



ISSN 1857-4440

# **Relații Internaționale Plus**

Revistă științifico-practică

Nr.1 (11) 2017

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Fondator: Institutul de Relații Internaționale din Moldova

Înregistrată la Ministerul Justiției al RM în data de 24 noiembrie 2017

Revista este acreditată de Consiliul Național pentru Acreditare și Atestare al RM, Categoria „C”

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INSTITUTE  
OF INTERNATIONAL RELATIONS  
OF MOLDOVA

ISSN 1857-4440

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Scientific-practical journal

No. 1 (11) 2017

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Founder: Institute of International Relations of Moldova

Registered at the Republic of Moldova's Ministry of Justice on 24 November, 2017

The journal is accredited by the National Council for Accreditation and Attestation of the Republic of Moldova, Category "C"

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## SECURITATEA NAȚIONALĂ ÎN DISCURSUL POLITOLÓGIC INTERNAȚIONAL

### CONSILIUL SUPREM DE SECURITATE AL REPUBLICII MOLDOVA: ACTIVITĂȚI ȘI PERSPECTIVE PENTRU ÎMBUNĂTĂȚIREA ACESTUIA ÎN CONTEXTUL EXPERIENȚEI ȚĂRILOR DIN SPAȚIUL POST-SOVIETIC

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#### **Rezumat**

*Lumea contemporană este caracterizată de multiple riscuri și provocări la segmentul asigurării securității. În acest context, problemelor asigurării securității i se acordă o atenție sporită în toate statele. Nu reprezintă o excepție și statele din spațiul postsovietic, care, în ultima perioadă, acordă o atenție majoră nivelului de funcționare a sistemului de stat, împuternicit să asigure securitatea națională, a rolului Consiliului securității naționale. Autorii își propun să coreleze diversitatea factorilor ce influențează securitatea națională a Republicii Moldova, să definească împuternicirile și prioritățile în activitatea Consiliului securității naționale.*

**Cuvinte-cheie:** *Consiliul Suprem de Securitate, Republica Moldova, spațiul postcomunist, riscuri, provocări, interes civil*

# ВЫСШИЙ СОВЕТ БЕЗОПАСНОСТИ РЕСПУБЛИКИ МОЛДОВА: ДЕЯТЕЛЬНОСТЬ И ПЕРСПЕКТИВЫ ЕЕ СОВЕРШЕНСТВОВАНИЯ В КОНТЕКСТЕ ОПЫТА СТРАН ПОСТСОВЕТСКОГО ПРОСТРАНСТВА

## **Аннотация**

*Современный мир характеризуется множеством вызовов и рисков для обеспечения безопасности. В данном контексте, проблемам обеспечения безопасности уделяется особое внимание во всех государствах. Исключением не являются государства постсоветского пространства, которые в последнее время обращают повышенное внимание уровню действия государственной системы, ответственной за обеспечение национальной безопасности, роли Совета национальной безопасности. Авторы анализируют возможность согласования различных факторов, влияющих на безопасность Республики Молдова. Цель исследования: определение полномочий и приоритетов в деятельности Совета национальной безопасности.*

**Ключевые слова:** Совет национальной безопасности, Республика Молдова, посткоммунистическое пространство, риск, вызов, гражданский интерес

**Введение.** Республика Молдова в силу своего географического положения и открытости в полной мере подвержена воздействию большинства происходящих в мире геополитических процессов, что затрудняет реализацию национальных интересов страны.

Базовыми измерениями национальных интересов Республики Молдова на современном этапе развития страны, на наш взгляд, являются:

- соблюдение конституционных прав и свобод человека;
- обеспечение устойчивого развития демократического, правового, социально ответственного государства и повышение эффективности функционирования государственных институтов в интересах общества;
- достижение сбалансированности интересов граждан, общества и государства, общественного консенсуса по ключевым вопросам развития Республики Молдова;
- развитие гражданского общества с учетом национальных традиций и особенностей;



- эффективное противодействие коррупции;
- прагматичное, с точки зрения национальных интересов, взаимодействие с мировыми центрами силы, основанное на эффективной многосторонней и многовекторной дипломатии, стратегическом партнерстве с ведущими странами Запада, Востока, ЕС, СНГ и особых отношениях с дружественными государствами-соседями, равноправном взаимодействии и взаимном учете интересов со всеми странами мира.

Для реализации этих и других направлений национальных интересов необходимо совершенствование и укрепление механизма обеспечения национальной безопасности Республики Молдова, а также коллективной безопасности с участием Республики Молдова на региональном и двустороннем уровнях.

К сожалению, современный уровень законодательства по вопросам обеспечения национальной безопасности, организационная система построения и функционирования системы национальной безопасности Республики Молдова не дают возможности в полном объеме реализовывать весь спектр мероприятий необходимых для защиты национальных интересов страны от внутренних и внешних угроз.

Наш анализ посвящен изучению правового положения, функций и полномочий Советов безопасности стран постсоветского пространства и возможность использования их положительного опыта для расширения полномочий вновь избранного Президента Республики Молдова по обеспечению высокого уровня национальной безопасности, формированию внутренней и внешней политики, сохранению государственного суверенитета, поддержанию социально-политической стабильности в обществе, защите прав и свобод граждан.

## **I. Анализ правового положения, функций и полномочий Советов безопасности стран постсоветского пространства**

Страны постсоветского пространства для анализа функционирования системы Советов национальной безопасности мы выбрали не случайно. Все страны постсоветского пространства вышли из одной политической и экономической системы, находятся в одной исторической стадии построения независимости, сталкиваются при этом практически с одними и теми же вызовами и угрозами, которые затрагивают наиболее важные стороны жизнедеятельности индивида, общества и государства.

Национальная безопасность во всех странах базируется на общей теории национальной безопасности, и все ее аспекты рассматриваются

исходя из системных позиций, как сложное социально-политическое явление с многообразием государственных и общественных связей в конкретно-исторической динамике становления и развития государственности в условиях современных процессов глобализации и интеграции. Причем, обеспечение национальной безопасности, выработка концепции и стратегии национальной безопасности во всех странах постсоветского пространства является предметом самого пристального внимания со стороны руководителей государств, роль которых в системе национальной безопасности постоянно возрастает. Важное место в системе обеспечения национальной безопасности принадлежит Советам безопасности. Президенты всех стран постсоветского пространства реализацию своих полномочий по защите личности, общества и государства, национальных интересов от внутренних и внешних угроз, формированию государственной политики в области обеспечения безопасности и контроля за ее реализацией осуществляют в рамках совещательно-консультативных и/или координационно-контрольных (в зависимости от страны) полномочий Советов безопасности.

Вместе с тем, каждая страна имеет свои особенности деятельности Глав государств, Советов безопасности по руководству системой национальной безопасности, которые мы посчитали необходимым проанализировать с точки зрения возможного использования для защиты национальных интересов Республики Молдова.

**В Российской Федерации** в целях обеспечения принятия мер по нейтрализации реальных и потенциальных угроз развитию государства на основании ранее действовавшего Закона Российской Федерации от 5 марта 1992 г. № 2446-1 «О безопасности» Указом Президента Российской Федерации от 3 июня 1992 г. № 547 был образован Совет Безопасности Российской Федерации, для обеспечения реализации функций Президента Российской Федерации по управлению государством, формированию внутренней, внешней и военной политики в области безопасности.

Совет Безопасности Российской Федерации является *конституционным органом*, осуществляющим подготовку решений Президента Российской Федерации в области обеспечения безопасности (Закон Российской Федерации от 5 марта 1992 г. «О безопасности», раздел III). В Конституции Российской Федерации Совет Безопасности закреплен как государственный орган в статье 83 пункт «ж», определяющей полномочия Президента Российской Федерации в отношении формирования важнейших институтов государства.



На Совет Безопасности как *конституционный орган*, осуществляющий подготовку решений Президента Российской Федерации в области обеспечения безопасности, возлагалось рассмотрение стратегических проблем государственной, экономической, общественной, оборонной, информационной, экологической и иных видов безопасности, охраны здоровья населения, прогнозирования, предотвращения чрезвычайных ситуаций и преодоления их последствий, обеспечения стабильности и правопорядка.

Указом Президента Российской Федерации от 7 июля 1992 г. № 747 «О порядке реализации решений Совета Безопасности Российской Федерации» было установлено, что решения Совета Безопасности, принимаемые в целях выполнения его основных задач (статья 15 Закона Российской Федерации «О безопасности»), *оформляются в виде Указов* Президента Российской Федерации, а решения, касающиеся организационно-технического и информационного обеспечения Совета Безопасности, – в виде распоряжений Президента Российской Федерации – Председателя Совета Безопасности (статья 1). На Секретаря Совета Безопасности возлагался *контроль за исполнением решений* Совета Безопасности и Указов Президента Российской Федерации по вопросам безопасности.

Практика применения Закона Российской Федерации от 5 марта 1992 г. «О безопасности» показала (по мнению российских специалистов) необходимость его корректировки, уточнения основ и содержания деятельности по обеспечению безопасности, полномочий органов государственной власти в данной области, а также статуса Совета Безопасности (Закон действовал в части, не противоречащей Конституции Российской Федерации).

В этой связи был принят новый Федеральный закон от 28 декабря 2010 г. № 390-ФЗ «О безопасности». В статье 13 закона определен статус Совета Безопасности как *конституционного совещательного органа*, осуществляющего подготовку решений Президента Российской Федерации по вопросам обеспечения безопасности, организации обороны, военного строительства, оборонного производства, военно-технического сотрудничества Российской Федерации с иностранными государствами, по иным вопросам, связанных с защитой конституционного строя, суверенитета, независимости и территориальной целостности Российской Федерации, а также по вопросам международного сотрудничества в области обеспечения безопасности. Деятельность по обеспечению безопасности в соответствии с законом включает в себя:

- 1) прогнозирование, выявление, анализ и оценку угроз безопасности;
- 2) определение основных направлений государственной политики и стратегическое планирование в области обеспечения безопасности;
- 3) правовое регулирование в области обеспечения безопасности;
- 4) разработку и применение комплекса оперативных и долгосрочных мер по выявлению, предупреждению и устранению угроз безопасности, локализации и нейтрализации последствий их проявления;
- 5) применение специальных экономических мер в целях обеспечения безопасности;
- 6) разработку, производство и внедрение современных видов вооружения, военной и специальной техники, а также техники двойного и гражданского назначения в целях обеспечения безопасности;
- 7) организацию научной деятельности в области обеспечения безопасности;
- 8) координацию деятельности федеральных органов государственной власти, органов государственной власти субъектов Российской Федерации, органов местного самоуправления в области обеспечения безопасности;
- 9) финансирование расходов на обеспечение безопасности, контроль за целевым расходованием выделенных средств;
- 10) международное сотрудничество в целях обеспечения безопасности;
- 11) осуществление других мероприятий в области обеспечения безопасности в соответствии с законодательством Российской Федерации.

Статьей 14 Федерального закона Российской Федерации к основным задачам Совета Безопасности отнесены:

- 1) обеспечение условий для осуществления Президентом Российской Федерации полномочий в области обеспечения безопасности;
- 2) формирование государственной политики в области обеспечения безопасности и контроль за ее реализацией;
- 3) прогнозирование, выявление, анализ и оценка угроз безопасности, оценка военной опасности и военной угрозы, выработка мер по их нейтрализации;
- 4) подготовка предложений Президенту Российской Федерации о мерах по предупреждению и ликвидации чрезвычайных ситуаций и преодолению их последствий, о применении специальных экономических мер в целях обеспечения безопасности, о введении, продлении и об отмене чрезвычайного положения;





5) координация деятельности федеральных органов исполнительной власти и органов исполнительной власти субъектов Российской Федерации по реализации принятых Президентом Российской Федерации решений в области обеспечения безопасности;

6) оценка эффективности деятельности федеральных органов исполнительной власти в области обеспечения безопасности.

2. Основными функциями Совета Безопасности являются:

1) рассмотрение вопросов обеспечения безопасности, организации обороны, военного строительства, оборонного производства, военно-технического сотрудничества Российской Федерации с иностранными государствами, иных вопросов, связанных с защитой конституционного строя, суверенитета, независимости и территориальной целостности Российской Федерации, а также вопросов международного сотрудничества в области обеспечения безопасности;

2) анализ информации о реализации основных направлений государственной политики в области обеспечения безопасности, о социально-политической и об экономической ситуации в стране, о соблюдении прав и свобод человека и гражданина;

3) разработка и уточнение стратегии национальной безопасности Российской Федерации, иных концептуальных и доктринальных документов, а также критериев и показателей обеспечения национальной безопасности;

4) осуществление стратегического планирования в области обеспечения безопасности;

5) рассмотрение проектов законодательных и иных нормативных правовых актов Российской Федерации по вопросам, отнесенным к ведению Совета Безопасности;

6) подготовка проектов нормативных правовых актов Президента Российской Федерации по вопросам обеспечения безопасности и осуществления контроля деятельности федеральных органов исполнительной власти в области обеспечения безопасности;

7) организация работы по подготовке федеральных программ в области обеспечения безопасности и осуществление контроля за их реализацией;

8) организация научных исследований по вопросам, отнесенным к ведению Совета Безопасности.

Президент Российской Федерации может возложить на Совет Безопасности иные задачи и функции в соответствии с законодательством Российской Федерации.

В соответствии со статьей 15 Федерального закона в состав Совета Безопасности входят председатель, которым по должности является Президент Российской Федерации, секретарь Совета Безопасности, постоянные члены Совета Безопасности Российской Федерации и члены Совета Безопасности. Постоянные члены Совета Безопасности входят в состав Совета Безопасности по должности в порядке, определяемом Президентом Российской Федерации. Секретарь Совета Безопасности входит в число постоянных членов Совета Безопасности. Члены Совета Безопасности назначаются Президентом Российской Федерации в порядке, им определяемом.

В целях реализации задач и функций Совета безопасности Президентом Российской Федерации создается аппарат Совета безопасности, могут создаваться рабочие органы Совета безопасности.

Основные организационно-правовые формы работы Совета безопасности – заседания, оперативные совещания, совещания по стратегическому планированию, рабочие совещания, а также заседания его рабочих органов - постоянных межведомственных комиссий, научного совета и его секций.

Заседания Совета безопасности проводятся на регулярной основе (как правило, один раз в квартал) по планам, утверждаемым Председателем Совета безопасности. В случае необходимости могут проводиться внеочередные заседания. Решения Совета безопасности принимаются на его заседании постоянными членами Совета безопасности простым большинством голосов от их общего числа и вступают в силу после утверждения Председателем Совета безопасности.

Для оперативного обсуждения вопросов обеспечения национальной безопасности Председатель Совета безопасности проводит с постоянными членами Совета безопасности оперативные совещания (как правило, один раз в неделю).

В целях подготовки решений по стратегическим направлениям развития Российской Федерации и концептуальным проблемам в области обеспечения национальной безопасности, выносимых на заседания Совета безопасности,

Секретарь Совета безопасности по согласованию с Председателем Совета Безопасности может проводить с постоянными членами Совета безопасности и членами Совета безопасности совещания по стратегическому планированию.

Решения указанных заседаний и совещаний Совета безопасности



оформляются протоколами, которые утверждает Председатель Совета безопасности.

Основными рабочими органами Совета безопасности являются межведомственные комиссии, которые образуются в соответствии с главными задачами и направлениями деятельности Совета Безопасности. Они могут создаваться по функциональному или региональному признаку на постоянной или временной основе. Положения о межведомственных комиссиях Совета безопасности и их состав по должностям утверждается Президентом Российской Федерации по представлению Секретаря Совета безопасности. Персональный состав каждой межведомственной комиссии Совета безопасности утверждается Секретарем Совета безопасности. Межведомственные комиссии Совета безопасности осуществляют подготовку предложений и рекомендаций Совету Безопасности по основным направлениям внутренней и внешней политики в области обеспечения национальной безопасности, способствуют осуществлению стратегического планирования и координации деятельности федеральных органов исполнительной власти и органов исполнительной власти субъектов Российской Федерации в целях реализации федеральных программ в области обеспечения национальной безопасности и выполнения решений Совета безопасности.

Научный совет при Совете Безопасности функционирует с 1993 г. Он осуществляет научно-методологическое обеспечение деятельности Совета безопасности и способствует формированию научного фундамента национальной безопасности, включая целевую ориентацию отечественной науки на вопросы обеспечения национальной безопасности, выявление и системную интеграцию новых знаний в этой области, формирование методологических основ стратегического планирования.

Организационно-техническое и документационное обеспечение деятельности научного совета возложено на аппарат Совета безопасности.

Аппарат Совета безопасности возглавляет Секретарь Совета безопасности, который назначается на должность и освобождается от должности Президентом Российской Федерации.

В начале 90-х годов XX в. органы, подобные Совету Безопасности Российской Федерации, были образованы в государствах постсоветского пространства, при этом у ряда из них задачи и функции, а также полномочия и порядок действий имеют существенное отличие от российского Совета Безопасности.

**В Азербайджанской Республике** в соответствии с Конституцией

(пункт 27 статья 109 «Президент создает Совет безопасности») Указом Президента 10 апреля 1997 г. создан Совет безопасности, который является *совещательным органом* при Президенте. Совет безопасности обеспечивает условия для реализации Президентом его конституционных полномочий по защите прав и свобод граждан, охране независимости и территориальной целостности Азербайджанской Республики.

В состав Совета безопасности, который формирует Президент, входят: председатель Милли Меджлиса, премьер-министр, руководитель Администрации Президента, государственный советник по вопросам внешней политики, государственный советник по военным вопросам, генеральный прокурор, министр иностранных дел, министр обороны, министр национальной безопасности, министр внутренних дел. На заседаниях Совета безопасности председательствует Президент.

Обязанности секретаря Совета Безопасности исполняет руководитель Администрации Президента, который обеспечивает деятельность Совета Безопасности, руководит подготовкой его заседаний.

Повестку дня и порядок рассмотрения вопросов на заседаниях Совета Безопасности определяет Президент по представлению руководителя Администрации.

**В Республике Армения** организация и деятельность Совета национальной безопасности основаны на Конституции Республики. Конституцией (статья 55 пункт 6) определено, что Президент «формирует Совет национальной безопасности, председательствует в нем, может формировать другие консультативные органы» и Уставе Совета национальной безопасности, утвержденном Указом Президента Республики Армения от 28 мая 2008 г. Таким образом, в Конституции Республики Армения установлен *консультативный статус* Совета национальной безопасности.

В Уставе Совета национальной безопасности на Совет возложены обязанности по выявлению внутренних, внешних, политических, военных, экономических, социальных, и других проблем, связанных с вопросами национальной безопасности, а также организации, координации и контроля за работами по реализации государственных программ и концепций, предусмотренных стратегической программой национальной безопасности.

Совет национальной безопасности *координирует* деятельность государственных органов, оценивает результативность принятых ими решений в сфере обеспечения национальной безопасности, определяет



основные направления по повышению государственного стратегического развития, национальной безопасности и национальной конкурентоспособности, принимает решения по их реализации. В соответствии со стратегией национальной безопасности Совет осуществляет стратегические реформы в системах вооруженных сил, правоохранительных органов, налоговой и таможенной систем, а также оценивает их результативность.

Председателем Совета является Президент Армении. Он утверждает ежемесячную программу деятельности Совета, ратифицирует решения Совета. Секретарь Совета национальной безопасности обеспечивает реализацию задач, предусмотренных стратегией и решениями Совета, организует и координирует связанные с этим работы, а также осуществляет контроль за их реализацией. Рабочими органами Совета являются межведомственные комиссии, которые организуют работу органов власти, связанную с реализацией национальной стратегии безопасности. С целью организации деятельности данной структуры глава государства создал аппарат Совета национальной безопасности, работой которого управляет секретарь Совета.

В состав Совета национальной безопасности входят: председатель – Президент Республики Армения, председатель Национального собрания, премьер-министр, председатель конституционного суда, вице-премьер-министр, секретарь Совета национальной безопасности, министр обороны, министр иностранных дел, глава аппарата Президента, генпрокурор, начальник службы национальной безопасности при правительстве, начальник полиции при правительстве, начальник Главного штаба Вооруженных Сил – первый заместитель министра обороны, глава комиссии по внешним сношениям парламента, глава комиссии по вопросам европейской комиссии парламента.

**В Республике Беларусь** правовой основой для организации и деятельности Совета Безопасности является Конституция Республики Беларусь (в соответствии с ее статьей 84 пункт 27 Президент Республики Беларусь формирует и возглавляет Совет Безопасности Республики Беларусь (СБРБ), назначает на должность и освобождает от должности государственного секретаря Совета Безопасности) и Указ Президента Республики Беларусь от 5 августа 1994 г. № 24 «О создании Совета Безопасности Республики Беларусь», который издан на основе Конституции Республики Беларусь для обеспечения реализации функций Президента Республики Беларусь по управлению государст-

вом, формированию внутренней, внешней и военной политики в области безопасности, по сохранению государственного суверенитета, территориальной целостности и конституционного строя Республики Беларусь, поддержанию социально-политической стабильности в обществе, защите прав и свобод граждан.

Согласно названному Указу Совет Безопасности Республики Беларусь является *конституционным органом*, который создается в целях подготовки решений Президента Республики Беларусь по основным направлениям внутренней, внешней и военной политики в сфере обеспечения безопасности Республики Беларусь.

К основным задачам Совета безопасности отнесены:

- определение приоритетов жизненно важных интересов личности, общества и государства, выявление внутренних и внешних угроз объектам безопасности;
- определение основных направлений стратегии безопасности Республики Беларусь и организация подготовки государственных программ поддержания надлежащей безопасности Республики Беларусь;
- подготовка рекомендаций Президенту Республики Беларусь по вопросам формирования внешней, внутренней и военной политики, по выработке основных положений государства в отношении других стран;
- разработка предложений по координации деятельности органов исполнительной власти по реализации принятых решений в сфере обеспечения безопасности и оценки их эффективности;
- подготовка оперативных решений по предотвращению и преодолению чрезвычайных ситуаций, которые могут нанести значительный ущерб интересам Республики Беларусь;
- предварительное обсуждение кандидатур на руководящие должности министерств и ведомств (согласно перечню, утверждаемому Советом Безопасности), от которых зависит эффективность мер по обеспечению безопасности Республики Беларусь;
- подготовка предложений Президенту Республики Беларусь по вопросам введения, продления, отмены чрезвычайного либо военного положения, использования контингента Вооруженных Сил Республики Беларусь.

В соответствии с возложенными на него задачами Совет Безопасности Республики Беларусь (несмотря на их схожесть с задачами, стоящими перед Советом Безопасности Российской Федерации) уполномочен *контролировать* надежность функционирования системы обеспечения национальной безопасности, а также осуществлять *контроль* за



выполнением решений Совета Безопасности, *заслушивать отчеты* и сообщения руководителей и других работников государственных органов, предприятий, учреждений и организаций о выполнении возложенных на них функций и задач по вопросам укрепления обороны и безопасности; координировать работу межведомственных комиссий Совета Безопасности.

Для реализации своих полномочий Совет Безопасности может по представлению его государственного секретаря создавать постоянные или временные межведомственные комиссии.

В состав Совета безопасности входят председатель, которым по должности является Президент Республики Беларусь, государственный секретарь СБРБ, постоянные члены и члены СБРБ. Постоянными членами Совета Безопасности Республики Беларусь являются по должности: первый заместитель председателя Верховного Совета, премьер-министр, глава Администрации Президента, государственный секретарь СБРБ. В члены Совета Безопасности Республики Беларусь входят: государственный секретарь президентского совета, министр обороны, министр внутренних дел и министр иностранных дел, председатель Комитета государственной безопасности, генеральный прокурор. В члены Совета Безопасности Республики Беларусь могут быть также включены и другие служебные лица, назначаемые Президентом Республики Беларусь.

Согласно Концепции национальной безопасности Республики Беларусь, утвержденной Указом Президента Республики Беларусь от 9 ноября 2010 г. № 575, взаимодействие субъектов обеспечения национальной безопасности осуществляется с учетом их правового статуса, компетенции и характера решаемых задач при координирующей роли Совета Безопасности и его рабочего органа, которым является Государственный секретариат Совета Безопасности Республики Беларусь.

Президент Республики Беларусь осуществляет общее руководство системой обеспечения национальной безопасности путем реализации своих полномочий в этой сфере через Совет Безопасности Республики Беларусь и его рабочий орган – Государственный секретариат Совета Безопасности Республики Беларусь, а также через Совет Министров Республики Беларусь.

Совет безопасности Республики Беларусь рассматривает вопросы внутренней и внешней политики Республики Беларусь, затрагивающие интересы национальной безопасности, принимает по ним решения, в том числе определяет государственные органы, ответственные за

обеспечение национальной безопасности в основных сферах жизнедеятельности личности, общества и государства, и *пороговые значения индикаторов (показателей) состояния национальной безопасности*, организует эффективное функционирование системы обеспечения национальной безопасности.

Государственные органы, подчиненные (подотчетные) Президенту Республики Беларусь, и республиканские органы государственного управления, подчиненные Правительству, в соответствии с их компетенцией реализуют меры, направленные на решение задач обеспечения национальной безопасности, поддерживают в состоянии готовности к применению имеющиеся силы и средства.

Взаимодействие субъектов обеспечения национальной безопасности осуществляется с учетом их правового статуса, компетенции и характера решаемых задач при координирующей роли Совета Безопасности Республики Беларусь и его рабочего органа.

Контроль за ходом реализации настоящей Концепции осуществляется Государственным секретариатом Совета Безопасности Республики Беларусь, в том числе в рамках подготовки ежегодного доклада Государственного секретаря Совета Безопасности Республики Беларусь Президенту Республики Беларусь о состоянии национальной безопасности и мерах по ее укреплению.

**В Республике Молдова** согласно Закону от 31 октября 1995 г. № 618 «О государственной безопасности» (в ред. Закона от 24 июля 1997 г. № 1300-XIII) Указом Президента Республики Молдова **№ 331-II от 8 октября 1997 года** утверждено Положение «О Высшем совете безопасности Республики Молдовы». Статьей 1 названного Положения установлено, что Высший совет безопасности является *консультативным органом*, анализирующим деятельность министерств и департаментов в области обеспечения государственной безопасности и вырабатывающим соответствующие рекомендации для Президента Республики Молдова по вопросам внешней и внутренней политики. Председателем Высшего совета безопасности является Президент Республики Молдова.

Согласно статьи 1 Закона «О государственной безопасности» государственная безопасность является составной частью национальной безопасности. Под государственной безопасностью (в соответствии с законом) понимается защищенность суверенитета, независимости, территориальной целостности и конституционного строя страны, ее экономического, научно-технического и оборонного потенциала,





законных прав и свобод личности от разведывательно-подрывной деятельности иностранных спецслужб и организаций, а также от преступных посягательств отдельных групп или лиц.

К основным угрозам государственной безопасности, в соответствии с Законом, относятся:

а) действия, направленные на насильственное изменение конституционного строя, подрыв или уничтожение суверенитета, независимости и территориальной целостности страны. Эти действия не могут быть истолкованы в ущерб политическому плюрализму, реализации конституционных прав и свобод человека;

б) деятельность, прямо или косвенно способствующая развёртыванию боевых действий против страны или развязыванию гражданской войны;

с) вооруженные или иные насильственные действия, подрывающие государственные устои;

д) действия, способствующие возникновению чрезвычайных происшествий на объектах транспорта, связи, жизнеобеспечения и экономики;

е) шпионаж, передача сведений, составляющих государственную тайну, другим государствам, а также незаконное получение или хранение сведений, составляющих государственную тайну, с целью передачи их другим государствам или антиконституционным структурам;

ф) предательство, выражающееся в оказании помощи другому государству в проведении враждебной деятельности против Республики Молдова;

г) действия, направленные на насильственное свержение законно избранных органов публичной власти;

h) действия с целью ущемления конституционных прав и свобод граждан, вызывающие угрозу государственной безопасности;

і) подготовка и совершение террористических актов, а также посягательство на жизнь, здоровье и неприкосновенность высших должностных лиц республики и зарубежных государственных и общественных деятелей во время их пребывания в Республике Молдова;

ј) хищение и контрабанда оружия, боеприпасов, боевой техники, взрывчатых, радиоактивных, отравляющих, наркотических, токсичных и иных веществ, их незаконное производство, использование, транспортировка и хранение, если при этом затрагиваются интересы обеспечения государственной безопасности;

к) создание незаконных организаций или групп, представляющих угрозу государственной безопасности, или участие в их деятельности;

1) случаи организованной преступности и/или коррупции, подрывающие государственную безопасность.

Согласно статьи 5 Закона «О государственной безопасности» основными направлениями деятельности по обеспечению государственной безопасности являются:

а) формирование внешней и внутренней политики с учетом интересов обеспечения государственной безопасности;

б) определение и реализация системы мер экономического, политического, правового, военного, организационного и иного характера, направленных на своевременное выявление, предупреждение и пресечение угроз государственной безопасности;

с) образование системы органов государственной безопасности, разделение их функций с одновременным обеспечением взаимодействия, а также создание механизма контроля и надзора за их деятельностью;

д) совершенствование правовой основы обеспечения государственной безопасности;

е) координирование с другими государствами деятельности по выявлению, предупреждению и пресечению возможных угроз государственной безопасности. Президент:

а) осуществляет общее руководство деятельностью по обеспечению государственной безопасности и несет ответственность за состояние государственной безопасности в пределах полномочий, установленных законодательством;

б) принимает в соответствии с законодательством необходимые меры по обеспечению государственной безопасности;

е) обеспечивает взаимодействие органов публичной власти в сфере обеспечения государственной безопасности;

д) в соответствии с законодательством создает консультативные органы по вопросам обеспечения государственной безопасности и управляет ими;

е) издает указы нормативного характера по вопросам обеспечения государственной безопасности;

ф) ведет переговоры и заключает международные договоры от имени Республики Молдова, связанные с обеспечением государственной безопасности.

В соответствии с Положением о Высшем совете безопасности, утвержденным Указом Президента Республики Молдова от 8 октября 1997



г. № 331- П статья 3 Высший совет безопасности осуществляет следующие функции:

1) консультирует Президента Республики Молдова по вопросам национальной безопасности;

2) представляет Президенту Республики Молдова рекомендации по вопросам внешней и внутренней политики государства;

3) рассматривает:

а) проекты постановлений о внесении изменений и дополнений в Концепцию национальной безопасности, Военную доктрину и Концепцию внешней политики;

б) вопросы разработки и реализации Концепции реформы Вооруженных сил;

с) план строительства Вооруженных сил;

д) планы по оснащению Вооруженных сил, органов и подразделений внутренних дел и государственной безопасности вооружением, военной техникой; е) вопросы комплектования Вооруженных сил;

ф) план мобилизации Вооруженных сил;

г) план мобилизации национальной экономики в случае войны;

h) планы взаимодействия Министерства обороны, Министерства внутренних дел, Министерства национальной безопасности, Департамента гражданской защиты и чрезвычайных ситуаций по:

– поддержанию вооруженных сил в мирное и военное время; уменьшению и ликвидации последствий, связанных с природными бедствиями и катастрофами;

– поддержанию и восстановлению правопорядка;

– охране стратегических объектов;

и) основные направления сотрудничества Республики Молдова с другими государствами в военно-политической области;

ж) проекты международных договоров в военно-политической области;

к) доклады руководителей органов публичного управления, имеющих отношение к области национальной безопасности;

4) представляет предложения по дислокации и передислокации воинских частей по территории республики в мирное время, а также по их участию в международной деятельности, направленной на поддержание мира;

5) анализирует ситуации, при которых необходимо:

а) объявление чрезвычайного положения;

b) объявление осадного положения;  
c) объявление военного положения;  
d) объявление частичной или всеобщей мобилизации и демобилизации;

e) заключение мира после прекращения военных действий;

б) анализирует деятельность Министерства обороны, Министерства иностранных дел, Министерства внутренних дел, Министерства национальной безопасности, Департамента гражданской защиты и чрезвычайных ситуаций, других министерств и департаментов в области национальной безопасности;

7) рассматривает ход выполнения указов и других решений Президента Республики Молдова по вопросам национальной безопасности.

Предложения Высшего совета безопасности имеют рекомендательный характер и могут служить основанием для издания Указов и принятия иных решений Президента Республики Молдова по вопросам национальной безопасности.

Членами Высшего совета безопасности по должности являются: премьер-министр, министр обороны, министр иностранных дел, министр внутренних дел, министр национальной безопасности, министр финансов, начальник Главного штаба Вооруженных сил, начальник Департамента гражданской защиты и чрезвычайных ситуаций и секретарь Высшего совета безопасности.

Президент Республики Молдова может назначать в Высший совет безопасности и других членов из числа должностных лиц.

В настоящее время деятельность Высшего совета безопасности регламентируют следующие законодательные и нормативные акты:

Указ № 331 от 08.10.1997 «Об утверждении Положения о Высшем совете безопасности».

Указ № 664 от 10.06.2013 «Об образовании Высшего совета безопасности».

Постановление № 153 от 15.07.2011 «Об утверждении Стратегии национальной безопасности Республики Молдова».

Закон № 618 от 31.10.1995 «О государственной безопасности».

Закон № 112 от 22.05.2008 «Об утверждении Концепции национальной безопасности Республики Молдова».

Закон № 345 от 25.07.2003 «О национальной обороне».

Закон № 1192 от 04.07.2002 «О мобилизационной подготовке и мобилизации».



Закон № 212 от 24.06.2004 «О режимах чрезвычайного, осадного и военного положения».

**В Республике Казахстан Совет Безопасности** образован в соответствии с Конституцией страны, Законом от 26 июня 1998 г. № 233-1 «О национальной безопасности Республики Казахстан» (в ред. от 7 августа 2007 г. № 321-III ЗРК). Положением о Совете Безопасности, утвержденным Указом Президента Республики Казахстан от 20 марта 1999 г. № 88 его статус определен как *консультативно-совещательного органа*, образуемого Президентом Республики Казахстан для выработки решений и содействия реализации главой государства полномочий по обеспечению обороноспособности и национальной безопасности, сохранению государственного суверенитета, независимости и территориальной целостности Республики Казахстан, поддержанию социально-политической стабильности в стране, защите конституционных прав и свобод граждан.

К основным задачам Совета Безопасности отнесены:

- определение основных направлений защиты национальных интересов, выявление угроз национальной безопасности, выбор средств и методов по обеспечению национальной безопасности страны;
- разработка основных направлений стратегии безопасности страны и организации подготовки государственных программ по вопросам национальной безопасности;
- внесение предложений и рекомендаций Президенту Республики Казахстан для принятия решений по вопросам внутренней, внешней и военной политики в области обеспечения национальной безопасности и мер по реализации этих решений, а также по повышению эффективности деятельности государственных органов, обеспечивающих безопасность личности, общества и государства;
- подготовка рекомендаций по заключению, исполнению и денонсации международных договоров Республики Казахстан, затрагивающих национальные интересы.

На Совет Безопасности также возложена *координация деятельности* силовых структур, центральных и местных исполнительных органов, а также осуществление анализа законопроектов и *контроль* за исполнением нормативных документов в пределах компетенции.

Решения, принятые Советом Безопасности являются *обязательными к исполнению* государственными органами Республики Казахстан. В случае необходимости решения Совета Безопасности могут

реализовываться актами Президента или Правительства Республики Казахстан.

Председателем Совета Безопасности является Президент Республики Казахстан. Членами Совета Безопасности по должности являются: председатель Мажилиса парламента, председатель Сената парламента, премьер-министр, руководитель Администрации Президента, помощник президента – секретарь Совета Безопасности, председатель Комитета национальной безопасности, министр иностранных дел, министр обороны.

Согласно Указу Президента Республики Казахстан от 20 марта 1999 г. № 88 «О Совете Безопасности Республики Казахстан» деятельность Совета Безопасности обеспечивается его секретариатом, структура и штаты которого определяются руководителем Администрации Президента Республики Казахстан по представлению помощника президента - секретаря Совета Безопасности, осуществляющим общее руководство работой секретариата и отдела правоохранительной системы Администрации Президента Республики Казахстан. При необходимости для обеспечения деятельности Совета Безопасности могут создаваться межведомственные комиссии и рабочие группы.

В соответствии со статьей 64 Конституции **Кыргызской Республики** (введена в действие 27 июня 2010 г.) Президент Кыргызской Республики возглавляет Совет обороны Кыргызской Республики, образуемый в соответствии с Законом. 19 января 2011 г. Президентом Кыргызской Республики в целях обеспечения непрерывности реализации мер по вопросам обороны и безопасности до принятия Закона Кыргызской Республики «О Совете обороны» подписан Указ «О Совете обороны Кыргызской Республики», которым упразднен Совет Безопасности Кыргызской Республики, а также признаны утратившими силу Указы Президента Кыргызской Республики от 26 июля 2010 г. № 56 “О составе Совета Безопасности Кыргызской Республики” от 9 сентября 2010 г. № 171.

Совет обороны Кыргызской Республики является конституционным органом, осуществляющим подготовку решений Президента Кыргызской Республики в области обеспечения национальной безопасности.

В соответствии с законом «О Совете обороны Кыргызской Республики» одной из главных его задач является прогнозирование, анализ и оценка современных вызовов и угроз безопасности, выработка мер, направленных на их предотвращение. В ведении Совета обороны



находятся вопросы внутренней и внешней политики Кыргызской Республики в области обеспечения безопасности, стратегические проблемы государственной, экономической, общественной, оборонной, информационной, экологической и иных видов безопасности, охраны здоровья населения, прогнозирования, предотвращения чрезвычайных ситуаций и преодоления их последствий, обеспечения стабильности и правопорядка, а также состояния защищенности жизненно важных интересов личности, общества и государства от внешних и внутренних угроз. Правовую основу деятельности Совета обороны составляют Конституция и законы Кыргызской Республики, акты Президента Кыргызской Республики, ратифицированные международные договоры и соглашения, регулирующие отношения в области национальной безопасности, а также Положение «О Совете обороны Кыргызской Республики и его аппарате».

Совет обороны формируется Президентом Кыргызской Республики на основании Конституции Кыргызской Республики, Закона Кыргызской Республики «О национальной безопасности», указов Президента Кыргызской Республики, Положения «О Совете обороны» и состоит из членов Совета обороны, определяемых Президентом Кыргызской Республики.

Председателем Совета Обороны является Президент Республики Кыргызстан. В состав Совета Обороны в качестве его членов включены: спикер национального парламента (Торага Жогорку Кенеша Кыргызской Республики), премьер-министр, вице-премьер-министр - секретарь Совета Обороны, заведующий отделом обороны и безопасности Аппарата Президента – заместитель секретаря, генеральный прокурор, министр иностранных дел, министр обороны, министр внутренних дел, министр финансов, министр чрезвычайных ситуаций, председатель Государственного комитета национальной безопасности.

Заседания Совета обороны ведет председатель Совета обороны – Президент. Решения Совета обороны принимаются на его заседании членами Совета обороны простым большинством голосов от их общего числа и вступают в силу после утверждения председателем Совета обороны.

Решения Совета обороны оформляются протоколами заседаний Совета обороны. Для реализации решений Совета обороны могут издаваться Указы и распоряжения Президента Кыргызской Республики.

**Совет национальной безопасности и обороны Украины (СНБОУ)** – согласно действующей Конституции Украины, *координационный*

*орган при Президенте Украины* по вопросам национальной безопасности и обороны Украины.

Первоначально Указом Президента Украины в июле 1992 г был создан Совет национальной безопасности Украины как *консультативно-совещательный* орган в системе органов государственной исполнительной власти при Президенте Украины. В таком качестве он просуществовал до 1994 г., когда опять же Указом Президента Украины за ним были закреплены функции *организационно-координационной* деятельности. Предоставление координационных полномочий параллельно с осуществлением мер по адекватному информационному обеспечению позволили Совету и его аппарату действовать гораздо результативнее, касаться сложных и масштабных вопросов государственной жизни. Вместе с тем, ощущались и соответствующие ограничения, поскольку статус Совета определялся на уровне президентских Указов, тогда как фактически его деятельность влияла на действия Президента Украины, на деятельность правительства, силовых структур и т. п. и объективно требовала закрепления на конституционном и законодательном уровнях. Первой попыткой определить новый статус Совета национальной безопасности и место, которое он занимает в системе государственных органов Украины, было подписание в 1995 году Конституционного договора между Верховной Радой и Президентом Украины, в котором на Президента возлагались функции гаранта национальной безопасности Украины и председателя Совета национальной безопасности Украины.

В Конституции Украины 1996 года этот вопрос решен значительно глубже.

Во-первых, в нем, по сути, конституирован новый государственный орган – Совет национальной безопасности и обороны Украины, унаследовавший функции бывших Совета обороны и Совета национальной безопасности.

Во-вторых, Конституция определяет основные задачи этого органа – *координацию и контроль деятельности* органов исполнительной власти в сфере национальной безопасности и обороны.

В-третьих, непосредственно в тексте Конституции определены принципиальные основы формирования СНБОУ и, наконец, Конституция содержит прямое указание о разработке специального закона, который определял бы функции и полномочия Совета.

25 декабря 2014 г. Верховной Радой был принят Закон, расши-





ряющий полномочия СНБОУ и его секретаря, что, по мнению наблюдателей, сделало Совет национальной безопасности и обороны Украины вторым по значимости органом власти на Украине.

Согласно принятому закону, в компетенцию Совета национальной безопасности и обороны Украины входит: координация и контроль деятельности органов власти в сфере противодействия коррупции, обеспечения общественной безопасности и борьбы с преступностью. Изменения предполагают, что Совет национальной безопасности и обороны Украины может не только подавать предложения Президенту, но и *принимать решения* по ряду вопросов, таких как: определение стратегических национальных интересов Украины, усовершенствование системы обеспечения национальной безопасности и организации обороны, реорганизации и ликвидации органов исполнительной власти в этой сфере, проект государственного бюджета по статьям, связанным с обеспечением национальной безопасности и обороны.

Кроме того, Совет национальной безопасности и обороны Украины может *принимать решения* и по вопросам мер политического, экономического, военного, информационного, иного характера в соответствии с масштабом потенциальных и реальных угроз национальным интересам Украины, а также «по вопросам объявления состояния войны, общей или частичной мобилизации, введения военного или чрезвычайного положения». СНБОУ также может принимать решения по неотложным мерам по разрешению кризисных ситуаций, которые угрожают национальной безопасности. «Решения Совет национальной безопасности и обороны Украины, введенные в действие Указами Президента Украины, являются обязательными для выполнения органами исполнительной власти», – говорится в законопроекте.

Согласно предложенным изменениям, секретарь Совет национальной безопасности и обороны Украины осуществляет в период между заседаниями Совета координацию и контроль над выполнением решений Совет национальной безопасности и обороны Украины в сферах государственной безопасности, правоохранительной деятельности, борьбы с коррупцией, в военной сфере и сфере безопасности государственной границы Украины и ряде других сфер.

Секретарь Совета безопасности организует работу Ставки Верховного Главнокомандующего в случае ее создания; участвует в рассмотрении предложений по кандидатурам на должности в органах государственной власти, деятельность которых связана с вопросами

национальной безопасности и обороны Украины и которые назначаются на должность президентом или по согласованию с главой государства; вносит на рассмотрение президента предложения относительно назначения и увольнения руководства военных формирований, правоохранительных органов.

Кроме того, секретарь Совета безопасности вносит на рассмотрение Совет национальной безопасности и обороны Украины предложения относительно законопроекта о государственном бюджете Украины по статьям, связанным с обеспечением национальной безопасности и обороны.

Совет национальной безопасности и обороны Украины наделен компетенцией по:

- осуществлению *текущего контроля* за деятельностью органов исполнительной власти в сфере национальной безопасности и обороны;
- разработке нормативных актов и документов по вопросам национальной безопасности и обороны;
- разработке проектов государственных программ, доктрин, Законов Украины, Указов Президента, директив Верховного главнокомандующего Вооруженными силами Украины, международных договоров, других нормативных актов и документов по вопросам национальной безопасности и обороны;
- рассмотрению вопросов относительно материального, финансового, кадрового, организационного и другого обеспечения выполнения мероприятий по вопросам национальной безопасности и обороны.

Решение Совета национальной безопасности и обороны Украины вводятся в действие Указами Президента Украины.

Персональный состав Совета национальной безопасности и обороны Украины формирует Президент Украины. В состав Совета национальной безопасности и обороны Украины по должности входят: премьер-министр, министр обороны, председатель Службы безопасности, министр внутренних дел, министр иностранных дел. Членами СНБО Украины могут быть руководители других центральных органов исполнительной власти. Текущее информационно-аналитическое и организационное обеспечение деятельности Совет национальной безопасности и обороны Украины осуществляет его аппарат, подчиненный секретарю СНБОУ.

Итак, в настоящее время Совет национальной безопасности и обороны Украины – *это специализированный государственный орган с*



конституционным статусом, который является органической частью системы президентской власти и призван обеспечить одну из важнейших конституционных функций Президента – гарантировать государственную независимость и национальную безопасность государства.

**В Республике Узбекистан** Указом Президента Республики Узбекистан в 1995 г. создан Совет по национальной безопасности при Президенте Республики Узбекистан (далее – СНБРУ). Совет по национальной безопасности при Президенте Республики Узбекистан является *совещательным органом* по вопросам внутренней и внешней политики государства в области обеспечения безопасности. В состав Совета по национальной безопасности при Президенте Республики Узбекистан входят председатель – Президент Республики Узбекистан и назначаемые им члены и секретарь СНБРУ.

**В Республике Таджикистан** правовой основой организации и деятельности Совета Безопасности являются ее Конституция, Закон Республики Таджикистан от 28 декабря 1993 г. № 918 «О безопасности» (в ред. Закона от 12 декабря 1997 г. № 498) и Положение «О Совете Безопасности Республики Таджикистан», утвержденное Указом Президента Республики Таджикистан от 20 марта 2003 г. № 1037.

В соответствии со статьей 13 Закона Республики Таджикистан «О безопасности» Совет Безопасности является *органом коллегиального руководства* вопросами обороны и безопасности Республики Таджикистан. Президент Республики Таджикистан создает Совет Безопасности и руководит им. В состав Совета Безопасности входят: председатель, секретарь, постоянные члены и члены Совета Безопасности. Председателем Совета Безопасности является по должности Президент Республики Таджикистан. В число постоянных членов Совета Безопасности по должности входят: председатель Маджлиси Оли (парламента), премьер-министр и секретарь Совета Безопасности, который назначается и освобождается от должности Президентом Республики Таджикистан. Членами Совета Безопасности могут быть руководители министерств и ведомств: экономики, финансов, иностранных дел, юстиции, обороны, внутренних дел, национальной безопасности, экологии, здравоохранения, а также иные должностные лица. Персональный состав Совета Безопасности утверждается Президентом Республики Таджикистан.

**В Туркменистане** в соответствии со статьей 55 пункт 4 Конституции Президент «формирует и возглавляет Государственный совет безопасности Туркменистана, статус которого определяется законом». В июне 2001 г.

решением Президента Туркменистана создан Совет государственной безопасности, являющийся *совещательным органом*, руководство деятельностью которого осуществляет Президент Туркменистана.

Государственный совет безопасности Туркменистана в целях обеспечения безопасности и обороны государства, защиты прав и свобод человека и гражданина, законных интересов юридических лиц, совершенствования принципов укрепления законности и правопорядка, усиления влияния политики постоянного нейтралитета Туркменистана на укрепление мира в регионе представляет по этим аспектам на рассмотрение Президента Туркменистана информацию, предложения и проекты решений по соответствующим вопросам, а также рассматривает другие вопросы, указанные в настоящем Законе, затрагивающие государственную безопасность Туркменистана.

Основными задачами Государственного совета безопасности Туркменистана являются:

- 1) обеспечение государственной безопасности и обороны Туркменистана, разработка основных направлений государственной политики по охране прав и свобод человека и гражданина, законных интересов юридических лиц, законности и правопорядка;
- 2) определение стратегии осуществления статуса постоянного нейтралитета в международных отношениях;
- 3) подготовка для Президента Туркменистана информации, предложений и проектов решений по вопросам внутренней и внешней политики, разработка военной доктрины Туркменистана как нейтрального государства и определение мер по ее реализации;
- 4) разработка в целях обеспечения государственной безопасности перспективных задач обеспечения важнейших интересов личности, общества и государства, предотвращения внутренних и внешних угроз, которые могут подрывать их безопасность;
- 5) разработка основных направлений обеспечения государственной безопасности;
- 6) подготовка предложений Президенту Туркменистана по введению режима чрезвычайного положения, продлению периода его действия или отмене;
- 7) координация деятельности органов центральной и местной представительной и исполнительной властей по обеспечению государственной безопасности и защиты Туркменистана, прав и свобод человека и гражданина, законности и правового порядка;



8) рассмотрение других задач, предусмотренных законодательством Туркменистана.

Государственный совет безопасности Туркменистана в целях выполнения возложенных на него задач:

1) рассматривает вопросы реализации военной, технической, экономической и правовой политики государства по обеспечению государственной безопасности и обороны Туркменистана, демократии, конституционных прав и свобод человека и гражданина;

2) координирует деятельность центральных и местных органов исполнительной власти по разработке и реализации программ охраны Государственной границы Туркменистана, защиты государственных интересов на границах и по вопросам их организационного, правового и экономического обеспечения;

3) разрабатывает программы реформирования военной структуры Вооруженных Сил, других войск Туркменистана, вопросы создания и развития видов и родов войск, готовит предложения по их дислокации и использованию;

4) координирует деятельность военных и правоохранительных органов Туркменистана по ведению борьбы с преступностью в сфере экономики, организованной преступностью и терроризмом, по предотвращению незаконного оборота и контрабанды наркотиков и оружия, боеприпасов, взрывчатых веществ или взрывных устройств;

5) координирует деятельность центральных и местных органов исполнительной власти по обеспечению мобилизационной готовности, гражданской обороны на местах, призыву граждан на воинскую службу, защите населения и оборудования при возникновении чрезвычайных ситуаций;

6) готовит предложения Президенту Туркменистана по объявлению режима чрезвычайного положения, о его продлении или отмене;

7) возлагает на одного из заместителей Председателя Кабинета Министров Туркменистана временное исполнение обязанностей Президента Туркменистана, если Президент Туркменистана по тем или иным причинам не может исполнять свои обязанности, впредь до избрания нового Президента Туркменистана;

8) по поручению Президента Туркменистана осуществляет руководство военным и военно-техническим сотрудничеством в международных отношениях с дружественными государствами, определяет главные направления, цели и основные методы его реализации,

рассматривает программы, направленные на решение задач обеспечения устойчивого характера сотрудничества, на ликвидацию стихийных бедствий и аварий.

## **II. Классификация правового положения и функций**

Советов безопасности стран постсоветского пространства

Проведенный анализ правового положения Советов безопасности стран постсоветского пространства позволяет в зависимости от их уровня формирования классифицировать их на *конституционные и законодательные*. На основе конституции формируются Советы безопасности в Российской Федерации, Азербайджанской Республике, Республике Армения, Республике Беларусь, Республике Казахстан, Украине, Туркменистане и в Республике Таджикистан, на основе законодательства – в Республике Молдова (законом) и Узбекистане (Указом Президента).

*По функциям и полномочиям Советов безопасности* их статус можно классифицировать на:

- совещательно-консультативный статус (Российская Федерация, Азербайджанская Республика, Республика Узбекистан, Туркменистан, Республика Молдова);

- совещательно-консультативный статус с координационно-контрольными функциями (Армения, Республика Беларусь, Кыргызская Республика, Туркменистан);

- статус государственного органа принимающего прямые решения по вопросам национальной безопасности – Украина, Казахстан. Принятые Советами Безопасности этих стран решения, являются *обязательными к исполнению* государственными органами. В случае необходимости решения Советов Безопасности реализуются актами Президентов. В Республике Таджикистан Совет Безопасности – *орган коллективного руководства*.

Следует особо отметить, что за время формирования и становления независимости статус Советов Безопасности практически всех стран постсоветского пространства вырос от совещательного органа при Президентах до статуса конституционного государственного органа; значительно увеличились и расширились их полномочия и функции деятельности, вопросы, рассматриваемые на заседаниях Советов, стали охватывать весь спектр обеспечения национальной безопасности, внешней и внутренней политики.

В определенной мере данные процессы произошли и в Молдове



при принятии Президентом Молдовы в 1997 г. Положения о Высшем совете безопасности Республики Молдова. Так, в Положении о Высшем совете безопасности Президент Республики Молдова расширил функции Высшего совета безопасности – от уровня рассмотрения вопросов обеспечения *государственной безопасности*, с уже определенными законодателями перечнем вызовов и угроз, (как это предусматривает Закон «О государственной безопасности»), до рассмотрения вопросов обеспечения *национальной безопасности* с возложением обязанностей консультирования Президента Республики Молдова по вопросам национальной безопасности.

Мы полагаем, что Положение о Высшем совете безопасности Республики Молдова соответствует духу Закона о всенародном избрании Президента Республики Молдова, который несет ответственность перед гражданами и обществом, как того требуют проблемы обеспечения национальной безопасности, а не как предусматривает Закон «О государственной безопасности». *Цель обеспечения национальной безопасности*, как известно, состоит в достижении и поддержании такого уровня защищенности *личности, общества, государства* от внутренних и внешних угроз, при котором гарантируется устойчивое развитие страны и реализация ее национальных интересов. Государственная же безопасность, как часть национальной безопасности, решает только вопросы защищенности суверенитета, независимости, территориальной целостности и конституционного строя страны, что, безусловно, важно, но не обеспечивает полного решения всех проблем безопасного развития.

### **III. Предложения по совершенствованию функций и полномочий Высшего совета безопасности Республики Молдова**

В настоящее время в рамках действующего законодательства Высший совет безопасности Республики Молдова является одним из немногих рычагов влияния Президента Республики Молдова на управление государством, на защиту его национальных интересов, на процесс обеспечения национальной безопасности, на выработку внутренней и внешней политики.

В связи с этим, а так же в целях консолидации усилий и повышения эффективности деятельности государственных органов, общества и граждан по обеспечению национальной безопасности Республики Молдова, обеспечению условий для осуществления Президентом

Республики Молдова полномочий в области безопасности предлагается провести реорганизацию деятельности Высшего совета безопасности Республики Молдова по следующему алгоритму:

- на первом этапе повысить эффективность деятельности Высшего совета безопасности Республики Молдова в рамках действующего законодательства;

- на втором этапе – путем изменения законодательства расширить функции Высшего совета безопасности по формированию государственной политики в области безопасности до уровня *национальной* безопасности, придать ему дополнительные контрольно-координационные и аналитико-консультативные полномочия с возможностью формирования межведомственных комиссий и научных советов для обеспечения реализации функций Президента Республики Молдова по формированию внутренней, внешней и военной политики в области безопасности, по сохранению государственного суверенитета, территориальной целостности и конституционного строя, поддержанию социально-политической стабильности в обществе, защите прав и свобод граждан;

- на третьем этапе необходимо придать Высшему совету безопасности конституционные полномочия, что поставит его на уровень с другими высшими органами власти и управления страной;

- на четвертом этапе, на законодательном уровне необходимо сформировать положения участия граждан, общественных объединений, гражданского общества в выработке основных концептуальных подходов Стратегии национальной безопасности, другие концептуальных и стратегических документов обеспечения безопасности, внутренней и внешней политики Республики Молдова.

#### **I этап.**

В действующем законодательстве Республики Молдовы, на наш взгляд, имеется возможность использования положительного опыта ряда стран постсоветского пространства по включению в полномочия Высшего совета безопасности Республики Молдова *координационно-контрольных функций*.

Так, согласно Положению о Высшем совете безопасности, утвержденного Указом Президента Республики Молдова № 331- П от 8 октября 1997 г. (статья 3 пункт 7) Высший совет безопасности «рассматривает ход выполнения указов и других решений Президента Республики Молдова по вопросам национальной безопасности», а это ничто иное как контрольная функция, которая дает право *контролировать*





надежность функционирования системы обеспечения национальной безопасности, а также осуществлять контроль за выполнением решений Высшего совета безопасности, заслушивать отчеты и сообщения руководителей и других работников государственных органов, учреждений и организаций о выполнении возложенных на них функций и задач по вопросам укрепления обороны и безопасности.

Что касается координационных функций, то в соответствии с законом «О государственной безопасности» Президент «обеспечивает взаимодействие органов публичной власти в сфере обеспечения государственной безопасности», а это уже ничто иное как координационная функция.

Таким образом, несмотря на то, что законодательством определены функции Высшего совета безопасности как *совещательные и консультативные* это не является препятствием для выполнения Высшим советом безопасности Республики Молдова *координационно-контрольных функций*.

Как нам представляется, наделение Высшего совета безопасности *контрольными* полномочиями в части проведения проверок полноты реализации решений, принятых Высшим советом безопасности и Указов Президента Республики Молдова по вопросам обеспечения национальной безопасности и *координационных функций* в плане координации деятельности органов государственной власти по обеспечению национальной безопасности является одним из резервов по активизации работы этого важного органа в деле укрепления государственности и безопасности, и позволит органично включить Президента Республики Молдова в систему государственного управления и контроля за деятельностью исполнительной власти, выработке внутренней и внешней политике.

Кроме того, действующее законодательство дает возможность принятые решения Высшего совета безопасности Республики Молдова подкреплять принятием Указов Президента, которые уже (в отличие от решений Высшего совета) носят обязательный правовой характер для исполнения государственными органами Республики Молдова.

Для сбалансированности интересов в Высшем совете безопасности политических сил и Президента, законодательство дает возможность Указом Президента формировать Совет не только из определенных должностных лиц, но и из любых должностных лиц, определяемых Президентом. Причем, законодательство не регламентирует количество членов Совета безопасности, что дает возможность Президенту сформировать Совет любой направленности.

Таким образом, уже действующее законодательство позволяет повысить роль Высшего совета безопасности Республики Молдова в системе обеспечения национальной безопасности, роль Президента в системе управления страной, изменения его функций из представительных к активно влияющим на систему государственного управления и принятия государственных решений.

## II этап.

На данном этапе необходимо принять Закон «О Высшем совете национальной безопасности Республики Молдова», в котором необходимо:

1. Изменить название совета «Высший совет безопасности Республики Молдова» на «Высший совет национальной безопасности Республики Молдова». Данное название делает акцент на изменение функций Совета от обеспечения государственной безопасности к обеспечению национальной безопасности.

*Справочно: Национальная безопасность* – это сложная, многоуровневая система. Ее образует целый ряд подсистем, каждая из которых имеет свою собственную структуру. Прежде всего, это безопасность личности, безопасность общества и безопасность государства.

*Безопасность государства* связана, прежде всего, с сохранением конституционного строя, обеспечением суверенитета и территориальной целостности.

Таким образом, система национальной безопасности значительно шире государственной безопасности и включает соблюдение баланса интересов всех субъектов: личности, общества и государства, а также их взаимную ответственность за обеспечение безопасности.

2. Изменить структуру рабочих органов Совета безопасности путем создания секретариата Высшего совета национальной безопасности Республики Молдова и формирования постоянных или временных межведомственных комиссий по основным направлениям структуры национальной безопасности, а именно: экономическая безопасность, социальная, финансовая, научно-техническая, инновационная, информационная, энергетическая, военная, демографическая, экологическая безопасность.

Для анализа процессов, возникающих в ходе обеспечения национальной безопасности, перспектив развития внутренней и внешней политики предлагается создать научно-аналитический совет, функции которого может выполнять профильная научная структура,



например, IRIM, имеющий опыт по выработке основных положений национальных интересов Молдовы, определения вызовов и угроз, возникающих в ходе реализации национальных интересов и обеспечения национальной безопасности Республики Молдова. В настоящее время IRIM в рамках созданного им Центра Национальной безопасности ведет исследования по вопросам обеспечения экономической безопасности Республики Молдова, формированию инновационной экономики и инновационной безопасности Республики Молдова.

В законе должно быть отмечено, что Президент Республики Молдова осуществляет общее руководство системой обеспечения национальной безопасности путем реализации своих полномочий в этой сфере через Высший совет национальной безопасности Республики Молдова и его рабочий орган – секретариат Высшего совета национальной безопасности Республики Молдова.

3. Определить основные организационно-правовые формы работы Высшего совета национальной безопасности Республики Молдова – заседания, совещания, оперативные совещания, рабочие совещания, а также заседания его рабочих органов – секретариата Высшего совета национальной безопасности, постоянных или временных межведомственных комиссий, научного аналитико-консультационного совета.

4. К основным задачам Совета безопасности предлагается отнести:

- выработку Концепции национальной безопасности Республики Молдова, определение основных направлений Стратегии безопасности Республики Молдова, иных концептуальных и доктринальных документов, а также критериев и показателей обеспечения национальной безопасности;
- осуществление стратегического планирования в области обеспечения безопасности, определение приоритетов жизненно важных интересов личности, общества и государства, выявление внутренних и внешних угроз объектам безопасности;

- подготовку рекомендаций Президенту Республики Молдова по вопросам формирования внешней, внутренней и военной политики, по выработке основных положений государства в отношении других стран;

- разработку предложений по координации деятельности органов исполнительной власти по реализации принятых решений в сфере обеспечения безопасности и оценки их эффективности;

- подготовку оперативных решений по предотвращению и преодолению чрезвычайных ситуаций, которые могут нанести значительный ущерб интересам Республики Молдова;

– рассмотрение проектов законодательных и иных нормативных правовых актов Республики Молдова по вопросам обеспечения национальной безопасности;

– предварительное обсуждение кандидатур на руководящие должности министерств и ведомств (согласно перечню, утверждаемому Высшим советом национальной безопасности), от которых зависит эффективность мер по обеспечению безопасности Республики Молдова;

– подготовку предложений Президенту Республики Молдова по вопросам введения, продления, отмены чрезвычайного либо военного положения, использования Вооруженных Сил Республики Молдова.

5. Высший совет национальной безопасности Республики Молдова, кроме имеющихся совещательно-консультативных функций, должен быть законодательно уполномочен контролировать надежность функционирования системы обеспечения национальной безопасности, а также осуществлять контроль за выполнением решений Совета безопасности, заслушивать отчеты и сообщения руководителей и других работников государственных органов, учреждений и организаций о выполнении возложенных на них функций и задач по вопросам укрепления обороны и безопасности; координировать работу межведомственных комиссий Высшего совета национальной безопасности Республики Молдова.

Решения Высшего совета национальной безопасности Республики Молдова должны носить характер нормативных документов обязательных к исполнению государственными органами Республики Молдова, в случае необходимости решения должны реализовываться актами Президента.

### **III этап.**

Предлагаемые изменения по повышению роли Высшего совета национальной безопасности в системе государственного управления по обеспечению национальной безопасности было бы целесообразно в последующем закрепить в Конституции Республики Молдова. В данном случае можно было бы решить возникший дисбаланс между ответственностью перед гражданами и обществом у всенародно избранного Президента и его ограниченными полномочиями, определенными ныне действующей Конституцией и законодательством, в том числе и в сфере национальной безопасности.

В Конституции необходимо четко определить, что Высший совет



национальной безопасности Республики Молдова создается Президентом для обеспечения реализации функций Президента Республики Молдова по формированию внутренней, внешней и военной политики в области безопасности, по сохранению государственного суверенитета, территориальной целостности и конституционного строя Республики Молдова, поддержанию социально-политической стабильности в обществе, защите прав и свобод граждан.

Кроме того, придание Высшему совету национальной безопасности конституционных полномочий поставит его на уровень с другими высшими органами власти и управления страной, что, безусловно, будет способствовать повышению эффективности функционирования системы национальной безопасности.

#### **IV этап.**

Положения Конституции Республики Молдова целесообразно использовать в процессе дальнейшего совершенствования законодательства по вопросам обеспечения национальной безопасности в контексте современных процессов, требующих участия в обеспечении безопасного развития государства общества и граждан, когда безопасность гражданина, общества зависит не только от непосредственной защиты их со стороны государства, но и через непосредственное участие граждан, общества в вопросах обеспечения национальной безопасности.

На этом этапе необходимо на законодательном уровне разработать положения по участию граждан, общественных организаций в выработке Стратегии национальной безопасности, других документов стратегического характера по вопросам обеспечения национальной безопасности, внешней и внутренней политики путем обсуждения в рамках гражданского общества основных концептуальных положений обеспечения безопасного и устойчивого развития страны, а при необходимости, принятия решений на всенародных референдумах.

Предлагаемые поэтапные изменения дают возможность, на наш взгляд, выстроить стройную систему управления системой национальной безопасности Республики Молдова во главе с Высшим советом национальной безопасности под руководство Президента Республики Молдова.

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## SECURITATEA NAȚIONALĂ A REPUBLICII MOLDOVA ÎN CONTEXTUL CONSOLIDĂRII SISTEMULUI DE SECURITATE INTERNAȚIONALĂ

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### **Rezumat**

*Autorul trece în revistă toate documentele ce vizează securitatea națională a Republicii Moldova, evidențiind mai multe etape în elaborarea politicii de securitate. Prima etapă a politicii naționale de securitate și apărare înglobează perioada de la declarare a independenței Republicii Moldova și până la adoptarea Constituției țării noastre (1991-1994). Cea de a doua etapă în definitivarea politicii de apărare și securitate a țării începe cu adoptarea la 5 mai 1995 a Concepției Securității naționale a Republicii Moldova, considerată un important act juridic. În anul 2008 este adoptată Concepția Securității Naționale. În concluzie, autorul subliniază că securitatea națională a Republicii Moldova nu poate fi concepută în afara contextului securității internaționale, iar în cadrul eforturilor de integrare europeană a țării noastre o atenție deosebită se acordă intensificării cooperării cu UE.*

**Cuvinte-cheie:** *securitate națională, sistemul de securitate internațională, Republica Moldova, strategie, Concepția securității naționale, interes național*





Republica Moldova ca stat independent constituie un element deplin al sistemului securității internaționale, adaptându-și sistemul național de securitate la exigențele celui internațional. Statul nostru participă activ în calitate de membru în cadrul organizațiilor internaționale de securitate, precum și la diferite operațiuni internaționale de pacificare.

De rând cu alte state ex-sovietice, Republica Moldova a devenit membru al ONU pe 2 martie 1992, concomitent cu adoptarea de către Adunarea Generală ONU a Rezoluției A/RES/46/223 [21]. La Conferința pentru Securitate și Cooperare în Europa țara noastră a aderat la 30 ianuarie 1992 în cadrul Consiliului Ministerial de la Praga, iar la 26 februarie a aceluiași an a semnat Actul Final de la Helsinki. În rezultat, Republica Moldova a obținut susținere permanentă din partea OSCE, în special în contextul reglementării conflictului transnistrean, constituind principalul actor internațional colectiv, implicat plenar în procesul de soluționare a diferendului [6].

Printre cele mai importante acte normative care determină sistemul securității naționale menționăm: Constituția Republicii Moldova; Concepția Securității Naționale din 1995 (abrogată); Concepția Politicii Externe din 1995; Concepția Securității Naționale din 2008; Strategia Militară; Strategia Securității Naționale din 2011; Proiectul Strategiei Securității Naționale din 2016, Legea securității statului; Legea privind organele securității statului; Legea cu privire la apărarea națională etc. Analiza evoluției procesului de elaborare a politicii de securitate și apărare în dependență de modificarea componentei politice interne, a reacției prompte la provocările expuse din exterior, gen terorism, interese geostrategice din exterior, precum și a procesului de constituire a cadrului legislativ intern în domeniu, ne-a determinat să proiectăm etapele elaborării politicii de securitate și apărare, care este una mobilă și deci necesită o revizuire continuă și adaptare la circumstanțele unui mediu în permanentă evoluție.

Prima etapă a politicii naționale de securitate și apărare înglobează perioada de la declararea independenței Republicii Moldova și până la adoptarea Constituției țării noastre (1991-1994) [1]. Datorită evenimentelor de renaștere națională, tensionării coliziunii etnice, persistența conflictului transnistrean, politica de securitate și apărare poartă un caracter de consolidare a statalității Republicii Moldova și de identificare a valorilor naționale. În perioada estimată, politica sectorială în domeniu este caracterizată de adoptarea legislației în domeniu, cum ar fi: Legea cu privire la apărare, Legea cu privire la forțele armate, Legea despre obligațiunea militară și serviciul militar al cetățenilor Republicii Moldova, prin care au fost stabilite bazele organizării și asigurării apărării naționale și modul de realizare a

datoriei constituționale a cetățenilor pentru apărarea Patriei [16]. Au fost adoptate Hotărârea privind unele căi de soluționare a conflictului armat din raioanele de răsărit ale Republicii Moldova [10] și Hotărârea privind principiile de bază pentru reglementarea pașnică a conflictului armat, instaurarea păcii și înțelegerii în raioanele de Est ale Republicii Moldova [9]. La această etapă politica de securitate și apărare este orientată spre afirmarea Republicii Moldova ca subiect de drept internațional și ca actor al sistemului internațional de securitate prin aderarea țării la cele mai importante organizații internaționale, prin consolidarea parteneriatelor cu statele de interes strategic. Adoptarea Constituției Republicii Moldova la 29 iulie 1994 [5] a determinat inițierea procesului de conformare a legislației în vigoare la prevederile Legii Supreme. Constituția a definit și a consolidat caracterul distinct al politicii de securitate și apărare a statului moldovenesc. În art.11 al Constituției se declară statutul de neutralitate permanentă al Republicii Moldova și se stipulează că țara noastră nu admite dislocarea de trupe militare ale altor state pe teritoriul său.

După adoptarea Constituției, Parlamentul Republicii Moldova a aprobat principalele acte normative care reglementau sistemul organelor de securitate și atribuțiile acestora, incluzând forțele armate și de securitate într-un cadru constituțional și legislativ adecvat.

Cea de-a doua etapă în definitivarea politicii de apărare și securitate a țării începe cu adoptarea la 5 mai 1995 a Concepției Securității Naționale a Republicii Moldova, considerată un important act juridic având menirea să determine politica de securitate și apărare a Republicii Moldova. În anul 2008, aceasta este abrogată, fiind adoptată o nouă Concepție în domeniu. Concepția Securității Naționale din anul 1995 a constituit temei pentru elaborarea politicii de stat în domeniul securității naționale și de apărare, însă nu determina interesele naționale, ci menționa doar unele priorități ale politicii externe, reieșind din interesele naționale. În această perioadă a fost adoptată și Doctrina militară a Republicii Moldova [13]; potrivit prevederilor acesteia, scopul principal al politicii militare a țării îl constituie asigurarea securității militare a poporului și statului, prevenirea războaielor și conflictelor armate prin aplicarea mijloacelor de drept internațional.

Această etapă este determinată de legislația cu privire la organizarea activității organelor securității statului. Prin urmare, la 31 octombrie 1995 au fost adoptate atât Legea securității statului [17], cât și Legea privind organele securității statului [14], ambele excluzând unele lacune ale Concepției Securității Naționale, completată conceptual și structural. Legea privind



organele securității statului vine cu o completare descriptivă a Legii securității statului, stabilind că organele securității statului au atribuții, cum ar fi:

a) apărarea independenței și integrității teritoriale a Republicii Moldova (atribuție specifică Ministerului Apărării), asigurarea pazei frontierei de stat, apărarea regimului constituțional, a drepturilor, libertăților și intereselor legitime ale persoanei de atentate ilegale (atribuții specifice Ministerului Afacerilor Interne, Serviciului de Informații și Securitate și Procuraturii Generale);

b) asigurarea, în limita competenței lor, a protecției economiei de atentate criminale; prevenirea evenimentelor extraordinare în transporturi, telecomunicații și la unitățile de importanță vitală (atribuții inerente Ministerului Afacerilor Interne, Serviciului de Informații și Securitate și Procuraturii Generale);

c) combaterea terorismului, a crimei organizate (atribuții inerente Serviciului de Informații și Securitate, Ministerului Afacerilor Interne), a corupției (preocupare a Centrului de Combatere a Crimelor Economice și Corupției), care subminează securitatea statului, precum și descoperirea, prevenirea și contracararea altor infracțiuni, a căror urmărire penală este de competența organelor securității statului [15].

Totodată, în această perioadă se observă intențiile distincte de reformare și modernizare a Serviciului de Informații și Securitate. Anexa Legii privind Serviciul de Informații și Securitate adoptate în anul 1999 - „Regulamentul privind controlul parlamentar asupra activității serviciilor speciale” - indică crearea unei comisii parlamentare speciale care să monitorizeze respectarea de către SIS a prevederilor Constituției și a legislației. Legislația în vigoare conține prevederi ce stipulează exercitarea controlului parlamentar asupra sectorului de apărare și securitate a statului, gen audierea rapoartelor în plenul Parlamentului Republicii Moldova ale conducătorilor organelor securității statului, care are ca suport legal Regulamentul Parlamentului (art. 108) și Legea privind organele securității statului (art. 25). Una dintre cele mai diversificate forme de control parlamentar asupra sectorului de securitate și apărare constituie controlul prin expunerea de întrebări și interpelări, reglementată prin art.108 din Regulamentul Parlamentului. O altă formă de control parlamentar asupra organelor securității statului reprezintă participarea președintelui sau a vicepreședintelui Comisiei vizate la ședințele Colegiului SIS. Această formă în mare parte poartă caracter de supervizare a procesului, prin care activitatea SIS se conformează prevederilor legislației în vigoare. Domeniul de activitate al Comisiei parlamentare pentru securitate națională, apărare și ordine publică este

stabilit printr-o Hotărâre a Parlamentului aprobată la începutul fiecărei legislaturi. De regulă, aceasta este axată pe problemele securității naționale, pe cele ce vizează realizarea activității în structurile specializate ale puterii executive menite să asigure securitatea națională, combaterea criminalității și terorismului, asigurarea ordinii publice, paza și regimul frontierei de stat, protecția secretului de stat.

Politica de apărare în această perioadă a culminat cu adoptarea la 26 iulie 2002 a Concepției Reformei Militare, care reprezintă un complex de idei, direcții, obiective, sarcini, mecanisme de perfecționare a sistemului de asigurare a securității militare a statului. Oportunitatea lansării procesului de reformă militară a fost condiționată de mai mulți factori. În primul rând, în virtutea faptului că forțele politice care au succedat la guvernare pe diferite perioade nu dispuneau de un număr suficient de cadre civile instruite și experimentate în domeniul construcției sistemului de securitate și apărare națională. În al doilea rând, perioada estimată s-a caracterizat prin aprofundarea crizei economice și financiare în Republica Moldova, fapt ceea ce a condiționat apariția unei instabilități politice în interiorul instituțiilor publice centrale, prin care fapt s-a diminuat potențialul militar al țării și al Forțelor Armate.

Elaborarea Concepției Reformei Militare a fost determinată de necesitatea constituirii unei baze conceptuale noi pentru perfecționarea sistemului militar al Republicii Moldova în conformitate cu necesitățile de apărare impuse de modificările operate în situația geopolitică națională și internațională la moment [23]. Concepția prevede că una dintre direcțiile principale în care se va desfășura cooperarea cu alte forțe armate este conducerea și controlul democratic al forțelor armate [12].

Multiplele curențe, erori și contradicții din Concepția Securității Naționale, precum și deficiențele actelor legislative cu caracter strategic care se bazau pe prevederile Concepției au format treptat opinia despre caracterul deficitar al acestuia și despre necesitatea elaborării unui nou document [19].

Noua Concepție a Securității Naționale a Republicii Moldova, adoptată în anul 2008 [18], reprezintă începutul etapei trei a politicii de securitate și apărare a țării noastre, care include și adoptarea, la o diferență de trei ani, a Strategiei Securității Naționale a Republicii Moldova. Etapa a treia a politicii de securitate și apărare a Republicii Moldova (2008-2015) este dictată de modificările constante care au avut loc în mediul de securitate, dar și de stimularea unor reforme profunde în sectorul de securitate și apărare *realizate* în conformitate cu standardele și practicile euroatlantice, în același rând, de necesitatea de a eficientiza gestiunea sectorului de securitate națională, de a



consolida capacitățile instituționale și de personal, precum și funcționalitatea instituțiilor din sectorul de securitate. Și Concepția Securității Naționale a Republicii Moldova, adoptată în anul 2008, conținea un șir de lacune, având un caracter declarativ, aplicabilitate limitată și interpreta confuz riscurile și amenințările la adresa securității naționale a Republicii Moldova, iar Strategia Securității Naționale, adoptată în anul 2011, o devansează cu mult. Spre exemplu, în cazul conflictului transnistrean nu este pusă în discuție prezența forțelor militare și a armamentului rusesc pe teritoriul necontrolat al Republicii Moldova, fapt ce denotă inconsecvență în soluționarea conflictului, dar și tendința de a camufla faptele reale care condiționează menținerea regimului separatist din raioanele din stânga Nistrului. În acest document nu se face referință la staționarea trupelor militare ruse în Transnistria, ci se enunță despre evacuarea unor trupe străine de pe teritoriul Republicii Moldova [2]. În consecință, Concepția face o distincție între trupele pacificatoare din Federația Rusă, care își onorează misiunea, și așa-zisa armată transnistreană, care este prezentată în calitate de amenințare gravă pentru securitatea națională. Reabilitarea prezenței militare ruse este cu atât mai vizibilă, cu cât în Concepție nu există nicio mențiune cu privire la decizia Summit-ului OSCE de la Istanbul din 1999, privind retragerea forțelor ruse de pe teritoriul Republicii Moldova și la Tratatul cu privire la Forțele Convenționale din Europa [7].

Autorii Concepției Securității Naționale a Republicii Moldova, vorbesc despre inițiativa de a deveni producători de securitate, neancorând la acest document prevederile Strategiei Europene în domeniul Securității, Politicii Externe și de Securitate Comună, respingând definitiv perspectiva de integrare euroatlantică, invocând participarea la consolidarea componentei de securitate a Comunității Statelor Independente. Or, pentru a deveni generator de securitate, Republica Moldova trebuie să aplice rațional tendințele regionale în domeniul securității [8]. În această Concepție unele componente de bază ale securității unui stat, cum ar fi securitatea alimentară, nici nu sunt schițate, iar altele (spre exemplu, securitatea economică) sunt abordate cu superficialitate.

În conformitate cu viziunile doctrinare naționale, de facto cel mai important act juridic al politicii naționale de securitate și apărare ce determină funcționarea sistemului de securitate și apărare, formele de asigurare a securității naționale, mecanismele și instrumentele de guvernare a sistemului securității este nu Concepția Securității Naționale a Republicii Moldova, ci Strategia Securității Naționale a Republicii Moldova [11]. Elaborarea Strategiei Securității Naționale a constituit un subiect distinct de-a lungul anilor în cadrul mai multor Planuri de acțiuni, inclusiv al celor de cooperare

între Republica Moldova și NATO (IPAP), însă a început de facto numai după aprobarea Concepția Securității Naționale a Republicii Moldova din anul 2008. Acest proces a fost unul lung, anevoios și ținut cu mare întârziere. Abia la 15 iulie 2011, Parlamentul Republicii Moldova a aprobat Strategia Securității Naționale, care constituie primul document de acest gen din Republica Moldova. Strategia a preluat o abordare identică cu cea din Strategia Securității Europene în domeniul securității, conform căreia „securitatea națională a unui stat european nu mai poate fi privită în izolare” și „ține cont de abordarea esențială a securității naționale, caracterul multidimensional și interdependent al acesteia, determinat atât de starea de lucruri din domeniile politic, militar și al ordinii publice din țară, cât și de situația din sfera economică, socială, ecologică, energetică etc.”.

În scopul conectării continue a Republicii Moldova la sistemul securității internaționale, de rând cu adaptarea actelor normative în domeniul securității la noile circumstanțe internaționale se impune oportunitatea stringentă în realizarea reformei sectorului de securitate (RSS), ce derivă din oportunitatea de a promova o reformă militară sau în sectorul de apărare, reformă amplă și eficientă, care a evoluat în timp, astfel încât să includă conceptul multidimensional al securității. Această reformă consolidează forțele militare, poliția, serviciile de securitate, grănicerii, vama; prin intermediul acesteia ei obțin un ghid complet de obiective, instruire, responsabilități și coordonarea necesară. Organele abilitate din Republica Moldova conștientizează că pentru a aplica toate mijloacele de asigurare a securității va fi necesar de a implica un spectru diversificat de instituții [24]. Reforma sectorului de securitate trebuie să fie una eficientă, care să asigure dezvoltarea evolutivă a acestui stat. În anul 2006, discuția a avut ca rezultat semnarea unui Acord care avea să asigure temelia pentru promovarea unei astfel de reforme - Planul Individual de Acțiuni ale Parteneriatului (IPAP) semnat între Republica Moldova și Alianța Nord-Atlantică (NATO).

Soluția la problema în cauză a fost oferită în Raportul General al Activităților UE. În Capitolul V „Europa ca un partener global”, Secțiunea 4 „Contribuție la securitatea globală”, se menționează despre Strategia Europeană în domeniul Securității și Politica Externă și de Securitate Comună, în special despre Reforma sectorului de securitate (RSS). Raportul informa publicul că la 24 mai 2006, Comisia a adoptat un comunicat intitulat „Reflecții privind susținerea de Comunitatea Europeană a RSS”. În acest comunicat se declara că UE susține RSS în peste 70 de țări. Prin recomandările UE în domeniu este etalată importanța pe care instituțiile



europene o atribuie RSS în țările cu care are semnate Planuri de acțiuni, cum este cazul Republicii Moldova.

Susținerea în continuare a reformelor sectorului de securitate inițiate în Republica Moldova devine o perspectivă importantă pentru asigurarea controlului asupra regiunii transnistrene. Pe de altă parte, printre subiectele cele mai importante pe care le expune o abordare a securității Republicii Moldova poate fi menționată și lipsa unei definiții acceptate în societate a interesului național [4]. Interesele naționale ale unei țări deseori depind de raportul dintre interesele naționale ale diferiților actori de pe arena internațională, de caracterul de concurență al acestor interese.

În Republica Moldova, formarea și evoluția interesului național este afectat de deficitul de integritate teritorială a statului (ca urmare a tendințelor separatiste din stânga Nistrului încununate cu existența de facto a formațiunii anticonstituționale rmn), de nivelul scăzut al democrației, de îmbinările paradoxale ale scopurilor democratice cu mijloace autoritare. Iar, capacitățile reduse ale factorului de putere în reformarea democratică a țării au frânat până la urmă promovarea interesului național pe arena internațională. Totodată, interesul național al Republicii Moldova este permanent știrbit de interesul geostrategic al Rusiei prin amplasarea contingentului militar rusesc în raioanele din stânga Nistrului, prin trăgănarea evacuării lui, prin stimularea și susținerea regimului anticonstituțional de aici. Interesele Rusiei și problema secesionismului transnistrean rămân a fi izvorul insecurității în regiune și principalul obstacol al integrării europene a țării [22].

Politica de stat în materie de securitate națională trebuie să fie orientată atât spre asigurarea intereselor și valorilor naționale, cât și spre prevenirea și soluționarea problemelor (amenințărilor, riscurilor, pericolelor și provocărilor) cu care se confruntă un stat. Excesul de uzitare a principiului de neutralitate ar fi trebuit să coincidă în măsură egală cu cel legat de dezvoltarea sistemului național de apărare. Aceste condiții, dar și apariția noilor riscuri și vulnerabilități survenite în cadrul actualului sistem de securitate internațională, gen războiul hibrid, extinderea formelor noi ale terorismului, intensificarea tendințelor separatiste, au determinat actuala guvernare de la Chișinău să revină asupra prevederilor Strategiei Securității Naționale. În alte state, spre exemplu în România, elaborarea și adoptarea unei noi strategii are loc practic o dată la trei ani [25].

Proiectul noii Strategii, care în prezent se află în proces de analiză la Președinția Republicii Moldova și de consultare cu Academia de Științe a Moldovei, expune referințe noi care nu figurau anterior în actele oficiale. În

acest proiect al Strategiei, în mod aparte se propune pentru prima dată declararea că pe continentul european NATO rămâne a fi Alianța politică și militară cu cele mai performante capacități militare și tehnologice, cu cel mai sporit nivel al coeziunii valorilor și al solidarității aliaților, în stare să asigure securitatea și apărarea colectivă în arealul de referință. În același rând, Uniunea Europeană, în calitate de principală structură și comunitate economico-politică pe continent, constituie factorul integrant și stabilizator în cadrul sistemului european și internațional de securitate.

Printre noile riscuri și amenințări expuse la adresa securității naționale a Republicii Moldova un atare document pentru prima dată include:

Persistența instabilității regionale și a conflictului de pe teritoriiul Ucrainei, factori ce limitează capacitatea Republicii Moldova în promovarea intereselor strategice: integrarea europeană, procesul de identificare a unor soluții politice, viabile privind soluționarea conflictului transnistrean în condițiile respectării suveranității și integrității sale teritoriale, asigurarea securității energetice și a intereselor comercial-economice ale statului.

Dinamizarea acțiunilor militare și de diversiune, războiul hibrid și potențialul extinderii zonei de instabilitate de pe teritoriul Ucrainei au influență directă asupra unor elemente, grupuri cu viziuni extremiste din Republica Moldova și păstrează riscul extinderii conflictului pe teritoriul Republicii Moldova.

Extinderea presiunilor politice externe manifestate prin: acordarea de susținere economică, militară și politică regimului neconstituțional de la Tiraspol; impunerea restricțiilor artificiale în accesul produselor moldovenești pe piețele tradiționale, inclusiv blocarea accesului cetățenilor Republicii Moldova pe piața muncii din alte țări; aplicarea tratamentului diferențiat în raport cu părți ale teritoriului vamal unic al Republicii Moldova (rmn, UTA Găgăuzia).

Dependența exagerată de resursele energetice, rețelele de distribuire și/sau furnizorii controlați de un singur stat, combinate cu valorificarea limitată a resurselor energetice alternative.

Persistența riscului sporit al atacurilor cibernetice asupra infrastructurilor informaționale și a obiectivelor de importanță strategică ale țării [3].

Aportul Republicii Moldova la consolidarea sistemului de securitate internațională s-a intensificat în urma semnării Acordului de Asociere dintre Republica Moldova și Uniunea Europeană, semnat la Bruxelles la 27 iunie 2014, și se dezvoltă în cadrul Politicii Europene de Vecinătate și al Parteneriatului Estic. Consolidarea cooperării în cadrul Politicii Externe și de Securitate Comune a Ue (PESC) servește intereselor de durată ale Republicii





Moldova, integrarea europeană rămânând, conform proiectului noii Strategii, obiectivul strategic ireversibil al agendei interne și externe a Republicii Moldova. Unul dintre capitolele incluse în Acordul de Asociere RM-UE se referă la Politica de Securitate. Disponibilitatea Republicii Moldova de a fi implicată în aranjamentele Politicii de Securitate și Apărare Comună a UE (PSAC) a fost inclusă în Programul de Activitate al Guvernului „Integrare Europeană, Libertate, Democrație, Bunăstare” pentru anii 2011-2014 [20]. Acordul de Asociere prevede și cooperarea internațională în domeniul luptei împotriva terorismului. Părțile convin să colaboreze la nivel bilateral, regional și internațional pentru a preveni și a combate terorismul în conformitate cu dreptul internațional, cu rezoluțiile ONU în domeniu, cu standardele internaționale în domeniul drepturilor omului, cu dreptul refugiaților și cu dreptul umanitar. La același spectru de idei se referă și cooperarea părților pentru a preveni utilizarea sistemelor lor financiare și a celor nefinanciare relevante în scopul spălării veniturilor provenite din activități infracționale, precum și în scopul finanțării terorismului.

Un aport important în cultivarea educației de securitate, în monitorizarea, expertizarea și consilierea în domeniul politicii de securitate și prevenire a terorismului îl au think tankurile din țara noastră, precum: Institutul de Politici Publice, Asociația pentru Politică Externă, Institutul pentru Dezvoltare și Inițiative Sociale (IDIS Viitorul) etc. Spre exemplu, Institutul de Politici Publice dezvoltă proiecte în domeniul de securitate: “Consolidarea capacității mass-media de a informa și monitoriza reformele din sectorul de securitate și procesul de soluționare a conflictului transnistrean”; Asociația pentru Politică Externă: Dialoguri Transnistrene; ”Sinteze și Dezbateri de Politică Externă și Integrare Europeană”; „Impactul aderării Republicii Moldova la Comunitatea Energetică Europeană asupra securității sectorului energetic autohton”. Prin intermediul acestor proiecte, instituțiile de securitate naționale sunt consiliate de societatea civilă și de instituțiile academice de profil.

Republica Moldova participă intens la activitatea sistemului internațional de securitate, aplicând eficient oportunitatea oferită de IPAP și UE de a participa de rând cu alte state partenere. În acest sens, autoritățile naționale urmează să formuleze o poziție definită cu privire la Politica de Securitate și Apărare Comună, care este un element distinct al Politicii Externe și de Securitate Comune a Uniunii Europene și reflectă aspirațiile Uniunii Europene de a asigura securitatea comună prin cooperare multilaterală în cadrul Uniunii Europene și cu participarea partenerilor din exterior. Politica de Securitate și Apărare Comună este o continuare a Politicii Europene de Securitate și

Apărare, lansate în decembrie 1998 și a luat naștere ca unul dintre elementele Politicii Externe și de Securitate Comune a Uniunii Europene, care la rândul său, a fost dezvoltată în cadrul tratatelor de bază ale UE.

Republica Moldova cooperează cu structurile internaționale de securitate în domeniile prevenirii și soluționării conflictelor, gestionării crizelor, combaterii terorismului și neproliferării armelor de distrugere în masă. În calitate de element al sistemului securității internaționale, țara noastră participă la eforturile globale, regionale și subregionale de promovare a stabilității și securității internaționale prin cooperarea în cadrul UE, NATO, ONU, OSCE și al altor organizații internaționale în domeniu.

### **Concluzii**

Securitatea națională a Republicii Moldova nu poate fi concepută în afara contextului securității internaționale, iar în cadrul eforturilor de integrare europeană a țării noastre o atenție deosebită se acordă intensificării cooperării cu UE, orientată spre consolidarea securității naționale și a celei regionale. Rolul țării noastre în cadrul sistemului de securitate internațională este determinat de mai mulți factori, printre care: interesele naționale; principalele amenințări, riscuri și vulnerabilități la adresa securității naționale; principalele repere ale politicii externe și ale politicii de apărare; căile de asigurare a securității naționale.

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## GEOPOLITICA STATELOR DE FRONTIERĂ ȘI CRIZA POLITICII EUROPENE A „PARTENERIATULUI ESTIC”

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### **Rezumat**

În acest articol autorul supune analizei diferite fenomene ce explică geopolitica statelor de frontieră. Este vorba despre: stat de frontieră, parteneriat estic, semnificație geostrategică, mitul regimului fără vize. Diverse teze se referă la criza Uniunii Europene și a statelor europene. Autorul își exprimă propria opinie asupra viitorului Europei, întrebându-se ce va urma după eșecul Programului Parteneriatului Estic. Sunt descrise relațiile Uniunii Europene cu Rusia. În concluzie, autorul revine la obiectivele Parteneriatului Estic, menționând că acestea vizează interesele economice ale Uniunii Europene.

**Cuvinte-cheie:** geopolitică, state de frontieră, Parteneriat estic, Uniunea Europeană, Rusia

## ГЕОПОЛИТИКА РУБЕЖНЫХ ГОСУДАРСТВ И КРИЗИС ЕВРОПЕЙСКОЙ ПОЛИТИКИ «ВОСТОЧНОГО ПАРТНЁРСТВА»

### **Аннотация**

*В данной статье автор анализирует различные явления связанные с геополитикой приграничных государств. Речь идёт о приграничных государствах Евросоюза, о Восточном партнёрстве, о геостратегической оценки, о мифе без визового режима. Различные тезисы отражают кризис Евросоюза и европейских государств. Автор высказывает собственную позицию по вопросу будущего Европы, выделяя вопрос: Что следует после краха Программы Восточного партнёрства. Далее автор характеризует отношения Евросоюза и России. В заключении автор подчёркивает, что цели Восточного партнёрства защищают экономические интересы Евросоюза.*

**Ключевые слова:** геополитика, приграничные государства, Восточное партнёрство, Евросоюз, Россия

**Рубежное государство** — держава, расположенная на цивилизационных (суперэтнических), геополитических, геоэкономических, конфессиональных и других рубежах между двумя и более центрами силы. Из бывших союзных республик к рубежным государствам относятся Украина, Молдова и Грузия. Всемирный Банк решил отметить в своём ежегоднике 25-летие распада СССР статистикой о динамике ВВП (ППС) стран мира с 1990 по 2015 годы. По его данным эти страны стали мировыми аутсайдерами по росту ВВП (ППС) с 1990 по 2015 годы, а Украина стала единственной страной в мире, не достигшей за годы независимости уровень 1990 года. Три страны по несчастью объединяет аморальная по своим последствиям вера в западные ценности [13], или как сказал известный европейский философ Карен Свасьян, желание стать частью «богатого пуза» Запада. По выражению патриарха американской экономической мысли Джона Гэлбрайта желание сиюминутной замены одной общественно-политической системы другой является «приступом глупого оптимизма». В результате три рубежных государства потеряли часть территорий и отброшены на мировую периферию.

**«Восточное партнёрство». Финиш антиевропейского проекта Европы.** После падения Берлинской стены и распада Советского Союза главной геостратегической задачей Европейского Союза была



политика продвижения на Восток, которая исходила из прогноза сохранения положительных темпов экономического роста в обозримом будущем. Однако из-за системного внутреннего кризиса (финансового, еврозоны и миграционного) и игнорирования геополитических реалий, восточное направление европейской политики соседства, реализуемое в последние годы главным образом в рамках «Восточного партнёрства», стало одной из острых общеевропейских проблем, вызывающих опасность открытия горячего фронта.

Официально программа «Восточного партнёрства» ставила цель сотрудничества и интеграции связей ЕС с шестью восточными соседями. Однако только Украина, Грузия и Молдова подписали соглашения об ассоциации с ЕС, Азербайджан воздерживается, а Белоруссия и Армения уже являются членами Евразийской экономической союза (ЕАЭС).

**Времена безвозмездной экономической поддержки прошли.** В 90-е годы для стран Центрально-Восточной и Восточной Европы были созданы программы ФАРЕ и ТАСИС и предложен общеевропейский проект трансмодальных транспортных коридоров. Однако по мере расширения на Восток стали проявляться финансовые ограничения в реализации евроинтеграционных программ. Ежегодные темпы экономического роста ВВП Евросоюза в 60-е годы были на уровне 5%, перед мировым финансовым кризисом — +3%, в 2008 году — +0,8%, а далее началась стагнация. В 2009 году ВВП сократился на -4,1%, 2012 (-0,3%), 2013 (0,0%), с небольшим ростом в 2010/11 гг. (соответственно, 2,1% и 1,7 %), 2014 году (1,3%, в еврозоне 0,9%) и в 2015 году (1,7%, в еврозоне 1,5%). В результате замедления темпов экономического роста уже в третий раз сокращается финансирование крупных инфраструктурных проектов, которые в 90-е годы выступали в качестве главного «пряника» для кандидатов в члены ЕС.

За последние два десятилетия Европейский Союз использовал «мягкую силу» для продвижения на Восток и на первых этапах трудно было отказаться от привлекательного предложения членства в ЕС. Но из-за поспешной евроинтеграции накопилось много проблем, угрожающих целостности ЕС. Инвестиционный бум завершился с началом мирового финансового кризиса [14].

По своему геостратегическому значению задача расширения ЕС на Восток была сравнима лишь с созданием самого Европейского Союза в середине двадцатого столетия. Однако, остается открытым вопрос восточных границ и скорости объединения. Становится очевид-

ным, что этот процесс будет не только медленным, чем казалось после падения «железного занавеса», но и может привести к нежелательному для Европы углублению геополитической конфронтации на постсоветском пространстве.

На Западе неоднозначно оценивается процесс продвижения ЕС на Восток. Впервые в истории Евросоюза при приеме новых членов (ЕС-25 и ЕС-28) политические цели доминировали над экономической целесообразностью, и был нарушен один из основополагающих принципов приема новых членов, чья экономика должна была соответствовать среднеевропейскому уровню. Это требование не выполнено, ВВП на душу населения у новых членов даже после десятилетия евроинтеграции уступает среднему европейскому уровню. Достаточно сравнить ВВП на душу населения по паритету покупательной способности (средний по ЕС принят за 100%). В Болгарии он составляет 45%, в Румынии — 54%, в Хорватии — 59%, в Латвии — 64%, в Венгрии и Польше — 68%, в Эстонии — 73%, в Литве — 74%, в Словакии — 76%. При этом стоимость рабочей силы во много раз меньше среднеевропейского уровня.

Средства на реформировании экономики новых членов выделяются Евросоюзом и ложатся тяжелым бременем, прежде всего на Германию, чей вклад в консолидированный бюджет ЕС превышает 20 %. В Германии, которая является экономическим локомотивом европейской интеграции, сокращаются социальные программы, а \$1,5 трлн. вложенных в Восточную Германию не привели к выравниванию уровня жизни.

После падения «железного занавеса» особенно актуальными стали проблемы общеевропейской транспортной интеграции, обусловленной открывшимися перспективами для торговли и экономики, улучшения сообщения между Западом и Востоком Европы. В 1994 году на острове Крит вторая Общеевропейская конференция определила девять приоритетных транспортных коридоров с учетом основных направлений перевозок грузов и пассажиропотоков. Предполагаемая стоимость развития коммуникационных коридоров оценивалась примерно в \$70 млрд. Финансирование осуществлялось за счет заинтересованных стран, международных финансовых организаций, частных инвестиций, программ ТАСИС и ФАРЕ. Проект планировалось реализовать к 2010 году при условии достигнутого взаимопонимания заинтересованных стран. Для современной Восточной Европы проект международных транспортных коридоров ЕС предоставлял реальную возможность мирохозяйственной интеграции. Однако поспешное расширение на





Восток и финансовый кризис не позволили Европейскому Союзу в полной мере реализовать программу создания Панъевропейский транспортных коридоров. Европейский рынок транспортной инфраструктуры наглядно свидетельствует о нарастающих финансовых трудностях. Срок завершения грандиозного проекта переносится уже в третий раз, в начале с 2010 года на 2020 год и наконец — на 2030 год. При этом из новой транспортной стратегии Евросоюза исключены страны «Восточного партнёрства».

**Трансформация миграционной политики и миф о либерализации безвизового режима.** Еще несколько лет назад была популярна европейская идея частичной замены «желтых» и «черных» рабов (гастарбайтеров) на «белых» из Восточной Европы, но эти времена прошли. Европа в условиях экономического спада, кризиса еврозоны и миграционного кризиса не испытывает потребностей в дополнительной рабочей силе из-за рубежа [3]. Предлагаемый для стран «Восточного партнёрства» безвизовый статус не дает права на работу или проживание. Предоставление безвизового режима может заблокировать в Европейском парламенте любая страна ЕС. Недоступны для безвизовых поездок будут европейские страны, не входящие в «Шенгенскую зону» (Великобритания, Ирландия, Швейцария, Лихтенштейн, Болгария, Румыния и Словения).

**Нарастающий кризис новых членов Евросоюза.** К европейским континентальным проблемам как кризис еврозоны и миграционный кризис, кризис на Украине и выхода Великобритании из Евросоюза, можно прибавить нарастающий кризис новых членов Евросоюза из бывших стран народной демократии. Кризис наступал постепенно с первого дня их членства в Евросоюзе [9]. Как уже отмечалось выше, в результате «головокружения от успехов» Брюссель нарушил один из основополагающих условий евроинтеграции. При вступлении в ЕС не одна из стран не вышла на среднеевропейский уровень по макроэкономическим показателям. С другой стороны, каждая страна рассчитывала на большую финансовую поддержку в модернизации экономики. Брюссель в полной мере не выполнил программу создания европейских международных транспортных коридоров.

В последние годы члены Вышеградской группы (Польша, Венгрия, Чехия и Словакия) все чаще выступают в качестве восточноевропейских «смутьянов». Лидером является Польша, в наибольшей степени обласканная Вашингтоном и Берлином. Только за последнее десяти-



летие Польша получила от Запада свыше 70 млрд. евро, это не считая многомиллиардный долг, списанный по просьбе США. Однако это не привело к уменьшению трудовой миграции поляков в Западную Европу.

В ближайшем будущем, независимо от миграционного кризиса, недовольство бывших европейских стран народной демократии политикой Брюсселя будет возрастать. Среди новых членов Евросоюза нет не одной страны, которая была абсолютно удовлетворена итогами европейской интеграции. Во всех странах произошла частичная потеря политического и экономического суверенитета. Соглашения с ЕС часто подписывались бездумно, когда политический популизм доминировал над экономической целесообразностью. Бедные страны стали еще беднее, в отношении которых ЕС часто выступает в качестве метрополии.

Утешительный проект «Восточного партнёрства». После распада СССР Запад использовал в отношении стран постсоветского пространства «мягкую силу» в виде неоколониальной оффшорной геополитики. Если в оффшоры выведено всего 5% национального богатства США, то в Российской Федерации – 50%, а на Украине – 80% [4].

В 2009 году на саммите в Праге было официально учреждено «Восточное партнёрство» в целях содействия политическим и социально-экономическим реформам в странах-участницах проекта при условии выполнения ими программных требований ЕС. Инициатива «Восточного партнёрства» принадлежала Польше при участии Швеции. Проект «Восточное партнёрство» с шестью постсоветскими государствами создавался как утешительный приз для постсоветских государств, которые не будут членами Европейского Союза (Украина, Белоруссия, Молдавия, Азербайджан, Грузия и Армения). Восточное партнёрство предполагало перспективу заключения соглашения об ассоциации нового поколения, глубокой интеграции в экономику ЕС, заключения всеобъемлющих соглашений о зонах свободной торговли, облегчения поездок в ЕС для граждан при условии реализации мер по повышению безопасности, внедрения мер энергобезопасности и увеличения финансовой помощи. Но главной целью «Восточного партнёрства» является доступ ЕС на постсоветские рынки в одностороннем порядке.

Проект рассматривался как очередной региональный вектор европейской политики соседства, дополнение к «Северному измерению» и «Средиземноморскому союзу». Мировой финансовый кризис не позволил реализовать программу «Северного измерения». Политика ближнего соседства со средиземноморскими арабскими государствами



закончилась уничтожением Ливии — лучшей страны для жизни человека в Африке (по классификации программы ООН по человеческому развитию), неконтролируемой миграцией и росту терроризма в Европе.

Среди программ соседства необходимо вспомнить «Организацию черноморского экономического сотрудничества», которая так же оказалась неэффективной, особенно после несостоявшегося американского проекта ГУУАМ и вступления Румынии и Болгарии в Евросоюз.

В ноябре 2013 года прошел третий саммит «Восточного партнёрства» в Вильнюсе. Участникам проекта в качестве «пряника» было обещано «светлое» европейское будущее в «цивилизованной семье» вместо «темного» пророссийского. Молдова парафировала договор об ассоциации с ЕС, а Армения и Украина воздержались от его подписания. Германия как экономический лидер Евросоюза впервые в послевоенной истории попыталась реализовать свои геополитические интересы на Украине, но по требованию из Вашингтона, отказалась от своих намерений.

Рижский саммит, состоявшийся в мае 2015 года, особенно наглядно показал кризис восточной политики Евросоюза [2], в которой идеологическая антироссийская направленность доминировала над экономической целесообразностью. В саммите отказались принимать участие президенты Белоруссии и Азербайджана. Страны-партнеры требуют большей дифференциации в восточной политике ЕС и только три страны (Молдова, Грузия и Украина) декларируют желание вступления в ЕС. Многие западные эксперты признают разочарование восточных партнеров в программе сближения с ЕС. Брюссель не располагает финансовыми ресурсами, необходимыми для реализации программы. По мнению многих экспертов фактически произошла смысловая смерть «Восточного партнёрства». Не может дальше быть приоритетом восточной политики Евросоюза программа, раскалывающая постсоветское пространство, провоцирующая войны и политические кризисы, предлагающая вместо взаимовыгодного экономического сотрудничества «сдерживание имперских амбиций России».

Границы трех оставшихся членов «Восточного партнёрства» сформировались в советском геополитическом пространстве, и его трансформация привела к утратам территориальной целостности Молдовы, Украины и Грузии. Это произошло в первую очередь из-за националистической политики, игнорирующей геополитические реалии и исходящей из мифического принципа «Запад нам поможет» и стремления местных политиков продать свой суверенитет в обмен на

гарантии личной безопасности. Особую активность в геополитическом переформатировании трех государств проявляют Соединённые Штаты Америки, что не подкрепляется соответствующей экономической помощью. Общим для этих беднеющих государств является и доминирование переводов гастарбайтеров в формирование национального ВВП.

Рассмотрим макроэкономические показатели оставшихся членов «Восточного партнёрства». Перед мировым финансовым кризисом индекс физического объема ВВП 2007 года к 1991 году составлял в Украине 47%, Молдове — 61 %, Грузии — 84 %. ВВП Украины на душу населения в 2008 году более чем в два раза превышал аналогичный показатель Молдовы и в 1,5 раза — Грузии. По прогнозу МВФ в 2016 году он почти сравняется с Молдовой и будет в два раза меньше, чем в Грузии, и меньше Папуа–Новая Гвинея (1973), самой динамично развивающейся страны третьего мира. Здесь за период 1970-2015 гг. ВВП на душу населения вырос в 7 раз. В Европе Молдова и Украина стали самыми бедными странами, чей ВВП на душу населения в два раза меньше недавнего многолетнего европейского аутсайдера (Албании).

*Таблица 1. ВВП на душу населения (номинал) в 2014 – 2016 гг., по данным МВФ*

Место в мире	Страна	2014	2015	2016 (прогноз)
134	Украина	2924	2004	1854
140	Молдова	2243	1804	1712
116	Грузия	4428	3788	3790
	Евросоюз		32006	
	Мир в целом		10023	

Источник: World Economic Outlook Database-April 2016, International Monetary Fund. Accessed on 12 April, 2016.

**Молдова. Результатом «Соглашения об ассоциации Молдовы с ЕС» стал глубокий экономический кризис.** С Россией свернуты торговые связи, а Запад не собирается в обозримом будущем предоставлять Молдове членство в ЕС. В 2015 году Молдова первой из стран «Восточного партнёрства» получила безвизовый режим с Евросоюзом, который не решил проблемы трудовой миграции. По данным Всемирного банка, переводы молдавских гастарбайтеров составляют около трети ВВП страны.

Не произошла переориентация рынков сбыта молдавских товаров.



Внешнеторговый оборот страны ежегодно сокращается, и по данным Национального бюро статистики в 2015 году экспорт товаров составил \$1967 млн., что на 16 % меньше, чем в 2014 году.

В 2015 году на международной конференции в Кишинёве политики и эксперты из Молдовы, Украины, Румынии, Болгарии, России, Германии, Литвы, Австрии и Словакии подвели первые итоги Ассоциации Молдовы с ЕС. В решении конференции отмечалось, что подписанное соглашение с ЕС об Ассоциации — большая ошибка, которая привела к многочисленным проблемам в экономическом и социальном развитии страны, а также для существования молдавской государственности. Нужны прагматические отношения с ЕС и стратегические с Россией, сохранение территориальной целостности на основе федерализации. Политика молдавских властей привела к тому, что в евроинтеграции разочаровались даже самые большие оптимисты [11]. Выгоды от обнуления пошлин у Евросоюза оказались вдвое выше, чем у Молдовы.

Молдавская экономика испытывает чрезмерную зависимость от внешней поддержки (кредитов), которая составила в 2012 году 13%, 2013 году –19% и в 2015 году – 17%. Особенно зависит от внешних кредитов сельское хозяйство (67%).

Главная причина политического и экономического кризиса в Молдове – проевропейская власть (с 2009 года), допустившая обвальный спад в экономике при росте коррупции. Имидж молдавских евроинтеграторов, находящихся во власти, подорван непрекращающимся политическим кризисом и коррупционными скандалами. В результате, как пишут СМИ, поддержка Брюсселем Кишинева стала «условной».

**Грузия.** За последние годы произошла кардинальная геополитическая и геоэкономическая трансформация Грузии, в которой все в большей мере вместо российского бизнеса стал доминировать не европейский, а турецкий бизнес. В Грузии активно работают турецкие банки, строительные компании, доминируют турецкие инвестиции. Европейский Союз не смог вложить капитал в создание производств на территории Грузии, в том числе из-за перманентной политической нестабильности на Южном Кавказе. Выгодное геостратегическое положение Грузии на пути транспортировки бакинской нефти и возможная политическая нестабильность могут привести к непоправимым последствиям. В Турции набирают мощь националистические партии, а часть элиты не расстается с надеждой вернуть «оккупированную» Грузией территорию Абхазии.

Активизация сотрудничества Грузии с НАТО не стало гарантом



целостности Грузии, а лишь усилила присутствие американских инструкторов и натовской Турции, которая как набирающая мощь региональная держава стремится восстановить свое влияние на территории бывшей Османской империи. Согласно Шестой статье Карсского договора 1921 года Турция имеет полное право «вернуть Батуми и его область», то есть Аджарию в случае его нарушения. На картах в турецких учебниках истории для 11-х классов территория Аджарии показана, как «оккупированная историческая область Батуми». В Аджарии выражают опасение усилением «турецкой экспансии» [7].

Не оправдались надежды на международные транспортные коридоры, проходящие через Грузию. Возможности для их создания в Черном море блокируются отсутствием стабильных двухсторонних торговых потоков. Созданные международные паромные линии работают с перебоями и нарушением расписания.

Брюссель проявляет все меньшее стремление к евроинтеграции с Грузией. После снятия запрета на импорт грузинских, преимущественно, сельскохозяйственных товаров, местные фермеры в большей степени стали ориентироваться на перспективный российский рынок.

**«Европейская мечта» Украины.** Благодаря «революции достоинства» страна стремительно становится беднейшей в Европе. В 90-е годы Украина была единственной страной Восточного блока, которая по макроэкономическим показателям соответствовала требованиям Брюсселя для вступления в Европейский Союз. По данным Программы человеческого развития (ПРООН) Украина в 1990 году занимала по макроэкономическим показателям 25 место в мире. Но украинская власть после провозглашения независимости на первое место поставила приватизацию, породившую доморощенных олигархов и крупномасштабную коррупцию. К 2013 году по Индексу человеческого развития Украина сместилась на 83 место, а по экспертным оценкам в последующие два года отброшена во вторую сотню (по прогнозу примерно 140 место). Очередной Майдан привел к утрате Крыма, гражданской войне на Донбассе и политической нестабильности.

Официальными кандидатами на вступление в Евросоюз являются Албания, Македония, Сербия, Черногория и Турция, которая ждет своей очереди еще с 60-х годов. В будущем кандидатами могут стать Косово, Босния и Герцеговина. То есть первоочередной, но долгосрочной программой является интеграция балканских стран. Украина в список кандидатов никогда не входила.



Заявление председателя Европейской комиссии Жан-Клода Юнкера о шансах вступления Украины в Евросоюз и НАТО через 20-25 лет является предсказуемым для Брюсселя и неприятным сигналом для украинских политиков, которые на протяжении многих лет обещают гражданам неизбежную скорейшую евроинтеграцию. Игнорирование Киевом соглашения Минск-2, углубляющийся внутривластный кризис и отсутствие результатов в борьбе с коррупцией, получившей новое дыхание, раздражает европейских чиновников. Кроме того украинская власть стремится эксплуатировать образ жертвы, вместо проведения экономических реформ в целях евроинтеграции.

После подписания Соглашения об ассоциации с ЕС и зоне свободной торговли выгоды от обнуления пошлин у Евросоюза оказались на порядок выше, чем у Украины.

После очередного Майдана уровень жизни в Украине упал в два раза, национальная валюта обесценилась в 3,1 раза, инфляция превысила 40 %. На этом фоне главной задачей украинского правительства остаётся свёртывание торговых и других связей с Россией. В результате оборонная и авиационная отрасли лишились крупных заказов и 80% доходов. Создание свободной зоны торговли с ЕС привело к потере преференций на крупнейшем российском рынке сбыта продукции.

Ежегодные потери от разрыва экономических связей с Россией составляют \$15 млрд., взамен страна получает транши МВФ по \$1 млрд. После так называемой «революции достоинства» произошло беспрецедентное падение прямых иностранных инвестиций в Украину в десять раз с \$4,5 млрд. в 2013 году до \$410 млн. в 2014 году. В последующие годы не восстановлен дореволюционный уровень. По традиции треть инвестиций поступает из оффшоров, куда выведены активы украинских и российских олигархов (Кипр, Британские Виргинские острова и др.). Падение ПИИ вызван в первую очередь уменьшением вложений украинского и российского бизнеса, выведенного в оффшоры [12]. В 2016 году по сравнению с предыдущим годом транзит нефтепродуктов через Украину сократился в 6,3 раза. Число выехавших на работу за границу увеличилось на 1,2 млн. человек. Всего за границей трудится 4,6 млн. человек или 25% экономически активного населения. После подписания с ЕС соглашения о Зоне свободной торговли товарооборот увеличился незначительно, причем импорт из ЕС в десять раз превысил экспорт украинских товаров.

**Миф об аграрной сверхдержаве.** По заявлению бывшего амери-

канского посла Украина должна стать аграрной сверхдержавой. Но еще не было в мировой практике случая, чтобы страна, идущая по пути деиндустриализации и планомерно разрушающая вершину созданной высокотехнологической пирамиды, смогла рассчитывать на лидирующие позиции даже в третьем мире, когда вместо ракет будет выращивать «рапс» на биотопливо. Американский посол, вероятно, не знал, что по данным Института почвоведения и агрохимии за последнее 130 лет черноземы Украины потеряли до 30-40% гумуса и перешли в разряд почв со средним плодородием. Из 26 млн. га украинских черноземов не менее 15 млн. га находятся в деградированном состоянии. На этом фоне рекордное увеличение производства в 2016 году семян подсолнечника на 22% является пирровой победой. Семена экспортируются в Европу, которая стремится не выращивать подсолнечник, так как эта культура сильно истощает почву.

**Информация для размышления.** В прошлом аграрной сверхдержавой была Аргентина [5]. По численности населения она равновелика современной Украине, но её экономическая мощь (номинальный ВВП) в 6,5 раза превышает украинский показатель. В 1990 году этот макроэкономический показатель Аргентины был всего в 1,5 раза выше, чем в советской Украине. Самостийная Украина решила пойти путем деиндустриализации и наступить по рекомендациям внешних управляющих на грабли «аграрной сверхдержавы». Аргентина достигла временных успехов аграрной сверхдержавы и благодаря эффективной реформе народного образования. На Украине эта реформа привела во власть самостийных «патриотов» — мародерам от науки и образования, облечённых в плагиате диссертаций. За четверть века независимости произведено столько липовых «кандидатов» и «докторов» наук, что, войдя во власть, они способны без Майданов эффективно парализовать будущее у государства.

Как пишет британская Guardian, «Украина серьезно рискует оказаться несостоявшимся государством». Без кардинальной смены акцентов в экономической политики, исходящей из интересов страны, а не западных кураторов, Украину ждет дальнейшее падение ВВП, сокращение промышленного производства, безработица и девальвация национальной валюты.

Украина внесла весомый вклад в раскол восточноевропейского геополитического пространства, сыграв роль «пятой колонны» Запада и превратилась в лидеры «серой» зоны и беднейшую страну Европы.





Украина стала «передовой» страной рыночного фундаментализма, основанного на бизнесе на государственных ресурсах. Можно сказать, что это вершины европейской интеграции страны, где власть уже живет по европейским сантехническим стандартам и сделает все возможное, чтобы закрепиться на достигнутых рубежах. В результате оффшорной геополитики на Запад выведены активы стратегических предприятий и практически утрачены основные рычаги управления экономикой и регулирования платежного баланса.

Украина должна осуществить конституционную реформу, которая должна оградить Восток, Юг Украины и Закарпатье от националистических поездов «дружбы» с дубинами, битами и указаниями, какие памятники ставить или кого сжигать. Если не будут сегодня обсуждаться проблемы федерализации и конфедерации, завтра будет поздно. Чтобы у страны было будущее, Украине необходимо избавляться от псевдонациональной идеи «под кого залечь», неоднократно приводившей к утрате государственности (Руинам), и найти свое место в новой геополитической конфигурации Большой Европы. Для этого требуется профессионализм в управлении с опорой на украинский народ Запада, Востока и Юга Украины. Будущее Украины за нейтральным статусом. Украина должна оставаться нейтральным и дружественным соседям государством с сохранением обширных экономических связей на Западе и Востоке. Если украинская власть выберет вместо нейтралитета проамериканскую или пророссийскую сторону, она будет разорвана без особого сожаления для основных геополитических игроков в Восточной Европе. Украине, Молдове и Грузии необходимо внимательно изучить опыт Албании — полувекового европейского аутсайдера, совершившего экономический рывок благодаря эффективному использованию фактора рубежности государства [8].

**Что будет после провального «Восточного партнерства»?** Сепаратизм, терроризм, финансовый кризис с частичной девальвации евро, миграционный кризис не позволяют Евросоюзу осуществлять дальнейшее продвижение на Восток. В Западной Европе ширится движение против «Евроленда», включая противодействие расширению Европейского Союза и наплыву мигрантов (дешевой рабочей силы). Усиливающаяся «партия» евроскептиков не приведет в обозримом будущем к распаду Европейского Союза, но окончательно остановит продвижение на Восток, включая «европейский выбор» Украины. Дальнейшее расширение ЕС будет ограничено также дефицитом финансовых ресурсов, необходимостью «переварить» тылы на Балканах.

В Европейском Союзе с доминированием западного христианства православные государства могут рассчитывать в лучшем случае только на место маргиналов. Восточная Европа, принадлежащая к православной цивилизации, никогда не будет частью преимущественно западно-христианского Евросоюза. Православные Болгария мечтала стать «Японией на Балканах», а Грузия — Европой на Кавказе, а трансформируются в турецкий протекторат.

Между Западной Европой и Россией образовалась обширная «серая зона» формирующейся новой мировой периферии, грозящей стать очередным эпицентром мирового конфликта. Под видом «Восточного партнёрства» создается антироссийский «санитарный кордон» в Восточной Европе.

Создание нового «железного занавеса» возможно при условии, что Брюссель возьмёт на себя все издержки экономической антироссийской блокады, в первую очередь для стран Центрально-Восточной Европы. Но Брюссель не располагает такими финансовыми возможностями. Экономические санкции против России отрицательно влияют в целом на европейскую экономику.

В Центрально-Восточной и Восточной Европе усиливается роль Китайской Народной Республики. Эта сверхдержава входит в регион как мировой геоэкономический игрок. Здесь создаётся важный плацдарм суперпроекта «Экономический пояс Шёлкового пути» в мирном наступлении на Европейский Союз. Будут созданы крупные транспортно-логистические центры в Белоруссии, Литве и России, включая Крым.

Геополитической и геоэкономической нестабильности в Восточной Европе способствует эгоизм великих держав, преследующих свои стратегические цели. Они поставили новые независимые государства (Украину, Молдову и Грузию) перед жестким выбором *Или/Или* между евроинтеграцией (зоной свободной торговли с ЕС) и евразийской интеграцией (ЕАЭС). Тогда как в европейской практике имеются процветающие государства, которые в своем внешнеполитическом и экономическом выборе исходят в первую очередь из своих национальных интересов. Например, лучшая в мире страна для жизни человека (по классификации Программы ООН по человеческому развитию) — Норвегия — не является членом Евросоюза, но пользуется всеми экономическими привилегиями Брюсселя. Даже при поддержке других скандинавских стран вошла в Шенгенскую зону.

Страны «Восточного партнёрства» оказались как в известной



басне между лебедью, раком и щукой. Евросоюз и Россия тянут в разные стороны, а самая «правильная» страна в мире создаёт анти-российский «санитарный кардан», присваивая звания демократов местным марионеткам и радикальным националистов.

Внешняя экономическая экспансия, новые рынки для сбыта европейской продукции является жизненно необходимым для благополучия Европейского Союза. Но при этом Брюссель не располагает возможностями для финансирования программы «Восточного партнёрства» и ошибочно игнорировал геополитический фактор вторжения в постсоветское пространство — зону «жизненных интересов» России. Попытки геополитической трансформации восточноевропейских стран со стороны Брюсселя безуспешны и опасны, так как Евросоюз не обладает соответствующей военно-политической мощью. Деиндустриализация и вывод активов стратегических предприятий осуществлялись под «патронажем» Запада и не были компенсированы инвестиционным капиталом.

Пока Евросоюз по инерции продолжает демонстрировать намерения по сохранению политики «Восточного партнёрства», но его основное внимание сосредоточено на необходимости решения более актуальных задач преодоления внутреннего системного кризиса (финансового, миграционного и дезинтеграции).

Проект «Восточного партнерства» терпит поражение из-за недавней политики Евросоюза, главная цель которого была одностороннее расширение потребительского рынка без гарантий перспективы вступления в Евросоюз и мощной финансовой поддержки. Нарастающая конкуренция за влияние на постсоветском пространстве не только ослабляет «Восточное партнёрство», но может спровоцировать создание еще одного горячего фронта, не только на южных, но и восточных границах. При этом ни Евросоюз, ни Россия не заинтересованы в обострении конкуренции, которая может повредить двусторонним отношениям.

В конечном итоге «Восточное партнерство» повторит печальную судьбу других региональных программ европейского соседства, включая «Средиземноморское партнерство» и «Северное измерение». При этом следует обратить внимание на особенности европейской политики соседства, которая зависит каждый раз от страны, председательствующей в Совете ЕС. Вместе с уходом очередного председателя Европейского совета угасает очередной проект «соседства». В связи со сменой в 2017 году на этом посту представителя Польши, закончится проект «Восточного партнёрства», инициированного Варшавой.

Геополитические и геоэкономические сценарии в Восточной Европе в первую очередь определяются от исхода «большой геополитической игры» между Россией и Америкой. Будущее Европы как важной составляющей мировой экономики будет зависеть от реализации межблочных мега-проектов, включая китайский суперпроект Большой Евразии от Лондона до Шанхая. В этой связи концепция биполярной Большой Европы после образования Евразийского экономического союза (ЕАЭС) и китайского суперпроекта «Экономический пояс Шёлкового пути» приобретает новое измерение.

После введения Евросоюзом экономических санкций против России только после восстановления утраченных торговых связей станет возможным обсуждать межблочное сотрудничество ЕС – ЕАЭС. Однако реализация китайского суперпроекта Большой Евразии от Шанхая до Лондона может ускорить этот процесс. Экономическое взаимодействие между ЕС и КНР в рамках «Экономического пояса Шёлкового пути», ЕС и ЕАЭС будет чрезвычайно позитивным импульсом экономического развития для рубежных стран «общего соседства» — Украины, Молдовы и Грузии.

Евросоюз является крупнейшим торговым партнером ЕАЭС, который в свою очередь является третьим торговым партнером ЕС. Страны ЕАЭС заинтересованы в трансфере европейских технологий, а Евросоюз испытывает зависимость от «евразийских» углеводородов. Европейский континент нуждается в дальнейшем развитии трансграничной инфраструктуры. Сочетание конкурентных преимуществ ЕС и ЕАЭС даст взаимовыгодные преимущества.

В связи с проблемами реализации европейской стратегии экономического развития «Европа 2020» Брюссель в ближайшем будущем окончательно прекратит реализацию финансовых программ для государств ближнего соседства, включая Украину. Одновременно начнется процесс сближения экономического сотрудничества ЕС – ЕАЭС и будут устранены требования ЕС в отношении безальтернативного выбора Украины, Молдовы и Грузии.

**Европейский Союз после Brexit. Чем крепче поцелуй, тем меньше денег [6].** Выход из ЕС самой крупной военной ядерной державы, пятой экономики мира и второй по размеру вклада в консолидированный бюджет Союза (15%) сравнивают с геополитическим землетрясением и цунами евроскептицизма. Правда, Лондон никогда не был в тесных объятиях Брюсселя. Великобритания оставалась особым членом ЕС, не вошедшим в еврозону и Шенген.



В 90-е годы экономический рост в Западной Европе обещал безоблачное будущее, и началось «головокружение от успехов». К 2020 году с учетом расширения на Восток прогнозировался консолидированный семилетний бюджет Евросоюза в 1,5 – 2,0 трлн. евро. Европейский Союз, начав активное продвижение на Восток, не успел «переварить» новых средиземноморских членов, посадив их на иглу дешевых кредитов, ставших искрой зажигания дефолта после начала мирового финансового кризиса и кризиса еврозоны. Надежды бывших стран народной демократии на советский патернализм со стороны Брюсселя не оправдались.

Brexit неизбежно интенсифицирует центробежные процессы в «европейском доме», особенно в странах не желающих кормить иждивенцев. Политика европейского «плавильного котла» провалилась, вместо европейского народа англичане хотят оставаться англичанами, французы — французами и так далее. Повторяется ошибка СССР по формированию советского человека.

Как пишет The Wall Street Journal, решение Великобритании о выходе из состава Евросоюза рушит надежды украинцев на скорое вступление в блок [1]. Модель «демократического» украинского форпоста цивилизованного мира против «варваров» уже не приносит дивиденды в Европе.

Основными спонсорами (странами-донорами) Евросоюза, у которых взносы в консолидированный бюджет намного превышают получаемые субсидии, являлось всего несколько европейских государств (Германия, Франция, Великобритания, Италия, Нидерланды и Швеция). Из консолидированного бюджета ЕС больше всего получили Польша (12 млрд.), Португалия, Греция, Испания, Венгрия и Чехия.

Максимальный консолидированный бюджет Евросоюза никогда не превышал 1200 млрд. евро. В 2013 году после долгих переговоров из-за недовольства стран-доноров был впервые уменьшен бюджет на 100 млрд. евро. В семилетнем бюджете (2014 – 2020) расходы не должны превышать 960 млрд. евро, что соответствует 1 % ВНД ЕС (-3,5 % по сравнению с прошлым бюджетом). Реально запланированные расходы были зафиксированы на уровне 908 млрд. евро. Но с учетом девальвации евро в ценах 2007 года фактически семилетний бюджет 2014 – 2020 года уменьшился до 700 млрд. евро (примерно в 3,5 раза меньше радужных прогнозов десятилетней давности). После Brexit консолидированный бюджет сужился еще на 15 % (доля взноса Великобритании). Финансисты Лондон-Сити могут посчитать более

точно, чем автор. Но факт, что с расширением Евросоюза денег в консолидированном бюджете становится все меньше.

Как считает американский лауреат Нобелевской премии Майкл Спенс, растущее напряжение в ЕС между странами в ближайшее время должно быть преодолено или же Союз распадется.

Еврозона всё больше превращается в две группы стран, движущихся на разных скоростях. У инвесторов вызывает повышенную тревогу возможность распада еврозоны. Реальный (с учётом инфляции) ВВП Италии находится примерно на уровне 2001 года, а Испании – на уровне 2008 года. В средиземноморских странах Европы, включая Францию, наблюдаются крайне слабые темпы восстановления экономики и упорно высокий уровень безработицы, превышающий 10%, а среди молодёжи младше 30 лет он намного выше. Между тем, уровень госдолга достиг или превысил 100% ВВП (в Италии равен 135%), при этом инфляция и темпы реального роста остаются низкими. Этот затяжной долговой кризис мешает использованию фискальных мер, способствующих возврату уверенных темпов роста экономики [10].

### **Заключение**

Европейская политика соседства создавалась в первую очередь для расширения потребительского рынка Евросоюза. В ближайшее время произойдет корректировка этой политики, а точнее её финиш. Из-за системного внутреннего кризиса (финансового, еврозоны и миграционного) и игнорирования геополитических реалий, Брюсселю сегодня не до соседей, оказавшихся у разбитого корыта евроинтеграции.

К европейским континентальным проблемам как кризис еврозоны и миграционный кризис, кризис на Украине и выхода Великобритании из Евросоюза, можно прибавить нарастающий кризис новых членов Евросоюза из бывших стран народной демократии. Кризис наступал постепенно с первого дня их членства в Евросоюзе. При вступлении в ЕС не одна из стран не вышла на среднеевропейский уровень по макроэкономическим показателям и рассчитывала на большую финансовую поддержку в модернизации экономики. Брюссель эти ожидания не оправдал.

Проект «Восточное партнёрство» с шестью постсоветскими государствами создавался как утешительный приз для постсоветских государств, которые не будут членами Европейского Союза (Украина, Белоруссия, Молдавия, Азербайджан, Грузия и Армения).



Европейский союз, импотент в военно-политическом отношении и протекторат США, решил поиграть в геополитику. Самым большим «достижением» последнего «Дранг нах Остен», связанного с программой «Восточного партнёрства», стала гражданская война на Украине. При этом Брюссель не желает нести бремя ответственности за государство, не выполняющее требование «нормандской четверки» и соглашений Минск-2.

Многочисленные вызовы, с которыми сталкивается Евросоюз (Brexit, кризис еврозоны, миграционный кризис и др.) оставляет все меньше надежд для «светлого будущего» европейской периферии, где иждивенцы мечтают только о несбыточном патернализме Брюсселя. Времена относительно бесплатных пряников прошли. И на очередном саммите «Восточного партнёрства», если он состоится, взаимные поцелуи усилятся, но денег нет.

Между Западной Европой и Россией образовалась обширная «серая зона» формирующейся новой мировой периферии, грозящей стать очередным эпицентром мирового конфликта. Оптимистический сценарий заключается в ликвидации искусственно созданного под видом «Восточного партнёрства» межгосударственного буфера («санитарного кордона»). Будущее рубежных государств зависит от нейтрального статуса с опорой на собственный народ и отказа от геополитического курса «под кого залечь» и продажи суверенитета.

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## DIFICULTĂȚILE INTEGRĂRII COMUNITĂȚII RUSOFONE DIN REPUBLICA MOLDOVA: CONSECINȚE ASUPRA SECURITĂȚII NAȚIONALE

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### **Rezumat**

În acest studiu autorul își propune să explice specificul statului post-sovietic Republica Moldova, care, rezidă în faptul că comunitatea de limbă rusă cuprinde nu numai minoritatea națională rusă (5,95%), ci și alte minorități etnice - ucraineană (8,34%), bulgară (1,94%) găgăuză 4,36%) - care au fost supuși în perioada sovietică unui proces intens de deznaționalizare și rusificare. Integrarea vorbitorilor de limbă rusă în societatea și cultura moldovenească este destul de scăzută, deoarece nu cunosc limba de stat. Din cauza slabei integrări sociale, vorbitorii de limbă rusă preferă vectorul de est al integrării regionale, în ciuda avantajelor clare oferite de integrarea europeană. Succesul unui bun avantaj al țării pe calea integrării europene, susținut de o majoritate consolidată a societății moldovenești, implică eforturi pentru o mai bună integrare în societatea moldovenească a vorbitorilor de limbă rusă.

**Cuvinte-cheie:** integrare, comunitatea vorbitoare de limbă rusă, separatism, securitate socială, Republica Moldova

**Introducere.** Specificul statului post-sovietic Republica Moldova (RM) vizează faptul că minoritatea rusofonă cuprinde nu numai minoritatea națională rusă (5,95 %, la recensământul din 2004), ci și alte comunități minoritare naționale/etnice, care în perioada sovietică au fost supuse unui intens proces de deznaționalizare și rusificare prin *sistemul educațional* cu predarea în limba rusă, *mass-media* ș.a. Astfel, minorități naționale ca cea ucraineană (8,34 %, la recensământul din 2004) și bulgară (1,94 %, la recensământul din 2004), minoritatea etnică găgăuză (4,36 %, la recensământul din 2004) utilizează în prezent în spațiul public în mod curent limba rusă: în administrația publică și în învățământ. Spre comparație, o altă minoritate etnică – cea romă, mai puțin numeroasă – a fost mai puțin rusificată în perioada sovietică, într-o oarecare măsură datorită unei expuneri mai reduse la sistemul de învățământ și la impactul instituțiilor media și de cultură. Deosebirea dintre noțiunile *minoritate națională* și *minoritate etnică* ține de faptul că prima vizează comunități care dispun de o țară-mamă – de origine (ucrainenii – Ucraina, bulgarii – Bulgaria, rușii – Rusia), în timp ce a doua noțiune vizează comunități care nu dispun de o țară-mamă (cu toate că unii leagă, în mod forțat, găgăuzii de Turcia, iar pe romi de India).

Majoritatea autohtonă (moldofonă/românofonă) se constituie din 77,96% (75,8% declarați moldoveni și 2,16% declarați români, la recensământul din 2004).

Aruncând o privire pe harta etnică a RM, se poate constata prezența pe teritoriul moldovenesc a patru regiuni cărora autoritățile centrale trebuie să le acorde o atenție sporită:

1. regiunea nistreană (atât partea sa basarabeană – municipiul Bender și cele șase sate: Gâsca, Proteagailovca, Merenești, Chițcani, Cremenciug și Zahorna; cât și partea sa transnistreană, fără cele șase sate controlate de autoritățile de la Chișinău: Coșnița, Pârâta, Doroțcaia, Pohrebea, Molovata Nouă și Cocieri);

2. autonomia găgăuză (din 1994);

3. raionul Taraclia, locuit în majoritate de bulgari: în 2015 Parlamentul a votat în prima lectură un proiect de lege privind statutul de *autonomie culturală*;

4. în nordul RM există zone rurale locuite compact de ucraineni.

Așadar, cu unele mici excepții, minoritățile naționale/etnice din RM constituie o comunitate (minoritate) lingvistică – rusofonă. De menționat că în perioada sovietică a fost supusă procesului de rusificare și o parte din comunitatea etniei titulare, mai ales în mediul urban, unde nu existau suficiente grădinițe, școli și la instituțiile de învățământ superior cu predarea în



limba etniei titulare (până în prezent școlile cu predare în limba rusă din orașele moldovenești sunt frecventate de elevi cu nume de familie tradiționale moldovenești, dar limba nativă a căroră este rusa). Gradul de integrare a comunității rusofone în societatea moldovenească, în ansamblu, poate fi calificat drept redus. Fiind legată prin limbă și cultură de Federația Rusă, comunitatea rusofonă din RM este înclinată spre integrarea statului moldovenesc în spațiul cultural dominat de Federația Rusă (din punct de vedere instituțional: Uniunea Economică Eurasiatică). Adesea, sprijinul pentru vectorul estic al politicii externe a RM, din partea comunității rusofone, este consecința unei mai proaste informări privind avantajele integrării europene, datorită cunoașterii insuficiente a limbii de stat. Gradul redus de integrare în societatea moldovenească – slaba cunoaștere a limbii de stat, a culturii populației majoritare titulare – îi face pe minoritarii rusofoni să prefere vectorul estic al politicii externe a RM, în pofida avantajelor clare oferite statului moldovenesc de integrarea europeană. Iată de ce reușita unui bun parcurs al RM pe calea integrării europene, care să fie sprijinit de o majoritate consolidată a societății moldovenești, implică depunerea unor eforturi susținute în vederea unei mai bune integrări a minorității rusofone din țară. Dificultățile integrării comunității rusofone trebuie depășite printr-o abordare pragmatică: prin formularea misiunii statului, a unei viziuni privind dezvoltarea sa, a unei politici de edificare statală (națională – a *națiunii civice*), a unei strategii, a unei tactici, respectiv a unui plan de acțiuni. Statul Republica Moldova trebuie să devină atractiv atât pentru populația sa majoritară (să scadă numărul celor care părăsesc țara în căutarea unei vieți mai bune), cât și pentru minoritățile etnice și lingvistice. Prin integrarea minorității rusofone (a tuturor minorităților naționale și etnice) poate fi rezolvată și problema asigurării *securității societale* – unul dintre cele cinci sectoare ale securității naționale (de rând cu sectoarele: *politic, economic, de mediu și militar*).

Integrarea deficitară a comunității rusofone – o vulnerabilitate în contextul asigurării securității RM

Integrarea deficitară a minorității rusofone din Republica Moldova constituie o vulnerabilitate în contextul asigurării securității sale naționale. Această vulnerabilitate, care vizează sectorul *societal* al securității naționale, se înscrie într-o listă de vulnerabilități, care vizează și celelalte sectoare: guvernarea ineficientă, corupția în organele de stat, crizele privind nealegerea președintelui republicii sau cele legate de constituirea unor alianțe consolidate în Parlament, corupția politică, contestarea procesului electoral (scoaterea din cursă a unor concurenți electorali, admiterea în cursă a unor partide

spoiler) – toate acestea reprezentând probleme din sectorul *politic*; degradarea solului, apelor (debitul tot mai scăzut al râului Nistru, din care se alimentează municipiul Chișinău și alte orașe [8]), defrișări ilegale [3] – vulnerabilități în sectorul *de mediu*; indicatorii tot mai scăzuți ai producției industriale, agricole și ai sferei serviciilor (pierderea unor piețe de desfacere tradiționale și incapacitatea de a penetra pe piețe noi) – vulnerabilități în sectorul *economic*; o bază materială deficitară, tehnică militară și echipamente ale Armatei Naționale care necesită modernizare – vulnerabilitate în sectorul *militar*. Toate aceste vulnerabilități sunt dovada unor aspecte asupra cărora statul moldovenesc trebuie să lucreze și care pot fi utilizate de forțe din exterior, care se pot deda la provocări, creând riscuri ce se pot transforma în amenințări la adresa securității naționale a RM.

Republica Moldova este parte integrantă a regiunii extinse a Mării Negre – spațiu caracterizat de o suită de conflicte care au și o conotație etnică: Karabahul de Munte, Osetia de Sud, Abhazia, Donbas. În majoritatea acestor conflicte poate fi observată manifestarea unui factor extern: Rusia s-a implicat și sprijină regimurile din Transnistria (Republica Moldova), Donbas – Lugansk și Donețk (Ucraina), Abhazia și Osetia de Sud (Georgia). Armenia sprijină administrația din Karabahul de Munte (teritoriu formal aparținând Azerbaidjanului). Astfel, în condițiile manifestării unor vulnerabilități într-o anumită regiune (sau în câteva) a (ale) unui stat, o putere regională, prin implicarea sa – sub forma sprijinirii unor mișcări separatiste ale unor minorități etnice sau lingvistice – poate crea riscuri și amenințări la adresa securității unui stat vulnerabil. Exploatând vulnerabilitățile dintr-un stat, o putere regională își poate impune controlul asupra unui spațiu, pe care îl consideră sfera sa de influență (în speță, pentru Rusia, spațiul post-sovietic este sfera sa de influență: *ближнее зарубежье* – străinătatea apropiată). Iată de ce fiecare stat polietnic – inclusiv RM – ar trebui să abordeze cu atenție sporită problemele interne ale relațiilor interetnice, contribuind la consolidarea societății prin integrarea minorităților etnice (lingvistice). Din cauza unei integrări deficitare a minorităților etnice din RM, sunt rare cazurile când reprezentanții respectivelor comunități se afirmă profesional și ocupă funcții importante în domeniile politic, academic/universitar, cultural ș.a. – la nivel național (republican). Este necesară identificarea unor mecanisme prin care comunitățile etnice să poată transmite forurilor de conducere problemele cu care se confruntă, în vederea obținerii de ajutor și în vederea soluționării lor.

Unul dintre aspectele importante ale problemei slabei integrări a minorității rusofone vizează faptul că statul Republica Moldova nu are o



imagine pozitivă în interior – nu este atractiv pentru tânăra generație a minoritarilor etnici. Nu există un mediu cultural atractiv (filme artistice, teatre, programe TV etc.). În școlile cu limba rusă de predare, mai ales în autonomia găgăuză, nivelul de predare a limbii de stat este scăzut. În consecință, datorită accesării unor surse mass-media din Federația Rusă, minoritatea rusofonă trăiește într-un plan paralel cu populația majoritară moldovenească. Datorită consumului unui anumit tip de informație, comunitatea rusofonă este pentru vectorul estic de integrare a RM. Astfel, societatea moldovenească este divizată geopolitic – ceea ce face statul moldovenesc vulnerabil. În condițiile unui război hibrid, cu referire la proiectul Novorosia, o comunitate rusofonă slab integrată în societatea moldovenească face statul RM mai vulnerabil la riscuri externe.

### ***Războiul hibrid în confruntarea Rusia – Occident în regiunea Europei de Est***

*Războiul hibrid* este un instrument în confruntarea Est (Rusia) – Vest (SUA și aliații săi din NATO) în spațiul Europei de Est. În prezent, minoritățile etnice sau lingvistice sunt folosite ca instrumente în războiul hibrid, ele fiind mobilizate din exterior împotriva puterii centrale de stat în țările în care conviețuiesc cu majoritățile titulare. Cercetătorul american Joseph S. Nye Jr. a explicat în una din lucrările sale că după 1945 a crescut numărul războaielor purtate între state și diverse grupuri. „Astfel de grupuri pot fi divizate în categoriile insurgenților, teroriștilor, milițiilor și organizațiilor infracționale, deși categoriile se pot suprapune și se pot estompa în timp” [6, p.50]. Nye conchide: „Finalul unor astfel de conflicte se stabilește rareori pe câmpuri de luptă convenționale, cu ajutorul unor armate tradiționale. Ele devin războaie hibride – «un amalgam de arme convenționale, tactici neregulate, terorism și comportament infracțional în spațiul de desfășurare a conflictului»” [6, p.51]. Conform unei definiții date de cercetătorul american, „În războaiele hibride, forțele convenționale, distrugerile fizice și războiul informațional se întrepătrund” [6, p.51].

De menționat că fenomenul *războiului hibrid* nu este unul nou. În lucrarea sa „Diplomația” Henry Kissinger a făcut referire la o analiză critică a destinderii, pregătită de „un grup de specialiști eminenți” și înaintată Subcomitetului pentru Controlul Armamentului, pe care îl prezida, de senatorul Henry Jackson în iunie 1974. În document se nota: „în terminologia sovietică actuală, détente sau «coexistența pașnică» înseamnă o alternativă strategică la antagonismul militant deschis împotriva așa-numitelor «țări capitaliste». Aceasta nu implică din partea Uniunii Sovietice și a aliaților săi abandonarea

conflictului cu țările occidentale liberale... Conflictul frontal urmează să lase locul unor metode indirecte de luptă, folosind mijloace nemilitare, descrise ca «ideologice»: în practica sovietică acest termen acoperă subversiunea, propaganda, șantajul politic și operațiunile serviciilor de informații” [4, p.649]. După cum se poate constata, în perioada Războiului Rece fenomenul desemnat astăzi prin sintagma *război hibrid* era la ordinea zilei.

Regiunea Europei de Est pare a fi, în prezent, un spațiu aflat sub asediu, unele state ale regiunii fiind supuse unor testări mai dure decât în alte zone, din partea actorilor importanți care își urmăresc realizarea propriilor interese geopolitice în regiune. Republica Moldova, parte componentă a regiunii Europei de Est, este în prezent un teren de confruntare între Rusia și Occident. În prezent, Federația Rusă, sub președinția lui Vladimir Putin, încercă să restabilească controlul asupra teritoriului post-sovietic, pe care l-a denumit, încă la începutul anilor '90, *ближнее зарубежье*. Este cunoscută aprecierea președintelui Putin făcută în noiembrie 2011, conform căreia „destrămarea Uniunii Sovietice a fost cea mai mare catastrofă geopolitică a secolului XX”. Titlul atribuit șefului de la Kremlin, mai ales după anexarea Crimeii – „собиратель земель русских” (*adunătorul pământurilor rusești*), promovarea conceptului de „русский мир” (*lume rusă*) cu referire la spațiul post-sovietic – acolo unde a rămas o numeroasă comunitate de etnici ruși sau vorbitori de limbă rusă, proiectul „Новоросси” (*Novorosia*), care vizează joncțiunea forțelor separatiste din Donbas, din estul Ucrainei, cu cele din Transnistria, din estul RM – deci preluarea de către aceste forțe, sprijinite de Rusia, a litoralului ucrainean al Mării Negre. Toate aceste elemente constituie semnale îngrijorătoare, riscuri ce se pot transforma în amenințări la adresa securității tânărului stat moldovean.

În contextul manifestării unui interes din ce în ce mai sporit din partea Rusiei pentru regiunea Europei de Est și a activizării acțiunilor sale în spațiul cu pricina, se poate observa încurajarea de către Kremlin a unor populații rusofone în zone ca Transnistria și Donbas, pentru a destabiliza situația în regiune – în statele din care fac parte, pentru a-și consolida influența într-o regiune pe care o consideră *sfera sa de influență* (sfera sa de interese majore). Prin conflicte, fie înghețate, întreținute de Federația Rusă în Transnistria, Abhazia, Osetia de Sud, sau fierbinți, ca cel din Donbas, Kremlinul blochează integrarea europeană și euroatlantică a Republicii Moldova, Georgiei și Ucrainei – state care au semnat acorduri de asociere cu UE și care și-au exprimat deschis voința de integrare în spațiul comunitar european, deci intenția de a părăsi *sfera rusă de influență*.



De menționat că dialogul, iar în ultima perioadă de timp, confruntarea dintre Rusia și Occident are drept unul dintre subiecte și Republica Moldova, inclusiv conflictul înghețat din regiunea nistreană. În lucrarea sa „Diplomația”, reputatul istoric și specialist în Studii de Securitate, Henry Kissinger, nota: „Bush [senior, notă A.L.] a deplâns dezintegrarea URSS-lui lui Gorbaciov, iar Clinton [pe timpul președinției lui Elțin, notă, A.L.] a consimțit la eforturile de refacere a vechii sfere de influență a Rusiei” [4]. În lumina acestei mărturii a unei personalități bine informate și influente a lumii academice și politice americane, devine clar de ce SUA nu s-au manifestat hotărât în timpul conflictului ruso-moldovenesc din 1992, din regiunea nistreană a RM. În comparație cu perioada anilor '90, când s-a consemnat un dialog amiabil între Washington și Moscova, în prezent, mai ales din 2014, când Rusia a anexat Crimeea și sprijină regimurile separatiste de la Lugansk și Donețk, se poate observa o tensiune și o sporire a neîncrederii între cei doi poli geopolitici de putere.

Cu siguranță, cele mai eficiente instrumente ale apărării de influența Kremlinului în statele post-sovietice sunt instituțiile democratice consolidate, inclusiv instituții anticorupție eficiente, un sistem judiciar funcțional, un proces politic democratic veritabil (alegeri corecte), progrese reale în dezvoltarea economică și socială a țării (implementarea unei economii de piață funcționale, atragerea de investiții și tehnologii avansate). Dar e important să remarcăm în acest context încă un aspect: este vital necesară consolidarea societății, pacea civică, asigurarea *securității societale*. Acest deziderat poate fi realizat prin elaborarea (formularea) și implementarea unui *proiect de țară* (a unei *misiuni*, a unei *viziuni*, a unei *politici* de edificare statală, a unei *strategii*, a unei *tactici* și a unui *plan de acțiuni*), care să facă din Republica Moldova un stat atractiv atât pentru populația majoritară (titulară), cât și pentru minoritățile sale etnice (inclusiv pentru comunitatea rusofonă). Or, în condițiile confruntării dintre Rusia și Occident, minoritățile etnice și lingvistice pot fi implicate și folosite în războiul hibrid, utilizat în confruntarea respectivă.

#### Proiectul de țară – Republica Moldova

Cercetătorul american Robert Kaplan, consideră că Republica Moldova este un stat mult prea slab, fără o identitate și o idee națională, ceea ce o face și mai vulnerabilă în fața pericolelor externe. În opinia sa, țara noastră este prada unui haos intern, deoarece are instituții slabe. „Moldova este o țară de graniță, iar în interiorul Moldovei sunt alte multe granițe. Prin urmare, are o slabă identitate națională”, a spus Kaplan [7].

În unul dintre manuscrisele sale Mihai Eminescu nota: „Idea comună,

fie cea religioasă, fie cea politică, seamănă cu toarta pe care olarul o pune oricărei oale încât le poți înșira și aduna pe toate la un loc pe un fir de ață. Fără idei comune, nu există popor” [1]. O idee sau câteva idei comune ale unei națiuni pot viza *misiunea* pe care și-o asumă respectiva națiune, realizată într-un stat. Expresia eminesciană de *idee comună* (a unui popor) mai este folosită în perioada contemporană și sub forma *idee națională*. O *idee națională*, dezvoltată într-un *proiect național*, este un element indisolubil pentru buna dezvoltare a unui stat cu o identitate puternică. O *idee națională*, o *misiune* a unui popor este legată și de un *ideal*, un *vis național*. Formularea ideii naționale și elaborarea proiectului național este o responsabilitate a comunității politicienilor și a intelectualității oricărui stat.

Istoria statului moldovenesc ne arată că Principatul Moldova s-a aflat, de-a lungul secolelor, între state puternice sau imperii. Este posibil ca acesta să fi fost factorul principal datorită căruia statalitatea moldovenească s-a perpetuat până în prezent. În toată istoria sa Moldova a avut o misiune legată de securitatea regiunii din care a făcut parte. O formulare a misiunii Moldovei o găsim într-o epistolă a Domnitorului Ștefan cel Mare, din 12 ianuarie 1474, către prinții Europei: „Țara noastră este poarta creștinătății, pe care Dumnezeu a ferit-o până acum. Dar această poartă, care este țara noastră, va fi pierdută – Dumnezeu să ne ferească de așa ceva – atunci toată creștinătatea va fi în mare primejdie. Iar noi, din partea noastră, făgăduim pe credința noastră creștinească și cu jurământul Domniei-Noastre, că vom sta în picioare și ne vom lupta până la moarte pentru legea creștinească, noi cu capul nostru. Așa trebuie să faceți și voi, pe mare și pe uscat, după ce, cu ajutorul lui Dumnezeu Cel Atotputernic, noi, i-am tăiat dușmanului mâna cea dreaptă”. Din acest pasaj rezultă că Domnitorul Ștefan al III (cel Mare) și-a asumat, împreună cu poporul său, misiunea de a apăra Creștinătatea – *Europa* perioadei medievale – de pericolul ce emana de la Imperiul Otoman.

Într-un articol din 2 noiembrie 1879 marele intelectual Mihai Eminescu a consemnat misiunea statului moldovenesc, iar după unirea principatelor valahe în 1859 misiunea respectivă a fost moștenită de statul Principatele Unite, care din 1862 a adoptat denumirea de *România*. Se știe că în urma războiului Crimeii (1853-1856), puterile europene, care au învins Rusia, i-au impus să retrocedeze Moldovei, în 1856, regiunea gurilor Dunării – trei districte basarabene: Cahul, Bolgrad și Ismail. Din acel moment Moldova a primit o misiune legată de securitatea regiunii. Eminescu scria: „Trebuie să fim un strat de cultură la gurile Dunării; aceasta e singura misiune a statului





român și oricine ar voi să ne risipească puterile spre alt scop pune în joc viitorul urmașilor și calcă în picioare roadele muncii străbunilor noștri” [2].

În prezent, societatea statului Republica Moldova se află în căutarea unui *sens* sau *rost* (pierdut?). Sensul/rostul trebuie identificat, formulat și elaborat ca proiect național/de țară. Numai pentru un proiect național (pentru un sens, pentru un rost, pentru o cauză, pentru o idee comună) cetățenii unei țări se pot uni, se pot sacrifica, își pot sluji țara.

Din 2009, guvernarea pro-europeană de la Chișinău a avansat obiectivul strategic de integrare europeană a RM. Este integrarea europeană o idee națională pentru statul moldovenesc? Cu regret, datorită divizării societății moldovenești în două părți aproximativ egale a cetățenilor, una dintre care se pronunță pentru vectorul vestic de integrare, iar cea de-a doua pentru vectorul estic, *integrarea europeană* nu se prezintă drept o idee națională (împărtășită de majoritatea societății). Chiar și în unele state din interiorul UE ideea integrării europene, sau a calității de membru al Uniunii, poate constitui un măr al discordiei (vezi cazul Regatului Unit al Marii Britanii și Irlandei de Nord, electoratul cărui a votat în cadrul referendumului din 23 iunie 2016 pentru ieșirea țării din UE, cu scorul de 51,90% la 48,10% [5]). Pentru un stat ca Republica Moldova, rămas în urmă în dezvoltarea sa în mai multe domenii, integrarea europeană este o modalitate optimă pentru modernizare și eficientizarea sistemelor politic, de justiție, economic, social ș.a.. Preluarea și implementarea standardelor și practicilor europene în materie de relații interetnice, inclusiv în ceea ce privește elaborarea de politici multiculturale, pot contribui la perfecționarea relațiilor în cauză și, prin aceasta, la asigurarea securității societale a Republicii Moldova. Așadar, integrarea europeană este un instrument eficient în dezvoltarea și modernizarea statului. Într-un proiect de țară însă, autorii trebuie să identifice elemente cu care Republica Moldova să fie utilă în cadrul UE (pentru statele sale membre) și pentru întreaga comunitate internațională.

Un proiect de țară ar putea să fie structurat pe cele cinci sectoare ale conceptului de *securitate*. Autorii săi ar trebui să scoată în evidență care poate fi aportul statului moldovenesc în cadrul regional și internațional – deci ce poate oferi RM – în sectoarele: economic, de mediu, societal, politic și militar. Dacă vor fi stabilite obiective temerare, dar realiste și identificate resursele necesare, statul moldovenesc va încerca să se afirme plenar pe plan regional și internațional, să-și acrediteze o identitate inconfundabilă și meritorie, să-și împlinească un rost. Un proiect de țară presupune o misiune, o viziune (exprimată într-o concepție), o politică (de

edificare statală), o strategie, o tactică și un plan de acțiuni. O misiune a unui stat vizează un vis, un ideal național.

Păstrând proporțiile, se poate afirma că în prezent situația statului Republica Moldova se aseamănă celei a Franței după al doilea Război Mondial. În acea perioadă problema pe care și-o puneau, spre rezolvare, președintele de Gaulle, era: „cum se putea restaura identitatea unei țări copleșite de sentimentul eșecului și al vulnerabilității” [4, p. 525]. În acest sens, „Conducând o țară sleită de conflicte întinse pe o întreagă generație și de decenii de umilință, de Gaulle judeca politicile nu atât după criterii pragmatice, cât în funcție de capacitatea lor de a contribui la refacerea sentimentului francez al propriei demnități” [4, p. 526]. Este un exemplu pentru guvernarea de la Chișinău.

### Concluzii

Problemele privind slaba integrare a comunităților naționale/etnice din Republica Moldova (mulți dintre componenții cărora constituie comunitatea rusofonă) sunt o reminiscență a politicilor de rusificare practicate în perioada sovietică, dar și a incapacității de a rezolva în perioada de independență (1991 – prezent). Slaba integrare a comunității rusofone reprezintă o vulnerabilitate la adresa securității statului moldovenesc, ea face statul moldovenesc vulnerabil în fața riscurilor din exterior. În vederea eliminării vulnerabilității în cauză, autoritățile de la Chișinău pot prelua practici din UE cu privire la gestionarea relațiilor interetnice. Elaborarea și implementarea unei politici multiculturale ar avea rol semnificativ în asigurarea *securității societale* (unul dintre cele cinci sectoare), în contextul asigurării *securității naționale* a RM.

Slaba integrare în societatea moldovenească, slaba cunoaștere a limbii de stat (Moldovenească/Română) de către comunitatea rusofonă duce la faptul că membrii săi preferă vectorul estic de integrare, în pofida avantajelor clare oferite de integrarea europeană. Succesul unui bun parcurs pe calea modernizării, a integrării europene, susținut de o majoritate consolidată a societății moldovenești, implică eforturi pentru o mai bună integrare a comunității rusofone.

Pentru a consolida societatea moldovenească, respectiv pentru a asigura securitatea societală, ar putea fi luate mai multe măsuri:

1. utilizarea de *soft power* (putere blândă) pentru a spori atractivitatea statului moldovenesc în raport cu comunitatea rusofonă din interiorul țării, la fel ca și în raport cu statele lumii;
2. crearea unui canal al postului public de televiziune, care să emită în limba rusă (după exemplul Estoniei);
3. elaborarea unei idei naționale – a unei misiuni a țării;



4. desfășurarea unui proces de edificare națională (a națiunii civice moldovenești – membră a Organizației Națiunilor Unite);

5. elaborarea și implementarea de programe, cu suport financiar din partea UE, de predare și însușire a limbii Moldovenești/Române, a culturii și istoriei naționale;

6. studierea și preluarea experienței unor state din UE (mai ales România) cu privire la integrarea minorităților etnice;

7. sporirea rolului Biroului pentru Relații Interetnice (BRI), care poate fi transformat într-un minister responsabil de elaborarea de politici multiculturale;

8. îmbunătățirea condițiilor de studiere a limbilor materne și a culturilor proprii pentru minoritățile naționale/etnice.

În contextul integrării europene a Republicii Moldova, colaborarea cu România, sprijinul din partea statului vecin ocupă un loc aparte. Relația Germania – Austria, între două state atât de apropiate cultural, din cadrul UE, poate constitui un model util al relației România – Republica Moldova, atât în perioada de preaderare, cât și atunci când statul moldovenesc va obține calitatea de membru al Uniunii Europene.

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## PROCESELE INTEGRAȚIONISTE ȘI ECONOMIA GLOBALĂ

### SECURITATEA NAȚIONALĂ. EXPERIENȚA STRATEGIEI SUA PENTRU ȚĂRILE CU ECONOMII ÎN TRANZIȚIE

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#### **Rezumat**

În acest studiu autorul evidențiază unele aspecte teoretice ale problemelor de securitate națională. Evidențiază poziția de bază a strategiei de securitate națională a Statelor Unite și Republicii Moldova. În concluzie, autorul recomandă utilizarea experienței SUA în dezvoltarea mecanismului național de management al siguranței statului moldovenesc.

**Cuvinte-cheie:** securitatea națională, securitatea regională, SUA, țările cu economii în tranziție, Republica Moldova

**JEL Classification:** F52, H56



## НАЦИОНАЛЬНАЯ БЕЗОПАСНОСТЬ: ОПЫТ СТРАТЕГИИ США ДЛЯ СТРАН С ПЕРЕХОДНОЙ ЭКОНОМИКОЙ

### **Аннотация**

*В данном исследовании автор выделяет некоторые теоретические аспекты проблем национальной безопасности. В основе исследования положены Стратегии национальной безопасности США и Республики Молдова. В заключении, автор рекомендует использование опыта США в развитии национального механизма управления и обеспечения безопасности молдавского государства.*

**Ключевые слова:** *национальная безопасности, региональная безопасность, США, страны с переходной экономикой, Республика Молдова*

**Постановка проблемы.** В современном обществе глобальные процессы способствуют проявлению новых угроз и вызовов. В значительной мере это обусловлено развитием и углублением научно-технического прогресса (а порой революционных открытий и нововведений), сопровождающихся коренными и не всегда положительными изменениями в обществе и окружающей его среде. Неравенство во многих его проявлениях, оскудение ресурсной базы, увеличение нагрузки на природу и человека, войны и преступность, бедность, ограничения прав и свобод, миграция и многие другие угрозы требуют своего решения, что предопределяет потребность комплексного подхода к процессу на различных уровнях иерархии общества. Формирующиеся на мировой арене новые центры силы (Китай, Индия, развивающиеся страны) возвращают общество в начале нового тысячелетия от однополярного мира к многополярной конструкции, где региональные и национальные приоритеты играют все более яркую роль.

В этих условиях возрастает значение формирования научно обоснованной системы менеджмента национальной безопасности. При этом механизм управления национальной безопасностью однотипных стран может иметь однородную структуру. Это, в частности, можно отнести к странам с переходной экономикой, у которых немало общих и однотипных как слабостей, проблем и угроз, так и возможностей, и перспектив потенциального роста. Эти страны при разработке проектов научно обоснованного менеджмента системы национальной

безопасности могут и обязаны использовать опыт других стран и, в частности, крупнейшего мирового экономического лидера – США.

**Исследование проблемы.** По классификации Конференции Организации Объединенных Наций по Торговле и Развитию (ЮНКТАД) в группу стран с переходной экономикой входят Юго-Восточная Европа, Содружество Независимых Государств и Грузия [5]. Страны с переходной экономикой сегодня нередко сталкиваются с серьезными проблемами на своих границах либо с противодействием, в том числе вооруженным, на части признанных ими своей национальной территории. Это в различной мере относится к Армении, Азербайджану, Грузии, Молдове, Украине. Немало угроз проявляется в странах Центральной Азии (бывших союзных республиках). Нередко у стран с переходной экономикой схожий перечень угроз в экономической, политической, социальной сфере, миграционных потоках, коррупции, соотношении доходов между отдельными группами общества и др. Одна из классификаций угроз национальной безопасности приведена на рис. 1.

Осознавая необходимость самостоятельного обеспечения национальной безопасности, страны с переходной экономикой разрабатывают механизмы менеджмента данной сферы. Это и национальные, и региональные, и международные системы.



Источник: Угрозы национальной и экономической безопасности. <http://www.grandars.ru/student/nac-ekonomika/ugrozy-bezopasnosti.html>

*Рис. 1. Классификация угроз национальной безопасности*



Участвуют страны с переходной экономикой и в решении глобальных проблем (например, через структуры ООН и международных организаций). Однако из всего многообразия механизмов менеджмента национальной безопасности обычно центральное место занимает стратегия (планы, программы) национальной безопасности. Подобные документы разрабатывают органы государственной власти.

В Молдове механизм регулирования процесса управления системой национальной безопасности страны включает стратегию, национальные программы и планы действий, систему контроля реализации стратегии и регулярной отчетности высшего совета безопасности Молдовы (под руководством президента страны) перед парламентом, а также информирование высшего совета безопасности о ходе реализации стратегии через каждые шесть месяцев центральными органами публичного управления. Законом о национальной безопасности Молдовы предусмотрено, что инициатива разработки Стратегии национальной безопасности является прерогативой президента (ст. 25 и ст. 364) [9].

Действующую стратегию национальной безопасности страны парламент Молдовы утвердил 15.07.2011 [19]. Структурно стратегия состоит из 7 разделов (введение; национальные интересы и политика безопасности; укрепление национальной безопасности посредством внешней и оборонной политики; пути обеспечения национальной безопасности; сектор национальной безопасности и его реформирование; обеспечение сектора национальной безопасности ресурсами; этапы реализации, процедуры отчета и мониторинга).

В целях укрепления национальной безопасности посредством внешней и оборонной политики стратегия концентрирует внимание на процессе интеграции в Европейский Союз; участии в международных усилиях, направленных на управление современными угрозами и вызовами; сотрудничестве с Организацией Североатлантического договора (НАТО); двустороннем сотрудничестве в области безопасности; а также проведении оборонной политики.

Выделено 12 путей обеспечения национальной безопасности.

В стратегии было дано поручение правительству привести национальные программы и планы действий в соответствие с целями, приоритетами и политиками, изложенными в стратегии, а на высший совет безопасности Молдовы возложено осуществление мониторинга реализации Стратегии и представление ежегодно парламенту соответствующего отчета. Учитывая динамичный характер состояния

национальной безопасности, стратегия разработана на среднесрочный период, который установлен продолжительностью от 4 до 7 лет (до 2015-2018 гг.). Предусмотрено, что не реже одного раза в четыре года стратегия подлежит пересмотру и актуализации.

Во исполнение положений стратегии национальной безопасности Республики Молдова, в 2011 г. Министерство обороны Молдовы разработало проект Национальной военной стратегии и опубликовало его для общественного обсуждения, но данный проект не был доведен до конца. Позже (в августе 2012 г.) правительство утвердило стратегию информирования и связей с общественностью в области обороны и национальной безопасности на 2012-2016 годы и план действий по внедрению данной Стратегии [10].

В целях согласования действующей стратегии с реалиями сегодняшнего дня Высший совет безопасности (ВСБ) Молдовы на своем заседании под председательством президента Николае Тимофти утвердил новую стратегию национальной безопасности Молдовы стратегию и план действий по ее внедрению. В новом варианте стратегии освещены вопросы военной, информационной и геополитической безопасности. Особое внимание было уделено проблемам энергетической безопасности, укрепления принципов правового государства, борьбы с коррупцией, восстановления банковской системы, надлежащего управления, урегулирования приднестровского конфликта. Планировалось, что стратегию утвердит парламент и она вступит в силу с 1 января 2017 года [7].

Однако процесс утверждения нового варианта стратегии был заторможен и в конечном итоге новый президент страны (Додон И.) подписал Указ об отзыве проекта Стратегии национальной безопасности, а также Плана мер по ее реализации, разработанных во время мандата предыдущего президента, так как содержание указанных документов не соответствует значительным изменениям в национальной, региональной и международной сферах безопасности» [15].

Следует отметить, что, по нашему мнению, действующая стратегия и ее обновленный вариант не в полной мере соответствуют современным вызовам, в них слабо проработаны некоторые вопросы экономической безопасности страны. В частности, это касается депопуляции населения, борьбы с крайней нищетой отдельных категорий населения страны, устранения несправедливого неравенства в доходах между отдельными слоями населения и др.





Серьезнейшей проблемой для Молдовы стала депопуляция населения. Стабильное (не вызванное разовыми чрезвычайными обстоятельствами) сокращение численности населения страны на протяжении десятилетий ведет к экономико-социальной, а в перспективе и политико-институциональной катастрофе. Административные меры по сокрытию тяжести проблемы приводят к таким фактам, когда Национальное бюро статистики страны на своем сайте указывает одновременно четыре разные цифры населения Молдовы (3,551 млн. чел. по текущему учету, 2,998 млн. чел. по переписи населения 2014 г., 2,789 млн. чел. проживавших на территории РМ на протяжении последних 12 месяцев и 2,596 млн. чел. с обычным местом жительства в Республике Молдова). В результате в дебрях статистики теряется от 550 до 950 тыс. чел., т.е. 20-35% фактического населения страны.

В столице страны по данным переписи населения учтено 339 тыс. чел, однако Национальное бюро статистики не верит результатам собственной работы и продолжает утверждать, что жителей в Кишиневе 533 тыс. чел., корректируя цифры переписи 200 тыс. чел. или на почти 60%. Отметим, что по результатам двух последних переписей число районов, население которых составляет менее 50 тыс. чел., увеличилось с 6 в 2004 г. до 9 в 2014 г. Количество городов с численностью населения от 10 до 20 тыс. чел. уменьшилось с 22 в 2004 г. до 18-ти в 2014 г. [2]. В отдельных селах официально зафиксировано, что жителей там больше нет.

Официальная депопуляция населения страны за последние 10 лет составила 578 тыс. чел. или 17% населения. Главная причина сокращения численности населения страны на протяжении десятилетий – эмиграция. В 1990-е годы основным направлением переселения населения Молдовы в другие страны по экономическим, политическим, личным обстоятельствам была Россия, то в последние годы к ней добавились, Италия, Румыния, Болгария, Турция. Объем направления части заработанных за рубежом денег на родину в последние годы снижается, что свидетельствует об укоренении эмигрантов на новых землях и нарастании разрыва с родиной. В конечном итоге эмиграция трудоспособного населения Молдовы формирует угрозу самому существованию страны в отдаленной перспективе, что должно стать центральным компонентом в системе национальной безопасности страны иначе некем и некому будет управлять, некого и некому будет защищать.

Более активно, по нашему мнению, следует реагировать, например, на обострение проблемы с обеспечением населения Молдовы питьевой

водой. В рамках действующей стратегии эта угроза сформулирована в виде «загрязнения питьевой воды». Это продолжение практики отдельных высказываний опасения и несистемного подхода в стране к данной проблемы. Так, например, в национальной программе «Молдавское село» констатировалось, что в Республике Молдова услугами водоснабжения и централизованной канализации пользуется 81% городского населения и лишь 17% жителей сельской местности. Остальные потребители используют воду в пищевых и хозяйственных целях из колодцев, количество которых составляет около 150 тысяч. В большинстве случаев качество воды из этих источников не соответствует требованиям Госстандарта 2874-82 «Питьевая вода» по жесткости, содержанию фтора, нерастворимых осадков и т.д., что приводит к возникновению заболеваний. Магистральные водопроводы (около 350 км) и сети водоснабжения имеют степень износа более 50%. 250 км сетей находятся в аварийном состоянии и нуждаются в срочной замене, в первую очередь – сети под давлением из свинца. Для повышения доступа населения к ресурсам качественной питьевой воды планировалось развитие и модернизация систем водоснабжения и канализации в 156 населенных пунктах, сооружение и восстановление в сельской местности 93300 колодцев и т.д. [11]

Однако национальная программа «Satul Moldovenesc» по показателям обеспечения населения качественной питьевой воды оказалась невыполненной. Еще в 2012 г. Счетная палата Молдовы пришла к выводу, что питьевая вода в Молдове «жуткого качества», а в некоторых районах ситуация приближается к катастрофической. Примерно 80% сельского населения не имеют доступа к питьевой воде и вынуждены использовать воду, не соответствующую санитарным нормам [16].

За 2013-15 гг. в Молдове было выполнено 13 проектов по водоснабжению и канализации на общую сумму свыше 340 млн леев. Было проложено 130 км сетей водопровода и 27 км сетей канализации. Построена одна станция водоподготовки (с. Маноилешь Унгенского р-на) и одна станция очистки сточных вод (г. Атаки Окницкого р-на). Улучшен доступ к услугам водоснабжения для 21 тыс. человек, а доступ к услугам канализации – для 816 человек. В среднем затраты на одного человека составили 15 тыс. лей (340 млн.лей/22 тыс.чел.). Однако водопровод в Молдове не обязательно снабжает потребителя питьевой водой. В настоящее время в Молдове только 50-60% населения имеет доступ к питьевой воде, а в Тараклии, Комрате, Чадыр-Лунге, Хынчештах,



Калараше и т.д., которые обеспечены водопроводами, потребителю поступает техническая вода. В Чадыр-Лунге, Ниспоренах, Новых Аненах станции по очистке питьевой воды не работают [12].

Проблема водоснабжения населения страны обострилась в 2016 г., а затем и в 2017 г. В первую очередь это проявилось в бассейне реки Днестр, от ресурсов которой зависят две трети территории страны. Молдова в ноябре 2012 года подписала с Украиной Договор «О совместной работе в области охраны и развития бассейна реки Днестр». Договор был подписан в Риме, во время Совещания сторон Конвенции по охране и использованию трансграничных водоемов. Он дополняет и детализирует договоренности, взятые на себя сторонами по Конвенции Европейской экологической комиссии ООН по трансграничным водам [8]. Однако договор пока не ратифицирован украинской стороной [14]. При этом в стратегии ничего не говорится ни о трансграничных водах, ни о совместной работе в области охраны и развития бассейна реки Днестр, ни о других водных ресурсах страны, которые деградируют либо потеряны (например, река Бык).

Агентство «Apele Moldovei» обращалось к украинской стороне с просьбой увеличить сброс воды с плотины Ново-Днестровского водохранилища на стыке трех областей Украины (Хмельницкой, Черновицкой и Винницкой) до 200 метров в секунду [6], что должно позволит стабилизировать ситуацию с уровнем Днестра на территории Молдовы. Однако с вводом в действие третьего агрегата Днестровской гидроаккумулирующей электростанции (ГАЭС), 2016 г., проблема обостряется. Следует также учитывать, что в 2020 году в Новоднестровске запланирован ввод еще одной турбины, а всего только на этом объекте турбин должно быть 7.

Не решат проблем водоснабжения и подземные источники. Они относятся к слабо восстанавливаемым и истощение ресурсов со 120 метрового подземного горизонта приведет к необходимости уходить на 156-160 метров и т.д. При этом подземные воды Молдовы минерализованы, их постоянное использование вредно для почвы и здоровья людей, а очистка удорожает стоимость воды. Вредное воздействие на национальную систему водообеспечения оказывают микроводопроводные сети и запруды, которые обезвоживают реки (например, в бассейне реки Бык сотни микроводопроводов) [12], вырубка зеленых насаждений (в том числе рядом с населенными пунктами и у дорог).

Учитывая изложенное можно констатировать, что современная

проблема обеспечения населения питьевой водой должна быть отнесена к наиболее важным аспектам системы национальной безопасности Молдовы. Однако ничего этого нет в стратегии.

В целом, мы считаем, что в новом варианте стратегии должен быть широко использован передовой европейский и международный опыт, в частности опыт стратегии национальной безопасности США.

Так, Стратегия национальной безопасности США, опубликованная на сайте Белого Дома, изложена на 32 страницах, включая обращение президента США Барака Обама и 28 страниц собственного текста стратегии (без страницы №6). Структурно стратегия состоит из 6 разделов (введение, безопасность, благосостояние, ценности, международный порядок и заключение) [1].

Во введении стратегии основной упор делается на констатации факта, что множество возможностей США одновременно соседствует с разнообразными рисками для безопасности страны, как лидера в глобальном мире. Особо отмечается, что новая стратегия (2015 года), как и само американское лидерство основываются на непреходящих национальных интересах, изложенных в стратегии национальной безопасности от 2010 года. Этим подчеркивается преемственность и стабильность национального курса в сфере безопасности страны.

В разделе «Безопасность» излагаются вопросы укрепления оборонного потенциала США, усиления внутренней безопасности, борьбы с устойчивой террористической угрозой, наращивания возможностей по предотвращению конфликтов, противодействия распространению и применению оружия массового уничтожения, борьбы с климатическими изменениями, обеспечения доступа к общим пространствам, а также укрепления всемирной охраны здоровья.

Раздел «Благосостояние» посвящен путям поиска решения таких проблем как активизация экономики США, укрепление энергетической безопасности страны, лидерование в науке, технологиях и инновациях, формирование мирового экономического порядка и ликвидация крайней бедности.

В разделе «Ценности» стратегия сконцентрирована на таких аспектах как сохранение верности американским ценностям дома и продвижение всеобщих ценностей за рубежом, содействие равенству, поддержка формирующихся демократий, вдохновение гражданского общества и молодых лидеров, меры по недопущению массовых злодеяний.

Раздел «Международный порядок» включает в себя изложение



видения в отношении перебалансировки США в сторону Азиатско-Тихоокеанского региона, укрепления альянса с Европой, стремления к стабильности и миру на Ближнем Востоке и в Северной Африке, инвестирования в будущее Африки, углубления сотрудничества в сфере экономики и безопасности в Северной и Южной Америке.

В заключении стратегии отмечается, что она создает представление об укреплении и сохранении американского лидерства в современном мире, разъясняя цель и перспективы американской мощи. Приводятся итоговые заверения в приверженности курсу на реализацию основных направлений укрепления национальной безопасности США, базирующихся на американском лидерстве в прошлом веке и в будущем.

Наряду со стратегией национальной безопасности в США принята национальная военная стратегия [3] и ряд других документов, конкретизирующих национальную политику в сфере безопасности.

Важным уроком, выносимым из опыта стратегии национальной безопасности США для регионов с переходной экономикой и, в частности, для Молдовы, должно стать отношение одной из самых богатых стран мира к проблеме бедности. В разделе «Благосостояние» стратегии США одним из важных направлений деятельности определены меры по искоренению крайней бедности. Подобное направление в деятельности по обеспечению национальной безопасности в регионах с переходной экономикой должно быть одним из основных. *Понятие порог бедности было введено в 1990 году Всемирным банком (ВБ).* В конце 2015 г. ВБ установил уровень данного показателя в \$1,9 на день против \$1,25, действовавшего с 2008 г. Решение было принято по результатам исследования в 15 самых бедных странах мира [4].

В результате в Молдове по состоянию на 11.01.2016 уровень крайней бедности достиг 1177,5 леев в месяц (при курсе Национального банка Молдовы в 20,66 лей за \$1). В то же время, средний размер пенсии на начало января 2016 года достиг 1165,22 лея [17], т.е. менее установленного ВБ уровня крайней бедности. Лишь последующая «игра» Национального банка страны на понижение курса доллара к лею (до 18,2-18,3 лея за доллар в мае - июне 2017 г.) позволила математически вывести среднего пенсионера выше черты крайней бедности, что не отразилось реально на жизненном уровне.

В экономическом блоке стратегии национальной безопасности США («Благосостояние») на первое место поставлена необходимость заставить экономику работать, что отразится в росте доходов, населе-

ния, увеличении числа рабочих мест и т.д. Этот пример должен стать одним из наиболее важных в регионах с переходной экономикой, где доходы населения и так крайне малы. В Молдове, например, прожиточный минимум для трудоспособного населения на начало 2016 г. составил 1842,2 лея [17], что лишь на 56% выше уровня крайней бедности. При этом в 2015 г. наблюдался процесс обнищания населения страны, когда индекс реальной оплаты труда составил 94,5% [18]. Не наблюдается коренного перелома в этой сфере и в 2016 г. и в первом полугодии 2017 г.

Важный урок, извлекаемый из стратегии национальной безопасности США (2010 и 2015 гг.) для регионов с переходной экономикой, включая Молдову, состоит в приверженности ранее выбранному курсу. Разрабатываемые меры и механизмы демпфирования угроз в современном их видении адаптируются к новым условиям, базируясь на стабильных многолетних принципах (прошлого и нынешнего веков).

Являясь глобальным лидером однополярного мира, США гибко встраиваются в изменяющиеся современные условия, многогранно реагируя на потенциальные вызовы и угрозы национальной безопасности страны. Ранжирование в разделе «международный порядок» регионов (Азиатско-Тихоокеанский, Европа, Ближний Восток и Северная Африка, Африка, Северная и Южная Америка) подчеркивает при этом объективный характер стратегии, с учетом ожидаемых темпов роста и уровня экономического, политического и военного потенциала этих регионов, что следовало бы учитывать молдавским политикам.

### **Выводы**

В целом, учитывая опыт США в обеспечении устойчивого менеджмента системой национальной безопасности, по нашему мнению, целесообразно:

- Выделить в качестве приоритетной сферы национальной безопасности страны, экономическую составляющую и жизненного уровня населения, как главной цели создания любого государственного образования.

- Среди угроз национальной безопасности Молдовы в экономической (а соответственно и социальной) сферах, требующих неотложных мер по их преодолению, следует выделить депопуляцию населения, высокую долю населения с доходами ниже уровня крайней нищеты, неравенство в доходах между отдельными слоями населения



страны, обостряющиеся проблемы в обеспечении населения Молдовы питьевой водой и т.д.

- Обеспечить реальный пересмотр и актуализацию стратегии национальной безопасности Молдовы не реже одного раза в четыре года, проводя широкие консультации с гражданским обществом и используя накопленный мировым сообществом опыт в этой сфере.

- Активизировать действия, которые необходимо предпринять в таких важных для национальной безопасности секторах, как здравоохранение (средняя продолжительность жизни, детская смертность, туберкулез, гепатит, венерические заболевания и др.), экология (земельные, водные, лесные ресурсы и воздух), образование (соответствие европейским нормам, качество, актуализация), борьба с коррупцией (в первую очередь в высших эшелонах власти) и др., коррелируя сферы деятельности в рамках целей тысячелетия, провозглашенных ООН для Молдовы.

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## APLICAREA MANAGEMENTULUI GENERAL AL CALITĂȚII (TQM) – CONDIȚIE A INTEGRĂRII EFICIENTE A REPUBLICII MOLDOVA ÎN SPAȚIUL ECONOMIC GLOBAL

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### **Rezumat**

*Calitatea producției și a serviciilor este apreciată ca indicator al eficienței muncii, sursă a bogăției naționale, caracteristică a economiei dezvoltate, condiție a vieții suficiente. Respectiv este necesar de aplicat concepția TQM pentru asigurarea acestui indicator. Actualmente, în Moldova, întrebarea despre calitatea producției autohtone este foarte acută. Justificarea nivelului calității producției autohtone în competiția internațională a dobândit un nivel amenințător și în condițiile nesiguranței pieței moldovenești influențează masiv economia, ocuparea forței de muncă, viața culturală și socială. Expereiența istorică arată că cu atenția oferită calității începe perioada ieșirii din criză în mai multe state. Logica arată că și în Moldova trebuie de acordat o atenție majoră la acest remediu împotriva crizelor.*

*Una din problemele importante cu care se confruntă antreprenorii moldoveni este legată de adaptarea reușită la condițiile economiei de piață, integrarea în spațiul economic mondial. Soluționarea acestei probleme reprezintă o condiție a supraviețuirii și dezvoltării lor ulterioare. Concepția politicii naționale în domeniul*

producerii și serviciilor confirmă că obiectivul principal al economiei naționale în sec. XXI este creșterea competitivității din contul creșterii calității.

**Cuvinte-cheie:** managementul universal al calității, gestiunea generală a calității, concepția TQM, asigurarea calității, integrarea economică

**JEL Classification:** M11, L15

## ПРИМЕНЕНИЕ КОНЦЕПЦИИ ВСЕОБЩЕГО МЕНЕДЖМЕНТА КАЧЕСТВА (TQM) КАК ОДНО ИЗ УСЛОВИЙ ДЛЯ ЭФФЕКТИВНОЙ ИНТЕГРАЦИИ РЕСПУБЛИКИ МОЛДОВА В МЕЖДУНАРОДНОЕ ЭКОНОМИЧЕСКОЕ ПРОСТРАНСТВО

### **Аннотация**

Качество продукции и услуг стало показателем высокой эффективности труда, источником национального богатства, признаком высокоразвитой экономики, условием достойной жизни. Соответственно необходимо применение концепции TQM для обеспечения этого показателя.

В настоящее время в Молдове вопрос о качестве стоит очень остро. Отставание уровня качества отечественной продукции от зарубежных конкурентов приобретает угрожающий характер, и при незащищенности молдавского рынка существенно влияет на экономику, занятость, социальную и культурную жизнь. Исторический опыт свидетельствует, что с вниманием к качеству начинался выход из кризисных ситуаций во многих странах. Логика подсказывает, что и в Молдове необходимо обратить самое пристальное внимание на это «лекарство от кризисов».

Одной из основных проблем, стоящих сегодня перед молдавскими предприятиями, является их успешная адаптация к условиям рыночной экономики, интеграция в международное экономическое пространство. Решение этой проблемы – необходимое условие для их выживания и дальнейшего развития. Концепция национальной политики в области качества продукции и услуг совершенно справедливо подчеркивает, что главной задачей отечественной экономики в XXI веке является рост конкурентоспособности за счет роста качества.



**Ключевые слова:** всеобщий менеджмент качества, всеобщее управление качеством, концепция TQM, обеспечение качества, экономическая интеграция

**Введение.** Проблема качества никогда не теряет своей актуальности, она – постоянна. Качество воспринимается как стратегическая задача, успешное решение которой во многом определяет стабильность национальной экономики, ее место в мировом производстве и распределении. Обеспечение качества в современных условиях развития экономики должно стать не просто приоритетным, а трансформироваться в ранг национальной идеи, стать одним из важнейших условий для эффективной интеграции Республики Молдова в международное экономическое пространство.

Безусловно, недооценка значения проблемы качества и необходимости систематической работы над его повышением приводит многие ключевые отрасли промышленности к потере своих позиций. Там, где осознана стратегическая роль качества и предпринимаются шаги по повышению конкурентоспособности продукции, внедрению и применению Концепции всеобщего менеджмента качества (TQM), как появляется шанс остановить развитие кризисных явлений и стабилизировать производство. Это полностью подтверждает исторический опыт разных стран (США, Японии, Германии, стран Юго-Восточной Азии и др.) и многих зарубежных фирм, которые выходили из кризиса, направив усилия на повышение качества.

Не вызывает сомнения тот факт, что изучение проблем управления качеством, в частности TQM, – настоящее требование времени, так как эти знания крайне необходимы в условиях рыночной экономики, подразумевающей наличие острой конкурентной среды производителей товаров и услуг.

Между качеством и эффективностью производства существует прямая связь. Повышение качества способствует повышению эффективности производства, приводит к снижению затрат и повышению доли рынка. Отсюда вытекают и объективные условия, позволяющие использовать данную связь для успешных интеграционных шагов национальной экономики в международное экономическое пространство.

**Основной текст.** Развитие мирового рынка товаров и услуг, резкое обострение конкуренции на этом рынке и политика государственной защиты интересов потребителей породили необходимость развития

новой фазы менеджмента качества. Эта фаза стала зарождаться в середине 60х гг. как развитие идей предыдущей фазы в направлении более полного удовлетворения запросов потребителей. Таким образом, *Всеобщий менеджмент качества* (TQM) постепенно пришел на смену всеобщему управлению качеством (TQC).

Все это привело к ситуации, когда выпуск на рынок продукции, имеющей «детские болезни» или удовлетворяющей запросы потребителя в меньшей степени, чем изделия конкурентов, связана с одной стороны, с развитием теории надежности изделий, и с другой стороны, с широким внедрением вычислительной техники в процесс разработки изделий.

Основой концепции новой фазы стали:

- идея, что большая часть дефектов изделий закладывается на стадии разработки из-за недостаточного качества проектных работ;
- перенос центра тяжести работ по созданию изделия с натуральных испытаний опытных образцов или партий на математическое моделирование свойств изделий, а также моделирование процессов производства изделий, что позволяет обнаружить и устранить конструкторские и технологические дефекты еще до начала стадии производства;
- место концепции «ноль дефектов» заняла концепция удовлетворенного потребителя;
- высокое качество необходимо предоставить потребителю за приемлемую цену, которая постоянно снижается, т.к. конкуренция на рынках очень высока.

В рамках фазы менеджмента качества удастся практически преодолеть противоречие между качеством и эффективностью производства в его существовавших формах, и новая фаза возникает при проявлении новой формы этого противоречия. Например, требования потребителя, чтобы не только продукция, но и производственный процесс были бы экологичными, т. е. не наносили бы ущерб окружающей среде. [5] Эти идеи позволяют развивать производство с принципиально новых позиций, позволяющих совершенствовать качество не только продукции и услуг, но и всех процессов на предприятии, тем самым увеличивая его конкурентоспособность, как на внутреннем рынке, так и за его пределами. Безусловно, все это создает условия для успешной интеграции в мировое экономическое пространство.

Если *TQC* – это *управление качеством с целью выполнения установленных требований*, то *TQM* – *еще и управление целями и самими требованиями*. В *TQM* включается также и обеспечение



качества, которое трактуется как система мер, обуславливающая у потребителя уверенность в качестве продукции (рис. 1).

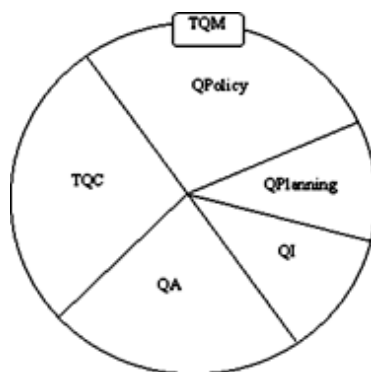


Рис. 1. Основные составляющие TQM

Источник: <http://helpiks.org/9-11856.html>

TQC – Всеобщее управление качеством;

QA – Обеспечение качества;

QPolicy – Политика качества;

QPlanning – Планирование качества;

QI – Улучшение качества.

Система TQM является комплексной системой, ориентированной на *постоянное улучшение качества*, минимизацию производственных затрат и поставку точно в срок. Основная идеология TQM базируется на *принципе – улучшению нет предела*. Применительно к качеству действует целевая установка – стремление к нулю дефектов; к нулю непроизводительных затрат, к поставкам – точно в срок. При этом осознается, что достичь этих пределов невозможно, но к этому надо постоянно стремиться и не останавливаться на достигнутых результатах. Эта идеология имеет специальный термин – «*постоянное улучшение качества*» (continuous quality improvement). [5]

В системе TQM используются адекватные целям методы управления качеством. Одной из *ключевых особенностей системы* является *использование коллективных форм и методов поиска, анализа и решения проблем*, постоянное участие в улучшения качества всего коллектива.

Несомненно, что в TQM существенно возрастает *роль человека и обучения персонала*. Мотивация достигает состояния, когда люди настолько увлечены работой, что отказываются от части отпуска, задерживаются на работе, продолжают работать и дома. Обучение

становится всеохватывающим и непрерывным в течение всей их трудовой деятельности. Изменяются формы обучения – используются деловые игры, специальные тесты, компьютерные методы и т. п. Обучение превращается в часть мотивации: хорошо обученный человек увереннее чувствует себя в коллективе, способен на роль лидера, имеет преимущества в карьере. Разрабатываются и используются специальные: приемы развития творческих способностей работников. [5]

Таким образом, Total quality management - это система действий, направленных на достижение удовлетворения и восхищения потребителей (клиентов), рост возможностей работников, более высокие, долговременные доходы и меньшие затраты [6]. Не вызывает сомнения тот факт, что это и есть главные цели любого бизнеса.

Международный стандарт ИСО 8402 дает следующее определение TQM: «Менеджмент качества и обеспечение качества: «TQM (всеобщее руководство качеством) - подход к руководству организацией, направленный на качество, основанный на участии всех ее членов и направленный на достижение долгосрочного успеха путем удовлетворения потребителя и выгоды для всех членов организации и общества». [4] Интересны примечания к понятию TQM из упомянутого стандарта:

1. «Все члены» означает персонал во всех подразделениях и на всех уровнях организационной структуры.
2. Сильное и настойчивое лидерство руководство высшей администрации, обучение и подготовка всех членов организации являются существенными моментами для успешной реализации TQM.
3. При всеобщем руководстве качеством (TQM) концепция качества имеет отношение к достижению всех целей управления.
4. Концепция «выгоды для общества» подразумевает выполнение требований общества». [4]

В условиях все усиливающейся конкуренции на мировом рынке многие страны - Япония, Корея, Сингапур, Малайзия, Гонконг, Англия, Германия, в последние годы Бразилия - подняли концепции Всеобщего качества на уровень национальной идеи. В США появились публикации с предложениями о внесении изменений в Конституцию страны, отражающих тот факт, что США является родиной многих концепций качества и должна быть страной качества. Соответственно необходимо выносить идеи Всеобщего качества на уровень нации по многим причинам. Можно выделить основные из этих причин:

1. *Системный характер обеспечения качества.* Качество про-



дукции, услуг - системное понятие, оно с трудом решается в рамках одного, отдельно взятого предприятия.

2. *Авторитет продукции начинается с ее национальной принадлежности.* Основная масса потребителей в своем выборе чаще всего ориентируются на страну, к которой принадлежит производитель. Репутация страны в вопросах качества - очень важный фактор успеха в международной торговле. Все знают: японское - значит отличное. Другое отношение, допустим, к китайским товарам. Переломить ситуацию можно лишь представив концепцию Всеобщего качества как основу экономической политики страны.

3. *Социально-экономический аспект Всеобщего качества.* Концепции TQM гуманны и справедливы, они несут классовый мир и сотрудничество между владельцами, менеджерами и служащими. Другими словами, концепции Всеобщего качества приносят стабильность и справедливость в социальную жизнь страны, общества, и в этом они также должны быть востребованы на национальном уровне.

4. *Использование научно-технического потенциала.* Очевидно, что концепции Всеобщего качества особенно привлекательны для научной и в целом интеллектуальной части общества. Огромное количество научных работников, профессора и преподаватели вузов не востребованы сегодня в народном хозяйстве. Масштабное внедрение TQM на большом числе компаний с продуманной поддержкой государства могло бы начать процесс интеграции науки и производства.

Экономика Республики Молдова находится только в начале пути к овладению TQM, и на этом пути существует огромное количество проблем и причин, по которым этот путь он постоянно усложняется. Таким образом, необходимы подготовительные действия и усилия, чтобы поднять концепцию Всеобщего качества на уровень национальной идеи нашей страны.

Безусловно, существует ряд причин неэффективности наших предприятий:

- усугубившийся политический кризис;
- отсутствие рынка капитала;
- отсутствие инвестиций;
- низкий уровень морали и цинизм большей части работающих;
- разрыв взаимопонимания между руководством, служащими и рабочими;
- потеря чувства справедливости и веры;

- неадекватная рыночным механизмам структура промышленных предприятий, концентрация полномочий на верхних этажах управления;
- неэффективный менеджмент;
- неразвитый маркетинг;
- низкое качество продукции и услуг;
- низкая производительность;
- непонимание сути конкуренции и роли качества в конкурентной борьбе;
- длительные сроки освоения новой продукции;
- непонимание роли образования и подготовки персонала;
- непонимание роли информации и данных;
- высокий уровень конфликтности;
- подмена полномочий властью, использование власти за пределами ответственности (обязанностей).

А теперь рассмотрим другой список, который характерен для предприятий, применяющих TQM. Путем сопоставления этих двух списков можно определить направление преобразований предприятий [6].

Характерные черты предприятий, использующих TQM:

- высокий уровень морали у всех служащих, признание общих моральных и этических ценностей и руководящих принципов;
- высшие менеджеры и служащие - одна семья, одна команда;
- справедливость основа мотивации и объединения служащих, вера - основа оптимизма;
- плоская организационная структура промышленных предприятий с проектным и процессным стилями управления;
- эффективный менеджмент, в том числе:
- наличие четкого контроля за менеджерами со стороны собственников, акционеров, инвесторов;
- новый стиль менеджмента, основанный на гуманистической философии, обеспечивающий высокую мотивацию и вовлеченность персонала;
- подход, основанный на знаниях, научном методе;
- наличие системы подготовки, выдвижения и отбора менеджеров лидеров;
- ориентация на удовлетворение всех заинтересованных сторон - собственников, инвесторов, акционеров, потребителей, служащих, общества;
- ориентация на долговременный успех, видение будущего и правильное целеполагание;





- высокое качество продукции и услуг, непрерывное улучшение качества продукции, услуг, процессов, работы;
- качество как цель номер один, ведущая к снижению затрат, сокращению сроков, повышению производительности и в итоге победе над конкурентами;
- персонал как ценность номер один: его знания, творчество, приверженность интересам фирмы стоят больше, чем стоимость недвижимости и техники;
- непрерывное, пожизненное образование всего персонала;
- процессы циркулирования точной и достоверной информации, охватывающие всю компанию;
- системное, процессное и статистическое мышление менеджеров и служащих;
- четкое распределение ответственности, полномочий и взаимодействия.

Продвижение идей TQM в экономику является самостоятельной задачей. Побудительным моментом может и должно стать массовое внедрение международных стандартов. На современном этапе, образно говоря, «интеллект» «средства производства» и «капитал» находятся в трех разных местах. «Интеллект» в виде консультантов и исследователей должен быть призван в промышленность. Одновременно «интеллект» должен стать связующим звеном между капиталом и промышленностью, решая задачи консалтинга, оценки стоимости предприятия для инвесторов, повышения стоимости предприятия за счет улучшения менеджмента. Безусловно, необходимо разработать концепцию внедрения международных стандартов в молдавскую практику с учетом реальных условий; создать механизм мультипликативного внедрения международных стандартов; развить консалтинг в области TQM; минимизировать ущерб от формального и фиктивного внедрения международных стандартов.

**Вывод.** Таким образом, продвижение концепций и методов TQM в практику национального менеджмента является приоритетным, востребованным и актуальным направлением на данном этапе. Это предопределяет объективную обусловленность интеграции Республики Молдова в международное экономическое пространство. Очевидно, что как бы мы серьезно ни принимали вопросы Всеобщего качества, нужно согласиться, что предприятия, прежде всего, должны попасть в бизнес, в рынок, стать конкурентоспособными. Соответственно, для этого необходимо решить следующие задачи:

1. Освоить производство товара, пользующегося спросом. Следовательно, начинать надо с изучения спроса на рынке и его учета при создании и освоении производства новых изделий.

2. Создать торговую сеть продаж, распространения товара и информации о нем.

3. Минимизировать издержки производства, отказаться от всего лишнего, провести реструктуризацию.

4. Научиться управлять финансами.

Все вышеперечисленные условия успешной деятельности предприятий, рассматриваются в различных концепциях качества, но там речь идет об их улучшении. На большинстве же национальных предприятий эти условия нужно создавать практически с нуля. И только после того, как предприятие как-то справилось с этими задачами, оно может приступить к созданию и сертификации систем качества, отвечающих требованиям международных стандартов, а также концепции TQM.

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## ROLUL COMERȚULUI ELECTRONIC ÎN EPOCA PROCESELOR DE GLOBALIZARE

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### **Rezumat**

*Globalizarea pieței mondiale a provocat o transformare profundă a metodelor de marketing și formare a rețelilor trans-frontiere de marketing, a căror activitate depășește jurisdicția anumitor state. Mediul virtual al Internetului permite a elimina restricțiile comerțului tradițional, legate de depărtarea geografică a participanților la tranzacțiile electronice și a automatiza în totalmente procesul de vânzare. Acestea își lasă amprenta asupra promovării mărfurilor de consum în rețeaua World Wide Web, facilitând pe prim-plan vânzarea, cumpărarea producției, o atenție sporită se acordă cerințelor individuale ale consumatorilor.*

**Cuvinte-cheie:** e-comm, cloud, factori instituționali, marketing de rețea, comunicații nor, corporații

### **JEL Classification: F18, F60**

**Introducere.** Comerțul electronic literalmente „întoarce pe dos” marketingul, transformându-l dintr-o disciplină aplicabilă, care se concentrează pe metodele promovării mărfurilor, într-o bază instituțională a relațiilor economice virtuale. Datorită comunicațiilor nor (cloud), care dominau în modelele tradiționale de repartizare, „monștrii” corporativi cedează locul

„corporațiilor non-conținut” (*hollow corporation*), care nu depind de piețele teritoriale, nici de imperfecțiunea instituțională a practicii aplicabile a normelor de drept.

În economia de rețea are loc separarea funcțiilor organizării producerii directe de mărfuri și infrastructurii de promovare, care acum reprezintă domenii diferite de activitate economică cu diversificarea participanților în relațiile instituționale. Mediul virtual al Internetului și a tehnologiilor informaționale anulează formularea opiniei lui R. H. Couse, potrivit căreia reținerile din interiorul firmelor sunt mai mici decât reținerile analogice legate de delegarea atribuțiilor executorilor externi [2, p. 250].

Din cauza reducerii drastice a cheltuielilor tranzacționale pe piețele globale de consum, se formează o infrastructură principală nouă, ce formează un mediu de marketing al comerțului electronic. Această infrastructură acoperă toate tipurile de forme și relații, legate de distribuirea mărfurilor, organizarea plăților și prestarea serviciilor comerciale, formând un strat de furnizori specializați. Ca rezultat, posibilitățile de marketing și capacitatea de concurență a subiecților comerțului electronic devin direct dependente de nivelul de dezvoltare a infrastructurii economiei de rețea. Aceste modificări influențează condițiile de piață în realizarea activității de marketing. Din acest motiv, transformarea marketingului în economia de rețea este provocată astăzi nu atât de schimbarea metodelor și a instrumentelor de marketing, cât de transformarea instituțională a mediului de marketing în gestionarea afacerii. F. Kottler a propus să utilizeze noțiunea de „rețea de marketing” în calitate de indice de finisare a instituționalității acestor rutine în economia de rețea. „Rezultatul final al relațiilor de marketing, evidențiază el, este formarea unui activ unic al companiilor, numit rețea de marketing. Rețeaua de marketing include compania în sine și pe toți cei așa sau altfel implicați în activitatea subiecților, cu care organizația a stabilit relații reciproc avantajoase de parteneriat” [4, p.27].

**Metodologia cercetării.** Principala problemă instituțională la crearea rețelelor de marketing constă în soluționarea problemelor legate de transformarea plăților și a infrastructurii de transport a activității de marketing, inclusiv și reglementarea juridică a comerțului electronic. Concurența aici se reduce la utilizarea facilităților globale a economiei de rețea, când infrastructura de marketing ce s-a afirmat cu anii, adesea servește ca frână în dezvoltarea inovațională, nepermițând subiecților economiei tradiționale de a concura la egal cu subiecții economiei de rețea pe piața de consum. De aceea, cele mai mari facilități de concurență, astăzi sunt specifice țărilor, care au un scop bine determinat în formarea infrastructurii de repartizare a



comerțului electronic, în calitate de bază a dezvoltării inovaționale. În economia de rețea, chiar și cei mai mici producători ai mărfurilor de consum primesc ieșire garantată la piețele globale ale lumii, eliberându-se de sub dictatura intermediarilor angro și cu amănuntul. Acest fapt nu doar sporește posibilitățile de concurență a producătorilor de mărfuri mici, dar și permite acestora, din contul individualizării ofertei pe piață, de a concura cu corporațiile transnaționale mari.

Comerțul electronic, ca sector al economiei, domeniu de activitate, și obiectul activității de analiză științifică se vizualizează ca un sistem complex în relațiile economice internaționale. La dezvoltarea acesteia influențează un număr impunător de factori [1]. Cu anumite rezerve acestea pot fi grupate în felul următor:

1. **Factorii economici:** stabilitatea situației macroeconomice; dinamica indicilor producerii naționale și de consum; nivelul monopolizării economiei; nivelul luptei de concurență [3 p.45]; politica fiscală a statului (povara fiscală); atractivitatea investițională (climatul); disponibilitatea sprijinului guvernamental pentru diferite sectoare ale economiei; nivelul investițiilor în dezvoltarea tehnologiilor informaționale.

2. **Factorii de infrastructură:** rata și ritmul creșterii a audienței pe internet; gradul de încredere reciprocă a participanților pieței; nivelul dezvoltării mijloacelor de efectuare a plăților electronice; nivelul potențialului intelectual în domeniul dezvoltării tehnologiilor informaționale; disponibilitatea metodelor convenabile și accesibile în livrarea mărfurilor.

3. **Factorii tehnici:** dezvoltarea tehnologiilor informaționale; nivelul standardizării protocoalelor schimbului de informații; nivelul automatizării a proceselor de business; fiabilitatea rețelei de telecomunicații.

4. **Factorii de conducere:** dinamismul în perceperea ideilor de inovare incluse de conducători; gradul de corespundere a sistemelor de pregătire a cadrelor de conducere, nivelul modern de dezvoltare a comerțului electronic [3, p.15].

5. **Factorii juridici:** nivelul de reglementare juridică a comerțului electronic; gradul de elaborare a aspectelor juridice ale protecției proprietății intelectuale și a datelor personale [3, p.82-84].

Dezvoltarea comerțului electronic provoacă inevitabil schimbări în structura economiei. În mediul virtual are loc formarea clusterelor transnaționale, ce concentrează „industriile intelectuale și inovatoare, relațiile cu alți producători și consumatori, care sunt în dezvoltare continuă” [1]. Aceste grupuri există adesea în afara jurisdicției statelor și posedă o competitivitate



mai mare în comparație cu subiecți economici tradiționali. Motivul se ascunde în accesul liber la piețe și a cheltuielilor tranzacționale mai mici. Spre exemplu, vânzătorul din SUA virtual se ocupă de vânzarea la licitațiile pe internet „eBay” cu transportarea directă de mărfuri din Hong Kong unde se află furnizorul chinez, care primește marfa de la fabrica japoneză din Shenzhen. Sau, de exemplu, firma moldovenească face comandă pentru producerea unei partide de mărfuri în China pentru livrările directe în continuare, pentru partenerii săi din spațiul post-sovietic.

Liderii mondiali economici, rămân aceiași. Cea mai mare parte a activității economice mondiale și a comerțului internațional este concentrată în trei regiuni geografice mari: America de Nord, regiunea Pacificului / China (inclusiv Japonia) și Europa de Vest. Acestor trei regiuni le revin 80% din produsul economic mondial și 75% din exportul mondial. Se modifică doar motivul competitivității acestora. Dacă în economia tradițională are loc legătura directă a potențialului de producere și cu elaborările tehnologice, atunci în economia de rețea competitivitatea este determinată de dezvoltarea infrastructurii comerțului economic.

Putem afirma, că economia trece pe Internet și se gestionează de cel care operează infrastructura de rețea. Deja nu este atât de important, unde sunt plasate instalațiile de producție, sau care tehnologii sunt utilizate la producerea mărfurilor de consum larg. Toate acestea se pot procura, copia, sau crea de sine stătător.

Însă fără accesul la piața globală, care reprezintă comerțul electronic, acești factori economici tradiționali ai competitivității, vor fi inutili. Prin urmare, industria tradițională de producere se transformă în industrii globale în care „poziția competitivă a companiilor pe piața locală și cea națională sunt determinate de pozițiile globale ale acestora”.

Transformarea structurală a relațiilor economice duce la apariția a celor patru schimbări globale în economia mondială:

1. Creșterea importanței economice globale a rețelelor de afaceri, care determină avantajul competitiv pe piață.
2. Separarea fluxurilor informaționale și de mărfuri, deoarece tranzacțiile sunt virtualizate și au loc independent de locul amplasării mărfurilor.
3. Stratificarea economiei mondiale, datorită căreia se formează noi ramuri industriale cu creștere rapidă și rentabilitate pozitivă.
4. Dezvoltarea prioritară a economiilor cu „venituri în creștere” din contul redistribuirii globale a fluxurilor de informații.

Acest lucru este îndeosebi actual „în condițiile recesiunii economice”



și scăderii cererii de consum, când, după cum specifică F. Kotler, obiectivul principal ar trebui să fie dezvoltarea unor „măsuri de reducere a costurilor” [5, p.27]. Ca rezultat degradează și suferă transformări comerțul tradițional cu ridicata și cu amănuntul, iar costurile tranzacționale, legate de activitatea acestora, se redistribuie între consumatori și furnizorii de servicii logistice.

Dezvoltarea economică accelerată are loc din contul reducerii lanțurilor de circuit a mărfurilor și atragerii resurselor externe de pe piețele globale. În același timp, creșterea comerțului electronic sub multe aspecte este însoțită de scăderea comerțului tradițional. În economia mondială se observă aceea, ce S. Bowles a numit „represiunea instituțională”, care „are loc atunci, când prezența unei instituții perturbă funcționarea alteia”. Așa, spre exemplu, numai pentru anul 2007, comerțul electronic lansat, în Japonia deja a adus la reducerea în valoare de un milion de intermediari de diferite niveluri”.

În condițiile globalizării virtuale, apare întrebarea: în care țări se acumulează dividendele de la dezvoltarea comerțului electronic, și în care pierderile, de la degradările însoțitoare ale comerțului tradițional. Nu întâmplător, mulți economiști din occident fac direct trimitere la faptul, că comerțul electronic astăzi este „unul din ultimele sectoare, unde afacerea poate fi profitabilă, ocupând un segment în competitivitatea globală”. În cadrul priorităților de dezvoltare instituțională al comerțului cu amănuntul se pot specifica: necesitatea elaborării sistemelor informaționale ce țin de gestionarea comerțului cu amănuntul pentru asigurarea furnizărilor globale, efectuarea plăților, executarea cerințelor bancare. Anume aici, deja apare concurența globală, care nu este legată în mod direct nici de tehnologiile de producere, nici de potențialul financiar.

La etapa actuală, liderul mondial incontestabil în ratingul dezvoltării comerțului electronic este China. Inițial unul din factorii creșterii fenomenale a economiei chineze a fost „transparența economică, bazată pe modelul de dezvoltare orientat spre export, care presupune din contul creșterii venitului valutar, ridicarea nivelului tehnic și științifico-economic, însușirea noilor tehnologii informaționale de comunicare, introducerea schemelor moderne în industria logistică”. Însă, existența doar a potențialului de producere, evident, este insuficientă în lipsa unei infrastructuri de repartizare. Din acest motiv, astăzi „strategia Chinei nu constă atât în utilizarea tacticii pasive de protejare a comerțului, cât a tacticii active de înaintare și obținere a facilităților pe seama uniunilor integrate”. China în mod activ utilizează oportunitățile comerțului electronic pentru promovarea transfrontieră a mărfurilor pe piața externă, atât prin vânzări directe, cât și pe calea dezvoltării dropshipping-ului și a altor forme de cooperare economică.

Particularitatea abordării chineze în organizarea comerțului electronic constă în reglementare activă a statului, care înaintază sarcini în domeniul afacerilor și dezvoltă cu ajutorul acestora direcțiile prioritare ale economiei naționale. Politica guvernului chinez în domeniul comerțului electronic se poate caracteriza prin trei sensuri: îndrumare, încurajare, asistență.

Statul chinez determină direcțiile dezvoltării economice, stimulează activitatea economică și contribuie la atingerea scopurilor propuse a subiecților economiei. De exemplu, la 08.01.2005 în China a fost publicat documentul „Unele opinii ale Oficiului Consiliului de Stat al RPC asupra dezvoltării accelerate a comerțului electronic”. În acesta se conținea o listă de măsuri instituționale, îndreptate spre accelerarea dezvoltării comerțului electronic:

1. Introducerea modificărilor în cursul politic și sistemul legislativ al RPC, cu scopul perfecționării normelor de drept, a sistemului financiar și a sistemului de impozitare fiscală, crearea unor condiții favorabile pentru investiții.
2. Accelerarea creării sistemului de suport pentru comerțul electronic în domeniul creditării, standardelor, plăților și transportărilor.
3. Îmbunătățirea accesului la informație, precum și promovarea comerțului electronic între întreprinderile mari, mijlocii și mici și a consumatorilor.
4. Îmbunătățirea bazei tehnice și a sistemului de servicii în comerțul electronic.
5. Promovarea necesității pregătirii cadrelor în domeniul comerțului electronic.
6. Lărgirea cooperării internaționale, bazate pe comerțul electronic.
7. Contribuția participării businessului electronic la expozițiile comerciale internaționale de producere.

În același timp, în cazul dat este vorba nu doar de promovarea mărfurilor chineze, dar și de soluționarea problemelor globale. În 2008, China în colaborare cu Brunei, Indonezia, Malaezia, Filipine, Singapore și Thailanda au creat o zonă de liber schimb CAFTA (China and ASEAN free trade area), pe baza țărilor-membre ale ASEAN. În condițiile de subdezvoltare a canalelor tradiționale a circuitului de mărfuri, anume comerțul electronic constituie unul din mecanismele care asigură creșterea comerțului bilateral CAFTA aproximativ cu 20% zilnic.

Putem concluziona că businessul electronic în mediul virtual este trans-național și transfrontier. Acesta, de facto nu se amplasează acolo, unde se află cumpărătorii, intermediarii și vânzătorii, dar acolo, unde este amplasată infrastructura comercială a comerțului electronic – adică piața de vânzări. Participanții la businessul virtual, ușor pot migra dintr-o jurisdicție în alta, în timp ce platforma de tranzacționare electronică este legată de locul de înregistrare.





Astfel, de exemplu, China în dezvoltarea de e-commerce a contat pe sistemul de plată națională «UnionPay», pe providerii de distribuție națională și furnizare comercială.

În general, dacă ne orientăm spre experiența internațională al instituționalizării comerțului electronic, putem evidenția trei modele de bază a reglării instituționale: european, american și chinez.

**Modelul European** presupune reglementarea totală și înregistrarea subiecților comerțului electronic și tranzacțiilor efectuate în cadrul comerțului electronic. Un exemplu de activitate servește introducerea de către țările europene principale (Germania, Franța și Elveția), al registrului public de evidență a vânzătorilor de bună credință, înregistrați la autoritățile fiscale. Pe site-urile web cu oferte de vânzări de mărfuri, vânzătorii sunt obligați să specifice numărul său de identificare al înregistrării de stat. Modelul european nu se justifică completamente, deoarece în domeniul C2C infrastructurii de tranzacționare europeană, din cauza restricțiilor instituționale, acest model cedează liderilor mondiali. În acest sens, câștigul le revine producătorilor mari de mărfuri și rețelelor de comercializare a mărfurilor la prețuri reduse, din contul restricțiilor de concurență externă.

**Modelul american** presupune un refuz practic complet de implicare din partea statului în domeniul comerțului electronic „în scopul maximizării beneficiilor de la utilizarea potențialului economic al rețelelor, pentru economiile naționale”. La baza acestui model stă proiectul de lege, adoptat în anul 1998 pentru o perioadă de trei ani „Despre libertatea fiscală pe internet”. Acest act normativ prevede „A determina politica națională împotriva interferențelor de stat și locale în comerțul interstat al serviciilor pe internet sau serviciilor online și de a limita competența Congresului privind comerțul interstat; instituind un moratoriu privind impunerea unor cerințe care ar fi interferat cu fluxul liber în comerțul prin intermediul Internetului”. De atunci, moratoriul stabilit, este prelungit în mod regulat până în prezent. Astfel, modelul american de reglementare a comerțului electronic, constă în aceea de a crea condițiile instituționale necesare pentru concentrarea și dezvoltarea prioritară a infrastructurii acesteia pe teritoriul SUA. Nu întâmplător cele mai mari platforme tranzacționale la nivel global (Amazon, eBay) și prestatorii de servicii cu plată (PayPal) la un circuit monetar de multe miliarde, se află anume în SUA.

**Modelul chinezesc** presupune prioritar dezvoltarea instituțională a comerțului electronic ca instrument de promovare a mărfurilor chinezești pe piețele externe și dezvoltarea infrastructurii de repartizare chiar în China. Comerțul electronic se consideră în China nu doar ca o sursă de venituri fiscale,

ci ca un mecanism de importanță strategică pentru stimularea producției industriale. Anume din acest motiv „în China majoritatea tipurilor de activități logistice sunt dirijate de autoritățile de stat sau strict sunt controlate de către acestea”.

Spre deosebire de alte țări, în China, pentru dezvoltarea comerțului electronic, statul, cu un scop bine determinat, creează condiții instituționale favorabile: începând cu lipsa unui sistem de impozitare până la sistemul modern a circuitului de mărfuri și a regimului vamal preferențial. Impozitele în economia chineză sunt ridicate din producția industrială și nu din comerțul electronic, (B2C și C2C). În același timp, nu putem afirma lipsa unor măsuri cu referire la impozitarea antreprenorilor în domeniul comerțului electronic.

Reforma fiscală planificată va face impozitul pe venitul personal „unul din principalele tipuri de impozite, care „va avea un rol mai important decât impozitul pe veniturile întreprinderilor”. Astfel, în domeniul reglementării instituționale a comerțului electronic, se poate găsi întreaga gamă de abordări în soluționarea aspectului dat: de la reglementarea dură până la deliberarea coniventă și stimularea conștientă. Doar într-un singur aspect, abordările pentru instituționalizarea comerțului electronic sunt aceleași – în perceperea conceptului că acesta reprezintă un fenomen global, care trebuie să fie reglementat de standardele globale.

Comerțul electronic ca un fenomen instituțional nu a căpătat încă categoria sa de reglementare juridică și statutul său juridic nu este definitiv determinat. Această problemă aparține nu doar sistemului de drept din Republica Moldova, dar și dreptului internațional în general. În același timp, aspectele instituționale de reglare a comerțului electronic nu se limitează exclusiv doar la impozitare. Comerțul electronic este astăzi în prim-plan în procesul de dezvoltare a civilizației, asigurând creșterea fără precedent a activității de antreprenariat în întreaga lume. Suntem de comun acord cu opinia lui F. Kotler, care scrie: „Întrebarea principală, legată de legislația cu privire la activitatea de antreprenariat constă în: când cheltuielile pentru reglementare vor începe să depășească beneficiile? Fiecare lege nouă, indiscutabil, poate fi juridic îndreptățită, dar în același timp există posibilitatea faptului, că adoptarea acesteia va duce la o „slăbire” a spiritului antreprenorial și o creștere economică mai lentă” [5, p.177].

Comerțul electronic posedă proprietăți a unui început instituțional, impunând organele administrării de stat ia decizii importante în acest sens. Pe de o parte, acesta deschide și oportunitățile globale, legate de transformarea lanțurilor de aprovizionare. Pe de altă parte, ajută la „reducerea barierelor politice și ocupându-se de transformările eco-funcționale, inter-statale și inter-companii”.



Putem afirma că în funcție de prioritățile politicii instituționale, comerțul electronic ar putea deveni un obstacol sau o rampă de lansare pentru modernizarea economiei moldovenești. Vitalitatea sistemelor economice într-o măsură considerabilă depinde de, capacitatea de adaptare la mediul înconjurător și la modificările lui. Sistemul economic productiv se distinge prin capacitatea de îmbunătățire și de inovare, iar acest lucru se referă la planul sub-constituțional, adică la nivelul când au loc procesele social-economice, cât și la domeniul constituțional - adică la însăși condițiile cadrului instituțional.

**Concluzie:** Datorită comerțului electronic vectorul general al concurenței globale actuale se orientează spre reducerea costurilor tranzacționale și rolului mediului de marketing tradițional. El poartă în sine sa mari oportunități a creșterii de dezvoltare instituțională a economiei, bazându-se pe avantajele vânzărilor virtuale la nivel mondial. Însă, eficient să profite, de avantajele apărute, vor putea doar acele țări, care într-un mod mai eficace vor transforma structura instituțională a circuitului de mărfuri și vor crea condiții pentru dezvoltarea prioritară a economiei de rețea. În schimbul dezvoltării spontane a comerțului electronic apare o direcție de dezvoltare, avantajată din partea organelor de stat. În aceasta constă tendința principală a transformărilor instituționale în dezvoltarea economică mondială, care determină natura competitivității mondiale în comerțul electronic.

Comerțul global electronic, creat de convergența tehnologiilor informaționale și de comunicare, depășește limitele businessului și schimbă caracterul economiei mondiale a secolului XXI. Aceasta asigură oportunitățile și avantajele noi, competitive atât pentru principalele Corporațiuni Multinaționale, cât și pentru întreprinderile mici și mijlocii (IMM), căutând să-și extindă sfera de influență pe piețele internaționale promițătoare. IMM abia încep să cuprindă aceste noi oportunități.

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## DINAMICA RESTABILIRII ECONOMIEI MONDIALE POST-CRIZĂ

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### **Rezumat**

*Schimbările globale au cuprins întreaga lume, inclusiv domeniile și regiunile, impulsionate de succesele umanității în domeniul progresului social-economic, C&D, tehnologic și extinderea oportunităților umane. Dezvoltarea economică accelerată a declanșat noi provocări și presupune creștere intensivă și extensivă. Un miracol economic se consideră dezvoltarea țărilor emergente, apariția „tigrilor asiatici”. Metoda extensivă apelează la creșterea factorilor cantitativi: materii prime și forța de muncă. Capitalul financiar, ISD și energia doar pot fi catalizatori ai creșterii economice. Metoda respectivă nu presupune creșterea calificării resurselor umane, care degradează de rând cu tehnica, soldându-se cu crize economice. Metoda intensivă presupune o percepere nouă a lucrurilor, perfecționarea și raționalizarea tehnologiilor aplicate. Utilizarea metodelor mixte aduce un aport sinergetic. Creșterea economică se măsoară prin creșterea PIB-*



lui. Într-o țară foarte săracă, este aproape cu neputință de a diminua sărăcia, fără a impulsiona ascensiunea economică. Într-o astfel de societate lipsesc persoanele, veniturile cărora pot fi redistribuite. Dezvoltarea economică, chiar și într-o țară săracă, va asigura creșterea economică, reducând sărăcia. Renaissance-ul economic a declanșat un impuls creșterii economice la finele sec. XX. Deschiderea și integrarea economică, schimbul de tehnologii și knowhowleger penetra în țările sărace și în curs de dezvoltare. Pășind pe calea deja bătătorită, țările sărace asimilează ușor noutățile tehnologice, aplicându-le în practică. Autorii și-au pus ca scop cercetarea caracterului economiei mondiale la începutul secolului al XXI-lea, în perioada post-criză, pentru identificarea direcțiilor de dezvoltare și adaptarea la noile realități economice. În mod evident, creșterea economică este asigurată, în primul rând, de resursele energetice. Unele energii, adesea sunt epuizabile, poluante sau costisitoare. Omenirea a ajuns la conștientizarea necesității căutării unor surse alternative de energie eficiente. Perspectivile sunt suficient de promițătoare.

**Cuvinte-cheie:** dezvoltare, oportunitate, disponibilități, creștere, obstacole, strategie

**JEL Classification:** F11, F12, H30, H87 O40, O47, O52, P67, Q32

**Introducere.** Dezvoltarea social-economică permite detectarea a două realități atotprezente. Primordial este perceperea de către societate și guverne că calea de dezvoltare anterioară nu este cea mai bună. Cea de-a doua realitate consistă în faptul că schimbările palpabile pot apărea ca rezultat al unui șoc major, cum ar fi: revoluția agrară, revoluția industrială, schimbarea mentalității și manierei de a gândi, revoluțiile burgheze, epoca post-Napoleon, revoluția din 1917, înfrângerea Germaniei și Japoniei, decolonizarea sau căutarea unor vectori noi de orientare social-economică, SUA, Coreea de Sud, Malaiezia, Singapore, China, Spania, Portugalia, Brazilia etc. Peter Russel își exprimă gândul în lucrarea „The White Hole in Time” din anul 1992 că ritmul ascendent al cunoașterii va conduce la apariția de eoni [16]. Peter Russell presupune că ne aflăm în ajun de un salt major în evoluție, la fel de semnificativ ca apariția vieții în sine, iar esența acestui salt este dezvoltarea spirituală interioară, evoluția și transformarea accelerată interioară. Autorul consideră că doar printr-o astfel de schimbare a conștiinței vom putea gestiona cu succes crizele globale, cu care ne confruntăm frecvent [16].

Ca urmare, în opinia autorilor, în majoritatea țărilor industrializate și dezvoltate economic, modernizatoare continuitatea a fost deteriorată pe parcursul timpului, cu toate că intelectualitatea și cercurile de vârf ale societății

au depus efort pentru a depăși unele puncte de reper pentru progres, care, însă, s-au dovedit a fi efemere. Majoritatea țărilor, care au avansat economic, au realizat o simbioză sinergetică dintre știință și gândirea filosofică. Modernizarea nu a schimbat imediat standardul de viață, chiar dacă s-a remarcat o creștere economică per ansamblu. Autorii explică acest fenomen prin faptul, că nivelul de trai nu este o schimbare radicală (revoluționară) în gândirea inovațională. Elitele politice aveau ca scop obținerea popularității, faimei, influenței asupra maselor, pe când elitele economice depun efort pentru a-și spori profiturile. Acest lucru îl observăm în unele țări exportatoare de hidrocarburi din Golful Persic. Actualmente asistăm la criza de strategie pe termen lung, observăm un scepticism în Spațiul European și Nord-american. Cu cât nivelul de trai și intelectual crește – scade natalitatea, societatea îmbătrânește. Acceptarea valului de refugiați, selectarea imigranților, loialitatea democratică, Brexit sunt consecințele lipsei de strategie viabilă pentru viitor. Criza recentă (2007-2012) nu a condus la o avansare tehnologică, industrială sau socială. Se face o impresie că democrația a „obosit”. La nivel global, putem remarca dispariția clasei de mijloc: „bogații se îmbogățesc, iar săracii se înmulțesc”. Populația săracă constituie partea ce mai numeroasă a societății (circa 85%), pe când oamenii bogați controlează peste jumătate din bogățiile lumii. În viitorul apropiat, 50% din valorile globale vor fi gestionate de 1% de cei bogați.

Potrivit publicațiilor Forbes, în topul celor mai bogați oameni din lume în anul 2017 sunt incluși: pe locul întâi – Bill Gates, președintele Microsoft, cu 86 miliarde USD; pe locul secund – Warren Buffett, conducător la Berkshire Hathaway, cu 75.6 miliarde USD; pe locul trei – Jeff Bezos, Amazon, cu 72.8 miliarde USD, pe locul patru – Amancio Ortega, de la Inditex, cu 71.3 miliarde USD; locul cinci – Mark Zuckerberg, de la Facebook, deținător a 56 miliarde USD; locul șase – Carlos Slim din Mexican telecom, cu 54.5 miliarde USD; locul șapte – Larry Ellison de la Oracle, cu 52.2 miliarde USD; locul opt – Charles Koch, de la Koch Industries, cu 48.3 miliarde USD; locul nouă – David Koch, președintele Koch Industries cu 48.3 miliarde USD; locul zece – Michael Bloomberg, Bloomberg, cu 47.5 miliarde USD [17]. Opt dintre cei mai bogați oameni pe Terra dețin avere egală cu 3,6 miliarde de săraci din lume [3].

**Scopul cercetării** constă în investigarea stării economiei globale la începutul secolului XXI, în perioada post-criză, pentru a identifica direcțiile prioritare ale vectorului de dezvoltare și adaptarea economiilor naționale la noile realități.



**Rezultate și analiză.** În SUA, gazele naturale ieftine și curate devin din ce în ce mai mult un concurent al cărbunelui ca sursă principală de energie. În alte țări, cărbunele începe, de asemenea, să devină nepopulară în măsura în care guvernele înăspresc legile privind protecția mediului. Statele Unite își rezervează poziția de cea mai impunătoare economie din spațiul mondial, care cifrează un PIB apreciat la 16.800 miliarde USD, depășind China și Japonia. La etapa actuală, SUA are rol de locomotivă pentru țările G7, impulsionând statele din zona euro, reducând șomajul, iar țările din periferia UE își vor spori numărul locurilor de muncă [3; 4]. Un actor serios pe piața economică mondială apare China, care are tendința de a depăși SUA, către 2025 va deveni cea mai mare putere economică din lume [4]. Alt concurent important devine India, având o forță de muncă de 4 ori mai ieftină decât în China. Indonezia cu pași accelerați înaintază, și în scurt timp se va plasa pe locul 16 după PIB cu 1 trilion USD.

În acest context, autorii estimează că PIB-ul Chinei, în 2025, va constitui 26.774 miliarde USD, depășindu-l pe cel american. Discrepanța economică va spori până la 43.700 miliarde USD, comparativ cu 34.000 miliarde USD al SUA în 2030. În spațiul economic european estimăm că Marea Britanie, cu PIB-ul de 2.828 miliarde USD, va depăși economia Franței. Germania își rezervează locul patru cu PIB-ul de 3.636 miliarde USD, cu toate că după 2024 va fi depășită de India, depășind cu PIB-ul de 3.100 miliarde USD Marea Britanie, plasându-se pe locul trei cu 9.000 miliarde USD către 2029. Din cauza presiunilor economice din partea SUA și UE asupra prețurilor la petrol, economia Rusiei cedează în plasamentul economic, de la 8 la 10 [15].

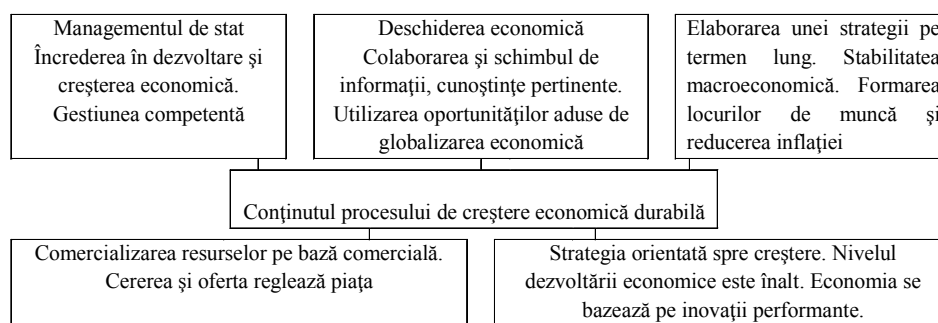


Fig. 1. Elementele generale ale creșterii economice durabile

Problema energetică devine tot mai acută. China consumă aproape jumătate din totalul cărbunelui energetic din lume și are nevoie urgentă de combaterea poluării urbane și a amenințării cu încălzirea globală. Nivelul de poluare în unele părți ale Beijingului atinge 265 micrograme/m<sup>3</sup>, față de 25 micrograme/m<sup>3</sup> prevăzute de OMS. Cauza este emisia de smog industrial, bazat pe utilizarea cărbunelui, praful de la construcții. Din anul 2014, China a introdus unele restricții în utilizarea cărbunelui în calitate de combustibil, care atinge 66% [2]. În acest sens, guvernul intenționează, până în 2020, să crească cu 15% consumul de energie din surse non-fosile, iar până în 2030 – la 20%. Potrivit previziunii chineze, în următorii cinci ani, accentul va fi pus pe energia eoliană și solară, energia nucleară și energia din materii prime de biomasă: industria oțelului, energiei și chimică va fi supusă controlului asupra eliberării de substanțe poluante. Globalizarea va evolua cu ritmuri lente. Se preconizează că ritmul creșterii comerțului mondial va rămâne în urmă de creșterea economică globală. Accelerarea protecționismului național va spori dificultățile în dezvoltarea economiei mondiale. Relația comercială dintre SUA și China se va acutiza, iar Parteneriatul Transpacific va rămâne puțin soluționat [5].

Cel mai mare consumator de energie din lume activează construcția de centrale electrice care utilizează combustibili anorganici. În anul 2015, s-a declanșat lansarea de centrale electrice eoliene cu o putere totală de 100 GW. Utilizarea energiei solare va crește și ea (China este cea mai mare piață a echipamentelor fotovoltaice din lume). La nivel global, creșterea energiei regenerabile va depăși în mod semnificativ creșterea consumului de energie per ansamblu (fig. 2).

Strategia China constă în accelerarea construcției de centrale nucleare [1]. Un alt motiv care determină statutul Asiatic ca un actor-cheie pe această piață este concurența puternică din partea Coreei de Sud. Japonia va începe să

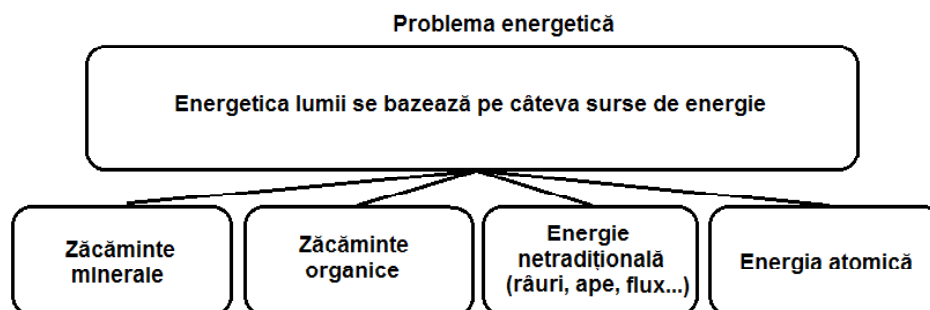


Fig. 2. Necesarul de utilizare a diferitor surse de energie pe Glob



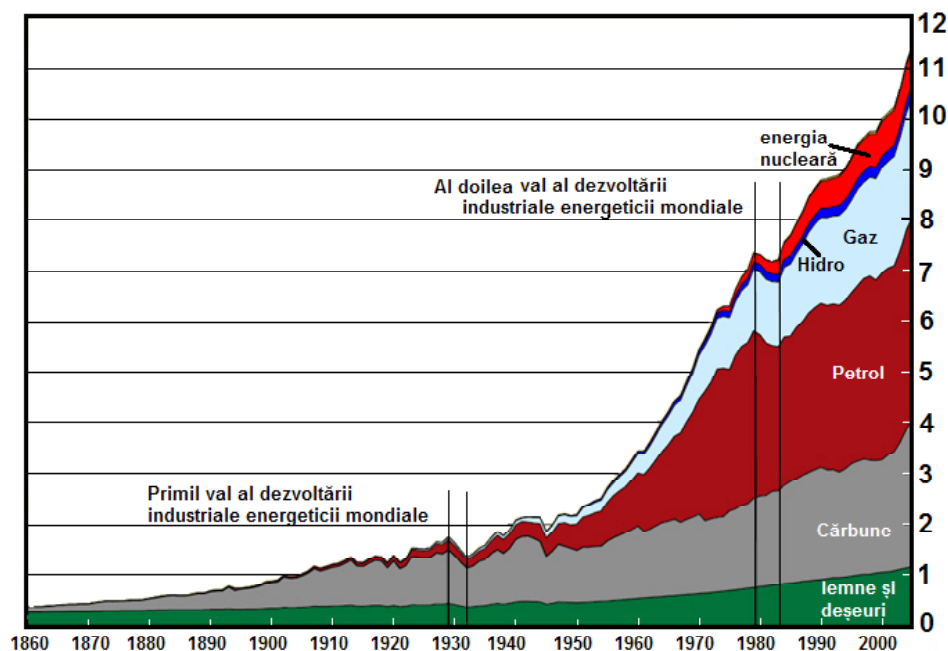


Fig. 3. Dinamica creșterii consumului de energie pe Glob,  
% față de anul precedent

Source: The Economist Intelligence Unit.

reanimeze reactoarele nucleare, deteriorate după accidentul cauzat de cutremurul din Fukushima (2011), ceea ce va reduce cererea de combustibil fosil importat.

În ciuda semnelor încurajatoare ale unei „revoluției verde”, combustibilul anorganic este lipsit de sprijinul global, necesar pentru o descoperire globală de succes. În anul 2009, încercările de a găsi un înlocuitor pentru Protocolul de la Kyoto s-au încheiat [11]. Cu toate acestea, acordul recent dintre SUA și China privind emisiile de CO<sub>2</sub> în atmosferă oferă speranța că alte țări în curs de dezvoltare vor începe să ia măsuri mai stricte pentru a contracara încălzirea globală [12].

Economia mondială trece prin ceață și nori. Dubiile apar similar declanșării crizei financiare din perioada anilor 2007-2012. Motivul pesimismului se datorează evenimentelor, care denotă faptul că un nou ciclu economic nu s-a început, n-au apărut noi metode de producere a energiei și produselor alimentare. În timp scurt economia mondială se va extinde, dar vor apărea dezechilibre între resurse și numărul populației [14].

În același timp, în ciuda reducerii resurselor pe cap de locuitor, țările

trebuie să exercite cheltuieli excesive pentru salariile funcționarilor de rang înalt și pentru finanțarea armatei. Aceste costuri nu sunt ușor de redus și, în cele din urmă, pot fi considerate de guverne ca o modalitate de a rezolva probleme. Concomitent, veniturile muncitorilor sunt în scădere, în același timp, taxele care vor fi direcționate spre cheltuielile de mai sus sunt în creștere. Impozitele devin prea mari, iar lucrătorii nu au posibilitatea de a câștiga suficient pentru o viață decentă [10]. Astăzi omenirea depinde de sistemele financiare internaționale, de sistemul comercial, accesul la resursele petroliere, din aceste motive putem previziona că, criza se va declanșa în ritmuri accelerate [8].

Presupunând că rezervele de cărbune vor scădea și că alte resurse energetice vor crește moderat, se poate aștepta ca, în viitorii ani, consumul total de energie să fie aproximativ la același nivel. În opinia autorilor, aceasta este o prognoză destul de optimistă, deoarece multe țări încearcă în prezent să reducă producția de petrol pentru a crește prețurile [6]. Astfel, putem distinge două scenarii posibile:

1) prețurile la petrol nu vor crește prea mult, astfel încât consumul de petrol va crește în același mod ca și în trecut;

2) prețurile la petrol vor crește semnificativ, ceea ce va afecta pozitiv situația din țările producătoare de petrol, iar consumatorii nu vor reduce nivelul consumului ca răspuns la prețurile ridicate.

Deoarece populația mondială este în creștere, se presupune că va scădea consumul de energie pe cap de locuitor.

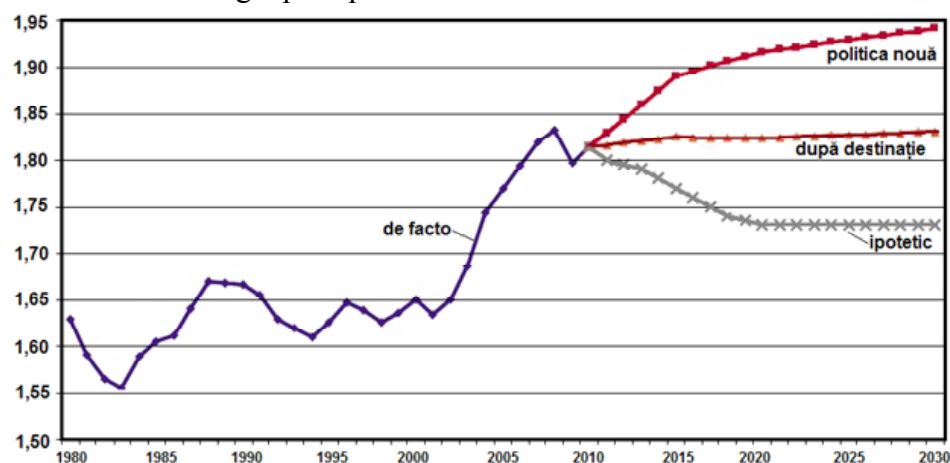


Fig. 4. Consumul mondial de energie pe cap de locuitor, 1980-2030

Sursa: World Energy Outlook 2010. International Energy Agency. Paris, 2010



În economia Republicii Moldova autorii remarcă unele tendințe benefice vis-à-vis de creșterea PIB-ului. În anul 2016, PIB-ul a avansat cu 4,3%, ca în trimestrul doi să crească cu 2,5% [18]. Ca motor de creștere s-au evidențiat: comerțul angro și cu amănuntul, construcțiile, serviciile TIC, activitatea financiară. Agricultură a stagnat, aportul ei în PIB a fost negativ. Creșterea PIB-ului în general s-a datorat consumului intern și investițiilor, pe când balanța exportul a cifrat deficit. Autorii remarcă că deficitul persistă în ultimii ani, fiind în diminuare pe toate pozițiile. Se reduc livrările de import-export, însă importul diminuează cu ritm superior exportul, deficitul *comercial* reducându-se. Se atestă un bilanț de plăți negativ pe toate direcțiile, inclusiv cu UE, CSI și țările terțe. Unica resursă regenerabilă în Republica Moldova este producția agricolă. Accentul trebuie pus nu doar pe producția agricolă, ci pe exportul produselor agricole. Este necesar de extins piața de desfacere, de căutat nișe noi, deoarece piețele tradiționale deja sunt suprasaturate. Se estimează o creștere economică în Republica Moldova cu 4-4,5%, pe când FMI și Expert-Grup estimează la 3%, Banca Mondială – 2,8%, BERD – 2,5-3%, cu toate că vor spori tarifele la energia electrică, încălzire, gaz, salariul a crescut doar cu 11%. Pentru anul 2018 estimăm o creștere de 3,6-3,7%. Cu regret, putem remarca că economia Republicii Moldova nu și-a găsit locul în diviziunea internațională a muncii, nu are o strategie clară pentru vectorul economic.

### Concluzii

Situația din economia mondială este foarte vulnerabilă. Mulți factori pot declanșa criză prin: creșterea prețurilor la energie, creșterea ratelor dobânzilor, valori implicite, care vor deveni un rezultat indirect al valorilor de încetinire sau negative ale creșterii economice, reducerea influenței organizațiilor internaționale, schimbări rapide în raportul cu valuta, prăbușirea băncilor asociate cu numărul tot mai mare de valori implicite și scăderea prețurilor la active. În prezent, situația nu este rea, dar problemele menționate mai sus sunt grave și mulți analiști cred că lumea este în așteptarea crizei. Cu toate acestea, nu sunt evidenți termenii crizei – va fi economia mondială afectată de criză în anul 2018 sau problema va fi amânată până în 2019 sau 2020.

Pe parcursul a mai mult de două decenii de independență a fost prezentă nevoia de modernizare și dezvoltare, totuși acum este evident că nu au avut loc schimbări serioase în țară. Obiectivele modernizării și accentul principal pe anumite sectoare nu sunt încă definite. Nișele de pe piețele mondiale, pe care Republica Moldova le-ar putea ocupa, nu sunt încă determinate. Este destul de naiv să presupunem că țara poate începe să se dezvolte rapid

numai prin restaurarea industriei vinicole. Accentul pus pe progresul tehnologic pare neconvingător, deoarece nici o țară nu a atins încă standardele societății postindustriale, neavând, în primul rând, cunoștințe în domeniul unor ramuri competitive, care singure pot fi „consumatoare”.

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## DREPT NAȚIONAL ȘI INTERNAȚIONAL EUROPEAN

### FORMAREA STATALITĂȚII SLOVACE

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#### **Rezumat**

*Dezvoltarea istorică a Slovaciei atestă că ea se află într-un extrem de volatil spațiu geopolitic. Republica Slovacă în istoria sa a fost nevoită mereu să lupte pentru cel mai important - pentru teritoriul său. Fiecare teritoriu are limitele sale, astfel încât statul ar trebui să definească limitele de influență, în cadrul cărora statul își exercită puterea supremă. Frontierele de stat au o importanță deosebită, și elementele, care le diferențiază de alte tipuri de frontiere, este faptul că aceste frontiere de stat sunt în același timp și limite decizionale și limite politice cu țările din jur, cu care Republica Slovacă se învecinează.*

**Cuvinte-cheie:** *stat de frontieră, tratate de pace, teritoriul de stat, autonomia, suveranitatea, cedarea teritoriului, sfera de influență geopolitică*



## ФОРМИРОВАНИЕ СЛОВАЦКОЙ ГОСУДАРСТВЕННОСТИ

### **Аннотация**

*Историческое развитие Словакии происходит в особенном геополитическом пространстве. Словацкая Республика в своей истории была вынуждена бороться за самое главное – за свою землю. Каждая территория имеет свои ограничения, поэтому государство должно определить границы собственного влияния, в рамках которых осуществляет свою высшую власть. Государственные границы имеют особое значение и особенные характеристики, которые и определяют отношения с приграничными государствами.*

**Ключевые слова:** приграничное государство, мирные соглашения, государственная территория, автономия, суверенитет, присвоение чужой территории, область геополитического влияния

Границы сегодняшней Словакии не были в прошлом конкретно определены. До 1918 года установившиеся границы имелись лишь на севере и западе Словакии, которые были сходны с границами Королевства Венгрии с Польшей, Моравией и Австрией. Южные и восточные границы Словакии были фактически впервые определены мирными соглашениями в 1919 году.

Исходя из вышеизложенного, границы Словакии на юге и востоке не были установлены на основании национального принципа. Это означает, что в то время как в южных районах юго-западной части Словакии многочисленно компактно проживало венгерское население, в приграничных зонах на установленной границе или несколько южнее от нее существовали тогда в Венгрии сёла со словацким населением восточнее от Эстергом, а затем в Новоградской и Абовской жупах, и на востоке в Ужской жупе.

Горные районы Словакии, заселённые представителями словацкой ветви лужицко-силезской культуры, были на периферии культурного развития центральной Европы. Приблизительно в 833 году правитель Моравского княжества Моймир победил князя Прибину и захватил территорию его княжества, которое простиралось в регионе около города Нитра. Таким способом, можно сказать, возникло государство, которое более чем 100 лет спустя византийский император Константин Порфирогенет (Константин VII Багрянородный) назвал в своей книге “Об управлении империей” именем “Великая Моравия”.

Следующим историческим этапом в развитии границ Словакии был

890 год, когда король Восточно-Франкского королевства Арнульф Каринтийский уступил Святоплуку, правителю Великой Моравии власть над Чешским воеводством. Это привело к тому, что Святоплук стал королём моравских славян. Критическим был период от 904 до 906 года, когда погиб князь Святоплук, и, таким образом, восточная часть Великой Моравии стала исключительно венгерской сферой интересов.

Современной терминологией Великую Моравию бы можно было назвать моравско-словацким государством. Об этом свидетельствует тот факт, что особенную национальную идентичность со времен Великой Моравии сохранил только словацкий народ.

После 907 года древние венгры стали гегемонами бассейна Дуная и за более чем полвека исчезла и Восточная Марка. Предводители семи венгерских племен разделили между собой всю свою территорию бассейна Дуная.

В X веке и первой половине XI века к Нитрианскому уделу принадлежала территория от нижнего и частично центрального Погронья на запад до Малых Карпат и Моравии. После создания Королевства Венгрии эта географическая область в регионе Нитры исполняла функцию пограничной оборонительной зоны. В начале XIII века на этих землях территориальными частями были Словацкие жупы.

Самовольному укреплению идеи словацкой этнической территории в течение истории Венгрии также способствовало то, что во время турецкого господства, после вторжения турецких войск в Венгрию, территория эта до конца XVII века сузилась на представляющую примерно территорию современной Словакии.

В конце периода османских набегов 29 августа 1526 года состоялась битва при Мохаче. Численное слабое венгерское войско во главе с неопытными военачальниками было полностью разбито османской армией. Битва при Мохаче замыкает целую эпоху развития Словакии и связанных с ней границ. После этого наступает постепенный захват почти всей заселенной венграми части Венгерского королевства Османской империей, владычество которой длилось на протяжении более полутора веков.

Юридически Венгрия вошла в состав Габсбургской империи в 1538 году, когда заключением Варадского мирного договора Фердинанд I Габсбургский на основе статус-кво оставил за собой западную часть а Ян Запольский восточную части Венгрии. [1]

29 августа 1541 года турки заняли Замок Буда. Султан объявил территории вдоль Дуная аж до Тисы центром новой Османской империи.





Венгрия была разделена на три части: турки контролировали территорию между Дунаем и Тисой, княжество Трансильвания с несколькими престолами существовало на востоке Венгрии и, наконец, северная и западная часть, так называемое Королевство Венгрия, стали неотъемлемой частью Габсбургского государственного образования. Центром была территория сегодняшней Словакии. В Словакию переехали главные королевские учреждения, административные и церковные институты. Братислава, таким образом, стала местом, в котором заседал венгерский сейм и одновременно столицей этого государственного образования.

Турецкая оккупация центральных регионов Венгрии привела к существенным изменениям в этническом составе населения. Высшее дворянство в Словакии переселялось в сельскую местность, где получало владения, конфискованные у сторонников Яна Запольского. Среднее дворянство и шляхта переселялись, в основном, в города. Они поступали на военную службу в пограничные замки и крепости на юге Словакии. В города сходились с захваченных турками территорий и много представителей мещанства, среди них группы венгерских купцов, которые поселились в основном в Братиславе, Трнаве и Кошицах.

В XVII веке на изменение политической стабильности османско-габсбургской границе повлиял князь Трансильвании Дьёрдь II. Ракоци. Последнее антигабсбургское восстание вспыхнуло в Венгрии 27 сентября 1703 года под руководством Ференца II. Ракоци. Однако императорская армия разбила отряды куруцов 3 августа 1708 года при Тренчине.

На протяжении всего XVIII века миграция населения продолжалась. Основное направление переселения людей, по сравнению с двумя предыдущими веками, было обратным, а именно в направлении с севера на юг. Переселение осуществлялось в южные, после вытеснения турок, малонаселенные регионы Словакии, в центральные и южные части Венгрии, на север сегодняшней Сербии и Хорватии.

В течении XVIII века все сильнее кристаллизовалась идея об этнической территории словацкой национальности и начало углубляться внутреннее политическое единство. Матей Бел, словак энциклопедических знаний, определил пределы населенных словаками земель в 13 северо-венгерских административных единицах. Первый шаг в вопросе создания самостоятельной национальной словацкой территории находим в речи Людовита Штура перед сеймом в 1840 году. [4] Более точное определение словацкой этнической территории находим в книге П.Й. Шафарика "Словацкое народописание". В ней Шафарик

определил границы словацкой этнической группы на основании словацком наречия.

10 мая 1848 года словацкая интеллигенция провозгласила петицию к венской верхушке под названием «Требования словацкого народа». В этом программном документе, помимо прочего, содержался призыв к «определению этнических границ каждого народа с целью участия в национальных парламентах и необходимости организации местных администраций».

На Славянском конгрессе в Праге сам Людовит Штур высказал мнение о вхождении Словакии в «австрийские рамки славянской составляющей», в котором территориальные единицы, населенные отдельными славянскими народами, были бы составляющей частью федеративного образования. [7] В конце 1848 года обсуждался план относительно возможного создания словацкого королевства. [3]

Эти усилия не были включены в «октроированной» конституции Австрийской империи 1849 года, которая отвергла словацкие усилия, изложенные в петиции к монарху. В этой петиции содержался, в частности, призыв признать самобытность словацкого народа и выделить ему на этнической основе определенную территорию.

После поражения революции 1848-1849 годов венское правительство в лице министра внутренних дел Александра фон Баха, укрепляло централизацию империи. В Венгрии была введена военная диктатура. Страна управлялась королевским наместником, который контролировался Венским правительством и императорским двором. Официальным языком во всей монархии стал немецкий. Словакам Венское правительство пошло на мелкие уступки в том, что в словацких жупах в коммуникации с властями также мог использоваться словацкий. В 1853 году Франц-Иосиф I отменил крепостное право, правительство, однако, стремилось сохранить как можно больше привилегий для аристократов.

В 1859 году Австрия потерпела поражение от итальянских национально-освободительных войск, боровшихся за объединение Италии и отделение регионов Италии от австрийской монархии. Народы начали провозглашать свои требования. Тем не менее, император предпочел поддержать венгерские требования - восстановил в Венгрии сейм и, практически, вместо централизованного государства установил существование двуединой монархии, и как следствие вся Венгрия попала под контроль венгерского правительства, сейма и органов жуп, которые сразу же начали реализовывать свои давние планы по мадьяризации. Это



привело к усилению национального движения словаков, кульминацией которого стала провозглашение словацкой национальной программы - “Меморандум словацкого народа”. В таких условиях словацкий национальный комитет решил предложить по сути уже применённые требования Меморандума прямо монарху. Словацкий округ должен был иметь 16 районов, которые должны быть на юге ограничены словацко-венгерской этнографической границей. [9] Следует констатировать, что Меморандум, как и Привилегии Вена не учла, а требования, вытекающие из них, перемещались из Императорского совета на обсуждение в Королевскую венгерскую дворную канцелярию, пока наконец не затерялись в архивах. Венгерская политика правительства была направлена на усиление государственной централизации. Политика венгерского правительства в отношении меньшинств осталась неизменной. При таком раскладе политических сил, когда Германия поддерживала усилия по германизации и мадьяризации Австро-Венгрии, было невозможно собственными силами изменить политическую ситуацию. Изменение могло произойти только в случае радикальных сдвигов в международной ситуации.

Начало Первой мировой войны вызвало во многих европейских странах волну шовинизма и псевдопатриотического энтузиазма. Идея чешско-словацкой государственности среди словацкой общественности во время войны появилась относительно быстро. За границей начало организовываться сопротивление против Австро-Венгрии с целью создания независимого Чехо-Словацкого государства. Свое представление о первом будущем общем государстве чехов и словаков сформулировал Т. Г. Масарик еще в октябре 1914 года. В мае 1915 года Т. Г. Масарик резюмировал для министерства иностранных дел Великобритании свой план к меморандуму, который он назвал Индепендент Богемия. Карта Чехословакии еще в марте 1915 года была составной частью конфиденциального Меморандума Масарика, предложенного в Лондоне. В главе, посвященной территории и населению планируемого государства, говорилось: «Чешское государство будет состоять из так называемых чешских земель, а именно Чехии, Моравии и Силезии, к ним бы были присоединены словацкие края на севере Венгрии, от Ужгорода через Кошице по этнографической границе, и вниз по реке Ипель до Дуная, включая Братиславу и весь словацкий север аж к пограничной линии Венгерской». [2]

По просьбе Й. Ротнагла, председателя Чешско-словацкой гильдии в Праге, выработал Ш. Клима предложение по границам Словакии в

рамках будущего чешско-словацкого государства. Проект был основан на принципе, что неприемлемо учитывать только этнографические границы, но речь должна идти о их комбинации с границами естественными, а о принятия во внимание экономических аспектов.

Требование присоединения Словакии к историческим землям в чешской официальной политике в связи с предыдущим формированием взглядов возникло почти в последний момент. Наряду с доминированием радикализма, в чешской официальной политике окончательно утвердилась идея включения Словакии в общее государство. 6 января 1918 года была подготовлена чешскими депутатами Императорского совета и чешскими, моравскими и силезскими земельными сеймами так называемая Декларация Трех королей. Она провозглашена была и от имени “подчинённой и политически подавляемой ветви словацкой в Венгрии” за независимое государство на основе права на самоопределение. [8]

Представители чешско-словацкого сопротивления за границей стремились добиться от государств Антанты официального признания самостоятельной Чехословакии. Политические представители Антанты на тот момент все таки не могли решиться на последний шаг, который бы означал ликвидацию Австро-Венгрии.

Чехословацкий национальный совет изменил тактику и попытался получить поддержку не от Антанты в целом, а от отдельных правительств. И эта тактика была успешной. Значительным вкладом в этот процесс было и участие в военных действиях чешско-словацких легионов в Сибири. Первым признало Чехословацкий национальный совет в качестве чехословацкого правительства, а чехословацкие войска как союзные, французское правительство 29 июня 1918 года. 9 августа 1918 года так сделало британское правительство, 3 сентября - правительство США и 3 октября правительство Италии. Т. Г. Масарик также стремился мобилизовать чешских и словацких соотечественников, достичь их единства, чтобы они могли более эффективно поддерживать чешско-словацкое движение. В Соглашении, подписанном 30 мая 1918 года в Питтсбурге, содержался призыв к созданию общего демократического Чешско-Словацкого государства, в котором Словакия должна была иметь автономию. Соглашение дало новый импульс к движению соотечественников в США. Т. Г. Масарик также пытался повлиять на правительство США и специально на президента Вильсона, чтобы тот выступил за независимую Чехословакию.

Председатель чешской ассоциации Франтишек Станек выступил в



начале сентября в Императорском Рейхстаге и без церемоний заявил, что чехи уже расстались с Австрией, а чешский вопрос будет решаться на международном форуме. В том же духе выступил в венгерском сейме словацкий депутат Ф. Юрига, который 19 октября провозгласил, что венгерский сейм не имеет право представлять интересы словаков на мирной конференции, а такое право имеет лишь Словацкий национальный совет.

Решающим фактором стала новая чехословацкая государственная власть, которая посредством военного захвата Словакии силами чешских и словацких добровольцев при помощи иностранных войск навязала конкретный способ включения этой территориальной части в республику.

Чехословацкие требования на Парижской мирной конференции зафиксировались на главном требовании признания исторических границ трех основных земель Чешской Короны - Чехии, Моравии и Силезии, а также на определении оптимальных границ "присоединенной" Словакии и Закарпатской Украины, и, наконец, на решении вопроса границы с Польшей. Мирная конференция в Париже началась 18 января 1919 года. На этой конференции была создана так называемая специальная Комиссия по чехословацкому вопросу, которая должна была рассмотреть все территориальные запросы чехословацкой делегации и предложить их Верховному Совету для окончательного утверждения. 27 февраля 1919 года на первом заседании этой Комиссии под председательством представителя Франции Жюль Камбона все ее члены согласились с принципом признания исторических границ в качестве основы для дальнейших действий. В целом можно констатировать, что мирная конференция в Париже акцептировала большую часть чехословацких территориальных требований. Словакия вместе с Закарпатской Украиной были утверждены в составе Чехословакии. Пограничный спор о Тешинском округе был окончательно решен разделением его на две части.

Линию границы между Словакией и Венгрией регулировал Трианонский мирный договор, заключенный 4 июня 1920 года, согласно которому международно-правовым способом была решена проблема определения южных границ Чехословакии. В соответствии со статьей 50 этого договора, была создана чешско-венгерская комиссия по делимитации, которая должна была установить границы, указанные в статье 24, пункте 4 этого Трианонского мирного договора. [6]

Польша связывала с северной границей свои претензии, которые она представила на Парижской мирной конференции. Кроме спорной

территории Тешинского округа, Польша имела территориальные претензии в Ораве и в Спишском крае. Польская сторона аргументировала свою позицию, касающуюся пограничных претензии на эти части Словакии, в основном тем, что они населены поляками, и обосновывала это “улучшением своих стратегических позиции в указанных регионах”. Чехословацкая Комиссия по делимитации предложила в июле 1921 года этот спор на конференцию послов, которая обратилась с запросом на разъяснение в Совет Лиги наций, а тот в свою очередь передал на рассмотрение этот спор Постоянной палате международного правосудия в Гааге (позднее Международный суд в Гааге). Международный суд поддержал чехословацкую позицию, аргументом для которой послужило действующее решение Совета послов о новых границах от 28 июля 1920 года. [5] Совет Лиги Наций принял резолюцию, которая была сходной с чехословацкой позицией.

С 1918 года и в течение 1919 года решался вопрос и по восточной части словацкой границы, который был тесно связан с Закарпатской Украиной. Территория Закарпатской Украины или Подкарпатской Руси, так же, как и Словакия, не была ни административной, ни автономной единицей в Венгрии. Историческим событием в развитии Закарпатской Украины была декларация венгерских русинов, провозглашенная в Соединенных Штатах, которой они 26 октября 1918 года в Филадельфии высказались за присоединение русинской территории Венгрии к Чехословакии. Заместитель председателя Центральной русской народной рады доктор права Антоний Бескид вместе с представителями чехословацкой делегации на Парижской мирной конференции выступил за присоединение Подкарпатской Руси к Чехословацкой Республике. Мирная конференция приходит к выводу, что не оставит жить русинов в одном государстве с венграми, но выскажется в соответствии с пожеланием всех русинов присоединить Подкарпатскую Русь к Чехословакии.

Границы Словакии с Австрией установил договор, подписанный в Сен-Жермен-ан-Ле 10 октября 1919 года. Этот Договор в статье 27, пункт 6, указывает на старые административные границы между Чехией и Моравией с одной стороны, и Верхней и Нижней Австрией на другой.

Государственные границы Словакии с Чехией по сути не были до 1993 года точно нормативно определены. Историческим переломом стало заключение Договора между Словацкой Республикой и Чешской Республикой об генеральном установлении государственной границы, который был подписан в Праге 19 октября 1992 года, и который был заменен Договором между Словацкой Республикой и Чешской Респуб-



ликой о совместных государственных границах, подписанный в Жидлоховицах 4 января 1996 года. Этот исторический договор подготовила Объединенная словацко-чешская разграничительная комиссия. Главной задачей этой комиссии было обозначить и измерить на местности неустановленную словацко-чешскую государственную границу. Ее прохождение было определено административной границей республик.

Чехословацкая Республика после Второй мировой войны подписанием Договора “О Закарпатской Украине” от 29 января 1945 года передала Подкарпатскую Русь Советскому Союзу. Граница, которая была между Словакией и Закарпатской Украиной, установленная 12 сентября 1938 года, стала границей между Чехословацкой Республикой и Союзом Советских Социалистических Республик, а позднее между Словацкой Республикой и Украиной.

Историческое развитие Словакии подтверждает, что она расположена в чрезвычайно нестабильном геополитическом пространстве. Словацкая Республика в своей истории вынуждена была всегда бороться за самое главное - за свою территорию. Как каждая территория имеет свои границы, так государству необходимо определить пределы своего влияния, в рамках которых государство осуществляет верховную власть. Государственные границы имеют особое значение, и что их отличает от других типов границ, так это то, что эти государственные границы являются одновременно и границами властных и политических сфер окружающих стран, с которыми Словацкая Республика граничит.

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## ROLUL CURȚII EUROPENE DE JUSTIȚIE ÎN CONTROLUL CONSTITUȚIONALITĂȚII LEGILOR

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### **Rezumat**

*Curtea Europeană de Justiție (în continuare CEJ) este o instituție a Uniunii Europene, pe care Tratatul Constitutiv au însărcinat-o să vegheze asupra corectei interpretări și aplicări a dreptului european.*

*Reprezentanții statelor membre, prezenți la negocierile privind semnarea Tratatului de la Paris vedeau în Curtea de Justiție adevăratul organ de control al legalității actelor emise de Înalta Autoritate și Consiliul special de Miniștri, menit să asigure în același timp echilibrul între aceste instituții și statele membre, de asemenea să garanteze neamestecul autorităților Comunității Economice a Cărbunelui și Oțelului în domeniile care cad sub incidența suveranității statelor membre.*

**Cuvinte-cheie:** *Curtea Europeană de Justiție, controlul constituționalității legilor, democrație, suveranitate, instituție, sistem de drept, justiție națională*

**Introducere.** Așa cum vom arăta mai jos, ca și oricare organ instituțional al Uniunii Europene, CEJ a fost și este obiectul multiplelor cercetări și analize, prin care se încearcă identificarea rolului și locului ei în arhitectura europeană.

În rândurile ce urmează vom trece în revistă cazurile cu cea mai mare





rezonanță, pentru a desprinde și a evidenția momentele-cheie care vor marca doctrina constituțională din Republica Moldova.

**Metode aplicate.** În contextul celor relatate în prezentul articol, am considerat oportun efectuarea unei cercetări minuțioase prin metode analitico-logice, comparative, sistemice și prospective a repertoriului normativ privind consfințirea problematicei privind rolul Curții Europene de Justiție în controlul constituționalității legilor în impactul practicii de ultimă instanță prevăzut în materia dreptului constituțional, în special în Constituția Republicii Moldova. Metoda analizei logice (analiza deductivă, inductivă, generalizare, specificare etc.), utilizată pe larg în conținutul cercetării și, în special, la efectuarea sintezei opiniilor diferiților autori privind problematicele cercetate asupra legilor autohtone în speță. Metoda analizei comparative s-a utilizat îndeosebi la compararea actelor normative și doctrinei diferitor state în materia vizată. Metoda analizei sistemice, indispensabilă pentru cercetarea normelor juridice naționale și internaționale de ordin instituțional, material și procedural. Metode prospective, folosite pentru a descrie tendințele existente în domeniul problematicei privind rolul Curții Europene de Justiție în controlul constituționalității legilor, inclusiv prin prisma unificării practicii naționale în coraport cu cea internațională.

**Rezultatele cercetării.** Astfel, în opinia autorului român **F.Gyula**, procesul de aplicare a normelor de drept ale Uniunii este supus prin dreptul originar unui control jurisdicțional independent, care este realizat de Curtea de la Luxembourg, aceasta fiind menită să asigure o interpretare unitară a dreptului Uniunii pe întreg teritoriul comunitar. Totodată, ca natură juridică având în vedere, că are o componentă obligatorie și nu opțională pentru statele membre are calitatea de organ jurisdicțional supranațional [17].

Autorul **Alec Stone Sweet** a abordat subiectul Curții Europene de Justiție prin prisma impactului pe care îl are aceasta asupra procesului de „judiciarizare” asupra guvernării din cadrul Uniunii Europene. De asemenea, dânsul cercetează interrelația dintre CEJ și curțile naționale, relație ce își are sorginte legală în textul art.267 din TFEU [34, p.29-33].

Un alt cercetător – **Michael Rosenfeld**, s-a consacrat unui aspect extrem de interesant, dar totodată și actual – cel al examinării comparate între Curtea Europeană de Justiție și Curtea Supremă de Justiție a Statelor Unite ale Americi, în special pe dimensiunea atribuției de control de constituționalitate. Dânsul ajunge la concluzia, că atât Curtea Europeană de Justiție, cât și Curtea Supremă de Justiție a SUA nu sunt curți constituționale, dar ambele, totodată, se angajează în control de constituționalitate, în virtutea atribuțiilor consacrate în legislație [33, p.33-63].

Un alt grup de constituționaliști din spațiul european au reflectat asupra problematicii controlului constituționalității legilor prin prisma legislației UE și a practicilor stabilite de CEJ. Astfel, cercetătorul **Jurgen Schwarze**, a examinat originile și situația legală actuală a controlului constituționalității legilor în spațiul UE [35]. Pe de altă parte, într-o lucrare de co-autorat, cercetătorii **Koen Lenaerts** și **Tim Corthaut**, ajung să concluzioneze, că controlul constituționalității legilor este un element sine-qua-non al contribuției la dezvoltarea constituționalismului european [29]. Exact în același sens sunt și ideile expuse de **Anthony Arnall** în monografia sa dedicată Uniunii Europene și CEJ [1] și de **Alexander Turk**, care abordează puțin mai larg subiectul, mergând pe studiul problematicii controlului constituțional al legilor în dreptul Uniunii Europene [36]. Pe când **Damian Chalmers** va analiza locul Curții Europene de Justiție în sistemul instituțional al Uniunii Europene, prezentând CEJ drept „cel de-al treilea pilon” [5].

Pe de altă parte, unii cercetători s-au preocupat de corelația dintre actele și tratatele internaționale și activitatea Curții Europene de Justiție, prin prisma impactului pe care îl produc sau ar putea să-l producă deciziile ei. Este cazul lui **Lawrence Collins**, care a analizat problematica interdependenței relațiilor externe și a controlului de constituționalitate [6]; a lui **Maria Ketvel**, care a abordat problema jurisdicției CEJ prin prisma politicilor externe și de securitate [27]; a lui **Stefan Griller**, care a analizat impactul deciziei Curții Europene de Justiție în cazul Kadi asupra dreptului internațional, drepturilor fundamentale ale omului și a ordinii de drept [18].

Dacă însă, să ne referim la cadrul legal, care guvernează materia raporturilor juridice ce țin de controlul constituționalității legilor exercitat de Curtea Europeană de Justiție, urmează să evidențiem, că în virtutea prevederilor Tratatului privind Uniunea Europeană și a Tratatului privind funcționarea Uniunii Europene, Curtea de Justiție a Uniunii Europene controlează legalitatea actelor legislative, a actelor Consiliului, ale Comisiei și ale Băncii Centrale Europene, altele decât recomandările și avizele și a actelor Parlamentului European și ale Consiliului European menite să producă efecte juridice față de terți [37, art. 263].

Remarcăm o extindere a atribuțiilor, în acest sens Curtea are competența în temeiul art.263 TUE [37] (ex-articolul 230 TCE [38]) să se pronunțe cu privire la acțiunile formulate de Curtea de Conturi, de Banca Centrală Europeană și de Comitetul regiunilor, care urmăresc salvagardarea prerogativelor acestora. Curtea este competentă de asemenea să controleze și legalitatea actelor organelor, oficiilor sau agențiilor Uniunii, destinate să producă efecte



juridice față de terți. Mai mult, orice persoană fizică sau juridică poate formula, în condițiile actualelor reglementări, o acțiune împotriva actelor al căror destinatar este sau care o privesc direct și individual, precum și împotriva actelor normative care o privesc direct și care nu presupun măsuri de executare [14, p.236].

De asemenea, constatăm, că în temeiul art.269 TFUE aceasta este îndreptățită să se pronunțe și în privința legalității unui act adoptat de Consiliul European sau de Consiliu în temeiul art.7 TUE numai la solicitarea statului membru, care face obiectul unei constatări a Consiliului European sau a Consiliului și numai în privința respectării dispozițiilor de procedură prevăzute de respectivul articol [14, p.234]. Respectiva cerere trebuie prezentată în termen de o lună de la data respectivei constatări. Curtea hotărăște în termen de o lună de la data cererii (alin.2 din art.269 TFUE).

În ceea ce privește garanția respectării principiilor subsidiarității și proporționalității, controlul jurisdicțional înfăptuit de Curtea de Justiție a Uniunii Europene este decisiv, ori de câte ori acesta se impune [2, p.25].

Totuși, cea mai mare atenție a cercetărilor în materia controlului constituționalității legilor, exercitat de Curtea Europeană de Justiție, a fost îndreptată spre analiza interrelațiilor dintre curțile constituționale naționale și CEJ, impactul și limitele pe care le pot avea deciziile CEJ asupra sistemului de drept național.

Astfel, **Andrea Biondi** a punctat asupra unor limitări procedurale naționale în raport cu hotărârile și practica Curții Europene de Justiție [3]. Iar **Alan Dashwood** a insistat în a evidenția multitudinea de aspecte, adesea controversate, ce izvorăsc din relația dintre statele membre și instituțiile sale, în special Curtea Europeană de Justiție [15].

Privitor la deciziile instanței unionale, urmează să evidențiem, că efectele hotărârilor sale se exercită asupra tuturor statelor membre, pe baza aceluiasi principiu de drept. Dar sunt și critici în acest sens, astfel, că de cele mai multe ori statele membre nu au văzut în Curtea de la Luxembourg o similitudine între aceasta și Curțile lor Constituționale, unele dintre acestea nici măcar nu recunosc deciziile instanței unionale (Germania), altele însă considerând poziția sa în cadrul sistemului constituțional al Uniunii, ba mai mult, consideră binevenită cooperarea dintre Curtea Constituțională națională și cea a Uniunii. Curtea Constituțională Federală a Germaniei a stabilit în cauza Solange I, că atâta timp cât dreptul unional nu a ajuns încă la un nivel de protecție a drepturilor fundamentale, echivalent cu cel prevăzut în Constituția germană, precum și un nivel similar de legitimitate democra-

tică a puterii sale legislative, Curtea va continua să controleze legislația secundară a Uniunii, în concordanță cu standardele constituționale naționale. În Solange II, după opt ani Curtea Constituțională germană s-a exprimat în sensul, că minimul nivel indicat în prima decizie a fost atins și atâta timp cât Comunitățile, în primul rând prin jurisprudența Curții de Justiție vor continua să asigure o protecție efectivă a drepturilor fundamentale, Curtea Constituțională nu va mai putea controla legislația secundară în raport cu Constituția, deși va reține competența instanței unionale. [39, p.85-86]

Așa cum se observă din speța de mai sus, subiectul interrelației dintre curțile constituționale naționale și CEJ a fost dezvoltat, în mare măsură, cu referire la impactul său asupra sistemului de drept german. În sensul celor expuse, evidențiem eforturile științifice a lui **Dieter Grimm**, cu studiul său axat pe interrelația dintre CEJ și curțile naționale, cu accente pe perspectivele constituționale germane în lumina deciziei de la Maastricht [19] și a lui Matthias Kumm, care se întreabă, cine ar fi arbitrul final al constituționalității în Europa, oferind în studiul său trei concepții privind relația dintre Curtea Constituțională a Germaniei și Curtea Europeană de Justiție [28].

În general, competențele Curții Europene de Justiție, rolul și locul său în arhitectura instituțională a Uniunii Europene, controlul constituționalității legilor și impactul acestui control asupra statelor membre, au constituit subiectul multiplelor dispute și intervenții pe diverse dimensiuni doctrinare.

Astfel, președintele Curții de Justiție, **Rodriguez Iglesias** a manifestat interesul față de reforma instituțională a Uniunii Europene și și-a exprimat satisfacția, că jurisprudența Curții de Justiție a contribuit la constituționalizarea ordinii juridice comunitare. În același context, președintele Curții a specificat, că este utilă creșterea importanței controlului jurisdicțional și în acest sens a arătat, că o uniformizare a sistemului de protecție jurisdicțională pe baza modelului comunitar, s-ar părea că este într-adevăr cea mai bună cale pentru a asigura respectarea dreptului în toate domeniile Uniunii Europene [7].

În acest sens, **Constanța Călinoiu și Victor Duculescu** în lucrarea Drept constituțional european [7] prezintă unele probleme legate de perspectivele Curții de Justiție în raport cu reforma instituțională a Uniunii Europene.

Toate aceste provocări enumerate mai sus, dar și altele ce urmau să apară o dată cu extinderea Uniunii Europene și reforma instituțională iminentă, au dus la apariția anumitor îngrijorări, care s-au materializat în doctrină cu mai multe studii, printre care: **Piet Eeckhout**, care a insistat în mod special să releve impactul CEJ în domenii de maximă rezonanță precum: libertatea, securitatea și justiția, evidențiind principalele provocări și probleme [16].



Trebuie să evidențiem faptul, că un catalizator al studiilor și preocupărilor științifice în materia controlului constituționalității legilor exercitat de Curtea Europeană de Justiție l-a avut după semnarea Tratatului de la Lisabona (semnat la 13.12.2007 și intrat în vigoare la 01.12.2009). Imediat după semnarea respectivului Tratat, mai mulți constituționaliști și-au pus întrebarea în ce direcție va merge CEJ. Spre exemplu, constituționalistul **Stephen Carruthers** a analizat impactul Tratatului de la Lisabona asupra reformei puterilor jurisdicționale a Curții Europene de Justiție în domeniul judiciar și a afacerilor interne [8]. Pe când **Dorota Leczykiewicz** a pus accentul pe problematica drepturilor fundamentale ale omului și în special pe protecția lor de către CEJ în lumina noilor reglementări ale Tratatului de la Lisabona [30]. În final, Rene Barents a efectuat o radiografie a celor mai relevante aspecte ale activității Curții Europene de Justiție, care au fost influențate-modificate prin Tratatul de la Lisabona [4].

În **concluzia** celor expuse mai sus, se desprinde incontestabil faptul, că Curtea Europeană de Justiție nu este tocmai varianta unei curți constituționale clasice. Ba chiar mai mult, abordând subiectul referitor la tipul de tribunal (național sau internațional) de care CEJ ar fi mai apropiată sub aspectul caracteristicilor, există două puncte de vedere în doctrină: 1) cei care o situează în rândurile tribunalelor internaționale, considerând comunitățile europene organizații internaționale, clasificând și dreptul comunitar drept internațional; și 2) cei care aseamănă Curtea cu un tribunal național sau cu o curte constituțională.

Ambele puncte de vedere au dreptul la viață, având o doză de adevăr în sine. Astfel, celor dintâi li se poate obiecta faptul, că: deciziile Curții sunt obligatorii și executorii: jurisdicția sa acoperă și alți subiecți de drept decât statele; aproape niciodată statele membre nu se denunță între ele în fața Curții, ci în fața Comisiei (faptul, că apoi, aceasta recurge la Curte pentru a vedea dacă a fost violat sau nu dreptul comunitar este o altă chestiune); dar și, că instituția Curții nu are caracter de instanță superioară în raport cu Tribunalul de Primă Instanță.

Pe când celor care aseamănă Curtea cu o curte constituțională li se poate obiecta faptul, că Curtea nu numai că se pronunță asupra constituționalității normelor de drept comunitar, dar chiar oferă judecătorului național interpretarea concretă ce trebuie dată.

Republica Moldova, prin intermediul Curții sale Constituționale ar urma să stabilească relații de colaborare cu Curtea Europeană de Justiție, fapt care va aduce beneficii imense țării noastre: atât pentru justițiabili, cât și pentru doctrinari.

Controlul constituționalității legilor în unele state ale Uniunii Europene:  
**Germania – actor cu tradiții în domeniul controlului constituționalității legilor.**

În cadrul controlului normativ abstract la cererea Guvernului Federal, a guvernului unui land sau a unei treimi din membrii Bundestag-ului, Curtea Constituțională Federală poate examina – între altele – compatibilitatea unei norme de drept federal cu Legea fundamentală.

În materia controlului constituționalității legilor, Legea fundamentală a Germaniei, prevede expres următoarele cazuri: **1)** asupra interpretării Legii Fundamentale în caz de litigii privind întinderea drepturilor și obligațiilor unui organ federal suprem [9, art.93 alin.(1) pct.1]. **2)** în caz de divergență de opinii sau dubii cu privire la compatibilitatea formală sau de fond a dreptului federal sau a dreptului de land cu Legea Fundamentală sau asupra compatibilității dreptului de land cu orice alt drept federal, la cererea Guvernului Federal, a unui guvern de land sau a unei treimi din membrii Bundestagului [9, art.93 alin.(1) pct.2]. **3)** în caz de divergență de opinii asupra drepturilor și obligațiilor Federației și ale landurilor, în special în ceea ce privește aplicarea dreptului federal de către landuri și aplicarea controlului federal [9, art.93 alin.(1) pct.3]. **4a)** asupra recursurilor constituționale, care pot fi introduse de oricine consideră că a fost lezat de puterile publice într-unul din drepturile sale fundamentale [9, art.93 alin.(1) pct.4a]. **4b)** asupra recursurilor constituționale introduse de comune și de asociații comunale pentru violarea printr-o lege a dreptului de autogestiune, cu o singură mențiune, că în exclusivitate, doar în cazurile de violare printr-o lege de land numai în măsura în care nu poate fi introdus un recurs înaintea Tribunalului Constituțional al landului [9, art.93 alin.(1) pct.4b].

Toate acestea arată, că există numeroase posibilități de a declanșa controlul Curții privind constituționalitatea măsurilor sau omisiunilor din partea Guvernului. Într-un caz concret, aceste posibilități depind și de dreptul constituțional material, anume dacă prin Legea fundamentală petiționarului i se acordă un drept care să fi fost încălcat prin măsura Guvernului Federal, astfel contestată [20, p.11].

Dacă un tribunal apreciază, că o lege, de validitatea căreia depinde decizia sa, este anticonstituțională, el trebuie să suspende procedura și să supună problema deciziei tribunalului competent pentru litigiile constituționale ale landului, dacă este vorba de violarea Constituției unui land, și deciziei Tribunalului Constituțional Federal, dacă este vorba de violarea Legii Fundamentale [9, art.100 alin.(1)]. Această procedură se aplică și în cazul în



care Legea Fundamentală este încălcată printr-o lege de land sau în caz de incompatibilitate a unei legi de land cu o lege federală [9, art.100 alin.(1)].

Totodată, dacă în cursul unui litigiu există îndoieli asupra chestiunii de a ști, dacă o regulă de drept internațional public face parte integrantă din dreptul federal și dacă ea creează în mod nemijlocit drepturi și obligații pentru indivizi, tribunalul trebuie să supună chestiunea deciziei Tribunalului Constituțional Federal [9, art.100 alin.(2)]. În acest caz suntem în prezența situației juridice reglementate prin dispozițiile art.25 din Legea Federală, care stabilește, că „...regulile generale ale dreptului internațional sunt parte integrantă a dreptului federal. Ele primează față de legi și creează în mod nemijlocit drepturi și obligații pentru locuitorii teritoriului federal...” [9, art.25].

În final, dacă Tribunalul Constituțional al unui land, cu ocazia interpretării Legii Fundamentale, vrea să deroge de la o decizie a Tribunalului Constituțional Federal sau a Tribunalului Constituțional al unui land, el trebuie să supună chestiunea deciziei Tribunalului Constituțional Federal [9, art.100 alin.(3)].

Potrivit jurisprudenței Curții Constituționale Federale, în locul declarării nulității unei norme se va pronunța o „simplă” constatare de incompatibilitate, acolo unde situația ce ar rezulta prin declararea nulității s-ar depărta și mai mult de la ordinea constituțională decât dacă ea ar continua să se aplice cu titlu temporar. Este valabil nu numai pentru legi, ci și în cazul altor categorii de norme juridice [20, p.12]. În baza acestui principiu, de exemplu, a fost declarată incompatibilă cu Legea fundamentală o reglementare referitoare la compunerea unui organ cu atribuții în domeniul protecției tinerilor, aceasta întrucât, prin declararea nulității s-ar fi adus atingere regimului de protecție a tinerilor, ca și drept fundamental [20, p.12].

Tot astfel, urmează a se declara doar o incompatibilitate, dacă prin declararea nulității, este de așteptat să se creeze o stare de incertitudine juridică, incompatibilă cu principiul statului de drept.

Potrivit unui alt principiu dezvoltat în jurisprudența Curții Constituționale Federale, o prevedere nu va fi declarată nulă, ci doar incompatibilă cu Legea fundamentală acolo unde există diferite posibilități de remediere a neconstituționalității [20, p.12]. Aici nu este vorba de cazul – mai întotdeauna practicabil – când prevederea poate fi reconfigurată în detaliu pentru a deveni constituțională, ci de cazul în care, în loc să se elimine norma odată cu declararea nulității, vor exista și alte posibilități de a-i remedia neconstituționalitatea printr-o reglementare pozitivă. Înainte de toate, atunci când prevederea este considerată neconstituțională pentru că încalcă principiul egalității, aceasta se va putea

remedia nu numai eliminând acele avantaje sau dezavantaje care constituie încălcarea propriu-zisă, ci și prin extinderea tratamentului avantajos – modificându-i eventual condițiile și modalitățile de acordare – în beneficiul altor categorii. În consecință, pentru a da numai câteva din numeroasele exemple jurisprudențiale: interzicerea muncii pe timp de noapte, care constituie o încălcare a principiului egalității în cazul lucrătorilor-femei, reglementările care încălcă egalitatea șanselor de promovare prin finanțarea cursurilor de perfecționare, precum și reglementarea care condiționa relaxarea regimului de acordare a dreptului de rezidență unui copil născut în Germania, din părinți de etnie negermană, de calitatea de rezident a mamei, nu însă și a tatălui nu au fost declarate nule, ci numai incompatibile cu Legea fundamentală [20, p.13].

În cazul unei simple constatări de incompatibilitate, de regulă se fixează un termen în care prevederea va continua să se aplice ori se stabilește că legiuitorul are obligația de a adopta o nouă reglementare într-un anumit interval. Durata acestei perioade depinde de aspecte, care în majoritatea situațiilor, nu sunt menționate expres – cum ar fi gravitatea încălcării ori alte chestiuni cu caracter urgent, complexitatea noii reglementări sau anumite particularități ale problemei ce necesită a fi reglementată.

De cele mai multe ori termenele fixate variază între unu și doi ani.

În anumite cazuri s-au stabilit termene și mai lungi. De exemplu, în cadrul procedurii de contencios electoral, un termen de aproape trei ani pentru adoptarea de noi reglementări referitoare la prevederi din legea electorală, declarate neconstituționale, făcându-se o mențiune expresă cu privire la necesitatea de a ține cont de termenele legale prevăzute pentru măsurile de pregătire a alegerilor și de complexitatea noii reglementări cerute în materie, ceea ce a dus la situația, că alegerile pentru Bundestag, programate să aibă loc la mai bine de un an după data deciziei, s-au ținut totuși potrivit unei dispoziții considerată neconstituțională [20, p.13]. Dar, deși prevederea neconstituțională influențase modul de distribuire a mandatelor în urma precedentelor alegeri, ceea ce constituia obiectul propriu-zis al sesizării, ele nu au fost anulate. Între altele, un rol l-a jucat faptul, că distribuirea mandatelor nu fusese influențată într-o manieră semnificativă, eroarea survenită nefiind una de factură majoră nici în alte privințe. Ea consta într-un paradox de calcul, dificil de înțeles, apărut în procesul de distribuire a mandatelor, potrivit unui sistem ales din rațiuni legitime în sine, dar care, în anumite cazuri, putea avea consecința absurdă, că un număr mai mare de voturi se solda cu reducerea numărului de mandate obținute. Dacă aici ar fi fost vorba de o prevedere, care ar fi avut scopul de a favoriza anumite partide





politice, fără îndoială, că eroarea ar fi fost considerată una majoră, prin urmare s-ar fi fixat un termen mai scurt [20, p.14].

Au fost stabilite însă și termene sub un an. Astfel, legiuitorului i s-a dat ca termen un interval mai mic de 11 luni pentru a adopta o nouă reglementare în materia ajutoarelor sociale [20, p.14].

În final, se mai poate întâmpla să nu fie stabilit niciun termen. În speță, prevederea legală potrivit căreia tatăl, copilului născut în afara căsătoriei, era generic îndepărtat de la încredințarea copilului în lipsa consimțământului mamei, a fost declarată incompatibilă cu dreptul părintesc al tatălui, pus sub protejirea drepturilor fundamentale. Nu s-a pus problema declarării nulității prevederii în cauză, deoarece până la adoptarea unei noi reglementări, s-ar fi ajuns la situația, că tatălui, să nu-i mai poată fi încredințat copilul, nici măcar acolo unde ar exista consimțământul mamei. Or, aici, aplicarea temporară a prevederii neconstituționale ar fi condus la perpetuarea încălcării unui drept fundamental, cu posibilitatea producerii unor consecințe ireversibile, ținând cont de semnificația deosebită a factorului timp într-un astfel de caz, dată fiind legătura dintre copil și părintele său [20, p.14]. În aceste condiții speciale, Curtea s-a considerat, ea însăși, îndreptățită să instituie o normă tranzitorie, în sensul, că instanța de judecată [tribunalul specializat] va încredința custodia unuia dintre părinți, la cererea acestuia, sau le-o va acorda parțial, ambilor părinți, după cum s-ar dovedi, că este în interesul copilului. De aceea s-a considerat, că nu este necesar ca legiuitorului să i se mai fixeze vreun termen, al cărui ultim scop nu poate fi decât acela de a pune capăt în timp util unei situații tranzitorii, adică aplicabilității temporare a unei forme, în sine neconstituționale, care decurge din simpla constatare a incompatibilității [20, p.14].

**Franța – sfârșitul supremației parlamentare.** În conformitate cu Articolul 56 din Constituție, **Consiliul Constituțional** are nouă membri, al căror mandat este de nouă ani și nu poate fi reînnoit. Consiliul Constituțional se reînnoiește cu o treime din membrii săi, din trei în trei ani. Trei dintre membri sunt numiți de Președintele Republicii, trei de Președintele Adunării Naționale, trei de Președintele Senatului [10, art.56 alin.(1)].

Pe lângă cei nouă membri sus-menționați, sunt membri de drept pe viață ai Consiliului Constituțional foștii Președinți al Republicii [10, art.56 alin. (2)].

Președintele Consiliului Constituțional este numit de Președintele Republicii. În caz de egalitate de voturi, Președintele Consiliului Constituțional are votul decisiv [10, art.56 alin. (3)].

Propunerea, de numire din partea Președintelui Republicii, se supune

avizului ambelor comisii permanente, propunerea din partea președintelui Adunării Naționale, primește avizul unei singure comisii, a Adunării, iar cea făcută de președintele Senatului, urmează aceeași regulă (avizul unei singure comisii, a Senatului) [21, p.1].

În conformitate cu art.61 din Constituția Franceză, Consiliul Constituțional exercită un control sistematic privind: **legile organice**, înainte de promulgare; **propunerile de legi care se aprobă prin procedura de referendum**, înainte de a fi supuse referendumului; **regulamentele camerelor parlamentare**, înainte de punerea lor în aplicare.

Totodată, Consiliul Constituțional poate exercita și controlul a priori, privind: **tratatele**, înainte de a fi autorizate spre ratificare sau aprobare, la sesizarea Președintelui Republicii, a primului-ministru, a președintelui Adunării Naționale, a președintelui Senatului, a unui număr de 60 de deputați sau 60 de senatori [10, art.54]; **legile ordinare**, înainte de promulgare, la sesizarea Președintelui Republicii, a primului-ministru, a președintelui Adunării Naționale, a președintelui Senatului, a unui număr de 60 de deputați sau 60 de senatori [10, art.61 alin.(2)]; **legile cu statut teritorial** din Noua-Caledonie, înainte de promulgarea acestora, la sesizarea Înalțului Comisar din Noua Caledonie, a Guvernului, a președintelui Congresului, a președintelui uneia din adunările de provincie sau a unui număr de 18 membri al Congresului din Noua Caledonie [21, p.3].

Începând cu 1 martie 2010, Consiliul Constituțional exercită, pe calea chestiunii prealabile de constituționalitate, controlul a posteriori asupra **oricăror dispoziții legale în vigoare (deja promulgate)**, la sesizarea Consiliului de Stat sau a Curții de Casație, în legătură cu o excepție ridicată în cursul unui proces aflat pe rolul instanței de judecată, referitoare la conformitatea acestor prevederi „cu drepturile și libertățile garantate de Constituție” [10, art.61<sup>1</sup> alin.(2)].

În cadrul controlului a posteriori nu există o procedură specială, însă Consiliul Constituțional poate amâna efectul deciziei sale, pentru a-i da Parlamentului proprio motto, posibilitatea de a interveni, în acest interval, în sensul corectării problemei de neconstituționalitate constatată [21, p.4].

**Italia – modelul clasic de control al constituționalității legilor.** Constituția Italiei declară, că soluționarea „contestațiilor privind legitimitatea constituțională a legilor și a actelor normative cu putere de lege adoptate de Stat și de Regiuni” [11, art. 134] reprezintă principala atribuție – istoricește și cea mai semnificativă – a Curții Constituționale. Toate legile și actele normative cu putere de lege, indiferent de data adoptării (înainte sau după intrarea în vigoare a Constituției



din 1 ianuarie 1948) pot fi supuse controlului Curții în ceea ce privește legitimitatea lor constituțională – și astfel este posibil să fie anulate, adică eliminate complet din ordinea juridică, împreună cu orice posibilă interpretare pe care ar primi-o. Curtea poate fi chemată să verifice, dacă actele legislative au fost adoptate în conformitate cu procedurile stabilite de Constituție (constituționalitate extrinsecă) și dacă în conținutul lor sunt conforme principiilor consacrate de Constituție (constituționalitate intrinsecă) [22, p. 2].

Actele susceptibile de a fi supuse controlului Curții sunt numeroase: ele cuprind legile adoptate de stat, decretele legislative adoptate în baza unei delegări (acte normative emise de executiv în virtutea abilitării acordate de Parlament) și decrete-legi, acte normative emise de executiv ca reacție urgentă și necesară la anumite situații de urgență și care după șaizeci de zile, trebuie convertite într-o lege adoptată de Parlament. Curtea se poate pronunța și asupra constituționalității legislației adoptate de Regiuni și de cele două Provinciile Autonome, cărora Constituția le-a conferit atribuții de legiferare (Provinciile Bolzano și Trento, care formează regiunea Trentino-Alto Adige). Controlul de constituționalitate poate influența și asupra decretelor prezidențiale, prin care se declară abrogarea unei legi sau unui alt act normativ în urma unui referendum, conform art. 75 din Constituție [22, p.2].

În momentul în care Curtea declară neconstituțională o dispoziție legală sau un act cu putere de lege, norma în cauză își încetează valabilitatea a doua zi după publicarea deciziei. Decizia Curții este publicată și comunicată Camerelor și Consiliilor Regionale interesate, pentru ca acestea, dacă consideră necesar, să ia măsuri pentru a se încadra în prevederile constituționale [11, art.136].

**Danemarca și Norvegia – exponenți ai modelului scandinav.** În Danemarca problemele de constituționalitate sunt supuse controlului judiciar al instanțelor de drept comun, de la orice nivel. În afară de cazurile în care este implicată linia de demarcație dintre expropriere și intervenție economică generală, în fața instanțelor daneze nu sunt invocate des probleme de constituționalitate [23, p.2]. Dacă un act sau anumite dispoziții ale unui act sunt declarate neconstituționale de către o instanță daneză, actul sau dispozițiile sale specifice își încetează obligativitatea cu efecte ex tunc [23, p.3].

**Norvegia.** S-a constatat, că Norvegia nu are o curte constituțională specializată. Instanțele judecătorești ordinare, în a căror ierarhie, Curtea Supremă se pronunță în ultimă instanță, au în competență controlul constituționalității legislației adoptate de parlamentul norvegian, precum și controlul actelor administrative.

Instanțele au dreptul de a controla constituționalitatea legislației și de a cenzura actele administrative. Acest control este limitat întotdeauna și face parte din procedura ordinară de soluționare a litigiului sau a cauzei penale de către instanța de judecată, dacă este relevant în respectivul caz. Astfel, instanțele nu efectuează controlul de constituționalitate în abstracto, de exemplu, un membru al Parlamentului sau un grup parlamentar nu pot sesiza instanțele judecătorești cu o problemă de constituționalitate în abstracto [24, p. 2].

O dezvoltare ulterioară a atributelor de control constă în aceea, că instanța supremă și-a asumat de-acum, dreptul de a verifica, dacă legislația sau actele administrative sunt conforme cu convențiile în materia drepturilor omului la care Norvegia este parte, în special cu Convenția Europeană a Drepturilor Omului din 1950. Convenția Drepturilor Omului este încorporată în legislația norvegiană, ca parte a Legii privind drepturile omului din 1999, având prioritate față de alte dispoziții legale [24, p. 3].

În baza propunerilor legislative făcute de Guvern, Parlamentul va abroga, va modifica sau va schimba legea pentru punerea ei în acord cu Constituția, astfel cum este prevăzut în decizia Curții Supreme. Prin decizia sa, Curtea Supremă nu dictează modificările necesare, iar din considerente vădite, nu reiese întotdeauna cu claritate ce modificări trebuie efectuate. Acest lucru este de multe ori subiect de intense dezbateri politice. Decizia este obligatorie inter partes litigantes și ea va conține doar soluția dată în litigiul concret între părți. Cu toate acestea, instanțele inferioare și autoritățile publice, fără excepție, vor da curs deciziei Curții Supreme în ceea ce privește chestiunile de constituționalitate și alte probleme de drept. Astfel, odată ce Curtea Supremă s-a pronunțat în acest sens, dispoziția declarată neconstituțională nu va mai fi aplicată [24, p. 3].

**Elveția – federație fără Curte Constituțională instituționalizată.** Tribunalul Federal Elvețian este autoritatea judiciară supremă a Confederației Elvețiene (art.188 din Constituția Federală) [12, art.188 pct.1].

Atribuțiile sale se relevă atât în jurisdicția constituțională, cât și în jurisdicția civilă, penală și administrativă. Tribunalul Federal Elvețian exercită funcțiile unei curți constituționale, atunci când judecă recursuri în materie de drept public îndreptate împotriva actelor normative cantonale [25, p. 1]. Totodată, actele Adunării Federale (puterea legislativă a Confederației) și cele ale Consiliului Federal (puterea executivă a Confederației) nu pot fi atacate în fața Tribunalului Federal Elvețian, cu excepția cazurilor prevăzute de lege [12, art.189 pct.4].

În sistemul de drept elvețian, Legile federale și dreptul internațional



sunt excluse de la controlul de constituționalitate, deoarece Tribunalul Federal Elvețian este obligat să le aplice (art. 190 din Constituție). Controlul abstract este exclus în toate aceste cazuri (art. 189 alin. 4 din Constituție). În schimb, în cadrul controlului concret, Tribunalul poate constata, că o lege federală încalcă Constituția sau dreptul internațional. În primul caz, el nu poate nici să anuleze legea, nici să refuze să o pună în aplicare (cf. de exemplu, Deciziile TF 131 II 697 și 131 II 710). El are posibilitatea de a semnaliza neconstituționalitatea mai întâi prin decizie, dar și în raportul său de gestiune anuală, prezentat Parlamentului, în secțiunea intitulată „Indicații în atenția legiuitorului” [25, p.3].

În Elveția, tratatele internaționale fac parte integrantă din ordinea juridică internă. Drepturile fundamentale ale cetățenilor, garantate de dreptul internațional, în special Convenția Europeană a Drepturilor Omului (CEDO) și Pactul II al Organizației Națiunilor Unite, sunt foarte similare celor garantate de Constituția Federală. Atunci când o lege federală conține o dispoziție contrară unui drept fundamental garantat printr-o astfel de convenție internațională, respectiva lege va face obiectul unui anumit control de constituționalitate. În acest caz, Tribunalul nu aplică o lege federală contrară unei dispoziții de drept internațional. Într-o astfel de constelație, dreptul internațional prevalează asupra dreptului federal [25, p. 3].

Ordonanțele federale nu pot fi aduse în fața Tribunalului Federal Elvețian (art. 189 alin. 4 din Constituție). Rezultă de aici, că și controlul abstract este exclus pentru această categorie de acte normative. În schimb, este posibil un control concret efectuat de Tribunalul Federal.

Constituțiile cantonale sunt garantate de Confederație, care le verifică în prealabil constituționalitatea (art. 51 alin. 2 și 172 alin. 2 din Constituție). Rezultă, că potrivit jurisprudenței (de exemplu, Decizia TF 118 Ia 124), controlul abstract este exclus. În ceea ce privește controlul concret, el se limitează la controlul conformității cu dreptul constituțional federal intrat în vigoare după acordarea garanției federale [25, p. 4].

Legile și ordonanțele cantonale (inclusiv legile și ordonanțele comunale) pot fi supuse fără restricții unui control abstract și concret (art. 189 alin. 4 din Constituție [60]).

**România – experiență utilă pentru Republica Moldova.** Potrivit art.146 lit. c) din Constituție, Curtea Constituțională „se pronunță asupra constituționalității regulamentelor Parlamentului [13]”. Controlul exercitat de Curte în acest caz este unul abstract, exercitat asupra unui act normativ deja intrat în vigoare (a posteriori), direct, la sesizarea unor subiecte calificate,

respectiv: unul din președinții celor două Camere, un grup parlamentar, un număr de cel puțin 50 de deputați sau de cel puțin 25 de senatori [26, p. 8].

Controlul exercitat de Curte poate inclusiv influența asupra hotărârilor de modificare sau de completare a regulamentelor Parlamentului, respectiv asupra hotărârilor Camerelor Parlamentului care au caracter normativ și conțin dispoziții referitoare la organizarea și funcționarea Parlamentului în ansamblu sau a fiecărei Camere în parte. În acest sens, CC a statuat, că nu este competentă să exercite un control de constituționalitate asupra modului de interpretare sau asupra modului de aplicare a regulamentelor Parlamentului [26, p. 9].

În exercitarea acestei atribuții, CC a pronunțat 15 decizii de admitere a sesizărilor formulate, constatând neconstituționalitatea prevederilor din Regulamentele Camerelor Parlamentului criticate (4 decizii în 1994, o decizie în 1998, o decizie în 2004, 3 decizii în 2005, o decizie în 2006, două decizii în 2007, două decizii în 2008 și o decizie în 2009) [26, p. 8].

Actele normative care reglementează organizarea și funcționarea Guvernului, sunt supuse controlului de constituționalitate exercitat de Curtea Constituțională în măsura în care constituie acte de reglementare primară – legi sau ordonanțe [26, p.13]. Astfel, Legea nr.90/2001 privind organizarea și funcționarea Guvernului României și a ministerelor, în ansamblul său, a format obiectul unei excepții de neconstituționalitate [31].

Obiect al controlului de constituționalitate exercitat de Curtea Constituțională pot fi însă numai ordonanțele Guvernului (nu și hotărârile) [13, art.146 lit.d)]. Hotărârile Guvernului, constituind acte de reglementare secundară și, prin urmare, nu sunt supuse controlului de constituționalitate exercitat de Curtea Constituțională, ci, eventual, controlului de legalitate exercitat de instanțele judecătorești de contencios administrativ [26, p.13].

În conformitate cu prevederile art. 2 alin.(1) din Legea privind organizarea și funcționarea Curții Constituționale, Curtea asigură controlul constituționalității legilor, a tratatelor internaționale, a regulamentelor Parlamentului și a ordonanțelor Guvernului, adică al actelor de reglementare primară [32].

Astfel, în virtutea prevederilor constituționale, Curtea Constituțională a României exercită controlul de constituționalitate, după cum urmează:

1. a legilor organice sau ordinare – înainte de promulgare la sesizarea Președintelui României, a unuia dintre președinții celor două Camere, a Guvernului, a Înaltei Curți de Casație și Justiție, a Avocatului Poporului, a unui număr de cel puțin 50 de deputați sau de cel puțin 25 de senatori, precum și, din oficiu, asupra inițiativelor de revizuire a Constituției [13, art.146 lit.a)];

2. sau după intrarea lor în vigoare, prin soluționarea excepțiilor de



neconstituționalitate ridicate în fața instanțelor judecătorești sau de arbitraj comercial, ori a excepțiilor de neconstituționalitate ridicate direct de Avocatul Poporului [13 art.146 lit.d)];

3. al tratatelor, sau altor acorduri internaționale înainte de ratificarea acestora de Parlament, la sesizarea unuia dintre președinții celor două Camere, a unui număr de cel puțin 50 de deputați sau de cel puțin 25 de senatori [13, art.146 lit.b)];

4. sau după ratificare. În cazul în care constituționalitatea tratatului sau acordului internațional a fost constatată, acesta nu poate face obiectul unei excepții de neconstituționalitate. Pe când tratatul sau acordul internațional constatat ca fiind neconstituțional nu poate fi ratificat [13, art.147 alin.(3)];

5. al regulamentelor Parlamentului în vigoare [13, art.146 lit.c)];

6. al ordonanțelor Guvernului în vigoare [art.146 lit.d)] [13, art.146 lit.d)].

În **concluzie**, studiul controlului constituționalității legilor din perspectiva comparată, ne-a permis să punctăm anumite concluzii, care se referă la faptul, că fiecare țară își are specificul său în materia controlului constituționalității legilor. Totuși, există o doză mare de similitudini, situație care se datorează în mare măsură faptului, că respectivele state sunt membre ale UE.

Republica Moldova ar putea prelua multiple nivele și practici eficiente de pe tărâmul controlului constituționalității legilor, realizate de către curțile constituționale din diferite state ale Uniunii Europene.

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## ANALIZA DREPTULUI PROPRIETĂȚII INTELECTUALE CA INSTITUȚIE JURIDICĂ AUTONOMĂ

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### **Rezumat**

*Scopul vizat de autor în cercetarea proprietății intelectuale, a locului ei în sistemul de drept din Republica Moldova, rolul, semnificația și tendința dezvoltării; analiza căilor de perfecționare a reglementării de stat în domeniul proprietății intelectuale și a asigurării juridice a relațiilor sociale legate de ea; influența acordurilor internaționale asupra legislației naționale în domeniul proprietății intelectuale.*

**Cuvinte-cheie:** *proprietatea intelectuală, încălcările în domeniul proprietății intelectuale, acorduri internaționale.*

## ИССЛЕДОВАНИЕ ПРАВА ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ КАК САМОСТОЯТЕЛЬНОГО ПРАВОВОГО ИНСТИТУТА

### **Аннотация**

*Преследуемая автором цель заключается в исследовании интеллектуальной собственности, её место в правовой системе Республики Молдова, роль, значение, тенденции развития, а также пути совершенствования государственного регулирования в сфере интеллектуальной собственности и законодательного обеспечения, связанных с ней общественных отношений, влияние международных договоров на национальное законодательство в сфере интеллектуальной собственности.*

**Ключевые слова:** интеллектуальная собственность, нарушение в сфере интеллектуальной собственности, международные договоры

**Введение.** Общеизвестно высказывание о том, что кто владеет информацией, тот владеет миром. С давних времен сбор и систематизация сведений об окружающем мире помогали человеку выживать в нелегких условиях – из поколения в поколение передавался опыт и навыки изготовления орудий охоты и труда, создания одежды и лекарств. Информация постоянно обновлялась и дополнялась – каждое изученное явление позволяло перейти к чему-то новому, более сложному. Со временем, большие объемы данных об окружающем мире поспособствовали развитию научно-технического прогресса.

С течением времени роль информации в жизни человека становилась все существеннее. Нужно было изучать и понимать уже не только законы природы, но и понятия и ценности человеческого общества – литературу, искусство, архитектуру и т.д., т.е. объекты интеллектуальной собственности. В нынешнее время роль информации в жизни человека является определяющей.

Современный мир на сегодняшний день сталкивается с рядом фундаментальных проблем, которые уже могут иметь катастрофические последствия. Некоторые из этих острых проблем связанных с защитой интеллектуальной собственности (далее ИС): во-первых это, увеличение опасных контрафактных товаров (лекарственные препара-



раты, пища и напитки, косметика или игрушки, запчасти для автомобилей и т.д.); во-вторых это, скорость и простота цифрового воспроизведения; а также, это растущее значение интернета как средства распространения, изысканность в применении технологий международными финансовыми мошенниками. Все эти факторы делают эту проблему как никогда острой и насущной для разрешения.

ИС стала одним из важных стратегических, управленческих ресурсов, наряду с ресурсами - человеческим, финансовым, материальным. Ее производство и потребление составляют необходимую основу эффективного функционирования и развития различных сфер общественной жизни, и, прежде всего, экономики. А это означает, что не только каждому человеку становятся доступными источники информации в любой части нашей планеты, но и генерируемая им новая информация становится достоянием всего человечества. В современных условиях право на информацию и доступ к ней имеют жизненную ценность для всех членов общества.

Получение новых знаний и технологий и их использование в интересах социально-экономического развития государства непосредственно определяют роль и место страны в мировом сообществе, уровень жизни народа и обеспечения национальной безопасности. [19, стр. 254]

Охрана ИС приобретает все более важное значение. При этом необходимо в первую очередь отметить ее экономическое значение. Результаты интеллектуальной деятельности человека в современном обществе становятся непосредственной производительной силой наряду с традиционными факторами производства.

На данном этапе ИС играет важную роль в нахождении решений для экономического роста, развития и конкурентоспособности, для трудовой занятости и роста уровня благосостояния населения.

В широком смысле под интеллектуальным продуктом понимается совокупность интеллектуальных, культурных ценностей, знания, инноваций, произведения искусства и различные формы информации, обучения и развлечения, полученные традиционным путем или с помощью информационных технологий, электронной техники.

ИС всегда рассматривали как обобщающее, родовое понятие, но при этом часто предпринимались попытки ограничить ее несколькими видами (в частности, «литературно-художественной» собственностью и промышленной собственностью) либо свести представление о ней к особым правам или особым способам защиты. При этом к объектам промышленной собственности обычно относили научно-технические творения

человека, а к объектам авторского права – произведения искусства. Очевидна ограниченность подобного подхода. Вместе с тем иногда ИС трактуют чрезвычайно широко, относя к ней не только все предметы духовной культуры в ее разнообразных проявлениях, но и почти любую информацию.

Наиболее широкий официальный перечень объектов ИС содержится в Конвенции, учреждающей Всемирную организацию интеллектуальной собственности (ВОИС), 1967г.

ИС – это продукты творческой деятельности в производственной, научной, литературной, художественной областях, носящие нематериальный характер. Вместе с тем, ИС воплощается в определенные материальные объекты или сопровождает их, присутствует как компонент качества, цены товара. С этой точки зрения она сама становится разновидностью товара. [6, стр. 112]

Для охраны некоторых видов объектов ИС выдвигаются дополнительные условия. Так, товарный знак может охраняться только в случае обладания «различительной способностью». Изобретением может считаться не всякий достигнутый человеком творческий результат, суть которого состоит в нахождении конкретных технических средств решения задачи, возникшей в сфере практической деятельности, но лишь такой, который воплощает некий «творческий шаг».

Интеллектуальный продукт, информация и знания, умственный, научный и культурный потенциал современного общества являются движущей силой устойчивого развития и определяют экономическую конкурентоспособность. Все это указывает на рост роли ИС в современном обществе, и действия правительств по инвестированию в усиление режимов ИС не относятся к расходам, а скорее являются инвестициями, создающими добавленную стоимость и способствующими экономическому росту.

Ст. 33 Конституции Республики Молдова закрепляет право граждан на ИС, их материальные и моральные интересы, которые возникают в связи с различными видами интеллектуального творчества, защищенными законом. [12]

На основании постановления о Национальной стратегии в области ИС до 2020 года (далее – Национальная стратегия) Национальная система интеллектуальной собственности являет собой **совокупность:**

**- правовых положений**, на основе которых любое лицо реализует, приобретает и защищает свои права, возникающие в связи с различными видами интеллектуального творчества (нормативная база),



- **учреждений**, вовлеченных в реализацию этих положений (институциональная база),

- **элементов и отношений**, которые обеспечивают и поддерживают нормальное функционирование системы (инфраструктура системы ИС), а также бенефициаров этой системы. [14]

Используемые методы исследования:

Сравнительно - правовой метод - будет использован для исследования различных научных подходов к определению понятий ИС, а также для осуществления сравнительного анализа законодательства зарубежных стран.

Диалектический метод – будет использован для исследования и для выявления противоречий.

Нормативно-догматический метод – будет использован для исследования содержания правовых норм. Использование результата интеллектуальной деятельности или средства индивидуализации, если такое использование осуществляется без согласия правообладателя, является незаконным и влечет ответственность.

Метод обобщения будет использован для обобщения в выводах основных результатов исследования.

**Результаты исследований.** Термин «интеллектуальная собственность» эпизодически употреблялся теоретиками — юристами и экономистами в XVIII и XIX веках, однако в широкое употребление вошел лишь во второй половине XX века, в связи с подписанием в 1967 году в Стокгольме Конвенции, учреждающей Всемирную организацию интеллектуальной собственности (ВОИС) [11].

Согласно учредительным документам ВОИС «интеллектуальная собственность» включает права, относящиеся к:

- литературным, художественным и научным произведениям;
- исполнительской деятельности артистов, звукозаписи, радио и телевизионным передачам;
- изобретениям во всех областях человеческой деятельности;
- промышленным образцам;
- товарным знакам, знакам обслуживания, фирменным наименованиям и коммерческим обозначениям;
- другие права, относящиеся к интеллектуальной деятельности в производственной, научной, литературной и художественной областях.

Позднее в сфере деятельности ВОИС были включены исключительные права, относящиеся к географическим указаниям, новым

сортам растений и породам животных, интегральным микросхемам, радиосигналам, базам данных, доменным именам.

В юриспруденции словосочетание «ИС» является единым термином, входящие в него слова не подлежат толкованию по отдельности. В частности, «ИС» является самостоятельным правовым режимом (точнее даже — группой режимов), а не представляет собой, вопреки распространённому заблуждению, частный случай права собственности.

На сегодняшний день юридическая наука во всем мире составляющими ИС признает объекты авторского права, объекты промышленной собственности и иные объекты интеллектуальной собственности. Объекты авторского права представляют собой, главным образом, результаты творческой деятельности в области культуры и искусства. Авторское право, охраняя творческий результат интеллектуальной деятельности коллектива или индивида, оперирует имущественными и неимущественными правами. Как имущественное право оно предоставляет право владения и право распоряжения, а также исключительное право на получение дохода от использования творческого результата.

В конце XIX в. появилось первое многостороннее соглашение в области авторского права - Бернская конвенция об охране литературных и художественных произведений 1886 г.; государства, подписавшие эту конвенцию, образовали так называемый Бернский союз. В середине XX в. было заключено второе основное многостороннее соглашение в этой области - Всемирная конвенция об авторском праве 1952 г.

Оба этих соглашения охватывают большое количество государств, численность которых продолжает расти: если первоначальный состав Бернского союза (1886 г.) ограничивался десятью государствами, то в Женевской межправительственной конференции 1952 г., на которой и была принята Всемирная конвенция, принимали участие представители пятидесяти различных стран; в 1972 г. число участников конвенций превысило 60; в 1997 г. в Бернской конвенции участвовало уже 91 государство, а во Всемирной конвенции - 81, причём участниками Всемирной конвенции является ряд государств, не участвующих в Бернской конвенции (в частности, страны американского континента).

Кроме многосторонних конвенций общего характера, таких как Бернская и Всемирная, в области авторского права и смежных прав заключён также ряд других международных соглашений:

а) специального характера:





- Римская конвенция по охране прав артистов-исполнителей, производителей фонограмм и организаций вещания, заключённая в 1961 г.;
- Конвенция об охране интересов производителей фонограмм от незаконного воспроизводства их фонограмм, подписанная в Женеве в 1971 г.;
- Конвенция о распространении несущих программы сигналов, передаваемых через спутники, подписанная в Брюсселе в 1974 г.;

б) региональных соглашений (это многочисленные панамериканские конвенции, ряд европейских соглашений, а также Соглашение о сотрудничестве в области охраны авторского права и смежных прав, подписанное в Москве в 1993 г. государствами - участниками СНГ).

Таким образом, несмотря на то, что проблема ИС и ее охраны всегда была актуальной, античности и средневековью не были известны универсальные кодексы, обеспечивающие соответствующее правовое основание существования права ИС. Случались лишь прецеденты предоставления тому или иному лицу права на получение выгод из своей продукции, а также охраны авторского права вследствие индивидуальной правотворческой деятельности властителей государств в разные периоды времени.

Новое время и существенный прогресс в производстве привели к разветвлению права ИС, поскольку возникла необходимость регулировать усложненные правоотношения в сфере, как промышленных изобретений, так и авторского права на художественные произведения. С развитием международных отношений в глобальном пространстве возникают международные нормы регулирования правоотношений в сфере ИС. Эволюция института ИС активно продолжается в связи с динамическим развитием технологий производства и трансляции информации.

Результаты интеллектуальной деятельности, которые объединяются в общем понятии ИС, занимают все большее место на современном рынке. Их обращение подчиняется общим правилам рынка, однако характер прав и обязанностей, средства» их реализации и охраны обладают своими особенностями. «Интеллектуальный капитал» становится в современной экономике все более значимым.

В последние десятилетия внимание стало привлекать именно экономическое значение авторского права. Одна из причин этого - чрезвычайное ускорение развития новых технических средств для создания и распространения охраняемых работ. Звукозапись, радио и телевидение, фотокопирование, освоение кабельной и спутниковой связи, видеозапись, компьютерные технологии - всего лишь некоторые примеры. [3, стр. 33]

Тиражирование материальных объектов авторского права сформировалось в крупную отрасль индустрии с рядом подотраслей: выпуск книг и кинофильмов, программного обеспечения и компьютерных игр, аудио- и видеозаписей. В некоторых странах проводились специальные исследования относительно того, какую долю «производства, основанные на авторском праве» занимают в национальной экономике. [16]

Совершенствование цифровых технологий послужило основой для развития новых средств представления и передачи информации. Новые технологии вызывают к жизни новые формы использования охраняемых объектов. Преобразование в цифровую форму позволяет включать в произведение любую другую информацию, если она хранится в той же форме, в результате чего появляются совершенно новые категории произведений. Такой новой категорией являются, например, произведения мультимедиа, представляющие собой объединение различных способов подачи информации (в том числе в интерактивном виде), делающие одновременно доступными для органов восприятия человека устные и письменные тексты, графику, мультипликацию, музыку, фотографические изображения, видеoinформацию, иные зрительные образы и звуковые эффекты. В произведениях мультимедиа используются специфические и присущие только им сочетания средств выражения, цифровые носители допускают интерактивное обращение - «нелинейное» использование, предоставляющее пользователю возможности вмешиваться в содержание произведения.

Продукты мультимедиа создаются специально для использования их с помощью компьютерной техники (интерактивного аудиовизуального проигрывающего устройства) и становятся доступны восприятию именно в результате их «проигрывания» с помощью ЭВМ (например, персонального компьютера). Мультимедийные продукты составляют основу так называемой «виртуальной реальности», в которой к настоящему времени представлены практически все формы и жанры произведений, все виды проявления творческих усилий человека. Причем сам продукт, как совокупность оцифрованных данных, может находиться как в персональном компьютере потребителя (пользователя), так и в любой точке мира (при условии подключения пользователя к соответствующей телекоммуникационной сети).

Существование современной культуры невозможно без ИС, без законодательного урегулирования связанных с ней общественных отношений по поводу производства «духовных благ». Но и мате-



риальное производство сегодня немыслимо без постоянно возрастающего использования интеллектуального труда. Философ Карл Поппер отмечал, что некоторые идеи гораздо более «фундаментальны», чем большая часть сложных материальных средств производства, предлагал провести следующий довольно жестокий мысленный эксперимент: «Представим себе, что наша экономическая система, включая всю промышленность и все социальные организации, уничтожена, но техническое и научное знание сохранилось. В этом случае потребовалось бы не так уж много времени для восстановления промышленности (конечно, в меньшем масштабе и после гибели многих людей от голода). Вообразите теперь, что исчезли все наши знания, а материальные вещи сохранились. Это равносильно тому, что случилось бы, если бы дикое племя поселилось в высокоиндустриальной, но покинутой ее жителями стране. Это вскоре привело бы к полному исчезновению всех следов цивилизации». Однако большинство стран до сих пор не в состоянии обеспечить приемлемого уровня соблюдения традиционных прав интеллектуальной собственности. [13, стр. 107]

В течение нескольких столетий сложилось устойчивое понимание того, что создатель «интеллектуальной ценности» вправе извлекать выгоду из своего произведения и распоряжаться его судьбой благодаря предоставляемой ему совокупности специальных «интеллектуальных прав». Развитие этого понимания привело к возникновению ряда теорий, стремящихся отразить реальные отношения, а также к распространению термина «интеллектуальная собственность», все чаще закрепляемому на уровне международных договоров и в национальных законодательствах.

Однако многие ученые-цивилисты либо предлагают вообще отказаться от использования термина «интеллектуальная собственность», либо понимают под ним только нематериальные блага (совокупность идей, образов, творческих, технических решений и т.д.), на которые за достигнувшем их лицом или иным правообладателем закрепляется особое «исключительное право». При этом резюмируются, что право ИС по существу устанавливает режим охраны только в отношении нематериальных объектов. При таком подходе интеллектуальная собственность оказывается никак не связанной с материальным объектом, в котором результат интеллектуальной деятельности выражен, хотя несомненно, что законодательство во многих случаях предусматривает необходимость контроля авторов и их правопреемников за участием такого объекта в хозяйственном обороте или

возможность получения авторами дополнительного вознаграждения в определенных случаях. Можно привести многочисленные примеры: особые положения о праве на прокат произведения, право следования в отношении произведений изобразительного искусства и т.д.

Специалисты неоднократно отмечали, что появление категорий интеллектуальная собственность, промышленная собственность, литературная и научная собственность обусловлено не только политическими и экономическими, но и психологическими процессами, повлиявшими даже на международные договоры, на национальное законодательство и на юридические конструкции, разрабатываемые в этой области. Поскольку для любого участника экономического оборота крайне важно обладание статусом, известным всем другим участникам, то исключительно удобной оказывается именно конструкция, аналогичная праву собственности или иному вещному праву: «Вещные права обладают перед обязательственными таким преимуществом, как определенность их статуса, поскольку последний устанавливается только законом». [20, стр. 245]

Реагируя на эти замечания, сторонники дальнейшего развития теории ИС стали подчеркивать, что речь в данном случае идет о собственности особого рода, которая требует специального регулирования из-за того, что объектами права собственности владельцев патентов, товарных знаков, субъектов авторского права являются неосозаемые и бестелесные вещи. Однако противники данного понятия продолжают указывать на опасность того, что сохранившееся сходство наименований скроет различие в содержании: «Термин «ИС» представляется юридически недостаточно корректным. Он может создать впечатление о распространении на нематериальные объекты режима, установленного для права собственности. Это впечатление было бы ошибочным» [4, стр. 32].

Понятие интеллектуальной собственности по своему смысловому значению удачно характеризует принадлежность и сущность результата интеллектуальной деятельности. Вообще, любое употребление понятия «собственность» с неизбежностью указывает на наличие ее владельца и соответствующую возможность возникновения связанных с ней имущественных отношений [4, стр. 35]

Право вещной собственности и право интеллектуальной собственности регулируются различными институтами гражданского права, но в рамках целостного понимания права собственности их коллизию



следует разрешать по особо установленным правилам. Только в этом случае удастся, наконец, устранить многие существующие между ними противоречия, поскольку «количественные свойства спорят друг с другом, качественные - друг друга дополняют».

Хотя нелепо смотреть на мир как на совокупность только физических тел, но объектом правового регулирования не могут быть ни «информация», ни «произведение», ни иные нематериальные блага, как не может регулироваться правом «вещество», «энергия» (в отрыве от прав на их использование) и т.д. «Для того чтобы вещество (как собирательное понятие) стало объектом правового регулирования..., должны возникнуть отношения между людьми по поводу конкретных вещественных объектов». Правовая охрана может распространяться только на такие объекты. [7, стр. 8]

Права обладателей ИС, защищаются с помощью иных правовых средств по сравнению с теми, которые применяются для защиты права вещной собственности, но такая же особенность средств применяемой защиты характерна для большинства видов самой вещной собственности. «Достоверность» прав интеллектуальной собственности может считаться даже большей: если для вещей регистрация прав устанавливается в качестве исключения, то подчиненность прав ИС регистрации и формальностям - это практически общее правило, из которого изъяты лишь объекты авторского права, смежных прав и некоторые другие. [8, стр. 13]

Однако даже в отношении не подлежащих регистрации объектов ИС установлены законодательные презумпции, позволяющие однозначно определять первоначального правообладателя.

Как уже отмечалось, в целом теоретическое противостояние ИС и исключительных прав приводит лишь к негативным последствиям, к тому, что непривычные слова вытесняют привычные понятия.

Становление единого института ИС позволяет поднимать вопрос о расширении круга правообладателей за счет распространения единых правомочий на все виды охватываемых этим понятием объектов. Так, давно уже назрела необходимость решить проблему охраны прав не только владельцев товарных знаков, но и их авторов, дизайнеров. Авторское право возникает в силу создания произведения, к юридическим лицам могут переходить права на использование произведения в качестве средства индивидуализации - товарного знака, но автор, дизайнер остается обладателем авторских прав, например, на упоминание своего имени, по

крайней мере, в изданиях, публикуемых не за счет заказчика - обладателя прав на объект промышленной собственности [17, стр. 20].

Упоминание имени автора (дизайнера) возможно также в рекламных материалах, на рекламных щитах фирмы - обладателя права на товарный знак, что может регулироваться отдельным соглашением.

В рыночной экономике право собственности является принципом общественного развития. Поэтому в странах с развитой рыночной экономикой за длительный период ее эволюционного развития на принципах частной собственности создана огромная нормативно-правовая база, регулирующая отношения и охраняющая права ИС. В странах СНГ остаются актуальными вопросы, связанные с законодательной защитой прав ИС, а это, в свою очередь, влияет на эффективность вовлечения в активный хозяйственный оборот результатов инновационной деятельности [1, стр. 20].

Из-за недостаточного внимания и опыта решения проблем, связанных с использованием интеллектуальной собственности, государство несет значительные убытки. Во-первых, потому, что многие научно-технические достижения по разным причинам не используются в практической деятельности и не востребованы обществом. Во-вторых, происходит крупномасштабная утечка высококвалифицированных кадров, труд которых не оценивается по достоинству. Так же есть проблемы в защите прав правообладателей за рубежом. Многие правообладатели не патентуют должным образом свои изобретения и их творения уходят за рубеж, там патентуются и используются.

Главная проблема - это охрана новшеств. У большинства предприятий отсутствует единая политика в области охраны интеллектуальной собственности и продвижении своих товаров и технологий на рынок. В результате предприятия теряют приоритет на рынке и проигрывают своим конкурентам. Еще одна причина низкой эффективности торговли - это уровень промышленного освоения предмета продажи. [1, стр. 28]

В настоящее время имеется и другая, не менее важная проблема - это недостаточный уровень квалификации специалистов. Предприятия стараются найти покупателей или инвесторов своих инновационных технологий, прежде всего в промышленно развитых странах, не имея при этом необходимых средств и деловых связей.

Без решения этих проблем, без осознания роли ИС как фактора научно-технического, экономического и культурного развития нашей страны немыслимо положительное развитие экономики.



Результаты интеллектуальной деятельности являются важной составной частью национального богатства Республики Молдова, однако ее потенциал еще не в полной мере оценен и освоен. Стабилизация экономики и стимулирование ее развития, основанного на знаниях и инновациях, рост конкурентоспособности, развитие производства и торговли, науки и культуры, рост занятости населения и т.д. диктуют необходимость все большего использования ИС в этой деятельности.

**Выводы:** Охрана прав ИС является международно-признанным, динамично развивающимся правовым институтом. Большое внимание ему уделяют в нашей стране, однако ситуация с соблюдением прав ИС складывается далеко не лучшим образом. Необходимо обеспечить формирование современных механизмов защиты ИС. При этом правовые методы защиты ИС необходимо применять в сочетании с технологическими.

Международные договоры и международная правоприменительная практика в области ИС оказывают значительное влияние на развитие законодательства Республики Молдова. На основании имеющихся данных, можно отметить, что за недолгий период своего существования законодательство РМ претерпело множество изменений. Значимая часть этих изменений связана с межгосударственными договорами, которые Молдова заключила. Присоединяясь, к какому либо договору или конвенции страна в обязательном порядке берет на себя определенные обязательства, которые напрямую влияют на внутреннее законодательство.

Бурный рост знаний, появление новых технологий привели к изменению политики в отношении ИС и к применению новой практики управления интеллектуальными активами.

Наиболее важная роль в наши дни принадлежит многосторонним соглашениям общего характера, но это не означает, что в современном мире не применяются другие формы охраны авторских и смежных прав – предоставление охраны на началах взаимности и заключение двусторонних соглашений: каждое государство выбирает тот или иной вид международной охраны авторского права в зависимости от культурной политики, экономических, исторических, юридических и иных условий и особенностей данной конкретной страны.

Государство играет первостепенную роль в развитии ИС. Так посредством присоединения к международным договорам, принятием различных стратегий развития оно закрепляет в законодательстве способы охраны ИС, которые в целом вписываются в систему способов защиты так называемой «обычной собственности». Однако специфика

объектов ИС предполагает определенные отличия характера их защиты. Главным образом это связано с ментальностью общества, для которого понятие «собственность» до сих пор воспринимается как нечто материальное, то, что можно потрогать руками. Также важна роль превентивных способов охраны интеллектуальных прав государством.

Интеллектуальная собственность – собственность особого рода. ИС не является разновидностью права вещной собственности, это самостоятельный правовой институт. Относящиеся к ИС права называют правом интеллектуальной собственности потому, что их следует защищать также «основательно», как вещные права, а не для того, чтобы распространить на них порядок (определения, способы защиты), применяемый в отношении прав вещной собственности. В то же время веянием современности является «расширение» понятия собственности, включение в него не только материальных объектов, охраняемых вещным правом, но и иных представляющих имущественную ценность объектов.

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## ANALIZA LATURII SUBIECTIVE A INFRAȚIUNII PREVĂZUTE DE ARTICOLUL 264 CODUL PENAL AL REPUBLICII MOLDOVA

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### **Rezumat**

*Încadrarea juridică a unei fapte prejudiciabile urmează a fi făcută ținând cont de cele patru elemente constitutive ale componenței de infracțiune. Determinarea prezenței laturii subiective urmează a fi făcută pentru a stabili vinovăția subiectului faptei prejudiciabile imputate și a stabili încadrarea juridică corectă. Latura subiectivă ca element constitutiv al componenței de infracțiune este un factor determinant pentru individualizarea pedepsei penale, or, temei pentru liberarea de răspundere penală în cazul absenței acesteia.*

**Cuvinte-cheie:** *latura subiectivă a infracțiunii, vinovăție, imprudență, accidente rutiere*

**Introducere.** Stabilirea laturii subiective a infracțiunii are un rol primordial pentru calificarea juridică a infracțiunilor. În unele situații acesta deter-



mină recalificarea faptei potrivit unui alt articol din partea specială a Codului Penal al Republicii Moldova.

Semnele laturii subiective reprezintă partea componentă a infracțiunii prevăzute la art.264 Cod penal al RM fiind deosebit de importante și complexe, astfel fiind necesită o abordare conceptuală serioasă a acestora.

Latura subiectivă a componenței infracțiunii constituie partea interioară a infracțiunii, care determină atitudinea psihică a făptuitorului față de fapta prejudiciabilă săvârșită și de urmările acesteia, sub raportul conștiinței, voinței și emoțiilor sale [4, p. 199].

În cazul infracțiunii prevăzute la art. 264 Cod penal al RM considerăm că latura subiectivă poate fi exprimată prin imprudență față de fapta prejudiciabilă săvârșită, la fel și față de urmările prejudiciabile.

Latura subiectivă a infracțiunii prezintă prin sine o combinație a semnelor, prevăzute de legea penală, ce caracterizează atitudinea psihică a unei persoane față de fapta comisă.

La tragerea la răspundere penală trebuie să fie stabilită atitudinea psihică față de fapta săvârșită, care a fost exprimată în formă de intenție sau imprudență.

**Scopul** articolului este de a identifica particularitățile și aspectele determinante ale laturii subiective a infracțiunii de încălcare a regulilor de circulație sau de exploatare a mijlocului de transport, în vederea excluderii incidenței încadrării juridice improprie subiectului unei fapte prejudiciabile imputate.

**Metodele aplicate** la elaborarea studiului – caracterul complex al problematicii investigate a determinat utilizarea unui spectru larg de metode, cum ar fi: metodele logicii formale (analiza, sinteza, deducția, inducția, comparația, abstractizarea etc.) metoda istorică, sistemică etc.

Problema laturii subiective a infracțiunii este una din cele mai dificile în dreptul penal. Acest lucru se explică prin faptul că formarea atitudinii față de faptul că are loc prin interacțiunea persoanei cu circumstanțele obiective, prin intermediul conștientizării și evaluării, și poate fi modificată, inclusiv în procesul comiterii infracțiunii. Însăși formarea (procesul) atitudinii față de faptă pentru a o comite este rezultatul activității psihice a făptuitorului [7, p. 28].

Aprecierea corectă a laturii subiective a componenței infracțiunii are o mare importanță juridico-penală, în special pentru:

- 1) delimitarea comportamentului criminal de cel noncriminal;
- 2) determinarea temeiului răspunderii penale;
- 3) calificarea infracțiunilor;
- 4) delimitarea componențelor infracțiunilor omogene (adiacente);
- 5) aprecierea caracterului prejudiciabil al faptei și al infractorului;

6) aplicarea răspunderii și pedepsei penale echitabile [10, p. 200].

Vinovăția persoanei vis-a-vis de fapta săvârșită este determinativă răspunderii penale. În acest sens, prezentăm o definiție autohtonă a vinovăției care se prezintă a fi atitudinea psihică (conștientă și volitivă) a persoanei față de fapta prejudiciabilă săvârșită și urmările prejudiciabile ale acesteia, ce se manifestă sub formă de intenție sau imprudență. La rândul ei intenția se manifestă în directă și indirectă, iar imprudența în neglijență și sine încredere.

Factorul intelectual (conștiința) presupune reprezentarea deplină a conținutului, sensului și consecințelor urmărite sau acceptate prin săvârșirea faptei penale, precum și prevederea întregii desfășurări cauzale a acesteia. În conștiință apare deci ideea săvârșirii faptei, se cântăresc argumentele în favoarea și împotriva acțiunii și, în fine, se ia decizia de a săvârși sau nu infracțiunea. După terminarea procesului decizional se trece de la manifestarea de conștiință la manifestarea de voință, care constă în concentrarea energiei în vederea realizării actului de conduită [10, p. 157].

În doctrina penală autohtonă, cât și în cea străină s-a subliniat că factorul intelectual are rol hotărâtor în reglarea activității omului, inclusiv activitatea infracțională, pentru că prezența acestuia înseamnă existența vinovăției. Factorul intelectual dezvăluie atitudinea conștiinței făptuitorului față de fapta săvârșită și față de urmările ei [11, p. 116].

Factorul volitiv (voința) reprezintă facultatea psihică prin care sunt mobilizate ori orientate conștient energiile fizice ale omului în vederea săvârșirii actului de conduită exterioară. Voința de a săvârși actul de conduită face ca acesta să fie atribuit, să aparțină, să fie imputabil persoanei care l-a săvârșit. În cazul în care fapta nu este voită de persoana care a comis-o, pentru că nu a acționat în mod liber, ci ca urmare a unei energii străine, sub presiunea unei constrângeri, nu poate exista vinovăție. Această faptă poate fi imputată făptuitorului doar fizic, nu și psihic, ceea ce exclude vinovăția [8, p. 156].

În baza art.52 alin. (2) Cod penal, „răspunderii penale este supusă numai persoana vinovată de săvârșirea infracțiunii prevăzute de legea penală”. Potrivit art.3 alin.(1) Cod penal „nimeni nu poate fi declarat vinovat de săvârșirea unei infracțiuni nici supus unei pedepse penale, decât în baza unei hotărâri a instanței de judecată și în strictă conformitate cu legea penală”. Astfel, legiuitorul concepe vinovăția ca instituție a dreptului penal (art.17-20), ca condiție necesară a răspunderii penale (art.6 și art.51 alin.(2)), precum și ca o trăsătură esențială a infracțiunii (art.14 alin.(1)).

Latura subiectivă a infracțiunii de încălcare a regulilor de securitate a circulației rutiere se caracterizează prin omogenitatea atitudinii psihice a



făptuitorului față de acțiunea și consecințele acestora, și anume forma de *vinovăție* în legătură cu încălcarea normelor de securitate și consecințele care rezultă întodeauna, coincide între ele [14, p. 34].

Legislația penală, în mod tradițional consideră că infracțiunea prevăzută de art.264 Cod penal, este comisă din imprudență, atât în modalitatea sa de neglijență, cât și de încredere exagerată în sine.

Pentru efectuarea unei conduceri corecte, șoferul trebuie să dispună de capacitatea de a percepe într-un timp foarte scurt mai multe elemente, selectând dintre acestea pe acelea de care depinde securitatea circulației. De aceea, atenția constituie una din principalele calități psihice implicate în activitatea de conducere. În toate statisticile referitoare la accidente de circulație se menționează că una din cele mai frecvente cauze generatoare de accidente este neatenția față de cerințele importante ale momentului, fapt reflectat în prevederile p.45 (a) RCR: „Conducătorul trebuie să conducă vehiculul în conformitate cu limita de viteză stabilită, ținând permanent seama de starea psihofiziologică ce influențează atenția și reacția”.

Conducătorul auto trebuie să posede o bună mobilitate a atenției, a cărei bază fiziologică o constituie mobilitatea proceselor nervoase. De asemenea, stabilitatea atenției necesară în special în timpul conducerii pe drumuri monotone, fără curbe, precum și capacitatea de distribuire a atenției, care permite conducătorului auto să se ocupe concomitent de perceperea mai multor obiecte și de efectuarea în același timp a unor mișcări necesare în conducere sunt de mare importanță în activitatea conducătorului auto.

Conducerea unui vehicul în oraș reclamă un grad mai mare de atenție decât conducerea în afara orașului. Deficiențele de atenție se caracterizează prin aceea că individul nu se poate concentra în anumite momente, nu-și poate distribui și deplasa atenția în special la intersecții sau nu poate urmări timp îndelungat semnele de circulație rutieră de pe parcurs.

Pentru a conduce un vehicul, este necesară o bună acuitate vizuală centrală și laterală (câmp vizual) pentru a distinge obstacolele ce apar pe neașteptate. Ochiul vede în toate condițiile de iluminat și excesiv de puternic și slab de tot, cu condiția să i se dea timpul necesar pentru adaptare la situația nouă. Nu toți conducătorii auto înțeleg că, în cazul conducerii pe timp de noapte, diminuarea luminii farurilor la întâlnirea cu un alt vehicul, e un lucru obligatoriu. Orbirea absolută sau relativă, poate duce ușor la accident prin aprecierea eronată a spațiului de parcurs. De aceea conducătorul auto trebuie să dispună de promptitudine și suplețe în gândire.

Unele probleme ce apar în activitatea de conducere nu pot fi rezolvate



cu succes dacă conducătorul auto nu dispune de posibilitatea efectuării principalelor operații ale gândirii.

Înțelegerea modului de funcționare a motorului și a tuturor dispozitivelor de comandă contribuie la remedierea cu ușurință a situațiilor ulterioare.

De asemenea, o bună echilibrare a proceselor nervoase este necesară, în situațiile conflictuale, fiind recomandat calmul și stăpânirea de sine. O stare de emoție puternică, generată de apariția bruscă a unui pieton sau a unui vehicul poate crea o situație conflictuală pentru șofer.

Emoțiile, prin caracterul situativ, îl obligă pe șofer să efectueze anumite mișcări într-un timp foarte scurt. Astfel, într-o situație periculoasă, conducătorul auto are tendința de a preîntâmpina accidentul, dar fiind cuprins de o emoție puternică, el frânează, deși, o rezolvare mai bună a situației critice ar fi reclamat accelerarea. Fără o coordonare perfectă între mișcările mâinilor, picioarelor și observare vizuală, șoferul poate provoca inevitabil accidente [2, p. 91].

Corectitudinea reacțiilor de frânare, accelerare, semnalizare sau schimbarea vitezelor depinde aproape în întregime de procesele motrice ale fiecărui șofer. De asemenea, la viraje, șoferul trebuie să controleze dacă unghiul de rotație al volanului corespunde curbării necesare traseului autovehiculului. Pentru aceasta este necesar ca el să țină cont de faptul că roțile din spate efectuează un viraj cu o rază mai mică. Corelarea tuturor acestor parametri se realizează printr-o bună motricitate. În operații mai grele și mai complexe de conducere ca mersul înapoi, trecerea prin intersecții neregulate, circulația noaptea prin ceață sau pe șosele cu polei și zăpadă, sunt necesare mișcări cu grad sporit de precizie.

Deficiențele de motricitate generatoare de accidente rutiere se referă la situații în care s-a reacționat prea lent, prea rapid sau neadecvat. În cazul unei viteze mari de circulație o reacție lentă din partea conducătorului auto poate duce la accidente grave. Acest fel de reacții sunt mai frecvente la conducătorul auto începător care nu și-a format deprinderea unei bune conduceri.

Reacțiile prea rapide pot duce, de asemenea la accidente grave. Ele au un caracter instinctiv, determinate de o stare afectivă de moment și fiind prea rapide șoferul nu are timpul necesar de a face o analiză corectă a situației. Trebuie să demonstrăm că timpul util de reacție depinde de factori multipli, de deprinderile conducătorului auto, de modelul de funcționare a dispozitivelor de comandă, de viteza autovehiculului în momentul respectiv, de starea drumului (polei, zăpadă, asfalt umed etc.).

Activitatea conducătorului auto însumează o serie de acțiuni legate între ele cu diferite componente automatizate (schimbarea vitezelor,



accelerarea, semnalizarea, frânarea și alte acțiuni automatizate), totuși, în ansamblu, ele se desfășoară sub controlul conștiinței, solicitând intens și trăsături de caracter.

Reieșind din ideile analizate mai sus, conchidem că infracțiunea prevăzută în art. 264 Cod penal, nu poate fi săvârșită cu intenție or, legiuitorul a specificat în normă că făptuitorul manifestă o atitudine psihică ce se manifestă prin imprudență.

În conformitate cu art. 18, Cod penal, „Se consideră că infracțiunea a fost săvârșită din imprudență dacă persoana care a săvârșit-o își dădea seama de caracterul prejudiciabil al acțiunii sau inacțiunii sale, a prevăzut urmările ei prejudiciabile, dar considera în mod ușuratic că ele vor putea fi evitate ori nu își dădea seama de caracterul prejudiciabil al acțiunii sau inacțiunii sale, nu a prevăzut posibilitatea survenirii urmărilor ei prejudiciabile, deși trebuia și putea să le prevadă” [9].

Imprudența, ca formă a vinovăției, se poate manifesta sub două modalități, și anume: sine încredere și neglijența. Putem remarca că doar Codul penal actual consacră modalitățile imprudenței față de faptă, pe când știința penală și practica judiciară mult timp au studiat mult problematica în cauză făcând posibilă modificarea Codului penal în formatul actual.

Conducătorul care circulă cu viteză excesivă are posibilități minime de a preîntâmpina un accident, chiar și atunci când posedă calități pentru manevrele de conducere, de aici și *sine-încrederea exagerată* care în doctrina penală este recunoscută ca o formă a imprudenței, când persoana prevede posibilitatea survenirii urmărilor prejudiciabile a acțiunilor/inacțiunilor sale, însă consideră în mod ușuratic că ele vor putea fi evitate.

Conștientizarea caracterului prejudiciabil al faptei este legată, de regulă, de nerespectarea unor reguli de precauție stabilite pentru a evita survenirea unor urmări prejudiciabile în procesul de desfășurare a anumitor activități. De exemplu, șoferul dezvoltă o viteză inadmisibilă pe o rută din raza orașului și își dă seama că această abatere de la regulile de circulație rutieră creează un pericol pentru securitatea participanților la trafic [1, p. 67].

Previzibilitatea de către făptuitor a urmărilor prejudiciabile ale faptei sale presupune doar previziunea posibilității survenirii lor, deoarece numai în acest caz poate exista și speranța, lipsită de temei, a prevenirii acestor urmări. În cazul de prevedere a inevitabilității survenirii urmărilor, nu mai poate fi vorba de speranță, ele nu se vor produce, de speranța de a le preveni etc., situație în care apreciem că persoana acționează cu intenție directă [3, p. 96].

În cazul când speranța în neproducerea urmărilor prejudiciabile s-ar



întemeia pe o întâmplare sau pe un eveniment care ar putea să se producă, dar în realitate să nu aibă loc, vinovăția făptuitorului va îmbrăca forma intenției, fiind practic vorba de acceptarea riscului producerii rezultatului [15, p. 243].

Neglijența penală constă în poziția psihică a făptuitorului care nu își dă seama de caracterul prejudiciabil al acțiunii sau inacțiunii sale, nu a prevăzut posibilitatea survenirii urmărilor prejudiciabile, deși trebuia și putea să le prevadă [4, p. 210].

Dacă este să raportăm toate opiniile sus-menționate la prevederea art. 264 Cod penal al Republicii Moldova, atunci putem remarca că regulile de securitate a circulației rutiere sau de exploatare a mijloacelor de transport sunt încălcate de obicei intenționat, iar față de urmările acestor încălcări făptuitorul manifestă imprudență și anume sub forma de: (încredere exagerată sau neglijență).

Analizând dispoziția normei cercetate considerăm că nu poate fi exclusă cu totul posibilitatea manifestării imprudenței față de fapta prejudiciabilă. Această opinie o invocăm reieșind din interpretarea stilistică și lingvistică a normei, observând astfel că legiuitorul nu specifică în acest articol care formă a vinovăției trebuie să manifeste făptuitorul în raport cu fapta prejudiciabilă. Spre deosebire, de alte norme ale Codului penal, de ex: art. 213 Cod penal, în care se constată că regulile sau metodele de acordare a asistenței medicale se încalcă din neglijență.

Referitor la încrederea exagerată în sine, de exemplu – în cazul în care se depășește viteza de deplasare admisibilă pe un anumit traseu, se traversează la culoarea roșie a semnalului semaforului, când se traversează trecerea la nivel cu calea ferată la semnalul roșu al semaforului etc. în cazul dat – făptuitorul, își dă seama că încalcă regulile de circulație rutieră însă în acest caz el contează pe abilitățile sale, pe finalul pozitiv cunoscut în trecut, sau pe funcționarea sistemului de frânare a mijlocului de transport pe care îl conduce în așa mod încât ar permite să frâneze abil, sau nu este exclus ca conducătorul să mizeze chiar pe rezonabilitatea și atenția altor participanți la trafic. Or infracțiunea prevăzută la art. 264 Cod penal poate fi săvârșită din imprudență și anume prin încrederea exagerată în sine.

Considerăm a fi mult mai dificil de a stabili cazul în care făptuitorul a manifestat neglijență față de urmările prejudiciabile. Acesta se remarcă mai ales în cazul în care accidentul rutier se produce într-un loc și în condiții în care făptuitorul nu se putea aștepta la apariția vreunui pericol.





Eperiența profesională duce în mod treptat la interiorizarea și apoi la depășirea constrângerii exterioare create de legea circulației și de forța publică și la crearea unui „spirit de securitate”, a unui „spirit defensiv” care comportă ideea de relativitate a drepturilor și îndatoririlor în utilizarea drumurilor publice și admite erorile altora ca variabilă permanentă în previziunile conducătorului prudent.

Legea circulației, de pildă, oferă întâietate pietonilor, nu pentru faptul că aceștea ar fi mai valoroși decât cetățeanul din mașină, ci pentru rațiunea foarte clară că dacă șoferul nu acordă prioritate pietonului, atunci accidentele sunt mult mai dese și mai grave. Pietonul poate să se oprească imediat, mașina nu mai poate. De aceea este normal ca măsurile de precauție să fie luate din partea aceluia care prevede posibilitatea cea mai mică de prevenire, mai ales că p.4 RCR indică clar că: „orice participant la trafic care respectă prezentul Regulament este în drept să conteze pe faptul că și ceilalți participanți la trafic execută cerințele acestuia” [12].

În țările cu trafic mare de automobile, șoferul este pedepsit chiar dacă el a acceptat invitația pietonului de a trece el primul. Vinovați sunt exclusiv conducătorii mijloacelor de transport, iar alți participanți la trafic nu poartă nici o vină. În acele situații, când vinovăția conducătorului mijlocului de transport lipsește, răspunderea pentru producerea accidentului rutier trebuie să o poarte acei participanți la trafic care se fac vinovați de producerea acestuia.

Conducătorului mijlocului de transport, care nu a încălcat nici o regulă de securitate a circulației sau de exploatare a mijloacelor de transport, nu i se poate imputa nepreîntâmpinarea consecințelor situației de accident, care a fost provocat de fapta victimei sau a altor participanți la trafic. Dacă calculul persoanei este întemeiat, însă circumstanțe neprevăzute sau neexecutarea obligațiilor de către alte persoane au condiționat aceste consecințe, atunci nici ele, nici faptele care le-au provocat, nu-i pot fi imputate.

În contextul celor prenotate, latura subiectivă a infracțiunii se caracterizează numai prin vinovăție imprudentă. De aceea pregătirea sau tentativa de infracțiune se exclude.

Dacă conducătorul mijlocului de transport a provocat intenționat daune vieții și sănătății persoanei sau proprietății, cele săvârșite trebuie calificate ca infracțiuni contra vieții și sănătății persoanei sau contra patrimoniului, în acord cu pct. 9 al Hotărârii Plenului nr. 20/1999, [13] dacă vătămarea integrității corporale sau a sănătății ori decesul victimei au fost provocate intenționat, atunci nu se va aplica art.264 Cod penal.

Deși, în literatura juridică unii autori, de exemplu A. Borodac consideră

că „atitudinea psihică a făptuitorului față de încălcarea normelor de securitate rutieră și de exploatare a vehiculelor poate fi exprimată atât în formă de intenție, cât și în formă de imprudență, iar față de consecințele prejudiciabile, doar în formă de imprudență” [8, p.119], iar S. Brînză și V. Stati [6, p. 390] vorbesc despre faptul că : „Latura subiectivă a infracțiunii prevăzute la art.264 Cod penal se caracterizează prin intenție față de fapta prejudiciabilă și numai prin imprudență față de urmările prejudiciabile”, totuși considerăm că această abordare este una eronată.

În această ordine de idei ținem să menționăm că împărtășim în totalitate viziunea expusă în teza de doctor a autorului V. Budeci care consideră că latura subiectivă a infracțiunii prevăzute la art.264 Cod penal se caracterizează exclusiv prin vinovăție imprudentă față de consecințele dăunătoare, care se exprimă doar în formă de neglijență și încredere exagerată. În opinia autorului V. Budeci nu pot fi recunoscute diverse forme a vinovăției distinct față de faptă (intenție sau imprudență) și distinct pentru consecințe (imprudență). În final, dacă s-ar admite o astfel de calificare, fapta ar fi considerată în mod eronat ca fiind intenționată, prin urmare infracțiunea prevăzută la art.264 Cod penal poate fi săvârșită doar prin imprudență.

Legea penală scrie foarte clar, în dispoziția alin.(1) art.264 Cod penal „...încălcarea ce a cauzat din imprudență...”, ceea ce interesează și prezintă relevanță sub aspectul stabilirii răspunderii penale a conducătorului de autovehicul care, prin încălcarea dispozițiilor legale referitoare la circulația pe drumurile publice, cauzează vătămare corporală medie, gravă sau chiar decesul unei sau mai multor persoane sunt consecințele importante de care se ține cont doar la individualizarea pedepsei penale și prezintă importanță pentru stabilirea pedepsei penale în fața instanței de judecată, în vederea realizării scopului legii penale de a corecta și reeduca conducătorul mijlocului de transport, precum și de prevenire a comiterii unor noi infracțiuni atât de către condamnat, cât și de către alți conducători ai mijloacelor de transport, ținând cont de modalitatea imprudentă a infracțiunii comise.

În condițiile în care, pe drumurile publice conducerea devine o adevărată competiție sportivă, unde unii conducători auto se înfruntă după capacitatea lor și posibilitățile oferite de autovehiculul pe care îl conduc, făcând titlu de glorie din a depăși sau a întrece autovehicule cu capacități cilindrice mai mari, efectuând manevre periculoase, în regim de viteză sporită, în care doza de risc este extreme de mare și cel mai mic factor neprevăzut poate duce la accidente grave, oare nu putem vorbi despre prezența intenției? O intenție a conducătorilor auto care șofează și nu permit să fie depășiți, orbesc cu farurile



pe cei ce vin din față, manifestând manevre periculoase, cu un mare coeficient de risc, care se conjugă uneori cu un refuz de supunere la normele de conduită în trafic, creându-i sentimentul de a fi un „supercetățean”, sentiment cu totul nejustificat și foarte periculos din punct de vedere a producerii accidentelor, în special dacă fapta este săvârșită în stare de ebrietate.

În lumina celor expuse, justificăm necesitatea sancționării mai severe a infracțiunii cercetate în cazul în care acesta a provocat vătămarea gravă a integrității corporale a victimei sau decesul unei sau mai multor persoane. Instituirea unui regim diferențiat de punere în mișcare a acțiunii penale pentru aceste două modalități în raport cu cel stabilit pentru modalitatea tipică a infracțiunii în discuție este expresia firească a plusului de pericol social pe care ele îl prezintă, precum și a diferenței de tratament penal aplicabil făptuitorului în situațiile respective.

Semnele laturii subiective a componenței de infracțiune sunt în strânsă legătură cu toate celelalte elemente ale componenței. Analiza laturii subiective permite identificarea corectă a obiectului infracțiunii. În practica judiciară, de multe ori se fac erori cu privire la calificarea infracțiunilor, comise cu utilizarea autovehiculelor, atunci când nu este stabilit cu precizie obiectul față de care a fost îndreptată intenția persoanei vinovate. Astfel, există cazuri de neatrageră la răspundere pentru omor cu utilizarea mijlocului de transport, chiar și în prezența intenției de a săvârși omorul victimei.

Nu va constitui infracțiune încălcarea regulilor de securitate a traficului rutier sau de exploatare a autovehiculelor, dacă persoana care conduce autovehiculul nu a trebuit și nici nu a putut să prevadă survenirea urmărilor prejudiciabile indicate la art.264 Cod penal al RM. În această situație va avea loc o cauzare de daune săvârșită fără vinovăție.

Motivul încălcării regulilor de securitate a traficului rutier și de exploatare a autovehiculelor nu are importanță la calificare. Acesta, în majoritatea cazurilor se exprimă în demonstrarea de îndrăzneală, graba sau simplu ignorarea acestor reguli. Stabilirea motivului infracțiunii are o mare importanță la individualizarea pedepsei.

Studiul laturii subiective presupune și explicarea unor aspecte a motivului încălcărilor regulilor de circulație și de exploatare a vehiculelor, astfel menționăm că acesta, în general nu prezintă interes pentru calificare. Dar, în condițiile în care conducătorului auto i se pretinde diligență și prudență maximă, dorința de a fi „tare în trafic” poate fi un eventual motiv care va influența la individualizarea judiciară a pedepsei penale, nu și la calificare.

**Concluzii:** Latura subiectivă a infracțiunii incriminate la art. 264, Codul Penal al Republicii Moldova este circumscrisă de următoarele semne:

**1) Semne principale** (au importanță pentru calificarea infracțiunii):

- vinovăția, care poate prelua forma imprudenței în ambele sale modalități;

**2) Semne facultative** (au importanță doar pentru individualizarea judiciară a pedepsei penale):

- motivul;
- scopul;
- emoțiile;
- retrăirile.

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## NATIONAL SECURITY IN THE INTERNATIONAL POLITICAL DISCOURSE

### THE SUPREME SECURITY COUNCIL OF THE REPUBLIC OF MOLDOVA: ACTIVITIES AND PROSPECTS FOR ITS IMPROVEMENT IN THE CONTEXT OF THE POST-SOVIET SPACE COUNTRIES' EXPERIENCE

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#### ***Abstract***

*The contemporary world is characterized by multiple risks and challenges to the security sector. In this context, security issues are given increased attention to in all states. It is not an exception for the post-Soviet countries, which have lately paid great attention to the level of functioning of the state system, empowered to ensure national security, the role of the National Security Council. The authors suggest correlating the diversity of factors influencing the national security of the Republic of Moldova, defining the powers and priorities in the activity of the National Security Council.*

**Keywords:** *Supreme Security Council, the Republic of Moldova, post-communist space, risks, challenges, civil interest*



**Introduction.** The Republic of Moldova, due to its geographical position and openness, is fully exposed to the influence of the majority of geopolitical processes taking place in the world, which complicate the performance of the country's national interests.

The basic measures of the Republic of Moldova's national interests at the current stage of the country's development, in our view, are:

- observing constitutional human rights and freedoms;
- ensuring the sustainable development of a democratic, legal, socially responsible state and enhancing the efficiency of the state institutions' functioning in the public interest;
- achieving a balance of interests of citizens, society and the state, public consensus on key issues of the Republic of Moldova's development;
- developing civil society, taking into account national traditions and features;
- effective counteraction to corruption;
- a pragmatic interaction, from the point of view of national interests, with the world's centers of power, based on effective multilateral and multi-vector diplomacy, strategic partnership with the leading countries of the West, the East, the EU, the CIS and special relations with friendly neighboring states, equal interaction and mutual consideration of interests with all countries of the world.

To implement these and other areas of national interests, it is necessary to improve and strengthen the mechanism for ensuring national security of the Republic of Moldova, as well as collective security with the participation of the Republic of Moldova at the regional and bilateral levels.

Unfortunately, the current level of legislation on national security issues, the organizational system for the construction and functioning of the national security system of the Republic of Moldova does not provide an opportunity to fully implement the full range of measures necessary to protect the national interests of the country from internal and external threats.

Our analysis is devoted to the study of the legal status, functions and powers of the Security Councils of the post-Soviet space countries and the possibility of using their positive experience to expand the powers of the newly elected President of the Republic of Moldova to ensure a high level of national security, formulate domestic and foreign policies, preserve state sovereignty, stability in society, protection of citizens' rights and freedoms.

## **I. Analysis of the legal status, functions and powers of the Security Councils of the post-Soviet space countries**

We have chosen the countries of the post-Soviet space for analyzing the functioning of the system of national security councils not by chance. All the countries of the post-Soviet space have emerged from the same political and economic system, are in the same historical stage of building independence, while facing practically the same challenges and threats that affect the most important aspects of life of the individual, society and the state.

National security in all countries is based on the general theory of national security, and all its aspects are considered based on systemic positions, as a complex socio-political phenomenon with a variety of state and public relations in the concrete historical dynamics of the formation and development of statehood in the current processes of globalization and integration. Moreover, ensuring national security, developing the concept and strategy of national security in all countries of the post-Soviet space is the subject of the closest attention on the part of the heads of state, whose role in the national security system is constantly growing. An important place in the system of ensuring national security belongs to the Security Councils. Presidents of all countries of the post-Soviet space exercise their powers to protect the individual, society and the state, national interests from internal and external threats, formulate state policy in the field of security and control its implementation in the framework of consultative and / or coordination and control (depending on the country) power of the Security Council.

At the same time, each country has its own specifics of the activities of the State Heads and the Security Councils in guiding the national security system, which we considered necessary to analyze from the point of view of possible use to protect the national interests of the Republic of Moldova.

To ensure that **the Russian Federation** takes measures to neutralize real and potential threats to the development of the state on the basis of the previous Law of the Russian Federation of March 5, 1992 No. 2446-1 "On Security", Presidential Decree No. 547 of June 3, 1992 established the Security Council of the Russian Federation to ensure the implementation of the Russian Federation's President's functions in the management of the state, the formation of an internal, external and military policy in the field of security.

The Security Council of the Russian Federation is the constitutional body that prepares decisions of the President of the Russian Federation in the field of security (Law of the Russian Federation of March 5, 1992 "On Security", section III). In the Constitution of the Russian Federation, the Security Council is designated as a state body in Article 83 clause "g",





which defines the powers of the President of the Russian Federation with regard to the formation of the most important state institutions.

The Security Council, as the constitutional body responsible for preparing the decisions of the President of the Russian Federation in the field of security, was charged with examining the strategic problems of state, economic, public, defense, information, environmental and other types of security, protecting public health, forecasting, preventing emergencies and overcoming their consequences, ensuring stability, law and order.

By the Decree of the President of the Russian Federation of July 7, 1992, No. 747 “On the Procedure for Implementing the Decisions of the Security Council of the Russian Federation”, it was established that decisions of the Security Council, taken to fulfill its main tasks (Article 15 of the Law of the Russian Federation “On Security”), are issued in the form of Decrees of the Russian Federation’s President, and decisions relating to the organizational, technical and information support of the Security Council - in the form of orders of the Russian Federation’s President - the Chairman of the Security Council (Art. 1). The Secretary of the Security Council was charged with monitoring the implementation of decisions of the Security Council and Presidential Decrees on security issues.

The practice of applying the Law of the Russian Federation of March 5, 1992 “On Security” showed (in the opinion of Russian specialists) the need for its correction, clarification of the bases and content of security activities, the powers of state authorities in this area, and the status of the Security Council (the Law was carried out in the part that did not contradict the Constitution of the Russian Federation).

In this regard, a new Federal Law of December 28, 2010 No. 390-FZ “On Security” was adopted. Article 13 of the law defines the status of the Security Council as a constitutional advisory body that prepares decisions of the President of the Russian Federation on security issues, organization of defense, military construction, defense industry, military-technical cooperation of the Russian Federation with foreign states, on other issues related to the protection of the constitutional order, sovereignty, independence and territorial integrity of the Russian Federation, as well as on international cooperation in the field of security. Security activities in accordance with the law include:

- 1) forecasting, identification, analysis and assessment of security threats;
- 2) definition of the main directions of state policy and strategic planning in the field of security;
- 3) legal regulation in the field of security;
- 4) development and application of a complex of operational and long-

term measures to identify, prevent and eliminate threats to security, localization and neutralization of the consequences of their manifestation;

5) application of special economic measures to ensure security;

6) development, production and introduction of modern types of weapons, military and special equipment, as well as dual-use and civilian equipment for security purposes;

7) organization of scientific activities in the field of security;

8) coordination of state power's federal bodies' activities, state authorities of the subjects of the Russian Federation, local governments in the field of ensuring security;

9) financing security expenditures, monitoring the targeted expenditure of allocated funds;

10) international cooperation on security purposes;

11) implementation of other activities in the field of security in accordance with the legislation of the Russian Federation.

Article 14 of the Federal Law of the Russian Federation refers to the main tasks of the Security Council:

1) provision of conditions for the exercise of authority by the President of the Russian Federation in the field of security;

2) formation of a state policy in the field of security and control over its implementation;

3) forecasting, identification, analysis and assessment of security threats, assessment of military danger and military threat, development of measures to neutralize them;

4) preparation of proposals to the President of the Russian Federation on measures for the prevention and elimination of emergencies and overcoming their consequences, on the application of special economic measures to ensure security, on the introduction, extension and cancellation of the state of emergency;

5) coordination of the activities of federal executive bodies and executive authorities of the constituent entities of the Russian Federation on the implementation of decisions taken by the President of the Russian Federation in the field of ensuring security;

6) evaluation of the effectiveness of federal executive bodies in the field of security.

2. The main functions of the Security Council are:

1) consideration of issues for ensuring security, organizing defense, military construction, defense production, military-technical cooperation of the Russian Federation with foreign states, other issues related to the



protection of the constitutional order, sovereignty, independence and territorial integrity of the Russian Federation, as well as issues of international cooperation in the field of security;

2) analysis of information on the implementation of the main directions of state policy in the field of ensuring security, on the socio-political and economic situation in the country, on the observance of human and civil rights and freedoms;

3) development and refinement of the national security strategy of the Russian Federation, other conceptual and doctrinal documents, as well as criteria and indicators for ensuring national security;

4) implementation of strategic planning in the field of security;

5) consideration of draft legislative and other normative legal acts of the Russian Federation on issues assigned to the jurisdiction of the Security Council;

6) preparation of draft normative legal acts of the President of the Russian Federation on security issues and monitoring the activities of federal executive authorities in the field of security;

7) organization of work on the preparation of federal programs in the field of security and monitoring their implementation;

8) organization of scientific research on issues within the competence of the Security Council.

The President of the Russian Federation may assign to the Security Council other tasks and functions in accordance with the legislation of the Russian Federation.

In accordance with Article 15 of the Federal Law, the Security Council includes a chairman who is the President of the Russian Federation, Secretary of the Security Council, permanent members of the Security Council of the Russian Federation and members of the Security Council. Permanent members of the Security Council are members of the Security Council on a post in the manner determined by the President of the Russian Federation. The Secretary of the Security Council is one of the permanent members of the Security Council. The President of the Russian Federation in the order he/she determines appoints the members of the Security Council.

To implement the tasks and functions of the Security Council, the President of the Russian Federation establishes the apparatus of the Security Council, and the working bodies of the Security Council may be established.

The main organizational and legal forms of the work of the Security Council are meetings, operational meetings, strategic planning meetings, workshops, as well as meetings of its working bodies - permanent interdepartmental commissions, a scientific council and its sections.

Meetings of the Security Council are held on a regular basis (usually once a quarter) on the plans approved by the President of the Security Council. If necessary, extraordinary meetings can be held. Decisions of the Security Council are adopted at its meeting by the permanent members of the Security Council by a simple majority of votes of their total number and come into force after approval by the President of the Security Council.

For the prompt discussion of national security issues, the President of the Security Council holds operational meetings with the permanent members of the Security Council (usually once a week).

To prepare decisions on strategic directions of the development of the Russian Federation and the conceptual problems in the field of ensuring national security to be submitted to Security Council meetings, the Secretary of the Security Council, in agreement with the President of the Security Council, may hold strategic planning meetings with the permanent members of the Security Council and members of the Security Council.

The decisions of the meetings and sessions of the Security Council are documented by the protocols approved by the President of the Security Council.

The main working bodies of the Security Council are interdepartmental commissions, which are formed in accordance with the main tasks and areas of activity of the Security Council. They can be created on a functional or regional basis on a permanent or temporary basis. Provisions on interdepartmental commissions of the Security Council and their composition by positions are approved by the President of the Russian Federation on the proposal of the Secretary of the Security Council. The Secretary of the Security Council approves the composition of each interdepartmental commission of the Security Council. Interdepartmental commissions of the Security Council prepare proposals and recommendations to the Security Council on the main areas of domestic and foreign policy in the field of national security, contribute to the strategic planning and coordination of the activities of federal executive bodies and executive authorities of the constituent entities of the Russian Federation to implement federal programs in the field of national security and the implementation of decisions of the Security Council.

The Scientific Council of the Security Council has been functioning since 1993. It implements scientific and methodological support for the activities of the Security Council and fosters the formation of a scientific foundation for national security, including the target orientation of Russian science on national security issues, the identification and systematic integration of new knowledge in this field, the development of methodological bases of strategic planning.



The organizational-technical and documentation support of the activities of the scientific council is entrusted to the apparatus of the Security Council.

The apparatus of the Security Council is headed by the Secretary of the Security Council, who is appointed and dismissed by the President of the Russian Federation.

In the early 90s of the XX century, bodies like the Security Council of the Russian Federation were formed in the states of the post-Soviet space, while for a number of them, the tasks and functions, as well as the powers and procedures for action, have a significant difference from the Russian Security Council.

**In the Republic of Azerbaijan**, in accordance with the Constitution (clause 27, article 109 “The President establishes the Security Council”), the Presidential Decree of April 10, 1997 established the Security Council, which is an advisory body to the President. The Security Council provides the conditions for the President to exercise his constitutional powers to protect the rights and freedoms of citizens, protect the independence and territorial integrity of the Republic of Azerbaijan.

The Security Council, which is formed by the President, includes the chairman Milli Mejlis, the prime minister, the head of the presidential administration, the state foreign policy counsellor, the state military counsellor, the general prosecutor, the foreign minister, the defense minister, the minister of national security, the minister of internal affairs. The President chairs the sessions of the Security Council.

The head of the Presidential Administration, who ensures the activities of the Security Council, directs the preparation of its meetings, executes the duties of the Secretary of the Security Council.

The agenda and order of issues consideration at the meetings of the Security Council are determined by the President on the proposal of the head of the Administration.

**In the Republic of Armenia**, the organization and activities of the National Security Council are based on the Republic’s Constitution. The Constitution (article 55, clause 6) stipulates that the President “shall form the National Security Council, preside therein, may form other advisory bodies” and the Statute of the National Security Council approved by the Decree of the President of the Republic of Armenia on May 28, 2008. Thus, the Constitution of the Republic of Armenia has established the consultative status of the National Security Council.

The Statute of the National Security Council assigns the Council to

identify internal, external, political, military, economic, social, and other problems related to national security issues, as well as to organize, coordinate and monitor the implementation of state programs and concepts envisaged by strategic national security program.

The National Security Council coordinates the activities of state bodies, assesses the effectiveness of their decisions in the sphere of ensuring national security, determines the main directions for increasing state strategic development, national security and national competitiveness, and makes decisions on their implementation. In accordance with the national security strategy, the Council implements strategic reforms in the systems of the armed forces, law enforcement agencies, tax and customs systems, and evaluates their effectiveness.

The President of Armenia is the Chairman of the Council. He approves the monthly program of the Council's activities, ratifies the decisions of the Council. The Secretary of the National Security Council ensures the implementation of the tasks stipulated by the strategy and decisions of the Council, organizes and coordinates the related work, and monitors their implementation. The working bodies of the Council are interdepartmental commissions that organize the work of government bodies related to the implementation of the national security strategy. To organize the activities of this structure, the head of state created the apparatus of the National Security Council, whose work is governed by the Secretary of the Council.

The composition of the National Security Council is: the Chairman is the President of the Republic of Armenia, the Chairman of the National Assembly, the Prime Minister, the Chairman of the Constitutional Court, the Vice-Prime Minister, the National Security Council Secretary, the Defense Minister, the Minister of Foreign Affairs, the head of the President's Office, the Attorney General, the head of national security service under the government, the police chief under the government, Chief of General Staff of the Armed Forces - the first Deputy Defense Minister, the head of the Commission in Parliament's foreign affairs, the head of the Committee on European Parliament committee.

In the Republic of Belarus, the legal basis for the organization and functioning of the Security Council is the Constitution of the Republic of Belarus (in accordance with its Article 84 clause 27, the President of the Republic of Belarus forms and heads the Security Council of the Republic of Belarus (SCRB), appoints and dismisses the Secretary of State of the Security Council) and the Decree of the President of the Republic of Belarus of August 5, 1994 No. 24 "On the establishment of the Security Council of



the Republic of Belarus”, which is issued on the basis of the Constitution of the Republic of Belarus to ensure the implementation of the President’s functions in the management of the state, the formation of internal, foreign and military security policies, the preservation of state sovereignty, territorial integrity and the constitutional order of the Republic of Belarus, protection of citizens’ rights and freedoms.

According to the mentioned Decree, the Security Council of the Republic of Belarus is a constitutional body created for the purpose of preparing President’s decisions on the main areas of domestic, foreign and military policy in the sphere of ensuring the security of the Republic of Belarus.

The main tasks of the Security Council are:

- determination of priorities for the vital interests of the individual, society and the state, identification of internal and external threats to security objects;
- determination of the main lines of the Republic of Belarus security strategy and organization of state programs preparation to maintain the proper security of the Republic of Belarus;
- preparation of recommendations to the President of the Republic of Belarus on the formation of foreign, domestic and military policies, on the development of the main provisions of the state in relation to other countries;
- development of proposals on coordination of the activities of executive bodies in implementing decisions taken in the field of security and assessing their effectiveness;
- preparation of operative decisions on prevention and overcoming emergency situations, which can cause significant damage to the interests of the Republic of Belarus;
- preliminary discussion of candidates for leading positions in ministries and departments (according to the list approved by the Security Council), on whom the effectiveness of measures to ensure the security of the Republic of Belarus depends;
- preparation of proposals to the President of the Republic of Belarus on introduction, extension, cancellation of emergency state or martial law, use of the Republic of Belarus Armed Forces’ contingent.

In accordance with the tasks assigned to it, the Security Council of the Republic of Belarus (despite their similarity with the tasks facing the Security Council of the Russian Federation) is authorized to monitor the reliability of the national security system, as well as to monitor the implementation of the decisions of the Security Council, to hear reports and communications from the leaders and other employees of state bodies, enterprises,

institutions and organizations on the performance of the functions and tasks assigned to them on issues of strengthening defense and security; to coordinate the work of interdepartmental commissions of the Security Council.

To exercise its powers, the Security Council may, on the proposal of its Secretary of State, establish permanent or temporary interdepartmental commissions.

The Security Council includes the chairman, who is the President of the Republic of Belarus, the State Secretary of the SCRB, permanent members and members of the SCRB. The permanent members of the Security Council of the Republic of Belarus are: the First Deputy Chairman of the Supreme Council, the Prime Minister, the Head of the Presidential Administration, the State Secretary of the SCBR. The members of the Security Council of the Republic of Belarus include: the Secretary of State of the Presidential Council, the Minister of Defense, the Minister of Internal Affairs and the Minister of Foreign Affairs, the Chairman of the State Security Committee, the Attorney General. Members of the Security Council of the Republic of Belarus may also include other officials appointed by the President of the Republic of Belarus.

According to the National Security Concept of the Republic of Belarus, approved by the Decree of the President of the Republic of Belarus No. 575 of November 9, 2010, the interaction of the subjects of national security is carried out taking into account their legal status, competence and the nature of the tasks to be performed, with the coordinating role of the Security Council and its working body, which is the State Secretariat of the Security Council of the Republic of Belarus.

The President of the Republic of Belarus exercises overall leadership of the national security system by fulfilling his powers in this area through the Security Council of the Republic of Belarus and its working body - the State Secretariat of the Security Council of the Republic of Belarus, and through the Council of Ministers of the Republic of Belarus.

The Security Council of the Republic of Belarus considers issues of domestic and foreign policy that affect the interests of national security, takes decisions on them, as well as determines the state bodies responsible for ensuring national security in the main spheres of the life of the individual, society and the state, and threshold values of indicators (indices) of national security state, organizes the effective functioning of the national security system.

State bodies subordinate (accountable) to the President of the Republic of Belarus and the republican government bodies subordinate to the





Government, in accordance with their competence, implement measures aimed at solving the tasks of ensuring national security, maintain available forces and means in a state of readiness for implementation.

Interaction of subjects of national security is carried out taking into account their legal status, competence and the nature of the tasks to be performed under the coordinating role of the Security Council of the Republic of Belarus and its working body.

The implementation of this Concept is monitored by the State Secretariat of the Security Council of the Republic of Belarus, as well as the preparation of the annual report of the Secretary of State of the Security Council of the Republic of Belarus to the President of the Republic of Belarus on the state of national security and measures to strengthen it.

**In the Republic of Moldova**, in accordance with the Law of October 6, 1989, No. 618 “On State Security” (as amended by Law No. 1300-ÖR of July 24, 1997), the Decree of the President of the Republic of Moldova No. 331-II of October 8, 1997, approved the Regulations “On the Supreme Security Council of the Republic of Moldova”. Article 1 of the mentioned Regulation establishes that the Supreme Security Council is an advisory body analyzing the activities of ministries and departments in the field of ensuring state security and drafting appropriate recommendations for the President of the Republic of Moldova on foreign and domestic policy issues. The President of the Republic of Moldova is the Chairman of the Supreme Security Council.

According to Article 1 of the Law “On State Security”, state security is an integral part of national security. Under the state security (in accordance with the law) we understand the protection of sovereignty, independence, territorial integrity and constitutional system of the country, its economic, scientific, technical and defense potential, legal rights and individual freedoms from intelligence and subversive activities of foreign special services and organizations, as well as from criminal attacks on certain groups or individuals.

The main threats to state security, in accordance with the Law, are:

- a) actions aimed at violent change of the constitutional order, undermining or abolishing the sovereignty, independence and territorial integrity of the country. These actions cannot be interpreted at the expense of political pluralism, the exercise of constitutional human rights and freedoms;
- b) activities directly or indirectly facilitating the deployment of fighting against the country or unleashing a civil war;
- c) armed or other violent actions that undermine state foundations;

d) actions that contribute to the occurrence of emergencies at the sites of transport, communications, life support and economy;

e) espionage, transfer of information constituting a state secret to other states, as well as illegal receipt or storage of information constituting state secrets with the purpose of transferring it to other states or to unconstitutional structures;

f) treason, expressed in rendering assistance to another state in the conduct of hostile activities against the Republic of Moldova;

g) actions aimed at the violent overthrow of lawfully elected public authorities;

h) actions, which threaten state security aimed at infringement of citizens' constitutional rights and freedoms;

i) preparation and commission of terrorist acts, as well as encroachment on the life, health and inviolability of the highest officials of the republic and foreign state and public figures during their stay in the Republic of Moldova;

j) theft and smuggling of weapons, ammunition, military equipment, explosive, radioactive, poisonous, narcotic, toxic and other substances, their illegal production, use, transportation and storage, if the interests of ensuring state security are affected;

k) the creation of illegal organizations or groups that threaten state security, or participation in their activities;

l) cases of organized crime and / or corruption that undermine state security.

According to Article 5 of the Law on State Security, the main areas of activity for ensuring state security are:

a) the formation of foreign and domestic policies, taking into account the interests of ensuring national security;

b) the definition and implementation of a system of economic, political, legal, military, organizational and other measures aimed at the timely detection, prevention and suppression of threats to national security;

c) the formation of a system of state security bodies, the division of their functions with the simultaneous provision of interaction, as well as the creation of a mechanism for monitoring and overseeing their activities;

d) improvement of the legal basis for ensuring state security;

f) coordination with other states of the activities to identify, prevent and suppress possible threats to state security.

The president:



a) carries out general management of activities to ensure state security and he is responsible for the condition of state security within the powers provided by law;

b) adopts, in accordance with the legislation, necessary measures to ensure state security;

c) ensures the interaction of public authorities in the sphere of ensuring state security;

d) establishes and manages, in accordance with the legislation, advisory bodies on matters of state security;

e) issues normative decrees on issues of ensuring state security;

f) negotiates and concludes international treaties on behalf of the Republic of Moldova related to ensuring state security.

In accordance with the Regulation on the Supreme Security Council approved by the Decree of the Republic of Moldova's President of October 8, 1997 No. 331-P, Article 3, the Supreme Security Council performs the following functions:

1) advises the President of the Republic of Moldova on national security issues;

2) submits recommendations to the President of the Republic of Moldova on foreign and domestic policy issues;

3) considers:

a) draft resolutions on amendments and additions to the National Security Concept, the Military Doctrine and the Foreign Policy Concept;

b) issues related to the development and implementation of the Armed Forces Reform Concept;

c) a plan for the construction of the Armed Forces;

d) plans to equip the Armed Forces, internal affairs bodies and state security with weapons, military equipment;

e) issues on recruiting the Armed Forces;

f) a plan for the Armed Forces' mobilization;

g) a plan for mobilizing national economy in case of war;

h) plans for cooperation between the Ministry of Defense, the Ministry of Internal Affairs, the Ministry of National Security, the Department of Civil Protection and Emergencies on:

- the maintenance of armed forces in peacetime and wartime;

- reduction and elimination of consequences associated with natural disasters and catastrophes;

- maintenance and restoration of law and order;

- protection of strategic facilities;
- i) the main areas of cooperation of the Republic of Moldova with other states in the military-political sphere;
- j) draft international treaties in the military-political sphere;
- k) reports of heads of public administration authorities relevant to national security; 4) submits proposals on the deployment and redeployment of military units on the territory of the republic in peacetime, as well as on their participation in international activities aimed at maintaining peace;
- 5) analyzes situations in which it is necessary:
  - a) to declare the state of emergency;
  - b) to declare the state of siege;
  - c) to declare of martial law;
  - d) to declare partial or total mobilization and demobilization;
  - e) to conclude peace after the cessation of hostilities;
- 6) analyzes the activities of the Ministry of Defense, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Ministry of National Security, the Department of Civil Protection and Emergencies, other ministries and departments in the field of national security;
- 7) reviews the implementation of decrees and other decisions of the President of the Republic of Moldova on national security issues.

The proposals of the Supreme Security Council are recommendatory in nature and can serve as the basis for issuing Decrees and other decisions of the President of the Republic of Moldova on national security issues.

Members of the Supreme Security Council are:

Prime Minister, Minister of Defense, Minister of Foreign Affairs, Minister of Internal Affairs, Minister of National Security, Minister of Finance, Chief of the General Staff of the Armed Forces, Head of the Department of Civil Protection and Emergencies and Secretary of the Supreme Security Council.

The President of the Republic of Moldova may appoint to the Supreme Security Council other members from among the officials.

Currently, the activities of the Supreme Security Council are regulated by the following legislative and regulatory acts:

Decree No. 331 of 08.10.1997 "On approval of the Regulations on the Supreme Security Council".

Decree No. 664 of 10.06.2013 "On the formation of the Supreme Security Council".

Resolution No. 153 of 15.07.2011 "On the Approval of the National Security Strategy of the Republic of Moldova".



Law No. 618 of 31.10.1995 “On State Security”.

Law No. 112 of 22.05.2008 “On the Approval of the National Security Concept of the Republic of Moldova”.

Law No. 345 of 25.07.2003 “On National Defense”.

Law No. 1192 of 04.07.2002 “On Mobilization and Mobilization Preparation”.

Law No. 212 of 24.06.2004 “On the regimes of emergency, siege and martial law”.

**In the Republic of Kazakhstan**, the Security Council was established in accordance with the country’s Constitution, Law No. 233-1 of June 26, 1998, “On the National Security of the Republic of Kazakhstan” (as amended on August 7, 2007, No. 321-S ZRK). Regulation on the Security Council, approved by the Decree of the President of the Republic of Kazakhstan dated March 20, 1999 No. 88, its status is defined as a consultative body formed by the President of the Republic of Kazakhstan for decision-making and facilitating the implementation by the Head of State the authority to ensure the defense capability and national security, to preserve state sovereignty, independence and territorial integrity of the Republic of Kazakhstan, to maintain socio-political stability in the country, protection of citizens’ constitutional rights and freedoms.

The main tasks of the Security Council are:

- definition of the basic directions of national interests’ protection, revealing of threats to national security, a choice of means and methods on maintenance of the country’s national security;
- development of the main directions of the country’s security strategy and organization of the preparation of state programs on national security issues;
- introduction of proposals and recommendations to the President of the Republic of Kazakhstan for taking decisions on domestic, foreign and military policy in the field of national security and measures to implement these decisions, as well as to increase the effectiveness of government agencies that ensure the security of the individual, society and the state;
- preparation of recommendations on the conclusion, execution and denunciation of international treaties of the Republic of Kazakhstan affecting national interests.

The Security Council is also charged with coordinating the activities of law enforcement agencies, central and local executive bodies, as well as analyzing draft laws and monitoring the implementation of normative documents within its competence.

Decisions adopted by the Security Council are mandatory for execution by state bodies of the Republic of Kazakhstan. If necessary, the decisions of the Security Council can be implemented by acts of the President or the Government of the Republic of Kazakhstan.

The President of the Republic of Kazakhstan is the Chairman of the Security Council. Members of the Security Council are: Chairman of the Majilis Parliament, Chairman of the Parliament's Senate, Prime Minister, Head of the Presidential Administration, Assistant to the President - Secretary of the Security Council, Chairman of the National Security Committee, Minister of Foreign Affairs, Minister of Defense.

According to the Decree of the President of the Republic of Kazakhstan No. 88 "On the Security Council of the Republic of Kazakhstan" of March 20, 1999, the activity of the Security Council is provided by its secretariat, whose structure and staff are determined by the head of the Administration of the President on the proposal of the presidential assistant - secretary of the Security Council, exercising general monitoring activities of the secretariat and the law enforcement system of the Administration of the President of the Republic of Kazakhstan. If necessary, interdepartmental commissions and working groups may be established to ensure the activities of the Security Council.

In accordance with Article 64 of the Constitution of **the Kyrgyz Republic** (put into effect on June 27, 2010), the President of the Kyrgyz Republic heads the Defense Council of the Kyrgyz Republic, formed in accordance with the Law. On January 19, 2011, the President of the Kyrgyz Republic signed the Decree "On the Defense Council of the Kyrgyz Republic" to abolish the implementation of measures on defense and security issues prior to the adoption of the Law of the Kyrgyz Republic "On the Council of Defense", which abolished the Security Council of the Kyrgyz Republic, as well as considered the Decrees of the President of the Kyrgyz Republic of July 26, 2010 No. 56 "On the Composition of the Security Council of the Kyrgyz Republic" of September 9, 2010 No. 171 as invalid.

The Defense Council of the Kyrgyz Republic is the constitutional body that prepares the decisions of the President of the Kyrgyz Republic in the field of ensuring national security.

In accordance with the law "On the Defense Council of the Kyrgyz Republic," one of its main tasks is to forecast, analyze and evaluate modern challenges and threats to security, and to develop measures to prevent them. The Defense Council is responsible for internal and foreign policy of the Kyrgyz Republic in the field of security, strategic problems of state, eco-



conomic, public, defense, information, environmental and other types of security, public health, forecasting, prevention of emergencies and overcoming their consequences, ensuring stability and law and order, as well as the state of the vital interests' protection of the individual, society and the state from external and internal threats. The legal basis for the work of the Defense Council is the Constitution and laws of the Kyrgyz Republic, acts of the President of the Kyrgyz Republic, ratified international treaties and agreements regulating relations in the field of national security, as well as the Regulation "On the Defense Council of the Kyrgyz Republic and its apparatus".

The President of the Republic of Kyrgyzstan is the chairman of the Defense Council. The Defense Council includes as its members: the Speaker of the National Parliament (Toraga of the Jogorku Kenesh of the Kyrgyz Republic), the Prime Minister, the Deputy Prime Minister - the Secretary of the Defense Council, the Head of the Defense and Security Department of the President's Office - the Deputy Secretary, the Attorney General, the Minister of Foreign Affairs, the Minister of Defense, the Minister of Internal Affairs, the Minister of Finance, the Minister of Emergency Situations, the Chairman of the State Committee for National Security.

The chairman of the Defense Council is the President. Decisions of the Defense Council are taken at its meeting by members of the Defense Council by a simple majority of votes of their total number and come into force after approval by the chairman of the Defense Council.

The decisions of the Defense Council are formalized by the minutes of the meetings of the Defense Council. Decrees and orders of the President of the Kyrgyz Republic may be issued to implement decisions of the Defense Council.

**National Security and Defense Council of Ukraine (NSDCU)** - in accordance with the current Constitution of Ukraine, is the coordinating body under the President of Ukraine on National Security and Defense of Ukraine.

Initially, by the Decree of the President of Ukraine in July 1992, the National Security Council of Ukraine was established as an advisory and deliberative body in the system of state executive power under the President of Ukraine. In this capacity, it existed until 1994, when again, by the Decree of the President of Ukraine, it was assigned to the functions of organizational and coordination activities. The provision of coordination powers in parallel with the implementation of measures on adequate information support allowed the Council and its staff to act much more effectively, to deal with complex and large-scale issues of public life. At the same time, appropriate

restrictions were felt, since the status of the Council was determined at the level of presidential decrees, whereas in fact, its activities influenced on the actions of the President of Ukraine, on the activities of the government, law enforcement agencies, etc., and objectively required consolidation at the constitutional and legislative levels. The first attempt to define the new status of the National Security Council and the place it occupies in the system of state bodies of Ukraine was the signing in 1995 of the Constitutional Treaty between the Verkhovna Rada and the President of Ukraine in which the President was entrusted with the functions of the national security of Ukraine's guarantor and the chairman of the National Security Council of Ukraine.

In the Constitution of Ukraine in 1996, this issue was resolved much deeper.

Firstly, there was, in essence, a new state body in it- the Council of National Security and Defense of Ukraine, inheriting the functions of the former Defense Council and the National Security Council.

Secondly, the Constitution defines the main tasks of this body - coordination and control of the activities of executive authorities in the sphere of national security and defense.

Thirdly, directly in the text of the Constitution, the basic principles for the formation of the NSDCU are determined and, finally, the Constitution contains a direct instruction on the development of a special law that would define the functions and powers of the Council.

On December 25, 2014, the Verkhovna Rada passed a law expanding the powers of the NSDCU and its secretary, which, in observers' opinion, made the National Security and Defense Council of Ukraine the second most important authority in Ukraine.

According to the adopted law, the competence of the National Security and Defense Council of Ukraine includes: coordination and control of the activities of government bodies in the sphere of combating corruption, ensuring public security and combating crime. The changes suggest that the National Security and Defense Council of Ukraine cannot only submit proposals to the President, but also take decisions on a number of issues, such as: determining Ukraine's strategic national interests, improving the system of ensuring national security and organizing defense, reorganizing and liquidating executive bodies in this area, the draft state budget on articles related to national security and defense.

In addition, the National Security and Defense Council of Ukraine can take decisions on political, economic, military, information and other meas-





ures in accordance with the scale of potential and real threats to Ukraine's national interests, as well as "on declaring a state of war, general or partial mobilization, introduction of a military or emergency state". The NSDCU can also take decisions on urgent measures to resolve crises that threaten national security. "Decisions of the National Security and Defense Council of Ukraine, enacted by the decrees of the President of Ukraine, are mandatory for execution by the executive authorities," the bill says.

According to the proposed changes, the Secretary of the National Security and Defense Council of Ukraine in the period between the meetings of the Council coordinates and controls the implementation of decisions of the National Security and Defense Council of Ukraine in the areas of state security, law enforcement, fighting corruption, in the field of military and security of the state border of Ukraine and a number of other spheres.

The Secretary of the Security Council organizes the work of the Supreme Commander-in-chief's staff in the event of its establishment; participates in the consideration of proposals for candidacies for positions in public authorities whose activities are related to issues on national security and defense of Ukraine and who are appointed to the post by the president or in agreement with the head of state; brings to the president proposals on the appointment and dismissal of the heads of military formations, law enforcement agencies.

In addition, the Secretary of the Security Council submits to the Council of National Security and Defense of Ukraine proposals for a bill on the state budget of Ukraine on articles related to national security and defense.

The Council of National Security and Defense of Ukraine is endowed with the competence to:

- implement current control over the activities of executive bodies in the sphere of national security and defense;
- develop normative acts and documents on issues of national security and defense;
- draft state programs, doctrines, laws of Ukraine, presidential decrees, directives of the Supreme Commander-in-Chief of the Armed Forces of Ukraine, international treaties, other normative acts and documents on national security and defense issues;
- consider issues related to material, financial, personnel, organizational and other support for the implementation of activities on national security and defense issues.

The Decisions of the National Security and Defense Council of Ukraine shall be implemented by the Decrees of the President of Ukraine. The per-

sonal composition of the National Security and Defense Council of Ukraine is formed by the President of Ukraine. The National Security and Defense Council of Ukraine includes: Prime Minister, Defense Minister, Chairman of the Security Service, Minister of Internal Affairs, Minister of Foreign Affairs. The members of the National Security and Defense Council of Ukraine may be the leaders of other central executive bodies. Current information, analytical and organizational support for the activities of the National Security and Defense Council of Ukraine is carried out by its apparatus, subordinate to the Secretary of the National Security and Defense Council.

So, at present the National Security and Defense Council of Ukraine is a specialized state body with a constitutional status that is an organic part of the presidential system and is called upon to ensure one of the most important constitutional functions of the President - to guarantee state independence and national security of the state.

In the **Republic of Uzbekistan**, by the Decree of the President of the Republic of Uzbekistan in 1995, the National Security Council under the President of the Republic of Uzbekistan (hereinafter - NSCRU) was established. The National Security Council under the President of the Republic of Uzbekistan is an advisory body on domestic and foreign policy of the state in the field of security. The National Security Council under the President of the Republic of Uzbekistan consists of the Chairman - the President of the Republic of Uzbekistan and the members and secretary of the NSCRU appointed by him.

In the **Republic of Tajikistan**, the legal basis for the organization and activities of the Security Council is its Constitution, Law of the Republic of Tajikistan No. 918 of December 28, 1993 "On Security" (as amended by Law No. 498 of December 12, 1997) and the Regulation "On the Security Council of the Republic Tajikistan", approved by the Decree of the President of the Republic of Tajikistan No. 1037 of March 20, 2003.

In accordance with Article 13 of the Law of the Republic of Tajikistan "On Security", the Security Council is a body of collegial leadership in the matters of defense and security of the Republic of Tajikistan. The President of the Republic of Tajikistan establishes and directs the Security Council. The Security Council includes: the chairman, the secretary, the permanent members and members of the Security Council. The President of the Republic of Tajikistan is the President of the Security Council. Permanent members of the Security Council include: Chairman of the Majlisi Oli (Parliament), Prime Minister and Secretary of the Security Council, who is appointed and dismissed by the President of the Republic of Tajikistan. Members of the



Security Council can be heads of ministries and departments: economy, finance, foreign affairs, justice, defense, internal affairs, national security, ecology, health, as well as other officials. The President of the Republic of Tajikistan approves the personal composition of the Security Council.

In **Turkmenistan**, in accordance with Article 55 clause 4 of the Constitution, the President “forms and heads the State Security Council of Turkmenistan, whose status is determined by law.” In June 2001, the decision of the President of Turkmenistan established the State Security Council, which is an advisory body, and which is managed by the President of Turkmenistan.

The State Security Council of Turkmenistan, to ensure the security and defense of the state, protect the rights and freedoms of individuals and citizens, legitimate interests of legal entities, improve the principles of strengthening law and order, strengthen the influence of the policy of Turkmenistan’s permanent neutrality on peace in the region, provide information, proposals and draft decisions on relevant issues to the President, as well as consider other issues in the present Law, affecting the national security of Turkmenistan.

The main tasks of the State Security Council of Turkmenistan are:

1) provision of state security and defense of Turkmenistan, development of the main directions of the state policy for the protection of human and civil rights and freedoms, legal interests of legal entities, legality and law and order;

2) defining a strategy for the implementation of the status of permanent neutrality in international relations;

3) submitting information, proposals and draft decisions on domestic and foreign policy issues, development of the military doctrine of Turkmenistan as a neutral state and identification of measures for its implementation to the President of Turkmenistan;

4) development, to ensure state security, of promising tasks to ensure the most important interests of the individual, society and the state, to prevent internal and external threats that may undermine their security;

5) development of the main directions for ensuring state security;

6) submitting proposals to the President of Turkmenistan for the introduction of the state of emergency, extension of its validity or cancellation;

7) coordination of the activities of central and local representative and executive authorities in ensuring state security and defense of Turkmenistan, human and civil rights and freedoms, legality and legal order;

8) consideration of other tasks envisaged by the legislation of Turkmenistan.

The State Security Council of Turkmenistan to fulfill the tasks assigned to it has to:

1) examine the implementation of the military, technical, economic and legal policies of the state to ensure state security and defense of Turkmenistan, democracy, constitutional rights and freedoms of the individual and citizen;

2) coordinate the activities of central and local executive authorities in the development and implementation of programs for the protection of the State Border of Turkmenistan, protection of state interests at the borders and on their organizational, legal and economic support;

3) develop programs for reforming the military structure of the Armed Forces, other troops of Turkmenistan, for creation and development of arms and services, and prepares proposals for their deployment and use;

4) coordinate the activities of Turkmenistan's military and law enforcement agencies in combating crime in the sphere of economy, organized crime and terrorism, preventing illegal trafficking and smuggling of drugs and weapons, ammunition, explosives or explosive devices;

5) coordinate the activities of central and local executive authorities to ensure mobilization readiness, civil defense on the ground, the recruitment of citizens for military service, protection of the population and equipment in the event of emergency situations;

6) prepare proposals to the President of Turkmenistan on declaring a state of emergency, on its extension or cancellation;

7) assign to one of the Vice-Presidents of the Cabinet of Ministers of Turkmenistan temporary performance of duties of the President of Turkmenistan, if the President of Turkmenistan for any reason cannot fulfill his duties, pending the election of the new President of Turkmenistan;

8) on the instructions of the President of Turkmenistan, manage military and military-technical cooperation in international relations with friendly states, determine the main directions, aims and main methods of its implementation, consider programs aimed at resolving the tasks of ensuring a sustainable nature of cooperation, on the elimination of natural disasters and accidents on the President's instructions.

## **II. Classification of the legal status and functions of the Security Councils of the post-Soviet space countries**

The analysis of the post-Soviet space countries' Securities Councils' legal allows, depending on their level of formation, to classify them into constitutional and legislative ones. Based on the constitution, Security Councils are formed in the Russian Federation, the Republic of Azerbaijan, the



Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Ukraine, Turkmenistan and the Republic of Tajikistan, and on the basis of legislation - in the Republic of Moldova (by law) and Uzbekistan (by Presidential Decree).

According to the functions and powers of the Security Councils, their status can be classified into:

- advisory and deliberative status (the Russian Federation, the Republic of Azerbaijan, the Republic of Uzbekistan, Turkmenistan, the Republic of Moldova);
- advisory and deliberative status with coordination and control functions (Armenia, the Republic of Belarus, the Kyrgyz Republic, Turkmenistan);
- the status of the state body that takes direct decisions on national security issues - Ukraine, Kazakhstan. The decisions taken by the Security Councils of these countries are binding on state bodies. If necessary, the decisions of the Security Council are implemented by acts of the Presidents. In the Republic of Tajikistan, the Security Council is an organ of collective leadership.

It should be specially noted that during the formation and establishment of independence, the status of the Security Councils of practically all countries of the post-Soviet space grew from the advisory body under the Presidents to the status of a constitutional state body; their powers and functions of activity have significantly increased and expanded, the issues considered at meetings of the Soviets have begun to cover the whole range of ensuring national security, foreign and domestic policy.

To a certain extent, these processes also took place in Moldova when the President of Moldova adopted the Regulations on the Supreme Security Council of the Republic of Moldova in 1997. Thus, in the Regulations on the Supreme Security Council, the President of the Republic of Moldova expanded the functions of the Supreme Security Council - from the level of consideration of ensuring state security issues, with a list of challenges and threats already identified by the legislators (as provided by the Law on State Security) to consideration of national security issues with the assignment of advising the President of the Republic of Moldova on national security issues.

We believe that the Statute on the Supreme Security Council of the Republic of Moldova corresponds to the spirit of the Law on the National Election of the President of the Republic of Moldova, who is responsible to citizens and society, as required by the problems of ensuring national security, and as not provided by the Law on State Security. The goal of ensuring

national security, as it is known, is to achieve and maintain such a level of protection of the individual, society and the state from internal and external threats, in which the country's sustainable development and the fulfillment of its national interests are guaranteed. State security, as a part of national security, solves only issues of protection of sovereignty, independence, territorial integrity and constitutional order of the country, which, of course, is important, but does not provide a complete solution to all problems of safe development.

### **III. Proposals on improving the functions and powers of the Republic of Moldova's Supreme Security Council**

At present, within the framework of the current legislation, the Supreme Security Council of the Republic of Moldova is one of the few influence levers of the President of the Republic of Moldova on the governance of the state, the protection of its national interests, the process of ensuring national security, and developing domestic and foreign policies.

Therefore, to consolidate efforts and improve the effectiveness of the activities of state bodies, society and citizens in ensuring the national security of the Republic of Moldova, in ensuring the conditions for the implementation of the security authority by the President of the Republic of Moldova, it is proposed to reorganize the activities of the Supreme Security Council of the Republic of Moldova by the following algorithm:

- at the first stage, to increase the effectiveness of the Supreme Security Council's activities of the Republic of Moldova within the framework of the current legislation;
- at the second stage - by changing the legislation, to expand the functions of the Supreme Security Council in shaping the state security policy to the level of national security, give it additional control and coordination and analytical and consultative powers with the possibility of forming interdepartmental commissions and scientific councils to ensure the implementation of the functions of the President of the Republic of Moldova on the formation of domestic, foreign and military policy in the field of security, preservation of state sovereignty, territorial integrity and constitutional order, maintenance of social and political stability in society, protection of rights and freedoms of citizens.
- at the third stage, it is necessary to give the Supreme Security Council constitutional powers that will put it on a level with other supreme bodies of power and government of the country;



- at the fourth stage, at the legislative level, it is necessary to formulate the provisions for participation of citizens, public associations, civil society in the development of the basic conceptual approaches of the National Security Strategy, other conceptual and strategic documents for ensuring security, domestic and foreign policy of the Republic of Moldova.

#### **Stage I.**

In the current legislation of the Republic of Moldova, in our opinion, it is possible to use the positive experience of a number of countries in the post-Soviet space to include coordination and control functions in the powers of the Supreme Security Council of the Republic of Moldova.

Thus, according to the Regulations on the Supreme Security Council approved by the Decree of the President of the Republic of Moldova No. 331-P of October 8, 1997 (Article 3, clause 7), the Supreme Security Council “reviews the implementation of decrees and other decisions of the President of the Republic of Moldova on national security issues”, and this is nothing more than a control function that gives the right to control the reliability of the national security system functioning, as well as to monitor the implementation of the decisions of the Supreme Security Council, to hear reports and statements from the leaders and other employees of state bodies, institutions and organizations on the performance of the functions and tasks assigned to them on strengthening defense and security.

With regard to coordination functions, in accordance with the Law on State Security, the President “ensures the interaction of public authorities in the sphere of ensuring state security” and this is nothing more than a coordination function.

Thus, despite the fact that the law defines the functions of the Supreme Security Council as advisory and deliberative, this is not an obstacle to the implementation of the coordination and control functions by the Supreme Security Council of the Republic of Moldova.

It seems to us that granting the Supreme Security Council the control powers in carrying out inspections of the completeness of the decisions’ implementation taken by the Supreme Security Council and the Presidential Decrees of the Republic of Moldova on ensuring national security and coordinating functions in managing the activities of state authorities to ensure national security is one of the reserves to intensify the work of this important body in strengthening statehood and security, and will allow organically include the President of the Republic of Moldova in the system of state administration and control over the activities of the executive power, the development of domestic and foreign policies.

In addition, the current legislation enables the adopted decisions of the Supreme Security Council of the Republic of Moldova to be supported by the adoption of Presidential Decrees, which already (in contrast to the decisions of the Supreme Council) are legally binding for execution by the state bodies of the Republic of Moldova.

For the balance of interests in the Supreme Security Council of political forces and the President, the legislation makes it possible for the Presidential Decree to form the Council not only from certain officials, but also from any officials designated by the President. Moreover, the law does not regulate the number of members of the Security Council, which gives the President the opportunity to form a Council of any orientation.

Thus, the existing legislation allows increasing the role of the Supreme Security Council of the Republic of Moldova in the system of ensuring national security, the role of the President in the system of governing the country, changing its functions from representative to actively influencing the system of public administration and making state decisions.

#### **Stage II.**

At this stage, it is necessary to adopt the Law “On the Supreme Council of National Security of the Republic of Moldova”, which requires:

1. To change the name “Supreme Security Council of the Republic of Moldova” to the “Supreme Council of National Security of the Republic of Moldova”. This title places emphasis on changing the Council’s functions from ensuring state security to ensuring national security.

For reference: National security is a complex, multilevel system. It forms a number of subsystems, each of which has its own structure. First of all, it is the security of the individual, the safety of society and the security of the state.

The security of the state is connected, first of all, with the preservation of the constitutional system, the provision of sovereignty and territorial integrity.

Thus, the national security system is much broader than the state security and includes the observance of all subjects’ balance of interests: the individual, society and the state, and their mutual responsibility for ensuring security.

2. To change the structure of the working bodies of the Security Council by setting up the secretariat of the Supreme Council of National Security of the Republic of Moldova and forming permanent or temporary inter-departmental commissions on the main directions of the national security structure, namely: economic, social, financial, scientific and technical, innovation, information, energy, military, demographic, ecological security.





To analyze the processes that arise in the course of ensuring national security and the prospects for the development of domestic and foreign policy, it is suggested creating a scientific and analytical council whose functions can be performed by a specialized scientific structure, for example, IRIM, which has experience in drafting the main provisions of Moldova's national interests, identifying challenges and threats, arising during the implementation of national interests and ensuring the national security of the Republic of Moldova. Currently, IRIM, within the framework of the National Security Center, has been conducting research on the issues of ensuring the economic security of the Republic of Moldova, the formation of an innovative economy and the innovative security of the Republic of Moldova.

The law should note that the President of the Republic of Moldova exercises overall leadership of the national security system by exercising his powers in this area through the Supreme Council of National Security of the Republic of Moldova and its working body, the secretariat of the Supreme Council of National Security of the Republic of Moldova.

3. To determine the main organizational and legal forms of the work of the Supreme Council of National Security of the Republic of Moldova - sessions, meetings, operational meetings, workshops, as well as meetings of its working bodies - the secretariat of the Supreme National Security Council, permanent or temporary interdepartmental commissions, scientific analytical advisory council.

4. The main tasks of the Security Council are as follows:

- elaboration of the National Security Concept of the Republic of Moldova, definition of the main lines of the Security Strategy of the Republic of Moldova, other conceptual and doctrinal documents, as well as criteria and indicators for ensuring national security;
- implementation of strategic planning in the field of security, setting priorities for the vital interests of the individual, society and the state, identifying internal and external threats to security objects;
- recommendations' preparation to the President of the Republic of Moldova on the formation of foreign, domestic and military policies, on the development of the main provisions of the state in relation to other countries;
- proposals' development on the coordination of the activities of executive bodies in implementing decisions in the field of security and assessing their effectiveness;
- preparation of operative decisions on prevention and overcoming emergencies that can cause significant damage to the interests of the Republic of Moldova;

- consideration of draft legislative and other normative legal acts of the Republic of Moldova on issues of national security;
- preliminary discussion of candidacies for senior positions at ministries and departments (according to the list approved by the Supreme National Security Council), on which the effectiveness of measures to ensure the security of the Republic of Moldova depends;
- proposals' preparation to the President of the Republic of Moldova on the introduction, extension, cancellation of an emergency or martial law, the use of the Armed Forces of the Republic of Moldova.

5. The Supreme National Security Council of the Republic of Moldova, in addition to the existing advisory and consultative functions, should be legally authorized to monitor the reliability of the national security system, as well as monitor the implementation of the Security Council's decisions, hear reports and statements of leaders and other employees of state bodies, institutions and organizations on the performance of the functions and tasks assigned to them on issues of strengthening defense and security; coordinate the work of interdepartmental commissions of the Supreme National Security Council of the Republic of Moldova.

Decisions of the Supreme National Security Council of the Republic of Moldova should be of the nature of normative documents binding on the state bodies of the Republic of Moldova, if necessary, decisions should be implemented by acts of the President.

### **Stage III.**

The proposed changes to enhance the role of the Supreme National Security Council in the system of state administration for ensuring national security would be advisable subsequently to be fixed in the Constitution of the Republic of Moldova. In this case, it would be possible to resolve the imbalance between responsibility to citizens and society from a popularly elected President and his limited powers, as defined by the current Constitution and legislation, including in the sphere of national security.

The Constitution should clearly define that the Supreme National Security Council of the Republic of Moldova is established by the President to ensure the implementation of the Republic of Moldova's President's functions in the formation of internal, external and military security policies, in the preservation of state sovereignty, territorial integrity and the constitutional order of the Republic of Moldova, political stability in society, protection of the civil rights and freedoms.

In addition, giving constitutional authority to the Supreme National



Security Council will put it on a level with other supreme authorities and government of the country, which will undoubtedly contribute to improving the effectiveness of the national security system.

#### **Stage IV.**

The provisions of the Republic of Moldova's Constitution should be used in the process of further improving the legislation on ensuring national security in the context of modern processes that require the participation of the society and citizens in ensuring safe development of the state, when the security of a citizen and society depends not only on direct protection of them by the state, but also through the direct participation of citizens and society in matters of national security.

At this stage, it is necessary at the legislative level to develop provisions on the participation of citizens, public organizations in the development of the National Security Strategy and other strategic documents on national security, foreign and domestic policy issues, by discussing, within the framework of civil society, the main conceptual provisions for ensuring safe and sustainable development of the country, and, if necessary, decision-making in nationwide referenda.

The suggested step-by-step changes make it possible, in our view, to build a coherent system for managing the national security system of the Republic of Moldova, headed by the Supreme National Security Council under the leadership of the Republic of Moldova's President.

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## THE REPUBLIC OF MOLDOVA'S NATIONAL SECURITY IN THE CONTEXT OF THE INTERNATIONAL SECURITY SYSTEM FORMATION

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### **Abstract**

*The author reviews all the documents related to the national security of the Republic of Moldova, highlighting several stages in the elaboration of the security policy. The first stage of the national security and defense policy includes the period from the declaration of independence of the Republic of Moldova until the adoption of the Constitution of our country (1991-1994). The second stage in defining the country's defense and security policy, which begins with the adoption of the National Security Concept of the Republic of Moldova on May 5, 1995, considered an important legal act. In 2008, the National Security Concept was adopted. In conclusion, the author emphasizes that the national security of the Republic of Moldova cannot be conceived outside the context of international security, and within the efforts of the European integration of our country special attention is paid to the intensification of cooperation with the EU.*

**Keywords:** national security, international security system, the Republic of Moldova, strategy, national security concept, national interest

The Republic of Moldova as an independent state is a full element of the international security system, adapting its national security system to the requirements of the international one. Our state is actively participating as a member of international security organizations, as well as in various international peacekeeping operations.

Along with other ex-Soviet states, the Republic of Moldova became a member of the UN on March 2, 1992, along with the UN General Assembly's adoption of Resolution A / RES / 46/223 [21]. The Conference for Security and Co-operation in Europe, our country joined on January 30, 1992 at the Ministerial Council in Prague, and on February 26, the same year, signed the Helsinki Final Act. As a result, the Republic of Moldova obtained permanent support from the OSCE, especially in the context of Transnistrian conflict settlement, being the main international collective actor, fully involved in the settlement of the dispute [6].

Among the most important normative acts that determine the national security system we mention: the Constitution of the Republic of Moldova; The 1995 National Security Concept (repealed); The 1995 Foreign Policy Concept; The 2008 National Security Concept; Military Strategy; 2011 National Security Strategy; The National Security Strategy Draft of 2016, the State Security Law; Law on State Security Bodies; The Law on National Defense, etc. The analysis of the evolution of the security and defense policy development process, depending on the modification of the internal political component, the reaction to the external challenges, such as terrorism, geostrategic interests from the outside, as well as the process of setting up the internal legislative framework in the field, has led us to design the stages of the security and defense policy development, which is a mobile one and therefore requires a continuous review and adaptation to the circumstances of a constantly evolving environment.

The first stage of the national security and defense policy includes the period from the declaration of the Republic of Moldova's independence until the adoption of the Constitution of our country (1991-1994) [1, p.238]. Due to the national rebirth events, the tension of the ethnic collision, the persistence of the Transnistrian conflict, the security and defense policy has the character of strengthening the statehood of the Republic of Moldova and of identifying the national values. During the estimated period, the sectorial policy in this field is characterized by the adoption of legislation in the field, such as the Defense Law, the Armed Forces Act, the Military Bonding Act and the Military Service of the Republic of Moldova, which



established the foundations of organizing and securing national defense and ways to achieve the constitutional duty of citizens for the protection of the Homeland [16]. The Decision on some ways to solve the armed conflict in the eastern regions of the Republic of Moldova [9] and the Decision on Basic Principles for Peaceful Regulation of Armed Conflict, Peace and Understanding in Eastern Regions of the Republic of Moldova [10] were adopted. At this stage, the security and defense policy is aimed at asserting the Republic of Moldova as a subject of international law and as an actor of the international security system through the accession of the country to the most important international organizations, by strengthening the partnerships with the states of strategic interest. The adoption of the Republic of Moldova's Constitution on July 29, 1994 [5] led to the initiation of the process of the legislation compliance in force with the provisions of the Supreme Law. The Constitution has defined and consolidated the distinct character of the Moldovan state's security and defense policy. Article 11 of the Constitution declares the permanent status of the Republic of Moldova and states that our country does not allow the deployment of military troops of other states on its territory.

After the adoption of the Constitution, the Parliament of the Republic of Moldova approved the main normative acts regulating the system of the security bodies and their power, including the armed and security forces within an adequate constitutional and legislative framework.

The second stage in defining the country's defense and security policy begins with the adoption of the Republic of Moldova's National Security Concept on May 5, 1995, considered an important legal act aimed at defining the security and defense policy of the Republic of Moldova. In 2008, it is repealed, with a new Concept being adopted. The 1995 National Security Concept constituted a basis for state policy development in the field of national security and defense, but did not determine national interests, instead only mentioned some foreign policy priorities based on national interests. During this period, the Military Doctrine of the Republic of Moldova was adopted [13]; according to its provisions, the main purpose of the country's military policy is to ensure the military security of the people and the state, to prevent wars and armed conflicts by applying the means of international law.

This stage is determined by the legislation on the organization of state security bodies' activities. Therefore, both the State Security Act [17] and the Law on State Security Bodies [14] were adopted on October 31, 1995, both excluding some gaps in the Concept of National Security, conceptually and structurally complemented. The Law on State Security Bodies comes

with a descriptive supplement to the State Security Law, establishing that the state security bodies have such powers as:

a) the defense of the Republic of Moldova's independence and territorial integrity (specific task of the Ministry of Defense), the protection of the state border guard, the protection of the constitutional regime, the legitimate rights, freedoms and interests of the person illegally violated (specific attributions to the Ministry of Internal Affairs, Security and General Prosecution Service);

b) ensuring, within their competence, the protection of the economy from criminal acts; prevention of extraordinary events in transport, telecommunication and units of vital importance (attributions inherent to the Ministry of Internal Affairs, the Intelligence and Security Service and the General Prosecutor's Office);

c) combatting terrorism, organized crime (duties inherent to the Intelligence and Security Service, Ministry of Internal Affairs), corruption (concerns of the Center for Combating Economic Crimes and Corruption), which undermine state security, as well as finding out, prevention and counteraction of other criminal offenses whose criminal prosecution is the responsibility of the state security authorities [15].

At the same time, the distinct intentions of reforming and modernizing the Intelligence and Security Service are observed. The Appendix to the Law on the Intelligence and Security Service adopted in 1999 - "Regulation on Parliamentary Control over the Activity of Special Services" - indicates the creation of a special parliamentary committee to monitor the compliance of the Constitution and the legislation with the ISS. The legislation in force contains provisions stipulating the exercise of parliamentary control over the state defense and security sector, such as hearing of the heads of state security bodies' reports in Parliament's plenary sessions, which has the legal support of the Parliament's Rule of Law (Article 108) and the Law on State Security Bodies (Article 25). One of the most diversified forms of parliamentary control over the security and defense sector is the control through the presentation of questions and interpellations, regulated by article 108 of the Parliament's Rules of Procedure. Another form of parliamentary scrutiny over state security bodies is the participation of the President or vice-president of the Commission concerned at the meetings of the ISS College. This form is largely overseeing the process through which the ISS activity complies with the provisions of the legislation in force. The field of activity of the Parliamentary Committee on National Security, Defense and Public Order is established by a Parliament resolution approved at the beginning of each parliamentary term.





As a rule, it focuses on the issues of national security, those aimed at carrying out activity in the specialized structures of the executive power meant to ensure national security, fight against crime and terrorism, ensure public order, guard and state border regime, state secret protection.

The defense policy in this period culminated in the adoption of the Military Reform Concept on July 26, 2002, which represents a complex of ideas, directions, objectives, tasks, mechanisms for improving the military security system of the state. The opportunity to launch military reform process has been conditioned by several factors. Firstly, because the political forces that succeeded the government at different times did not have enough civilian personnel trained and experienced in the making up the national security and defense system. Secondly, the estimated period was characterized by the deepening of the economic and financial crisis in the Republic of Moldova, which conditioned the emergence of political instability within the central public institutions, whereby the military potential of the country and of the Armed Forces diminished.

The elaboration of Military Reform Concept was determined by the necessity of creating a new conceptual basis for the improvement of the military system of the Republic of Moldova in accordance with the defense needs imposed by the changes in the national and international geopolitical situation at the moment [23, p.14]. The concept provides that one of the main directions in which cooperation with other armed forces will take place is the democratic leadership and control of the armed forces [12].

Multiple deficiencies, errors and contradictions of the National Security Concept, as well as the deficiencies of the strategic acts that were based on the Concept provisions, gradually formed the view of its character and the need for a new document [19, p.24].

The Republic of Moldova's new Concept of National Security, adopted in 2008 [18], represents the beginning of the third stage of our country's security and defense policy, which includes the adoption of the National Security Strategy of the Republic of Moldova. The third stage of the Republic of Moldova's security and defense policy (2008-2015) is dictated by the constant changes that have taken place in the security environment, as well as by the stimulation of deep security and defense reforms carried out in accordance with the standards and Euro-Atlantic practices, in the same way, by the need to streamline national security sector management, strengthen institutional and staff capacities, and the functionality of security sector institutions. The Concept of National Security of the Republic of Moldova, adopted in

2008, contained a series of gaps with a declarative character, limited applicability and confusing interpretation of the risks and threats to the national security of the Republic of Moldova, and the National Security Strategy, adopted in 2011, is far ahead of it. For example, in the case of the Transnistrian conflict, the presence of the Russian military forces and weapons in the uncontrolled territory of the Republic of Moldova is not questioned, which shows inconsistency in the settlement of the conflict, but also the tendency to camouflage the real facts that condition the maintenance of the separatist regime in the districts of Left bank of the Dniester River. This document does not refer to the stationing of Russian military troops in Transnistria, but states about the evacuation of foreign troops from the territory of the Republic of Moldova [3, p. 268]. Consequently, the Concept makes a distinction between the peacekeeping troops in the Russian Federation, who honor their mission, and the so-called Transnistrian army, which is presented as a serious threat to national security. The rehabilitation of the Russian military presence is more visible as the Concept does not mention the decision of the 1999 OSCE Summit in Istanbul on the withdrawal of Russian forces from the territory of the Republic of Moldova and the Treaty on Conventional Europe [7].

The authors of the Republic of Moldova's National Security Concept talk about the initiative to become security producers, not encroaching on this document the provisions of the European Security Strategy, the Common Foreign and Security Policy, rejecting the Euro-Atlantic integration perspective, invoking participation in the consolidation of the security component of the Commonwealth of Independent States. To become a security generator, the Republic of Moldova must rationally apply regional security trends [8]. In this Concept, some basic components of state security, such as food security, are not sketched, and others (for example, economic security) are dealt with superficially.

In accordance with the national doctrinal visions, de facto, the most important legal act of the national security and defense policy that determines the functioning of the security and defense system, the forms of ensuring national security, the mechanisms and instruments of governance of the security system is not the National Security Concept of the Republic of Moldova, but the National Security Strategy of the Republic of Moldova [11]. The elaboration of the National Security Strategy has been a definite topic over the years in several Action Plans, including those of cooperation between the Republic of Moldova and NATO (IPAP), but, in fact, it started only after the approval of the National Security Concept of the Republic of Moldova in



2008. This process was a long, difficult and enduring process with a long delay. Only on July 15, 2011, the Parliament of the Republic of Moldova approved the National Security Strategy, which is the first such document in the Republic of Moldova. The strategy has taken the same approach as the one in the European Security Strategy for Security, according to which “the national security of a European State can no longer be viewed in isolation” and “takes into account the essential approach of national security, its multi-dimensional and interdependent character, determined both by the state of affairs in the political, military and public order fields in the country, as well as by the situation in the economic, social, ecological, energetic sphere, etc.”.

To continuously connect the Republic of Moldova to the international security system, along with the adaptation of the normative acts in the field of security to the new international circumstances, a stringent opportunity is needed in implementing the reform of the security sector (RSS), deriving from the opportunity to promote a military reform in the defense sector, a broad and effective reform that has evolved over time to include the multidimensional concept of security. This reform strengthens military forces, police, security services, border guards, customs. Through this reform, they get a complete guide to objectives, training, responsibilities and the necessary coordination. Authorized bodies in the Republic of Moldova are aware that to apply all means of ensuring security it will be necessary to involve a diverse spectrum of institutions [25, pp. 23-24]. Security sector reform must be effective to ensure the development of this state. In 2006, the discussion resulted in the signing of an agreement that would provide the basis for the promotion of such a reform - the Individual Action Plan for Partnership (IPAP) signed between the Republic of Moldova and the North Atlantic Alliance (NATO).

The solution to the problem in question was provided in the EU General Report. Chapter V “Europe as a global partner”, Section 4 “Contribution to Global Security”, mentions the European Strategy for Security and Common Foreign and Security Policy, in particular on Security Sector Reform (SSR). The report informed the public that on May 24, 2006, the Commission adopted a communication entitled ‘Reflections on the European Community’s support for SSR’. This communication states that the EU supports SSR in over 70 countries. The EU’s recommendations in the field highlight the importance that European institutions attribute to SSR in countries with which they have signed Action Plans, as is the case with the Republic of Moldova.

Further support for security sector reforms initiated in the Republic of Moldova becomes an important perspective for securing control over the

Transnistrian region. On the other hand, one of the most important subjects of the Republic of Moldova's approach to security is the lack of an accepted definition of national interest in society [4, p.372]. National interests of a country often depend on the relationship between the national interests of the various actors in the international arena, the competition nature of these interests.

In the Republic of Moldova, the formation and evolution of the national interest is affected by the territorial integrity deficit of the state (due to the separatist tendencies on the left bank of the Dniester with the factual presence of the anti-constitutional TMR formation), the low level of democracy, the paradoxical connections of the democratic goals with authoritarian means. Moreover, the reduced capacity of the power factor in the democratic reform of the country has eventually hindered the promotion of national interest on the international arena. At the same time, the national interest of the Republic of Moldova is constantly overwhelmed by Russia's geostrategic interest by placing the Russian military contingent in the left-bank districts, by delaying its evacuation, by stimulating and supporting the anti-constitutional regime here. Russia's interests and the problem of Transnistrian secessionism remain the source of insecurity in the region and the main obstacle to the European integration of the country [22, p. 198].

State security in the field of national security must be geared to securing national interests and values and to preventing and resolving the problems (threats, risks, dangers and challenges) that a state faces. Excessive use of the principle of neutrality should have coincided equally with that relating to the development of the national defense system. These conditions, as well as the emergence of new risks and vulnerabilities within the current international security system, such as the hybrid war, the expansion of new forms of terrorism, the intensification of the separatist tendencies, led the current government in Chisinau to return to the provisions of the National Security Strategy. In other countries, for example in Romania, the development and adoption of a new strategy takes place every three years [25, p.25].

The draft of the new Strategy, which is currently being analyzed by the Presidency of the Republic of Moldova and consulted with the Academy of Science of Moldova, presents new references that were not previously mentioned in the official documents. In this draft of the Strategy, it is particularly important to state for the first time that the European continent remains the political and military Alliance with the most advanced military and technological capabilities, with the highest level of Alliance cohesion and solidarity, able to ensure security and collective defense in the reference area. In the same way, the European Union, as the main economic and



political structure and community on the continent, is the integral and stabilizing factor in the European and international security system.

Among the new risks and threats to the national security of the Republic of Moldova, such a document for the first time includes:

The persistence of the regional instability and the conflict in the territory of Ukraine, factors limiting the capacity of the Republic of Moldova in promoting strategic interests: European integration, the process of identifying viable political solutions to solve the Transnistrian conflict in the conditions of respecting its sovereignty and territorial integrity, and commercial and economic interests of the state.

The dynamics of military and sabotage actions, the hybrid war and the potential for the expansion of the instability zone on the territory of Ukraine have a direct influence on certain elements, groups with extremist views from the Republic of Moldova and preserve the risk of spreading the conflict on the territory of the Republic of Moldova.

Expanding the external political pressures is manifested by: granting economic, military and political support to the unconstitutional regime in Tiraspol; imposing artificial restrictions on the access of Moldovan products to traditional markets, including blocking the access of Moldovan citizens to the labor market of other countries; application of differentiated treatment in relation to parts of the single customs territory of the Republic of Moldova (TMR, ATU Gagauzia).

Excessive dependence on energy resources, distribution networks and / or suppliers controlled by a single state, combined with the limited use of alternative energy resources.

Persistence of increased risk of cyber-attacks on information infrastructures and strategic objectives of the country [3, p.329].

Moldova's contribution to strengthening the international security system has intensified following the signing of the Association Agreement between the Republic of Moldova and the European Union signed in Brussels on June 27, 2014, and developed within the framework of the European Neighborhood Policy and Eastern Partnership. Strengthening the cooperation within the Common Foreign and Security Policy of the European Union (CFSP) serves the long-term interests of the Republic of Moldova, as the European integration remains, according to the draft of the new Strategy, the irreversible strategic objective of the internal and external agenda of the Republic of Moldova. One of the chapters included in the Moldova-EU Association Agreement refers to the Security Policy. The availability of the Republic of Moldova to be involved

in the EU Common Security and Defense Policy (CSDP) arrangements was included in the Government's Program of Action "European Integration, Freedom, Democracy, Welfare" for 2011-2014 [20]. The Association Agreement also provides for international cooperation in the fight against terrorism. The Parties agree to cooperate bilaterally, regionally and internationally to prevent and combat terrorism in line with international law, UN resolutions in the field, with international human rights standards, refugee law and humanitarian law. The same range of ideas also covers the cooperation of the parties to prevent the use of their relevant financial and non-financial systems for laundering the proceeds of criminal activity and for financing terrorism.

An important contribution to the development of security education, monitoring, expertise and counseling in the field of security policy and the prevention of terrorism are our country's think tanks, such as the Institute for Public Policy, the Foreign Policy Association, the Institute for Development and Social Initiatives (IDSI Viitorul), etc. For example, the Institute for Public Policy develops projects in the field of security: "Strengthening the capacity of the media to inform and monitor the security sector reforms and the Transnistrian conflict settlement process"; Foreign Policy Association: Transnistrian Dialogues; "Synthesis and Debate of Foreign Policy and European Integration"; "The Impact of the Republic of Moldova's Accession to the European Energy Community on the Security of the Domestic Energy Sector". Through these projects, national security institutions are counseled by civil society and academia.

The Republic of Moldova participates intensively in the work of the international security system, effectively implementing the opportunity offered by IPAP and the EU to participate with other partner states. To this end, the national authorities are to formulate a defined position on the Common Security and Defense Policy, which is a distinct element of the European Union's Common Foreign and Security Policy and reflects the European Union's aspirations to ensure joint security through multilateral cooperation within the European Union and with the participation of external partners. The Common Security and Defense Policy is a follow-up to the European Security and Defense Policy launched in December 1998 and has emerged as one of the elements of the European Union's Common Foreign and Security Policy, which was also developed under the EU's treaties.

The Republic of Moldova cooperates with international security structures in the areas of conflict prevention and resolution, crisis management, counterterrorism and non-proliferation of weapons of mass destruction. As an element of the international security system, our country participates in



global, regional and sub-regional efforts to promote international stability and security through cooperation within the EU, NATO, the UN, the OSCE and other international organizations in the field.

**Conclusion:** The national security of the Republic of Moldova cannot be conceived outside the context of international security, and within the European integration efforts of our country special attention is paid to the intensification of cooperation with the EU, aimed at strengthening the national and the regional security. The role of our country in the international security system is determined by several factors, including: national interests; the main threats, risks and vulnerabilities to national security; the main strands of foreign and defense policy; ways of securing national security.

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## GEOPOLITICS OF THE BORDER STATES AND THE CRISIS OF THE “EASTERN PARTNERSHIP” EUROPEAN POLICY

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### **Abstract**

*In this article, the author deals with various phenomena that explain the geopolitics of the Border States. It is about border state, Eastern partnership, geostrategic significance, myth of the visa-free regime. Various theses refer to the crisis of the European Union and the European states. The author expresses his own opinion on the future of Europe, wondering what will follow after the failure of the Eastern Partnership Program. The relations of the European Union with Russia are described as well. In conclusion, the author goes back to the objectives of the Eastern Partnership, noting that they concern the economic interests of the European Union.*

**Keywords:** *geopolitics, Border States, Eastern partnership, the European Union, Russia*

**A border state** is a state located on civilizational (super-ethnic), geopolitical, geo-economic, confessional and other boundaries between two or

more centers of power. From the former union republics Ukraine, Moldova and Georgia are assigned to the Border States. The World Bank decided to note in its yearbook the 25th anniversary of the collapse of the USSR by the statistics on the dynamics of GDP (PPP) of the world countries from 1990 to 2015. According to it, these countries became the world outsiders in terms of GDP growth (PPP) from 1990 to 2015, and Ukraine became the only country in the world that did not reach the 1990 level during the years of independence. The three countries in misfortune are united by the immoral belief in Western values, [13] or as the well-known European philosopher Karen Svasyan said, by the desire to become part of the “rich belly” of the West. In John Galbraith’s words, the patriarch of American economic thought, the desire for a momentary replacement of one socio-political system by another is “a fit of stupid optimism.” As a result, three Border States lost part of the territories and were thrown back to the world periphery.

**“Eastern Partnership”. The end of the European anti-European project.** After the fall of the Berlin Wall and the collapse of the Soviet Union, the main geostrategic task of the European Union was the policy of moving to the East, which proceeded from the forecast of maintaining positive economic growth rates in the foreseeable future. However, due to the systemic internal crisis (financial, Eurozone and migration) and ignoring geopolitical realities, the eastern direction of the European Neighborhood Policy, implemented in recent years mainly within the framework of the Eastern Partnership, has become one of the most acute pan-European problems that cause the opening of a hot front.

Officially, the Eastern Partnership program set the goal of cooperation and integration of EU relations with six eastern neighbors. However, only Ukraine, Georgia and Moldova signed agreements on association with the EU, Azerbaijan abstains, and Belarus and Armenia are already members of the Eurasian Economic Union (EAEC).

Times of gratuitous economic support have passed. In the 1990s, PHARE and TACIS programs were established for the countries of Central-Eastern Europe and Eastern Europe and a pan-European project of transport corridors was proposed. However, with the expansion to the East financial constraints in the implementation of Eurointegration programs began to manifest. The annual rate of economic growth in the GDP of the European Union in the 1960s was at 5%, before the global financial crisis - + 3%, in 2008 - + 0.8%, and then stagnation began. In 2009, GDP contracted by -4.1%, in 2012 (-0.3%), in 2013 (0.0%), with a slight increase in 2010/11 (respectively 2.1%



and 1.7%), in 2014 (1.3%, in the Eurozone 0.9%) and in 2015 (1.7%, in the Eurozone 1.5%). Because of the slowdown in economic growth, financing of large infrastructure projects, which in the 1990s were the main “carrot” for EU candidates, is being reduced for the third time.

Over the past two decades, the European Union has used “soft power” to move to the East and in the first stages, it was difficult to abandon the attractive proposal of EU membership. But because of the hasty European integration, there are many problems that threaten the integrity of the EU. The investment boom ended with the onset of the global financial crisis. [14]

In terms of its geostrategic significance, the task of expanding the EU to the East was comparable only to the creation of the European Union itself in the middle of the twentieth century. However, the issue of the eastern borders and the speed of unification remains open. It becomes obvious that this process will not only be slower than it seemed after the fall of the Iron Curtain, but it could also lead to an undesirable, for Europe, deepening of geopolitical confrontation in the post-Soviet space.

In the West, the process of promoting the EU to the East is ambiguous. For the first time in the history of the European Union, with the admission of new members (EU-25 and EU-28), political goals dominated economic expediency, and one of the fundamental principles of admission of new members, whose economy was to meet the European average, was violated. This requirement is not met, the GDP per capita for new members even after the decade of European integration is inferior to the average European level. It is enough to compare GDP per capita at purchasing power parity (the EU average is taken as 100%). In Bulgaria it is 45%, in Romania - 54%, in Croatia - 59%, in Latvia - 64%, in Hungary and Poland - 68%, in Estonia - 73%, in Lithuania - 74%, in Slovakia - 76%. The cost of labor is many times lower than the average European level.

The means for reforming new members’ economy are allocated by the European Union and place a heavy burden, primarily on Germany, whose contribution to the EU consolidated budget exceeds 20%. In Germany, which is the economic engine of European integration, social programs are being cut, and \$ 1.5 trillion invested in East Germany have not led to a leveling of living standards.

**After the fall of the Iron Curtain, the problems of pan-European transport integration, caused by the opening prospects for trade and economy, and improving the communication between the West and the East of Europe, became especially urgent.** In 1994, on the island of Crete, the Second Pan-

European Conference identified nine priority transport corridors, taking into account the main directions of cargo and passenger traffic. The cost of developing the communication corridors was estimated at about \$ 70 billion. The financing was provided through interested countries, international financial organizations, private investments, TACIS and PHARE programs. The project was planned to be implemented by 2010, provided the reached mutual understanding of the countries concerned. For modern Eastern Europe, the project of international transport corridors of the EU provided a real opportunity for world economic integration. However, the hasty expansion to the East and the financial crisis did not allow the European Union to fully implement the program for the creation of the Pan-European Transport Corridors. The European transport infrastructure market clearly demonstrates the growing financial difficulties. The completion of the grandiose project is postponed for the third time, at the beginning from 2010 to 2020 and finally - for 2030. At the same time, the countries of the "Eastern Partnership" are excluded from the new transport strategy of the European Union.

**Migration policy transformation and the myth of visa-free regime liberalization.** A few years ago, the European idea of a partial replacement of the "yellow" and "black" slaves (guest workers) with "whites" from Eastern Europe was popular, but these times have passed. Europe in terms of economic recession, the crisis of the Eurozone and the migration crisis does not feel the need for additional labor from abroad. [3] The visa-free status offered to the "Eastern Partnership" countries does not give the right to work or residence. Provision of a visa-free regime can be blocked in the European Parliament by any EU country. European countries that are not members of the Schengen zone (Great Britain, Ireland, Switzerland, Liechtenstein, Bulgaria, Romania and Slovenia) will not be available for visa-free travel.

**The growing crisis of the European Union's new members.** To European continental problems like the crisis of the Eurozone and the migration crisis, the crisis in Ukraine and the withdrawal of Britain from the European Union, one can add the growing crisis of the European Union's new members from the former countries of people's democracy. The crisis came gradually from the first day of their membership in the European Union. [9] As mentioned above, as a result of "dizziness from success" Brussels violated one of the fundamental conditions of European integration. With accession to the EU, none of the countries has reached the Central European level on macroeconomic indicators. On the other hand, each country counted on greater financial support for modernizing economy.



Brussels has not fully implemented the program for the creation of European international transport corridors.

In recent years, members of the Visegrad Group (Poland, Hungary, the Czech Republic and Slovakia) are increasingly acting as Eastern European “troublemakers”. The leader is Poland, most favored by Washington and Berlin. Only in the last decade Poland received more than 70 billion euros from the West, this is not counting the multibillion-dollar debt written off at the request of the United States. However, this did not lead to a reduction in the labor migration of Poles to Western Europe.

In the near future, regardless of the migration crisis, the discontent of the former European countries of people’s democracy by the policy of Brussels will increase. Among the new members of the European Union there is no country that was absolutely satisfied with the results of European integration. In all countries, there was a partial loss of political and economic sovereignty. Agreements with the EU were often signed thoughtlessly when political populism dominated economic expediency. Poor countries have become even poorer, for which the EU often acts as a metropolis.

**A consolatory project of the Eastern Partnership. After the collapse of the Soviet Union, the West used “soft power” in the form of neo-colonial offshore geopolitics towards post-Soviet countries.** If only 5% of the US national wealth is taken offshore, then in the Russian Federation - 50%, and in Ukraine - 80%. [4]

In 2009, at the Prague Summit, the “Eastern Partnership” was formally established to promote political and socio-economic reforms in the participating countries of the project, provided they fulfill the EU’s program requirements. The initiative of the “Eastern Partnership” belonged to Poland with the participation of Sweden. The Eastern Partnership project with six post-Soviet states was created as a consolation prize for post-Soviet states that will not be members of the European Union (Ukraine, Belarus, Moldova, Azerbaijan, Georgia and Armenia). The Eastern Partnership envisaged the prospect of concluding an agreement on a new generation of associations, deep integration into the EU economy, the conclusion of comprehensive agreements on free trade zones, facilitating travel to the EU for citizens, subject to security measures, the introduction of energy security measures and increased financial assistance. **But the main goal of the “Eastern Partnership” is EU access to the post-Soviet markets unilaterally.**

The project was considered as the next regional vector of the European Neighborhood Policy, an addition to the “Northern Dimension” and

the “Mediterranean Union”. The global financial crisis did not allow the implementation of the Northern Dimension program. The Neighborhood Policy with the Mediterranean Arab States ended with the destruction of Libya - the best country for human life in Africa (according to the United Nations Human Development Program), uncontrolled migration and the growth of terrorism in Europe.

Among the neighborhood programs it is necessary to recall the “Organization of the Black Sea Economic Cooperation”, which also proved ineffective, especially after the failed US GUUAM project and the accession of Romania and Bulgaria to the European Union.

In November 2013, the third summit of the Eastern Partnership was held in Vilnius. Participants of the project, as a “carrot”, were promised a “bright” European future in a “civilized family” instead of “dark” pro-Russian future. Moldova initialed an association agreement with the EU, and Armenia and Ukraine abstained from signing it. Germany as the economic leader of the European Union for the first time in post-war history tried to fulfil its geopolitical interests in Ukraine, but at the request of Washington, has given up on its intentions.

The Riga Summit, held in May 2015, particularly vividly illustrated the crisis of the European Union’s eastern policy [2], in which the ideological anti-Russian orientation dominated economic expediency. The presidents of Belarus and Azerbaijan refused to participate in the summit. Partner countries require greater differentiation in the EU’s eastern policy and only three countries (Moldova, Georgia and Ukraine) declare their desire to join the EU. Many Western experts recognize Eastern partners’ disappointment in the program of rapprochement with the EU. Brussels does not have the financial resources necessary to implement the program. In the opinion of many experts, the semantic death of the “Eastern Partnership” actually took place. The program that divides the post-Soviet space, which provokes wars and political crises, suggests instead of mutually beneficial economic cooperation “restraining Russia’s imperial ambitions”, can no longer be a priority of the European Union’s eastern policy.

The borders of the three remaining members of the Eastern Partnership were formed in the Soviet geopolitical space, and its transformation led to the loss of the territorial integrity of Moldova, Ukraine and Georgia. This was primarily due to nationalist policy that ignored geopolitical realities and came from the mythical principle “The West will help us” and the aspirations of local politicians to sell their sovereignty in exchange for per-



sonal security guarantees. Especially active in the geopolitical reformatting of the three states are the United States of America, which is not supported by appropriate economic assistance. Common to these poor countries is the dominance of guest workers' transfers in the formation of national GDP.

Let us consider the macroeconomic indicators of the remaining members of the Eastern Partnership. Before the global financial crisis, the index of the physical volume of GDP in 2007 by 1991 was 47% in Ukraine, 61% in Moldova, and 84% in Georgia. Ukraine's GDP per capita in 2008 was more than twice that of Moldova and 1.5 times that of Georgia. According to the IMF forecast in 2016, it will almost be equal to Moldova and will be half as much as in Georgia, and less than in Papua-New Guinea (1973), the most dynamically developing third world country. Here, for 1970-2015, GDP per capita grew 7 times. In Europe, Moldova and Ukraine have become the poorest countries, whose GDP per capita is two times less than the recent long-term European outsider (Albania).

*Table 1. GDP per capita (nominal) in 2014 - 2016, according to the IMF*

Place in the world	Country	2014	2015	2016 (forecast)
134	Ukraine	2924	2004	1854
140	Moldova	2243	1804	1712
116	Georgia	4428	3788	3790
	EU		32006	
	World as a whole		10023	

Source: World Economic Outlook Database-April 2016, International Monetary Fund. Accessed on April 12, 2016.

**Moldova. The result of the “Agreement on the Association of Moldova with the EU” was a deep economic crisis.** Trade relations with Russia are curtailed, and the West is not going to provide Moldova with membership in the EU in the foreseeable future. In 2015, Moldova was the first country in the Eastern Partnership to receive a visa-free regime with the European Union, which did not solve the problem of labor migration. According to the World Bank, the remittances of Moldovan migrant workers make up about a third of the country's GDP.

There was no reorientation of commodity markets for Moldovan goods. The country's foreign trade turnover annually declines, and according to the National Bureau of Statistics in 2015, exports of goods amounted to \$ 1967 million, which is 16% less than in 2014.

In 2015, at the international conference in Chisinau, politicians and experts from Moldova, Ukraine, Romania, Bulgaria, Russia, Germany, Lithuania, Austria and Slovakia summed up the first results of the Association of Moldova with the EU. The decision of the conference noted that the signed agreement with the EU on the Association is a big mistake that led to numerous problems in the country's economic and social development, as well as for the existence of Moldovan statehood. Pragmatic relations with the EU and strategic relations with Russia are needed, maintaining territorial integrity on the basis of federalization. The policy of the Moldovan authorities led to the fact that even the biggest optimists were disappointed in European integration. [11] **Benefits from the zeroing of duties at the European Union were twice as high as that of Moldova.**

The Moldovan economy is overly dependent on external support (loans), which amounted to 13% in 2012, 19% in 2013 and 17% in 2015. The agriculture is especially dependent on external credits (67%).

The main reason for the political and economic crisis in Moldova is the pro-European power (since 2009), which allowed a recession in the economy with the growth of corruption. The image of the Moldovan Eurointegrants in power is undermined by the continuing political crisis and corruption scandals. As a result, as the media write, Brussels' support for Chisinau has become "conditional".

**Georgia.** In recent years, Georgia's cardinal geopolitical and geo-economic transformation has taken place, in which the Turkish business rather than Russian or European business has become more and more dominant. Turkish banks, construction companies, Turkish investments dominate in Georgia. The European Union was unable to invest in the creation of production in the territory of Georgia, also because of the permanent political instability in the South Caucasus. Favorable geostrategic position of Georgia on the way of transportation of Baku oil and possible political instability can lead to irreparable consequences. Nationalist parties are gaining power in Turkey, and part of the elite does not part with the hope of returning the territory of Adzharia "occupied" by Georgia.

The intensification of Georgia's cooperation with NATO did not become a guarantor of Georgia's integrity, but only strengthened the presence of American instructors and NATO's Turkey, which as a power-gathering regional power seeks to regain its influence in the territory of the former Ottoman Empire. According to the Sixth article of the Treaty of Kars in 1921, Turkey has the full right to "return Batumi and its region," that is,





Adjara in case of its violation. On maps in Turkish history textbooks for the 11th grade, the territory of Adjara is shown as “the occupied historical region of Batumi”. In Adjara, they express their fears about the intensification of “Turkish expansion”. [7]

Hopes for international transport corridors passing through Georgia did not materialize. The opportunities for their creation in the Black Sea are blocked by the lack of stable bilateral trade flows. The established international ferry lines work with interruptions and violation of the timetable.

Brussels is showing less and less desire for European integration with Georgia. After lifting the ban on imports of Georgian, mainly agricultural products, local farmers began to focus more on the promising Russian market.

**Ukraine’s “European dream”.** Due to the “revolution of dignity”, the country is rapidly becoming the poorest in Europe. In the 1990s, Ukraine was the only country in the Eastern bloc, which, according to macroeconomic indicators, met the requirements of Brussels for accession to the European Union. According to the Human Development Program (UNDP), in 1990 Ukraine ranked 25th in the world on macroeconomic indicators. However, after the proclamation of independence, the Ukrainian government placed privatization in the first place, which gave birth to homegrown oligarchs and large-scale corruption. By 2013, according to the Human Development Index, Ukraine has shifted to the 83rd place, and according to expert estimates in the next two years, it was thrown back into the second hundred (according to the forecast about 140th place). Another Maidan led to the loss of the Crimea, civil war in the Donbass and political instability.

The official candidates for joining the European Union are Albania, Macedonia, Serbia, Montenegro and Turkey, which has been waiting for their turn since 60s. In the future, candidates may be Kosovo, Bosnia and Herzegovina. That is, the priority, but long-term program is the integration of the Balkan countries. Ukraine has never been on the list of candidates.

The statement by European Commission President Jean-Claude Juncker about the chances of Ukraine joining the European Union and NATO in 20-25 years is predictable for Brussels and is an unpleasant signal for Ukrainian politicians who for many years have promised the citizens the inevitable speedy Eurointegration for many years. Kyiv’s ignoring the agreement Minsk-2, the deepening internal political crisis and the lack of results in the fight against corruption, which has received new breath, irritates European officials. In addition, the Ukrainian government seeks to exploit the image of the victim, instead of carrying out economic reforms for the purposes of European integration.

After the signing of the Association Agreement with the EU and the free trade zone, the benefits of zeroing fees from the European Union proved to be much higher than those of Ukraine.

After the next Maidan, the standard of living in Ukraine fell by half, the national currency depreciated 3.1 times, inflation exceeded 40%. Against this background, the main task of the Ukrainian government remains the curtailment of trade and other ties with Russia. As a result, defense and aviation industries lost large orders and 80% of revenues. The creation of a free trade zone with the EU led to the loss of preferences in the largest Russian market for the sale of products.

The annual losses from the severance of economic ties with Russia amount to \$ 15 billion, in return the country receives IMF tranches of \$ 1 billion. After the so-called “revolution of dignity”, there was an unprecedented drop in direct foreign investment in Ukraine tenfold from \$ 4.5 billion in 2013 to \$ 410 million in 2014. In subsequent years, the pre-revolutionary level was not restored. By tradition, a third of the investment comes from offshore, where the assets of Ukrainian and Russian oligarchs (Cyprus, British Virgin Islands, etc.) are withdrawn. The fall in FDI is caused primarily by a decrease in the investments of Ukrainian and Russian businesses, which are withdrawn to offshore. [12] In 2016, compared to the previous year, the transit of petroleum products across Ukraine fell by 6.3 times. The number of those who went to work abroad increased by 1.2 million people. A total of 4.6 million people or 25% of the economically active population work abroad. After the signing of the agreement on the Free Trade Zone with the EU, trade increased slightly, with imports from the EU ten times higher than exports of Ukrainian goods.

**Myth about the agrarian superpower.** According to the former American ambassador, Ukraine must become an agrarian superpower. But there was not yet a chance in the world of practice that a country, following the way of de-industrialization and systematically destroying the summit of the created high-tech pyramid, could count on leading positions even in the third world, when instead of rockets it would grow “rapeseed” for biofuel. The American ambassador probably did not know that according to the Institute of Soil Science and Agrochemistry in the past 130 years, the chernozems in Ukraine have lost up to 30-40% of humus and have passed into the category of soils with medium fertility. Out of 26 million hectares of Ukrainian chernozems, at least 15 million hectares are in degraded condition. Against this background, a record increase in the production of sun-



flower seeds by 22% in 2016 is a Pyrrhic victory. Seeds are exported to Europe, which seeks not to grow sunflower, as this culture is severely depleting the soil.

**Information for reflection.** In the past, Argentina was an agrarian superpower. [5] By population, it is equal to modern Ukraine, but its economic power (nominal GDP) is 6.5 times higher than the Ukrainian index. In 1990, this macroeconomic indicator of Argentina was only 1.5 times higher than in Soviet Ukraine. Ukraine has decided to go through de-industrialization and step according to the external managers' recommendations on the rake of the "agrarian superpower." Argentina has achieved temporary success of the agrarian superpower due to effective reform of public education as well. In Ukraine, this reform has brought in power self-styled "patriots" - marauders from science and education, vested in plagiarism of dissertations. For a quarter of a century of independence, there have been so many phony "candidates" and "PhDs" of sciences that, having entered power, they are able to effectively paralyze the future of the state without Maidan.

As the British Guardian writes, "Ukraine seriously risks becoming an invalid state." Without a radical shift in emphasis on economic policy based on the interests of the country, and not Western curators, Ukraine will face a further decline in GDP, a reduction in industrial production, unemployment and the devaluation of the national currency.

Ukraine made a significant contribution to the split of the Eastern European geopolitical space, playing the role of the "fifth column" of the West and turned into the leaders of the "gray" zone and the poorest country in Europe. Ukraine has become an "advanced" country of market fundamentalism based on business on state resources. We can say that these are the tops of the European integration of the country where the authorities already live according to the European sanitary standards and will do everything possible to gain a foothold on the achieved boundaries. As a result of offshore geopolitics, the assets of strategic enterprises were withdrawn to the West and the main levers for managing the economy and for regulating the balance of payments were practically lost.

Ukraine should implement a constitutional reform that must protect the East, the South of Ukraine and Transcarpathia from nationalist trains of "friendship" with clubs, beats and directions, which monuments to set or whom to burn. If problems of federalization and confederation are not discussed today, tomorrow it will be too late.

To have a future, Ukraine needs to get rid of the pseudo-national idea

“under whom to lie down”, which repeatedly led to the loss of statehood (Ruins), and to find its place in the new geopolitical configuration of Greater Europe. This requires professionalism in management based on the Ukrainian people of the West, East and South of Ukraine. The future of Ukraine lies in its neutral status. Ukraine should remain neutral and friendly to the neighboring states with the preservation of extensive economic ties in the West and East. If the Ukrainian government chooses a pro-American or pro-Russian side instead of neutrality, it will be severed without much regret for the main geopolitical players in Eastern Europe.

Ukraine, Moldova and Georgia need to carefully study the experience of Albania - a half-century European outsider, who made an economic breakthrough due to the effective use of statehood factor. [8]

**What will happen after the failed “Eastern Partnership”?** Separatism, terrorism, financial crisis with a partial devaluation of the euro, the migration crisis do not allow the European Union to further advance to the East. In Western Europe, there is a growing movement against Euroland, including opposition to the expansion of the European Union and the influx of migrants (cheap labor force). The growing “party” of Eurosceptics will not lead to the disintegration of the European Union in the foreseeable future, but will finally stop the advance to the East, including Ukraine’s “European choice”. Further expansion of the EU will also be limited by a shortage of financial resources, the need to “digest” the rear in the Balkans.

In the European Union with the dominance of Western Christianity, Orthodox states can at best count only on the place of marginals. Eastern Europe, belonging to the Orthodox civilization, will never be part of the predominantly Western Christian European Union. Orthodox Bulgaria dreamed of becoming “Japan in the Balkans”, and Georgia - Europe in the Caucasus, and both are transformed into a Turkish protectorate.

Between Western Europe and Russia, a vast “gray zone” of the emerging new world periphery has emerged, threatening to become yet another epicenter of the world conflict. Under the guise of the “Eastern Partnership”, an anti-Russian “sanitary cordon” is being created in Eastern Europe.

The creation of a new “Iron Curtain” is possible provided that Brussels will assume all the costs of an economical anti-Russian blockade, primarily for the countries of Central and Eastern Europe. However, Brussels does not have such financial possibilities. Economic sanctions against Russia adversely affect the whole European economy.

In the Central-Eastern and Eastern Europe, the role of the People’s



Republic of China is growing. This superpower enters the region as a world geo-economic player. Here an important springboard of the super-project “Economic belt of the Silk Road” is being created in a peaceful offensive against the European Union. Large transport and logistics centers will be established in Belarus, Lithuania and Russia, including the Crimea.

The selfishness of the great powers pursuing their strategic goals contributes to geopolitical and geo-economic instability in Eastern Europe. They have put new independent states (Ukraine, Moldova and Georgia) ahead of the tough choice of the either/ or between the European integration (the free trade zone with the EU) and the Eurasian integration (ĽREU). While in European practice, there are prosperous states that, in their foreign policy and economic choice, proceed primarily from their national interests. For example, the best country in the world for human life (according to the classification of the United Nations Human Development Program) - is Norway - which is not a member of the European Union, but enjoys all the economic privileges of Brussels. Even with the support of other Scandinavian countries, it entered the Schengen area.

The countries of the “Eastern Partnership” turned out to be in the well-known fable between swan, cancer and pike. The EU and Russia are pulling in different directions, and the most “right” country in the world is creating an anti-Russian “sanitary cordon”, appropriating the ranks of democrats to local puppets and radical nationalists.

External economic expansion, new markets for the sale of European products is vital for the well-being of the European Union. But at the same time, Brussels does not have the capacity to finance the Eastern Partnership program and mistakenly ignored the geopolitical factor of the invasion of the post-Soviet space - a zone of Russia’s “vital interests”. Attempts by the geopolitical transformation of the Eastern European countries from Brussels are unsuccessful and dangerous, since the European Union does not have the appropriate military-political might. Deindustrialization and withdrawal of assets of strategic enterprises were carried out under the “patronage” of the West and were not compensated by investment capital.

While the European Union continues to demonstrate its intentions to preserve the policy of the Eastern Partnership, still its main focus is on the need to address more pressing tasks to overcome the internal systemic crisis (financial, migration and disintegration).

The project of the “Eastern Partnership” is defeated because of the short-sighted policy of the European Union, whose main goal was unilat-

eral expansion of the consumer market without prospect's guarantees of joining the European Union and strong financial support. The growing competition for influence in the post-Soviet space not only weakens the "Eastern Partnership", but can provoke the creation of yet another hot front, not only on the southern, but also on the eastern borders. At the same time, neither the European Union nor Russia is interested in escalating competition, which can damage bilateral relations.

Ultimately, the Eastern Partnership will repeat the sad fate of other regional programs of the European Neighborhood, including the Mediterranean Partnership and the Northern Dimension. At the same time, it is necessary to pay attention to the peculiarities of the European Neighborhood Policy, which depends each time on the country presiding over the Council of the EU. Together with the departure of the next chairman of the European Council, the next project of "neighborhood" is dying away. In connection with the replacement of the Polish representative in this post in 2017, the "Eastern Partnership" project initiated by Warsaw will end.

Geopolitical and geo-economic scenarios in Eastern Europe are primarily determined by the outcome of the "great geopolitical game" between Russia and America. The future of Europe as an important component of the world economy will depend on the implementation of inter-bloc mega projects, including the Chinese super-project of Greater Eurasia from London to Shanghai. In this regard, the concept of bipolar Greater Europe after the formation of the Eurasian Economic Union (EAEC) and the Chinese super-project "The Economic Belt of the Silk Road" acquires a new dimension.

After the EU imposed economic sanctions against Russia, only after the restoration of lost trade ties, it will be possible to discuss EU-EAEC inter-block cooperation. However, the implementation of the Chinese super-project of Greater Eurasia from Shanghai to London can accelerate this process. The economic interaction between the EU and the PRC within the framework of the "Economic belt of the Silk Road", the EU and the EAEC will be an extremely positive impetus for economic development for the "common neighborhood" countries - Ukraine, Moldova and Georgia.

The European Union is the largest trading partner of the EAEC, which in its turn is the EU's third trade partner. The countries of the EAEC are interested in the transfer of European technologies, and the EU is dependent on "Eurasian" hydrocarbons. The European continent needs further development of cross-border infrastructure. The combination of competitive advantages of the EU and the EAEC will give mutually beneficial advantages.



In connection with the implementation of the European Economic Development Strategy “Europe 2020” Brussels in the near future will finally stop the implementation of financial programs for neighboring countries, including Ukraine. At the same time, the process of rapprochement of EU-EAEC economic cooperation will begin and the EU’s requirements for the non-alternative choice of Ukraine, Moldova and Georgia will be eliminated.

**The European Union after Brexit. The stronger kisses, the less money.** [6] The withdrawal from the EU of the largest military nuclear power, the fifth economy of the world and the second largest contribution to the consolidated budget of the Union (15%) is compared with the geopolitical earthquake and tsunami Euroscepticism. True, London has never been in the close embrace of Brussels. Great Britain remained a special member of the EU, not included in the euro area and Schengen.

In the 1990s, economic growth in Western Europe promised a cloudless future, and a “dizziness from success” began. By 2020, taking into account the expansion to the East, the consolidated seven-year budget 1.5-2.0 trillion Euro of the European Union was projected. The European Union, having started active promotion to the East, did not have time to “digest” the new Mediterranean members by putting them on the needle of cheap loans that became a spark of default after the global financial crisis and the Eurozone crisis began. Hopes of the former countries of people’s democracy on the Soviet paternalism from Brussels were not justified.

Brexit inevitably intensifies the centrifugal processes in the “European house”, especially in the countries that do not want to feed dependents. The policy of the European “melting pot” failed, instead of the European people, the English want to remain English, the French - French and so on. The Soviet Union’s mistake on the formation of a Soviet man is repeated.

According to The Wall Street Journal, the UK’s decision to withdraw from the European Union is ruining Ukrainians’ hopes for an early entry into the bloc. [1] The model of the “democratic” Ukrainian outpost of the civilized world against the “barbarians” no longer brings dividends to Europe.

The main sponsors (donor countries) of the European Union, whose contributions to the consolidated budget far exceed the subsidies received, were a few European countries (Germany, France, Great Britain, Italy, the Netherlands and Sweden). Poland (12 billion), Portugal, Greece, Spain, Hungary and the Czech Republic received the most from the consolidated budget of the EU.

The maximum consolidated budget of the European Union has never

exceeded 1200 billion euros. In 2013, after long negotiations because of the discontent of donor countries, the budget was reduced by 100 billion euros for the first time. In the seven-year budget (2014 - 2020), expenditures should not exceed 960 billion euros, which corresponds to 1% of the EU GNI (- 3.5% compared to the previous budget). Actual planned costs were fixed at the level of 908 billion euros. Nevertheless, taking into account the devaluation of the euro in 2007 prices, the seven-year budget of 2014-2020 actually fell to 700 billion euros (about 3.5 times less than the rain forecasts of ten years ago). After Brexit, the consolidated budget decreased by another 15% (the share of the UK contribution). Financiers of London City can calculate more accurately than the author. However, the fact is that with the expansion of the European Union money in the consolidated budget is becoming less.

According to the American Nobel laureate Michael Spence, the growing tension in the EU between the countries in the near future should be overcome or the Union will disintegrate.

The Eurozone is increasingly turning into two groups of countries moving at different speeds. Investors are increasingly worried about the possibility of the Eurozone's collapse. Real (taking into account inflation) GDP of Italy is approximately at the level of 2001, and of Spain - at the level of 2008. In the Mediterranean countries of Europe, including France, there are extremely weak rates of economic recovery and persistently high unemployment rate exceeding 10%, and among young people under 30, it is much higher. Meanwhile, the level of public debt has reached or exceeded 100% of GDP (in Italy is equal to 135%), while inflation and real growth rates remain low. This protracted debt crisis is hampering the use of fiscal measures that contribute to the return of strong economic growth. [10]

**Conclusion.** The European Neighborhood Policy was created primarily to expand the EU's consumer market. In the near future, there will be an adjustment of this policy, or rather its finish. Due to the systemic internal crisis (financial, Eurozone and migration) and ignoring the geopolitical realities, Brussels today is not up to neighbors who have found themselves in a broken trough of European integration.

One can add the growing crisis of new members of the European Union from the former countries of people's democracy to European continental problems like the crisis of the Eurozone and the migration crisis, the crisis in Ukraine and the withdrawal of Britain from the European Union. The crisis came gradually from the first day of their membership in the European Union. With acces-





sion to the EU, none of the countries reached the Central European level on macroeconomic indicators and counted on greater financial support in modernizing the economy. Brussels did not meet these expectations.

The Eastern Partnership project with six post-Soviet states was created as a consolation prize for post-Soviet states that will not be members of the European Union (Ukraine, Belarus, Moldova, Azerbaijan, Georgia and Armenia).

The European Union, a politico-military impotent and US protectorate, decided to play geopolitics. The biggest “achievement” of the last “Drang nach Osten”, connected with the program of the “Eastern Partnership”, was the civil war in Ukraine. At the same time, Brussels does not want to bear the burden of responsibility for a state that does not fulfill the requirement of the “Norman four” and Minsk-2 agreements.

The numerous challenges which the European Union faces (Brexit, the crisis of the Eurozone, the migration crisis, etc.) leave less and less hope for a “bright future” of the European periphery, where the dependents only dream of the unrealizable paternalism of Brussels. Times for free gingerbread cookies have passed. In addition, at the next summit of the “Eastern Partnership”, if it takes place, mutual kisses will increase, but there is no money.

Between Western Europe and Russia, a vast “gray zone” of the appearing new world periphery has emerged, threatening to become yet another epicenter of the world conflict. An optimistic scenario is the elimination of an interstate buffer (“sanitary cordon”) artificially created under the guise of the Eastern Partnership. The future of the foreign states depends on a neutral status based on their own people and the rejection of the geopolitical course “under whom to lie down” and the sale of sovereignty.

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## DIFFICULTIES OF THE REPUBLIC OF MOLDOVA'S RUSSIAN-SPEAKING COMMUNITY INTEGRATION: CONSEQUENCES ON NATIONAL SECURITY

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### **Abstract**

*The specifics of the post-Soviet state the Republic of Moldova is that the Russian-speaking community comprises not only the Russian national minority (5.95%), but also other ethnic minorities – Ukrainian (8.34%), Bulgarian (1.94%) Gagauz (4.36%) – who were subjected in Soviet times to an intense process of denationalization and Russification. Their integration into the Moldovan culture is quite low. A bad integration into Moldovan society, poor knowledge of Moldovan (Romanian) language by the Russian-speaking minority leads to the fact that they prefer the Eastern vector, despite the clear advantages offered by the European integration. The success of a good forward of the country on the path of European integration, supported by a reinforced majority of Moldovan society, involves making efforts to a better integration of Russian-speaking community.*

**Keywords:** *Integration, Russian-speaking community, separatism, societal security, the Republic of Moldova*

**Introduction.** The specific character of the post-Soviet state the Republic of Moldova (RM) is that the Russian minority includes not only the Russian national minority (5.95% at the 2004 census), but also other national / ethnic minority communities, which during the Soviet period were subjected to intensive process of denationalization and Russification through the education system with teaching in Russian, the mass media, etc. Thus, national minorities such as the Ukrainian (8.34% at the 2004 census) and Bulgarian (1.94% at the 2004 Census), the Gagauz ethnic minority (4.36% at the 2004 census) currently use the Russian language in public space: in public administration and in education. For comparison, another ethnic minority - Romany, less in number - was less Russified in the Soviet period, to some extent due to lower exposure to the education system and the impact of media and culture institutions. The distinction between the notions of the national minority and the ethnic minority is that the first concerns communities that have a mother-country of origin (Ukrainians - Ukraine, Bulgarians - Bulgaria, Russians - Russia), while the second notion concerns communities that do not have a mother country (although some forcefully link Gagauz to Turkey and Romanies to India).

Most native (Moldovan / Romanian) consist of 77.96% (75.8% declared of being Moldovans and 2.16% declared of being Romanians at the 2004 census).

Looking at the ethnic map of the Republic of Moldova, one can find the presence of four regions on the territory of Moldova, which central authorities should pay attention to:

1. the Transnistrian region (both the Bessarabian part - the city of Bender and those six villages: Gâsca, Proteagailovca, Merenești, Chițcani, Cremenciug și Zahorna; and the Transnistrian part without six villages controlled by the Chisinau authorities: Coșnița, Pârâta, Doroțcaia, Pohrebea, Molovata Nouă și Cocieri);
2. Gagauz autonomy (since 1994);
3. Taraclia district, inhabited mostly by Bulgarians: in 2015 Parliament voted in first reading a draft law on the status of cultural autonomy;
4. there are rural areas inhabited by Ukrainians in the northern part of the country.

Therefore, with some minor exceptions, national / ethnic minorities in the Republic of Moldova constitute a linguistic – Russian-speaking community (minority). It is worth mentioning that during the Soviet period a part of the ethnic community was subjected to Russification, especially in



the urban environment where there were not enough kindergartens, schools and higher education institutions with teaching in the language of the ethnics (so far schools with Russian-language teaching in Moldovan cities are attended by students with traditional Moldovan family names, but their native language is Russian). The degree of integration of the Russian community into the Moldovan society as a whole can be qualified as low. Being linked by language and culture of the Russian Federation, the Russian-speaking community in Moldova is inclined towards integrating the Moldovan state into the cultural space dominated by the Russian Federation (from an institutional point of view: the Eurasian Economic Union). Often, the support for the eastern vector of the Republic of Moldova's foreign policy by the Russian community is the result of poor information on the advantages of European integration due to insufficient knowledge of the state language. The low degree of integration in the Moldovan society - poor knowledge of the state language and the culture of the majority population - makes the Russian minority prefer the eastern vector of Moldova's foreign policy, despite the clear advantages granted to the Moldovan state by European integration. That is why the success of the Republic of Moldova on the path of European integration supported by a strengthened majority of the Moldovan society implies sustained efforts towards a better integration of the Russian-speaking minority in the country. The difficulties of integrating the Russian-speaking community must be overcome by a pragmatic approach: by formulating the state mission, the vision of its development, a state-building policy (national one - of the civic nation), a strategy, a tactic, and an action plan. The state of the Republic of Moldova must become attractive both for its majority population (to decrease the number of those who leave the country in search of a better life), as well as for the ethnic and linguistic minorities. By integrating the Russian-speaking minority (of all national and ethnic minorities), the issue of ensuring social security - one of the five sectors of national security (along with the political, economic, environmental and military sectors) can be solved.

Poor integration of the Russian-speaking community - a vulnerability in the context of ensuring RM's security

Poor integration of the Russian-speaking minority from the Republic of Moldova is a vulnerability in the context of ensuring its national security. This vulnerability, which targets the national security sector, is part of a list of vulnerabilities that target the other sectors as well: inefficient governance, corruption in state bodies, crises regarding non-election of the presi-



dent of the republic or those related to the establishment of consolidated alliances in the Parliament, political corruption, the contestation of the electoral process (removal of some electoral competitors from the race, the admission of spoiler parties in the race) - all these being problems in the political sector; soil, water degradation (the lower flow of the Dniester River, which feeds Chisinau and other cities [8]), illegal deforestation [3] - vulnerabilities in the environmental sector; declining industrial, agricultural and service output (loss of traditional outlets and inability to penetrate new markets) - vulnerabilities in the economic sector; a defective material base, military technique and equipment of the National Army that requires modernization - vulnerability in the military sector. All these vulnerabilities are evidence of some aspects that the Moldovan state needs to work and which can be used by outside forces that can face challenges, creating risks that can turn into threats to Moldova's national security.

The Republic of Moldova is an integral part of the wider Black Sea region - a space characterized by a series of conflicts that also have an ethnic connotation: the Karabakh Mountain, South Ossetia, Abkhazia, Donbas. In most of these conflicts one can observe the manifestation of an external factor: Russia has been involved and supports the regimes of Transnistria (the Republic of Moldova), Donbas - Lugansk and Donetsk (Ukraine), Abkhazia and South Ossetia (Georgia). Armenia supports the administration of Karabakh Mountain (Azerbaijan's formal territory). Thus, with the presence of vulnerabilities in a certain region (or a few) of a state, a regional power through its involvement - in the form of supporting separatist movements of ethnic or linguistic minorities - can create risks and threats to the security of a vulnerable state. By exploiting the vulnerabilities of a state, a regional power can impose its control over a space that it considers its sphere of influence (in this case, for Russia, the post-Soviet space is its sphere of influence: *áëĉćíĺĺ ċřďóáĺćüĺ* - the near abroad). That is why every poly-ethnic state - including the RM - should carefully address the internal problems of interethnic relations, contributing to the consolidation of society through the integration of ethnic (linguistic) minorities. Because of the poor integration of ethnic minorities in the Republic of Moldova, there are rare cases when the representatives of these communities profess professionally and occupy important positions in political, academic / university, cultural fields, etc. - at national (republican) level. It is necessary to identify mechanisms by which ethnic communities can convey to the governing bodies the problems they are facing, to obtain help and to solve them.



One of the important aspects of the poor integration problem of the Russian minority is that the Republic of Moldova does not have a positive image in the interior - it is not attractive for the young generation of ethnic minorities. There is no attractive cultural environment (arts movies, theaters, TV programs, etc.). In schools with Russian language teaching, especially in the Gagauz autonomy, the level of teaching of the state language is low. Consequently, due to access to media sources from the Russian Federation, the Russian-speaking minority lives in a parallel with the majority of Moldovan population. Due to the consumption of a certain type of information, the Russian-speaking community is for the eastern vector of RM's integration. Thus, the Moldovan society is divided geopolitically - making the Moldovan state vulnerable. Under a hybrid war, with reference to the Novorosia project, a poorly integrated Russian community in Moldovan society makes the RM more vulnerable to external risks.

#### Hybrid war in Russia - West confrontation in Eastern Europe

Hybrid war is an instrument in confronting East (Russia) - West (US and its NATO allies) in Eastern Europe. At present, ethnic or linguistic minorities are used as instruments in the hybrid war, being externally mobilized against the central state power in the countries where they live together with the majority. The American researcher Joseph S. Nye Jr. explained in one of his papers that after 1945 the number of wars waged between states and various groups increased. "Such groups can be divided into categories of insurgents, terrorists, militias and criminal organizations, although the categories may overlap and may fade over time" [6, p. 50]. Nye concludes: "The end of such conflicts is rarely established on conventional battlefields with the help of traditional armies. They become hybrid wars - "an amalgam of conventional weapons, irregular tactics, terrorism and criminal behavior in the conflict space" [6, p. 51]. According to the definition given by the American researcher, "In hybrid wars, conventional forces, physical destruction, and informational warfare interpenetrate" [6, p. 51].

It is worth mentioning that hybrid war is not a new phenomenon. In his work "Diplomacy," Henry Kissinger referred to a critical analysis of the détente, prepared by "a group of eminent specialists" and forwarded to the Subcommittee on Armaments Control that presides it by the senator Henry Jackson in June 1974. The document notes: "In current Soviet terminology, détente or "peaceful coexistence" means a strategic alternative to the militant antagonism open against the so-called "capitalist countries". It does not involve the Soviet Union and its allies to abandon the conflict with Western liberal coun-

tries... The frontal conflict is to leave the place of indirect fighting methods, using non-military means, described as “ideological”: in Soviet practice this term covers subversion, propaganda, political blackmail and intelligence operations” [4, p. 649]. As can be seen, during the Cold War the phenomenon designated today by the term hybrid war was at the day’s agenda.

The region of Eastern Europe appears to be a space under siege today, with some states in the region being subjected to tougher testing than in other areas, from major actors pursuing their own geopolitical interests in the region. The Republic of Moldova, a component part of the Eastern Europe region, is now a land of confrontation between Russia and the West. At present, the Russian Federation, under the presidency of Vladimir Putin, has attempted to re-establish control over the post-Soviet territory, which he has called, in the early 1990s, ближнее зарубежье (the near abroad). One knows President Putin’s appreciation made in November 2011, according to which “the collapse of the Soviet Union was the greatest geopolitical catastrophe of the 20th century.” The title attributed to the Kremlin chief, especially after the annexation of the Crimea - “собиратель земель русских” (the Russian land collector), the promotion of the “русский мир” concept (Russian world) with reference to the post-Soviet space - where there was a large Russian ethnic community or Russian speakers, “Новороссия” project (Novorossia), which is aimed at the junction of the separatist forces in Donbas, eastern Ukraine, with those in Transnistria, in the east of the RM - thus taking over by these forces supported by Russia, the Black Sea coast of Ukraine. All these elements are alarming signals, risks that can turn into threats to the security of the young Moldovan state.

In the context of growing interest from Russia for the Eastern European region and stirring up of its actions in the area, one can notice the encouragement by the Kremlin of Russian-speaking populations in areas like Transnistria and Donbas to destabilize the situation in the region - in the states they are part of, to strengthen their influence in the region that they consider their sphere of influence (their sphere of major interests). Through conflicts, either frozen, maintained by the Russian Federation in Transnistria, Abkhazia, South Ossetia, or hot, like Donbas, the Kremlin blocks the European and Euro-Atlantic integration of the Republic of Moldova, Georgia and Ukraine - states that have signed Association Agreements with the EU and that have expressed their willingness to integrate into the European community space, thus expressing their the intention to leave the Russian sphere of influence.





It is worth mentioning the Republic of Moldova also considers the dialogue, and for the last time, the confrontation between Russia and the West as one of the subjects, including the frozen conflict in the Dniester region. In his paper “Diplomacy”, a historian and Security Studies specialist Henry Kissinger noted: “Bush [senior, A.L. notes] deplored the disintegration of Gorbachev’s USSR, and Clinton [during the presidency of Yeltsin, A.L. notes] has consented to the efforts to restore Russia’s old sphere of influence” [4, p. 711]. In the light of this testimony of a well-informed and influential personality of the American academic and political world, it becomes clear why the US did not manifestly emerge during the 1992 Russian-Moldovan conflict in the Dniester region of the RM. Compared to the 1990s when an amicable dialogue between Washington and Moscow took place, especially since 2014, when Russia annexed Crimea and supports the separatist regimes in Lugansk and Donetsk, tension and increase of mistrust between the two geopolitical poles of power can be observed.

Certainly, the most effective defense tools for the Kremlin’s influence in the post-Soviet states are consolidated democratic institutions, including effective anti-corruption institutions, a functioning judicial system, a genuine democratic political process (fair elections), real progress in economic and social development of a country (implementing a functioning market economy, attracting investment and advanced technologies). But it is important to note in this context another aspect: it is vital to strengthen society, civic peace, and ensure social security. This desire can be achieved by developing (drafting) and implementing a country project (mission, vision, state-building policy, strategy, tactics, and action plan) to transform the Republic of Moldova into an attractive state both for the majority population (holders) and for its ethnic minorities (including the Russian-speaking community). However, in the face of the confrontation between Russia and the West, ethnic and linguistic minorities can be involved and employed in the hybrid war used for that confrontation.

### **Country project - the Republic of Moldova**

US researcher Robert Kaplan believes that the Republic of Moldova is a very weak state without a national identity and idea, which makes it even more vulnerable to external dangers. In his opinion, our country is the prey of internal chaos, because it has weak institutions. “Moldova is a border country, and there are many other borders within Moldova. Therefore, it has a weak national identity”, Kaplan said [7].

In one of his manuscripts, Mihai Eminescu noted: “The common idea, whether religious or political, resembles a handle that the potter puts on any pot that can be fit and gathered together on a string. Without common ideas, there is no people” [1, p.146]. An idea or some common ideas of a nation can refer to the mission that a nation takes in a state. Eminescu’s expression of common idea (of a people) is still used in the contemporary period as a national idea as well. A national idea, developed in a national project, is indispensable for the good development of a state with a strong identity. A national idea, a people’s mission is also linked to an ideal, a national dream. The formulation of the national idea and the elaboration of the national project is a responsibility of the community of politicians and intellectuals of any state.

The history of the Moldovan state shows us that the Principality of Moldova has been, for centuries, between powerful states or empires. This may have been the main factor for which the Moldovan statehood has been perpetuated so far. Throughout its history, Moldova has had a mission related to the security of the region it was part of. A Moldovan mission’s statement is found in an epistle of Ruler Stephen the Great, dated January 12, 1474, to the princes of Europe: “Our country is the gate of Christendom, which God has protected so far. But this gate, which is our country, will be lost - may God keep it from us - then all Christendom will be in great danger. And we, on our part, promise our Christian faith and the oath to our Lord, that we will stand up and fight to death for the Christian law, we with our heads. This is what you should do, both on the sea and on land, after we, with the help of the Almighty God, cut our enemy’s right hand.” From this passage it follows Ruler Stephen III (the Great) assumed with his people the mission of defending Christianity - Europe of the medieval period - from the danger that came from the Ottoman Empire.

In an article of November 2, 1879, the great intellectual Mihai Eminescu recorded the mission of the Moldovan state, and after the union of the Wallachians in 1859, the United Principalities, which in 1862 adopted the name of Romania, inherited the mission. It is known that following the Crimean War (1853-1856), the European powers, which defeated Russia, forced them to return to Moldova the region of the mouths of the Danube in 1856 - three Bessarabian districts: Cahul, Bolgrad and Ismail. Since that time Moldova has received a mission related to the security of the region. Eminescu wrote: “We have to be a layer of culture at the mouth of the Danube. This is the only mission of the Romanian state and anyone who



wants to dispel our powers for another purpose puts into play the future of the descendants and tramples the fruits of our ancestors' labor" [2, p. 213].

At present, the Republic of Moldova's society is looking for a sense or meaning (lost?). Sense / meaning should be identified, formulated and developed as a national / country project. Only for a national project (for a sense, for a reason, for a cause, for a common idea) the citizens of a country can unite, they can sacrifice, they can serve their country.

Since 2009, the pro-European government in Chisinau has advanced the strategic objective of European integration of the Republic of Moldova. Is European integration a national idea for the Moldovan state? Regretfully, due to the division of Moldovan society into two approximately equal parts of the citizens, one of which speaks for the Western vector of integration and the second one for the Eastern vector, European integration does not present itself as a national idea (shared by the majority of society). Even in some countries within the EU, the idea of European integration or quality membership of the Union may be an apple of discord (see the case of the United Kingdom of Great Britain and Northern Ireland, whose voters voted in the referendum of June 23, 2016 for the withdrawal from the EU, with the score of 51.90% to 48.10% [5]). For a state like the Republic of Moldova, which is lagging behind in its development in several fields, European integration is an optimal way to modernize and make more effective political, justice, economic, social systems, etc. The adoption and implementation of European standards and practices in interethnic relations, including the elaboration of multicultural policies, can contribute to the improvement of the respective relations and thus to the ensuring of the social security of the Republic of Moldova. Thus, European integration is an effective tool in developing and modernizing the state. In a country project, however, the authors have to identify elements with which the Republic of Moldova can be useful within the EU (for its member states) and for the entire international community.

A country project could be structured on the five sectors of the security concept. Its authors should highlight the contribution of the Moldovan state in the regional and international framework - so what RM can offer - in the economic, environmental, social, political and military sectors. If the goals are determined, but realistically and the necessary resources are identified, the Moldovan state will try to assert itself plenary on the regional and international level, to accredit an unmistakable and meritorious identity and to make a point. A country project involves a mission, a vision (expressed in a conception), a policy (state building), a strategy, a tactic, and a plan of action. A mission of a state is aimed at a dream, a national ideal.

Keeping proportions, it can be said that at present the Republic of Moldova's state resembles that of France after the Second World War. At that time, the problem that President de Gaulle put to the resolution was "how to restore the identity of a country overwhelmed by the feeling of failure and vulnerability" [4, p.525]. In this sense, "Driving a country that is out of conflict over an entire generation and decades of humility, de Gaulle judges policies not so much by pragmatic criteria, but by their ability to contribute to the restoration of the French sentiment of their own dignity" [4, p. 526]. It is an example for the government in Chisinau.

### Conclusion

Problems of the poor integration of the national / ethnic communities in the Republic of Moldova (many of whom constitute the Russian-speaking community) are a reminiscence of Russification policies practiced in Soviet period and the inability to solve during the period of independence (1991 - present). Poor integration of the Russian-speaking community is a vulnerability to the security of the Moldovan state; it makes the Moldovan state vulnerable to external risks. To eliminate the vulnerability in question, the authorities in Chisinau can take over from the EU practices in the management of interethnic relations. The elaboration and implementation of a multicultural policy would play a significant role in ensuring the social security (one of the five sectors), in the context of ensuring Moldova's national security.

Poor integration in Moldovan society, poor knowledge of the state language (Moldovan / Romanian) by the Russian-speaking community leads to the fact that its members prefer the Eastern vector of integration, despite the clear advantages offered by the European integration. The success of a good path towards modernization, European integration, backed by a strengthened majority of Moldovan society, involves efforts to better integrate the Russian-speaking community.

To strengthen the Moldovan society, respectively to ensure the social security, several measures could be taken:

1. using of soft power to increase the attractiveness of the Moldovan state in relation to the Russian-speaking community within the country, as well as in relation to the states of the world;
2. creating a public television channel broadcasting in Russian (as exemplified by Estonia);
3. developing a national idea - a country's mission;
4. carrying out a process of national development (of the Moldovan civic nation - a member of the United Nations);



5. developing and implementing programs, with financial support from the EU, teaching and learning of Moldovan / Romanian, national culture and history;

6. studying and taking over the experience of some EU states (especially Romania) regarding the integration of ethnic minorities;

7. enhancing the role of the Bureau of Interethnic Relations (BIR), which can be transformed into a ministry responsible for multicultural policy-making;

8. improving the conditions for studying mother tongues and cultures for national / ethnic minorities.

In the context of the Republic of Moldova's European integration, the collaboration with Romania, the support from the neighboring state occupies a special place. The Germany-Austria relationship between two so close cultural states within the EU can be a useful model of the relationship between Romania and the Republic of Moldova both during the pre-accession period and when the Moldovan state becomes a member of the European Union.

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## INTEGRATIONAL PROCESSES AND GLOBAL ECONOMY

### NATIONAL SECURITY AND THE US STRATEGY LESSONS OF EXPERIENCE FOR COUNTRIES WITH TRANSITION ECONOMY

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#### **Abstract**

*In this study, the author highlights some theoretical aspects of national security issues. The article deems the basic stance of the US and Moldovan national security strategy. In conclusion, the author recommends the use of US experience in the development of the national security management mechanism in the Moldovan state.*

**Keywords:** *national security, regional security, the USA, countries with economies in transition, the Republic of Moldova*

**JEL Classification:** *F52, H56*

**Problem setting.** In modern society, global processes contribute to the emergence of new threats and challenges. Largely this is due to the development and deepening of scientific and technological progress (and sometimes revolutionary discoveries and innovations), accompanied by radical and not always positive changes in society and its environment. Inequality



in many of its manifestations, the impoverishment of the resource base, increasing burden on nature and man, war and crime, poverty, restrictions on rights and freedoms, migration and many other threats require solution, which predetermines the need for an integrated approach to the process at various levels of the society's hierarchy. Emerging centers of power on the world arena (China, India, developing countries) return society at the beginning of the new millennium from a unipolar world to a multipolar structure, where regional and national priorities play an ever more prominent role.

In these conditions, the importance of a scientifically based system formation of national security management is growing. At the same time, the mechanism for managing national security of the same type of countries can have a uniform structure. This, in particular, can be attributed to countries with economies in transition, which have many common and similar types of weaknesses, problems and threats, and opportunities, and prospects for potential growth. These countries can and must use the experience of other countries and, in particular, the largest world economic leader, the United States, when developing projects of scientifically based management of the national security system.

**Research of the problem.** According to the classification of the United Nations Conference on Trade and Development (UNCTAD), the group of countries with economies in transition includes South-Eastern Europe, the Commonwealth of Independent States and Georgia. [5] Countries with economies in transition today often face serious problems at their borders or with opposition, including the armed forces, on the part of their recognized national territory. This applies in varying degrees to Armenia, Azerbaijan, Georgia, Moldova and Ukraine. Many threats are manifested in the countries of Central Asia (the former union republics). Often, countries with economies in transition have a similar list of threats in the economic, political, social sphere, migration flows, corruption, the ratio of income between certain groups of society, etc. One of the classifications of threats to national security is shown in Figure 1.

Countries with economies in transition participate in addressing global problems (for example, through the UN and international organizations) as well. However, from the whole variety of mechanisms of national security management, the strategy (plans, programs) of national security is usually central. Public authorities develop similar documents.

In Moldova, the mechanism for regulating the country's national security system management includes a strategy, national programs and action



Source: Threats to national and economic security. <http://www.grandars.ru/student/nac-ekonomika/ugrozy-bezopasnosti.html>

Figure 1. Classification of threats to national security

plans, a system for monitoring the implementation of the strategy and regular reporting by the Moldovan supreme security council (under the leadership of the country's president) to the parliament, and informing the supreme security council about the implementation of the strategy every six months by central public administration authorities. The National Security Law of Moldova stipulates that the initiative to develop the National Security Strategy is the prerogative of the President (Article 25 and Article 364). [9]

The Moldovan Parliament approved the current national security strategy of the country on July 15, 2011. [19] Structurally, the strategy consists of 7 sections (introduction, national interests and security policy, strengthening of national security through foreign and defense policy, ways to ensure national security, national security sector and its reform, providing the national security sector with resources, stages of implementation, reporting and monitoring procedures).

To strengthen national security through foreign and defense policies, the strategy concentrates on the process of integration into the European Union; participation in international efforts aimed at managing contemporary threats and challenges; cooperation with the North Atlantic Treaty Organization (NATO); bilateral cooperation in the field of security; as well as carrying out of defense policy.

There are 12 ways to ensure national security.

The strategy instructed the government to bring its national programs





and action plans into line with the goals, priorities and policies outlined in the strategy, and the Supreme Security Council of Moldova is charged with monitoring the implementation of the Strategy and submitting an annual report to the parliament annually. Given the dynamic nature of the national security state, the strategy is developed for the medium-term period, which is set for a duration of 4 to 7 years (until 2015-2018). It is envisaged that at least once every four years the strategy is subject to review and updating.

Pursuant to the provisions of the National Security Strategy of the Republic of Moldova, the Ministry of Defense of Moldova developed a draft of the National Military Strategy in 2011 and published it for public discussion, but this project was not completed. Later (in August 2012), the government approved a strategy for informing and communicating with the public in the field of defense and national security for 2012-2016 and an action plan for the implementation of this Strategy. [10]

To harmonize the current strategy with today's realities, the Supreme Security Council of Moldova, at its meeting chaired by President Nicolae Timofti, approved a new strategy for Moldova's national security strategy and action plan for its implementation. The new version of the strategy covers issues of military, information and geopolitical security. Particular attention was paid to the problems of energy security, strengthening the principles of the rule of law, combating corruption, restoring the banking system, proper management, and settlement of the Transnistrian conflict. It was planned that the parliament will approve the strategy and it will come into force on January 1, 2017. [7]

However, the process of approving the new version of the strategy was stalled. Eventually the new president of the country (Dodon I.) signed a decree revoking the draft National Security Strategy, as well as the Action Plan for its implementation, developed during the mandate of the previous president, as the contents of these documents do not correspond to significant changes in the national, regional and international security spheres. [15]

Consequently, we have a strategy, and we have no alternative in this area, but we have poorly developed non-governmental organizations in the field of economic security. Particularly, in the case of depopulation, fight against extreme poverty, elimination of the inequitable inequalities in the income between the individual strata, etc.

Depopulation of the population became a serious problem for Moldova. Stable (not caused by one-time extraordinary circumstances) reduction in the population of the country for decades leads to an economic-social, and in the long term, political and institutional catastrophe. Administrative measures

on concealment of the problem severity lead to such facts when the National Bureau of Statistics of the country on its website indicates simultaneously four different figures of the population of Moldova (3.551 million people on current accounts, 2.998 million people in the 2014 census, 2.789 million who lived on the territory of the Republic of Moldova for the last 12 months and 2.596 million people with the usual place of residence in the Republic of Moldova). As a result, in the wilds of statistics, 550 to 950 thousand people are lost, i.e. 20-35% of the actual population of the country.

In the capital of the country, according to the population census, 339,000 people were registered, but the National Bureau of Statistics does not believe the results of its work and continues to argue that the residents in Chisinau are 533,000 people, correcting the census figures of 200,000 people or almost 60%. We note that according to the results of the last two censuses, the number of districts with a population of less than 50 thousand people increased from 6 in 2004 to 9 in 2014. The number of cities with a population of 10 to 20 thousand people decreased from 22 in 2004 to 18 in 2014. [2] In some villages, it is officially recorded that there are no more residents there.

The official depopulation of the country's population for the past 10 years was 578 thousand people or 17% of the population. The main reason for the decline in the population of the country for decades is emigration. In the 1990s, Russia was the main destination for the resettlement of the Moldovan population to other countries for economic, political, personal reasons. In recent years Italy, Romania, Bulgaria, and Turkey were added to such destinations. The volume of part of the money earned abroad for home has decreased in recent years, which indicates the establishment of emigrants on new lands and the growing gap with the homeland. Ultimately, the emigration of the working-age population of Moldova poses a threat to the very existence of the country in the distant future, which should become the central component in the national security system of the country otherwise there will be nobody to manage and to be managed, there will be no one to protect and to be protected.

In our opinion, we should react more actively, for example, to the worsening of the problem of providing the Moldovan population with drinking water. Within the framework of the current strategy, this threat is formulated in the form of "drinking water pollution". This is the continuation of individual statements' practice of apprehension and a non-systematic approach in the country to this problem. For example, in the national program "Moldovan village" it was stated that in the Republic of Moldova, 81% of



the urban population and only 17% of the rural population use water supply and centralized sewerage services. Other consumers use water for food and household purposes from wells, the number of which is about 150 thousand. In most cases, the quality of water from these sources does not meet the requirements of Gosstandart 2874-82 "Drinking water" for stiffness, fluorine content, insoluble sediments, etc., which leads to the occurrence of diseases. Trunk water pipelines (about 350 km) and water supply networks have a wear rate of more than 50%. 250 km of networks are in emergency condition and in need of urgent replacement, first of all - networks under pressure from lead. To increase the population's access to high-quality drinking water resources, it was planned to develop and modernize water supply and sewerage systems in 156 settlements, construction and rehabilitation of 93300 wells in rural areas etc. [11]

However, the national program "Satul Moldovenesc" on indicators of providing the population with quality drinking water was unfulfilled. As far back as in 2012, the Chamber of Accounts of Moldova came to the conclusion that drinking water in Moldova is of "terrible quality", and in some areas the situation is approaching a catastrophic one. Approximately 80% of the rural population does not have access to drinking water and is forced to use water that does not meet sanitary standards. [16]

During 2013-15, 13 projects on water supply and sewerage for a total of over 340 million lei were implemented in Moldova. 130 km of water supply networks and 27 km of sewage networks were laid. One water treatment plant (Manoiles village, Ungheni region) and one wastewater treatment plant (Otaci, Ocnita region) have been built. Access to water services for 21 thousand people, and access to sewerage services for 816 people have been improved. The average cost per person was 15 thousand lei (340 million lei / 22 thousand people). However, the water supply in Moldova does not necessarily supply the consumer with drinking water. Currently, only 50-60% of the population in Moldova has access to drinking water, and technical water comes to the consumer in Taraclia, Comrat, Ceadir-Lunga, Hincesti, Calarasi, etc., which are provided with running water. In Chadyr-Lunga, Nisporeni, Anenii Noi, the stations for cleaning drinking water do not work. [12]

The problem of water supply to the country's population has worsened in 2016, and then in 2017. First of all, this manifested itself in the Dniester river basin, on whose resources two thirds of the country's territory depend. In November 2012, Moldova signed a treaty with Ukraine on "Joint work in the field of protection and development of the Dniester River Basin".

The treaty was signed in Rome, during the Meeting of the Parties to the Convention on the Protection and Use of Trans-boundary Waters. It complements and details the agreements undertaken by the parties to the UNECE Convention on Trans-boundary Waters. [8] However, the Ukrainian side has not yet ratified the treaty. [14] At the same time, the strategy says nothing about trans-boundary waters, nor about joint work in the protection and development of the Dniester River basin, nor on other water resources of the country that are degraded or lost (for example, the Bic River).

The Agency “Apele Moldovei” appealed to the Ukrainian side to increase the discharge of water from the dam of the Novo-Dniester reservoir at the junction of three regions of Ukraine (Khmelnitsky, Chernivtsi and Vinnitsa) to 200 meters per second [6], which should stabilize the situation with the level of the Dniester in the territory of Moldova. However, with the commissioning of the third unit of the Dniester Pumped Storage Power Plant (GAES), in 2016, the problem is exacerbated. It should also be taken into account that in 2020 in Novodnistrovsk another turbine is planned to be commissioned, and only 7 turbines should be at this facility.

The problems of water supply will not be solved by underground sources. They are related to poorly restored resources and depletion of resources from a 120 meter underground horizon will lead to the need to leave for 156-160 meters, etc. At the same time, the underground waters of Moldova are mineralized, their constant use is harmful to soil and human health and water purification will make water more expensive. Harmful impact on the national water supply system is provided by micro-water supply networks and dams, which dehydrate rivers (for example, in the Bik river basin there are hundreds of micro-water pipelines [12]), deforestation (including near settlements and roads).

Taking into account the outlined, it can be stated that the contemporary problem of providing the population with drinking water should be attributed to the most important aspects of the national security system of Moldova. However, there is nothing about this in the strategy.

In general, we believe that in the new version of the strategy, advanced European and international experience, in particular the experience of the US national security strategy, should be widely used.

Thus, the US National Security Strategy, published on the White House website, is set out on 32 pages, including US President Barack Obama’s appeal and 28 pages of his own strategy text (without page # 6). Structurally, the strategy consists of 6 sections (introduction, security, welfare, values, international order and conclusion). [1]



In the introduction of the strategy, the main emphasis is on stating the fact that a lot of US opportunities simultaneously coincide with a variety of risks for the country's security as a leader in the global world. It is specially noted that the new strategy (2015), like the American leadership itself, is based on the enduring national interests set out in the 2010 national security strategy. This emphasizes the continuity and stability of the national course in the sphere of national security.

The section "Security" outlines the issues of strengthening the US defense potential, strengthening internal security, combating a persistent terrorist threat, increasing the capacity to prevent conflicts, countering the proliferation and use of weapons of mass destruction, combating climate change, providing access to common spaces, and strengthening World health protection.

The section "Welfare" focuses on ways to find solutions to such problems as the stirring up of the US economy, the strengthening of the country's energy security, leadership in science, technology and innovation, the formation of the world economic order and the abolition of extreme poverty.

In the section "Values", the strategy focuses on such aspects as maintaining loyalty to American values at home and promoting universal values abroad, promoting equality, supporting emerging democracies, inspiring civil society and young leaders, and preventing mass atrocities.

The "International Order" section includes a vision of a US rebalancing toward the Asia-Pacific region, an alliance with Europe, a desire for stability and peace in the Middle East and North Africa, investing in the future of Africa, deepening cooperation in the sphere of economy and security in North and South America.

In conclusion, the strategy notes that it creates an idea of the strengthening and preservation of American leadership in the modern world, explaining the purpose and prospects of American power. The final assurances of the commitment to the implementation of the main directions for strengthening US national security based on American leadership in the past century and in the future are given.

Along with the national security strategy, the US adopted a national military strategy [3] and a number of other documents specifying the national security policy.

An important lesson learned from the experience of the US national security strategy for the transition regions and, in particular, for Moldova, should be the attitude of one of the richest countries in the world to the problem of poverty. In the "Welfare" section of the US strategy, measures

to eradicate extreme poverty have been identified as one of the important activities. Such a direction in the activities to ensure national security in the regions with an economy in transition should be one of the main. The World Bank (WB) introduced the concept of poverty threshold in 1990. At the end of 2015, the World Bank set the level of this indicator at \$ 1.9 per day versus \$ 1.25, which was in effect since 2008. The decision was made based on the results of the survey in the 15 poorest countries in the world. [4]

As a result, as of January 11, 2016, the level of extreme poverty in Moldova reached 1177.5 lei per month (at the rate of the National Bank of Moldova of 20.66 lei for \$ 1). At the same time, the average pension at the beginning of January 2016 reached 1165.22 lei [17], i.e. less than the established level of extreme poverty. Only the subsequent “game” of the National Bank of the country to reduce the dollar to lei (up to 18.2-18.3 lei per dollar in May-June 2017) made it possible to derive mathematically the average pensioner above the extreme poverty line, which did not really affect the vital level.

In the economic block of the US national security strategy (“Welfare”), the need to make the economy work, which will be reflected in the growth of incomes, the population, an increase in the number of jobs, is in the first place. This example should become one of the most important in regions with a transition economy, where the incomes of the population are already extremely small. In Moldova, for example, the subsistence level for the able-bodied population at the beginning of 2016 was 1842.2 lei [17], which is only 56% higher than extreme poverty. At the same time, in 2015 there was a process of impoverishment of the country’s population, when the real wage index was 94.5%. [18] There is no radical change in this area in 2016 and in the first half of 2017.

An important lesson learned from the US national security strategy (2010 and 2015) for transition regions, including Moldova, is adherence to a previously chosen course. The measures and mechanisms for damping threats in their modern vision are being adapted to new conditions, based on stable long-term principles (of past and present centuries).

As the global leader of the unipolar world, the US flexibly integrates into changing modern conditions, responding multifaceted to the potential challenges and threats to the country’s national security. The ranking in the “international order” section of the regions (Asia-Pacific, Europe, Middle East and North Africa, Africa, North and South America) underscores the objective nature of the strategy, taking into account the expected growth rates and the level of economic, political and military potential of these regions, which should be taken into account by Moldovan politicians.



## Conclusion

In general, considering the US experience in ensuring sustainable management of the national security system, in our opinion, it is advisable:

- To distinguish the economic component and the standard of living of the population as the priority sphere of national security of the country, as the main goal of creating any state education.

- To sort out problems, among threats to Moldova's national security in the economic (and therefore social) spheres, which require urgent measures to overcome them. These are: depopulation of the population, a high proportion of the population with incomes below extreme poverty, inequality in incomes between certain strata of the country's population, aggravated problems of providing the population of Moldova with drinking water, etc.

- To ensure a real review and update of the national security strategy of Moldova at least once every four years, conducting broad consultations with civil society and using the experience accumulated by the world community in this field.

- To intensify actions that need to be taken in such important sectors for national security as health (life expectancy, child mortality, tuberculosis, hepatitis, venereal diseases, etc.), ecology (land, water, forest resources and air), education (compliance with European norms, quality, relevance), combating corruption (primarily in the highest echelons of power), etc., correlating the spheres of activity within the framework of the millennium goals proclaimed by the UN for Moldova.

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## APPLICATION OF THE CONCEPT OF TOTAL QUALITY MANAGEMENT (TQM) AS ONE OF THE CONDITIONS FOR EFFECTIVE INTEGRATION OF THE REPUBLIC OF MOLDOVA IN THE INTERNATIONAL ECONOMIC SPACE

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### **Abstract**

*The quality of products and services has become an indicator of high labor efficiency, a source of national wealth, a sign of a highly developed economy, a condition for a dignified life. Accordingly, it is necessary to apply the TQM concept to ensure this indicator.*

*At present, the question of quality in Moldova is very acute. Lagging the level of quality of domestic products from foreign competitors is becoming threatening, and with the insecurity of the Moldovan market the economy, employment, social and cultural life are significantly affected. Historical experience shows that from the attention to quality, the way out of crisis situations began in many countries. Logic suggests that in Moldova it is necessary to pay close attention to this "cure for crises".*

*One of the main problems Moldovan enterprises face today is their success-*

*ful adaptation to the conditions of a market economy, integration into the international economic space. The solution of this problem is a necessary condition for their survival and further development. The concept of the national policy in the field of quality of products and services rightly emphasizes that the main task of the domestic economy in the 21st century is the growth of competitiveness at the expense of quality growth.*

**Keywords:** *Total Quality Management, universal quality management, concept of TQM, quality assurance, economic integration*

**JEL Classification:** *M11, L15*

**Introduction.** The problem of quality never loses its relevance, it is constant. Quality is perceived as a strategic objective, the successful solution of which largely determines the stability of the national economy and its place in the global production and distribution. Quality assurance in the current conditions of economic development should not only become a priority, but be transformed into the rank of a national idea, and become one of the most important conditions for the effective integration of the Republic of Moldova into the international economic space.

Undoubtedly, underestimation of the importance of the quality problem and the need for systematic work on its improvement leads many key industries to lose their positions. Where the strategic role of quality is recognized and steps are being taken to increase the competitiveness of products, implement and apply the TQM, there is a chance to stop the development of crisis phenomena and stabilize production. This fully confirms the historical experience of different countries (the United States, Japan, Germany, Southeast Asian countries, etc.) and many foreign firms that have emerged from the crisis, directing efforts to improve the quality.

There is no doubt that the study of quality management problems, in particular TQM, is an imperative requirement of time, since this knowledge is extremely necessary in a market economy that implies the presence of an acute competitive environment of producers of goods and services.

There is a direct relationship between quality and production efficiency. Improving quality helps to increase production efficiency, leads to lower costs and higher market share. This implies the objective conditions that allow using this connection for the successful integration steps of the national economy into the international economic space.

**Main text.** The development of the world market of goods and services,



the sharp aggravation of competition in this market and the policy of state protection of consumers' interests created the need for the development of a new phase of quality management. This phase began to emerge in the mid-60s as the development of ideas of the previous phase in the direction of more complete satisfaction of consumers' requests. Thus, the Total Quality Management (TQM) has gradually replaced the universal quality management (TQC).

All this led to the situation when the release of products with "children's illnesses" or satisfying the consumer's needs to a lesser degree than the products of competitors on the market is connected with the development of the theory of product reliability and, on the other hand, with the widespread introduction of computer technology in the process of product development.

The basis for the concept of the new phase is:

- the idea that most of the defects in products are laid at the development stage due to the insufficient quality of the design work;
- transfer of the center of works' gravity on product creation from full-scale testing of prototypes or batches to mathematical modelling of product properties, as well as modelling of product manufacturing processes, which allows to detect and eliminate design and technological defects before the production stage begins;
- the concept of a "satisfied customer" took the place of the concept of "zero defects";
- High quality must be provided to the consumer at an affordable price, which is constantly reduced, because competition in the markets is very high.

Within the framework of the quality management phase, it is possible to overcome the contradiction between the quality and efficiency of production in its existing forms, and a new phase arises when a new form of this contradiction is manifested. For example, customer requirements, so that not only the products, but also the production process, would be environmentally friendly, i.e., not damaging the environment. [5] These ideas allow us to develop production from mainly new positions that allow us to improve the quality not only of products and services, but also of all processes in the enterprise, thereby increasing its competitiveness, both on the domestic market and beyond. Undoubtedly, all this creates conditions for successful integration into the world economic space.

If TQC is quality management to meet established requirements, then TQM is also the management of goals and the requirements themselves. TQM also includes quality assurance, which is treated as a system of measures, which gives the consumer confidence in the quality of the product (Figure 1).

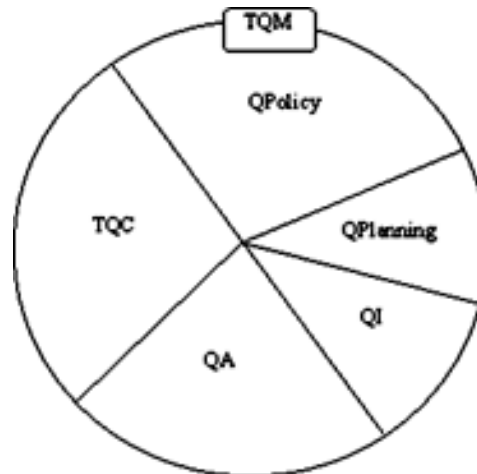


Fig. 1. The main components of TQM

Source: <http://helpiks.org/9-11856.html>

TQC - Total Quality Management;  
QA - Quality assurance;  
QPolicy - Quality policy;  
QPlanning - Quality Planning;  
QI - Quality improvement.

The TQM system is an integrated system focused on *continuous quality improvement*, minimizing production costs and delivering on time. The basic ideology of TQM is based on the principle that there *is no limit to improvement*. With regard to quality, the target setting is the tendency to zero defects; to zero unproductive costs, to deliveries - just in time. At the same time it is realized that it is impossible to reach these limits, but one must constantly strive for this and not to dwell on the achieved results. This ideology has a special term - "*continuous quality improvement*" (continuous quality improvement). [5]

The TQM system uses quality management methods that are adequate to the objectives. One of the key features of the system is the use of collective forms and methods of searching, analyzing and solving problems, constantly participating in improving the quality of the whole team. Undoubtedly, in TQM, the role of the person and *the training of personnel* is significantly increased. Motivation reaches a state where people are so passionate about work that they give up part of the vacation, stay at work, continue to work at home as well. Training becomes all-inclusive and continuous throughout their



work life. The forms of training are changing - business games, special tests, computer methods, etc. Learning turns into a part of motivation: a well-trained person feels more confident in the team, is capable of the role of a leader, has advantages in his career. There are developed and used special techniques for developing the creative abilities of workers. [5]

Thus, Total quality management is a system of actions aimed at achieving satisfaction and admiration of consumers (customers), growth of employees' opportunities, higher, long-term incomes and lower costs [6]. There is no doubt that this is the main goal of any business.

The international standard ISO 8402 gives the following definition of TQM: "Quality management and quality assurance": TQM (universal quality management) is an organization management approach aimed at quality based on the participation of all its members and aimed at achieving long-term success by satisfying the consumer and benefiting all members of the organization and society". [4]

There are interesting notes to the concept of TQM from the above standard:

1. "All members" means staff in all units and at all levels of the organizational structure.
2. Strong and persistent leadership of the top management, instruction and training of all members of the organization are essential points for the successful implementation of TQM.
3. With overall quality management (TQM), the quality concept is relevant to achieving all management objectives.
4. The concept of "benefits for society" implies the fulfillment of the requirements of society. " [4]

In the face of increasing competition in the world market, many countries - Japan, Korea, Singapore, Malaysia, Hong Kong, England, Germany, in recent years, Brazil - have raised the concept of universal quality to the level of the national idea. In the United States, publications appeared with proposals to amend the country's Constitution, reflecting the fact that the US is the birthplace of many quality concepts and should be a country of quality. Accordingly, it is necessary to bring the idea of universal quality to the level of the nation for many reasons. It is possible to single out the main reasons of this:

1. *Systematic nature of quality assurance.* The quality of products and services is a systemic concept, it is difficult to solve within the framework of a single enterprise.
2. *The authority of the product begins with its nationality.* The bulk of

consumers in their choice often focus on the country to which the producer belongs. The country's reputation for quality is a very important factor for success in international trade. Everybody knows: Japanese means excellent. Another attitude, say, to Chinese goods. It is possible to reverse the situation only by presenting the concept of universal quality as the basis of the country's economic policy.

3. *Social and Economic Aspect of Universal Quality.* The concepts of TQM are humane and fair, they carry a class world and cooperation between owners, managers and employees. In other words, the concepts of universal quality bring stability and justice to the social life of the country, society, and in this they also need to be claimed at the national level.

4. *Use of scientific and technical potential.* Obviously, the concepts of universal quality are particularly attractive for the scientific and generally intellectual part of society. A huge number of scientists, professors and university professors are not in demand today in the national economy. The large-scale implementation of TQM on a large number of companies with well-considered state support could begin the process of integrating science and production.

The economy of the Republic of Moldova is only at the beginning of the way to mastering TQM, and on this path there is a huge number of problems and reasons why this way is constantly becoming more complicated. Thus, preparatory actions and efforts are necessary to raise the concept of universal quality to the level of the national idea of our country.

Of course, there is a number of reasons for the inefficiency of our enterprises:

- aggravated political crisis;
- lack of a capital market;
- lack of investment;
- low level of morality and cynicism of a large part of workers;
- loss of a sense of justice and faith;
- structure of industrial enterprises that is inadequate to market mechanisms, concentration of powers on the upper floors of management;
- inefficient management;
- undeveloped marketing;
- poor quality of products and services;
- low productivity;
- lack of understanding of the competition's essence and the role of quality in competition;
- long terms of new products' development;



- lack of understanding of the education and training's role;
- lack of understanding of the information and data's role;
- high level of conflict;
- substitution of powers by the authorities, use of power outside of responsibilities (duties).

And now consider another list, which is typical for enterprises that use TQM. By comparing these two lists, you can determine the direction of enterprise transformation [6].

Typical features of enterprises using TQM are:

- high morale among all employees, recognition of common moral and ethical values and guidelines;
- senior managers and employees - one family, one team:
- justice is the basis for motivating and uniting employees, faith is the basis of optimism;
- flat organizational structure of industrial enterprises with project and process management styles;
- effective management, including:
- Clear control over managers by owners, shareholders, investors;
- a new management style based on a humanistic philosophy, ensuring high motivation and involvement of staff;
- a knowledge-based approach, a scientific method;
- availability of a system for training, nominating and selecting managers' leaders;
- orientation to satisfaction of all stakeholders - owners, investors, shareholders, consumers, employees, society;
- Orientation to long-term success, vision of the future and proper goal setting;
- high quality of products and services, continuous improvement of the quality of products, services, processes, work;
- quality as the number one goal, leading to lower costs, shorter terms, higher productivity and, ultimately, victory over competitors;
- staff as the number one value: their knowledge, creativity, commitment to the interests of the firm are worth more than the value of real estate and technology;
- continuous, lifelong education of all staff;
- processes for the circulation of accurate and reliable information covering the whole company;
- system, process and statistical thinking of managers and employees;

- Clear distribution of responsibilities, authority and interaction.

Promotion of TQM ideas in the economy is an independent task. The motivation can and should be the mass implementation of international standards. At the present stage, figuratively speaking, “intellect”, “means of production” and “capital” are in three different places. “Intellect” in the form of consultants and researchers should be called into industry. Simultaneously, “intellect” should become a link between capital and industry, solving the tasks of consulting, assessing the value of the enterprise for investors, increasing the value of the enterprise by improving management. Of course, it is necessary to develop a concept for the implementation of international standards in the Moldovan practice, taking into account the real conditions; to create a mechanism for the multiplicative implementation of international standards; to develop consulting in the field of TQM; minimize the damage from the formal and fictitious implementation of international standards.

### Conclusion

Thus, the promotion of TQM concepts and methods in the practice of national management is a priority, demanded and relevant direction at this stage. This predetermines the objective conditionality of the Republic of Moldova’s integration into the international economic space. Obviously, no matter how seriously we take the issues of universal quality, we must agree that enterprises, first of all, must get into business, into the market, and become competitive. Accordingly, for this purpose it is necessary to solve the following tasks:

1. To master the production of goods that are in demand. Therefore, it is necessary to start with the study of demand in the market and its accounting when creating and mastering the production of new products.
2. Create a sales network for sales, distribution of goods and information about it.
3. Minimize the costs of production, abandon everything superfluous, carry out restructuring.
4. Learn how to manage finances.

All of the above conditions for the successful operation of enterprises are considered in various quality concepts, but they are about improving them. At most national enterprises, these conditions need to be created practically from scratch. And only as soon as the enterprise somehow copes with these tasks, it can start creating and certifying quality systems that meet the requirements of international standards, as well as the TQM concept.





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## THE ROLE OF E-COMMERCE IN THE AGE OF GLOBALIZATION PROCESSES

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### **Abstract**

*The globalization of the world market has caused a profound transformation of marketing methods and formation of trans-boundary marketing, their activity overcoming the jurisdiction of some states. The virtual environment of the Internet lets us eliminate the traditional commerce restrictions linked to the geographical distance between the participants of electronic transactions and to totally automatize the sales process. This will influence the promotion of consumer goods in the World Wide Web, bringing the sale and purchase to the foreground, and granting more attention to the individual requests of the consumer.*

**Keywords:** *e-commerce, cloud, institutional factors, network marketing, cloud communications, corporations*

**JEL Classification:** *F18, F60*

**Introduction.** E-commerce totally changes marketing, transforming it from an applicable discipline, concentrated on the methods of products promotion, into an institutional base of virtual economic relations. Due to cloud communications that prevailed in the traditional distribution methods, the corporate “monsters” give way to hollow corporations that do not depend



either on the territorial markets, or on the institutional imperfection of applicable practices of rules of law.

In the marketing economy the division of functions of direct goods production and promotion infrastructure takes place. Now they represent different fields of economic activity, diversifying participants in institutional relations. The virtual environment of the Internet and of informational technologies represents an argument against R. H. Couse's opinion, according to whom the retentions from within the companies are smaller than those linked to the delegation of attributions to the external executives. [2, 250]

Due to the drastic reduction of transactional expenditures on the global consumer markets, an essentially new infrastructure is formed that represents the base for a market environment of e-commerce. This infrastructure covers all types of forms and relations, linked to the distribution of goods, organization of payment and provision of commercial services, forming a number of specialized providers. As a result, the marketing possibilities and the competitiveness of the e-commerce subjects become directly dependent on the development level of the market economy infrastructure. These changes influence market conditions during marketing activities. Thus, today, the transformation of marketing in network economy is caused rather by institutional transformation of marketing environment in the business management than by the change of marketing methods and instruments.

F. Kottler has suggested the use of "marketing network" notion as an index of finishing the institutionalization of these practices in the marketing economy. He mentions: "The final results of marketing relations is the formation of a unique asset of the companies that is the marketing network. This network comprises the company itself, as well as those who are implied in the activity of the subjects with whom the company has established mutually beneficial relationship" [4, p. 27].

**The research methodology.** The main institutional problem in creating marketing networks is solving the problems linked to the transformation of payments and of transport infrastructure of the marketing activity, including the legal regulation of e-commerce. The competitiveness is reduced to the usage of global facilities of market economy, as the marketing infrastructure that gained success over the years often represents an impediment in the innovational development, not allowing the traditional economy subjects to compete fairly within the consumer market with the network economy subjects. Therefore, today, the biggest competitiveness facilities are characteristic to the countries that have a well-defined pur-

pose on the formation of the division infrastructure of the e-commerce, as a foundation to the innovational development. In the market economy, even the smallest producers of consumer goods are guaranteed the access to global markets, thus being freed of the dictatorship of wholesale and retail intermediates. This both increases the competitiveness between producers of small goods and enables them to compete with big transnational corporations, due to the individualization of market offers.

E-commerce, as a sector of economy, field of activity and an object of activity for scientific analysis is viewed as a complex system in international economic relations. A great number of factors influence its development. [1] With some limitations, we can group them as it follows:

1. **Economic factors:** stability of macroeconomic situation; dynamics of national and consumer index of production; level of economy monopolization; level of competitiveness [3, p.45]; state fiscal policy (tax burden); investment attractiveness (climate); availability of governmental support in different economic sectors; level of investment in the development of informational technology.

2. **Infrastructure factors:** rate and rhythm of the Internet audience growth; degree of mutual trust between the market participants; level of development of electronic payment means; level of intellectual potential in the domain of informational technology development; availability of convenient and accessible methods in the delivery of goods.

3. **Technical factors:** development of informational technology; level of standardization of information exchange protocols; level of automation of business processes; reliability of communication network.

4. **Management factors:** dynamism in approaching the innovative ideas included by the administration; degree of correspondence of training system for administration; modern level of e-commerce development [3, p.15].

5. **Legal factors:** level of e-commerce legal regulation; degree of elaboration of legal aspects regarding the protection of intellectual property and personal data [3, p.82-84].

E-commerce development inevitably causes changes in the structure of economy. The formation of transnational clusters takes place in the virtual environment that puts together “intellectual and innovative industries, relations with other producers and consumers that are continually developing” [1]. These groups are often outside the jurisdiction of the states and much more competitive in comparison to traditional economic subjects. The reason behind this is the free access to markets and smaller transac-



tional expenditures. For example, a virtual seller from US is selling at Internet auctions on “eBay”, transporting the goods directly from Hong Kong, where the Chinese provider is, who receives the goods from the Japanese factory in Shenzhen. Or, another example is a Moldovan company that orders the production of a batch of goods in China for further direct delivery to its partners from post-Soviet states.

The global economic leaders remain to be the same. “The biggest part of the global economic activity and of international commerce is centered in three big geographical areas: North America, the Pacific region/China (including Japan) and Western Europe. These three regions encompass 80% of the world economic product and 75% of the global export”. The only change is the reason of their competitiveness. While in the traditional economy there is a direct link between the production potential and technological development, in the market economy the competitiveness is determined by the development of the e-commerce infrastructure.

We can say that the economy is transferring on the Internet and is managed by the person who operates the network infrastructure. It is already not so important where the production facilities are placed or which technologies are used at manufacturing consumer goods. All these may be bought, copied or created independently.

But, without the access to the global market that represents the e-commerce, these traditional economic factors of competitiveness would be useless. Therefore, the traditional production industry is transformed into global industries where “the competitive position of companies from the local and national markets is determined by their global positions”.

The structural transformation of the economic relations leads to the occurrence of those four global changes in the global economy:

1. The increase in the global economic importance of business networks that determine the competitive advantage on the market.
2. The separation of the fluxes of information and those of goods, as the transactions are virtualized and are independent from the location of goods.
3. The stratification of the global economy due to which new industrial branches with rapid growth and positive profitability are formed.
4. The priority in the development of economies with “growing income” due to the global redistribution of fluxes of information.

This is especially relevant “in the conditions of economic recession” and the drop in the consumer demand when, as F. Kotler specifies, the main objective should be the development of some “measures of cost reduction” [5, p. 27]. As a

result, the traditional retail and wholesale commerce declines and suffers transformations, and the transactional costs linked to their activity are redistributed between the consumers, and providers of logistic services.

The fast economic development takes place due to the reduction of series of goods circuit and the attraction of external resources from global markets. At the same time, the growth of e-commerce in many aspects is accompanied by the decline of the traditional commerce. In the global economy we can observe the phenomenon named by S. Bowles as “institutional repression”, which “takes place when the presence of some institution disturbs the functioning of another institution”. Thus, for example, just in 2007 the e-commerce launched in Japan led to the reduction of the number of intermediaries of different levels by a million.

In the conditions of virtual globalization a question appears: which countries benefit from the development of e-commerce and which ones lose because of the degradation of the traditional commerce. Thus, it is not by coincidence that many economists from the Western world say that today e-commerce is “one of the last sectors where the business may be profitable, occupying a portion in the global competitiveness”. Within the institutional development priorities of the retail commerce can be specified: the necessity of elaboration of informational systems related to the management of retail commerce to ensure the global supply, performance of payments and execution of banking requirements. It is at this stage that the global competitiveness appears, not being directly linked either with the production technologies, or with the financial potential.

At this stage, the indisputable world leader in the rating of e-commerce development is China. Initially, one of the factors of the phenomenal growth of the Chinese economy was “the economic transparency”, based on the development model oriented to export in which the growth of the currency income brings the development of technical, scientific and economic sectors, the acquiring of new communicational informational technologies, the introduction of modern schemes in the logical industry. But the production potential alone is, of course, not enough if there is no infrastructure of division. That is why today “the strategy of China is not in using the passive tactics, protecting commerce, but in using the active tactics, advancing and obtaining facilities based on the integrated unions”. China is actively using the opportunities of e-commerce to promote goods on the external market, both through direct sales and through developing drop shipping and other forms of economic cooperation.



The particularity of the Chinese approach in the e-commerce organization consists in the active regulation of the state that sets tasks in the businesses field and develops through them the most important directions of the national economy. The policy of the Chinese government regarding e-commerce may be characterized by three directions: guidance, encouragement and support.

The Chinese state determines the directions of the economic development, stimulates the economic activity and contributes to the achievement of the goals suggested to the economic subjects. For example, on January 8, 2005, the document "Some opinions of PRC's State Council's Office on the accelerated development of e-commerce" was published. It contained a list of institutional measures, directed towards the accelerated development of e-commerce:

1. The introduction of the modifications in the politic course and legislative system of PRC aimed at improving the rules of law, financial and taxation systems, the creation of conditions favorable for investments.
2. The acceleration of creation of an e-commerce support system in the fields of lending, standards, payments and transports.
3. Improvement of access to information, as well as the promotion of e-commerce among the large, medium and small enterprises, as well as among consumers.
4. Improvement of the technical base and of the services system in the e-commerce.
5. The promotion of the necessity to prepare the employees in the domain of e-commerce.
6. The enlargement of the international cooperation based on the e-commerce.
7. The contribution of the participation of e-commerce at the international commercial expositions of production.

At the same time, we are talking not only about the promotion of Chinese goods, but also about solving global problems. In 2008, in collaboration with Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand, China has created the CAFTA (China and ASEAN free trade area) free trade zone, based on ASEAN members. As the traditional channels of circuits of goods are underdeveloped, e-commerce represents one of the mechanisms that ensure the growth of the bilateral commerce of CAFTA with approximately 20% daily.

We can come to the conclusion that electronic business in the virtual environment is transnational and trans-boundary. Actually, this business is not placed where the buyers, intermediaries and sellers are, but where the commercial

infrastructure of e-commerce is located, namely the sales market. The participants of the virtual business can easily migrate from a jurisdiction to another, while the electronic transaction platform is linked to the registration place.

Thus, for example, in developing e-commerce, China has counted on the national payment system “UnionPay”, on the providers of national distribution and commercial supply.

Generally, if we are directed towards the international experience of the e-commerce institutionalization we can highlight three basic models of institutional regulation: European, American and Chinese.

**The European model** supposes the total regulation and registration of e-commerce subjects and of the transactions made within the e-commerce. An example of it is the introduction by the main European countries (Germany, France and Switzerland) of the public registry of trustworthy sellers, registered by the fiscal authorities. On the websites with goods sales offers, the sellers are obliged to specify their state registration id number. But the European model is not perfect as in the field of C2C infrastructure of European transactions this model is inferior to the global leaders because of the institutional restrictions. Those who earn in this sense are the big producers of goods and the commercial chains of goods at low prices because of the restrictions of external competitiveness.

**The American model** supposes an almost total refusal of implication from the part of the state in what regards e-commerce “to maximize the benefits from the use of the economic potential of the networks, for the national economies”. This model is based on the bill “Internet Tax Freedom Act” adopted in 1998 for a period of three years. This bill provides: “To establish a national policy against State and local interference with interstate commerce on the Internet or online services, and to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on imposing requirements that would interfere with the free flow of commerce via the Internet”. From then on, the established moratorium is regularly prolonged so far. Thus, the American model of e-commerce regulation consists in creating the necessary institutional conditions for its concentration and essential development of its infrastructure in the US. It is not incidental that the biggest global transactional platforms (Amazon, eBay) and payment service providers (PayPal) with a multi-billion monetary circuit is in the US.

**The Chinese model** supposes primarily the institutional development of e-commerce as a promotion instrument of Chinese goods on the external markets and the development of the division infrastructure namely in China. In China, e-commerce is not just a source of tax revenue, but also a mecha-





nism of a strategic importance for the stimulation of industrial production. Namely from this reason “in China, the majority of types of logistic activities are managed or strictly controlled by the state authorities”.

In China, in comparison with other countries, to develop e-commerce, with a well-defined purpose, the state creates favorable institutional conditions as the lack of a taxation system, the modern system of goods circuit and the preferential customs regime. The Chinese economy imposes taxes on the industrial production, not on e-commerce (B2C and C2C). But, at the same time, we cannot say that there are no measures in taxation of e-commerce businessmen.

The planned tax reform will make the personal income tax “one of the most important types of tax” that “will have a more important role than the corporate income tax”. Thus, in the field of institutional regulations of e-commerce, we can find a whole range of approaches in solving this aspect, as the hard regulation, the deliberate ignorance or the conscience stimulation. The approaches to the institutionalization of e-commerce are the same in just one aspect – the perception of the concept that it represents a global phenomenon that has to be regulated by global standards.

E-commerce as an institutional phenomenon has not yet obtained its category of legal regulation and its legal status is not definitely determined. This problem concerns not just the legal system of Republic of Moldova, but also generally the international law. At the same time, the institutional aspects of e-commerce regulation are not limited exclusively to taxation. Today, e-commerce is one of the main factors in the development of the civilization, ensuring the unprecedented growth of the entrepreneurial activity in the whole world. We all agree with F. Kotler’s statement: “The main question, linked to the legislation related to the entrepreneurial activity is: when will the expenditures for the regulation begin to overcome the benefits? Indisputably, each new law may be legally rightful, but at the same time, there is the possibility that its adoption will lead to a decline in the entrepreneurial initiative and to a slower economic growth” [5, p.177].

E-commerce has the properties of an institutional beginning, imposing the bodies of the state administration to take important decisions in this regard. On the one side, this offers global opportunities linked to the transformation of the supply chains. But, on the other hand, it helps “to reduce the political barriers and to make the eco-functional, interstate and intercompany transformations”. We can say that depending on the institutional policy priorities, the e-commerce may become an obstacle or a launching ramp for the modernization of the Moldovan economy. The vitality of the economic systems greatly depends on the capacity of adaption to the environment and its changes. The productive

economic system is distinguished by the capacity of improvement and innovation and this refers to the sub-constitutional plan, i.e. the level where socio-economic processes take place, as well as the constitutional domain, namely conditions of the institutional framework themselves.

### Conclusion

Due to e-commerce, the general vector of today's global competitiveness is oriented towards the reduction of the transactional costs and of the role of the traditional marketing environment. It represents great opportunities for the growth of institutional development of economy, based on the advantages of global virtual sales. But only the countries that will efficiently transform the institutional structure of the goods circuit and that would create conditions for the development of the market economy would be able to profit out of these advantages. In exchange for the spontaneous development of e-commerce, a new development direction appears, advantaged by state organs. This represents the main tendency of institutional transformations in the development of the global economy that determines the nature of global competitiveness in e-commerce.

The global e-commerce, created by the convergence of the informational and communication technology overcomes business limits and changes the character of the 21<sup>st</sup> century global economy. This ensures the opportunities and new competitive advantages both for the main Multinational Corporations (MNC) and for the Small and Medium-sized Enterprises (SME) that want to extend their sphere of influence on the promising international markets. SME only get to know these new opportunities.

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## THE DYNAMICS OF THE RESTORATION OF MONDAY ECONOMY POST-CRISIS

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### **Abstract**

*There is only little room in world economy for considering the development of trading capacities. Accelerated economic development has triggered new challenges. Economic development implies intensive and extensive growth. Developing emerging countries, the "Asian tigers" belong to an economic miracle. The extensive method calls for the increase of the quantitative factors: raw materials, labor force. Financial capital, FDI, energy can only be catalysts of economic growth. This method does not imply an increase in the human resources qualification, which degrades with the technique, with the economic crisis. The intensive method involves a new perception of things, improvement and rationalization of applied technologies. Using mixed methods brings synergy. Growth is measured by GDP growth. In a very poor country, it is impossible to diminish poverty without boosting economic growth. In such a society people are missing, whose rev-*



*enues can be redistributed. Economic development, even in a poor country, will ensure economic growth, reducing poverty. Economic renaissance triggered economic growth at the turn of the XX century. Openness and economic integration, technology transfer and know-how leger penetrate into poor and developing countries. Going on the already beaten path, the poor countries assimilate technological novelties by applying them in practice. The authors set out to investigate the character of the world economy at the beginning of the 21st century, in the post-crisis period, to identify the directions of development and adaptation to the new economic realities. Obviously, economic growth is ensured primarily by energy resources. Some energies are often exhausting, polluting or expensive. Mankind has become aware of the need to look for alternative sources of efficient energy. Prospects are promising enough.*

**Keywords:** *development, opportunity, availability, growth, obstacles, strategy*

**JEL Classification:** *F11, F12, H30, H87 O40, O47, O52, P67, Q32*

**Introduction.** Socio-economic development allows the detection of two atypical realities. Primordial is the perception by society and governments that the previous development path is not the best. The second reality is that tangible changes can occur as a result of a major shock such as: the agrarian revolution, the industrial revolution, the change of mentality and the way of thinking, the bourgeois revolutions, the post-Napoleonic era, the revolution of 1917, the defeat of Germany and Japan, the decolonization or search of new social-economic orientation vectors, USA, South Korea, Malaysia, Singapore, China, Spain, Portugal, Brazil, etc. Peter Russel expresses his thought in the work "The White Hole in Time" in 1992 that the ascending rhythm of knowledge will lead to the emergence of eons [16]. Peter Russell assumes that we are on the eve of a major leap in evolution, as significant as the appearance of life itself, and the essence of this leap is inner spiritual development, evolution, and inner accelerating transformation. The author believes that only through such a change of consciousness will we be able to successfully manage the global crises we frequently face [16].

As a result, in most industrialized and economically developed, modernized countries, continuity has been deteriorated over time, although the intelligentsia and society's top circles have endeavored to overcome some milestones for progress, which, however, have proven to be ephemeral. Most countries, which have advanced economically, have made a synergetic symbiosis between science and philosophical thinking. Modernization has not immediately changed the standard of living, even though overall eco-



nomie growth has been noted. The authors explain this phenomenon by the fact that the standard of living is not a radical (revolutionary) change in innovative thinking. Political elites aimed at gaining popularity, fame, influence over the masses, while economic elites make an effort to increase profits. We observe this in some Persian Gulf-exporting countries. We are currently witnessing the long-term crisis, we observe skepticism in the European and North-American Space. The higher the standard of living and the intellectual level - the birth rate decreases, the society ages. Accepting the wave of refugees, selecting immigrants, democratic loyalty, Brexit are the consequences of the lack of a viable strategy for the future. The recent crisis (2007-2012) has not led to technological, industrial or social advancement. It is an impression that democracy has "tired". Globally, we can note the disappearance of the middle class: "the baguette is enriched, and the poor are multiplying". Poor population is the largest part of society (about 85%), while wealthy people control over half of the world's riches. In the near future, 50% of global values will be managed by 1% of the rich.

According to Forbes, the world's richest people in 2017 are included: Bill Gates, Microsoft's president, with \$ 86 billion; Second place - Warren Buffett, head of Berkshire Hathaway, with \$ 75.6 billion; on the third place - Jeff Bezos, Amazon, with 72.8 billion USD, Amancio Ortega from Inditex, with 71.3 billion USD; fifth place - Mark Zuckerberg, of Facebook, holding \$ 56 billion; sixth place - Carlos Slim of Mexican Telecom, with \$ 54.5 billion; Seventh - Larry Ellison from Oracle, with \$ 52.2 billion; Eighth place - Charles Koch, of Koch Industries, with \$ 48.3 billion; New Place - David Koch, President of Koch Industries with \$ 48.3 billion; tenth place - Michael Bloomberg, Bloomberg, with \$ 47.5 billion [17]. Eight of the richest people on the Earth own a fortune equal to 3.6 billion poor people in the world [3].

**The aim of this research** is to investigate the state of the global economy at the beginning of the 21st century in the post-crisis period to identify the priority directions of the developmental vector and adapt national economies to new realities.

**Results and analysis.** In the US, cheap and clean natural gas is becoming more and more a coal competitor as the main source of energy. In other countries, coal is also becoming unpopular as governments tighten environmental laws. The United States reserves its position as the world's most impressive economy, with a GDP of USD 16,800 billion, surpassing China and Japan. At the current stage, the US has a role as a locomotive for the G7 countries, pushing euro zone countries, reducing unemployment,

and increasing the number of jobs in the periphery of the EU [3; 4]. A serious actor in the global economic market appears - China, which tends to overtake the US, by 2025 it will become the world's largest economic power [4]. Another major competitor is India, with a 4 times cheaper workforce than in China. Indonesia with accelerated pace moves forward, and soon will be ranked 16th according to its GDP with \$ 1 trillion.

In this context, the authors estimate that China's GDP in 2025 will be \$ 26.774 billion, surpassing the US's one. Economic discrepancy will increase to US \$ 43,700 billion, compared to US \$ 34,000 billion in 2030. In the European Economic Area, we estimate that the UK, with GDP of \$ 2,828 billion, will overcome the French economy. Germany reserves its fourth place with GDP of \$ 3.636 billion, although after 2024 it will be overtaken by India, surpassing UK GDP of \$ 3,100 billion, ranking third with USD 9,000 billion by 2029. Due to US and EU economic pressures on oil prices, Russia's economy creeps into economic growth from 8 to 10 [15].



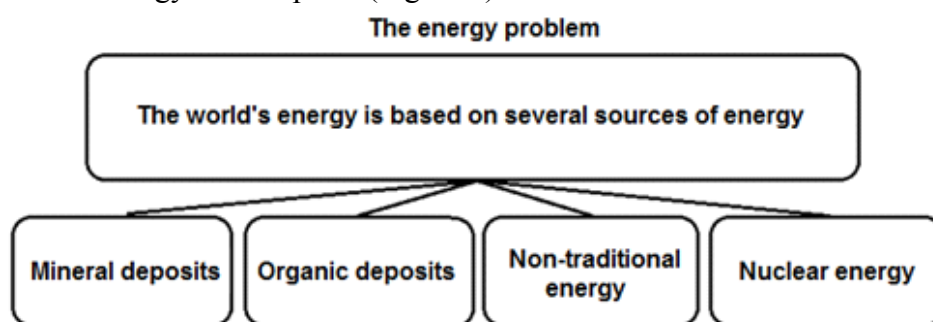
*Fig. 1. General Elements of Sustainable Economic Growth*

The energy problem is becoming more and more acute. China consumes almost half of the world's energy coal and urgently needs to tackle urban pollution and the global warming threat. The pollution level in some parts of Beijing reaches 265 micrograms / m<sup>3</sup>, compared to 25 micrograms / m<sup>3</sup> provided by the WHO. The cause is the emission of industrial smog, based on the use of coal, dust from construction. Since 2014, China has introduced some restructuring in the use of coal as a fuel, which reaches 66% [2]. In this sense, the government intends to increase by 15% the consumption of energy from non-fossil sources by 2020, and by 2030 to 20%. According to the Chinese forecast, over the next five years, the emphasis will be on wind and solar energy, nuclear energy and energy from biomass



raw materials: the steel, energy and chemical industries will be controlled by the release of polluting substances. Globalization will evolve with slow rhythms. It is expected that the pace of global trade growth will be dampened by global economic growth. Accelerating national protectionism will increase the difficulties in developing the world economy. The trade relationship between the US and China will increase, and the Transpacific Partnership will remain unresolved [5].

The world's largest consumer of energy activates the construction of power plants using inorganic fuels. In 2015, the launch of wind power plants with a total power of 100 GW was triggered. The use of solar energy will also increase (China is the largest photovoltaic market in the world). At global level, the growth of renewable energy will significantly exceed the overall energy consumption (Figure 2).



*Fig. 2. The prediction of the increase in energy consumption on the Globe in the years 2015-16 by types of sources, % compared to the previous year.*

Source: The Economist Intelligence Unit.

China's strategy is to accelerate the construction of nuclear power plants [1]. Another reason that determines Asian status as a key actor on this market is the strong competition from South Korea. Japan will begin reanimating nuclear reactors damaged after the Fukushima earthquake accident (2011), which will reduce demand for fossil fuel imported.

Despite the encouraging signs of a "green revolution," the inorganic fuel lacks the global support needed for a successful global breakthrough. In 2009, attempts to find a replacement for the Kyoto Protocol have ended [11]. However, the recent agreement between the US and China on CO<sub>2</sub> emissions into the atmosphere offers hope that other developing countries will start to take stricter measures to counteract global warming [12].

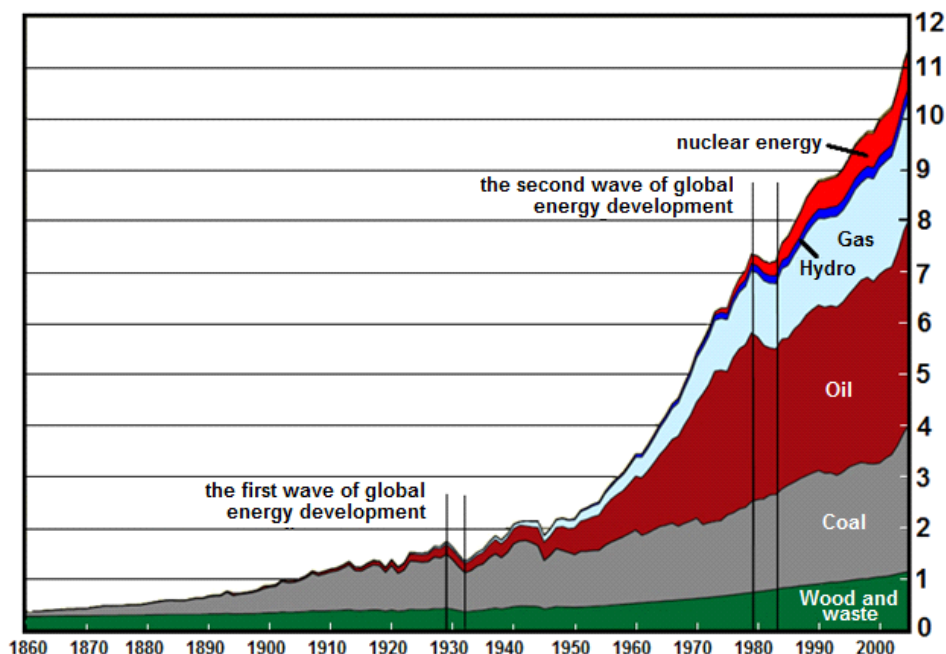


Fig. 3. Dynamics of the increase in energy consumption on Globe,  
% compared to the previous year

Source: The Economist Intelligence Unit.

World economy passes through fog and clouds. Doubts appear similar to the start of the financial crisis during the years 2007-2012. The reason for pessimism is due to events that indicate that a new economic cycle has not begun, and new methods of producing energy and food have not emerged. In short, the world economy will expand, but there will be imbalances between resources and the population [14].

At the same time, despite the reduction in per capita resources, countries have to exert excessive spending on the salaries of high-ranking officials and on the financing of the army. These costs are not easy to cut and, ultimately, they can be considered by governments as a way to solve problems. At the same time, workers' incomes are decreasing, at the same time, the taxes that will be directed to the above costs are increasing. Taxes are getting too high, and workers can not earn enough for a decent life [10]. Today, mankind depends on international financial systems, the trading system, access to oil resources, and for this reason we can predict that the crisis will be triggered at accelerated rates [8].





Assuming coal reserves will decline and other energy resources will grow moderately, it may be expected that in the coming years total energy consumption will be roughly the same. In the opinion of the authors, this is a rather optimistic forecast because many countries are currently trying to reduce oil production to raise prices [6]. Thus, we can distinguish two possible scenarios:

1) Oil prices will not increase too much so that oil consumption will increase in the same way as in the past;

2) Oil prices will rise significantly, which will positively affect the situation in oil producing countries, and consumers will not reduce consumption in response to high prices.

As the world population is on the rise, it is assumed that the per capita consumption of energy will decrease.

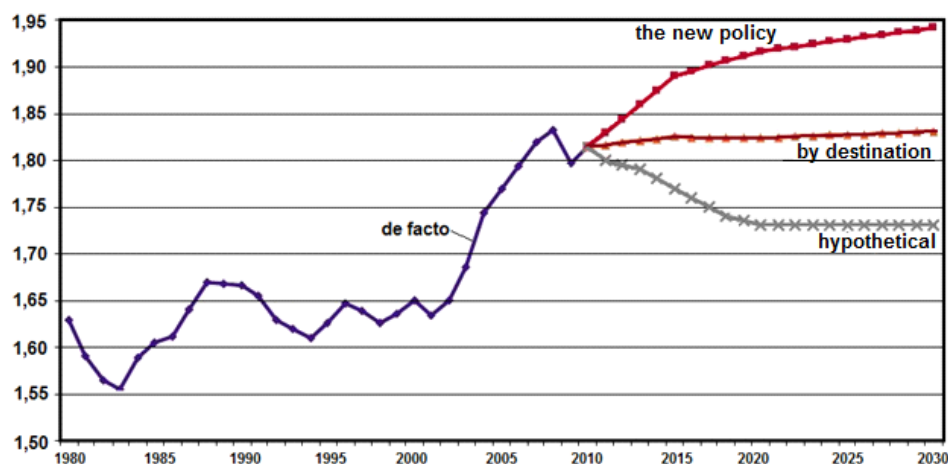


Fig. 4. World energy consumption per capita, 1977-2017

Source: Gail Tverberg Our FiniteWorld.com, 2017

In the Moldovan economy the authors note some positive trends in GDP growth. In 2016, GDP grew by 4.3%, rising by 2.5% in the second quarter [18]. As a growth engine, we have highlighted: wholesale and retail trade, construction, ICT services, financial activity. Agriculture stagnated, its contribution to GDP was negative. GDP growth was generally driven by domestic consumption and investment, while the export balance was deficit. The authors note that the deficit has persisted in recent years, falling in all positions. Import-export deliveries are reduced, but imports are shrinking exports at higher pace, with the trade deficit decreasing. There is a

negative balance of payments in all directions, including the EU, the CIS and third countries. The only renewable resource in the Republic of Moldova is agricultural production. Emphasis should be placed not only on agricultural production but on the export of agricultural products. It is necessary to expand the market, to look for new niches, as traditional markets are already over-saturated. An economic growth in the Republic of Moldova is estimated at 4-4.5%, while the IMF and Expert-Grup are estimated at 3%, the World Bank - 2.8%, the EBRD - 2.5-3%, although they will increase electricity, heating, gas, wages increased by only 11%. For the year 2018, we estimate an increase of 3.6-3.7%. Regretfully, we can notice that the Moldovan economy has not found its place in the international division of labor, it does not have a clear strategy for the economic sector.

### **Conclusions**

The situation in the world economy is very vulnerable. Many factors can trigger crisis by: raising energy prices, raising interest rates, implicit values that will become an indirect result of slowing down or negative economic growth, reducing the influence of international organizations, rapid change in foreign exchange rates, collapsing banks with the increasing number of default values and declining asset prices. Currently, the situation is not bad, but the issues mentioned above are serious and many analysts believe the world is awaiting crisis. However, the terms of crisis are not highlighted - it will be the world economy hit by crisis in 2018 or the issue will be postponed until 2019 or 2020.

Over the course of more than two decades of independence, the need for modernization and development was present, yet it is now obvious that there have been no serious changes in the country. The objectives of modernization and the main focus on certain sectors are not yet defined. The niches in the world markets, which the Republic of Moldova could occupy, are not yet determined. It is quite naive to suppose that the country can begin to grow rapidly only by restoring the wine industry. The emphasis on technological progress seems unconvincing, because no country has yet reached the standards of post-industrial society, not having first-hand knowledge of competitive industries that alone can be “consuming”.



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## NATIONAL AND INTERNATIONAL EUROPEAN LAW

### FORMATION OF THE SLOVAK STATEHOOD

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#### **Abstract**

*The historical development of the Slovak Republic has confirmed that it is located in a particularly hectic geopolitical space. In its history, the Slovak Republic, as one of the few states in the world has had to continuously endure struggles for its territory.*

*As each territory has its borders, so does each state need to determine its domain, where it will exercise its sovereign power. The significance of state borders lies within their difference from other types of borders in that the state borders are simultaneously the borders of governmental and political influence of other states surrounding the Slovak Republic.*

**Keywords:** *state borders, peace treaties, state territory, autonomy, sovereignty, cession of territory, sphere of influence, geopolitics*

The boundaries of today's Slovakia have not been specifically identified in the past. Until 1918, the established boundaries were only in the north and west of Slovakia, which were similar to the borders of the Kingdom of Hungary with Poland, Moravia and Austria. The southern and eastern borders of Slovakia were for the first time determined by the peace agreements in 1919.

Proceeding from the above mentioned, the borders of Slovakia in the

south and east were not established on the basis of the national principle. This means that while in the southern parts of the southwestern part of Slovakia the Hungarian population inhabited compactly, in the border areas on the established border, or somewhat south of it, there were then villages in Hungary with Slovak populations east of Esztergom, and then in Novograd and the Abovski Zhupa (district), and in the east in the Uzh Zhupa.

The mountainous regions of Slovakia, inhabited by representatives of the Slovak branch of the Lusatian-Silesian culture, were on the periphery of the cultural development of central Europe. Approximately, in 833, the ruler of the Moravian principality Mojmir defeated prince Pribina and captured the territory of his principality, which stretched in the region near the city of Nitra. In this way, one can say, a state arose that more than 100 years later the Byzantine emperor Constantine Porphyrogenet (Constantine VII Porphyrogenitus) named in his book "On the Management of the Empire" "The Great Moravia".

The next historical stage in the development of Slovakia's borders was the year 890 when the King of the East-Frankish Kingdom Arnulf of Carinthia gave power to Svyatopluk, the ruler of Great Moravia, over the Czech provinces. This led to the fact that Svyatopluk became the king of the Moravian Slavs. Critical was the period from 904 to 906, when the prince Svyatopluk perished, and, thus, the eastern part of Great Moravia became exclusively a Hungarian sphere of interests.

Modern terminology Great Moravia could be called a Moravian-Slovak state. This is evidenced by the fact that only the Slovak people preserved the special national identity since the time of Great Moravia.

After 907, the ancient Hungarians became the hegemons of the Danube basin and for more than half a century, East Mark also disappeared. The leaders of the seven Hungarian tribes shared their entire territory of the Danube basin.

In the 10th century and the first half of the 11th century, the territory from the lower and partially central Pogranya to the west to the Lesser Carpathians and Moravia belonged to the Nitrians appanage. After the creation of the Kingdom of Hungary, this geographical area in the Nitra region served as a frontier defense zone. At the beginning of the 13th century Slovak Zhupy were the territorial districts on these lands.

The strengthening of the idea of the Slovak ethnic territory during the history of Hungary was also greatly facilitated by the fact that during the Turkish rule, after the invasion of the Turkish troops in Hungary, this territory to the end of the 17th century narrowed to the one, which modern Slovakia represents, approximately, now.



At the end of the Ottoman raids, the Battle of Mohacs took place on August 29, 1526. The numerical weak Hungarian army, led by inexperienced military commanders, was completely defeated by the Ottoman army. The Battle of Mohacs closes the whole era of the development of Slovakia and its associated borders. After this, the gradual capture of almost all Hungarian-occupied part of the Hungarian kingdom by the Ottoman Empire, whose dominion lasted for more than one and a half centuries, comes.

Legally, Hungary became part of the Habsburg Empire in 1538, when the conclusion of the Varadian Peace Treaty, Ferdinand I of Habsburg, left the western part on the basis of the status quo and the eastern part of Hungary was left to Jan Zapolsky [1].

On August 29, 1541, the Turks occupied the Castle of Buda. The Sultan declared territories along the Danube right up to Tisza as the center of the new Ottoman Empire. Hungary was divided into three parts: the Turks controlled the territory between the Danube and Tisza, the principality of Transylvania with several thrones existed in the east of Hungary, and finally the northern and western part, the so-called Kingdom of Hungary, became an integral part of the Habsburg state formation. The center was the territory of today's Slovakia. The main royal institutions, administrative and ecclesiastical institutions moved to Slovakia. Bratislava, thus, became the place where the Hungarian Sejm was sitting and at the same time it was the capital of this state formation.

The Turkish occupation of the central regions of Hungary led to significant changes in the ethnic composition of the population. The higher nobility in Slovakia moved to the countryside, where they received possession confiscated from the supporters of Jan Zapolsky. The middle nobility and gentry moved mainly to cities. They entered the military service in the border castles and fortresses in the south of Slovakia. The cities converged with the territories seized by the Turks and many representatives of the middle class, among them a group of Hungarian merchants who settled mainly in Bratislava, Trnava and Kosice.

In the 17th century, the Prince of Transylvania György II Rakoczy influenced the change of political stability of the Ottoman-Habsburg border. The last anti-Habsburg uprising broke out in Hungary on September 27, 1703 under the leadership of Ferenc II Rakoczy. However, the Imperial Army defeated the Kuruts troops on August 3, 1708 at Trenchin.

Throughout the 18th century, population migration continued. The main direction of people's resettlement, in comparison with the two previous centuries, was the reverse, namely in the direction from north to south. The

resettlement was carried out to the southern sparsely populated regions of Slovakia, after the displacement of the Turks, to the central and southern parts of Hungary, to the north of today's Serbia and Croatia.

During the 18th century, the idea of an ethnic territory of Slovak nationality crystallized more and more, and internal political unity began to deepen. Matei Bel, a Slovak with encyclopedic knowledge, defined the limits of 13 North-Hungarian administrative units inhabited by Slovaks. The first sign in the issue of creating an independent national Slovak territory is found in the speech of Ludovit Stuhr before Sejm in 1840 [4]. A more precise definition of the Slovak ethnic territory is found in P.Y. Shafarik "Slovak national description". Shafarik defined in it the boundaries of the Slovak ethnic group on the basis of the Slovak dialect.

On May 10, 1848, the Slovak intelligentsia proclaimed a petition to the Viennese top under the title "Requirements of the Slovak people." This program document, among other things, called for "defining ethnic boundaries of each people for the purpose of participating in national parliaments and the need to organize local administrations".

At the Slavyansk Congress in Prague, Ludovit Shtur himself expressed an opinion on Slovakia's entry into the "Austrian framework of the Slavic component", in which the territorial units inhabited by individual Slavic peoples would be part of the federal formation [7]. At the end of 1848, the plan for the possible creation of a Slovak kingdom was discussed [3, p.58-59].

These efforts were not included in the "Ochered" Constitution of the Austrian Empire of 1849, which rejected the Slovak efforts set forth in the petition to the monarch. This petition contained, inter alia, an appeal to recognize the identity of the Slovak people and to allocate to it on an ethnic basis a certain territory.

After the defeat of the 1848-1849 revolution, the Viennese government, in the person of Interior Minister Alexander von Bach, strengthened the centralization of the empire. In Hungary, a military dictatorship was introduced. A royal governor, who was controlled by the Vienna government and the imperial court, ruled the country. The official language in the whole monarchy was German. The Viennese government made minor concessions to the Slovaks in that the Slovak language could also be used in communication with the authorities in the Slovak zhupy. In 1853, Franz Joseph I abolished serfdom, the government, however, sought to preserve as many privileges as possible for aristocrats.

In 1859, Austria was defeated by the Italian national liberation forces





who fought for the unification of Italy and the separation of the regions of Italy from the Austrian monarchy. The peoples began to proclaim their demands. Nevertheless, the emperor preferred to support the Hungarian demands - he restored the Sejm in Hungary and, practically, instead of a centralized state, established the existence of a dual monarchy, and as a result all of Hungary fell under the control of the Hungarian government, the Sejm and Zhup bodies, who immediately began implementing their old plans by the Magyarization. This led to the strengthening of the national movement of the Slovaks, culminating in the proclamation of the Slovak national program - "the Memorandum of the Slovak People". In such conditions, the Slovak National Committee decided to suggest the already applied requirements of the Memorandum directly to the monarch. The Slovak district was supposed to have 16 regions, which should be in the south limited by the Slovak-Hungarian ethnographic boundary [9]. It should be noted that the Memorandum, as well as the Privileges, Vienna did not take into account, and the claims arising from them moved from the Imperial Council to the Royal Hungarian Courtyard Office for discussion, until finally they were lost in the archives. The Hungarian government policy was aimed at strengthening state centralization. The Hungarian government's policy towards minorities remained unchanged. In this situation of political forces, when Germany supported the efforts for Germanization and the Magyarization of Austria-Hungary, it was impossible to change the political situation on its own. A change could occur only in the case of radical shifts in the international situation.

The outbreak of the World War I caused a wave of chauvinism and pseudo-patriotic enthusiasm in many European countries. The idea of the Czech-Slovak statehood among the Slovak public during the war appeared relatively quickly. Abroad, resistance began to be organized against Austria-Hungary to create an independent Czechoslovak state. T. G. Masaryk formulated his idea of the first future common state of Czechs and Slovaks back in October 1914. In May 1915, T.G. Masaryk summed up his plan for a memorandum, which he called the Independent Bohemia, for the British Foreign Office. The map of Czechoslovakia back in March 1915 was part of the confidential Memorandum of Masaryk, proposed in London. The chapter on the territory and population of the planned state said: "The Czech state will consist of the so-called Czech lands, namely the Czech Republic, Moravia and Silesia, they would have been joined by the Slovak lands in the north of Hungary, from Uzhgorod through Kosice on the ethnographic border, and down the Ipel River to the Danube, including Bratislava and the entire Slovak north as far as the border line of the Hungary" [2, p.246].

At J. Rotnagl's request, the chairman of the Czech-Slovak Guild in Prague, Sh. Klim developed a proposal on the borders of Slovakia within the framework of the future Czech-Slovak state. The project was based on the principle that it is unacceptable to take into account only ethnographic boundaries, but it should be about their combination with natural boundaries, so about taking into account economic aspects.

The demand for Slovakia's accession to historical lands, in the Czech official policy in connection with the previous formation of views, arose almost at the last moment. Along with the dominance of radicalism, in the Czech official policy the idea of including Slovakia in the overall state was finally confirmed. On January 6, 1918, the so-called Declaration of the Three Kings was prepared by the Czech deputies of the Imperial Council and by the Czech, Moravian and Silesian land Sejms. It was proclaimed on behalf of the "subordinate and politically suppressed branch of the Slovak in Hungary" for an independent state based on the right to self-determination [8, p.81].

Representatives of the Czech-Slovak resistance abroad sought to obtain from the Entente states the official recognition of independent Czechoslovakia. Political representatives of the Entente at that time still could not decide on the last step, which would mean the elimination of Austria-Hungary.

The Czechoslovak National Council changed tactics and tried to get support not from the Entente as a whole, but from individual governments. And this tactic was successful. Significant contribution to this process was the participation in the military actions of the Czech-Slovak legions in Siberia. The Czechoslovak National Council was recognized as the Czechoslovak government first, and the Czechoslovak troops as allied, by the French government on June 29, 1918. On August 9, 1918 so did the British government, on September 3 - the US government and on October 3 - the Italian government. T.G. Masaryk also sought to mobilize Czech and Slovak compatriots, to achieve their unity, so that they could more effectively support the Czech-Slovak movement. The Agreement, signed on May 30, 1918 in Pittsburgh, called for the creation of a common democratic Czech-Slovak state, in which Slovakia was to have autonomy. The agreement gave a new impetus to the movement of compatriots in the United States. T.G. Masaryk also tried to influence the US government and specifically on President Wilson, that the latter would favor independent Czechoslovakia.

The chairman of the Czech Association Frantisek Stanek spoke at the beginning of September in the Imperial Reichstag and without ceremony declared that the Czechs had already parted with Austria, and the Czech



question would be decided at the international forum. In the same spirit, the Slovak deputy F. Jurig, who on October 19 in the Hungarian Sejm, announced that the Hungarian Sejm did not have the right to represent the interests of the Slovaks at a peace conference, and only the Slovak National Council had this right.

The decisive factor was the new Czechoslovak state power, which through the military seizure of Slovakia by Czech and Slovak volunteers with the help of foreign troops imposed a specific way of including this territorial part in the republic.

Czechoslovak requirements at the Paris Peace Conference were fixed on the main demand for recognition of the three main lands of the Czech Crown's historical boundaries - the Czech Republic, Moravia and Silesia, as well as determining the optimal boundaries for the "annexed" Slovakia and Transcarpathian Ukraine, and, finally, on the border issue with Poland. The peace conference in Paris began on January 18, 1919. A so-called special Commission on the Czechoslovak question was set up at this conference, which was to consider all the territorial requests of the Czechoslovak delegation and to invite them to the Supreme Council for final approval. On February 27, 1919, at the first meeting of this Commission, chaired by the representative of France, Jules Cambona, all its members agreed with the principle of recognizing historical boundaries as the basis for further action. In general, one can state that the peace conference in Paris accepted most of the Czechoslovak territorial demands. Slovakia along with the Transcarpathian Ukraine were approved as part of Czechoslovakia. The border dispute over the Teshinsky District was finally resolved by dividing it into two parts.

The boundary line between Slovakia and Hungary was regulated by the Treaty of Trianon, concluded on June 4, 1920, according to which the problem of determining the southern borders of Czechoslovakia was resolved in an international legal way. In accordance with Article 50 of this treaty, a Czech-Hungarian delimitation commission was made up, which was to establish the boundaries indicated in Article 24, clause 4 of this Trianon Peace Treaty [6, p. 329-331].

Poland linked its claims to the northern border, which it presented at the Paris Peace Conference. In addition to the disputed territory of the Teshinsky District, Poland had territorial claims in Orava and in the Spissky Krai. The Polish side argued its position on the border claims to these parts of Slovakia, mainly because they were populated by the Poles, and justified it by "improving their strategic position in these regions". In July 1921, the

Czechoslovak Delimitation Commission proposed this dispute to an ambassadorial conference that requested clarification from the Council of the League of Nations, which in turn referred the dispute to the Permanent Court of International Justice in the Hague (later the International Court of Justice in the Hague). The International Court of Justice supported the Czechoslovak position, the argument for which was the current decision of the Council of Ambassadors on the new borders of July 28, 1920 [5, p. 321-323]. The Council of the League of Nations adopted a resolution that was similar to the Czechoslovak position.

Since 1918 and during 1919 the question was solved also on the eastern part of the Slovak border, which was closely connected to the Transcarpathian Ukraine. The territory of Transcarpathian Ukraine or Subcarpathian Rus, as well as Slovakia, was neither an administrative nor an autonomous unit in Hungary. A historic event in the development of Transcarpathian Ukraine was the declaration of the Hungarian Rusyns, proclaimed in the United States, which they favored the annexation of the Rusin territory of Hungary to Czechoslovakia on October 26, 1918 in Philadelphia. Deputy Chairman of the Central Russian National Rada, PhD in Law Antony Beskid, together with representatives of the Czechoslovak delegation at the Paris Peace Conference, spoke in favor of the annexation of the Subcarpathian Rus to the Czechoslovak Republic. The Peace Conference concludes that it will not leave the Rusyns living in one state with the Hungarians, but will, in accordance with the wishes of all Rusyns, join the Subcarpathian Rus to Czechoslovakia.

The borders of Slovakia with Austria established a treaty signed at Saint-Germain-en-Lay on October 10, 1919. This Treaty, in Article 27, clause 6, points to the old administrative borders between the Czech Republic and Moravia on the one hand, and Upper and Lower Austria on the other.

The state borders of Slovakia with the Czech Republic were not in fact precisely defined until 1993. The historical breakthrough was the conclusion of the Treaty between the Slovak Republic and the Czech Republic on the general establishment of the state border, which was signed in Prague on October 19, 1992, and which was replaced by the Treaty on Joint State Borders between the Slovak Republic and the Czech Republic, signed in Jidlochovice on January 4, 1996. The United Slovak-Czech Border Commission prepared this historic agreement. The main task of this commission was to designate and measure the unidentified Slovak-Czech state border. The administrative border of the republics determined its passage.



The Czechoslovak Republic, after the Second World War, by signing the Treaty “On Transcarpathian Ukraine” on January 29, 1945, transferred Subcarpathian Rus to the Soviet Union. The border that was between Slovakia and Transcarpathian Ukraine, established on September 12, 1938, became the border between the Czechoslovak Republic and the Union of Soviet Socialist Republics, and later between the Slovak Republic and Ukraine.

The historical development of Slovakia confirms that it is located in an extremely unstable geopolitical space. The Slovak Republic in its history was forced to always fight for the most important thing - for its territory. As each territory has its borders, so the state needs to determine the limits of its influence, within which the state exercises supreme power. The state borders are of particular importance, and what distinguishes them from other types of borders is that these state borders are at the same time the boundaries of the political and powerful spheres of the surrounding countries with which the Slovak Republic borders.

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## THE EUROPEAN COURT OF JUSTICE'S ROLE IN REVIEWING LAWS' CONSTITUTIONALITY

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### **Abstract**

*The European Court of Justice (hereinafter the ECJ) is an institution of the European Union, which the Constitutional Treaties have entrusted to ensure the correct interpretation and application of European law.*

*The Member States Representatives, being present at the negotiation on signing the Treaty of Paris deemed the Court of Justice as the true body to supervise the legality of acts issued by High Authority and the Special Council of Ministers, aiming to assure, at the same time, the balance between these institutions and member states, and also to guarantee the Economic Coal and Steel Community authorities' non-interference in the fields falling under the sovereignty of member states.*

**Keywords:** *The European Court of Justice, reviewing the constitutionality of laws, democracy, sovereignty, constitution, legal system, national justice*

**Introduction.** ECJ has been the subject of numerous researches and analyses, as any other European Union institutional body, seeking to identify its function in the European architecture, as explained bellow. Bellow we are going to take a look at the cases with the greatest resonance, to point



out the key moment which will mark the Republic of Moldova's constitutional doctrine.

**Applied methods.** In the context of this article, we considered it appropriate to carry out a thorough research through the analytical, comparative, systemic and prospective methods of the normative repertoire on the issue of the European Court of Justice's role in controlling the constitutionality of laws in the impact of the final study of constitutional law, especially in the Constitution of the Republic of Moldova. The method of logical analysis (deductive, inductive, generalization, specification, etc.) is widely used in the content of the research and, in particular, the synthesis of the opinions of the various authors on the researched problem of the native laws in the present case. The comparative analysis method was used especially when comparing legislative acts and doctrines of different countries in the concerned field. The systemic analysis method is necessary for researching the national and international legal rules, by institutional, material and procedural order. The prospective methods are used to describe the existing tendency related to the European Court of Justice's function issues while reviewing the constitutionality of laws, especially via national practice unification in relation with the international one.

**Research results.** The Romanian author **F. Gyula**, sustains that the Union's legal rules application is subject to a judicial review through native law, carried out by the Luxembourg Court, which is intended to ensure a unitary interpretation of Union's law on the whole Community's territory. At the same time, as a legal nature, having a mandatory and not optional membership for the Member States, it has the status of a supranational jurisdictional body [17].

**Alec Stone Sweet** has approached the subject of the European Court of Justice in light of its impact on the "judiciary" process over governance within the European Union. He also investigates the interrelationship between the ECJ and the national courts, a relationship that has its legal origin in the text of Article 267 of the TFEU [34, p. 29-33].

Another researcher – **Michael Rosenfeld**, devoted himself to an interesting and at the same time relevant issue – comparative examination between the European Court of Justice and Supreme Court of the United States, especially the importance of reviewing the constitutionality. He concludes, that both the European Court of Justice and Supreme Court of the United States are not constitutional, but undertake in reviewing the constitutionality, based on legislation duties [33. p. 33-63].

Another group of European constitutionalists thought about the problem of reviewing the law constitutionality through EU legislation and the

ECJ established practices. Thus, the researcher **Jurgen Schwarze**, examined the origins and actual situation of monitoring the law constitutionality on the EU territory [35]. On the other side, in a co-author report, researchers **Koen Lenarts and Tim Corthaut**, conclude that reviewing the law constitutionality is a sine-qua-non element that contributed to the development of European Constitutionalism [29]. The same ideas are exposed by **Anthony Arnall** in his monograph dedicated to European Union and ECJ [1] and by Alexander Turk, who address the issue a little wider, studying the reviewing of law constitutionality problems in European Union law [36]. Whereas **Damian Chalmers** will analyze the European Court of Justice's place in European Union institutional system, considering ECJ "the third pillar" [5].

On the other side, some researchers focused on correlation between international acts and treaties and European Court of Justice's activity, through impact, that its decisions produce or could produce. This is **Lawrence Collins** case, who analyzed the interdependence of external relations and reviewing the constitutionality problem [6]; **Maria Ketvel**, who examined the ECJ jurisdiction problem through the external and security politics [27]; **Stefan Griller**, who analyzed the European Court of Justice's decision's impact in Kadi case upon the international law, the basic human rights and the rule of law [18].

If, however refer to legal framework that governs the matter of legal relationships, about monitoring the law constitutionality by the European Court of Justice, we will highlight, that based on Treaty's anticipations concerning the European Union and concerning the European Union operation, the Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties [37, Article 263].

We note a duties extension, in this respect the Court has jurisdiction pursuant to Article 263 TEU [37] (ex Article 230 TEC [38]) under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives. The Court shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties. More than this, any natural or legal person may, under the conditions laid down in current legislation, institute proceedings against an act addressed to that person or which is of direct and individual





concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures [14, p. 236].

Also, we note that pursuant to Article 269 TFEU it shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article 7 of the Treaty on European Union solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article [14, p. 234]. Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request. (Section 2 from Article 269 TFEU).

In terms of compliance guarantee of subsidiarity and proportionality principles, the judicial review by the European Court of Justice is decisive, whenever it is required. [2, p. 25].

However, the greatest attention of researches pursuing the law reviewing by the European Court of Justice was directed to the interrelationship between National Courts and ECJ, possible decisions' impact and limits of ECJ upon the national legislation system.

This way, **Andrea Biondi** emphasized upon some national procedural limitations in relation to the European Court of Justice rulings and practices [3]. But **Alan Dashwood** insisted on highlighting the multiplicity of issues, often controversial, appearing from the relation between state members and its institutions, especially the European Court of Justice [15].

With regard to union courts' decisions, we will highlight, that its rulings effects are exercised over all Member States, based on the same law principle. But there also exist critics regarding this, like, most member states did not see a similarity between the Luxembourg Court and their Constitutional Courts, some of them do not even recognize union courts' decisions (Germany), but other considering their position in the constitutional system, moreover, welcome the cooperation between the National Constitutional Court and the Union Court. The German Federal Constitutional Court had set in Solange I case, that as long as Union legislation does not become at the level of protection of fundamental rights, equivalent to that provided for German Constitution, as well as a similar level of democratic legitimacy of its legislative jurisdiction, the Court will continue to review the Union's secondary legislation in accordance with national constitutional standards. In Solange II case, after eight years the German Constitutional Court expressed within the meaning, that the minimum level specified in the first decision was reached and as long as Communities, firstly by case-

law of the Court of Justice, they will continue to provide effective protection of fundamental rights, the Constitutional Court will not be able to review the secondary legislation in relation to Constitution, although it will retain the Union Court's discretion. [39, p. 85-56]

From the present case you can observe, that the interrelationship between National Courts and ECJ topic was enlarged, greatly, with reference to its impact on the German Law system. According to this, we emphasize **Dieter Grimm's** scientific efforts, with his study focused between ECJ and national courts, emphasizing the German Constitutional prospects in the light of Maastricht decision [19] and Mattias Kumm's decision, who was wondering who would be the final umpire of constitutionality in Europe, providing in his study three conceptions about the relationship between the German Constitutional Court and the European Court of Justice [28].

In general, the European Court of Justice jurisdiction, its role and place in the institutional architecture of the European Union, reviewing law constitutionality and this review impact on Member States, have been the subject to multiple arguments and interventions on various doctrinal dimensions.

Therefore, the President of the Court of Justice, **Rodriguez Iglesias** was interested in the institutional reform of the European Union and welcomed that the case-law of the Court of Justice has contributed to the Constitutionalisation of the Community legal order. In the same perspective the President of the Court specified, that the growing importance of judicial review is useful and according to this he had shown, that a uniformity of the jurisdictional protection system based on Community model, seems, to be really the best way to ensure the respect for the right in all fields of the European Union [7].

Regarding to this, **Constanta Calinoiu and Victor Deculescu** in their work European Constitutional Law [7] present some the Court of Justices' problems in relation to institutional reform of the European Union.

All these challenges listed above, and others that were going to appear along with enlargement of the European Union and the imminent institutional reform, caused the appearance of certain concerns, which materialized in doctrine with multiple studies, such as: **Piet Eeckhout**, who insisted especially to point out ECJ impact in fields of highest resonance such as: freedom, security and justice, emphasizing the main challenges and problems [16].

We should note that, after signing of the Treaty of Lisbon (signed on 13.12.2007 enforced on 01.12.2009) a studies and scientific concerns catalyst has played in reviewing the law constitutionality exercised by the Eu-



European Court of Justice. Immediately after signing this Treaty, many constitutionalists started to wonder where ECJ is going. For example, the constitutionalist **Stephen Carruthers** analyzed the Treaty of Lisbon's impact upon the European Court of Justices' jurisdiction reform in judiciary and internal affairs field [8]. Whereas **Dorota Leczykiewicz** focused on basic human rights issues and especially on their ECJ protection in the light of new rules of the Lisbon Treaty [30]. At last, Rene Barents has made a generalization of the most relevant activity aspects of the European court of Justice, which were influenced-modified through the Treaty of Lisbon [4].

Based on the above, it can be concluded that the European Court of Justice is not really a traditional constitutional court. But even more, talking about the type of court (national or international) typical to ECJ, there are two points of view in the doctrine: 1) those who classify it on the level as international courts, taking into account the European Communities, and classifying the Community law as international; and 2) those who characterize the Court as being like a national Court or as a Constitutional Court.

Both points of views have the right to exist, being true partly. Those who have the first point of view can be objected, that: Courts' decision are mandatory and enforceable: its jurisdiction comprise the states and other subjects of law; The State Members almost never denounce between themselves to the Court, but to the Commission ( the fact that after that, it applies to the Court to see if its Community law was violated or not, is another thing ); but also, that the Court does not have a superior court status relative to the Court of First Instance.

Whereas those who characterize the Court as being like a Constitutional Court can be objected, that: the Court shall decide on constitutionality of rules of Community law, but it also provides the national judge with its right concrete interpretation.

Based on the Constitutional Court, the Republic of Moldova will establish working relationships with the European Court of Justice, thing that will bring huge benefits to our country: both for persons and doctrinaire.

**Reviewing the laws' constitutionality in some European Union States:  
Germany – an actor with traditions in reviewing the laws' constitutionality.**

In the case of a normative review, on application of the Federal Government, of a Land government, or of one fourth of the Members of the Bundestag, the Constitutional Federal Court can examine – among others - concerning the formal or substantive compatibility of federal law with the Basic Law.

In the field of reviewing the laws' constitutionality, the Basic German Law expressly requires the following cases: **1)** on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of a supreme federal body [9, Article 93, Lined (1) point.1]. **2)** in the event of disagreements or doubts concerning the formal or substantive compatibility of federal law or Land law with this Basic Law, or the compatibility of Land law with other federal law, on application of the Federal Government, of a Land government, or of one fourth of the Members of the Bundestag; [9, Article 93 Lined (1) point.2]. **3)** in the event of disagreements concerning the rights and duties of the Federation and the Länder, especially in the execution of federal law by the Länder and in the exercise of federal oversight; ; [9, Article 93 Lined (1) point.3]. **4a)** on constitutional complaints, which may be filed by any person alleging that one of his basic rights has been infringed by public authority; [9, Article 93 Lined (1) point.4a]. **4b)** on constitutional complaints filed by municipalities or associations of municipalities on the ground that their right to self-government has been infringed by a law; in the case of infringement by a Land law, however, only if the law cannot be challenged in the constitutional court of the Land; [9, Article 93 Lined (1) point.4b].

All these laws show that, there are a lot of possibilities to cause Court's review on Government's actions and omissions. In a specific case, these possibilities depend on constitutional law, that is if the Basic Rights as contested, grant to petitioner a violated right by the Federal Government [20, p.11].

If a court concludes that a law, whose validity its decision depends on, is unconstitutional, the proceedings shall be stayed, and a decision shall be obtained from the Land court with jurisdiction over constitutional disputes where the constitution of a Land is held to be violated, or from the Federal Constitutional Court where this Basic Law is held to be violated. [9, Article 100 Lined (1)]. This provision shall also apply where the Basic Law is held to be violated by Land law and where a Land law is held to be incompatible with a federal law. [9, Article 100 Lined (1)].

If, in the course of litigation, doubt exists whether a rule of international law is an integral part of federal law and whether it directly creates rights and duties for the individual, the court shall obtain a decision from the Federal Constitutional Court. [9, Article 100 Lined (2)]. This case applies the legal situation from the Article 25 from the Federal Law which says, that "...the general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory..." [9, Article 25].



At last, if the constitutional court of a Land, in interpreting this Basic Law, suggests deviation from a decision of the Federal Constitutional Court or of the constitutional court of another Land, it shall obtain a decision from the Federal Constitutional Court. [9, Article 100 Lined (3)].

According to the Federal Constitutional Court jurisdiction, instead of declaring the invalidity of a rule, it will rule a “simple” incompatibility observation, in the situation that it will result in declaring the invalidity, it will deviate even more from the constitutional order except if it continues to apply on a temporary basis. This is valid for laws, and also for other categories of legal rules [20, p.12]. For example, based on this principle the Fundamental Law with a regulation referring to formation of a body responsible in protection of young was declared incompatible, because, declaring the invalidity will lead to prejudice on the rules about protection of young, as a basic right [20, p.12].

The same way, there will be declared only an invalidity, if by declaring the invalidity, could be created a state of legal uncertainty, incompatible with the rule of law.

According to another principle developed in a case law of the Federal Constitutional Court, a provision would not be declared invalid, but only incompatible with the rule of law where possibilities of unconstitutionality correction exist [20, p.12]. Here is not the almost always practicable case when the provision can be reconfigured in details to become constitutional, but the case when instead of eliminating the rule once its invalidity was declared, other will exist and other possibilities to fix its unconstitutionality through a positive rule will also exist. First of all, when the provision is considered unconstitutional because it violates the principle of equality, it could be fixed, through the elimination of advantages and disadvantages that constitutes itself a violation, but also through the extension of advantageous treatment – modifying possible conditions and terms of grant – for the benefit of other categories. Therefore, for giving only some of the many case law examples: prohibition of work during nighttime, which represents a infringement of the principle of equality among the women-employees, the rules that violated the equal opportunities of advancement by financing the cases of refresher training, including and the rule that relaxes the system of granting legally resident a child born in Germany, from parents that are not Germans, mothers status of resident, but not and father’s was declared invalid, but only incompatible with the Basic Law [20, p.13].

In the event of a mere declaration of incompatibility, a deadline is set

as a rule for the temporary further application of the provision, or it is pronounced that the legislature is obliged to create a new regulation within a certain period. The length of the period is set according to aspects which in most cases are not explicitly named – such as the gravity of the violation or other urgencies, the complexity of the necessary new provision and special requirements of the matter.

**Deadlines are largely set in the range of one to two years.**

Longer deadlines are however also granted in some cases. For instance, a deadline of almost three years was set in an election scrutiny procedure for the new regulation on a provision of electoral law which was considered to be unconstitutional, explicitly referring to the need to consider the statutory deadlines for the acts in preparation of the elections and the complexity of the new provision required, which led to a situation in which the *Bundestag* elections which were due almost one-and-a-quarter years after this decision still took place according to the provision which was regarded as unconstitutional [20, p.13]. Also, a declaration of nullity of the previous election, which formed the actual subject-matter of proceedings, did not take place although the provision regarded to be unconstitutional had exerted an influence on the distribution of mandates. For this, a role was played inter alia by the fact that no considerable influence was exerted on the distribution of the mandates, and the error was also not particularly major in other regards. The error lay in a difficult-to comprehend paradox of the calculation procedure for the distribution of mandates which had been chosen for reasons which were legitimate as such, but which may lead in certain cases to the absurd consequence of an increase in the number of votes being reflected in a reduction in the number of mandates achieved. Had this been for instance a provision tending to deliberately favor certain political parties, the error would undoubtedly have been regarded as being major and a shorter deadline set. [20, p.14].

Deadlines of less than one year are also sometimes set. Thus, the legislature was set a deadline of less than eleven months for the new regulation of social benefit.

Finally, it also happens that no deadline is set at all. In the case at hand, a statutory provision according to which the father of a child born out of wedlock was generally excluded from parental custody of his child without the consent of the mother was declared to be incompatible with the father's parental right which is protected by fundamental. A declaration of the nullity of the provision in question could not be considered because it would have entailed the fathers



in question not even being able to receive custody with the consent of the mother until there was a new statutory provision. Furthermore, the provisional application of the unconstitutional provision would have led to a perpetuation of the violation of the fundamental right, the consequences of which because of the particular significance attaching in such matters to the time factor with regard to the child's bond with the parent in question would possibly no longer have been reversible [20, p.14]. Under these special circumstances, the Court considered itself to be entitled to create a temporary provision of its own to which end the family court assigns to the parents, on request by a parent, parental custody or a part of such custody to the parents jointly where one may anticipate that this is in the child's best interests. It was hence unnecessary to set a deadline for the legislature the purpose of which is ultimately to ensure that the interim state of temporary further applicability of a form which per se is unconstitutional normally occurring with a mere declaration of incompatibility, is ended in a suitable period [20, p.14].

#### **France - the end of parliamentary supremacy**

According to Article 56 of the Constitution, The Constitutional Council shall comprise nine members, each of whom shall hold office for a non-renewable term of nine years. One third of the membership of the Constitutional Council shall be renewed every three years. Three of its members shall be appointed by the President of the Republic, three by the President of the National Assembly and three by the President of the Senate. [10, art.56 paragraph.(1)].

In addition to the nine members provided for above, former Presidents of the Republic shall be ex officio life members of the Constitutional Council. [10, art.56 paragraph.(2)].

The President shall be appointed by the President of the Republic. He shall have a casting vote in the event of a tie. [10, art.56 paragraph. (3)].

The proposal for appointment by the President of the Republic is subject to the opinion of both Standing Committees, the proposal of the President of the National Assembly receives the opinion of a single commission of the Assembly and that of the President of the Senate follows the same rule (the opinion of a single commission, ) [21, p.1].

*According to the Article 61 of the French Constitution*, the Constitutional Council exerts systematic scrutiny of: institutional acts before their promulgation; Private Members' Bills that are approved by the referendum procedure before they are submitted to referendum; and the rules of procedure of the Houses of Parliament before coming into force.

At the same time, the Constitutional Council may also exerts a priori control over: the treaties- before authorization to ratify or to approve, on a referral from the President of the Republic, from the Prime Minister, from the President of one or the other Houses, or from sixty Members of the National Assembly or sixty Senators [10, art.54];

Institutional Acts, before their promulgation, that may be referred by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators. [10, art.61 paragraph (2)];

The Acts on territorial status in New Caledonia, before their promulgation, to the High Commissioner of New Caledonia, the Government, the President of the Congress, the President of one of the Provincial Assemblies or of 18 members of the New Caledonia Congress [21, p.3].

From March 1, 2010, the Constitutional Council exorcists on the issue of constitutionality, *a posteriori* control of any legal mandates in force (already promulgated), at the referral of the State Council or the Upper Bench, regarding an exception in the course of a trial before the court, regarding to the conformity of these articles “with the rights and freedoms guaranteed by the Constitution” [10, art. 611 paragraph (2)].

There is no special procedure in the *a posteriori* control, but the Constitutional Council may delay the effect of its decision, in order to give Parliament its own motto, the possibility to intervene within this period in order to correct the unconstitutionality problem [21, p.4].

#### **Italy - the classic model of the constitutionality of laws control**

Adjudication of “controversies on the constitutional legitimacy of laws and enactments having force of law issued by the State and Regions” (Article 134 of the Constitution) is the principal, and historically most significant, task of the Constitutional Court. All laws and measures having force of law, regardless of date of enactment (whether prior to, or following, the entry into force of the Constitution on 1 January 1948) can be subjected to the Court’s review for constitutional legitimacy – and thus possibly be annulled, i.e. removed completely from the legal system, along with all meanings potentially ascribable. The Court may be called upon to ascertain whether legislative measures were enacted in accordance with the procedures established by the Constitution (i.e. formal constitutionality) and whether the content of the acts conform to the principles enshrined in the Constitution (i.e. substantive constitutionality). [22, p.2].

The enactments susceptible to submission to the Court for constitu-





tional scrutiny are numerous: these comprise laws enacted by the State, delegated legislative decrees (legal measures issued by the executive upon delegation from the Parliament) and decree-laws, legal measures issued by the executive in necessary and urgent response to emergency situations and that, after sixty days, must be converted by the Parliament into laws. The Court can also adjudicate upon the constitutionality of laws enacted by Regions and by the two Autonomous Provinces to which the Constitution has granted legislative powers (i.e. the Provinces of Bolzano and Trento, which constitute the Region of Trentino-Alto Adige). The Court's capacity for review for constitutionality also extends to Presidential decrees that declare the abrogation of a law or of legal measures operated through a referendum as established by Article 75 of the Constitution. [22, p. 2].

When the Court declares the constitutional illegitimacy of a law or enactment having force of law, the law ceases to have effect the day following the publication of the decision. The decision of the Court shall be published and communicated to Parliament and the Regional Councils concerned, so that, wherever they deem it necessary, they shall act in conformity with constitutional procedures. [11, art. 136].

#### **Denmark and Norway - exponents of the Scandinavian model**

**In Denmark**, constitutional issues are subject to judicial review by the ordinary courts at any level. There are often no problems of constitutionality invoked before the Danish courts apart from/ except for the cases where the demarcation line between expropriation and general economic intervention is involved [23, p. 2]. If an act or more likely a specific section of an act is considered unconstitutional by a Danish court, the act or the specific section of the act is as the overall starting point not binding *ex tunc*. [23, p. 3].

**Norway.** Norway does not have a special Constitutional Court. The ordinary courts of law, with the Supreme Court pronouncing judgments in the final instance, have power to review the constitutionality of legislation adopted by the Norwegian parliament, and also the right to review administrative decisions.

The Courts have the right to review the constitutionality of legislation and to review administrative decisions. Review is always limited to and part of the ordinary hearing of the dispute or criminal case handled by the court, if relevant in that case. Thus the courts will not review constitutionality in *abstracto*, for instance a member or fraction of Parliament cannot submit a question of constitutionality in *abstracto* for the courts. [24, p. 2].

A further development of the right to review is that the Supreme Court

has now also assumed the right to consider the question of whether legislation or administrative decisions conform to human right conventions to which Norway is a party, in particular the European Convention on Human Rights of 1950. The Human Rights Convention is incorporated in the Norwegian legislation as part of the Human Rights Act of 1999 and has precedence over other provisions of law. [24, p. 3].

Based on law proposals from the Government, the Parliament will repeal, amend or change the law to bring it in accordance with the Constitution as set out in the Supreme Court's decision. The Supreme Court does not in its decision dictate necessary changes, and it is not always obvious from the premises what changes must be done. This is often also an object of great political discussion. The decision is only binding inter partes and will only stipulate the solution on the concrete dispute between the parties. However, without exceptions lower courts and public authorities will follow the Supreme Court's decision regarding constitutional questions and other questions of law. Thus, after the Supreme Court has given its decision, the provision reviewed unconstitutional by the Supreme Court will not be applied. [24, p. 3].

#### **Switzerland - federation without institutionalized Constitutional Court.**

The Federal Supreme Court is the supreme judicial authority of the Confederation (Article 188 of the Federal Constitution) [12, Art.188 pt.1].

Its duties are revealed both in constitutional and in civil jurisdiction, as in criminal and administrative jurisdiction. The Swiss Federal Court exorcists the functions of a constitutional court when appeals in the field of public law directed against cantonal normative acts are judged [25, p. 1]. At the same time, the acts of the Federal Assembly (the legislative power of the Confederation) or the Federal Council (the executive power of the Confederation) may not be challenged in the Federal Supreme Court. Exceptions may be provided for by law [12, art.189 pt. 4].

In the Swiss legal system, federal laws and international law are excluded from constitutional control, since the Federal Supreme Court is bound to apply them (Article 190 of the Constitution).

The abstract control is excluded in all these cases (Article 189 paragraph 4 of the Constitution).

On the other hand, in the context of concrete review, the Court may find that a federal law breaks the Constitution or international law. In the first case, he can neither canceled the law nor refuse to implement it (see, for example, Decisions TF 131 II 697 and 131 II 710). First of all, he has



the opportunity to signal the unconstitutionality through the decision, but also in his annual management report, presented to Parliament, in the section entitled “Indications to the Legislator’s Attention” [25, p. 3].

In Switzerland, international treaties form an integral part of the domestic legal order.

The fundamental rights of citizens guaranteed by international law, especially the European Convention on Human Rights (ECHR) and the Second United Nations Pact, are very similar to those guaranteed by the Federal Constitution.

When a federal law contains a disposal/ mandate contrary to a fundamental right guaranteed by such an international convention, that law will be reviewed by constitutional examination. In this case, the Court does not apply a federal law contrary to a mandate of international law. In such a way, international law prevails over federal law [25, p.3].

Acts of the Federal Assembly or the Federal Council may not be challenged in the Federal Supreme Court (Article 189 (4) of the Constitution).

It follows/ Results that the abstract control is also excluded for this category of normative acts. (Result that this category of normative acts are unbound from abstract control) Instead, it is possible for the Federal Court to carry out a concrete /control/examination.

Confederation shall guarantee the cantonal constitutions, which first verifies their constitutionality (Article 51 paragraph 2 and Article 172 paragraph 2 of the Constitution).

It follows that, according to the case-law (for example, Decision TF 118 Ia 124), abstract control is excluded. The specific control is limited to the control of compliance with federal constitutional law that has entered into force after the granting of the federal guarantee [25, p.4].

Cantonal laws and edicts (including communes laws and edicts) may be challenged without restriction to an abstract and concrete control (Article 189 paragraph 4 of the Constitution [60]).

#### **Romania - useful experience for the Republic of Moldova**

According to art.146 let. c) According to Article 146 subparagraph c) of the Constitution, the Constitutional Court “adjudicates on the constitutionality of regulations of Parliament [13]”. The Court’s review in the instance is an abstract one, and is exercised over a normative act which is already in force (therefore, a posteriori), at the request of certain qualified subjects, namely: the President of either of the two Chambers, a parliamentary group, at least 50 Deputies or at least 25 Senators. [26, p. 8].

The Court's review also extends over resolutions amending or supplementing the regulations of Parliament, or any normative acts adopted by the Chambers of Parliament whose provisions envisage the organization and operation of Parliament as a whole, or of each Chamber. In that regard, the Constitutional Court ruled that it had no authority to review the constitutionality of the manner of interpretation or application of the Parliament's Regulations. [26, p. 9].

In exercising this power of review, the Constitutional Court handed down 15 decisions in which, on admission of the petition, held the impugned provisions from the Regulations of Chambers of Parliament as being unconstitutional (four decisions in 1994, one decision in 1998, one decision in 2004, three decisions in 2005, one decision in 2006, two decisions in 2007, two decisions in 2008, and another decision in 2009). [26, p. 9]

Normative acts governing the organization and operation of the Government are subject to constitutionality review exercised by the Constitutional Court to the extent that they are acts of primary regulation – laws or ordinances [26, p.13]. Thus, Law No. 90/2001 on the organization and operation of the Romanian Government and Ministries, in its entirety, constituted the subject matter of an exception of unconstitutionality. [31]

Government Ordinances<sup>54</sup> can be subject to the constitutional review carried out by the Constitutional Court [Article 146 subparagraph d)]. Government decisions constituting acts of secondary regulation, therefore they cannot be subjected to the constitutional review carried out by the Constitutional Court, but only to the judicial review carried out by the courts of administrative contentious. [26, p.13]

According to Article 2 paragraph (1) of Law No. 47/1992, the Constitutional Court ensures the constitutionality review of laws, international treaties, Parliament regulations and Government ordinances, therefore of acts of primary regulation. [32]

Thus, the Constitutional Court of Romania carries out the review of constitutionality as follow:

1. organic and ordinary laws – before promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least 50 deputies or at least 25 senators, on initiatives to revise the Constitution [Article 146 subparagraph a)].

2. after their entry into force - to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law



or commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People [Article 146 subparagraph d)].

3. of treaties or other international agreements before their ratification by Parliament - to adjudicate on the constitutionality of treaties or other international agreements, upon notification by one of the presidents of the two Chambers, a number of at least 50 deputies or at least 25 senators [Article 146 subparagraph b)].

4. after ratification- If the constitutionality of a treaty or international agreement has been found according to article 146 b), such a document cannot be the subject of an objection of unconstitutionality. The treaty or international agreement found to be unconstitutional shall not be ratified [Article 147 paragraph (3)].

5. Parliament regulations in force [Article 146 subparagraph c)].

6. Government ordinances in force [Article 146 subparagraph d)].

In conclusion, the study of the control of the constitutionality of laws from a comparative perspective allowed us to point out certain conclusions, which refer to the fact that each country has its own specificity in the matter of controlling the constitutionality of laws. However, there is a great deal of similarity, a situation that is largely due to the fact that these countries are members of the EU.

The Republic of Moldova could take over many effective levels and practices from the realm of the constitutionality control of the laws, carried out by the constitutional courts of different European Union states.

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## STUDY ON INTELLECTUAL PROPERTY LAW AS AN INDEPENDENT LEGAL INSTITUTION

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### **Abstract**

*The aim pursued by the author is to study intellectual property, its place in the legal system of the Republic of Moldova, the role, significance, development trends, as well as ways to improve state regulation in the field of intellectual property and legislative support, related social relations, the impact of international treaties on national legislation in the field of intellectual property.*

**Keywords:** *intellectual property, violation in the field of intellectual property, international treaties*

**Introduction.** It is common knowledge that someone owns information that owns the world. Since ancient times, the collection and systematization of information about the surrounding world have helped people to survive in difficult conditions - from generation to generation, the experience and skills of making tools for hunting and labor, creating clothes and medicines was transferred. The information was constantly updated and supplemented - each studied phenomenon allowed to move to something new, more complex. Over time, large amounts of data on the surrounding world have contributed to the development of scientific and technological progress.

Over time, the role of information in human life has become increasingly important. It was necessary to study and understand not only the laws of nature, but also the concepts and values of human society - literature, art, architecture, etc., i.e. objects of intellectual property. At the present time, the role of information in human life is decisive.

The modern world today faces a number of fundamental problems that can already have catastrophic consequences. Some of these acute problems associated with the protection of intellectual property (IP): firstly, the increase in dangerous counterfeit goods (drugs, food and beverages, cosmetics or toys, car parts, etc.); secondly, the speed and simplicity of digital playback; and also, it is the growing importance of the Internet as a means of dissemination, sophistication in the application of technology by international financial fraudsters. All these factors make this problem more urgent and urgent than ever before.

IP has become one of the important strategic, managerial resources, along with resources - human, financial, material. Its production and consumption constitute the necessary basis for the effective functioning and development of various spheres of public life, and, above all, the economy. And this means that not only each person becomes available sources of information in any part of our planet, but the new information generated by him becomes the property of all mankind. In modern conditions, the right to information and access to it are of vital value to all members of society.

The acquisition of new knowledge and technologies and their use in the interests of the social and economic development of the state directly determine the role and place of the country in the world community, the standard of living of the people and ensuring national security [19, page 254].

IP protection is becoming increasingly important. At the same time, it is first of all necessary to note its economic significance. The results of intellectual human activity in modern society become a direct productive force along with traditional factors of production.

At this stage, IP plays an important role in finding solutions for economic growth, development and competitiveness, for employment and the growth of the well-being of the population.

In the broadest sense, an intellectual product is understood as a set of intellectual, cultural values, knowledge, innovations, works of art and various forms of information, education and entertainment, obtained in the traditional way or with the help of information technology and electronic technology.

IP has always been viewed as a generalizing, generic concept, but of-



ten attempts have been made to restrict it to several types (in particular, “literary and artistic” property and industrial property) or to reduce the idea of it to special rights or special ways of protection. In this case, the objects of industrial property are usually attributed to the scientific and technical creations of man, and to objects of copyright - works of art. Obviously, this approach is limited. At the same time, sometimes IP is interpreted extremely broadly, referring to it not only all the objects of spiritual culture in its various manifestations, but also almost any information.

The broadest official list of IP objects is contained in the Convention Establishing the World Intellectual Property Organization (WIPO), 1967.

IP - these are products of creative activity in the production, scientific, literary, artistic fields, which are intangible. At the same time, IP is embodied in certain material objects or accompanies them, is present as a component of quality, commodity prices. From this point of view, it becomes a kind of commodity [6, 112].

To protect certain types of IP objects, additional conditions are put forward. Thus, a trademark can only be protected if it has a “distinctive ability”. The invention can not be considered any creative result achieved by man, the essence of which is to find specific technical means of solving a problem that arose in the field of practical activity, but only one that embodies a certain “creative step”.

Intellectual product, information and knowledge, intellectual, scientific and cultural potential of modern society are the driving force of sustainable development and determine economic competitiveness. All this points to the growing role of IP in modern society, and governments’ actions to invest in strengthening IP regimes are not related to costs, but rather are investments that create added value and contribute to economic growth.

Art. 33 of the Constitution of the Republic of Moldova establishes the right of citizens to IP, their material and moral interests, which arise in connection with various types of intellectual creativity, protected by law [12].

Based on the Decree on the National IP Strategy until 2020 (hereinafter referred to as the National Strategy), the National Intellectual Property System is a collection of:

- legal provisions on the basis of which any person realizes, acquires and protects his rights arising in connection with various types of intellectual creativity (regulatory framework),
- institutions involved in the implementation of these provisions (institutional framework),

- elements and relationships that provide and maintain the normal functioning of the system (the infrastructure of the IP system), as well as the beneficiaries of this system [14].

Research methods:

Comparatively - legal method - will be used for research of various scientific approaches to definition of concepts of IP, and also for realization of the comparative analysis of the legislation of foreign countries.

Dialectical method - will be used for research and for identifying contradictions.

Normative-dogmatic method - will be used to study the content of legal norms. The use of the result of intellectual activity or a means of individualization, if such use is carried out without the consent of the rightholder, is illegal and entails responsibility.

The method of generalization will be used to generalize in the conclusions of the main results of the study.

Results of the research. The term “intellectual property” was used sporadically by theoreticians - lawyers and economists in the 18th and 19th centuries, but it was widely used only in the second half of the 20th century, in connection with the signing in 1967 of the Convention establishing the World Intellectual Property Organization (WIPO) in Stockholm [eleven].

According to WIPO constituent instruments, “intellectual property” includes rights relating to:

- Literary, artistic and scientific works;
- Performing activities of artists, sound recording, radio and television programs;
- Inventions in all areas of human activity;
- Industrial designs;
- Trademarks, service marks, trade names and commercial designations;
- Other rights related to intellectual activity in the production, scientific, literary and artistic fields.

Later, exclusive rights related to geographical indications, new plant varieties and animal breeds, integrated circuits, radio signals, databases, domain names were included in the scope of WIPO activities.

In jurisprudence, the phrase “IP” is a single term, the words included in it are not to be interpreted separately. In particular, “IP” is an independent legal regime (more precisely, even - a group of regimes), and does not represent, in spite of widespread misconception, a particular case of ownership.

To date, the legal science world-wide IP constituents recognize ob-



jects of copyright, objects of industrial property and other objects of intellectual property. The objects of copyright are, mainly, the results of creative activity in the field of culture and art. Copyright, protecting the creative result of intellectual activity of the collective or individual, operates with property and non-property rights. As a property right, it grants the right of possession and the right of disposal, as well as the exclusive right to receive income from the use of creative result.

At the end of XIX century. the first multilateral agreement on copyright - the Berne Convention for the Protection of Literary and Artistic Works of 1886; The states that signed this convention formed the so-called Berne Union. In the middle of XX century. the second major multilateral agreement was concluded in this area - the World Copyright Convention of 1952.

Both these agreements cover a large number of states, whose number continues to grow: if the original composition of the Berne Union (1886) was limited to ten states, then at the Geneva intergovernmental conference in 1952, at which the World Convention was adopted, representatives of fifty different countries took part; in 1972 the number of participants in the conventions exceeded 60; In 1997, 91 States participated in the Bern Convention, and 81 in the World Convention, and a number of states that do not participate in the Bern Convention (in particular, the countries of the American continent) are participants in the World Convention.

In addition to multilateral conventions of a general nature, such as the Berne and the World, in the field of copyright and related rights, a number of other international agreements have also been concluded:

a) of a special nature:

- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in 1961;
- Convention on the Protection of Producers of Phonograms from Illicit Producing of Their Phonograms, signed in Geneva in 1971;
- Convention on the Distribution of Program-Carrying Signals Transmitted by Satellite, signed in Brussels in 1974;

b) regional agreements (these are numerous Pan American conventions, a number of European agreements, as well as the Agreement on Cooperation in the Field of Copyright and Related Rights, signed in Moscow in 1993 by CIS member states).

Thus, despite the fact that the problem of IP and its protection has always been relevant, antiquity and the Middle Ages, universal codes were not known to provide the appropriate legal basis for the existence of IP

rights. There were only precedents of granting to one or another person the right to receive benefits from their products, as well as the protection of copyright due to the individual law-making activities of the rulers of states at different periods of time.

New time and significant progress in production led to the ramification of IP rights, since it became necessary to regulate complicated legal relationships in the field of both industrial inventions and copyright in artistic works. With the development of international relations in the global space, international norms for the regulation of legal relations in the sphere of IP arise. The evolution of the IP institute is actively continuing in connection with the dynamic development of production and information transmission technologies.

The results of intellectual activity, which are united in the general concept of IP, take an increasing place in the modern market. Their treatment is subject to the general rules of the market, but the nature of rights and obligations, means of their implementation and protection have their own characteristics. "Intellectual capital" is becoming increasingly important in the modern economy.

In recent decades, attention has been drawn to the economic importance of copyright. One of the reasons for this is the extraordinary acceleration of the development of new technical means for the creation and dissemination of protected works. Sound recording, radio and television, photocopying, development of cable and satellite communications, video recording, computer technologies are just some examples [3, p. 33].

Replication of copyrighted material objects formed into a large industry branch with a number of sub-sectors: the production of books and movies, software and computer games, audio and video recordings. In some countries, special studies have been carried out as to what proportion of "copyright-based production" is held in the national economy[16].

The improvement of digital technologies served as a basis for the development of new means of presenting and transmitting information. New technologies bring to life new forms of using protected objects. Digitization allows you to include in the work any other information if it is stored in the same form, resulting in completely new categories of works. This new category is, for example, multimedia products, which combine the various ways of presenting information (including in an interactive form), making oral and written texts, graphics, animations, music, photographic images, video information, other visual images and sound effects. In multimedia products, specific and inherent combinations of means of expression are



used, digital media allows interactive treatment - “non-linear” use, which gives the user the opportunity to interfere with the content of the work.

Multimedia products are created specifically for use with computer technology (interactive audio-visual playback device) and become accessible to perception precisely as a result of their “playback” by a computer (for example, a personal computer). Multimedia products form the basis of the so-called “virtual reality”, in which by now almost all forms and genres of works, all kinds of manifestation of man’s creative efforts are represented. And the product itself, as a collection of digitized data, can be located both in the personal computer of the user (user) and anywhere in the world (provided the user connects to the relevant telecommunications network).

The existence of modern culture is impossible without IP, without a legislative settlement of the social relations associated with it with regard to the production of “spiritual goods.” But material production today is inconceivable without the ever-increasing use of intellectual labor. Philosopher Karl Popper noted that some ideas are much more “fundamental” than most of the complex material means of production, suggested the following rather brutal thought experiment: “Imagine that our economic system, including all industry and all social organizations, is destroyed, but technical and scientific knowledge is preserved. In this case, it would not take very long to restore the industry (of course, on a smaller scale and after the death of many people from hunger). Imagine now that all our knowledge has disappeared, and material things have been preserved. This is tantamount to what would happen if the wild tribe settled in a highly industrialized country, but abandoned by its inhabitants. This would soon lead to the complete disappearance of all traces of civilization. “ However, most countries are still unable to provide an acceptable level of compliance with traditional intellectual property rights [13, page 107].

For several centuries there was a stable understanding that the creator of “intellectual value” has the right to benefit from his work and dispose of his destiny thanks to the set of special “intellectual rights” given to him. The development of this understanding led to the emergence of a number of theories that seek to reflect the real relationship, as well as the extension of the term “intellectual property”, increasingly fixed at the level of international treaties and in national laws.

However, many civilian scientists either propose to abandon the use of the term “intellectual property” altogether, or they understand only non-material goods (a set of ideas, images, creative, technical solutions, etc.) under

which the person who achieved them or another rightholder a special “exclusive right” is fixed. At the same time, it is summarized that the IP right essentially establishes a protection regime only with respect to intangible objects.

With this approach, intellectual property is not related to the material object in which the result of intellectual activity is expressed, although it is undeniable that in many cases the law provides for the need for the authors and their successors to control the participation of such an object in economic circulation or the possibility of receiving additional remuneration in certain cases. There are numerous examples: special provisions on the right to rent a work, the right to follow in relation to works of fine art etc.

Experts have repeatedly noted that the emergence of categories of intellectual property, industrial property, literary and scientific property is due not only to political and economic, but also psychological processes that have influenced even international treaties, national legislation and legal constructions developed in this field. Since it is extremely important for any participant in the economic turnover to have the status known to all other participants, it is very convenient to construct a structure analogous to the property right or other property right: “Property rights have a mandatory advantage such as the certainty of their status, since the latter is established only by law “ [20, page 245].

In response to these comments, proponents of the further development of the theory of IP began to emphasize that in this case it is a property of a special kind that requires special regulation because the objects of ownership of the owners of patents, trademarks, copyright subjects are intangible and incorporeal things. However, the opponents of this concept continue to point out the danger that the existing similarity of names will conceal the difference in content: “The term” IP “appears legally insufficiently correct. It can create the impression of the extension to the non-material objects of the regime established for the right of ownership. This impression would be erroneous “ [4, page 32].

The concept of intellectual property in its semantic meaning successfully characterizes the belonging and essence of the result of intellectual activity. In general, any use of the concept of “property” inevitably indicates the presence of its owner and the corresponding possibility of the emergence of related property relations [4, page 35].

The right of real property and the right of intellectual property are regulated by various civil law institutions, but within the framework of a holistic understanding of the ownership right their conflict should be resolved according to specially established rules. Only in this case will finally be





able to eliminate many of the contradictions existing between them, since “quantitative properties are in dispute with one another, qualitative ones are complementary to each other”.

Although it is absurd to look at the world as a combination of only physical bodies, but the object of legal regulation can not be neither “information” nor “work”, nor other non-material goods, as can not be regulated by the law “substance”, “energy” (in isolation from rights to use them), etc. “In order for a substance (as a collective concept) to become the object of legal regulation ..., relations between people should arise about concrete material objects.” Legal protection can only extend to such facilities [7, page 8].

The rights of IP holders are protected by other legal means in comparison with those used to protect the right of property, but the same feature of the means of protection applied is characteristic of most types of the most proprietary property. “Reliability” of intellectual property rights property can be considered even more: if for things registration of rights is established as an exception, the subordination of IP rights of registration and formalities is practically the general rule, from which only objects of copyright, related rights and some others have been withdrawn[8, page 13].

However, even with respect to non-subjective IP objects, legislative presumptions are established that make it possible to unambiguously determine the original rightholder.

As already noted, in general, the theoretical confrontation between IP and exclusive rights leads only to negative consequences, to the fact that unusual words displace the usual concepts.

The formation of a single institute of IP allows us to raise the issue of expanding the range of rightholders by extending the unified powers to all types of objects covered by this concept. So, it is long overdue to resolve the problem of protecting the rights of not only the owners of trademarks, but also their authors and designers. Copyright arises from the creation of the work, legal persons can transfer the rights to use the work as a means of individualization - the trademark, but the author, the designer remains the owner of the copyright, for example, the mention of his name, at least in the publications published not at the expense of the customer - the owner of the rights to the object of industrial property [17, page 20].

Mention the name of the author (designer) is also possible in promotional materials, billboards of the company - owner of the trademark rights, which may be regulated by a separate agreement.

In a market economy, ownership is the principle of social develop-

ment. Therefore, in countries with developed market economies over a long period of its evolutionary development on the principles of private property creates a huge legal and regulatory framework governing the relationship and is protected by IP rights. In the CIS countries remain relevant issues related to the legal protection of intellectual property rights, and this, in turn, affects the effectiveness of active involvement in economic turnover of innovation [1, page 20].

Due to insufficient attention and experience in solving problems related to the use of intellectual property, the state incurs significant losses. First, because many scientific and technological achievements for various reasons are not used in practice and are not in demand by society. Secondly, there is a large-scale leak of highly qualified personnel, whose work is not appreciated. There are also problems in protecting the rights of right holders abroad. Many rightholders do not properly patent their inventions and their creations go abroad, they are patented and used.

The main problem is the protection of innovations. Most enterprises lack a common policy in the field of protecting intellectual property and promoting their goods and technologies to the market. As a result, enterprises lose priority in the market and lose to their competitors. Another reason for the low efficiency of trade is the level of industrial development of the subject of sale [1, page 28].

Now there is another, no less important problem - this is an insufficient level of skills of specialists. Enterprises are trying to find buyers or investors for their innovative technologies, especially in industrialized countries, without having the necessary means and business ties.

Without solving these problems, without realizing the role of IP as a factor in the scientific, technical, economic and cultural development of our country, the positive development of the economy is inconceivable.

The results of intellectual activity are an important part of the national wealth of the Republic of Moldova, but its potential has not yet been fully appreciated and mastered. Stabilization of the economy and stimulation of its development based on knowledge and innovations, growth of competitiveness, development of production and trade, science and culture, employment growth, etc. dictate the need for increasing use of IP in this activity.

### **Conclusions**

The protection of IP rights is an internationally recognized, dynamically developing legal institution. Much attention is paid to it in our country, but the situation with observance of IP rights is far from being the best.



It is necessary to ensure the formation of modern IP protection mechanisms. At the same time, legal methods of IP protection must be applied in combination with technological ones.

International treaties and international law enforcement practice in the field of IP have a significant impact on the development of the legislation of the Republic of Moldova. Based on the available data, it can be noted that for a short period of its existence the legislation of the Republic of Moldova has undergone many changes. A significant part of these changes is related to interstate agreements that Moldova has concluded. By joining, to any treaty or convention the country necessarily assumes certain obligations that directly affect the domestic legislation.

The rapid growth of knowledge, the emergence of new technologies have led to a change in the policy on IP and to the application of new practices in the management of intellectual assets.

The most important role nowadays belongs to multilateral agreements of a general nature, but this does not mean that other forms of protection of copyright and related rights are not applied in the modern world - the provision of protection on the basis of reciprocity and the conclusion of bilateral agreements: each state chooses one or another type of international protection copyright depending on the cultural policy, economic, historical, legal and other conditions and features of this particular country.

The state plays a pivotal role in the development of IP. Thus, through accession to international treaties and the adoption of various development strategies, it fixes in the legislation ways of IP protection, which generally fit into the system of ways to protect the so-called "ordinary property". However, the specific nature of IP objects implies certain differences in the nature of their protection. This is mainly due to the mentality of society, for which the concept of "property" is still perceived as something material, something that can be touched. Also important is the role of preventive ways of protecting intellectual property rights by the state.

Intellectual property is a special kind of property. IP is not a variety of property rights, it is an independent legal institution. Intellectual property rights are called intellectual property rights because they should be protected as "fundamental" as property rights, and not to extend to them the order (definitions, methods of protection) applied to the rights of property. At the same time, the modern trend is the "expansion" of the notion of property, the inclusion in it of not only material objects protected by proprietary rights, but also of other objects representing property value.

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## THE ANALYSIS OF THE SUBJECTIVE SIDE OF THE CRIME PROVIDED BY ARTICLE 264 OF THE REPUBLIC OF MOLDOVA'S CRIMINAL CODE

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### ***Abstract***

*Legal framing of a prejudicial act is to be made taking into account the four constituent elements of the criminal offence. The determination of the subjective side's presence is to be made to establish the guilt of the subject of the imputed prejudicial act and the correct legal classification. The subjective side as a constituent element of the criminal offence component is a determining factor for the individualization of the criminal punishment, a ground for the exemption from criminal liability in case of its absence.*

**Keywords:** *subjective side of the criminal offense, guilt, imprudence, road accidents*

**Introduction.** The establishment of the subjective side of the criminal offense has a primary role in the legal classification of offenses. In some

cases, it determines the re-qualification of the act according to another article of the special part of the Republic of Moldova's Criminal Code.

The signs of the subjective side represent a component part of the offense stipulated in art. 264 of the Republic of Moldova's Criminal Code being especially important and complex, thus requiring a serious conceptual approach to them.

The subjective side of the criminal offence consists of the inner part of the offence, which determines the offender's mental attitude towards the committed detrimental act and its consequences, in terms of conscience, will, and emotions [4, p. 199].

In the case of offences provided in art. 264 of the Republic of Moldova's (RM) Criminal Code, one can consider that the subjective side can be expressed by recklessness towards the committed detrimental act, as well as the prejudicial consequences.

The subjective side of the offence presents a combination of signs, provided by criminal law, which characterizes a person's psychic attitude towards the committed act.

In the case of criminal liability, the psychic attitude towards the committed act, which has been expressed in the form of intention or imprudence, must be established.

**The purpose** of the article is to identify the peculiarities and determinants of the subjective side of the criminal offence in violation of the traffic or operating rules of the means of transport to exclude the incidence of legal fraudulent impropriety to the subject of a prejudicial offence.

**The methods** used in the study - the complex character of the investigated problem determined the use of a wide range of methods, such as: the methods of formal logic (analysis, synthesis, deduction, induction, comparison, abstraction etc.), historical, systemic method, and others.

The issue of the subjective side of the offence is one of the most difficult in criminal law. This is explained by the fact that the formation of the attitude towards the fact that it takes place through the interaction of the person with the objective circumstances, through awareness and evaluation, and can be modified, including in the process of committing the offence. The very formation of the attitude towards the act of committing it is the result of the offender's psychic activity [7, p. 28].

The correct assessment of the subjective side of the offence component has a great legal-criminal importance, especially for:

- 1) delimitating criminal behavior from the non-criminal one;



- 2) determining the basis of criminal liability;
- 3) rating of crimes;
- 4) delimiting the components of homogeneous (adjacent) offences;
- 5) assessing the harmfulness of the offence and offender;
- 6) applying fair and equitable criminal liability [10, p. 200].

The guilt of the person in relation to the committed act is determinative of criminal liability. In this regard, we present an indigenous definition of guilt, which is the psychic (conscious and volitional) attitude of the person towards the detrimental act committed and the prejudicial consequences of it, manifested in the form of intention or imprudence. In its turn, the intention is manifested in (direct and indirect) and imprudence in (negligence and self-confidence).

The intellectual factor (consciousness) presupposes the full representation of the content, meaning and consequences pursued or accepted by the criminal act, as well as the provision of its entire causal development. In the consciousness, therefore, the idea of committing the act appears, the arguments in favor and against the action are weighed, and finally, the decision is made whether or not to commit the offence. When the decision-making process is over, consciousness manifests itself in the will, which consists in the concentration of energy to conduct an act [10, p.157].

In domestic and foreign criminal doctrine, it has been stressed that the intellectual factor has a decisive role in regulating human activity, including criminal activity, because its presence means the existence of guilt. The intellectual factor reveals the attitude of the offender's consciousness to the deed and its consequences [11, p.116].

The volitional factor (will) is the psychic capacity through which the physical energies of a man are consciously mobilized or directed towards the act of external conduct. The will to do the act of conduct causes it to be attributed, to belong, to be imputable to the person who has committed it. If the act is not wanted by the person who committed it because it did not act freely but as a result of foreign energy, under the pressure of a constraint, there can be no guilt. This deed can be imputed to the perpetrator only physically, not psychically, which excludes guilt [8, p. 156].

Under Article 52 parag. (2) of the Criminal Code, "criminal liability is subject only to the person guilty of committing the offence provided for by criminal law". According to Article 3 parag. (1) of the Criminal Code, "no one can be held guilty of committing an offence or subject to criminal punishment, except on the basis of a court decision and in strict compliance with the crimi-

nal law”. Thus, the legislator conceives guilt as an institution of criminal law (art. 17-20), as a necessary condition of criminal liability (art. 6 and art.51 paragraph (2)), as well as an essential feature of the offence (art. 14 parag. (1)).

The subjective side of the offence of traffic safety regulations’ violation is characterized by the homogeneity of the perpetrator’s psychic attitude to actions and their consequences, namely the form of guilt in connection with the breach of security rules and the resulting consequences that always coincide with each other [14, p. 34].

Criminal legislation traditionally considers that the offence provided for in Article 264 of the Criminal Code is committed by imprudence, both in its negligence and over-exaggerated self-confidence.

To drive correctly, the driver must have the ability to perceive in a very short time more elements, selecting from them the ones which the security of the traffic depends on. Therefore, attention is one of the main psychic qualities involved in driving. All traffic accident statistics indicate that one of the most common causes of accidents is inattention to the important requirements of the moment, as reflected in the provisions of p.45 (a) Traffic Regulations: “The driver must drive the vehicle in accordance with the established speed limit, always taking into account the psychophysiological condition that influences attention and reaction”.

The driver must possess a good mobility of attention, the physiological base of which is the mobility of the nerve processes. In addition, the focus of attention, especially during driving on monotonous, curved roads, as well as the ability to distribute the attention, which allows the driver to simultaneously handle the perception of multiple objects and at the same time making necessary movements in driving are of great importance in the driver’s activity.

Driving a vehicle in the city requires more attention than driving outside the city. The attention deficit is characterized by the fact that the individual cannot concentrate at certain times, cannot distribute and divert his attention especially at intersections or cannot track the road traffic signs for a long time.

Driving a vehicle requires a good central and lateral visual acuity (visual field) to distinguish obstacles that occur unexpectedly. The eye sees under all illumination conditions and is excessively strong and weak, provided the time it takes to adapt to the new situation. Not all drivers understand that in the case of driving at night, the dimming of the headlights when meeting another vehicle is a must. Absolute or relative blindness can easily lead to accident by misrepresentation of the space. That is why the driver must have the flexibility and readiness in mind.





Some issues that arise when driving cannot be successfully resolved if the driver does not have the possibility to perform the main thinking operations.

Understanding the operation of the engine and all control devices helps to make the next situation easier.

In addition, a good balancing of nerve processes is necessary, in conflicting situations, being calm and self-mastery is advised. A state of strong emotion, generated by the sudden occurrence of a pedestrian or a vehicle, can create a conflict situation for the driver.

Emotions, by situational character, force the driver to make certain movements in a very short time. Thus, in a dangerous situation, the driver tends to prevent the accident, but with a strong emotion, he stops, although a better resolution of the critical situation would have claimed acceleration. Without perfect coordination between hand movements, legs and visual observation, the driver can inevitably cause accidents [2, p. 91].

The correctness of the braking, acceleration, signaling or gearing responses depends almost entirely on the driving processes of each driver. In addition, at turns, the driver must control whether the steering angle of the steering wheel corresponds to the curve required for the vehicle's route. For this, it is necessary to take into account that the rear wheels make a turn with a smaller radius. The correlation of all these parameters is achieved by good motoring. In heavier and more complex driving operations such as backward movement, passage through undisturbed intersections, foggy night traffic, or snowflake roads, high precision movements are required.

Road traffic- and motor-related deficiencies refer to situations in which drivers responded too slowly, too quickly or inadequately. In case of a high speed, a slow reaction from the driver can lead to serious accidents. This kind of reactions are more common for the beginner driver who has not formed the skills of good driving.

Excessive reactions can also lead to serious accidents. They have an instinctive character, determined by an emotional state of the moment and being too fast, the driver does not have the time to make a proper analysis of the situation. We have to show that the useful time of the reaction depends on the multiple factors, the driver's habits, the mode of operation of the driving devices, the speed of the vehicle at that time, the state of the road (poles, snow, wet asphalt, etc.).

The driver's activity sums up a series of actions linked to each other with different automated components (gear change, acceleration, signaling, braking and other automated actions), yet overall they are carried out under the control of consciousness, demanding intense character traits.

Based on the ideas discussed above, we conclude that the offence provided in art. 264 of the Criminal Code cannot be committed intentionally; the legislator specified in the norm that the perpetrator has a psychic attitude manifested by imprudence.

In accordance with art. 18 Criminal Code, “It is considered that the offence was committed out of recklessness if the person who committed it was aware of the harmfulness of his action or inaction, provided for its injurious consequences, but considered that it would be avoided or did not take into account the injurious character of his action or inaction, did not foresee the possibility of the occurrence of its harmful consequences, although he should have been able to foresee them” [9].

Imprudence, as a form of guilt, can be manifested in two ways, namely: self-reliance and negligence. We can note that only the current Criminal Code places the ways of recklessness towards deeds, while criminal science and judicial practice have long studied the issue in question, making it possible to amend the Criminal Code in the current format.

The driver who drives at excessive speed has minimal possibilities to prevent an accident even when possessing qualities for driving maneuvers, hence the over-reliant confidence, which in criminal doctrine is recognized as a form of recklessness when the person provides for the possibility of harmful consequences of his actions / inactions, but finds it easy to avoid them.

Awareness of the detrimental nature of the act is usually related to non-observance of precautionary rules established to avoid harmful consequences in the course of certain activities. For example, the driver develops an inadmissible speed on a route within the city and realizes that this deviation from road traffic rules creates a danger to the safety of traffic participants [1, p. 67].

The perpetrator’s foreseeability of the detrimental consequences of his deed presupposes only the anticipation of the possibility of their occurrence, because only in this case there can be hope, without grounds, to prevent these consequences. In the case of foreseeing the inevitability of the occurrence of the consequences, one can no longer speak of the hope that they will not occur, the hope of preventing them, etc., in case in which we consider that the person acts with direct intent [3, p. 96].

If the hope of not producing harmful consequences is based on an event or an event that may occur, but in fact it does not occur, the perpetrator’s guilt will embody the form of intent, as it is about accepting the risk of producing the result [15, p. 243].

Criminal negligence consists in perpetrator’s psychic position who does



not realize the prejudicial nature of his action or inaction, did not foresee the possibility of occurring injurious consequences, although he should have been able to foresee them [4, p. 210].

If to consider all the opinions mentioned above to the provision of art. 264 of the Criminal Code, then, we can observe that the rules of the road traffic security or operation of the means of transport are usually intentionally violated, and with regard to the consequences of these violations, the perpetrator manifests imprudence, namely in the form of (exaggerated trust or negligence).

Analyzing the disposition of the norm under consideration, we think that the possibility of manifesting recklessness towards the prejudicial act cannot be totally excluded. This opinion is invoked by the stylistic and linguistic interpretation of the norm, so that the legislator does not specify in this article which form of guilt the perpetrator must manifest in relation to the prejudicial act. In contrast, other rules of the Criminal Code, e.g. article 213 of the Criminal Code, which state that the rules or methods of granting health care are violated negligently.

Regarding exaggerated self-confidence, for example - if the admissible travel speed is exceeded on a certain route, when crossing the red traffic light signal, when crossing the railroad to the red traffic light signal, etc., in the given case - the perpetrator, realizes that he violates the rules of road traffic but in this case he depends on his abilities, on the positive known end in the past, or on the functioning of the braking system of the means of transport that he drives in such a way that it would allow him to brake easily, or it is not excluded that the driver even relies on the reasonableness and attention of other road users. Alternatively, the offence provided in art. 264 of the Criminal Code can be done out of recklessness, namely by over-reliance in oneself.

We consider it more difficult to determine whether the perpetrator has neglected the injurious consequences. This is particularly noticeable if the road accident occurs in a place where the perpetrator could not expect any danger.

Professional experience gradually leads to the introspection and then to overcoming the external constraint created by the law of circulation and the public force, and to the creation of a “security spirit”, a “defensive spirit” that carries the idea of relativity of rights and duties in the use of public roads and acknowledges the errors of others as a permanent variable in the predictions of a prudent driver.

Traffic rules, for example, gives pedestrians priority, not for the fact that they are more valuable than the citizen in the car, but for the very clear reason that if the driver does not prioritize the pedestrian then the accidents

are much more serious and happen much more often. The pedestrian can stop immediately, the car cannot. Therefore, it is normal for precautions to be taken by the one that provides for the least possible prevention, especially since p.4 of the Traffic Regulations clearly states that “any traffic participant complying with this Regulation is entitled to count on the fact that other road users fulfill its requirements” [12].

In countries with high traffic, the driver is punished even if he accepted the pedestrian’s invitation to go first. The guilty are exclusively the drivers of the means of transport, and other road users are not to blame. In those situations, when the driver of the means of transport is guilty, the responsibility for the road accident must be borne by those road users who are guilty of producing it.

The driver of the means of transport, who has not violated any traffic safety or traffic safety rules, cannot be charged with avoiding the consequences of the accident situation caused by the act of the victim or other traffic participants. If the person’s calculation is well founded, but unforeseen circumstances or non-fulfillment of obligations by other persons have conditioned these consequences, then neither they nor the facts that have caused them can be imputed to them.

In the context of the above mentioned, the subjective side of the offence is characterized only by imprudent guilt. That is why the preparation or attempted crime is excluded.

If the driver of the means of transport intentionally caused damage to the life and health of the person or property, the offences must be classified as crimes against the life and health of the person or against the patrimony, in accordance with point 9 of the Plenum Decision no. 20/1999, [13] if injury to the bodily integrity or health or death of the victim was intentionally caused, then Article 264 of the Criminal Code shall not be applied.

Although in the legal literature some authors, for example A. Borodac, consider that “the psychic attitude of the perpetrator against the violation of the rules of road safety and vehicle operation can be expressed both in the form of intention and in the form of imprudence, and the face of the harmful consequences, only in the form of imprudence” [8, p. 119], and S. Brânză and V. Stati [6, p. 390] speak of the fact that: “The subjective side of the offence provided by art. 264 of the Criminal Code is characterized by intent to the detrimental deed and only by recklessness to the injurious consequences”, yet we consider this approach to be erroneous.

In this context, we would like to mention that we fully share the view



expressed in V. Budeci's doctor's thesis, who considers that the subjective side of the offence provided by art. 264 of the Criminal Code is characterized solely by imprudent guilt towards the harmful consequences, which are expressed only in the form of over-reliance on negligence and trust. In V. Budeci's opinion, different forms of guilt distinct from the act (intent or imprudence) and distinct for consequences (imprudence) cannot be recognized. Finally, if such a qualification were accepted, the deed would be mistakenly considered as intentional, so the offence provided for in article 264 of the Criminal Code may be committed only by recklessness.

The criminal law clearly writes in the provision of paragraph (1) art.264 of the Criminal Code "... a violation caused by recklessness...", which is of interest and relevance in terms of determining the criminal responsibility of the driver who, in violation of the legal provisions concerning the traffic on public roads, causes serious bodily injury or even the death of one or more persons, the important consequences which only take into account the individualization of the criminal punishment and are important for establishing the criminal punishment before the court, to achieve the purpose of the criminal law to correct and re-educate the driver of the means of transport as well as to prevent the commission of new crimes both by the condemned and by other drivers of the means of transport, taking into account the imprudent manner of the committed offence.

Given that driving on the public roads becomes a real sporting competition, where some drivers face their capabilities and the possibilities offered by the vehicle they are driving, making it a glory to overcome or compete with cars with larger cylindrical capacities, performing dangerous maneuvers in high-speed mode where the risk dose is extremely high and the smallest unforeseen factor can lead to serious accidents, can we not talk about the presence of intention? An intention of drivers who are driving and not allowing to be overtaken, blind with the headlights those coming from the front, displaying dangerous maneuvers with a high risk coefficient, sometimes associated with a refusal to obey the rules of conduct in traffic, creating the feeling of being a "super-citizen", a feeling entirely unjustified and very dangerous from the point of view of accidents, especially if the deed is committed in the state of drunkenness.

In the light of the above, we justify the need for more severe punishment of the investigated offence if it has caused serious injury to the victim's bodily integrity or the death of one or more persons. Establishing a differentiated regime for the prosecution of criminal proceedings for these

two ways in relation to the one established for the typical way of the offence in question is the natural expression of the added danger of social peril they present as well as the difference in criminal treatment applicable to the perpetrator in those situations.

The signs of the subjective side of the offence are closely related to all other elements of the composition. Analysis of the subjective side allows the correct identification of the object of the offence. In court practice, there are often errors in the classification of offences committed with the use of motor vehicles when the object against which the intention of the guilty person has been directed is not precisely established. Thus, there are cases of non-responsibility for murder with the use of the means of transport, even in the presence of the intention to commit the murder of the victim.

No infringement of the rules of road traffic or motor vehicle safety will be a violation if the person driving the vehicle has not and could not have foreseen the occurrence of the injurious consequences indicated in article 264 of the Criminal Code of the RM. In this situation, an indemnity will be incurred without guilt.

The reason for violation of road safety and traffic rules is not relevant to qualification. This, in most cases, is expressed in the demonstration of boldness, rush or simply ignoring these rules. Determining the cause of the offence has a great importance in individualizing the punishment.

The study of the subjective side also involves explaining some aspects of the reason for violations of traffic rules and vehicle operation, so we mention that it is generally not of interest for qualification. However, as long as the driver is asked for maximum diligence and caution, the desire to be “strong in traffic” may be a possible reason that will influence the judicial individualization of the criminal punishment, not the qualification.

### **Conclusion**

The subjective side of the offence ascribed to art. 264 in the Republic of Moldova’s Criminal Code is circumscribed by the following signs:

**1) Main Signs** (are important for crime qualification):

- guilt, which can take the form of imprudence in both ways;

**2) Optional signs** (are only relevant for the judicial individualization of criminal punishment):

- reason;
- aim;
- emotions;
- recollections.



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## NOUTĂȚI EDITORIALE

### **„НА ПЕРЕКРЁСТКЕ ВСЕХ ЗОЛ” РЕЦЕНЗИЯ**

**на книгу: „История политических учений в 12-ти  
книгах. Книга XII. Общественно-политическая мысль  
Молдовы Нового времени. Часть первая: Национальная  
политическая мысль”, Валентин Бенюк,  
Эдуард Волков, Виктор Степанюк**

Рецензируемая работа была представлена на суд общественности 30 ноября 2016-го года перед широкой аудиторией учёных, политиков, преподавателей и студентов в Институте Международных Отношений Молдовы и вызвала большой резонанс. Книга представляет собой исследование политической мысли летописцев, государственных и политических деятелей, писателей, поэтов и других мыслителей Молдовы в период с XVI по XIX вв.

Молдова возникло и признано как государство в 1359-м году под названием Цара Молдовой, в котором жители идентифицировали себя как молдаване, говорящие на молдавском языке.

Излагая общественно-политические воззрения молдавских мыслителей, авторы касаются всех важнейших событий в истории Молдовы - образование молдавского государства, рост международного значения Молдовы в 15-16 веках, османский сюзеренитет в Молдове





в 16-19 вв., раздел Молдовы в 1812-м году на Западную и Восточную части, объединение Молдовы и Валахии в 1859-м году, образование унитарного государства - Румыния в 1862-м и её признание в 1878-м году, влияние национализма и патриотизма на становление и укрепление государственности и другие.

Исследования позволяют сделать главный вывод: несмотря на различные события и повороты истории, по словам Grigore Ureche: „*fiind în calea tuturor răutăților*” (“Молдова, находясь на перекрёстке всех зол”. - Перевод наш. В.Пушкаш), молдаване сумели сохранить и по сей день национальную идентичность - молдаване и название языка - молдавский.

Авторы работы отмечают, что **политическими мыслителями Молдовы была высказана вся существующая на тот момент палитра политических воззрений**: среди них были и сторонники монархии - как ограниченной (Г. Уреке, М.Костин, Г. Асаки), конституционной (М.Когэлничану) так и абсолютной, но просвещённой (Н.Милеску-Спэтару, Д.Кантемир), и приверженцы республики (И. Крянгэ, Н. Зубку-Кодряну).

Уже в первой половине 19-го века многие молдавские мыслители разделяли либеральные ценности (М.Когэлничану, К.Стамати-Чуря, К.Негруцци, в начале своей деятельности), другие - консервативные (Г. Асаки, К.Негруцци в зрелые годы, П. Леонард); имелись среди них сторонники демократии, причём различных её подвидов (М.Когэлничану, И. Крянгэ, Б.П.Хашдеу), а были и её противники, почитатели авторитарного режима (К.Стамати-Чуря); наряду с идеями в поддержку революции (В. Александри, М.Когэлничану, А. Руссо), высказывали и идеи в поддержку эволюционного пути общественного развития (Г. Асаки, Б.П.Хашдеу); одни были революционными демократами (А. Руссо), а другие - социалистами (З. Ралли-Арборе, Н. Зубку-Кодряну); наконец, большинство молдавских интеллектуалов были националистами (в положительном значении этого слова), причём позитивный умеренный национализм (М.Эминеску) порой трансформировался в воинственный (Б.П.Хашдеу, М.Эминеску).

Когда возник вопрос объединения Молдовы с Валахией на равноправной основе, чтобы совместно добиваться независимости от Османской империи, возникли унионисты - (В. Александри, М.Когэлничану, А. Руссо), и антиунионисты, государственники - (Г. Асаки, К.Негруцци, И. Крянгэ), которые стремились к сохранению независимого государства – Молдова.

Авторы приходят, на наш взгляд к очень важному выводу: «*практи-*

*чески все те политические учения и доктрины, которые были созданы в европейской общественно-политической мысли, были представлены и в Молдове». (С.516,636).*

Данную особенность общественно-политической мысли Молдовы можно объяснить как влиянием буржуазных революций, так и тем, что на палитру существовавших воззрений повлияла и геополитическая специфика Молдовы: Она находилась среди империй: Римской (476-й год по 1453-й), Османской(1299- 1923), Российской (1721 - 1917), Австро-венгерской (1867 - 1918); среди трех мировых культур (славянской, латинской и восточной); среди трёх великих религий (православной, католической и мусульманской); между тремя идеологическими течениями (панславизм, пантюркизм и панлатинизм).

Не меньшее воздействие на политическую и социально-экономическую жизнь Молдовы, а значит и на формирование общественно-политических воззрений элиты оказали влиятельные государства средних веков - Венгрия и Польша.

Как справедливо указывают авторы, разнообразные мнения молдавскими мыслителями высказывались и в отношении внешнеполитической ориентации Молдовы, её геополитических устремлений: в первые столетия рассматриваемого периода в основном шла борьба между сторонниками ориентации на Османскую и на Российскую империю, некоторое время с ними конкурировали симпатизанты Польши; в XIX в. ситуация кардинально изменилась, в основном шла борьба между сторонниками ориентации на Россию и приверженцы западных стран – Франции или Германии.

В целом, конкретная геополитическая ситуация оказывало сильное воздействие на политическую ориентацию Молдовы, что позволяло на протяжении веков сохранить свой суверенитет и свою национальную идентификацию. Стремление к суверенитету и независимости были присущи молдаванам на протяжении всей своей истории, включая и периоды объединений в 1859-м году и 1918-м.

Вместе с тем, отмечают авторы, в Молдове разрабатывались и достаточно оригинальные учения – **пашоптизма** (М.Когэлничану, А.Донич) и **попоранизма** (И. Крянгэ – по сути своих воззрений, его предтеча, основателем которого принято считать К. Стере).

В книге уделяется внимание отношениям мыслителей к образованию нового государства – Румынии и тем последствиям, которые испытали на себе молдаване.

Авторы отмечают, что *«вопреки договоренностям о равноправии*



княжеств в объединённом государстве, вопреки просьбам о нейтральной столице (предложен был г. Фокшань. – В.П.), вопреки требованиям о сохранении определённых органов государственной власти за Ясами, молдаване, по сути, были обмануты». (С.311). Нарастало недовольство простых жителей и определённой части элиты общества несправедливым отношением к Молдове и её жителям со стороны бухарестских (Валашских) властей.

Апогеем недовольства, как нам кажется, стало свержение А.И. Куза, господаря Молдовы, а потом и Валахии, организатора объединения принципатов, и первого господаря Румынии. Политические требования государственников (И. Крянгэ, Г. Асаки, И. Истрати и других) сводились к отмене объединения Молдовы и Валахии и восстановление независимого молдавского государства. Безразличие к требованиям анти-унионистов привело к массовым столкновениям. Как подчёркивают авторы, “в результате столкновения армии с протестующими молдаванами, 16 солдат погибли и более 30 были ранены, а среди протестантов погибли десятки участников, а по некоторым данным сотни, множество были арестованы”.... Точные цифры этой трагедии неизвестны, ибо эта “позорная страница, характеризующая суть «объединения» и характер отношения Бухареста к Молдове, к молдаванам, является в Румынии табуированной».(С.314-315).

Вероятно, сомневаясь в правильности объединения Молдовы и Валахии, Михай Эминеску, хотя и придерживался румынской идентичности, высказывался за возрождение древней Дакии как государственного образования, которое объединило бы говорящих на одном языке народы. Дакия, как отмечают авторы, «в творчестве Эминеску представляет собой архаический образ идеального естественного государства, источника правды и святости».

Может именно для достижения таких целей, как предполагают авторы «поэт организовал движение за возрождение Дакии, и деятельность подпольной политической организации Societatea Carpații (общество Карпаты) была направлена на дакизацию (дачизацию) Румынии и Трансильвании» (С.365). Возможно, Михай Эминеску, в таком проекте видел, и объединение восточной и западной части Молдовы.

В работе много внимания уделено национальной идентичности молдаван. Авторы книги ссылаются в этом вопросе на исторические источники. Например, в книге *«История в польских стихах государства Молдовы и стране Мунтении»* Мирон Костин пишет, *«Отныне будут с*



одной стороны молдаване и с другой мунтены». И далее «Дав этой реке навеки имя Молдова, от Молды она сохранила и поныне первое имя. Река Молдова дала вечное имя и стране и народу: от Молды и молдаванин». (С.26).

В книге «О племени молдаван, из какой страны вышли их предки» Мирон Костин пишет «Большим доказательством народов, каких корней и истоков, являются имена, которые именуются они сами и другими чужими странами...». (С.27).

Приводится и очень интересный вывод современного историка **Л.Бога** который в начале 20-го века, как нам кажется, выразил истинную душу молдаван восточной части Молдовы. «Из свидетельств времени, пишет он, вытекает, что у оставшихся в Бессарабии существует светлое сознание единой родины - Молдовы, единого народа - молдавского, единой нации – молдавской, единого племени – молдавского, и превыше всего единого языка-молдавского». (С.200)

Резонно задать стороннику «унирии» вопрос, что дали молдаванам Бессарабии (Восточной Молдовы) 22 года, нахождения в составе Румынии. Ведь ни язык – молдавский, ни национальная идентичность не изменились. В качестве ответа, авторы книги приводят высказывания другого румынского правоведа и историка **А.Болдур**, о том, что в Восточной части Молдовы «много совершенно специфических черт... Историк прошлого Бессарабии под русскими ни на один момент не должен забывать, что Бессарабия сохранила своё этнически отличное лицо, социально-политическое и юридическое всегда в национальном аспекте». (Там же).

Эти взгляды находят своё подтверждение и в сегодняшних реалиях: большинство жителей Республики Молдова считают себя молдаванами, живущих в восточной части исторической Молдовы; они никогда не признавали название “Бессарабия”, имя, навязанное молдаванам царским самодержавием, которое желало навсегда превратить родину молдаван в рядовую губернию Российской империи.

Много внимания в работе уделено вопросам молдавского языка, о котором писали Григоре Уреке, Мирон Костин, Дмитрий Кантемир, другие, а также молдаване - создатели румынского языка: А. Руссо, И. Некулче, К.Негруцци, М.Когэлничану, В. Александри, М.Эминеску, И. Крянгэ и другие.

Некоторые идеологи единого румынизма и унионизма, утверждающие существование только одного языка - румынского и не признающие второго названия того же языка - молдавский язык, фактически разделили общество на румын и молдаван; первые считают



последних манкуртами и проповедниками примитивного молдовенизма. Но читая работу авторов, невольно приходишь к выводу, что молдаване заслуживают и требуют то, что им принадлежало и принадлежит на протяжении веков и не молдаване являются манкуртами.

Ион Некулче в своём произведении *«Летопись Страны Молдавской...»* справедливо подчёркивает что, *«только опираясь на опыт прошлого можно не повторять ошибки в будущем»*. (С.148). На наш взгляд, молдаване ошиблись при первом «объединении», в 1859-м году и также при втором «объединении», в марте 1918 г.

Неужели молдаване и в третий раз допустят ошибку - отказаться от государственности, суверенитета и от своего языка и последуют за идеологами современного унионизма.

Жаль, что в своём исследовании авторы не дошли до второго «объединения», которое открыло бы читателям правду о многих постыдных событиях, сопутствующих ему.

Авторы книги, на наш взгляд приводят убедительные доказательства об исторических корнях молдавского языка, анализируя произведение Григоре Уреке *«О нашем молдавском языке»* - первое письменное исследование о языке молдаван на молдавском языке.

Дмитрий Кантемир в работе *«Описание Молдовы»* в разделах *«О языке молдаван»* и *«О буквах молдаван»* исследует различные аспекты молдавского языка: фонетический, лексический и грамматический. Дмитрий Кантемир первым обратил внимание на идентичность, но и отличие разговорного языка молдаван используемого другими восточно-романскими народами. *«У жителей Валахии и Трансильвании тот же язык, что и у молдаван, но произношение резче... Даже ввели несколько слов, неизвестных молдаванам, но в письме их совершенно избегает. Они следуют как молдавскому языку, так и молдавской орфографии, признавая этим, что молдавский чище их языка, даже если антипатия между молдаванами и валахами мешает им сказать это»*. (С.99-100).

Отметим, что согласно различным проведённым опросам граждан Республики Молдова, около 70% населения в настоящий период считает, что их язык называется молдавский. Если это так, спросим себя, почему не признавать и идентичность названных языков и определить название языка *«молдо-ромынэ»* или *«молдовеняскэ-ромынэ»*. Оба названия как единый язык имеют право на жизнь: Молдаване - молдавский, румыны - румынский.

Другой путь консолидации нашего общества, кроме признания



идентичности языков и равноправного использования обоих названий, на наш взгляд, не существует.

В рецензированной книге проводится сравнительный анализ многих социально-политических явлений прошлого и настоящего Молдовы. В частности, как отмечают авторы, многие статьи Эминеску, опубликованные в прессе того времени, явно опережают свою эпоху и звучат актуально и в наши дни.

К примеру, процитируем важный фрагмент из произведения М.Эминеску, который приводят авторы опубликованной книги: *«У нас есть историки, не знающие истории, литераторы и журналисты, не умеющие писать, актёры не умеющие играть, министры не умеющие управлять, финансисты не умеющие считать, поэтому у нас столько бездарных бумаг, поэтому столько животного визга в театрах, поэтому столько раз меняются министры и министерства, поэтому столько банкротов. Легче найти людей, ставящих под сомнение само существование Бога, нежели души, влюблённые в язык и обычаи своих предков, чем сердца, влюблённые в самые выразительные черты нашего народа, умы, занятые жизненными проблемами того народа, на спине которого мы пишем все фантасмагории нашей лживой цивилизации»*. (С.392).

Важным уроком для сегодняшнего дня являются и заметки М.Эминеску о политизации просвещения. Все мы понимаем, что у нас политическими силами захвачены не только государственные органы, но и институты образования.

Так, ещё в 1878 году, М.Эминеску констатирует, что *«университетские профессора вместо дела занимаются политикой; преподаватели лицеев и начальных школ – тоже самое; инженеры, врачи, писатели, музыканты, даже актёры – все занимаются политикой, чтобы выдвинутся»*. (С.396).

Автор данной рецензии задаётся вопросом: Разве участие в массовых протестах учеников, лицеистов и студентов вместе с преподавателями, не свидетельствует о чрезмерной политизации институтов просвещения современной Молдовы? А ведь М. Эминеску предупреждал нас, что *«это особенно большое зло, ибо вред сегодняшний может оказаться преходящим, а подрыв жизненного нерва любого общества – трудолобие – не оставляет даже надежды на исправление положения»*. (Там же).

Но особенно злободневной и сверхактуальной является мысль



М.Эминеску, процитированная авторами книги: «низкий культурный уровень и в верхах, и в низах - ещё не самое большое бедствие... Все стремятся лишь к одному - использовать преимущества иностранной цивилизации, а не создавать в стране культурные условия, в которых такие результаты достигаются сами собой».(С.392).

Опубликованная книга *«История общественно-политической мысли Молдовы Нового времени»*, безусловно, является важным событием в научной жизни нашей страны. При её написании авторы использовали огромное количество источников и литературы на молдавском, русском и иностранных языках. Как заявлено авторами во Введении, первая часть рецензируемой книги – *Национальная политическая мысль* - будет дополнена *Антологией*: избранными текстами молдавских мыслителей по рассматриваемой тематики.

*«История общественно-политической мысли Молдовы Нового времени»* очень выразительно показывает и доказывает: У Молдовы есть своя самобытная история, огромный пласт выдающихся мыслителей, философов, литераторов, людей науки и создателей разнообразных политических учений. Это богатство, о котором мы должны знать. И этим большим богатством, мы, молдоване, должны гордиться.

Рецензированный научный труд будет весьма полезен для:

- преподавателей и студентов, изучающих политологию, правовые науки, государственное управление, историю, философию, культурологию;
- политиков и государственных деятелей,
- учёных и исследователей в области общественных наук,
- всех тех граждан, которые хотят узнать о прошлом своего народа и прогнозировать будущее.

Было бы желательно, чтобы авторы в дальнейшем исследовали развитие общественно-политической мысли нашей родины и в XX и XXI-м веках и опубликовали свои исследования и на молдавском языке. Пожелаем им дальнейших творческих успехов.

**Виктор ПУШКАШ,**  
кандидат юридических наук, доцент

## RECENZIE

**la publicația „Materialele Conferinței științifice  
internationale *Statalitatea Moldovei: continuitatea istorică și  
perspectiva dezvoltării*”, organizată sub patronajul  
Președintelui Republicii Moldova Igor Dodon,  
24-25 martie 2017**

Activînd de mai bine de 20 de ani în cadrul Academiei de Științe a Moldovei, încîntat pot să menționez că aceasta este prima Conferință științifică internațională care și-a desfășurat lucrările sub patronajul Președintelui Republicii Moldova. Îndeosebi, remarc faptul că este primul Forum științific internațional, în cadrul căruia s-a abordat problema Statalității Moldovei - un subiect deosebit de actual pentru țara noastră.

În acest sens, afirmațiile domnului președinte Igor Dodon din cuvîntul său de salut către participanții conferinței sunt substanțiale pentru societatea moldovenească: „temelia statalității Moldovei este identitatea noastră moldovenească”. Susținem și confirmăm că promovarea acestei identități este o condiție importantă pentru dăinuirea statalității țării noastre și subsemnăm la cele menționate de domnul președinte că „Statalitatea moldovenească trebuie consolidată prin discuții academice și prin inițiative politice, dar și prin programe naționale de restabilire a încrederii cetățenilor în propria țară”. Acestea și alte afirmații ale șefului statului mobilizează nu doar oamenii de





știință, dar și cetățenii simpli să se implice activ în cercetarea, promovarea și consolidarea identității moldovenești și a „statalității Moldovei”.

Abordarea problemelor existente din țara noastră de către savanți din mai multe țări, precum Rusia, Bulgaria, România, Germania, Spania, Italia, Ucraina, Republica Belarus, Kazahstan, Slovacia, confirmă importanța și actualitatea genericului conferinței - Statalitatea Moldovei.

Interesul sporit față de această tematică este susținut și de faptul că în activitatea acestui Forum au participat reprezentanți ai mai multor structuri de stat, ai mediului academic, ai societății civile, experți în domeniu, precum și tineri cercetători. În acest context, valoarea științifică a materialelor incluse în culegere este una deosebită - reprezintă diverse opinii și recomandări de îmbunătățire a legislației și a politicilor publice cu privire la problemele statalității Moldovei, constituind astfel atât o sursă științifică fundamentală pentru cercetători, cât și pentru factorii de decizie, autoritățile publice, în vederea dezvoltării de perspectivă a Statalității Moldovei.

Întrucât publicația prezintă un maxim interes, cuprinde o tematică multidimensională, pregătesc o recenzie amplă asupra acesteia, care urmează a fi publicată într-o revistă de specialitate din domeniul dreptului, acreditată de Consiliul Național de Atestare și Acreditare al Republicii Moldova - „Legea și Viața”.

Exprim cu toată fermitatea că publicația *Statalitatea Moldovei: continuitatea istorică și perspectiva dezvoltării* va fi apreciată înalt de către toți cei care nu sunt indiferenți de soarta țării Moldovei, de soarta și viitorul nostru, al tuturor.

**Costachi GHEORGHE,**

*doctor habilitat în drept, profesor universitar,*

*cercetător științific principal,*

*Institutul de Cercetări Juridice și Politice*

*al Academiei de Științe a Moldovei*

*Materialele publicate în revista „Relații Internaționale Plus”  
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*Tirajul - 100 de exemplare  
Periodicitatea – bianuală (trianuală)  
Versiunea online: <http://irim.md/cercetare/revista-ri-plus/>*

*ADRESA REDACȚIEI:  
str. Pușkin 54, mun. Chișinău, Republica Moldova, MD 2005,  
telefon/fax: 022-21-09-78; e-mail: [roșcaludmila@mail.ru](mailto:roșcaludmila@mail.ru)*

*TIPOGRAFIA „PRINT-CARO”*

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*Circulation - 100 copies  
Periodicity - biannual (triennial)  
Online version: <http://irim.md/cercetare/revista-ri-plus/>*

*EDITORIAL ADDRESS:  
54 Pushkin Street, Chisinau, the Republic of Moldova, MD 2005,  
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*PUBLISHING HOUSE “PRINT-CARO”*