent to "five or more". The problem is that Directive does not define the meaning of '*significant number*'. The legislator has chosen the meaning of five or more, although the tough discussion emerged. There were opinions that significant number should be treated as "three or more", "ten or more" or even "twenty or more". The persons in charge of drafting the amendments of the Criminal Code have argued that according to Article 3 of the Law on Small and Medium Size Business Development, the number of five employees correspond to the half of a very small enterprise. Moreover, this number has been chosen concerning the principle of proportionality. Although the arguments are rational, this example of the EU law implementation raises some doubts – whether it complies with the wording and objectives of the Directive.

According to that, it should be stated, that the Lithuanian legislator meets different types of problems in transposing abstract terms of the EU legal acts. There is a risk of incorrect implementation if legislator decides to formalize such a term. However, literal implementation of the requirements of EU legislation can distort the entire national system and become a tough issue to apply it.

2.3. Constitutional Issues of Repeated Act (Repetition) Implementation

The Lithuanian legislator faces another type of problem – implementation of the EU legal acts requirements to criminalize a feature of '*repeated act*' (or '*repetition*') as aggravating circumstance. For example, Paragraph 3 of Article 5a of Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ 2009 L 280, p. 52) (hereinafter – Directive 2009/123/EC) defines that "***repeated*** [author's emphasis] *minor cases that do not individually but in conjunction result in deterioration in the quality of water shall be regarded as a criminal offence <...>*". In accordance with Paragraph 1a of Article 9 of the Directive 2009/52/EC,

¹⁹ *Ibid.*, p. 302.

Member States shall ensure that the infringement of the prohibition referred to in Article 3 constitutes a criminal offence when committed intentionally, in each of the following circumstances as defined by national law: (a) the infringement **continues or is persistently repeated** [author's emphasis].

The transposition of repeated acts, as aggravating circumstances, is a big issue for the Lithuanian legislator, because the administrative prejudice (repetition aggravates the dangerousness of it in such level that such act should be qualified as a crime and not the administrative violation²⁰) had been abolished from Lithuanian legal system before the adoption of the new CC. Moreover, the Constitutional Court of the Republic of Lithuania in the ruling 'On the compliance of the Code of Administrative Violations of Law with the Constitution of 10 November 2005 (case No. 01/04) has hold that:

It should also be emphasised that it is not permitted to legislatively establish any such legal regulation whereby when holding a person legally liable for a repeatedly committed violation of law, the repetition (in the aspect discussed) would be treated both as a circumstance formally qualifying another violation of law of the same kind and as a circumstance aggravating the legal liability for the said, formally another, violation of law. Such legal regulation would deviate from the *non bis in idem* principle consolidated in Paragraph 5 of Article 31 of the Constitution²¹.

There are some options, how to transpose the repetition, as aggravating circumstance, to the Lithuanian CC. The first choice is to criminalize broader than it is being required, e.g. criminalize 'one time' act as well as repetition of them. One time act can be treated as misdemeanour and repetition – as a crime. Such an action would not be in conflict with the Constitution of Lithuania. The Constitutional Court of the Republic of Lithuania in the ruling of 10 November 2005 has hold that:

However, the legislature is not prohibited from legislatively establishing such legal regulation, where the repetition (in the aspect discussed) would be treated as a circumstance formally qualifying another violation of law of the same kind (i.e. defined by the norms of the same branch of law) and the repeatedly committed violation of law of the same kind (the same as the previous violation or as another violation, which is defined by means of norms of law of the same branch) would be formally named in a corresponding article (part thereof) as another violation of law of the same kind²².

Nevertheless, such type of implementation of the EU legal acts would lead to an artificial criminalisation and strict liability. It should be emphasized that

²⁰ V. Pavilonis [et al.], *Baudžiamoji teisė. Bendroji dalis (Trečiasis pataisytas ir papildytas leidimas)*, „Eugrimas“, Vilnius 2003, p. 130.

²¹ Ruling of the Constitutional Court of the Republic of Lithuania, 10th of November 2005 (case No. 01/04).

²² *Ibid.*

criminal law is the measure of *ultima ratio*, and should be applied only when it is undoubtedly necessary.

The second option, how to deal with this problem of implementation, is to transform the term of ‘repetition’ into another formulation that legally used in the CC, e.g. into the term ‘in the form of the business’ (this term is being used in Articles 202, 292¹, 301, 302 and 302¹ of the CC). The formulation of the Directive 2009/52/EC ‘*persistently repeated*’ has been transformed into ‘*in the form of the business*’ after its implementation to the Lithuanian Criminal Code. The content of this featured has been revealed in the case law – the action in the form of business is related to the permanent income and repeatedly committed violation (three or more times). However, the Authors have to admit that this choice of implementation of the ‘repetition’ solves the problem only partially. This way of implementation does not solve the cases, when it is obligatory to adopt two-time (not three or more) repetition, as aggravating circumstance; or the cases, when repetition is not linked to income.

2.4. Preparation to Commit a Criminal Act and Its Issues

Some of the EU legal acts impose an obligation on the EU member states to criminalise certain conduct whose substance constitutes only an attempt (or even preparation) to commit a certain criminal act, for example, Article 4 of Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and the counterfeiting of non-cash means of payment requires the member state to establish as a criminal offence “the intentional fraudulent making, receiving, obtaining, sale or transfer to another person or possession of computer programmes the purpose of which is the commission of any of the offences described under Article 3”; Article 3 of Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro obligates to criminalise “the fraudulent making, receiving, obtaining or possession of instruments, articles, computer programs and any other means peculiarly adapted for the counterfeiting or altering of currency”, etc. In these cases criminal liability, in principle, should be set for the preparation to commit fraud using non-cash payment instruments or to counterfeit non-cash-payment instruments or money.

It should be noted that in the opinion of the Authors there are even thirteen articles of the CC at present (for example, Articles 198(2), 201, 213, 214, 250(1), 250(2), 250(5), 302(1) of the CC, etc.), which establish criminal liability for

separate criminal offences the substance whereof is preparation to commit another criminal offence. Given the fact that Lithuania must implement the requirements of EU legislation in the national law and criminalise preparation to commit certain acts as individual criminal offences, it should be considered whether it is necessary to leave in the CC the general rule that the preparation to commit a grave and very grave offence shall be punishable. The legislator defines preparation to commit an offence as a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime in the Article 21 of the CC. The theory of criminal law recognises that such a description of preparation as “any other intentional facilitation of the commission of an offence” means that the criminal law does not provide for all potential ways (forms) of preparation to commit offences²³. Other facilitation of offences can include any intentional acts (omissions), if they make it possible to implement a criminal intention or significantly facilitate the commission of the intended offence.

Having regard that the preparation to commit a grave or very grave offence makes the person liable under the general procedure, the definition of one of the forms of preparation in criminal law raises serious doubts, as it is completely unclear which acts or omissions form the basis for criminal liability, e.g. whether criminal liability will be possible for the acquisition of binoculars used to search the territory of the planned theft, etc. It should be noted that the prosecution for preparation (even in case of grave or very grave offences), as regulated in the CC of the Republic of Lithuania, cannot be found in the criminal laws of any of the legal systems, either continental (Germany, France, Sweden, etc.) or Anglo-Saxon (England, USA, India, etc.)²⁴.

On the other hand, there arise a lot of qualification problems. It should be noted that preparation to commit a criminal act has to be incriminated twice: first time as a feature of particular *corpus delicti*; second time – under Article 21 of the General Part. This situation can be treated as “preparation to prepare”. For example, the Lithuanian legislator has criminalized a criminal act of “Training for terrorism” in the Article 2505:

1. A person who passes to another person special knowledge or skills necessary for the commission of a terrorist crime or participation in committing a terrorist crime, with knowledge that the person intends to use the knowledge or skills for terrorist purposes, shall be punished

²³ Lietuvos Respublikos baudžiamojo kodekso..., p. 134.

²⁴ G. Švedas, *Europos Sąjungos teisės įtaka Lietuvos baudžiamajai teisei*, Teisė 2010/74, p. 14.

by a custodial sentence for a term of up to seven years. 2. A legal entity shall also be held liable for the acts provided for in this Article²⁵.

when Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism had come into force. It should be noted that this criminal act is only a form of preparation for terrorism. However, the maximum sanction for training for terrorist as a crime reaches seven years of imprisonment. It means that under Paragraph 5 of Article 11 of the Lithuanian Criminal Code training for terrorism is being treated as a grave crime. The grave crimes are punishable for the preparation to commit them.

The fact is that double qualification of preparation to commit an act would deny the general principles of the criminal law. However, it is not possible to ignore nor the requirements of the Special Part, neither the requirements of the General Part of the CC. On the one hand, the preparation would be an essential feature²⁶ of *corpus delicti* (e.g. Training for Terrorism). On the other hand, according to Articles 57 and 62 of the CC, the qualification of preparation (under Article 21) mitigates the criminal liability. If these provisions of the General Part are ignored, legal circumstances of the person, who has committed the criminal act, would be unreasonably aggravated.

2.5. Complicity

Practically all EU legal acts obligate the EU member states to establish criminal liability for complicity in the commission of criminal acts. For example, the Convention on the Protection of the European Community Financial Interests (Official Gazette *Zinios* 2004/112–4178), Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, Council Framework Decision 2001/888/JHA of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of

²⁵ See the amendments of the CC, Official Gazette *Zinios*, 2013, No. 75–3768, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.453252>, access: 1.05.2016.

²⁶ Note – the feature of *corpus delicti*: a structural component of *corpus delicti*, which on its own has individual normative value, that is significant for the qualification of the criminal act and its distinction from the others. Ideally any single feature of *corpus delicti* is essential (exception due to alternative features of the composition) and along with the other features of *corpus delicti* sufficient to qualify an act as criminal and distinct it from other criminal acts, other breaches of law or incidents.

the euro, Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment, Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism and Council Framework Decision 2008/919/JHA of 28 November 2008 on amending Council Framework Decision 2002/475/JHA on combating terrorism, Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, Directive 2011/93/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, 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, etc. require that each EU Member State shall take all measures necessary to ensure that instigating, aiding and abetting the conduct referred to in the above-mentioned Convention, Council Framework Decisions and Directives is punishable, etc.

On the other hand, EU legislation makes reference only to the types of accomplices – a perpetrator, an abettor (instigator) and other accomplices; it does not provide a consistent definition of complicity, or of the types of accomplices (a perpetrator, an instigator and other accomplices), the forms and types of complicity or the meaning of the institute of complicity for criminal liability. Thus, in this regard EU legal acts grant EU member states the discretion to apply the national provisions of their criminal laws to complicity and its forms and types, as well as to the types of accomplices. It should also be noted that EU legal acts (including also the criminal laws of some EU member states) do not distinguish an organiser as a type of accomplice.

Article 24 of the CC of Lithuania provides that accomplices to a criminal act shall include a perpetrator, an organiser, an abettor and an accessory. A perpetrator

is a person who has committed a criminal act either by himself or by involving a legally incapacitated person or a person who has not yet attained the age specified in the CC, or other persons who are not guilty of that act. An organiser is a person who has formed an organised group or a criminal association, has been in charge thereof or has co-ordinated the activities of its members or has prepared a criminal act or has been in charge of the commission thereof. An abettor is a person who has incited another person to commit a criminal act. An accessory is a person who has aided in the commission of a criminal act through counselling, issuing instructions, providing means or removing obstacles, protecting or shielding other accomplices, who has promised in advance to conceal the offender, hide the instruments or means of commission of the criminal act, the traces of the act or the items acquired by criminal means, and also a person who has promised in advance to handle the items acquired or produced in the course of the criminal act.

Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime defines one form of complicity – a criminal organisation. A criminal organisation means a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit.

Article 25 of the CC of Lithuania provides that the forms of complicity are a group of accomplices, an organised group or a criminal association. A criminal association is one in which three or more persons linked by permanent mutual relations and the division of roles or tasks join together for the commission of a joint criminal act – one or several less serious, grave and very grave crimes.

When interpreting the essential characteristics of a criminal association, the Supreme Court of Lithuania has in addition noted the constant character of a group, the long-term close relations between its members, internal discipline maintained by authority, intimidation and other means, the distribution of roles and tasks, the possession of communication and other technical equipment, weapons, etc. All these features “highlight and describe more precisely” the elements necessary for a criminal association²⁷ and eliminate the risk that a group

²⁷ Senate of Judges of the Supreme Court of Lithuania, Ruling No. 16 of 10 October 1995 “Summary of the Case-Law Relating to Organising, Leading or Involvement in Criminal Associations (CC Art. 227(1))”, Lietuvos Respublikos baudžiamasis kodeksas ir lydimoji medžiaga pastraipsniui, Vilnius 2009, pp. 643, 654–659.

having nothing in common with organised crime will be considered a criminal association²⁸.

In summary it can be stated that in principle the CC of Lithuania implements most of the provisions of EU legal acts related to complicity, its forms and types (including a criminal association), and to types of accomplices. A more detailed regulation of the institute of complicity in national criminal laws facilitates the implementation of the requirements of EU legal acts in Lithuania. The Authors believe that further consideration should be given to the proposal contained in the doctrine of criminal law²⁹ to revise the concept of criminal association by including in it additional elements that would inter alia bring more conformity with the requirements of EU legislation – (a) a pre-agreement to engage in joint criminal activity; (b) presence of a leader or leaders; (c) intention to obtain, directly or indirectly, a financial or other material benefit.

2.6. Criminal Liability of a Legal Entity

Corporate criminal liability was introduced in 2002 for several crimes when Lithuania ratified the Council of Europe Criminal Law Convention on Corruption. The prerequisites for the criminal liability of legal entities follow directly from the aforementioned Convention and EU legislation. These prerequisites remain unchanged in the Criminal Code; however, the list of criminal acts for which legal entities may be punished has been enlarged by 60 criminal acts. Between 2002 and 2013, the list of criminal acts subjecting legal entities to criminal liability was enlarged by 50 new offences. The list has been expanded mostly as a result of the national implementation of EU secondary law requirements.

Article 20 of the CC provides that “a legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of this Code”. Paragraph 2 of Article 20 of the CC states that:

a legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying

²⁸ O. Fedosiuk, *Turto prievartavimas ir jo kvalifikavimas*, Vilnius 2002, p. 185.

²⁹ A. Gutauskas, *Organizuoto nusikalstamumo baudžiamasis teisinis vertinimas pagal naują baudžiamąjį kodeksą*, Jurisprudencija 2003/45(37), p. 34.

an executive position in the legal entity, was entitled: (1) to represent the legal entity, or (2) to take decisions on behalf of the legal entity, or (3) to control activities of the legal entity³⁰.

The Constitutional Court Decision of 8 June 2009 (Official Gazette *Zinios* 2009/69–2798) should be noted as being of special importance – the Court recognised that corporate criminal liability does not expostulate with the Constitution of Lithuania. The Constitutional Court emphasised that the fact that a criminal act is committed “for the benefits or interests of a legal entity” makes it possible to attribute the criminal act committed by a natural person to the scope of liability of a legal entity (which means that the legal entity has a specific value and recognises it, or the legal entity is interested in the behaviour and its consequences). These provisions signify that the Constitutional Court has recognised that corporate criminal liability derives from the liability of a natural person.

Thus, constitutional jurisprudence and the theory of criminal law make it possible to conclude that the criminal liability of legal entities and natural persons exists only for one and the same criminal act committed by a natural person. This situation might lead to a violation of the constitutional and criminal law principles prohibiting being punished twice for the same criminal act, however, only in the case when the natural person and the legal entity are one and the same venture. It should be noted that the Finnish Supreme Court refused to uphold the conviction of the legal entity in a similar case because “the company and individual person was identical in financial terms and financial obligations”³¹.

The Constitutional Court has stressed that, although the legal entity’s guilt is closely related to the individual’s guilt, they are not identical. This separation of guilt allowed the Constitutional Court to conclude that the legal entity’s guilt should be established by law and recognised by an effective court sentence. The Supreme Court of Lithuania (criminal case 2K–269/2010) has also emphasised that a legal entity’s guilt should be proved by the methods mentioned in the Code of Criminal Procedure. In order to hold a legal entity guilty, two elements should be present: (1) a relationship between the criminal act of the head of the legal entity and the legal entity’s business strategy (for example, all appropriated money was used for unreported payments, etc.) and (2) the legal entity’s owner, who is responsible for the strategy formulation and compliance with the duty of care, should promote the illegal conduct, be aware of or at least tolerate such behaviour (for example, recognise crime results *ex post facto*, etc.).

³⁰ The Criminal Code of the Republic of Lithuania (Official Gazette *Zinios*, 2000, No. 89–2741).

³¹ **M. Tolvanen**, *Pasitikėjimas, verslo etika ir nusikaltimų prevencija – įmonių baudžiamoji atsakomybė pagal Suomijos teisę*, Jurisprudencija 2009/1(115), p. 352.

Paragraph 3 of Article 20 of the CC provides that “a legal entity may be held liable for criminal acts also where they have been committed by an employee or authorised representative of the legal entity as a result of insufficient supervision or control by the entity” if the employee or authorised representative holds an executive position in the legal entity. Such wording of the criminal law suggests that in this case a legal entity may be prosecuted only when it is held that such liability is reasonable. The prosecutor and the court, when ascertaining whether it is possible to prosecute, should take account of the entity’s organizational culture, management principles applicable to the prevention of criminal acts, the acceptance of the consequences of the criminal act, the relationship between the legal entity and the employee who has committed the criminal act, indicating whether the criminal act and consequences may be associated with the legal person, etc. Furthermore, as is stated in the Constitutional Court’s decision, when considering the nature of the criminal act in order to determine guilt in the case, the court should assess the neglect or lack of control and influence of the person discharging managerial responsibilities. In addition, the theory of criminal law recognises that the legal entity that discloses the fact of the criminal act, seeks full restitution, and takes active steps to ensure that the employee who has committed the criminal act is prosecuted, should not be held liable³². The Supreme Court of Lithuania upholds the same position. For example, in Resolution No. 55 “On the cases relating to criminal acts against the financial system” (2005) it is noted that:

[...] the individual person’s prosecution does not mean that for committed acts in all cases legal person would be appealed as for criminal liability. In deciding whether a legal entity should be prosecuted, courts have to evaluate in each case whether the legal entity closely monitored criminal acts of its employees, has taken sufficient measures to prevent the criminal acts, etc.³³

In summary, it can be stated that the CC of Lithuania in principle implements most of the provisions of conventions and other EU legal acts related to the establishment of conditions for corporate criminal liability as well as criminal

³² **R.S. Litt**, The experience and views of the enforcement community, proceedings of the second symposium on crime and punishment in the United States, corporate crime in America: Strengthening the „Good Citizen“ corporation, 1995, p. 13; **D. Soloveičikas**, Juridinių asmenų baudžiamoj iatsakomybė (lyginamieji aspektai), TIC, Vilnius 2006, pp. 113–115.

³³ Senate of the Supreme Court of Lithuania, Resolution of 29 December 2005 No. 55 “On the Case-Law in the Criminal Cases Related to Criminal Acts against the Financial System”, Lietuvos Respublikos baudžiamasis kodeksas ir lydimoji medžiaga pastraipsniui, Vilnius 2009, pp. 593–594.

penalties for legal entities³⁴. In the opinion of the Authors, the CC must be supplemented with new types of criminal penalties recommended by EU legal acts for legal entities: (a) exclusion from entitlement to public benefit or aid; (b) placing under judicial supervision. The inclusion of these penalties in the CC would enable the expansion of the list of penalties applicable to legal entities, by new and effective punishments meeting the principle of proportionality and the requirements of EU legal acts to impose effective, proportionate and dissuasive penalties (measures) on legal entities for the criminal acts committed.

3. Conclusions

1. The significant part of the amendments of the Criminal Code of Lithuania has been stipulated by the implementation of the European Union legislation.
2. The Lithuanian legislator meets different types of problems in transposing abstract terms of the EU legal acts. There is a risk of incorrect implementation if the legislator decides to formalize such a term. However, literal implementation of the requirements of the EU legislation can distort the entire national system and become a tough issue to apply it.
3. The transposition of repeated acts, as aggravating circumstances, has become a big issue for the Lithuanian legislator, because administrative prejudice is recognized unconstitutional by the Constitutional Court of the Republic of Lithuania. The methods transposing repetition lead to an artificial criminalisation and strict liability or to the breach of the EU legislation.
4. Given the fact that Lithuania must implement the requirements of the EU legislation in the national law and criminalize preparation to commit certain acts as individual criminal offences, it should be considered whether it is necessary to leave, in the Criminal Code of Lithuania, the general rule that the preparation to commit a grave and very grave offence shall be punishable.
5. The Criminal Code of Lithuania should be supplemented with new types of criminal penalties recommended by the EU legal acts for legal entities: (a) exclusion from entitlement to public benefit or aid; (b) placing under judicial supervision.

³⁴ A. Abramavičius, D. Mickevičius, G. Švedas, *Europos Sąjungos teisės aktų įgyvendinimas Lietuvos baudžiamojoje teisėje*, Teisinės informacijos centras, Vilnius 2005, p. 98.

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Gintaras ŠVEDAS
Paulius VERŠEKYS

TENDENCJE I PROBLEMY ZWIĄZANE Z WDROŻENIEM PRAWA UNIJNEGO DO CZĘŚCI OGÓLNEJ LITEWSKIEGO KODEKSU KARNEGO

(Streszczenie)

Artykuł dotyczy teoretycznych i praktycznych kwestii związanych z wdrożeniem prawa unijnego do Części ogólnej litewskiego Kodeksu Karnego, jak również niektórych aspektów unijnego prawa karnego. Prawo to w istotny sposób wpływa na litewskie prawo karne, co może wywołać określone problemy w przyszłości.

Słowa kluczowe: prawo Unii Europejskiej; prawo karne; litewski Kodeks Karny