

EPPO (From a Federal and Protection of Human Rights Perspective)

Dimitrios Nomikos¹

Keywords: EPPO, federalism, corpus juris, PIF directive, human rights.

In a few words and in a simplified way, the core of the PhD research is: 1) why EPPO, 2) what EPPO, 3) how EPPO (works), 4) rights and EPPO. The main subject is to elaborate and to criticise the new institution of European Public Prosecutor's Office (EPPO) in a federal and constitutional view of the EU, to clarify the necessity of the new institution and to make crucial proposals in order to improve the operation of the EPPO in the aspect of the protection of the fundamental rights in the AFSJ. In the proposed aspect, the future of the EPPO is strictly connected with the EU integration, the fundamental rights and the EU citizenship (Mitsilegas, 2016, p.121-123). Furthermore, we are going to compare the EPPO, to the USA federal prosecution system (Diez, Gomez, 2015, p. 129-135). Emphasis will be given to the cooperation with the OLAF and EUROJUST (Herrnfeld, Brodowski, Burchard, 2021, p. 588-589).

The EU as a *sui generis* federal organization, is an autonomous legal entity and doubtlessly, is based on the balances between the sovereignty of the Member States and the federal structure of the EU. Criminal law is the hard core of national sovereignty and it was perceived as an exclusive privilege of national authorities, so it is necessary to focus on the elaboration of the competence of the EU in criminal matters (Mitsilegas, 2009, p. 107-109) from the establishment of the EEC (no competence in criminal matters) to Lisbon Treaty (provided competence in criminal matters). In the past, the EU (EEC) was strictly a financial organization without any competence in criminal matters and it has gone a really rocky way to establish the EPPO. Nowadays, the EU not

¹ LLM in Criminal Law Democritus University of Thrace, PhD candidate at Democritus University of Thrace Faculty of Law. Dissertation in progress: "*The European Public Prosecutor's Office (federal and human rights perspectives)*". E-mail: nomikosd@gmail.com.

only has expressed the competence in the field of criminal law, but also has an independent institution with the main task to protect the financial interests of the UNION. The research will explain the relation between the national sovereignty and the EU, under a historical and comparative progressive approach, in order to support the necessity of the establishment of the EPPO, which is in the centre of the discussion for the EU competence in criminal matters and has been the subject of so many debates (Ligeti, 2013, p. 1-6). The CJEU has been the motor of the EU integration (Sicurella, 2016, p. 49-53), so it is useful to focus on the cornerstone decisions of the CJEU (Wieczorek, 2020, p. 126-127), concerning the EU competence in criminal law (Greek Maize). The Lisbon Treaty has really changed everything in the structure and the competence of the EU in criminal matters, consequently the research will be based on the TEU and TFEU mainly in the provisions of ar. 82,83,86, 325 TFEU focusing on the importance of the so called choice of legal basis (Öberg, 2017, p. 119-131).

The debate for the establishment of the EPPO is related to various concerns of the national sovereignty, thus it is necessary to pay attention to this debate and to support it with legal arguments that the EPPO is an innovative and advantageous institution efficiently protecting the financial interests of the EU (PIF directive) and it would be useful to expand the competences of the EPPO. In addition, the co-operation with the national authorities is necessary (Satzger, 2018, p. 43-55) and we are going to elaborate this coordination, especially taking into account the so called forum shopping and the judicial review concerning the EPPO acts. The success of the EPPO from a constitutional view is based on the protection of human rights. Consequently, further research has to do with all these issues concerning the human rights, the international treaties (the European Convention on Human Rights), the Charter of Fundamental Rights of the European Union and all the secondary EU law affecting the rights of the accused and the fairness of the investigations and prosecutions under the EPPO (Klip, 2016, p. 260-261), including the judicial review (Ambos, 2018, p. 578-579). Furthermore, the main principles of the EU Law (such as subsidiarity, mutual recognition, proportionality, *ne bis in idem*, rule of law) will be examined in relation with the operation of the EPPO (Tridimas, 2006).

The main conclusion of the research is that the ambitious EPPO is a very innovative institution, empowering the constitutional structure of the EU and enforcing the federal nature of the EU. Finally, we propose that the EPPO

should have a more centralised structure in order to be more effective, we should legitimate a special and autonomous procedural code for the crimes under the EPPO (why not a new *Corpus juris*) and establish a special court for these crimes (based on the International Criminal Court).

Bibliography

Case Law

Commission of the European Communities v. Hellenic Republic [CJEU], No. C-68/88, [1989-09-21] EULI:EU:1989:339.

Special literature

Ambos Kai (2018), *European Criminal Law*, Cambridge University Press.

Diez Jara and Gomez Carlos (2015), *European Federal Criminal law*, Intersentia.

Herrnfeld/Brodowski/Burchard (2021), *European Public Prosecutor's Office article-by-article-commentary*, Beck-Hart-Nomos.

Klip Andre (2016), *European Criminal Law An Integrative Approach*, Intersentia.

Ligeti Katalin (2013), *Toward a Prosecutor for the European Union*, vol.1 *A Comparative Analysis*, Hart.

Mitsilegas Valsamis (2009), *EU Criminal Law*, Hart.

Mitsilegas Valsamis (2016), *EU Criminal Law after Lisbon*, Hart.

Öberg Jacob (2017), *Limits to EU Powers*, Hart.

Satzger Helmut (2018), *The European Public Prosecutor's Office and Its Coordination with the National Public Prosecutor's Office: The Model of Complementarity*, in: Lorena Bachmaier Winter, ed., *The European Public Prosecutor's Office The Challenges Ahead*, Springer.

Sicurella Rosaria (2016), *EU competence in criminal matters*. In: Valsamis Mitsilegas/Maria Bergstrom/Theodore Konstadinides, ed., *Research Handbook on EU Criminal Law*, Elgar.

Tridimas Takis (2006), *The General Principles of EU Law*, Oxford University Press.

Wieczorek Irene (2020), *The legitimacy of EU Criminal Law*, Hart.

About author

Dimitrios Nomikos is a PhD Student at the Democritus University of Thrace. He is a Public Prosecutor for the Greek State, nomikosd@gmail.com.
