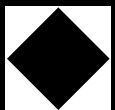


Sara Pausco

**Nullum Crimen Sine Lege,
the European Convention on Human Rights
and the Foreseeability of the Law**



Nomos

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Europäischen Strafrecht**

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List of Abbreviations

ACHR	American Convention on Human Rights
AG	Amtsgericht
Arch. pen.	Archivio Penale
BGH	Bundesgerichtshof
BVerfG	Bundesverfassungsgericht
Cass. Pen.	Cassazione Penale
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
DAR	Zeitschrift für Deutsches Autorecht
Dig. disc. pen.	Digesto discipline penalistiche
Dig. disc. priv.	Digesto discipline privatistiche
Dig. disc. pubbl.	Digesto discipline pubblicistiche
Dir. pen. cont.	Diritto penale contemporaneo (website)
Dir. pen. proc.	Diritto penale e processo
ECHR	European Convention on Human Rights and Fundamental Freedoms
EComHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
GA	Goldammer's Archiv für Strafrecht
Giur. cost.	Giurisprudenza costituzionale
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IMT	International Military Tribunal
Ind. Pen.	Indice Penale
JA	Juristische Arbeitsblätter
JR	Juristische Rundschau
JZ	Juristen Zeitung
MDR	Monatsschrift für Deutsches Recht
NJW	Neue Juristische Wochenschrift
NStZ	Neue Zeitschrift für Strafrecht
OLG	Oberlandesgericht

List of Abbreviations

PCIJ	Permanent Court of International Justice
Riv. it. dir. proc. pen.	Rivista italiana di diritto e procedura penale
Riv. trim. dir. pen. cont.	Rivista trimestrale diritto penale contemporaneo
RUDH	Revue universelle des droits de l'homme
UN	United Nations
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
ZIS	Zeitschrift für internationale Strafrechtsdogmatik
ZStW	Zeitschrift für die gesamte Strafrechtswissenschaft

Abstract

The aim of this research is investigating *nullum crimen sine lege* as European principle. Therefore, the analysis focuses on the European Court of Human Rights (ECtHR) interpretation of this principle. The approach of this work is top-down. Since the research question is the role of foreseeability assessment in ‘Europeanised’ Criminal Law and its possible relevance at the European and national level, when and if necessary, the chosen approach is to look first at the European perspective, in order to analyse it in depth in its own specificities and then try to link it to the national perspective.

With regards to ECHR law, the autonomous definition of law and the application of foreseeability (one of the ‘qualities’ of the law) as main parameter to assess legality, both in light of retroactivity and legal certainty, are investigated. In particular, special attention is given to the role of judge-made law in the interpretation of Art. 7 ECHR. Hence, the research focuses on the role of foreseeability, milestone of European legality, as a means to find a solution to the legality issues raising from case-law in criminal law. The origin, rationale and application of the concept of foreseeability in ECtHR case-law are scrutinised, trying to extract its main development paths. Subsequently, the current solutions that civil law States adopt to try solving the problem of case-law in criminal law are analysed, with reference to Italy and Germany, also with regards to the traditional rationales of *nullum crimen* and its theoretical foundations. Moreover, the role of foreseeability and legality in the European Union legal order is considered, as an example of an effectiveness-oriented and de-formalised legal order. In the end, future perspectives for the implementation of the principle of foreseeability are analysed, with particular regard to the Italian legal order.

