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## **B. RECENZJE**

## **REVIEWS**

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**Joanna Beata Banach-Gutierrez  
and Cristopher Harding (Eds.),  
Criminal Law and Policy: Values, Principles  
and Methods, Milton Park, Abingdon, Oxon;  
New York, NY: Routledge, 2017**

The collective book *Criminal Law and Policy: Values, Principles and Methods*, co-edited by Joanna Beata Banach-Gutierrez – Associate Professor at the Faculty of Law and Administration, University of Warmia and Mazury in Olsztyn – and Cristopher Harding – Professor of Law at the Department of Law and Criminology, Aberystwyth University –, is the result of a compilation of contributions, produced in the framework of an international research network, whose main purpose is to disseminate the research on EU Criminal Law, a topic that has experienced a swift development in the recent times.

The introductory chapter, signed by both editors and titled *EU criminal law as an emergent regime: editorial introduction*, intends to clarify that the concepts “EU Crime Policy” and “EU Criminal Law” – which not only implies substantive penal law, but also criminal procedure law and criminology – should be conceptually understood as parts of an amorphous territory stemmed from EU provisions on “justice and home affairs”, and on “freedom, security and justice”. Therefore, all the contributions that comprise this book aim to make more comprehensible a topic and process built, to some extent, on uncertainty and chaos. They affirm that the discussions about criminal policy always begin at the national level, and that it is only through a comparative process between the different solutions adopted at the national level when a dialogue at the European level is reached, a dialogue that leads to the achievement of useful results. It is a natural gradual process that comes from the national sphere and goes to the supranational, transnational and international level. Metaphorically, they use the different connotations of the term “fugue” to show two divergent views – one more positive, one more negative – on the development process of the EU Criminal Law.

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After this introductory chapter, the book is divided in two main parts. The first part, headed *The search for principle, direction and coherence*, is comprised by seven different chapters –chapters 2 to 8–, in which the different topics are analysed, predominantly, from a conceptual approach. It covers a wide range of contributions which reflect on the nature, method, function and legitimacy of the law instruments and policies on EU Criminal Law.

The first contribution, signed by the co-editor Joanna Beata Banach-Gutierrez and entitled *Supranational integration in criminal matters within the European Union: what could the future bring?*, summarizes the evolution of the judicial cooperation in criminal matters in the EU since the entry into force of the Maastricht Treaty, ending with a reflection on the possibilities and prospects that could be expected on this matter in the future.

*The effects of the civilising process on penal developments in the European Union*, authored by Jarosław Utrat-Milecki, contains a highly interesting analysis, from a critical stance, about the opportunity to codify the Criminal Law at the European Union level, taking account of the additional difficulties entailed by this task due to the strong relationship between the criminal law and the national sovereignty of the States. The author not only assesses if this codification would be possible, but also disputes whether it would be desirable, ultimately defending that the purely national criminal law and policies could perfectly and peacefully coexist with the construction and development of the EU Criminal Law.

Under the title *EU Criminal Law: national boundaries and the European penal rainbow*, both editors, Joanna Beata Banach-Gutierrez and Cristopher Harding, analyse, through the prism of the different national substantive penal laws that currently persist in the European Union and the emerging process of substantive law harmonization at the EU level, the discrepancies between unity and diversity, pointing out that both EU Criminal Law and national law are equally affected by the necessary balance between the components “security” and “justice” of the AFSJ. Although they suggest that diversity could be perceived as an obstacle to the EU criminal law harmonization process and to the application of the mutual recognition principle, they expose an alternative approach in which this diversity should be perceived as a valuable resource for the development of the European Union law, rather than an obstacle to integration.

With *Towards a principled European criminal policy: some lessons from the Nordic countries*, Raimo Lahti stresses the special importance that the principles of subsidiarity and proportionality have in the field of EU Criminal Law. He reflects on the convenience of adopting alternative and possibly more effective forms of punishment –for instance, the application of punitive administrative sanctions– for minor transgressions, preserving the formal penal response for more serious criminal offences. He also analyses the state of play of this topic at the national level in the Nordic countries.

Hendrik Kaptein through his contribution *Towards marginalisation of European criminal law: proportionality, subsidiarity and principled public policy priorities in protecting human life and rights* deals with the issue of how the prevention of

crime and the respect of person's safeguards should be guaranteed through a rational administration of criminal justice, considering the principles of proportionality and subsidiarity. In other words, the author considers that the problem should be tackled from its roots, maintaining that any damage caused by a criminal act should be restored, in first place, by means of the application of reparative criminal law solutions, relegating the pure application of the penal justice to a true *ultima ratio* measure.

*EU criminal law and effect utile: a critical examination of the Union's use of criminal law to achieve effective enforcement*, written by Vanessa Franssen, analyses how the current powers that the EU have in the field of substantive penal law are currently being used, giving the example of the new criminal sanctions for market abuse. She suggests that the powers covered by the Treaties regarding this matter should not be used, under no circumstances, as a pretext to apply the substantive penal law instrumentally, noting that it may have a counterproductive effect.

The first part of this book concludes with another contribution signed by Cristopher Harding, titled *Tasks for criminology in the field of EU criminal law and crime policy*, in which he defends that the development of the EU criminal law and the approval of new legal instruments in this field should come along with the promotion of research and academic discussions on this matter, in order to achieve a better knowledge that would lead to a better policy-making.

The contributions that compose the second part of this book, headed *Stock-taking progress, achievements and prospects* –chapters 9 to 16–, tackle the matter from a more specific approach, focusing on particular topics that have emerged throughout this process. Each chapter aims to determine and illustrate the main questions and issues that have arisen, offering a wide overview of the current state of play at the EU level to the reader.

Harmen van der Wilt opens this section with the reflective discussion *Reflections on the prospects for regional criminal courts: Europe and Africa compared*, focusing on the analysis of the proposals for the establishment of a Criminal Chamber within the African Court of Justice and Human Rights, and the potential collision with the jurisdiction of the ICC that this establishment could entail. The author compares this situation with the gradual progresses, achieved step by step, that have been conducted in the European Union. It is very interesting how the author points out the possibility that the establishment of the EPPO could be one mid-step to the future establishment of a European Criminal Court.

Patrick S. Günsberg in *The practice of plea bargaining in the Nordic context* explains the plea bargaining system adopted in Finland, and the impact that this new system could have on the principles of legality and mandatory prosecution and the safeguards of the accused.

*The EU Criminal Intelligence Model: problems and issues*, by Artur Gruszczak, warns about the necessity of developing a European criminal intelligence and information exchange model, based on four main dimensions: technological harmonization, legal approximation, cultural exchange and organizational centralization of information exchange, in order to fight against serious organized cross-border crime effectively.

The chapter *victims as individuals with rights in the European Union: their*

*protection and their legal standing*, by Begoña Vidal Fernández, begins with an enlightening retrospective of the evolution of the role of the victim in the EU. Subsequently, she explores the different instruments that compose the current legal framework in the EU on this matter, making an in-depth analysis of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and assessing, at the same time, the transposition of this Directive into the Spanish national law by means of Act 4/2015 *del Estatuto de la víctima del delito*.

*Exploring the impact of legal culture in shaping the role of the European Public Prosecutor: the prospects for penal moderation*, by Constantina Sampani, reflects on the challenge that supposes the establishment of the European Public Prosecutor Office, considering the different interests at risk and the significant divergences between the different national systems of the European Union. She explores how the new agency should be fitted into some of the newest penal strategies of penal moderation, which advocate the convenience of soft compliance, decriminalization and diversification in the methods of legal control of criminal behaviour.

*Exploring the case for criminalization of business cartels in Europe*, is the second contribution to this book signed by Patrick S. Günsberg, in which he assesses the opportunity of using penal law and penal sanctions towards cartel cases in the European Union. Through the analysis of some comparative law examples that are being used and discussed at the national level, he reflects on the possibility of including, at the EU level, the Director Disqualification orders as an alternative way to punish this sort of conduct.

*The EU legislation on protection of financial markets against market manipulation and its implementation in Polish Law*, by Anna Błachnio-Parzych, pays a special attention to the EU legislation on market manipulation, and examines how this legislation has been implemented at the national level in Poland. She gives a global assessment of the transposition of this matter into the Polish national law, highlighting the main positive and negative aspects.

The final chapter, written by Jennifer Edwards, is entitled *Transposing EU Framework Decisions into the United Kingdom's criminal law: the trials and tribulations of a researcher*—please note that this contribution was submitted before the celebration of the referendum on the permanence of the United Kingdom in the European Union—. The author offers us an overview of the transposition into the Criminal Law of the United Kingdom of different Framework Decisions issued by the European Union in the AFSJ. The outcome of this analysis allows her to defend that, although it has been usually thought that the UK lacks European commitment in this field, they actually have successfully fulfilled the transposition of every European instrument analysed.

In conclusion, we are in front of an excellent work that, without straying from the field of the European Criminal Law, covers a wide range of trending research topics which are singularly complex. Due to the conceptual character of this book, and the meticulousness and solvency that every author shows in each chapter, this reading is highly recommended for those researchers and students that are previously acquainted with this field. Nevertheless, it could be also useful for anyone

interested in European criminal matters who wants to know, not only panoramically but also thoroughly, what are the main problems that are currently being discussed by scholars in the field of European Criminal Law.