

СРАВНИТЕЛЬНО-ПРАВОВЫЕ ИССЛЕДОВАНИЯ COMPARATIVE STUDIES

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Challenges and Perspectives of the EU Accession Policy — a Reflection on Criminal Law

Abstract. Should we join the European Union or not? The European Union is not some imaginative goal to be pursued. It requires and offers concrete solutions. At the same time, it seeks out and establishes values and obligations to be fulfilled and inserted in a concrete political life. These obligations and values are universal and it is up to each state to assess whether the acceptance and realization of those interests and values is in its own interest. It should be borne in mind that the legal state and the rule of law, respect for human rights and freedoms, a market economy with developed social policy, fight against corruption and terrorism and many other values that the European Union stands for are essential to every democratic society and exactly these values are a goal that every human being strives for. Eurasian integration is also in favor of these values, but instead of ultimatum and conditioning, they offer a more flexible negotiation method.

It is indisputable, at the moment, that in the region of the Western Balkans, the Republic of Serbia is at the back line of the European integration process. It has entered these processes as the last interested state, but in addition it constantly faces major internal problems and insufficient understanding, as well as new conditions that are constantly being set for its accession. If we add the fact that the decrease of the interest of citizens to join the European Union is currently being noticed, it is clear why the question of who to approach is becoming actualized. One of the goals of the reforms undertaken in the accession process is the harmonization of internal regulations with Communitarian Law. In doing so, it should be borne in mind that total harmonization is almost impossible.

Keywords: European Union; association; reforms; Criminal Law; policy; problems; Eurasian integration.

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Вызовы и перспективы политики расширения ЕС. Размышления об уголовном праве

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Аннотация. Должны ли мы вступать в Европейский Союз или нет? Вступление в Европейский Союз — это не какая-то воображаемая цель, которую мы преследуем. Эта цель требует и предлагает конкретные решения. В то же время она выявляет и устанавливает ценности и обязательства, которые должны выполняться и стать частью определенной политической жизни. Эти обязательства и ценности являются универсальными, и каждое государство само должно определить, отвечает ли принятие и реализация этих интересов и ценностей интересам страны. Следует иметь в виду, что правовое государство и верховенство права, уважение прав и свобод человека, рыночная экономика с развитой социальной политикой, борьба

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с коррупцией и терроризмом и многие другие ценности, за которые выступает Европейский Союз, необходимы каждому демократическому обществу и именно эти ценности являются целью, к которой стремится каждый человек. Евразийская интеграция также выступает за эти ценности, но вместо ультиматума и условий она предлагает более гибкий подход к переговорам.

В настоящее время бесспорно, что в регионе Западных Балкан Республика Сербия находится на переднем крае процесса европейской интеграции. Однако Сербия постоянно сталкивается с серьезными внутренними проблемами и недостаточным их пониманием, а также с новыми условиями, которые постоянно ставятся перед ней для присоединения к ЕС. Если добавить, что в настоящее время наблюдается снижение интереса граждан к вступлению страны в Европейский Союз, становится ясно, почему актуализируется вопрос о том, к кому необходимо обращаться. Одной из целей реформ, проводимых в процессе присоединения, является приведение внутреннего законодательства в соответствие с нормами коммунитарного права. При этом следует иметь в виду, что полная гармонизация права практически невозможна.

Ключевые слова: Европейский Союз; объединение; реформы; уголовное право; политика; проблемы; евразийская интеграция.

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There is no doubt that Europe is the cradle of civilization that continues to be a role model to many modern countries today. The Republic of Serbia, not only territorially but also by its rich history, belongs to the European cultural area. Due to its geopolitical position, Serbia often bore impacts by many forces that wanted and sought to gain control over this region. It is for these reasons that Serbia and its citizens have often been confronted with the Hamlet dilemma. Starting from which way to go, who to choose as a friend, as an ally and as a companion in arms, up to which socio-economic system to build and develop. Of course, through historical development, Serbia has sometimes resolved this dilemma with great success, and sometimes it had expensively paid for its choices.

At the beginning of the 21st century, Serbia is again facing the Hamlet dilemma, whether to accept the values of the European Union and become its equal member or to join Eurasian integrations? There is no simple answer to this question. Many scientists, social workers and prominent politicians have expressed their views on this life issue. In recent times, many intellectuals hold point of view in which Serbia doesn't belong to the European Union, and that by joining the EU it will lose its sovereignty and that it will not make economic progress. They advocate that Serbia binds its future to the Eurasian Union, because they believe that the alliance will allow faster economic and every other prosperity. However, there are still opinions that start from the fact that the values espoused by the European Union are overall accepted, universal, accepted by most European countries and that Serbia belongs to that family.

It is necessary to start from the fact that the European Union is not a magic word that has the power and the solution to all problems. It is a living organism that is being built, developed and promoted. At every stage of socio-economic development, its institutions are being upgraded and changed. Some states, EU founding countries, dissatisfied with the direction of the undergoing reforms, as well as with their intensity, are proceeding with an exit from this organization.

It is indisputable that at that stage of social development, when there was a rapprochement in the field of economic relations between the countries of the European Union, the desire to create more complete and stronger institutional cooperation was born. Not only in this field but also in the field of political cooperation, and also in the development and functioning of the common market, as well as the harmonization of their legislation. At numerous international conferences, the European Union has continually sought to increase the protection of common interests, strengthen democracy and the rule of law, respect for human rights and fundamental freedoms, strengthen judicial and civil justice cooperation and cooperation in the field of internal affairs.

Countries that want to become equal members of the European Union have to align their legislation with the legislation of the European Union, i.e. the *acquis communautaire*. As a general term, the *acquis communautaire* comprehends all that the European Communities have achieved in legal, political, economic and administrative terms in order to achieve the objectives set before the European Community and later the European Union. In the praxis of accession to the European Union so far, problems in the functioning of the

judiciary have been expressed in all countries, and shortcomings of the system were not rare, which is the reason why the judiciary was not independent. In addition, inefficient and politicized administration was present in all countries. Under such conditions, it was impossible to develop and affirm the rule of law, as institutions most often did not act in accordance with their Constitution and established powers.

In order to fully harmonize national criminal legislation, such changes are often made so that acts that have never occurred in the history of an acceding country have been prescribed as criminal offenses. Such a Criminal Law is not capable of effectively responding to the challenges of the 21st century, and the judicial power, since it is an imprecisely formulated legal norm, is unable to apply it.

In what direction should the criminal legislation be reformed in the 21st century, that is, in the period of transformation of the judicial system of the Republic of Serbia. It is well-known that the centuries-old aspirations of progressive humanity were directed in such a way that the perpetrators of the crime, no matter where the crime was committed and who did it, should not escape the punishment deserved. That is why the idea of harmonizing criminal legislation or establishing a generally accepted international criminal court arose very early. Numerous scientific and other creators have contributed to the realization of this idea. The experience gained through the work of the courts in Nuremberg and Tokyo, and even the ad hoc tribunals formed for the former Yugoslavia, significantly contributed to the embodiment of this idea. The period of open divergences of blocks, especially expressed in the Cold War era, had a negative impact on the idea of creating an international criminal justice system.

The international criminal justice system today is realistically limited by the existence of two levels: national and international, which together should form a unified system. We are confronted with the fact that the political goals of individual powerful countries are not intended to strengthen the international judiciary. In these countries, international criminal standards are not incorporated into national criminal legislation as super national norms. There is no practical application of international criminal justice by national courts.

Each stage of the development of human society is characterized by the relationship of man as an individual towards it, a man who was able

to survive and develop his personality in relation to other people. Modern society, characterized by the increasingly open globalization of the world, offers us countless different destructive views of modern society. Man, as an individual loses meaning and significance because, more than ever, globalization is trying to impose a false identity, virtual values, fictional rights and a false future on human society. In this way, violence against man and his nature is being performed and his nature is becoming less and less a part of a social community tailored to its needs.

Despite such efforts, there is a difference today in the development of the legal systems of individual states, which in practice leads to the same rights being protected in different ways and with different success from state to state. Therefore, there is an obligation to harmonize the Criminal Law, regardless of whether one is aspiring to the EU or to the EAEU. It is an indisputable fact that almost all the countries of the world at the beginning of the 21st century are more or less faced with phenomena such as: organized crime; corruption; terrorism; human trafficking; endangering human rights and freedoms; money laundering; computer crime and similar. These forms of criminal activity represent the most serious threat to the initiated reforms of the criminal legislation and the realization of universal human rights and freedoms. The successful fight against these crimes forms the cornerstone of the exercise of human freedoms and rights as universal values, in which Criminal Law plays an indispensable role.

Aware of the problems encountered in harmonizing the legal system, the European Union has provided various financial assistance programs to EU 's accession countries, in order to facilitate the necessary reforms as easily as possible. One of these programs is the PHARE program, which aims to strengthen the capacity of the judiciary and administration (institution building) with the assistance of national experts from Member States, as well as to support institutions related to acquisitions and enforcement of achievements. Such programs constitute a financial component of assistance in accession to the European Union. In the last ten years alone, some € 28 billion of non-refundable aids have been granted from the EU budget.

It is justified to ask a question where is the Republic of Serbia in all the above stated processes? The cooperation between the Republic of Serbia and the European Union is not of recent

date. This cooperation has been going on for over 35 years and is full of successes and downfalls as well as of creation of new instruments, both for cooperation and for sanctions. One should not lose sight of the fact that during this period, the Republic of Serbia has gone through three state structures (SFRY, FRY and the State Union of Serbia and Montenegro).

It is necessary to create a compatible legal system of Serbia with the European Union in order to enable efficient functioning and effective implementation of the adopted laws and regulations, as well as quality administrative and judicial infrastructure, so that they can be properly and effectively implemented.

It is of utmost importance for the Republic of Serbia to regulate cooperation in the area of justice, freedom and security, that is, in the field of justice and home affairs. In the reform processes that the Republic of Serbia must undertake, it is necessary to ensure the strengthening of the

rule of law and the enforcement of rights, the development of judicial mechanisms, and the strengthening of institutions at all levels. A special place belongs to strengthening and developing an independent judiciary and improving its efficiency, as well as permanently improving the professional competence of court employees. The overall assessment is that the judicial system in the Republic of Serbia is heavily influenced by the executive authority.

During the reform of the criminal legislation, considerable attention must be paid to fighting rising crime, which includes the prevention and suppression of crime and other illegal activities, such as: drug trafficking and drug consumption, human trafficking, corruption, money laundering, illicit trade in goods, smuggling, illicit arm trafficking, terrorism and similar. In all these fields, the Republic of Serbia is taking significant steps to fight them, but this struggle must be even more fruitful.

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