

Editorial

We decided to dedicate this first volume of 2013 to a series of fundamental issues related to European criminal law. As such, **Claus Roxin** (Ludwig Maximilian University of Munich) adds a key contribution to the long lasting debate regarding the value of the so called **goods-in-law** doctrine (Rechtsgutstheorie). Based on examples from different domestic law systems, he points out that this restriction of criminal law is not only a guiding value of criminal law *policy* but is also guaranteed – at least in some cases – on a (domestic) constitutional level. The importance of the matter has also been shown in the Manifesto for a European Criminal Policy and it has recently been picked up by the European Parliament in its Resolution of 22 May 2012 on an EU approach to criminal law. The European Parliament takes up the position that ‘criminal provisions focus on conduct causing significant pecuniary or non-pecuniary damage to society, individuals or a group of individuals’ and that it is ‘not sufficient to refer to abstract notions or to symbolic effects’.

The reader will also note that this concept is an essential stepping stone to an **ultima ratio approach** to criminal law. This topic will be further belaboured by **Sakiri Melander** (University of Helsinki). Even though, over the last few decades, this principle has emerged within the domestic legal framework, he demonstrates that it also binds the European legislator as it is contained in the concept of subsidiarity and proportionality.

Two further contributions discuss how the European standard of **human rights** finds its way into national constitutional case law. In particular, **Vittorio Manes** (University of Salento) discusses the ‘entrenchment of the European Convention on Human Rights in the Italian legal system’, and **Mercedes Pérez Manzano** (Universidad Autónoma de Madrid) uses the Spanish example to elaborate upon the relationship between the protection of fundamental rights on a European level and domestic constitutional standards. Both of them are of crucial importance as the protection of human rights has to be realised, after all, within the framework of the MS’s legal orders.

On a more concrete level, **Elisavet Symeonidou-Kastanidou** (Aristotle University Thessaloniki) deals with the safeguarding of **legality and proportionality** when discussing recent developments countering bribery in the private sector. This contribution fits well the wider discussion rules against corruption. From a quite different vantage point, the EU is taking another ‘stab’ at the traditional topic of the protection of its financial interests: as we know, the proposal for a directive on the

fight against fraud to the Union's financial interests by means of criminal law is well under way¹. In the area of combating *corruption*, this draft Directive, in particular, goes beyond the previous efforts to protect the Union's financial interests: It should no longer be considered astonishing that the definition of corruption no longer requires the furtherance of an illegal act on the part of a public official, since the CoE Criminal Law Convention on Corruption already took this step in 1999.

However, asking member states to criminalise *all* sorts of fraudulent behaviour by tenderers in public procurement, or grant procedure involving the Union's financial interests, goes defiantly beyond the current standard. This step, which may not astonish in the administrative law context of multilateral development banks, will be difficult to reconcile with the concept of **ultima ratio**, upheld in criminal law.

Using another example, **Helmut Satzger**, **Frank Zimmermann** and **Georg Langel** (Ludwig-Maximilians-University of Munich) evaluate the directive on preventing and combatting trafficking in human beings. They also follow a critical approach based on fundamental principles of criminal law such as the *ultima ratio* principle, the principle of guilt, the principle of legality, the principle of subsidiarity and the principle of coherence.

Overall, we are confident that the authors of this volume have managed to link together basic questions with current examples and thus offer a rich variety of thoughts to assist in the improvement of the legislative future approach on European Criminal Law. Enjoy the read!

The Editors

¹ See Kaiifa-Gbandi's evaluation of the directive in the 3rd Volume of EuCLR 2012.