

## COMPARATIVE PERSPECTIVES OF CRIMINAL PROCEDURE



# COMPARATIVE PERSPECTIVES OF CRIMINAL PROCEDURE

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## Comparative Perspectives of Criminal Procedure

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## PREFACE

Truth will be an important concept in this book. And the truth is that this book should have arrived sooner. But as with most ambitious projects in academia, other endeavours came up delaying its completion. It started as a vague plan in 2015, with the introduction and one chapter being written in 2016, and a good nine years later, here we are with this book. But throughout these years, we have remained dedicated to its completion. We have employed most of our intervening projects (which coincidentally involved similar topics addressed in this book) as opportunities to do as much as comparative research as possible.

Confessions can be important in criminal procedure. It might be our turn to confess that researching, writing and editing this book has been an arduous task: we had to delve into other legal systems, understand their mindsets and gain the ability to distance our thinking from our own specific legal cultures. This exercise has been particularly confrontational but has also led to lots of fun. It was an unparalleled experience to attend trials within foreign legal systems and one that we cannot wait to repeat for the next edition of this book.

This book could not have been written without the indispensable help of several people. Our deepest gratitude goes to the authors of five of the chapters, Suzan van der Aa, Jacques Claessen, Robin Hofmann, Elvira Loibl and Dorris de Vocht, who provided their time and expertise, went fearlessly beyond their comfort zone into new legal systems and endured our feedback and relentless editing. For any mistakes or inconsistencies please blame the editors alone.

As such this book comes as the sister to *Comparative Concepts of Criminal law* (Keiler & Roef, Intersentia, 3rd edition 2019). While different in many ways, both books share common approaches and are intended as literature for comparative courses taught at Maastricht University. Our book is designed for an educational environment, such as the European Law School, in which the principles and mindsets behind legal systems are the focus, instead of the blunted operation of examining each legal system. Most importantly, this book represents another fruit of the labours of researchers thinking, writing, teaching and laughing together long before and, hopefully, long after this book at the Maastricht Institute of Criminal Sciences (MICS).

Visiting the legal systems discussed in this book was instrumental for this book. We are most thankful to how open and welcoming the practitioners and experts have been in sharing their insights and experience during our trips. Comparative research is an act of mutuality, requiring the system researched

to be as open as the researchers conducting the research. We are grateful to the practitioners in London who gave freely their time and expertise. We were most humbled and impressed to be allowed to join several sessions of the Criminal Procedure Rule Committee. In Germany, our deepest thanks go to the German Ministry of Justice – Bundesministerium der Justiz and as well as to the various courts and judges that allowed us access and were available for discussion.

Most importantly we are honoured to have received the astute and ingenious feedback of three legends of comparative research, namely Prof. Thomas Weigend, Prof. Chrisje Brants and Prof. Ed Cape. They dedicated significant time to reading through the completed draft, correcting mistakes and clarifying the perplexing ways in which legal systems operate. We hope that our revised version does justice to their feedback. Furthermore, we are grateful to Rebecca Heemskerk and Stefanie Lemke who contributed to the initial stages of this book, to Johannes Keiler and David Roef whose comments on the introduction improved it significantly, and to the students at the European Law School of the last seven years, whose feedback on earlier chapters greatly improved the book.

Finally, we would like to thank Intersentia once more for a fine collaboration and especially Rebecca Moffat and Francesa Ramadan for their help in making this book a final product, and Joanne Choulerton for her brilliant editing and proofreading.

Christina Peristeridou and André Klip

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## LIST OF ABBREVIATIONS

|        |                                        |
|--------|----------------------------------------|
| Abs.   | Absatz                                 |
| BVerfG | Bundesverfassungsgericht               |
| CJEU   | Court of Justice of the European Union |
| CPS    | Crown Prosecution Service              |
| CrimPR | Criminal Procedure Rules               |
| ECHR   | European Convention on Human Rights    |
| ECtHR  | European Court of Human Rights         |
| EU     | European Union                         |
| NJ     | Nederlandse Jurisprudentie             |
| OJ     | Official Journal of the European Union |
| PACE   | Police and Criminal Evidence Act 1984  |
| par.   | paragraph                              |
| StGB   | Strafgesetzbuch                        |
| StPO   | Strafprozessordnung                    |
| Sv     | Wetboek van Strafvordering             |
| UK     | United Kingdom                         |



## LIST OF CONTRIBUTORS

**Suzan van der Aa** is a full professor of Criminal Law and Criminal Procedure within the department Criminal Law and Criminology at Maastricht University. In June 2010, she defended her multidisciplinary PhD thesis on stalking in the Netherlands. After that, she continued working for the International Victimology Institute Tilburg (INTERVICT, Tilburg University), first as an assistant professor, later as an associate professor. Her research focuses on victims of crime and victim rights within the context of criminal proceedings. She has ample research experience in stalking and other forms of gender-based violence. She has led various national and international research projects involving victims of road traffic offences, victims of intimate partner violence, protection orders, property crimes within marriage, hate crime and the criminalisation of child sex dolls.

**Jacques Claessen** is endowed professor of Restorative Justice and associate professor of Criminal Law at Maastricht University. He is also co-editor-in-chief of the Dutch-Flemish *Journal of Restorative Justice* (*Tijdschrift voor Herstelrecht*), guest lecturer at the Anton de Kom University of Suriname and deputy judge at the District Court of Limburg. Since his dissertation he has authored many publications on criminal sanctions and restorative justice – often from a meta-legal perspective. Jacques is considered an expert on restorative justice, and he was the first to win the Herman Bianchi Restorative Justice Prize. Together with the Dutch Restorative Justice Netherlands Foundation, he has worked on a citizens' initiative bill on the introduction of restorative justice provisions concerning electronic home tagging in criminal law.

**Robin Hofmann** is an assistant professor of Criminal Law and Criminology at Maastricht University. He is a trained lawyer in Germany, where he also obtained his PhD in law in 2016. His research interests are in comparative legal research, cross-border cooperation between law enforcement agencies in the fight against organised crime, and the regulation of cannabis within the EU. He has conducted several EU research projects, among others in Kosovo, Germany, the Netherlands, and Belgium on cross-border cooperation.

**André Klip** is professor of Criminal Law, Criminal Procedure and the Transnational Aspects of Criminal Law at Maastricht University. He is a member of the Royal Netherlands Academy of Arts and Sciences. He is founder and editor of the *Annotated Leading Cases of International Criminal Tribunals* (73 volumes since 1999). He is author of *European Criminal Law: An Integrative*

*Approach* (Intersentia, 4th Edition 2021). Throughout his career, Professor Klip has been frequently involved in national and international legal practice. Both as an academic and as a practitioner he is very much engaged in comparative criminal law and international cooperation in criminal matters. He is a judge at the 's-Hertogenbosch Court of Appeal (criminal division) in the Netherlands.

**Elvira Loibl** is an assistant professor of Criminology and Criminal Law at Maastricht University, Faculty of Law. She received her law degree at the University of Vienna and her LL.M. in Forensics, Criminology and Law at Maastricht University. In 2019, she defended her dissertation entitled 'The Transnational Illegal Adoption Market: A Criminological Study of the German and Dutch Intercountry Adoption System' in which she identified and explained the criminogenic weaknesses within the intercountry adoption system that encourage and facilitate illegal adoptions. Her study is frequently cited in commissioned inquiries and studies on illegal intercountry adoption.

**Christina Peristeridou** is an assistant professor of Criminal Law and Procedure at the Faculty of Law, Maastricht University. She specialises in comparative and European criminal law and procedure and has published on various topics within these fields. She authored *The principle of legality in European Criminal Law* (Intersentia, 2015) which combines comparative law, theories of justice and EU law. She has participated in funded projects on the acceleration and digitalisation of the criminal process and on the European Arrest Warrant. She is currently working in a multi-disciplinary project on remote criminal trials, and she is co-founder of the Virtual Criminal Justice Network. Peristeridou is executive editor and member of the Editorial Board of the *Maastricht Journal of European and Comparative Law*, co-founder of Female Empowerment Maastricht University (FEM) and member of the Bar of Thessaloniki, Greece.

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