FUNDAMENTAL RIGHTS AND LEGAL CONSEQUENCES OF CRIMINAL CONVICTION

The legal position of convicted offenders is complex, as are the social consequences that can result from a criminal conviction. After they have served their sentences, custodial or not, convicted offenders often continue to be subject to numerous restrictions, in many cases indefinitely. In short, criminal convictions can have adverse legal consequences that may affect convicted offenders in several aspects of their lives. In turn, these legal consequences can have broader social consequences. Legal consequences are often not formally part of the criminal law, but are regulated by different areas of law, such as administrative law, constitutional law, labour law, civil law and immigration law. For this reason, they are often obscured from judges as well as from defendants and their legal representatives in the courtroom. The breadth, severity, longevity and often hidden nature of these restrictions raises the question of whether offenders’ fundamental rights are sufficiently protected. This book explores the nature and extent of the legal consequences of criminal convictions in Europe, Australia and the USA. It addresses the following questions: What legal consequences can a criminal conviction have? How do these consequences affect convicted offenders? And how can and should these consequences be limited by law?
Recent titles in this series

Life Imprisonment and Human Rights
Edited by Dirk van Zyl Smit and Catherine Appleton

Trust in International Police and Justice Cooperation
Edited by Saskia Hufnagel and Carole McCartney

Human Rights Encounter Legal Pluralism
Edited by Eva Brems, Giselle Corradi and Mark Goodale

Transitional Justice and the Public Sphere: Engagement, Legitimacy and Contestation
Edited by Chrisje Brants and Susanne Karstedt

Law and the Precarious Home: Socio Legal Perspectives on the Home in Insecure Times
Edited by Helen Carr, Brendan Edgeworth and Caroline Hunter

Criminologies of the Military: Militarism, National Security and Justice
Edited by Andrew Goldsmith and Ben Wadham

Law and the Precarious Home: Socio Legal Perspectives on the Home in Insecure Times
Edited by Helen Carr, Brendan Edgeworth and Caroline Hunter

Collective Bargaining and Collective Action: Labour Agency and Governance in the 21st Century?
Edited by Julia López López

For the complete list of titles in this series, see ‘Onati International Series in Law and Society’ link at www.bloomsburyprofessional.com/uk/series/onati-international-series-in-law-and-society
Fundamental Rights and Legal Consequences of Criminal Conviction

Edited by
Sonja Meijer
Harry Annison
and
Ailbhe O’Loughlin

Oñati International Series in Law and Society
A SERIES PUBLISHED FOR THE OÑATI INSTITUTE FOR THE SOCIOLOGY OF LAW

• H A R T •
OXFORD • LONDON • NEW YORK • NEW DELHI • SYDNEY
Acknowledgements

We are grateful to the Oñati International Institute for the Sociology of Law (IISL) for accommodating a two-day workshop that enabled us to bring together a team of leading legal, socio-legal and criminological scholars from different parts of the world. At this workshop, first versions of the chapters that make up the bulk of this book were presented and discussed extensively. In Oñati, the IISL provided us with logistical and administrative support, which made our stay very pleasant. Our special thanks go to Malen Gordoa Mendizabal for making the arrangements on behalf of the IISL.

Furthermore, we would like to thank the Kooijmans Institute of the VU University Amsterdam, which allocated a fellowship to Ailbhe O’Loughlin, allowing us to work closely together on the book for two weeks at the Law Faculty.

We are grateful to Professor Dirk Van Zyl Smit, who inspired us to undertake this project. We are also thankful to Dirk Van Zyl Smit, Shadd Maruna, Fergus McNeill, Nicola Padfield and Claire Lougarre for reading a draft of the Introduction. This book, and our Introduction in particular, has benefited greatly from their thought-provoking comments.

Lastly, our thanks go to the team at Hart/Bloomsbury Publishing for copyediting and producing this book, in particular to Emily Braggins, Rosamund Jubber and Catherine Minahan. Special thanks are due to our contributing authors. Your work has given an important insight into how a criminal conviction can affect the fundamental rights of former offenders in your countries, and will no doubt inspire future collaborations and comparative work.

Sonja Meijer, Harry Annison and Ailbhe O’Loughlin
Amsterdam, Southampton and York, January 2019
Table of Contents

Acknowledgements ...........................................................................................................v
List of Contributors ......................................................................................................... ix

1. Introduction .........................................................................................................................1
   Sonja Meijer, Harry Annison and Ailbhe O’Loughlin

PART I
CRIMINOLOGICAL PERSPECTIVES ON LEGAL CONSEQUENCES OF CRIMINAL CONVICTION

2. Collateral Consequences of a Conviction in Spain .........................................................27
   Elena Larrauri and Marti Rovira

3. Incapacitation: Salutary Protection of Society or the Definitive Elimination of People? ................................................................. 45
   Marijke Malsch

PART II
LEGAL LIMITS ON THE LEGAL CONSEQUENCES OF CRIMINAL CONVICTION

4. The ‘Stain of Conviction’ – Penal Theory, Fundamental Rights and Criminal Records in Germany ...........................................65
   Christine Morgenstern

5. Proportionality as a Constraint on the Legal Consequences of Conviction .............................................87
   Sonja Meijer

6. The Detrimental Legal Consequences of a Conviction in Hungary ............... 107
   Krisztina Lukács and Dávid Vig

7. Challenging the Legitimacy and Limits of Criminal Background Checks in Switzerland ................................................................. 129
   Anna Coninx

8. Relevance of a Criminal Record to Employment Opportunity: A Greek Example for Comprehensive Law Reform .............................147
   Dimitra Blitsa and Anna Kivrakidou
PART III
DANGEROUS OFFENDERS AND LEGAL CONSEQUENCES OF CRIMINAL CONVICTION
   Harry Annison and Ailbhe O’Loughlin
10. Intensive Supervision of Sexual and Violent Offenders in Germany ...... 189
    Axel Dessecker
11. Bifurcation and Redemption in France ................................................. 209
    Martine Herzog-Evans
    Patrick Keyzer and Darren O’Donovan

PART IV
JUVENILE OFFENDERS AND LEGAL CONSEQUENCES OF CRIMINAL CONVICTION
13. The Albatross of Juvenile Criminal Records................................. 249
    Nicola Carr
14. Dutch Criminal Record Screening in Light of International Children’s Rights Standards.......................................................... 265
    Elina van ’t Zand-Kurtovic

Index ......................................................................................................... 285
List of Contributors

Harry Annison
Associate Professor in Criminal Law and Criminology, School of Law, University of Southampton, England, United Kingdom

Dimitra Blitsa
Public prosecutor, LLM LSE NYU, PhD candidate Aristotle University of Thessaloniki, Greece

Nicola Carr
Associate Professor in Criminology, University of Nottingham, England, United Kingdom

Anna Coninx
Assistant Professor in Criminal and Criminal Procedural Law, University of Luzern, Switzerland

Axel Dessecker
Professor in Criminology and Criminal Law, Institute for Criminal Law and Criminal Justice Sciences, Georg August University, Göttingen, and Deputy Director, Centre for Criminology (KrimZ), Wiesbaden, Germany

Martine Herzog-Evans
Professor in Criminal Law and Criminology, University of Rheims, France

Patrick Keyzer
Head of School and Chair of Law and Public Policy, La Trobe University Law School, Melbourne, Australia

Anna Kivrakidou
Criminal defence lawyer, PhD Aristotle University of Thessaloniki, Greece

Elena Larrauri
Professor in Criminal Law and Criminology, Pompeu Fabra University, Barcelona, Spain

Krisztina Lukács
Legal advisor Constitutional Court, Hungary

Marijke Malsch
Senior researcher Netherlands Institute for the Study of Crime and Law Enforcement (NSCR), Amsterdam, the Netherlands
Christine Morgenstern  
Professor in Criminal Law and Criminology, Ernst Moritz Arndt University, Greifswald, Germany

Sonja Meijer  
Assistant Professor in Criminal Law, VU University Amsterdam, the Netherlands

Darren O’Donovan  
Senior Lecturer in Administrative Law, Human Rights Law and International Law, La Trobe University Law School, Melbourne, Australia

Ailbhe O’Loughlin  
Lecturer in Criminal Law, York Law School, University of York, England, United Kingdom

Martí Rovira  
Postdoctoral Researcher in Sociology and Criminology, Department of Sociology, University of Oxford

David Vig  
Senior Lecturer in Criminology and Penology at the Department of Criminology, Eötvös Lorand University Budapest, Hungary

Elina van ’t Zand-Kurtovic  
Assistant Professor in Criminology, Leiden University, Leiden, the Netherlands