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**Article**

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## THE MANIFESTO ON EUROPEAN CRIMINAL PROCEDURE LAW – FOUNDATION FOR CREATING A COMMON SPACE OF EUROPEAN CRIMINAL JUSTICE

Rodica PANAINTE\*

**Abstract:** *In this article, we propose to analyze the content of the Manifesto on European Criminal Procedure Law of 2013, and how this document can represent a foundation for the legal cooperation of the European states, and also for creating a unique, common space of European criminal justice. Elaborated by the European Criminal Policy Initiative and launched on November 2013, the Manifesto on European Criminal Procedure Law contains the principles and the rules that should be followed by the European penal legislator when gives shape to the laws in the field of Criminal Procedure. This document represents a natural following of the first Manifesto, in the field of substantive criminal law of 2009. The Manifesto concerns mainly the rules and the principles of criminal procedure because, as its authors affirm, this kind of rules have increasingly been shaped lately in European regulations, and also because the regulations in this field must reflect and respect the highest standards of the rule of law, as they must continuously and without exception guarantee the fundamental rights. In this study, we propose to focus upon the legal solutions found out by the authors of the Manifesto in order to attain, during the criminal proceedings, an equilibrium between the interest of the state and even of the Union to realize an effective criminal proceedings, and the individual human rights that are affected, and also an equilibrium between the actual legal order and the traditions of the member states.*

**Keywords:** European Criminal Procedure Law; Manifesto; European Criminal Policy Initiative; European criminal policy; legal cooperation

**JEL Classification:** K14; K40

### Introduction

On 12th November 2013, in Bruxelles, the second Manifesto of European Criminal Policy Initiative (ECPI) was released a document that contains recommendations of the scholars in law regarding the principles of criminal procedure law that should be taken into consideration by the European legislator when elaborates law regulations in this field. This second Manifesto is a sort of a sequel to an earlier project which ended with the publication of a Manifesto on European Criminal Law, focusing on basic principles for the development of EU substantive criminal law. (Asp, 2013)

The releasing conference was also attended by Viviane Reding, Vice-president of the European Commission and Commissioner for justice, fundamental rights and citizenship, who appreciated that the first Manifesto was a real help for elaborating regulations in the criminal field: *“In 2009, you presented me the first Manifesto on EU criminal policy. It listed the key principles of European criminal policy, rooted in the different legal traditions of the Member States. The Manifesto has been*

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*a very important source of inspiration for the European Commission. Our Communication on criminal policy of 2011 echoed many of your calls.” (Reding, 2013)*

As said in the introductory part, the Manifesto has been conceived by its authors as a recognition of the fact that the spirit of enlightenment is the major contributor to and the driving force behind European civilisation and current integration and that the purpose of this document is to provide guidance for the preservation of European culture - in all its forms we would say, here including the civic and juridical culture, and also to provide guidance for the future cooperation between Member States. (European Criminal Policy Initiative, 2013)

In addition to the first document, this second Manifesto concerns mainly the rules and the principles of criminal procedure because, as its authors affirm, because this kind of rules have increasingly been shaped lately in European regulations, and also because the regulations in this field must reflect and respect the highest standards of the rule of law, as they must continuously and without exception guarantee the fundamental rights. But The Manifesto also concerns the rules and the principles of the legal mutual assistance between the member states of the EU, because this assistance becomes essential in this area of law, where various interests of states, societies and individuals meet and have to be balanced (Bogdan, 2013).

Regarding the conditions under which European Union and the member states can work together in order to put in place a coherent and consistent EU criminal policy, the European commissioner for justice said that, on this purpose, European Commission stated four fundamental guiding principles: *„That criminal law remains a measure of last resort; that criminal law sanctions are reserved for serious offences; that new legislation respects fundamental rights as guaranteed by the EU Charter of Fundamental Rights; and that every decision on criminal law is accompanied by clear factual evidence. These four principles have been guiding our work ever since then”* (Reding, 2013).

Moreover, regarding the importance of criminal law, the same commissioner said that *„criminal law is a very specific field of law. It is about designing and implementing intrusive sets of rules, which can result in depriving people of their liberty. The Charter of Fundamental Rights sets limits for EU action in this field. And the Charter is the yardstick by which I measure criminal law. It is an area where diversity between the national legal orders in Europe is considerable; and these differences will not go away soon. The Lisbon Treaty obliges EU institutions to respect the different legal traditions of the Member States. And rightly so, as, like no other area of law, criminal law reflects the basic values, customs and choices of any given society”* (Reding, 2013).

## 1. About European Criminal Policy Initiative

The European Criminal Policy Initiative (ECPI) is an academic group of 14 criminal law professors from ten Member States of the European Union. It was founded in 2008 in Munich in order to analyse critically the criminal policy of the EU, and benefits of the financial support of the European Commission.

As it is declared in their statement of purpose, „*The ECPI is devoted to contributing to a coherent criminal policy at the level of the European Union. This international group of scholars aims to promote the respect for fundamental legal principles such as the principles of legality, proportionality, subsidiarity or coherence, the principle of guilt or the rule of law and to individual rights by analysing present and proposed legislation.*” (European Criminal Policy Initiative, 2013b)

Also, the ECPI is committed to achieving three project objectives: the definition of principles for an European law of criminal procedure; the evaluation of current European legislative acts with regard to substantive criminal law, and organising seminars for postgraduates and doctoral students to discuss European criminal policy with the next generation of aspiring legal professionals. On this purpose, in 2009 the group published a *Manifesto on the European Criminal Policy*, that contains basic principles which – if respected – guarantee a consistent and acceptable criminal policy in the EU. The Manifesto contains an evaluation of current European legal acts in the field of substantive criminal law and it should serve as an evaluation tool that can be used to evaluate new proposals for European legislation with an influence on criminal law. (European Criminal Policy Initiative, 2013b)

As professor Sergiu Bogdan (2013), the Romanian member of ECPI, said: “*The members of the group are not politically enrolled, neither do they represent governments in the solutions they propose. The national experience is evaluated and analyzed by comparison. Their work has a scientific specific, but it is done with the wish and the hope to be able to propose solutions in order to make better the way of conceiving and elaborating criminal laws, and also with the wish to avoid the negative effects of the European laws over the national criminal laws but also over the European citizens*”.

In the doctrine it is considered that the European Criminal Policy Initiative is now able to provide an in-depth analysis of the previous and proposed legal acts aimed at harmonising the substantive criminal laws of the Member States and at the same time to develop principles for a European policy on criminal procedure (Bogdan, 2013).

## **2. The necessity and the importance of the Manifesto on European Criminal Procedure Law**

The importance and the necessity of this document have been also shown up by the European Commissioner Viviane Reding (2013) in her speech in the day of launching the Manifesto: *“To make EU criminal law more effective, we must ensure that the promises made on paper correspond to the reality on the ground. EU criminal law has in many cases neither been transposed nor used in practice at national level. The Lisbon Treaty provides us with the possibility to change this state of affairs. It enables the Commission to ensure genuine implementation and enforcement, as rigorous as any other EU policy. Post-Lisbon criminal law is monitored by the Commission and subject to judicial control by the Luxembourg court. The time of dead letter laws – agreed in the Council and hardly implemented – is over”*.

Reding (2013) also expressed her hope that this second Manifesto would be at least as useful as the first one for the European legislator, *“Let me thank you once again for the Manifesto presented today. I expect it to be an important contribution to the debate on the future of EU criminal justice. After all, as you mention in the Manifesto: effective criminal justice is a basic prerequisite for peaceful coexistence in any society”*.

As stated in the preamble of the document, being aware that effective criminal justice is a basic prerequisite for peaceful coexistence in any society, the Manifesto emphasises that the inevitable clash with the fundamental rights of those persons against whom the proceeding is conducted or who are otherwise affected by it may not, however, be resolved one-sidedly in favour of the criminal prosecution - regardless of whether it is conducted by national or supranational authorities.

The authors of the Manifesto also affirm that what led to this second document was the growing influence of the Union law on criminal proceedings, which manifests itself in three respects: 1. the principle of mutual recognition has had a profound impact on the traditional system of mutual legal assistance and in many ways has weakened the position of the suspect considerably; 2. national law in the field of criminal procedure is increasingly being harmonised by EU instruments, which may not only disturb the coherence of the Member States' criminal justice systems but can also result in a “race to the bottom” which curtails more extensive rights that a particular legal order grants to the individual; 3. criminal proceedings are supplemented more and more with supranational elements that facilitate the work of prosecutorial authorities, particularly through the establishment of new European institutions such as a future European Public Prosecutor's Office. (European Criminal Policy Initiative, 2013b)

The authors of the Manifesto affirm that these developments call for a thorough, principle-based criminal policy that strikes a fair balance between the interests of the Member States involved in cross-border proceedings and those of the individuals affected by it. Otherwise, the objective of countering organised cross-border crime – although legitimate in principle – may result in a one-sided enhancement of the efficiency of criminal prosecution to the detriment of citizens' rights. Furthermore, the differences that continue to exist between the Member States' criminal justice systems, as well as factual difficulties, render an effective defence considerably more complicated when a criminal proceeding is conducted across borders. (European Criminal Policy Initiative, 2013b)

### **3. Principles and demands proposed by ECPI for a European law of criminal procedure**

The ECPI proposed „to define principles for transnational criminal proceedings within the EU by directing its attention in particular to the necessity of outweighing the reinforcement of prosecution powers brought about by the mutual recognition of judicial decisions in criminal matters. Thus the different principles will serve to strengthen the suspect's position in transnational criminal proceedings. Most of these principles will turn out to be facets of the fair trial principle, which can be regarded as the core requirement for criminal proceedings under the rule of law.” (European Criminal Policy Initiative, 2013b)

ECPI also proposed that these principles shall serve as a measure to evaluate the European legal instruments and that they must not be derived from the laws of the Member States. Instead, they have to be enrooted directly in European Union law – i.e. primarily in the Treaties and the Charter of Fundamental Rights.” Another source for the genesis of these principles will provide the European Convention on Human Rights.

The ECPI proposed also that the relevance of these principles would be exemplified with various provisions taken from existing legislative acts to illustrate to what extent the European legislature has or has not respected these principles in the past.

Moreover, the ECPI proposed to conduct a detailed evaluation of harmonising measures in the field of substantive criminal law, if they aim directly at the approximation of the Member States' criminal law. The evaluation will cover, however, the instruments in the fields of terrorism, trafficking in human beings, sexual exploitation of women and children (including child pornography), illicit drug trafficking, fraud against the Union's financial interests, money laundering, corruption, counterfeiting of means of payment, computer-related crime, organised crime, environmental crimes including maritime pollution, racism and xenophobia. As a result of this

evaluation, for every legislative act a detailed proposal for amendments shall be presented and explained. (European Criminal Policy Initiative, 2013b)

Regarding the demands of the manifesto for being taken into consideration by the European legislator, the Manifesto states that in order to pursue a coherent and well-balanced policy in the field of criminal procedure law, the Union legislator should thus satisfy the following demands, each of which can be derived from primary Union law:

1. Limitation of mutual recognition through the rights of the individual as well as through the Member States' national identity and their order public on the basis of the principle of proportionality.
2. Balance of the increasingly supranationalised European criminal proceeding
3. Respect for the principle of legality and judicial principles
4. Preservation of coherence
5. Observance of the principle of subsidiarity
6. Compensation of deficits in the European criminal proceeding. (Satzger and Zimmermann, 2013)

### **Conclusions**

The Manifesto on European Criminal Procedure Law represents a clear and strong foundation and also an expression of the fact that, by realizing the desideratum of creating a common space of European criminal justice, the European Union would become one of the most important international actors in the area of establishing and guaranteeing the human rights, with all its inherent consequences, in the social, political and even economic field. As stated in the preamble of the Manifesto, being aware that effective criminal justice is a basic prerequisite for peaceful coexistence in any society, the Manifesto emphasises that the inevitable clash with the fundamental rights of those persons against whom the proceeding is conducted or who are otherwise affected by it may not, however, be resolved one-sidedly in favour of the criminal prosecution - regardless of whether it is conducted by national or supranational authorities. In particular, the laws of criminal procedure and mutual legal assistance, which recently have increasingly been shaped by Union legislation, must adhere to the highest standards of the rule of law and must continuously guarantee fundamental rights, notwithstanding the fact that in this area of law various interests of states, societies and individuals have to be balanced, in order to reinforce mutual trust among Member States and citizens' trust in the Union.

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