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Since its introduction in the 1999 Treaty of Amsterdam, the Area of Freedom, Security and Justice has become a central policy area of the European Union, leading to a continuing stream of legislation, case law, and academic analysis on topics such as policing, criminal law, migration, and asylum. While these are at first glance quite disconnected, the AFSJ ties them together in a way that is not self-evident from the structures of domestic law. From this, a field of law emerged, shaped by the Member States’ attempts to strengthen public security as well as the need to preserve fundamental rights and principles.

One of these fundamental rights, the right to liberty and security, is the perspective used by Mancano to make sense of the diverse policies set up in the AFSJ. While that fundamental right is far from new, being a cornerstone of the ECHR, the meaning it obtains within the context of the EU’s policy agenda is certainly striking. Mancano has without doubt enriched our academic understanding of the policies of the EU and their backgrounds by approaching them in a “holistic” way (p. 3), including criminal law and criminal procedure, international cooperation in criminal matters, migration, asylum, and citizenship, and moreover assessing these against the normative benchmark of the right to liberty and security.

Perhaps surprisingly, the book does not start with an analysis of ECtHR case law on Article 5 ECHR, which could be of help in evaluating the EU’s activities touching on that fundamental right. Rather, it provides us with an overview of all aspects of EU law that have an impact on the right to liberty and security. This impact is mostly indirect, through directives providing for harmonization of substantive criminal law, regulating international cooperation in criminal matters, or rules on asylum and immigration. Nevertheless, the standards that are set by the Union legislature will strongly impact the actual domestic rules applied in enforcing State or Union interests.

When evaluating the EU’s harmonization efforts in the field of substantive criminal law, Mancano rightly observes that there is a strong preference for the use of imprisonment as a sanction for wrongdoers. For some offences, this may certainly be justified. However, in a couple of case studies into harmonized offences, the book raises questions as to the appropriateness of the EU obliging Member States to enable imprisonment for certain types of behaviour. In its proposal for a Directive on Market Abuse, the Commission did not include provisions on imprisonment. These were later added by the European Parliament, and made it into the final version. There is also an obligation for Member States to enable imprisonment as a sanction in the Directive on the fight against fraud to the Union’s financial interests. One may wonder whether deprivation of liberty for this type of offences is effective, dissuasive, and proportionate. Mancano rightly questions the use of arguments from rational choice theory in the justifications for these legislative instruments.

A true “holistic” aspect of the AFSJ is evident in the rules on intra-EU transfer of detained persons, whether on the basis of a European Arrest Warrant, for purposes of execution of a sentence, or for processing an asylum claim under the Dublin scheme. In some respects, the EU’s legislative instruments have raised the quality of these procedures, and have reduced the difference between on the one hand true domestic (e.g. criminal) procedures and on the other hand procedures for cross-border cooperation, which can also seriously affect a person’s liberty.
Nevertheless, standards are still lower in these cross-border contexts. With respect to the procedures involving the mutual recognition of pre-trial supervision measures, probation orders, or the enforcement of custodial penalties, Mancano is right to point out that there is too little involvement of the individual concerned in these procedures. This leads him to propose an innovative European right to liberty, on the basis of which definitions should be made of cases justifying detention, rules on procedures for authorizing detention and challenging it, and a harmonization of detention conditions around Europe. This is not superfluous, given the state of Europe’s prisons.

A true European right to liberty and security would, in my mind, entail an assimilation of entirely domestic situations of detention and situations of detention where the judicial authority authorizing it is in a different Member State from the detainee. Mancano casts some doubt on the suitability of the ECtHR’s case law on Article 5(1)(f) ECHR, including its arbitrariness test, for the context of the EAW system (pp. 125–128), yet shies away from declaring that Article 5(1)(c) ECHR, as relevant through Article 6 of the EU Charter, should be the appropriate basis for detention awaiting surrender. Of course, this would trigger the rights included in Article 5(1)(c) and 5(3) ECHR, raising serious practical and legal questions, for instance relating to the possibilities for a judge in the place of detention to assess whether there is a reasonable suspicion against the person involved. Still, when considering the future of the right to liberty and security in the EU, it would make sense to view detention in intra-EU cross-border cooperation as near as possible to detention in purely domestic proceedings.

Detention also serves a number of other purposes. The aims of resocialization and rehabilitation play an important role in sentencing and detention. Their interpretation is, however, never stable. The book points out that, in the EU context, there is a possible “catch 22” in the way authorities take into account periods of detention when assessing integration and reintegration. While the aim of resocialization requires a person preferably to be detained in his/her home State, the mere fact of being detained can indicate a lack of integration into society, as it means that the person has transgressed in such a serious way that imprisonment is judged necessary. In order to escape this line of reasoning, a risk of reoffending should be balanced against rehabilitation efforts, and not be a reason for denying individual rights (p. 204). Moreover, it is hard to view EU citizenship as compatible with the idea that a Member State can just get rid of a person that poses a security risk on its territory (p. 211).

The book is definitely to be praised for bringing together many facets of EU law. Moreover, it provides the reader with new and valuable insights by discussing the EU’s AFSJ from the perspective of one specific fundamental right: the right to liberty and security. The book is full of interesting observations. It can sometimes be hard for the reader to keep track of all the different labels and metaphors the book uses in analysing the legal materials and presenting new perspectives and interpretations of the field. The internal market is presented as the “paradigm” for integration in the AFSJ, but also as its “genesis”, and as a “laboratory” for its development (p. 4). Four “levels” of the right to liberty and security have to be taken into account: procedural, substantial, imposition, and enforcement (p. 8). The overarching framework to assess all this is the “dynamic” between integration and fundamental rights protection (p. 10). These analytical frameworks all play a part, but sometimes one would prefer a more straightforward narrative. However, that is only a minor point of criticism. Mancano has certainly written a thought-provoking book on a complicated field of law. He has managed to discuss many relevant and topical issues in a clear and compelling way, and, while not hiding his viewpoints and interpretations, invites readers to develop their own. This type of writing can only inspire the preservation of the rule of law in a policy area that has such an impact on individual lives.

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