

# THE STATUS OF FOREIGN ARMED FORCES ON THE ROMANIAN TERRITORY. REGULATIONS, SPECIFIC CASES, SOLUTIONS REGARDING JURISDICTIONS

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*Regardless of the controversies caused by the presence of allied forces on the Romanian territory, reality proves beyond any doubt that the Romanian state wishes to build upon such a situation to the benefit of its own security, especially in the current international conjuncture. Such a choice may seem logical and responsible to the great majority of the Romanian people. However, in our opinion, there is still an element that needs to be adjusted: the same people's perception on the status of foreign armed forces on the Romanian territory. The current paper aims to approach some legal issues regarding this matter, to contribute to a better understanding of the regulations that govern this domain and to reveal a principle that needs to be unanimously accepted: the allied forces need to be treated, for better or worse, just like a host nation's military.*

**Key words:** *status of force, jurisdiction, allied forces, permanent presence, morale, liability, Romanian territory.*

## **1. THE CASE OF THE PERMANENT AMERICAN MILITARY PRESENCE ON THE ROMANIAN TERRITORY**

After meeting Philip M. Breedlove, Supreme Allied Commander Europe of NATO Allied Command Operations in Bucharest on the 26th of November 2014, the Romanian minister of national defense, Mircea Dușa, states that the Mihail Kogălniceanu Base has become an important logistic hub and a transit center as a result of the excellent cooperation between Romania and the United States of America [1].

Also, on the 3rd of December 2014, the minister of foreign affairs, Bogdan Auresco, meets the Secretary General of NATO, Jens Stoltenberg in Brussels, where they discuss the progress made in implementing the decisions of the state and government chiefs adopted at the NATO Summit in Great Britain, in September the same year. Bogdan Auresco reconfirms Romania's availability to host NATO command and control elements on national territory,

considering the importance of a fully supported implementation of the action plan for the consolidation of the Alliance security within the context of the security challenges that continue to aggravate in the south and east vicinity of NATO [2].

Referring to the Deveselu Base, another facility offered to the American allies on the 9th of December 2014, Bogdan Auresco underlines that the anti-ballistic missile defense system implemented by the USA in Romania shows the latter's determination not to return to Russian influence [3] Thus, the anti-ballistic missile defense system from the Deveselu base involves American permanent presence on the Romanian territory and, hence, provides a security warranty for Romania while showing this country's Westward orientation [4].

Shortly after Bogdan Auresco's declaration that the shield is defensive and does not aim towards Russia, Mike Rogers, member of the Armed Services Committee and Chairman of the Subcommittee on Strategic Forces from the USA Congress declares that the

Deveselu anti-ballistic missile defense system has the purpose to protect Romania and NATO allies from possible aggressions coming from the Russian side [5].

This is for the first time an American official admits that the missiles from the sophisticated Aegis Ashore system located in Romania and Poland are being headed more to Moscow than to Teheran [6].

Regardless of the controversies caused by the presence of the allied forces on the Romanian territory, reality proves beyond any doubt that the Romanian state wishes to build upon such a situation to the benefit of its own security, especially in the current international conjuncture. Such a choice may seem logical and responsible to the great majority of the Romanian people. However, in our opinion, there is still an element that needs to be adjusted: the same people's perception on the status of foreign armed forces on the Romanian territory. The current paper aims to approach some legal issues regarding this matter, to contribute to a better understanding of the regulations that govern this domain and to reveal a principle that needs to be unanimously accepted: the allied forces need to be treated, for better or worse, just like a host nation's military.

## 2. LEGAL CHALLENGES OF SPECIFIC CASE STUDIES ON FOREIGN MILITARY PRESENCE ON ROMANIAN TERRITORY

In the following subchapters, a few cases regarding the foreign military presence on Romanian territory and the legal solutions related especially to jurisdiction aspects are to be presented.

### 2.1. Crazy Horse, Red Bull and various ingredients

In 2007, two American soldiers refused to pay the bill in a striptease club "Crazy Horse" from Mamaia because it seemed to much in comparison to what they had actually consumed [7]. The Americans tried to leave the bar, but the administrator ordered the security staff to close and block the exit. The American soldiers were not intimidated and in their

attempt to get out they broke the door and the conflict between the two parts grew bigger in front of the bar. The scandal degenerated into a fight; therefore, in order to calm the spirits down, the police intervention was necessary [8].

The investigations that could have been made by the Romanian authorities were stopped, because the trial, in the event of one, had to take place in the USA. All this because, according to Law no. 260/2002 for the ratification of the Agreement between Romania and the United States of America regarding the status of the United States of America forces in Romania, Romania acknowledges the particular importance of disciplinary control exerted by American military authorities over the members of the military force and its effect upon operational training. As a result, in cases similar to the one above, Romania renounces to its own jurisdiction. Therefore, the Prosecutor's Office belonging to the Constanta Court House waited for a request from the USA Embassy and the moment it came the file was forwarded to the American authorities.

### 2.2. Teo Peter, the Vienna Convention and the American Military Justice

R.C. VanG., ex commander [9] of the Marine security detachment at the U.S. Embassy in Bucharest was accused of being involved in a deadly accident on the 4th of December 2004. While driving a car belonging to the Embassy he crashed into a cab in an intersection and the accident resulted in the death of a person. On the 18th of April 2004 Staff Sgt. R.C. VanG. was officially accused by the American military Justice for being involved in the accident that ended with the death of the Romanian artist Teo Peter (T.P. from now on). The commander of the US Marine Security Battalion of the US Embassy decided to start an investigation in order to analyze the charges that had been brought against the American marine.

In accordance with the USA Forces Military Justice Code, R.C. VanG. was accused, of manslaughter, obstruction of Justice, imprudent driving and making

false official declarations. The American marine was also under investigation for other charges as well, that were not directly linked to the car crash, such as: not respecting an order or a rule, driving under alcohol influence and reprehensible behavior while being drunk.

The hearing procedure is similar to the one with a jury and the accused has the right to request the presence of a lawyer. Also, until proven the guilt, the accused has the benefit of the doubt.

The officer in charge with the investigation of the case, LTC S.C., initiated a hearing, examining the charges brought against R.C. VanG. Among these he was found guilty of “adultery” [10]. As a member of the administrative staff of the Embassy, R.C. VanG., had immunity from prosecution by the Romanian authorities, but he was legally responsible in front of the American military legal system, according to the declaration of J.D.C.II, the American ambassador in Romania at the time.

The Vienna Convention regarding the diplomatic relations marks the limits to this type of immunity and stipulates that a diplomatic agent is not excused from the jurisdiction of the accrediting state, the one that sends him to the post. R.C. VanG. was tried in the USA after the accident where T.P. lost his life [11]. A Committee of the Court Martial consisting of 7 members found Staff Sgt. R.C. VanG. not guilty of manslaughter and adultery, but guilty of 2 minor charges, obstruction of justice and false declarations. After a touching statement about his character, made by his family and co-workers, presented at the conviction hearing, the jury recommended that the accused should be given a reprimand letter [12].

Subsequently to the verdict, the president of the National Institute for Military Justice in Washington, E.F., stated for BBC that T.P.s family had two solutions. The victims’ family could sue R.C. VanG. in Romania, but they would never find him because it was expected that he would never return to Romania or they could have filed a complaint against the USA Government, asking for damages repair. According to E.F., it was

not about a lawsuit, but about a request that the USA Government should pay a compensation and, to his mind, the USA Government would refuse to pay.

### **2.3. Saber Guardian and the Armenian military**

Between the 13th and 26th of April 2013 the “Saber Guardian 2013” exercise took place in Romania and was organized by the Romanian Land Forces Staff in cooperation with the U.S. Army Europe (USAREUR). Military from the Republic of Armenia participated in this activity.

Because of alcohol abuse, two Armenian soldiers started a fight with civilians in Făgăraș, on the 16th of April 2013. The case was investigated by the Romanian Police because the Armenian military were under Romanian jurisdiction, according to the provisions of the Technical Arrangement that both parties had signed for this activity [13].

### **2.4. More Case studies and related claims resolutions**

A. On the 22nd of February 2012, around 07.30 am, an American citizen drove a Mitsubishi Montero, property of the US Army, on DN2A reaching km. 185+800 m in Mihail Kogălniceanu and crashed into another automobile, a Smart Ford Two. According to forensics report, L.M.C., passenger in the Smart Ford Two automobile, driven by G.V. did not require any medical attendance.

During the interrogatory, G.V. said that he would not press any charges for the damage caused in the car crash, nor would he want to be seen by the medical examiner. Both drivers had been tested for alcohol consumption, resulting 0,00 mg/l, in both cases.

On the 23rd of February 2012 the Army General Headquarter Department – Intervention Forces from Mihail Kogălniceanu Airfield communicated that the American citizen P.A. was a member of the United States armed forces, with a contract in Romania at Mihail Kogălniceanu Airfield and that according to art. VII, paragraph 3, letter a (ii) from the Agreement between the member countries of the North

Atlantic Treaty regarding the status of forces, ratified by Law no. 23/1996, the jurisdiction priority belonged to the American military authorities. The latter had requested to use this right and the Romanian authorities had not filed a petition asking to give up this jurisdiction right.

The conclusion in this case was that the authorization from the competent agency was missing. Therefore the Romanian criminal procedure would not be applied. P.A. and he would not be accused of injury by negligence, which is provided and punished according to art. 184, paragraph (1) and (3) Penal Code.

According to the Implementation Arrangement between the United States and Romania designated authorities regarding claims procedures in the implementation of the Agreement between the United States of America and Romania concerning the activities of the United States forces located on the territory of Romania, the persons who have suffered damages can request reparation according to the procedures developed by the American authorities.

B. On the 23rd of June 2014 at 10.18 hours, in Vâlcea district, a Chevrolet Aveo automobile, private property belonging to the complainer B.M.E., collided with a Volvo Van belonging to the USA army forces, driven by N.T., member of the US forces, who did not maintain the proper side distance from the Chevy [14]. Based on current regulations and inherent provisions, the conclusions were as follows:

- Mrs. B.M.E.'s petition for 3153.48 lei, the equivalent for the repairs of the damaged motor vehicle, falls under the provisions of art. VIII, paragraph 5 from the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (NATO SOFA), ratified by Law no. 23/1996.

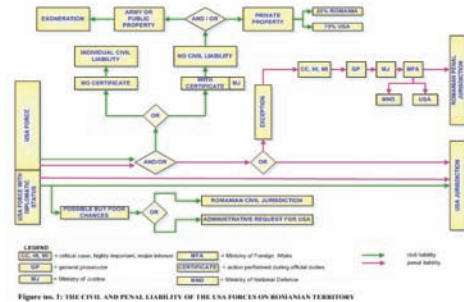
- Solving the payment claims is the responsibility of the Romanian state, the amount is determined either through an Arrangement or through courts order. Mrs. B.M.E. requested to receive 3153.48 lei based on the repair receipt from an auto service in Galati.

- According to the aforementioned Agreement, the amount is to be paid as follows: 25% is to be covered by the Romanian side and 75% by the American side.

### 2.5. Example of a procedure on establishing liability and jurisdiction

As previously shown, in spite of the relatively short experience regarding the presence of allies on Romanian territory, the cases already tried prove that current agreements are successfully applied.

Thus, by resorting to the examples above we managed to outline cases of civil and penal liability of the allies on Romanian territory. A quite simple diagram describes the path to follow in order to establish such liability in the case of the American armed forces stationed on Romanian ground. Thus, as far as Romania is concerned, these rules or paths are axioms where there is no room for "de lege ferenda" (see **Figure 1**).



### 3. CONCLUSIONS

The rules concerning the presence of foreign military on a allied state's territory are common for the majority of the allies. When these rules are not applicable, then bi or multilateral Arrangements are used; otherwise the members of the force are treated like simple tourists.

There are, also, some cases in which our allies were subjects of unfortunate events that happened on the Romanian territory, in these situations both, the perpetrator and the victim belonged to the same force (American allies). From a legal point of view it is not in our interest how the allies cause damage to each other, without affecting the life or the goods belonging to Romanian citizens. Although these exist, in this current paper we did not approach this matter. Because, in our opinion, such

events do not affect or influence the Romanian people morale we will not make references to them.

States always try to protect their own forces as much as possible, assuring, among other things, a proper morale for the troops (check, for example, Romania's case involving gendarmes in Kosovo, when even our country protected its troops by withdrawing them immediately after being involved in a tragic event that ended with loss of civilian lives). On the contrary Romanian population desires to see all the people who break the law (including on allies) tried and condemned by the Romanian authorities, according to Romanian law.

Romania and its people must PERCEIVE and TREAT allied troops as they does do with their own soldiers, Allies are not occupational troops. They are on the Romanian territory based on Arrangements signed between the sovereign states and their presence in Romania is beneficial.

Without taking into consideration the previous principle, we will only have endless frustrations, with unpleasant consequences, especially in the areas where the allies benefit from Romanian facilities.

## NOTES AND REFERENCES

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[6] <http://www.puterea.ro/eveniment/scutul-de-la-deveselu-cu-fata-catre-moscova-105613.html>, accessed on last retrieved.

[7] The American soldiers were irritated to see that for two beers, two glasses of whisky and two energizers, Red Bull, they had to pay 300 RON.

[8] One of the men who had been hit by the Americans, the bar's administrator, had a broken leg and hand injuries, so he needed between 12-14 days of medical recovery. He was transported to the Central Hospital in Constanta for medical care. At the scene of the incident almost all of the Military Police management team was present. The latter held competence for solving the case, as well as the possible complaints that could be filed against the two Americans.

[9] The member of the Marine Security Department of the USA Embassy in Bucharest was driving the motor vehicle that crashed into a taxi in Bucharest, taking the life of a popular Romanian musician. He was assigned to accomplish administrative tasks at his Battalion Headquarters in Virginia. Meanwhile, the military investigators traveled to Bucharest to determine if Staff Sgt. R.C. VanG., age 31 should be charged with the death of T.P. The veteran rocker, in his 50s was the bassist of the Romanian rock band "Compact". R.C. VanG., ex commander of the Marine security detachment at the U.S. Embassy in Bucharest was removed from Romania shortly after the accident, which irritated most of the Romanian citizens. The Romanian prime-minister, Adrian Năstase, sent a letter to President Bush asking him to get involved in solving this situation in order to calm down the Romanian public, maybe by removing the diplomatic immunity of R.C. VanG and returning him in Romania, according to the information presented by the Romanian authorities. According to some news sources R.C. VanG appears to have driven while drinking and that is the reason why he had refused the alcohol test and the investigations of the local authorities. "I know that the perception in Romania is that he was smuggled out of the country" said during a telephonic interview Major M.W.M., spokesman of the 4th Expeditionary Marine Brigade from Camp Jejeune. "It was the ambassador's decision. In conclusion the case is still being investigated and R.C. VanG isn't going anywhere, currently he is located at his Battalions Headquarter."

[10] The protagonist of the "case" was the daughter of M.W., counselor for public affairs at the Embassy. Regarding R.C. VanG another two charges have been brought against him, referring to "the request of committing an offence", because he had asked W. to erase all email correspondence and not to mention about their relationship (affair). The marine has been accused as well of driving while drinking and reprehensible behaviour. According to the declaration of the Marine Infantry's spokesman, R.C. VanG has voluntarily submitted to the alcohol test at the scene of the accident, on the 3rd of December. He

has also been submitted to a blood test, but only after determining that the tests will be executed by American personnel.

[11] According to art. No.31 from the Vienna Convention, a diplomatic agent has penal jurisdiction immunity of the accredited state (the country where he was sent to post). He also has civil and administrative jurisdiction immunity. The same article shows that “the diplomatic agent cannot be forced to testify” and that against him one can take no measure that could harm “personal or residence immunity”. The “diplomatic agent” is the chief of the mission or a member of the diplomatic staff of the mission.

[12] In the opening pleading, the main prosecutor, captain C.M., from the Marine Corps stated in front of the court that R.C.VanG (married with two children) ignored three traffic lights and hit the taxi where T.P. was. Afterward the accused lied to the investigators regarding the events in the night of the accident. The main lawyer representing R.C.VanG, Major P.S., stated in front of the court that the traffic in Bucharest is so “chaotic” and the intersection where the accident occurred is so confusingly lighted that the accused could not have avoided the crash, even if he had exceeded the maximum legal speed and the taxi “also moved very fast”. The Court Martial, formed out of 7 members, is the military equivalent of a jury Court. Its members - 3 of them being artillery sergeants, another is sergeant major and three majors – had been designated on Monday, one day before the hearings.

[13] The exercise took place in Romania at the Training Combat Centre of the Land Forces Cincu, between the 13th and 26th of April 2013. Following this incident the Prosecutors Office within the Courthouse in Făgăraș, started a judicial file. According to the provisions of Law no. 291/2007 regarding the entrance, the stationing, the deploying of operations or the transit of foreign armed forces on Romanians territory “the military authorities of the sending nation are obliged to notify the Ministry of Justice of the host nation, in 24 hours from the moment the act was committed, which has all the elements of a crime committed by a member of its own force, regardless if the action was performed inside or outside the facilities or the established zones”. The obligation of the Armenian military personnel participating to SABER GUARDIAN 13 to submit to Romanian laws was foreseen in article 7 from the Technical Arrangement between the Armenian Ministry of Defense and the Romanian Ministry of National Defense regarding the provisions of the host nation support for the military exercise “SABER GUARDIAN 13”.

[14] According to the Police Report no. CP 6931125, registered at the Road office from Râmnicu Vâlcea, attached to the file, guilty for the accident is N.T.

[15] Law no. 291/2007 regarding the entrance, the stationing, the deploying of operations or the transit of foreign armed forces on Romanians territory.

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