

BOOK REVIEW

Alessandra Lanciotti and Maria Mercedes Pisani (eds.), *Restorative justice, mediation and protection of EU financial interests. Proceedings of the DRAMP Conference*. Perugia: Dipartimento di Giurisprudenza, Università di Perugia, 2022, 290 pp., ISBN: 978-889949013-3.

This book contains the proceedings of the final conference of the European project DRAMP (*Diversion, Restorative and Mediation Procedures in PIF Crimes*). It discusses the application of alternative dispute resolution or diversion procedures to crimes affecting the financial interests of the European Union (commonly referred to as *PIF crimes*).¹ It also offers reflections on the compatibility of these procedures with the principles of restorative justice. As such, it makes a valuable contribution to the efforts of research groups exploring the implementation of restorative justice in the field of white-collar crimes.² Additionally, this publication aids in the improved implementation of the Council Regulation (EU) 2017/1939 of 12 October 2017 *Implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office* (the 'EPPO' Regulation). According to this regulation, European-delegated prosecutors are permitted to propose the use of 'simplified prosecution procedures' for dealing with PIF crimes, provided that the applicable national law allows it.

Aimed at determining whether European national laws accommodate such procedures for PIF crimes, and exploring their possible application in detail, the DRAMP project analysed the legislation of eighteen EU member-countries and one candidate member. The information is systematically organised in a clear way, enabling easy comparison across different European jurisdictions. This has led to a clearer understanding of both the currently available legal framework and the extent of 'restorative culture' in Europe. It also provides a more solid foundation for promoting crime policies aimed at introducing restorative justice, including in the context of white-collar crimes.³

Contributions in this book do not exclusively focus on the analysis of simplified prosecution procedures in EU member-states, and only a few of them directly

- 1 PIF crimes, such as Value Added Tax (VAT) fraud, money laundering, corruption or misappropriation of EU funds or assets by a public official, are detailed in the Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law. Further information can be retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1371&from=EN> (last accessed 25 April 2024).
- 2 Examples of contributions to restorative justice research in the European context include Aertsen (2018, 2023) and Pali, Forsyth and Tepper (2022) in Belgium; Mazzucato (2018) and Mannozi (2017) in Italy; the research group on *Criminal Law and New Trends in Crime Policy* at the Universidad Autónoma de Barcelona (García-Arán, 2021), Varona (2019) and Nieto-Martín (2015, 2023) in Spain; Maximilian Schormair and Lara Gerlach (2019) in Germany. And outside the EU, of course, Braithwaite (2002, 2022).
- 3 Complete information is available for all countries except Croatia and Czech Republic. National reports can be retrieved from <https://www.dramp.eu/wp-content/uploads/2022/08/D3-DRAMP-National-reports.pdf> (last accessed 25 April 2024).

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address issues regarding the implementation of restorative justice in the field of PIF crimes. This may be due to the necessity of examining related issues that, while tangential, are equally critical to understanding such a complex topic. Consequently, the initial chapters outline the EPPO legal framework and PIF crimes from a diachronic perspective (Chapters 2, 3 and 4). Other chapters delve into specific criminal law aspects, such as possible threats to the principle of proportionality in tax sanctions or the protection of accused persons' fundamental rights (Chapter 8 and 9). Additionally, several chapters are devoted to the analysis of how EPPO regulation is transposed into national jurisdictions (e.g. Chapter 17) and provide examples of national criminal prosecutions of PIF crimes beyond simplified prosecution procedures (e.g. Chapter 20).

A detailed description of each contribution to the proceedings is available in Chapter 1. Here, however, I would like to highlight a number of points that I believe are crucial for the implementation of restorative interventions for PIF crimes and/or for white-collar crimes in general. Firstly, the very existence of the DRAMP project not only highlights the academic attention dedicated to this issue but also reflects a growing interest by the European Union in promoting the use of simplified prosecution strategies. These strategies allow for avoiding or terminating criminal proceedings for PIF crimes 'on the basis of terms agreed with the suspect' (Art. 40, Reg. EPPO). However, this does not necessarily indicate a definitive commitment to implementing restorative justice in this field. In fact, as many contributors to this book have noted, the emphasis often leans more towards simplifying the criminal process than on promoting restorative solutions. Nevertheless, when the EPPO regulation is considered alongside previous European regulations on restorative justice, there is room for cautious optimism about the gradual expansion of procedural opportunities for applying restorative justice to white-collar crime (see also Pisani, Chapter 5).

In any case, it is accurate to state that the use of simplified prosecution procedures – such as plea bargaining, conditional termination of the criminal proceedings, compensation, restitution or even conciliation – has primarily been promoted to alleviate congestion in the justice and penitentiary systems. Although these procedures are mainly designed for system efficiency, they can also offer tangential benefits, such as reducing sentencing for the offender and providing more expedient compensation methods for the victim.

In this context, the majority of current simplified prosecution procedures represent forms of negotiated justice rather than restorative justice (Montagna, Chapter 19). These often neglect fundamental principles of restorative justice. Several contributors to this book emphasise, for example, that victims rarely have a significant role in simplified prosecution procedures and that their position tends to be weak or asymmetrical compared to that of the accused. Furthermore, these procedures are typically not based on genuine dialogue but on mere haggling negotiation of opposing interests. Additionally, reparation is not always a requisite for the successful resolution of these procedures. Finally, the 'community', an essential pillar of restorative justice practice, plays a minimal role, except in instances where 'community service' is imposed as a condition for deferring or terminating criminal prosecution.

All that said, it comes as no surprise that among all simplified prosecution procedures, plea bargaining is the most frequently used and appears most suited for PIF crimes (and, in some jurisdictions, for crimes in general). Another relevant aspect to consider is the lack of uniformity among European jurisdictions in the use and scope of simplified prosecution procedures. In this regard, the need for a uniform approach at the European level, which would allow for overcoming national idiosyncrasies, has been rightly pointed out (Naziris, Chapter 16). This need for standardisation also extends to restorative justice, as not all countries under review have a comprehensive and coherent regulation of restorative justice within their criminal justice systems. For example, while Italy, Portugal, Belgium and France have integrated restorative justice into their criminal justice systems, Spain is still deliberating a reform of the Criminal Procedural Code that would include the implementation of restorative procedures. At any rate, many contributors note that the practical application of simplified prosecution procedures to PIF crimes is often limited by several factors, including:

- Length of sentence: in many jurisdictions, simplified prosecution procedures are only applicable to crimes that carry lighter sentences than those typically imposed for PIF crimes.
- Type of crimes: in some cases, specific PIF crimes, such as corruption or other serious crimes, are excluded from these types of procedures.
- Discretion in their implementation: more often than not, the decision to initiate a simplified prosecution procedure is left to the discretion of public prosecutors and is not mandatory.

Despite debates over their effectiveness or applicability to PIF crimes, some contributors express concerns that both simplified prosecution procedures and restorative justice might jeopardise procedural guarantees or even the rule of law. This concern is a familiar challenge faced by scholars and practitioners of restorative justice. While there are strong reasons to believe that offenders participating in restorative justice encounters would not face such risks (e.g. Braithwaite, 2002), it cannot be ignored that other procedures, like plea bargaining, might indeed undermine the right to a fair defence. Concerns about this issue have been raised by various scholars, including Davis (1998), King and Lord (2018), Johnson (2019) and Langer (2020).

Regarding resistance to implementing restorative justice for PIF crimes, some contributors highlight judicial operators' mistrust and emphasise the need for a renewal of judicial culture. This renewal might include, as Fonti suggests in Chapter 7, updated legal training and initiatives to raise public awareness.

Furthermore, many authors argue that restorative justice is not suitable for dealing with PIF crimes due to the collective and diffuse nature of victimisation, which complicates having a victim representative at the restorative table. In this context, Sartarelli (Chapter 6) advocates for a broader application of the restorative justice concept, while Fonti (Chapter 7) recommends restorative encounters that include a large number of affected parties. The challenge of representing diffuse and collective victims in criminal proceedings or restorative justice procedures is explored in a single contribution (Perez-Rivas, Chapter 14). This discussion

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presents criteria previously noted by several authors in recent years, such as Rodríguez-Puerta (2020), and offers insightful reflections based on the examples like *class action* in consumer cases and *actio popularis* for the administrative protection in environmental matters in Spain.

Participation of diffuse and collective victims in criminal trials and simplified prosecution procedures is a fundamental issue that merits further research. Most PIF crimes undeniably harm diffuse interests, and finding restorative formulas to address them might seem daunting, if not impossible. However, since the ‘community’ itself is often the victim of these crimes, the primary challenge in implementing restorative justice in this field is not so much identifying the victims or determining who is entitled to represent them. The more significant obstacle is the reluctance of both national and supranational legislators to allow collective and diffuse victims to represent their interests *as a group* in both criminal and restorative processes.⁴ Typically, national and supranational regulations define victims in individual terms, either directly or indirectly. Although collective or multiple victims are occasionally acknowledged, this usually refers to a sum of individual victims rather than groups with distinct collective interests. Without recognising ‘collectivity’ itself (i.e. ‘community’) as a victim of crime, there is scant real opportunity to address white-collar crime restoratively. Much work, thus, awaits us in this regard.

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4 To illustrate, the most recent supranational normative, Council of Europe Recommendation CM/Rec(2023)2 of the Committee of Ministers to Member States on Rights, Services and Support for Victims of Crime, defines victims explicitly as ‘natural persons’, whether direct or indirect.

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