

JURIDICAL APPROACH TO DEFENSE PLANNING FROM THE PERSPECTIVE OF THE RELATIONS BETWEEN STATE EXECUTIVE AUTHORITIES

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Abstract: *The existence of the national defense system is supported by the structural elements of the state, which from the perspective of ensuring the public defense service of the state are given distinct properties and attributions, whose configuration is the result of the action of a set of factors, both internal and external nature. In the contemporary paradigm, in which national defense is carried out interdependently with collective defense, the state's participation in alliance systems and forms of international cooperation determine substantial transformations in the field of defense, including in the field of defense planning. Defense planning, as regulated by Law no. 203/2015 involves carrying out a set of activities and measures aimed at protecting and promoting national interests, as well as achieving the state's national security objectives, under the direct coordination of representative public authorities that mediate at the central level the exercise of the will of the people in order to achieve democratic control defense civilian. From an executive perspective, the defense planning process does not only involve a simple exercise of the legal powers assigned to the authorities of the central public administration, but is a consequence of how to ensure balance in the interrelationship between these authorities.*

Keywords: defense, planning, legal, military, authorities

1. The concept of defense planning in the context of the current security environment

Among the substantial transformations that Romania's participation in alliance systems and forms of international cooperation have generated in the field of defense are those aimed at the defense planning sector.

The defense planning system in the North Atlantic Treaty Organization and the European Union is highlighted by important defense planning documents, such as the *Strategic Concept and Political Directive of the North Atlantic Treaty Organization* or the *Security Strategy of the European Union*, which have become determining sources of defense policy orientation and defense planning at the national level, with an impact

on the legal regulations applicable in the field.

The process of integration into the European Union, completed by the ratification of the *Accession Treaty by Law no. 157/2005* and the process of accession to the North Atlantic Treaty Organization, realized by acquiring full membership by submitting the instrument of accession in 2004, after the adoption of *Law no. 22/2004 for Romania's accession to the North Atlantic Treaty*, contributed decisively to the construction of a new paradigm, within which national defense merges with collective defense, based on a partial transfer of powers specific to state sovereignty [1].

However, this process does not diminish the importance of the national interest,

represented as “the set of fundamental values that have the role of ensuring the sovereignty, independence and integrity of the country, national infrastructures and national defense and security systems” [2].

Thus, defense planning constitutes a first-order component of the defense policy, and becomes, by Romanian state law, “the process that is the basis of the transformation and modernization in the field of defense and includes all the programs, actions and measures initiated by Romania for the identification, development and the preparation of military and non-military capabilities necessary to fulfill missions and objectives in the field of defense” [3].

The accomplishment of the missions and the fulfillment of the objectives assumed by the Romanian state at the international level creates the prerequisites for the development of a “unique set of capabilities, managed through an integrated defense planning mechanism” [4] which is connected to the complex system of exercising state power through the authorities public.

2. Defense planning from the perspective of the configuration of the management of the national defense system

In accordance with the overall vision of the political and administrative role of the representative public authorities, the defense planning process is coordinated by the public authorities that mediate at the central level the exercise of the will of the people in order to achieve civilian democratic control of the defense, the Parliament of Romania and the President of Romania. The complexity of the defense planning process, however, determines the need to include among the authorities of first importance and the executive authorities, which, by their legal nature, have a non-representative character, but which have a determining role in the field of defense: the Government of Romania, the Supreme Council of Defense and the Ministry of National Defense.

The content of defense planning includes

areas as diverse as: force and armaments planning, command, control and defense communications, civil emergencies, defense resources, air defense and air traffic management system, intelligence, the medical sector, the field of research and development, standardization.

Of course, several criteria can be used to distinguish categories in the field of defense planning, but the most important differentiation is provided by *Law no. 203/2015 on defense planning* which divides the approach of the main defense planning documents into: defense planning documents at national level (National Defense Strategy of the country, Government Program) and defense planning documents at departmental level (White Paper of Defense ; Military strategy; Defense planning directive; major programs and annual plans) [5].

The exercise of democratic control of the armed forces is supported by the configuration of the interactions between the authorities that exercise the functions of the state, a configuration established by the Constitution and based on the principle of sovereignty that gives the people the status of legitimate holder of the political power of the state. Starting from this perspective, of the differentiated exercise of the democratic control of the armed forces, it can be observed that participation in the initiation, adoption or execution of specific measures in the field of defense planning is distributed among the authorities that exercise the management of the national defense system, of which a significant share is owned by the specialized central public administration authorities.

3. The activity of executive authorities in national defense planning

The provision of the Romanian Constitution, according to which “national sovereignty belongs to the Romanian people, who exercise it through its representative bodies, established by free, periodic and fair elections, as well as by

referendum” [6] represents a solid starting point to highlight the need to endow the two representative public authorities at national level, the Parliament of Romania and the President of Romania, with specific attributions in the field of defense.

However, as noted in the specialized literature, the mere fact of the existence of the regulation of the constitutional principle of the sovereignty of the people does not guarantee the quality of the governing act, because the transfer between the people, on the one hand, and the legislative and executive, on the other hand, it functions rather as a transfer of political power, understood in a general sense, and not as an absolute translation of the will of the people regarding the concrete aspects of the realization of state functions [7].

At the level of many states, the distribution of powers at the level of executive power respects the form of bicephalic organization of the executive that enshrines the investment of both the head of state and the head of government with the powers of executive leadership. The right that the head of state has to set in motion the state mechanisms created for defense has both a *political component*, represented by the legitimization of the position, either through heredity or through elections, as well as an *executive component* that refers to the ancestral character of the ruler's institution, as an authority recognized by those it governs [8].

Compared to the President of Romania, the Government is not elected by vote of the citizens, the appointment procedure may create a reservation regarding its legitimacy, but from the perspective of the investment by the Parliament, it is considered that the Government has direct legitimacy and that it benefits from indirect representativeness [9] or, in an established formulation “The Government is parliamentary by origin and governmental by function” [10].

It is worth noting that, in the relations

between the two institutions, the constitutional attribution of the President of Romania by which he designates the person who will be a candidate for the position of prime minister, does not mean the subordination of the prime minister and his cabinet to the head of state. Therefore, as long as the mandates of the two executive authorities are exercised based on the current Constitution, the relations between the two authorities are collaborative, including in the field of defense and its planning.

The most important defense planning document at the national level is represented by the National Defense Strategy of the country it represents, which is developed by the President of Romania, within a period of no more than 6 months from the moment the head of state takes the oath. After the presentation of the national defense strategy of the country by the head of state in the Parliament, the legislative authority, in a joint meeting of the two Chambers, debates its content and approves it, by decision of the Parliament.

The coverage horizon of the *National Defense Strategy* is correlated with the duration of the presidential mandate, which is 5 years, with the possibility of its modification according to the procedure established by law, in case of changes in the security environment that require an adaptation of the security policies defense and defense planning elements.

From the perspective of the regulations in force, the *National Defense Strategy for the period 2020-2024*, named “Together, for a safe and prosperous Romania, in a world marked by new challenges” realizes an integrated approach to the elements of defense planning from the perspective dual role assumed: on the internal level, with the highlighting of the national elements that ensure the proper functioning of the defense system, public order and security, and on the external level, from the perspective of the membership of the Romanian state

within the forms of cooperation and alliance at the system level alliance and European, Euro-Atlantic and international [11].

The Programme for Government is the second document that ensures planning at the national level, its particular importance being highlighted by the fundamental law, which stipulates that “The Government, according to its governing program accepted by the Parliament, ensures the implementation of the internal and external policy of the country and exercises the general leadership of the public administration” [12].

Executive authority located at the highest level in the hierarchy of public administration authorities, the Government of Romania exercises its functions directly conditioned by the application of the governance program. *O.U.G. no. 57/2019 on the Administrative Code* establishes that the functions of the Government are exercised for the implementation of the government program, some of these functions being derived directly from this document. Thus, the strategy function of the Government determines the implementation strategy of the Government Program and the implementation function ensures the application of the Government Program.

The Government of Romania is an authority with national general and territorial material competence and does not have the specialized profile for the full assurance, at the central level, of all attributions in the field of defense, but, through its unique position within the executive power, it directs the activity of the most important administrative structures which contributes to ensuring the defense.

4. Defense planning at the departmental level through the central public administration

The execution of the executive function of the state is done, from a structural perspective, with the contribution of a large

number of public authorities, in legal relationships that have a high degree of complexity. The implementation of the country's defense and, implicitly, defense planning involves administrative authorities with special material competence in the field of defense. At this level, the most interesting aspect highlighted by the analysis of the functions and attributions of these authorities is the way of combining administrative centralization with administrative autonomy. Each state has its own compositional recipe for the simultaneous use within the executive of the two administrative systems, which at first sight seem mutually exclusive.

First of all, from the perspective of central administrative autonomy in the Romanian state, the autonomous administrative authorities are not subordinate to the Government, but their activity is subject to parliamentary control. The process of accession of European states to the European Union created the conditions for an increase in the number and importance of autonomous agencies, the autonomy from the central executive power being seen as an advantage from the perspective of cooperation within European initiatives.

The field of defense is represented within the autonomous central administrative authorities by the Supreme Council of Defense, an authority which benefits from a constitutional regulation and which has an indisputable coordinating role in ensuring the defense function of the state, an aspect also emphasized by the quality of the members who ensure its composition.

An important set of attributions of the Supreme Council of Defense concerns the analysis and proposals for the promotion of some programmatic documents. Included in this category are documents such as: the national defense strategy, the military strategy, the public order and national security strategies, as well as the data, information and evaluations of the structures with attributions in the field of

national security.

Secondly, from the perspective of administrative centralization, the organization and functioning of the Ministry of National Defense gives this specialized body a role, structure, attributions and responsibilities adapted to the requirements imposed by the defense policies of the executive, carried out both internally and externally.

The Ministry of National Defense is responsible for the way of applying, in its field of activity, the provisions of the Constitution and other normative acts, responsibility manifested in the relations with the Parliament, in the framework of the control exercised by the Parliament over the public administration, in the relations with the Government, through the hierarchical relations which he has with it and in the relations with the Supreme Council of National Defense, the central authority with a coordinating role in the field of national defense and security.

In the specific issue of defense planning, a distinct role is assigned to the *Department for Defense Policy, Planning and International Relations*, the structure directly subordinate to the Minister of Defense that ensures integrated defense planning.

Law no. 203/2015 on defense planning diversifies the scope of defense planning documents at the departmental level including: *The Defense White Paper, The Military Strategy, The Defense Planning Directive*, as well as *major programs and annual plans*.

The common elements of these programmatic documents reside in the fact that they are developed by centralized structures of the specialized public administration (ministry and specialized bodies subordinate to it), they are necessarily based on the planning documents developed and adopted at the national level and are subject to, as a rule, the approval of the Supreme Council of

National Defense and the approval of the Romanian Parliament.

The time horizon of coverage of the mentioned planning documents varies between 4 and 10 years, depending on their specifics and the conditioning with respect to the previous higher-level planning documents that substantiate their existence. The general milestones of the calendar for the development and adoption of defense planning documents at the departmental level are established by law and are correlated and directly determined by the mandate of the executive authorities by rank, the President and the Government of Romania.

5. Conclusions

At the state level, the executive power has the highest level of complexity from the perspective of the dimensions of the administrative structures and the categories of relationships that are established between public authorities. Approaching defense planning from the perspective of relations between executive state authorities is an approach that includes the analysis of different types of executive and administrative authorities, of roles and functions assigned distinctly by reference to hierarchy or autonomy, as well as of institutional or programmatic interactions that go beyond the scope the national executive.

It should also be emphasized that, although the legal regulation of defense planning has its importance in ensuring the stability of the existing system, the variable represented by the political factor, which, on the one hand, ensures the legitimacy of public decisions, but which, on the other hand, it also introduces a relative amount of uncertainty into the configuration, balance, and maintenance of executive decision.

In conclusion, the structuring of defense planning on the two levels, national and departmental, is able to ensure the functionality of the system through the

correspondence with the functions and attributes with which the executive and administrative authorities are invested. However, beyond the mentioned formal aspect, the understanding of the intrinsic legal mechanisms that ensure the realization of the executive power and the specific

administrative processes contributes decisively to the achievement of defense planning in an efficiently foreseen way, adapted to the requirements of the current security environment and properly integrated in the pursued directions of action nationally or internationally.

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