

Cooperation with the International Criminal Court of the European Union

PhD., Judge George Dorel Matei
Ph.D. Lecturer at the Faculty of Law and Administration
"Dimitrie Cantemir" Christian University
Judge at the Court of Appeal
Email: mateidorelgeorge@yahoo.com

PhD, Professor Luminita DRAGNE
Faculty of Law and Administration
"Dimitrie Cantemir" Christian University
Email: lumidragne@gmail.com

Abstract: *Through the Rome Statute the International Criminal Court was created, the first permanent international criminal court with jurisdiction to hear the most serious crimes that concern the entire international community, a status which has been ratified by all Member States of the European Union. Council of the European Union found that the principles of the Rome Statute and those governing the functioning of The International Criminal Court are fully in line with the principles and objectives of the Union, acting with the support and cooperation of this international Criminal Court. Serious crimes within the jurisdiction of the International Criminal Court concern the international community as a whole, and the Union and its Member States.*

Key words: *European Union, cooperation, crimes, International Criminal Court*

JEL Classification: K40

Introduction

The International Criminal Court is the first international permanent criminal court with jurisdiction to judge the most serious crimes that concern the entire international community, namely war crimes, crimes against humanity, genocide and the crime of aggression.

Established by the Rome Statute, adopted on 17 July 1998 and entered into force on 1 July 2002, The International Criminal Court in The Hague, the Netherlands, have international legal personality and may exercise its functions and powers under its Statute in the territory of any given State, and through a Convention having this purpose in the territory of any other State.

The Court is complementary to national criminal jurisdictions and according to Art. 88 Statute of the Court, States Parties shall ensure that national legislation implement the necessary measures to ensure full cooperation with international courts. Such a provision is widely considered to be imperative because in the

absence of appropriate legal instruments would arrive in a situation where Statute of the Court would remain a mere empty shell¹.

Its initiators considered the Statute not only as an important tool for international criminal justice but also an argument for encouraging peace, people who were prone to serious action against the most basic universal values should know that there is no question of their impunity².

European Parliament in its turn recommended to EU Member States the ratification the document as soon as possible, which is further evidence of the importance of the International Criminal Court. International cooperation is covered in Chapter IX of the Statute of the Court, establishing the art. 86 general obligation of the States parties to fully cooperate with the Court, in accordance with its fundamental act, in the investigation and prosecution of crimes falling within its competence.

Also, statutory provisions also allow cooperation with third countries in accordance with art. 87 paragraph 5, cooperation that will be achieved at the invitation of the Court or under an ad hoc arrangement, which will be concluded between the Court and the that state on a particular criminal case found out in the competences of the Court, or under a permanent agreement between Court and state, governing the terms of cooperation between them.

Member States of the EU cooperation with The International Criminal Court

The European Union is, according to art. 67 paragraph 1 of the Treaty on the Functioning of EU (TFEU), an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

Creating a space within the Union is also inconceivable without concrete and comprehensive cooperation between the Union and international institutions aimed at punishing the most serious crimes against humanity, regardless of where their perpetration.

Close cooperation with The International Criminal Court came as a natural element to the Union, Decision 2011/168 / CFSP of 21 March 2011 on The International Criminal Court ³(ICC) being adopted for this purpose, highlighting the art. 1 paragraph 1 it is to prevent and stop committing serious crimes within its jurisdiction, an essential means to promote respect for international humanitarian law and human rights and, therefore, to guarantee freedom, security, justice and the rule of law and to contribute to peacekeeping, conflict prevention and strengthening international security in accordance with the purposes and principles of the United Nations Charter.

The main objective of the decision is to "promote universal support for the Rome Statute of the International Criminal Court by promoting the widest possible participation in it, maintaining the integrity of the Rome Statute, the ICC's independence and support effective and efficient operation its support cooperation with the ICC and support the implementation the principle of complementarities "(Art. 1 paragraph 2).

¹ G. D. Matei, M. Copcă, L. Dragne, States collaboration with the International Criminal Court, in Strategic Universe journal Year V, no. 4 (20), ISSN 2068-1682, 2014, p.65

² F. Adrian, International justice between ambition and reality. International Criminal Court, Ed. Paideia 2007, p. 187.

³ http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=uriserv:OJ.L_2011.076.01.0056.01.RON

According to the principle of complementarity, the Statute of the International Criminal Court leaves primary responsibility to Members, intervening when: a) national courts refuse to send their citizens justice and b) justice system of a State ceases to be functional. The Court may exercise jurisdiction in moot cases when the procedure was not conducted in an independent and impartial manner.

EU Council found as shown in the preamble of the decision that the principles of the Rome Statute and those governing the functioning of The Statute of the International Criminal Court are fully in line with the principles and objectives of the Union. Serious crimes within the jurisdiction of the International Criminal Court concern the international community as a whole, and the Union and its Member States.

To ensure the independence of the International Criminal Court, the Union and the Member States⁴:

(a) encourage States Parties to pay their financial contribution without delay and in full to the Court's budget in accordance with the decisions taken by the Assembly of States Parties;

(b) do everything for accession to the Agreement on the Privileges and Immunities of the International Criminal Court and its ratification by the Member States to take place as soon as possible and make steps on the path to that agreement and its ratification by other countries; and

(c) endeavor to support, where appropriate, the introduction of training programs and assistance for judges, prosecutors, officials and councilors requested to perform in work related to the International Criminal Court.

It is observed that despite generous objectives explained in the Decision, identify very few concrete measures nationally to fulfill them. For example, in Romania there is no going to date a program of assistance and training of magistrates on cooperation with The International Criminal Court. In article 5 of the decision states that the Union and its Member States shall, where appropriate, initiatives or measures to ensure the implementation of the principle of complementarity at national level.

A particular problem arose in connection with the conduct of signatories of the Rome Statute which have concluded bilateral agreements with the United States and guaranteeing non-transfer of US citizens before the Court.

Without in any way prohibit the signing of such agreements, the Council recalled to the Member States certain guidelines that should be followed when signing such agreements, namely the European Union Member States should consider existing agreements between signatory states of the Statute of the Court and the United States; signed agreements to date are inconsistent with the obligations of the signatory states of the Statute of the Court; where such agreements are signed, however, they should be limited in time and such agreements should be ratified as ordinary constitutional procedures of the Member States.

Regarding Romania, we consider that law 302/2004 regarding international judicial cooperation should be changed urgently, within the meaning of the evening and detailing effective mechanisms for cooperation with the court mentioned above and to reconcile national legislation with the requirements of Decision 2011/168 / CFSP of 21 March 2011 on The International Criminal Court.

Practical ways of EU cooperation with The International Criminal Court are set out in the Agreement on cooperation and assistance between the Court and the European Union concluded between the parties on 10

⁴ Art. 3 of Decision.

April 2006⁵ establishes the obligation consultation on matters of mutual interest, encouraging and exchange of information and documents.

EU may invite the Court to attend meetings and conferences organized under its auspices, in which it addresses issues of interest to the Court, because it can provide assistance in matters within its competence. Clerk of the Court, in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation relating to pleadings, oral proceedings, judgments and orders of the Court that may be of interest to the European Union.

Within compliance responsibilities and competencies under the EU Treaty, the EU undertakes to cooperate with the Court and to provide information or documents in its possession, which the Court might request under Article 87 (6) of the Statute.

If the court seeks to exercise its jurisdiction over the person alleged to be criminally responsible for a crime that falls within its jurisdiction and if such person enjoys under the relevant rules of international law, privileges and immunities institution concerned European Union undertake to cooperate fully with the Court and, in compliance with its responsibilities and competencies under the EU Treaty and related rules, to take all necessary measures to enable the Court to exercise jurisdiction, particularly by raising these privileges and immunities in accordance with all relevant rules of international law, as derived from the requirements of Art. 12 of the Agreement.

If a State Party does not agree with a Court request for cooperation, contrary to the provisions of the Statute, and prevents it to exercise its functions and powers conferred on it by this Article 87, paragraph 7, provides that the Court may take note of it and inform the Assembly of States Parties or the United Nations Security Council when he was asked by the latter. Assembly of States Parties will examine under Article 112, paragraph 2, letter f) problems related to the lack of cooperation.

One element that we consider to be modified is the absence of an express sanction if the state refuses to cooperate with the Court. UNO Security Council will be also advised of non-cooperation on the part of a State Party to which we sustain that he will take the UN Charter to implement its cooperation. Council also will consider taking the most appropriate measures could be arranged if the United Nations Security Council considers that the refusal of cooperation as a case of threat to international peace and security, to adopt measures under Chapter VII of the UN Charter.

Conclusions

Fighting international crime is a priority for the European Union and that is why special efforts are made to counteract this phenomenon.

As shown in the official documents of the International Criminal Court⁶ is an essential means to promote respect for international humanitarian law and human rights and decisions, the European Council stressed that

⁵ Official Journal of the European Union L 115 din 28.4.2006, p. 49 - http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2006.115.01.0049.01.ENG

⁶<http://eur-lex.europa.eu/legalcontent>

support the proper functioning of the Court that it promotes universal support encouraging the widest possible participation in the Rome Statute.

All Member States of the European Union have ratified the Rome Statute and the Union is convinced, as was stated in the preamble to Common Position of the Council of 16 June 2003 on The International Criminal Court, that universal accession to the Rome Statute is essential for the full effectiveness of the International Criminal Court and, to this end, considers that initiatives to promote acceptance of the need to be encouraged, to the extent that they are consistent with the letter and spirit of.

Bibliography

1. Adrian F., 2007, International justice between ambition and reality. International Criminal Court, Paideia Publishing House
2. Matei. G. D., Copcă M., Dragne L., 2014, States collaboration with the International Criminal Court, in Strategic Universe Journal Year V, no. 4 (20), ISSN 2068-1682.
3. Statute of the International Criminal Court.
3. Matei G. D., International judicial cooperation in criminal matters, PhD thesis, 2013, unpublished.
4. Decision 2011/168 / CFSP of 21 March 2011 on the International Criminal Court.
5. The Treaty on European Union.
6. Council Common Position 2003/444 / CFSP of 16 June 2003 on the International Criminal Court.