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Welcoming remarks

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WELCOMING REMARKS

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Abstract: This editorial first discusses the relevance of European Criminal Law in the current context, specifically in terms of the obligations it imposes on national legal systems, legislators, and practitioners. It also provides an overview of the International Conference that led to the creation of this book of proceedings. The contributions of the participants in this Conference, which make up the rest of this volume, are then briefly presented.

Keywords: European criminal law; Legal foundations; Substantive rules; Judicial cooperation in criminal matters; European Public Prosecutor's Office.

Resumo: Este editorial aborda, primeiramente, a questão da relevância do Direito Penal Europeu no contexto actual, nomeadamente em relação às obrigações decorrentes para os ordenamentos legais nacionais, legislador e aplicadores do Direito, dando conta, paralelamente, da organização da Conferência Internacional que esteve na origem destas actas. De seguida são, de modo sucinto, apresentados os diversos contributos dos participantes nessa Conferência, que compõem o restante deste volume.

Palavras-chave: Direito Penal Europeu; Fundamentos legais; Normas substantivas; Cooperação judiciária em matéria penal; Procuradoria Europeia.

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On April 28, 2023, the “International Conference on European Criminal Law: From the legal foundations to its impact on national legal orders” was held at Lusíada University in Porto, Portugal.

This conference was organised as part of the ongoing research project at the Centro de Estudos Jurídicos, Económicos, Internacionais e Ambientais (CEJEIA), which focuses on the impact of globalisation on criminal law. Therefore, the contributions that made this conference possible highlighted both the legal foundations of European criminal law and its effects on national legal orders, covering a wide range of topics that provided a bird’s eye view of the questions, problems and solutions that are currently discussed in this field.

The present relevance of these topics is undeniable. At a time when the very existence of European criminal law is still being questioned in practice, let alone its relevance, it is important to remind ourselves, through concrete examples, that the European Union’s influence on the legal orders of Member States is widespread and unavoidable. This is still true (and increasingly so) in criminal law.

This influence is not only expressed through legislative means, although Directives on criminal law issues are abundant and spur many a new law in Portugal, but also through the emergence of obligations stemming from the judgments of the Court of Justice of the European Union. These can be directed at any function of the State, including judges who would (apparently) only be concerned with national law.

An example of this effect – beyond what is already widely known – is given by the Court in a recent case, where it was stated that:

“... it does not matter whether the interpretation given by the Court takes the form of a judgment or a reasoned order. Thus, a national court cannot disregard an order on the ground that, unlike a judgment, it allegedly contains no new elements for the interpretation of EU law. Consequently ... the referring court is bound, for the purposes of resolving the dispute in the main proceedings, by the interpretation of EU law given by the Court of Justice and must, if appropriate, set aside the assessment made by the ... (Supreme Court) in earlier decisions which have, in national law, the value of a binding precedent, if it considers, in the light of that interpretation, that that assessment is not in conformity with EU law.”⁴

A constant effort – by academia and practitioners alike – to keep up with developments that take place at European level is crucial nowadays for a good discharge of the duties of every jurist, in any legal profession, in every Member State. This is precisely the effort we have tried to contribute for, when holding this conference, by

⁴ Case C-537/22 *Global Ink Trade Kft.* [2024] ECLI:EU:C:2024:6, paras 27 and 28.

discussing the most fundamental aspects of European criminal law, as well as presenting research at the forefront of academic development and thought.

These proceedings, that provide a written record of what was presented that day, further that objective. The contributions are organised according to the order of the presentations, thus accurately representing the organisation and connections between the different panels.

We start, therefore, with some thoughts on the foundations of European criminal law: Prof. *Valsamis Mitsilegas* explores the justifications for the establishment of European criminal law, noting the challenging questions that emerge along the way.

Prof. *Pedro Caeiro*, taking on a traditional principle of (European) criminal law, shares some thoughts on the newly proposed Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures (COM/2022/684 final) and the principle of proportionality, especially when applied to legal persons with respect to the criterion used to determine the applicable sanction.

In the second panel, Prof. *Fernando Torrão* opens the substantive reflections of European criminal law by continuing on the topic of legal persons, but this time discussing the Portuguese model of collective liability, while noting the influence of the Union's legislative instruments on that matter.

Prof. *Raquel Cardoso* follows with some thoughts on the legitimacy of certain problematic incriminating norms in migrant smuggling, questioning (and arguing for) the function and material legitimacy of European criminal law itself.

This panel concludes with the intervention by Prof. *Sofia Santos*, who takes up the difficult and ever-relevant issue of terrorism and security, by analysing the concept, instruments and pertinent statistics related to it.

The last panel was entirely dedicated to a pressing and constantly evolving topic within the European Union (and beyond): judicial cooperation in criminal matters. With the purpose of conveying an ample view, Prof. *Mar Jimeno Bulnes* started by presenting an overview of a fairly recent European institution, the European Public Prosecutor's Office, with an analysis on its organic and procedural aspects, as well as the identification of its strengths and weaknesses, concluding with some considerations on the Spanish legal order⁵.

The following intervention, by Prof. *Marta Muñoz de Morales Romero*, focused on the principle of dual criminality in the European Union, its limits and meaning within judicial cooperation, illustrating the issues that arise by exploring the case of Puigdemont.

Continuing with new aspects in judicial cooperation, Prof. *Miguel João Costa* highlights new duties that arise when cooperation involves a Member State of the

⁵ Which becomes even more relevant in light of the first-ever CJEU judgment on the EPPO: case C-281/22 G.K. [2023] ECLI:EU:C:2023:1018.

Union and a third country: what was traditionally viewed as a concern solely of the State is now tempered by the close relationship between Member States, the principles that bind them within the EU, and the reflections those have on international obligations – particularly with respect to the Petruhhin case-law.

Finally, Doctor *Inês Horta Pinto* brought the conference to a close with considerations on the impact of specific conditions of imprisonment on cooperation procedures between Member States, pointing out the most salient conflict in this area: the effective functioning of criminal law enforcement and the fundamental rights of the individual subject to it.

A most fruitful day, that is now being brought to the wider public in a more permanent record, was thus concluded.

Some formal notes are in order: the editors opted to maintain an open format for the contributions because this is essentially a collection of the presentations from that day. Authors were given the freedom to submit a transcript, short notes used for the presentation, or a more formal article in the language of their choice – and this is why there is a wide variety of formatting in this special issue, which is personally very pleasing, as it provided a rare opportunity to showcase the bright colours of academic freedom and diversity (an increasingly rare commodity indeed).

Some acknowledgments are also in order: none of this would have been possible without the personal investment of everyone involved. It is, therefore, with heartfelt gratitude that we thank the members of the European Criminal Law Academic Network who were present that day, for generously lending their personal and professional time to contribute their wealth of knowledge, both orally and in writing; we extend our thanks to the Professors who tirelessly worked to organise this event and stepped out of their comfort zone to explore the fascinating yet challenging realm of European criminal law; and additionally, the students that helped along the way and showed the interest and enthusiasm with which they are ready to take on new approaches in law on that day.

Lastly, we thank the University Lusíada itself, as well as its periodic, for providing us with the forum to share our passion with the public.

We hope this collective work brings you, our reader, the same joy that it brought us during its organisation. May it also spark many questions and curiosity about this area of the law.