

## Guest Editorial eucrim 4/2014

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### EDITORIAL

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Since the Lisbon Treaty, the concept “Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments” has acquired a constitutional rank. All the European institutions recognise that, in order for the principle of mutual recognition to become effective, mutual trust needs to be strengthened, and that mutual understanding between the different legal systems in the Member States will be one of the main challenges of the future. The promotion of a European legal culture among judges, prosecutors, and judicial staff is considered to be of paramount importance.

Unfortunately, since the 19th century, legal culture in Europe has been dominated by the assumption that national legislation must be the basis of legal training. The curricula of law schools consider untouchable the specific elements of national penal dogmatics and emphasize national pride for merely internal legal concepts. The national narrowness of legal education in Europe is reinforced by the accent on specific features of national doctrine, on formal dogma, on legal techniques, and on subtle doctrinal distinctions while comparative law, European law, and international law are confined to marginal introductory courses or relegated to specialised seminars. Hence, European lawyers are trained primarily in doctrines and conceptual tools specific to the laws of their own countries. Europe has as many legal sciences as there are legal systems. Academic studies are marked by a nationalism that is unknown to other sectors of higher education. The present *curricula studiorum* tend to promote an attitude on the part of lawyers that is rather hostile to other national systems and to European law, particularly in the criminal law area. Mutual understanding and mutual trust become gruelling.

It is time to reverse mentalities. There is a need to elaborate a *curriculum studiorum* in which national law is presented, first of all, in the context of legal ideas existing in the legislation of other European nations, that is: against the background of principles and institutions that these countries have in common. It is important to demonstrate that a common stock of principles and rules is used throughout the laws of the European nations; in other words, a “European common law” or “*jus commune*” does exist in Europe, even in England, if it is accepted that the myth of isolation is renounced. It is suggested to stimulate the creation of a common core movement to draw attention to the common heritage of the European legal systems presently obfuscated by the more eye-catching of concepts, approaches, and languages of national origin. It is proposed to work at two levels.

At the academic level, the subjects that a student has to study in the first and second years of law are essentially national, so that he learns the false lesson that the “essence” of law is national. It would facilitate the implanting of the European cultural basis into the consciousness of lawyers if legal studies were to begin with transnational and European subjects. Young European lawyers would learn first what is common all over Europe and then continue with the study of national laws.

Concerning the criminal law practitioners, the level and standard of cooperation among Member States in criminal matters will, even with the advent of the European Public Prosecutor in the foreseeable future, rest with national judges, prosecutors, police, and other enforcement officers. Mutual trust among these institutions has indeed become a foundation of effective cooperation. A scheme for the creation of an integrated common European legal training is urgently needed. The elaboration of such a scheme could rely on already existing researches in criminal law, such as those at surrounding the Corpus Juris and the Commission proposal for the creation of a European Public Prosecutor and other similar researches that have been carried out by several national institutes on comparative and European criminal law for two decades.

A preliminary note on these topics was discussed by the presidents of the criminal lawyers’ associations for the protection of the financial interests of the European Union during the annual meeting in Vienna on 14 May 2014 and received principle approval, both at the practitioner’s and academic levels. The attending professors intend to concretise the idea at the academic level.

My operational proposal is that the academic and practitioner's levels can work hand in hand. For practitioners, however, there is greater urgency to act. The training manual for them does not need to be developed in great detail and can concentrate on the operational requirements. Results can thus be achieved in a shorter time.

Concretely, the European criminal law associations, in collaboration with training European and national institutions and with the financial support of the European Commission, could take the initiative to extrapolate the most relevant common features, which condition an effective protection of the EU's financial interests – from the national legal orders concerning the general and special part of criminal law and criminal procedure, together with the existing criminal law texts at the European level, the aim being to constitute a European common core of legal principles and rules. The development of common legal material with a common vocabulary as well as common legal literature is also to be elaborated.

In accordance with OLAF's Financial Regulation and the terms of the Hercule Program it is proposed to have a meeting organised by OLAF with representatives of the main law families in Europe: German law, Roman law, Common Law, and the law of the Nordic countries. A law practitioner, possibly a public prosecutor working at OLAF or a national institution, should attend the meeting to assist in identifying the real operational requirements. A defense lawyer would also be needed. This could lead to a study, the results of which would be subjected to the scrutiny of all the individual associations to check whether the operational guidelines cover the specificities of the 28 legal orders. The common core of principles and rules combined with the relevant literature would then be finalised.

I am convinced that if European law practitioners were trained according to this framework instead of in the traditional way, mutual understanding would be enormously facilitated, despite allegedly great differences among national systems in their historical development, conceptual structure, and style of operation with regard to national institutions. The principle of subsidiarity would be fully respected, since national law would be taught together with already existing European law.

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