

# 'THE NEED FOR A SHARED SENSE OF JUSTICE IN THE EU'

We cannot avoid it any longer. With the crisis in Greece and with Italy left isolated as African refugees flood the country, does the EU have a shared responsibility or not? And if so, can it be incorporated in an integrated system of justice? And how can the EU achieve a common sense of fairness in its development of criminal law? Lawyer Ester Herlin Karnell is conducting research into this area on which the very future of the union depends.



By Rianne Lindhout

"She is one of those talented young people you encounter and immediately think: she is destined to be a professor", says Dean of Law Elies van Sliedregt. "She has a background in both criminal law and European law, which is an unusual combination. Many criminal lawyers do not fully understand the importance of European law and are put off by the dry nature of the subject matter."

Ester Herlin Karnell is not one of those lawyers. She is fascinated by the question of whether law can become integrated or whether it is inextricably bound to individual nation states. "The European Union is experiencing both a financial and constitutional crisis. We allow people to move freely across the borders of the member states to create the life they want, but at the same time we do not. The other member states are refusing to take responsibility for refugees entering Greece, Italy and Spain even though this is actually a European problem. In this case, there is no common aim: national interests take precedence. The result is a negative spiral: no one is helping those countries, which is making them wonder what the point of the EU is for them and become less cooperative in other areas at the same time as it is a severe economic crisis. This is why it is important for me to investigate whether there is actually a shared notion of justice among the 28 EU members and whether we can achieve a shared legal concept based on it."

## THE ANGER THAT SURFACED

The sense of community that Herlin Karnell is trying to find is the essential basis that the European Union needs if it is to succeed. When the EU was founded after World War II in order to bring an end to the wars that had arisen as a result of nationalism, it was initially focused primarily on economic cooperation. The ultimate milestone of that endeavour was the introduction of the euro in 2002. The fact that this was not a secure destination is something of which we have become only too aware since the euro crisis: will we work together to help Greece – and Portugal, Spain or Ireland – or are we only willing to go so far? The anger that

surfaced at that time was all too obvious. The complex issues currently at play with regard to criminal law, asylum law, money-laundering, terrorism and privacy are things we were not accustomed to in the EU. All of them show how essential a shared sense of justice is in order to form a stable unit. Tax law is another perfect example: countries with more favourable regulation attract more businesses, much to the dismay of neighbouring countries. "If there is no common strategy, you might as well wonder what the purpose of the European Union really is."

'If there is no common goal, you might as well wonder what the point of the European Union is'

Herlin Karnell does not limit herself to the issue of law alone. The subject itself prevents it, she explains: "The subject is a political one. If European electors do not want EU laws, things become complicated. The issue is not that I myself would like to see a massive canon of EU legislation, but I do wonder what basic shared principles we could effectively establish." Although this may sound all very practical, just imagine how complex the subject is. So many member states, each with their own background and perspectives. "The main focus of my research is on why things are as they are and how it can be improved. There are gaps in the law and it is up to the EU to solve that. European judges have too little theoretical context and knowledge with which to work and in practice are having to reinvent the wheel." She continues: "I am not really looking for a practical solution for this though I hope this will be the outcome of my research, but am trying to capture the notion of justice in the EU within a theory that I can apply to the current situation of EU integration."

## 'YOU NEED TO HAVE DRIVE'

In addition to politics, she also involves philosophy in her research. For example, she recently spent some time at New York University and had some interesting discussions with the many intriguing people she met there on the concept of justice in

combination with legal issues. "Many lawyers need to be much more receptive to other disciplines. It could be that I am actually too receptive and should really be more restrictive." But, for the time being, she can pursue her interests in her own way and that suits her fine. "As a researcher, you need to have drive if you are to be productive. That is also what I tell prospective PhD students. It is not only about your CV – you also need to have passion. The great thing about being at VU University Amsterdam is that I got the freedom to set up a new master course in European law and develop my own courses from scratch. And nobody really minds which journals I publish in or what exactly I am working on. As long as it has something to do with law, there is no pressure placed on me. The work can be lonely at times and I miss all the action in court, but what I really enjoy is being able to read, think and write freely."

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Never before has anyone analysed European law and its possibilities in the way that Herlin Karnell is now doing. There are also very few colleagues at the University with the kind of practical experience she has from her time as a lawyer. Nevertheless, she was very surprised to be appointed. "I did not

## IT STARTED WITH A HORSE

Swedish Ester Herlin Karnell (1977) actually wanted to be a professional equestrian. After training in the UK for 12 months, and after having been a hobby competition rider in Sweden from the age of 11, that path suddenly came to a halt because she could not find a sponsor. Plan B was to go to university and study sports law. Once practising as a lawyer, she would have enough money to keep a horse and combine her passion for horses with law. While studying, she discovered that she found criminal law

think I would be senior enough. Explaining the importance of my work is also slightly more difficult than it is for a scientist." Perhaps it is true that she publishes a lot. Still, she sometimes has doubts: "In times like that I think: no one will ever use this." But that kind of existential doubt affects any reasonable person now and again. If she needs to clear her head, she goes horse-riding. And despite all her modesty, she has been lucky enough to have her talent acknowledged and recognized, enabling her to pursue this enormous intellectual challenge still further.

## CV ESTER HERLIN KARNELL

1977 Born in Stockholm, Sweden | 1996-1997 Horse training in Oxfordshire, UK | 1998-2002 LLM in Law, Stockholm University | 2003 Assistant Judge, Administrative court Skåne | 2003-2004 LLM King's College London | 2004-2005 Assistant judge District Court and lawyer, Gotheburgh and Karlstad respectively | 2005-2009) PhD Somerville College Oxford, *Constitutional dimension of European criminal law*, funded by Swedish scholarships | 2009 Assistant professor VU University Amsterdam | 2012 NWO VENI scholarship | 2013 Associate professor and in November professor of European Constitutional Law and Justice.

more interesting than sports law. She gained a lot of experience in legal practice but missed the theoretical side of things. She chose a Master's programme in London that awakened her interest in European law and culminated in a PhD programme in Oxford, where she met the Dean of Law from VU University Amsterdam. To cut a long story short: law became a great passion for her and now she is Professor in European Constitutional Law and Justice. As part of the VU talent programme, she holds a University Research Chair.