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Comparison of Czech and Slovak ‘Anti-Extremism’ Legislation

Introduction

Nowadays, concepts such as *extremism* or *political extremism* are mentioned almost daily, without much exaggeration, and interest in them is constantly growing, thus, it may seem that we are thoroughly familiar with the topic. However, there are a number of aspects that are not obvious in the context of extremism. Possibly owing to these, the issue of the so-called political extremism is constantly attractive and gains interest of the (not only expert) public - thanks to the ambiguities and controversies involved. It is true for this phenomenon, perhaps more than elsewhere, that what can be considered extremism is very closely related to who comes up with the assessment.

It is not surprising, therefore, that the term *extremism* is normative, not descriptive. This can have various secondary effects and certainly not all of them can be said to be positive. We can talk about positive benefits, for example, at the level of social control, where the designation of a selected group as hostile (anti-democratic) helps strengthen the conformity of society. At the same time, however, it cannot be argued that absolute conformity is a requirement and a dominant goal of a healthy and prosperous society. And although, for understandable reasons, certain sociopathological groups cannot be considered perfect examples of those who contribute to the prosperity of society, we should always bear in mind that the most honest criticism often comes from the mouth of our enemies. Therefore, disqualifying your opponents a priori - which corresponds exactly to the function of normative marking of groups of people - is what makes a democratic society less authentic and less self-confident. Where the manifestations of ‘extremism’ or nonconformism are completely absent, concerns with social conformity and stereotype should be raised. In such cases, social antipathy, which can be found in long-established (totalitarian) closed political systems, can also take on extreme proportions.¹

The concept of extremism is often perceived in various ways, usually incorrect ones. Moreover, lay explanations are in many cases characterized by a biased context. Due to the diversity of this term in the political, security, social, journalistic, official, criminal, scientific, or lay contexts, it is one of the most amorphous, but at the same time frequent, concepts in social sciences.²

¹ SMOLÍK, Josef and Petra VEJVODOVÁ. Politický extremismus jako bezpečnostní hrozba? In: SMOLÍK, Josef; ŠMÍD, Tomáš, et al. *Vybrané bezpečnostní hrozby a rizika 21. století*. Brno: Masarykova univerzita, 2011, p. 45.

² For more detail, see MILO, Daniel. Rasistický extrémizmus v Slovenskej republike.

To be termed as an 'extremist' is, to a certain extent, a stigma,¹ because this expression is generally understood as a synonym for an enemy and an undesirable person. Therefore, if we consider it problematic to use the term extremism alone, then its punishment under criminal law must be a clear manifestation of significant controversy.

In the context of discussions on political extremism in the Central European area, it can be stated that the Czech Republic (hereinafter referred to as the CR) and the Slovak Republic (hereinafter referred to as the SR) formed a single state unit for decades. This also corresponded to the fact that in many areas of public life the development was entirely identical, or at least very similar. This concerned not only the form of the constitution and the rule of law, but also the genesis of individual extremist organizations, tendencies, trends, etc.

There was a concordance in the field of the legal system until 1992; since 1. 1. 1993, however, the legal systems of the two republics began to part ways. Today, however, an opposite trend can be observed. There are international efforts for harmonization of legal systems and there are even tendencies to unify whole parts thereof. This is also true in the field of criminal law. These efforts can then be collectively described as the Europeanisation of (criminal) law. These include, for example, efforts of the Council of Europe, the European Union (hereinafter the EU) or the Organisation for Security and Co-operation in Europe (hereinafter the OSCE).

The possibilities of punishing extremism in the Czech Republic and Slovakia vary. However, it is possible that in the framework of Europeanisation or simple approximation of the form of criminal law, due to the geographical and historical proximity of both countries, the two will be unified. These efforts are greatly aided by comparative law aimed at comparing individual legal systems. In the field of security studies or political science, this also includes the field of comparative political science.

Comparative law as a legal science is based on the comparative method - this also forms its basis. As Pokorný states, "comparative law is considered to be one of the most effective and accurate tools in examining the state, level and development trends of legal institutions and entire legal systems of individual countries."²

The role of comparisons is also important "for the development of international terminology".³ Substantial effects in this field can also be observed in Central Europe. For example, Czech as well as Slovak criminal laws are strongly inspired by German legislation in the field of extremism, which is manifested not only at the level of terminology, but also in the concept of some legal regulations. Already during the first

Bratislava: *Lud'ia proti rasizmu*, p. 13; ŠTEFANČÍK, Radoslav and Miloslav HVAŠTA. *Jazyk pravcového extrémizmu*. Bratislava: Ekonóm, 2019, p. 19; GŘIVNA, Tomáš; SCHEINOST, Miroslav; ZOUBKOVÁ, Ivana et al. *Kriminologie*. Praha: Wolters Kluwer, 2014, p. 354; SMOLÍK, Josef and Petra VEJVODOVÁ. *Politický extremismus jako bezpečnostní hrozba?* In: SMOLÍK, Josef; ŠMÍD, Tomáš et al. *Vybrané bezpečnostní hrozby a rizika 21. století*. Brno: Masarykova univerzita, 2011, pp. 43-48.

¹ Cf. DANICS, Štefan. *Politologicko-právní aspekty militantní demokracie*. *Bussines & IT*. 2013, č. 2. Praha, ČVUT.

² POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 6.

³ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 6.

legal regulations, as well as political or politological discussions, the inspiration in the approaches applied in Germany was evident.¹

Research objective

Czech and Slovak experts in criminal law or criminology have been systematically focusing on the issue of political extremism since the 1990s.² The aim of this article is to compare Czech and Slovak criminal laws with regard to possible sanctions for extremism, which is why we consider comparative criminal law to be a very important discipline that allows such a comparison. The comparative method in its entirety means a very complex process, which provides comprehensive evaluation and results. Due to the limited scope of this paper, therefore, we will use the comparative method as an inspirational source for carrying out at least a basic comparison of selected parts of Czech and Slovak criminal laws.

Moreover, it is not easy to build our text on foundations that are not very solid in themselves, because, as Pokorný adds, “legal comparisons have always suffered from a lack of elaboration of methodology, theoretical bases, elaboration of goals and tasks” and, in addition, “unclear legal issues persist, especially in the field of sectoral comparative law.”³

Comparative criminal law, however, offers the best possible way to compare the criminal law codes of both countries, therefore, it has been chosen as the starting point for our work. In the Czech environment, this issue has been tackled most comprehensively by Ladislav Pokorný, who also summarized it in his publication *Úvod do trestněprávní komparatistiky (Introduction to Comparative Criminal Law)*.⁴ The procedures and methods described therein are also the basis for this paper.

It can also be stated that comparative law is in a way strongly influenced by the progressing European integration, which is manifested, inter alia, in the effort to create supranational law, including criminal law. This process is closely linked not only to the increasing internationalisation of crime, but also to political developments within the EU.

Internationalisation trends in crime are also typical for political extremism, and they are more than characteristic especially in the case of the Czech Republic and Slovakia. The transnationalisation of extremist activities is an interesting phenomenon, currently receiving increasing attention. In the Czech environment, this topic has already been addressed in several studies.⁵ It is also logical to offer a comparative

¹ Cf. MAREŠ, Miroslav. *Pravicový extremismus a radikalismus v ČR*. Brno: Barrister&Principa, Centrum strategických studií, 2003, pp. 13-17.

² Cf. ČERNÝ, Petr. *Politický extremismus a právo*. Praha: Eurolex Bohemia, 2005; ČERNÝ, Petr. *Právní ochrana před extremismem*. Praha: C. H. Beck, 2008; KUČHTA, Josef, VÁLKOVÁ, Helena et al. *Základy kriminologie a trestní politiky*. Praha: C. H. Beck, 2005.

³ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, pp. 11-12.

⁴ For more details, see POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium.

⁵ VEJVODOVÁ, Petra. *Transnational Forms of Contemporary Neo-Nazi Activity in Europe from the Perspective of Czech Neo-Nazis*. Brno: Muni Press, 2014; MAREŠ, Miroslav and Petra VEJVODOVÁ. *Transnacionální dimenze soudobého českého neonacismu. Mezinárodní vztahy*. 2011, vol. 46, no. 1, pp. 75-90.

perspective of the two state entities, which have not only had a long history of mutual relations, but also a long common development of extremist activities.¹ Therefore, there are several reasons to consider comparing the two criminal laws.

Conceptualization of the term *extremism*: a difficult search

The concept of *extremism* began to take shape during the 19th century, however, completely different meanings were attached to the term and it often denoted different and contradictory phenomena.² In the Czech security practice, but also in political science and security studies, the first discussions about 'extremism' took place in the mid-1990s, when the Czech Republic faced cases of political (ethnic, racially motivated) violence. Therefore, it can be stated that this concept is not new in the Czech environment.³

In democratic countries, extremism is used as an external and collective term for the specific social phenomenon in general, but also for its intellectual basis or for the activity arising from it independently. The ideological basis for extremism is in various ideologies (primarily or secondarily political ones), for which it is common to question the democratic foundations of society or some basic human rights and freedoms. From the point of view of the police, extremism is understood as a combination of verbal, graphic, physical, and other activities, typically with an ideological context, exercised by an individual or a group of people, aimed generally at undermining the public interest, attacking people, or damaging pre-selected targets. Extremists are understood by the police to be such persons or groups that are characterized by a significant deviation from generally established and currently accepted norms, especially with a high level of demagoguery and opinion intolerance and rejecting compromise solutions, while arguing for simple, quick, and unrealistic solutions to complex social problems, as well as directing attacks against population groups, regardless of whether these inhabitants are holders of the element against which the extremists' efforts are directed, as well as the lack of material motives in connection with the ideological motivation for their actions.⁴

Extremism is considered to be a multi-layered phenomenon, originating from many causes of social, economic, ideological, religious, ethnic, and ecological character or their various combinations.⁵

¹ MIHÁLIK, Jaroslav. "Politický extrémizmus: Kontext, koncepcie a jeho vymedzenie v Českej a Slovenskej republike." In: *Storočie českej a slovenskej krajnej pravice. 1918-2018*. Bratislava: IRIS, 2019.

² Cf. ŠEVČÍK, Michal. *Identita a mládež*. Brno: Nová kultura, 2021, pp. 21-26.

³ Cf. FIALA, Petr (ed.): *Politický extremismus a radikalismus v České republice*. Brno: Masarykova univerzita, 1998, pp. 7-44; MAREŠ, Miroslav. *Pravicový extremismus a radikalismus v ČR*. Brno: Barrister&Principal, Centrum strategických studií, 2003, pp. 13-90; DANICS, Štefan. *Extremismus*. Praha: Triton, 2003, pp. 10-15; DANICS, Štefan and Ladislava TEJCHMANOVÁ. *Extremismus, radikalismus, populismus a euroskepticismus*. Praha: Univerzita Jana Amose Komenského, 2014, pp. 15-18; LARYŠ, Martin; KUPKA, Petr and Josef SMOLÍK. *Krajní pravice ve vybraných zemích střední a východní Evropy. Slovensko, Polsko, Ukrajina, Bělorusko, Rusko*. Brno: Masarykova univerzita, 2009, pp. 15-17.

⁴ KUČHTA, Josef; VÁLKOVÁ, Helena et al. *Základy kriminologie a trestní politiky*. Praha: C. H. Beck, 2005, pp. 490-491.

⁵ Cf. DANICS, Štefan. *Extremismus – hrozba demokracie*. Praha: Police History, pp. 111-112.

In democracies, extremist phenomena are those which, by their existence, threaten primarily the democratic foundations of the state, its constitutional order, and the values protected by the state (declared human rights, civil liberties, and other basic social principles), the elimination of which would pose a real threat to the establishment of some form of non-democratic social system.

In these discussions, contradictions can be perceived at the level of social sciences (political science, psychology, sociology, and social anthropology) as well as law. The legal interpretation is more precise in many respects with clear procedural processes. From the point of view of social sciences, the term 'extremism' or 'extremist' is influenced by the position of the person who applies the label and their subjective view of the matter of interest.

Mareš also draws attention to another problem, namely the abuse of the concepts of extreme and extremist in the (not only Czech) journalistic discourse, often for the purposeful delegitimization of targets thus referred to by the mainstream entities.¹ In a similar manner, the vague use of the words 'extremism' or 'extremist' is criticized by other, not only domestic authors; apart from Mareš (CR), we can mention, for example, Mihálik, who draws attention to this contentious aspect in the definition of the essence of this phenomenon.²

Equally questionable is the use of the term extremism in Czech legal science, because, as Černý states, extremism is a political rather than a legal term, thus, not everyone who is referred to as an extremist can be prosecuted. Extremism is sanctioned by criminal law only when it grows into violence, proclamation of hatred, discrimination, defamation of certain groups of people, etc. In some respects, however, the situation in Slovakia is different, as the concept of extremist crimes is enshrined in the legal system (see below), therefore, extremism functions as a legal concept in this environment.

In addition to the above, the assessment of extremism is more dependent than elsewhere on the subjective assessment of the author or the state authorities. The lists are usually compiled by the government, which may consider any political opposition to be extremist. The designation of a group as extremist also has no legal relevance, and the term can be described as indeterminate and profane, although it is deeply rooted in the lay and professional public.³

The fact remains that the topic is widespread, controversial, and taken very seriously. Traditionally, extremism receives significant attention and is recognized as an established security threat. This is also reflected in the fact that the government has created a separate concept of combating extremism,⁴ or that Czech intelligence

¹ MAREŠ, Miroslav. *Pravicový extremismus a radikalismus v ČR*. Brno: Barrister&Principal, Centrum strategických studií, 2003, p. 21.

² MIHÁLIK, Jaroslav. "Politický extrémizmus: Kontext, koncepcie a jeho vymedzenie v Českej a Slovenskej republike." In: *Storočie českej a slovenskej krajnej pravice. 1918-2018*. Bratislava: IRIS, 2019.

³ For more detail, see ČERNÝ, Petr. *Právní ochrana před extremismem*. Praha: C. H. Beck, 2008.

⁴ The original concept was approved in 2009; the current version is called *Koncepce boje proti extremismu a předsudečné nenávisti 2021–2026 (Concept of Combating Extremism and Prejudicial Hatred 2021-2026)* and, as the title suggests, it also responds to the adopted legal

services regularly mention this threat in their annual reports. The Ministry of Defence also reacts to extremism as a specific form of threat. Although extremism is perceived as an internal threat, and the army is designed primarily to protect against external threats, the threat of extremism is seen primarily as a possible weakening of the army itself. Likewise, there is a risk of an increased threat to the credibility of this force of the state. In addition to various methodological-educational programmes for the army, the Ministry of Defence also responded by creating professional publications for internal use.¹ Similar response could also be observed in the Ministry of the Interior.²

The symbolism used by extremists can be described as a very specific area of manifestations of extremism. These symbols, used by individuals and groups to demonstrate their belonging to certain thought and opinion tendencies, are the most visible, but also the most controversial part of their identity. Therefore, extremist symbolism receives significant attention. As Mareš states, “in the fight against extremism, symbolism is of particular importance, which is, however, often exaggerated.” He also adds that “it cannot be said that if extremist symbolism is not used, extremism is subdued or non-existent, and on the contrary, not every public use of the symbols of historical totalitarian regimes has extremist motivation.” According to the applicable Czech legislation, it is not even possible to declare that the simple use of such symbols is a priori illegal. In other words, we cannot talk about symbols that would be prohibited in themselves. Said with Mareš, you cannot create a black list of symbols.³

Nevertheless, the symbolism of extremism is tackled in a number of professional publications both in the Czech Republic and in Slovakia. In addition to the above, let us mention, for example, manuals designed to identify extremist symbols. One of them was written for the use of the Slovak Ministry of the Interior,⁴ the other for a human rights think tank.⁵

Methodology: a comparative method

With the changing nature of social reality, changes in comparative criminal law are also necessarily manifested, both at the level of how they approach their subject of interest and in terms of defining their tasks and goals. In order to approximate comparative criminal law at least in the most basic outlines, it is important to realize that, as a separate discipline, it has its own:

- bases;
- basic delimitation;
- internal breakdown;

concepts, which are only beginning to appear in the Czech environment.

¹ E.g., MAREŠ, Miroslav, SVOBODA, Ivo and Eduard STEHLÍK. *Extremismus jako bezpečnostní hrozba*. Praha: MO ČR, 2011.

² MAREŠ, Miroslav. *Symboly používané extremisty na území ČR v současnosti: manuál pro Policii ČR*. Praha: MV ČR, 2006.

³ MAREŠ, Miroslav; SVOBODA, Ivo and Eduard STEHLÍK. *Extremismus jako bezpečnostní hrozba*. Praha: MO ČR, 2011.

⁴ MV SR. *Symbolika využívaná extrémistickými a radikálnymi skupinami. Príručka pre identifikáciu symbolov*. Bratislava: MV SR, 2016.

⁵ CENAA. *Rozpoznávanie politického extrémizmu na Slovensku. Príručka pre identifikáciu extrémistických symbolov*. Bratislava: CENAA, 2013.

- pitfalls;
- objectives;
- procedures and approaches.¹

Defining the comparative criminal law and its fundamentals precisely is not easy. However, its essence, based on comparisons, is important. Still, in order to compare any phenomena, these must not only be different, but also comparable. Although, in theory, anything can be compared to anything, we should always strive to reach a “reasonable and useful conclusion” in the comparison.²

Therefore, the role of the comparator, i.e., the one who makes the comparison, is important, as they determine what will be the subject of examination, what is worth examining. Two models (classical and ‘new’) are offered in the question of what to examine. This work is based on the classical concept, which Pokorný characterizes as “examining one’s own legal system and its institutes and comparing this regulation with the regulation of such institutes in the legal system of selected other state or states.”³

Regarding the comparison itself, there are essentially two basic elements that will be compared. The first one is the *comparatum*, the other *comparandum*. Comparatum is the primary element, which the secondary element - comparandum - is compared with. The only difference between the two is only in the prism that the comparator will take and which of the elements will be chosen as the primary one. We also need to determine the third element of comparison, the *tertium comparationis*, i.e., the element that will be assessed in the comparison itself. Therefore, in order to make a comparison, we must first identify all of these elements and define them as precisely as possible. Likewise, we must be sure that tertium comparationis is chosen meaningfully and reasonably (Pokorný 2010).

The basic task of comparisons is thus “to isolate various comparable legal phenomena and to establish tertium comparationis”. Therefore, the subject of comparative law always arises from this process. This is also related to the nature of its various types.

Pokorný states that the types of comparative law can be distinguished mainly from:

- a) micro- and macro-comparison;
- b) comparison with a foreign element and internal comparison;
- c) horizontal comparison and historical comparison;
- d) bilateral and multilateral comparisons;
- e) comparison of national law and comparison of international and supranational law (vertical comparisons).⁴

Due to the characteristics of individual types of legal comparisons, the approach of this paper can be defined as a micro-comparison; with a foreign element; horizontal; bilateral; where national law is compared. As far as the nature of comparative criminal law is concerned, it can be defined as an independent part of general comparative law,

¹ See POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010.

² POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, pp. 11-12.

³ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 12.

⁴ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 15.

the focus of which is specifically oriented towards substantive and procedural criminal law.

It is also important that, although the method of comparison is essential for comparative criminal law, the use of other methods is also important, e.g., analysis and synthesis, induction and deduction, or sociological methods.¹ In addition, Klokočka adds that “it is necessary to rely on all methods that, in their summary, enable knowing the meaning and actual function of individual components of the constitutional system.”² The principle of functionality is emphasized. “Functional analysis means comparing how the constitutional system or institutions operate in practice, taking into account the model solution;” its main objective is to seek an answer to the “question about the actual role of the institutes of interest.”³

In the search for the meaning of the comparison itself, we must look at the basic arguments that justify the comparison. In this respect, Pokorný mentions that “the need for comparative argumentation in constitutional law is greater than in other legal sectors, taking into account the universality of human rights and the fundamental principles of the rule of law and the constitutional state.”⁴ Both of these elements play an important role here, but the meaning of each is different. When it comes to the principles of the rule of law and the constitutional state, the link to the selected environments only is obvious. In the case of the mentioned universality, the situation is not so problem-free.

Claims similar to those of Pokorný undoubtedly take the lead in the current mainstream of human rights debates, but it is worth pointing out that the mentioned ‘universality’ may not be the only conceivable standard. If we talk about the fact that the universality of human rights is given by the biological essence of human as a species, then it is, of course, undisputable from the theoretical point of view. In practice, however, it is also important to take into account the specific conditions that put this neutral view into a somewhat different light. The level of human rights and how they are conceived and understood depends on the specific environment and culture, both in the wider cultural space and on the personal level.

Although it is not the intention of this text to discuss the more complicated issue of human rights and to engage in political and philosophical debates, it is worth drawing attention to a certain controversy of the claims about the universality of human rights (in the context of ethnocentrism).⁵ It is evident that the definition of that universality not only is not subject to absolute agreement even in the case of the respective authorities, but is also inextricably related to what kind of individuals come up with these theses, at what time, at what stage of development (of culture as well as their own intellect), what context the given claims appear in, and (last but not least) also with what motives they do so.

¹ For more details, see POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010.

² KLOKOČKA, V. *Ústavní systémy evropských států*. Praha: Linde, 2006, p. 17.

³ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 19.

⁴ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 19.

⁵ Cf. SMOLÍK, Josef. Koncept lidských práv a mezinárodní vztahy: kritický pohled. In: EŠTOK, G.; GEFFERT, R.; BZDILOVÁ, R. (eds.). *Lidské práva. Kam kráčaš demokracia. Košické politologické dialógy*. 1st ed. Košice: Univerzita Pavla Jozefa Šafárika, 2015. pp. 299-311.

The possibilities of applying the principles of universality of human rights stand and fall with the culture they are supposed to be promoted within. Were it our intention to introduce our Western level of perception of human rights into all human communities on Earth, we would necessarily have to come to the partial conclusion that some communities do not meet our standards. This can be assumed, for example, in comparison with some 'primitive' tribal societies. This means that in the first step, a superior-subordinate opposition would be created, where we would assume the superior role in the name of perceived objectivity. If we went further and tried to 'graft' our perception of the universality of human rights into such an environment, it would necessarily be a manifestation of a violent act. Therefore, we would immediately be committing a double denial of our own principles. Thus, in essence, this concept displays signs of a paradox.

Therefore, it may not be useful to devote ourselves to criminal law comparisons with regard to human rights only if we are aiming at unifying the law and its standards. Certainly, facilitating certain processes in dealing with transnational crime and the like provides an undoubted advantage for the competent criminal justice authorities, but the other level of this issue should not be left behind.

If comparative criminal law is used to learn the true meaning and function of the constitutional system (or its parts) and then use these findings with faith in the universal nature of human rights to unify it transnationally, the main aim is to facilitate sanctions under criminal law in the context of international or cross-border crime. In the comparison itself, it is appropriate to take into account national specificities in order to understand the meaning and function of the constitutional system in the best possible way and in a broader context. This is based on the assumption that local conditions shape, to a certain extent, the nature of criminal law. Here, however, it is also necessary to approach the issue from the opposite side.

If criminal law is unified across different countries, it can also be concluded that such a unified law may not be suitable for all of them. Similarly, it can be assumed that the adoption of criminal law, which will not be inherent in the selected country, will entail certain externalities - for example, in the form of unintended social-cultural impacts. Therefore, it makes sense to perceive the interconnectedness of the social context and criminal law not only if we want to adequately understand the specific law, but also to be able to sensitively map how and to what extent the given forms of criminal law are reflected, for example, in social norms or the nature of freedom of speech. This is particularly important in connection with the issue of political extremism and the application of repressive measures against it, as the very definition of it is associated with controversy in some respects.

If we take the position that social reality helps shape the nature of criminal law, assuming that this influence is reciprocal, we must consider all aspects even if we are going in the opposite direction, i.e., from the nature of criminal law to social reality. As Pokorný puts it:

“Comparative criminal law must therefore take into account sociological aspects in a broad sense, application in practice, and linguistic difficulties. Sociological aspects include the political and economic environment, morality, religion, traditions, as well as data on the state, scope and nature

*of crime. All these aspects should then be put into a relationship with positive law, i.e., legal structures, including their verbal expression.*¹

Therefore, it is appropriate to address the same aspects also in the case of examining the possible impact of criminal law on social reality. It is not without interest that Pokorný emphasizes that he “considers the decisive data necessary for comparative research in criminal law to be national mentality, including religious feeling, as well as philosophical and moral data, scientific doctrine (knowledge obtained by social sciences, criminology, psychology, psychiatry, anthropology, etc. is important ... it is not criminal law, but applied sciences that enable commentary on certain legal definitions), and political and social conditions.”²

All of this should lead to findings about the criminal law, not only in terms of whether it is applied, but also in what ways. Of course, it is clear from such a comprehensive list that comparison made at all these levels is a very complex and extensive matter, which does not correspond to the nature nor capacities of this paper. “This summary of the elements of comparison represents the preliminary stage of any comparative research. In principle, the comparison itself can be carried out using two methods (approaches): the static method and the dynamic method.”³

Pokorný also states that not only traditions, cultural orientation, or the integration of the state into a legal system, but also “urgent demands for criminal policy in the face of real threats of crime” play an important role in criminal law.⁴

If we take into account that in a number of aspects the Czech Republic is very close to Slovakia, not only in terms of similar culture, but also with a long-term common political history, one of the good reasons to start comparing these two countries is to find just how different (despite all similarities) the situation with extremism and its sanctions under criminal law is.

Premises for comparison

The first step in comparing criminal law and its necessary prerequisite at the same time is the study of foreign law. It means that we examine the wording of the respective acts, therefore, in the field of criminal law, the primary focus is on the study of codes. Once the comparator has made a basic comparison of the selected parts, they will perform a synthesis in which they will specify the elements that are common to both legal systems (or their examined parts) and those that differ. While the comparator should not be limited to the formal wording of the law when examining the materials, they should also focus on the search for differences between positive law and its application, thus, “the study of secondary sources, be it jurisprudence, court decisions, criminal statistics or doctrinal sources - textbooks, articles, etc., is extremely important for comparative criminal law.”⁵ Unfortunately, it is not within the capacities of this study to tackle comparisons at such an extensive level, however, where it is possible, secondary sources will be used.

¹ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 20.

² POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, pp. 20-21.

³ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 21.

⁴ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 22.

⁵ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010, p. 24.

As another prerequisite for meaningful comparison, according to Pokorný, it is important to define the rules that determine the entire legal system.¹ There are not many of these 'defining elements', still, their definition is not entirely clear. Therefore, let us try to define at least some of the following for the Czech and Slovak legal systems:

- *Principle of legality*: It is based on the assumption that state authorities can only do what the law explicitly allows them to do, while citizens are allowed to do anything that is not specifically forbidden. This principle is governing for both the Czech² and the Slovak³ constitutions.
- *Prohibition of retroactivity of the Criminal Code*: Here, the criminal offence is punishable only if its criminality was established by law before it was committed. This principle applies in the Czech⁴ as well as in the Slovak environment.⁵
- *Classification of offences*: In the Czech Republic⁶ and in Slovakia⁷ alike, the general division is the same, but in the Slovak environment, 'Czech' offences are referred to as 'unlawful conduct'. In both cases, criminal offence falls under public law offences. The division of offences is as follows:
 - public law offences;
 - private law offences;
 - mixed offences.
- *Principle of culpability*: It is also present in Czech and Slovak criminal law alike. In the Czech Republic it is Section 13(2) of the Criminal Code, in Slovakia it is covered Sections 15 to 18 of the Criminal Code.

The determining elements in the legal systems of both countries are very close. Therefore, in agreement with Pokorný, it is much more important to focus our attention on the secondary elements - those that can serve as the *tertium comparationis*, i.e., the element supposed to be compared.

Due to our focus on extremism, we will deal with those secondary elements that are related to extremism. Of course, there are many secondary elements and the purpose of this paper is not to provide a comprehensive legal comparison of the issue. From this point of view, it is possible to deal with, for example, crimes related to

¹ POKORNÝ, Ladislav. *Úvod do trestněprávní komparatistiky*. Praha: Auditorium, 2010.

² PSP 2015: *Ústava ČR* [on-line]. *Document*. Available from:

<http://www.psp.cz/docs/laws/constitution.html>

Polície 2015: *Nález Ústavného súdu* [on-line]. *Document*. Available from:

www.policie.cz/soubor/n14-1994-pdf.aspx

³ MZV 2015: *Ústava Slovenskej republiky* [on-line]. *Document*. Available from:

[http://www.mzv.sk/App/wcm/media.nsf/vw_ByID/ID_F38FE30121A6A4BAC1257648004A9230_SK/\\$File/ustava.pdf](http://www.mzv.sk/App/wcm/media.nsf/vw_ByID/ID_F38FE30121A6A4BAC1257648004A9230_SK/$File/ustava.pdf)

⁴ MV ČR 2009: *Sbírka zákonů* [on-line]. *Document*. Available from:

www.mvcr.cz/soubor/sb011-09-pdf.aspx

⁵ ÚS SR 1995: *Nález Ústavného súdu: PL. ÚS 16/95*. Nález z 24. mája 1995. Zbierka nálezov a uznesení Ústavného súdu Slovenskej republiky 1995, p. 49.

⁶ Právo-cz 2015: *Klasifikace deliktů* [on-line]. *Document*. Available from: <http://pravo-cz.studentske.cz/2008/04/klasifikace-delikt-prvn-odpovdnost.html>

⁷ BRÓSTL, Alexander; DOBROVIČOVÁ, Gabriela a Imrich KANÁRIK. *Teória práva*. 3rd ed. Košice: Edičné stredisko UPJŠ, 2007, p. 89.

extremism, which we understand as the *tertium comparationis* within this text. These are criminal offences whose motive lies in racial, national, religious, or other type of hatred; it is then the sign of the fundamental or qualified facts of the criminal offence.¹

A comprehensive list of crimes related to extremism is provided in the new Criminal Code. The Prosecutor General's Office,² referring to General Instruction No. 8/2009, on Criminal Proceedings, in Article 73, footnote 297, provides a complete list of crimes committed with hate motivation, consisting of racial, national, religious, or other hatred, but also adds that "crimes with extremist subtext can be understood as crimes motivated by racial, national or other social hatred".

In Slovakia, similar legislation developed in a somewhat more complex way. What is not perceived as a significant deficiency in the Czech environment, was a certain complication in Slovakia, and therefore, in response to the lack of legal definitions, the following legal definitions of the terms *extremism*, *extremist*, and *extremist group* were introduced into the Criminal Code.³

In addition, the Prosecutor General's Office⁴ adds in its methodological material on the subject of extremism that "eventually, Section 140a of the Slovak Criminal Code provides a definition of extremist crimes [in force from 1. 9. 2009, this provision was included by Amendment No. 257/2009 Coll.]." They are described quite specifically in the Slovak criminal law.^{5,6}

Comparison of 'anti-extremist' laws in the Czech and Slovak criminal law

The next step will be comparison of Czech and Slovak legislation in the field of criminal law with a focus on extremism. According to the previous findings, it is clear that the primary and significant difference between both legal systems is the fact that the Slovak one contains a legal definition of what an *extremist crime* is. The comparison will be based on the updated version of the respective act in the Czech environment, i.e., the variants of criminal offences and the wording of their facts will be based on the new *Criminal Code*.

¹ See ČERNÝ, Petr. *Politický extremismus a právo*. Praha: Eurolex Bohemia, 2005, p. 161.

² Nejvyšší státní zastupitelství 2009: Metodický manuál: Extremismus [on-line]. *Document*. Available from: portal.justice.cz/nsz/soubor.aspx?id=82741

³ These definitions were proposed by the Constitutional Law Committee of the National Council of the Slovak Republic in the context of comments on the draft of the Criminal Code (later adopted under No. 300/2005 Coll.) (NSS 2009).

⁴ Nejvyšší státní zastupitelství 2009: Metodický manuál: Extremismus [on-line]. *Document*. Available from: portal.justice.cz/nsz/soubor.aspx?id=82741

⁵ *Zákony pre ľudí 2016: Zákon č. 316/2016 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2016-316>

⁶ *Zákony pre ľudí 2005: Zákon č. 300/2005 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

Table 1: Czech and Slovak “anti-extremist” laws; an overview table.

CRIMINAL OFFENCES RELATED TO EXTREMISM in the Czech Republic. Definition according to the CRIMINAL CODE, as amended (in force since 28 June 2022)	OFFENCES OF EXTREMISM in the Slovak Republic. Definition according to the CRIMINAL CODE, as amended (in force since 1 January 2021)
The criminal offences related to extremism are:	The criminal offences of extremism are:
Violence against a group of people and against an individual pursuant to Section 352(2) and (3) of the Criminal Code	The offence of establishing, supporting and promoting a movement aimed at suppressing fundamental rights and freedoms pursuant to Section 421 and the offence of expressing sympathy for a movement aimed at suppressing fundamental rights and freedoms pursuant to Section 422
Defamation of a nation, race, ethnic, or other group of people pursuant to Section 355 of the Criminal Code	Production of extremist materials pursuant to Section 422a, dissemination of extremist materials pursuant to Section 422b, possession of extremist materials pursuant to Section 422c
Instigation of hatred towards a group of people or of suppression of their rights and freedoms pursuant to Section 356 of the Criminal Code	Defamation of a nation, race and beliefs pursuant to Section 423
Murder pursuant to Section 140(1) or (2), (3)(g) of the Criminal Code	Incitement of national, racial and ethnic hatred pursuant to Section 424
Grievous bodily harm pursuant to Section 145(1), (2)(f) of the Criminal Code and bodily harm pursuant to Section 146(1), (2)(e) of the Criminal Code	Incitement, defamation and threatening people on account of their belonging to any race, nation, nationality, colour, ethnic group, descent pursuant to Section 424a
Extortion pursuant to Section 175(1), (2)(f) of the Criminal Code	Crime committed out of a specific motive pursuant to Section 140, point (e): out of hatred against a group of persons or an individual because of their actual or deemed belonging to a race, nation, nationality, ethnicity, because of their actual or deemed origin, skin colour, gender, sexual orientation, political opinions or religion.
Damage to a thing of another pursuant to Section 228 (1) or (2), (3)(b) of the Criminal Code	
Genocide pursuant to Section 400 of the Criminal Code, and attack against humanity pursuant to Section 401(1)(e) of the Criminal Code	Denial or approval of the Holocaust, the crimes of political regimes and the crimes against humanity pursuant to Section 422d.

Establishment, support and promotion of movements aimed at suppression of rights and freedoms of people pursuant to Section 403 of the Criminal Code, expressing sympathies for movements aimed at suppression of rights and freedoms of people pursuant to Section 404 of the Criminal Code, denial, impugnation, approval and justification of genocide pursuant to Section 405 of the Criminal Code.	Establishment, support and promotion of movements directed at the suppression of fundamental rights and freedoms pursuant to Section 421
Section 402 Apartheid and Discrimination against a Group of People	According to Section 424a, this is a crime of apartheid and discrimination against a group of people.

Source: Authors using NSS 2009, Zákony pre ľudí 2016 and Zákony pre ľudí 2005.

The following section compares crimes with similar facts in the Czech and Slovak legal environments. In this text, Czech criminal law, or its specific part which deals with crimes related to extremism, will be considered as the reference element. It will be compared to the Slovak criminal law, both in terms of the wording of individual facts (in terms of factual similarity or the scope and detail of the description of crime), as well as with regard to the length of imprisonment imposed for selected crimes.

Section 352 Violence Against Group of People and Individuals

Section 352, paragraphs 2 and 3 of the Criminal Code may be considered as describing a crime related to extremism. Their wording is as follows:

- 2) Whoever uses violence against a group of people or against an individual or threatens them with death, bodily harm or causing extensive damage for their true or presupposed race, belonging to an ethnic group, nationality, political or religious beliefs or because they are truly or supposedly without religion, shall be sentenced to imprisonment for six months to three years.
- 3) The same sentence as in Sub-section (2) shall be imposed to anyone who
 - a) conspires or assembles for the purpose of committing such an act.¹

Paragraph 2) lists the individual acts covered. This list is quite diverse, so it can be expected that any equivalents in the Czech and Slovak criminal law will not be included in a single section, or in one of its paragraphs. In this respect, it can be assumed that the more extensive and varied the description each section (or each of its paragraphs) contains, the more likely an equivalent description will be found in a larger number of Slovak sections. Therefore, in order to make a meaningful comparison (for the purposes of this paper), the acts described in the second paragraph will be understood as individual *components* for which the corresponding Slovak equivalents will be sought.

Regarding paragraph (3), this is a clarification of the preceding paragraphs. It contains points (a) and (b), of which only point (a) applies to extremism. Forms of organisation through which the offences referred to in the second paragraph may be committed are presented here.

¹ Zákon č. 40/2009 Sb., Trestní zákoník, ve znění pozdějších předpisů, § 352.

For the sake of clarity, the individual components of this section can be defined as follows:

Table 2: Individual components of Section 352

ACT	VARIANT OF THE ACT	AGAINST WHOM?	MOTIVATION	PENALTY
<ul style="list-style-type: none"> ▪ Use of violence ▪ Use of death threats, threat of bodily harm or large-scale damage 	<ul style="list-style-type: none"> ▪ Conspiracy to commit such an act 	<ul style="list-style-type: none"> ▪ Group of people ▪ Individual 	<ul style="list-style-type: none"> ▪ For true or presupposed race ▪ For true or presupposed belonging to an ethnic group ▪ For true or presupposed nationality ▪ For true or presupposed political beliefs ▪ For true or presupposed religion or true or presupposed absence thereof 	<ul style="list-style-type: none"> ▪ 6 months to 3 years

Source: Authors using Act No. 40/2009 Coll., Criminal Code, as amended.

Equivalents in the Slovak criminal law:

The use of violence or the threat of its use against a group of citizens has the equivalent in Slovak criminal law in Section 359 *Violence against a Group of Citizens*, with the following wording:¹

(1) Any person who threatens a group of citizens with killing, inflicting grievous bodily harm or other aggravated harm, or with causing large-scale damage, or who uses violence against a group of citizens, shall be liable to a term of imprisonment of up to two years.

(2) The offender shall be liable to a term of imprisonment of six months to three years if they commit the offence referred to in paragraph 1

(a) out of a specific motive.

From the point of view of anti-extremist legislation under Section 140a (of the amended version of the Criminal Code), this “specific motive” corresponds to Section 140(e), listed in Table 1.

In the case of threats to an individual, these are dealt with in Section 360, paragraphs (1) and (2):

¹ *Zákony pre ľudí 2016: Zákon č. 316/2016 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2016-316>

Zákony pre ľudí 2005: Zákon č. 300/2005 Z. z. [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

(1) Any person who threatens another with killing, inflicting grievous bodily harm or other aggravated harm to an extent which may give rise to justifiable fears shall be liable to a term of imprisonment of up to one year.

(2) The offender shall be liable to a term of imprisonment of six months to three years if they commit the offence referred to in paragraph 1,

(c) with the intention of preventing or obstructing the exercise of fundamental rights and freedoms by another,

(d) out of a specific motive.

Taking into account the 'specific motive', which corresponds to the 'motivation' in the Czech Republic, penalties in the Czech Republic and Slovakia are the same, i.e., 6 months to 3 years. However, Slovak criminal law does not include the variant of 'mere' conspiracy or association to commit such an act.

Section 355 Defamation of Nation, Race, Ethnic or Other Group of People

This paragraph consists of two paragraphs, the first one describing the fundamental facts and the second one specifying the variant of committing the crime, where a higher penalty threatens.¹

(1) Whoever publicly defames

a) any nation, its language, any race of ethnic group, or

b) a group of people for their true or presupposed race, belonging to an ethnic group, nationality, political or religious beliefs or because they are truly or supposedly without religion, shall be sentenced to imprisonment for up to two years.

(2) An offender shall be sentenced to imprisonment for up to two years, if they commit the act referred to in Sub-section (1)

a) with at least two persons, or

b) by press, film, radio, television, publicly accessible computer network or in another similarly effective way.

Defamation has an equivalent in Slovak criminal law in Section 423 *Defamation of a Nation, Race and Beliefs*. In both Czech and Slovak criminal law, it is explicitly specified that defamation must be public. The public element is therefore one of the defining factors. The Act has the following wording:²

(1) Who publicly defames

(a) any nation, language, race or ethnic group; or

(b) an individual or group of persons, on account of their belonging to any race, nation, nationality, colour, ethnic group, descent, religion, or lack of belief, shall be punishable by a term of imprisonment of one to three years.

¹ Zákon č. 40/2009 Sb., Trestní zákoník, ve znění pozdějších předpisů, §355

² Zákony pre ľudí 2016: *Zákon č. 316/2016 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2016-316>

Zákony pre ľudí 2005: Zákon č. 300/2005 Z. z. [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

(2) The offender shall be punished by imprisonment for two to five years if they commit the act under paragraph 1
(e) out of a specific motive.

In the Slovak version, unlike in the Czech version, it is stated that an individual can also be defamed, while in the Czech Republic this applies only to a group of people. Objects of defamation listed in the Czech code are, with one exception (political beliefs), also found in the Slovak one, however, there are some objects of defamation added compared to the Czech Republic. These are *nation, skin colour, descent* (ancestry). On the contrary, where the definitions in the Slovak Criminal Code fall short of the Czech one is the issue of 'presupposed belonging'.

Concerning the second paragraph, its point (a) assumes in both cases committing 'by at least two persons', but whereas the next point in the Czech version only elaborates on the channels through which the defamation takes place, in the Slovak version aggravating circumstances are described with regard to the position of the perpetrator, other circumstances, or the aforementioned 'specific motive'. The length of penalty differs from one country to another. While in the Czech Republic the highest penalty is 3 years, in the Slovak Republic it is up to five years in prison.

Section 356 Instigation of Hatred Towards a Group of People or of Suppression of Their Rights and Freedoms

This paragraph consists of three paragraphs, the first one describing the fundamental facts, the second one specifying the variant of committing the crime, and the third one specifying the variant where a higher penalty threatens:¹

(1) Whoever publicly instigates hatred towards any nation, race, ethnic group, religion, class or another group of people or instigates suppression of rights and freedoms of their members, shall be sentenced to imprisonment for up to two years.

(2) The same sentence shall be imposed to anyone who conspires or assembles to commit the act referred to in Sub-section (1).

3) An offender shall be sentenced to imprisonment for six months to three years, if they

(a) commit the act referred to in Sub-section (1) by press, film, radio, television, publicly accessible computer network or in another similarly effective way, or

(b) actively participate in activities of a group, organisation or association that promotes discrimination, violence or race, ethnic, class, religious or other hatred by such an act.

This crime has its equivalent in Slovak Criminal Code in Section 424 *Incitement of National, Racial and Ethnic Hatred*. The wording of the offence is as follows:²

Section 424 Incitement of National, Racial and Ethnic Hatred

(1) Any person who publicly threatens an individual or a group of persons

¹ Zákon č. 40/2009 Sb., Trestní zákoník, ve znění pozdějších předpisů, § 356.

² Zákony pre ľudí 2016: *Zákon č. 316/2016 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2016-316>
Zákony pre ľudí 2005: *Zákon č. 300/2005 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

because of their actual or deemed affiliation to any race, nation, nationality ethnicity, because of their actual or deemed origin, skin colour, sexual orientation, political opinions, religion, or because they have no religion, or whoever publicly incites restriction of their rights and freedoms, shall be punished by a prison sentence of up to three years.

(2) The same sentence as referred to in paragraph 1 shall be imposed on any person who associates or assembles with others to commit the offence referred to in paragraph 1.

(3) The offender shall be liable to a term of imprisonment of two to six years if they commit the offence referred to in paragraphs 1 or 2

- (a) out of a specific motive,
- (b) as a public official,
- (c) as a member of an extremist group, or
- (d) under a crisis situation.

In addition, Czech law indicates membership of a *class* and an unspecified *other group of people* - generally speaking, it can be said that the Slovak legal regulation takes approach of enumeration of a number of specific circumstances, while the Czech regulation is noticeably more vague. Although the reference to restrictions of rights and freedoms in the Slovak version does not appear directly in the title, it is included in the text of the act. In the Czech Republic, the maximum penalty for this crime is 3 years, in Slovakia up to 6 years, which is twice as high as in the Czech Republic.

Section 140 Murder

This section consists of three paragraphs, each of which states a differently high level of penalty, differentiated on the basis of the seriousness of the circumstances of committing the murder:¹

(1) Whoever intentionally kills another person shall be sentenced to imprisonment for ten to eighteen years.

(2) Whoever intentionally kills another person with premeditation and after prior consideration shall be sentenced to imprisonment for twelve to twenty years.

(3) An offender shall be sentenced to imprisonment for fifteen to twenty years or to an exceptional sentence of imprisonment, if they commit the act referred to in Sub-section (1) or (2)

(g) on another person for their true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of their true or presupposed lack of religious faith.

In Slovak criminal law, we can find several relevant paragraphs on this crime. All of them are included among *criminal offences against life*. These are paragraphs 144 and 145 (*premeditated murder* and *murder*) and paragraphs 147 and 148 (*manslaughter*) (SLOV-LEX 2015):

¹ Zákon č. 40/2009 Sb., Trestní zákoník, ve znění pozdějších předpisů, §140

Section 144 First Degree Murder

(1) Any person who intentionally kills another person with premeditation shall be liable to a term of imprisonment of twenty to twenty five years.

(2) The offender shall be liable to a term of imprisonment of twenty-five years or to a life imprisonment sentence if they commit the offence referred to in paragraph 1 (e) out of a specific motive.

Section 145 Second Degree Murder

(1) Any person who intentionally kills another person shall be liable to a term of imprisonment of fifteen to twenty years.

(2) The offender shall be liable to a term of imprisonment of twenty-five years or to life imprisonment sentence if they commit the offence referred to in paragraph 1 (d) out of a specific motive.

(3) The offender shall be liable to a term of imprisonment of twenty-five years or to a life imprisonment sentence if they commit the offence referred to in paragraph 1 (a) and they were already convicted for such offence or for the first degree murder, (b) in a dangerous group.

Killing

Section 147

(1) Any person who, with the intention of causing grievous bodily harm to another person, causes their death by negligence shall be liable to a term of imprisonment of seven to ten years.

(2) The offender shall be liable to a term of imprisonment of nine to twelve years if they commit the offence referred to in paragraph 1 (b) out of a specific motive.

(3) The offender shall be liable to a term of imprisonment of twelve to fifteen years if they commit the offence referred to in paragraph 1 (a) acting in a more serious manner, (b) as a member of a dangerous group.

Section 148

(1) Any person who, with the intention of causing bodily harm to another person, causes their death by negligence shall be liable to a term of imprisonment of three to eight years.

(2) The offender shall be liable to a term of imprisonment of five to ten years if they commit the offence referred to in paragraph 1 (b) out of a specific motive.

(3) The offender shall be liable to a term of imprisonment of seven to twelve years if they commit the offence referred to in paragraph 1 (a) acting in a more serious manner, (b) as a member of a dangerous group.

It can be seen that the Slovak criminal law includes in extremist acts a much wider range of variants of crimes against life than the Czech law. The highest penalty in the Czech Republic for this type of crime is 15 to 20 years, in Slovakia it is 25 or life imprisonment. Again, in the Slovak environment, there are significantly tougher penalties. Interestingly, in Slovakia, it is possible to include participation in suicide as an extremist act, namely, if it occurs out of a 'specific motive'. It is described in Section 154(2)(c).

Section 145 Grievous Bodily Harm, paragraphs (1), (2)(f); Section 146 Bodily Harm, paragraphs (1), (2)(e)

In each of the two sections, two paragraphs are related to extremism, the first paragraph always describes the fundamental facts and the second paragraph, in combination with the respective point, specifies the 'extremist' variant of the act:¹

Section 145 Grievous Bodily Harm

(1) Whoever intentionally inflicts grievous harm to the health of another person, shall be sentenced to imprisonment for three to ten years.

(2) An offender shall be sentenced to imprisonment for five to twelve years if they commit the act referred to in Sub-section (1)

(f) on another person for their true or presupposed race, belonging to an ethnic group, nationality, political beliefs, religion or because of their true or presupposed lack of religious faith.

Section 146 Bodily Harm

(1) Whoever intentionally harms another person's health shall be sentenced to imprisonment for six months to three years.

(2) An offender shall be sentenced to imprisonment for one year to five years, if they commit the act referred to in Sub-section (1)

(e) on another person for their true or presupposed race, belonging to an ethnic group, nationality, political beliefs, religion or because of their true or presupposed lack of religious faith.

Slovak criminal law also has its equivalents to *grievous bodily harm* and *bodily harm*. These are included in Sections 155 and 156:²

Section 155

(1) Any person who intentionally causes grievous bodily harm to another person shall be liable to a term of imprisonment of four to ten years.

(2) The offender shall be liable to a term of imprisonment of five to twelve years if they commit the offence referred to in paragraph 1

(c) out of a specific motive.

¹ Zákon č. 40/2009 Sb., Trestní zákoník, ve znění pozdějších předpisů, §145

² Zákony pre ľudí 2016: *Zákon č. 316/2016 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2016-316>

Zákony pre ľudí 2005: Zákon č. 300/2005 Z. z. [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

Section 156

(1) Any person who intentionally causes bodily harm to another person shall be liable to a term of imprisonment of six months to two years.

(2) The offender shall be liable to a term of imprisonment of one to three years if they commit the offence referred to in paragraph 1

(b) out of a specific motive.

The problem of bodily harm is addressed in a very similar way in both legislations and the maximum penalties in both countries is 5 to 12 years in the case of grievous bodily harm. There are difference in individual variants, but not significant ones. In the case of 'mere' bodily harm, the penalty is lower in Slovakia, for both paragraphs of the respective section:

(1) imprisonment of 6 months to 2 years (compared to 6 months to 3 years in the CR); (2) imprisonment of 1 to 3 years compared to 1 to 5 years in the CR).

Section 175 Extortion, paragraphs (1), (2)(f)

This section consists of two paragraphs, the first one describing the fundamental facts and the second one specifying the variant of committing this crime with a higher penalty:¹

(1) Whoever forces another person by violence or by a threat of violence or another serious detriment to act, omit or to suffer something, shall be sentenced to imprisonment for six months to four years, or to a pecuniary penalty.

(2) An offender shall be sentenced to imprisonment for two to eight years, if they (f) commit such an act on another for their true or presupposed race, belonging to an ethnic group, nationality, political beliefs, religion or because of their true or presupposed lack of religious faith.

In Slovak criminal law, we can find the corresponding provision under Section 189; its second paragraph, point (c) is linked to extremism.

Section 189 Extortion

(1) Any person who forces another person by violence, the threat of violence or the threat of other serious harm to do anything, omit doing or endure anything being done shall be liable to a term imprisonment of two to six years.

(2) The offender shall be liable to a term of imprisonment of four to ten years if they commit the offence referred to in paragraph 1

(c) out of a specific motive.

The content of these sections in the Slovak environment is almost identical to the Czech wording. However, a significant difference can be found in the length of imprisonment. In the CR, paragraph (1) provides for 6 months to 4 years (in addition, a financial penalty), while the penalty in the SR is 2 to 6 years. Paragraph (2) specifies 2 to 8 years in the CR compared to 4 to 10 years in the SR. The penalty is thus significantly higher in Slovakia, even at the lower level.²

¹ Zákon č. 40/2009 Sb., Trestní zákoník, ve znění pozdějších předpisů, § 175.

² Zákony pre ľudí 2016: Zákon č. 316/2016 Z. z. [on-line]. *Document*. Available from:

Section 228 Damage to a Thing of Another, paragraphs (1) or (2), paragraph (3)(b)

The first two paragraphs indicate the fundamental facts, the third paragraph, point (b) defines the qualified facts, when the crime is already associated with extremism:¹

(1) Whoever destroys, damages or renders useless a thing of another and thus causes damage not insignificant on property of another, shall be sentenced to imprisonment for up to one year, to prohibition of activity or to forfeiture of a thing or other asset value.

(2) The same sentence shall be imposed to anyone who damages a thing of another by spraying, covering with drawing or text by paint or another substance.

(3) An offender shall be sentenced to imprisonment for six months to three years, if they

(b) commit such an act on a thing of another for their true or presupposed race, belonging to an ethnic group, nationality, belonging to a certain social group, political or religious beliefs or for true or presupposed lack or religious faith.

In the Slovak criminal law, there is an equivalent to this provision, namely in Sections 245 and 246, specifying the criminal offence of *damaging a thing of another*.

Section 245

(1) Any person who destroys, damages or renders unusable a thing belonging to someone else and thus causes a small damage to property of someone else shall be punished by imprisonment for up to one year.

(2) The offender shall be liable to a term of imprisonment of six months to three years if they commit the offence referred to in paragraph 1

(b) out of a specific motive.

Section 246

(1) Any person who damages a thing of another by spraying it, painting it, writing on it with paint or other substance shall be punished with imprisonment for up to one year.

(2) The offender shall be liable to a term of imprisonment of six months to three years if they commit the offence referred to in paragraph 1

(b) out of a specific motive.

The content of these sections in the Slovak environment is almost identical to the Czech counterpart. Also, the maximum penalty is the same: 6 months to 3 years of imprisonment.²

<https://www.zakonypreludi.sk/zz/2016-316>

Zákony pre ľudí 2005: *Zákon č. 300/2005 Z. z.* [on-line]. *Document*. Available from:

<https://www.zakonypreludi.sk/zz/2005-300>

¹ Act No. 40/2009 Coll., Criminal Code, as amended, Section 228

² Zákony pre ľudí 2016: *Zákon č. 316/2016 Z. z.* [on-line]. *Document*. Available from:

<https://www.zakonypreludi.sk/zz/2016-316>

Zákony pre ľudí 2005: *Zákon č. 300/2005 Z. z.* [on-line]. *Document*. Available from:

<https://www.zakonypreludi.sk/zz/2005-300>

Section 400 Genocide

This section consists of three paragraphs, worded as follows:¹

(1) Whoever with the intention to completely or partially eradicate a racial, ethnic, national, religious, class, or other similar group of people

(a) brings members of such a group to such living conditions that are to cause their complete or partial physical annihilation,

(b) takes measures to prevent birth of children within such a group,

(c) forcibly transfers children from one such group to another, or

(d) causes death or grievous bodily harm to a member of such group,

shall be sentenced to imprisonment for twelve to twenty years or to an exceptional sentence of imprisonment.

(2) The same sentence shall be imposed to anyone who publicly incites commission of the act referred to in Sub-section (1).

(3) Preparation is criminal.

This criminal offence can also be attributed to the offence of *denial, impugnation, approval and justification of genocide* under Section 405. The equivalent to this crime can be found in Slovak criminal law under Section 422d as *denial and approval of the Holocaust, crimes of political regimes, and crimes against humanity*. Slovak legislation thus equates the crime of genocide with criminal political regimes and other crimes against humanity.

Whoever publicly denies, impugns, approves, or attempts to justify Nazi, Communist or any other genocide, or other crimes of the Nazis and Communists against humanity, shall be sentenced to imprisonment for six months to three years.

The crime of genocide is also known in the Slovak criminal law, under Section 418:²

Section 418

Genocide

(1) Any person who, with the intention to destroy, in whole or in part, any national, ethnic, racial or religious group

(a) causes grievous bodily harm or death to a member of such group,

(b) imposes a measure intended to prevent births within the group,

(c) forcibly transfers children of the group to another group, or

(d) deliberately inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part, shall be liable to a term of imprisonment of fifteen to twenty years.

¹ Act No. 40/2009 Coll., Criminal Code, as amended, Section 400

² *Zákony pre ľudí 2016: Zákon č. 316/2016 Z. z.* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2016-316>

Zákony pre ľudí 2005: Zákon č. 300/2005 Z. z. [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

(2) The offender shall be liable to a term of imprisonment of twenty to twenty-five years or to life imprisonment if they commit the offence referred to in paragraph (1) in the wartime or during an armed conflict.

(3) The offender shall be liable to life imprisonment if, through the commission of the offence referred to in paragraph (1), they cause death to several persons.

The description of the facts in Slovakia does not differ much from the Czech version. In addition, the Czech criminal law includes *class* and *other group of people* in the list of potentially damaged groups. In this respect, the Czech criminal law thus covers a broader category. The fundamental fact is sanctioned in the Czech Republic by a penalty in the range of 12 to 20 years or an exceptional penalty (which is also the maximum penalty in the case of a qualified fact in the Czech Republic); in the Slovak Republic it is 15 to 20 years. In this case, the qualified facts in Slovakia have a maximum penalty corresponding to life imprisonment.

Section 403 Establishment, Support and Promotion of Movements Aimed at Suppression of Human Rights and Freedoms

This act also exists in the variant of Section 404 as expressing sympathies for movements seeking to suppress the rights and freedoms of people:¹

Section 403 Establishment, Support and Promotion of a Movement Aimed at Suppressing the Rights and Freedoms of People

(1) Whoever establishes, promotes or supports movements that is provably aimed at suppression of human rights or that proclaims racial, ethnic, national, and religious or class hatred or hatred against another group of people, shall be sentenced to imprisonment for one year to five years.

(2) An offender shall be sentenced to imprisonment for three to ten years, if they

- (a) commit the act referred to in Sub-section (1) by press, film, radio, television, publicly accessible computer network or in another similarly effective way,
- (b) commit such an act as a member of an organised group,
- (c) commit such an act as a soldier, or
- (d) commit such an act during a state of national peril or a state of war.

(3) Preparation is criminal.

Section 404 Expressing Sympathies for Movements Seeking to Suppress Human Rights and Freedoms

Whoever publicly expresses sympathy for the movements referred to in Section 403(1) shall be sentenced to imprisonment for six months to three years.

Both the Czech and Slovak legal regulations provide similar parameters for this type of crime. It is worth noting, on the one hand, that in the Czech environment it is necessary for the respective movements to be *demonstrably* aimed at suppression of rights and freedoms (this addition is missing in Slovak criminal law), and, on the other hand, that within the qualified facts, there are aggravating circumstances in the Czech Republic, when the perpetrator is a soldier, while in the Slovak Republic the perpetrator

¹ Act No. 40/2009 Coll., Criminal Code, as amended, Section 403

is disadvantaged by the relatively vaguely formulated circumstance of committing the offence *in a more serious manner*; in other points, the circumstances are more or less comparable:¹

Supporting and Promoting Groups Aimed at Suppression of Fundamental Rights and Freedoms

Section 421 Establishment, Support and Promotion of Movements Directed at the Suppression of Fundamental Rights and Freedoms

(1) Whoever establishes, supports or promotes a group, movement or ideology which is directed at the suppression of the fundamental rights and freedoms of persons or which propagates racial, ethnic, national or religious hatred or hatred against another group of persons or whoever promotes a group, movement or ideology that was directed at the suppression of the fundamental rights and freedoms of persons in the past, shall be punished by a prison sentence of one to five years.

(2) The offender shall be liable to a term of imprisonment of four to eight years if they commit the offence referred to in paragraph (1)

- (a) publicly or in a publicly place accessible,
- (b) acting in a more serious manner, or
- (c) under a crisis situation.

Section 422 Expression of Sympathy for Movements Directed at the Suppression of Fundamental Rights and Freedoms

(1) Any person who publicly or in a publicly accessible place demonstrates, in particular by using flags, badges, uniforms or slogans, their sympathy for a group, movements or ideology which is directed or was directed in the past at the suppression of the fundamental rights and freedoms of persons or which propagates racial, ethnic, national or religious hatred or hatred against another group of persons, shall be liable to a term of imprisonment of six months to three years.

(2) The same sentence as referred to in paragraph (1) shall be imposed on any person who, in the commission of the offence referred to in paragraph (1), uses altered flags, badges, uniforms or slogans appearing to be genuine.

Section 402 Apartheid and Discrimination against a Group of People

The offence of apartheid has the following wording in the Czech law:²

(1) Whoever practises apartheid or racial, ethnic, national, religious or class segregation or discrimination against other similar groups of people, shall be sentenced to imprisonment for five to twelve years.

(2) An offender shall be sentenced to imprisonment for ten to twenty years or to an exceptional sentence of imprisonment, if they

¹ *Zákony pre ľudí 2016: Zákon č. 316/2016 Z. z. [on-line]. Document. Available from: <https://www.zakonypreludi.sk/zz/2016-316>*

Zákony pre ľudí 2005: Zákon č. 300/2005 Z. z. [on-line]. Document. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

² Act No. 40/2009 Coll., Criminal Code, as amended, Section 402

- (a) expose such a group of people to difficult life conditions by the act referred to in Sub-section (1),
 - (b) expose such a group of people to inhumane or humiliating treatment by such an act.
- (3) Preparation is criminal.

Slovak criminal law treats this topic in an almost identical wording - according to Section 424a, it is *a crime of apartheid and discrimination of a group of persons*:¹

(1) Whoever exercises apartheid or racial, ethnic, national or religious segregation, or any other extensive or systematic discrimination of a group of persons, shall be liable to a term of imprisonment of four to ten years.

(2) A sentence of imprisonment of eight to fifteen years shall be imposed upon an offender if they commit an act referred to in paragraph (1)

- (a) as a member of an extremist group,
- (b) as a public official,
- (c) out of a specific motive,
- (d) and exposes such a group of persons to inhuman or degrading treatment,
- (e) thus putting such a group of persons at risk of grievous bodily harm or death, or
- (f) under a crisis situation.

It can be seen from the wording of both regulations that Czech legislation specifies a significantly higher penalty for this criminal offence. This applies, in particular, to the second paragraph, which defines aggravating circumstances.

In addition to the above-mentioned crimes, defined as the equivalent to Czech crimes related to extremism, there are a number of crimes in Slovak criminal law, the wording of which includes the so-called 'specific motive', for which it is possible to be convicted of extremism.

Discussion

In recent years, the concept of the so-called *hate crime* has also become part of the debate on extremism and related crimes. The core of the concept of hate crime is the emphasis on damage to an individual or group exhibiting a collective difference, which becomes the victim of prejudice. Originally, this approach was oriented towards violent attacks against ethnic and religious minorities (including anti-Semitic attacks), and gradually extended to other victimization factors, such as sexual orientation, disability, age, political orientation, social status, etc. The concept is used in various connotations - as a scientific, legal or statistical concept, while part of the Czech professional public strives to replace the vague concept of 'extremism' with 'hate crime'. It must be said that even the concept of 'hate crimes' is subject to criticism. First of all, it is the very concept of 'hatred' - a large part of violent crimes is motivated by some kind of hatred (resentment)² and the definition of a special category of crimes

¹ Zákony pre ľudí 2005. *Trestný zákon* [on-line]. *Document*. Available from: <https://www.zakonypreludi.sk/zz/2005-300>

² GRIVNA, Tomáš; SCHEINOST, Miroslav; ZOUBKOVÁ, Ivana et al. *Kriminologie*. 4th edition. Praha: Wolters Kluwer, 2014, p. 369.

creates a privileged position only for certain types of victims. Some authors even talk about strengthening collective conflicts in society or favouring certain victims.¹ Other arguments against hate crimes are based on the fact that it is not possible to mechanically adopt a concept that was organically created in a different cultural and civilizational environment. In the Czech Republic, this concept has not only its critics, but also its proponents. Its popularization and efforts to include it into the Czech legal order are addressed, for example, by authors publishing on the pages of the *Česká kriminologie* journal; their writing shows, inter alia, a certain tendency to abandon the original concept of extremism and to favour the use of the concept of hate crimes.² From the above, it can be seen that the difficulty to grasp the concept that results from the nature of the phenomenon of extremism is also manifested in hate crimes. This concept, despite a certain ambition to specify the nature of selected criminal offences, still remains only an incomplete attempt to correct the amorphousness of the concept of extremism.

From the historical grounds of the modern era, through the turbulent development of the 1990s, up to the current efforts to implement non-original concepts, discussions on extremism are still ongoing. The current form of the criminal codes of the Czech and Slovak Republics and the way they reflect the phenomenon of extremism is largely a legacy of the complicated conception from the beginning of the independence of both neighbouring states. It is clear that Slovakia has decided to go beyond legality through more targeted repressive measures and clearer definition of 'enemies of democracy'. Taking into account the differences in the historical development of Slovakia compared to the Czech Republic, these steps are understandable. But whether they will help the country in the actual struggle against extremism, this will be a question of future empirical development, rather than theoretical analysis. Similarly, questions remain about the development of criminal law in the Czech Republic and the approach of the Ministry of the Interior, for example, in further integration of the concept of hate crimes into the Czech Criminal Code.

Conclusion

The presented study focused on the comparison of Czech and Slovak criminal laws from the point of view of crimes described as 'extremist' in practice. Comparative criminal law was chosen as the starting point for comparison as a domain part of the general comparative law. The characteristics and specifics of the comparative method

¹ DVOŘÁK, Marek. "Hate crimes a extremismus." In: JELÍNEK, Jiří et al. *Kriminologie*. Praha: LEGES, 2021.

² E.g., KUPKA, Petr; KALIBOVÁ, Klára; WALACH, Václav and Vendula DIVIŠOVÁ. "Životní cyklus trestného činu z nenávisti: tři scénáře." In: *Česká kriminologie*, 1/2018. [on-line] Praha: ČKS, 2018. Available from: <https://ceskakriminologie.cz/cs/archiv/2018-1/zivotni-cyklus-trestneho-cinu-z-nenavisti-tri-scenare>; WALACH, Václav a Benjamin PETRUŽELKA. "Klasifikační chyba v policejních statistikách trestných činů s extremistickým podtextem" In: *Česká kriminologie*. 1–2/2021. [on-line] Praha: ČKS, 2018. Available from: <https://ceskakriminologie.cz/cs/archiv/2021-120132/klasifikacni-chyba-v-policejnich-statistikach-trestnych-cinu-s-extremistickym-podtextem>; KUPKA, Petr; KALIBOVÁ, Klára; WALACH, Václav and Benjamin PETRUŽELKA. "Specifika objasňování trestných činů z nenávisti: policejní pohled." In: *Česká kriminologie*. 1/2022. [on-line] Praha: ČKS, 2018. Available from: <https://ceskakriminologie.cz/cs/archiv/2022-1/specifika-objasnovani-trestnych-cinu-z-nenavisti-policejni-pohled>.

and its requirements or tasks were described. Due to the purely legal basis of comparative criminal law and the considerable scope that would result from following the method rigorously, only selected aspects of this method were used.

Due to the current trends of internationalization of crime and cross-border crime along with related transnationalization or Europeanization of criminal law, it is possible to see a tendency to unify criminal codes. These features were also found in the comparison of Czech and Slovak criminal laws. When comparing individual crimes related to extremism, we concluded that in the case of facts, both fundamental and qualified, Czech law is largely similar to Slovak law. Often, exactly the same wording is used in both cases. However, there are sometimes minor variations in the specification of the facts. In general, it can be stated that the Slovak criminal law is much more specifically formulated. This can be seen, for example, when the Czech law mentions "other groups of persons", while the Slovak version uses fixed listing, etc. Regarding penalties, we would hardly be looking for uniformity here. Criminal sanctions usually differ between both countries, with higher penalties in the case of the Slovak Criminal Code. Somewhere, the difference is 'only' one year in prison, but in other cases, life sentence is applicable in Slovakia, where only an exceptional penalty ranging from twenty to thirty years in prison would be imposed in the Czech Republic.

However, where the most significant difference lies, the Slovak criminal law knows the legal definition of terms such as *extremist*, *extremism* and *extremist group*, i.e., terms, which, as mentioned in the introduction, are somewhat controversial and their use can be a source of certain inequalities. This gives a somewhat disturbing impression that the Slovak criminal law includes the so-called *specific motive*, which also covers extremist motivation. This motive is included in several dozen paragraphs. Overall, it is possible to be convicted of a number of extremist crimes in Slovakia. In view of the comparison of only formal legal regulations, where specific jurisprudence has not been followed (and it is difficult to imagine that anyone would be convicted of all these crimes), it can be argued that these laws are there only 'in case of need'. Nevertheless, the nature of some of these crimes can easily lead to abuse, especially when the punishment for extremism may resemble the notorious 'witch hunt', because, as already stated in the introduction, the notion of 'extreme' is not universal and it always depends on who defines it and, especially, why.

List of abbreviations

CO - criminal offence

CR - Czech Republic

OSCE - Organization for Security and Co-operation in Europe

EU - European Union

SR - Slovak Republic

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S U M M A R Y

The article presents the issue of 'extremism' from the perspective of comparative law. It compares the approaches to extremism in two selected countries, namely, the Czech Republic and Slovakia. The text briefly discusses the development of legislation since the 1990s, while the main part is presented in the form of a comparative table. Individual criminal offences in the field of interest are analysed in more detail. Finally, the basic findings are discussed in the context of trends in extremism and the concept of 'hate crimes'.

Keywords: criminal law, comparison, extremism, crimes.

R E S U M É

DOLEČEK, Martin, SMOLÍK, Josef: KOMPARACE ČESKÉ A SLOVENSKÉ „PROTIEXTREMISTICKÉ“ LEGISLATIVY

Článek představuje problematiku „extremismu“ z pohledu právní komparatistiky. Porovnávají jsou přístupy k extremismu ve dvou zvolených státech, tj. v ČR a SR. Text stručně diskutuje vývoj legislativy od 90. let 20. století, přičemž hlavní část je představena v podobě srovnávací tabulky. Jednotlivé trestné činy ve zkoumané oblasti jsou blíže analyzovány. V závěru jsou diskutovány základní poznatky v kontextu trendů v oblasti extremismu i konceptu „hate crimes“.

Klíčová slova: trestní právo, komparace, extremismus, trestné činy.