

Can the primacy of EU law in criminal matters break the rule of law and legal certainty? Some remarks on the recent Taricco Case of CJEU

The recent CJEU judgment in Taricco concerns alleged VAT fraud against a national budget, and in particular the question of prescription periods.

The Court ruled that the operation of the limitation periods in Italian law infringed Article 325 TFEU, particularly because in Courts opinion Italian national law made it impossible to prosecute offences because the way in which it calculated breaks in the prosecution. As consequence of this breach of EU law, the national court has to disapply the relevant national law.

The problem is that under Italian law prescription is part of substantial and not procedural law.

Consequently, after the Taricco judgement a national court raised a question to the Italian Constitutional Court for possible breach of the principle of legality laid down in art 25 of the Italian Constitution.

The risk is that the Italian Constitutional Court opposes the counter limits doctrine.