DEVELOPMENTS

Book Review – HELMUT SATZGER, INTERNATIONALES UND EUROPÄISCHES STRAFRECHT (NOMOS 2005)

By Robert Esser[*]

Helmut Satzger, Internationales und Europäisches Strafrecht, Nomos Verlagsgesellschaft: Baden-Baden, ISBN: 3-8329-0841-2, € 24,00.

European and International Criminal Law is not only the title of the first textbook in this branch of law written by Helmut Satzger but also a field of study which has become more and more popular in recent years. A substantial study and examination reform within Germany has seen several universities develop a curriculum for advanced students on the ideas and elements of criminal law that extends beyond national boundaries. These new courses supplement those on Criminology, Juvenile Justice and Prison Law that have been the academic focus in the past. The curriculum developments follow the gradual development of the last 40 years of a European system of penal law under the influence of political bodies such as the Council of Europe and the European Union, a process more or less unnoticed by many practitioners and academics. In addition, the creation of the International Criminal Court (ICC) by the Rome Statute in 1998 and the largely successful work of the UN-Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) generated momentum in an academic discipline which has been neglected for quite some time. There is no denying the fact that crime has developed into a multinational and world-wide phenomenon. However, criminal law still remains an area of law infused by national scepticism. In his book, Satzger does not detail the various national criminal law systems but draws attention to three major fields of international criminal law: the application of national criminal law to international criminal activities and trans-boundary crime, EU criminal law and International Criminal Law.

Following the introductory part, which introduces the reader to the term "International Criminal Law", Satzger provides a detailed overview of the German principles of "international" criminal law laid down in the national Criminal Code. These provisions (§§ 3 – 9 StGB) are quite misleading since their international reference is relatively unilateral. In fact, they do not focus on the influence of

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international sources on national criminal law but rather answer the question as to the circumstances in which German courts and law enforcement agencies are allowed to apply "their own" national criminal law on cases standing in an international context or on crimes with a foreign link. Satzger illustrates the dogmatic problems arising in that context very clearly with eight case studies designed especially for students familiar only with "national" caselaw.

The third part provides the reader with a general background to EU criminal law. It deals with the development of criminal justice at a European level, i.e. legislative and political instruments set by the European Union and European Community, as well as the jurisdiction of the European Court of Justice (ECJ) and its influence on national criminal law. Satzger makes the reader aware of the fact that several EC-regulations and directives, without referring directly to criminal law, nonetheless contain provisions with a potential influence on criminal law.[1] The author also considers the on-going development at the EU level of a supranational criminal law; this began in the European Commission's fight against fraud and corruption resulting in the Corpus Juris project in 2000 (§ 7 Nr. 33 ff.) and the Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor in 2001.[2] This discussion allows students to appreciate the difference between criminal law influenced by EC-Law and criminal provisions originating under the intergovernmental level of governance in criminal matters under the EU-Treaty (Art. 29 – 42 EUT). What the reader gains is an appreciation of the impact of "Third Pillar" legal instruments on national criminal law. Under the so-called Third-Pillar (§ 8 Nr. 41 ff.), numerous treaties and framework decisions have been signed by the Member States in order to harmonize substantive features of national criminal law but only a few of these legal instruments have been implemented in national law so far. Unfortunately, Satzger refers only to some of them (§ 8 Nr. 44) and an exhaustive compilation of all existing instruments would have been desirable.

The subsequent chapter on *Criminal Prosecution in Europe* (§ 9) is arguably too short and does not do justice to the practical relevance of this field. Satzger covers the leading concepts in this field: the improvement of mutual legal assistance – part of

[1] At least, there is a tendency to interpret these provisions as a legal basis for protective criminal guidelines of the European Community connected to the focus of the legal instrument. See: Art. 23 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJEC L 1 of 4.1.2003, p. 1); Art. 19 of Commission Regulation (EC) No 907/2000 of 2 May 2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards aid for private storage in the beef and veal sector (OJEC L 105 of 3 May 2000, p. 6).

[2] COM (2001) 715 final, 11 December 2001.

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which is the concept of mutual recognition – the approximation and harmonisation of national legislation and the simplification of co-operation between the national police forces, Europol and Eurojust. But what the national states in Europe are really concerned with at the moment is the achievement of a fair balance between an adequate practical response to cross-border crimes on the one hand and the implementation of an adequate and effective judicial review of measures of the European Anti-Fraud Office (OLAF), Europol and Eurojust on the other hand; and this is not adequately addressed here.

Since international co-operation in criminal matters is the political focus of attention at the present time, one would have expected at least a short presentation of the guidelines of mutual legal assistance and of the components of the German Law on Mutual Legal Assistance (IRG). As regards the area of the European Union, the extradition procedure traditionally based on the European Convention on Extradition of 13 December 1957 and several EU-conventions have been replaced by the European Arrest Warrant (EAW), which itself is based on the Council Framework Decision of 13 June 2002. Satzger highlights the guiding principles of the EAW that were designed to speed up the extradition of criminal suspects, but refers neither to its implementation in the IRG nor to former – and as far as non-EU-states are concerned still existing – extradition instruments. It is mainly at this practical level that difficulties of the EAW remain, e.g. the still existing two-stage procedure with a court and the government deciding on the extradition of a suspect, as well as the question as to the circumstances in which a state may decline the extradition of a suspect already facing prosecution for the same offence at the national level.

This is true too of the law of mutual legal assistance, the basic provisions of which are framed in the European Convention of Mutual Legal Assistance of 20 April 1959. It would have been interesting for these provisions to have been considered in a separate chapter on a case-by-case basis, as Satzger has done in the second part of his book concerning the national principles of "international" criminal law. Moreover, the current transcription of the EU-Convention on Mutual Legal Assistance of 29 May 2000 and its Protocol of 16 October 2001 into German law could also have been dealt with in detail, since these instruments will become one of the most important tools of judicial co-operation.

Several EU Member States have built up judicial cooperation outside the Council of Europe and the European Communities, such as the great number of texts adopted under the so-called Schengen cooperation. The cross-national dimension of the principle *ne bis in idem* regulating that a person may not be tried twice for the same offence goes back to Article 54 of the Schengen Implementation Convention of 1990. Satzger illustrates that this rule, which has been codified as Article 50 of the EU-

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Charter of Fundamental Rights, has been interpreted by national courts in a different and often contradictory manner. However, since the European Court of Justice's (ECJ) well-known judgment in the case of *Gözütok and Brügge* of 11 February 2003, a more uniform approach to the interpretation of this principle is on its way (§ 9 Rn. 10-12). The ECJ has made it clear that even the decision of a public prosecutor to close the criminal proceedings forbids, under certain circumstances, a second prosecution in another member state of the Union.

Satzger also gives only a short account of the criminal provisions of the *Treaty establishing the Constitution for Europe* (OJEU C 310 of 16.12.2004, p. 1) signed in Rome on 29 October 2004 (§ 8 Rn. 48 f.). A short reference to the Charter of Fundamental Rights – now part II of the Constitution Treaty – which contains concrete defence rights and other guidelines for criminal procedural law would, however, have been useful at this point.

The chapter on the European Convention on Human Rights (§ 10) is no more than an excursus – as the author himself admits – which is a pity since the requirements of the Convention and the cases decided by the ECHR have a much deeper influence on German criminal procedure law than most of the problems arising under §§ 3 - 9 StGB, not least following the decision of the German Constitutional Court of 14 October 2004 laying down a constitutional duty of national courts and law enforcement agencies to take into account the whole jurisprudence of the ECHR as part of the rule of law (Art. 20 § 3 *Grundgesetz*). Since the 1960s, the ECHR has created a body of criminal procedure law whose principles are binding on the member states of the Council of Europe. A table of the most important sources and legal instruments of the Council of Europe (CoE)[3] and its criminal committees created under the framework of the CoE would have been helpful.

The fourth part of the book is dedicated to principles of International Criminal Law (*Völkerstrafrecht*).[4] Chapter 12 and 13 address the sources of international law and provides an introduction to current issues in human rights law. Satzger provides a concise historical overview of the development of this highly interesting field of law since 1945. Special attention is given to the creation of the ICC, its competence and procedures, as well as its co-operation with the national courts and law

[3] Conventions and agreements of the Council of Europe opened for signature between 1949 and 2003 were published in the EUROPEAN TREATY SERIES (ETS 001 TO 193). From 2004, this Series is continued by the COUNCIL OF EUROPE TREATY SERIES (CETS 194). All instruments of the Council of Europe are available at http://conventions.coe.int/Treaty/EN/cadreprincipal.htm

[4] The German International Criminal Law Statute (*Völkerstrafgesetzbuch*) of 2002 (BGBl. I 2254) is reprinted in the 1 ANNUAL OF GERMAN & EUROPEAN LAW 667 (RUSSELL MILLER/PEER ZUMBANSEN EDS. 2004); see the commentary by Christoph Safferling, *id.*, at 365; see, for its perhaps biggest application yet, in the *Abu-Ghraib* case, the essay by Andreas Fischer-Lescano, in 6 GERMAN LAW JOURNAL 689 (2005).

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enforcement agencies. Chapter 14 covers general principles of International Criminal Law, such as *nulla poena sine lege* or the rules establishing and excluding individual responsibility. Afterwards Satzger focuses on four crimes at the heart of substantive International Criminal Law: genocide, crimes against humanity, war crimes and aggression. The author illustrates not only the political background but also the substantive changes all four crimes have undergone throughout their history. The last chapter of the book's fourth part concentrates on the German Code of International Criminal Law (*Völkerstrafgesetzbuch*). Satzger puts special emphasis on the conflict between the provisions of the Statute of Rome and the principle *nulla poena sine lege* as laid down in the German constitution (Art. 103 § 2 *Grundgesetz*).

It would, moreover, have been interesting to have had in this part of the book a brief consideration of the jurisdiction of ICJ cases with a criminal character, such as *Avena* (31 March 2004) and *LaGrand* (27 June 2001)[5], and of relevant decisions by the Human Rights Committee, interpreting the International Covenant on Civil and Political Rights. More and more cases with a criminal aspect are emerging from New York and Geneva[6] and the book would have benefited from an indication of the direction these are taking.

Despite such missed opportunities, Satzger's book achieves its main aim – to familiarize law students with the three main topics and sources of international criminal law. What could be strengthened, however, is the practical orientation of what is offered. The manner in which Satzger describes the three sources of International and European Criminal Law is concise and comprehensible for students, for whom the book is designed. With the exception of § 9 and § 10 concerning Criminal Prosecution and the ECHR, the presentation of the material is deep enough to convey a full understanding of the background and impact of these topics. In addition, the questions at the end of each chapter (*Wiederholungs und Vertiefungsfragen*) as well as the references to internet sources and to relevant legal texts at the end of the book will be of great help for both students and teachers. Finally, taking into account that it is the first textbook for students on European and International Criminal Law, Satzger has done successful pioneer work.

[5] See: www.icj-cij.org. The cases concern the State's obligation to inform detainees of their consular rights under Article 36 § 1 (b) of the VIENNA CONVENTION ON CONSULAR RELATIONS of 24 April 1963.

[6] The Committee convenes three times a year for sessions of three weeks' duration, normally in March at United Nations headquarters in New York and in July and November at the United Nations Office in Geneva.

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