

Editorial

We are indeed experiencing turbulent times these days: new terrorist attacks in France, Belgium, Germany and other countries throughout the world (presumably initiated by or at least in context with the Islamic State) which repeatedly demonstrate how helpless our societies are against such simple and cruel attacks; highly dangerous international tensions in the South Chinese Sea which could easily lead into an armed conflict; the chaotic situation following the attempted military coup in Turkey which seems to be used as a justification for purging not only army officers, but all kinds of unwanted state officials (including an immense number of judges), even for a variety of repressive measures against potential opponents and even academics in general. In the aftermath, president Erdogan declared a “state of emergency” – which could imply the suspension of fundamental rights granted by the European Convention on Human Rights. Most striking is the ongoing discussion about reintroducing the capital punishment – in a country which is (still) an official EU-accession candidate!

The European integration process – in general a success story so far – certainly received a severe blow on Thursday, 23th June 2016, when a tiny – but nevertheless clear – majority of the British people voted in favour of leaving the European Union. *Alex Morrit’s* short evaluation of the Brexit decision summarises the spontaneous reaction of a vast majority of Europeans:

“If the surprise outcome of the recent UK referendum - on whether to leave or remain in the European Union - teaches us anything, it is that supposedly worthy displays of democracy in action can actually do more harm than good. Witness a nation now more divided; an intergenerational schism in the making; both a governing and opposition party torn to shreds from the inside; infinitely more complex issues raised than satisfactory solutions provided. It begs the question 'Was it really all worth it'?”¹

Nevertheless – the new UK government will clearly stand by the “Brexit means Brexit”-policy so that we must get used to the idea of a European Union without the UK – at least without England, Wales and Northern Ireland; it remains to be seen whether Scotland can finally manage to become an independent Member State of the European Union.

Looking more specifically to the criminal law implications - what are the consequences of the Brexit for EU criminal law and criminal cooperation between the remaining EU member states and the UK? According to the *status quo* the UK already has a very special legal position: in general it does not participate in the criminal justice cooperation but it has the possibility to “opt-in” on a case-by-case-basis and thus may participate in individual EU measures relating to criminal law. Nevertheless the UK supports EU crime fighting agencies (e.g. Europol and Eurojust – but indicated no support for a future European Public Prosecutor) and – in general – accepts mutual recognition instruments such as the European Arrest Warrant.

1 Alex Morrit, Quotes about Referendum, <http://www.goodreads.com/quotes/tag/referendum>

What will happen after the Brexit? The UK will surely be interested in continuing close cooperation with the EU agencies; this is not impossible, but requires a new legal basis, i.e. special UK-EU-agreements. But, of course, the UK will have to pay a price: it will have no influence whatsoever on the organisation or policies of those agencies any more.

As far as the mutual recognition instruments are concerned, the existing legal acts could, of course, not form the basis for future cooperation between the UK and the other Member States. Instead they must be replaced by international agreements between the UK and the European Union – a presumably difficult and lengthy task. The cooperation could also be based on existing international Conventions in this field which already bind the UK and all other EU-members. But the recourse to those older instruments will surely prove to be more complex, more time-consuming and less effective than the EU instruments in force at the moment.²

Thus we always come back to the fundamental question: *“Was it really all worth it?”*

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2 See also the first evaluations of J.R. Spencer, What would Brexit mean for criminal justice?, <https://fullfact.org/europe/what-would-brexit-mean-criminal-justice/> (23.06.2016)