THE INFLUENCES OF THE MILITARY LEGAL SYSTEM ON THE COMBAT CAPACITY OF THE ARMY

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Abstract: *The fighting capacity of the armed forces - a fundament social value of the state that has as its judicial object the social connections created around this value.*
What are the determining operational elements of combat capacity? What is the relationship between discipline and combat capacity and how are the determinations of discipline manifested in the process of preparation for battle? What are the legal determinations of the military discipline and what is the historical course of the legal evolution of the military discipline? What are the ways in which to ensure and develop the military discipline in the Romanian Army?

Keywords: combat capacity, legal system, discipline.

1. Introduction

The military legal systems are essential to the organization and efficiency of the military institutions, especially the modern ones, when the combatant executes the mission being at the determining meeting of a complex of factors inevitable to his condition: humanitarian, legal, judicial, of the legislation of his own country, but also of international, informational, high-tech legislation, etc. .

Without exception, all these national military codes, by which the legal philosophy regarding the affirmation of the military condition is exposed, have in common the fact that they contain both norms of material law - by incriminating the deviant behavior, as well as those of a procedural nature, applying to the military - there are rules other than civilians.

2. The evolution of the military legal system

From the perspective of the historical evolution of the military legal system, in the romanian paradigm, it is more than relevant that, efficiently and productively institutionally, the Military Justice Code, from 1873, with its numerous subsequent amendments and completions, has directed the organization and functioning of the romanian military justice for 64 years, until May 20, 1937, when the new Code of Military Justice was adopted.

The evolution of the military legal system exposes us that the use of the old military legislation for almost seven decades has made it possible to observe the necessity of realizing new instruments to discourage the antisocial behavior, being incriminated new facts, which had been omitted during the first legislations or which had arisen as a result of modern evolution of society, in its structure. [1]

In 1948, the amendments made to the Military Code, it can be appreciated that these interventions were made especially in the structures regarding the organization of military justice, regarding the procedures applicable to the material criminal law norms, with relatively few such operations being performed, and those made were mainly limited to changes in the limits of the applicable penalties, without incriminating new behaviors harmful to the well-being of the military organisation.

The military legal institutions or those with a premilitary character (in the inevitable sense of the stage of their early development), evolved with the evolution of the society, as the state needed an organized military force, which defended its independence, sovereignty, territoriality.

Legislations regulating sanctioning systems, belonging to some of the states that belonged to the former Warsaw Treaty, have as their main idea the renunciation of the system of military justice codes and the application of a penal code applicable to all citizens of the respective state, the specific incriminations of the combatants constituting only chapters of the respective common codes. The legal systems of the former socialist states have evolved according to the exigencies of the times, but they have kept or continue to maintain, at times, the imprint of the legal construction of the totalitarian society.

The internationalization of military confrontations, in which more and more states were involved, culminating in the two world conflagrations, required the establishment of a certain legal order regarding the conduct of wars, enshrined in the affirmation of international legislation in the field, as well as of international humanitarian law. The reporting assumed in international law has distinctly enshrined the international dimension of military justice;

The evolution of the Romanian military legal system knows a modern statement, especially after the establishment, in 1859, of the modern romanian state - Romania, permanently, unconditionally aligning with the spirit and letter of international law. [2]

3. Relationship between discipline and combat capacity

The fighting capacity of the armed forces is a fundamental social value of the state, which has as common legal object the social relations created around this value, endangered or injured by criminal acts, but also components that, in their turn, fulfill the axiological condition imposed by nature social value, such as: the country's armed forces viewed in their physical existence and in their fighting power, military order and discipline, the brave behavior of the military on the battlefield, the moral unity of the population and its spirit of resistance, the loyal and devoted attitude of citizens regarding the obligations regarding the defense of the country. [3]

The military discipline is a result of carrying out a whole and extremely complex instructional-educational process and of using a system of rewards and sanctions, it cannot be maintained and strengthened without the existence of a quality management practiced by the commander and his team, in promoting a set of principles, functions, methods and techniques used, all for the purpose of carrying out combat missions with minimal losses of human and material resources. [4]

In any hierarchy of administrative type, especially in one specific to the military hierarchy, we have to deal with, at each level of organization, both command rights and subordination duties, which means that the disciplinary responsibility is it applies to all those involved in the adoption and enforcement of military decisions.

The revolution in military affairs has not changed the essence of the disciplinary responsibility of the armed forces, with all its technical, managerial, informational and operational implications, as neither the development of the multinational operations system has affected the disciplinary conditions for the accomplishment of the collective defense missions, military alliances and coalitions. conferring special prerogative international organizations on the management of control over the combined armed forces.

The military discipline is, "state" and "process" - "disciplinary state", in the sense that it can be analyzed at any time of the existence of an army and throughout the military actions, the regulations forcing commanders from all levels of the hierarchy to investigate periodically "the state and the disciplinary practice"; "process", because it is the end product of a dynamic succession of states, of different natures, all subordinate to its social, institutional and, not least, legal conditions, the "disciplinary state" being at a general level of high efficiency and proven organizational, only if it is in relation to the framed military values or can it be improved when necessary. [5]

In his vision, the strengthening of military order and discipline is in a certain relation of continuous improvement of the management of military structures, in the sense that, in relation to the functions of management - forecasting, organizing, coordinating, training and controlling, any commander , irrespective of the hierarchical level from which it exercises its responsibilities, it must progressively streamline the managerial component of its organizational role.

In the realization of the current normative framework in the field of military discipline, it is appreciated that the Regulation of the military discipline is the operational normative document that clearly defines the guiding elements of the military discipline, the main directions for the achievement of the military discipline, as well as the way of granting the rewards, applying the disciplinary sanctions. and their execution. As a document with a normative-legal character regarding the institutional status of the military discipline, the Regulation, through the philosophy that legally maintains its normative value, states and specifies: the main directions of action for the implementation of the military discipline; factors that may affect the organizational efficiency of the military discipline; the mechanisms with a determining generating role in developing and maintaining the cohesion of the military organization.

4. Ways to develop military discipline

The laborious but essential treatment of the general management of the organizational systems, allowed the adequate understanding of the military environment, in the legal expression of its constitutional legitimacy. In epistemological succession, we have highlighted the evolution of the organic knowledge of management, in the development of its scientific approaches, dedicated, in particular, in conceptual remodeling of the definition, meaning in which we mention:

L. Kazmier specified that the functions of management: planning, organizing, directing and controlling**;** [6]

A more particular approach, by its conceptual extension, belongs to Professor Constantin Pintilie who attributed to the management the following functions: forecasting, organizing, motivating or ordering, coordinating, controlling, evaluating, maintaining and developing a climate of competition, cooperation and creativity;

Peter Drucker defines the five fundamental tasks of the manager, respectively: [7]

- A manager must define their goals and their nature;
- A manager organizes, that is, analyzes the activities, the necessary decisions, groups the work, divides it into activities and possible tasks to lead;
- A manager motivates and communicates;
- A manager exercises the function of control-evaluation of the management himself;
- A manager trains people and trains himself.

In conclusion, in view of the complementary assumption of the definitions invoked, I say that, especially in the military field, management applies, according to some authors, the following functions:: forecasting, organization, command (decision, training), coordination and control-evaluation. [8]

Regarding the particularities of the legal management in the military system, the theoretical concern is significant. We appreciated that the legal management represents the

current management of the administrative-judicial activity, in order to use human resources efficiently and to ensure a balanced dimensioning of the volume of activity reported to each worker. Starting from this acceptance, we are, in a certain way, in a certain consensus with the specialized literature that denotes the functions of legal management, namely: the function of forecasting (planning, forecasting), the function of organization, coordination, training and evaluation function (control-regulation). These functions are interconditioned with each other, as in all areas of human activity, and depending on how they are used depends on achieving the best judicial activity.

In order to understand the penal sanctioning system in maintaining the military discipline, to which we have given ample space, we note some details regarding the fundamental institutions of the criminal law system, as well as the fundamental principles of the criminal process.

Criminal liability is the fundamental legal institution of criminal law which, together with the institution of crime and the institution of criminal sanctions, forms the pillars of any system of criminal law, applicable both to the Romanian military. [9]

Between the three fundamental institutions there is a close interdependence, as the crime, as a dangerous act, prohibited by the criminal law, attracts, through its perpetration, criminal liability, the crime being the sole theme of criminal liability, and criminal liability without sanction (punishment) devoid of purpose. The correlation can also be inverse, since the application of the punishment can only be justified by the existence of the criminal liability of the perpetrator, and the criminal liability can be based only on the commission of an offense.

The principles of criminal liability, applicable to all the recipients of the law, including the Romanian military, are: the principle of the legality of criminal responsibility; crime is the sole basis of criminal liability; the principle of humanism; the principle of personal criminal liability; the principle of the uniqueness of criminal liability; the principle of the inevitability of criminal liability; the principle of individualizing criminal liability; the principle of prescriptibility of criminal liability. [10]

The offense, as a fundamental institution of criminal law, is defined by the legislator as "the act provided by the criminal law, committed with guilt, unjustified and imputable to the person who committed it."highlighting the essential, obligatory and cumulative traits that they must fulfill and which distinguish it from other facts (contravention, disciplinary deviations). The Romanian criminal legislator defines the general notion of crime, highlighting its human, material, social, moral-political and legal aspects, giving the general concept of crime a realistic, scientific character. [11]

The penalties of criminal law, the basic institution of the criminal law along with crime and criminal liability, are the consequence of the non-observance of the provision stipulated in a legal norm. The regulation of the sanctions of criminal law has a special importance for the whole criminal regulation, registering itself as an essential aspect of the fundamental principle of legality, contributing to the realization of the order of law both by compliance and by the constraint exerted towards those who have disregarded the provisions of the criminal norms. , applicable even to the Romanian military. Specific to the Romanian military is the fact that penalties are applicable, as criminal sanctions and, to a lesser extent, and security measures,as criminal law sanctions. . The principles of criminal sanctions, dealt with in the legal literature, applicable to the military are: the principle of the legality of criminal law sanctions; the principle of establishing sanctions compatible with the legal and moral conscience of the company; the principle of establishing revocable sanctions; the principle of individualizing the sanctions of criminal law; the principle of the personality of the sanctions of criminal law. [12]

The criminal acts capable of endangering the social relations regarding the defense capacity of the country, as this wish of the Romanian state is well known, are considered

serious acts and have been included by the legislator in a distinct category of crimes, under the name "Offenses against the fighting capacity of the armed forces" - regulated in Title XI of the Romanian Criminal Code. The chapter contains an exhaustive analysis on the content of the norms of incrimination of the facts against the fighting capacity of the armed forces, being highlighted, with meticulousness, the changes promoted in the new Penal Code, interpreted properly to the legal sciences

5. Conclusions

The military legal system exerts a complex, beneficial, inevitable and necessary determination on the military institution, implicitly on its combat capacity being a basic pillar of the development and the good functioning of the military institution.

REFERENCES

[1] https://www.mapn.ro/organizare/dimil/index.php.

[2] https://www.defense.ro/evolutie-smap.

[3] T.Toader, *Drept penal român. Partea Specială* - Editura Hamangiu, Bucureşti, 2009, pag. 486.

[4] Regulamentul disciplinei militare, Cap. I, Secţiunea 1, Art.4.

[5] Le Blond, Guillaume, *Military discipline*, , University of Michigan Library, 2008, pp. 1030-1031 .

[6] L. Kazmier, *Principles of Management*, Oxford University Press, 1969, p. 185.

[7] Peter Druckaer, *Management: Tasks, Responsibilities, Practices* (New York: Harper & Row), 1973, pp.87-103.

[8] Costică Voicu and Florin Sandu, *Management organizaţional în domeniul ordinii publice*, vol.I, Editura M.A.I. , Bucureşti, 2001.

[9] I. Oancea, *Explicaţii teoretice ale codului penal român,*.vol.I, Editura Academiei, Bucureşti, 1969, p. 99.

[10] C. Bulai, *Drept penal*, *vol.III, „Răspunderea penală, Sancţiunile în dreptul penal*", TUB, 1982, p. 6.

[11] V. Dongoroz, *Sinteze asupra noului cod penal*, în S.C.J., nr. 1 din 1969, p.15

[12] C. Bulai, *Drept penal*, vol.II, Casa de editură și presă ȘANSA S.R.L., București, 1992, p. 138.

BIBLIOGRAPHY

C. Bulai, *Drept penal vol.II,* Casa de editură și presă ȘANSA S.R.L., București, 1992.

C. Bulai, *Drept penal vol.III, „Răspunderea penală, Sancţiunile în dreptul penal*", TUB, 1982.

Costică Voicu and Florin Sandu, *Management organizaţional în domeniul ordinii publice*, vol.I, Editura M.A.I. , Bucureşti, 2001.

I. Oancea, *Explicaţii teoretice ale codului penal român,*.vol.I, Editura Academiei, Bucureşti, 1969.

L. Kazmier, *Principles of Management*, Oxford University Press, 1969.

Le Blond, Guillaume, *Military discipline*, , University of Michigan Library, 2008.

Peter Druckaer, *Management: Tasks, Responsibilities, Practices* (New York: Harper & Row), 1973.

Regulamentul disciplinei militare, Cap. I, Secţiunea 1, Art.4

T. Toader, *Drept penal român. Partea Specială* - Editura Hamangiu, Bucureşti, 2009.

V. Dongoroz, *Sinteze asupra noului cod penal*, în S.C.J., nr. 1 din 1969.

https://www.defense.ro/evolutie-smap.

https://www.mapn.ro/organizare/dimil/index.php.

ADMINISTRATIVE CONTROL IN THE ACTIVITY OF MILITARY ADMINISTRATION

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Abstract: *Public administration can be defined as that category of state authorities constituted under the same fundamental function executive activity that they carry out and through which, specifically, the public power is realised. In the terms of modern democracy, there must be forces in the state that control the functioning of this power. In order not to become an uncontrollable power, there must be other forces in the state that counterbalance the power of public administration, in other ideas, in any democratic contry there must be control over it. Given the principle of the separation of powers in the state, this control cannot be executed by a single institution, or a single power, because the existence of only two powers leads to the maintenance or evolution of a conflictual state.*

Keywords: Public administration, Democracy, Control, Military

1. Control of the activity of the public administration

1.1. Getting started

Public administration can be defined as that category of state authorities constituted under the same fundamental function of executive activity that they perform and through which, specifically, public power is realized. The executive activity is defined as representing that fundamental function of activity that specifically realizes the state power and which consists of the implementation or implementation of the provisions contained in laws and other legal acts issued under them, performed, as a rule, by a distinct category of public authorities, namely public administration, mainly.[1]

The public administration, viewed as a whole, is shaped at the state level as a system of bodies structured according to competence, material and territorial, with its own interests and goals, inseparably related to the executive power and the political processes in this section of state power.

In the terms of modern democracy, there must be forces in the state that control the functioning of this power. In order not to become an uncontrollable power, there must be other forces in the state that counterbalance the power of public administration, in other ideas, in any democratic country there must be control over it. Given the principle of the separation of powers in the state, this control cannot be executed by a single institution or a single power, because the existence of only two powers leads to the maintenance or evolution of a conflictual state.

[1]V. Tabără, *Bazele administraţiei publice*, Sibiu, Editura Academiei Forţelor Terestre „Nicolae Bălcescu", 2011, pp. 8-9.

According to the democratic system, in order to limit the power of the public administration, other state social institutions must act on it, forming a control system.

1.2. Administrative control in the activity of public administration

From the point of view of the organized character and being carried out by a hierarchical system of authorities, the executive activity requires actions of continuous verification of the way it is carried out. On the other hand, the administration can carry out control activities outside it, on the other subjects of law, natural and legal persons, various organizations or bodies.

The administrative control[2] can be defined as the verification carried out by the public administration on itself. From the perspective of the purpose and the objectives of the administrative control, they are to ascertain whether the way of fulfilling the legal attributions is in accordance with the law, and operatively, the control must have an active role, in order to improve the activity and the legislation on which it is based. controlled activity. The purpose of the control is the discovery of the causes that generate the deviations from the legal norms as well as the conditions that favor their occurrence, in order to eliminate them by applying some coercion or sanctioning measures, in case of necessity, in order to avoid future deviations or irregularities[3].

From the perspective of its objectives, the administrative control is appreciated as the most complex form of the control over the activity of the authorities of the public administration, designating, at the same time, the essential component of the activity of general management of the public administration by the Government[4]

Within the administrative control activity, a particular problem is the identification or delimitation of the sphere of the administrative bodies or authorities that have the task of verifying the public administration within it. The mission of these administrative structures, on the control line, consists in confronting the achievements of the administrative authorities with what should have been accomplished by it, verifying whether the structure and activity of the administration are in accordance with the legal norms and the satisfaction of the general interest, respecting the fundamental rights and freedoms of individuals[5]

The issue of administrative control in the field of public administration must be viewed from a double perspective, namely:

1. that of the internal control of the authorities of the autonomous public administration, of legality and of opportunity, in the sense of respecting the local regulations, adopted on the basis of the law, but in relation to the specific interests of the local authorities.

2. that of the external control of the state, through the authorities of the central or territorial public administration, along the lines of ensuring compliance with the law, in the sense that both the organization, but especially the activity of the public administration, does not deviate from the general interests of the state[6].

1.3. Administrative control procedure

The control, regardless of the level at which it is exercised and the objectives pursued, is composed of three distinct steps, but between which connections are established[7]:

- comparison of the situation that must exist, that is, ideal, with the actual situation; - analysis and evaluation of results and deviations;

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[2]A. Iorgovan, *Tratat de drept administrativ, vol.I, editia a II-a*, Bucureşti, Editura Nemira, 1996, p. 373.

[3]I. Alexandru, *Drept administrativ*, Bucureşti, Editura Lumina Lex, 2005, p. 513.

[4]C. C. Manda, *Drept administrativ comparat. Controlul administrativ în spaţiul juridic european*, Bucureşti, Editura Lumina Lex, 2005, p. 121.

[5]M. T. Oroveanu, *Tratat de drept administrativ*, Bucureşti, Universitatea Creştină „Dimitrie Cantemir", 1998, p. 129.

[6]C. C. Manda, *Teoria administraţiei publice*, Bucureşti, Editura C.H. Beck, 2013, p. 184.

[7]V. Tabără, *Dezvoltarea capacităţii administrative*, Bucureşti, Editura C.H. Beck, 2012, p. 290.

- capitalizing on the findings.

The ideal situation is established on the basis of the prescriptions and restrictions of the legislative system, of the decisions and decisions of the management at different levels, of the activity programs, the budgets of incomes and expenses, the scriptural stocks reflected in the accounting. It is the legal basis for control.

The real situation is established on the basis of factual observations on the spot; control inventories; documentary checks; laboratory analyzes; expertise; explanations obtained from those controlled. It is the object of control and its stage.

The essential moment of the control process is the comparison. Any operation or economic-financial activity is investigated in relation to a criterion, with a basis of comparison.

The comparison of control presents specific aspects, depending on the nature of the activities being the controlled economic-financial obligations, the calculation methodology and the accounting system. Compared operations or activities must be homogeneous, calculated and expressed according to a unitary methodology[8].

Based on the results reached after the comparison, one proceeds to the analysis and evaluation of the results or deviations and the delimitation of the factors of influence and the causes, the determination of the consequences and the responsibilities.

Capitalizing on the findings is the final stage of the control process. Depending on the conclusions reached in the previous stages of the control, within this stage a set of measures will be finalized and set in motion that will lead to the influence of the controlled activities and to the self-improvement of the control[9].

2. Administrative control in the activity of military administration

2.1. Military administration, subsystem of public administration

Fundamental activity of the state by which the power is exercised[10], the public administration uses legal, managerial and political processes in order to fulfill the government mandates, in order to ensure the necessary regulations and services for the society[11]. With the multiplication of social needs, the degree of complexity of the administrative structures responsible for meeting these needs also increased and required that the public service become a foundation of the system of public administration[12].

Particularized by its specificity, the national defense is included among the public services of the state[13], fulfilling the necessary conditions of the exitstency of the public services: through them the requirements of the members of the society are satisfied, their establishment is done by acts of authority, their activity is carried out in the realization of the state authority. , having legal personality, and the financial and material resources they use are provided from the state budget[14].

Inseparably linked to the very existence of the state, the national defense service has demonstrated its continuity, adaptability and efficiency over time and has been a major support point for the state building, “the evolution of the administrative organization is related

[8]V. Munteanu, *op. cit., apud* V. Tabără, *op. cit.,* p. 291.

[9]V. Tabără, Finanţele *publice şi controlul financiar în administraţia publică locală,* Editura C.H. Beck, Bucureşti, 2009, p. 159.

[10]I. Santai, *Drept administrativ şi ştiinţa administraţiei,* Sibiu, Editura Alma Mater, 2009, p. 10.

[11]I. Alexandru, *Tratat de administraţie publică,* Bucureşti, Editura Universul Juridic, 2008, p. 75.

[12]E.L. Catană, *Drept administrativ. Partea generală,* Cluj Napoca, Editura Risoprint, 2009, p. 205.

[13]N. Petrescu, *Drept administrativ,* Bucureşti, Editura Hamangiu, 2009, p. 16.

[14]1. Alexandru, *op.cit.,* 319.

to the evolution of the army; the very idea of hierarchy comes from the idea of subordination specific to the military phenomenon[15]. "

Subsystem of the public administration, which performs, during peace time, the concrete execution of the normative acts specific to the military field, the military administration ensures the organization, maintenance, completion and mobilization of the armed forces, as well as the elaboration of the specific rules for the military application of the legislation and the acts. regulations. Also, in situations of crisis or war, it is the military administration that ensures the organization and management by the military authorities of a occupied territory or ensures the fulfillment of specific tasks in exceptional situations, such as the state of siege or war[16].

According to the Constitution, the army is subordinated exclusively to the will of the people and according to the law and the international treaties to which Romania is a party, contributes to the collective defense in the military alliance systems and participates in actions regarding maintaining or restoring peace[17]. The application of the measures and the accomplishment of the specific activities of the defense is ensured by the public authorities of the Romanian state, of which the authorities of the public administration have an essential role. In addition to the Parliament and the President of Romania, representative authorities expressing directly the will of the people, the central and local public administration authorities, through the powers exercised, implement the Constitution and laws and guarantee the existence of an effective national defense system. According to the National Defense Law, the national defense system comprises:

1. leadership
2. the forces for defense
3. the defense resources
4. territorial infrastructure.

2.2. Forms of administrative control in the activity of military administration

The control in the Romanian army is executed on the basis of the following normative framework:

- The Romanian Constitution;
- the legislation that regulates the control at the level of the Romanian society, with applications on the military body;
- legislation and normative acts specific to the field of national defense, regarding the organization, operation and conduct of military activities as a whole;
- the legislation regulating the activities specific to the financial management control, the preventive financial control, the Court of Accounts, the protection of the environment, the protection and safety of the work, the prevention and extinguishing of fires, the health of the work, the civil protection, the transport, etc .;
- regulations, orders, instructions and provisions governing control in the military body.

For the execution of the control in the Romanian Army, the following structures are empowered, by the Constitution and the laws in force[18]:

- the constitutional authorities and the components of the civil society with powers of control over the army;
- the Minister of national defense, through the Control and Inspection Body and / or the other structures directly subordinated to it;
- state secretaries through the subordinate structures;

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[15] *A.* Iorgovan*, Tratat de drept administrativ,* voi. II, Bucureşti, Editura All Beck, 2005, p. 340.

[16] E. Badălan, *Administraţie militară. Note de curs,* Sibiu, Editura Academia Forţelor Terestre, 2004, p.49.

[17] Art. 118, Constituţia României.

[18] Legea nr. 346 din 21 iulie 2006 privind organizarea şi funcţionarea Ministerului Apărării Naţionale

- the chief of the General Staff through the subordinate structures;
- the major states of the categories of forces of the army;
- weapon commands;
- commands of large units and units;
- territorial military commands;
- other structures enabled by the instructions and methodological norms for applying the control concept and those responsible for the specific activity areas. From the perspective of the doctrine of administrative law it consecrates various criteria for classification and forms of administrative control.

2.3. Internal administrative control

Internal administrative control is performed within each public administration body as a component of the management activity, by civil servants with management positions on subordinates. It is carried out permanently, being the most widespread form of control within the administration. In this situation, both the active subject and the passive subject belong to the same administrative authority.

The object of the general control is the entire activity carried out by the authority concerned, related to the normative acts that regulate the organization and functioning, having an exhaustive role. It can be triggered before, at the same time or after the activity subject to the control, ending with a document recording the findings of the checks, the proposals for improving the activity, as well as the possible sanctions that are imposed for the irregularities found.

The general internal control is ensured by the head of the public institution, as an attribute of the management function, whose purpose is to verify the good organization and functioning of the managed structures, to improve the activities carried out by the subordinated personnel, and to improve their own activity.

The specialized internal control is performed by specialized structures or persons, based on special regulations, only in certain fields of activity. This form of control is materialized by issuing a compliance visa based on the legality, opportunity or efficiency of the controlled activity, and its failure to comply must be motivated.

Internal administrative control is exercised in two ways. A first way is self-control, an action that refers to the control of one's own activity and which aims to immediately correct the deviations or to prevent them in the execution operations to be carried out. The second modality refers to the action of internal control exercised by the leaders and aims at the execution of the administrative decisions concerning them.

2.4. External administrative control

The forms of external administrative control are: hierarchical control, administrative guardianship control and administrative-jurisdictional control.

Hierarchical control is performed by the public administration bodies, hierarchically superior to those over which the control is performed. In this case, the right of control also appears as an obligation, which is why it is not expressly provided by law. The activity of control at the level of hierarchy can be carried out both ex officio, and at the notification of the authority concerned or of another subject of law.

Through this form of control, the superior is given a certain power, which gives him the right to approve, modify, suspend or cancel the acts of the subordinate bodies, when there are indications of illegality or when these acts deviate from the main directives that the superior had set.

The administrative guardianship control is exercised by the central public administration bodies over the decentralized administrative authorities in the cases expressly provided by law.

As for the administrative administrative control, it is triggered only at the notice of the interested parties and intervenes only in the cases and under the conditions expressly provided by the law, where the acts or operations that are the subject of such control are regulated. It is a form of control of a contentious nature, resembling the court procedure carried out by the courts. It ends with the issuance of an administrative-jurisdictional act, subject to the remedies provided by law such as the administrative appeal and the judicial control.

BIBLIOGRAPHY

V. Tabără, *Bazele administraţiei publice*, Sibiu, Editura Academiei Forţelor Terestre „Nicolae Bălcescu", 2011, pp. 8-9.

A. Iorgovan, *Tratat de drept administrativ, vol.I, editia a II-a*, Bucureşti, Editura Nemira, 1996, p. 373.

I. Alexandru, *Drept administrativ*, Bucureşti, Editura Lumina Lex, 2005, p. 513.

C. C. Manda, *Drept administrativ comparat. Controlul administrativ în spaţiul juridic european*, Bucureşti, Editura Lumina Lex, 2005, p. 121.

M. T. Oroveanu, *Tratat de drept administrativ*, Bucureşti, Universitatea Creştină „Dimitrie Cantemir", 1998, p. 129.

C. C. Manda, *Teoria administraţiei publice*, Bucureşti, Editura C.H. Beck, 2013, p. 184.

V. Tabără, *Dezvoltarea capacităţii administrative*, Bucureşti, Editura C.H. Beck, 2012, p. 290.

V. Munteanu, *op. cit., apud* V. Tabără, *op. cit.*, p. 291.

V. Tabără, Finanţele *publice şi controlul financiar în administraţia publică locală,* Editura C.H. Beck, Bucureşti, 2009, p. 159.

I. Santai, *Drept administrativ şi ştiinţa administraţiei,* Sibiu, Editura Alma Mater, 2009, p. 10.

E.L. Catană, *Drept administrativ. Partea generală,* Cluj Napoca, Editura Risoprint, 2009, p. 205.

N. Petrescu, *Drept administrativ,* Bucureşti, Editura Hamangiu, 2009, p. 16.

A. Iorgovan, *Tratat de drept administrativ,* voi. II, Bucureşti, Editura All Beck, 2005, p. 340.

E. Badălan, *Administraţie militară. Note de curs,* Sibiu, Editura Academia Forţelor Terestre, 2004, p.49.

Art. 118, Constituţia României.

Legea nr. 346 din 21 iulie 2006 privind organizarea şi funcţionarea Ministerului Apărării Naţionale

THE VIOLATIONS COMMITTED BY MILLITARY FORCES AGAINST THE FIGHTING CAPACITY OF THE ARMED FORCES PROVIDED BY THE CRIMINAL CODE

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Abstract: *In the pages which will follow I will be presenting, in the beginning, few information about the actions taken by government in case of millitary conflict. Going further, there will be presented the situations that are considered millitary infractions like unjustified absence, desertion, breach of instruction, insubordination, hitting the superior or the inferior, leaving the battlefield, unauthorized flight and other actions that are bad for having of powerfull and disciplinated army..*

Keywords: Millitary, infractions, desertion, insubordination.

Even if the compulsory military service with the term military or short term military personnel has been suspended since January 1, 2007, art. 55 paragraph (1) of the Romanian Constitution provides that "citizens have the right and obligation to defend Romania". In this regard, romanian citizens can perform any form of military service voluntarily, if they meet the conditions provided by the legislation in force, regardless of gender. Military service becomes obligatory under the conditions of the law during the state of war, the state of mobilization, as well as during the state of siege. Under the conditions specified above, "the fulfillment of the military service as a military man in a concentrated or mobilized reservist term, becomes mandatory for men between the ages of 20 and 35, who fulfill the criteria for fulfilling the military service."[1]

Facts likely to jeopardize or damage the fighting capacity of the armed forces are highly serious acts, which the legislator has included in a distinct category of offenses in the Criminal Code, in Title XI, Chapter I, "*Offenses committed by the military*".

The special legal object of these crimes consists in the social relations regarding the bodily integrity and the health of the person, the brave behavior of the military on the battlefield, but also the military order and discipline.

The offenses against the fighting capacity of the armed forces are provided with differentiated sanctions in relation to the degree of social danger that each one presents. For those who are particularly serious, the law even provides life imprisonment, but as an alternative to the imprisonment from 15 to 25 years, we speak here of surrender or leaving the battlefield. In such cases, the criminal law stipulates in addition to the main punishment, the prohibition of some rights. Offenses against the fighting capacity of the armed forces that do not have a special gravity are punished with the prison sentence within the limits, which also

vary from one crime to another. In some cases, the law provides fines as an alternative to prison.

"Some of the offenses against the fighting capacity of the armed forces are provided in aggravating forms. The aggravating circumstance most often refers to committing under certain time conditions, such as, for example: during war, during fighting, during mobilization. "[2]

Regarding the procedural aspects, for the majority of offenses against the fighting capacity of the armed forces, the criminal action is initiated ex officio, but for certain offenses it is necessary that the referral be made by the commander of the unit of which the perpetrator is part.

Unjustified absence. The updated form of the penal code regulates in article 413 that "the unjustified absence of any military member from the unit or from the service, which exceeded 4 hours, but not more than 24 hours, during war, during the state of siege or of the state of emergency is a crime".

Over time, this crime has undergone some changes. Analyzing comparatively the provisions of art. 413 The new Penal Code with those of art. 331 para. (3) of the penal code of 1969, it is found that the offense of unjustified absence has a constitutive content similar to that of the previous regulation. The only change made relates to the time when the deed was committed. Thus, when compared to the previous regulation, when it provided for the crime of unjustified absence to be committed during the war, the new regulation specifies that the deed can be committed both during the war, and during the state of siege or state. emergency.[3]

For this crime, the legal object consists in the social relations regarding the military order and discipline.

Regarding the active subject of the crime, as in the previous regulation, it can be committed by the concentrated military or the active military, the active military being the professional military, the military in term, his student the student of the educational institutions of the national defense and security system (except students of high schools and military colleges), his soldier military graduate.

Like any crime, its material element may consist in an action or inaction. Thus, the action is represented by leaving the unit or the service without approval, and the absence must be unjustified. Absence can only be justified if the military member being sent or left on leave, he could not be presented to the unit due to calamities or other circumstances independent of his will.

"The inaction consists in not showing up at his service unit at the expiration of the term for which he was allowed to be absent, being sent or left on leave, on medical leave, etc.".[4]

The competence to carry out the criminal prosecution rests with the military courts, the criminal action being started on the commander's notification.

Desertion. "The desert represents the unjustified absence from the unit or from the service, which exceeds 3 days, of any military". This crime has aggravating circumstances and is punished more harshly when committed by two or more servicemen together, when the perpetrator has a military weapon on it, or when participating in missions outside the national territory. [5]

Assuming a plurality of perpetrators and their simultaneous participation in the commission of the crime, committing this deed by two or more soldiers together will be an aggravating circumstance when all participants, based on a common prior agreement, directly commit the act of deserting (each participant taking part in the desert) to answer as an author of the crime), as well as when the deed is committed under the conditions of concomitant complicity.

When the deed is committed with a military weapon on it, it is punished more severely because it holds a weapon intended for military use, also violating the provisions of Law no. 295/2004 regarding the regime of weapons and ammunition.

A third aggravating element is the commission of the crime of desertion during the mission in which the military participates and which is carried out outside the national territory. Under these conditions, for example, the Criminal Code condemns the offender to imprisonment from 3 to 10 years.

As well as the unmotivated absence, the legal object of the crime of deserting is represented by the social relations regarding the military order and discipline, and the criminal action is brought to the attention of the criminal investigation bodies by the commander of the unit of which the perpetrator is part.

Breach of record. According to article 415 of the New Penal Code, "the violation by the military of the rules of the guard, intervention, escort or security service, constitutes an offense and is punished according to the law. It is also punishable by the breach of the consignment by the sentinel who is in position at the arms depots, ammunition or other explosive materials or in other positions of a special military or state interest". These facts have aggravating circumstances if they are committed during the state of siege, state of emergency or during wartime.[6]

Starting from the definitions of specific terms contained in the Internal Service Regulation - RG2, approved by the Order of the Minister of National Defense no. M.87 / 2008, Annex no. 1, in which the guard is defined as "the totality of the actions through which the security of a military objective is ensured; the guard / control station represents everything entrusted to a security guard, as well as his place, the portion of land in which he fulfills his record; the sentry is the guard in the military, while he is serving in the assigned position; the guard system represents all the elements for surveillance, defense, intervention, together with the relations between them, it turns out that the guard service concerns the organization and execution of a complex of activities meant to ensure the security of the objective ".[7]

The intervention service concerns the organization of an activity that supports, rejects, strengthens, blocks, removes elements, consequences, forces that endanger the security of a military objective.

The accompanying service refers to the activity of escorting, to provide additional protection of a person, of a good / object, of an objective, etc., in order to remove the vulnerability of the protected means.

The security service constitutes all the means, the modalities established for achieving the stated purpose itself, the security of the objective.

The general consignment deals with all the duties of a permanent nature stipulated in the military regulations that belong to the military. The particular consignment concerns the duties of a special character, particular, established verbally or in writing by the chiefs or hierarchical commanders.

Leaving the job or command. The new Penal Code separately regulates leaving the post, service or any place where the military was to be. This offense can be found in the old form of the criminal law in art. 333, para. (2) and (4), entitled "Consignment breach".

For the existence of this crime, it does not matter at what time interval, after taking over the order or the position the leave action took place and how long it lasted.[8]

This offense has two aggravating forms. First of all, like all other crimes committed by the military, it is an aggravating circumstance to leave the command or the permanent service by any military member during the state of siege, the state of emergency or during the war.

The second aggravating circumstance is the danger existing after leaving the order or the permanent service by the military. In these conditions, the legislator appreciates from the point of view of the responsibilities and duties of the service, that in case of leaving the order

or of the permanent service there is an imminent danger due to the character of the activity, this offense must be punished more severely.

The command represents the act of management, coordination, organization of the subordinate military, in order to maintain the unit's capacity for action. The permanence service is organized according to the military regulations, with the purpose of ensuring continuity in leadership, maintaining the fighting capacity, of the unit's action, regardless of the situation.[9]

Insubordination. The criminal code regulates insubordination as a crime, which represents the refusal to execute an order regarding the duties of the service. This offense has aggravating circumstances if it is committed during wartime, during the siege or emergency.

According to RG3 - Regulation of military discipline, the order is a mandatory provision, written or verbal, given by a military authority that must be executed precisely. In order for this crime to exist, the order must be issued by a military authority, so that by military authority is meant commander, hierarchical superior, etc. Also, the active subject of insubordination is represented only by a military man who is in a relationship of subordination to the military authority.[10]

What is noteworthy is that, in comparison with the old regulations, the new form of criminal law has no longer taken as an aggravating variant the crime of insubordination committed by officers, military or non-commissioned officers, military personnel, two or more military personnel together. either in front of the assembled subunits or if the deed has serious consequences.

Analyzing the material element of the crime, it is accomplished by refusing to execute an order regarding the duties of the service.

The refusal can be explicit when the military states in writing or even in writing that they do not execute the order. In the same way, the refusal can be implicit, this resulting from the attitude of the military, which, without expressing itself in a certain way, does not execute the order received. However, refusing not to execute an order is not a crime when, after some hesitation, he finally executes the order. Also, if the order was subsequently withdrawn or was impossible to execute, the deed falls outside the scope of the criminal.

Another aspect is the legality of the refused order. It must have legal character, have legal content and form, be issued by his superior the competent commander and invested by law with the right to give law, otherwise the deed does not constitute a crime. To the same extent, the refused order must refer exclusively to service duties, otherwise it will no longer be an offense of insubordination.[11]

Hitting his superior to his inferior. It is an offense to "hit the superior by the inferior or the boss by the subordinate, when his superior the boss is in the exercise of the duties of service or for acts performed in connection with these tasks". [12] This aspect is regulated by art. 420, para. (1) of the New Penal Code. To the same extent, para. (2) presents the fact that "it is an offense and the offense committed by his or her superior boss against the inferior or the subordinate, when the inferior or the subordinate is in the exercise of the duties of service or for acts performed in connection with these tasks".[13]

This fact was regulated in the past as two distinct offenses, "hitting the superior" and "hitting the inferior", being punished differently. In addition, the new criminal law restricts the area of existence of the crime of striking the inferior or the superior, because this exists only when the passive subject, the injured person, is in the exercise of the duties of service or for acts performed in connection with them. In other words, in the previous regulation the deed existed in all situations of striking the superior by the inferior or vice versa.

A final significant difference is the elimination of the special necessity case provided by the previous Criminal Code regarding the offense of striking the inferior, according to which the crime did not exist when the act of hitting was committed during the war if it had been

determined by a military necessity. Moreover, hitting the superior or the inferior during the war, during the state of siege or emergency, has an aggravating form.

As regards criminal participation, it is possible both in the form of instigation and in the form of complicity. There is also the possibility of co-authoring, when two or more perpetrators contribute directly to the simultaneous hit of a military man, committing the crime.

Surrender. According to art. 421 of the Criminal Code, the surrender constitutes an offense and represents "the surrender in the hands of the enemy by the commander of the armed forces he commands, leaving in the hands of the enemy, destroying or bringing into the state of non-use by him the means of combat or other necessary means. for carrying on the war, without any of them being determined by the conditions of battle".[14]

The legal object of this crime consists in the social relations regarding the fighting capacity of the armed forces. To the same extent, depending on the concrete ways of committing the deed, other social values are violated, such as, for example, the social relations regarding the defense of the patrimony.[15]

It is obvious that for this crime, the active subject is qualified by the commanding officer, regardless of the size of the subunit he commands, and the criminal participation is possible only in the form of instigation or complicity, the co-author being not possible, because it represents a crime with the subject. unique.

Leaving the battlefield. "The abandonment of the battlefield or the refusal to act, committed during the battle, or surrendering in captivity or committing other such acts to serve the cause of the enemy is punishable under the criminal law."[16]

With regard to this fact, leaving the battlefield essentially implies a cowardly attitude, devoid of devotion on the part of the soldier in the mission, which ultimately leads to the weakening of the fighting capacity of the armed forces.

For the crime to exist, it is necessary that leaving the battlefield, refusing to act or surrender in captivity, cumulatively fulfill two conditions: first, the deed must be committed on the battlefield and during the battle, and in the second in a row, it may be of service to the cause of the enemy.

The active subject of this crime is any person who has the status of a military officer, regardless of rank or position, as long as he is effectively involved in military operations during war. The criminal participation in this crime can be in the form of instigation, complicity, but also of the co-author.

Unauthorized flight. "The flight with an aircraft belonging to the armed forces of the Romanian state, without prior authorization, as well as the non-observance of the flight rules, if in this way the security of the flight in the airspace or of the aircraft is endangered", is a crime.[17]

In case, this fact resulted in the destruction or degradation of the aircraft, as well as the creation of a disaster, the act will be punished more severely.

Therefore, according to this regulation, the aggravating form intervenes when causing serious consequences. In this sense, to take aggravating circumstance, the unauthorized flight can have negative consequences, creating an increased danger state, from which can result in loss of human life or serious bodily injury and, why not, significant material damage.

The active subject of this crime is the person who has the status of a military member of the air force with the pilot function, who does not respect the flight rules. Participation in this crime is possible in all forms.

Leaving the ship. The offense named "Departure of the ship", provided for in article 424 of the New Penal Code, has a normative content almost identical to that of the offense with the same name, provided in the old regulations, so that "leaving a military ship in the event of a shipwreck by the commander , before exercising his duties, as well as any other

persons who are part of the ship's crew, without the command of the commander, shall be punished by imprisonment from one to five years ”.[18]

The legal object of this crime consists in the social relations regarding the fighting capacity of the armed forces, relations that suppose loyalty and fairness in fulfilling the obligations of the ship's commander.[19]

The criminal participation for this offense is possible in all forms, the only aspect to be mentioned is that in this case the co-author is possible only in the case of the crew members.

The departure of the ship refers to the proper meaning of the expression being abandonment, landing on land or passing on another ship.

Leaving the ship in the event of a shipwreck, is where the ship is threatened by the danger of diving, meets the elements of the crime, given the special situation in which it is found. If the action of leaving the ship does not take place in the event of a shipwreck, the act no longer constitutes the offense of leaving the ship, but, possibly, another crime.[20]

Leaving the ship by the commander is a crime when he has not fulfilled his duties, that is to say, without having done everything possible, in relation to the concrete circumstances in which he was, to save the ship.

A final aspect is the departure of the ship by a crew member, this taking place without the command of the commander, which means that if the commander ordered the military to leave the ship, he could no longer be accused of committing this crime.

Leaving the command. "The abandonment of the order by the commander of a military ship or a group of military ships, in situations that could have endangered the military ship or military ships or their crew is punished" according to the criminal law.[21]

This crime has as legal object the social relations regarding the fighting capacity of the armed forces, the commander of a ship or a group of ships having the obligation to keep in their possession permanently their command, implicitly to take the decisions that are required, in order to put in danger to the crew and the ship or the aircraft.

As the name of the crime suggests, the active subject is qualified by the command of a ship or a group of military vessels. The special quality regulated by the law is given exclusively by the position held by the person concerned, and not his military rank.

As regards criminal participation, it is possible to instigate and complicit. The co-author is excluded, as this is a crime with a single subject.

Leaving the order can have several aspects. This may be tacit, when the commander does not actually exercise his duties, not expressing himself formally as regards the abandonment of the command, but also expressing it, when the commander declares openly that he no longer understands to exercise his function.

Also, the abandonment of the order can be temporary, the commander not fulfilling his functional duties for a period of time, but then he returns to the command, but also definitive, ceasing to exercise his duties for an indefinite period, without his resuming his activity. .

As for the aggravating form, it occurs when the order was abandoned during the fight. The aggravating circumstance takes into account the moment of the deed, that is, the time between the preparations for the fight and the one in which the fight ended.

Failure to take the necessary measures in naval operations. The penal code punishes the act whereby "the commander of a military ship or group of military ships, does not take measures to attack, to fight against the enemy, to help a ship of the Romanian state or an allied country, being pursued by the enemy or engaged in combat ". Also, the criminal law also punishes the failure to take measures for the destruction of an enemy convoy or the lack of interest in pursuing the enemy's war or commercial vessels.[22]

In order for the crime to exist, the perpetrator must not have been stopped by an order to take such measures or was not hindered by a special mission he had.

The offense of not taking the necessary measures in naval operations concerns the social relations regarding the combative capacity of the armed forces, which implies the attitude, the courage, the intervention of a master of a ship to take the measures required for the engagement, to destroy an enemy convoy. , respectively to track enemy warships or commercial vessels.

The active subject of the crime is the military officer in charge of a ship. The criminal participation in this case may be in the form of instigation or complicity. Co-authoring is not possible, this is a crime with a single subject.

Lowering the flag. It constitutes an offense "to lower the flag during combat, in order to serve the enemy, committed by the commander of a military ship or a group of military vessels, as well as by any other person embarked."[23]

This offense can only be committed by the person who is the ship's commander, which means that the co-authoritative form is not possible.

The offense of lowering the flag is characterized by the help of the enemy, being similar to the crime of treason. For the crime to exist, it must be committed during the fight, that is, during a naval operation against the enemy.

Collision. According to art. 428, para. (1) of the New Criminal Code, the collision represents the deed of the commander of a military ship or of any person on board the ship, which caused a collision or the landing of the ship, which resulted in its serious damage.

Collision means the collision of the ship with another ship or an obstacle, and the landing of the ship represents failure, immobilization of the ship, so that its navigation is impossible.

If the deed is committed, the offense has mitigating circumstances, so it will not be punished harshly.

For the existence of the collision offense, it is necessary to cause serious damage to the ship or other serious consequences, such as loss of human life or removal from the ship.

Given the importance of the relationships that the military commits, the necessity of implementing preventive measures and combating through criminal law means the facts that endanger the fighting capacity of the armed forces.

In other words, to maintain a high level of training, a climate of order and discipline, but also of an attitude specific to the military environment, in order to maintain the climate of national security and security, it is critical to apply these legal norms, not only for those mentioned above, but also for the execution of justice.

REFERENCES

[1] Art. 3 alin. (5) din Legea nr. 446/2006 privind pregătirea populuţiei pentru apărare.

[2] T. Toader, Drept penal român – Partea specială, Ediţia a 5-a, revizuită şi actualizată, Bucureşti, Editura Hamangiu, 2010, p.497;

[3] T. Toader, M. Michinici, A. Crişu-Ciocîntă, Noul Cod Penal: comentarii pe articole, Bucureşti, Editura Hamangiu, 2014.p. 615;

[4] Ibidem, p.498;

[5] Art. 414 din Codul penal actualizat şi valabil de la data de 01.03.2015.

[6] Ibidem, art. 415;

[7] Regulamentul serviciului interior - RG2, aprobat prin Ordinul ministrului apărării naţionale nr. M.87/2008;

[8] T. Toader, op.cit. p. 502;

[9] T. Toader, M. Michinici, A. Crişu-Ciocîntă, op.cit.p. 621.

[10] aprobat prin Ordinul ministrului apărării nr. M.64/2013;

[11] T. Toader, op.cit. p. 504;

[12] Art. 420 alin. (1) din Codul penal actualizatşivalabil de la data de 01.03.2015;

[13] Ibidem, art. 420 alin. (2).
[14] Ibidem, art. 421
[15] T. Toader, op.cit. p. 509;
[16] Art. 422 din Codul penal actualizatşivalabil de la data de 01.03.2015.
[17] Ibidem, art. 423, alin. (1);
[18] Ibidem, art. 424;
[19] T. Toader, op.cit. p. 513;
[20] Ibidem, p. 513;
[21] Art. 425 din Codul penal actualizatşivalabil de la data de 01.03.2015.
[22] Ibidem, art. 426;
[23] Ibidem, art. 427.

BIBLIOGRAPHY

Art. 3 alin. (5) din Legea nr. 446/2006 privind pregătirea populuţiei pentru apărare.

Toader, T. *Drept penal român* – Partea specială, Ediţia a 5-a, revizuită şi actualizată, Bucureşti, Editura Hamangiu, 2010.

Toader, T. M. Michinici, A. Crişu-Ciocîntă, Noul Cod Penal: comentarii pe articole, Bucureşti, Editura Hamangiu, 2014.

Art. 414 din Codul penal actualizat şi valabil de la data de 01.03.2015.

Regulamentul serviciului interior - RG2, aprobat prin Ordinul ministrului apărării naţionale nr. M.87/2008.

aprobat prin Ordinul ministrului apărării nr. M.64/2013.

Art. 420 alin. (1) din Codul penal actualizatşivalabil de la data de 01.03.2015.

Art. 422 din Codul penal actualizatşivalabil de la data de 01.03.2015.

Art. 425 din Codul penal actualizatşivalabil de la data de 01.03.2015.

THE CIVIL LEGAL CAPACITY OF THE MINISTRY OF DEFENSE

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Abstract: *At the foundation of civil law - as a private law par excellence - there is and must remain the individual, the human being as a subject of a distinct, autonomous law, called a natural person, as well as those individual rights that usually arise from the exercise of the free will of man. It is, however, to be emphasized that the individual rights are framed by the natural rights and interests of the collectivity, expressed by legal norms with an imperative character, the totality of which constitutes the public order of the state.However, it would be wrong to draw the conclusion that these individual rights belong exclusively to the individual and as individuals, as a natural person. They also belong, within the limits of the specialty of the capacity of use, and to the legal persons - a large category of civil law subjects that plays an important role in the economic-social life.*

Keywords: Public administration, Democracy, Civil, Military

1. Legal Person – General notions

1.1. Legal entity – subject of law

As long as he lives in the bosom of nature, man is an animal, an individual reduced to the level of biological needs. Once grouped into politically organized civil societies, people gain a new dimension, that of carriers of rights and obligations. From this point of view, they are persons participating in the legal life as subjects of the legal relationships, either individually - as individuals or as a community - as legal persons.[1]

For these reasons, most legal doctrine defines the person as any being capable of having rights and obligations, therefore, of being subject to law.

Roman law knew both the theory of the natural person and the theory of the legal person, but the latter was only developed and deepened in modern law.

The subject of law, designated as a person, manifests itself in the context of social life as a holder of rights and obligations. In this capacity, which the law recognizes not only to individuals, but, under certain conditions, and to organized groups, people establish among them various relations, social relations. Most of these social relationships, falling under the scope of legal norms, are metamorphosed into legal relationships. In this framework, the rights recognized by the law take place and the valid obligations assumed must be executed.

[1]Ceterchi, Ioan, Craiovan, Ion, *Introducere în teoria generală a dreptului*, Bucureşti, Ed. All, 1998

As a result, we find: the quality of the subject of law is permanently doubled by the quality of subject of the legal report.[2]

1.2. The constituent elements of the legal entity

The legal personality is acquired only in the presence of the cumulative assembly of several elements, because not every organized collectivity (for example, the military of a regiment, the students of a faculty, the workers of a factory, the co-owners of a good, the members of a family) or a random meeting of several persons (for example, people traveling in the same compartment, viewers watching the same show) is a distinct subject of law.

Article 26 paragraph (1) lit. e) of Decree no. 31/1954 stipulates that "any organization that has a self-organization and its own heritage assigned to achieve a certain purpose in accordance with the public interest" is a legal person.

Thus, it follows that the constituent elements of the legal person are:

a) an independent organization of its own;

b) an own, distinct heritage;

c) an own purpose, determined and in accordance with the general public interest.

a) The self-organization or its own organization constitutes that constituent element of any legal person that consists in forming as a whole unit or structuring, compartmentalizing the subject of law. It expresses the idea that any unit in order to have the status of legal entity must have a structure determined by law or statute (regulation); only a unit organized in a certain way can act as a unitary subject of law, it can be recognized as a legal entity.

The self-organization concerns two aspects: the internal organization of the legal person by compartments (sections, workshops, farms, offices, etc.); establishing management bodies and appointing persons with management positions, acting on behalf of the legal person.[3]

Due to the great diversity of the categories of legal persons, the self-organization is presented under various aspects. This diversity can be found even within the same category of legal entities. Basically, each legal person can determine, within the limits and conditions established by the law, its own organizational structure corresponding to the purpose pursued and the means of achieving it. In other words, today there are no rigid unitary rules of internal organizational structure for different categories of legal entities.

b) According to art. 26, lit. e, from Decree no.31 / 1954, any unit that has its own patrimony is - if the other legal requirements are met - legal entity. This general legal requirement is reflected and materialized in a series of regulations on the patrimonial basis of the different categories of legal persons.

The own and distinct patrimony is, therefore, that constituent element that consists of all the rights and obligations with economic content, which have as a legal entity the same person.

c) From the provisions of art. 26, lit. e, of the Decree no. 31/1954 it follows that its own purpose is one of the essential constituent elements of any legal entity. Its own purpose explains and justifies the reason for being of the other two constituent elements (its own organization and its own and distinct heritage).

Its own purpose is that constituent element of the legal person that concretizes for each entity its kind or object of activity.

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[2]Chirică, D., *Drept civil. Contracte speciale*, Bucureşti, Ed. « Lumina Lex », 1997

[3]Deak, Francisk, *Tratat de drept civil .Contracte speciale*, Bucureşti, Editura Actami, 1999

In order to be valid, the purpose of the legal person must meet the following conditions: be in accordance with the legal provisions, be determined, be in accordance with the public, general interest.[4]

The purpose of the legal entity must comply with the legal requirements; no legally established legal entity may have a purpose that is contrary to the legal provisions. Therefore, if it is clear from the constitutive act of a legal person that the activity object includes activities of representation, for example, of the economic agents before the courts, the drawing up of constitutive acts, of modification and of dissolution-liquidation of the economic agents and the registration of these documents in the competent bodies and consulting activities with the granting of legal assistance in matters regarding the organization and functioning of commercial companies, associations agreeing to carry out - among others - legal assistance, the purpose of the legal person cannot be considered according to the requirements of the law. This is because such a purpose would contravene the express provisions of Decree no. 28/1954, modified by the Decree-law no. 90/1990 and the Decree no. 143/1955, according to which the legal assistance is granted only by lawyers or jurisconsuls.

2. Content of the civil legal capacity of legal persons

2.1. The correlation of the civil capacity of the legal person with legal capacity

Every legal person is the holder of the legal capacity (to whom it is also called the legal capacity). By this capacity we mean the ability to have rights and obligations of any kind, so not only civilians, as well as to exercise them, respectively to execute under the conditions of the law. This is a unique legal capacity, which belongs to any subject of law. Given that a legal person participates in different types of legal relationships, belonging to different branches of law, the scope of these legal relationships is determined by categories of legal persons by the limits of the object of activity for which the subject of the respective law was born.

In the composition of the legal capacity, a special place is occupied by the civil capacity, which coexists with the capacities from other branches of law (constitutional, administrative, financial, commercial, etc.).

The correlation of the civil capacity with the legal capacity expresses the report from the side to the whole; civil capacity is part of the legal capacity. The legal capacity therefore includes the branch capacities, among which the civil capacity occupies an important place.[5]

In the case of civil law, being a branch capacity, the rules contained in the civil law regarding civil capacity are applicable in civil law reports; In the reports from other branches of law, special regulations regarding the capacity of the respective branch of law will always be applicable and only to the extent that there are no such regulations will the rules of civil law, as rules of common law, apply. In the absence of a legal definition of the civil capacity of the legal person, we say that by this we understand the aptitude of the collective subject of right to have civil rights and obligations - the capacity to use - and the ability to acquire and exercise subjective civil rights and to assume and fulfills civil obligations by the conclusion of civil legal acts, by the governing bodies - the capacity to exercise.

[4]Cristian, I., *Teoria persoanei juridice*, Bucureşti, Editura Academiei, 1964

[5]Cocoş, Şt., *Drept roman*, Bucureşti, Editura Lumina Lex, 1998

2.2. The civil legal capacity of usage of the legal person

From the point of view of civil law, the capacity of use of the legal person can be defined as that part of the civil capacity of these subjects of law which consists in the general and abstract aptitude to have rights and obligations.

This definition is specific to civil law, referring to the ability to have civil rights and obligations. It is known, however, that legal persons have not only civil capacity, they are not only subjects of civil law, but they also have commercial, administrative capacity, etc., having other rights and obligations than civil ones and appearing as subjects of law in relations. of a different nature.

The legal characteristics of the capacity of use of the legal person are: legality, inalienability, intangibility, generality and specialty.[6]

The legality of the capacity of use of the legal person expresses the idea that it is established by law, which regulates all its aspects, the will of the party or parties unable to play a role in determining the beginning, content and end of this capacity. The capacity of use of the legal person is regulated by law by imperative legal norms; it is therefore exclusively in the field of law.

Inalienability is the trait of the legal person's ability to use it that cannot be alienated or ceded and cannot be renounced, neither in whole nor in part. It is worth mentioning that the inalienability of the capacity of use of the legal person does not oppose neither the delegation of attributions nor the empowerment of representation, aspects that concern the valorization of the capacity of exercise of the legal person.

Intangibility is the character of the capacity of use of the legal person that consists in its appropriation of a year, it is granted restrictions only in the cases and conditions provided by law. This character is a consequence of that character which is its legality.[7]

2.3. The legal capacity to exercise the legal person

The exercise capacity of the legal person is that part of the civil capacity that consists in the ability of this subject to acquire and exercise subjective rights and to assume and fulfill civil obligations, through the conclusion of civil legal acts by his governing bodies. . The recognition of the legal person's exercise capacity is the work of the legislator. It is enhanced by participating in the civil circuit (the legal circuit in general) as a result of the conclusion of civil (or other) legal acts. The exercise of rights and the assumption of obligations, through the conclusion of legal acts, implies the manifestation of the legal will of the subject of the respective law. This manifestation of will is achieved through the governing bodies. This legal construction is absolutely necessary, the legal person by himself has practically no will, as the natural person has, and has no discernment as man has. A peculiar feature of the legal person's ability to exercise is that, although this subject of law has no discernment, she nevertheless participates in the civil circuit by concluding legal acts. Therefore, the legislator considered that the will of one or more natural persons belonging to the legal person is the will of the legal person. This feature is expressed in the legal representation of the legal person by its management bodies. Legal representation is not only necessary for the legal person to be able to participate, through his own acts, in different legal relationships, but also obligatory for this. The necessity and the obligation of legal representation is regulated both in

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[6]Costin, M., *Marile instituţii ale dreptului civil român*, 2, Cluj- Napoca, Editura Dacia, 1984

[7]Beleiu, Gheorghe, *Drept civil roman, Introducere în dreptul civil, Subiectele dreptului civil*, ed. a V-a, revăzută şi adăugită de Marian Nicolae şi Petrică Truşcă, Bucureşti, Casa de Editură şi Presă "Şansa" S.R.L., 1998

the general normative act regarding legal persons and in the special regulations regarding different categories of such subjects of law.[8]

As there is no legal provision regarding the moment when the legal person acquires the capacity to exercise, a controversy has arisen in the specialized literature. Several opinions have been formed regarding the beginning of the exercise capacity, thus: an opinion supports the idea that the moment of acquiring the exercise capacity coincides with that of the acquisition of the use capacity; a second opinion supports the idea that the beginning of the exercise capacity coincides with the moment of the appointment of the management bodies without which the legal person cannot put into practice the capacity of exercise; In a final opinion, it has been argued that the legal person acquires the capacity to exercise from the moment of its establishment, but it can only be valued when the governing bodies are appointed.[9]

Basically, the moment of acquiring the exercise capacity coincides with the moment of acquiring the capacity of use of the legal person. This is because the legal persons subject to registration have the capacity to use them from the date of their registration, and the other legal persons from the date of the disposition act establishing them, from the date of their recognition or authorization, that is, from the moment of acquiring the legal personality. However, the legal personality is not acquired without the appointment of the governing bodies. The governing bodies are designated, according to the rules established regarding the given legal person, from the moment the legal person is established.

3. The civil legal capacity of the Ministry of Defense

The Ministry of Defense is the specialized body of the central public administration that conducts and conducts, according to the law, the activities in the field of defense of the country. The Ministry of Defense consists of central structures, structures and forces subordinate to them. The system of central structures, structures and forces of the Ministry of Defense constitutes the Romanian Army, hereinafter referred to as the army.

The Parliament has a very important role to play in the defense of the country. The joint sessions of the two Chambers discuss the declaration of partial or total mobilization, the declaration of a state of war, the suspension or cessation of military hostilities, and, on the other hand, the reports of the Supreme Defense Council of the country are examined or the national strategy is approved. defense of the country.

The president of Romania can decide, only in exceptional cases, the partial or total mobilization, without the prior approval of the Parliament, this decision being subject to the subsequent approval of the Parliament, but in no more than 5 days after its adoption.

At the helm of the Ministry of Defense is a minister who is part of the structure of the Government along with the Prime Minister, the other ministers and other members established by organic law. The Ministry of Defense is organized under the subordination of the Government.

According to Law no. 346/2006 regarding the organization and functioning of the Ministry of Defense, art. 3, para. 1, the Ministry of Defense is a legal person. The Ministry of Defense is an organ of the executive power and thus a legal person of public law. The Ministry of Defense has subordinate structures that have legal personality or not.

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[8]Deak, Francisk, *Tratat de drept civil .Contracte speciale*, Bucureşti, Editura Actami, 1999

[9]Cristian, I., *Teoria persoanei juridice*, Bucureşti, Editura Academiei, 1964

The structures that do not have legal personality are all the structures of the army, except for the autonomous kingdoms or the national companies under the coordination of the Ministry of Defense and are represented in justice by the Ministry of Defense.

As any legal person, the Ministry of Defense fulfills the general conditions necessary for the recognition of legal personality.

In order to fulfill the missions that belong to the Ministry of Defense, the Government may establish and organize, according to the law, structures of its activity abroad. For this purpose, the Ministry of Defense is authorized to purchase movable and immovable property in the countries where these structures operate.

The Ministry of Defense exercises its rights and fulfills its obligations through its governing bodies. Its organs (established or chosen according to the normative act establishing the legal person) are the bearers of the will of the legal person.

The legal acts done by the organs of the Ministry of Defense, within the limits of the powers conferred on them, are the acts of the same. Legal documents cannot be concluded by any person. The person who concludes legal acts must realize the legal effects that the concluded act produces, must have a conscious will.[10]

The lawful or illicit acts committed by its bodies oblige the legal person itself, if they were committed on the occasion of the exercise of the function. Illicit acts also attract the personal responsibility of the perpetrator, both to the legal person and to the victim of the injury.

The cessation of the civilian exercise capacity of the Ministry of Defense coincides with the cessation of its civilian use capacity. Not having rights and obligations, the Ministry of Defense is unable to conclude legal acts that comply with the purpose of its establishment as a legal person and, thus, if the end of the civil capacity coincides with the end of the legal person of public law, the cessation of the Ministry of Defense means the end of its legal personality , capacity of use and exercise capacity.[11]

BIBLIOGRAPHY

Ceterchi, Ioan, Craiovan, Ion, *Introducere în teoria generală a dreptului*, Bucureşti, Ed. All, 1998

Chirică, D., *Drept civil. Contracte speciale*, Bucureşti, Ed. « Lumina Lex », 1997.

Cocoş, Şt., *Drept roman*, Bucureşti, Editura Lumina Lex, 1998

Costin, M., *Marile instituţii ale dreptului civil român*, 2, Cluj- Napoca, Editura Dacia, 1984

Cristian, I., *Teoria persoanei juridice*, Bucureşti, Editura Academiei, 1964

Deak, Francisk, *Tratat de drept civil .Contracte speciale*, Bucureşti, Editura Actami, 1999

Beleiu, Gheorghe, *Drept civil roman, Introducere în dreptul civil, Subiectele dreptului civil*, ed. a V-a, revăzută şi adăugită de Marian Nicolae şi Petrică Truşcă, Bucureşti, Casa de Editură şi Presă "Şansa" S.R.L., 1998

Legea societăţilor comerciale nr. 31/1990, modificată şi completată prin Legea 441/2006 şi actualizată în ianuarie 2007

[10]Costin, M., *Marile instituţii ale dreptului civil român*, 2, Cluj- Napoca, Editura Dacia, 1984

[11]Beleiu, Gheorghe, *Drept civil roman, Introducere în dreptul civil, Subiectele dreptului civil*, ed. a V-a, revăzută şi adăugită de Marian Nicolae şi Petrică Truşcă, Bucureşti, Casa de Editură şi Presă "Şansa" S.R.L., 1998

Legea nr. 36/1991 privind societăţile agricole şi alte forme de asociere în agricultură

Legea nr. 54/1991 cu privire la sindicate, modificată şi completată prin Legea nr. 54/24.01.2003

Legea nr. 27/1996 cu privire la partidele politice, modificată şi completată prin Legea nr. 14/2003

Lege nr.357/2006 pentru modificarea Legii nr. 562/2004 privind autorizarea instituţiilor publice din sistemul de apărare, ordine publică şi securitate naţională de a vinde personalului propriu unele locuinţe de serviciu pe care acestea le au în administrare, Publicat in Monitorul Oficial, Partea I nr. 650 din 27/07/2006

CRIMINAL LIABILITY OF MILITARY PERSONNEL. INFLUENCES ON THE OPERATIONAL CAPACITY OF THE ARMED FORCES

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Abstract: *The purpose of this paper is to study the criminal responsibility of military personnel from the perspective of the laws in force, as well as the influences of criminal responsibility on the missions that the armed forces must carry out. In the first chapter I will analyze the aspect of the competence of the judicial bodies that both under the influence of the activities carried out by the armed forces and the special status enjoyed by the military personnel, was a justified basis that led in some states, including Romania, to the emergence a differentiated system of organizing the judicial bodies based on the delimitation of the competence in relation to the quality of the persons who make up the body of the military personnel. It started from the presumption that only one other military might be able to fully understand the seriousness of the facts of another military. In chapter two I will analyze certain crimes that fall within the scope of criminal responsibility and which have influence on the conduct of military actions and operational capacity.*

Keywords: law, military personnel, armed forces, operational capacity, combat capacity

Criminal liability of military personnel in relation to special quality

In a democratic society and in a rule of law the armed forces occupy a particularly important position by virtue of their role in defending the most important values that the very state being depiles. Thus, the sovereignty, independence, indivisibility and territorial integrity of the state, democracy as well as other essential values depend to a large extent on the pre-existence of a strong army that guarantees the inalienability of the emelists listed. The power of the army is measured both by the fighting capacities (quantifiable in turn by the technical facilities it benefits, the number of active and past soldiers in reserve, logistics, etc.) and by the degree of trust and respect due to who must enjoy an army in a democratic society. For the benefit of the discussion, we make it clear that the form of government at the head of the state is in a relationship of dependence on the support that only military forces are able to provide, support that can manifest both internally and externally and is geared towards bringing public policies to the implementation. This support of which we speak spreads its effects, among others, and in the sense of security of the respective nation and at the same time, there is also a certain stability of the political factor in power.

Apart from the army-specific activity object, it often contributed to other areas of activity when its intervention was imperative. For example, in the event of a severe flood or

earthquake, when the Interior Ministry's forces cannot sufficiently meet the needs assumed by the circumstances caused by that natural disaster, the armed forces have contributed in order to recovery of the situation.

On the basis of this mention of military forces, on the basis of substantive law were created rules of criminalization with active circumstantiated subject (a military), and in the procedural aspect there are a number of specific rules precisely on the basis of the quality of the active subject of crime (different competence, mandatory citation of the military at each deadline). Also with implications for both substantial and formal law is the institution of referral to the commander, which looks like a condition of punish ability and procedability.

In terms of competence of judicial bodies and judicial organization, it can be seen how both the specificities of the activities carried out by the armed forces and the special status enjoyed by the military personnel have constituted justified grounds which led in some states to the emergence of a differentiated system of organization of judicial bodies based on the delimitation of competence in relation to the quality of the persons who make up the body of military personnel, regardless of their degree. It has been assumed that only another military could be able to fully understand the seriousness of the actions of another military man and its danger, thus being considered that the sum of the principles governing this honourable profession is not accessible Anyone. Also, the ierhized structure of the army was another argument for this differentiated system for the investigation and separate trial of civilian soldiers.

For starters, it should be noted that the separate prosecution/trial of the military takes place in all crimes (and not only those in which the law requires that the perpetrator be a military), but only if the suspect/defendant is the military framework (not when he is the person injured by the crime).

The ECHR has held in its case-law that a civilian cannot be tried by a military court, so in the criminal trial there is a prorogation of jurisdiction in favour of civil courts to judge and a military if in that case is sent to trial along with the military and a civilian, regardless of the form of criminal participation if necessary and regardless of the degree of military court in relation to civil instate. In the latter case, the commentary of the trial of all defendants and all acts rests with the equal civil court in the rank of the military court.

The military benefits from a slightly different procedure in certain situations based on the specifics of their activity. Thus Article 11(1) of Regulation (EC 353 para II final thesis provides that the military is quoted at each deadline, even if they have applied for legal action in the absence. Also the place of the subpoena and the execution of the warrant for bringing in the case of the military differ, they are quoted at the unit of which they belong by the intercession of the commander, and the excess ion of the warrant for bringing takes place through the commander military unit or military police. Also in the category of procedures that take into account the status of the defendant's military is also the legal disposition that the military judge and the military prosecutor (inquiry or sitting) must have the military rank at least equal to the defendant's. The purpose of this provision is clear, namely to give the effectiveness of the principle of independence of justice that must manifest itself not only to the other powers of the state but also to the parties in the file.

With regard to criminalization’s actively related to a military man, the Romanian criminal law offers a distinct chapter in Title XI of the Special Part of the Criminal Code entitled "crimes committed by the military". This Chapter describes a number of 14 crimes, and in 3 other articles the rule of sanctioning the attempts is established, the condition of punishability and procedure of the commander's referral and also shows what other crimes can be committed on military aircraft. In Chapter II of the same Title XI, 6 acts are criminalized that can be committed by both the military and the civilians, which are closely related to those committed by the military because it directly affects the fighting capacity of the armed forces. The legislature himself establishes the demarcation line between the two groups of crimes by the quality offered to the active subject of crime.

In 2004 Romania became a NATO member, where a series of army reforms took place that led to the transition from a mass army to a professionalized one. One of these measures was taken by Law 395/2005 and aimed to suspend compulsory military service in peacetime, creating an army made up of professionals alone. The criminal law could not remain out of this reform and so it also had to be restructured and put in line with the new vision of the military, the New Penal Code being the most opportunity for it. In the new law some crimes are no longer found being passed into special laws (e.g. the offence of evading military indictments provided for by Art. 352 of the Old Penal Code, but an act of the same kind of law 132/1997 in Art.34 para (1) in conjunction with Article 33(1)(a) is stipulated as a criminal offence) and others have been decriminalized.

Influences on the operational capacity of the armed forces

Regarding the meaning of the notion of "combat capacity" the specialized doctrine replied that capacity must be understood, the possibility of a force at any time to achieve results in developing a mission on a particular enemy, in an environment specific to combat. The forces referred to by the legislator are: 1) the fighting forces, of which the component belongs to the armoured units and the unarm red units; 2) combat support forces in turn made up of artillery units, artillery units and anti-armour missiles, artillery units and anti-aircraft missiles, genius, electronic warfare, nuclear, biological and chemical defense -NBC, research of communal and computer science, military police; 3) logistical support forces composed of supply and transport units, maintenance, medical, veterinary, commemoration and traffic guidance, campaign banking;

It is easlean to find that crimes against combat capacity have many common points, but also aspects that differentiate them, which is why we aim to achieve only the essence and common aspects of crimes committed by the military without detailing the peculiarities of each crime. We will also lean carefully on Art. 430 of the C.P. in the light of the effects produced from the perspective of criminal liability.

Thus, the generic (group) legal object of these crimes is all social relations concerning the maintenance of the combat capacity of military formations that make up the armed forces. The specific characteristics of this social value make it effective only by means of criminal protection. The special legal object differs from crime to crime depending on the specifics of this and may consist, for example, in the sum of social relations established around the order and discipline that must characterize each military unit, climate that cannot be achieved in the unjustified absence of the military from the unit, such as the offence of unjustified absence, the act stipulated and punished by Art. 413 C.P.

As regards the material object of these crimes, we consider that the vast majority are devoid of material object because the social value stipulated by the incriminating norm is not susceptible to materialization, but there are crimes that have an object material (Art. 418-superior coercion, Art. 420-hitting the upper or lower) where the material element of the offence spreads directly to the body of the adjacent (secondary) passive subject. They also have material object and collision (Art. 428) or the offences provided for in Article 10(1) of Regulation (EC) No 1257/1999. 430 and which is represented by the military ship or military aircraft that have been destroyed, degraded or brought into use.

The active subject of the crime determined the legislator to subdivide the category of offenses against the fighting capacity of the armed forces into "Crimes committed by the military" (Chapter I) and Crimes committed by the military or civilians "(Chapter II). The very need of the legislator to expressly specify the difference of active subject and at the same time to delimit the two subgroups of crimes, denotes the importance and attention he gives to the facts committed by the military in relation to civilians. Chapter I being intended only for crimes committed by the military, it is understood that this condition that the deed described to be committed only by a military author has the legal nature of a constituent element in the absence of which the deed does not meet the typicality requirements.

For a law that meets the requirements of clarity and predictability, the legislator has wanted to establish the content of the notion of military in art. 1 of Law no. 80/1995 regarding the status of the military cadres where it is stipulated that by military cadres are taken into consideration "the Romanian citizens who have been granted the rank of officer, military master or sub-officer in relation to their military and specialized training, under the conditions provided by law". During the war, the Presidents of Romania can grant to the generals the marshal rank which is the highest military rank. Depending on whether or not to occupy a military position, delimitations can be made between the active military, the reservists and the retired ones. In Chapter II, the facts described do not have an active subject circumstantial so that, as the name of the chapter states and specified, these crimes can have as an author any person, both military and civil, aspect highlighted by the first two articles of this chapter (art. 432 and art. 433) who begin their legal content with the expression "deed of the person" which undoubtedly shows that the perpetrator of the crime can be any person.

Criminal participation is, in principle, possible in all forms, not requiring the instigator or accomplices to have the quality required by law for the perpetrator. In contrast, co-authoring is not possible in the case of those offenses where the law provides for an obligation as strictly personal, as is the case for the offense of unjustified absence in which each military member has the obligation to be present at the unit. Even in the event of a prior agreement, the crime retains its own criminal character.

Regarding the passive subject it is necessary to specify that the state is the holder of the main value through the military unit of which the perpetrator of the crime is part by recording a decrease of the fighting capacity. Adjacent to some offenses there is also a secondary passive subject whose social values are also protected by the criminal law, but in a subsidiary way in relation to those mentioned above.

It can be observed that for some offenses, the premise is common, consisting of the existence of a state of war or siege or the state of emergency was instituted, sometimes some offenses are conditioned by the existence of a military obligation. At the same time, the state of war, siege or emergency is also an essential requirement of time besides the material element of the objective side, so with the value of a constituent element, at other times it appears only as an aggravating circumstantial element.

From the aspect of the subjective side, it seems that this type of crime is committed only with direct or indirect intention. The motive and purpose are not provided as essential requirements besides the subjective element so that they will be considered by the court in the process of judicial individualization of the sentence or of the manner of execution.

The preparatory acts, although possible, are not incriminated, and the attempt is sanctioned only in the case of the offenses indicated by art. 429 (the offenses of Chapter II did not provide a text of law that would stipulate the sanction of the attempt). The consumption of the crime takes place with the committing of the material element, the immediate consequence occurring instantly, being dangerous offenses. Within these crimes can be identified the harshest punishments between 15-25 years of imprisonment or life imprisonment (leaving the battlefield - art. 422), but also with a milder sanctioning regime between 3 months - 3 years prison (the desert - art. 414).

Art. 331 draws attention by regulating the cause of procedurality and punishment of the commander of the military unit in the case of offenses: unjustified absence, desertion, violation of the consignment, leaving the post or order and insubordination.

Over the millennia it has been necessary to know whether the person who commits an order of a superior commits a crime is liable to punishment. But the answer was different depending on the conditions of an era, the culture of some peoples, their experience, and a multitude of other factors. In the contemporary period in the civilized states the answer to this question was given in the sense that there must be a criminal liability for the one who commits the criminal act even from an order of an authority. If in the preceding I spoke about the military discipline and the submission to the superior now comes the need to know the limits, this discipline, that is the border in an order to be carried out and the one to be ignored.

In this context, the theory of intelligent bayonets, also known as the theory of the order (command) of the legitimate authority that was at the opposite pole, was developed. Mainly the supporters of the intelligent bayonet theory claim that the inferior will only obey those orders that are not manifestly illegal while the adherents of the diligent bayonet theory militate for the unreserved execution of any order of the superior, the latter also taking sole responsibility in the case. In which by the given order the rights and freedoms of the person or other components of the law order are violated.

Not only that the diligent bayonet theory is perfectly incompatible with the principles of the rule of law, which mainly imply the need for a clear demarcation between public power and individual rights and freedoms through the rule of law, which is why it was abandoned, but based on the same reasons expressed. it also imposes a nuance of the theory of intelligent bayonets in the sense that the illegally manifest order to which the theory refers must be extended to all cases when the illicit character of the ordered fact can be predicted (nobody can prevail against the ignorance of the law) to which the objective condition is added. that the order must be related to the fulfilment or non-fulfilment of an act that enters into the service duties of the person receiving the order.

An argument in favour of the sanctioning thesis of the one who has submitted to the illegal order is that the law does not provide for adverse consequences for the one who refuses to execute such an order. Moreover, to admit such an apology would imply paralyzing the act of justice and also encouraging the commission of crimes, which are inadmissible in a rule of law.

Conclusion

In conclusion, we can say that the military personnel enjoy a special status due to the special conditions in which they work and the military legal systems are indispensable to the ultimate organization and efficiency of the military institutions, especially the modern ones, when the fighter fulfils his mission being at the confluence determinant of a set of factors inevitable to its condition: humanitarian, legal, judicial, of the legislation of its own country, but also of the international, informational, high technology, etc .

The combat capacity of the armed forces represents a fundamental social value of the state, which has as common legal object the social relations created around this value, endangered or injured by criminal acts, but also components that, in their turn, fulfill the axiological condition imposed by nature. social value, such as: the country's armed forces viewed in their physical existence and in their fighting power, military order and discipline, the brave behaviour of the military on the battlefield, the moral unity of the population and its spirit of resistance, the loyal and devoted attitude of citizens regarding the obligations regarding the defense of the country.

REFERENCES

[1] L. Kazmier., *Principles of Management*, Ed. Oxford University Press, 1969, p. 185.

[2] C. Pintilie., L. Matei, *Curs de management public*, disponibil la adresa: http://www.slideshare.net/strumfigirl/management-public, accesed on 25.02.2020.

[3] I.Oancea., *Explicaţii teoretice ale codului penal român*, Ed. Academiei, Bucureşti, 1969, p. 99.

[4] T.Toader., *Drept penal român. Partea Specială*, Ed. Hamangiu, Bucureşti, 2009, p. 486.

[5] P. Drucker., *Management: Tasks, Responsibilities, Practices*, Ed. Harper & Row, New York, 1973, pp. 87-103.

[6] C. Mitrache., *Drept penal român*, Casa de editură şi presă ŞANSA S.R.L, Bucureşti, 1994, p. 70.