

Criminal Law and Procedure and Philosophy of Law

The research topics proposed will take place in the following sectors:

- The harmonisation of Criminal Law and Criminal Procedural Law in a European and trans-national context.

In this sphere, the accent will be upon studies of the comparison between orders with special attention given to the harmonisation profiles, nowadays encouraged by supranational initiatives that run in the direction of adaptation of national laws with fixed principles in the provisions of Community or International law.

As regards the relationship with European Union Law, above all an analysis will be made of the means of common contrast in the fight against fraud, money laundering and safeguarding the environment, considering both the incriminating facts in point as well as measures of a procedural nature, to improve judicial cooperation in criminal matters (both in horizontal and vertical perspective).

As regards the relationship with international law, the main focus of attention will be on the Statute of the International Criminal Court, and its implementation by means of the procedures before the Court of the Hague. The jurisprudence of the Court will be able to provide extremely interesting and numerous cues for initiating scientific investigations on fundamental questions concerning the basis of general criminal theory (indictment criteria, subjective factors and error, joint responsibility, mitigating circumstances, commensurate sentencing), the single instances of crime (genocide, war crimes, crimes against humanity) and important procedural aspects (role of the prosecution, penal action, investigation techniques, the formation of evidence, *ne bis in idem* and efficiency of the judgement).

The consideration of international criminal law, involving the search for "substantial" justice, also gives rise to a renewed consideration of a legal-philosophical kind on the concept of justice and on the opportunity to harmonize principles and rules, to identify spaces in which a conception can be allowed that does not suffer the limitations shown by formalism.

- Criminal Law and new technologies.

In this sector the focus of attention will be on criminal law regarding information technology and the internet on one side, and the relationship between criminal law and bioethics, on the other.

On the first point, with the aid of the competencies in terms of information technology deriving from legal-philosophical considerations, the research may be directed towards the needs for discipline and legal harmonisation caused by the strong development of relationships by means of the Internet, with the consequent number of problems of a criminal nature pertaining to the protection of privacy and copyright, illegal interception, the spread of pornographic material, the identification of internet provider responsibility, as well as, regarding prosecution, the regime of evidence and international cooperation.

On the second point, research of an interdisciplinary nature can be carried out, in which the criminal justice and philosophical justice competencies on the relative themes are brought together, amongst other things genetic identity, techniques of assisted reproduction and the protection of pre-natal life, end-of-life treatments and the production of genetically modified organisms.

- Alternative means of resolving conflict.

This is a very contemporary area of investigation, centred especially on the area of conciliatory justice performed by means of mediation between perpetrator and victim and on the consequent identification of penalties which, although criminal, are characterised by a reparatory nature.

The privileged area is the criminal competence of the justice of the peace, called to intervene specifically with instruments of this type, and in any case never with custodial sentences, in resolving interpersonal conflicts which cannot be seen as serious forms of criminal activity.

In this regard an interesting area is the study of the particular procedural forms which the justice of the peace uses to achieve the aforementioned objectives, the criteria for imputation of the fact and especially the functionality of the penalty regime which the Judge is called upon to apply, the characteristic of which is not so much clemency as the objective of an effectivity to do with profiles of rehabilitation of the criminal and reconciliation between perpetrator and victim.

In the interdisciplinary key of this type of investigation, the legal-philosophical consideration brings a necessary contribution from the point of view of the structure and the purposes of the sentence, made even more current by the increasingly evident crisis of legitimisation of the traditional sentences.

- Legal Argumentation, Criminal Law and Criminal Procedure.

In this Programme the candidate will cover the subjects above all to do with the legal reasoning developed in the criminal procedure, in a descriptive way focusing on the different legal orders and also in a prescriptive way considering the specific logical and linguistic elements arising from the dialogical structure of the dispute. To be better understood and thematised, the latter of these does in fact require argumentative proceedings of a topic-rhetorical nature which the most recent post-positivist juridical epistemology has shed considerable light upon.

Regarding this point, it is essential to study from the theoretical, juridical viewpoint the questions concerning the interpretation of criminal and procedural law (as in the case of so-called scientific evidence) and of the forms of practical rationality that identify criminal law as a social procedure. Insights about legal ethics and training in legal education will be provided together with the study on the legal argumentative methods, in order to address the specific education of practical jurists, and particularly of penal lawyers, to the necessary logic and rhetorical expertise.