

CURRENT ISSUES IN EUROPEAN CRIMINAL LAW AND THE PROTECTION OF EU FINANCIAL INTERESTS, ed. Zlata Đurđević, 2006, Austrian Association of European Criminal Law and Croatian Association of European Criminal Law, Zagreb, 201 pp.

Review\*

The book *Current Issues in European Criminal Law and the Protection of EU Financial Interests* edited by Dr Zlata Đurđević stemmed from a conference of the same name that was organised jointly in May 2005 in Dubrovnik by the Austrian and Croatian European criminal law associations, and so the book was written in English. The conference brought together leading scholars, politicians and officers of courts and departments from more than twenty European states, as well as from EU institutions. The objective was to discuss the most up-to-the-moment issues in European criminal law. Since Croatia at this time was not yet a member of the EU, one might wonder what kind of impact European criminal law can have on Croatia, and hence what the significance of this publication for the Croatian professional and other public might be. But it would be an error to conclude that the problems analysed are in the distant future for Croatia. On the contrary, Croatia has at this very moment the obligation to harmonise its legislation with European, and this derives from the starting of the accession negotiations.<sup>1</sup> During the negotiations, Croatia is obliged to adjust its legal system, in other words, to adopt the *acquis*. Hence the issues and challenges to which the conferees attempted to provide some answers are the same issues that Croatian lawyers are already having to address.

The contents of the book reflect the course of the conference. After welcome addresses by Petar Novoselec, chairperson of the Croatian Association, Friedrich Hauptmann, chairperson of the Austrian Association, of Ljiljana Vodopija Čengić, representative of the Minister of Justice of the Republic of Croatia, and Lothar Kuhl, representative of OLAF, the book contains papers that are divided into three fundamental units. These are EU frauds and the crimes and penalties associated with them, the criminal liability of

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<sup>1</sup> The European Council decided officially to start accession negotiations with Croatia on October 3, 2005. The association process and hence the adoption of the *acquis* officially started as early as October 29, 2001, on the signing of the SAA.

corporations [or legal entities] and corporate officers and the interaction of supranational and national bodies of criminal justice.

The first part of the book is devoted to EU fraud and to the mechanisms of protection afforded by criminal law to the financial interests of the Union. It is primarily through the enforcement of European instruments, primarily the Convention on the Protection of the Financial Interests of the EU (PIF or PFI Convention, as it tends to be called), and its two protocols, that an effort is made to ensure the protection of these interests.<sup>2</sup> **Petar Novoselec** demonstrated that Croatian criminal law, notwithstanding Croatia's not yet being a member state of the EU, already to some extent enables the prosecution of crimes against the financial interests of the EU, but only on the basis of an extensive interpretation (by taking the legal good and financial interests of the Union as protected), to which our local state attorneys and courts are not always inclined. In order for quandaries in the practice of the courts to be avoided, Novoselec recommends the introduction of an assimilation clause.

In the paper of **Robert Kert**, crimes against the European budget and their penalisation in Austrian law are analysed. Austrian legislation incorporated the PIF Convention standards into its criminal code above all by modifications to the Financial Crime Law of 1998 and 2004. In Austria the *acquis* is held in a certain reserve, however, and maladjustments with the PIF Convention are manifested in that according to Austrian law, for fraud to be proved there must be some damage to property, and the concept of fraud, according to Austrian criminal law, is more restricted than the concept according to PIF.

The next work, by **Margareta Hofmann**, compares the implementation of PIF instruments in member states from a supranational perspective. The greatest discrepancies between the PIF convention and the national laws can be seen in the characteristics of fraud, for according to PIF there need be no intention of deceiving someone and getting richer. From this point of view only four member states have correctly defined the crime of fraud against the interests of the EU. A great discrepancy exists in the area of criminal penalties, which in most states are not sufficiently effective or deterrent. Here it should be said that today there are different obligations to apply the 2<sup>nd</sup> Protocol of PIF for the older member states, who are not obligated to do so, and the new states (of 2004), who are obligated by all PIF instruments.

EU fraud from the Slovene point of view was discussed by **Matjaž Jager**. In general it can be concluded that Slovene legislation is at one with the *acquis*, but an effective enforcement of the laws can in practice be hindered in several ways: by the adoption of deliberately faulty criminal laws (*lex imperfecta*), obstructing the effectiveness of the criminal procedure by an exaggerated protection of human rights, inadequate funding of, and even direct interference in and distorting, criminal investigations. Another problem resides in judges and state attorneys that are not well enough informed.

**Judit Jasco** outlined the application of the regulation in Hungary. Crimes of fraudulent conduct against the revenue and expenditures of the EU are fraud, unlawful acqui-

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<sup>2</sup> The 1st Protocol to the Convention of September 27, 1996, prescribed the obligation of states signatories to criminalise both active and passive forms of European official corruption, and the 2nd Protocol the laundering of money obtained from frauds against the EU budget, as well as the criminal liability of corporations for frauds, active corruption and money laundering that derive from such frauds.

sition of assets and violation of the financial interests of the European Communities. In connection with corruption, the demand of the Convention for international and national officials to be equated has been fulfilled, and money laundering has been criminalised since 1994 as a felony when it is done with intent, and as a misdemeanour when money is laundered unwittingly.

The second part of the book deals with the legal liability of corporations and corporate executive officers. After an introduction to the issues of the criminal liability of corporations and an analysis of the phenomena involved in corporate crime, **Zlata Đurđević** writes of various models of deriving this liability, international documents and sources of EU law, from which stem the obligation of governments to introduce the corporate criminal liability for such crimes and gives a comparative review of the situation in the states of Europe. At the end there is a brief review of the Croatian Corporate Criminal Liability Law, and she adduces the first information about the enforcement of this law.<sup>3</sup> Hungarian regulations concerning corporate executive officers' criminal liability and their harmonisation with Article 3 of the PIF Convention and Article 3 of the Anti-Corruption Convention are analysed by **Katalin Ligeti**. After this comes a review of the dispositions of corporate criminal liability in Austrian law.<sup>4</sup> **Frank Hopfel** and **Robert Kert** explain the reasons that led to the introduction of this liability, the forms of entities that in spite of having no legal personality nevertheless fall under the purview of this law, the assumptions of liability and procedural rules concerning procedures against corporations. Aleksandar Karakas writes of the experience of Slovenia in the introduction and application of the Slovene Corporate Criminal Liability Law. According to police reports, crimes committed by corporations as a percentage of overall crime in 2000 were fairly small, ranging around 0.2 and 0.3%. The number of criminal procedures filed against corporations is constantly on the rise, but for the moment only a small number of such procedures have actually come to court.

The third and last unit of the book relates to the mechanisms and methods for the collaboration of national and supranational judicial bodies. In the introductory part of his work, Davor Krapac draws attention to the rapid development of international collaboration in the EU in the area of criminal justice. Although the European Community has no actual criminal law jurisdiction, there are several mechanisms via which it can affect the criminal law systems of member states. In the second part of this paper the legitimate extent of the repressive authorities of states, the jurisdiction of European bodies of criminal justice and the framework of cooperation among the national legal systems are discussed, and there is a special reference to the provisions of the European Constitution. The last part of the paper relates to mutual recognition of court decisions and the institute of the European arrest warrant, which has made collaboration among states more rapid, simpler and less dependent on political issues.

**Nico Keijzer** also writes on the European arrest warrant, primarily though from the point of view of the protection of human rights. Although the EU is based on trust in the justice of the member states, in some cases there might be a reasonable ground for sup-

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<sup>3</sup> NN 151/2003, passed September 11, 2003, entry into force March 25, 2005.

<sup>4</sup> Austrian criminal law until December 31, 2005, did not recognise the criminal liability of corporations or legal entities, and thus in line with this at the Dubrovnik conference in May 2005 it was the draft bill that was referred to.

posing that the fundamental human rights of a person being sought might be violated in the state making the request. In such case the bona fide application of human rights acts and the objectives of the EU require that surrender be denied.

Saša Sever sets forth the principle of *ne bis in idem* in the practice of the European Court of Justice. The decisions of this court foster international collaboration of courts and prosecutors in the member states. From them, further, it derives that for a single crime a person can be tried and convicted only in a single state. Here it is not important what shape the decisions has, only the content, and the courts of states of the Union are obligated only by the meritorious conclusion of a procedure in another member state.

**Katja Šugman** discusses Slovene experiences in 3<sup>rd</sup> Pillar issues, and cooperation in criminal prosecutions. The harmonisation of national legislations is often effectuated too rapidly and uncritically, and political processes and the necessary speed of reaction also affect the adoption of rulings even with the Union. Using the example of the institute of the European prosecutor, equality of arms, minimum standards and reciprocal recognition, Sugman provides a critical evaluation of some of the trends in the development of European criminal law. In this process, that is, the emphasis tends to be placed on effectiveness of international collaboration, sometimes without adequate reference to the right of the individual, thus neglecting the traditional requirement that the intervention of criminal law must be the *ultima ratio*.

The importance of formal and informal forms of collaboration of state attorneys in EU member states in the area of transnational organised crime and war crimes is highlighted by Dragan Novosel. The informal communication phase is primarily of an intelligence nature, and is invaluable because as a whole it will be succeeded by formal legal assistance. It is not enough here to work closely with EU member states, but it is also necessary to collaborate with neighbouring states that are still not members.

**John Vervaele** systematically reviews the role of the European Court of Justice in the development of the fundamental principles of Community law, with particular reference to *ne bis in idem*. He is of the opinion that the European Court deserves a chance to contribute with its decisions to the harmonisation of criminal material and procedural law, and in the protection of the rights of European citizens, the old-fashioned idea of state sovereignty and the traditional doctrine of *actes de gouvernement* should prevail, which unfortunately not even the Treaty on European Union does in its entirety. The book ends with an account of the final discussion about the outlook for the development of interaction and collaboration among national and supranational bodies. The conclusions of the conference are put forward and explained: that future collaborative mechanisms will work only if they have a real and practical value; that material criminal law must be simple, but also in accord with the requirements for lawfulness and legal certainty; that criminal procedural law must be transparent, and institutions flexible, and that full trust cannot be established without a strong European Court of Justice.

In their articles, the authors have drawn attention to the current state of development of European criminal law and the degree of harmonisation of national and European legislations. Their works have attempted to raise awareness that entry into the EU also means the adoption of European legal goods and the protection of equal protection to these legal

goods as to the national. As well as an analysis of the current condition in the harmonisation of Croatian material and procedural criminal law, the books provides an interesting comparative review of Austrian, Hungarian and Slovene approaches that can in some segments serve as an inspiration to the Croatian lawmaker and to the legal profession. At the end one has to say that the book contains not only a list of authors but also an index that facilitates the search for concrete concepts and coping with this demanding set of issues. For all of this, it can be said that the editor has collected and published valuable material that will be useful to a broad circle of persons in familiarising themselves with this complex and, in Croatia, still inadequately explored area of the law.

*Maja Munivrana*