



## THE PROBLEMS CONCERNING THE JURIDICAL TREATMENT OF THE ECONOMIC-FINANCIAL SECURITY OF REPUBLIC OF MOLDOVA

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### SUMMARY

In this article there are examined the fundamental basis of theoretical and normative nature that are related for a further making and development of the project of financial security of Republic of Moldova. Analyzing the theories present in the sphere of national security and the legislative acts that regulates the relationships that appear in this domain, there were made a number of useful recommendations that will be the guide in creating the document entitled as the strategy of financial security. Providing the principles that are at the basis of the law determining the concept of national security of Republic of Moldova, the law of state security and the constitutional norms that are referred to national economy and public finances, there was defined the concept of *economic-financial security of the state*. The work touches the nowadays problems of the state in the field of assuring the financial security and the methods of activation of different state bodies responsible of financial security.

**Key-words:** national security, national interests, economic-financial security, the principles of economic security.

### REZUMAT

În acest articol sînt cercetate bazele fundamentale teoretice și normative care se referă la elaborarea și perfecționarea proiectului strategiei securității financiare a Republicii Moldova. Fiind analizate teoriile existente în sfera securității naționale și actele legislative care reglementează raporturile apărute în sfera dată, au fost formulate un șir de recomandări utile ce țin de elaborarea conținutului documentului de politici privind strategia securității financiare. Examinînd principiile care au stat la baza legii pentru aprobarea Concepției securității naționale a Republicii Moldova, legii securității statului și făcînd referire la normele constituționale ce vizează economia națională și finanțele publice, a fost precizat conținutul conceptului de *securitate economico-financiară a statului*, astfel fiind dezvoltat în continuare sistemul de viziuni asupra conceptului dat. Este abordată problematica actuală a Statului în domeniul financiar și sînt investigate modalitățile de funcționare a instituțiilor statului, responsabile de securitatea economico-financiară. Este argumentată necesitatea elaborării unui concept nou privind activitatea instituțiilor statului în domeniul securității economico-financiare.

**Cuvinte-cheie:** securitate națională, interese naționale, securitate economico-financiară, principiile securității economice.

With the social, scientifically, technological development of a country, the community started to interfere with a variety of problems that were of a different nature and different kind in a vast diversity of fields as the economical, political, ecological, military, informational and other that had an impact on the society and state, and in order to solve them there was given the notion of security. The notion of security could be divided in the simple phase and the more complex one. The simple one is characteristic for all the living beings and the struggle for security has each specimen of its kind. The more complex one are those type of securities that have a general purpose and strive to satisfy the necessity of a large group of subjects. These kinds of security usually are determined by a state institution and a form of organization in the interior of the state.

The problem of assuring the security of a state appeared with the actual inception of the state society, and till now it is the main problem that is the state's main goal. Even Socrates stated 400 years b.c. the necessity of defending the state as the birth idea of its creation. Russo in his works mentioned that the preoccupation of self-defense and security is the most important goal

that a state should achieve [10, p. 34].

The term of security started often to be used approximately 800 years ago and has the meaning "the relaxed state of a human mind, that considers himself protected from any kind of harm that could appear" [9, p. 59].

A definition that was given by A. Rusnac in his work "The theoretical aspects of security" is the protection and assurance of vital interests of a person, society and of the state, through the Constitutional legal framework and practice. This is where we should understand the priority and the well established role of security in the field of constitutional law. Also when we are talking about the term of National security we should examine the idea of interest, and those interests that need to be protected by these defensive measures. These interests fall into three categories. The first includes vital interests, those of broad, overriding importance to the survival, safety and vitality of a nation. Among these are the physical security of a territory, the safety of citizens, economic well-being and the protection of critical infrastructures. The second category includes situations in which important national interests are at stake. These interests do not affect the national survival, but they do affect

national well-being and the character of the world in which we live. The third category is humanitarian and other interests. Examples include responding to natural and manmade disasters or violations of human rights, supporting democratization and civil control of the military, assisting humanitarian demining, and promoting sustainable development. Often in such cases, the force of our example bolsters support for our leadership in the world [8, p. 11].

The problem of financial security was firstly examined in USA at the beginning of the 20th century, as a result to the technical scientific progress, the fight with the social economical systems, and the struggle to globalization. Also here I should state that in USA was firstly used the term of national security. National security is the requirement to maintain the survival of the state through the use of economic, diplomacy, power projection and political power. Accordingly, in order to possess national security, a nation needs to possess economic security, energy security, environmental security, etc. Security threats involve not only conventional foes such as other nation-states but also non-state actors such as violent non-state actors, narcotic cartels, multinational corporations



and non-governmental organizations; some authorities include natural disasters and events causing severe environmental damage in this category [7, p. 13]. This term had a very large impact on the society between 1904 and 1947 and has the idea of defense without the integration of external, internal or military politics. The idea of financial security that was presented back in the 30th of the 20th century provided the American state with possibility of access to international marketplaces and the non-isolator policy in the technical progression domain. Congress enacted the Securities Act of 1933, in the aftermath of the stock market crash of 1929 and during the ensuing Great Depression. Legislated pursuant to the interstate commerce clause of the Constitution, it requires that any offer or sale of securities using the means and instrumentalities of interstate commerce be registered with the SEC pursuant to the 1933 Act, unless an exemption from registration exists under the law. "Means and instrumentalities of interstate commerce" is extremely broad, and it is virtually impossible to avoid the operation of this statute by attempting to offer or sell a security without using an "instrumentality" of interstate commerce. Any use of a telephone, for example, or the mails, would probably be enough to subject the transaction to the statute. The 1933 Act was the first major federal legislation to regulate the offer and sale of securities. Prior to the Act, regulation of securities was chiefly governed by state laws, commonly referred to as blue sky laws. When Congress enacted the 1933 Act, it left existing state securities laws ("blue sky laws") in place. The '33 Act is based upon a philosophy of disclosure, meaning that the goal of the law is to require issuers to fully disclose all material information that a reasonable shareholder would require in order to make up his or her mind about the potential investment. This is very different from the philosophy of the blue sky laws, which generally impose so-called "merit reviews." Blue sky laws often impose very specific, qualitative requirements on offerings, and if a company does not meet the requirements in that state then it simply will not be allowed to do a registered offering there, no matter how fully its faults are disclosed in the prospectus.

Economic security or financial security is the condition of having stable income or other resources to support a standard of living now and in the foreseeable future. It includes: proba-

ble continued solvency, predictability of the future cash flow of a person or other economic entity, such as a country, employment security or job security. Financial security more often refers to individual and family money management and savings. Economic security tends to include the broader effect of a society's production levels and monetary support for non-working citizens. By thoughts of many authors the economical security of a country is determined by the necessity of assuring its sovereignty in the adoption of decisions, related to internal and external affairs concerning and conserving the economical independence of the state and also increasing the achieved living status of the population.

In his treatment of economic security, Buzan concludes that economic security can only have meaning in restricted circumstances and where there is a demonstrable linkage between the economy, on the one hand, and military capability, power or social identity on the other. Yet issues impinging upon the content of economic capacity and national identity, ranging from monetary relations to macroeconomic policy to debt repudiation, are treated as essential and critical elements of the inexorable ebb and flow of the market mechanism [6, p. 45].

National security, nowadays, has some strict necessities, the first one is the theoretical basis of a scientifically methodological structure that has the goal to make the foundation of a legal framework in the basic domain of economical and financial domain, on a national and international level, with the goal of conserving the decisional independence of the state in this sphere and the growth of wealth level of the population.

The common ideas in the elaborating the theoretical basis should for a well determined ground for the growth of further ideas in this specific sphere, that's why the absence of such knowledge in domain of economical security could lead to the difficulty of determining the organizational bodies and specific institutions that work to provide a well determined goal. This also should lead to the equal diversification of the well established task and power, that will condition the complexity of the activities performed in the interior of the state. From the juridical aspect the economic security consists of two parts. The first one is the specific relationships that are under the regulation of financial laws and the subjects in this relationships follow the legal path of movement. The

second one is characterized by the Primary law that regalements the domain in which are applied the financial and economical relationships and struggles to perform the needs described as being the economical security. Economic security, in the context of politics and international relations, is the ability of a nation-state to follow its choice of policies to develop the national economy in the manner desired. Historically, conquest of nations have made conquerors rich through plunder, access to new resources and enlarged trade through controlling of the conquered nations' economy. In today's complex system of international trade, characterized by multi-national agreements, mutual inter-dependence and availability of natural resources. Economic security today forms, arguably, as important a part of national security as military policy.

The financial security strategy of Republic of Moldova must be formed of a bunch, a totality of ideas, norms, also resources, methods and directions that actions should have in order to tempt the state bodies to perform defensive, and reflective measures against the harms that can appear, on a long period of time and under different expected situations. The realization of economical reforms can be done only if there exists a solid legal framework, that is respected by all the private and public actors, the presence of a independent judicial system, and other factors of objective or subjective nature. The normative foundation of the Strategy assuring the financial security of Republic of Moldova can be enumerated through the present adopted and entered in to force legislative acts:

- The Constitution of Republic of Moldova
- The Law of state security nr. 618 from 31.10.1995
- The Law determining the concept of national security of Republic of Moldova nr. 112 from 22.05.2008.

Republic of Moldova has the main primordial basis of economical security established in Constitution. The article related to the economical system and the main characteristics that has the economic system in our country are there under article 126. The economic system of Republic of Moldova is a market one, with a social orientation, based on private property and public property, with the presence of free concurrence [1]. Form this statements we actually can determine the main aspects that are protected by the constitutional law.

First of all I should mention the



market economy with a social orientation. The social market economic model is based upon the idea of realizing the benefits of a free market economy, especially economic performance and high supply of goods, while avoiding disadvantages such as market failure, destructive competition, concentration of economic power and anti-social effects of market processes. The aim of the social market economy is to realize greatest prosperity combined with best possible social security. As a difference to the free market economy the state is not passive, but actively takes regulative measures. This kind of market determines the activity of the state in the economical flow of goods, and the most important aspect that actually interest us is the performing the economical security, or that control over the goods flow. The social market contains central elements of a free market economy such as private property, free foreign trade, exchange of , and free formation of prices. In contrast to the situation in a free market economy, the state is not passive and actively implements regulative measures. Some elements, such as pension insurance, universal health care and unemployment insurance are part of the social security system. These insurances are funded by a combination of employee contributions, employer contributions and government subsidies. The social policy objectives include employment, housing and education policies, as well as a socio-politically motivated balancing of the distribution of income growth. In addition, there are provisions to restrain the free market.

The second key point is the aspect of property, the division of property in two main branches, the public one, and that branch that actually gives the possibility of a financial system to develop, and to get the economical and civil flow of goods, because of the multitude of aspects determined by the criteria's that combine around the goods from the private domain [4, p. 33]. When we talk about the institutional bodies of a market there should be under the control of the state, that's why we have in our legal provision the terms of public property, also this is made to determine the division of species of goods, and their flow to the consumer.

The third one is the free competition, that determines the aspects of a legal and ordinal activity of the subjects participating at the economical relationship on the market field. Further we will notice the aspect of loyal competition described at letter "b" from this

article. free competition maximally satisfies consumer preferences and concluding that free competition is the morally right system. The best society of all would be one composed of good people who would all have good preferences whose efficient satisfaction we should favor. So in this society we should surely choose free competition. In reference with this idea there should be mentioned, the opened aspect of this type of competition, determined also by the type of market that persists on the territory of the country.

The second line of article 126 establishes the obligations of the state orientated to the well development of the economic sphere. The state must assure the regulation of the economic activity and the administration of public property, the market freedom and the entrepreneurial activity, protection of loyal competition, manufacturing a pleasant environment for a efficient production factors exploitation, the protection of national interests in the economic, financial and currency fields, the scientific researches in the economic domain, minting the ecological balance of the environment during the natural resource exploration, to not interfere in the investigations made by natural persons and legal entities, including the foreign ones. Analyzing all the components enumerated above, we can underline some interesting ideas that are a premise for the creation of the state's economic strategy. A special attention I will accord to the statement about the protection of national interests in economic, financial and currency domain. I think this statement gives us some ideas of those interests that should be formulated in a national security law, and those aspects of potential harm that could appear. This is the stage when we slowly progress to our next legislative act the law determining the concept of national security of Republic of Moldova.

In the concept of national security of Republic of Moldova, a greater accent is made on the economical development of the country, the practical achievement of the independence, increasing the wealth development of the population.

Analyzing the structure of the Concept of national security of Republic of Moldova, can be set the following parameters:

- Republic of Moldova in the international field
- National interests of Republic of Moldova
- The potential harms of the nation-

nal security of Republic of Moldova

- Maintaining the national security of Republic of Moldova [2].

The idea of forming the Conception of national security had the aim to consolidate the governing bodies of the state, organizations and people for acknowledging the national interests and security of Republic of Moldova. The idea main idea of this statement is that relating it to the national strategy of financial security the main purpose will be to accentuate and try to develop the concepts of those national interests described here.

Also the national strategy of financial security should be built on some defined principles of security measures. This principles should be shared with the preexisting ones formulated in the Concept of national security of Republic of Moldova, and they sound like:

- Respecting the Constitution of Republic of Moldova and it's legal framework in the process of activity of the national security.

- The unity, cooperation and balance between all types of securities and persistence of flexibility for different types of situations.

- The priority of political, economic, financial and informational sources of national security.

- The objective evaluation, taking in to consideration the real founds and power for the established goals.

- The assurance of the status of permanent neutrality

- To restore the territorial integrity of the state, removing the presence of foreign armed troops, strengthen the independence and sovereignty of the state.

- Maintaining the dynamic aspect of European integration.

- Maintaining the democratic development of the society and assuring it's protection.

- Respecting the fundamental human rights and freedoms.

- A unified system of security bodies and a centralized method of administration [3].

Some of this principles were stated also in the law of state security, and some of them are new. Also there should be mentioned a theoretical aspect of some principles and the non interference with the actual project of financial security, but overall this should be the basis according to which should be formed the strategy of financial security.

Taking in to consideration the amount of positive features that the



Concept of national security of Republic of Moldova has, there are some nuances that can be considered as drawbacks. The first one will be the absence of a certain statement of the body responsible for analyzing and forecasting the threats that could appear aimed towards the national security, and the body responsible for decisions upon those threats. The next drawback will be the absence of a certain order of activity that the responsible bodies from the executive front, should treat the question on different central and regional levels. The third one that should be mentioned is the lack of a certain definition and characteristics for national interests, as we already state based on this interests the actual security plan is formed and the whole it's activity is around those primordial interests that must be well determined and to provide the precise idea followed by the government and the society.

The terms "national security" and "national interests" obviously appeared and spread in countries where the idea of nation was determined by the principle "one nation – one country". Is a country's goals and ambitions whether economic, military, or cultural. The concept is an important one in international relations where pursuit of the national interest is the foundation of the realist school. While the concept of the national interest has long been central to theories of international politics, its analytical usefulness has also been seriously challenged. I argue that, to be useful in accounting for state action, this concept should be reconceptualized in constructivist terms. The national interest of a state is multi-faceted. Primary is the state's survival, welfare and security. Also important is the pursuit of wealth and economic growth and power. Many states, especially in modern times, regard the preservation of the nation's culture as of great importance. The difficulty with the analytical usage of the term is the absence of any agreed methodology by which the best interests of the nation can be tested. Some writers have argued that the best interests are, nevertheless, objectively determined by the situation of the state within the international system and can be deduced from a study of history and the success/failure of policies. Other writers concede that national interest is subjectively interpreted by the government of the day. In this version, national interest is similar to the politician's rhetorical usage of the term—the national interest is merely what the politician says the national

interest is. The problematic idea is the notion of nation that is a community of people who share a common language, culture, ethnicity, descent, or history. According to Joseph Stalin writing in 1913 in *Marxism and the National Question*: "a nation is not a racial or tribal, but a historically constituted community of people;" "a nation is not a casual or ephemeral conglomeration, but a stable community of people;" "a common language is one of the characteristic features of a nation;" "a nation is formed only as a result of lengthy and systematic intercourse, as a result of people living together generation after generation;" "a common territory is one of the characteristic features of a nation;" "a common economic life, economic cohesion, is one of the characteristic features of a nation;" "a common psychological make-up, which manifests itself in a common culture, is one of the characteristic features of a nation;" "A nation is a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture."

The aspect of nation definition, and word-use we also in our constitution have a slightly gap when talking about sovereignty. Article 2 line 1 from our constitution states that the national sovereignty belongs to the people of Republic of Moldova, that exercise in a direct way and through representative bodies, in forms established by the Constitution. We see here a strange aspect, and a actual paradox, that the national sovereignty belongs to a larger amount that the nation. This question was widely discussed by our professors and there exists a lot of opinions on the structural aspect of this statement.

Nowadays this term already has a common idea, and has a long term existence in our legal framework. There only can be some term delimitations or some points of interest, because the term of national interests is used in the law of state security nr. 618 since 31.10.1995.

Using the term national interests will help us underline the priority of society and people leaving on a certain territory, but not the interests of the state and the governing bodies. Specifically in the Strategy of national security is stated that primordial national interests of Republic of Moldova are the maintaining the protection of our independence, sovereignty and territorial integrity, the inviolability of national borders, citizen protecti-

on, respecting and protecting the fundamental human rights, strengthening the democratic relationships, that help develop the rule of law and the market economic [5]. According to the Strategy of national security of Republic of Moldova, the only way of achieving the established interests is to have the condition of a progressive development on the economic field, that's why the interests in this domain will be determined as the key points on which will be made a greater accent, and will be the leading domain which Republic of Moldova will try to upgrade on the period established by the Strategy. National interests are the factor that determine the state's politics which way to chose, in order to satisfy the goals made, and they are the objective guide for the country in order to get the best performance and a maximal efficiency in bringing the wealth to the society.

The national interests in the economic domain can be enumerated such ideas like taxes and currency politics, the efficient development of bank system, an independent from other economic/financial politics in the right to chose the stability of national currency. Also here should be added the protection for different kinds of investments, and the role of foreign currency in the economic activity of the country. This actually are some of the main key points established by the Constitution in the article 126 where are determined the role of the state in the economic system of the country. Making this statements there can come the conclusion that the national interests of Republic of Moldova in economic domain, can be determined as a totality of balanced interests of a subject, of society and state in the economic sphere [4, p. 34].

The integral problem of initiating in to the economic security is the concept of analyzing different criteria, different organizational forms and mechanisms of protection of the national economic system form different kinds of danger and harms that can be done towards national interests in the economic domain. The danger that can appear is the actually the key moment where the subjects participant to a economic relationship unify and try to work in a unison. The abstract characteristics of a national interest starts to get it's form when on the why of realization interfere these dangerous moments. It is obligatory to describe a secure economic system based on some principles and phenomenas in



order to form a concrete situation of development of a country.

From political view it is very important to follow the process of development of economic security process, also there are always present a lot of powerful political powers orientated towards the legal attitude of a present kind of strategy, specifically talking about economic security one. That's why besides the theoretical basis there should be a strong political will, which can be enumerated to a problem taking into consideration the actual state of Republic of Moldova.

Here should be mentioned that the document of National strategy of economic security is a powerful act, and the manipulation with it's provision could lead to un described harms to the state functional bodies and society wealth. That's why this document should have the possibility of correction, or in other words to be flexible to different kinds of situations that could appear in the interior or exterior of the state, but maintaining the priorities on the national interests.

The main goal for the National strategy of economic security for Moldova is in creating a administrative tool that state bodies with it's executional power could form measures of resisting the negative process, and measures to improve the overall activity through positive processes. Upper said ideas can conclude that the act of national strategy of economic security could lead to a well performance and a good activity on a normative basis of the economical relationships. That overall will lead to the satisfaction of those national interest established on a diversity of domains, as a result we will have a good defensive mechanism that will lead our country to a further development and further achievements.

In the National strategy of economic security should be determined the concrete placement of the already existing strategy of national security and the concept of national security of Republic of Moldova, with the delimitation of the already formulated national interests in the sphere of economic development. This should look like:

- The concrete delimitation and formulation of national interests in the economic domain.

- Establishing the external and internal dangers hat could harm the economic system, and give some specific characteristics of determination.

- The possibility of creating a

economic politic, institutional reforms and different mechanics, that will delete or smoothen the factors that are considered to be the danger for the economic system of the country.

Also the National strategy of economic security should be an act that will have the purpose of determining and establishing the protectional measures for political, economical, diplomatic, social, legal, educational, administrative, and military resources and also a measure of crisis passing in conformity with the present legislation and international law. The aim of the National strategy of economic security should be the assurance of development economic and financial sphere in such a manner that it will determine a well founded individual growth and society wealth, also the sociopolitical aspects and the military politic balanced society, maintaining the integrity of the country successfully excluding the external and internal dangers.

In conclusion I can state that the National strategy of economic security is a needed document for our country nowadays, I should say that it is too bad that we didn't thought about it earlier. This act must come as a response to raider attacks that took place in the summer of 2011. In that period a powerful strike on our banking system took place, as a result shareholder of four different banks lost their shares. The most harmful were the actions at "Universalbank" that had a loss of 78,16%, the other three banks had a variable loss between 5 to 30%. Weaknesses in the judicial system came under considerable scrutiny in 2011. Fraudulent takeover bids made headlines throughout the year, drawing attention to the susceptibility of courts to outside influence. The seemingly political nature of some judicial appointments and dismissals during the year also raised concern regarding the politicization of the justice system. However, some positive steps towards judicial reform were taken in 2011, including the decision to dissolve the economic courts and the drafting and passage by parliament of the Judicial Sector Reform Strategy. That's why the Strategy should be a essential component of financial-economic development of the country, assuring it's security. That's why the National strategy of economic security should be elaborated on the basis of the Concept of national security of Republic of Moldova and to exercise the legislative and executive power

through the system of normative acts of the Parliament, President and Government.

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