

A Manifesto on European Criminal Procedure Law: Summary

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With its new “Manifesto on European Criminal Procedure Law”, the European Criminal Policy Initiative (ECPI), which was founded in 2008 and is composed of 16 criminal law scholars from ten EU Member States, presents a set of principles that EU bodies should observe when legislating in the field of criminal procedure law. It follows the “Manifesto on European Criminal Policy” of 2009, which focused on guidelines for European legislation in substantive criminal law.

What led to this second Manifesto was the growing influence of Union law on criminal proceedings, which manifests itself in three respects: First, 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. Second, 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. Third, 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.

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. 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:

- Limitation of mutual recognition through the rights of the individual as well as through the Member States’ national identity and their *ordre public* on the basis of the principle of proportionality
- Balance of the increasingly supranationalised European criminal proceeding

- Respect for the principle of legality and judicial principles
- Preservation of coherence
- Observance of the principle of subsidiarity
- Compensation of deficits in the European criminal proceeding

With these guidelines, which were first presented at a conference in Brussels on 12.11.2013, the members of the ECPI hope to initiate a wide-ranging discussion on the Union’s future policy with regard to criminal proceedings. We are thus looking forward to receiving feedback, for which our homepage (<http://www.crimpol.eu>) can serve as a platform.

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