



UNIVERSITÄT
DES
SAARLANDES



The Role of Criminal Law in Our Times

AIDP Section I — 2024–2029 — Questionnaire

Dominik Brodowski | Faculty of Law & CEUS | Saarbrücken | 1 July 2025

Preliminary Remark

This questionnaire aims to guide national rapporteurs and, to a limited extent, special rapporteurs. Rapporteurs are kindly asked to address the questions highlighted in red below the introduction. Additional background information is provided alongside the questions.

Rapporteurs are asked to provide accurate, concise and nuanced answers, so that the *rapporteur général* may build upon a uniform analysis of each jurisdiction covered. When answering, rapporteurs should first focus on describing and analysing current legislation and relevant court decisions, with an emphasis on more recent rulings of the highest (including constitutional) courts, as well as contemporary scholarly writings on the matters of concern. Rapporteurs are invited to include their own interpretation and evaluation, provided this is clearly distinguished from the aforementioned description and analysis. If rapporteurs find additional aspects relevant to the overall theme, they are asked to address them, even if no specific question is posed. Rapporteurs are invited to include an introduction, general remarks, and a conclusion to their report, and use a prose style instead of short answers to the questions wherever appropriate.

For publication as an article in either e-RIDP or RIDP, the reports must adhere to the following formal standards:

- Language: English (British spelling preferred)
- Stylesheet: Use of the provided template is mandatory
- References: OSCOLA¹
- Page Limit: 15 pages, according to the template (equals around 7.500 words). Please note that longer manuscripts cannot be published in RIDP, but may be published in e-RIDP instead.
- Submission by: 30 June 2026 (final manuscripts)

If rapporteurs have any questions or doubts, they are asked to contact the *rapporteur général*, preferably by e-mail to dominik.brodowski@uni-saarland.de.

¹In case of any doubts of how to cite case law in a specific jurisdiction, please (a) take a look at previous RIDP issues or e-RIDP publications; (b) strive for consistency; and/or (c) ask the *rapporteur général*.

Introduction

Section I of the XXIIth International Congress of Penal Law analyzes the **current role of criminal law, that is its rationale, its foundations, and the politics of criminal legislation**. Under this umbrella, we will evaluate the issues addressed in contemporary legislation of criminal law, the goals are pursued by politicians and parliaments when discussing and enacting new criminal laws or abolishing old ones, and what this reveals about the role (or 'place') of criminal law in our times.

In political contexts as well as in criminal law treatises, many theoretical foundations of criminal law from the past and the underlying assumptions are still repeated today. That includes statements such as that criminal law may only be used as *ultima ratio* or concepts such as the harm principle. This reflects the roots of our core codifications of criminal law (in civil law systems) and common law offences (in common law systems). In recent times, however, criminal law is increasingly shaped by legislative action² as well as by its interaction with constitutional and human rights frameworks.³ This relationship, along with the corridor spanned by constitutional and human rights frameworks,⁴ shape how criminal justice systems respond to a wide array of phenomena such as migration, information technology and artificial intelligence,⁵ substance (ab)use, sexual self-determination,⁶ and/or the pro-

²Same as in civil law systems, no new crimes are created by the judiciary. In common law systems, deferring to legislative actions instead, cf. Jonathan M Burchell, *Principles of criminal law* (5th edn, Juta 2016) 38, 44–46.

³For Germany, cf. Dominik Brodowski, *Die Evolution des Strafrechts: Strafverfassungsrechtliche, europastrafrechtliche und kriminalpolitische Wirkungen auf Strafgesetzgebung* (Nomos 2023) (<https://doi.org/10.5771/9783748930457>); Matthias Bäcker and Christoph Burchard (eds), *Strafverfassungsrecht* (Mohr Siebeck 2022); with further references.

⁴See, for instance, Klaus Tiedemann, *Verfassungsrecht und Strafrecht* (CF Müller 1991) 5; Christoph Burchard, 'Strafverfassungsrecht – Vorüberlegungen zu einem Schlüsselbegriff' in Klaus Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege: Erinnerung an Joachim Vogel* (Baden-Baden, 2016) 51; Massimo Donini, 'Techniken und regulative Modelle eines verfassungsorientierten Strafrechts' in Klaus Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege: Erinnerung an Joachim Vogel* (Baden-Baden, 2016) 87–88; Adán Nieto Martín, 'A necessary triangle: the science of legislation, the constitutional control of criminal laws and experimental legislation' in Klaus Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege: Erinnerung an Joachim Vogel* (Baden-Baden, 2016) 125–128.

⁵Fernando Miró-Llinares (ed), *Criminalisation of AI-related offences* (RIDP 2024/I, Maklu 2024).

⁶See, e.g., Tatjana Hörnle, 'The Challenges of Designing Sexual Assault Law' (2024) 77(1) *Current Legal Problems* 49 (<https://doi.org/10.1093/clp/cuae002>); Gert Vermeulen, Nina Peršak, and Stéphanie De Coensel (eds), *Researching the boundaries of sexual integrity, gender violence and image-based abuse* (RIDP 2024/II, Maklu 2024).

tection of human rights by means of criminal law.⁷ At the same time, others are worried that a more constitutional perspective on criminal law may undermine its principles and protections.⁸

Therefore, the actual relevance, validity and legitimacy of the theoretical foundations of criminal justice in contemporary political systems require critical analysis, particularly as the expansion of criminal law,⁹ increases in punishment levels ('punitive turn')¹⁰ and selective/suppressive uses of the criminal justice systems may indicate that only lip service is being paid to them. Moreover, the foundations of these assumptions and theories, including their sometimes pre-democratic roots, are increasingly questioned.¹¹ Instead, it may well be that penal populism¹² and political opportunism prevail in the contemporary evolution and application of criminal law, necessitating a rethinking and potentially constitutionalisation or strengthening of the foundations and rationales for our criminal justice systems.

To highlight the role of criminal law *in our times*, we will emphasise recent or ongoing modifications of substantive criminal law (and/or the lack thereof), in particular criminal law legislation including failed legislation. A broader view on the full *acquis* of criminal law would be too heavily influenced by historically grown assumptions. Focusing instead on recent developments (in particular those since 2010)¹³ will provide a clearer view on the current realities of criminal justice, which are shaped by political-legislative activities such as the modification of economic and environmental offences in Chile by Law No. 21.595 of August 2023, the failed decriminalisation of abortion in Germany, or the process leading to the Indonesian Criminal Code of 2023. In contrast, questions relating to a (common?) philosophy of criminal law and its conclusions on criminalisation theories and limits to criminal law are excluded from the scope of this analysis: such philosophical approaches paint a

⁷See, e.g., Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016); Françoise Tulkens, 'The Paradoxical Relationship between Criminal Law and Human Rights' (2011) 9 JICJ 577.

⁸Luís Greco, 'Verfassungskonformes oder legitimes Strafrecht? Zu den Grenzen einer verfassungsrechtlichen Orientierung der Strafrechtswissenschaft' in Beatrice Brunhöber and others (eds), *Strafrecht und Verfassung* (Nomos 2013) 13–36.

⁹See, for instance, Brodowski (n 3) 500–504.

¹⁰See, for instance, David Garland, *The culture of control: crime and social order in contemporary society* (University of Chicago Press 2001) 139–166; Christina Schlepper, *Strafgesetzgebung in der Spätmoderne: Eine empirische Analyse legislativer Punitivität* (Springer VS 2014).

¹¹Critically Ivo Appel, *Verfassung und Strafe: Zu den verfassungsrechtlichen Grenzen des Strafens* (Duncker & Humblot 1998) 328–332; Massimo Donini, *Strafrechtstheorie und Strafrechtsreform: Beiträge zum Strafrecht und zur Strafrechtspolitik in Italien und Europa* (Thomas Vormbaum tr, Duncker & Humblot 2006) 9–10; Johannes Kaspar, *Verhältnismäßigkeit und Grundrechtsschutz im Präventionsstrafrecht* (Nomos 2014) 39.

¹²See, for instance Georg Wenzelburger, *The partisan politics of law and order* (Oxford University Press 2020).

¹³An even narrower focus might put too much emphasis on effects of the Covid-19 pandemic.

picture of an ideal criminal justice system. Such idealisations may starkly contrast with the realities of contemporary criminal justice that this section aims to highlight.

Similarly, it is necessary to conceptually distinguish the actual role from theoretical or scholarly requirements. A realistic analysis of legislative practices, review by constitutional and human rights courts, and the practical (dis-)application of criminal law¹⁴ is required, as this actual role may contrast starkly with scholarly demands for criminal justice, as expressed in theories on criminalisation and the (upward and downward) boundaries to criminal law: Does current legislation actually uphold the 'ultima ratio' character of criminal law, is it truly proportionate, does it really serve as both a shield and a sword in the protection of human rights? A critical comparison between theoretical requirements and the actual practices of criminal law legislation will enable us to reflect on how to strengthen the impact of theoretical foundations in the evolution and application of criminal law.

Questions to be addressed by country reports

I. Criminal Law Legislation in Current Times

Under this heading, we will analyse the current practices of legislation in the field of criminal law, including any special rules, deviations or peculiarities of criminal law legislation in contrast to other forms of legislation. We aim to discern what distinguishes criminal law legislation from other forms of social control. For instance, we seek to understand why legislatures opt for criminal law instead of alternatives such as civil wrongs, tort liability, or measures under administrative law. We also aim to study how legislation in the field of criminal law functions, including its shortcomings, and identify best practices for rationalising or otherwise strengthening criminal law legislation.

1. The legislative process for substantive criminal law

Please concisely describe the legislative process for substantive criminal law in your jurisdiction. Please place particular emphasis on any special rules in the legislative process compared to legislation in other fields of law,¹⁵ which may include aspects noted in the subquestions below.

- 1.1 Does the enactment/modification/removal of a provision of criminal law require a super-majority, an additional reading in parliament, or the involvement of a second legislative body? Are there

¹⁴Such as when some criminal laws, although enacted by the legislature and in force, are systematically ignored by the police and prosecution services.

¹⁵For an overview on Europe, see Uwe Scheffler, 'Strafgesetzgebungstechnik in Deutschland und Europa' (2005) 117 ZStW 766.

special rules in the decision-making process compared to other fields of law?¹⁶ For instance, some suggest that criminal laws should only be enacted by a two-thirds supermajority.¹⁷

- 1.2 Must specific advisory bodies be involved? Are they regularly involved, even if not legally required? Are there special rules in the legislative process, compared to other fields of the law? For instance, the Law Commission of England and Wales provides advice to the legislature.
- 1.3 Is the legislature constitutionally required to specifically substantiate the reasons for legislation in the field of substantive criminal law?¹⁸ Here, we want to discuss whether the legislature (or legislative bodies) must provide supplementary material, such as explanatory memoranda, besides the text of the law. Some argue that the legislature only speaks through the laws it enacts, while others consider explanatory memoranda (and their drafting) to be valuable for the rationalisation of the legislative process.

Additionally, please analyse the following features of legislation in relation to substantive criminal law:

- 1.4 Who is the *de facto* legislator: the *de jure* legislative body or another entity (e.g., the Ministry of Justice or the Ministry of the Interior)? For instance, if a parliament regularly 'rubber-stamps' bills proposed by the Ministry of Justice without modifications, this means that the *de facto* legislator is the latter.
- 1.5 Is the advice of academia considered in the legislative process, and what influence does academia have on legislation?
- 1.6 What binding influence do other actors (courts, international/supranational organisations, decisions by regional human right courts, etc.) exert on the legislation of criminal law, aside from the main legislative body/bodies? For instance, constitutional courts may require the legislature to act, or accession to the UN Cybercrime Convention may require the legislature to adapt the cybercrime provisions, raising the question how autonomous the legislature acts and how much criminal law legislation is shaped by other actors.

¹⁶On such mechanisms in the field of constitutional amendments, see the overview by Donald S Lutz, 'Toward a Theory of Constitutional Amendment' (1994) 88 American Political Science Review 355, 368.

¹⁷Urs Kindhäuser, 'Die deutsche Strafrechtsdogmatik zwischen Anpassung und Selbstbehauptung – Grenzkontrolle der Kriminalpolitik durch die Dogmatik?' (2009) 121 ZStW 954, 963.

¹⁸On such demands see, for instance, Gregor Stächelin, *Strafgesetzgebung im Verfassungsstaat: Normative und empirische, materielle und prozedurale Aspekte der Legitimation unter Berücksichtigung neuerer Strafgesetzgebungspraxis* (Duncker & Humblot 1998) 332–333; Wolfgang Frisch, 'Voraussetzungen und Grenzen staatlichen Strafens' [2016] NStZ 16, 24.

- 1.7 What non-binding influence do other actors (political parties, prosecution offices, bar associations, NGOs, expert committees, private standard-setting bodies, government/ministry officials, etc.) exert on the legislation of criminal law, aside from the main legislative body/bodies? For instance, prosecution offices may be well connected to the ministry of justice, allowing them to exert much influence on draft legislation in the field of criminal justice.
- 1.8 To what extent are regulations from other standard-setting bodies explicitly referenced in criminal law legislation ('blanket regulation')? For instance, criminal laws might explicitly or implicitly refer to regulations set out by city councils or mayors at a local level, to banking regulations set by the Basel Committee on Banking Supervision, or to accounting standards set by the International Accounting Standards Board. By referring to other legislation or standards, a distinct legislative process in the field of criminal law may be avoided. If such practices exist in your jurisdiction, please assess their justification.
- 1.9 Is substantive criminal law-related legislation enacted for a limited time ('sunshine clauses', 'experimental legislation')¹⁹ or without a time limit? For instance, *Thomas Jefferson* suggested that the U.S. Constitution, as well as any laws enacted by Congress, should only be valid for 19 years.²⁰
- 1.10 Are there requirements to monitor or evaluate substantive criminal laws some time after they have been enacted? Are they evaluated regularly? For instance, EU Directives in the field of criminal law usually contain requirements for at least one evaluation, sometimes regular evaluations, after a number of years.

2. What trends does recent legislation related to substantive criminal law in your jurisdiction follow?

Please analyse the current trends of legislation in the field of substantive criminal law. Such legislation may alter the core criminal law, such as the *Code Pénal*, but also other important laws defining crimes, such as those regulating the use of narcotic substances. Please focus on the most recent years (particularly the 2010s and 2020s), and describe whether and to what extent there are trends along the following non-exclusive²¹ dimensions.²²

¹⁹Nieto Martín (n 4) 133–137.

²⁰Cf. Richard E Myers, 'Responding to the time-based failures of the criminal law through a criminal sunset amendment' (2008) 40 Boston College Law Review 1328, 1328–1382.

²¹Please be aware that one law may both criminalise and decriminalise.

²²For an extended typology, see Brodowski (n 3) 314–321.

- 2.1 **expansion (criminalisation) — reduction (decriminalisation):** Are more or fewer acts/omissions covered by provisions of criminal law (e.g., if a criminal offence is enacted or removed from the criminal code)? For instance, some jurisdictions have enacted new offences in the field of economic criminal law, while others have decriminalised recreational drug use.
- 2.2 **increased punishment levels — decreased punishment levels:** Are statutory minimums and/or statutory maximums increased or decreased, are aggravating circumstances added or removed from provisions of criminal law? For instance, sentencing levels for organised crime have recently been increased in El Salvador, while the UK revised its sentencing guidelines for drug offences in 2021.
- 2.3 **simplification of punishment – complication of punishment:** Is the application of provisions of criminal law made easier or more complicated, for instance by increasing/decreasing limitation periods, by requiring a specific complaint by the victim, and/or by active repentance (e.g., being freed of criminal responsibility by compensating the victim)?

Please also indicate if such trends differ between various areas of criminal law, such as if there is no activity in the core area of criminal law, but a significant expansion of criminal law provisions in other codifications (such as those relating to economic or drug offences). Even within the core criminal code, there might be variations: In Germany, the provisions on murder have not been changed for ages, while the provision on the criminalisation of money laundering has the highest modification rate.

- 2.4 **To what extent are alternative means, such as policing, administrative law, or quasi-criminal law²³, employed by the legislator?**

3. What reasons are presented for the addition, amendment, or modification of provisions in substantive criminal law?

During the legislative process, legislative bodies (government, parliament, etc.) and individual legislators typically provide reasons or justifications for the necessity of the legislation, such as in explanatory memoranda. The following subquestions refer to the content of such statements/publications:

²³Vanessa Franssen and Christopher Harding (eds), *Criminal and Quasi-criminal enforcement mechanisms in Europe: Origins, Concepts, Future* (Hart 2022).

- 3.1 To what extent is reference made to criminalisation theory (theories of punishment)?
- 3.2 To what extent does the reasoning focus on changing or asserting behaviour in our societies,²⁴ social control, the protection of human rights (positive obligations), prevention, deterrence, risk prevention, popular/populist demands, and/or suppression?
- 3.3 To what extent are alternatives to criminal law (such as tort law) discussed in the legislative process?
- 3.4 Specifically, please analyse whether political actors in power use criminal law as a 'legislative tool' like any other to pursue their political goals, or whether there is a discernible 'dignity', '*proprium*' or restraint in relation to criminal law legislation? Note that arguments regarding the special 'dignity' of criminal law can be used both to limit criminal law and to argue that the importance of a political goal necessitates its use.²⁵
- 3.5 Please specify whether these trends differ across various areas of criminal law. For example, is there is significant reference to punishment theories when core criminal codifications are changed, compared to the enactment of criminal statutes in more 'remote' or 'technical' areas of law (such as the code on narcotic substances) which may lack specific references to criminal law?
- 3.6 How important are the reasons provided by legislative bodies for the subsequent interpretation of the law?

4. What reasons are discernible within the legislative process?

Provisions of criminal law and their threat of criminal punishment are typically considered to pursue the goals such as prevention, repression, and/or retribution of crime. Here, we aim to analyse whether the legislative process follows similar or distinct goals. For instance, media coverage of legislative processes may raise public awareness for crime issues, inform the public and potential offenders about the criminalisation of prohibited acts or omissions, and address the victims by demonstrating them society is responding to the crimes they have suffered through legislation.²⁶ Such a demonstration that 'something is being done' may also help politicians gain votes.

²⁴Michael Kubiciel and Thomas Weigend, 'Maßstäbe wissenschaftlicher Strafgesetzgebungskritik' [2019] KriPoZ 35, 35; Brodowski (n 3) 336.

²⁵Cf. Appel (n 11) 72; Christoph Burchard, 'Strafrechtslimitation als Motor der Strafrechtsexpansion: Wissenschaftsethische Vorüberlegungen zu 'Dual Use Research of Concern' aus dem Bereich der Strafrechtswissenschaften' in Milan Kuhli and Martin Asholt (eds), *Strafbegründung und Strafeinschränkung als Argumentationsmuster* (Nomos 2017) 28.

²⁶Brodowski (n 3) 541–546.

- 4.1 During the legislative process, do political actors including the media explicitly address
- victims (including potential victims),
 - perpetrators (including potential perpetrators), and/or
 - the society as a whole?
- 4.2 What aims do political actors pursue when addressing these audiences? Are they focused on the repression of crime (such as by placing blame on past offenders), the prevention of crime, gaining votes, or other objectives?

5. Is there *inertia* in the legislation of substantive criminal law?

There may be a lack of political incentives to legislate in the field of criminal law, particularly if there are no votes to be gained. In other instances, the fear of political repercussions or the fear of exacerbating issues²⁷ may cause legislative *inertia*, meaning that no new legislation is proposed or enacted.

- 5.1 Are there areas of substantive criminal law that, despite an urgent need for reform as stated by academia, public opinion or political minorities, remain unchanged? For instance, a change in social values may not yet be reflected in the criminal laws, even though NGOs advocate for reform.
- 5.2 If so, which of the aforementioned reasons²⁸ are cited to maintain the *status quo*?
- 5.3 Are alternative means, such as policing, administrative law, or quasi-criminal law²⁹, employed by the legislator to maintain the appearance of a 'never-changing criminal law'?

II. Criminal Law Boundaries in Current Times

6. Have constitutional/human right courts established boundaries for criminal law?

- 6.1 Have national constitutional/human right courts recently³⁰ established boundaries for criminal law legislation, such as by declaring provisions of criminal law unconstitutional or by stating that there are positive obligations to enact criminal law?

²⁷ Subsequent corrections usually cannot apply retroactively owing to *nulla poena sine lege praevia*.

²⁸ See questions 3.1 and 3.2 above.

²⁹ Franssen and Harding (n 23).

³⁰ Again – see question 1 –, please put particular emphasis on the 2010s and 2020s.

6.2 If so, please analyse to what extent the rulings have focused on the criminal law element of the provisions. For instance, the German Federal Constitutional Court recently struck down a provision criminalizing assisted suicide.³¹ As it reasoned that the prohibition of assisted suicide was unconstitutional, the (additional) criminalisation of this prohibition was without relevance to the ruling.

6.3 Please assess the role that theories on the boundaries³² of criminal law play in the constitutional/human rights review of criminal law, and evaluate the effectiveness of such review. These theories include

- criminalisation theories (harm principle³³, *Rechtsgutslehre*,³⁴ etc.),
- *ultima ratio*,³⁵
- proportionality,³⁶
- human rights and fundamental freedoms (as positive obligations to criminalise and as limitations to criminalisation),³⁷ or
- ‘overcriminalization’³⁸ and matters considered to be outside the realm of criminal law (‘thought-crimes’, ‘pre-crime’, preparatory offences, etc.).

7. What role do theories on boundaries of criminal law play in the legislative process?

7.1 Which theories on the boundaries of criminal law (including criminalisation theories)³⁹ prevail in contemporary scholarly writings on criminal law?

³¹BVerfG, Judgment of 26.02.2020 – 2 BvR 2347/15 –, ECLI:DE:BVerfG:2020:rs20200226.2bvr234715.

³²Boundaries here refers both to lower and upper limits (limitations) of criminal law.

³³See, for instance, Nina Peršak, *Criminalising harmful conduct: the Harm Principle, its limits and continental counterparts* (Springer 2007).

³⁴In brief, this theory states that criminal law must only be employed to protect specific legal interests, but not, for instance, societal values or morals as such. See critically Sabine Swoboda, ‘Die Lehre vom Rechtsgut und ihre Alternativen’ (2010) 122 ZStW 24.

³⁵See, for instance, European Criminal Policy Initiative, ‘Manifest zur Europäischen Kriminalpolitik’ [2009] ZIS 697, 697.

³⁶See, for instance, Emmanouil Billis, Nandor Knust, and Jon Petter Rui (eds), *Proportionality in crime control and criminal justice* (Hart 2021)

³⁷See n 7 above.

³⁸See, for instance, Douglas N Husak, *Overcriminalization: the limits of the criminal law* (Oxford University Press 2008).

³⁹See question 6.3 above.

- 7.2 Are these theories adopted or misused by actors in the political domain (such as by political parties, politicians, NGOs, etc.)?
- 7.3 Are these theories on the boundaries of criminal law applied and/or adhered to by legislative bodies during the legislative process? For instance, academia may argue that criminal law is bound by the principle of *ultima ratio*, but the legislature neither reflects on nor adheres to this principle during the legislative process.
- 7.4 If criminalisation theories and theories on boundaries of criminal law are of limited relevance in legislative practice: What reasons are provided in contemporary scholarly writings on criminal law and/or on political science for their lack of adherence in the legislative practice?

8. Are there other practices that limit the effects of criminal law legislation?

There may be a 'disconnect' between the law as written and the law in practice. For example, if the prosecution has a wide margin of discretion, they may decide not to prosecute crimes that fall under an offence recently enacted by the parliament, or they can use their discretionary power to limit criminal law to a proportionate level, regardless of what the legislature had enacted. Here, we aim to analyse such practices that limit the effects of criminal law legislation.

- 8.1 Are decisions by the police/prosecution/courts on the prosecution and adjudication of offences influenced by theories on the boundaries of criminal law (including criminalisation theories)⁴⁰?
- 8.2 Are decisions by the police/prosecution/courts on the prosecution and adjudication of offences influenced by the reasons provided by the legislature for a criminal offence⁴¹?
- 8.3 Do the police/prosecution/courts limit the application of criminal laws using the aforementioned theories on the boundaries of criminal law⁴²?

⁴⁰See question 6.3 above.

⁴¹See questions 3.1 and 3.2 above.

⁴²See question 6.3 above.

III. Consequences on the Foundations and Role of Criminal Law in Current Times

9. Is there a 'disconnect' between political realities and theoretical foundations of criminal law?

Taking your answers to I. and II. into account, please summarise whether the foundations of criminal law (as found in scholarly writings, foundational court decisions and constitutional/human rights frameworks) are adhered to in the political realities of contemporary criminal law, or whether there is a 'disconnect'? For instance, legislation may pay lip service to criminalisation theories, yet irrationally engage in overcriminalisation and increase punishment levels in some areas, while failing to address other phenomena in dire need of criminalisation.

10. What is the 'role' of criminal law in your jurisdiction?

Taking your answers to I. and II. into account, please assess the contemporary 'role' of criminal law in your jurisdiction.

- 10.1 Is contemporary legislation focused on aligning criminal laws with the aims of criminalisation theories, such as prevention or repression?
- 10.2 Is contemporary legislation utilised to pursue political goals, influence people's behaviour, gain votes, or fulfil populist demands?
- 10.3 To what extent is the 'output' (the new law) decisive in pursuing such goals, and to what extent is it the legislative process itself? For instance, the media often reports on legislative processes, but not necessarily on the *status quo* of criminal law. Therefore, the legislative process may be an end in itself and more effective in addressing (potential) offenders and victims than the law itself.

11. How can the foundations of criminal law be strengthened?

Are there trends, discussions, or suggestions on how to strengthen the rationality of criminal law in its legislation and/or in its application?

12. Is there anything else specific to your national criminal justice system that should be addressed?

If there are any additional aspects relating to your national criminal justice system, you are welcome to discuss them here. Preferably, give the *rapporteur général* (dominik.brodowski@uni-saarland.de) advance notice so that these issues may also be forwarded to other rapporteurs.

Timeline

- 28/07/2025:** 1st video-conference of national, special and general rapporteurs (focus: scope) (15:00 CEST = 13:00 UTC, ca. 1 hour)
- 10/2025:** 2nd video-conference of national, special and general rapporteurs (focus: questionnaire)
- 02/2026:** 3rd video-conference of national, special and general rapporteurs (focus: q&a; amendments to the questionnaire based on feedback by rapporteurs)
- 30/06/2026:** submission of national and special reports
- 11/2026:** circulation of draft General Report and draft Recommendations
- 12/2026:** International Colloquium, Chile
- 2029:** follow-up at World Congress

Bibliography

- Appel I, *Verfassung und Strafe: Zu den verfassungsrechtlichen Grenzen des Strafens* (Duncker & Humblot 1998).
- M Bäcker and C Burchard (eds), *Strafverfassungsrecht* (Mohr Siebeck 2022).
- E Billis, N Knust, and JP Rui (eds), *Proportionality in crime control and criminal justice* (Hart 2021).
- Brodowski D, *Die Evolution des Strafrechts: Strafverfassungsrechtliche, europastrafrechtliche und kriminalpolitische Wirkungen auf Strafgesetzgebung* (Nomos 2023) (<https://doi.org/10.5771/9783748930457>).
- Burchard C, 'Strafverfassungsrecht – Vorüberlegungen zu einem Schlüsselbegriff' in K Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege: Erinnerung an Joachim Vogel* (Baden-Baden, 2016).
- 'Strafrechtslimitation als Motor der Strafrechtsexpansion: Wissenschaftsethische Vorüberlegungen zu 'Dual Use Research of Concern' aus dem Bereich der Strafrechtswissenschaften' in M Kuhli and M Asholt (eds), *Strafbegründung und Strafeinschränkung als Argumentationsmuster* (Nomos 2017).
- Burchell JM, *Principles of criminal law* (5th edn, Juta 2016).
- Donini M, *Strafrechtstheorie und Strafrechtsreform: Beiträge zum Strafrecht und zur Strafrechtspolitik in Italien und Europa* (Vormbaum T tr, Duncker & Humblot 2006).
- 'Techniken und regulative Modelle eines verfassungsorientierten Strafrechts', in K Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege: Erinnerung an Joachim Vogel* (Baden-Baden, 2016).
- European Criminal Policy Initiative, 'Manifest zur Europäischen Kriminalpolitik' [2009] ZIS 697.
- V Franssen and C Harding (eds), *Criminal and Quasi-criminal enforcement mechanisms in Europe: Origins, Concepts, Future* (Hart 2022).
- Frisch W, 'Voraussetzungen und Grenzen staatlichen Strafens' [2016] NStZ 16.
- Garland D, *The culture of control: crime and social order in contemporary society* (University of Chicago Press 2001).
- Greco L, 'Verfassungskonformes oder legitimes Strafrecht? Zu den Grenzen einer verfassungsrechtlichen Orientierung der Strafrechtswissenschaft' in B Brunhöber and others (eds), *Strafrecht und Verfassung* (Nomos 2013).
- Hörnle T, 'The Challenges of Designing Sexual Assault Law' (2024) 77(1) Current Legal Problems 49 (<https://doi.org/10.1093/clp/cuae002>).
- Husak DN, *Overcriminalization: the limits of the criminal law* (Oxford University Press 2008).
- Kaspar J, *Verhältnismäßigkeit und Grundrechtsschutz im Präventionsstrafrecht* (Nomos 2014).

- Kindhäuser U, 'Die deutsche Strafrechtsdogmatik zwischen Anpassung und Selbstbehauptung – Grenzkontrolle der Kriminalpolitik durch die Dogmatik?' (2009) 121 ZStW 954.
- Kubiciel M and Weigend T, 'Maßstäbe wissenschaftlicher Strafgesetzgebungskritik' [2019] KriPoZ 35.
- Lavrysen L, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016).
- Lutz DS, 'Toward a Theory of Constitutional Amendment' (1994) 88 American Political Science Review 355.
- F Miró-Llinares (ed), *Criminalisation of AI-related offences* (RIDP 2024/I, Maklu 2024).
- Myers RE, 'Responding to the time-based failures of the criminal law through a criminal sunset amendment' (2008) 40 Boston College Law Review 1328.
- Nieto Martín A, 'A necessary triangle: the science of legislation, the constitutional control of criminal laws and experimental legislation' in K Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege: Erinnerung an Joachim Vogel* (Baden-Baden, 2016).
- Peršak N, *Criminalising harmful conduct: the Harm Principle, its limits and continental counterparts* (Springer 2007).
- Scheffler U, 'Strafgesetzgebungstechnik in Deutschland und Europa' (2005) 117 ZStW 766.
- Schlepper C, *Strafgesetzgebung in der Spätmoderne: Eine empirische Analyse legislativer Punitivität* (Springer VS 2014).
- Stächelin G, *Strafgesetzgebung im Verfassungsstaat: Normative und empirische, materielle und prozedurale Aspekte der Legitimation unter Berücksichtigung neuerer Strafgesetzgebungspraxis* (Duncker & Humblot 1998).
- Swoboda S, 'Die Lehre vom Rechtsgut und ihre Alternativen' (2010) 122 ZStW 24.
- Tiedemann K, *Verfassungsrecht und Strafrecht* (CF Müller 1991).
- K Tiedemann and others (eds), *Die Verfassung moderner Strafrechtspflege: Erinnerung an Joachim Vogel* (Baden-Baden, 2016).
- Tulkens F, 'The Paradoxical Relationship between Criminal Law and Human Rights' (2011) 9 JICJ 577.
- G Vermeulen, N Peršak, and S De Coensel (eds), *Researching the boundaries of sexual integrity, gender violence and image-based abuse* (RIDP 2024/II, Maklu 2024).
- Wenzelburger G, *The partisan politics of law and order* (Oxford University Press 2020).

* * *