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DIGITAL TRANSFORMATION, COOPERATION AND GLOBAL INTEGRATION IN THE NEW NORMAL

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THE COMPATIBILITY ON THE SCOPE OF MUTUAL LEGAL ASSISTANCE (MLA) IN CRIMINAL MATTERS AND THE CONDITIONS OF REFUSAL MLA IN CRIMINAL MATTERS BETWEEN VIETNAMESE LAW AND INTERNATIONAL TREATIES WHICH VIETNAM HAS SIGNED.

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Abstract:

Due to economic integration, the globalization of financial markets and the internationalization of organized crime, transnational crime has become increasingly popular in recent decades, especially economic crimes and money laundering. In order to settle criminal cases involving cross-border elements, the governments often seek assistance from foreign countries in the form of a request for mutual legal assistance (MLA) in criminal matters. However, the difficulties faced by countries are whether the requesting party's MLA requests fall within the scope of the requested party's MLA in criminal matters or the MLA's request falls under one of the following circumstances on refuse mutual legal assistance of the requested party. The research will analyze some views of the compatibility on the scope of MLA in criminal matters and the conditions for refusal MLA in criminal matters between national law and multilateral/bilateral treaties that Vietnam has signed and acceded to. From there, author gives some recommendations for Vietnamese government to solve tackles.

Keywords: *the scope of mutual legal assistance in criminal matters; conditions of refusal mutual legal assistance in criminal matters; Vietnamese law on legal assistance 2007; international treaties related to mutual legal assistance in criminal matters; recommendations.*

1. Introduction

In the context of current global and national security is extremely complicated, Vietnam and other countries are facing the number of organized crimes and transnational crimes, for instance: terrorism, money laundering, human trafficking, illegal migration, smuggling, drugs, obtaining property by fraud, intentional contravention of the State's regulations on economic management causing serious consequences and other property-infringing crimes. Notably, recently emerged several requirements for criminal justice related to criminals using high technology to appropriate property. Therefore, competent procedural authorities must deal with many criminal cases involving aboard elements. In the process of conducting the investigation and trial of criminal cases, it may arise that the perpetrators, victims or witnesses as well as the requisite evidence of the cases, which are all present or are residing in the territory of the state or other countries (Hồng, 2008). Due to the principles of national sovereignty in international law, it is very necessary to request the foreign countries to provide mutual legal assistance (MLA) in criminal matters to Vietnam following on these proceedings: investigation, prosecution, adjudication and certain courses of action for the enforcement of criminal judgments (Hồng, 2008). Therefore, each country must cooperate with other countries, whereby the relevant criminal proceedings must be conducted in accordance with regulations in the foreign state through MLA (Hồng, 2008). According to statistics, Vietnam had sent more

than 1,200 requests for criminal legal assistance and received nearly 280 requests for MLA in criminal matters from foreign countries from 2021 to 2022 (Chung, 2022). The most important legal basis for Vietnam as well as other countries to cooperate to carry out judicial activities in criminal are bilateral and multilateral treaties on MLA in criminal matters (Phước, 2013). Currently, within the framework of cooperation between countries around the world, Vietnam has totally signed and been effective lots of multilateral treaties and 27 bilateral treaties on MLA in criminal matters (Up to date on 1st April 2023 of Report of Department of International Cooperation and MLA in Criminal Matters - People's Supreme Procuracy of Viet Nam (Department 13). There are some effective bilateral treaties, such as: Treaty on MLA in criminal matters between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Socialist Republic of Vietnam in 2009, Treaty on MLA in criminal matters between the Socialist Republic of Viet Nam and Australia in 2014, Treaty on MLA in criminal matters between the Socialist Republic of Viet Nam and the Lao People's Democratic Republic in 2020, Treaty between the Socialist Republic of Viet Nam and Japan on MLA in criminal matters in 2021, and some multilateral treaties, such as: ASEAN Treaty on MLA in Criminal Matters dated on 29/11/2004 (ASEAN MLAT), United Nations Convention against Corruption (UNCAC) and United Nations Convention against Transnational Organized Crime (UNTOC). According to the Article 46 of UNCAC and Article 18 of UNTOC, it is regulated that "*States Parties shall afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offenses covered by UNCAC/UNTOC*".

In the term of national law, MLA in criminal matters has been regulated on Vietnamese Law on mutual assistance (Vietnamese LLA 2007) and Criminal Procedure Code 2015, which is a particularly important legal basis for Vietnam to cooperate in criminal legal assistance with other foreign countries (Phước, 2013). According to the Criminal Procedure Code 2015, proceeding-conducting agencies may make and submit requests for MLA at any stage of the legal proceedings (if necessary). In fact, the number of requests of criminal legal assistance sent abroad by Vietnamese government mainly arise during the prosecution case stage and the criminal case investigation stage. (Tú & Bằng, 2021)

Practically, although MLA treaties obtain government-to-government assistance in criminal investigations and prosecutions (Anh, 2023), the practice of MLA in criminal proceedings still has some barriers because Vietnamese laws are not compatible with international treaty to which Vietnam is a member.

2. Compatibility between Vietnamese law and international treaties signed by the government of the Socialist Republic of Vietnam on MLA in criminal matters.

2.1. The scope of MLA in criminal matters.

Regarding the concept of MLA in criminal matters, it is understood as "international cooperation relations between countries regarding to international treaties, the principle of reciprocity and national law, countries support and assist the competent judicial authority of the requested country to conduct the investigation, prosecution and adjudication of criminal cases in the fastest and most effective manner" (Phước, 2013). The scope of MLA in criminal matters is understood as the limited in which competent authorities in different countries carry out one or several activities to assist each other in the settlement of criminal cases involving foreign elements (Công, 2019).

2.1.1. The scope of MLA in criminal matters in national law.

According to Article 17 of Vietnamese LLA 2007, the scope of criminal legal assistance includes: Service of papers, dossiers and documents related to criminal legal assistance; Summons of witnesses and experts and persons who have rights and obligations in the case; Collection and supply of evidence; Criminal prosecution; Exchange of information; Other requests of mutual legal assistance in criminal matters. Currently, the number of requests for MLA in criminal matters tends to increase, especially the number of requests for legal assistance sent to foreign parties by Vietnamese procedure-conducting agencies. The contents of a criminal complaint request are mainly the collection and provision of evidence, the service of documents, the transfer of criminal prosecution, the request for the confiscation of property resulting from the crime, and the request for permission to conduct legal proceedings abroad to participate in MLA activities in Vietnam.

Additionally, Criminal Procedure Code 2015 also regulates provisions of MLA in Article 491, 493, 494, 495, 496, 507, 508. Determining the scope of international cooperation in criminal proceedings, which includes criminal legal assistance, extradition, acquisition, transfer of persons serving time and other international cooperation activities prescribed by Criminal Procedure Code 2015, Vietnamese LLA 2007 and international treaties that Vietnam is member (Article 491). Determining the validity of documents and items acquired via international cooperation in criminal proceedings: Documents and items, which are collected by foreign competent authorities as per the judicial delegation by competent Vietnamese authorities, or documents and items, which foreign competent authorities send to Vietnam for the delegation of criminal prosecution, shall be regarded as evidence (Article 494), the provisions on legal proceedings taken by competent Vietnamese individuals in foreign countries and by foreign competent nationals in Vietnam (Article 495), the provisions on overseas presence of witness testifiers, expert witnesses and persons serving time in Vietnam and vice versa (Article 496).

2.1.2. The scope of MLA in criminal matters in multilateral treaties which are Vietnam's member – Evaluate on the compatibility with Vietnamese law

Among the sources of law governing international MLA, it can be affirmed that international treaties are the most important legal basis. As the ASEAN members, Vietnam and other ASEAN's countries have signed several bilateral MLA treaties with both regional and extra-regional governments. By signing international conventions and MLA treaties are one of steps to demonstrate the government's willingness in fighting against transnational crime. The ASEAN MLAT in Criminal Matters, one of the principal regional treaties, relates to most of the aims of mutual assistance in criminal case prevention, investigation, and prosecution. (Nguyen, 2012). According to Clause 2 Article 1 of the ASEAN MLAT, this article includes ten specific contents and one technical content, which are: Taking of evidence or obtaining voluntary statements from persons; Making arrangements for persons to give evidence or to assist in criminal matters; Effecting service of judicial documents; Executing searches and seizures; Examining objects and sites; Providing original or certified copies of relevant documents, records and items of evidence; Identifying or tracing property derived from the commission of an offense and instrumentalities of crime; The restraint of dealings in property or the freezing of property derived from the commission of an offense that may be recovered, forfeited or confiscated. The recovery, forfeiture or confiscation of property derived from the commission of an offense; Locating and identifying witnesses and suspects.

Compared to the Vietnamese LLA 2007, the scope of criminal legal assistance of the ASEAN MLAT is wider (Tú H. T., 2021). Therefore, it has a significant impact on the effectiveness of cooperation between ASEAN countries in criminal proceedings for the fight against transnational crime and handling criminal cases. To be illustrated, there were some cases when Vietnam received requests for MLA from foreign

countries related to issues such as examining objects and sites, executing searches and seizures, however, Vietnamese law did not have clear regulations, leading to the interruption of the implementation of the MLA request, affecting the settlement of the case by the requesting party. Many cases must apply the principle of “reciprocity” to solve (Tú H. T., 2021). Compared to ASEAN MLAT, one of some limitations of Vietnamese LLA is the absence and inadequacy of asset confiscation legislation (Nguyen, 2012), which prevents the implementation of “prevention measures” and foreign confiscation requests. To be illustrated, when an ASEAN’s state asks for the legal assistance of the identification, tracing, freezing or seizure of any asset for the purpose of eventual confiscation – known as “preventive measures” and confiscating criminal proceeds from foreign states. (Nguyen, 2012). Therefore, the cooperation between ASEAN’s States and Vietnam was ineffective in applying preventive measures and confiscation measures to the proceeds and criminal tools will inevitably hinder the criminal case. Particularly, ineffective cooperation in preventive measures can lead to the amount of illicit proceeds being unidentified, its origin and its sources. Lack of mutual assistance in freezing or seizing and confiscating illicit funds can facilitate money trading and other money manipulation. (Nguyen, 2012). In practical, lots of requests of MLA from foreign countries to Vietnamese authorities for application of measures to seize, freeze and distraint assets that are determined to have originated from criminal acts abroad, however, these requests have been faced to problems due to the limitation of Article 17 of Vietnamese LLA 2007 on the scope of MLA in criminal matters (Duong, 2020). Besides, there are also differences between the central authorities regarding MLA in criminal matters of state member according to ASEAN MLAT, which led to a lack of connectedness between central authorities’ state member. In several cases, ASEAN countries still asked Vietnam to send a request for MLA in criminal matters through diplomatic channels, creating procedures and prolonging the time required (Duong, 2020).

Based on the current regulations on the scope of MLA in criminal matters within the ASEAN framework, the member states will designate a central authority and these agencies will communicate directly with each other in legal assistance activities or through diplomatic channels (Article 4 of ASEAN MLAT).

2.1.3. The scope of MLA in criminal matters in bilateral treaties which are Vietnam’s member – Evaluate on the compatibility with Vietnamese law and bilateral treaties

Bilateral agreements between countries are the most common types of international treaties in the field of MLA in general and MLA in criminal matters in particular. It can be said that the successful negotiation and signing of the bilateral treaties contribute to the completion of the legal framework to improve the effectiveness of cooperation in crime prevention with other countries, protect the legitimate interests of overseas Vietnamese and contribute to cooperate relations between our country and countries around the world. Currently, Vietnam has signed 27 MLA treaties with other countries and is continuing to negotiate and sign other treaties with other countries.

According to Report on status of implementation of criminal legal assistance activities in 2018 of Department of International Cooperation and MLA in Criminal Matters - People’s Supreme Procuracy of Viet Nam, through MLA in criminal matters, the People’s Supreme Procuracy exercised MLA authority with other countries and achieved number of significant cases as follows: (i) Organized an inter-sectoral delegation of the People’s Supreme Procuracy, Son La Provincial Police to Laos to coordinate in implementing the request for transfer of criminal prosecution for the case of 04 Vietnamese citizens who fled abroad to oppose the government according to the criminal law of Vietnam; (ii) Coordinated with the Investigation Security Agency of the Ministry of Public Security to set up an inter-sectoral task force to go

to Laos to carry out the request for MLA in criminal matters for the case “Fabricating an organization’s seal or documents and use thereof; Abuse of trust to appropriate property”; (iii) Organized an inter-agency meeting of the People’s Supreme Procuracy and Hai Phong City Police to solve the “Murder” case proposed by the United Kingdom to support the implementation of MLA in criminal matters in Hai Phong; (iv) Coordinated with the Office of the Investigative Police Agency of the Ministry of Public Security and the police of Binh Thuan Province in taking testimonies of some witnesses in Vietnam via videoconference at the criminal trial in Malaysia; Especially, (v) One of the most significant accomplishments in MLA in criminal matters between Vietnam and Southeast Asian countries was noticed with Singapore in 2021. The Vietnamese Supreme People's Procuracy cooperated with the Attorney-General of Singapore to request mutual legal assistance on asset recovery for the government of Vietnam in the Phan Sao Nam gaming case (Vinashinlines case). The Supreme People’s Procuracy successfully retrieved assets approximately \$2.7 million in Singapore in the gambling case back to Vietnam for the first time since the implementation of MLA in criminal matters (Anh, 2023).

However, in the practical application of MLA activities, it is shown that the scope of MLA in criminal matters under the Vietnamese LLA is more limited than the scope of MLA in criminal matters under the bilateral MLA treaties with that Vietnam has signed/acceded. Additionally, there are some incompatibilities with not only Vietnamese laws but also bilateral treaties. To be illustrated, the competent authorities processing MLA in criminal matters play an important position to request and/or respond to MLA’s requests to/from other countries (Anh, 2023). According to Clause 2, Article 493 of the Criminal Procedure Code 2015, the Supreme People’s Procuracy shall be the central governmental authority of the Socialist Republic of Vietnam, which is responsible for judicial assistance in criminal matters and other international cooperation activities. However, based on the content of many bilateral MLA treaties civil and criminal matters that Vietnam has signed, the central authority of Vietnam is both the People’s Supreme Procuracy and Ministry of Justice. The provision of Vietnamese’s central authority in some MLA treaties in criminal and civil matters has not been separated that the Ministry of Justice for civil matters, the Supreme People’s Procuracy for criminal matters and extradition, such as Treaty on MLA in civil and criminal matters between China and the Socialist Republic of Viet Nam in 1998, Treaty on MLA in civil and criminal matters between Russia and Viet Nam in 1998, Treaty on MLA in civil and criminal matters between Mongolia and Viet Nam in 2000, Treaty on MLA in civil and criminal matters between Belarus and Viet Nam in 2000. Therefore, this causes certain difficulties in the implementation of MLA in criminal matters.

There are some differences in scope of MLA in criminal matters under Vietnamese Law on mutual legal assistance 2007 compared to Bilateral Treaties that Vietnam has signed/ acceded to, such as:

- i. Treaty on the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Socialist Republic of Vietnam in 2009.

The treaty regulates the scope of MLA in criminal matters is wider than Article 17 of Vietnamese LLA, such as: taking the testimony or statements of persons including by videoconference or television (point a); locating or identifying persons where required as part of a wider request for evidence (point d); identifying, tracing, restraining, seizing, confiscating and disposal of proceeds of crime and assistance in related proceedings (point g); sharing of assets (point i). In the absence of such a treaty, the judgments of foreign courts are not enforceable against assets in Vietnam. Any proceeding or action for relief in Vietnam (such as enforcement against a specific asset) would need to be independently undertaken in Vietnam – for example: by seeking contractual remedies or a civil injunction (Harrison, Marsden, Dzakupasu, Nguyen, & Brown, 2022).

- ii. Treaty on MLA in civil and criminal matters between People's Republic of China and the Socialist Republic of Viet Nam in 1998.

Beside the regulation on serving of papers, dossiers, and documents (Article 22) as Vietnamese law, according to Article 23, 24, 26 of this treaty, Treaty between People's Republic of China and the Socialist Republic of Viet Nam also has the regulation on notice of Court's Judgment, perform procedural acts related to the investigation and collection of evidence such as taking testimonies of witnesses, victims, and the accused, conducting expert examination, judicial examination and conducting other acts. Especially on the provisions of confiscation measures, the requested state shall transfer to the requesting party money and property acquired by crime in the territory of the requesting State, found in the territory of the requested party.

- iii. Treaty on MLA in criminal matters between the Socialist Republic of Viet Nam and Australia in 2017.

Beside the regulation on serving of papers, dossiers, and documents (Article 22) as Vietnamese law, the treaty between People's Republic of China and the Socialist Republic of Viet Nam also has the regulation on notice of Court's Judgment, perform procedural acts related to the investigation and collection of evidence such as taking testimonies of witnesses, victims, and the accused, conducting expert examination, judicial examination and conducting other acts according to Article 23, 24, 26. Especially on the provisions of confiscation measures, the requested state shall transfer to the requesting party money and property acquired by crime in the territory of the requesting State, found in the territory of the requested party. It is noted that this treaty does not include extradition, the execution of criminal judgments or the transfer of prisoners (Clause 4 Article 1). Importantly, there is lots of safeguards and human rights protections in the Treaty, including the ability to refuse to provide assistance in cases where there is a risk that the death penalty may be imposed or carried out, the request has been made for the purpose of prosecuting someone on discriminatory grounds, or where double jeopardy or dual criminality considerations apply.

- iv. Treaty between the Socialist Republic of Vietnam and the Republic of France concerning MLA in Criminal Matters in 2016

According to Clause 2 Article 1 of MLA treaty between France and Vietnam, the treaty applies measures to tracing, distrain, blockade, seize or confiscate the property acquired by the crime and instruments of crime (point f); Locating and identifying places (point h), requests for search (point i).

- v. Treaty between Japan and the Socialist Republic of Vietnam on MLA in Criminal Matters in 2022

According to Clause 2 Article 1 of MLA treaty between Japan and Vietnam, the scope of legal assistance has some differences, which is comprised: the right to obtain items, including through the execution of search and seizure (point 2); right of proceedings related to confiscation and immobilization of proceeds or instrumentalities of criminal offenses. Compared to Vietnamese Law, the Criminal Procedure Code of Japan stipulated that in case there is a multilateral or bilateral international treaty signed between Japan and other countries on MLA, the provisions of treaties shall be applied on the principle of direct application without incorporating treaties into Japanese law (Ly, 2018).

In practice, different MLA treaties between countries and Vietnam may use different terms to describe the same legal concepts. To be illustrated, in the concept of confiscation measures, some countries use the term "confiscation" whereas other treaties use the term "forfeiture" or describe the same procedure some countries use the term "blockade" (such as Treaty between France and Vietnam), while others use the term "freeze" (such as ASEAN MLAT).

2.2. Refusal of MLA in criminal matters

In order to ensure the implementation of the principle of respect for independence, sovereignty and territorial integrity, countries all provide for cases of refusal to perform requests for MLA in criminal matters (Hùng, 2015). Refusal to perform a request for MLA means that a procedure-conducting competent authority is requested to provide assistance, but the request fails to perform the procedural acts if the content of the request affects the interests of the requested State (Đại học Luật TP.HCM, 2015).

2.2.1. The conditions for refusal or postponement to implementation of the MLA in criminal matters' request based on national law.

At present, Vietnamese LLA 2007 has stipulated details about the cases of refusal of MLA in criminal matters. According to the provisions of Clause 1 Article 21 of the Vietnamese Law on MLA in 2007, the Vietnamese competent authority has the right to refuse the request for criminal legal assistance in one of the following circumstances:

- i. It is inconsistent with the obligations of Vietnam under the international treaties to which Vietnam is a member and the provisions of Vietnamese law (point a).
- ii. The execution of the request may jeopardy the national sovereignty or national security (point b).
- iii. The request is for prosecution of a person for criminal conduct of which that person has been convicted, acquitted, or granted a general or special reprieve in Viet Nam (point c).
- iv. The request relates to criminal conduct for which the statute of limitations for the prescriptive period for criminal prosecution has elapsed in accordance with the provisions of the Vietnamese Criminal Code (point d).
- v. The request relates to a violation of law which does not constitute a criminal offense under the Vietnamese Criminal Code (the principle of double criminality) (point e).

2.2.2. The conditions for refusal or postponement to implementation of the MLA in criminal matters' request based on bilateral treaties and multilateral treaties - Evaluate on the compatibility with Vietnamese law.

Based on the cases of refusal of mutual assistance under the provisions of the Vietnamese LLA 2007, the bilateral and multilateral treaties that Vietnam has signed with many countries also provides for refusal conditions which *shall be refused* by requested party, such as:

Firstly, according to Article 4 of the treaty between the government of the United Kingdom of Great Britain and Northern Ireland and Vietnam, the central authority of Requested party may refuse assistance if “*the request relates to an offense that is regarded by the Requested Party as a military offense*” or “*the request relates to criminal proceedings which are politically motivated.*”

Secondly, when the requested party has well-founded reason to suppose that the request for legal assistance is made to prosecute or punish a person by reasons of person's race, sexual orientation, religion, nationality, ethnic, origin or political opinions, or due to implementing the request of mutual assistance, the performance will make the person biased for such above reasons, according to Treaty between Vietnam and Australia and Treaty between Vietnam and Japan.

Thirdly, when the requesting country requests to seek restraint, forfeiture, or confiscations of the proceeds of crime or seizure of property are in related to acts and activities that cannot serve as a basis for such restraint, forfeiture, confiscations, or seizure in the requested country (According to Treaty between Republic of India and the Socialist Republic of Vietnam).

Fourthly, according to article 3 of ASEAN MLAT, the requesting party does not undertake that it will be able to comply with a future criminal assistance requests of a similar nature by the requested party; or the requesting party fails to undertake that the requested item will not be used for any other purpose other than the criminal matters stated in the request and the requested party has not consented to waive such undertaking.

In addition, the Treaties that Vietnam has signed with other countries also stipulate refusal conditions that *may be refused*, such as:

Firstly, when the requesting country requests to seek restraint, forfeiture, or confiscations of the proceeds of crime or seizure of property are in related to acts and activities that cannot serve as a basis for such restraint, forfeiture, confiscations, or seizure in the requested country (According to Treaty between Republic of India and the Socialist Republic of Vietnam).

Secondly, ASEAN MLAT provides that the requested party may refuse to provide assistance if the implementation of the assistance would create an undue financial burden on the resources of the requested party (Hùng, 2015).

Most of the bilateral or multilateral MLA treaties that Vietnam has signed or acceded divided clearly into two cases, the “compulsory” of refusal of mutual legal assistance’s request and “possible” of refusal of mutual legal assistance’s request. To be illustrated, “compulsory” cases of mutual legal assistance in criminal matters shall be refused are specified in Article 21 of Vietnamese LLA 2007, however, the international treaties also stipulate some “possible” cases may be refused by requested party if such assistance activities are detrimental to national interests, human rights, and citizens’ rights.

Therefore, these regulations are not completely consistent with the provisions of the Vietnamese LLA 2007. In case of conflict of laws, according to article 6 of Vietnamese law on treaties 2016: “*in case where a legal document and a treaty to which the Socialist Republic of Vietnam is a party contains different provisions on the same matter, the provisions of the treaty shall prevail, except the Constitution*”. Therefore, when requested country receives a request for mutual legal assistance, although such request is prescribed by Vietnamese law in cases of compulsory refusal to perform, it is not regulated whether it is in the case of refusal assistance or not according to the provisions of a bilateral or multilateral international treaty that Vietnam has signed or acceded, therefore, the Vietnamese central authority does not have a right to refuse. At the same time, the determination of a request for criminal assistance as “compulsory” or “possible” also prioritizes the application of provisions in the bilateral and multilateral MLA treaties that Vietnam has signed or acceded.

In the other hands, according to the provision of Point a, Clause 1, Article 21 of Vietnamese LLA 2007, the request for legal assistance in criminal matters shall be refused when “*It is not in conformity with the obligations of Vietnam under the international treaties to which Vietnam is a party and Vietnamese laws*”. This provision clearly shows Vietnam’s responsibility towards international commitments. However, it has been stipulated that it is an inappropriate content that the cases of requesting assistance shall also be refused when it is not in accordance with the provisions of Vietnamese law. Obviously, the definition of “*the provisions of Vietnamese law*” is very broad, leading to the risk that refusal cases of mutual legal assistance shall increase. (Công, 2019)

3. Recommendations for Vietnamese Law on legal assistance 2007

From the above analyses, there are a number of recommendations for improving incompatibility on the scope and the conditions of refusal MLA in criminal between Vietnamese LLA 2007 and multilateral/bilateral treaties that Vietnam has signed and acceded to as follows:

The first recommendation: In the current international integration, improving the effectiveness of international cooperation in the fight against crime through MLA is an urgent need. Therefore, it is imperative to comprehensively amend the current Vietnamese LLA 2007 in the direction of separating it into separate laws governing different matters of MLA such as civil matters, criminal matters. Separation into separate laws governing different matters of MLA activities shall ensure more specific and complete regulation of MLA activities in each matter. The development of separate laws on MLA in each matter shall better ensure the in-depth, complete, and concretized regulation of multilateral/bilateral treaties that Vietnam has signed and acceded to.

The second recommendation: In general, in the Vietnamese LLA 2007, the scope of criminal legal assistance is basically not compatible with the provisions of international treaties to which Vietnam is a member. Simultaneously, the scope of Vietnam's MLA in criminal matters is quite narrow compared to commitments in multilateral and bilateral treaties which Vietnam has signed. As the provision in Clause 6, Article 17 of Vietnamese LLA, the scope of criminal legal assistance also includes "*other requests of mutual legal assistance in criminal matters*" is a general provision. This provision has advantages and limitations. The advantage of this regulation will satisfactorily address Vietnam's commitments to relevant countries. Vietnam fully has grounds to explain its cooperation obligations. However, as analyzed above, this is also a regulation that reveals many limitations, especially in the process of implementing international cooperation contents on MLA.

It is recommended to supplement the scope of MLA in criminal matters (article 17 of Vietnamese LLA 2017), broaden the scope of MLA on the principle that states fully cooperate as much as possible, provide each other with the widest possible range of MLA measures in investigation, prosecution and subsequent criminal proceedings. Accordingly, it is required to supplement a number of mutual legal assistance activities in conformity with current international treaties as follows: (i) regulate MLA activities in the application of preventive measures of tracing, distrain, blockade, seize or confiscate the property acquired by the crime and instruments of crime; (ii) allow proceeding-conducting persons of the requesting party to participate in certain activities in the course of providing MLA in the requested party; (iv) take testimonies via videoconference; (iii) arrange for persons of the requested party to come to the requesting party to assist in investigations or provide evidence; (v) collaboration investigation, cooperation investigation. These are MLA activities specified in bilateral and multilateral international treaties in criminal legal assistance that Vietnam has signed and acceded to, has arisen in practice yet.

The third recommendation: It is necessary to implement provisions on cases of refusal of MLA in criminal matters. In addition to the "compulsory" provisions, the Vietnamese LLA 2007 also needs to add conditions that "possible" refuse the MLA's request. More specific, it is necessary to add more conditions for "compulsory" refusal and "possible" refusal to provide mutual legal assistance in criminal matters relating to human rights as international treaties which Vietnam has signed (Phước, 2013) and supplement the provisions of the Vietnamese LLA 2007 on conditions of refusal to provide MLA in criminal matters in "an open direction", which should be additional provisions "*and other cases according to the provisions of law, provisions of international treaties to which Vietnam has signed or acceded*".

4. Conclusion

Generally, whereas multilateral/ bilateral treaties on MLA in criminal matters between Vietnam and other countries have been achieved significant results on the cooperation and responsibility among each country, the implementation of MLA in criminal matters still faces some obstacles, mainly due of the compatibility on the scope of MLA in criminal matters and the conditions of refusal MLA in criminal

matters between Vietnamese law and international treaties which Vietnam has signed. Therefore, it is necessary to supplement Vietnamese LLA 2007 for more completeness.

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