



STUDIES IN INTERNATIONAL & COMPARATIVE CRIMINAL LAW

Principles of German
Criminal Procedure

MICHAEL BOHLANDER

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Michael Bohlander



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PRINCIPLES OF GERMAN CRIMINAL PROCEDURE

The book aims to outline the fundamental aspects of the German approach to criminal procedure; it is meant as a companion volume to the author's earlier publications, *The German Criminal Code—A Modern English Translation*, and *Principles of German Criminal Law*, also with Hart. In appropriate cases, comparisons to English and Welsh law have been drawn. The chapters cover a wide range of issues from setting out the basic procedural principles to presenting the main players in the criminal justice system, pre-trial investigations, the path from indictment to trial judgment, rules of evidence, sentencing, and appeals and post-conviction review. As far as it is useful for an introductory text, the differences between proceedings against adults and juveniles are highlighted. The theoretical discussion of decision-making and style of judgment writing is supported by practical insights through specimen translations of an indictment, a trial judgment and an appellate judgment by the Federal Court of Justice.

Studies in International and Comparative Criminal Law: Volume 8

Studies in International and Comparative Criminal Law

General Editor: Michael Bohlander

Criminal law had long been regarded as the preserve of national legal systems, and comparative research in criminal law for a long time had something of an academic ivory tower quality. However, in the past 15 years it has been transformed into an increasingly, and moreover practically, relevant subject of study for international and comparative lawyers. This can be attributed to numerous factors, such as the establishment of ad hoc international criminal tribunals and the International Criminal Court, as well as to developments within the EU, the UN and other international organisations. There is a myriad of initiatives related to tackling terrorism, money laundering, organised crime, people trafficking and the drugs trade, and the international 'war' on terror. Criminal law is being used to address global or regional problems, often across the borders of fundamentally different legal systems, only one of which is the traditional divide between common and civil law approaches. It is therefore no longer solely a matter for domestic lawyers. The need exists for a global approach which encompasses comparative and international law.

Responding to this development this new series will include books on a wide range of topics, including studies of international law, EU law, the work of specific international tribunals, and comparative studies of national systems of criminal law. Given that the different systems to a large extent operate based on the idiosyncracies of the peoples and states that have created them, the series will also welcome pertinent historical, criminological and socio-legal research into these issues.

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In memory of
Kaiyan Homi Kaikobad
Our birth made us mortal, our death will make us immortal.

Preface

After the translation of the German Criminal Code in 2008 and the book on principles of German substantive criminal law in 2009, I am pleased to be able to present the next instalment, on German criminal procedure. It covers the major rules and stages of criminal proceedings, both in adult and juvenile cases, and has an extensive but nonetheless still superficial chapter on sentencing. I hope that together, these three books will now provide the reader with a reliable first impression of the operation of criminal law in theory and practice in Germany. The Code of Criminal Procedure and the Juvenile Courts Act, among many other pieces of legislation, including an up-to-date version of the Criminal Code, have been available for some time now in English on the official website of the German Federal Ministry of Justice. I thank the Ministry for agreeing to the use of excerpts from my translation of the Criminal Code in this book.

As with the previous books, I have to express my deep gratitude to a number of colleagues who gave freely of their time and expertise to prevent any major blunders from happening; needless to say, any remaining errors are mine alone. Chris Newman from Sunderland University again did his best to keep the text within the generally accepted boundaries of proper English. Judge Wolfgang Feld-Gerdes of the Landgericht at Meiningen, Judge Wolfgang Schomburg, formerly of the Bundesgerichtshof, of the International Criminal Tribunals for the former Yugoslavia and Rwanda, and now a Honorary Professor of Law at Durham University, Mr Geoffrey Mercer QC, Walnut House Chambers, Exeter, as well as Rechtsanwalt Christian Latour, Meiningen, and Rechtsanwalt Dr Stefan Kirsch, Frankfurt, gave helpful and much-needed advice from the practitioner's point of view, given that it has been almost seven years now since I left the German bench and many things have changed during that time, in law as much as in practice.

I should like to thank the University of Durham and Durham Law School for their generous research leave policy, which allowed me to spend Michaelmas Term 2010 in Germany writing the major part of the text and gave me freedom from onerous teaching and administration duties in Epiphany Term 2011. Part of the latter was spent as a visiting scholar at the Department of Sociology and Criminal Justice of Old Dominion University in Norfolk, Virginia; I am indebted to its Head of Department, Professor Randy Gainey, and my friend Dawn Rothe and her colleagues for making me feel very welcome, and for supporting me with travel funds and accommodation as well as being excellent company during my stay.

I am grateful to Richard Hart and his staff at Hart Publishing for accepting the manuscript into the series and handling the production process in the traditionally efficient and effective manner. CH Beck Publishers graciously granted the right to use and translate excerpts from two of their books in the annexes.

Preface

As always, I am amazed by the generosity of my wife and daughter, Christine and Laura, who allowed me to leave them behind in England for three months while I worked on the manuscript at our home in Germany. It was too long.

This book is dedicated to the memory of my dear friend, Professor Kaiyan Homi Kaikobad, who passed away in 2010 after a short, aggressive and relentless illness. His untimely death has left a deep scar in the lives of those who knew and loved him. He is sorely missed.

*Michael Bohlander
Durham, June 2011*

List of Abbreviations

List of unusual terms, abbreviations and general citations

§, §§	Section, sections
AG	Amtsgericht = County Court
AO	Abgabenordnung = Fiscal Code
BayObLG	Bayerisches Oberstes Landesgericht = Bavarian Supreme Court
BayObLGSt	<i>Amtliche Sammlung der Entscheidungen des Bayerischen Obersten Landesgerichts in Strafsachen</i> = <i>Official Gazette of the Decisions of the Bavarian Supreme Court in Criminal Matters</i> , cited by volume and page
BezG	Bezirksgericht = District Court under the previous court system of the German Democratic Republic
BFHE	<i>Amtliche Sammlung der Entscheidungen des Bundesfinanzhofes</i> = <i>Official Gazette of the Decisions of the Federal Fiscal Court</i> , cited by volume and page
BGH	Bundesgerichtshof = Federal Court of Justice
BGHR	<i>BGH-Rechtsprechung Strafsachen</i> , cited by section, keyword and number
BGHSt	<i>Amtliche Sammlung der Entscheidungen des Bundesgerichtshofes in Strafsachen</i> = <i>Official Gazette of the Decisions of the Federal Court of Justice in Criminal Matters</i> , cited by volume and page
BGHZ	<i>Amtliche Sammlung der Entscheidungen des Bundesgerichtshofes in Zivilsachen</i> = <i>Official Gazette of the Decisions of the Federal Court of Justice in Civil Matters</i> , cited by volume and page
BRat-Drs.	Bundesratsdrucksache = Document emanating from the Federal Council
BtMG	Betäubungsmittelgesetz = Drugs Act
<i>Bund</i>	The Federation, as opposed to the <i>Länder</i>
BVerfG	Bundesverfassungsgericht = Federal Constitutional Court
BVerfGE	<i>Amtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts</i> = <i>Official Gazette of the Decisions of the Federal Constitutional Court</i> , cited by volume and page
DAR	<i>Deutsches Autorecht</i> , cited by year and page
DJZ	<i>Deutsche Juristenzeitung</i> , cited by year and page
DRiZ	<i>Deutsche Richterzeitung</i> , cited by year and page
EB	U Eisenberg, <i>Jugendgerichtsgesetz</i> , 14th edn (Munich, CH Beck, 2010), cited by § and marginal number
EBB	U Eisenberg, <i>Beweisrecht der StPO—Spezialkommentar</i> , 7th edn (Munich, CH Beck, 2011), cited by marginal number

List of Abbreviations

EGGVG	Einführungsgesetz zum Gerichtsverfassungsgesetz = Organisation of Courts (Introduction) Act
EGStPO	Einführungsgesetz zur Strafprozessordnung = Code of Criminal Procedure (Introduction) Act
Einl	Einleitung = Introduction
GA	<i>Goldammers Archiv für Strafrecht</i> , cited by year and page after 1953; prior to that by volume and page
GG	Grundgesetz = Basic Law
GVG	Gerichtsverfassungsgesetz = Organisation of Courts Act
Hungerford-Welch	P Hungerford-Welch, <i>Criminal Procedure and Sentencing</i> , 7th edn (London, Routledge & Cavendish, 2008)
JGG	Jugendgerichtsgesetz = Juvenile Courts Act
JMBINW	<i>Justizministerialblatt für das Land Nordrhein-Westfalen</i> = Ministry of Justice Gazette of North Rhine Westphalia, cited by year and page
JR	<i>Juristische Rundschau</i> , cited by year and page
JW	<i>Juristische Wochenschrift</i> , cited by year and page
JZ	<i>Juristenzeitung</i> , cited by year and page
Keane	A Keane et al, <i>The Modern Law of Evidence</i> , 8th edn (Oxford, OUP, 2010)
KG	Kammergericht = State Supreme Court of Berlin
KK-contributor	<i>Karlsruher Kommentar zur Strafprozessordnung</i> , GVG, EGGVG, EMRK, 6th edn (Munich, CH Beck, 2008), cited by § and marginal number
<i>Land; Länder</i>	(One of the) member States of the Federation
LG	Landgericht = District Court
MDR	<i>Monatsschrift für Deutsches Recht</i> , cited by year and page
MG	L Meyer-Goßner, <i>Strafprozessordnung mit GVG und Nebengesetzen</i> , 53rd edn (Munich, CH Beck, 2010), cited by § and marginal number
Mn.	Marginal number
MRK	Menschenrechtskonvention = ECHR
NJW	<i>Neue Juristische Wochenschrift</i> , cited by year and page
NStE	<i>Neue Entscheidungssammlung für Strafrecht</i> (looseleaf), cited by section and number
NStZ	<i>Neue Zeitschrift für Strafrecht</i> , cited by year and page
NStZ-RR	<i>Neue Zeitschrift für Strafrecht Rechtsprechungs-Report</i> , cited by year and page
OGHSt	<i>Entscheidungen des Obersten Gerichtshofes der Britischen Zone in Strafsachen</i> = <i>Decisions of the Supreme Court of the British Zone in Criminal Matters</i> , cited by volume and page

List of Abbreviations

OLG	Oberlandesgericht = State Supreme Court
OLGSt	<i>Entscheidungen der Oberlandesgerichte zum Straf- und Strafverfahrensrecht</i> , cited by section and para or page
OWiG	Ordnungswidrigkeitengesetz = Summary Offences Act
POGCL	M Bohlander, <i>Principles of German Criminal Law</i> (Oxford, Hart Publishing, 2009)
RG	Reichsgericht = Supreme Court of the Reich
RGSt	<i>Amtliche Sammlung der Entscheidungen des Reichsgerichts in Strafsachen</i> = <i>Official Gazette of the Decisions of the Supreme Court of the Reich in Criminal Matters</i> , cited by volume and page
RiStBV	Richtlinien für das Strafverfahren und das Bussgeldverfahren = Guidelines for criminal and summary proceedings
RPfleger	<i>Der Deutsche Rechtspfleger</i> , cited by year and page
SchlHA	<i>Schleswig-Holsteinische Anzeigen</i> = <i>Schleswig-Holstein Gazette</i> , cited by year and page
SSvG	G Schäfer, GM Sander and G van Gemmeren, <i>Praxis der Strafzumessung</i> , 4th edn (Munich, CH Beck, 2008)
Sch/Sch-contributor	Schönke/Schröder, <i>Strafgesetzbuch, Kommentar</i> , 28th edn (Munich, CH Beck, 2010), cited by § and marginal number
StGB	Strafgesetzbuch = Criminal Code
StPO	Strafprozessordnung = Code of Criminal Procedure
StraFo	<i>Strafverteidigerforum</i> , cited by year and page
StrEG	Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen = Criminal Proceedings (Compensation) Act
StVollStrO	Strafvollstreckungsordnung = Criminal Sanctions (Enforcement) Order
StV	<i>Strafverteidiger</i> , cited by year and page
Vor	Before
Vorbem	Vorbemerkung
Vormbaum	T Vormbaum, <i>Einführung in die moderne Strafrechtsgeschichte</i> 2nd edn (Berlin, Springer, 2011)
VRS	<i>Verkehrsrechtssammlung</i> , cited by volume and page
wistra	<i>Zeitschrift für Wirtschaft, Steuer, Strafrecht</i> , cited by year and page
ZPO	Zivilprozessordnung = Code of Civil Procedure
ZStW	<i>Zeitschrift für die gesamte Strafrechtswissenschaft</i> , cited by year, volume and page

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