

MERCENARY ACTIVITY - A CHALLENGE TO NATIONAL SECURITY

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War crimes, until yesterday - circumstances described in history books, today - bloody events that shock and threaten the entire world map. The security of any nature of the entire world is threatened by the events in Ukraine. In these circumstances, it is all the more important to discuss SECURITY today, since we are in a period when social, political, geopolitical events are planning a real threat to the security system of the Republic of Moldova. The security system of the Republic of Moldova, in addition to economic, social, political and corruption threats, is also threatened by the mercenary phenomenon, especially in the situation of the intensification of the war in Ukraine and the pre-existence of the separatist region on the left of the Dniester.

Keywords: mercenary, soldier, conflict, freelancer, fight, misdemeanor, special status.

ACTIVITATEA MERCENARILOR - O PROVOCARE LA ADRESA SECURITĂȚII NAȚIONALE

Infrațiunile de război, până mai ieri - circumstanțe descrise în cărțile de istorie, astăzi - evenimente sângeroase care șochează și amenință întreg mapamondul. Securitatea de orice natură a întregii lumi este amenințată de evenimentele din Ucraina. În aceste circumstanțe, este cu atât mai important să discutăm astăzi despre SECURITATE, cu cât, ne aflăm într-o perioadă în care evenimentele sociale, politice, geopolitice, planează o amenințare reală la sistemul de securitate al Republicii Moldova. Sistemul de securitate al țării noastre, pe lângă amenințările de ordin economic, social, politic, corupțional, este amenințat și de fenomenul mercenariatului, în special în situația intensificării războiului din Ucraina și a preexistenței regiunii separatiste din stânga Nistrului.

Cuvinte-cheie: mercenar, soldat, conflict, liber profesionist, luptă, infrațiune, statut special.

L'ACTIVITÉ MERCENAIRE - UN DÉFI À LA SÉCURITÉ NATIONALE

Crimes de guerre, jusqu'à hier - circonstances décrites dans les livres d'histoire, aujourd'hui - événements sanglants qui choquent et menacent toute la carte du monde. La sécurité de toute nature du monde entier est menacée par les événements en Ukraine. Dans ces circonstances, il est d'autant plus important de parler de SÉCURITÉ aujourd'hui, puisque nous sommes dans une période où des événements sociaux, politiques, géopolitiques planifient une menace réelle pour le système de sécurité de la République de Moldavie. Le système de sécurité de la République de Moldova, outre les menaces économiques, sociales, politiques et de corruption, est également menacé par le phénomène mercenaire, en particulier dans la situation d'intensification de la guerre en Ukraine et de préexistence de la région séparatiste à gauche du Dniestr.

Mots-clés: mercenaire, soldat, conflit, freelancer, combat, crime, statut particulier.

ДЕЯТЕЛЬНОСТЬ НАЕМНИКОВ - ВЫЗОВ НАЦИОНАЛЬНОЙ БЕЗОПАСНОСТИ

Военные преступления, еще вчера - обстоятельства, описанные в учебниках истории, сегодня - кровавые события, которые потрясают и угрожают всей карте мира. Безопасности во всем мире угрожают события на Украине. В этих условиях тем более важно сегодня обсудить БЕЗОПАСНОСТЬ, поскольку мы находимся в период, когда социальные, политические, геополитические события создают реальную угрозу системе безопасности Республики Молдова. Системе безопасности нашей страны, помимо экономических, социальных, политических и коррупционных угроз, также угрожает феномен наемничества, особенно в ситуации эскалации войны в Украине и существования сепаратистского региона на левом берегу Днестра.

Ключевые слова: наемник, солдат, конфликт, фрилансер, борьба, преступление, особый статус.

Introduction

In the context of the latest international events, in which the involvement of third parties in armed conflicts taking place in other states is increasingly attested, the negative impact of mercenaries' activity on the observance of the provisions of international law and the norms of international treaties must be highlighted.

However, the activity of mercenaries *of principle* is a transnational crime, if for its qualification the primordial condition is that the perpetrator is not a citizen and/or not enrolled in the army of states involved in the armed conflict.

Thus, in the situation where, at the basis of a social crisis, there are certain violent actions, directed against the sovereignty, territorial integrity, constitutional order of a state, we are obviously in the presence of violations of human rights both internally - of the citizens of the respective state, as well as internationally [12, p. 561-567].

Methodology and methods

The study of the proposed theme is based on the use of a combination of scientific research methods, in order to investigate some aspects less addressed in the doctrine.

Under the respective conditions, the use of the analytical and research method was indispensable to be able to highlight the problem of the mercenary activity and the threat that this phenomenon represents on the national security of the Republic of Moldova. Also, the use of the comparative method was

necessary to establish the degree of danger of the studied crime as well as the facts found in the doctrine regarding this subject. Finally, as a logical continuity, the reasoning method (inductive-deductive) was used, the use of which allowed us to ascertain certain elements and to form an own opinion regarding the activity of mercenaries as a phenomenon of high threat to the state security.

Ideas and discussions

According to the Military Doctrine of the Republic of Moldova, approved by Parliament Decision no. 482/1995 regarding the military doctrine of the Republic of Moldova, "The main purpose of the military policy of the Republic of Moldova is to ensure the military security of the people and the state, the prevention of wars and armed conflicts through the means of international law" [8].

The Security Policy of the Republic of Moldova according to the Military Doctrine, stated above, "is determined by its foreign and internal policy, by the permanent neutrality proclaimed constitutionally, and has an exclusively defensive character based on the following priorities:

– in the political field - the peaceful settlement of the contradictions arising between the states and the exclusion of the military confrontation through the collective efforts of the countries, starting from the principles and norms of international law; establishing political, economic and military relations, which exclude the injury and independence of the state;

– *in the military field - maintaining the defense capacity of the state at the level that ensures military security; strengthening confidence measures, expanding mutually beneficial military collaboration based on the principles of respect for sovereignty, independence and non-interference in the internal affairs of other states*” [8].

The Republic of Moldova implements the Military Security system consistently performing the following activities:

– At the global level - participation in the activity of the world community in order to prevent wars and armed conflicts and the peaceful settlement of contentious issues; the creation of the conditions that, in case of an external military danger, will ensure the realization of the right of the republic to the assistance of international organizations; active participation in building the unique international collective security system;

– At the regional level - the establishment of bilateral and multilateral friendly relations with the states of the region, which will ensure a high level of mutual trust and openness in the military field, as well as mutual help in case of jeopardizing collective security;

– At the national level - the creation of a military potential, sufficient to ensure the military security of the state.

Military threats involve the use of force and, therefore, their effects are devastating for many of the entities targeted, regardless of the levels of socio-political cohesion and power that are characteristic of them. These types of threats can range from harassment and raids to territorial occupation, invasion, blockade and/or bombing. Consequently, security, on the one hand, has acquired a multidimensional character due to the various factors that influence it, and on the other hand, the security environment itself requires a deeply nuanced approach to old and new risks, dangers and threats. Also, security is no longer exclusively the domain of the armed forces, but involves

the effective and efficient cooperation between all the components of the security sector, both at the national and international level, both from the military field and from the other fields of social life [14, p. 12].

Over time threat has been permanently present in the relationships between people, so it has perfected its specific forms and methods, under the basis of the causes of countless conflict states that shadowed the evolution of human society. Named as such or not «threat», whether it was expressed by words or by gestures, has always been a potential danger [1, p. 67].

The author Grigore Alexandrescu rightly argues that: *“The real perception and the appropriate reaction to the existing or emerging threats to the Security represents only an approach of this activity of major importance in strengthening the confidence between states. This is a sine-qua-non condition of achieving the team spirit in the fight against the threats of the 21st century and the construction of a stable international security system”* [2, p. 16].

On the other hand, says G. Alexandrescu: *“The existing military potential disproportion is likely to worry some states or groups of important states. The sewerage of military accumulations to solve the open historical problems between states explains the disproportionate emphasis placed on the military component of the Security, even in the current period when threats from other sectors present greater and closer dangers.”* [Ibidem]

We believe that, military threat, military conflict is the danger that can lead to the most disastrous consequences, directly and seriously endangering the state security. This is also the opinion of the author I. Richicinschi who mentions: *“Moral, material or even human losses are considered as consequences of conflicts, which endanger the life and health of people, endangers the making of urgent*

and special significance decisions and which can generate instability in the region” [18, p. 110].

In the opinion of G. Alexandrescu, which we support: *“The military sector has an independent dynamic of development, even in the states where civil control over the army is effective. Whereas military capacity is still a reality whose existence is decisive both by supporting and promoting the interests of states in the international environment, as well as national security and, in the case of common alliances can be born the confusion of the signals that the states generate continuously. The fear of defeat determines the states to bring their armed forces to the parameters necessary to reject the effects of perceived threats” [2, p. 16].*

For the prospect of that consideration, some states, in parallel with the training of the armed potential, resort to attracting in the military conflicts between the states of mercenaries, among whom persons are often willing to execute any order. However, according to the specialized literature, *“the conflict implies the confrontation between various social groups, societies or states in the tendency to achieve contradictory interests and, in this sense, their outbreak is a reality, which we face. The impact of conflicts is a disastrous one because it causes disorder and destabilization, the society that is engaged is not able to ensure peace and social order; the confrontations are violent and the force is often applied ... [18, p. 110].* In such circumstances, as recent events demonstrate, the practice of mercenary is widened, which is used in military conflicts on a large scale.

The author A. Cauia rightly claims that: *“As long as there have been people with legal status that allows them to use force to destroy the adversary, there have been different categories of people affected by hostilities who participated directly in them, having different goals” [5, p. 34].*

We only mention that the practice of mercenary activity does not always imply that the respective persons are affected in some way by the hostilities generated by the armed conflict and that this was the factor that motivated their decision to get involved in the conflict. For the most part, as the data available at the moment show, the decision to participate in mercenary activities was based on the precarious material and financial situation of the respective persons and their families, and in some cases - certain beliefs, personal ideas, etc.

Despite the significant reduction in the danger of the thawing of the armed conflict once caused by the self-proclaimed authorities on the left of the Dniester, supported by the Russian military forces, the Republic of Moldova continues to face threats of a military nature, which come, first of all, from the military formations of the separatist regime from Tiraspol. Coupled with the rather worrying participation of people from the left of the Dniester in the conflicts in Ukraine, confirmed by the judicial practice of the Republic of Moldova, [15] the situation in question continues to present a hypothetical danger for the national security of the Republic of Moldova.

In that context, we support the idea of Mr. Moraru Sergiu who states that: *“It is necessary to carry out the reform of the entire national security system as consistently as possible with the widest possible involvement of all concerned actors, in particular, civil society, which should have an important role in the regulation, supervision and democratic control over the security structures of the state” [13, p. 50].*

More than ten years ago, the conception of national security approved by Law no.112/2008 for the approval of the conception of national security of the Republic of Moldova stated that: *“National Security represents the fundamental condition of the existence of*

the people in the Republic of Moldova, of the Moldovan state and is an objective of the country. The objectives of the national security of the Republic of Moldova are: ensuring and defending independence, sovereignty, territorial integrity, constitutional order, democratic development, internal security, strengthening the state of the Republic of Moldova. A special place in this regard is the defense and promotion of national values, interests and objectives. National security is not only the security of the state, but also the security of the society and the citizens of the Republic of Moldova, both on the territory of the Republic of Moldova and abroad” [11].

In conception it was mentioned that, *“the existence of the separatist regime amplifies the discrepancy within the unique legal framework of the Republic of Moldova, conditioning the impossibility of providing legal assistance to the citizens of the Republic of Moldova from the left of the Dniester (Transnistria), at the same time endangering the international judicial cooperation in this segment.*

The Republic of Moldova, being a multi-ethnic and multinational state, threatening the appearance of elements of chauvinism, nationalism and separatism is persistent.” [11]

We consider that the absence, and at present, of a control over the localities on the left of the Dniester (Transnistria) and on the Transnistrian segment of the Moldovan-Ukrainian border, on which the involvement of the organized crime in the migration of citizens is attesting to participate in military conflicts, can generate a serious threat to the national security of the Republic of Moldova. In the dramatic event of relaunching the military conflict on the territory of our country, this factor can also generate interest in recruiting mercenaries.

In this context, the opinion of the former MP in the Parliament of the Republic of Moldova, Mr. Roman Botan, is significant,

according to which: *“The risk of expanding the instability area on the Ukrainian territory, joint exercises of separatist and Russian troops in the eastern districts, the informational-subversive actions, the involvement of foreign citizens and foreign legal entities in internal policy issues, foreign propaganda by which public opinion is distorted, have influence on groups with extremist attitudes in the Republic of Moldova” [3].*

The above-mentioned reasons for our conviction that the military security of a state is also greatly endangered by the presence of mercenary phenomenon on the territory of the state or in the respective geopolitical region. However, it is much more difficult to estimate the military forces involved in the conflict on the side of a certain state, if it uses the mercenary forces/services.

Mercenaries most often enter the epicenter of conflict in a practically invisible way in terms of control and evidence of traffic at the border. The practice shows that most mercenaries arrive in that country by illegally crossing the border. From here, it is important to mention that, in the prevention segment, first of all, it is to be emphasized on the security at the border, in order to avoid the penetration of the respective platforms on the territory of the state in which they are to be used as mercenaries. However, it is not excluded, neither is the legal crossing of the border by the recruited persons, taking into account the possibilities of the free traffic regime.

Thus, it is also necessary to strengthen the bilateral relations on the international scale in the context of ensuring international security. In the Decision of the Parliament no.153/2011 for the approval of the Strategy of the National Security of the Republic of Moldova, it is mentioned that *“international security depends directly on the quality of bilateral relations between the members of the international community, although the vision of the states and their contribution in*

this process is different. The essential role in ensuring international security is played by the states possessing major political-military, economic and informational resources, which thus influence the situation at both regional and global level” [16, p. 5; 9].

In the sense of the above, it is important to refer to the text of the military doctrine of the Republic of Moldova, according to which: *“The Republic of Moldova considers partners in the activities of maintaining international peace and security, preventing armed conflicts all states and international organizations, whose policy does not cause harm to its interests and does not contradict the Statute of the United Nations (the emphasis is ours). The state ensures the creation and optimization of the legislative framework of military security, improves the mechanism of elaboration of military policy, control over the adoption of military-political decisions, takes care of the preparation of citizens and armed forces to defend the homeland, to increase the prestige of the military service, to social insurance of the military” [8].*

In an interview for the Tribuna.md, Roman Botan claims that: *“The national defense field must be a major concern of the authorities and this was the desire of the Liberals in the Government. The military security of the Republic of Moldova can be ensured by well-organized armed forces, capable of acting promptly and efficiently for suppressing external military threats, especially - in the context that in the region there is an undeclared war between Ukraine and the Russian Federation. Fortifying the capacity of the National Army, strengthening the dialogue with international structures, political and military cooperation on the international arena, including NATO (in the context of the recent decision of the Constitutional Court of Neutrality), represents a necessity to protect national interests and to strengthen the defense capacity of the Republic of Moldova” [3].*

On the other hand, according to the author N. Popescu, *“ensuring national stability and security should come back, first of all, to internal factors; and the competition of external forces should be just an additional element. However, the ability of Moldova to successfully overcome the crises that affect the security of the status is quite doubtful, which argues the possibility of direct involvement of external factors in resolving the security problems of Moldova, in order not to allow the proliferation of instability”*. [17, p.]

It is important to mention in the given context that, on June 22, 2018, the General Assembly of the United Nations adopted the UN resolution on the withdrawal of Russian military troops from Transnistria, which is an important step in carrying out the security policy of Moldova. Even more so as today *“we follow a continuous transformation of the international security environment, with political, economic, military, information, social, ethnic and cultural implications, in which armed conflicts in different regions of the world take place” [9].*

We return to the idea that the military security of one or another state depends, first of all, on its ability to respond to a military threat, but, as we convince ourselves, and on the effective counteracting the phenomenon of mercenaries. However, the activity of mercenaries in the last period knows a worrying ascendance worldwide. The more diverse forms of manifestation of the activity of mercenaries and the dramatic effects it produces do not fall, in any way, only in the domestic law of the states.

As the author A. Cauia rightly mentions, the activity of mercenaries *“goes far beyond the limits of the domestic law of a state and constitutes an attack on social values that fall within the spectrum of the general interest of states, as well as on the stability of international relations. The activity of mercenaries violates all norms of peaceful cooperation between*

nations and presents an increased danger for the entire international community” [6, p. 100].

On another note, we mention the opinion of the author A. Cauia, according to which *“belonging to the armed forces constitutes the criterion on the basis of which the differentiation of participants in military operations and their legal status can be achieved.”* [ibidem]

In the given context, it is important to reiterate that the criminal law of the Republic of Moldova in article 141 of the Criminal Code of the Republic of Moldova criminalizes the activity of mercenaries - *“the mercenary’s participation in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violation of the territorial integrity of the state”* [7].

The notion of mercenary is defined in art. 130 Criminal Code of Moldova, according to the provisions of which by *“mercenary is meant the specially recruited person, in the country or abroad, to fight in an armed conflict, which takes part in the military operations in order to obtain a personal advantage or a remuneration promised by one party to the conflict or on its behalf, who is neither a citizen of the party, nor a resident on the territory controlled by a part of conflict, is not a member of the armed forces of a part to the conflict and was not sent by a state, other than the party to the conflict, in an official mission as a member of the armed forces of the respective state.”*

Paragraph (2) of art. 141CP RM qualifies as a crime: *“Employing, training, financing or other assurance of mercenaries, as well as their use in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violation of the territorial integrity of the state”* [7].

We mention here the opinion of scholars S. Brinza and V. Stati, who claim that “for the qualification of the act based on paragraph

(1) art. 141 of the Criminal Code, it does not matter if the participation in an armed conflict, in military actions or in other violent actions is or is not active. Such a circumstance can be taken into account when individualizing the punishment” [4].

In this context, we mention that *the mercenary activity* is not only the fact of a certain person being in the *epicenter* of the armed conflict. Important for the qualification is precisely the fact of undertaking certain actions as a method of the objective side of *the mercenary’s activity*. Otherwise, when the deed takes the form of passive behavior, identifying the signs of the composition of the offense provided for in art. 141 of the Criminal Code of the Republic of Moldova will be a much more difficult logical-legal operation. [12, p. 561/567].

Starting from the belief, motivated previously, that the activity of mercenaries is at the top of the list of serious challenges to the security of the state, we can claim that the research of this negative phenomenon in order to optimize the legal framework that criminalizes it is the order of the day. The researches in the given field are as current as possible, being imposed, to a large extent, by the actual situation of the Republic of Moldova.

As I mentioned, the mercenary phenomenon in the Republic of Moldova recently shows a significant growth trend.

In an interview given to the Tribuna portal, the deputy in the Parliament of the Republic of Moldova, Roman Botan, president of the National Security, Defense and Public Order Commission, mentioned that *“the Republic of Moldova continues to face risks and threats to national security - both internal, as well as external. These come, obviously, from the foreign military formations stationed illegally on the sovereign territory of the Republic of Moldova and those of the separatist regime from Tiraspol, from the aggressive*

anti-constitutional policy carried out by its “leaders” [3].

Following what has been reported, we must recognize that the security system of the Republic of Moldova, in addition to economic, social, political and corruption threats, is also threatened by the mercenary phenomenon, especially in the situation of the intensification of the conflict in Ukraine and the pre-existence of the separatist region on left bank of the Dniester.

Conclusions

In conclusion, we express our conviction that, in the National Security Strategy of the Republic of Moldova, the component of combating the mercenary phenomenon should be given greater attention. In addition to the fact that the activity of mercenaries is criminalized in the criminal law, at the current stage, measures to prevent and combat this phenomenon are to be provided in the National Security Strategy, as it is a phenomenon that presents a real threat to national security.

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