

CRIMINAL LAW IN EUROPE. IS IT THE SAME AS EUROPEAN CRIMINAL LAW?

MAGDALENA MARASZEK

Faculty of Law on Gdansk University, Poland

Abstract in original language

Wspólnota nie dysponuje obecnie kompetencjami z zakresu prawa karnego, poza możliwością podajmowania działań zgodnie z zasadą pomocniczości. Dlatego, nierealnym jest stworzenie jednolitego i kompleksowego europejskiego prawa karnego, które obowiązywałoby w każdym państwie członkowskim Unii. Aktualnie, proces harmonizacji prawa karnego polega na zbliżaniu ku sobie ustawodawstw karnych i nie jest oficjalnie rozumiane jako wstępny etap do całkowitego ujednoczenia prawa karnego na obszarze Unii, chociaż nie da się tego wykluczyć w przyszłości

Key words in original language

Europejskie prawo karne; Unia Europejska; rozwój; harmonizacja; ustawodawstwa karne; korpus przestępstw europejskich; europejski kodeks karny.

Abstract

European Community currently does not have competence in area of criminal law and procedure. It shall action only in accordance with the principal of subsidiarity. It's impossible to create nowadays one, unified and complex european criminal law, which would bind in every EU state. Actually, process of harmonization of criminal law is based on bringing closer of criminal statues and is not officially understood as a preliminary phase to absolute unification of criminal law in the EU area, although we cannot exclude it in the future.

Key words

European criminal law; European Community; development; harmonization; criminal statutes; european crimes corps; european criminal code.

Criminal law in Europe. Is that the same as European criminal law? In my point of view, definitely not. I would say that systems of the criminal law in European countries are some kind of mix of local legal traditions and elements taken from Roman, Germanin (and less from Common Law) and from the Enlightenment ideas.

In doctrine we find out different opinions whether exists such thing as „European criminal law”.

The point is, that, in accordance with art. 5 of THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY: The Community

shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

Generally speaking, European Community does not have competence in area of criminal law and procedure. Exceptions are The Third Pillar and less The First Pillar. That suppose to confirm my argument, that, by now, we cannot say that there is something like European criminal law word for word. Despite this, dynamic and intensive development of The Third Pillar induce to ask a question: Is there any chance for making European criminal law in the future (doesn't matter - future nearer or further)?

For nowadays, the doctrine shows us three types of possible scenarios:

1. occurrence of separate system of criminal law in the EU
2. complete harmonization of criminal law in every EU memberstate
3. occurrence of the system of criminal law, which will be partially European, partially national

What I think is that, the first two scenarios are nowadays not possible and are not needed either. In the European legal area exists similar system of criminal law and jurisdiction, because it's based on common rules and similar systematics and axiology, which are catalogue of protected values. Despite this, by now it's almost impossible to harmonize criminal law in every memberstate of the whole European Union. It's proven eg. by the fact how difficult it was to create one Constitution for Europe.

In my point of view it's difficult, maybe even impossible nowadays, to create uniform and complex european criminal law, which would bind in every EU states. But there exists necessity of further EU memberstates criminal law harmonization.

Actually, process of harmonization of criminal law is based on bringing closer of criminal statutes in states that are EU members. The purpose of harmonization of the criminal legislation is to cause better co-operation in fighting against some crimes, such as seriously dangerous crimes with cross-border character.

It's hard to say about effects of the process of harmonization of criminal law in EU, because harmonization is still in action. Effect of harmonization of

criminal law is occurrence so called: european crimes corps, which is made of several dozen of crimes, which are contained in the instruments of harmonization of criminal law - conventions, common actions and framework decisions.

Now, criminal law harmonization in the EU memberstates is not officially understood as preliminary phase to absolute unification of criminal law in EU area. We cannot exclude that the final phase of harmonization in the EU will be absolute criminal law unification and will exist one, unified criminal law in all area of the EU and one „european criminal code”. Than perhaps we'll be able to say that criminal law in Europe is the same, or almost the same as European criminal law. As now, this scenario looks rather distant, but I cannot finally exclude that it would be possible in the future.

Literature:

- Adamski A., Bojarski J., Chrzczonowicz P., Filar M., Girdwoyń P.:
Prawo Karne i wymiar sprawiedliwości państw Unii Europejskiej.
Wybrane zagadnienia, Toruń, Wydawnictwo Naukowe Uniwersytetu
Mikolaja Kopernika, 2007, 517 pages, ISBN 978-83-231-2147-3
- Lach A.: Europejskie prawo karne. Zarys wykładu, Toruń, Arkadiusz
Lach i Towarzystwo Naukowe Organizacji i Kierownictwa
Stowarzyszenie Wyższej Użyteczności "Dom Organizatora", 2008, 152
pages, ISBN 978-83-7285-376-9

Contact – email

magdalena.maraszek@poczta.onet.pl