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THE JURISDICTION AND COMPETENCE OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE AND THE PROSECUTOR'S OFFICE OF THE SLOVAK REPUBLIC IN CRIMINAL PROCEEDINGS IN LIGHT OF THE CASE LAW OF THE CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC

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Abstract: *This article examines the systematic definition of the competence and jurisdiction of the European Public Prosecutor's Office (EPPO) and the Prosecutor's Office of the Slovak Republic (Prosecutor's Office SR) in criminal proceedings, analysing their normative foundations, institutional definition, and competences. Attention is paid to the legal provisions that exclude the jurisdiction of Slovak prosecutors in matters falling under the EPPO, and thus also the absence of powers of the Prosecutor General of the Slovak Republic to intervene in these proceedings. The structure of the EPPO's competences reflects the principle of solidarity, which obliges Member States to contribute to the effective enforcement of Union law while respecting EPPO's autonomy. The article is based on an analysis of the relevant provisions of the Criminal Code and the Regulation on the EPPO, as well as on scholarly articles and the Constitutional Court of the Slovak Republic´s case law. The aim of the contribution is to highlight the systemic and practical consequences of the EPPO's autonomy, especially regarding the possibility of applying extraordinary remedies by both bodies, thereby providing an overview of the legal framework and contributing to a better understanding of the architecture of criminal proceedings in the European context.*

Key words: *European Public Prosecutor's Office; Prosecutor's Office of the Slovak Republic; Competence; Constitutional Court; Extraordinary remedies*

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1. INTRODUCTION

In recent months, the public debate and the news in Slovakia consistently mention § 363 of the Criminal Procedure Code[1] (hereinafter as "CPC") and its application

[1] *Act. no. 301/2005 Coll. Criminal procedure Code (Trestný poriadok)* (CPC)

to criminal proceedings by the Prosecutor General of the Slovak Republic. This legal instrument is categorised as an extraordinary remedy that allows the Prosecutor General to annul certain procedural decisions.[2] Its frequent and sometimes controversial use raises a question about the internal architecture of the criminal proceedings in Slovakia.

Against this backdrop, it is necessary to examine how extraordinary remedies, such as § 363 CPC, are applied in cases under the European Public Prosecutors' Office (hereinafter referred to as „EPPO") competence, even if they are applied at all. Not all extraordinary remedies will be discussed, as the focus of this article is only on § 363 CPC and its "Annulment of final decisions in preliminary proceedings" and the § 368 CPC and its "Extraordinary appeal".

As the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), (hereinafter referred to as "EPPO Regulation")[3] is an integral part of almost every member state's legal order, the question also arises as to how this Regulation is used in Slovakia and whether EU law is applied consistently and uniformly within member states.

With that in mind, the article aims to answer three research questions that are:

1) What is the delineation of EPPO's competences and the Prosecutors office of the Slovak Republic?
2) Can the Prosecutor General act in cases under the competence of EPPO, especially in the field of extraordinary remedies?
3) Do the competences of the Prosecutor General transfer to EPPO in cases under EPPO's competence?

The basis for this article is also recent resolutions of the Constitutional Court of the Slovak Republic in which the competences of EPPO were discussed, relevant EU legislation and Slovak national law. To answer these questions, it is necessary to firstly analyse relevant EU legislation followed by an analysis of relevant Slovak national law, after which differing opinions about the competence of EPPO in the field of extraordinary remedies will be presented. Next, the author will provide his opinion stemming from a detailed analysis and synthesis of knowledge presented so far. In the end, the article will discuss two resolutions of the Constitutional Court of the Slovak Republic (hereinafter referred to as "Constitutional Court"), and will provide a conclusion, as well as answer the above-mentioned research questions.

2. EPPO REGULATION AND PROSECUTORS' OFFICE OF THE SLOVAK REPUBLIC

In the second part of this article, we will present the necessary legal basis for this article. We will present the relevant articles of the EPPO Regulation and the Prosecutors' Office of the Slovak Republic, including the relevant extraordinary remedies, laying a foundation for successful answering of the research questions. Lastly, we will anchor the legislature within the EU legal framework, especially the principles of EU law.

[2] CPC categorises it as an extraordinary remedy.
[3] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') OJ L 283, 31.10.2017, s. 1 – 71.

2.1 EPPO Regulation

Firstly, before answering the questions, it is necessary to present the relevant legal basis of the EPPO Regulation to establish the competences of the EPPO. Looking at the recitals, there are two that are worth mentioning – recital no. 32 and 33 respectively.

Recital no. 32 emphasises that the European Delegated Prosecutors (hereinafter referred to as the "EDP") form an integral and inseparable part of the institutional structure of the EPPO. They embody the EPPO on the territory of each participating member state. Accordingly, whenever they investigate or prosecute offences under the EPPO competence, they act exclusively on behalf of and in the name of the EPPO. The EDPs are functionally and legally independent from the national authorities, even as they are members of their respective national Prosecutorial service.[4]

Recital no. 33 clarifies that, despite EDPs' status within EPPO, they do not cease to be members of their national prosecution services, as they retain their professional legal position under the domestic legal order during their term of office as members of the EPPO. This dual role reflects the hybrid status of EPPO infrastructure, which relies on national professionals embedded in national prosecutorial environments operating under the direct supervision of a supranational prosecutorial body. [5]

Importantly, this recital also states that member states must ensure that the EDPs have at least the same powers as the national prosecutors when conducting investigations and prosecutions in cases within the EPPO's competence. This obligation arises from the need to guarantee that the EDPs' can act effectively within their domestic legal systems, using the full range of tools available to domestic prosecutors. It seems that the EPPO and EDPs independent structure is necessarily intertwined with the legal order of respective national jurisdictions in order to conduct effective investigations in crimes under EPPO's competence.[6]

Moving to the substantive part of the EPPO Regulation, it is necessary to mention Article 8 that underlines the structure of the EPPO as an *"…indivisible Union body operating as a single Office with a decentralised structure."*[7] This further underlines the importance of the autonomy of the EPPO pronounced in the recitals.

The following articles mention the structure of the EPPO with the European Chief Prosecutor as the head of the EPPO.[8]

In the end, article 13 mentions the European Delegated Prosecutors and further elaborates the recitals with respect to the powers of the EDPs, saying that EDPs "…*shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment."*[9] Moreover, EDPs are also responsible for bringing the cases to judgment and shall have the ability to use available remedies provided by national law.[10]

Here begins the basis of the problem. The European Delegated Prosecutor acts on behalf of the European Public Prosecutor's Office, conducting investigations and prosecutions in respect of criminal offences falling within the EPPO's competence.

[4] EPPO Regulation recital no. 32
[5] EPPO Regulation recital no. 33; For details see: Christoph Burchard, 'Article 13' in Hans-Holger Herrnfeld, Dominik Brodowski and Christoph Burchard, *European Public Prosecutor´s Office. Article-by-Article Commentary.* (1st edn, Nomos, C H Beck, Hart Publishing 2021) 99–100.
[6] Ibidem.
[7] Article 8 sec. 1 of the EPPO Regulation
[8] Article 11 of the EPPO Regulation
[9] Article 13 of the EPPO Regulation
[10] Ibidem.

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However, the EPPO Regulation does not provide a fully uniform set of rules governing all aspects of investigative and prosecutorial activities. In areas not harmonised at the Union level, the European Delegated Prosecutor is therefore required to take all necessary procedural steps in accordance with the applicable national law.[11]

This hybrid framework gives rise to structural challenges. In particular, the content and scope of national criminal law differ considerably across Member States, including variations in the powers and status of prosecutors as well as differences in the transposition of relevant EU directives. As a result, despite the EPPO's uniform institutional framework, the practical exercise of its powers may diverge across jurisdictions, reflecting underlying discrepancies between national legal systems. Such divergences may, in turn, affect the consistency and uniformity of EPPO's functioning at the operational level.[12]

This "excessive reliance" on applicable national law is, on the one hand, necessary for EPPO to function; on the other hand, the rights of perpetrators, suspects and other people vary based on the member state in which the EPPO investigates.[13]

Regarding the competences, or better said, the nature of offences that fall under the scope of EPPO are so-called PIF Offences, named after the PIF Directive[14] that introduces them.

Offences affecting the financial interests of the European Union (PIF offences) encompass a wide spectrum of unlawful conduct. These include, inter alia, both active and passive corruption, various forms of fraud, embezzlement, misuse of subsidies, and money laundering. In addition, the scope of PIF offences extends to participation in a criminal organisation, provided that the organisation's primary purpose is the commission of such offences.[15]

There are many more complex and conceptually significant issues that concern EPPO's competences regarding the offences, for example, to what extent is it justified for the EPPO to exercise jurisdiction not only over offences directly affecting the financial interests of the Union, but also over additional offences. In this regard, the EPPO Regulation establishes that the EPPO's competence is not limited to core PIF offences but also extends to any other criminal conduct that is inextricably linked to them. This approach reflects an effort to ensure the effectiveness and coherence of criminal prosecution by allowing the EPPO to address the full factual and legal context of complex criminal schemes, rather than being confined to isolated components thereof.[16] As interesting as this might be, sadly it is not the focus of our article.

With the relevant basis of the EU legislation mentioned above, it is necessary to focus our attention on relevant Slovak national legislation.

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[11] Tomáš Strémy, Ján Šanta and Roman Oleksik, *Poškodzovanie finančných záujmov Európskej Únie.* (Wolters Kluwer ČR 2022) 101–102.

[12] Dominika Becková, 'The European Public Prosecutor's Office: New Actor in EU Criminal Law' (2020) 4 Bratislava Law Review 163, 169; Strémy, Šanta and Oleksik (n 11) 102.

[13] Hans-Holger Herrnfeld, 'Introduction' in Hans-Holger Herrnfeld, Dominik Brodowski and Christoph Burchard, *European Public Prosecutor´s Office. Article-by-Article Commentary.* (1st edn, Nomos, C H Beck, Hart Publishing 2021) 9–10.

[14] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law. OJ L 198, 28.7.2017, pp. 29–41

[15] Article 3-4 PIF Directive; Jacob Öberg, *The Normative Foundations for EU Criminal Justice. Powers, Limits and Justifications* (Hart Publishing 2024) 94.

[16] ibid.

2.2 Prosecutor's office of the Slovak republic

The foundation of the Prosecutor's Office SR is laid down in the Constitution[17] in articles 149 – 151. The constitutional legal framework is quite sparse, as the only thing it tells us is that the Prosecutor's Office protects the rights and interests of natural and legal persons and the state, as well as mentions the appointment process of the Prosecutor General, designating him as the head of the Prosecutor´s Office SR.

However, it does not mention the status of the Prosecutor's Office. The constitutional provisions authorise all regulation of the powers and other matters concerning this body to be specified in the legislation. These are so-called blanket provisions.[18]

Further details necessary for this article are provided in the Public Prosecutor's Office Act[19], especially in § 2, § 10, § 12a and § 54.

The status of the Prosecutor's Office is mentioned in § 2 of the Prosecutor's Office Act (hereinafter also as the "POA"). From this, we can conclude that the Prosecutor´s Office is an independent state authority and that at its head is the Prosecutor General.[20] In § 10 section 1, the POA gives the Prosecutor General the powers to direct and supervise the Public Prosecutors Office at all levels. However, according to § 12a, this provision is not to be applied to matters under the EPPO jurisdiction. The last paragraph worth mentioning is § 54, which explains the hierarchy of the EPPO prosecutors, stating that the supervisor of an EPPO prosecutor is set out in the relevant Regulation.

2.3 Relevant extraordinary remedies in the Criminal Procedure Code

There are several extraordinary remedies mentioned in the CPC; however, this article is focused only on two. The main focus will be on the § 363 of the CPC.[21] It allows the Prosecutor General to overturn final decisions by a prosecutor or a police officer in pre-trial proceedings if the decision, or the proceedings from which that decision originated, violated the law.[22]

The secondary objective is the analysis of § 368 CPC which allows for the filing of an extraordinary appeal against a final court decision if the law or the procedural rules governing the proceedings were violated.[23] There are taxative reasons mentioned in § 371 CPC from which at least one must be the basis for filing such an extraordinary appeal.

More interesting from our perspective is the § 369 CPC, which provides the Prosecutor General with the competence to file such an extraordinary appeal against any final ruling of the court of second instance.[24]

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[17] *Constitution no. 460/1992 Coll. Constitution of the Slovak Republic (Ústava Slovenskej Republiky)* (Ústava SR)
[18] Ján Drgonec, 'Čl. 149' in Ján Drgonec, *Ústava Slovenskej republiky. Komentár* (2nd edn, C H Beck 2019) 1732.
[19] *Act no. 153/2001 Coll. on the Public Prosecutor's Office, as amended (o prokuratúre, v znení neskorších predpisov)*
[20] The full text of § 2 is: „The Public Prosecutor's Office is an independent, hierarchically organised, unified system of state authorities headed by the Prosecutor General, within which prosecutors operate in a relationship of subordination and superiority. "
[21] § 363 CPC. The use of this provision is completely in the discretionary power of the Prosecutor General. The defendant can, however, address a request to the Prosecutor General asking him to use the provision in their case.
[22] § 363 CPC
[23] § 368 CPC
[24] § 369 CPC

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2.4 Strenuous Relationship between EU legal order, especially the EPPO regulation and the applicable national law

The relationship between the EPPO regulation and the national legal order could be characterised by several principles of EU law. The principle of national procedural autonomy, principles of primacy, effectiveness and uniform application of EU law. The interaction between the principles of EU law and national procedural autonomy creates a unique "hybrid" framework.[25] While EPPO is an indivisible Union body, its operational reality is embedded in national legal systems, leading to a complex interplay where the primacy and effectiveness of EU law must be balanced against the principle of national procedural autonomy.[26] EPPO regulation does not create an EU criminal procedure code. Instead, it relies on a shared enforcement design where national law remains the primary source for investigative powers and procedural safeguards.[27] The principle of national procedural autonomy is reflected in Article 5 section 3 of the EPPO Regulation which establishes that national law applies to any matter not specifically regulated by the Regulation.[28] This respects national procedural autonomy and avoids creating a system that would be too removed from national traditions.[29]

However, such configuration creates its own problems. Several authors note that because the EPPO Regulation refers back to national law for the investigative procedure, EPPO's powers vary from one member state to another. Such patchwork of legal regimes accordingly leads to legal uncertainty and potential forum shopping.[30] We believe that it also disrupts the principle of the uniform application of EU law within member states[31] as well as could be discriminatory, as the defendants in a certain member state might have better standing, or better access to remedies, than those in a different member state.[32]

Regarding the principles of primacy and effectiveness, we highlight that the EPPO's mandate is the effective, proportionate and dissuasive protection of the EU financial interests.[33] This objective often triggers the principle of primacy.[34] First, the primacy of EU law entails the disapplication of national provisions that undermine the effective prosecution of serious offences affecting the Union's financial interests. In line

[25] Valsamis Mitsilegas, 'European Prosecution between Cooperation and Integration: The European Public Prosecutor's Office and the Rule of Law' [2021] Maastricht Journal of European and Comparative Law 262–263.
[26] Michiel Luchtman, 'Setting the Scene: The Rise of EU Law Enforcement Authorities' in Michiel Luchtman, Katalin Ligeti and John Vervaele (eds), EU Enforcement Authorities: Punitive Law Enforcement in a Composite Legal Order (Hart Publishing 2023) 16–18 <https://doi.org/10.5040/9781509946495>.
[27] Dominik Brodowski, 'Admissibility of Evidence in EPPO Proceedings' (2023) 14 (1) New Journal of European Criminal Law 35–38.
[28] Article 5 sec. 3 of the EPPO Regulation
[29] Luca De Matteis, 'The EPPO's Legislative Framework: Navigating through EU Law, National Law and Soft Law' [2023] New Journal of European Criminal Law 9–10.
[30] John Vervaele, 'Outlook on the European Public Prosecutor's Office: A Giant with National Clay Feet?' in Michiel Luchtman, Katalin Ligeti and John Vervaele (eds), *EU Enforcement Authorities: Punitive Law Enforcement in a Composite Legal Order* (Hart Publishing 2023) 324–325, 327–328 <https://doi.org/10.5040/9781509946495>.; ibid 324–325.
[31] Thomas von Danwitz, 'Uniform Interpretation and Primacy of Union Law in the Dialogue of the Courts' [2022] Verfassungsblog <https://doi.org/10.17176/20221104-215657-0> accessed 17 August 2026.
[32] Article 18 TFEU. This problem is discussed through this article.
[33] For example, Article 7 of the PIF Directive in conjunction with Article 4 of the EPPO Regulation.
[34] Judgment of 15. July 1964, Costa v E.N.E.L., C-6/64, ECLI:EU:C:1964:66.

with CJEU case law[35], national courts are required not to apply domestic rules, including limitation periods or rules concerning the application of the more lenient penalties, where those rules could generate a systemic risk of impunity for serious fraud against the EU budget.[36] Secondly, the principle of effectiveness requires national procedural frameworks to enable the effective investigation and prosecution of PIF offences. Nevertheless, this requirement is not absolute. The Court of Justice has recognised that the effectiveness of EU law must be balanced against fundamental rights and procedural safeguards. Accordingly, evidence may remain inadmissible under national law, for example where it was obtained without the necessary judicial authorisation, even if such exclusion may adversely affect the prospects of a successful prosecution.[37]

The EPPO Regulation establishes an exceptional model of judicial review, one that departs from the conventional architecture of EU judicial control. Particularly, the responsibility for reviewing acts of a Union body is transferred to national courts, thereby complicating the traditional division of jurisdiction between national courts and the Court of Justice of the European Union.[38]

First, Article 42 of the EPPO Regulation provides that procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties are, as a rule, subject to review before the competent national courts. This is institutionally unusual, given that the EPPO is a Union body. Rather than placing primary responsibility for judicial review in the hands of the EU Courts, the Regulation embeds review of EPPO procedural acts within the domestic judicial systems of the participating Member States.[39]

Secondly, this arrangement constitutes a notable divergence from the Foto-Frost[40] doctrine, according to which national courts lack competence to declare acts of EU institutions invalid, in order to secure uniform and coherent interpretation of EU law. Under the EPPO framework, the role of the CJEU is comparatively limited. It is primarily exercised through the preliminary ruling procedure, particularly in relation to the interpretation of the Regulation or the validity of EPPO procedural acts where such validity is challenged directly on the basis of Union law. The result is a hybrid system in which the legality of EPPO activity is assessed through a combination of national judicial review and limited CJEU supervision.[41]

Thirdly, this model has been criticised for generating a potential rule of law deficit. National courts may not always be well placed to scrutinise decisions that originate at the central level of the EPPO, especially where such decisions concern matters with transnational implications, such as the allocation of cases, the choice of forum, or strategic decisions taken in Luxembourg. The decentralisation of judicial review may

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[35] See cases: Judgment of 8 September 2015, Taricco, C-105/14, ECLI:EU:C:2015:555.; Judgment of 5. December 2017, M. A. S. and M. B., C-42/17, ECLI:EU:C:2017:936.; Judgment of 21 December 2021, Euro Box Promotion and Others, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034.; Judgment of 24 July 2023, PPU – Lin, C-107/23, ECLI:EU:C:2023:606.

[36] Elena-Simina Tănăsescu and Bianca Selejan-Guţan, 'A Turn of Tide in the Fight against Corruption in Romania: The CJEU between Systemic Risk of Impunity and Fundamental Rights' (2025) 25 ERA Forum 576 <https://doi.org/10.1007/s12027-025-00820-4>.

[37] Brodowski (n 27) 38.

[38] For details, see Article 42 of the EPPO regulation.; Luchtman (n 26) 17.

[39] Fabio Giuffrida and Georgia Theodorakakou, 'The Use of Investigative Results as Evidence in National Punitive Proceedings: The Case of OLAF' in Michiel Luchtman, Katalin Ligeti and John Vervaele (eds), *EU Enforcement Authorities: Punitive Law Enforcement in a Composite Legal Order.* (Hart Publishing 2023) 182 <https://doi.org/10.5040/9781509946495>; Luchtman (n 26) 17.

[40] Judgment of 22 October 1987, Foto-Frost, C-314/85, ECLI:EU:C:1987:452

[41] Michiel Luchtman and John Vervaele, 'European Agencies for Criminal Justice and Shared Enforcement (Eurojust and the European Public Prosecutor's Office)' (2014) 10 Utrecht Law Review 144; Mitsilegas (n 25) 261.

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therefore undermine legal certainty, consistency, and effective accountability within the EPPO's multilevel prosecutorial structure.[42]

The fragmentation and the "stretching" of the mentioned EU law principles are basically the baseline for this article, as we are discussing one of the symptoms of the fragmented EPPO legal order, which had emerged in Slovakia.

3. THE PROBLEM AND THE POSSIBLE SOLUTIONS

This chapter consists of three subchapters. The first will present the basis of the problem, the second will explore the extraordinary remedy under § 363 CPC, the third will talk about whether the situation is different within the extraordinary appeal procedure under § 368 CPC and will summarise the findings.

3.1 The problematic article

The basis for this article is the not yet mentioned problematic provision of the CPC. It is § 10 section 1, which explains that the prosecutor and the police are considered law enforcement authorities under this Statute. The second sentence states: "**In cases falling within the jurisdiction of the European Public Prosecutor's Office**, the term "prosecutor" also refers to the European Chief Prosecutor, the European Prosecutor, the European Delegated Prosecutor, and the Permanent Chamber, and **the powers of the Prosecutor General are exercised by the body of the European Public Prosecutor's Office established by a special regulation, otherwise by the Chief European Prosecutor.**"[43] Rephrased, it basically means that national legislation gives competence and powers to an EPPO body. There are several academic sources that have differing opinions on this matter. We will analyse every one of these afterwards, stating and explaining our position.

3.2 § 363 CPC in focus

All the authors have explained their positions using the § 363 CPC as the example. That is why we have decided to include their explanations in this section, combining them with our opinion presented at the end of this section.

We will begin with the Act[44] that has introduced the current version of this provision. Well, with its explanatory memorandum.[45] There we can find out more about the thought process of the legislator in creating this provision.

The reasoning is as follows: Hence, the Prosecutor General cannot exercise his competences in cases under the EPPO's jurisdiction, as that is precluded given the concept of how EPPO operates; there were two options according to the legislator on how to solve this problem. The first option was to leave it for the EPPO to solve, and the second was to amend the CPC. [46]

The legislator chose the latter. It is also noted that the second option is a better choice, looking at recital 15 and Article 5 sec. 3 of the EPPO Regulation. That is why,

[42] Mitsilegas (n 25) 256, 262–263.
[43] § 10 sec. 1 CPC
[44] It was introduced by the *Act no. 312/2020 Coll. on the enforcement of decisions regarding the seizure of property and the administration of seized property, and on amendments to certain laws (o výkone rozhodnutia o zaistení majetku a správe zaisteného majetku a o zmene a doplnení niektorých zákonov)* adopted on 21.10.2020, in effect from the 1.1.2021, hereinafter as Act no. 312/2020
[45] Explanatory memorandum to the Act no. 312/2020, s. 47
[46] ibid.

according to the legislator, where the CPC grants the Prosecutor General certain competences, in a case under EPPO jurisdiction, the powers of the Prosecutor General shall be exercised by the Chief European Prosecutor, or another body of EPPO designated by the Regulation. The explanatory memorandum also provided an example of such a situation, saying that in the case of an extraordinary appeal, whose filing is the competence of the Prosecutor General, the European Chief Prosecutor shall file this extraordinary appeal, as he is the highest-ranking official of the EPPO, just as the Prosecutor General is the highest-ranking official of the Prosecutor's Office SR.[47]

Moving to the authors who agree with the legislator, we need to stop by the article "The European Public Prosecutor's Office and Its Place in the Slovak Republic" by Lucia Vasilik. The conclusion to the problem in this article from 2022 is basically the same as in the explanatory memorandum, as the explanatory memorandum is cited in this article and the author's conclusion stems from it.[48]

The dissenting opinions begin with the former Advocate General Mazák. In his blog with the name "Section 363 comes up short when it comes to the European Public Prosecutor's Office". According to him, as EPPO is not part of the law enforcement authorities of Slovakia, as it has its own legal standing and independence defined in the EPPO Regulation, the Prosecutor General cannot exercise his competences including, the application of § 363 CPC. The Regulation also does not provide EPPO any such competence.[49] Accordingly, § 363 CPC *"has no influence, positive or negative, on the procedures and decision-making of the European Public Prosecutor's Office. It is as if it did not exist."*[50]

Worth mentioning is also the claim of former AG Mazák that apparently none of the 22 systems of the Prosecutor's Office participating in the enhanced cooperation that he has examined contain a similar provision as § 363 CPC in their own criminal procedure framework.[51]

As shown above, former AG Mazák does not specifically say that the European Chief Prosecutor cannot use the § 363 CPC. This claim is for assoc. prof. Šanta.

He claims that the § 363 CPC cannot be used in cases under the EPPO's jurisdiction, as that is precluded by the Regulation itself. He mentions that Article 8 of the Regulation states that EPPO is a decentralised and indivisible Union body, and Articles 9 and 13 do not grant any similar competence to any EPPO body (nor does the rest of the Regulation), as is the competence of the Prosecutor General. That also means that the Prosecutor General cannot act in cases where EPPO exercised its competence.[52]

In a different publication, the authors noted that one of the greater challenges of EPPO is the different legal frameworks of the participating member states. Especially in cases like § 363 CPC, as most member states do not have similar provisions in their own

[47] ibid

[48] Lucia Vasilik, 'Európska Prokuratúra a Jej Postavenie v Podmienkach Slovenskej Republiky' <https://www.projustice.sk/trestne-pravo/europska-prokuratura-a-jej-postavenie-v-podmienkach-sr> accessed 19 April 2026.

[49] Ján Mazák, 'Paragraf 363 Je Na Európsku Prokuratúru Krátky.' *DenníkN* (11 November 2021) <https://dennikn.sk/2607368/paragraf-363-je-na-europsku-prokuraturu-kratky/> accessed 19 April 2026.

[50] ibid.

[51] ibid.

[52] Ján Šanta, 'Európska Prokuratúra a Niektoré Aplikačné Poznatky z Praxe Prokurátora.' in Dominika Maročková Becková (ed), *Vplyv Európskej únie na trestné právo jej členských štátov. Recenzovaný zborník vedeckých prác z medzinárodnej vedeckej konferencie.* (Univerzita Pavla Jozefa Šafárika v Košiciach 2022) 62–63 <https://doi.org/https://doi.org/10.33542/VEU-0172-8>.

legal frameworks.[53] The authors also present the explanatory memorandum and its point of view on the application of § 363 CPC; however, they also add their own opinions.[54] According to them, the EPPO itself does not agree with the statements presented by the explanatory memorandum that, in their opinion the EPPO does not have the competence of the Prosecutor General. According to the authors, on one hand, it should be the Chief European Prosecutor that should have such competence; on the other hand, this approach would result in unequal treatment of defendants in EPPO proceedings, as the availability of a motion to repeal final decisions in pre-trial proceedings would depend on the existence of analogous legal mechanisms in the respective Member State.[55] And as we have demonstrated, hardly any other state has such a mechanism.

Moving to the Slovak Commentary to the EPPO Regulation[56], in the section regarding Article 13 of EPPO Regulation, the author writes the following thoughts. A systematic interpretation of the Regulation leads to the conclusion that none of the bodies of the EPPO possesses the competences of the Prosecutor General. Since the Regulation does not expressly regulate this matter, any potential solution must be sought within national legislation. However, national law cannot confer upon the EPPO, the powers of the Prosecutor General in the area of extraordinary remedies, as such an approach would be incompatible with the Regulation. At most, national legislation may provide that the EPPO, acting through a European Delegated Prosecutor, may submit a request to the Prosecutor General inviting him to exercise his competences in relation to extraordinary remedies.[57]

Such approach is interesting to say the least, as it completely ignores the independence and indivisibility of EPPO and basically mixes together jurisdiction and competences of EPPO and the National Prosecutor's Office together. Simply put, this approach would, in the end, mean that cases under EPPO jurisdiction would be in the hands of the Prosecutor General and his decision-making competences regarding the extraordinary remedies, a prosecutor that does not belong to the framework of the EPPO as stated by the Regulation. In effect, the Prosecutor General would gain supervisory competence over EPPO prosecutors, which is clearly contrary to the EPPO Regulation's intentions.[58]

As a last note to this Commentary, it is necessary to mention that it was published in 2017; thus, it logically cannot contain any practical insights, as the EPPO has been functioning since 2021.

Our opinion is in line with the opinions of assoc. prof. Šanta and former Advocate General Mazák. We believe that § 10 sec. 1 CPC basically creates competences for the EPPO not presupposed by the EPPO Regulation. National legislation cannot create competences for an EU body created by an EU Regulation, as such competence is reserved for the European Union and its institutions, in this case following Article 86 TFEU.

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[53] Sergej Romža and others, 'III. VZŤAHY KOOPERÁCIE A KOORDINÁCIE MEDZI EURÓPSKOU PROKURATÚROU A PROKURATÚROU SLOVENSKEJ REPUBLIKY: VZÁJOMNÉ DOPĹŇANIE SA?' in Martina Jánošíková and Dominika Becková Marčoková (eds), *Európska prokuratúra v Slovenskej republike.* (Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická Fakulta 2023) 93 <https://doi.org/https://doi.org/10.33542/EPSR-0218-3>.

[54] Katarína Petrášová, 'PÔSOBENIE EURÓPSKEJ PROKURATÚRY V SLOVENSKEJ REPUBLIKE – PRVÉ VÝSLEDKY, PROBLÉMY A HODNOTENIA.' in Martina Jánošíková and Dominika Becková Marčoková (eds), *Európska prokuratúra v Slovenskej republike.* (Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická Fakulta 2023) 263–264 <https://doi.org/https://doi.org/10.33542/EPSR-0218-3>.

[55] ibid 264.

[56] Anna Ondrejová, *Európsky Prokurátor. Komentár k Nariadeniu Rady Európskej Únie.* (Wolters Kluwer 2017).

[57] ibid 120–121.

[58] Especially looking at Articles 8 – 13 of the EPPO Regulation.

All this stems from the fundamental decisions like Costa/ENEL[59] about the autonomy of EU law and the primacy of EU law and subsequent non-application of national legal provisions which are contradictory to the EU law stemming from the Simmenthal decision.[60]

Because if the Prosecutor General could act and decide on extraordinary remedies or if EPPO would have the competence of the Prosecutor General, it would lead to a different application of EU law in Member States and would result in unequal treatment of defendants in proceedings conducted by the EPPO, as they would be able to use the hereto-mentioned extraordinary remedies only in certain Member States that have similar legal provisions.

Such a course of action could be a violation of the principle of equality of Member States before the Treaties in Article 4 section 2 TEU, as Member States cannot undermine the uniform application of EU law, through the adoption of subsequent domestic legal measures.[61]

Another principle that could be violated is the principle of solidarity, that is basically an expression of the principle of equality mentioned above. Member States must, under this principle, refrain from unilateral actions, as such conduct jeopardises and undermines the mutual trust on which the EU is founded.[62]

Lastly, such action could be discriminatory, which is prohibited under Article 18 TFEU, as the defendants from different member states would not have the same options to defend themselves as the defendants from Slovakia.[63]

As a last note it is worth mentioning, that some authors argue, that the scope of § 363 CPC is so broad, the statutory period to file for this remedy is too long (6 months), and it can annul decisions, that could be reviewed through an ordinary remedy, such as an appeal, consequently delaying the pre-trial criminal proceedings, that it seems like it is not an extraordinary remedy, but another ordinary remedy.[64] Now imagine, if it were classified as such by the legislator. As other member states do not have this kind of remedy in their legal order and as EPPO's criminal procedure relies on the national criminal procedure, it could further disturb the fragile balance of EPPO's functioning. Sure, this is an extreme example, that would probably be solved quite quickly, however it still illustrates the broader perspective that the reliance on national criminal procedure naturally creates imbalances and divergence in criminal investigations under EPPO's competence, possibly resulting in violations of the EU law itself.

3.3 What about the extraordinary appeal?

The situation is not very different in this instance. The § 368 CPC and § 369 CPC that allow for an extraordinary appeal against a second-instance court's decision by the Prosecutor General also fall under the same explanations as mentioned so far regarding the § 363 CPC. However, there are several differences between the extraordinary appeal

[59] Judgment of 15. July 1964, Costa v E.N.E.L., C-6/64, ECLI:EU:C:1964:66.
[60] Judgment of 9. March 1978, Simmenthal, C-106/77, ECLI:EU:C:1978:49.
[61] Marcus Klamert, 'Article 4 TEU' in Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights. A Commentary.* (Oxford University Press 2019) 40 Cf. with: Judgment of 15. July 1964, Costa v E.N.E.L., C-6/64, ECLI:EU:C:1964:66.
[62] ibid 41.
[63] Presuming that in Slovakia the crime is committed by a Slovak national and in other member states it is also the national of said member state.
[64] For details, see: Jozef Čentéš and Andrej Beleš, 'ZRUŠENIE ROZHODNUTÍ V PRÍPRAVNOM KONANÍ PODĽA § 363 TP – KĽÚČOVÝ NÁSTROJ OCHRANY ZÁKONNOSTI' in Tomáš Gřivna, Jiří Mulák and Andrea Beranová (eds), Opravné systémy a opravné prostředky v trestním řízení (Wolters Kluwer ČR 2023).

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and the § 363 CPC in the pre-trial proceedings. The § 363 CPC is only for the Prosecutor General to use; on the other hand, several persons are authorised to use the extraordinary appeal.[65]

The Prosecutor General and the defendant may lodge an extraordinary appeal solely against a final decision of the court of second instance, as they are bound by the requirement to exhaust ordinary remedies pursuant to § 372 sec. 1 CPC. Consequently, such an extraordinary appeal may challenge the decision of the court of second instance only within the scope of the matters it reviewed, namely the findings of the court of first instance and the persons to whom those findings relate. The Prosecutor General may file an extraordinary appeal both in favour of the defendant irrespective of the defendant's consent or even against the defendant's will and to the defendant's detriment. The extraordinary appeal may contest any part of the impugned decision and may be lodged either at the request of another person or ex officio. The Prosecutor General is restricted to the grounds for the extraordinary appeal exhaustively listed in § 371 sec. 1 CPC, which apply specifically to the Prosecutor General.[66]

The defendant may file an extraordinary appeal only in his own favour and solely against a decision that directly concerns him; he is therefore not entitled to do so on behalf of a co-defendant. Like the Prosecutor General, the defendant is limited to the grounds for the extraordinary appeal set out in § 371 sec. 1 CPC. Furthermore, the defendant may lodge an extraordinary appeal only through a defence counsel, in accordance with § 371 sec. 1 CPC.[67]

In the end it is important to note that, if Prosecutor General could act and decide on extraordinary remedies in such cases, or if the EPPO (any of its body) would have the competence of Prosecutor General, then it would lead to a different application of EU law in member states and would result in unequal treatment of defendants in proceedings conducted by the EPPO, as they would be able to use hereto mentioned extraordinary remedies only in certain Member States that have similar legal provisions. As we know, there are not many.

Such a provision could then violate the principle of equality of Member States before the Treaties in Article 4 section 2 TEU and could violate the principle of solidarity – the so-called "negative solidarity". [68]

We believe, along with other legal experts, that the harmonisation of criminal procedure is the key solution to the "patchwork" working order of EPPO.[69] This is however, a marathon and not a sprint. In the meantime, the CJEU has opportunities to shape the legal framework within which the EPPO operates by developing interpretative standards for the Regulation. To some extent, the Court may promote consistency by construing key provisions of the Regulation as autonomous concepts of EU law. This is particularly relevant in relation to rules governing the determination of the EPPO's competence and the criteria for selecting the forum of prosecution, both of which are likely to require uniform interpretation across the participating Member States. At the same time, the development of such standards must be accompanied by robust safeguards for the rights of the defence. Ensuring effective legal representation, both at national level and in cross-border proceedings, will be central to the legitimacy and fairness of the EPPO system.[70]

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[65] § 369 CPC
[66] Libor Duľa, '§ 369 Oprávnené Osoby.' in Jozef Čentéš and others, *Trestný poriadok II. Komentár* (1st edn, C H Beck 2021) 749.
[67] ibid.
[68] Klamert (n 61) 39–41.
[69] Vervaele (n 30) 328.
[70] Mitsilegas (n 25) 263.

Lastly, we do need to remember that the CJEU is not the legislator; indeed, it can smooth over some bumps within the EPPO legal framework; however, the Court is not suitable to solve every issue. Some just need to be solved by amendments to the EPPO regulation, if not the Treaties.

4. WHAT DOES THE CONSTITUTIONAL COURT SAY ABOUT EPPO?

In this part of the article, we will focus on two of the most recent resolutions of the Constitutional Court that deliberated on cases that were within the competence of Delegated European Prosecutors in Slovakia and in which the question of competence and the clash of Slovak legal order and European law in extraordinary remedies became important for a successful solution of those cases at hand. We will focus on both decisions independently, later combining their key takeaways together to delineate the competences of EPPO and the Prosecutor General more clearly.

4.1 Resolution ref. no. I. ÚS 588/2025 of the Constitutional Court

Firstly, some background. The plaintiffs in said case asked the European Chief Prosecutor to act according to § 363 CPC in their case, as they believed that, in cases under EPPO jurisdiction, the competence of the Prosecutor General inscribed in § 363 CPC would transfer to the European Chief Prosecutor, as the highest-ranking official of the EPPO. However, the European Public Prosecutor in charge of the case has informed them that the current legal norms do not permit such a course of action.[71]

The plaintiffs then requested that the European Public Prosecutor forward their motions to the Prosecutor General, as otherwise they would be denied the right to seek a remedy. In response, the European Public Prosecutor responded that national law enforcement authorities are not authorised to interfere with the activities of EPPO; this right belongs solely to national courts, at the latest during court proceedings.[72]

The European Prosecutor also referred to Article 48[73] of the Internal Rules of Procedure of the European Public Prosecutor's Office[74] which state in section 1: "**Where the national law of a Member State provides for the internal review of acts within the structure of its own prosecutor's office**, all requests for the review of an act undertaken by the European Delegated Prosecutor shall be inserted in the Case Management System which shall notify the supervising European Prosecutor and the monitoring Permanent Chamber."[75]

This is followed by sections 2, 3 and 4 of this article which explain the steps that need to be taken when internal review of an act is conducted. The European Delegated Prosecutor responsible for the case must submit written observations to the supervising European Prosecutor. The supervising European Prosecutor is then responsible for deciding on the matter within the time limit provided by the relevant national law. The review has no suspensive effect on the investigation, unless the national law grants such effect. Then, before adopting a decision, the supervising European Prosecutor must inform the Permanent Chamber.[76]

[71] Constitutional Court Resolution of 23. October 2025, ref. no. I. ÚS 588/2025, 2-3
[72] ibid.
[73] Constitutional Court Resolution of 23. October 2025, ref. no. I. ÚS 588/2025, 3-4
[74] Internal Rules of Procedure of the European Public Prosecutor´s Office, College Decision 003/2020 of 12. October 2020.
[75] ibid. art. 48
[76] ibid.

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Last section of article 48 of the Internal Rules of Procedure states: "Where in this context the **national law refers to the supervising/superior prosecutor, for the purposes of this Article it shall be understood as the supervising European Prosecutor in relation to the European Delegated Prosecutor.**"[77]

This might very well lead to a conclusion that the European Delegated Prosecutor sort of "shot himself in the foot", as the it would seem that the key takeaway is that the § 363 CPC does not apply to EPPO decisions; internal review is conducted solely within the EPPO structure, meaning that in cases where we would apply § 363 to a Slovak prosecutor, we will apply Article 48 of the Internal procedure of EPPO to a European Delegated Prosecutor. This would, in turn, mean that in member states where there is no § 363, Article 48 of the Internal Rules of Procedure could not be launched in the same situations.

This is not the case, as we have outlined above. The Constitutional Court then stated that it would basically be the same as the legal problem in a decision IV. ÚS 212/2022.[78]

So, we need to come back to the basics. The European Delegated Prosecutors act on behalf of EPPO in their respective member states while retaining the same powers as domestic prosecutors.[79] The European Delegated Prosecutors are in turn supervised by the European Prosecutors.[80] Other articles of "higher bodies" of EPPO such as the European Chief Prosecutor, the Permanent Chambers, or The College, do not provide for a supervisory role of individual proceedings in a way where the body reviews a decision and subsequently issues a binding legal interpretation that the subordinate entity must follow, or makes the decision itself.[81] Only such competence is given to the European Prosecutor by Article 48 of the Internal Rules of Procedure.

In essence, the plaintiffs asked for an internal remedy; it was delivered by the European Prosecutor, which has the supervisory position over the European Delegated Prosecutor. Subsequently, the plaintiffs wanted another review by a higher-ranking body. However, as the EPPO Regulation and the Internal Rules of Procedure do not provide any such competence to another EPPO body other than the European Prosecutor, which has already reviewed the decision, it would consequently mean that the European Prosecutor would review a decision he himself has taken. Such a course of action clearly does not make sense.[82]

The last question that might arise is whether internal rules are binding on EU citizens. They are not; however, some persons, such as the accused or suspects, have sufficient standing to require EPPO to abide by its own internal rules. Even though their internal nature suggests they have no effect "on the outside world," the contrary is true, because any violation of them leads to a risk of unequal application of justice.[83] Thus we can conclude that non-application, or violation of internal rules of EPPO, can lead to

[77] ibid.

[78] Constitutional Court Resolution of 23. October 2025, ref. no. I. ÚS 588/2025, 4. The Constitutional Court cited this case: Constitutional Court Finding of 28. June 2022, ref. no. IV. ÚS 212/2022.

[79] For further details, see: Burchard (n 5) 98–104.; Article 13 of the EPPO Regulation

[80] Article 12 of the EPPO Regulation

[81] Articles 8-11 of the EPPO Regulation

[82] That is why the Constitutional Court compared this to the case IV. ÚS 212/2022, as in that case the plaintiffs asked for § 363 CPC to be applied by the Prosecutor General to review the decision taken previously by himself (his deputy, who acted in the name of the Prosecutor General) under § 363 CPC. The actions of the Prosecutor General's deputy are considered as if they were taken by the Prosecutor General himself.

[83] Dominik Brodowski, 'Article 21' in Hans-Holger Herrnfeld, Dominik Brodowski and Christoph Burchard, *European Public Prosecutor´s Office. Article-by-Article Commentary.* (1st edn, Nomos, C H Beck, Hart Publishing 2021) 140.

individual rights being violated, so long as it cannot be proven that such violation did not have "detrimental or legal factual effects on the individual."[84]

4.2 Resolution ref. no. IV. ÚS 594/2025 of the Constitutional Court

The "problem" in this case was the mentioned § 10 sec. 1 of the CPC.[85] The key takeaway of this case is that the jurisdiction of the European Public Prosecutor's Office (EPPO) derives from Article 7(2) of the Constitution of the Slovak Republic, which establishes the primacy and applicability of European Union law within the domestic legal order. Consequently, pursuant to § 10(1) of the Code of Criminal Procedure, any intervention by the Prosecutor General of the Slovak Republic in the activities of EPPO bodies is excluded.[86]

At the same time, EPPO exercises its powers within the framework of national criminal jurisdiction, applying the substantive and procedural rules of the Member State concerned, insofar as these are not superseded by the EPPO Regulation.[87]

However, the absence in EU law of any provision conferring on the European Chief Prosecutor a scope of authority equivalent to that of the Prosecutor General under § 363 et seq. of the Code of Criminal Procedure cannot be remedied by national legislation. The Slovak legal order is therefore precluded from extending, by analogy or substitution, the powers of EPPO bodies beyond those explicitly provided for in the applicable EU legal framework.[88]

The Constitutional Court elaborated that § 10 sec. 1) CPC creates normative space for the possible establishment of a corresponding allocation of powers within the framework of the European Public Prosecutor's Office; however, it cannot, in itself, substitute for such an explicit legal basis.[89]

As a last note, the Constitutional Court provided a very important remark that, at the same time, the existence of the extraordinary remedy aimed at setting aside final decisions adopted in preliminary proceedings is not, in principle, incompatible with the Constitution or with international treaty obligations. Nevertheless, neither constitutional norms nor international instruments impose any obligation on the legislature to provide for such a remedy within the system of criminal procedure.[90]

Therefore, the absence of a possibility to review a final decision adopted in the preliminary proceedings does not constitute discriminatory treatment of defendants subject to the jurisdiction of the European Public Prosecutor's Office, nor does it amount to a breach of Constitutional or any EU Treaty guarantees within the meaning of Articles 125 sec. 1 and 127 sec. 1 of the Constitution of the Slovak Republic. The mere fact that certain procedural mechanisms available under the national system of prosecution are not applicable in proceedings conducted by the EPPO cannot be regarded as a violation of the principle of equality or the right to effective judicial

[84] ibid.
[85] This is the part of § 10 sec. 1 CPC in question: "**In cases falling within the jurisdiction of the European Public Prosecutor's Office**, the term "prosecutor" also refers to the European Chief Prosecutor, the European Prosecutor, the European Delegated Prosecutor, and the Permanent Chamber, and **the powers of the Prosecutor General are exercised by the body of the European Public Prosecutor's Office established by a special regulation, otherwise by the Chief European Prosecutor.**"
[86] Constitutional Court Resolution of 5. November 2025, ref. no. I. ÚS 594/2025, 5
[87] ibid.
[88] ibid.
[89] ibid.
[90] ibid.

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protection, particularly where alternative safeguards, most notably judicial review, remain available.[91]

Rather, this situation reflects the constitutional allocation of competences resulting from Article 7 section 2 of the Constitution, pursuant to which the Slovak Republic has, in a constitutionally prescribed manner, transferred the exercise of specific sovereign powers to the European Union. Within this transferred sphere, the applicable legal regime is determined primarily by EU law, which may legitimately deviate from domestic procedural arrangements. At the same time, powers not expressly transferred remain within the competence of the Slovak Republic, thereby preserving the integrity of the national legal order outside the scope of EU authority.[92]

From this perspective, the differentiated procedural position of persons subject to EPPO proceedings must be understood not as an arbitrary or unjustified disparity, but as an inherent and constitutionally permissible consequence of the division of competences between the national and supranational legal orders.[93]

5. CONCLUSION

Finally, firstly we will present the answers to the research questions presented in the Introduction of this article, then we will move to final remarks.

1) What is the delineation of EPPO's competences and the Prosecutors office of the Slovak Republic?

The EPPO exercises exclusive competence concerning the investigation and prosecution of criminal offences affecting the financial interests of the European Union, as defined in the EPPO Regulation and mainly the PIF Directive[94]. Within its sphere of competence, the EPPO operates through its own independent and autonomous hierarchical structure, composed of several bodies including the European Chief Prosecutor, European Prosecutors, and European Delegated Prosecutors acting at the national level.

By contrast, the Prosecutor's Office of the Slovak Republic retains competence only over offences falling outside the material scope of the EPPO – in cases where the EPPO has not exercised its competence. Once EPPO exercises its competence, national prosecutorial authorities are excluded from exercising their powers in that case. In particular, they are not entitled to supervise, review, or otherwise interfere with decisions taken by the EPPO, as such authority would be incompatible with the EPPO's independence and the primacy of EU law.

2) Can the Prosecutor General act in cases under the competence of EPPO, especially in the field of extraordinary remedies?

No, the Prosecutor General cannot act in cases falling within the competence of the EPPO. This limitation also extends to the exercise of extraordinary remedies, including those provided for under national law, such as § 363 CPC.

Allowing the Prosecutor General to intervene in EPPO proceedings would undermine the institutional independence of the EPPO and the independence of the EU legal order. Accordingly, once competence is assumed by the EPPO,

[91] ibid.
[92] ibid. 5-6
[93] More on the differences in EU financial interests´ protection see: Ján Šanta, 'Ochrana a Poškodzovanie Finančných Záujmov Európskej Únie v Niektorých Trestných a Iných Zákonov Členských Štátov EÚ' (2023) 75 Justičná revue 18.
[94] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law. OJ L 198, 28.7.2017, pp. 29–41

national authorities are precluded from exercising their otherwise applicable procedural powers in relation to that case.

3) Do the competences of the Prosecutor General "transfer" to EPPO in cases under EPPO's competence?

No, the competences of the Prosecutor General do not "transfer" to the EPPO. Rather, the EPPO exercises its own autonomous competences, which are directly conferred by EU law and are not derived from, nor dependent on, national prosecutorial powers and national law.

The EPPO does not assume the role or legal position of the Prosecutor General; instead, it operates within a distinct legal framework, governed by the EPPO Regulation. Therefore, the competences of the Prosecutor General remain intact at the national level but become inapplicable in cases falling within the EPPO's jurisdiction.

In the end, it would seem that all is well; there are no discrepancies in the application of EU law in member states. However, that is not the case. We have merely concluded that in the case of extraordinary remedies, such competences of the Prosecutor General are not transferred to any body of the EPPO. However, questions of differential treatment are still persistent. As in the same case, only the competence of the EPPO would not be established[95], the perpetrator would have a greater scope of remedies given to him.[96] Of course, the application of § 363 CPC is exclusively in the hands of the Prosecutor General and the extraordinary appeal in § 368 CPC can be filed by the plaintiff as well. However, for example, in cases where there is insufficient legal representation, there is the possibility of intervention by the Prosecutor General, applying for an extraordinary appeal, thus preventing injustice to the plaintiff. Plainly put, there are more opportunities for unlawful conduct to be healed if only national law was applied.

European law and its legal order are not perfect. Indeed, it is the result of what is possible; thus, there are many problematic aspects of the EU legal order, especially if you throw into the mix the 27 different legal systems of EU member states, or even international law.

As a result, the current legal landscape of the European Union may aptly be described as the coexistence of twenty-seven distinct national legal systems alongside a supranational EU legal order. This structural plurality is not a defect, but rather an inherent feature of the Union's constitutional design, particularly in the field of criminal law, which largely remains within the competence of the Member States. Consequently, the interaction between EU law and national legal systems necessarily gives rise to diversity in procedural rules, institutional practices, and decision-making processes.

In this context, the functioning of the EPPO illustrates the complexity of this multilevel legal order. Although established by directly applicable EU legislation – the EPPO Regulation – the EPPO cannot operate in isolation from national legal frameworks. Both the Regulation itself and the EPPO's internal rules explicitly rely on national procedural law, which governs key aspects of investigations and prosecutions, including investigative measures, admissibility of evidence, and judicial review. As a result, European Delegated Prosecutors must navigate not only the uniform framework of EU law but also the specific procedural regimes of the Member States in which they act.

[95] For example, the damage of the same scope was done to the national financial interests and not the EU financial interests.

[96] We have already mentioned this problem in the Introduction to our article. Herrnfeld (n 13) 9–10.

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This structural reliance on national law inevitably leads to divergences in procedural safeguards, investigative techniques, and judicial outcomes across Member States. Differences in the organisation and functioning of law enforcement authorities, varying standards of judicial control, and distinct procedural traditions all contribute to a fragmented operational environment.

While such diversity reflects the principle of national procedural autonomy, it also poses challenges to the uniform and effective application of EU law, as well as to the principles of equality before the law and legal certainty within EPPO proceedings. This can have substantial consequences, as the perpetrator can be punished differently for the same unlawful conduct in various member states. This definitely is not in line with the principle of equality the EU and member states stand for, as basically member states' borders create discriminatory treatment for the perpetrators of the same unlawful conduct based only on the country where the conduct occurred.

Consequently, relevant questions can be raised if the financial interests of the EU can be protected sufficiently, if there is differential application of EU law among member states, stemming from the uniqueness of each of their legal system?

From a systemic perspective, these tensions raise the question of whether deeper harmonisation is required. We believe it is necessary, as we have mentioned previously in this article. A conceivable solution would be the gradual development of a genuinely unified European criminal procedure, which would establish common rules applicable across all participating Member States. However, such a development would require a revision of the EU Treaties, given the current limits of EU competences in criminal procedural law. Until such a reform is realised, the EPPO will continue to operate within a hybrid framework, balancing supranational objectives with the enduring diversity of national legal systems, practising the art of what is possible.