



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:** *About the capacity to foresee ex ante the interpretation and the enforcement of the criminal law, id est about the comprehensibility of the criminal precept*
- Author:** **DANIELA FALCINELLI**
- Judgment:** European Court of Human Rights, Fifth Section, Decision of the 25th of June 2009, *Liivik vs. Esthonia* (Application n° 12157/05)
- Conventional Parameter:** Article 7 § 1
- Key Words:** Principles of no retroactivity; determinateness and peremptoriness of criminal law; knowledge of the criminal precept

According to the recurrent formula in the European jurisprudence, and also reproduced in the text of the judgment of reference, the art. 7 CEDU wants every one to be able to know what actions and omissions can involve his criminal liability, not only on the ground of the linguistic-grammatical formulation of the pertinent incriminating provision of the law, but also on the ground of the interpretation which has been given by the Courts. The system of warranties descending from the art. 7 CEDU, on the one hand really permits the possibility to use more or less vague formulas such as open to an interpretative work of progressive clarification by the national judicial organs; on the other hand it recognized the unlawfulness of the rule when there isn't an exegetic result of the rule itself «however coherent with substance of the unlawful action and reasonable foreseeable»: therefore the impassable limit is the reasonable capacity to foresee the interpretative result to which the internal judgement leads to, by the light of the former jurisprudence or of the evident changes of the social and cultural condition. In the concrete case in point the European Court consequently considered violating of the principles of unfavourable no retroactivity an *in peius* change of the jurisprudence, on the ground of which it was extended the limit of applicability of a certain unlawful criminal action to situations which were considered extraneous to it, including in the concept of significant damage, event of the crime of abuse of office *ex art. 161 penal code*, also the «moral damage», recognized by the interpreter of the case in point as subsisting in the same way of parameters that are individualized *ex novo*, and therefore involving the determination of the fact establishing crime *ex post* as regards the carrying out of the incriminating behaviour.

September 2012