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DIVISION GENERAL CONSTANTIN DRAGU – A MILITARY EDUCATOR

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The pedagogical training side of a fighter requires that the changes that have taken place during the training be assimilated of what has been learned so that similar soldierly knowledge will enter into the substance of his personality. Such an idea is not new. In the inter-war, a number of officers were interested in transmitting knowledge to soldiers respecting the principles of military pedagogy, contributing, repeatedly, by personal experience to enriching this discipline. Such a personality, who felt that he had the sacred duty to dedicate his life to teaching, is General Constantin Dragu. Throughout this article, we will attempt to portrait this distinguished general of the Romanian Army, and through his writings show what means to be a military teacher.

Keywords: teacher; military pedagogy; moral education; army.

„The officer must be worked by the thought and the burning desire, to always be led by the principle and to stand up for the call. Nothing is for his personal interest, all for the moral training of his soldiers under his command.”

Army General Constantin Dragu

Born on 8 January, 1873 in the town Străulești, Vâlcea, the General of Division Constantin Dragu, attended the Military School from 1894-1896, serving as an internship year in the Austro-Hungarian army (1905), and having various positions in the Romanian army.

In his activity, he paid special attention to issues regarding the military pedagogy, bringing through his own experience and written works, notable contributions in this area. For two years between 1910 and 1911, he was professor of tactics at military school of infantry and artillery in Sibiu, during which he improved his qualities of military educator.

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He also improved his pedagogical skills by holding various positions of commander: he commanded the 3rd Battalion of the Regiment 33 "Tulcea", fighting at the head of the subunits in the Romanian military campaign in the south of the Danube during the Second Balkan War (1913); he was Chief of Staff of the Division 13 and 16 Infantry, taking part in the battles of the war Nămolosa and Mărășești of wholeness (1916-1919); he was Commander of the 47 Infantry Regiment, taking part in battles in the fall of 1917 against Bolshevik Russian troops, working mainly in southern Bassarabia (Cahul Bolgrad Ismail New Chilia, Vâlcov); he was Commander of the 41 Infantry Brigade and Commander of the Infantry Training Centre, which acted to Sebeș (1919) and Timișoara (1920), where they trained officers come from the Austro-Hungarian army involved in the Romanian army; he held the position of senior director of inspection and Infantry in two periods (1921-1924, 1927-1928), he served as commander of the large unit: Division 3 frames Army Corps (1924-1925), Division 18 Infantry (1925-1926), 13th Infantry Division (1926-1927) and 3rd Army Corps deployed in Bassarabia (1929-1931).¹

He was concerned with problems of military pedagogy, especially moral issues and education in the army, and wrote a series of works: *Moral education of the army (notions of pedagogy)*, 1910; *Moral and national education of Army (Notions of pedagogy)*, second edition revised and adds, 1921; *Army achievement of democracy and "armed nation". Problem of reducing active military service*, 1925; *Facts and prosperity fulfilled to strengthen the nation, ascension moral strength of the Army*, 1930; *Marshal Alexander Averescu*, 1939 etc.

Good knowledge skills of the environment of his time, Constantin Dragu Division General considers that: "Education of youth is the target of all, because he reached the conviction that the only way to achieve the ideal of the great philosopher Kant stated: man can only become man by education. He is what education makes him. The great secret of human perfection is found in education"².

Defining "education" (development and the improvement of the human being), the teacher (who is dealing with growth and education) or by referring to the "four powers - physical, intellectual, professional and moral" that go hand in hand and reinforce each other to each individual and the entire mass to produce maximum gain and moral and material gain for the benefit of people and civilization³, General Constantin Dragu reveals himself to the

¹ Petre Otu, Teofil Oroian, Ion Emil, *Personalități ale gândirii militare românești*, Academy of High Military Studies Publishing House, Bucharest, 2001, p. 39.

² *Căpitanul Constantin Dragu, Educațiunea morală în Armată. Noțiuni de pedagogie*, „Cooperativa” Typography, Bucharest, 1910, p. 14.

³ *General Constantin Dragu, Educațiunea morală și națională în Armată (Noțiuni de pedagogie)*, IInd Edition reviewed, Typography of Army Geographical Service, Bucharest, 1921, p. 32.

readers and to the people who love the military training in pedagogy as a fine connoisseur of many issues, which at first sight would seem insignificant. So, for example, moral power is considered to be "the lever that helps development and the flourishing of the other three"⁴ He gives as examples America and England, to illustrate the primacy of moral power, countries where "it seems perfect harmony reigns between the four kinds of education"⁵. For Romania, the military educator, General Constantin Dragu, believes that the future of the four branches of education must be coordinated, "for youth, adults and even the elderly, to receive true education, prosperity and strengthen the Romanian people whole"⁶.

Pedagogy is for the General Constantin Dragu, the „science dealing with real and practical search methods, with which you can make education of soul, cultivation, growing good habits and ‘true’ virtues soldiers”⁷.

Not everyone can be educator, argues Constantin Dragu, but one that meets a number of requirements⁸, namely:

1. *personal beliefs*, materialized in passion for career in arms:

"Educator is fully aware and convinced of his calling, is beaten by weapons career passion, and then works well to pass inspections, to obtain good grades, to satisfy personal desires or interests, but must work with great zeal and love, for people that control unit, to be really well prepared and ready for war and for the morally life for citizenship, where to go-confidence inspired by love and trust in the institutions of the state and its military power, armed to the teeth with a boundless love of country and dynasty, and with the highest familiar and national feelings";

2. *moral qualities* namely:

- blood duty power considered the moral foundation from which other national sentiments will arise;

- feeling of brotherhood and love of soldiers he commands: "Teachers are parents of soldiers, during both serving under the flag, and you always love them like their parents";

- sense of duty and zealousness "must be the first educator on duty, working cheerfully and with great zeal, for only in this way, it takes dedication, love and joy for duty, from those whom he instructs and who make education";

⁴ *Ibidem*, p. 33.

⁵ *Idem*.

⁶ *Ibidem*, p. 34.

⁷ *Ibidem*, p. 77.

⁸ General Constantin Dragu, *Educațiunea morală și națională în Armată (Noțiuni de pedagogie)*, IInd Edition reviewed, Typography of Army Geographical Service, Bucharest, 1921, pp. 45-76.

- the sense of honor and justice "teacher must be fair and just, because the only way to get these feelings deep root in the hearts of the call of education of them";

- feeling soldierly courage and responsibility "must be brave officer, and ready to take responsibility for all acts and actions, for only in this way educated people are lead on the true path of soldierly courage, and liability for acts and actions";

- sense of honor and dignity, neither bought nor inherited but obtained through good deeds;

- character, determination, superhuman energy, "the teacher must be convinced of his calling, honesty, righteousness, faithfulness and determination etc. and above all decisiveness";

3. *physical qualities*, namely physically well built, sturdy, agile, nimble, strong;

4. *intellectual qualities* that help the future teacher military to face difficult circumstances "reading, rereading, and looking to keep up with the progress of science and civilization ... Exercise judgment must be cultivated with care";

5. *general knowledge rather developed and land*, resulting in strong and clear principles of anatomy, biology, physiology, hygiene and nutrition, psychology, philosophy, sociology;

6. *professional knowledge, techniques and tactics* that help the educator "to become an artist in his career, for only thus is the living example and gain confidence souls that command is obeyed and followed blindly";

7. *pedagogical qualities*, namely: patience and perseverance, self-discipline and perseverance, spirit of observation and research, personality educator;

8. *military skills* such as: skilled and equipped instructor, passionate and convincing educator, wise, determined and energetic commander, cultivated through work and education.

In his works, he makes known "notions of pedagogy that correspond to the nature of a Romanian", namely: labor division principle, knowing the soldiers in all relationships, mood of the soldiers, for any action (work) must pursue development and the raising moral powers; example – instance⁹.

The military teacher refers in his writings to moral education teaching methods and educational resources necessary to reach some relevant details¹⁰:

⁹ *Ibidem*, pp. 77-78.

¹⁰ *Capitanul Constantin Dragu, Educațiunea morală în Armată. Noțiuni de pedagogie, „Cooperativa” Typography, Bucharest, 1910, pp. 51-60 and General Constantin Dragu, Educațiunea morală și națională în Armată (Noțiuni de pedagogie), IInd Edition reviewed, Typography of Army Geographical Service, Bucharest, 1921, pp. 86-96.*

- "moral education of must vary in relation to the nature of each individual": for this emphasis on conversation and advice given to each individual separately;

- "way of teaching" can take two forms: synthetic (from simple to complex, from small to large) and intuitive (from the known to the unknown). Through these forms of teaching, more complex knowledge is added to recruits' more simple ones and so, "the simple concepts that are found in their brain folds and their souls, strengthen, and are empowered to develop and increase";

- the need to "talk" with them to implement two teaching methods mentioned above, "because while working as educator intellectual faculties and those of students. Looking for answers ... not devised or made by educators, but excitement turned into notions felt up and expressed deep down I can. Deeds, not words!"

- "development and setting the concepts" is based on laws of psychology, "the perception, through representation, reaching sense, the desire and finally at will". Military teacher emphasizes repetition (which I called schooling), mainly as a means of making pedagogical education, which turns moral concepts moral habits.

In Constantin Dragu's view, the military educator must be careful to the demands of war, and have in mind that every soldier has his own personality and his duty is "to make every fighter be convinced of the role he has to fulfill, the importance of individual personality, the spirit of enthusiasm, initiative and camaraderie that we must master"¹¹.

The military teacher does not mention in his writings coercive measures and penalties to be applied "with great greed and very careful"¹², and only educational means that prevent it. In their application, military educator must take into consideration the severity of mistake, and its cause.

In his works dedicated to military pedagogy, he includes a list of "vices or passions that attack and destroy the moral strength of a soldier"¹³, identifying over 50 vices and passions (E.g.: laziness, truancy, betrayal, lies, deceit, drunkenness, gambling, debauchery, simulation, pretense, fear of death and honor, cowardice, lack of will and energy, flattery, espionage between comrades, discipline, disgrace, hatred, envy, malice, jealousy, poor preparation for the war etc.) and proposes some pedagogical measures to defeat them as follows:

¹¹ General Constantin Dragu, *Educațiunea morală și națională în Armată (Noțiuni de pedagogie)*, IInd Edition reviewed, Typography of Army Geographical Service, Bucharest, 1921, p. 96.

¹² *Ibidem*, p. 97.

¹³ *Ibidem*, pp. 109-134.

- "commanders", the example you give to be imitated;
- "companions of equal rank" considered to be of paramount importance for good or evil on the attack power of moral vices;
- "education by itself" by creating a role model to promote the cult of great men through leisure activities, or by talking to people with personal combat powers in the war against vices.

For the moral education of young people, educators should pay special attention to fostering religious feeling ("the foundation of soldierly virtues of our ancestors") and honesty ("the most beautiful ornament of every human soul ... the foundation of virtue").

According to General Constantin Dragu, the units and subunits must have coherent educational program, which should contain guidelines for building moral strength for officers and troops.

While he was working at the Military School of Infantry in Sibiu, he displayed in the hallways and in classes the Calendar of Franklin, which I will quote in the desire to give cause for reflection to those who read this article:

"Calendar of Franklin

1. *Thrift*. Do not overeat, don't drink until you're dizzy.
2. *Silence*. Speak only what is useful to you and others, beware of verbiage;
3. *Order*. Every thing should have its place; every activity a decided time;
4. *Decision*. Be determined to do your duty; do what you decided without hesitation;
5. *Economy*. Be ready to spend money only for your sake or for other's; don't spend money without having to do so;
6. *Endeavor*. Do not waste time, but continually get busy with what is useful and refrain from any useless activity;
7. *Sincerity*. Beware of any harmful form of thought; think of right things and take them into account when speaking;
8. *Justice*. Do not hurt anyone, or his interests; do your duty in helping others;
9. *Moderation*. Beware of extreme thought; do not be upset because of injustice done to you even you think they are undeserved;
10. *Cleaning*. Don't keep your body dirty. Neither clothes nor household;
11. *Silence*. Do not get upset with trifles, ordinary events, or those that are beyond your control;
12. *Chastity*.
13. *Humility*. Imitate Socrates and Christ."¹⁴

¹⁴ *Ibidem*, p. 147.

Eager to contribute to moral education, the distinguished general published a booklet entitled "Facts fulfilled for strengthening and prosperity of the nation, the army's moral power ascension" in 1920 in 10,000 copies, which summarizes the special moments of military history and national public photos describing personalities and members of the royal family, which gave its students to read and cherish.

At the time of their appearance, the works of Dragu General Constantin established military pedagogy remained only at popularization. Over the years, those who have committed no wrong if applicable military education by adapting the military educator with more than 70 years ago.

The distinguished General Constantin Dragu died in an autumn day, and he was buried at Bellu Cemetery in Bucharest, on the Saint Paraskeva day, on 14 October 1956.

In the end, the short presentation of the military teacher, General Constantin Dragu, can be done through his own words: "Work ceaselessly to do your duty as it is the source of health and happiness for each person and for all Romanian people"¹⁵.

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¹⁵ General Constantin Dragu, *Fapte de împlinit pentru întărirea și prosperarea neamului, înălțarea puterii morale a Armatei*, INF. No.2 Military School Typography, Sibiu, 1930, p. 4.

INFORMATION RISKS, THREATS AND VULNERABILITIES AGAINST MILITARY FIELD. TENDENCIES AND DIRECTIONS OF DEFENCE POLICIES IN THE INFORMATION ERA

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The development of operational capabilities in the intelligence field represents a permanent concern in modern armed forces. The technological progress in this field has determined the achievement of new means, methods and procedures for collecting, processing, analysis and dissemination of intelligence in the space of interest.

Of these, Space Reconnaissance together with IMINT and SIGINT represent important components in the intelligence architecture at a national or alliance level.

The intelligence risks, threats and vulnerabilities are based on a series of reasons that should not be overlooked in order to establish the necessary protection measures.

Modern armed forces have as a primordial objective supremacy in the intelligence battle of present strategies and visions for development. The basis to win this battle is represented by the successful implementation of intelligence technology in the integrated battle field as well as the protection of these systems and technologies.

Keywords: information system; Space Reconnaissance; Management and Technical Collection; Information Methods and Procedures; Risks, Threats and Vulnerabilities; Information Revolution; Information Vision.

According to information technologies, the global information medium has two distinct poles: USA (with a considerable technological advance) and other important actors (with some advances in some domains): Russia and China and lately: France, Israel and a consortium of some European states¹. The previous hypothesis is based on the fact that the current information

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¹ Space reconnaissance and the management of technical collection,
<http://www.gpo.gov/fdsys/pkg/GPO-INTELLIGENCE/pdf/GPO-INTELLIGENCE-15.pdf>

technology is most advanced in programs like: Space Reconnaissance and Management of Technical Collection, where USA is the most technological advanced state, having an important technological advantage, but more important, unique operational capabilities which are hard to challenge on short and medium period.

Moreover, Russia and China are still having difficulties with these advanced programs, because of the profound internal transformations after the fall of the USSR in Russia's case and because of the insufficient level of development in these domains in China's case. The other states, new entered in the exclusivist club of entities capable of space collection have more modest concepts, probably because of the lack of financial possibilities to sustain such systems.

Starting from these hypotheses and taking into account the information capabilities of medium and above medium developed states, we can observe that most of them have specialized services on internal and external areas of interest, military and other form useful for information assurance of internal services. Moreover, where space collection capabilities are present, they are under military control. There are two organizations in the Department of Defense of USA:

1. US Space Command (SPACECOM), which supervises the so called "white world satellites" – satellites made public as being part of military programs;
2. National Reconnaissance Office (NRO), which supervises the so called "black world satellites" – intelligence satellites².

The new advanced technologies in domains like IMINT (Imagery Intelligence) and SIGINT (Signals Intelligence) greatly impacted the current concepts and notions on which the information systems implementation and development are based. All these implies the jump to new technological levels in IMINT domain for caption, transmission and data base creation for video images and platforms (satellites, manned or unmanned aerial, terrestrial, maritime and sub maritime systems); on the same note, SIGINT has an explosive evolution in communication means, sensors, collection and data base creation and platforms.

The impact of technological development on the concepts evolution regarding information are so important that it generated changes in the information structure and architecture, both in agencies organization and its responsibilities and competencies. At the extreme, there has been created new agencies with the goal to satisfy some specific requirements. Examples of

² Space reconnaissance and the management of technical collection,
<http://www.gpo.gov/fdsys/pkg/GPO-INTELLIGENCE/pdf/GPO-INTELLIGENCE-15.pdf>

such impact are: SIGINT management generated both more responsibilities for Defense Intelligence Agency (DIA), taken from CIA and the creation of National Intelligence Agency (NSA)³. According to the official data, NSA is a specialized stand alone agency, responsible for SIGINT collection, data processing and products dissemination to US agencies interested in such products. NSA's exceptional performances proved both the efficiency of the intelligence agency and the fact that the concept is operational and defined NSA as the main source of SIGINT intelligence for the other information systems and as the domain management coordinator in National Intelligence Community (NIC).

Moreover, NSA is today the interface between the commercial sector and Department of Defense in communication technology domain. Practically, all research and development activities in this domain are duplicated inside NSA for SIGINT technology creation. This type and level of influence of the information is not specific only to the national programs of USA. Information technology development has a similar impact in all the states involved in such programs. The result is reflected not only on the information architecture and operation procedures inside the Information Communities, but also on every member, both on his capabilities and on his profile as an adaptation to the system requirements.

The requirements complexity of different intelligence products based on the exploit of information technologies and on the huge and very specialized volume of information created by technical collection created the need for several concepts of distinct structure on domains and sub domains, regarding the responsibilities for collection and production, in accordance with a coherent management of the information collected and available for processing. The most technological advanced states divided SIGINT in: COMINT (Communication Intelligence) and ELINT (Electronic Intelligence). ELINT has three sub domains: FISINT (Foreign Instrumentation Signals Intelligence), TELINT (Telemetry Intelligence) and RADINT⁴ (Radar Intelligence).

The same way and based on the influence of the technological development, MASINT (Measurement and Signature Intelligence) divided its responsibilities in subdivisions according to the collection and processing domain: ACINT (Acoustical Intelligence), OPTINT (Optical Intelligence), ELECTRO-OPTICAL (Electro-Optical Intelligence), IRINT (Infrared Intelligence), LASINT (Laser Intelligence), NUCINT (Nuclear Intelligence) and RINT⁵ (Unintentional Radiation Intelligence).

³ *Idem*.

⁴ Gary H. Mills, SHAPE Senior analyst, *The role of rhetorical theory in military analysis*, 2003, p. 16.

⁵ *Idem*.

We may say that, if during the 70s and 80s, the commercial producers efforts were to answer the visions and dalliances of the information market, nowadays, these entities only produce new and more performing products for concepts developed at the beginning of the 90s, increase the collection, processing and archiving capabilities, making more efficient the concepts on which the whole specter of information interest is based.

Information risks, threats and vulnerabilities in military domain

Information risks, threats and vulnerabilities are based on the following considerations:

- permanent confrontation in order to obtain and keep information domination, supremacy and superiority;
- increased dependency on information systems and technologies, on technical equipments and embedded software;
- new technologies and capabilities, which will provide significant advantages to modern armed forces, are sold everywhere and may be bought by groups which can threat security and stability;
- modern collection equipments high level of connectivity with the information and decision networks generates the need for specific measures to protect and maintain the operability status of military systems and ensure the management continuity, secret actions, information unity (to ensure unitary and homogenous information coordination and execution links), behavior and adjustments functional flexibility (to avoid functional discontinuities and ensure its dynamic, self regulation, adaptability, viability and systemic coherence);
- changes of the global information medium, its structure and its environment will determine dramatic mutations in the strategic domain;
- information technologies extend the place and role of multinational corporations, NGOs and international VIPs who can play important roles in influencing the events;
- new technologies enter more and more in business domain, having an important impact on defense policies (the wider the series of potential factors which may drastically influence specific national interests the more difficult the identification of potential serious threats for the decision makers);
- modern systems interconnection and information technology and communication progress cause, in some cases, high difficulties in avoiding information floods;
- information considered unacceptable or undesirable may be disseminated very easy, information which serves specific interest groups and may impact national security;

- information technology and communications studies and researches can be conducted by small teams and even individuals;
- transformation by a potential adversary of commercial means in true “weapons” for provocation and threats proliferation;
- different options available due to the information and communications technology allow many actors, including non-state ones, to have access to tools which can be used for threats and provocations development (cyber war, hackers war or cyber terrorism);
- ignoring the borders and constraints generated by space or time;
- increased vulnerability for information technologies and systems and for technical equipments and embedded software due to unauthorized access, accidental or planned destruction and alteration of data and software. The current tendency is represented by the extension of connectivity, especially to Internet and Intranet networks, making more and more difficult illegal access points identification or aggressive behavior users. This type of vulnerability can generate huge damages, directly or indirectly, as a result of information “leaks” of both personal and economic or military data;
- there are many vulnerable targets in technical-military domain, which can be accessed quickly and widely and which generates the need for more protection measures;
- information era characteristic is not only the information quantity or technology proliferation but also its rhythm and dimension.

Basically, any state or NGO with hostile intentions can access technology needed to threat a military information system. Due to the low cost of the necessary equipments needed for an information attack, compared with the costs of a protected information system and to the fact that many knowledge are available on Internet, threats may come even from NGOs, terrorist groups or civilian hackers.

Threat to information security approach implies the consideration of the fact that vulnerability does exist during all stages of its organization and its representation must be used when ensuring its protection. In conclusion, there’s no clear distinction between information and the medium where/through it resides/flows, from information security point of view⁶.

Threat to information implies threats to the medium where this information resides or to the communication channel through which it flows. Information protection implies different security measures than those needed for electronic memories and communication channels.

⁶ Ion Roceanu, Iulian Buga, *Information, conceptual landmark and security coordinates*, AISM Publishing House, Bucharest, 2003, p. 59.

Compared with the traditional threats to military organization components we may observe an increased share of those associated with computers and computer networks in the case of military information systems. This share may be explained by the systemic integration role played by the computers subsystem and by the fact that the communication subsystem is based on computers. In the same time, we may notice that both principal hardware (workstations, network cables etc.) and software components (operation systems) in use were developed by civilian companies, which generates security concerns: many of them are available to anybody on the market, including their technical specifications. Dedicated military components, developed, produced and supervised in secure conditions are victims of industrial espionage, common characteristics of a free high technology market. It is more difficult to adapt these components to the evolving requirements and they may contain imported components or products verified outside the military sphere which can be altered intentionally through very well concealed processes. All military information systems were developed based on a logic component – software – which can be attacked with similar logic means, using cheap technologies which is developed and diversified permanently including by international criminal actors. Therefore, results of the civilian systems vulnerability study may apply to the military ones.

Specific threats for military information system, especially at the operative and strategic level, are influenced by the dependence of the communications and computers subsystem on national information infrastructure. Military related information presence in civilian mediums offers opportunities for potential adversaries to exploit uncontrolled sources.

The origin of system dangers that can become threats is diverse. Information threats may have different motivations, based on: politico-military objectives, revenge, economic gain, identity theft, blackmail and intellectual provocation.

According to specific publications, threat sources are classified by some criteria:

- *behavior*: manifested or open: direct (hacking) and indirect vandalism acts (malware), radio and radioreley, radiolocation and radio navigation jamming, SIGINT activities, electromagnetic pulse, special operations; under covered, disguised or conspired: espionage, sabotage and subversive acts, terrorist actions, criminal activities; by accident and natural;
- *origin*: internal, external or from the medium.

For the information operations, vulnerability represents a weakness, both in system projection from the information security point of view and as a

consequence of inefficient internal control and security measurements implementation. These situations can be exploited to obtain unauthorized access to data and information or to the informational system.

For the communications and IT systems, vulnerability represents a point where the system may be attacked. The confrontation to obtain and keep information domination, supremacy and superiority as well as dependence on information systems and technologies and technical equipments and embedded software have generated risks, threats and vulnerabilities which must be countered with specific measures, in the context of the new *revolution in military business and network centric warfare*.

Tendencies and guidelines regarding informational medium evolution in the information era

The effect of the ongoing information revolution, *both in social and military domain* is monitored closely by the military strategic specialists, most of them agreeing on the effects of information revolution as a factor which will profound modify our society, democracy and our daily lives⁷. These technologies will constitute the means to increase the military efficiency and reduce the losses, both in blood and money. There is an essential need for a unified social and military perspective on the military structure and future developments options and directions.

The main effects of the information era on social medium, especially on military domain, are: time and distance become less important as a constraint; events may be influenced by many transnational and international factors; international borders become less significant; regionalization and globalization tendencies will be on an ascending trend; there will be a bigger gap between rich and poor; threats may be the result of multiple sources and asymmetric warfare will be a real danger; there will be significant mutations in strategies and tactics in order to be continuously adapted to the battle environment; real revolution in military domain will be realized using a mix of information technology and communications and military applicable technologies.

Opportunities offered by information technology and communications to the military domain are developed taking into account the provision of a better planning and lead of the modern warfare. It is about information systems offered by the integration of sensors, radars and other collecting equipments which are continuously developing. These equipments are more and more connected with information networks in order to ensure a better

⁷ Z.K. Halilzad, J.P. White, A.W. Marshall, *Strategic appraisal. The changing role of information in warfare*, Rand, Santa Monica, California, 2001, pp. 26-32.

visualization of the battle space, including the location of every soldier and mechanized vehicle:

- global communication system with increased transmission speed and constancy which help accessing an accurate image of the battle space from any location on the Globe;
- increased high precision fire power which produce significant losses for adversary and diminish the amount of losses in friendly forces;
- possibilities to rigorous analyze the losses of battle space, which increases the efficiency and effectiveness;
- need for a rigorous information actions planning and conducting in order to protect own information and destroy adversary data base;
- ability to define and redefine specific terms like: systems of systems, information operations, information superiority, information warfare, network centric warfare, military revolution;
- ability to ensure information superiority, including: collection, processing and dissemination of a specific intelligence continuous flow and exploit of, or diminish of the adversary forces ability to respond.

Technologic evolution impact does not manifest only in the warfare space but also in *defense policy*, affecting many *directions*:

- information become essential in order to increase wealth, power and influence; information become more important than traditional resources and defense policy must rethink its objective and include actions regarding information defense and protection;
- continuous change of moral and material values, influenced by available information regarding possibility of using the technology to create them;
- information technology produces changes in structure and organization of all social components, including military, information flows providing real time command and control from locations which are independent of distances, platforms and hierarchical level.

Continuous condensation of space and time, especially generated by technologic support and its concepts is not new, previous constraints being dramatically reduced or totally eliminated, in some cases. Different format of information and superior quantitative and qualitative support on different platforms allow direct contact pretty quickly and usually only for remote controlled armament systems, which provide security both for leaders and systems operators.

Border insignificance, including state border is a reality with two sides. Increased international entities interactions which are useful for democracy and economic development is one side of the coin. The other side comprises unacceptable quick and rapid of unfavorable information

availability, which represents a major threat. Borders permeability creates the need for new strategies regarding information control, which can be rapidly change from positive elements to risk threats for owners. Maintaining information security and protection and informatics and communication systems become an important priority for security and defense⁸ in information era.

Information technology will encourage *regionalization and globalization tendencies*, rapid information transfer allowing production processes and relation to expand exponentially beyond state or regional borders. The true active factors of regionalization and globalization have the most important technical capabilities.

Economic integration will have a bigger impact in the military domain, generating: interoperability of forces owned by same evolutionist mediums; offer diversification; bigger technological and military gap between different states; access to specific technology, even for elements which uses violence as the principal instrument to attain its goals. Moreover, without global politics to eliminate such *major risk for regional and global equilibriums*, information technology will favor bigger gap between poor and rich spaces, generating an accelerated development of powerful states, increased differences and asymmetric wealth distribution, which inevitably generates internal and external disorders, major disparity and growing international tension between these spaces.

Risks generated by bigger dependence on information technologies and systems, on technical equipments and embedded software become more and more evident, entities with less personnel and using low cost methods being able to generate big losses, including financial, directly or indirectly, through aggressions on information systems, including defense and security ones (C4I, C4ISR, C4RISTA etc.). Current tendencies of interconnectivity, especially to Internet and Intranet networks increase the vulnerabilities due to the fact that it's more difficult to locate an illegal access point in the network or a rogue user.

From *technical-military* point of view, communications and information importance resides in the big number of vulnerable targets, rapidly and diversely accessible, which need protection means and procedures more and more diverse. According to future strategies and development visions, primary objective of modern armies is winning the information battle. Winning the information battle depends both on successful application of information technology in the integrated warfare space and protection of these systems and technologies.

Information and communications technology has a *major impact on military strategy*. The main provocation of our times is not only the information quantity or technology proliferation but also its rhythm and

⁸ *The Internet and press freedom 2000*, New York, Freedom House, 2000, p. 27.

format. World evolution is more efficient, complex and rapid than ever, entities which can adapt to this rhythm being the ones which make profit and dominates any domain, including the military one. There have been identified concerns inside different modern armed forces, solved through improvement of the network operations in all domains, including space⁹.

According to different specialists, present and future warfare concept will be dramatically impacted by new technologies, especially in military operations command and control levels. Warfare is combined with a conservative strategic approach in which states, alliances and military structures will remain the most important actors. Armed conflicts will remain political instruments.

Standardized *information domination, supremacy and superiority* will be the key for success in military actions through the capability to control and maintain a more rapid actions rhythm than the adversary, allowing friendly forces to win and maintain initiative during operations¹⁰ and ensuring success and the base for future actions.

Scarcity and disparity of more mobile forces and gradually implication in operations is more and more possible using the information technologies, allowing commanders to discover targets and conduct their own actions efficiently and effectively. Technologic and procedure development will continue tendencies of efficient global positioning, increased armament systems targeting, remote action platforms performances.

Confrontation asymmetry represents an important mutation produced in the military action, generated by this explosive technologic evolution, *concept manifested especially in:* utilization of high precision system and munitions or WMD against forces and means of inferior generations; terrorist actions against modern forces in order to weaken public support regarding utilization of military forces; option of quantitative utilization in order to compensate for terrain or urban medium constraints; a network organized adversary has a higher potential than a hierarchical one; cyber war; hackers community; ambiguity generated by actions situated on the border between military and non-military domain, between national and international jurisdiction, between classic warfare and peace.

As part of the society, armed forces need to transform, to remodel according to new requirements that society imposes. Being recognized by its conservative nature, armed forces oppose innovation – especially when change implies lowering the rank of some components.

⁹ Teodor Frunzeti, Vladimir Zodian, *World 2011*, political and military enciclopedy (security and strategic studies), Technical-Editorial Army Center Publishing House, Bucharest, 2011, p. 716.

¹⁰ Joint Vision 2020, pp. 61-62.

Military domain revolution represents, in essence, radical and profound changes, not only in technology domain. There's a need for a radical change of doctrine, review and change of the whole force structure, namely the dimension, composition and number of internal structures¹¹.

Cold war ended the bipolar era. This aspect, combined with technological evolution constituted the momentum for doctrine remodeling, adapted to new threats and risks, current and predictable in the future. Adversary becomes more invisible and more active, taking different modes of manifestation and existence and attacking in diverse mediums. There's a need for an international security system, where state and individual security plays a central role and represent global problems. There's a need for flexible structures, more mobile and hyper specialized, adaptable both to action requirements and commander conception. Current armed forces relax a rigid command system into one where decision authority is located at a minimum possible level, "a digital force needing a centralized control less rigid, conducting unilinear operations in a rapid rhythm, in pulsatory and complete systems which are not adequate for a rigid, centralized control"¹². There's a need for these structure to conduct more diversified actions: from food aid to locals after a disaster to training of an allied country in insurgency fight.

Moreover, we must not lose from site the leader's mentality. His intellectual matrice configuration needs a specific training, tailored both for destruction and helping others. Technical advance impact manifests in the fact that *new armed entities* assessed to be used in future military actions will be trained for battle using modern techniques and procedures, with special accent on training in similar conditions as the ones offered by the battle space. These ways, through simulation, commandants may realize an almost real image of stages and actions of the confrontation, in order to understand the critical moments and develop ways to overcome or avoid them in order to achieve final goals. Forces may be verified using sophisticated simulation systems and efficiency control elements related to different scenarios involving adversary actions, terrain constraints, time and season and other indicators which influences or changes the battle space.

Real image of *forces preparation and engagement* is presented in NATO doctrines¹³. These documents presents details regarding: use of force; rules and procedure of engagement; importance of the theatre of operations

¹¹ Ion Bălăceanu (colectiv), *Interaction of strategies in context of the modern armed conflicts*, UNAp Publishing House, Bucharest, 2010, p. 63.

¹² Eugen Bădălan, Teodor Frunzeti, *Asymmetry and Idiosyncrasy in the military actions*, Technical-Editorial Army Center Publishing House, Bucharest, 2004, p. 95.

¹³ AJP-01 (B), *Allied Joint Doctrine*, NATO HQ, Brussels, 2001, pp. 3-12.

culture and customs; basic and fundamental language and key expressions; importance of check points and blocking of operational routes; patrol actions, observation and reporting; search and rescue equipments and personnel; EOD tactics and techniques; mine finding and neutralization; equipment, technical equipments and warfare means identification; NBC protection procedures.

Information revolution *major result in military domain* is represented by the vision of informational warfare – a warfare which is using information as weapons and being the main target of the aggressive actions, in the same time. The possibility that this may become the main dimension of future warfare is more and more obvious, sustained by the following: possible military advantages through information utilization as a weapon against adversary targets – mental, weapons systems, support; vulnerabilities of both communications, economic and commercial and logistics and command infrastructures to hostile actions utilizing information technology and specific doctrines.

In conclusion, implementation of new IMINT, SIGINT and space collection technologies determined a reconfiguration of military information systems, of domains and subdomains regarding responsibilities in collection and production, for an efficient and effective management for intelligence products.

Modern confrontation space complexity generates information risks, threats and vulnerabilities and the need for specific protection measures. Information era impact effects in military domain generated rethinking actions for training and tactical, operational and strategic confrontation engagement of forces and for defense politics and its objectives. Information technologies create new elements in military actions management, maneuver capability, protection, force structure and information operations procedures.

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THE MILITARY JUSTICE SYSTEM IN THE UNITED STATES OF AMERICA

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The procedure of initiation of a court martial is named "convocation". A commander authorized to convene a court martial is a "convening authority". The Uniform Code of Military Justice appoints the commanders which convene a court martial.

The authority to convene a court martial is independent of the ranks and is maintained as long as the convening authority remains as a commander in an assigned position.

Keywords: military justice system; authority; commander; inquiry; offence; search; immunity proof.

Role of the convening authority

The procedure of initiation of a court martial is named "convocation". A commander authorized to convene a court martial is the "convening authority". The Uniform Code of Military Justice appoints the commanders which convene a court martial.¹

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Rules for the courts martial³. Rules for the Courts Martial 504 (b)

A commander may order disciplinary measures by:

- a. Considering the accusations as groundless;
- b. Forwarding them to a superior commanding officer;
- c. Proposing administrative measures;
- d. Imposing non-punitive measures;

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¹ *Uniform Code of Military Justice (UCMJ)*

² *Ibidem.*

³ *Art. 504 b and the following ones from the Uniform Code of Military Justice (UCMJ)*

- e. Imposing extrajudicial punishments;
- f. Convening a court martial.

The commander's influence as regards the inquiry and the enforcement of the disciplinary measures consists of the following:

- Once the accusations have been notified by the commander to a court martial established under the law, said commander may not use his command authority to influence the decision of the Court Martial.
- A superior commanding officer may choose not to give the authority of disposition in the case of a particular offence, in types of cases, or in general. A subordinated commander may take measures for which the authority has not been withdrawn⁴.

Here are some examples of how inquiries take place:

a. Inquiries begin with a report on the offence. Such a report may come from the staff in charge with law enforcement currently trying to uncover the wrongs from the victim of an offence or from witnesses.

b. The report of the offence is forwarded to the direct commander of the suspect for subsequent measures. Usually, the commander shall order a more thorough inquiry.

c. In the case of a serious or complex criminal activity, the commander may request the assistance of specialized military investigators. In the Marine, these are specially trained civilians acting as agents of the Naval Criminal Investigative Service. In the Land Forces, the specially trained personnel are assigned to cooperate with the Criminal Investigation Division.

d. In the case of minor or simple offences, the commander normally appoints a younger officer under his command to lead the inquiry. In other cases, the inquiry may be led by personnel of the military police.

e. Criminal investigations should be led in accordance with the Constitution of the United States, the Uniform Code of Military Justice and the Military Rules of Evidence⁵.

The following activities are often a part of the criminal investigation:

- Questioning the witnesses. The persons that witnessed an offense or have information about an offense should be contacted and asked for a statement or the identification of the suspect. Witnesses may not refuse to give a statement, unless it incriminates them. False statement is a military offence.⁶

⁴ It is somewhat similar to the exception from the official procedures in the Romanian Criminal Procedural Law when, for certain offences involving militaries and their activity, an indictment may only be issued at the order of the commander.

⁵ *US Constitution*, with the Uniform Code of Military Justice and the Military Rules of Evidence.

⁶ *Art. 260 Criminal Code*.

- **Interrogations.** Suspects are often asked to give a statement during the investigation. If the officer in charge of the investigation knows that the questioned military is a suspect, he should inform the suspect about the right of not giving statements and the right to an attorney.⁷ The suspect may not be forced to give statements and may request to stop the interrogation at any time.

- **Searches.** Physical or documentary evidence is often the key of an efficient prosecution. However, the fourth amendment of the US Constitution prohibits the searches of private areas, such as residences or briefcases without the permission of a neutral judicial official. In the army, commanders are authorized to give permission for a search. In emergency situations, the police may conduct a search without prior permission.

- **Scientific proofs.** A variety of scientific investigation techniques are used to prove offences. In the army, the use of chemical urine tests to determine prior drug consumption is the most common one. Other techniques such as taking fingerprints, writing, blood and DNA analyses are also widely used as part of the investigation of the militaries accused of offences. The results of the scientific tests may be used in court if the scientific methods are generally accepted in the scientific community.

- **Inquiries** may be considerable and prolonged and may not be enough for a conviction. Accordingly, prosecutors may use several special inquiry techniques to obtain vital testimonies of the witnesses.

- **Informative.** When criminal investigators suspect that a criminal activity is being carried on by certain individuals, they may try to gather evidence by sending an informer to the suspect to see whether the suspect will engage in criminal activities in the presence of the informer. Later on, at the trial, the informer may testify against the suspect.⁸

- **Compromise.**⁹ Called in the army a pre-trial agreement, it is an agreement made between the accused and the government. The accused offers to plead guilty or to testify against a co-accused in return for a promise of the government to limit the potential sentence against the accused. This method

⁷ In Romanian law, we encounter these principles, namely the right to remain silent and the right to defense. In the disciplinary procedure for the militaries in Romania, it is stipulated the right to defense, but not the right to remain silent.

⁸ It is somewhat similar to the procedure of article 224¹ *Romanian criminal procedure code* regarding undercover investigators.

⁹ In the *Romanian criminal procedure code*, art. 320¹ was introduced, stipulating that this procedure of pleading guilty before the commencement of the judicial investigation, when the criminal case is solved based on the evidence administered during the criminal prosecution, and the applied punishment is reduced by one third. However, this confession should be unconditional.

saves the time and costs of a complete trial with witnesses and may result in valuable evidence that can be used against another suspect.

- *Immunity.* In the case of a conspiracy, it is often necessary that one of the conspirators testifies against another. The persons that are suspected of an offence may not be coerced to testify in a way that would bring evidence against them. However, if the government promises not to use any of the supplied information in a future trial against the witness, the same may be coerced to testify. This promise is called immunity against subsequent prosecution. It is often used to prosecute a drug sale conspiracy.¹⁰ For instance, drug buyers may receive immunity in order to testify against the seller.

Court Martial procedure

Jurisdiction

a. Personal. The legal authority to bring a person before a legally established court martial.

b. Subject. Perpetration by an active service military of a legally recognized military offence.

c. Concurrent jurisdiction. The jurisdiction shared with the civil authorities regarding an offence perpetrated by a military¹¹.

Double prosecution: ... and no person shall be judged twice for the same offence¹².

Double prosecution has been construed as meaning that the same authority may not judge the same person twice for the same offence. Hence, preliminary actions at local, state or foreign level do not prevent, constitutionally speaking, subsequent disciplinary measures for the same offence.

Pre-trial confinement

a. All officers have the authority to place the militaries in a state of confinement before the final sentence regarding an offence.

b. The continued confinement requires the decision of the commander according to which there are enough reasons to believe that the accused committed an offence and that he can either escape or commit subsequent offences.

c. The decision of the commander is reviewed by an independent and neutral officer, who holds a hearing to see whether the pre-trial confinement should continue.

¹⁰ For instance, drug buyers may receive immunity in order to testify against the seller.

¹¹ *The Romanian legal procedure* does not know this institution because militaries, except for the criminal deeds in the other litigations, are tried according to the usual procedure.

¹² *The 5th amendment to the US Constitution.*

The three types of courts martial

Summary court martial:

- Consists of one officer and may only try enlisted officers.
- May impose sentences of up to 30 days.

Special court martial:

- Consists of a military judge, a trial counsel, and a counsel of defense and includes minimum three members.
- It may pronounce a maximum punishment of 6 months and a dismissal for disciplinary reasons.

General court martial:

- Consists of a military judge, a trial counsel, a defense counsel and minimum five members.
- It may pronounce the maximum authorized sentence for an offence.

Appeal procedure

The government may not appeal against an acquittal¹³. At least one form of appeal is guaranteed against each conviction of the court martial.

• *The convening authority*. Should review each conviction and approve each punishment. The accused may petition the convening authority for clemency before these measures. The convening authority may offer clemency or another favorable reduction to the accused upon the approval of the conclusion of guilt and the adjudication of the sentence.

• *The officer exercising the general court martial*¹⁴ (OEGCM). The accused may waive the guaranteed statutory appeal and refer the case for review by OEGCM and by the Judge Advocate of the OEGCM. The OEGCM authority also reviews all the courts martial that do not qualify for the automatic review.

• *The military court of review*¹⁵. (CMR). (Military judges). All the cases, except for the cases wanted by the accused, where a disciplinary dismissal or a confinement punishment of at least one year has been pronounced, shall be reviewed by one of the military courts of review of the categories of armed forces.

¹³ This is a special situation.

¹⁴ (OEGCM).

¹⁵ (CMR).

Court of Appeal for armed forces. (Civil Judges)

The Court of Appeal for armed forces shall review the CMR decisions when:

- it receives the request of the accused; or
- the Judge Advocate General hands over the case to the Court of Appeal for armed forces.

USA Supreme Court

The Court of Appeal for armed forces makes decisions that can be reviewed by the Supreme Court of the USA by a certiorari document. The Supreme Court may not review any action or approval of the military justice, unless the Court of Appeal for military forces has previously entered a review request.

Conclusions

The military justice is the attempt to offer constitutional guarantees to militaries, except for the cases modified by the need for order and discipline. Maintaining the optimum balance between the individual rights and the discipline of the unit shall ensure the efficiency and the morale.

By maintaining high procedural standards and equal protection, the army shall preserve the trust of the civilian leaders in the executive, judicial and legislative branches that have entrusted the military justice to military leaders.

The freedom of speech is important and necessary for the morale and for military recruitment. Any limitation of the freedom of speech should be directly linked to an important military assignment. The restrictions applied to the freedom of speech, when applied to militaries, do not apply and should not be applied to civilians.

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THE VULNERABILITY ELEMENTS OF THE ROMANIAN MARITIME BORDER

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The extended region of the Black Sea represents at the beginning of this century an area with generous strategic opportunities that can ensure the prosperity, stability and security for the countries from the region, in a environment where the confrontational strategies will be replaced with the ones of partnerships, economical and political cooperation, involvement in the management of the international crisis and conflicts and actions of countering the terrorism. From Romania's point of view, this area offered and still offers economical, political and military strategy opportunities related to the access to the gigantic energy resources from the region and their exploitation and also related to the security process in which every country from the area must be actively involved.

Keywords: risks; threats; crisis; natural resources; Extended Region; security; energy resources.

The main phenomenon that influences the current security environment is the globalization that generated both opportunities and risks/threats. In what concerns Romania, as a country located within the Extended Region of the Black Sea, a region that seems for a good period of time to catch the attention of the main actors of the worldwide scene, it being foreseen a series of strategic opportunities generated by the favourable conditions of acceding to the Euro-Atlantic security and prosperity areas, opened as a result of countering the communism politic regime and installing the democracy, the expansion of NATO and EU, the abolition of controls at borders, the enhancement of the circulation for persons, merchandises, services and capitals, and also of the possibilities for technological development. These opportunities are particularly amplified in Romania's case due to our statute of NATO member, the increased possibility of integration within the European economical, political, cultural and security

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areas, the existence and coherence of the strategic partnership with the USA, the development of the role and importance of the Extended Region of the Black Sea in what concerns the objectives of ensuring the European security and energy resource, the high level of effective cooperation between the Romanian institutions with attributions in the field of security and defense and the ones of NATO and EU¹.

Even from the moment when Romania started to be mentioned in the first historical writings, the geographical context created a special statute for the Black Sea region, being influenced by a multitude and variety of political evolutions with a contradictory touch as a result of a duality that generated both advantages and disadvantages for the populations and later on for the countries that were created and developed in this region: a bridge point and in the same time a demarcation line between the continents and empires that promoted cultures, religions and populations with different styles of life and distinctive existential philosophies, with profound and various meanings, some of them very sober. The permanent confrontation between the East and the West transformed this region into an area of demarcation between the big empires and later on between the great powers, which determined that the geo-political and social evolution of this region to be characterized by pragmatism and tensions, the fight for subsistence or domination reaching devastating values in the detriment of the lucrative and advantageous relationships development.

Especially during the Cold War, the dominant characteristic of the strategic profile within the Black Sea region and its neighbourhood was settled by the fact that as a physical border between two opposite great ideologies, it couldn't manifest either of its bivalent features. The self reservation could be the best word to unilateral describe the geopolitical environment from within this area during the Cold War, even if the geographical element generated permanent possibilities with strategic and economical implications: the expansion towards the continental Europe through the Danube River, towards Eurasia through "The Silk Road" and the Black Sea's network of affluent rivers, towards the Mediterranean Sea and through it towards the Atlantic Ocean, the Persian Gulf and Indian Ocean – through the Bosphorus and Dardanelles straits, towards the oil and natural gases' strategic passages.

Although the Black Sea is not in the category of opened seas, it's being directly connected to the main means of communication by important rivers from the region (Danube, Volga and Don) and by main passages that

¹ *Romanian National Security Strategy*, Publishing House of the Romanian Official Journal, 2006 , pp. 7-8.

unite the Central Europe with the Caucasian Area and Central Asia, respectively from North to South, the Baltic basin with the Mediterranean one through the South-East of Europe. Bosphorus and Dardanelles straits transform the Black sea into a semi-opened sea, which from geographical point of view is being characterized by numerous asymmetries: the continental shelf is very wide in the North-West, but extremely shrink and abrupt in South and East, the shores are generally low in West and North-West and higher in North-East, East and South-East, the main rivers are located in the North-West and they lack in South, the length of the shore is 4.000 km and its being uneven distributed to the coastal states: Turkey 34%, Ukraine 31%, Russia 15%, Georgia 7%, Bulgaria 7% and Romania 6% ².

Participating in the events at worldwide scale that followed the Cold War, the Black Sea coastal states were themselves actively involved in the scenario of the worldwide political scene reconfiguration, most of them belonging to the former communist bloc, either as a component of the URSS or their allies.

Taking into consideration the implication in ensuring an environment of security and cooperation in the region by the countries belonging to the Black Sea area, their mission is not simple if we think about the hot areas that could shake the stability, which is not quite consolidated: the Caucasian area, Transnistria and the Balkans – the “fire triangle” of the region.

The picture could be completed by the dissensions and the competition of the Black Sea’s coastal states in what concerns the supremacy of their own interests as regional leader position, the division of the continental shelf and as a consequence of the Exclusive Economic Zones of the Black Sea and Caspian Sea and also in controlling the circuit of oil and natural gases from the Caspian Sea and Central Asia zones. In the last past years, in the majority of the countries from this adjacent area of the Black Sea, the situation seems to evaluate in a stable framework, the countries clearly expressing their willingness of integration to the European and Euro-Atlantic democratic structures, in the same time with the intensification of the efforts of putting into application the provisions of the South-East Europe Stability Pact.

Even from the beginning of the new millennium, the Russian Federation redefined the new national security concept adopted on 10.01.2001 by the decree of the President Putin. This defines the national interests and emphasizes the determination of promoting them in the relations with other countries. The document underlines that a threat to the interest of creating a strong Russia is represented by the tendencies of some countries in opposing to the statute of “worldwide power pole” and in weakening its position within Europe, Central Asia, Middle Orient, Transcaucasia and Asia-Pacific zone.

² http://www.mapn.ro/smg/gmr/Arhiva_pdf/revista_4.pdf accessed on 26.04.2012

Russia's interests in the Balkans seems to be a priority because of the possibility that the transport way for the oil and natural gases from the Caspian region and the transportation vessels to cross the Russian terminals from the Black Sea, countering this way the limits drawn by Turkey for Russian petrol oil vessels that cross the straits, by imposing weight and size limits. Russia's military and political presence within the Black Sea and promoting the "pro Slavic" doctrine certify the fact that the economical interests represent the basis for the fraternity feeling with the South-Slavic population in this area. From military point of view the Russian Federation tries to counter-balance the expansion towards East of NATO by creating a new regional security structure under the central command dislocated in Moscow – "The Collective Security Organization"- which is foreseen to configure three groups of regional forces, also under Russian command, with the following disposal: the West group with forces from the Russian Federation and Belorussia; the group from South Caucasia with forces from the Russian Federation and Armenia and the group from the Central Asia, with forces from the Russian Federation, Kazakhstan, Kirgizstan and Tajikistan. For now, this remained in the initial phase because there are many unclear political and military issues, which determine reserved attitudes, especially from the Asiatic states requested to participate in the coalition.

A situation that this country cannot yet accept is represented by the dispute with Ukraine over the Sevastopol military base, where there are dislocated the vessels from the Black Sea's fleet, which's ownership wasn't permanently established. This conflict determined Moscow to build a naval military base within the Black Sea at Novorosiisk where there are concentrated the vessels dislocated from Sevastopol, in accordance with the Convention concluded with Ukraine after URSS divided. Manifesting its own interest within the Black Sea region can also be noticed in Russia's attitude within the UNO and OSCE Security Councils, where Russia supported the peace process under the auspicious of the two organisms; moreover Russia gave the consent for reinitiating the activity of OSCE mission in Chechen.

The existence in the vicinity of the Black Sea of the Caucasian hot spots increases the complexity and risks factors of the Black Sea region. This part of the region is known for unsolved conflicts such as Chechen- being considered Russia's internal affair- and the dispute between Christian Armenian and Muslim Azerbaijani for the region Nagorno - Karabah, in which Turkey is trying to manifest its influence. The separatist tendencies of Georgian republics - Abkhazia and Adjaria- are being supported by Russia, maintain this way two latent instability cores within the Black Sea's shores.

The period for preparing the accession to NATO for Bulgaria and Romania determined Russia to delay the redrawn of the military bases from

Transnistria and the two separatist republics from Georgia, attitude strengthened also by announcing Georgia's intention of acceding to NATO.

Turkey, as NATO member and taking into consideration the confusion of the former states of the URSS, has the tendency to increase its influence within the countries from the Central Asia with Islamic/Muslim majority population. Within the Black Sea basin, Turkey's influence over Georgia is very obvious. Turkey still has a lot of internal affairs to solve, which are being considered incompatible with the EU's member state statute that is trying to acquire and without which the countries of the European Community will never consent to such accession: complying with the human rights, the peaceful resolution of the Cyprus conflict, taking the necessary measures in order to balance the Islamic fundamentalism- that became very aggressive, solving the situation of the Kurdish population's statute.

Winning in the matter of the "means of transportation for the Caspian oil" – the way from Baku to Ceyhan – transform Turkey into an actor interested in maintaining the stability in the region and attracting the former soviet republics on the side of the democratic states and of the North-Atlantic Alliance.

It becomes more and more evident the tendency of Ukraine in gaining the role of regional leader, being in a sort of competition with Turkey. Ukraine is betting on increasing its military capabilities within the Black Sea basin in order to sustain its political interests. The geo-strategically position on the virtual energy route and the influence exercised within the GUUAM group (Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldavia) are the main cards this country is playing. It's important to specify that on 24th of December 2003, Ukraine signed the "Treaty concerning the common use of Azov Sea by Russia and Ukraine", fact that brings a sensitive balance to the relations between the two countries, allowing Ukraine to adopt an aggressive politic towards Romania in what concerns the issues of Snakes Island and the delimitation of the continental shelf and Exclusive Economic Zone.

Romanian and Bulgaria are two other coastal states for the Black Sea, engaged in the process of Euro-Atlantic accession. Recently members of NATO, these countries significantly contributed to enlarging the Alliance south-east flank and together with Turkey they are foreseen to establish a new distribution of the maritime space within the Black Sea basin, which is now at its half. In the same time they are the owners of the region's key points of a strategic importance: the straits that make the connection with the Planetary Ocean and with the Danube's mouths. These countries are also the main promoters of the security and cooperation in the region, their initiatives being visible by creating some organisms such as: Three-lateral Romania – Bulgaria – Turkey, the Black Sea Economic Cooperation Zone, the South-East Europe

Initiative for Security and Cooperation, organisms and organizations that led to increasing the confidence and security in the area.

Georgia is a country that is trying to make significant efforts in order to regain the statute of a democratic state. The poor economic development and the internal conflicts led to new confrontations, the crisis being emphasized by the conflict between Russia and Georgia. Winning the elections by the pro-West party of president Sakashvili and countering Adjara Republic's attempt of separation seem to give hope for this country to become a democratic state, which will also allow to launch again the prosper economical activities specific to Georgia.

In the last period of time, within Black Sea's adjacent area took place manifestations that weren't specific to this region, such as smuggling, trafficking in narcotic drugs, guns and even radioactive substances. Also, there were present non-compliances with the rules foreseen for navigation's vessels under different pavilions and also with the regime for phishing by Turkish and Bulgarian vessels within the Romanian exclusive economic zone, actions that were promptly sanctioned by the Romanian border police.

The activity and some successes of the organisms for worldwide and regional security in what concerns the Black Sea region, especially OSCE, represent reasons for regaining the optimism related to a positive evolution of the security environment in this part of the world. OSCE is the organization where the interest of Russia and USA are face to face, managing the East-West interest over the conflict zones from Bosnia, Kosovo and Chechen, which can support a politic focused on creating stability in the region.

The region from the vicinity of the Black Sea gained a strategic importance due to the transportation way for the oil and natural gases from the Caspian basin and Central Asia that leads to the West European countries and secondly because of the expansion of NATO's southern flank towards the entire south half of the Black Sea area, situation created by the accession of Romanian and Bulgaria to the Alliance. The increased interest of the western democracies for ensuring the energy resources through another way than the main classical one (and almost "unique" – URSS and then the Russian Federation) and removing the insecurity and instability sources from the borders recently updated by the accession of the new states to the main organisms with attribution in promoting the security and cooperation at international level – NATO and EU, supported by the main benchmark for democracy – USA-, led to the concept of "the extended region of the Black Sea", starting with 2004.³ The concept also has a redundant connotation, most

³ Ronald Asmus, Bruce Jackson, *Marea Neagră și frontierele libertății*, Revista Politică (*The Black Sea and Frontiers of the Freedom*, Policy Review), june 2004; Ronald Asmus, Joerg

likely being developed in connection with the other concept used not long ago in the specialty literature under the name of „Great Middle East”, proving the necessity of a conceptual updating in trend with the latest evolutions of the social-economical and political realities from the regions, which intentionally or not “got away” from the sphere of interests of the occidental democracies.

The increased importance of this region was especially manifested after the shocking event from 11th of September 2001, when the USA and their allies in the anti-terrorism coalition discovered that this region may constitute a cohesion element and a bridgehead for the anti-terrorism campaign developed within Afghanistan and Iraq.⁴

In this context, Romania makes efforts to redefine its place and role within the international scene in general and especially at regional level, disposing of a series of strategic advantages, such as: the demographic potential (the number and quality of the population), the economic, scientific, cultural and military potential, the geographic position and also the natural resources. Another strategic advantage for our country is represented by the fact that Romania is located in the space of economic connection of the west European democracies with the Middle Orient’s commercial routes and moreover with the energy route of the oil resources from the Caspian Sea and Persian Gulf, being the owner of a significant part of the VIIth European Transportation Corridor, formed by the Rhine-Main Canal – Danube-Black Sea. This is the reason for the augmentation of the importance of the harbours at the Black Sea, conferring them a strategic level value. Being aware of its European vocation, our country fully engaged in the process of accession to the Euro-Atlantic and European political, economical and security structures. Thus, there were consolidated and even modernized the state’s institutions, the affirmation of the democratic principle and the market economy within the entire economical-social life, the compliance with the right of the human beings and the affirmation of the moral and spiritual values of the Romanian people within the pantheon of the European and worldwide values.⁵

Forbrig, Konstantin Dimitrov, *O nouă strategie euroatlantică pentru regiunea Mării Negre*, IRSI Publishing House, Bucharest, 2004, p. 18.

⁴ Mihai E. Ionescu, *Regiunea extinsă a Mării Negre între constrângerile Tradiției și provocările noului mediu politic internațional de securitate*”, the article was published in the work paper *Securitate și stabilitate în bazinul Mării Negre*, „Carol I” National Defence University Publishing House, Bucharest, 2005, p. 26.

⁵ Marius Hanganu, *Evoluția prezentă a puterii maritime în Marea Neagră și influența ei asupra geopoliticii în acest spațiu*, the article was published in the work paper *Securitate și stabilitate în bazinul Mării Negre*, „Carol I” National Defence University Publishing House, Bucharest, 2005, pp. 93-94.

Being interested in installing a state of peace and security at regional and worldwide level, Romania constantly participated in the international community's efforts in managing and solving the crisis situations, with this purpose sending military troops in the operation theaters from Balkans, Afghanistan, Iraq and other parts of the world.

We consider that the actually engagement of the country by sending troops for the battle of solving crisis and for countering the international terrorism constitute the determinant factor in being recognized by the main international actors as a reliable partner on the "scene where it takes place the collective security play", which led in the end at accepting Romania within the main organization that assumed the responsibility of an active implication in what concerns the peace and security climate at international level. In fact, looking back at the Romanian people's history, it's impossible not to notice that all "the natural rights" of the population and later on of the Romanian nation were gained by engaging in great sacrifice and battles, which finally led to the acceptance and recognition from the part of the main actors that at one moment had the power of decision over the nations destiny (we mainly refer to the two Unifications of the Romanians, the State's Independence and all other "critical" situations in which Romania was involved after being part of the main military confrontations).

In our opinion, the strengthening of the democratic institutions at national level and overcoming the tensions between the states of the Black Sea's Exclusive Economic Zone could transform this part of the world in a spreading starting point of security and stability for the other neighbouring countries, as a result of its integration within the Euro-Atlantic security architecture and focus of the great actors' interest directly involved in the situation of the zone - NATO, EU and Russian Federation. In this context, Romania who is already implicated in the main processes and initiatives developed in the area, can extend and consolidate its role as a stability and security pillar, by contributing in dismantling the tensions and "frozen" conflicts and also by managing the crisis and effectively countering the terrorism.⁶

In what concerns the economical level, we consider that the option of getting involved in the transportation and distribution of the energy resources of the Caspian Sea (even if the route of the main distribution way is towards West and Central Europe was established on a path that don't cross Romania) would represent "a strategic move" by accomplishing a secondary transportation route for these resources made by vessels from the oil terminals on the Asian

⁶ Eugen Bădălan, *Securitate și cooperare în spațiul extins al Mării Negre*, the article was published in the work paper „*Securitate și stabilitate în bazinul Mării Negre*”, „Carol I” National Defence University Publishing House, Bucharest, 2005, pp. 9-13.

coast of the Black Sea (Baku), on sea and then on Danube and putting it in function way before the main part of the path Baku and Ceyhan is ready.

Romania made significant efforts for tempering the conflicts and to avoid the disputes in the Black Sea region within the South-East European Cooperation Initiative (SECI) and Borders Defense Initiative (BDI). Moreover, the tensions were increased by Ukraine decision of building a canal that would connect the Chilia Canal with the Black Sea (Bistroe canal), which could have destructive effects to the Danube Delta's ecosystem and to the Sulina Canal, if the works are not being stopped.

Starting even from the simple fact that the name of the region is given by the aquatic space surrounded by the states belonging to this area, we can see the great importance that must be shown to the maritime dimension, as a place of manifesting the national interests within the extended region of the Black Sea.

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THE IMPORTANCE OF THE NAVAL COMPONENT OF THE ROMANIAN BORDER POLICE WITHIN THE EU'S EXTERNAL BORDER

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At European and international level, the surveillance of the maritime space, rivers and harbours, saving and protecting the sea life, the prevention and countering the trans-border criminality, the surveillance of the maritime border, countering the piracy and the terrorism, the protection of the marine environment, the control of the compliance with the rules foreseen by the maritime legislation, ensuring the public order, the security of the maritime transportation, the protection of the exclusive economic zone's resources, represent a wide range of attributions assigned to one authority with different structures and roles, also usually known under the name of Coast Guard.

Keywords: surveillance of the maritime space; prevention; countering; illegal migration; trans-border criminality; Naval Group.

At local level, the Romanian Border Police organizes, on the basis of the Law no. 280/7th of December 2011¹ the Coast Guard, under the direct supervision of the Border Police general inspector, with juridical personality and an area of competency correspondent to Tulcea and Constanța counties.

The Coast Guard has competencies in a area of 30 km from Romania's border towards the interior, within the territory of Constanța and Tulcea counties, within the Black Sea and within the area of 10 km on both shores of the Danube, in Ialomița and Tulcea counties, with the following attributions²:

- border surveillance and crossing control of the border between Romania and Ukraine on a length of 207.9 km;

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¹ Law no. 280/7.12.2011, concerning the modification of the Law no. 265/2010 for updating the Emergency Government Ordinance no. 104/2001 related to the organization and functioning of the Romanian Border Police and for rending obsolete art. 4 paragraph. (4) of the Emergency Government Ordinance nr. 105/2001 Romania borders, and for updating the Emergency Government Ordinance no.104/2001-the organization and functioning of the Romanian Border, published in the Official Journal no. 877/12.12.2011

² <http://www.politiadefrontiera.ro/organizare/> last accessed on 09th of January 2012

- border surveillance and crossing control of the border between Romania and Bulgaria on a length of 161,325 km;
- surveillance of the interior Danube, Macin and Sulina canals opened to the international navigation on the range of competency of Cernavodă, Isaccea, Tulcea, Pardina, Chilia and Sulina Border Frontier Sectors;
- border surveillance and crossing control of the territorial sea, contiguous zone and exclusive economic zone on a length of 193,5 km;
- compliance with the provisions of the treaties, agreements, conventions and borders protocols between Romania and Ukraine, Bulgaria and other international regulations border state related, in which Romania is part of.

The Coast Guard is organized in services, territorial services, Naval Groups, sectors and points of the border police, in accordance with the order of the ministry of administration and interior. From internal point of view, the Coast Guard is composed by services, bureaus, compartments and training center.

The Naval Group and Border Police sectors are execution units from within the Coast Guard, with limited competency and they are organized in compartments and shifts, in compliance with the specificity of their activities, having as main attributions the surveillance and the control of the Romanian border crossing, the prevention and the countering of the illegal migration and trans-border criminality within the competency zone and also any other offence related to the state border legal framework.

The points of the Border Police are subordinated to the Naval Groups and Border Police Sectors and they function on the basis of the bilateral agreements concluded between Romania and the neighboring countries, in accordance with the national legislation and their main attribution consists in controlling the documents during the crossing of the border, ensuring a fluent, coherent and civilized traffic for the travelers and merchandises through the border crossing points, together with other authorities with control competencies in the field of border crossing.

In order to fulfill its attributions, the Coast Guard collaborates and cooperates with the structures of the state's institutions that develops activities at the borders and also with the border institutions of the Ukraine Republic and Bulgaria, through the above mentioned subordinated structures.

The Coast Guard must be a strong institution with clear defined attributions, with well trained personnel, both flexible and capable to impose the compliance with the legal provisions and the state's authority in the area.

This authority was created by a high number of countries, some of them with decades or even century ago, some of them were recently created. Its structure and attributions can vary from country to country; nevertheless its specificity is being determined by the attributions assigned and by the maritime space, rivers and harbours that has to be managed.

Analyzing the Law no. 280/07.12.2011³ concerning the constitution of the Coast Guard we reached to notice two aspects that neglect the basis component of a Coast Guard (the Vessels of the Coast Guard), namely the organization and the attributions of the naval component. As we mentioned in the reasons expose, within the European Union, out of 27 member states, 24 have a coast zone/maritime border and 20 countries have a Coast Guard, authorities that have a common element, namely the naval component (the vessels of the coast Guard and their crews).

The naval component of the Coast Guard is organized in naval structures distinctively named, Coast Guard Naval Base or Coast Guard Naval Group within the Coast Guard and not within the terrestrial structures as it is mentioned in the law at point 3 paragraph 6 of the 12 article within the border police sectors.

The organization of these naval structures is different from the terrestrial structures and their coordination is made by the Zone Centers of the Coast Guard that have the role of ensuring a unitary coordination of the Coast Guard's specialized structures: marine structures (Naval Groups of the Coast Guard); aviation structures (Air Bases of the Coast Guard); terrestrial structures (the sectors of the Coast Guard or for example the special forces in the case of the Greek Coast Guard).

The Zone Center of the Coast Guard with responsibilities within the Black Sea, *in our opinion*, will probably be The Command and Control Center SCOMAR.

The arguments for supporting the idea of having a distinctive naval structure within the Coastal Guard are determined by the following aspects:

- the specificity of the accomplished tasks, the procedures used on sea, the particularities of the radio naval communications that are developed in accordance with the international regulations;
- the specific legislation; the surveillance of the maritime border is made on the basis of the principle of harmless passage defined by the Law no. 17 R1990 concerning the legal framework of Romania's internal maritime waters, the territorial sea, the contiguous zone and the exclusive economic zone;
- the complex training of the navigant personnel which involves acquiring competencies in the maritime/inland waterway law enforcement,

³ Law no. 280/7.12.2011, concerning the modification of the Law no. 265/2010 for updating the Emergency Government Ordinance no. 104/2001 related to the organization and functioning of the Romanian Border Police and for rending obsolete art. 4 paragraph. (4) of the Emergency Government Ordinance nr. 105/2001 Romania borders, and for updating the Emergency Government Ordinance no.104/2001-the organization and functioning of the Romanian Border, published in the Official Journal no. 877/12.12.2011.

compliance with the navigation and exploitation rules in adequate parameters for the navigation, communication, radar and electronic surveillance equipments, armament and electro-magnetic devices;

- the existence of marine technique which involves appropriated maintenance for the vessels.

The naval personnel's training (the crews of the Coast Guard's vessels) is organized within all Coast Guards' training schools, which ensures the acquirement of the above mentioned competencies.

From the analyze of the legislative regulation it's not very clear what are the attributions of the future Coast Guard, taking into consideration that all the Coast Guards from within the European Union have attributions established by the law.

In our opinion the main attributions of the Coast Guard are:

- to ensure the unitary implementation within the subordinated structures, of the Romanian Border Police Concept related to the surveillance and control of the state's border, of the provision of the methodology concerning the Regulation CE no. 562/2006 and of other legislative regulations in the field, of the Strategy for securing the state's border, the Border Integrated Management Strategy, the conventions, the agreements and settlements in which Romania is part of;

- to ensure the effective disposal of the forces and technical means (naval and terrestrial mobility), in accordance with the operative situation indicated by the system SCOMAR and the threats assessment;

- to supervise the implementation of the Schengen acquis within the subordinated structures and the applicability of the communitarian best practices in the field of surveillance and control of the border crossing;

- to supervise the accomplishment of the legal attributions by the entire personnel of the Coast Guard and the subordinated structures;

- to ensure and to supervise the way of action for the activities developed under the auspicious of FRONTEX, in the field of competency and other international activities developed by the Coast Guard;

- to represent the Romanian Border Police Inspectorate within the meetings, national and international missions in accordance with the assigned prerogatives;

- to draft and to present with the view of obtaining general inspector's approval the principles of operational employment of the forces and means in time of peace, mobilization, crisis, deployment of subordinated structures in time of peace;

- to ensure the maintenance and the development of the operational and intervention capabilities of the subordinated structures and to supervise the fulfillment of these structures' missions in accordance with the legal provisions;

- to participate in drafting and to ensure the applicability of the provisions, cooperation plans related to the intervention, guard and defense of the objectives from the area of competency, reestablish and maintain the public order together with other forces from within the Ministry of Administration and Interior and Ministry of National Defense;
- to supervise and gather the data related to the events that take place in the area of competency in connection to the field of activities and to draft notes, summarizes, studies and prognosis with the view of informing the management of the Romanian Border Police and other authorities entitled to receive such information;
- to ensure the application of the provisions, treaties, agreements, conventions and protocols related to the frontiers and concluded by Romania with the neighbouring countries in order to implement an unitary concept concerning the bilateral cooperation and some bilateral regional programs (inclusively programs for accessing European funds destined for the regional development);
- to permanently assess the organization functionality and to propose improvement measures for the structure's organization, in accordance with the legal provisions;
- to ensure the operative management of the subordinated structures and investigate the complex penal cases, which are not in the competencies of the territorial subordinated structures;
- to develop supportive, guidance, coordination and control activities for the subordinated structures;
- to participate together with the territorial authorities for the environment protection and with the border authorities of the neighbouring countries, in taking the necessary measures in order to prevent the ecological risks and the damages and also in case of accidents that affect the environment factors and in eliminating their effects;
- to execute, directly or together with the custom authority, the control of the vessels suspect for committing illegal activities in the area of competency or which are actually caught in action committing such activities;
- to execute the control of the vessels together with the subordinated structures in case of the evacuation of the used waters or in case of an accidental pollution;
- to participate in the surveillance, control and ensuring the protection and conservation of the hunting and natural phishing resources by preventing and countering the illegal hunting and phishing and also the illegal exploitation of other biological and non-biological resources located in the area of competency;

- to execute the surveillance and to participate in the control of the compliance with the rules foreseen for the navigation's order and security within the waters from the area of competency and harbours, in collaboration with the harbours captains;
- to manage the state's budget funds and to ensure the increase of the efficient use of funds by accomplishing a centralized material acquisition;
- to take the necessary measures in order to increase the level of non-returnable communitarian funds' absorption;
- to ensure the efficient repartition of the equipments and material, in accordance with the activities of each subordinated structure and to coordinate their maintenance activities at regional level;
- to administrate the movable and immovable patrimony of the Coast Guard and its subordinated structures;
- to ensure the recruitment, selection, training, employment and professional evaluation of the Coast Guard and its subordinated structures' personnel;
- to ensure the management and efficient use of the financial resources of the Coast Guard and also the specific accountancy activities for the subordinated structures;
- to verify the way of implementing the quality management within the Coast Guard and its subordinated structures and to organize the specific activities in order to prevent and to counter the non-compliance with the legal rules foreseen for the personnel of the Coast Guard and its subordinated structures, to organize and to control the way the subordinated structures are fulfilling their tasks in accordance with their competencies;
- to represent and to defend the legitimate interest of the Coast Guard (as an institution with legal personality) in front of courts and other public authorities;
- to develop cooperation activities with similar institutions from other/neighbouring states, on the basis of the bilateral cooperation documents, the purpose being to ensure a high level of surveillance and control of the border crossing in the area of competency;
- to organize the psychological periodical evaluation of the Coast Guard and its subordinated structures' personnel and to elaborate organizational diagnosis;
- to organize and to ensure the institutional communication with the civil society, mass media and non-governmental institutions, with the role of maintain a favourable image of the Coast Guard and the Romanian Border Police in general;

- to develop activities related to traditions and culture with the view of ensuring the cohesion of the personnel and to promote the respect for the institutional and Romanian people values;
- to supervise the compliance with the legislation related to the classified information and personal data by all the subordinated structures and to take the necessary measures for ensuring the legality of the activities of registration, process and archive related to this type of documents;
- to identify the risks that can affect the Coast Guard's objectives and to take the necessary measures in order to reduce these risks.

In our opinion, the Coast Guard's service is responsible with imposing the law on the sea (being the only armed service) and leads the maritime safety under all aspects. Also, the importance of the Coast Guard for the Romanian population is a result of the high seas' effect. Only those who cannot understand the vital importance of the sea for Romania's safety, prosperity and development, will have a hard time understanding why it is necessary to have a modern Coast Guard and its total implication in solving the problem of the maritime security of Romania and EU's external border.

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<http://www.politiadefrontiera.ro/organizare/> last accessed on 09th of January 2012

SPECIAL RIGHTS AND OBLIGATIONS OF THE EMPLOYEE INVENTOR

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Romanian legislation on patents, defines the inventor as the person "who created the invention". If the invention has been created by more than one inventor, each has the status of joint invention and the right belongs to them jointly. In this respect, a legal relationship of employment arises between the employee inventor and the employer, with specific content, special requirements, rights and obligations that makes it different from a general individual employment contract.

Keywords: employee inventor; employer; invention; rights and obligations.

Making an invention implies significant investments and a laborious and time consuming activity, which can be sustained by independent investors only in a small share, these cases being rather the exception¹. This is the reason why, the invention is achieved most of the times in special research institutes or in companies that can sustain the effort. In this respect, a legal relationship of employment arises between the employee inventor and the employer, with specific content, special requirements, rights and obligations that makes it different from a general individual employment contract.

According to Article 10 of the Labor Code, by individual employment contract, we understand an agreement under which an individual, called employee, performs work for and under the authority of an employer, person or entity, in exchange for a remuneration called salary².

The clauses of an individual employment contract cannot contain provisions contrary to or below the minimum rights established by legislation or by collective employment agreements³.

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¹ Gheorghe Gheorghiu, Cosmin Cernat, *Dreptul proprietății intelectuale*, university course, Juridical Universe Publishing House, Bucharest, 2009, p. 147.

² Cosmin Cernat, *Dreptul muncii*, university course, 3rd Edition, Juridical Universe Publishing House, Bucharest, 2011, p. 237

³ Alexandru Țiclea, *Tratat de dreptul muncii*, Juridical Universe Publishing House, Bucharest, 2011, p. 331.

According to the Romanian law, the rule is that an individual employment contract is made for an indefinite period of time⁴.

By exception, the individual employment contract may be terminated and the period determined under the conditions provided by law. In this sense the employee inventor may conclude an individual employment contract with determined period, provided that the contract is concluded for a temporary mission of specific research and its term does not exceed the maximum imposed by the framework law, that is the Labor Law⁵.

Romanian legislation on patents, namely, Law nr.64/1991, republished⁶, defines in Article 2, letter g) that the inventor is the person "who created the invention". If the invention has been created by more than one inventor, each has the status of joint invention and the right belongs to them jointly⁷.

According to article 5 of this law, the inventor employee is entitled to the patent unless otherwise provided, in the following cases:

a) in the employment contract of determined and/or undetermined duration there is a special clause more advantageous in the sense that, for any invention made by him, which comes under Article 5, he is not obliged to inform in writing the employer about the creation and the progress of invention, and the employer has a preference right to make a contract on the invention made by him.

b) in the employment contract for temporary inventive mission, there is a clause providing that if an invention will result from this contract, the person entitled to the patent is the inventor-employee.

c) in the research contract is a clause stating that, if an invention results, the employer declines its right to the patent.

d) in the internal research contract, there is a clause stating that the employee inventor is entitled to the patent.

In these cases it is considered that there is a more advantageous contract provision in the favor of the employee inventor and he is entitled to the patent. The cases in paragraphs c) and d) are very rare because, basically, the person who acquired the research theme that contains the invention cannot, actually, apply it, unless signs a contract with the holder of the patent that is the inventor-employee, which have to be exceptions⁸.

⁴ Ion Traian Ștefănescu, *Tratat de dreptul muncii*, Juridical Universe Publishing House, Bucharest, 2011, p. 223.

⁵ See art. 82 in *Codul muncii*.

⁶ Law. 64/1991 regarding patent, Monitorul Oficial al României, Part I, no. 541, from 08.08.2007.

⁷ Ion Macovei, *Tratat de dreptul proprietății intelectuale*, C.H. Beck Publishing House, Bucharest, 2110 p. 73

⁸ Ligia Dănilă, *Dreptul de autor și dreptul de proprietate industrială*, C.H. Beck Publishing House, Bucharest, 2009, p. 167.

The patent holder is the employer, according to article 5. (1) a) and b), article 5. (2) with an assignment contract or a contract with a contrary provision.

The special rights and obligations of the owner of the patent are:

- the holder has the exclusive right to exploit it during the duration of the patent and to prevent third parties from exploiting the patent without his consent;
- the patent holder may request reinstatement of grounds, in term of 6 months from the date of publication of the forfeiture;
- the patent holder may give up in whole or in part, the right to the patent based on a written declaration filed with OSIM;
- the holder is entitled to be paid damages to compensation under civil law;
- the holder may transmit to a third party rights conferred by the patent based on the license agreement or assignment contract;
- the holder may require, motivated, to the Bucharest Court, to withdraw the compulsory license provided that the legitimate interests of the person who has acquired it are protected in an appropriate manner;
- the applicant / holder may receive credit in foreign currency for certification abroad.

Obligations of the holder of the patent:

- holder shall inform in writing the inventor about the progress of implementation of the invention. Important is that within a research contract information is transmitted by the inventors of the research unit employees through these latter to the beneficiary. It is necessary to conclude a contract of confidence and without collusion between the two parts, same parts that concluded the research contract;
- the holder is obliged to pay annual maintenance fees of patent throughout the duration of the patent in the amounts and terms prescribed by law;
- the holder must respect the rights accruing to the inventor established through negotiation on a contract basis and to specify in the contract of assignment or to settle it by negotiation before the contract of assignment terminates;
- the holder is required to maintain the classification of invention information covered by a patent;
- the holder must request the approval of the institution of classified information for patenting abroad;
- the holder must guarantee, in case of a contract assignment or license with another person. The holder must have a contract with the employee inventor of taking the author the right to claim convention priority, for registration of a patent application in member countries of the Paris Convention or OMC.

If all inventors are employees of the same employer which was signed employment contract with inventive mission, at least up to the entire duration of the employment contract with inventive mission or to the creation of the invention, in accordance with Article 5, paragraph 3, the right to the patent belongs to the employer⁹.

When inventors are employees of other employers, each employee must announce the other co-authors and their employers and comply with the contract which will take account of Article 5 paragraph 6 (Law no. 64/1991). The right to the patent may belong to one or more persons¹⁰.

Virtually all inventors should be employees of the employer unit to comply with Article 5, paragraph 3 and paragraph 6, in the sense that there is at first a single legal entity that has a preference right to a contract related to the invention of his employees.

If, in the team of inventors there is an inventor who is not covered by a contract of employment, or is employed but the invention is not part of the business of the employer, or is a foreign person, and the other inventors are employed in a Romanian legal entity employing invention in art. 5 (a) b) ten, all inventors, persons entitled to the grant of the patent, must obey the provisions of Article 5 para. (3) and paragraph. (6) in relation to the Romanian legal entity¹¹.

According to the provisions of Article 4 and Article 5 para. (2), all inventors must be employees of the employer unit which carried out research under contract with the beneficiary and that actually worked to the contract and / or employees of a third party that has a subcontract research with the employer unit. In this case a sub clause must be inserted in the subcontract related to the person entitled to the patent of the main research contract or failing that a clause on the legal provisions in force.

The preference right of an employer to have the contract for the invention of his employee as required by Article 5 para. (6) and hence of the art. Alin.11 90-14, for an invention created under the provisions of art. 5 paragraph 1 letter. b) for which a patent application has been registered with the applicant the inventor-employee or for which the latter is the holder as a result of granting the patent, the applicant / holder must first offer to license or assignment contract to the employer unit, whose employee he was at the creation date, and the unit will show interest within three months from the offer in a contract between the parties¹².

⁹ Viorel Roș, *Tratat de dreptul proprietății intelectuale*, C.H. Beck Publishing House, p. 97.

¹⁰ Gheorghe Gheorghiu, Cosmin Cernat, *op.cit.*, p. 237.

¹¹ Lăgia Dănilă, *Dreptul proprietății intelectuale*, C.H. Beck Publishing House, Bucharest, 2010, p. 167.

¹² Gheorghe Gheorghiu, Cosmin Cernat, *op.cit.*, p. 239.

Regarding the article. 90 para. (12) it is noted that where it is a non-exclusive agreement, the holder, who is the inventor-employee may enter into non-exclusive agreement with a third party until the final resolution of the dispute on the contract price by the court under provisions of Article 5 para. (6)¹³.

Following the conclusion of individual employment contract, the employee-inventor has the following main rights and obligations.

Employee inventor rights:

1. Employee inventor is entitled to be named, first name and position in the patent issued, employment record and any other documents or publications concerning his invention, according to art. 35 para 1
2. Employee inventor is entitled to a duplicate of patent
3. Employee inventor is entitled to take possession of rights accruing under contract.
4. Employee inventor is entitled to take in whole or in part if the holder surrenders the right to the patent in whole or in part.
5. Employee inventor said the applicant may request in writing to OSIM not be published in the bibliography of published application or patent, this request is subject to payment of legal fees
6. Employee inventor is entitled to additional remuneration after conducting an invention, regardless of wage employment
7. Employee inventor is entitled to reimbursement of costs for all technical and economic documentation, projects, studies, research with prototypes, if they were made by the inventor for the invention
8. Employee inventor is entitled to the right to dignity at work.
9. Employee inventor is entitled to protection in the event of dismissal.
10. Employee inventor is entitled to the right of the employee inventor to the patent

The inventor-employee is entitled to a patent under Art. 3 and hence of the art. 88, para 1 and para. 2, letter. a) for any invention made which comes under Article 5, paragraph 1, letter b).

If the invention was created in accordance with Article 5, paragraph 1, letter a) or Article 5, paragraph 1, letter b), with or without contractual provision contrary to, or Article 5, paragraph 2, and the owner, which is unity, give under Article 37 rights under the patent, the inventor of this situation, if it is - following its announcement by the owner, can take these rights by paying the transfer fee.

When a patent was granted and has not been applied by the employer holder or patent holder has not taken the necessary measures to implement the invention in effect legal right to patent the inventor is under Article 71, paragraph. (4).

¹³ Viorel Roș, *op.cit.*, p. 77.

In both cases it is necessary that the patent is in force, and the charge transfer in the first case will be paid by the inventor-employee, as assignee, or a person established in writing between the parties.

According to the preamble of Article 5 and hence the provisions of Article 88, paragraph 2, letter a) and d), if there is otherwise in the case of inventions created under the provisions of Article 5, paragraph 1 a), and paragraph 2, lit b), unless a contrary clause, right to the patent belongs to the inventor-applicant.

In the situation covered by Article 5, paragraph 5 and Article 88, alin.2.lit.e), inventor employee is entitled to the patent if the employer exceeds the 60 days for the application of the request.

Inventor-employee obligations

1. Obligation to inform of the employee inventor

Employee author of an invention shall inform in writing and "immediately", the leader in working units, of the invention made by him in the operating unit. This obligation refers both to employee engaged with the temporary mission, and to the employee who made an invention, without being assigned to this mission, but within the unit.

If the invention was created by more inventors, information will be made jointly by all the inventors or their attorney. Information must contain sufficient data to allow the unit to assess integration of the invention in the categories of service regulated by law. The notification shall contain information on:

- object of the invention and scope;
- the conditions under which the invention was created;
- integration of the invention in one of the categories of service invention.

Information must be accompanied by a description of the invention on which the unit is entitled to the patent. The information must describe the problems encountered, technical status, the proposed solution and a sample.

Information on invention is personally registered with the employer unit by letter, so that it can be an evidence of the information obligation, but respecting the privacy and confidentiality. The term of 60 days, in which the unit must apply for patent issuance shall begin from the date of registration of information, accompanied by description.

If the employer and employee have not reached agreement on the patent right, the dispute is in the jurisdiction of the courts. In this case, under rule 51 of the Regulations of the Law nr.64/1991, to ensure protection of invention, patent application will be filed with OSIM, by the inventor, before referral to court, with its obligation to inform the employer.

Infringement of the mutual information obligation is punishable and liable for any harm caused.

2. Employee inventor must refrain from any disclosure of the invention. He is bound by loyalty throughout his employment contract. This obligation continues even when the main effects of the job (work performed and salary) are suspended.

3. Employee inventor must provide, at the request of the holder of the patent, technical assistance based on a contract for implementation of the invention.

4. Obligation to comply with health and safety measures at work

5. The obligation to make an offer. If the employee wishes to transfer the rights on his invention, preferably the employer has a right to a contract on free invention that at its conclusion can be exploited in its scope. This right is exercised by the employer within 3 months after the employee's offer. Misunderstandings arising from a contract on free invention are solved in a court.

The analysis of specific provisions reveals a series of conclusions. This general area of labor rights and obligations under the Labor Law are adapted to specific work. The creative activity of the employee must be protected in some way both in employer and employee relationship, and also in the relationship of the employee with third parts.

Also, a number of personal rights of the employee are acknowledged, unprecedented in any other category of employees. These rights are rooted in the specific characteristics of his work. The inventions will always carry the mark of the inventor, and in such a situation the rights of the employee acquire a special connotation. In this category of employees intrinsic motivation plays a crucial role over the extrinsic material one.

It is our duty to highlight also the specificity of obligations, which, must, on one hand integrate in the area of legal work that are dominated by subordinate employee to the employer, and also the increased freedom in performing duties of the employee inventor. This type of employee is an exception from the usual employee prototype. Being a creative and philosophical person, he has special needs and expectations, but his activity is still dominated by a limited obligation of result of the parameters imposed by the employer for each controlled invention.

In this respect, we welcome and appreciate the additional rights recognized for such employee, but also his duties, given the additional expectations of the employer, and also the latter's need of legal protection against both the employee inventor and the beneficiaries of the inventions made by its employees.

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PROBABLE POLICY SCENARIOS IN THE ROMANIAN RIVER-MARITIME AREA

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Tulcea Navy Authority

Likely strategic scenarios that may occur in river-maritime area of Romania are hypothetical situations and based on response options to a possible threat to national security interests.

Strategic scenarios are developed early in the planning process and are the cornerstone of contingency plans.

Strategic scenarios river-maritime area of Romania aims response options when producing asymmetric security crises, the hybrid nature of civil emergencies and activation of frozen conflicts in the area of strategic interest.

Keywords: asymmetric risks and threats; security crisis nature of civil emergencies; crisis hybrid security; contingency plans; armed conflict in national and multinational.

Romanian river-maritime area, circumscribing the eastern border of NATO and the EU, subject to all risks, threats and challenges conventional and unconventional, symmetric, asymmetric and irregular manifest in the current operating environment.

Therefore, we believe that in this space, complex and fluid occurs mainly hybrid risks and threats and frozen conflicts characterized by instability in Romania near the activation potential, terrorism, cross-border organized crime, cyber attacks, damage to critical infrastructure components and limitations determined by access to resources and the need to protect the environment.

Thus, we consider that the river-sea area of Romania is integrated security environment the wider Black Sea area, with branches to the Caspian Sea and Middle East, where the trend towards the reconfiguration of the architecture of power, competition between global actors and regional access to energy resources and control medium and long term.

We also consider that this area may be affected by the occurrence of natural disasters that can cause bouts of civil emergency nature, with implications for the population, material goods and the environment.

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The synthetic assessment of potential risks that may occur in river-maritime area determines the development of strategic scenarios contextualizing hypothetical options Romania as a member of NATO and EU by harmonizing plans for crisis intervention and institutional structures responsible optimization in order public safety and national defense.

Strategic possible scenarios considered in the river-sea area of Romania aims at the harmonization and optimization plans for managing crisis intervention nature of civil emergencies, optimization of power structures involved in crisis prevention and management of security, development options for the establishment, organization and of police action destined to participate in managing conflicts in national or multinational.

Harmonization and optimization plans for managing crisis intervention nature of civil emergencies

We believe that such a strategic scenario with a high probability to occur in the river-sea of Romania is based on the occurrence of natural disasters or major ecological catastrophe, with trans-boundary effects and serious consequences on the environment.

If other types of scenarios make riparian states in the position of opponents, this scenario puts the position of allies. Global climate change causes the frequency of extreme hydro-meteorological phenomena and their amplitude is becoming larger.

The river-maritime Danube area is flood exposed. High levels of the Danube during freezing, with ice floes leakage can have devastating effects on communities, people and the local ecosystem as a whole.

Development of industrial activities upstream can cause at anytime massive pollution of the Danube waters, with catastrophic effects.

The existence of oil terminals in the Maritime Danube ports that can trigger terrorist attacks on them may cause catastrophic pollution, with direct effect on the Danube Delta. From this perspective, Romania, Moldova and Ukraine must improve their internal mechanisms and procedures for cross-border response.

Producing such a situation can affect analyzed area, and its population, flora and fauna with very complex consequences.

Such a scenario approach is based on detailed knowledge of the technological risk sources of river-maritime space and on identified potential accidents that may occur on the water by the discharge of chemicals and petroleum.

The forecast of the likely effects produced in such situations is carried out by structures with responsibilities in civil emergencies at central and county level, and conclusions are embodied in the contingency plans drawn up for this purpose.

We appreciate that the possibilities for occurrence of crisis of civil emergency nature in river-maritime area of Romania are the following:

a. *in the category of natural risks* we include the possibility of dangerous phenomena such as floods and freezing on the Danube or its arms, with complex effects on the population, infrastructure assets, goods and space environment analysis and on cross-border area;

b. *in the category of technological risks* we include those associated with industrial activities that may come from possible accidents at nuclear power plant in Cernavodă, in facilities that have toxic industrial chemicals and during transport on land or water of dangerous materials, with medium and long-term consequences on the population and environment;

c. *in the category of technological risks* we include those *generating ecological crisis* by massive dumping petroleum products into the Danube, its arms and into Danube Delta or by the damaging activities at oil terminals in the ports of the Maritime Danube;

d. *in the category of biological risks* we include the possibility of epidemics, epizootics, zoonoses and pandemics in the river-maritime area, with negative consequences on the population, animals and plants.

Certainly, the effects of these risks are complex and their consequences are long-term manifested and include the entire internal and cross-border area of the river-maritime area of Romania. If we extend the analysis of the consequences that may occur, we see that, in addition to large scale effects, the Romanian interests in this area can be affected.

A cross analysis of these elements lead us to affirm that it requires the creation and operation of an integrated system to promote and protect the security interests of Romania, composed of modular, flexible and interoperable institutional structures able to perform the full range of missions to limit, ameliorate and eliminate the effects of these types of crises, protect and defend the political, economic and national security interests.

In this situation, we consider that it necessary to activate and intervene in the first phase of emergency with management module designed to work with structures set into action plans. In the second phase, structures assigned to restrict and eliminate environmental effects are acting and then their intervention will trigger the rehabilitation of the affected zones, restoring the infrastructure and the reply of the social and economic activities.

Optimization of the power structures involved in crisis prevention and management of security crisis

Security crises differ according to their characteristics and areas of endeavor. This category includes interstate and intrastate asymmetric crises that may affect national security interests in river-maritime area by:

- increasing crime by a high occurrence of violence that outnumbers normal specific situations;
- moving large groups of people from areas affected by the crisis to the unaffected or backwards to avoid or support actions turbulent elements;
- outbreaking of local or generalized movements being them of various shades and difficult to solve, which degenerate into breaches of the law rules actions and jeopardize the constitutional order and internal stability;
- increasing legal and illegal border cross passing in both directions, but especially to the interior;
- increasing of the tourist number and abroad journalists presents into the country;
- increasing tendency to purchase weapons, ammo and explosives by social groups, and deploying actions by aiming warehouses or military units;
- intensificating member's activities from diplomatic missions, to gather information.

In this context, we appreciate that the fact like in the Romanian river-maritime area an eventual security asymmetric crisis could be:

- intrastate, being characterized by the existence of differences, challenges or even threats to the Romanian security interests by a coastal state;
- interstate, when events behavior into different fields of activities have an adverse effect and with a major impact on the deployed activities in the river system;
- hybrid, by political, economically or social content, and threw its behavior, intrastate or interstate, the impact on Romanian security interests being complex.

In this context, we appreciate that the fact that the Romanian river-sea area could run a script aimed at the development of asymmetric actions by terrorist groups or cross-border organized crime could be manifested by:

- a) insurgent actions with clearly defined purposes and objectives;
- b) terrorist actions aiming harbors, infrastructure assets, ships and other interest targets in the area;
- c) illegal cross-border organized crime, smuggling, economic evasion, cyber attacks, etc, actions.
- d) piracy into the area of interest;
- e) aimed actions at destabilizing public nuisance;
- f) subversive actions with local or cross-border character.

Intervention of promoting and defending integrated components system of Romanian security interests aim at:

- a) counterinsurgency;

- b) terrorism/counterterrorism;
- c) border organized crime prevention;
- d) counter-rebels (for public nuisance);
- e) combat subversive activities.

Watching the multitude of forces and means involved into the prevention and countering asymmetric actions, we believe that they fall under the following stages:

Stage I - Operative-intelligence actions, aimed at gathering information, analyzing and disseminating information needed for efficient management structures into decision making process.

Stage II - Counter criminality/counterterrorism/anti-subversive actions, which involve preparing and deploying by measures of non-military activities and stopping/reducing action of potential asymmetric terrorist groups/criminal or subversive nature. This activity is included into potential risk areas, in addition to the defensive structures and specialized training for intervention.

Stage III - Counter criminality/counterterrorism/counter subversive actions, which are activities and offensive measures for deterring or reducing actionable potential terrorist groups/ criminal or subversive in nature. In this case, the specialized structures act by rules and military procedures in order to dismantle military adversary networks and protect people, material properties and their harbor infrastructure. In this stage, counter cyber actions aim at protecting own computer networks, by identifying and punishing hackers and by other specific safeguards.

Stage IV - Return to normality by removing the effects of asymmetric actions on short, medium and long term.

3. Develop options for the establishment, organization and actions of forces designed to participate in managing conflicts in national or multinational context.

We appreciate that this type of scenario has a low degree of probability, based on the principle use of policy instruments, diplomatic, economic and information to promote, protect and defend the security interests of Romania. Use of force is the last option of the military instrument, used to protect and defend the security interests of Romania, only if other options fail.

In this situation, we believe that participation in conflict resolution in river-maritime area may take place in Romania in the context of:

- National defense;
- Collective defense.

National defense concerns military instruments of power in space under assault for rejecting potential enemy, interdict conquest of strategic interest's area providing necessary conditions for NATO intervention.

Collective defense requires the deployment of a multinational operation in the area subjected to aggression to protect and defend the security of the State and therefore NATO.

In this context, we appreciate that in case of conflict, the potential enemy may perform the following actions:

- a) cyber attacks and the wave spectrum electromagnets disruption to friendly forces command and control system;
- b) air offensive on the directions of interest for hitting opponent and neutralize political goals, economic, military and critical infrastructure, artwork etc.;
- c) Air-land-naval offensive on a collision course to achieve goals in a short time.

Initially, the answer of friendly forces from a potential enemy action will focus on planning; organizing, coordinating and conducting joint operation in the Joint Operations Area, in national defense context, and then multinational operation will be performed in the collective defense context, with the participation and action management structures designed at NATO level.

In conclusion, although we consider that the strategic scenarios analyzed are possible, we believe that the highest probability are asymmetric attacks based on asymmetric scenarios and civil emergencies or the hybrid nature and that of lower probability are those regarding management of active conflicts in river-maritime area of Romania.

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CAUSAL FACTORS OF THE ORGANIZATIONAL INFORMAL STRUCTURES' CONFIGURATION

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The existence of informal-type structures is in wide sense improper to the place where lucrative activities are undergone. This is inexplicable because the support of formal-type structures is constituted by the presence of structures based on emotional alliances and not only conditioned by the pragmatism of the regulations settled by the coordinating manager.

Keywords: organization, management, structure, formal structure, informal structure.

The informal structure is a natural, spontaneous structure. It is composed on the basis of some relations settled between the members of a group or between persons situated from different reasons in the same professional location and who by communicating, settle particular communicational relations. The presence of a structure defined on these considerations is possible into the military organization – organization of integrated type, very well constituted and trained for actions in conditions of extreme risk.

Such structure is not complementary to the formal structure but distinctive by it, in the most diverse situations being able to become even antagonistic.

The informal structure into an organization has a flexible and unobvious, limited and even unexploited existence. In the organizations which are strongly hierarchal, bureaucratic and rigid as contextual aspect, the presence of an informal structure would not be justified because the formal structures are very well integrated, dense and do not leave much liberty of action and option for its members.

The composition of the informal structures is mainly settled on basis of affinities by different means of communication, by collaboration and cooperation in accomplishing different missions. The peoples acting together by the activities' nature for a long time become good comrades, get friends,

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“share” and play certain roles. Sometimes, they group when time allows them or even along their accomplishing different tasks, around an informal leader, a comrade or a charismatic, intelligent and tenacious person.

Although the informal structures are not always recognized and encouraged, they are very strong being characterized as emotionally durable and consistent. For example, the military acting for a long time in the operation theatres under conditions of risk and even of extreme risk are very good comrades, prefer to act together in patrols and teams especially when the risk is higher. Such actions and structures as teams or cell types present importance for the stability and cohesion of formal structures – groups, equipages, platoons, companies, offices – but also for missions’ quality.

We can identify the existence of some informal structures built on the support of some musical preferences, some sportive activities or of some cultural values. An archaic proverb mentions “birds of a feather flock together” being the engine of the constitution of such structure no matter the organization’s typology.

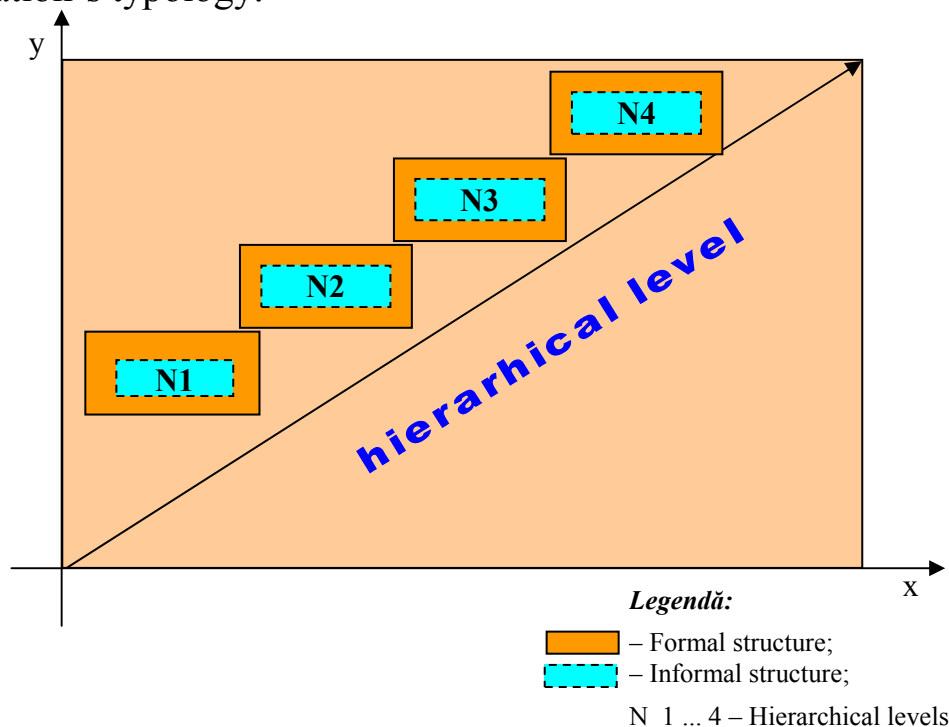


Fig. 1 *The parallelism of the informal structure*

A classification of the informal structures could be synthesized as follows:

1. From the motivation’s perspective:

- based on common values, cultural, sportive, social etc. affinities;
- based on common interest;
- random or conjectural.

2. *From the perspective of their utility:*

- useful to the formal organization, activities and missions;
- antagonist to the ethical and conduit norms and rules;
- conjectural.

3. *Regarding the location:*

- in the same entity (group, team, platoon, company, office, etc.);
- individuals that are part of the same sub-units or different units being in the same location;
- conjectural (along some common exercises, to the sportive or other nature activities etc.)

4. *Regarding their constitution and organization:*

- linear or networked (wherein all its members are equal);
- constituted around a single formal or informal leader;
- without a specific configuration.

5. *As regards their architecture or intern cohesion:*

- with role and functions précised by a statute or by a functioning regulation (a literary cenacle, a musical band, a group of stamps collectors, a group of elite shooters, a group of fans of a football team etc.);
- without a precise statute, without rules, only supported on some common, non-formal affinities or ideas.

The informal structures or entities from the organization can be in different relations one from the other. The main relations defined by the presence of connections are the following:

- cooperation and collaboration in the favor of formal organization;
- cooperation and collaboration disfavoring the formal organization;
- emulation, some acting in the favor of formal organization, another against it;
- competition between them, all acting against the formal organization;
- insignificant or partial insignificant.

Members that compose or determine the construction of informal entities present the following features:

- one or many leaders;
- a series of direct participants;
- a series of occasional participants;
- a series of fans or denigrators.

The centre of an informal structure is the informal leader. This is virtually a deliverer of opinion, a charismatic, intelligent person that has the

quality to be listened and followed. Many times the leader is a strong character person, very well trained, with authority, which exercises a positive influence over a group of comrades.

Therefore, when a commandant or chief is assigned, especially into smaller organizations (subunits, units, offices, sections etc.) he can be regarded as much possible as the respective person to be formal leader but also informal leader with immediate impact over the collective.

The informal structures, in regard to their form of constitution and manifestation of the interpersonal relations can present different configurations as follows:

- linear (communication and relations are linear, from the leader to the last person or from the first to the last person, when the informal structure isn't constituted around a leader but around an idea or for the ongoing of certain common activities);
- circular (communication is undergone circularly, all the members of the group benefiting of the information transmitted by his mate therefore to reach in circle, even in distorted form to the first people transmitting it);
- radial (the leader communicates with each member of the collective and receives from each communications, reports, ideas, information etc.);
- in cluster (the leader communicates with different groups which can or can't communicate between them).

There are informal structures constituted after the model of conspiratorial structure, with strict rules and well defined goals. These informal structures are as dangerous as possible because their goal is often very dangerous (consume of alcoholic drinks, drugs, hidden affairs, traffic of influence, etc.). The constitution of such dangerous informal structures is possible in those organizations where quality management does not exist, but also where there are charismatic leaders who are oriented to non-conformism, indiscipline or even to criminality.

Usually "in the process of interpersonal interactions, peoples which perceive, communicate, act and react each over are getting closer, know each over and in result make acquaintances, associate, like, help, become friends, or on the contrary, suspect, become jealous, reject, hate each over."¹

In conclusion we can argue that the informal structures appear as result of common, long lasting and difficult activities constituting in means of amplification of organization's performance, of stimulation of individual

¹ Pantelimon Golu, *Psihologia socială*, Didactical and Pedagogical Publishing House, Bucharest, 1971, p. 131.

qualities, of communication's improvement and on this ground of amelioration of the individual condition. On this occasion, unwritten rules of respect and treasuring of the other are created together with legends, myths, and habits. The impact is determinant and significantly amplifies the organizational culture, the effort and action motivation, the individuals and groups performances. The good organization creates chain informal structures that support and amplify its creator force.

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THE RISK OF OSTEOPOROSIS IN MILITARY WOMEN EXPOSED TO CHRONIC OCCUPATIONAL STRESS

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Stress fractures have a significant impact on military personnel, limiting the freedom of movement and increasing costs of treatment and recovery. The aim is to determine the risk of osteoporosis in military women exposed to chronic occupational stress. Materials and methods: 31 employees of military female, apparently healthy, without previous osteoporotic therapy were divided into 3 groups according to the body mass index (BMI). Lumbar bone mineral density was evaluated by dual X ray absorptiometry (DXA), while serum leptin was evaluated by ELISA. Results: High chronic stress is associated in literature with high levels of leptin and increased risk of osteoporotic fractures default stress. Conclusions: women in the military subject to significant occupational stress are exposed to a number of factors that may predispose to increased bone fragility.

Keywords: osteoporosis; fracture stress; leptin; military occupational stress.

Stress fractures have a significant impact on military personnel, limiting the freedom of movement and increasing treatment costs and recovery time. The program, Bone Health and Military Medical Readiness”, (BHMMR), launched by the U.S. Defense Department estimated costs \$ 1,850,000 and the 4120 annual work days lost for military personnel, with a stress fracture incidence of 3.4 to 21% for women in the military (1).

Recent research shows that changes in U.S. Navy physical training programs can increase the capacity of movement in military personnel, delay the onset of stress fractures and reduce the incidence of stress fractures(1).

The occupational stress in the military is significant and is caused by multiple factors physical, biological, psycho-emotional, chemical (2).

Recent studies associate chronic exposure to stress with decreased neuropeptide Y expression in the central nervous system (3). Neuropeptide Y

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is a regulator of bone homeostasis by inhibiting osteogenic effect of transcription promoter ligand receptor activator of nuclear factor kappa-B (RANKL) and by increasing osteoprotegerin (OPG) expression in osteoblasts in the early stages of cell differentiation (3). Decreased neuropeptide Y in occupational stress increases the risk of the osteoporosis. Also, chronic stress is associated with increased levels of leptin (4), which in turn inhibits NPY. The current programs for the management of osteoporotic risk in military women recommend adapted exercise.

Material and methods

Our study is a cross-sectional study on 3 groups of about 8 premenopausal women each: 16 women with normal and underweight BMI (BMI <25 kg/m²), 9 overweight women (BMI between 25-30 kg/m²) and 6 obese women (BMI >30-40 kg/m²). All women volunteered to participate in this study, and were recruited from the military personnel. An informed consent was signed by all women.

Exclusion criteria were: diabetes mellitus, osteoporosis under treatment, hormone replacement therapy, severe liver or kidney disease, hyperthyroidism, primary hyperparathyroidism, hypogonadism, growth hormone deficiency, Cushing's syndrome, corticotherapy for over a year, anorexia nervosa, malabsorption syndrome, genetic syndromes. A fasting blood sample was collected, centrifuged, and stored in a refrigerator (-30°C) for leptin determinations. Then, all volunteers' height and weight were measured, and subjected to osteodensitometry by dual X-ray absorptiometry (DXA). A certified technician measured bone mineral density (BMD) of the lumbar spine on Hologic DXA. Total fat and lean masses were expressed in grams. Lumbar BMD was expressed in g/cm², leptin (ng /ml) was determined using commercial ELISA kits (Diagnostic Automation Inc., Calabasas, CA). The results were statistically processed using NCSS 2007 software, simple Pearson correlation, student t test, the correlation being considered significant when $p < 0.05$. Multivariate regression (ANOVA) was used to exclude systematic biases.

The occupational stress was assessed by validated questionnaires, and physical activity was assessed in volunteers with normal weight / overweight and morbid obesity by completing a physical activity questionnaire (GP physical activity questionnaire).

Results

All subjects received questionnaires in order to identify the level of occupational stress, with an average subjective perception of 7.19 ± 1.77 on

the whole lot. Military organization by its very nature and specificity generates high levels of stress but most soldiers accept stress as a normal characteristic of their professional life. Problems arise when its effects exceed individual's resistance or capacity of adaptation. There are multiple stressors involved like multiple tasks, conflicting orders, and interpersonal relations, working conditions with insufficient human, technical and financial resources. Following centralization of physical activity questionnaire we found that all volunteers fell into the category of active people.

We intended a correlation between various body compartments with bone mass. BMI is positively correlated with lumbar BMD T score and Z score. The best correlation was achieved for the Z score, because this parameter excludes the influence of age on bone. Due to heterogeneity of the study group we used the Z score, which compares the BMD with average BMD for age.

Different body compartments were correlated with lumbar Z score. Thus, the lumbar Z score correlated with total body weight expressed as BMI (Fig. 1 a) and fat mass (Fig. 1b) on a comparable degree, the correlation Z score –lean tissue mass being significantly stronger (fig. 1c).

Lean mass seems to be the most important predictor of bone mass in Caucasian women.

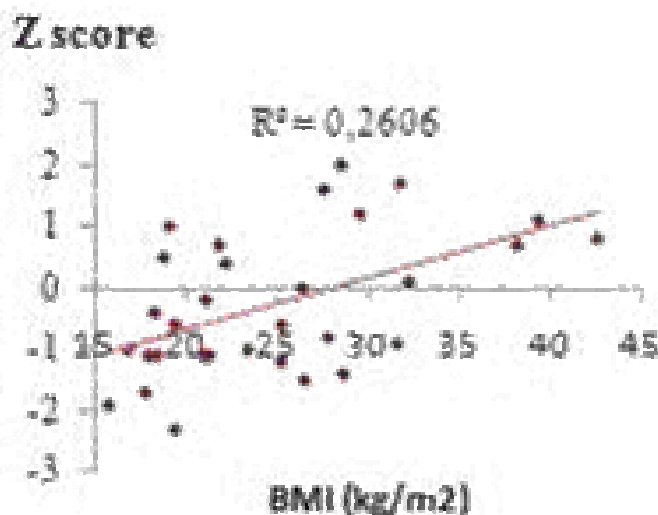


Fig 1a. Relation between lumbar Z score and BMI

Correlation is significant R^2 0.2606

Between lumbar Z score and fat mass of pre-menopausal women there is also a positive correlation, R^2 0.2414.

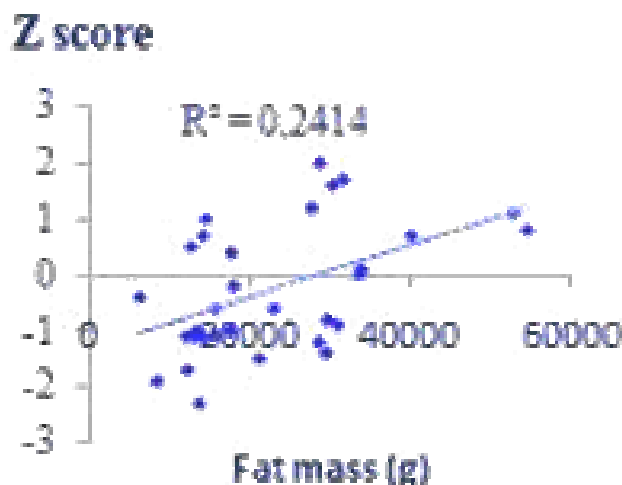


Fig. 1b. Relation between lumbar Z score and fat mass

The correlation is positive, but much stronger when it was made between lumbar Z score and lean mass, R^2 0.4626.

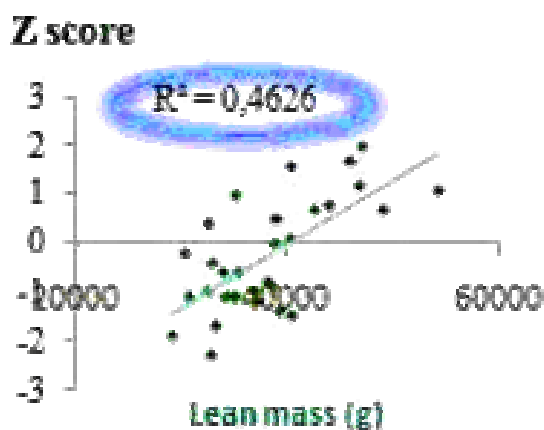


Fig. 1c. Relation between lumbar Z score and lean mass

It is known that both leptin and adiponectin are secreted by adipocytes, but only leptin reflects total fat mass. Data concerning the effects of adipose tissue on bone is even more conflicting. Certain authors suggest that fat tissue

mass might be more important in predicting bone mass. Other authors described that, once fat tissue mass is expressed as percentage of the total body weight, its predictive effect on bone mass either disappears or becomes negative (5-7).

In our study we established a positive correlation between serum leptin and lumbar Z score and also between leptin and fat mass (Fig. 2).

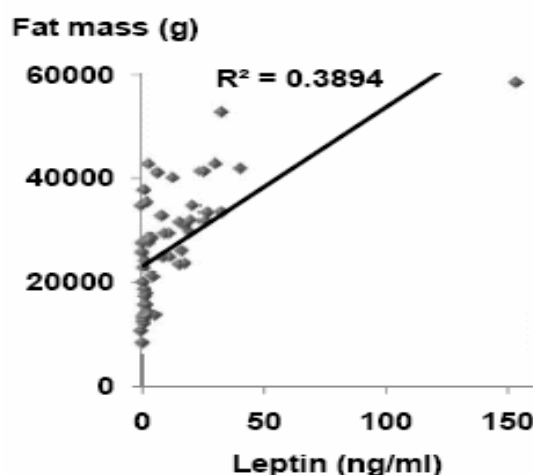


Fig 2 *Relation between leptin and fat mass*

Discussions

Studies in the scientific literature correlate occupational stress exposure with increased levels of leptin, via inhibiting central neuropeptide Y levels and thus possibly promoting the development of osteoporosis.

In our study with relatively young women, apparently healthy, with very strict exclusion criteria, we found a positive correlation of BMD with BMI and also between leptin and BMD. The found results can be explained through increased muscle mass correlated with sustained physical activity. We found normal levels of leptin, but this does not exclude that prolonged exposure to stress, may further increase levels of leptin.

Conclusions

Lean tissue mass has an important predictive role on bone mass, except those who practice intensive sport activity.

Occupational stress level is above average in an area where occupational demands are many and may influence bone mineral density via leptin.

Women in the military being subjected to significant occupational stress and exposed to a number of factors, including diet and calcium

deficiency may be predisposed to increased bone fragility and increased fracture risk with significant impact on the ability of movement.

Bone mineral density in military women is affected by various factors and their mechanisms of action are still under research.

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ABOUT TRANSMISSION, GUARANTEEING AND PAYMENT OF AN OBLIGATION ASSUMED BY A CHECK

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In a dynamic range as the one of securities, the analysis proposed in this paper provides to the experts a theoretical and practical image, structured and updated in terms of legislation. The study consists of specific elements about transmission, guaranteeing and payment of an obligation assumed by a check, both in terms of common law and of regulations of their own domain.

Keywords: checks; endorsement; downstream; certification; payment.

The concept of "check", in special legislation and doctrine, numerous definitions of the term "check" are constantly developed and analyzed

Thus, the first definition is retained in the text of Law. 59/1934 which establishes mandatory elements a document must meet in order to be considered a check. The legislator was inspired by the Italians who took over the Convention containing uniform law on checks and adopted in 1931 in Geneva.

However, in Norm nr.7/1994 of the National Bank of Romania it was established the legal relationship as a result of using checks (item 4), stating that "the instrument is created by the drawer, based on an established available prior to a bank, gives an unconditional order, which is held in position of drawee, to pay at the presentation, a determined amount to a third party or to the drawer itself, who is in a position of beneficiary".

Representatives of the doctrine have been and are concerned with the study of this security, as proved by numerous approaches including the concept of checks, which usually start from defining the term. Thus, some authors define the check as representing the "credit title that includes an order

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that the drawer gives to a bank thru which he orders him to pay to the beneficiary a sum of money".¹ Another definition states that "the check is a document that someone called drawer, orders to the bank where his money is available, called drawee, to pay at the title presentation a sum of money to another person, called the beneficiary".² The check is defined as the "credit title that contains the order to pay a sum of money, drawee on a bank, by the one who has available funds there."³

Discussion of the endorsement – specific means of transmission of the obligation assumed by check

The check can be sent both by means of common law (assignment) and by specific endorsement, thus confirming its dual legal nature.⁴ On the other hand, check's category also includes determination and transmission of obligations under that document.

Thus, a "check nominative" transmission can operate only by assignment of debt, because it contains the clause "not to order" which doesn't allow manual transfer by endorsement or tradition, while a "bearer check" is transmitted only through manual tradition. If the endorsement is on a "bearer check" the guarantor will respond as provided in the fall, without title to be turned into a check to the order.

In case of "check in order" and the check is issued by clause "not transmissible", their transmission operates through endorsement, taking into account the particularities of transmission through endorsement of the check issued by clause "non-transferable" because in the latter case clause is inserted by drawer on beneficiary's demand and thus determines the last owner who can take possession of the amount entered in the title.⁵

We conclude that a check is sent by endorsement, if it's payable to a particular individual, with or without an express clause "to order" and if it is stipulated payable to a person "not at order" it is sent having the form and effects of an ordinary common law assignment.

The law expressly defines endorsement of the check, and devotes its written form (deleted endorsement is deemed unwritten) and signature

¹ I. Dogaru, L. Săuleanu, A. Calotă Ponea, *Theory and practice in the field of securities trading value - bill of exchange, promissory notes and checks*, Didactic and Pedagogical Publishing House-RA, Bucharest, 2006, p. 166.

² St. D. Cărpenu, *Romanian Commercial Law*, The 5th Edition, All Beck Publishing House, Bucharest, 2004, p. 560.

³ Pyk Gălășescu, *Banking course*, "I.C. Parhon" Publishing House, Bucharest, 1950, p. 174.

⁴ A.D. Dumitrescu, *Securities. Regulation. Doctrine. Jurisprudence*, Bucharest, C.H. Beck Publishing House, Bucharest, 2011, p. 331.

⁵ Ion Dogaru, Lucian Săuleanu, Armand Calotă Ponea, *works cited*, p. 177.

requirement set by the guarantor. If only the guarantor signs the endorsement, it is valid only if it is written on the check, even if the beneficiary is not mentioned.

Moreover, the provisions of the Rules of the National Bank of Romania no.7/1994 are relevant in this problem, since on one hand, section 73 provides that the endorsement is a bill thru which the endorser, holder of the check, transfers to the endorsed, by written and subscribed statement on the instrument together with delivery, all rights arising from the check written and completed, and, on the other hand, the rules stated in item 88 says that endorsement "in full" involves guarantor's declaration, signed and dated, including the order addressed to the drawee to pay some specific persons. Endorsement "in full" must include the guarantor's signature, endorsed name and the endorsement date (if the date is not mentioned, it can be proven by any means of evidence admitted).

An endorsement becomes effective only if the title is remitted and the partial endorsement is null. Endorsement is transmitted through all the rights arising from the title, so the guarantor will be liable to yaw and to subsequent owners of the check.

In this context we can discuss about the application of certain principles enshrined in law, as the principle of good faith and the principle of indivisibility.

Common law principle of protection the good faith says that one, who loses title possession, cannot recover it from the current owner, whether the check is payable to bearer or transferable by endorsement, unless the new owner acquired the check in bad faith or following a serious mistake in connection with its acquisition.

The principle of indivisibility is present in sanctioning by check nullity two situations – when endorsement and partial endorsement given by the drawee.

Endorsement allows the transmission and analysis regarding the mandate, because the mandate applications are included in the check in general and endorsement in particularly.

Therefore, we see that, if the endorsement contains the words "to buy", "value coverage", "for collection" or equivalent wording, shall be presumed a general mandate and the check owner is entitled to exercise all rights under it, but it may endorse it only if he's authorized.

Regarding endorsement affected by the way, we note that the check guarantee, must not be conditioned or encumbered by consideration, or the sanction consists in that that condition shall be deemed unwritten.

The practice retains many situations where a person can endorse the check in the interest of another drawer or interest required by check, and they can endorse the check back later (business management). If the endorsement is given in the benefit of the drawee, it is worth a receipt unless the

endorsement has several establishments and that the drawee is made for an establishment that does not coincide with that on which the check was drawn.

An interesting situation is "white endorsement " or endorsement "to bearer", stated by Article 90 of the Rules of the National Bank no.7/1994 which provides that a "white endorsement " consists only of guarantor signature entered either on the back check, or on its margins.

If the endorsement is "white", the title holder may have to check whether in the purpose of completing his name or the name of another person on it, or to endorse (endorse again) or give it to a third party.

The rule is that responsible for payment is the guarantor, unless the clause is contrary.

Draw a check in several copies, make a guarantor who sent these copies to different people, but also the coming sureties, to respond for all the non-returned copies bearing the signature of such persons.

It is considered legitimate the possession of a transferable check, as far as the title holder can justify his right by a continuous series of signatures.

Another problem that arises when analyzing the liability of persons involved in check traffic is the problem of force majeure and that of unforeseeable circumstances.

If these situations occur, the document owner is immediately obliged to inform his endorser and to check out the mention of it, signed and dated.

However, the unforeseeable circumstances or force majeure does not include purely personal facts of the check owner or person authorized by the facts to present the title, by making the protest or equivalent finding. When the situation stops, the title holder must present the check to payment and possibly to draw protest or finding.

Guarantee obligation assumed by check

Guaranteeing securities can be achieved both by common law guarantees⁶ (guarantees and collateral) and the specific guarantees these documents.

The specific payment guarantee is the downstream given by a third party, other than drawee or a signatory of the check, for the full amount or part of it.⁷ Downstream is given on the check or addition and it shall be signed by the avalist by words: "to downstream" or other equivalent formula.

⁶ Provisions of Art. 2279-2322 of the Civil Code refers to personal guarantees (fideiussione and autonomous guarantees), and art. 2323-2499 of the Civil Code governing the privileges and collateral materials (privileges, mortgage, pledge, retention of title). In addition, The Civil Code provides now two independent guarantees of obligations different by the object of the obligation assumed. Thus, the guarantor assumes to pay a sum of money, or the obligation to do or not do, in a comfort letter.

⁷ A.D. Dumitrescu, *Securities. Regulation. Doctrine. Jurisprudence*, Bucharest, C.H.Beck Publishing House, Bucharest, 2011, p. 337.

Downstream of the check may be given by a third party, other than drawee or a check signatory. Regularly, it is stated the person to whom is given further, and if not, is believed that it is given for the drawer.

The avalist position is equated to the position of the one who gave the downstream, in the sense that both are equally bound, but the avalist's obligation is autonomous relative to the guaranteed obligation, so the avalist's obligation is valid even if the guaranteed obligation is zero.

If downstream appears as a specific warranty obligation arising from the security in general, other security – "certified check" is specific to check.

Trade rules no.7/1994 regarding credit checks institutions provides (item 38): "The term certified check means a check that a credit institution in a position to drawee confirms, before handing the check to the beneficiary, the existence of required funds payment ordered by that instrument"⁸.

It is specified that check certification means signing title by the drawee (the bank), which confirms at the time that the provision of bank covers the check amount. Moreover, the amount can't be withdrawn by the drawer, nor can it be used for other purposes, certainly guaranteeing the check at the bank.⁹

So, the certification statement written and signed on the check by the drawer, confirms the existence of available funds. The drawer is prevented to withdraw the cash before the transition time of presentation, and the beneficiary check deception is impossible since the company banking is financial responsible if its officers are certified the fictitious check, without the necessary provision.

Certification may be required by the drawer to the issuing banking company before giving it to payment or by subsequent owners, check's beneficiaries. The banking society certifies the bank checks with the expression "certificate", with the full name of his legal representative designated to perform this function, followed by his signature and stamp of the bank.

Settle the obligation by paying the check

The main effect of obligations and their main mode of extinguishing is represented by the payment.

Generally, the payment will settle the obligation under article 1503 of The Civil Code. Thus, if the original acknowledging the debt document is voluntarily submitted, in our case, the security, from the creditor to debtor, one of the co-debtors or fideiutor, it arises the presumption of extinguishing by payment the obligation, and if the document submitted shall be authentic,

⁸ Item 38 was amended by item 3 of the art. III of the Regulation no. 6 of June 5, 2008, published in Official Journal no. 509 of July 7, 2008.

⁹ M.N. Costin, *Dictionary of International Business Law*, 1st Volume, Lumina Lex Publishing House, Bucharest, 1996, p. 163.

the creditor is entitled to prove that delivery was made for other reasons than redemption of the obligation (for example, bills or remission check in original). We have a different solution if the authentic original document is remitted – it does not stand the presumption that the obligation has been extinguished by payment because its authentic document suggests the need for greater legal protection, the protection of an interest not only between parties but also between third parties.

Regarding pay check, there are different provisions than those in bills of exchange because the check is payable on demand and is not subject to acceptance by the drawee who is only a payer and is not responsible for unpaid amount.¹⁰

If the full amount is paid, check signatories (drawer, avalists or guarantors) are absolved of obligations they have assumed, and failure to pay within the statutory title entails loss of the right of recourse against the guarantor or against the avalists without causing the settle of obligation undertaken by the drawer by issuing the check.

The analysis of obligation settlement by payment has three components: presentation of payment, effective payment and refuse to pay.

The first activity, presenting the check for payment is made by a drawee, the banking company or clearing house, and the credit title presents the same effect as the original or truncation.¹¹

Mandatory mentions on checks include a "code" and a unique identification number (according to article 1 section 8 of the Law no.59/1934 on checks and "the drawer code – a unique identification number, taken from or registration identification documents of the drawer "), the consequence of such provision consisting in the fact that the check can be presented for payment by truncation and it's an electronic document bearing an electronic signature, under condition of existing between credit institutions a prior agreement in this respect.

The drawer, the credit institution must verify that the original check comply with legal background form, has to ensure accuracy and compliance of relevant information transmitted electronically from the original data and to ensure compliance check to check original image.

¹⁰ A.D. Dumitrescu, *Securities. Regulation. Doctrine. Jurisprudence*, Bucharest, C.H. Beck Publishing House, Bucharest, 2011, p. 339.

¹¹ Norm no. 7/1994 on trade made by credit institution with checks, item 166.1. "Checks can be presented for payment by truncation, in accordance with SENT system Rules or if the cropping operation can not be achieved through the presentation at the collection, in original, directly from the drawer credit institution or from the beneficiary drawee credit institution, according to existing procedures concerning agreements between credit institutions involved. Item 166.1 was introduced by item 30 of Art. I of Regulation no. 6 of June 5, 2008, published in Official Journal no. 509 of July 7, 2008.

The supreme court¹² held that can not be accepted a bill of exchange action based on a check which has not been proved by the applicant that was presented for payment in due time and that was protested for non-payment, the applicant being entitled to appeal based on the report, using the check as a written document through can be established the report.

In judicial practice it was decided that some courts have erroneously concluded that the check may be an active claim – an inheritance good which is tax recorded, but the presentation¹³ of the check owner to be paid is an operation derived from check obligations.

In considering the forms that must be observed in performance of an obligation (where the execution is performed and not those where the obligation was incurred, if the place of performance is in another country is to apply the law of that country), we note that the check owner which does not meet these formalities is deprived of recourse against the action against the one who endorse the check.

The effective payment of the check by the drawee empowers him to claim that the document shall be handed to him by the holder marked as "paid" total or partial.

If payment is partial one, the drawee's interest is to require its notification on the title and to be issued a receipt which can prove the payment. Also, check payment is made according to available amount in the account, and if the cash is not enough, the payment is made in the existing amount, without the drawee or the beneficiary to invoke and refuse partial payment.

As a following to the payment, the bank is entitled to give the title with the word "paid" and check the regularity of succession of endorsements. It does not check the authenticity of signatures of the executive officers. Bank role is crucial, as it controls the payment made by check and the payment formalities within the issuer up before available funds.¹⁴

The doctrine¹⁵ states that although the payment instrument that meets the formal conditions laid down in law on checks may not be accepted by the drawee, he may be required to certify it, at the request of the drawer or beneficiary, confirming the existence of availability in drawer's account.¹⁶

¹² High Court of Cassation and Justice, Section III, nr.1465/1932 decision published in Florin Ciutacu, *Commercial Law. Reports of cases. Commercial legislation. Model contracts. Models of action*, Themis Cart Publishing House, 2003, p. 487.

¹³ Court of Cassation, in December. nr.758/1928, *Judicial practice in commercial*, p. 123.

¹⁴ I. Dogaru, L. Săuleanu, A. Calotă Ponea, *works cited*, Bucharest, 2006, p. 188.

¹⁵ I. Dogaru, L. Săuleanu, A. Calotă Ponea, *Idem*, p. 189.

¹⁶ Item 38 National Bank Rules. no.7/1994: "The term *certified check* means that a check is confirmed by the drawer bank, before handing the check to the beneficiary, the existence of necessary funds payment ordered by the instrument of payment; item 41 establishes a rule for

The bank is not directly bound by the check certification, but it may be required to indemnify the beneficiary of the check, if the amount was not blocked and the amount was used for the drawer.

The payment can be made both personally and through intermediary (agent of the drawer), and if the representative or the false representative exceed their powers to sign a check, they are personally obligated for the full amount provided in check.¹⁷

The law provides¹⁸ the sole responsibility of the drawer for serving as payment a check and other arrangements, which would include the transfer of obligations on a third party, will not be considered by the parties.

The check will have the same effect and its holder will have the same rights, even if after the issuance of the document occurred death, inability of the drawer or its capacity restriction, and the effect will be freezing the amount entered in title of which certification is required.

After expiry of the presentation period, the drawer can revoke the payment order established by issuing checks, but its revocation during the presentation can be made only if the instrument is lost or stolen.

If the drawer does not address to the drawee that he is not available to pay, the beneficiary may present the check and benefit from its effects in the general limitation period (item.168 no.7/1994 of National Bank Rules).

The check is paid in the currency of the place, but item.182 of National Bank Rules no.7/1994 departs from the rule by inserting two exceptions. The first exception occurs if the drawer expresses the amount payable in other currency than in lei and payment is to be made in that currency, in which case payment can be made only if the cash drawer to hold that currency. In the second case, if the drawer expresses the amount payable in a currency other than lei, but states that the actual payment to be made in lei, at the day, the clauses contained in endorsements drafting that would alter the currency risk clause set at the issuance of the check are void.

Total or partial refusal of payment of checks presented for this purpose may be related both to the refusal of payment of original checks, or to refusal of payment of checks presented by truncation.

certification made by the National Bank "National Bank and the banks certifies checks with the expression" certified "and with the name and surname clearly written of his legal representative designated to perform this operation, as well as his signature and stamp of the banking company or the National Bank of Romania"; item.39 "Certification of a check may be required to the bank by the issuing drawer company before giving it to payment, or by one of the subsequent owners, beneficiaries of the check".

¹⁷ Article 12 of Law 59/1934 on checks and item 60 of the rules of the National Bank Rules no.7/1994.

¹⁸ Article 13 of Law 59/1934 on checks.

Following the refusal, the credit institution who holds the original check will note on it certain information, factual evidence of refusal of payment – payment date check to see if the presentation was made in due time and the declaration of refusal, signed by their legal representatives or their assigns.

The effect of not paying the amount of the check is held until expiry of the presentation, and without order, the drawee may pay after the deadline, too.

Conclusions

The check is a security issue, with special legal statute, which comes to meet professionals¹⁹ interested to transact conveniently and economically, in "other currencies", whose feature requires careful analysis and insight, in order to reach the purpose of the existence of such an instrument. From this perspective, the study shows the usefulness of transmission, guaranteeing and payment of an obligation assumed by a check.

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¹⁹ V. Dumitriu, *Bills law*, Al. T. Radu Voda Doicescu 41 bis Publishing House, Bucharest, 1926., pp.141-145. Use and utility bills of exchange as means of payment title and execution of contracts was motivated primarily by reference to check.

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