

Editorial

Judicial control in the European law factory

The accession of the European Union to the European Convention on Human Rights is nearly concluded. This can be a gain for the protection of fundamental rights in Europe. In a particularly sensitive area of fundamental rights – the area of freedom, security and justice – there are clear indications for a long time now that the one-sided orientation of the executive interests of internal security has at least softened: fundamental rights in criminal proceedings, including data protection, should be strengthened throughout Europe. The European law factory produces: more European laws, which aim at the protection of fundamental rights, and more political recommendations to expand institutional legal protection. Away from the bailout plans, the European Union seems to want to celebrate the "joy of the beautiful spark divine" of freedom and legal protection. But, is the spark spreading only pretty pretence? Experience of political and administrative power in Europe still proves just the opposite. The contributions of this publication – its main emphasis is dedicated to the judicial control in the European legal factory – formulate doubt, namely whether the institutionalisation and implementation of judicial protection mechanisms succeed, whether they can and should succeed.

Such a process of legalisation, *Henri Labayle* states, is a process of juridification that wants to formally establish fundamental rights in the European criminal law environment on the one hand, but, on the other hand, has no adequate safeguards in a European judicial system. The law factory produces more rules, but these rules are then handed over for manual care to a wide variety of artisans that are employed by the Member States. This type of law-factory forgets mostly – still – the protection of the individual. *Erhard Denninger*'s contribution addresses the shortcomings of the European legal protection: the interpretation of European standards is not always motivated by the best possible deployment of individual rights, but characterised by "political preconceptions within community law". In its systemic integration gets the nod before individual freedom. *Gavin Robinson* is adamant that the classic hierarchical form of judicial control in the light of data networking, whose storing on the storage and processing by third parties, can only fail: social control that decoupled itself from states, also from an association of states, requires a strengthening of pan-European legal protection. Just how urgent this is, is shown by the contribution of *Sandro Dicker*: the European Investigation Order seeks to overcome the national systems of proof bans, but without ensuring that anywhere in Europe the same level of criminal procedural protection of fundamental rights exists – and indeed so, in detail.

Beyond the main emphasis of this publication, particularly sensitive areas of fundamental rights are also involved, rights that have as target the protection of individuals against administrative or religious power authority. *Dirk Wüstenberg* demands that in the amendment of § 226 of the Criminal Code (StGB), "genital mutilation" should replace the offence constituent of "member" in order to comply with the legal requirements of the United Nations and the World Health Organization. *Astrid Wallrabenstein* finally

files a suit in the form of a constitutionally compliant revision of the Asylum Seekers Benefits Act, which will go well beyond the "status quo".

We hope that this publication will make a critical and constructive contribution to law production in the European law factory.

Luxemburg, December 2012

Stefan Braum