

The Notions of Defense and Security in the Romanian Legislation

Țuțu Pișleag¹

Abstract: This article discusses the notions of defense and security as they are contained in Romanian legislation after 1990 and which highlights today the issue of a unitary approach. The method used consists in the study of normative acts regarding national defense and security. Although the National Defense Strategy is adopted at the national level, it fully meets the requirements of any national security strategy, according to the complexity and transformations of the global security environment.

Keywords: security; defense; security; strategy; national

Introduction

The notions of defense and security are found in various legal texts in relation to the implementation of specific legislation after 1990. Thus, in the Romanian Constitution, the term defense is connected with other terms, as follows:

- “approval of the national defense strategy²” (referring to the conduct of joint sittings of the Chambers);
- “attributions in the field of defense³” (referring to the attributions of the President of Romania);

¹ Professor, PhD, “Danubius” University of Galati, Faculty of Communication and International Relations, Galati, Romania, Address: 3 Galati Blvd., 800654 Galati, Romania, Tel.: +40.372.361.102, Fax: +40.372.361.290, Corresponding author: pisleagtutu@univ-danubius.ro.

² Art. 65, par. f), the Romanian Constitution, amended and supplemented by the Law on the revision of the Romanian Constitution no. 429 of 2003, Official Monitor, part I, no. 758 of October 29, 2003, republished by the Legislative Council, Official Monitor, part I, no. 767 of October 31, 2003 (The Constitution of Romania, in its initial form, was adopted at the meeting of the Constituent Assembly on November 21, 1991, was published in the Official Monitor of Romania, Part I, No. 233 of November 21, 1991 and entered into force on following its approval by the national referendum of December 8, 1991).

³ *Ibidem*, art. 92.

- “The Supreme Council of National Defense organizes and coordinates unitary activities concerning the defense of the country and national security, participation in maintaining international security and collective defense in military alliance systems, as well as in actions to maintain or restore peace.¹”

At the same time, we find the phrase “national defense” as being “the set of measures and activities adopted and carried out by the Romanian state in order to guarantee national sovereignty, independence and unity of the state, territorial integrity of the country and constitutional democracy.²”

The phrase “national security” appears in the Law on National Security as being “the state of legality, balance and social, economic and political stability necessary for the existence and development of the Romanian national state as a sovereign, unitary, independent and indivisible state, maintaining the rule of law, as well as the climate of unrestricted exercise of the fundamental rights, freedoms and duties of the citizens, according to the democratic principles and norms established by the Constitution³”, by which the term *safety* was replaced with *security*.

The phrase state of legality is also found in the definition of public order, “as a component of national security, is the state of legality, balance and peace, corresponding to a socially acceptable level of compliance with legal norms and civic behavior, which allows constitutional rights and freedoms, as well as the functioning of structures specific to the rule of law and is characterized by the credibility of institutions, public health and morals, the state of normal in the organization and conduct of political, social and economic life, in accordance with legal, ethical, moral, religious and of another nature, generally accepted by society⁴”.

From a European perspective, it is stated that “the Union respects the equality of the Member States in relation to the Treaties, as well as their national identity, inherent in their fundamental political and constitutional structures, including local and regional autonomy. It respects the essential functions of the State and, in particular, those aimed at ensuring its territorial integrity, maintaining law and order and

¹ *Ibidem*, art. 119.

² Art. 1, National Defense Law no. 45/1994, with subsequent amendments and completions, Official Monitor no. 172 of July 7, 1994.

³ Art. 1, Law no. 51 of July 29, 1991 (republished) regarding the national security of Romania, Official Monitor no. 190 of March 18, 2014.

⁴ Decision no. 196 of March 17, 2005 on the approval of the Strategy of the Ministry of Administration and Interior for the realization of public order and safety, for increasing the safety of the citizen and preventing street crime, Official Monitor, no. 243 of March 23, 2005.

defending national security. In particular, national security remains the sole responsibility of each Member State”¹.

Compared to the above, we state that the state of legality refers to the social values with the highest degree of illicit frequency and that “public order is much more comprehensive than its expression in legal norms, which makes it a major problem for national security (Pişleag, 2017)”. At the same time, “according to the constituent legislator, the notion of public order appears expressly nominated, either to mark a usual limit of a fundamental right, or to outline an exceptional situation from the rule, or to evoke a situation with a general feature of the exercise of certain rights or freedoms” (Pişleag, 2017).

Also in this law there are provided the attributions² in the field of national security of the Supreme Council of National Defense, according to art. 7. At the same time, the notions of defense and security are connected with the notion of strategy, referring to the attributions of the Supreme Council of National Defense, in which in relation to the law it analyzes and / or proposes the promotion of “Romania’s national security strategy and the national defense strategy of the country; Romania’s military strategy; the public order and national security strategies of Romania, in relation to the responsibilities of the competent institutions; data, information and assessments provided by intelligence services and other structures with responsibilities in the field of national security³” as well as “endorsement of draft normative acts initiated or issued by the Government on national security⁴” or concerning “budget allocations for ministries and services in the field of defense, public order and national security⁵”. What is interesting is that although the phrase national safety has been replaced by the phrase national security, the notion of security is still maintained in the text of the law, as we find it in the wording “defense

¹ art. 4, par. (2), Treaty on European Union, 13 December 2007 (paragraph 1, in accordance with Article 5, any competence not conferred on the Union by the Treaties belongs to the Member States).

² a) analyzes the data and information obtained and evaluates the state of national security; b) establishes the main directions of activity and approves the general obligatory measures for removing the threats provided in art. 3; c) establishes the modalities for capitalizing the information regarding the national security; d) analyzes reports and information on the application of the law on national security, e) approves the organizational structures, staff and operating regulations of the Romanian Intelligence Service, the Foreign Intelligence Service and the Protection and Guard Service; f) approves the operative expenses destined to the achievement of the national security.

³ Art. 4, letter a, Law no. 415 of June 27, 2002 on the organization and functioning of the Supreme Council of National Defense, Official Monitor of Romania, Part I, no. 494 of July 10, 2002.

⁴ *Ibidem*, art. 4, letter d), point 1.

⁵ *Ibidem*, art. 4, letter d), point 6.

of the country and national security¹” on the attributions of the CSAT as “invested autonomous administrative authority, according to the Constitution²” but also in the Regulation of functioning of the Supreme Council of National Defense³. We specify that the phrase national security has been replaced by the phrase “state security⁴” in the first official form of regulation of the Supreme Council of National Defense. However, in the Criminal Code, Title X is enshrined on crimes against national security (articles 394 - 412)⁵.

In the French view, “security is considered a global and permanent concept, while defense is understood as the preparation and use of military means against armed threats” (Warusfel, 1994).

In accordance with the law in force, we find the wording according to which “The national defense strategy of the country is the basic document that substantiates the defense planning at national level. The President of Romania, within a maximum of 6 months from the date of taking the oath, presents in the Parliament the National Strategy for the defense of the country which is debated and approved, by decision, in a joint meeting of the two Chambers”⁶.

Compared to the above, the concept of extended national security is promoted, which “based on constitutional democracy and mutual respect between citizens and the state and which aims at interests that converge towards ensuring national security, manifested in the following areas: defense (understood in double normative quality, national defense and collective defense), public order, intelligence, counterintelligence and security, education, health, economic, energy, financial, environment, critical infrastructure⁷”.

The integrative and multidimensional approach implies that “the defense dimension should be combined and balanced with a number of other dimensions: public order,

¹ *Ibidem*, art. 1.

² *Ibidem*.

³ Regulation of operation of the Supreme Council of National Defense (pursuant to art. 10 of Law no. 415/2002).

⁴ Law no. 39 of December 13, 1990 on the establishment, organization and functioning of the Supreme Council of National Defense, Official Monitor no. 142 of December 13, 1990.

⁵ Criminal Code (with subsequent amendments and completions), Official Monitor, Part I no. 510 of July 24, 2009

⁶ Art. 4, Law no. 203 of 2015 on defense planning (with subsequent amendments), Official Monitor, Part I no. 555 of July 27, 2015.

⁷ Romania's military strategy - for a strong Romania in Europe and in the world, Official Monitor no. 789 of October 7, 2016.

intelligence, counterintelligence and security, diplomacy, crisis management, education, health and demography¹”.

Although, at national level, such documents were approved, the National Security Strategy of Romania (2006), the National Strategy for National Defense (2010), the Military Strategy of Romania (2015), the National Strategy for National Defense for between 2020 and 2024, they actually address the issue of national security through the growing interconnection between threats and risks, being the direct consequence of globalization that removes the barriers between conflict and risk. It follows from the above, the need to harmonize the specific terminology in all normative acts in order to operate in a unitary manner both at legal and operational level. Given the procedure for drafting and approving the strategy (national defense of the country) in a joint meeting of the Chambers of Parliament, the question arises as to the legal force of the strategy, as long as from a political perspective, the document is politically assumed. An element of modernity but also of operability is the evaluation report on the implementation of the strategy based on the fact that “the national security landscape is changing faster than can be accepted in the current cycle²” of national security strategies.

For these reasons, it is important to emphasize that a security strategy “is not a document, but an ongoing process” (Corbett, 2015, p. 14) and only in this way can a “clear articulated relationship between national security and the value it creates for the individual and society in general” (Edwards, 2007, p. 52). It results, therefore, that the “national security is an end in itself, because it merges with the existence of the state” (Măila, 1987, p. 855).

The National Strategy for the Defense of the Country (for the period 2020 - 2024) stands out mainly through the following: it is a strategic-applicative instrument, which draws guidelines, against which concrete actions are required; is a document that addresses national public opinion on how institutions carry out their missions for the benefit of citizens, but also on international public opinion on how security is conceptualized; it is a platform for strengthening national unity and cohesion; proposes a management of the national security issue. All this and more, reinforce the principle of “using security, economic and influence capabilities to protect,

¹ *Ibidem.*

² <https://publications.parliament.uk/pa/jt201719/jtselect/jtnatsec/2072/207206.htm>, assessed on 20.08.2020

promote and design our national security, economic and influence objectives¹". Compared to other previous documents, the current strategy called National Defense Strategy responds primarily to the normative imperatives of the law and we appreciate that sectoral strategies can design capabilities more effectively to meet current and future challenges. We believe that there is a need to harmonize specific terminology as in this area of national security we need to operate with concepts that have practical applicability.

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¹ *National Security Capability Review*, Including the second annual report on implementation of the National Security Strategy and Strategic Defense and Security Review 2015, HM Government, March 2018, p. 10.

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