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ALIGNMENT OF NATIONAL CRIMINAL LEGISLATION WITH EUROPEAN UNION STANDARDS THROUGH THE LENS OF THE ASSOCIATION AGREEMENT

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Урсу В. Приведення національного кримінального законодавства у відповідність зі стандартами Європейського Союзу через призму Угоди про асоціацію.

Як країна, яка прагне приєднатися до Європейського Союзу, Молдова працює над гармонізацією своїх стандартів кримінального правосуддя та законодавства з ЄС.

Це передбачає узгодження його правової бази з *acquis communautaire* ЄС, який є сукупністю законів ЄС, яких повинні дотримуватися всі країни-члени. Однією з головних цілей цього процесу гармонізації є підвищення ефективності та дієвості системи кримінального правосуддя Молдови, а також посилення її спроможності боротися з транскордонною злочинністю та іншими формами транснаціональної організованої злочинності. Щоб досягти цього, Молдова здійснила низку реформ, спрямованих на вдосконалення інститутів і процесів кримінального правосуддя, включаючи прийняття нових законів і нормативних актів, які відповідають стандартам і практикам ЄС.

Крім того, Молдова також налагодила тіснішу співпрацю з іншими країнами ЄС як через двосторонні угоди, так і через участь у загальноєвропейських ініціативах, таких як Євроюст та Європейська прокуратура. Ця співпраця дозволяє обмінюватися інформацією та передовим досвідом між Молдовою та ЄС, а також координувати зусилля з боротьби з транскордонною злочинністю та іншими формами транснаціональної організованої злочинності.

Шлях, пройдений державами Центральної та Східної Європи за останнє десятиліття, демонструє, що європейська інтеграція не може розглядатися лише як пріоритет зовнішньої політики країни, як це донедавна заявляв уряд Республіки Молдова. З моменту проголошення незалежності в Республіці Молдова створені умови, які дозволяють по-новому підходити до процесу європейської інтеграції, а курс на приєднання до Європейського Союзу став пріоритетною державною політикою, яка послідовно просувається всередині країни та за її межами.

Прийняття такого нового підходу є тим більш важливим, оскільки розширення Європейського

Союзу набуло безпрецедентних масштабів, і це вперше, коли приєднання нових членів безпосередньо спрямоване на інтереси Республіки Молдова.

Загалом, гармонізація стандартів кримінального правосуддя та законодавства в Молдові є постійним процесом, який вимагатиме постійних зусиль та співпраці між Молдовою та ЄС.

Стаття присвячена аналізу співробітництва Республіки Молдова з Європейським Союзом через призму положень Угоди про асоціацію, імпліцитно, шляхом прив'язки національного законодавства до вимог, передбачених у правових актах ЄС, що досягається шляхом імплементації положень Директив, Регламентів, Рішень ЄС та РЕ.

В Угоді про асоціацію, зокрема в її додатках, міститься перелік конкретних правових актів ЄС і терміни їх виконання, встановлені для Республіки Молдова. Це означає той факт, що Молдова зобов'язана не тільки гармонізувати відповідне законодавство з цими правовими актами, але й імплемувати його та забезпечити дотримання у встановлений термін. Слід взяти до уваги, що Республіка Молдова не є державою-членом ЄС і, отже, зобов'язана дотримуватися поступового процесу гармонізації, тому що Молдова на даний момент не зобов'язана здійснювати повну гармонізацію з *acquis* ЄС на рівні держав-членів ЄС, щоб виконати свої зобов'язання, що впливають з Угоди. Однак отримання у 2022 році Республікою Молдова статусу країни-кандидата на вступ до ЄС означає більш широкі зусилля щодо гармонізації національного законодавства із законодавством ЄС, що не обмежується *acquis* ЄС, включеним у додатки до Угоди про асоціацію, але передбачає необхідність забезпечити транспозицію в національне законодавство всього законодавчого органу ЄС.

Відповідно до аналізу Європейської комісії, Молдова досягла певного рівня підготовки (рівень II) до впровадження *acquis* ЄС у сфері юстиції, свободи та безпеки. Законодавство значною мірою узгоджено із законодавством ЄС, і Молдова реалізувала низку важливих стратегій. Проте є можливості для вдосконалення інституційної

співпраці та координації для прискорення впровадження.

Ключові слова: європейська інтеграція, гармонізація законодавства, кримінальне правосуддя, стандарти та рекомендації ЄС, угода про асоціацію, співробітництво та правова допомога.

Ursu V. Alignment of national criminal legislation with european union standards through the lens of the association agreement.

As a country aspiring to join the European Union, Moldova has been working towards the harmonization of its criminal justice standards and laws with those of the EU.

This involves aligning its legal framework with the EU *acquis communautaire*, which is the body of EU law that all member states must comply with. One of the main objectives of this harmonization process is to improve the efficiency and effectiveness of the Moldovan criminal justice system, as well as to enhance its capacity to fight against cross-border crime and other forms of transnational organized crime. To achieve this, Moldova has implemented a number of reforms aimed at improving its criminal justice institutions and processes, including the adoption of new laws and regulations that are in line with EU standards and practices.

In addition, Moldova has also established closer cooperation with other EU countries, both through bilateral agreements and through its participation in EU-wide initiatives such as Eurojust and the European Public Prosecutor's Office. This cooperation allows for the exchange of information and best practices between Moldova and the EU, as well the coordination of efforts to combat cross-border crime and other forms of transnational organized crime.

The path traveled by the states of Central and Eastern Europe in the last decade demonstrates that European integration cannot be considered only as a priority of the country's foreign policy, as was declared by the Government of the Republic of Moldova until recently. Since independence, conditions have been created in the Republic of Moldova that allow a new approach to the European integration process, and the course towards joining the European Union has become a priority state policy that is consistently promoted internally and externally.

The adoption of such a new approach is all the more important, as the expansion of the European Union has taken on an unprecedented scale and it is the first time that the accession of new members directly targets the interests of the Republic of Moldova.

Overall, the harmonization of criminal justice standards and legislation in Moldova is an ongoing process that will require continued effort and cooperation between Moldova and the EU.

The article is dedicated to the analysis of the cooperation of the Republic of Moldova with

the European Union through the prism of the provisions of the Association Agreement, implicitly, by connecting its national legislation to the requirements stipulated in the legal acts of the EU, this being achieved by implementing the provisions of Directives, Regulations, Decisions of the EU and of the CoE.

In the Association Agreement, in particular, in its annexes, a list of concrete legal acts of the EU and the deadline for their implementation established for the Republic of Moldova is included. This denotes the fact that Moldova is obliged not only to harmonize its relevant legislation with these legal acts, but also to implement it and ensure its compliance by the set deadline. It should be taken into account that the Republic of Moldova is not a member state of the EU and, therefore, it is obliged to follow a gradual process of harmonization, because Moldova is not, for now, obliged to carry out full harmonization with the EU *acquis*, at the level of the EU member states, in order to fulfill its obligations deriving from the Agreement. However, the acquisition in 2022 by the Republic of Moldova of the status of a candidate state for EU accession, denotes wider efforts in terms of harmonizing national legislation with EU legislation, which is not limited to the EU *acquis* included in the annexes to the Association Agreement, but implies the need to ensure the transposition into national legislation of the entire legislative body of the EU.

According to the analysis of the European Commission, Moldova has reached a certain level of preparation (level II) for the implementation of the EU *acquis* in the field of justice, freedom and security. The legislation is largely aligned with EU legislation, and Moldova has implemented a number of important strategies. However, there is room for improvement regarding institutional cooperation and coordination to boost implementation.

Key words: European integration, harmonization of legislation, criminal justice, EU standards and recommendations, association agreement, cooperation and legal assistance

I. Introduction. The path traveled by the states of Central and Eastern Europe in the last decade demonstrates that European integration cannot be considered only as a priority of the country's foreign policy, as was declared by the Government of the Republic of Moldova until recently. Since independence, conditions have been created in the Republic of Moldova that allows a new approach to the European integration process, and the course towards joining the European Union has become a priority state policy that is consistently promoted internally and externally.

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directly targets the interests of the Republic of Moldova.

The history of the relations of the Republic of Moldova with the European Union probably began on December 12, 2002, when at the European Council in Copenhagen, it was decided to accept the accession, in May 2004, of 10 new members to the European Union, including 8 ex-socialist states, including 3 former Soviet republics - Estonia, Lithuania and Latvia.

Thus, the Republic of Moldova remains the only South-Eastern European state, to which the European Union has not offered the prospect of accession [1]. However, despite the difficulties that the Republic of Moldova continues to face, its political leadership realized the importance of promoting that strategic course.

Therefore, it is important to analyze the steps that a non-member state of the European Union must take in order to integrate into the EU.

To become a member state of the European Union, a non-member country must follow the following steps:

1. *Meeting the membership criteria*: the country must meet the criteria set by the EU, which include political, economic and social requirements. These include a functioning market economy, stability of institutions and respect for human rights.

2. *Applying for membership*: the country must formally apply for membership by submitting an application to the European Council.

3. *Negotiation of membership terms*: the country must negotiate the terms of EU accession, including any reforms and conditions necessary for accession.

4. *Ratification of the accession agreement*: The accession agreement must be ratified by the country and the existing EU member states.

5. *Accession to the EU*: once the accession agreement has been ratified, the country becomes a full member of the EU.

Apparently, the EU integration process would constitute only 5 steps that a state should fulfill chronologically. In fact, the most difficult and lengthy of these is the first point, which in many cases (in particular we will mention the Republic of Turkey, which was officially recognized as a candidate state for full membership on December 12, 1999) can take many years, being a continuous process of transposing European standards in the respective state, the EU being responsible for following up and supervising this process.

II. The objectives of the Republic of Moldova in criminal matters through the lens of the Association Agreement

A non-EU member state is to integrate into the European Union by adopting and harmonizing

European legislation, which can improve the prospects of EU accession.

The term „harmonization” means the alignment of national rules to a standard provided by Union law. Starting with the Treaty of Lisbon, criminal law in the EU has been approximated or harmonized within the supranational framework of „Judicial Cooperation in Criminal Matters” (art. 82 et seq. of the Treaty on the Functioning of the European Union, TFEU¹), which is part of the „Space of freedom, security and justice” (art. 67 et seq. TFEU). In principle, criminal law thus follows general rules, which also apply in other areas of Union law, for example, in the internal market.

In the EU, legislative harmonization is not an end in itself but must be understood and applied functionally. Therefore, it does not only serve to reduce legal differences between member states but also to achieve certain political objectives, as well as a general „European common good”. [2]

Thus, the harmonization of criminal law and criminal procedure in the EU is subject to specific conditions. They can prevent negative approximation of national criminal law systems through mutual recognition, as well as positive approximation through EU secondary law. Furthermore, if there are serious doubts about the EU’s full respect for the rule of law, which is the premise of any form of judicial cooperation in criminal matters in the EU, a possible accession is no longer valid.

In the context of the Republic of Moldova, the harmonization of national legislation with European legislation refers to the process by which it adapts its internal legislation to the standards and rules established by the European Union. This harmonization is necessary to facilitate the country’s integration into the world economy and to ensure the protection of the rights of its citizens in accordance with European standards. The harmonization process can be complex and take several years, as it is necessary to examine all areas of activity, such as labor law, commercial law, personal data protection, human rights protection, environmental protection, etc. and ensure that they comply with European legislation.

Fortunately, the European Union has a rather integrationist approach for non-member states, through the prism of cooperation tools and mechanisms, among which are:

- The action plans of the European Neighborhood Policy (ENP), which contain specific cooperation measures between the EU and non-member states in the field of justice and internal affairs.

- EU-Third Country Agreements, which

¹ <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A12007L%2FTXT>The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed in Lisbon, December 13, 2007.

are bilateral agreements between the EU and third countries in specific areas of cooperation, such as mutual legal assistance and information exchange.

- The European Public Prosecutor's Office (EPPO), which can bring criminal proceedings in cross-border cases of fraud and corruption affecting the EU's financial interests.

- The EU Agency for Law Enforcement Cooperation (Europol), which provides operational and technical support to EU and non-EU law enforcement authorities in the fight against serious and organized crime.

- The European Judicial Network, which provides practical support and information to EU and non-EU judicial authorities on mutual legal assistance and the recognition and enforcement of foreign judgments.

Starting from the 1990s, the Republic of Moldova began to reform its criminal justice system and align itself with the recommendations of the European Union. This process involved amending criminal laws and criminal procedure codes to comply with European standards on human rights and criminal justice. One of the important objectives of this settlement was to guarantee a fair trial and respect for the rights of the accused. Increased attention was also paid to the prevention and combating of corruption and economic crimes.

The EU – Republic of Moldova association agreement¹ (hereinafter „the Agreement”) is a comprehensive and legally binding international treaty, which represents the legal framework for political association and gradual economic integration between the EU and its member states and the Republic of Moldova. According to art. 460 of the Agreement, this is concluded for an unlimited period.

Given the vast scope of the entire Agreement, its implementation will require an extensive effort on the part of the Republic of Moldova in terms of harmonization. In fact, the harmonization objectives established by the Association Agreement are much broader than those contained in the stabilization and association agreements signed by the EU with the countries of the Western Balkans a decade ago and can be compared to the legislative harmonization obligations of the states with candidate status.[3]

In the case of harmonization with EU regulations, the most important element that is required is the development of an institutional system capable of implementing the national legislation harmonized a priori with the EU acquis. In order to create such a framework, the fact that

the EU does not have its own criminal system, but is based on national systems, is required, the EU member states must also ensure the correct application of the rules through sanctions, if such an obligation results from the regulation, even if the regulations are directly applicable to the member states.

The Association Agreement provides in art. 448 that the Republic of Moldova will carry out a gradual harmonization process: „The Republic of Moldova will gradually bring its legislation closer to Union law and the international instruments mentioned in the annexes to this agreement, based on the commitments identified in this agreement and in accordance with the provisions of the respective annexes”.

In the Association Agreement, in particular, in its annexes, a list of concrete legal acts of the EU and the deadline for their implementation established for the Republic of Moldova is included. This denotes the fact that Moldova is obliged not only to harmonize its relevant legislation with these legal acts but also to implement it and ensure its compliance by the set deadline. It should be taken into account that the Republic of Moldova is not a member state of the EU and, therefore, it is obliged to follow a gradual process of harmonization, because Moldova is not, for now, obliged to carry out full harmonization with the EU acquis, at the level of the member states of the EU, to fulfill its obligations deriving from the Agreement. However, obtaining in 2022 by the Republic of Moldova the status of a candidate state for EU accession,

Title III of the Agreement describes cooperation in the area of freedom, security and justice, in which the parties attach particular importance to the following areas:

- promoting the principles of the rule of law, respect for human rights and fundamental freedoms and the protection of personal data;
- includes cooperation in the field of preventing and combating organized crime, corruption and other illegal activities;
- cooperation for a comprehensive dialogue and cooperation in the field of legal/illegal migration, human trafficking, border management, asylum/return policy and movement of persons;
- provides for judicial cooperation in civil/commercial matters as well as in criminal matters.

In the context of the above, according to art. 20 paragraph (2) of the Association Agreement, the parties are making efforts to intensify cooperation regarding mutual legal assistance. This would include, as appropriate, the accession to and implementation of relevant UN and Council of

¹ between the European Union and the European Atomic Energy Community and their member states, on the one hand, and the Republic of Moldova, on the other [https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22014A0830\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:22014A0830(01)&from=EN).

Europe international instruments, as well as closer cooperation with Eurojust.¹

The Association Agreement regulates and reaffirms that the prosecution of the most serious crimes, such as genocide, war crimes and crimes against humanity, must be carried out both nationally and internationally. To this end, the Agreement promotes the implementation of the 1998 Rome Statute on the International Criminal Court, which Moldova ratified in 2010.

Moldova adopted a law in 2016 that clarifies the provisions for the implementation of UN Security Council resolutions. Moreover, Moldova and the EU agreed to promote the non-proliferation of weapons of mass destruction, by ratifying and implementing relevant international instruments. We also agree to advance their effective control and cooperation to combat the illegal arms trade (in accordance with Council Common Position 2008/944/CFSP of 8 December 2008) and to combat international terrorism (in accordance with, inter alia, Resolution UN Security Framework 1373 of 2001).[4]

According to the latest Report on the implementation of the National Action Plan for the implementation of the RM – EU Association Agreement in the years 2017-2019², among the most recent criminal reforms were the following:

- Law no. 163/2017 for the amendment and completion of some legislative acts (humanization of criminal policy) – an extended spectrum of effective punitive measures, which do not provide for deprivation of liberty, was implemented. Thus, a mixed sentencing system was created, which involves serving only part of the sentence in prison, with the rest of the sentence suspended. The conditions to be met in order to be released on parole before the term was reduced, as well as other measures were introduced, etc.

- In 2019, Government Decision No. 827/2010 on the organization and operation of probation bodies was amended – by which the Electronic Monitoring Department was created and the staffing of the National Probation Inspectorate (INP) was changed, which allows the 24/7 electronic monitoring.

- In 2017, the common standards for the organization, operation and staffing of the investigation, prosecution and forensic subdivisions of the police were approved.

- Also, the Code of Criminal Procedure of the Republic of Moldova was completed (Law no. 49/2018), by which the State Fiscal Service was invested with the attribution of ascertaining the

offenses provided for in art. 241-242, 244, 2441, 250-253 and 3351 of the Criminal Code.

- another key achievement is the amendment and completion of the Criminal Code of the Republic of Moldova, in order to exempt the application of the provisions of the criminal law to persons who collaborate with the Competition Council, within the limits of the implementation of the leniency policy, which will contribute to the substantial improvement of the investment climate by removing the constraint of to benefit from the leniency policy according to the Competition Law.

The most recent amendment to the Criminal Code is from January 9, 2023, through law 316/2022 regarding the amendment of some normative acts, with the generic provision of victims' rights in the case of crimes regarding sexual life and family violence, but which does not transpose EU legislation directly, but the community standards in that matter.

On the other hand, the last amendment to the criminal legislation aimed at harmonizing it with EU legislation was in September 2022, through law no. 249/2022, which added two more crimes to the Criminal Code (Manipulation on the natural gas market and Abusive use of privileged information on the natural gas market) which transposes 2 directives and 3 European regulations in the field of natural gas, which, among other things, is found in the Association Agreement as an obligation to comply with national legislation.

Candidate country status

After examining the answers received from the Republic of Moldova, the European Commission, at the request of the Council, issued an opinion on the application for accession³. The Commission examined in detail the situation in the Republic of Moldova, in accordance with the Copenhagen criteria and the credibility of the application for accession. The commission recommended that the Republic of Moldova obtain the status of a candidate country, subject to the fulfillment of the following requirements, among which:

- completing the essential steps of the recently launched comprehensive reform of the justice system in all institutions of the justice and prosecution chains to ensure their independence, integrity, efficiency, accountability and transparency, including through the effective use of asset verification and effective democratic supervision; in particular, filling all remaining vacancies within the Supreme Council of Magistracy and within its specialized bodies;

¹ In 2015, the Cooperation Agreement between the Republic of Moldova and Eurojust was ratified, the purpose of which is to strengthen the cooperation between the Republic of Moldova and Eurojust in combating serious crimes, especially organized crime and terrorism, and the competent authority in the Republic of Moldova for fulfilling the objectives of the Agreement is the Prosecutor's Office of the Republic Moldova.

² https://mfa.gov.md/sites/default/files/raport_pna_aa_2017-2019_final_pentru_publicare_website.pdf.

³ The Commission's opinion on the Republic of Moldova is available at: https://neighbourhood-enlargement.ec.europa.eu/opinion-moldovas-application-membership-european-union_en.

- delivering on the commitment to combat corruption at all levels by taking decisive action towards proactive and effective investigations, as well as achieving a credible record of prosecutions and convictions; a substantial increase in the degree of application of the recommendations of the National Anticorruption Center;

- putting into practice the commitment to „deoligarchization” by eliminating the excessive influence of private interests in economic, political and public life;

- strengthening the fight against organized crime, based on detailed threat assessments, increased cooperation with regional, EU and international partners and better coordination of law enforcement authorities; in particular, the establishment of a legislative package on asset recovery and a comprehensive framework for combating financial crime and money laundering, ensuring compliance of anti-money laundering legislation with the standards of the Financial Action Task Force on International Affairs (FATF).

On February 1, 2023, the second part of the European Commission’s Opinion on the application for the accession of the Republic of Moldova to the European Union was published¹, which evaluates the related situation of 33 chapters of EU legislation and completes the first part of the Opinion, which was broadcast on June 17, 2022, and evaluated the political criterion and the economic criterion of accession.

It covers the following areas of criminal law:

- Cooperation in the field of drug policy;
- The fight against terrorism;
- Legal and illegal migration;
- Counterfeiting the euro currency (criminal law aspects);
- Judicial cooperation in civil and criminal matters.

According to the analysis of the European Commission in the Report, Moldova has reached a certain level of preparation (level II) for the implementation of the EU acquis in the field of justice, freedom and security. The legislation is largely aligned with EU legislation, and Moldova has implemented a number of important strategies. However, there is room for improvement regarding institutional cooperation and coordination to boost implementation.

III. Conclusions

The harmonization of criminal law in the European Union refers to the process of aligning and standardizing criminal laws and procedures in EU member states. This process aims to ensure that the EU’s criminal justice system operates efficiently and fairly by ensuring the coherence of the criminal law framework.

One of the main objectives of the harmonization of criminal law in the EU is to combat cross-border crime such as terrorism, organized crime, cybercrime and human trafficking, which requires close cooperation and coordination between Member States. Harmonization also helps to reduce the risk of jurisdictional conflicts between Member States and to ensure that EU citizens are subject to the same legal protections and standards.

The EU has adopted a number of measures to harmonize its criminal law framework, including the adoption of common definitions of crimes such as money laundering, counterfeiting and fraud. In addition, the EU has adopted a number of frameworks for mutual recognition of judicial decisions and mutual legal assistance, including the European Arrest Warrant and the European Evidence Warrant.

However, the harmonization of criminal law in the EU is a complex and ongoing process and there are still many challenges to be addressed, including ensuring that consistency in the application of criminal law and ensuring that the EU criminal justice system is accessible and effective for all citizens. However, the EU continues to work towards a more harmonized and efficient criminal justice system, and the ongoing harmonization process is seen as an essential component of the EU’s efforts to fight cross-border crime and ensure the rule of law in Europe.

With reference to the Republic of Moldova, the harmonization of criminal law is achieved through the adoption of EU directives and regulations. These instruments provide the legal framework and guidelines for Moldova to harmonize its national criminal legislation. They are binding for all member states and must be implemented in national legislation, and for non-member states they become binding with the signing of Association, Collaboration and/or Cooperation Agreements.

In this regard, Moldova has adopted several directives and regulations aimed at harmonizing criminal law, including:

- *Framework Decision 2001/220/JAI of the Council* on the status of victims in criminal proceedings, which aims to improve the rights and protection of victims in criminal proceedings.

- *Framework Decision 2008/913/JAI of the Council* on the application of the principle of mutual recognition of judgments in criminal matters, which increases cooperation and coordination between EU member states in the recognition and enforcement of criminal judgments.

- *Directive 2012/29/EU* establishing minimum standards on the rights, support and protection of victims of crime, which outline the rights and

¹ The analytical report can be consulted here: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_32_20Moldova.pdf.

obligations of Member States to ensure that victims of crime are supported and protected throughout the criminal justice process.

- *Directive 2014/41/EU* on the European Investigation Order, which provides a framework for cooperation between EU member states in the investigation and prosecution of crimes.

- *Directive 2016/343/EU* on strengthening certain aspects of the presumption of innocence and the right to be present at trial, which strengthens the rights of the accused and ensures the fair conduct of criminal proceedings.

These directives and regulations aim to improve the protection of human rights, strengthen cooperation and coordination between EU member states and strengthen the efficiency of the criminal justice system.

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