

THE LEGAL REGIME APPLICABLE TO FINANCIAL AUDIT IN ARMY UNITS

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Abstracts: *Through the present paper, the authors propose to bring into the readers' attention the most relevant legal aspects that relate to the organisation and exercise of activity of internal public audit in those entities that have a more special character, by being included in the national defence and security system. Also, we will also be referring to the ways of exercising the aforementioned activity, and to the weaknesses that still characterise the system, as shown by the external public audit reports, published by the Supreme Institute of Audit (The Romanian Court of Auditors, for the last verified exercise at the Ministry of Defence - 2015). The development of our proceedings is based on the legislation applicable in this domain, but also on reports, issued by prestigious institutions, that contain data and information that is both as recent as possible and absolutely credible.*

Keywords: compartment of audit, risks, norms/standards, damage, legal liability/compensation

1. Introduction

Referring to some matters that are meant to clarify some contextual aspects regarding the importance of the financial-budgetary component for the national defence system, we make use of documents / reports, published by institutions that have duties / competence in the researched matter [1-8]. Between these, we can find [7]: the defence policy, the integrated planning of defence, human resources, financial – accounting part, internal audit, legal, religious and medical assistance, scientific research etc. This is included in the institutional mission that involves governance and implementation of multiple activities in the field of national defence, targeting main objectives such as defence and promoting the national security objectives in Romania, reaction to crisis to peace or humanitarian assistance. The resources allocated through the annual budgetary process are meant to

be the basis of an entire series of capabilities, for the upkeep and upbringing of these to the current standards and to assure the basic functionalities of the institution. As a result, the deployment and support of forces in the theatres of operation should be covered through the allocation of additional resources. Amongst the activities that focus on the optimisation of the management of the resources for defence, the concrete transformations in the financial – accounting field, aim to [9] create a financial – accounting system that is capable to ensure and make use of the financial resources that are allocated to conduct military actions, as well as financial information necessary for the commanders, in order to make the best decision. Today, the competence and dimensions of the financial structures [10] are correlated with the legal norms regarding the financial – accounting

activity, the echelon being supported, and also the place and type of military operation, in order to allow the forces to acquire and maintain the capabilities, ensuring effective financial support of all military entities. Taking the incident legislation in the domain of resources for defence into consideration, the planning and programming of financial resources is achieved in consistency with the general objectives of MAPN (Ministry of National Defence) and the priorities that are defined in accordance with the National Defence Strategy, the guidelines for the defence policy in accordance with the Strategic Concept of NATO etc., the financing based on programs establishing a base for the process of planning, programming and budgeting. As far as MAPN's objective to create an efficient financial – accounting management is concerned, the following steps have been chosen [6]:

- ◆ optimisation of financial planning and the rhythmical and balanced execution of the budget;
- ◆ financing programs that are simple, easy to follow/evaluate, and the priority usage of funds for the fulfilment of objectives of the force and their planned capabilities;
- ◆ compliance with the steps of budget exercise regarding expenses and the operational monitoring of the budgetary process;
- ◆ computerisation of financial – accounting components and operation;
- ◆ increasing the liability of the authorising officer and the heads of the financial – accounting departments when managing funds and assets;
- ◆ diminishing losses.

Showing the fact that the financial – accounting department is the structure that ensures the fulfilment of the financial – accounting responsibilities which belong to the Minister of Defence as Authorising Officer, we can point out that the internal public audit bears a very special role.

2. Exercising the auditing operations of asset management and usage of public funds in entities in the defence sector.

If the structure called Internal Affairs (Corpul de Control și Inspecție) exercises specific general inspection and the evaluation of activities conducted by MAPN, the exercise of internal audit is the task for a completely specialized structure: Department of Internal Audit (Direcția de Audit intern - DAI). This performs the auditing of the administration of assets, and the usage of public funds in MAPN according to the legal norms. Thus, DAI is defined as being the central structure, directly subordinated to the Minister of Defence which coordinates and exercises internal public audit activities in the Romanian Army.

2.1. Regulatory milestones

By trying to present some historical elements [11], we show that through the Order of the Minister of National Defence nr. M-67/2000, the Department of Internal Audit (DAI) was created in the central structure being directly subordinated to the Minister of Defence. This has services, sectors, offices and compartments under its command. In the same year – 2000, the first methodological norms regarding the organization and function of the internal audit in MAPN, have been elaborated and approved through OMApN nr. M-81/2000. For the harmonisation with the national law (Law nr. 672/2002 regarding public internal audit), DAI elaborated the “Norms regarding the exercise of public internal audit in MAPN”, which were approved through the Order of the Minister of National Defence nr. M-87 from 02.07.2003. Having the basic national and departmental rules, the place and part of DAI in the military institution was established through the Rules of procedures of MAPN. With the emergence of Law nr. 191/2011 for the amendment of Law nr. 672/2002 regarding internal public audit, auditing committees have been created in public institutions with annual budgets that

exceed 2 bn. lei, and it becomes mandatory that internal auditors from the public sector should be nationally attested. In the year 2014 through the Order of the Ministry of National Defence nr. M-67/2014, the new “Methodological norms regarding the exercise of internal public audit in the Ministry of National Defence” have been approved, aiming to harmonise the national legislation in this field, namely the Government Decision nr.1086/2013 regarding the approval of the general Norms concerning the exercise of internal public audit.

2.2. Duties of the Department of Internal Audit

The main duties of DAI are [12]:

- a) establishes/updates norms regarding the exercise of internal public audit activities in MApN, which are approved by the Central Unit of Harmonisation for Internal Public Audit from the Ministry of Public Finances (Unitatea Centrală de Armonizare pentru Auditul Public Intern din Ministerul Finanțelor Publice - UCAAPI), in accordance with the legal norms in effect;
- b) elaborates the project of the multiannual Plan for internal public audit of MApN, based on this, the project of the annual Plan for internal public audit of MApN, which are submitted for approval to the Ministry of National Defence;
- c) performs internal public audit activities in order to evaluate if the financial management and control systems of central structures, and their subordinated structures and forces from MApN, and also structures that are under its coordination or its authority, are transparent and compliant with the norms of legality, regularity, economical, efficiency and efficacy;
- d) informs UCAAPI about the recommendations that are not appropriated with the Ministry of National Defence;
- e) reports the findings, conclusions and recommendations that result from the

activities of internal public audit, to the Minister of National Defence, to UCAAPI and to the Court of Auditors, at the given fixed dates;

- f) harnesses the results of activities of internal public audit and reports to the Ministry of National Defence and to UCAAPI, about the manner of accomplishment of the objectives of the Department of Internal Audit, through an annual Report;

In case that irregularities or possible prejudices are identified, DAI reports to the Minister of National Defence and to the authorised internal control structure. Furthermore it elaborates the internal public audit Charter and it verifies the compliance with the norms, instructions and even the Code of ethical conduct of an internal auditor in subordinated territorial structures and internal audit compartments from independent structures or national companies found under the coordination/authority of MApN.

2.3. Missions that aim to reach the main objective of internal public audit in MApN

According to a special order of the Minister of National Defence [12], the internal public audit represents the objective, functional and independent activity to ensure and council, designed to bring value and enhance the activities developed in MApN; internal public audit aids the management of the Ministry, the audited structures and military units to achieve their objectives through a methodical and systematic approach, it evaluates and improves the efficiency and efficacy of risk management, control and processes of governance.

In MApN the internal public audit is organised and is exercised distinctly from the audited activities. The sphere of internal public audit covers all the exercised activities, for the completion of set objectives, including the evaluation of the internal control and managerial systems, in the central structures and their subordinated

forces from the Ministry of National Defence, and also in structures that are under its coordination or its authority

The general objective of the internal public audit in MApN is the improvement of management of central structures, and their subordinated structures and forces from MApN, which can be reached through:

a) Insurance missions which consist of objective assessment of evidence, made in order to supply central structures and their subordinated structures and forces from MApN, with an independent evaluation of risk management, control and governance processes.

b) counselling missions that are meant to bring values and improve governance process in central structures and their subordinated structures and forces from MApN, without the auditor assuming any managerial responsibility;

c) evaluation missions that represent an appreciation, on analytic base, of the internal audit function organised and exercised in MApN.

The aim of these is to insurance regarding the fulfilment of objectives according to the international standards of internal audit.

3. Mirroring the economic-financial legality status, but also the level of trust in the internal public audit, in MApN, in the external audit reports of the Court of Auditors of Romania

3.1. Preliminaries

In this sense, we resort to present some excerpts from the public Reports elaborated

by the Court of Auditors of Romania (2012-2015 exercises), but not before reminding that MApN, is the competent authority of the central public administration, subordinated to the Government through which, the activity in the field of national defence is conducted, according to legal provisions and the strategy for national security, for guaranteeing the sovereignty, independence, unity, territorial integrity of the state and the constitutional democracy [13].

In terms of budgetary exercise of MApN in the year 2015, the supreme institution of audit makes the following observations [14]:

- the principle of accounting of commitments (independence of exercise) was not complied with, some expenses with goods and services associated with the month September-December 2014, being wrongly registered when the payment was made, in 2015, but not in the books corresponding to the 2014 budgetary exercise;
- it was identified that some debts were kept in the balance of the “Debtor” account in 31.12.2015, while being registered in the 2002-2013 period, the limitation period being exceeded, motivated by the difficulties in obtaining the necessary documents to clarify the situation of the sums taken over from different disbanded military units.

In numbers, the budgetary exercise for the year 2015 of MApN is as follows [15]:

Table 1 - the budgetary exercise for the year 2015 of MApN

Table 1. The budgetary exercise for the year 2015 of MApN (Thousands Lei)

Name of Indicator	Provisions/ Initial budgetary credits	Provisions/ Definitive budgetary credits	Made Payments	% from the provisions/Initial credits	% from the provisions/ Definitive credits
0	1	2	3	4=3/1	5=3/2
General Total	7.357.291	8.766.431	7.809.979	106,15	89,09
Public Authorities and external actions	2.193	2.589	2.558	116,64	98,90
Other general public Services	2.925	2.622	2.454	83,90	93,59
Defence	6.547.156	7.811.341	6.869.699	104,93	87,95
Public Order and National Security	399.175	460.879	460.197	115,29	99,85
Education	233.281	254.238	252.251	108,13	99,22
Health	47.557	84.208	77.909	163,82	92,52
Culture, recreation and religion	36.933	65.566	60.516	163,85	92,30
Insurance and social security	87.137	84.299	84.082	96,49	99,74
General economic, commercial and worker actions	934	686	313	33,51	45,43
Expenses – State Budget	6.278.975	7.688.115	7.664.116	122,06	99,69
Public Authorities and external operations	2.193	2.589	2.558	116,64	98,80
Other general public services	2.925	2.622	2.454	83,90	93,59
Defence	5.475.066	6.740.660	6.725.720	122,84	99,78
Public Order and National Security	399.160	460.846	460.197	115,29	99,86
Education	233.120	254.056	252.248	108,21	99,29
Health	45.925	82.572	77.841	169,50	94,27
Culture, recreation and religion	33.449	60.449	59.016	176,44	97,63
Insurance and social security	87.137	84.299	84.082	96,49	99,74
Total Expenses from own income	1.078.316	1.078.316	145.863	13,53	13,53
Defence	1.072.090	1.070.681	143.863	13,43	13,45
Public Order and National Security	15	15		0,00	0,00
Education	161	182	3	1,86	1,65
Health	1.632	1.632	68	4,17	4,17
Culture, recreation and religion	3.484	5.117	1.500	43,05	29,31
General economic, commercial and worker actions	934	689	313	33,51	45,43

3.1. Observations of the Court of Auditors to the entities that are subordinated to MApN, audited in the year 2016

The observations in cause are based on the findings of the Supreme Institute of Audit in a structure that has a heightened importance for MApN – Department of Domains and Infrastructure. Here it has been determined that [14-15]:

- unjustified retention, in the balance of the account “Corporal fixed assets in progress” at 31.12.2015, of some sums that represent expenses belonging to finalized and received investment works from the year 2014, buy also expenses belonging to investment works that were finished in 2014 but were never received (The Centre

of Domains and Infrastructure nr.1 Bucharest).

- sums that had an expired limitation period were not transferred to the state budget, representing security for good exercise in 26.11.2012

- lack of compliance with legal provisions regarding the transfer of fixed corporal assets, that have a lesser value that that established by the Government Decision, in the category materials of the nature of inventory objects;

- the proceedings for updating the centralised Inventory of goods from the State’s public domain were not completed for some fixed assets of the entity’s assets.

- harnessing a feasibility study and the related project documentation, in the 5 year

term stipulated in art. 55 from OMAN nr. 120/2012, was not ensured and thus, according to the mentioned norm, the project documentation became obsolete.

3.2. Recommendations of the Supreme Institute of Audit

Court of Auditors of Romania recommended to the management of MAPN to take measures regarding:

- the analysis, at the end of each financial exercise, of the tendering securities/securities for good exercise, found in the balance of the account “Creditors”, that are the object of extinctive limitation, with the purpose to identify the securities with expired limitation period and to transfer them to the state budget;
- the completion of proceeding in order to update the centralised Inventory of goods from the State’s public domain;
- identify the causes that led to failure to harness, in term of 5 years, the feasibility study for repairs and eventually to collect some damages from the persons responsible.

3.3. The audit opinion expressed by the Court of Auditors of Romania at the end of the specific action at The Ministry of National Defence

Based on the conclusions formulated at the end of the mission of financial audit of the exercise account and of the balance, concluded for the budgetary exercise of the year 2015, an opinion *with reserves, with a paragraph to highlight one of the aspects* [14-15] was expressed. As mentioned in the Report of the Court of Auditors (2015), “the paragraph to highlight means that, although violations of legality and regularity were found, both at the chief authorising officer and at the subordinated entities, that influenced the accuracy of the financial statements compiled by the Ministry of National Defence for the year 2015, the added value of these was under the materiality threshold established by the team of external public auditors.” At the same time, a decision was issued (which has not been contested) through which

measures were prescribed for the management of the Ministry of National Defence, which need to be fulfilled in order to dispel the found violations, and also to enter legality.

4. Conclusions

The activity conducted by the audit structures, in their incipient times, was as beneficial as possible. In the case of MAPN, which find itself in full process of reorganising and restructuring, the audit has been professionally engaged in the supervision of the financial flows and materials that are specific to this process, thus ensuring that the risks, of prejudicing the assets of the institution, are kept under control. With the issue of Law nr. 672/2002, regarding internal public audit, according to which the public institutions organise their internal public auditing activities, a new and adequate legal framework, accepted by the European Commission and harmonised with systems similar with other State Members, was ensured. What we wish to show is that the exercise of the auditing operations of asset administration and usage of public funds in the entities form the defence sector, must further be perfected, as shown by the fact that external auditing still discovers irregularities and even prejudices in the defence sector. In this article we made reference to the fact that the audit opinion expressed by the Romanian Court of Auditors, at the end of its specific operation (financial exercise 2010) at the Ministry of National Defence was “with reserves”. Furthermore an enforceable Decision of the Romanian Court of Auditors regarding the dispelling of the found violations and entering in absolute legality is in power.

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