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THE EUROPEAN LEGAL FRAMEWORK OF ENVIRONMENTAL POLICY AND ITS IMPACT ON THE CRIMINAL LEGISLATION OF REPUBLIC OF MOLDOVA

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Урсу В. Європейська правова база екологічної політики та її вплив на кримінальне законодавство Республіки Молдова.

У статті автор наводить стисле тлумачення положень Директиви 2008/99/ЄС Європейського Парламенту та Ради від 19.11.2008 щодо захисту навколишнього середовища за допомогою кримінального права та впливу її положень на кримінальне законодавство Республіки Молдови як країни-кандидата на вступ до ЄС.

Автор порівнює положення директиви та національного законодавства щодо захисту навколишнього середовища за допомогою правових та кримінально-правових засобів та відповідність кримінального законодавства Республіки Молдова положенням міжнародних актів у цьому питанні. У цій статті висвітлено об'єкти кримінально-правового захисту від злочинних посягань та наскільки вони відповідають об'єктам, рекомендованим для захисту згаданою директивою ЄС. Також автор зазначає, що в результаті проведеного дослідження можна зробити загальний висновок про те, що поняття «охорона навколишнього середовища» та «екологічна безпека» не можна вважати синонімами. Крім цього, було проаналізовано ефективність застосування кримінально-правових положень Кримінального кодексу Республіки Молдова, недоліки в тлумаченні та окремі законодавчі прогалини.

У підсумку дослідження автор наводить загальні рекомендації, які, на його думку, сприятимуть удосконаленню національної законодавчої бази та підвищенню рівня ефективності її практичного застосування. Таким чином, автор наголошує на важливості приведення національного законодавства у відповідність до стандартів ЄС не лише тому, що це є обов'язком для набуття членства в ЄС, але й для вдосконалення законодавчої бази, таким чином, щоб вона відповідала основним міжнародним прагненням. У результаті гармонізації внутрішнього законодавства з загальновизнаними нормами міжнародного права Республіка Молдова може стати не тільки готовою до приєднання до сім'ї ЄС, але й процвітаючою та безпечною країною для життя.

Ключові слова: екологічні злочини, охорона довкілля, природоохоронна політика громади, компоненти/елементи довкілля, забруднення довкілля, відходи, забруднювачі, гармонізація законодавства, гармонізація законодавства, законодавство ЄС, вступ до ЄС, Директива ЄС.

Ursu V. The European legal framework of environmental policy and its impact on the criminal legislation of Republic of Moldova.

The article contains a brief interpretation of the provisions of Directive 2008/99/EC of the European Parliament and of the Council of 19.11.2008 regarding the protection of the environment through criminal law and the impact of its provisions on the criminal legislation of the Republic of Moldova in its capacity as a candidate state for accession to the EU. The author compares the provisions of the Directive and the national framework in the matter of environmental protection through legal-criminal means and the correspondence of the criminal legislation of the Republic of Moldova with the provisions of international acts in the matter. In this article, there are highlighted the objects of legal-criminal protection against criminal attacks and the extent to which they correspond to the objects recommended for protection by the mentioned EU Directive. The author also notes that as a result of the conducted research, it is possible to draw a general conclusion that the concepts of "environmental protection" and "ecological safety" cannot be considered synonymous.

Also, there is analyzed the effectiveness of the applicability of the legal-criminal provisions of the Criminal Code of the Republic of Moldova, the interpretation deficiencies and certain legislative gaps. In the conclusions of the study, the author comes up with some general recommendations that, in his opinion, would contribute to improving the national legislative framework and raising the level of efficiency in its practical application. Therefore, the author highlights the importance of alignment of the national legislation with the EU standards, not only because it is an obligation for becoming an EU member state, but also for improving the legislative framework in order to be in accordance

with the main international aspirations. Thus, the Republic of Moldova could become not only ready for joining the EU family, but also a prosperous and a safe country to live in.

Key words: ecological crimes, environmental protection, community environmental protection policy, components/elements of the environment, environmental pollution, waste, pollutants, harmonization of legislation, EU legislation, accession to the EU, EU Directive.

Problem statement. The current existing situation in the field of environmental protection is far from favorable, as is the situation with the disastrous ecological state, both at the level of some states taken separately, and at the global level, in general. The environment is continuously polluted, the acts of pollution (including crimes against the environment) are increasing alarmingly. In order to prevent and combat crimes against the environment, it is necessary to adopt some measures, including legislative measures that presuppose the adoption of laws that would allow the definition of crimes against the environment and the punishment of the respective acts.

Main material. As stated in Directive 2008/99/EC of the European Parliament and of the Council of 19.11.2008 on the protection of the environment through criminal law (hereinafter "the Directive") " In accordance with Article 174(2) of the Treaty, Community policy regarding the environment must aim to ensure a high level of protection". [1]

The authors of the Directive state that "the community is concerned with the increase in the number of crimes against the environment and their effects, which are increasingly expanding beyond the borders of the states in which they are committed. Such crimes pose a threat to the environment and therefore require an appropriate response."

At the time of the adoption of the mentioned Directive, the authors found that the existing systems for sanctioning environmental crimes were not sufficient and did not guarantee full compliance with the environmental protection legislation.

Thus, it was proposed to define new crimes committed against the environment and to punish not only acts or activities that harm the environment, and that usually cause or are likely to cause significant damage to the air, including the stratosphere, soil, water, animals or plants, including in terms of species conservation but to be sanctioned, by applying sanctions with a higher dissuasive character and for failure to comply with a legal obligation to act. Point 6 expressly states that "Failure to comply with a legal obligation to act may have the same effect as active conduct and should therefore be subject to appropriate sanctions".

The mentioned Directive includes annexes in which a series of normative acts are listed that contain provisions that should, from the authors' point of view, "be the subject of criminal law measures that ensure the full effectiveness of the rules on environmental protection (pt.), and the obligations resulting from this Directive refer only to the provisions of the legislative acts listed in the annexes to this Directive which impose on the member states the obligation to, when implementing the respective legislative acts, provide for restrictive measures (pt. 9)".

At the same time, the behavior of the subjects, manifested either through active actions or through inaction, carried out by non-respect of legal obligations must be considered by the member states as a crime throughout the territory of the community if it is carried out with intent or through negligence (pt.7) .

The analyzed normative act establishes the obligation for member states to provide in their national legislation criminal sanctions for serious violations of the provisions of Community law regarding environmental protection. At the same time, the invoked Directive provides only minimum standards, with member states having the right to adopt or maintain stricter measures, which they consider effective to protect the environment through national criminal law, the only condition being the compatibility of the respective measures with the provisions of the Treaty establishing of the European Community.

The legislative act analyzed in art. 2 lit. a) defines a series of which notions, for the purposes of this directive, will be considered "contrary to the law", and in letter b) presents the notions inherent in the protected domain.

Of interest for our study are the provisions of art. 3, which list the facts that constitute crimes, if they are contrary to the law and are committed with intent or at least with negligence.

Thus, according to letter a), we will consider crimes the serious injury to a person or significant damage to air quality, soil quality or water quality or animals or plants. In other words, acts of direct pollution of the enumerated components of the environment the following actions: direct attacks on the air, soil or water committed by spilling, emitting or introducing a quantity of substances or ionizing radiation into the air, soil or water, and which cause or are likely to cause death.

Article 3 also regulates other provisions that attribute to the category of crimes the following actions: operations undertaken by the subjects, related to the management and transfers of waste (collection, transport, valorization or disposal of waste), including, the control of these operations and the subsequent maintenance of the disposal premises waste, requiring a causal relationship between the listed actions and

the provocation or probability (danger) of provocation of death or serious injury to a person or significant damage to air quality, soil quality or water quality or animals or plants (letter b)).

Regarding the transport of waste, the act will be considered a crime, if the said activity falls within the scope of Article 2 paragraph (35) of Regulation (EC) no. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, and is carried out in a quantity that cannot be neglected, whether it is carried out by a single transport or by several transports apparently linked to each other (letr. c)).

The attribution of the mentioned activity to the category of crimes is argued by the fact that the main and predominant objective and component of the invoked regulation represents the protection of the environment. Therefore, it is important to organize and regulate the supervision and control of waste transfers in a way to take into account the need to conserve, protect and improve the quality of the environment and human health and to promote a more uniform application of the regulation in question in the Community. It is also important to take into account the requirement in Article 4(2)(d) of the Basel Convention that according to which, the hazardous wastes must be minimized in accordance with the environmentally sound and efficient management of those wastes [2].

Any operations that involve the use, transport, storage or other actions with substances or preparations dangerous to the environment, require strict control from the authorities and specialized entities, including, a special legal regime, often this involves limiting the civil circuit of the mentioned substances, both special rules for handling them. Special machines and means of transport, processing rooms, storage and preservation, etc. are designed and operated from these reasonings.

Thus, according to the aforementioned Directive, the following are recognized as crimes: "the operation of a plant in which a hazardous activity is carried out or in which hazardous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to a person or significant damage to air quality, soil quality or the quality of water or animals or plants".

The Directive specifically provides certain substances or materials that present an increased danger to the health or life of persons, including, for environmental components, for example, nuclear materials or other dangerous radioactive substances, or substances that deplete the ozone layer.

Thus, crimes within the meaning of the Directive will be considered "the production, processing, handling, use, possession, storage, transport, import, export or disposal of nuclear materials or other dangerous radioactive substances , which cause or are likely to cause death or serious injury of any person or damage to air quality, soil quality or water quality or animals or plants" (letr.e)), as well as "the production , import, export, introduction to the market or use of substances that deplete the ozone layer" (letr. i)).

And, finally, acts manifested by killing, destroying, possessing or obtaining specimens of protected species of wild fauna or flora are subject to criminal sanctions, except in cases where the act affects a negligible amount of such specimens and has a negligible impact on the conservation status of the species (letr. f)); trade in specimens of protected wild fauna or flora species or parts or derivatives thereof, except in cases where the act affects a negligible amount of such specimens and has a negligible impact on the conservation status of the species (letr. g)) or any act that causes significant damage to a habitat within a protected site (letr. h)).

We must mention that according to art. 10 of the Directive, it is addressed to the member states of the EU.

However, as a country aspiring to join the European Union, Moldova has worked to harmonize 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 criminal justice system in the Republic of Moldova, as well as to increase its capacity to fight cross-border crime and other forms of transnational organized crime. To achieve this, Moldova has implemented a series 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.

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 in the supranational framework of "Judicial Cooperation in Criminal Matters" (art. 82 et seq. of the Treaty on the Functioning of the European Union, TFEU[1]), which is part of the "Area 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.

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

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".[3]

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.

The Criminal Code of the Republic of Moldova includes a separate chapter entitled "Environmental crimes". Analyzing the rules contained in Chapter IX of the Criminal Code, we can draw the conclusion that the Moldovan legislator establishes liability and criminal punishment for a series of criminal acts that generically fall within the activity recognized as crimes according to EU directives.

Thus, Article 223 **Violation of ecological security requirements** conventionally corresponds to the fact provided for in letr. d) of art. 3 of the Directive, because it provides for criminal liability for the violation of ecological security requirements in the design, location, construction or commissioning, as well as in the exploitation of industrial, agricultural, scientific or of other objectives, by the persons responsible for their compliance. The Directive reduces the activity of the subject only to the operation of a **plant** in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used. The Criminal Code of the Republic of Moldova extends the criminal activity, starting from the stage of design and the area of buildings where the subjects' activity is carried out is extensive, listing not only the factory but also other industrial, agricultural, scientific or other objective constructions.

The Directive indicates as harmful consequences the death or serious injury of a person, or significant damage to air, soil or water quality, or damage caused to animals or plants, while art. 223 of the Criminal Code of the Republic of Moldova provides for a criminal penalty if the act described in the provision caused: a) the essential increase in the level of radiation; b) damage to the health of the population; c) mass destruction of animals; d) other serious consequences.

Similarly, we can also relate other provisions from the Republic of Moldova's legislation to the provisions of the EU Directive analyzed by us.

Analyzing the provisions of the articles in Chapter IX of the Criminal Code of the Republic of Moldova, we have identified various categories of substances that our legislator assigns to the class of pollutants or materials that can produce/cause, create the danger of causing damage to the environment in general or its components, in particular. Thus, the legislator uses the following notions: radioactive, bacteriological or toxic materials and waste (without specifying them in any way), or expressly indicates the type of pollutants, for example, pesticides, herbicides or other chemical substances (terms used in the provision of art. 224 Criminal Code of the Republic of Moldova); harmful products of economic or other activities, harmful substances, mineral fertilizers, plant growth stimulants, other chemical or biological substances (art. 227 Criminal Code of the Republic of Moldova); toxic waste or harmful substances (art. 228 Criminal Code of the Republic of Moldova); wastewater or other waste (art. 229 Criminal Code of the RM); pollutants (art. 230 Criminal Code of the RM).

The diversity of terms used to describe the facts is probably due to the specifics of each rule, but also to the specifics of the environmental components that are targeted, water, soil, basement, air, etc.

In the context, the EU Directive, likewise, configures several types of harmful agents that damage the environment. For example, letter a) art. 3 – air, water, soil can be affected if the perpetrator discharges, emits or introduces quantities of substances or of ionizing radiation; letter d) – dangerous substances or preparations; letter e) that of nuclear materials or other radioactive substances; letter i) – substances that deplete the ozone layer; letter b) and c) uses the generic notion of waste.

As for the object of criminal attacks, both those expressly specified in the content of the EU Directive and those mentioned in the provision of Chapter IX of the Criminal Code of the Republic of Moldova, we will mention: air (the ozone layer in the directive), water, soil, subsoil (in art. 228 of the Criminal Code of the Republic of Moldova), the damages being expressed through damage to the quality of the air, water (surface and underground),

the soil, through injuries to health or deaths caused to people, including animals or plants (including agricultural production (art. 227 Criminal Code of the Republic of Moldova)), the animal or vegetable kingdom, fishery resources, forestry, agriculture, vegetation or forest massifs, etc., therefore, the latter mentioned, as well, constitute the object of ecological crimes (in the version of the Criminal Code of the Republic of Moldova).

In the context, we consider that the generic designation of environmental crimes of Chapter IX of the Criminal Code is not successful and, accordingly, we propose to be renamed Environmental/anti-environmental crimes. In this case, the criminal legislation of the Republic of Moldova will be in accordance with the international acts (the analyzed Directive, but also other acts inherent in the field). Also, secondly, it will be in accordance with the objects of the mentioned legal-criminal protection that constitute the components of the environment, as defined by for example, in Law no. 1515 of 16.06.1993 regarding the protection of the environment. The mentioned law does not expressly define the notion of environment, instead its components/elements are described, namely, air, waters, soil, subsoil, flora and fauna.

A detailed analysis of the notion and a characterization of ecological crimes in the Criminal Code of the Republic of Moldova is done by university professor X. Ulianovschi in the article published under the same title RND no. 10/2015 [4]. From the text of the article, we clearly deduce that the so-called ecological crimes constitute criminal acts that harm the environment, are directed against and threaten the components of the environment.

Another argument in support of our opinion and proposal is the analysis carried out by the author Petru Furtună of the concept of ecological security in his article entitled Ecological security in international political theory [5].

The general conclusion drawn from the text of the article is that the concepts "environmental protection" and "ecological security" cannot be considered synonymous. However, there is a close connection between the relations of environmental protection and those of ensuring ecological security: through environmental protection activities, in general, the ecological security of the environment and of man is also ensured. Ecological security is one of the basic components that essentially contribute to ensuring the general security of the state and its sustainable development. Ecological security, largely, is also determined by the condition of the components of the environment. Pollution of water resources, atmospheric air, reduction of soil fertility, cross-border pollution and others represent a danger for ecological security.

In **conclusion**, we consider it necessary to fundamentally revise the content of Chapter IX of the Criminal Code of the Republic of Moldova so that:

1. The provisions contained in the provisions of the legal-criminal norms should be aligned with the provisions of the international acts in the field of environmental protection: the consistency of the use of the terminology/glossary of terms and notions inherent in the field; the definition in the articles of the General Part of some generic notions, such as the notions of waste, pollutants, forest vegetation, forest fund, protected natural area, etc. (as a frame of reference see: https://solidarityfund.md/wp-content/uploads/2021/04/Cadrul-de-Management-de-Mediu-si-Social.pdf);
2. Identification of all environmental elements/components that are harmed by the criminal acts generically called environmental crimes. At the current stage, the development of technical-scientific progress, the amplification and diversification of economic activities, research, etc. involves a much greater impact on the environment, the environmental components that until recently were not accessible to humans (the subsoil, the ozone layer, underground waters at much greater depths, etc.) are exploited more and more intensively, their identification will allow us to take under legal protection;
3. Avoiding the use of terms or expressions in the formulation of the components of environmental crimes that would not meet the requirements of clarity or predictability of the criminal law, with the risk of being declared unconstitutional, a fact that leads to the reduction of the effectiveness of the applicability of the criminal law, deficiencies in interpretation, etc., with the consequences of rigor;
4. The specification and adequate evaluation of the damages caused to the environment by environmental crimes, taking into account the methodologies for assessing the degree and nature of the pollution or the amount of damage caused to the environmental components affected by the corresponding acts;
5. Application of the "polluter-pays" principle, enshrined not only in international acts but also in national legislation;
6. Establishing liability and criminal penalties for legal entities, as recommended by international acts, including the EU Directive cited in the text of our article.

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