

Varia

Believing in people – Balancing the scales in European Criminal Law¹

Viviane Reding

On 12th November 2013 the European Criminal Policy Initiative organised a one-day Experts' Conference on the "Future of Criminal Proceedings in the European Union at the Representation of the Free State of Bavaria to the European Union in Brussels. At the Conference, the ECPI presented and "A Manifesto on European Criminal Procedure Law"² and discussed it with invited experts and the interested public. Vice-President of the European Commission and EU Justice Commissioner Viviane Reding delivered a most interesting speech on the future plans and objectives of the Commission in the field of criminal law and criminal procedure which we – with the kind consent of the Vice-President – publish in the following.

Ladies and gentlemen,

Thank you for asking me to come to speak to you today. It is an absolute pleasure. It gives me particular satisfaction to meet Professor Helmut Satzger and his fellow members of the European Criminal Policy Initiative.

Thank you for taking a continued and active role in helping us in designing and delivering a solid EU criminal policy.

You have just presented me with the second Manifesto on European Criminal Procedural Law. I am grateful for it and I look forward to discussing your ideas, following on in the good tradition of close co-operation and dialogue we have established over the years.

In 2009, you presented me the first Manifesto on EU criminal policy³. It listed the key principles of European criminal policy, rooted in the different legal traditions of the Member States. The Manifesto has been a very important source of inspiration for the European Commission. Our Communication on criminal policy of 2011 echoed many of your calls. **We have set out the conditions under which**

¹ Speech (SPEECH/13/914) of Vice-President of the European Commission and EU Justice Commissioner at the Conference on the European Criminal Policy Initiative, organised by the European Criminal Policy Initiative with the support of the Criminal Justice Programme of the European Commission and of the Ragnar Söderbergs Stiftelse on 12th November 2013

² The text of the second Manifesto is published in *Zeitschrift für die Internationale Strafrechtsdogmatik (ZIS)* 2013, 430 et seq. and freely accessible at www.zis-online.com.

³ The text of the Manifesto on European Criminal Policy was published in *ZIS* 2009, 707 et seq. (see also www.crimpol.eu)



the Union and Member States can work together to put in place a coherent and consistent EU criminal policy. To that end we set four important guiding criteria such as:

- 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. **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.

Progress achieved since the Lisbon Treaty

Before the Treaty of Lisbon, EU criminal law was a piece-meal affair. It was done in the Council of Ministers – mostly behind closed doors – and subject to the rule of unanimity. There was no parliamentary control and hardly any judicial control. The focus was on security and enforcement and the rights of the citizen were neglected.

Before the Treaty of Lisbon, Criminal proceedings were all about catching the criminal. Lady Justice was holding two swords and no scales.

In the speech at the European Law Academy in Trier in March 2010, I set out an ambitious programme for criminal justice. The main goal was to correct the imbalances of the Pre-Lisbon era. The aim was to balance the scales of EU criminal law policy.

Today, most of this has become a reality. Today's conference is an opportunity to take stock and to reflect on how far we have come in EU criminal law since then. It is also a good moment to look forward to where we should be heading in the development of an EU criminal policy.

The objective remains to design a fully coherent criminal law policy: A criminal law policy which responds to developments in crime in the 21st century whilst strengthening mutual trust amongst the Member States and the national judiciaries.

Towards a more coherent EU criminal policy

In our 2011 Communication we set out a vision for a coherent and consistent EU criminal policy.

We want to come to a common understanding of the guiding principles underlying EU legislation in criminal law. Examples are the interpretation of basic legal concepts used in EU criminal law, and how criminal sanctions at EU level can provide extra benefits. This was a first and an unprecedented step.

We have achieved a great deal over the last couple of years.

The expert group the Commission set up in 2012 provides us with valuable input. The experts, some of whom I see here in the room today, contribute to the quality of our legislation. The role played by the European Parliament in the decision making process also leads to better legislation. Some of those responsible for this fact are here today – such as Jan-Phillip Albrecht and Cornelis de Jong – and I thank them for their work.

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.**

Strong procedural rights

We made a big difference on procedural rights. I want to ensure the procedural rights of the suspect, the accused as well as victims are respected, all across Europe. **I set out to restore and maintain the balance in criminal law between shield and sword, between state and individual.** We will only have mutual trust in Europe once each and every Member State has earned that trust; once every Member State shows that its criminal justice system is built on a firm bedrock guaranteeing fair trials.

There are now a number of legal instruments that give strong defence rights to citizens: the right of interpretation and translation, the right to information and the most recent one concerning the access to a lawyer and the right to communicate upon arrest. Victims of crime will have a right to information, support and protection as well as their procedural rights when participating in criminal proceedings.

All these rules are published in the Official Journal – they are part of the EU's rulebook.

Are these rights not self-evident and already applied all across the EU? The answer, unfortunately, is no. This is why I appreciate initiatives like this conference: all those shaping EU justice should be aware that people, the citizens, must be at the heart of everything we do.

Like you, I am committed to ensuing even better protection for the individual in criminal proceedings. Once implemented by the Member States, the Directives on procedural rights will ensure that suspects or accused persons benefit from a wide

range of guarantees. But the Procedural Rights Agenda needs to be completed. That is why I am working to present more initiatives in the coming weeks.⁴

I will present legislative initiatives on: legal aid for suspects or accused persons, special safeguards for children and vulnerable people, and on the presumption of innocence.

I will present a balanced package of measures. Our actions will foster mutual trust which is essential for the European area of justice. With the completion of the procedural rights package, **we will deliver on the pledge made in Trier in 2010**: to propose a full set of procedural rights by 2013. This is also an important commitment to deliver in 2013 – the European Year of Citizens.

Better protection of EU interests

In addition to the citizen's agenda we have developed a new doctrine to better protect genuine "European goods", such as the euro – the common currency of the European Union – and the EU's financial interests against fraud. If we do not protect them, nobody will do it for us.

To better protect the EU budget against fraud, in July this year we proposed to establish a European Public Prosecutor's Office. The aim is to ensure that crimes affecting the EU budget are effectively investigated and prosecuted and money is recovered.

We have taken a cautious and pragmatic approach. We did not introduce a European code of criminal procedure. We are respecting the national justice systems and legal traditions. We proposed a decentralised and integrated structure. Most of the work will be done in cooperation with national authorities.

The creation of the European Public Prosecutor's Office does not shift power to the prosecution. The powers of the European Prosecutor to investigate and prosecute are balanced with strong procedural safeguards for individuals. These safeguards are for example the right of access to a lawyer and the right to legal aid. I would like to see you and the experts from academia to continue to advise us on the best way to get the European Public Prosecutor's Office agreed and put to work.

Future challenges for EU criminal justice

Let me share with you some ideas on the future of European criminal justice.

EU action in the field of criminal law should continue to foster citizen's confidence in the fact that they live in a European area of justice. Any EU action in this field should put the interests and needs of citizens first.

European criminal justice will eventually mature into a regular EU policy field. It will always remain sensitive, but the institutional setup should be like in any other

⁴ http://europa.eu/rapid/press-release_IP-13-1157_en.htm (IP/13/1157); http://europa.eu/rapid/press-release_MEMO-13-1046_en.htm (MEMO/13/1046)

policy field. The European Parliament should be the co-legislator in all legislative procedures and the Court of Justice should have full control over all EU criminal legislation. We made important steps in this direction with the Lisbon Treaty. And we should continue on this path in the future.

Undoubtedly, further solid progress on the Procedural Rights' agenda and the European Public Prosecutor's Office will require continued discussions.

We should also focus on the effectiveness of EU criminal law. Commitments made at EU level must be translated into legislation and measures that allow the citizens to actually benefit from them. There are many EU legal instruments that strengthen the position of the individual in criminal proceedings. For instance, the Framework Decision on the European Supervision Order helps to limit pre-trial detention by providing the judge with the alternative of non-custodial supervision. This Framework Decision should have been transposed into national law by 1 December of 2012, but has only been implemented in ten Member States so far. How can we improve the mutual trust if Member States do not implement on the ground what they have agreed in Brussels? Citizens need *lex certa*; they need to be able to rely on the predictability of the law.

The Commission will have an important role to play in ensuring the effectiveness of EU legislation. Under the Lisbon Treaty, the Commission has the possibility to enforce the implementation of EU criminal law and this possibility is becoming increasingly relevant with the end of the transitional period in December 2014.

We will continue to work closely with Member States in making EU legislation effective for citizens and known and used by practitioners. The Commission will also continue to offer training to all relevant players and promote best practices.

Conclusion

On 21 and 22 November [2013], we will hold the 'Assises de la Justice' conference in Brussels. Judges, lawyers, scholars and policy makers will debate the future of justice in the European Union. This will be an excellent opportunity for you to shape EU justice in the years to come and I look forward to meeting you there again.

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”. I wish you a fruitful discussion.

Thank you.

