

## ARGUMENT

National security is the most important attribute of the state and the concrete expression of sovereignty. By its complexity, this social value extends beyond the area of interest of a particular individual or group of individuals by becoming a reference object for the whole society. The evolution of the concept of security was directed towards a new architecture in which the multidimensional characteristic of national security is defining. Also the integrating values of security which include the three essential components: national security, defense and public order were also highlighted.

In recent decades the analysis of the concept of national security has experienced an unprecedented development becoming the subject of strategic, political, sociological and legal studies. Due to its mission in the society criminal law is the first one called to establish the general framework of protection of this social values by punishing the crimes that threaten or harm it. However, the penal protection of national security criminal has benefited in our legal literature only sequentially from a monographic approach.

On these bibliographic coordinates we based our scientific investigations necessary for the development of the work. Necessarily, in our approach we had to consider and some of the relevant literature on the emergence of the concept of national security and the multidimensional and complex nature of this notion. Special attention was paid to the political documents which in their sequence capture the dynamic evolution of the relationship between the Romanian society and risks, vulnerabilities and threats to national security.

The first part of the paper considers the main stages in the construction of the concept of security in the immediate post-war period until these days. We identified the major schools and analysis trends that have emerged in the scientific debate on the content and dimensions of the security concept. The contemporary discourse on human rights aims to give new meanings to the concept of national security by ensuring a balance between the need to protect basic social values of the whole nation and the imperative of guaranteeing the exercise of fundamental rights and interests of each individual. On these premises, we considered useful to analyze in a separate chapter the mechanisms of interaction between the three dimensions of legal protection of human

rights and national security. Finally, in this first part of the paper we were concerned with the historical perspective on criminal protection of national security.

Part II of the paper is the core of our approach. They are considered as the 17 offenses under the title of the Tenth Special Part of the Criminal Code and the 3 offenses covered in the current form of Law no. 51/1991 on Romania's national security. For each offense were considered the following elements: subject of criminal protection (legal object, object material); crime subjects (active subject passive subject); the content of association (the objective side, the subjective side); and attempted commission of the crime; sanctioning regime.

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In a separate chapter we analyzed the aspects of the content and development of special investigation techniques used in the field of national security. Also, in this chapter we exposed criminal procedural aspects of the prosecution and trial of crimes against national security. The last chapter of the paper deals with the regulation of crimes against national security regulation in other European countries.

## **PART I**

### **GENERAL THEORY OF NATIONAL SECURITY**

#### **CHAPTER I**

#### **THE SECURITY CONCEPT. EVOLUTION. REALITY. OUTLOOK**

The security term has a diverse and complex meaning, being able to influence and affect both the individual and every level of social organization, community, state or international organization. In summary, the concept of security implies the absence of any threats but also the possibility of preserving a core of values and welfare.

The perspective on the security concept was tortuous, this phenomenon being caused by the evolution of perceptions on the reference object, size and content of security. Despite its undeniable importance, the critical study on security appeared relatively late, after the second great world war, along with the assimilation of the concept of security to the national security.

In Romania, the altered perspective on the content of the concept of security is visible in the terminology options of post-December official documents in which the tradition of the security system politicization could not be abandoned. Today, the term "national security" is widely used in all the research literature being considered the most representative expression of the idea of defending the fundamental national interests of a state against the aggression, threats, threats or risks of any kind.

The traditional approach to the dimensions of the security concept identifies three levels of analysis: individual, state and international. According to the new perspective on the concept of security more constituents which act interdependently were detected. They build a multi-dimensional morphology of security in which we can distinguish: the political dimension, the military dimension, the economic dimension, the social dimension, the environmental dimension.

The relationship between national safety and national security is from part to whole. The concept of national security is a complex one and includes three subfields: national security, national defense and public order. All three subfields define areas of consideration of the national interests by the insurance of which the state called national security is achieved.

## **CHAPTER II**

### **NATIONAL SECURITY STRATEGY OF ROMANIA**

The National Security Strategy is the fundamental policy document which delineates the framework of existence and survival of a nation in the context of international security and which is intended to produce and protect national interests through all resources available to a community. It defines national security policy, provides the basis for counteracting the threats and risks identified and signal the risks that can strike their own identity preservation effort.

The present *National Security Strategy of Romania* is sub-called the *European Romania, Euro-Atlantic Romania: for a better life in a democratic, more secure and prosperous country.*

By addressing a pragmatic vision on security issues, the National Security Strategy differs from previous similar documents by means of the numerous factors about its genesis, structure and content.

The vision promoted by this document on the concept of national security is that of a dynamic and integrative factor. In this framework, the National Security Strategy aims to meet the need and obligation of legitimate protection against risks and threats that endanger human fundamental rights and freedoms, the values and vital national interests, the bases of Romanian state's existence and to target the following priority areas: the legal status; citizen safety; public security; prevention and combating of terrorism and other asymmetric threats; defense capability; protection against natural disasters, against the degradation of living conditions and industrial accidents.

### **CHAPTER III**

#### **PROTECTION OF NATIONAL SECURITY AND THE IMPERATIVE OF OBSERVING THE FUNDAMENTAL RIGHTS AND FREEDOMS**

The emergence of the international and constitutional system for the guarantee of fundamental human rights and freedoms clearly influenced the theories on national security. Historical experience has shown that often the interest of defending national security has been hijacked in order to justify the abuses against individuals or communities.

The identification of a balance between the interest of protecting certain common values for the society and the protection of fundamental rights and freedoms remain a necessity. All sources of modern construction of human rights pursued to find a solution to this problem by restricting the exercise of certain rights or by including certain general derogability clauses.

Among the legitimate aims justifying the restriction of exercise of fundamental rights and freedoms the defense of national security occupies a privileged place. Documents, covenants and international conventions and legal Constitution open list of the categories justifying state interference with national security. This technical legal terminology is explained not only by traditional public law but by the position reserved for this notion shared values of a society. New

perspective on national security, based not only on political and military aspects but also on a more active social and economic component, justifying this reality once again.

## **CHAPTER IV**

### **HISTORICAL PERSPECTIVE ON CRIMINAL PROTECTION OF NATIONAL SECURITY**

Systematization of the first Romanian criminal code has been strongly influenced by the French model of classification of crimes into murders, offenses and contraventions. The first title of Book II is called *High treason crimes* and is divided into two chapters: *Crimes against external security of the State* and *Crimes and offenses against the internal security of the State*. The Criminal Code which came into force on January 1, 1937 was the result of nearly two decades of intense doctrinal and legislative proposals and debates undertaken in order to achieve legal unification. Title I, entitled *Crimes and offenses against the State*, includes the most serious crimes threatening the existence of the State, its independence, territorial integrity, form of government, political institutions, international relations of the Romanian state, etc.

After the dictatorship of the proletariat in Romania the interpretation and application of criminal law have become tools meant to help strengthen the political power of the new regime. In the new context, the crimes against state security were part of the "counterrevolutionary crimes."

The Criminal Code came into force on January 1, 1969 represented the triumph of technical and legal method in Romanian criminal science and was a progress regarding the criminalization and punishment regime, legal logic and concise expression. Crimes against national security continued to be considered the most serious crimes, inaugurating the Special Part of the Criminal Code. Given the uniqueness and indivisibility of the state security they waived the traditional dichotomy "external security" - "internal security" and reduced the number of crimes the legal object of which is the social relationships regarding the state.

At the beginning of 1990 the regulation of crimes against state security has undergone a number of changes required by the violent collapse of the communist regime.

**PART II**  
**ANALYSIS OF CRIMES AGAINST NATIONAL SECURITY**

**CHAPTER I**  
**CRIMES AGAINST NATIONAL SECURITY REGULATED BY THE CRIMINAL  
CODE**

The current Romanian Criminal Code was adopted by Law no. 286/2009 and entered into force on February 1, 2014. Generally, the current criminal law keeps many elements of continuity from the previous Criminal Code both in terms of criminalization and regarding the sanctioning regime. The 10<sup>th</sup> Title of Special Part of the Criminal Code provides 17 offenses against national security. With a number of distinguishing features such crimes have a correspondent in the previous Criminal Code. Exceptions are the crime of high treason and the crime of constituting illegal information structures the constitutive content of which is partly found in the initial version of Article 19 of Law no. 51/1991. A redefinition of the content of the crime of actions against the constitutional order and the attack threatening national security was redefined and the propaganda for war became a crime against national security.

Some changes have a reforming form in the evolution of the Romanian criminal law. Thus, this is the first time when a Criminal Code contains the expression of *national security* as a result of the imposition of the text of the Constitution of Romania in the constitutional jurisprudence of inclusive and multifaceted conception on national security.

Also, a novelty element is the inclusion of crimes against national security in the architecture of the Criminal Code. In the current regulations a number of crimes punishable by the previous Criminal Code can no longer be found in the title against state security: the crime of undermining the national economy, the crime of conspiracy and the crime of propaganda for the totalitarian state.

## **CHAPTER II**

### **ANALYSIS OF CRIMES COVERED BY LAW NO. 51/1991 ON ROMANIA'S NATIONAL SECURITY**

The adoption of the new Criminal Code and of the new Criminal Procedure Code has intensified discussions about the need to reform the Romanian legislation on national security. Although the Romanian legal system needs a legislative package that is the result of a coherent vision on national security and the organization and activities of state bodies with responsibilities in protecting this basic social value, the Romanian legislature has opted for a compromise solution generated probably by the imperative of the entry into force of the two codes fundamental for the Romanian society.

By Article 34 of Law no. 187/2012 two articles (19 and 22) of Law no. 51/1991 were repealed and the content of Article 21 was changed. But the true reform took place by means of the provisions of Article 29 of Law no. 255/2013. Based on this article the title of Law no. 51/1991 was amended and the phrase *national security* has been replaced throughout the law with the phrase *national security*. Also, ten new articles were introduced (12<sup>1</sup> – 12<sup>10</sup>), Articles 13 to 15 were repealed and the content of Article 20 was amended.

*Law no. 51 of July 29, 1991 on Romania's national security* was republished, giving a new numbering to the text. From the analysis of this bill three offenses can be detected: a) performing activities specific to collecting information without authorization or by exceeding authorization; b) the disclosure, denial or prevention of carrying out the mandate; c) the disclosure or use of information without having the right,.

## **CHAPTER III**

### **ADDITIONAL ISSUES**

Protection of Romania's national security is achieved through a complex of activities consisting in the collection, verification and recovery of information necessary to prevent and counteract any actions that may constitute as threats to national security. The debates related to the project of a new Criminal Procedure Code brought to light the major discrepancies between

the regulation of special surveillance and research methods of the common procedure and the regulation of special investigation techniques used in the field of national security. By Law no. 255/2013 significant changes in the laws governing special investigation techniques in matters of national security were made.

Notification of the prosecution bodies on the commission of crimes against national security can be made by denouncing, by the documents concluded by finding bodies provided by law or ex officio. Finding bodies in this area are state agencies with responsibilities in the area of national security: Romanian Intelligence Service, Foreign Intelligence Service, Protection and Guard Service and specialized internal structures of the Ministry of Defense, Ministry of Home Affairs and Ministry of Justice.

The prosecution of crimes against national security are carried out, necessarily, by the prosecutor as for these crimes court jurisdiction belongs to the Court of Appeal or to the High Court of Cassation and Justice. When the crimes mentioned above are committed by military staff, jurisdiction in the first instance belongs to the Court of Military Appeal.

#### **CHAPTER IV**

### **ASPECTS OF COMPARATIVE LAW ON THE REGULATION OF CRIMES AGAINST NATIONAL SECURITY**

In the European penal systems we can identify two broad categories of models on the regulation of crimes against national security. The first model is the traditional one, generated by the criminal codes adopted in the second half of the nineteenth century and the first decades of the next one. Within these criminal laws, crimes known as "against the State" or "against the state and national defense", often opens the Special Part of the Criminal Code. According to the applicable sanction criteria, these criminal codes distinguish in the criminal between crimes and offenses.

The second major regulatory model of crimes against national security is the expression of reform that several European legislations have experienced in the last two decades. Since the last decade of the twentieth century some European countries adopted new criminal codes which have an architecture and content slightly different from the criminal laws they replace. These

new criminal codes are in effect a paradigm shift in criminal philosophy. Symbolically, the first sanctioned crimes are no longer those against the state but those who injure a person in terms of his/her fundamental prerogatives. Crimes against the State and its essential attributes are described in the second part of the code, to its end.

## **CONCLUSIONS**

The issue of criminal protection of national security is always within the perimeter of reform. This is due to the peculiarities of national security concept, which is in a continuous development caused by changes in the structure of the national, regional and international security environment. The content of threats to national security has an unstable character, which requires the legislature to identify optimal solutions to ensure a safe climate, based on order and stability in which the society may develop.

The adoption of the new Criminal Code and the new Code of Criminal Procedure imposed legislative correlations and terminology adjustments. In the current criminal law, crimes against national security benefit from a new systematization in the architecture of Special Part of the Criminal Code and include a number of crimes the matter of which originated in the content of other regulations. The law implementing the Code of Criminal Procedure operated significant changes in the laws governing special investigation techniques used in the field of national security. However, by imposing the term of "national security" in the name and content of the framework law they ended a lengthy legislative anomaly.

Romanian legislation on national security is currently facing in this time of reference a success of a stage. On these premises, it remains necessary to develop a coherent national security package which overcomes all these drawbacks. Until that time, it is the responsibility of the specialized doctrine to highlight in the new regulatory framework any deficiencies and to propose concrete measures in order to strengthen national security legislation on grounds of efficiency and compliance to the rule of law.