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Jointly organised by
the University of Turin, the University of Liverpool and the University of Milan Bicocca

Call for Papers

Proportionality of Criminal Penalties in EU Law

Turin – May 11th-12th, 2023

As a multi-dimensional general principle of the European Union legal order, proportionality plays a key role in the development of national and EU criminal law. Since the early stages of the integration process, the Court of Justice has consistently referred to the principle of proportionality to assess the compatibility of domestic choices of criminalisation and criminal sanctions with the Treaties. More recently, following the Lisbon Treaty, proportionality has become a guiding light for the exercise of EU criminal law powers under Article 83 TFEU.

The Lisbon Treaty itself gave autonomous significance to the principle of proportionality of sanctions, now enshrined in Article 49(3) of the Charter: “the severity of penalties must not be disproportionate to the criminal offence”.

The potential of this provision still needs to be explored in full. On the one hand, from a conceptual viewpoint, the wording of the Charter falls short of depicting the whole spectrum of the principle of proportionality of criminal penalties in EU law. For instance, it postulates a solely retrospective view on proportionality, which differs from the inherently prospective theorisation of the general principle of proportionality, according to which any measure shall be suitable to the aim pursued and shall not exceed the limits of what is necessary to its attainment. On the other hand, Article 49(3) of the Charter has long been a silent provision, as the Court of Justice abstained from granting it any actual role. The Court has traditionally relied, instead, on different expressions of the principle of proportionality, such as the Treaty provisions on derogations to free movement law, Article 52(1) of the Charter, or the ‘effective, proportionate and dissuasive’ paradigm, derived from the Court’s case-law and frequently enshrined in EU secondary law.



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However, the most recent case law provides evidence of a structural paradigm shift. The Court has recently acknowledged that these expressions of proportionality reiterate the principle enshrined in Article 49(3) of the Charter. What is more, it has also recognised that the principle of proportionality of penalties enjoys direct effect.

This evolution marks the emergence of a distinct theoretical identity for proportionality of criminal penalties in the EU legal order and raises an array of systemic questions, ranging from its relationship with the general proportionality principle to its impact on domestic criminal systems and the EU legal order.

With a view to foster deeper reflection on the principle of proportionality of penalties at the EU level, the Law Department of the University of Turin, the School of Law and Social Justice of the University of Liverpool and the School of Law of the University Milan Bicocca organise an international conference in Turin, on the 11th and 12th of May 2023.

The Organising Committee calls for original contributions on the following topics:

1. The emergence of the distinct and autonomous dimension of the principle of proportionality of penalties elicits deeper reflections on its relationship with the general proportionality principle in the EU legal order. Proposals may offer insights into the uneasy relationship between EU law and criminal law theoretical approaches to penalties. More specifically, contributions may deepen:

- the interaction between the various dimensions of the principle of proportionality under the EU legal order and the prospective and retrospective conceptions of the proportionality of penalties developed in criminal law;
- the theorisation of the principle of proportionality of criminal penalties under Article 49(3) of the Charter.



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2. Deeper analyses are needed with respect to the spill-over effects of the proportionality of criminal penalties beyond the criminal sphere and the reciprocal connections with other areas of EU law.

Contributions in this regard may notably zoom on the following research streams (although not exhaustive):

- The interplay between proportionality of criminal penalties and the imposition of penalties in EU competition law;
- The interplay between proportionality of criminal penalties and restrictive measures under the CFSP;
- Proportionality of criminal penalties *vis-à-vis* EU sanctions within the EMU;
- Proportionality of criminal penalties *vis-à-vis* ECB sanctions;
- Proportionality of criminal penalties *vis-à-vis* CFSP restrictive measures;
- The relationship between the principle of proportionality of criminal penalties and the exercise of sanctioning powers pursuant to Article 260(2) TFEU.

3. Proportionate sentencing represents a pressing issue in Member States' criminal systems. The EU principle of proportionality of criminal sanctions and the recognition of its direct effects add further complexity. Contributions may thus focus on the following (still not exhaustive) aspects:

- The implications of the direct effect of the EU principle of proportionality of penalties for domestic criminal systems;
- The relationship between the EU proportionality of criminal penalties and proportionality standards established under Member States' constitutions;
- The place of the EU proportionality of criminal penalties in Member States' constitutional jurisprudence;
- The principle of proportionality of criminal penalties *vis-à-vis* Member States' establishment and imposition of administrative sanctions;



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- The impact of proportionality of criminal penalties as established in EU law on domestic crime prevention measures;
- The role of the EU-derived proportionality of criminal penalties within domestic “dual track” criminal sanction systems.

Abstract Submission and Selection Procedure

Authors are invited to submit a max **800-word abstract (in English)**, together with a **short CV**, by **March 5th, 2023**.

Applications must be sent via email to the Organising Committee at the following address:
conference.proportionality2023@gmail.com.

Selected presenters will be notified by March 10th, 2023 and will be asked to submit a draft of their contribution by May 5th, 2023.

For any additional information, do not hesitate to contact the Organising Committee:
conference.proportionality2023@gmail.com.

Organising Committee

Valsamis Mitsilegas (University of Liverpool)

Stefano Montaldo (University of Turin)

Lorenzo Grossio (University of Milan Bicocca)