Preface

In the classic state approach the sovereign designs his ius puniendi in relation to offences that have been committed on his territory. This power is part of what the French call “le pouvoir régalien de l’état”. To the extent that judicial authorities need cooperation or mutual legal assistance from foreign authorities, be it for extradition or for gathering evidence abroad, requests are based on bilateral or multilateral treaties. This judicial cooperation has a governmental character and is based on mutual trust and comity. In such a model, conflicts of jurisdiction are mainly an issue that fall within the jurisdiction of a single state, as foreign judicial decisions, as a rule, are not recognized.

With the increasing integration in the internal market and certainly the setting up of Schengen and the Area of Freedom, Security and Justice (AFSJ), the state-centric approach has been replaced by a different model in which the member states and the European Union are jointly responsible for achieving Treaty goals such as guaranteeing security for its citizens, and the prevention and combating of crime in combination with respect for fundamental rights and the rule of law. For the realization of these common goals in a common territory (albeit the combined territories of the member states), since the Treaty of Amsterdam (1999) the European legislator has introduced new instruments of judicial cooperation based on the concept of mutual recognition. In this model, judicial authorities are cooperating directly with each other and they recognize each other’s judicial decisions, including final decisions on criminal responsibility and sentencing. Moreover, the European legislator has harmonized many transnational crimes and imposed extended jurisdiction criteria. In such a model there is an increasing risk of parallel investigations, prosecutions and thus also of positive conflicts of jurisdiction. With the transnational reach of the ne bis in idem protection in the AFSJ, there is also the risk that ne bis in idem turns into a partial regulator of conflicts, which is of course not the task of this fundamental right. Otherwise, even with an increased obligation of jurisdiction in the law, there is still the risk that national judicial authorities are not willing to trigger their jurisdictions in practice and that by these negative conflicts of jurisdiction the victims of offences in the AFSJ will remain unprotected and allegations of serious transnational crimes will end up in impunity. As it stands, Eurojust can only mediate in such conflicts at the request of the member states, and without imposing binding decisions.

By introducing a specific legal basis in Articles 82(1)(b) and 85(1)(c) TFEU for legislative action in relation to conflicts of jurisdiction the member states have demonstrated that they are aware of the necessity for a new legal instrument to solve these conflicts. However, up until now neither the European Commission nor a group of member states have tabled any proposal in that respect and neither have they given Eurojust the competence to issue binding decisions on conflicts of jurisdiction in the new regulation.

In this book, Alejandro Hernández López offers us not only an in-depth analysis of the conceptual dimensions of the topic (chapter 1) and its legal framework in the EU from the perspective of effective enforcement (chapter 2) , but also from the perspective of compliance with fundamental rights, such as the ne bis in idem principle and the due process of law (chapter 3) . Moreover, in this analysis he integrates the relationship between conflicts of jurisdiction and the transfer of criminal proceedings.

As it stands, the EU does not have the proper instruments for the transfer of criminal proceedings between member states. The Council of Europe's European Convention on the Transfer of Criminal Proceedings from 1972 is now outdated, has been insufficiently ratified and is seldom used. Within the framework of the AFSJ the author, rightly so, analyses to which extent there is a necessity to provide for EU law on this transfer of proceedings, including eventually also the transfer of criminal jurisdiction as such.

The assessment of the actual legal framework (*de lege lata*) is not only done through the lens of EU law, but also through the lens of interaction with national law. The study of the Spanish and Italian national dimensions offers us a very rich insight into how the existing EU law is received (or not) in the domestic legal orders and to which extent these national legal orders and their judicial authorities are able to accomplish the tasks in the AFSJ. Thanks to his extensive contacts with the judicial authorities and his internship at Eurojust, the author also offers us an assessment that is not only based on legal scholarship, but also on judicial practice.

Alejandro Hernández López maintains in his conclusion on the actual legal framework (chapter 4) that "there is no procedure that establishes a homogeneous solution, nor one which guarantees that once the conflict has occurred, it will be settled after consideration of all the circumstances applicable to the case and in the interest of proper administration of justice". For this reason he proposes to trigger the mentioned legal basis in the TFEU and to design a new model for settling conflicts of jurisdiction, and for this purpose he has come up with a new methodology in chapter 4.

Fortunately for the reader the author elaborates *de lege ferenda* proposals for the settlement of conflicts of jurisdiction in a horizontal setting (chapter 5) as well as in a vertical setting, mainly including Eurojust and to some extent also the European Public Prosecutor's Office (chapter 6). These two chapters are not just an outlook, but cover nearly half of the book. In line with his approach in the former chapters he also combines a proposal for a regulation on conflicts of jurisdictions with a proposal for a regulation on the transfer of proceedings. In his opinion the proposal on the transfer of proceedings could be based on Article 82(1)(d) TFEU. Finally, his proposals also include important fundamental rights issues on judicial review both in relation to the choice of jurisdiction in the case of conflict or on the concentration of proceedings in the case of a transfer. At the end of the book annexes with the drafts of both regulations, be it in a horizontal setting or in a vertical setting, are also included.

This book takes stock of all existing scholarship and legal developments in this field and offers the reader an excellent insight into the need for new legislative steps to be taken. Based on a detailed and high quality analysis, the author elaborates a new model and concrete proposals for regulations on the settlement of conflicts and the transfer of proceedings, both from a horizontal and a vertical perspective, and the reader is therefore given a very clear idea of the importance of the legislative innovation in the AFSJ.

Without a doubt, I would strongly recommend this book to everyone who is interested in the judicial dimension of the AFSJ. It offers food for thought for legislators and judicial practitioners alike, as well as for legal scholars.

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