

Name: Lorenzo Picotti

**Date of visit: 12 July – 10
September 2010**

Research Statement (please write a brief statement about the research you have carried out at The University of Edinburgh during your visit)

RESEARCH PROJECT – Visiting research program

Prof. Lorenzo Picotti (University of Verona)

Title: Expanding forms of preparation and participation in the perspective of the evolution of penal law in the sectors of European Competences in the light of the reform of the European Treaties

1. The research project at the School of Law of the University of Edinburgh (Scotland - United Kingdom) is coordinating with the final part of the research program of national interest co-founded by the Italian Ministry of University and Research (MIUR Founds 2007- prot. 2007JK2M8M) on “ The evolution of penal law in the sectors of European Competences in the light of the reform of the European Treaties”.

In particular the topic of the Research Unit of Verona concerns the expanding forms of preparation and participation in the modern criminal policy, with particular consideration to specific serious crimes, such as international terrorism, transnational organized crime, human trafficking and exploitation of human beings, in particular of children and women, cybercrimes, other illicit trafficking, which have become object of the new penal competences of the European Union on the base of the reform of the European Treaties approved in Lisbon in 2007 and definitely entered into force on 1st December 2009.

2. On one side it is necessary to verify the incidence of those criminal policies in Common Law and Civil Law Countries, with a specific attention to the balance between the effective fight against those serious transnational crimes, and the basic principles of a democratic penal law.

On the other side, it is important to analyse the harmonization instruments of European Law and their influence on this process, as well as the guarantee of fundamental rights and freedoms through the international jurisdictions based on the European Treaties and the international Conventions.

3. The research project will be focused on two main categories of new penal offences, that can be distinguished in two groups:

A-1. Firstable, it will be analyzed the formulation and application of criminal provisions consisting in the merely “preparatory” acts of serious crimes (so called inchoatus offences), settled up as extensive provisions “*of the general part*” derogatory of the common regulation of the attempt.

A-2. Afterwards other autonomous offences “*of the special part*” can be considered, having a preparatory nature, which are punished even in the case of the commission of the more serious crimes, which are the goal of the preparation act: such as in the case of “possession” or detention of objects or dangerous



substances (for example weapons, explosive) or secret or reserved informations (such as passwords, access code, false identity documents, etc).

B-1. In the first group of the second categories are included acts of merely “participation” to a more serious crime that are autonomously punished even if the serious crime is not committed (derogating from the general principle of accessoriness), as in the *conspiracy* in the Common Law system.

B-2. Beside the question on the “general part”, many other hypothesis are emerging on the “special part”, that criminalizes autonomously certain acts strictly connected to the commission of a (serious) crime, besides the commission of it.

4. Regarding the critical-evaluative aspect, it will be analyzed how and whether are respected – in all of those offences- the principles of guarantee of penal law, especially related to the *actus reus*, for a real nearness and functionality, of the preparatory acts that are indictable for the commission of the ultimate goal of the offense/crime, also for the corresponding *mens rea*.

5. The topic of the research project has already been addressed, in particular in the “rapport général” discussed during the Preliminary Colloquium in La Coruña (2007), that has become the base for the “resolution” approved in the I section of the XVIII International Congress of Penal Law which took place in Istanbul in 2009, organized by the *Association Internationale de Droit Pénal* on the “expanding forms of preparation and participation”.

The research period at the School of Law of the University of Edinburgh (included the previous experiences in August 1995, in August 2003 and in July 2009) will be very useful for the program co-founded by the “Cooperint Project 2009”, not only for the prestige of the University, but also because gives the opportunity to use its library and to discuss with colleagues and experts