



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW

“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

- Section:** **Criminal Law Protection** - Principles of Criminal law – *Lawfulness and no Retroactivity*
- Title:** *The “evolution” of the principle of retroactivity of more favourable criminal law: a new fundamental right*
- Author:** **DANIELA FALCINELLI**
- Judgment:** European Court of Human Rights, Great Chamber, Decision of the 17th of September 2009, *Scoppola vs. Italia n. 2* (application n° 10249/03)
- Conventional Parameter:** Article 7 § 1
- Key Words:** Principle of retroactivity of more favourable criminal law; notion of substantial criminal law

The decision object of this comment marks a turning - point in the debate about the real articulation of the principle that is provided for by the art. 7 CEDU, relative to the succession in time of the criminal laws: beside a negative content, like a prohibition of retroactive pursuance whether of the incriminating case in point or of the consequent punishment, that principle is recognized as the foundation of the right of pursuance of the more favourable cropped up law too. So the innovation lifts up as a fundamental principle of criminal law that same rule - of retroactivity of the *lex mitior* - which the Italian penal code yet sanctioned in the 1930 in the art. 2, 2nd and 3rd paragraph, and that it is reflected today in the indispensable pillars that are written in the Constitution as the equality, the reasonableness, the previous knowledge of the criminal system. So, in a context made by facts which invokes the applicability of the cropped up law “of favour”, the judges of Strasbourg find the arguments to get over the close letter of the art. 7, paragraph 1, and to read in it as «implicit» also the obligation to the judge to apply, in the case of succession of laws, the more favourable law which has come into force between the moment of the committing of the fact and the final pronouncement of responsibility of the accused one. Besides this “novum” - that the national judge (Italian) has to mean by those inner limits which admit reasonable exceptions of the side principle ex art. 3 Cost. - is the confirmation of the ambit of applicability of art. 7 CEDU to the exclusive area of definition of the criminal unlawful act and of the linked criminal penalty, *ex adverso* confirming the regency of the principle of *tempus regit actum* on the trial rules.

September 2012