

# Ultima Ratio 2.0

June 19-20 2013, University of Helsinki

Co-organized by the Centre of Excellence of Foundations of Law and Polity Research, University of Helsinki, and the National Graduate School 'Law in a Changing World'<sup>1</sup>

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<sup>1</sup> With the collaboration of research project Der 2010-19715 of the Spanish Government (subprogram juri, Micin; IP J. Bengoetxea, University of the Basque Country) and research project "Criminal Law Under Pressure—Between Differentiation and Harmonization" (PI S. Melander, University of Helsinki)

The UR 2.0. Colloquium seeks to elaborate and stimulate a broad and deep discourse on the issue of Ultima Ratio, a necessary building block of a *Rechtsstaat*-oriented criminal justice system within Europe and throughout. In this sense, it continues the work started in the International Workshop “ULTIMA RATIO, Is the General Principle at Risk in our European Context?” held February 2nd-4th, 2012 at the Oñati Institute in Basque Country, Spain. The papers from that conference have been published online at the Oñati Socio Legal Series.

Ultima Ratio as a normative principle, or rather a constellation of related principles, would be a hermeneutic pre-understanding or pre-interpretative concept to the effect that the definition of a certain socially relevant conduct as a crime, as a felony, and the consequent infliction of a penal sanction on the perpetrator of such conduct is a serious matter to be handled with caution and not to be abused. The risk referred to in the rhetoric question of the Workshop Ultima Ratio (1.0) “is the Ultima Ratio principle at risk?” lies in the non-observance of the principle of minimal intervention, the tendency to criminalise and to bring all or any socially – even politically - undesirable actions under the criminal law, and to use the criminal definition and sanction for purposes and situations other than the strictly necessary – principle of necessity - and universally shared – principle of deep social consensus.

The Ultima Ratio principle forms part of the “cultural heritage” of criminal law. It is supposed to work as a built-in restraint against excessive criminalisation. In actual fact, this principle has come under pressure for some time; its rank is unclear: is it a constitutional principle or just a policy consideration? Is it marking a special qualitative difference between criminal law and other branches of law as regards sanctioning of harmful behaviour? Should the principle be conceived of as expressing a special legislative ethics? Moreover, with the return of punitiveness, its “protective potential” in criminalisation processes is limited. Has Criminal Law now become the “prima” or “sola ratio” (Naucke; Hassemer) or is it more appropriate to speak of Criminal Law as a “propria ratio” (Prittwitz)?

This predicament calls for stock-taking, in particular in times of an emerging European Criminal Law. It is necessary to review, reconsider (and reaffirm?) the classical Criminal Law standards and guarantees. The Conference hopes to address the Human Rights, European Law, International Law and Constitutional Law perspectives, and moves from the European to the local, and back to the global. The role of Criminal Law within a system of social control also poses the question about who has the last word in matters of criminalisation, the legislator or the judiciary, not the least when multiculturalism and plurality of religions are taken into account, which raises issues of tolerance, all the way to the question of a cultural defence. Also, the Ultima Ratio principle inspires judicial decision-making, especially the interpretation of the law to be applied by the courts and features in the justificatory practices of courts. The legislative and judicial approaches to politically motivated crimes, to gender and environmental crimes, to cybercrimes and fraud, or drug abuse and trafficking also in the competitive sport

dimension, or security related crimes - terrorism, crimmigration - and the related issue of incarceration have become a real challenge to Ultima Ratio.

There is therefore a legitimate concern that the principle of Ultima Ratio should not be abused in our European context and legal environment. But what would it mean for the principle to be abused and put at risk? In the European context the risk of abusing the principle can be related to the extension of new crimes to protect interests of the EU or the indirect expansion - or hidden transplant - of crimes from one jurisdiction to the other by means of apparently neutral procedural instruments like the European Arrest Warrant. However, risks also lurk in cases of impunity, when seriously harmful acts are allowed, for different reasons, to go unpunished.

Ultima Ratio is a constitutional and constitutive legal principle which is primarily and primordially addressed to the legislator, not to the judiciary. But the judiciary too, may, and should, draw certain normative interpretations or conclusions from this principle, as if the principle had indirect effects for the custodians of the law. If Ultima Ratio is conceived as a general principle addressed to the legislator by some higher normative realm – like the Constitution or an International Human Rights instrument - or if the principle, whether we characterise it as legal or politico-moral, is reflexively self-imposed by the legislator on itself, then there will be a possibility of control as to whether the legislator is respecting this limitation, or else abusing it. Constitutional courts can perform this type of control, together with supranational Human Rights Courts. But jurists and the body politic at large can also control it. And scholars can and should be engaged in this debate. But this possibility of control requires a shared understanding as to what constitutes respect and what constitutes abuse of the principle, an issue that is closely linked to cultural and political perceptions in each jurisdiction and for which, unfortunately, few common or shared European standards are found. The on-going project on Ultima Ratio can be seen also as an attempt and a contribution in this quest for shared standards based on fundamental rights, that might allow us all to control whether legislators and judges are being respectful of the Ultima Ratio principle, which is of growing importance in the post-Lisbon Treaty context of ever greater interaction between the criminal laws of the Member States of the EU and ever more manifestations of transnational criminal law.

This Ultima Ratio 2.0 colloquium aims at deepening the insights to the various dimensions mentioned above that the Ultima Ratio principle implies. Indeed, Ultima Ratio constitutes an important legal-cultural heritage especially worth remembering during the times of increasing instrumentalism when criminal law is made to play a part in various security and policy regimes.

**For registration please contact Merita Huomo-Kettunen by 8 May:  
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# Ultima Ratio 2.0

Helsinki, June 19-20, 2013

Venue: Faculty Board Room – Porthania Building (Yliopistonkatu 3, room 545)

Organizing committee: Joxerramon Bengoetxea, Heike Jung, Kimmo Nuotio

Conference secretary (academic matters): Merita Huomo-Kettunen

Conference secretary: Aarne Granlund

Wednesday, June 19<sup>th</sup>

9.00-9.30 Registration

## First Session

9.30

Opening: Heike Jung, Joxerramon Bengoetxea, Kimmo Nuotio

9.45–12.30

*Ultima ratio in comparative and historical perspective* – Markus Dirk Dubber (Toronto)

*Imprisonment as a Last Resort* – Emmanuelle Allain

12.30–13.30 Lunch hour

## Second Session

13.30–15.15

*Ultima ratio: reflections in the context of domestic violence* – Linda Gröning (Bergen)

*Lost (ultima) ratio? Reflections in the context of crimmigration (or the securitization of migration)* – Luisa Marin (Twente)

15.15–15.45 Coffee

### Third Session

**15.45–18.00**

*Ultima ratio and drug crimes* – Per Ole Träskman (Lund)

*Dangerousness as ‘New’ emerging Risk for the Principle of Ultima Ratio? A Reflection under the Light of the new Criminal Reform in Spain* – Jon Landa (University of the Basque Country)

**Thursday, June 20<sup>th</sup>**

### Fourth Session

**9.30–12.30**

*Ultima Ratio and Norwegian criminal regulation of terrorism* – Jørn Jacobsen (Bergen)

*Criminal justice response to violence against women in Spain: a test bench for a growing punitivism in Criminal Law* – Enara Garro (University of the Basque Country)

**12.30–13.30** Lunch hour

### Closing session

**13.30–14.30**

*Ultima Ratio and the judicial application of the law* – Joxerramon Bengoetxea (University of the Basque Country/University of Helsinki)

*Closing remarks* – Heike Jung, Kimmo Nuotio