

## ABSTRACT OF DOCTORAL THESIS

entitled

### **JURIDICAL REGIME OF ACCOMPLISHING THE NATIONAL SECURITY GUARANTOR FUNCTION BY PUBLIC ADMINISTRATION AUTHORITIES**

**KEY WORDS:** *security, threats, rights, freedoms, protection, restraint.*

Doctoral thesis entitled „**JURIDICAL REGIME OF ACCOMPLISHING THE NATIONAL SECURITY GUARANTOR FUNCTION BY PUBLIC ADMINISTRATION AUTHORITIES**”, written under the scientific coordination of Univ.-Prof. Dr. Ioan Alexandru, approaches a permanently general interest subject, national security in the context of global security, from the juridical point of view, as function of public administration authorities.

The thesis contains: **Introduction** (10 pages), **6 (six) Chapters**, containing 271 pages, **Conclusions and proposals *de lege ferenda*** (7 pages), **3 Annexes** (14 pages) and **Bibliography** (7 pages).

The abstract presentation regarding the content of doctoral thesis, is intended to show the importance of the search subject, from the point of view of juridical demonstration of the fact that each of public administration duties, starting with the noble mission administration has been created for – to protect the citizen – might be interpreted as element to fulfill the national security.

The point of start in our search was the idea that administration, through its executive function, was created to serve the citizens, its entire system tries to improve the communication between administration and administered. Administration serves the „public interest”.

We proved in our search the reality of a content scaling in order to “accomplish the security” function, because each structure in state that acts for the commonweal, accomplishes the function of assuring the citizens security.

**In first chapter – *National security and fundamental rights of citizens***, we realized a comparative study of “national security” and “national safety” concepts, we explained juridical regime of human rights protection through universal and regional title instruments.

We appreciated as necessary, inside this chapter, to particularize the Lisbon Treaty, regarding fundamental rights of citizens.

**In the second chapter – *Role and functions of public administration***, we detailed the role of public administration with peculiar functions, in order to assure national security.

We paid a special attention to The Supreme Council of Country Defense, autonomous administrative structure, which „borrows” its members from different state structures with functions in strategical domains, such as defense or security, but who, by all its functions, is a high level decision organ among national institutions with security duties.

We approached the “army forces” concept, considering that, in Romania, some structures that belonged to the army have been assimilated to the category of civil servant and it has been created the institution of civil servant with special statute.

**In the third chapter – *Public administration and the other public authorities***, we compared the legislation, doctrine and jurisprudence, considering the limits of misuse of authority by public administration authorities in the national security field.

From this point of view, we believe that intelligence services are an important element of public administration system.

Following the legal frame, we statued that the parliamentary control to the structures in national security field could be interpreted as an extension of art. 16, Law no.

51/1991, in the acceptance that means to obtain national security informations mustn't affect in no sense, the fundamental rights and liberties of citizens, private life, honor or reputation and mustn't get them under any illegal restriction.

We approached the instruments to restraint the fundamental rights and liberties, considering the internal jurisprudence and the one of European Court of Human Rights: Law no. 298/2008, regarding stocking the data by the providers of electronical communications, declared unconstitutional; Patriot Act –U.S.A.; Constitutional Court of Romania, Decision no. 766 from 7 november 2006, regarding the exception of unconstitutionality of disposals of some articles of Law no. 51/1991 regarding national security of Romania and of Law no. 182/2002 regarding the protection of classified informations; the „Dumitru Popescu vs. Romania” Decision of European Court of Human Rights from 26th april 2007; the „Calmanovici vs. Romania” Decision of European Court of Human Rights from 1st july 2008.

We made a practical analysis of the european arrest warrant enforcement to a court in Romania and we analyzed by comparison the european legislation in the experts field.

In the end of this chapter we approached the restraint of some rights and liberties during the exceptional state and we analyzed statistical data referring to how a law regarding violation of citizens rights and liberties is enforced in our country.

**In the fourth chapter – *The role of decision and coordination in national security field of public administration institutions***, we approached the subject of good governance, including a comparative analysis of aspects regarding assuring national security of Romania in Governance Programmes 2005-2008 and 2009-2012.

We approached the relationship of national security institutions with civil society and the free access of citizens to information of public concern, showing, after a presentation of European legislation, a case study registered at Court of Appeal from

Craiova – Law no. 544/2001, regarding the free access to information of public interest, updated.

**In the fifth chapter – *Citizens protection through public administration in European states***, we started from the idea that legality is the essential condition of protection and we analyzed through comparison the means of protecting citizens in different European states and Romania.

We also analyzed institutions such as: Code of Behaviour, prosecutor, ombudsman, by their role in protecting the rights and liberties of citizens.

Analyzing the institutions who protect the citizen, we demonstrated the protection of its citizens by the European Union through diplomatic and consular means.

**In the sixth chapter – *Romania and international security organisms***, we approached the architecture of the new European and Euro-Atlantic security system, regarding the risks but also the specific reactions of international institutions: United Nations Organisation, North-Atlantic Treaty Organisation, European Union, Western European Union, Organisation for Security and Cooperation in Europe, The Partnership for Peace, European Security and Defence Policy.

To be a decision maker in the national security field represents a duty and a honor, and from this point of view, the institutions with such functions have the huge responsibility to find out the equilibrium between the public and national security interest.

At the end of this chapter we approached the international law in security field regarding asymmetric risks – weapons of mass destruction and terrorism, threats of modern world that forced the governments to put them in international laws.

We analyzed the jurisprudence of a Romanian law court regarding terrorism acts made in our country by minors and we quoted the Romanian Intelligence Service valuation regarding alarms with terrorist content in Romania.

In our search, we approached different **methodes of scientific search**: historical method, comparison method, other strategies of search (analysis of different documents, laws, participation at scientific events, etc.).

The historical method helped us to identify and point out new means of different concepts, influenced by evolution of contemporary society (functions of public administration, concepts like national security and national safety, protection of citizens in different European law systems, etc.).

The comparison method, as compound of logical method, helped us to determine the specific of notions in various societies or law systems, in theory and in practice. It was necessary to use this method in order to search and show the similarities and differences between Romanian law system and the other states ones, in the juridical regulation of protection and security state of citizens, through administrative law.

Romanian and European doctrine were studied, also Romanian and European Union laws.

On our entire search we analyzed the legislative acts (primary law, secondary and third law), but also jurisprudence, starting with Romanian Constitution and international documents of protecting the citizens, such as: the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, other international documents with universal title, and also documents that protect human rights in regional title organisations (European system, inter-American, African and Asian human rights protection systems).

In the absence of doctrine interpretation, many times during our search we confronted with situation of approaching for the first time some aspects and we tried to find the appropriate mean.

Because the evolution of contemporary society regards directly the internet, this way of documentation was a very useful instrument and we appreciate as a positive aspect the large amount of materials in the internet in the security field, sometimes larger than the printed ones.

In the end of our thesis we posed some *Conclusions and proposals de lege ferenda*, which brief the **new and original aspects** approached.

The modality of analysis of risk factors and threats by the states is the fundamental problem of the present and of the future, and asymmetric threats impose, more than ever, to create educational programmes for children but also for adults, in the fields of disarming and nonproliferation of weapons of mass destruction and conventional weapons, but also in the field of international terrorism.

For this reason, it is necessary that Romania permanently update its legislation with its partners ones.

In the same context, becomes important for our country to consolidate the process of authorities cooperation in matters of security, in the meaning of creating not only theoretical protocols between institutions, but to establish appointments, simulate exercises in security fields, with role of teaching the personnel with specific functions the way how to act.

In the process of elaborating the laws and the concrete definitions, we have to consider elements from national law, but also from international one (permanently referring to Romanian Constitution and international documents of fundamental rights and liberties).

As we tried to demonstrate, the terms “security” and “safety” are almost complementary, with the amendment that “security” involves more the action of an entity to protect, and safety more the one to feel protected.

In this way, our country needs to find the power, inclusively in elaborating the laws, to get over the communist experience in order to attend the international law system, by posing the term “security” in our national legislation.

Romania also needs to create programmes of awaring the population about the situations that allow the restraint of citizens rights and freedoms, in order to accomplish the national security.

In conclusion, in a present with asymmetric threats, the public administration system, created in old history to serve public interest, must adapt and reform itself, in order to assure the respect of human rights and liberties in the process of putting in execution the law.

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