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THE MILITARY AUTHORITY – THE DECISIONAL SUPPORT OF THE MILITARY ADMINISTRATION

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Abstract: *The military authority represents the essence of the military administration's right to impose its decisions. The military authorities are public authorities invested by law with the exercise of public power. The military authority imposes considering its legal operational substitutes, respectively the delegation of authority and the transfer of authority. The delegation of authority, as an institutional process is characteristic to the military administration of the state of affiliation, while the transfer of authority is characteristic to multinational military administration.*

Key words: *administration, military authority, authority delegation, authority transfer*

1. INTRODUCTION

In the area of conceptual boundaries regarding the military administration, the basic feature of enforcing prerogatives within the military administration, in the applied state of its operational formula, *is the military authority.*

It is considered that the *military authority* is represented by the military administration's right to command, to give directives, in situations stipulated by law.

2. THE MILITARY AUTHORITY

2.1 The military authority in the Romanian legislation.

The digression, from the specific comprehension of *the military authority*, as it is found in the Romanian legislation, indicates exceptional situations, in which the military administration has de decisive role. Thus,

searching for the references in the legislation to the military authority notion, we find it, firstly, in the law regarding the civil status, in which it is stipulated that in the documents for granting the citizenship, given that a territory is under the military administration jurisdiction, are presented: "... *extracts from the civil status documents which were issued by the military authorities under the law*". A more pronounced use of the phrase it is found in the Law regulating activities specific to the military administration, specifying issues like: "*the goods are commandeered only based on the order issued by the military authorities*"; "*The delivery order of the commandeered goods will compulsory include the nomination of the issuing military authority, and the beneficiary military unit, the legal base of the commandeering, identification data of the goods, of the owner or the possessor, as well as specifications of the place and the place and term of the delivery of the goods*"; "*The*

*commandeering order will compulsory include: the name of the issuing **military authority**, and the beneficiary unit, the legal grounds of the request, the name, surname and the address of the requested person, the term and the location where to be presented*". In another normative act, regulating the military administration's activity in the term of the state of siege, quoting the military administration's role, there are specified its legal rights, more important being the following: *"In exercising the attributions in their duty in the period of the state of siege or the state of emergency, **the military authorities** issue military commands having force of law (...)... "the information regarding the state of siege or the state of emergency, excepting those referring to natural disasters, are published only with the notification of the **military authorities**" ... "The military commands are issued on the period of the state of siege by the minister of national defense or the Chief of General Staff, as exclusive **military authorities** at national level, when the state of siege was established on the entire territory of the country." ... "The military command includes (...) the issuing **military authority**, the legal grounds, the period of application the date, the stamp and the signature of the issuing **authority**" ... "On the period of the state of siege, (...) a) the application by the **military authorities** of the measures provided in the approved plans according to the provisions of the present emergency order and the decree of establishment, is compulsory."*

Likewise, the defined role of the *military authority* is cited in the law regarding the *Agreement between the member states of the North Atlantic Treaty Organization and the participant states to the Partnership for Peace*, in which are defined, especially the **military authorities** of the sending state, as well as the main attributes, stipulating: ***the military authorities** of the sending state are those authorities invested with command attributions and with attributions of applying the legislation of that state regarding the members of its force or the civilian component" ... "The sending state's **military authorities** will grant all the support to ensure*

*that the goods susceptible to be seized by the Romanian custom or fiscal authorities or on their behalf will be made available for the respective authorities." ... "the sending state's **military authorities** will have the right to exercise the penal jurisdiction or the disciplinary competence conferred by the law of the sending state in relation to persons subject to that state's military laws" ... "the sending state's **military authorities** will have the right to exercise their exclusive jurisdiction on persons subject to that state's military laws for the offenses, including to its security, incriminated by the sending state's legislation, but not by the Romanian law."*

The interwar localization of the operational concept relative to the *military authority*, as an efficient operational instrument of the military administration acts, is identified in the constitutional enactment of the *military power*, in which, in fact, it was appointed the public power of military nature of the state. Specific but also significant of that period, is the opinion that *"the military authority through which the public order and state security is done is the Commander besides which it exists a court (The military Commander of the Capital, the army commandments and certain division commandments). All these commanders exercise these powers either directly, either by delegating certain attributions, on the garrison commanders from the respective juridical circumscription."*

Allowing certain preliminary conclusions regarding the operational concept of *military authority/ military authorities*, it can be affirmed that: in the present Romanian legislation, the collocation *military authority/military authorities* does not have a strong use, this being an effect of the sluggish change in the defense and security culture after December '89 from the communist mentality to the democratic evolution paradigm: lacking a definition to conceptually explain the collocation *military authority* or *military authorities*, some have comprehensively subordinated, with the same meaning, names of some military institutions with a very powerful and well known public image – The General Staff or the staffs of all the services (forces), the area military centers, the specific

commandments; the late and somehow feeble affirmation in the specific juridical literature of the notion of *military authority*, can be explained also by the fact that, in the same semantic sense, the collocations “*military bodies*” and “*military staff*” were largely used, having assigned, subliminally, the meaning of military authorities. We record that, according to the operational defining of the military authority, this concept does not refer to the relations present inside the military body, or the military institution, but exclusively to the direct relations of the latter with the citizens or the public authorities.

Regarding the military specific legislation, but also the internal normative acts arising from it we encounter the collocation – military authority, in the Military disciplinary regulation, in the issue from the year 2000. In the body of the Regulation, the topic regarding “*The military authority and the obligations arising from it*”, is treated separately, however, in its following normative development, there are more common the terms “commanders”, “superiors”, “hierarchical chiefs”, “military structures”, “upper echelon”, all being used subliminally with the meaning of *military authorities*. We find that, probably because of a breach in the process of elaboration, in the context of the definition of the misbehaviors it is appreciated that “*the lack of respect for the commanders, superiors, equals or inferiors in rank ant for the authorities*”. The wording as such leads indirectly towards the supposition that the authorities referred to are exclusively civilian. We appreciate that this is a hiatus of theoretical process of defining the *military authority*, the construction of this concept not being fulfilled in institutional paradigms.

However, the document that frequently uses the notion of *military authority*, in certain way establishing this concept in the profile literature, is the General regulation for conducting military actions. Being systematically subscribed to the notion of *authority*, we can find the concept in phrases that target and regulate: the stipulation according to which “*the commander is the authority legally invested or assumed which exercise the act of command on the personnel of the subordinated structures, as well as on*

the temporarily subordinated personnel” ... the provision according to which “*the command act includes the authority and the responsibility for the efficient use of the available resources and for planning the action, organizing, coordinating and the control of the forces in order to accomplish the missions*” ... the organizational role of the deputy commander, defining it as “*the invested authority taking part to the act of command within the boundaries established by the commander*”, as well as the role of the chief of staff, as “*authority invested with exercising the act of command on the staff, he can make decisions regarding the entire base, only in the absence of the commander or his deputy*”. Likewise, in the supporting section of the of the Regulation we find defined “*the legally assumed authority*” as “*the right to issue orders, which a military assumes according to normative acts in force, to hierarchy of ranks, positions and competences in the field*”.

There are committed to memory, in this advocacy, the rules in force of the military discipline. The document assigns one distinctive sector to the *military authority*, which entitles the supposition that the references to institutional roles of the military hierarchy are dealt with having the conceptual support of the *military authority*. It is withhold as representative for this exposure the assertion according to which “*The commander/chief represents the military authority legally invested with responsibilities and rights for exercising the acct of command in a military structure*”. In the spirit of a endemic conclusion, it can be assessed “*the military authorities as being public authorities invested by the law with the exercise of public power, which have attributions of command and of applying the military legislation in their area of responsibility in times of peace, crisis and war, exercising it under civilian control from the public constitutional authorities, by military bodies with unipersonal or collective character, in compliance with the rules and principles of the public law.*”

2.2 The authority transfer and the authority delegation. The approach of the *military authority* concept requires considering its operational legal substitutes, respectively, the *authority delegation* and the *authority transfer*, very important in exercising the administrative and commandment acts of the military administration. The concepts are recorded and defined, according to the manner they act in the operational space of the military administration. The *delegation of authority* is realized according to the general rules, through which, in certain situations provided by law, it is used exercise the specific attributions of the public offices, by persons, other than the one fulfilling the institutional holder of the position. In this respect, the military normative system contains clear provisions, stating that according to the situation, “*The commander of the military unit, in exercising the act of command, can temporarily assign, through delegation of competences, part of his duties and responsibilities to subordinates*”. The descriptive analysis of the commander’s attributions, indicate that the regulated amount of those (32 responsibilities, defined and delimited through distinct phrases), only two are not be delegated, respectively, the responsibility of “*providing the operational capacity of the unit*” and the obligation to “*inform the deputy/chief of staff with necessary data for taking over the command.*”

Regarding the *authority transfer*, this procedure is specific to the operational context in which it is engaged a multinational force. It is the manner in which, according to rules assumed in consensus, the unique military command of all the forces taking part to the mission is assured, regardless of the country of origin. This means that all but one of the participant national military forces admit being under the command of a foreign military. Also it means that the *transfer of authority* represents the manner to provide continuous and unitary, from the point of view of concept and all the participant forces, the leadership for the multinational force, in other words, of the organization and execution by the *multinational military administration* of the assigned missions. From the conceptual perspective of this topic, the leading body of

the participant multinational forces at such a mission can be assimilated, from the prospect of the administrative and commandment acts by which it is responsible, to the *multinational military administration*. Thus it results a fist feature of the *authority transfer*. If the *authority delegation* operates at all the levels of the military administration, the *authority transfer* consists of the full transition of operational leadership of the participant forces at the mission in the responsibility of military leaders, others than those belonging to the national structure. The *authority transfer* is a very well developed procedure, preceded by the assuming by the military administrations of the states participating in the multinational force, but also by the political decision-makers in the respective countries, by consensus, of the Rules of Engagement. These are “*directives issued by the political/military authority, towards the military structures participating to the military operation in which there are specified the circumstances and the limits within which they can initiate or continue combat actions with the opposing forces*”. Legally based, the exercise of the national political control over the military and the assumed understanding of the military necessity, the Rules of Engagement guarantee the *transfer of authority* the administrative and operational framework of the multinational forces, without malfunctions, stagnations or specific involutions.

The *authority transfer* has a series of features which personalizes is a specific procedure of the multinational military administration, significant being:

- The *authority transfer* is produced without altering the principle of the command unit, which determines the operational cohesion of the multinational forces, any national contingent, part of the multinational force, can receive orders and instructions exclusively from the commander of the force, also by utterly from the multinational military administration;

- The *authority transfer* doesn’t affect the administrative and jurisdictional authority under which the commander of a national contingent acts, these being under the operational authority of the multinational

military administration, remaining fully subordinated to the national authorities of the country of origin (it isn't a double subordination, the subordination to the national authorities avoiding the separation of responsibility towards the resources, order and discipline of the forces in command);

- The *authority transfer* gives the military authority a well-defined juridical framework, in the administrative and commandment acts of the multinational military administration. While the organizational interior of the national contingent the participant forces are subject to national legislation, in the multinational forces these fulfill exactly the administrative and commandment acts of the organization and execution, and the accomplishment of the missions, in accordance with the standard documents and procedures of operating the multinational alliance or coalition.

3. CONCLUSION

The presented conceptual arguments, entitle the conclusion that the military authority, through its operational features, represents the decisional support of the military administration. Moreover, the military administration's authority legally consists in the act of command, in fact in making use of it, as a method of accomplishing acts and deeds of administration and command.

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