

DEMOCRATIC OVERSIGHT – THE KEY TO A RESILIENT LEGAL FRAMEWORK FOR CIVIL – MILITARY RELATIONS

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Abstract: *Built on a multi-layered foundation, contemporary legal systems have created their stability by combining the flexibility to adapt to new elements, with the rigidity necessary to preserve essential social values. However, the accelerated transformations within modern-day society pose significant challenges to the carefully constructed balance of these systems and question the resilient nature of elements that until recently seemed irreplaceable. In this context, the paper addresses one of the most dynamic aspects of the activity of military structures, civil - military relations, from the perspective of the set of norms that ensure the functionality of this process. Democratic control of the armed forces, as an additional mechanism for ensuring respect for the rule of law, connects military structures and representative constitutional authorities of the state and provides the latter with prerogatives to supervise the implementation of the state defense function.*

Keywords: civil – military relations, legal framework, resilience, democratic

1. Introduction

In recent decades, understanding civil-military relations has become a priority in the context of an increasingly detailed explanation of the global security system and the interaction between participating states. The shift from the traditional role of national military institutions from defence itself to successfully participating in situations involving crisis management, disaster response, cyber defence or medical emergencies has led to the multiplication of the functions of defence structures and a more adequate adaptation to the needs of contemporary society.

Moreover, civil society's trust in military capabilities has become essential in the case of hybrid threats, transnational crises and the acceleration of the use of emerging and disruptive technologies.

Re-evaluating the legal framework with internal and external applicability thus becomes a sine qua non condition for ensuring the stability of state systems and the

efficient establishment and distribution of state power. The role of the military factor is therefore revalued and readapted to the new paradigm. From a legal point of view, one of the primary questions that can be addressed is whether the contemporary distribution of the role of military structures under conditions of uncertainty does not fragment the application of the normative framework and does not create the premises for undermining the rule of law and removing constitutional supremacy.

Therefore, demonstrating the link between a resilient national legal framework and effective civil - military relations must start from the fundamental mechanisms of the distribution of power, which primarily involve the democratic control of the armed forces.

Reminiscent of the period following the Second World War, conceptualizing ways of controlling a state's armed forces by the people has enjoyed wide popularity, being inserted into the constitutional law norms of

all states that claimed to be democratic regimes. However, the application of the theory has demonstrated vulnerabilities in terms of the effectiveness of civil society control, its concrete implementation through state institutional mechanisms and the potential for abuse of power in the case of insufficiently consolidated democracies [1]. However, democratic oversight of the activity of military structures has proven to be not just a static concept, but a dynamic process that requires continuous improvement in response to internal and external challenges.

As specialized studies have demonstrated, a reconceptualization of democratic civilian control within civil-military relations is required, which implies a broader extension of the scope of application of this control. This framework includes *democratic civilian control* within the sphere of civil-military relations and relates this essential element to the *effectiveness* of security forces to fulfil the roles and missions assigned to them and to the *efficiency* in achieving those assigned roles and missions at minimum cost [2].

Using research methods specific to the legal field, to ensure the finality of the scientific approach, it is necessary to use the logical, formal - legal method, through which the legal norms incident to the democratic control of the armed forces are interpreted, as well as the comparative method, necessary to identify optimal solutions by combining different legal norms, institutions or legal systems.

2. The resilience of legal systems in contemporary society

The approach to resilience applied to a legal system requires a broader perspective, since the legal norm is defined as “a general, impersonal and binding rule of conduct, established or sanctioned by public power, the application of which is achieved, if necessary, by state coercion.”[3]. The belonging of legal norms to social norms is not diminished by the regulatory action of

the state entity, and the identification of the resilience of any legal system must take this aspect into account. “*As a system within a system, law has resilience features that can be characterized along the lines of general resilience theory: it exhibits properties of reliability, efficiency, scalability, modularity, and evolvability*” [4].

The development of these properties within legal systems in contemporary society in the balance between the VUCA and BANI paradigms must take into account the adaptive governance of public institutions that develop norms, the strengthening of the rule of law and the efficiency of law enforcement mechanisms.

Adaptive governance of state structures decisively determines the way in which legal systems respond to societal, economic, environmental or technological challenges.

“Adaptive governance is suited to dealing with problems and projects that are complex, uncertain and in which many actors are involved. Adaptive governance recognizes that technology projects are inherently complex, surrounded by a high level of uncertainty and different interests that might even be conflicting” [5].

The capacity of public authorities and institutions to foresee, absorb and reset themselves following the impact of disruptive factors inevitably transfers to the quality of both the regulation and the application of the legal norms through which they perform their functions.

The value of the rule of law is enshrined in Article 2 of the Treaty on the European Union, the criteria for its definition being developed by the Venice Commission in 2016:

- the legality of the state action framed by law;
- legal certainty (precise, accessible and non-retroactive rules of law);
- prohibition of executive arbitrariness (abuse of power);
- independent and impartial judicial option;
- free access to justice (effective judicial

review);

- equality before the law (absence of discrimination);

- respect for fundamental rights [6].

The efficiency of law enforcement mechanisms takes into account the capacity of the system of state authorities to ensure compliance with the rules, by providing effective normative and institutional guarantees, with violations of normative acts being promptly and proportionately sanctioned.

Ensuring these elements within the legal systems provides a basic degree of the necessary resilience, an aspect that is also fundamental for the system of normative acts that regulate the organization of the armed forces and the relationship between civilians and the military.

In relation to the civilian-military relationship, the conceptual deepening of resilience determines the existence of three layers of resilience: military resilience, civilian resilience and military-civilian resilience, each of which explains differently the capacity to absorb shocks and to provide resistance and functionality [7].

3. The legal dimension of civil - military relations

In the broadest sense of the expression, civil – military relations has a constitutional starting point, through the establishment of democratic control of the armed forces, which contains not only a one-way supervision, but a relationship, an exchange, which aims to ensure national defence within the democratic rule of law. Starting from this perspective, the civil-military binomial gradually becomes involved in the complexity of the state institutional mechanism, prefiguring itself as a solution in solving some of the most complex problems that the state entity faces.

In contemporary society, democratic civilian control, as a component of civil-military relations, is not limited to military force structures, but also considers non-militarized structures that contribute to

ensuring state security. In the conceptual analysis of civil-military relations, it is considered that democratic civilian control represents the authority of democratically elected leaders exercised through three elements:

a. *Institutional control mechanisms* represent the formal direction and guidance that civilian leadership provides to security forces. These include the norms that empower civilian authority, as well as civilian administrative structures that provide oversight, legislative committees that set defense and security policy and budgets, and a well-established chain of command through which civilians establish roles and missions in the national security system.

b. *Oversight within the framework of democratic civil control* ensures continuous monitoring, based on legal principles, of the actual actions of security forces, to verify whether they comply with the norms in force. A significant role is played not only by the classical executive, legislative and judicial powers, but also by independent media, NGOs, expert groups and international bodies.

c. *The inculcation of professional norms* leads to the internalization of the two elements mentioned by institutionalizing the objectives of civilian leadership within the security forces through transparent and clearly regulated recruitment, education, training and promotion policies [8].

In Romania, national law contains regulations that support the presented elements, but they do not benefit from an express codification, the legal norms being dispersed in a variety of normative acts, which includes a wide legislative spectrum, starting from the Constitution and going up to the orders of the leaders of the decentralized administrative structures in the territory.

However, at the legislative level there are normative acts of an organic nature that highlight civil-military control, among which can be mentioned: Law no. 45/1994

on the national defence of Romania, Law no. 446/2006 on the preparation of the population for defence, Law no. 477/2003 on the preparation of the national economy and territory for defence. These normative acts contain elements that target civil-military relations in various action scenarios. Moreover, in crisis situations, the military element is invested with additional authority, taking over the functions of the central and local public administration authorities and extended prerogatives in relation to the civil authorities of the state. In the local legal system, this is encountered in the case of the establishment of a state of siege, as stipulated by the provisions of Government Emergency Ordinance no. 1/1999 or in the event of the declaration of a state of mobilization or a state of war, according to the procedures described by Law no. 355/2009.

Thus, in this situation, the democratic oversight of the armed forces intervenes decisively when dysfunctions occur that may endanger national values.

4. Democratic oversight of the activity of the armed forces

The application of democratic control of the armed forces knows various forms of adaptation to the particularities of national legislation. The European perspective on this form of control occupies a wide spectrum that manifests itself between a strong parliamentary control of military structures, on the one hand, and a more pronounced executive control, on the other. Thus, the need for parliamentary approval for the deployment of armed forces abroad is required in legal systems such as those of Austria, Denmark, Germany, Latvia, Lithuania, Spain and Sweden, while in Belgium, Greece, Luxembourg, Poland and the United Kingdom, the executive branch has the role established by the basic law of deciding to deploy armed forces, with the parliament only being informed. States such as France, the Czech Republic and Slovakia, give the government the possibility of

deploying troops, with the possibility of requesting approval from the legislative branch.

A comparative analysis of the main features of the legal systems of Germany, France and the United Kingdom shows different forms of mechanisms for ensuring democratic control of the armed forces. Germany has a strong parliamentary control model, in which the legislature plays a key role in determining the direction and content of defence policies. France, on the other hand, has adopted a system in which power is vested in the executive authority that decides on security and defence policies, with the head of state playing the most important role. In the United Kingdom, political accountability mechanisms are used, including parliamentary debates and conventions requiring consultation of the government before military action.

The very different application of the control of a state's armed forces through democratic instruments is explained primarily by the significant differences between the legal systems mentioned. That is why identifying standardized solutions to streamline the control in question is not an easy task.

The activity of the armed forces is subject to direct control, when a decision with implications for national defence is submitted to a referendum, or indirectly, when the legislative authority or the head of state, based on the mandate provided by democratic elections, take decisions with relevance in the military field. Budgetary control of the legislative power and control exercised through ombudsman-type authorities are also forms of indirect control that ensure democratic supervision of the armed forces.

The particular relevance of these forms of control lies in the fact that, being interactions at the highest decision-making level in a state, the forms of democratic control of the armed forces set in motion institutional mechanisms that produce impact from a military, political, economic, and social point of view. This perspective of the

relations between civilians and military gives the two poles an indisputable scope, the military factor being subordinated only to the will of the people. This aspect is reiterated by the Constitution of Romania, which in art. 118 (1) prioritizes the democratic factor in relation to the military one: "The Army shall be exclusively subordinated to the people's will, in order to guarantee the sovereignty, independence and unity of the State, the country's territorial integrity, and the constitutional democracy. Under the law and the international treaties Romania is a party to, the Army shall contribute to the collective defence in military alliance systems, and participate in peace keeping or peace restoring missions" [9]. A subsequent paragraph of the Romanian Constitution extends the application of these provisions to the entire category of armed forces.

The interpretation of the constitutional text results in the lack of ambiguity regarding the nature of subordination, but the expression of the people's will is made within the framework of certain events, the elections for the legislative authority and for the head of state, situations that set the organization of the exercise of democratic control over the armed forces at intervals of 4 years, respectively 5 years. Or the will of the people is not only that which is ascertained following an electoral vote or exceptionally, following a referendum, it is a permanent force that can ensure balance in the exercise of power and the performance of state functions. The relation between civilians and the military originates at this point where civilians invest trust in a force structure, organized to ensure defence and whose support, training and endowment is vital for the very existence of the entire state edifice. In order to ensure the functionality of the integration of militarized structures into the system of state authorities, the national defense system is regulated in Romanian legislation, through Law no. 45/1994 on national defense. Within this framework, the management of the national defense system

is provided as a distinct element, which assigns the most important responsibilities in the field of defense to the central public authorities of the state, authorities that are either directly representative of the will of the people or designated by the former. The integration of these public authorities, almost exclusively civilian, into a unitary system that fully assumes the management and coordination of the complex defense system represents one of the most important aspects of civil - military relations.

5. Conclusions

Civil-military relations constitute an essential pillar of the involvement of civilian structures in the control of security forces to ensure the rule of law and in supporting its role and functions. The fact that civilian democratic control is one of the essential instruments that the state can use to consolidate state power and defend the significant values of society implies responsibility both in terms of the use and further development of this instrument.

Understanding and supporting the values of democracy represents a goal assumed both at the institutional level and at the individual level, because "Democracy is more than just democratic institutions. A democratic culture assumes a degree of common identity, tolerance and trust which makes it possible to accept that the opposition might win the next election. In a democracy individuals and minorities feel secure because their fundamental rights are respected and protected by the rule of law" [10].

The expansion of the role of the armed forces in new areas represents one of the major challenges of the military organization because the management of emergency situations, the fight against terrorism or the support provided to civil authorities in the context of health crises, have determined paradigm shifts for the proper integration of new roles in the functionality of military structures.

The need to have precise and clear regulations adapted to social life remains a

priority of any legal system, but in a brittle, anxious, nonlinear, incomprehensible world these qualities are constantly tested, and the resilience of these legal systems is not explained by static resistance, but by a constant dynamic adaptation.

The impact of new technologies on civil-military relations also brings challenges for legal systems. The use of artificial intelligence, autonomous systems and

surveillance technologies causing questions regarding accountability, decision-making transparency and the efficiency of democratic control.

In conclusion, contemporary challenges in civil-military relations require a constant reassessment of the legal framework, in order to ensure a balance between security needs and respect for fundamental democratic values.

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