

# CONTEMPORARY RELATIONS BETWEEN THE STATE POWER AND THE ARMED FORCES FROM THE PERSPECTIVE OF POLITICAL SCIENCE

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The subject of the research in this paper are contemporary aspects of the relation between branches of the state power and the Armed Forces. The general starting hypothesis was: „If the state power holders do not have stable support in economic and political actors of the social structure and do not ensure their interaction with social, political, cultural, information and communications and security system, then the execution of the modern role of the Armed Forces in the political system is difficult.” Almost all main analytical and synthetic methods of knowledge have been used in the paper, and the comparative method when it comes to general scientific methods. From the data collection methods the operational method of document content analysis has been used. The paper emphasizes several main findings, first of all, that the Armed Forces and other elements of the defence system in the process of protection of vital social values should be under constant supervision and civilian control of the legitimately elected legislative power, and the executive power should provide conditions, budget and supreme command and through ministerial instructions give guidelines and priorities for the development of the Armed Forces and directly control them. The judicial power sanctions anti-constitutional and illegal actions of the Armed Forces members, as well as other citizens of the society, but also protects the rights and freedoms of those who seek justice.

*Key words: the Armed Forces, political system, division of power, legislative power, executive power, judicial power*

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## Introduction

**F**or modern understanding of the relation between the state power and the Armed Forces, it is necessary to start first from what is understood by the modern state in political and legal theory as the main categorical concept important for understanding the subject of this paper. From an epistemological point of view, the modern state can be defined as “a state with developed stable political, legal, economic, social, security and cultural systems that enable the sovereignty of the power in its territory and the rule of people by modern, democratic methods of governance, in which a citizen is not the subject of the state authorities, but a full member of the social structure in power.”<sup>1</sup>

Two assumptions have affected the establishment of the modern state. The first one is the existence of the state through time and the second one are the modern achievements that the states have done, above all, the level of the development of democracy, human freedoms and rights, „welfare society”, as well as the level of the development of science, culture and education.<sup>2</sup>

At the current level of the development of human society, the concept of the modern state is slowly being implemented for numerous factors, first of all, the states are becoming less independent and sovereign, and more dependent on other states and international organizations. In addition, in modern international relations, there is an expansion of the regulatory competencies of the state and an increase in the control role of citizens in them.

Under the influence of those tendencies, the security function of the state has been changed, in which the primary function of security has been transformed into collective security, and the function of defence, independence, sovereignty and territorial integrity into joint defence, while the function of creating and maintaining internal legal order has been subordinated to the primacy of international law, and the traditional sovereignty of the state, due to strengthening of the role of international organizations, is increasingly taking on the role of „limited sovereignty”.<sup>3</sup>

This is exactly the paradigmatic framework in which the contemporary relation between branches of the state power and the Armed Forces in Serbia is considered from the point of view of political science.

## The relation between the legislative power and the Serbian Armed Forces

The legislative power – the National Assembly decides on war and peace and declares the state of war and emergency; exercises democratic and civilian control over the Serbian Armed Forces and other defence forces; provides financial, norma-

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<sup>1</sup> Neđo Danilović, Aleksandra Danilović, „Pravo 2018”, in: Boris Krivokapić, Neđo Danilović, Dragan Čović (urs), *Ostvarivanje koncepta pravne države i njenog višeg kvaliteta vladavine prava u savremenim državama*, Univerzitet Union „Nikola Tesla”, Poslovni i pravni fakultet, Beograd, 2018, p. 5.

<sup>2</sup> *Ibid*, p. 4 and 5.

<sup>3</sup> *Ibid*, p. 6.

tive, legal and other preconditions for the functioning and development of the Armed Forces and the defence system, etc.

The legal basis for the execution of the social role of the legislative power in the field of defence is provided by the Constitution of the Republic of Serbia. Namely, Article 141 stipulates that the Serbian Armed Forces are under democratic and civilian control. Thus, the principle of democratic and civilian control of the Armed Forces has been raised to the level of the constitutional principle.

The legislative power of the Republic of Serbia influences the execution of the social role of the Armed Forces through numerous instruments, the most important ones being the establishment of the defence policy and the legislative framework for the functioning of the Armed Forces and their harmonization with international agreements; distribution of legal powers; budget adoption and control; decision-making on the deployment of troops to peacekeeping missions; gaining insight into planning and carrying out greater public procurement for the Armed Forces and the defence system as a whole.

## The role of the legislative power in establishing the defence policy and the legislative framework for the functioning of the Armed Forces

The role of the legislative power in Serbia in establishing the defence policy and the legislative framework for the Armed Forces and defence is conducted in the phases of *development, decision-making, implementation and subsequent evaluation* of the implementation of the defence policy and law.

*In the phase of developing the defence policy and laws regulating the Armed Forces*, the National Assembly of the Republic of Serbia has a limited role. The competent expert, legal and other services in the ministries of the Government have a greater role, primarily in the Ministry of Defence, the Ministry of Foreign Affairs and the Ministry of Finance.

The National Assembly of the Republic of Serbia has a decisive role in the process of determining whether the existing Government policy in the field of defence meets the needs of citizens, and it may require a revision of such policy, if necessary. In this phase of the legislative work, the most important thing is that the competent committees of the Serbian National Assembly are consulted in order to have a substantial influence on the content of political and legal documents, expressing pluralism of political visions in the process of preparation of the defence policy and laws in the field of defence. This approach allows not only the National Assembly to transfer the interests of people at the beginning of the policy-making and law drafting process, but it provides a positive pluralistic debate and democratic atmosphere, when the documents such as the Defence Strategy and laws in the field of the Armed Forces and defence are submitted to the Assembly for adoption.

*In the phase of adopting the Defence Strategy and laws related to the Armed Forces and defence, the National Assembly of the Republic of Serbia has a significant role. When the documents such as the Defence Strategy, the Strategic Defence Review and laws related to the Armed Forces and defence are submitted to the National Assembly, they become its „property”, and it assumes responsibility for their adoption. Therefore, it is necessary that the National Assembly and its working and expert bodies are provided with sufficient time to study thoroughly the Defence Strategy, the Strategic Defence Review and the submitted legal acts without any pressure. At this stage of the legislative work, it is very important that the working bodies of the Assembly do not rush into the procedure of adopting documents in the field of defence.*

After the democratic procedure in the working bodies of the Assembly, the National Assembly of the Republic of Serbia, at its plenary session, adopts the Defence Strategy, the Strategic Defence Review and laws in the field of the Armed Forces and defence or rejects them and proposes their amendment in accordance with the proposals of the parliamentary groups and the deputies themselves.

## The role of the legislative power in the field of harmonization of the defence policy and the law on the Armed Forces and defence with international treaties

The definition of the defence policy of the Republic of Serbia and the adoption of laws in the field of the Armed Forces and defence are limited by numerous international treaties, above all, the UN Charter and several international standards that serve as a recommended framework for harmonizing national defence policies of each country.<sup>4</sup> One of them is 2625 Declaration of the UN General Assembly on the principles of international laws related to friendly relations and cooperation between the states (1970). It represents an authentic interpretation of the UN Charter and is therefore binding for all UN member states.<sup>5</sup>

The harmonization of the defence policy and national laws in the field of defence with international treaties is carried out through multilateral and bilateral agreements related to some aspects of defence. In the field of defence, there is a wide range of multilateral agreements. The main categories of these agreements are the treaties that regulate the world security, above all: the United Nations Charter; international treaties on international humanitarian law, which regulate international and non-international armed conflicts (four Geneva Conventions from 1949 including two additional protocols from 1977); international treaties related to different types of weapons and their regimes (the Treaty on the Limitation of Anti-Ballistic Missile Systems, the Strategic Arms Reduction Treaty, the Landmines Convention, etc.); international

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<sup>4</sup> The United Nations Charter and Statute of the International Court of Justice, San Francisco, 1945.

<sup>5</sup> Deklaracija o načelima međunarodnog prava u pogledu prijateljskih odnosa i saradnje među državama, Rez. G. S. 2625 (XXV) (1970).

treaties established by regional organizations related in part to the defence issues (the Charter of the Organization of the American States, the Agreement on the European Community, the African Union Constitutive Act); regional agreements on military cooperation and mutual defence assistance (NATO, Partnership for Peace, the WEU Treaty, the Inter-American Convention on Mutual Assistance),<sup>6</sup> etc.

The National Assembly of the Republic of Serbia, as the highest institution of the legislative power, ratifies international treaties, and the negotiation process itself in the preparation for ratification of international treaties is conducted by the executive power, through the Minister of Foreign Affairs, who signs international treaties, and they come into force since the moment of their ratification in the Assembly.

Bilateral treaties in the field of defence are considered as a means of expressing foreign defence policy, improving friendly relations with other countries and resolving specific problems between participating countries. When ratifying bilateral treaties, the National Assembly has the possibility to propose changes to the text of a treaty, which the executive power should later negotiate on.

The experiences of three-decades-long parliamentary work in Serbia have confirmed that the participation of the public in the National Assembly in the process of ratification of international treaties is very important and desirable. The public is an obstacle to the executive power to conclude secret agreements or bilateral treaties without the knowledge and consent of the National Assembly, which represents an important mechanism for the balance of branches of power in the conduct of the principle of division of power.

According to generally accepted standards in advanced democracies, international treaties related to the sovereignty, territory and international status of Serbia have to be the subject of debate and ratification in the National Assembly of the Republic of Serbia.

## The role of the legislative power in the field of political and legal powers

In the domain of political powers, the National Assembly of the Republic of Serbia in the field of security and defence adopts: the National Security Strategy, the Defence Strategy and the Strategic Defence Review. In addition to these highest strategic documents, it also makes the decision on the declaration and abolition of the state of war; then the decision on the membership of the country in international organizations and the rights and obligations that derive from such membership; decides on the change of borders according to the procedure envisaged for the adoption of the Constitution; calls on representatives of the executive power, military and civilian personnel in the Armed Forces and the defence system, as well as civilian ex-

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<sup>6</sup> Nedo Danilović, Miodrag Gordić, Srđan Blagojević, *Savremeni sistemi bezbednosti*, Zavod za udžbenike, Beograd, 2015, pp. 77-78.

perts, to witness at the sessions of the National Assembly; seeks information and other acts from representatives of the executive power that cause great public attention; questions representatives of the executive power on the military and defence issues and interrogates representatives of the executive power, the Armed Forces and other elements of the defence system and civilian personnel on some issues of special importance for the defence and security of the Republic of Serbia.<sup>7</sup>

In the field of legal powers, the National Assembly of the Republic of Serbia adopts laws on: the defence, Armed Forces, police, control of intelligence and security services, protection and rescue, criminal proceedings, courts, prosecution, physical and technical protection of people, goods and business and a set of laws on civilian aspects of the protection and security of people and material goods. Within its legal powers, the National Assembly of the Republic of Serbia also adopts the Law on Determining Borders and laws and other acts on the implementation of international law, as well as resolutions and conventions that establish obligations on cooperation with international courts.

## The role of the legislative power in the adoption and control of budget

In the field of budget adoption and control, the National Assembly of the Republic of Serbia has constitutional capacities to access all budgetary documents; review and influence budget allocations for the Armed Forces and the defence system; adopt the annual budget for the financing of the Armed Forces and other elements of the defence system; control the budget intended for the Armed Forces and defence at the level of programmes, projects and guidelines, and adopt/rejects all subsequent proposals of budgetary funds for the needs of the Armed Forces and other elements of the defence system.

The parliamentary budget control, as a rule, takes place in stages. These are: the budget preparation, budget approval, budget spending and budget audit.

*In the budget preparation phase*, the relevant Government bodies, in accordance with the Constitution and the Budget System Law, determine in the governmental budget the funds for the expenditures of the Armed Forces and some elements of the defence system. The National Assembly, through the Committee on Defence and Security and the Committee on Finance and Budget, may contribute to the allocation of funds for various purposes through formal and informal mechanisms of communication with the bodies of the executive power, especially when it comes to previously assumed contractual obligations of the Republic of Serbia arising from international agreements and treaties, as well as bilateral and multilateral treaties with other countries.

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<sup>7</sup> *Ibid*, p. 79.

*In the budget approval phase*, the National Assembly studies and evaluates the public interest in the acceptability of the allocation of funds for certain purposes and manages the approval of funds for the Armed Forces and other elements of the defence system. The act of the Assembly on annual revenues and expenditures necessary for the financing of its competences, the percentage of funds intended for the financing of the Armed Forces and other elements of the defence system and their precise distribution according to items is defined. This act is considered by the Committee on Defence and Security and the Committee on Finance, and it is adopted by the National Assembly, whereby it actively affects the amount of budget funds intended for the Armed Forces and their distribution according to items, most often at the level of programmes and projects for the modernization and equipping of the Armed Forces and their regular functioning.

*In the budget spending phase*, the National Assembly has the constitutional and legal capacities to analyze and monitor the Government costs and can seek an increase in transparency and accountability in the spending of funds intended for the Armed Forces and other elements of the defence system. In the case of extra-budgetary requests, the National Assembly has mechanisms to monitor and review these requests so as not to exceed costs, but it usually does not use them. The failure to perform adequate budget control is a serious problem, especially because, according to Erich File, „budget control is a material legal guarantee that the Government will obey the laws”.<sup>8</sup>

*In the budget audit phase*, the National Assembly has the legal capacities and mechanisms to consider whether there has been the abuse of funds allocated by the Government for specific purposes. Furthermore, it has the capacity to periodically evaluate the entire budget intended for the financing of the Armed Forces and the state competencies in the field of defence and conduct audit to provide liability insurance, efficiency and precision in spending funds. In its two-decades-long work so far, the National Assembly of Serbia has not used this constitutional and legal capacity in an adequate way, except in one case, under strong pressure by the media, the civil society and the public.

In addition to the National Assembly of the Republic of Serbia, the State Audit Institution set up by the National Assembly also has significant responsibility for the budget expenditures intended for the Armed Forces and other elements of the defence system. It has a triple function. It financially reviews the budget of the Armed Forces and other elements of the defence system, monitors the spending of funds from budget and ensures the proper use of funds from the budget intended for the Armed Forces and other elements of the defence system.

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<sup>8</sup> Slobodan Vukadinović, Analiza uticaja zakonodavnog postupka na predlog zakona, *Pravni zapisi*, br. 1/2010, pp. 97-118.

## The role of the legislative power in deciding on the deployment of the Serbian Armed Forces personnel to peacekeeping missions

According to the Defence Strategy of the Republic of Serbia, assistance and mediation in the peaceful resolution of international crises and conflicts is an integral part of an active and peaceful foreign policy that significantly contributes to the preservation of peace and security in the region and the world. The Republic of Serbia is committed to deploying the available capacities for the peaceful resolution of international crises and conflicts. The main principle of deploying members, teams and units of the Serbian Armed Forces to peacekeeping missions is the compliance with international law, improvement of mutual trust and transparency in the common interest of the conflicting parties.

Since the deployment of members and units of the Serbian Armed Forces to peacekeeping missions is one of the important international obligations of the Republic of Serbia, it is planned and executed in accordance with the requirements of the United Nations Security Council, the European Union and the OSCE, and according to the capacities of the Republic of Serbia. It is carried out by the participation of members and units of the Serbian Armed Forces in multinational operations and missions, which makes Serbia a significant contributor to the preservation of peace and security in the region and the world.

In the decision-making process on deploying members and units of the Serbian Armed Forces to multinational operations and missions, the National Assembly of the Republic of Serbia: 1) makes the decision to deploy individuals and troops to multinational operations and missions; 2) defines the mandate of peacekeeping mission; 3) adopts the budget for peacekeeping mission and exercises its control; 4) evaluates the possible risks of the deployed military, police and civilian personnel in peacekeeping mission; 5) adopts the rules of engagement of members of the Armed Forces, police and civilian personnel in peacekeeping missions; 6) defines the chain of command in peacekeeping mission; 7) decides on the duration of peacekeeping mission, and 8) makes a decision on the tour of the troops participating in peacekeeping mission.

## The Inquiry Committees and Commissions of the National Assembly of Serbia

The *ad hoc* established inquiry committees and commissions have a significant form of parliamentary control over the Armed Forces and other elements of the defence system. The appointment of the inquiry committees and commissions is perceived by the public as a positive political signal of the legislative power that it would like to investigate politically sensitive issues related to the Armed Forces and defence. The inquiry committees and commissions can provide the evaluation of the Government's policy on specific issues related to the Armed Forces and defence and to suggest ways to address sensitive security issues.



The composition and number of oppositional deputies involved in the inquiry committees and commissions are of key importance for the outcome of the investigation conducted by the inquiry committees. The investigative power of the inquiry committees and commissions depends on the powers and competencies assigned to them by the National Assembly. From the current parliamentary practice arises that the competencies of the *ad hoc* inquiry committees include:<sup>9</sup> selection of files from the scope of the parliamentary investigation; tour of the military bases and facilities; collection of relevant data including confidential and secret documents from the President of the state, the Government or the General Staff of the Serbian Armed Forces; taking, under oath, evidence from the President of the state, the Government or the Armed Forces, as well as members of the civil society, and the organization of public or closed hearings on politically sensitive issues.

## The relation between the executive power and the Serbian Armed Forces

The executive power is the function of the state performed by the Government and the President of the state. The Government defines and conducts the internal and foreign policy of the Republic of Serbia and represents the centre of political and social power.<sup>10</sup>

From an epistemological point of view, the engagement of the executive power in the conduct of internal policy in the field of defence includes: the active participation of the Government as a collective body of the executive power in the adoption of laws; the preparation and adoption of by-laws; the organization, direction and coordination of the administration in the field of defence; the provision of preconditions for the stable functioning of the Serbian Armed Forces and other defence forces, and the command of the Armed Forces and other elements of the defence system in peace and war.

The participation of the executive power in the adoption of laws implies: 1) proposing the laws on defence, the Armed Forces, police, civilian and democratic control of the Armed Forces, civil protection, protection and rescue system, criminal procedure, etc.; 2) participation in the discussion during the adoption of these laws and 3) promulgation of the adopted laws in the field of defence (law promulgation).

The main proposer of the law in the field of defence is the Government of the Republic of Serbia with the state administrative bodies. The initiative of the Government includes not only the choice of the matter that will be regulated by law, but also a formal proposal of law. By proposing law, the Government implements its programme, whose implementation it has been entrusted with by the National Assembly.<sup>11</sup>

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<sup>9</sup> Neđo Danilović, Miodrag Gordić, Srđan Blagojević, *Gen. quote*, p. 86.

<sup>10</sup> *Ibid.*

<sup>11</sup> Ratko Marković, *Ustavno pravo i političke institucije*, „Službeni glasnik”, Beograd, 1997, p. 338.

The Government of the Republic of Serbia is responsible not only to propose laws in the field of defence, but also to consider proposals of laws of other authorized proposers. The Government representatives may participate in the work of the working bodies of the National Assembly, which consider the legal texts.<sup>12</sup>

The promulgation of the law is the final part of the lawmaking process, which is under the jurisdiction of the executive power. It is the legal act in which the President of the Republic of Serbia establishes the authenticity of the legal text and the regularity of its adoption. The President of the Republic of Serbia has the right of the legislative veto on the law passed in the parliament and submitted to him for promulgation. In such cases, the law is returned for reconsideration to the National Assembly. During the reconsideration of the law, the same or more difficult procedure in the National Assembly may be requested. After the adoption, the law is promulgated in the official gazette and implemented in social practice.<sup>13</sup>

In addition to proposing laws, the executive power has broader authorities for the adoption of by-laws, which in the field of defence includes: (1) the adoption of laws with legal force (the so-called autonomous regulations and delegated legislation); (2) the adoption of acts for the execution of laws (the so-called executive decrees); (3) the organization, direction and coordination of the administration; (4) the adoption of acts due to an exceptional situation (the so-called emergency regulations) and (5) the adoption of other acts.<sup>14</sup>

The executive power is also responsible for the organization, direction and harmonization of the administration in the field of defence. According to the content, the executive power in relation to the state administration has organizational, personal, directive, coordinating and supervisory (control) authorities.<sup>15</sup>

The organizational authorities imply that the executive bodies (the President of the Republic of Serbia, the Government of Serbia and the Ministry of Defence) have a decisive influence on the organization of the administration in the Armed Forces and the defence system as a whole.

The personal authorities imply the appointment and dismissal of the administrative function holders in the Armed Forces and the defence system, in accordance with the law, by the President of the Republic, the Minister of Defence and the Chief of the Serbian Armed Forces General Staff.

The executive power directs the work of the administrative bodies in the Armed Forces and the defence system through guidelines, directives, provisional attitudes and other acts whose main goal is the unique implementation of the policy of the executive power and regulations in this sensitive field of social life. The executive power harmonizes and coordinates the work of the administration in the Armed Forces and other elements of the defence system and resolves disputes that appear in the implementation of the defence policy, laws and regulations in this field.

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<sup>12</sup> Neđo Danilović, Miodrag Gordić, Srđan Blagojević, *Gen. quote*, p. 87.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

The supervision of the state administrative bodies by the executive power includes the control over the legality and integrity of the work of the administrative bodies in the Armed Forces and the defence system. While performing supervisory duties, the executive authorities may annul or revoke some acts, order a certain procedure and substitute the activities of the administrative bodies in the Armed Forces and the defence system.<sup>16</sup>

In complex social and international circumstances, the functioning of the state power can be disrupted due to political conflicts, social riots, ethnic and religious conflicts, armed rebellions, terrorist activities, armed intervention, threats of war, war, economic sanctions, etc. In such circumstances, the balance of the state power is legally shifted in favour of the executive power and it necessarily gains broader authorities in the decision-making in a state of emergency. The executive power has the original authority to the decision-making during a state of emergency while the decision-making during an imminent danger of war and in the state of war is in the jurisdiction of the legislative power. If the National Assembly is not in a position to hold a session, the executive power shall pass the acts of the utmost urgency with the obligation to submit its decisions to the parliament for the approval as soon as it can hold a session.<sup>17</sup>

The National Assembly of the Republic of Serbia, the President of the Republic, the Government and the Ministry of Defence are the highest managing bodies of the defence system of the Republic of Serbia. According to Art. 112 of the Constitution of the Republic of Serbia, the President of the Republic of Serbia, in accordance with the law, commands the Serbian Armed Forces.<sup>18</sup> The Minister of Defence, on the basis of the Law on Defence and the authorities of the President of the Republic, manages affairs in the field of defence, defence preparation and provides conditions for the functioning of the defence system in peace and war<sup>19</sup>. The Chief of the General Staff and the officers of the Serbian Armed Forces command and manage the Armed Forces in accordance with the law and acts of commanding of the superiors.<sup>20</sup>

Due to the necessity of uniting all activities related to the defence of the country, the institution of the Supreme Commander of the Armed Forces is established only at war and the period of an imminent danger of war. The General Staff of the Serbian Armed Forces takes over the role of the Headquarters of the Supreme Command and represents the highest professional and staff body for the preparation and proposal of the use of the Armed Forces in war. The Armed Forces in war consist of the Serbian Armed Forces and some police units of the Ministry of Internal Affairs of the Republic of Serbia. In such social conditions, the Supreme Command is taken

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, p. 91.

<sup>18</sup> Ustav Republike Srbije („Službeni glasnik RS”, br. 98/2006).

<sup>19</sup> Zakon o odbrani („Sl. glasnik RS”, br. 116/2007, 88/2009, 88/2009 – dr. zakon, 104/2009 – dr. zakon, 10/2015 i 36/2018).

<sup>20</sup> Član 19. Zakona o Vojsci Srbije, („Sl. glasnik RS”, br. 116/2007, 88/2009, 101/2010 – dr. zakon, 10/2015, 88/2015 – odluka US, 36/2018, 94/2019 i 74/2021 – odluka US).

over by the President of the Republic of Serbia, and the supervision and control over the Armed Forces is exercised by the Supreme Command and the Headquarters of the Supreme Command with the engagement of all potential at the central, regional and local levels of the power. Even in such social circumstances, the executive power is obliged to submit its decisions to the National Assembly for the approval when it is in a position to hold a session, which establishes the disturbed balance of branches of the state power and the principle of division of power.

Conducting foreign policy in the field of defence is a significant activity of the executive power, which includes: advocating for the military neutrality of the Republic of Serbia; strengthening regional cooperation in the field of security and defence; development of partnerships and cooperation with international organizations; development of partnerships and cooperation with other countries; concluding international security contracts and arrangements, and managing parts of the armed and police forces deployed to peacekeeping and humanitarian operations.<sup>21</sup>

## The relation between the judicial power and the Serbian Armed Forces

The judicial power ensures that the executive power (the President of the Republic, the Government and the state administration in the field of defence) is accountable for its activities, and that the legislative power ensures that the adopted laws in the field of the Armed Forces and defence are implemented and, to a greater or lesser extent, in accordance with the Constitution or higher legal acts. Moreover, the judicial power supervises the Armed Forces, other elements of the defence system and prosecutes the improper actions of the Armed Forces personnel through civilian, administrative, civil and criminal proceedings. In order to fulfill its social role, the judicial power must be independent of the other two branches of power, which excludes any inappropriate connections with them or their influence on the judicial power.<sup>22</sup> The independence of the judicial power is achieved through the external control of the Armed Forces and other defence entities in three modalities. These are: the control of *the regular judiciary* (the so-called courts of general jurisdiction); the control of *the special judiciary*, *the administrative judiciary* and the control of *the constitutional judiciary*, which makes decisions on the compliance of general legal acts of the Armed Forces and the subjects of the defence system with the Constitution. According to the type of litigation, which is the subject of proceedings before the courts,

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<sup>21</sup> Strategija odbrane Republike Srbije, „ Službeni glasnik RS”, broj 94 od 27. decembra 2019.

<sup>22</sup> Opinion no. 1 (2001) of the Consultative Council of European Judges (CCJE) to the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the immutability of judges (Recommendation No. R (94) 12 on the independence, efficiency and role of judges and relevance of recommended standards and other international standards for current problems in these areas), Strasbourg, 2001.

three categories of lawsuits dominate – administrative, civil and criminal ones in connection with the illegal functioning of the Armed Forces and elements of the defence system, and the illegal behaviour of the Armed Forces members.<sup>23</sup>

„The judicial control is always preceded by an appropriate request for legal protection, with the claim of legal validity of an administrative act. It is further up to the court, in accordance with the law, to unequivocally and authoritatively define the foundedness of this request, i.e. a claim. In the case of illegality, the court is obliged to intervene with the pronouncement of the defined legal sanction. These are sanctions of the following type: removal of legal effects of an administrative act, prohibition of further illegal administrative procedure, ordering the issuance of a relevant administrative act, awarding damage compensation, etc. Carrying out the control of the administrative entities in the Armed Forces and the defence system, the court is placed *outside and above* the legal case, leading - in the role of the third person, *arbiter* – a dispute over legality arising from administrative and legal relations”.<sup>24</sup>

The goal of the independent and efficient judiciary in Serbia is to provide fair, impartial judgement in lawsuits, while protecting the rights and freedoms of the Armed Forces personnel and other elements of the defence system seeking justice. In order to achieve this goal, the court has to find relevant facts in a fair trial in each case, judge within a reasonable deadline and strictly implement the law and provide the Armed Forces personnel and other elements of the defence system, in this case, justice seekers, with effective legal remedies.

### Literature

[1] Драган Батавельић, *Дилеме поделе власти у СРЈ*, Задужбина Андрејевић, Београд, 1996.

[2] Драган Батавельић, *Начео поделе власти од античког полиса до модерних држава*, Задужбина Андрејевић, Београд, 1999.

[3] Слободан Вукадиновић, *Анализа утицаја законодавног поступка на предлог закона*, *Правни записи*, бр. 1/2010, стр. 97-118.

[4] Scott Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today*, University Press, Harvard, 2002.

[5] Неђо Даниловић, Миодраг Гордић, Срђан Благојевић, *Савремени системи безбедности*, Завод за уџбенике, Београд, 2015.

[6] Неђо Даниловић, Александра Даниловић, „Право 2018”, у: Борис Кривокапић, Неђо Даниловић, Драган Човић (урс), *Остваривање концепта правне државе и њеног вишег квалитета владавине права у савременим државама*, Универзитет Унион „Никола Тесла“, Пословни и правни факултет, Београд, 2018.

[7] Декларација о начелима међународног права у погледу пријатељских односа и сарадње међу државама, Рез. Г. С. 2625 (XXV) (1970).

<sup>23</sup> Neđo Danilović, Miodrag Gordić, Srđan Blagojević, *Gen. quote*, p. 92.

<sup>24</sup> *Ibid.*

[8] John C. Donovan, Richard E. Morgan, Christian P. Potholm, Narcia A. Weigle, *People, power and politics: an introduction to political science*, Rowman & Littlefield, 1993.

[9] Benoit Dubreuil, *Human Evolution and the Origins of Hierarchies: The State of Nature*, Universite Quebec, a Montreal, 2010.

[10] Закон о одбрани Републике Србије („Сл. гласник РС”, бр. 116/2007, 88/2009, 88/2009 - др. закон, 104/2009 - др. закон, 10/2015 и 36/2018).

[11] Закона о Војсци Србије, („Сл. гласник РС”, бр. 116/2007, 88/2009, 101/2010 – др. закон, 10/2015, 88/2015 – одлука УС, 36/2018, 94/2019 и 74/2021 – одлука УС).

[12] Ратко Марковић, *Уставно право и политичке институције*, „Службени гласник”, Београд, 1997, стр. 338.

[13] Мишљење бр. 1 (2001) Консултативног вијећа европских судија (CCJE) упућено Комитету министара Савјета Европе поводом стандарда који се тичу независности судства и несмјењивости судија (Препорука бр. Р (94) 12 о независности, ефикасности и улози судија и релевантности препоручених стандарда и других међународних стандарда за тренутне проблеме у овим областима), Стразбур, 2001.

[14] Trevor C. Salmon, Mark F. Imber, *Issues in international relations*, Taylor & Francis US, 2008, p. 54.

[15] Martin Shaw, *War and genocide: organized killing in modern society*. Wiley-Blackwell, 2003, p. 59.

[16] Стратегија одбране Републике Србије, („Службени гласник РС”, број 94 од 27. децембра 2019.

[17] Устав Републике Србије („Службени гласник РС”, бр. 98/2006).

[18] Charter of the United Nations and Statute of the International Court of Justice, San Francisco, 1945.

[19] Colin Hay, „State theory”, in: Jones, R.J. Barry (ed), *Routledge Encyclopedia of International Political Economy: Entries P-Z*, Taylor & Francis, 2001.

[20] Erika Cudworth, Timothy Hall, John McGovern, *The Modern State: Theories and Ideologies*, University Press, Edinburgh, 2007.

## S u m m a r y

In the last few decades, there has been a change in the relation between branches of the state power in the modern states. Although the executive and legislative power have become increasingly interdependent, the possibility of the legislative influence on the executive power in all areas of the society including the field of defense, has been reduced. At the same time, the role of the judiciary has become increasingly important, influenced by the increasing number of court cases and the number of the legislative acts that courts have to implement, as well as the number of the hearings of the executive power activities before the military, administrative, criminal and civil courts.

Given the fact that the Serbian Armed Forces are one of the subsystems of the state security system and that it is an important institution of the state power, its relation with the legislature is regulated by the Constitution, the National Security Strategy, the Defense Strategy, laws and other strategic documents.

According to the Constitution and adopted strategic documents, the social role of the legislative power is to exercise control and parliamentary oversight of the Armed Forces, to adopt a stable legal framework for the functioning of the Armed Forces and other elements of the defense system, as well as to adopt the appropriate budget for the Armed Forces and take care of the respect of human rights in the Armed Forces.

The executive power (the President of the Republic and the Government through the Ministry of Defense) directly controls the Armed Forces from the central level of government, proposes budget, manages and commands the Armed Forces and gives the main guidelines and priorities of its engagement in peace and war.

The judiciary ensures that the executive power (the President of the Republic, the government and the state administration in the field of defense) is accountable for its activities before the courts, and that the legislature ensures that adopted laws in the field of the military and defense are implemented, and that they are, to a greater or lesser extent, in accordance with the Constitution or higher legal acts. Also, the judicial power supervises the Armed Forces, other elements of the defense system and prosecutes the improper actions of members of the Armed Forces through civilian, administrative, civil and criminal proceedings.

Starting from the results of the analysis of the modern relation between branches of the state power and the Armed Forces, in the conclusion of the paper we point out several important recommendations arising from the research.

The first recommendation refers to the necessity of the legislative power to reach a consensus in a democratic dialogue of all political actors (position and opposition) on vital social values in the form of lasting general attitudes of high intensity that would serve as an orientation in the strategic and operational activities of the Armed Forces and other defense systems, and represent the basic criteria for evaluating their own behaviour and the behaviour of other social entities in their protection.

The second recommendation refers to the need to respect the law in which the military activity and the activity of other elements of the defense system should be under the constant supervision and civilian control of the legitimately elected legislative power.

The third recommendation points to the need for the executive power to continuously provide organizational, personnel and technological conditions for the efficient functioning of the Armed Forces and other elements of the defense system, adequate budget, supreme command of the Armed Forces and to provide main guidelines through ministerial instructions and priorities for the long-term, medium-term and short-term development of the Armed Forces, and to directly control the Armed Forces and other elements of the defense system from the central level of government.

The fourth recommendation refers to the judicial power, which should sanction the actions of members of the military that are against the Constitution and laws, as well as other citizens of the society. At the same time, the goal of an independent and efficient judicial system is to ensure fair, impartial adjudication in legal disputes, while protecting the rights and freedoms of all members of the Armed Forces and other elements of the defense system seeking justice.

*Key words: the Armed Forces, political system, division of power, legislative power, executive power, judicial power*

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