



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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MODULE 2

Shaping Factors for the Area of Freedom, Security and Justice

Reading Lecture 4

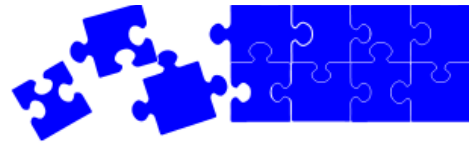
BLACK BADGE – Ius Puniendi

1. In this lecture you will learn about...

- the dynamic of the evolution within the AFSJ (justice and home affairs),
- the criteria of the development (from the traditional point of view of being criminal justice a closed national system) and
- the fundamental concept of any criminal laws, namely about the state power to punish.

1

Learning time – approximately 2 hours



Criteria of Europeanization



union law

unfolding the legal relationship between EU law and national criminal law



functional integration

protecting EU supranational interests through criminal law



ius puniendi

development of supranational ius puniendi



competence gaining at supranational level

extension of justice and home affairs competencies in the supranational framework



cooperation in criminal matters

facilitation and juridification of cooperation between MS



procedural law & fundamental rights

approximation of criminal procedure; fundamental rights context; European standards



2. Black Badge

Read the following text!

2

From the very beginning of the discussion about the integration of European criminal justice systems and of criminal laws, the question of accepting or denying 'European' ius puniendi became the core issue not only in academic debates but also on the level of politics and policymaking. The notion itself is a broad concept and comprises a bundle of (several) competences in criminal law which are generally applied in domestic criminal law (particularly in continental legal families), while others are determinative for the framework of international criminal law. In a domestic (national) context, ius puniendi means the public power to punish, with components as between values and protected ('whether use criminal law: punish in order to values or interests

Ius puniendi means the public power to punish.

the power to choose: choice interests which should be to punish'), the power to decision to use power to protect above-mentioned ('why to punish') or the power to define crime and punishment in two aspects: on the one hand, the decision about the threshold of protection (what is punishable behaviour and 'normal' behaviour); the decision about other prerequisites of punishment (age, justification, excuse etc.) in close connection with the former ('what to punish'); and, on the other hand, decision about the limitations of punishment.



If you think on the drug use – there are states which do punish any use of drugs and there are others which not. Or some countries (also within EU) do not punish the owners of brothel business (e.g. Germany) meanwhile this act falls under criminal law other MS (e.g. Hungary).

The justification of any criminal legal framework is the presumption that any State disposes of a power of *ius puniendi* as part of the public power it exercises. The fundamental principles of criminal law are enshrined in constitutions, which control the States' power by designing and enforcing criminal law. The scope and margin of accepted restrictive principles diverges in modern criminal law systems globally, but there are common values embodied in common or similar principles that can be deducted from national criminal laws. In Europe, **the principle-guided limits of criminal law are more convergent due to the influence of the common constitutional heritage of the states** and to the regionally 'unified' development of **fundamental rights protection**.



Ius Puniendi

development of
supranational *ius
puniendi*

Clear criminal law competences **are nowhere to be found** in the text of the founding treaties of the European Community: the first inference to 'something criminal' only appeared in Article K.1 of the 1992 Treaty on European Union above, which was not (even partial) *ius puniendi* in terms of criminal law **but a competence of the newly established EU** to commence joint action in the field of criminal law (exceeding the former limits of national combat against crime). This explicit *ius puniendi* as described thus was in fact absent. However, the development of the enforcement of union law gave rise to wide-range academic debate on the justification of rules laid down by several directives or regulations of the Commission and the Council which aimed at applying necessary sanctions against entities (natural persons or legal bodies) infringing union law on the level of the

respective national (domestic) legal orders. **As for today, there are several Articles which express *ius puniendi*** on the European level within the TFEU (79, 82, 83, 325), but there are quite substantial differences between the rules concerning the limits of *ius puniendi*. Putting it simply, only splits of *ius puniendi* are transferred to the Union; therefore, we cannot conclude that a general European *ius puniendi* would exist.

**1992 –
establishment of the
EU
(TEU came into force
at 1.11.1993)**

The EU can decide by its own neither on punishing any behaviour nor execution of punishment – it has no separate criminal justice. EU needs the criminal justice system of the MS to protect its interest.



Nevertheless, the process at the end of which these fragments may have appeared in the TFEU involved several milestones that earned the black badge. Furthermore, all achievements concerning the exercise on 'power of definition' can be granted by black badge as those approximation of criminal law regulatory regimes also represent the exercise of a split of *ius puniendi* at supranational level.



3. Black Badge

Watch the video
lecture No 6!



4. Questions for review

1. How can the EU get the *ius puniendi*?
2. What is link between the *ius puniendi* and the approximation of criminal laws?
3. What was the result (another action earning black badge) of the milestone explained in the video lecture?

Further readings:

Karsai, Krisztina: *Ius Puniendi of the European Union*. In: Emberek őrzője. ELTE Eötvös Kiadó, Budapest, pp. 117-128. (2014) ISBN 9789632845166

<http://publicatio.bibl.u-szeged.hu/15470/>

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