PUBLIC ADMINISTRATION CONTROL OVER THE MILITARY ADMINISTRATION

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ABSTRACT
The article’s architecture is configured by the structure of two theoretical fields: the military administration control by the power system of the state in the rule of law and control of military administration by specialized public administration authorities and other public autonomous authorities. The first part is dedicated to the applied knowledge of control exercise over the military administration by the system of public authorities having constitutional legitimacy – the Parliament, the President, the Government, central public administration and the judicial authority; the second part emphasizes control exercise over the military administration by specialized central public administration authorities, namely the Ministry of National Defense, the Supreme Council of National Defense, the Constitutional Court, the Ombudsman and the Court of Auditors.

KEYWORDS: public administration, military administration, authorities, civil control, rule of law

1. Introduction
The military administration, whose fundamental responsibility lies in performing the public service of national defense, is subject, on one side, under the democratic grounds of its very constitutional existence, to control exercised by central bodies of the public administration, but, on the other side, in the constitutional primacy of power separation, is subject to control exercised by the public authorities configured by the democratic legitimacy of acquiring power. Moreover, the systemic perspective of institutionalization, de facto and de jure, of control over the military administration is even more evident in its proceeding assertion, as we operationally relate it to the whole democratic control system enshrined in the Constitution. This is the paradigm in which we analytically expose the issues by which we theoretically define public administration control over the military administration.

2. Control Over the Military Administration by the Power System of the State of Law
The entire system of constitutionally enshrined public authorities is engaged, directly or indirectly, in the democratic control over the military administration – Parliament, the President, the Government, central public administration and the judicial authority. We find, here, clearly and distinctly, the three powers of the state
which, directly or complementary exercise specific control actions over the military administration. The Constitutional configuration of public authorities indicate not only the scale of the control action over the military administration, by default the level of control, but also its content and character, the targeted domain, the nature of responses and corrective possibilities, as well as, possibly, the quality of provided support. Meanwhile, the systemic organics of control over the military administration is complemented by specific actions of this Court, the Constitutional Court and the Ombudsman’s Office.

From the stated perspective, the systemic nature of control exercised by public authorities, for example, by the public administration, but also by autonomous public authorities that I have mentioned, over the military administration, can be configured as follows:

![Figure no. 1 Systemic control of public authorities over the military administration (Bădălan, 2004, p. 95)](image)

In terms of public authorities defining the operational nature of the state, founded on its three powers, the control over the military administration has a specific characteristic determined precisely by the role conferred to it by institutions that define and maintain the condition of the rule of law. To these we shall further refer as, respectively Parliament, Government, courts, to which, determined by the major responsibilities that it has toward the military administration, we add the President of Romania. In relation to the public authority to which we refer, the content of the control action over the military administration bears the quality of the institution that exercises it, furthermore defining them from this perspective.

**The Parliament** – The control exercised by the Romanian Parliament over the military administration has essentially the attributes conferred by the status of “supreme representative body of the Romanian people and the sole legislative authority of the country”. (Constitution of Romania, 2003, Art. 61, par. 1) From this perspective at least, it is the institution of maximum democratic legitimacy, but also
of undoubted legislative authority, otherwise the only one, whose responsibilities on controlling the military administration are not only necessary, they are imperative. Moreover, without exaggeration, we can admit that developing the entire legal system on military administration has had as direct foundation source the results of the control exercised by the Parliament, the control proving to be the most effective means of knowledge of reality, of correction and optimization of the legal framework of military administration, to outline the legal and judicial predictability in military planning and activity. By the applied lawmaking function, the Parliament otherwise imposes itself, as the only authority vested with the right to establish fundamental legal rules to the whole social system, by default, therefore, legal rules with force of law, which fully governs the organization criteria and mechanisms of military administration. On the other hand, for the Parliament the control exercised over the military administration is the most effective form of self-control in terms of operational viability of the issued laws on the military administration. Thus, the link between the ‘producer’ – Parliament and the “beneficiary” – the military administration cannot be parasite-infested and made vulnerable by intermediary factors, their force of distorting the reality being often significant. In this case, in the practical way of distribution of power, the Parliament is the body that establishes the institutions that have control over the military administration, the content and limits of the law and the legal relations with it. Thus, we can admit that indirectly the control exercised by the non-parliamentary institutions over the military government is an extension of parliamentary control or, rather, a “delegation” with concrete specificities.

Specifically speaking, directly operational, the main way of proper control over the military administration is exercised by committees of defense, public order and national security, which operate in the two Houses of Parliament. In terms of legislation aimed to entire national defense system, thus by default, the military administration, the decision Board is the Romanian Senate, the responsibilities of the two committees being somewhat similar, we will focus on the Senate Defense Committee. Thus, from the very beginning of the regulating document of the Commission activity we note that this “is the specialized standing committee of the Senate, empowered to examine draft laws or legislative proposals and to decide on notifications or reports to be further subject to debate” (Regulation, p. 12), being “formed to prepare legislative activities and for exercising the function of parliamentary control” (Regulation, Art. 1, par. 1), sentence resumed in the section on powers. Defining its powers, we retain that, fundamentally, the Committee is accountable for “the realization of parliamentary control over public institutions, belonging to the system of defense, public order and national security” (Regulation, Art. 1, par. 2), specifying the instruments available to substantiate the act of control over national defense system, respectively: participation in specific analysis, hearings, documentation activities and conducting parliamentary inquiries determined by potential negative aspects of the activity of the military administration, either on Permanent Bureau referral, or on own initiative or at the reporting of some of the military administration factors. Also, in the operational space of the mission of the two committees of defense, public order and national security of the Parliament, we emphasize that their members may attend any other parliamentary committees where on debate there are issues related to the military administration activity, regardless of their nature. In this case, the issues refer,
especially, to the opportunity and visibility of the legislative framework legally defining the national role of the military body; the budget allotted to the military administration; the size, structure and missions of the military administration; to ratification of the system of international treaties and agreements concluded by Romania, applicable in the military sector; to current legislative framework on preparation of population, territory and economy for any of the fundamental missions the military – defense administration may act in, under curfew regime or state of emergency regime. At the same time, parliamentary control over military administration manifests itself in the relationship between Parliament and the executive power, the Parliament giving a vote of confidence to the Executive, in fact to the government plan, as well as the ministerial composition thereof, including, of course, Ministry of National Defense, which acts, in the spirit of the governmental program approved by Parliament, this ministry, component of the central specialty government. Under the constitutional grounds of relations it has with the Government (CR, 2003, Chap. IV, Art. 111-112), the Parliament, under the right to information, may request, in the operative paradigm of parliamentary control, by specialized committees, namely the defense, information and documents related to a given problem, to a given aspect of military administration. On the other hand, any bill, government emergency ordinance, legislative law or proposal that directly or indirectly aims the military administration, are subject to specialty control of committees of defense, public order and national security. It is not without significance the fact that being asked to participate in the Parliament works, where a matter concerning the military institution is debated on, the presence of the Minister of National Defense is mandatory. In the paradigm of responsibilities which, by the complex nature of their manifestation on the route from Necessity – Projection – Documentation – Debate – Regulation, can be partially assimilated to control activity on military administration, we also enroll the quality of the Parliament to regulate by organic law major issues of high military administration organization, as well as the reaction of the Romanian state in the context in which its independence, territorial integrity and sovereignty are jeopardized, meaning that we have in mind: organization of the Government, for example of the Ministerial leadership of the Ministry of National Defense, as well as of the Supreme Council of National Defense, as public authority, with an advisory-deliberative role in matters concerning national defense and security; legislating the establishment of partial or total regime of mobilization of the armed forces and the state of war; the establishment of the state of siege and emergency. (CR, 2003, Art. 173, par. 3, letters e-g).

**President of Romania** – At level of descriptive approach of relations between the President of Romania and military administration, it should be specified that the its constitutional power, expressed through the functions it performs, has no absolute nature, as the case of the Parliament is, its functional responsibilities being specific to executive power. Without being a quantitative criteria distribution, control over the military administration responsibilities with specificity assigned to each institution, are divided between the President and the Government, decisions of both institutions being under parliamentary control. Beyond the fact that the exercise of presidential attributions, are performed in strict conformity with constitutional provisions, most of them become operational after the consent of the Government or Parliament, in exceptional cases, with the possibility of obtaining parliamentary consent post factum. We consider, in particular, the situation in
which the President may establish “state of siege or state of emergency throughout the country or in some territorial-administrative units”, in which case “it requires Parliament’s approval for the adopted measure, within 5 days from taking it”. (CR, 2003, Art. 93, par. 1) Also similar are the situations where “only in exceptional cases” the President’s decision to “declare partial or total mobilization of the armed forces” (CR, 2003, art. 92, par. 2) and/or to establish “measures to repel the aggression” (CR, 2003, art. 92, par. 3), for considerations relating to the appropriateness of the reaction, the Parliament may also decide, by endorsement, later.

The definition, meaning and importance of the responsibilities the President of Romania fulfills in the entire national defense system, fundamentally consists in its constitutional capacity of “guarantor of national independence, unity and territorial integrity” (CR, 2003, art. 80, par. 1). Meanwhile, the President “upholds the compliance with the Constitution and the proper functioning of public authorities” (CR, 2003, art. 80, par. 2), explicitly, in our case, regarding the responsibility for “defense of the country”. Moreover, as the “commander of the armed forces and chairman of the Supreme Council of National Defense” (CR, 2003, art. 92, par.1), the President exercises genuine control over the national military body, promulgating laws passed by Parliament, on the Romanian Army, as well as on issues concerning the defense and national security issues and, when necessary, participating in meetings of the Government, debating national defense issues of national interest.

The Government – Expression of confidence of the sovereign power of the Romanian people, vested by organic law, the Government is accountable for special missions on military administration, some exercised directly, others arising from exercising general management of Public Administration (CR, 2003, art. 102, par. 1). Mainly, without going into details which, indeed, are specific to subordinated bodies, we retain, under express responsibility of the Executive the following responsibilities: when the situation requires, the Prime Minister submits to the Chamber of Deputies or the Senate reports and statements on Government policy on defense and national security, with a focus, where appropriate, on the concrete problems of military administration, they taking precedence in parliamentary debate procedure; the Prime Minister shall issue, where applicable, judgments and orders on the application of laws concerning military administration, in particular, executive issues of defense and national security in general; we reiterate, in the meaning of constitutional responsibility of the executive power, the fact that the Government and other public administration bodies, under the Parliamentary control, are required to submit information and documents requested by the Chamber of Deputies, the Senate, or parliamentary committees, through their Presidents (CR, 2003, art. 111, par. 1); the exercise by the Government of possibility of political responsibility engagement, before the Chamber of Deputies and the Senate, in joint session (CR, 2003, art. 111, par. 1), upon a program or a draft law on matters relating to national defense, military administration by default.

The judiciary power /Courts – Sole performers of the act of justice, in this perspective, the courts exercise, from this perspective, the control on the military administration, control exclusively aiming the observance of laws by military and civilian personnel of the national defense system. The courts are guaranteed with the right to exercise control on administrative acts of public authorities at all levels, by administrative courts, except for those regarding relations with the Parliament as well as the military command acts. (CR, 2003, art. 126, par. 6) At this level, in the
Prosecutor’s Office attached to the High Court of Cassation and Justice, the Military Prosecutor department operates and in the National Anticorruption Directorate, the Department of combating corruption crimes committed by military personnel, whose staff is subordinated only from administrative perspective to the Minister of National Defense, professionally being subordinated, with the express approval of the Superior Council of Magistracy, to the general prosecutor of Prosecutor’s Office and chief prosecutor of the National Anticorruption Directorate (Law 346, 2000, art. 6, par. 3).

3. Control of the Military Administration by the Government and Other Autonomous Public Authorities

According to constitutional provisions, from the overall public authorities, separately highlighted in the central specialty public administration, as parts of it, belong the ministry of resort, which directly handles the work of the military administration, namely the Ministry of National Defense and the Supreme Council of National Defense respectively, which by legal responsibilities, has an important role in institutional affirmation of the military administration. Also, to complement the control system of military administration, we will emphasize the role distributed in this respect to the Constitutional Court, the national Ombudsman and the Court of Auditors.

Ministry of National Defense – As an institution that is established and organized exclusively subordinated to the Government, it is the specialized body for management of any kind of problems relating directly to national defense and specific tasks of national security. Central structures of the Ministry of National Defense (Law 346, art. 6, par. 1), components of military administration, but directly subordinated to the Ministry of National Defense, through which it exercises specialty control on military administration are: Department of Defense Policy and Planning, Department for Parliament Liaison and Public Information, Department for Armaments, General Staff, General Secretary, General Directorate of Defense Intelligence, Directorate of Human Resources Management, Financial Accounting Department, Directorate of Military Courts, Control and Inspection Body, Internal Audit Department and the Medical Directorate. In terms of control over the categories of forces, the Minister exercises it through the Chief of General Staff.

The Supreme Council of National Defense – Constitutionally empowered (CR, 2003, art. 119) regarding the role and tasks it performs, the “Supreme Council of National Defense is an autonomous administrative authority” (Law 415, 2002, art. 1) vested with unitary organization and coordination of the two fundamental public services the military administration provides, national defense and security. According to the responsibilities it is legally accredited by, the Council has a significant package of non-decisional tools for operative, conjecture, and programmatic influence over the core activity of the military, thus the military administration, a process that relies on both a laborious activity of control over the military system, as well as on a comprehensive range of analysis on key aspects of the military organization and activity. In the current tasks (Law 415, 2002, art. 4), with operational impact on the military administration, we remind those aimed at: analyzing and/or promoting programmatic documents related to national defense and national security; dissemination to the central bodies of military administration, data, information and assessments provided by intelligence services and other structures involved in national security, in areas they are interested in; analyzing and development of measures for establishment
of the state of siege or of emergency in the entire country or in some locations, declaring partial or general mobilization of the armed forces; rejection of armed aggression against the country, a state of war and its ending; initiation, suspension or termination of military actions; implementation of the plan for the mobilization of national economy and state budget execution for the first year of war; necessary measures to defend and restore constitutional order. It also approves draft normative acts issued or initiated by the Government on the general organization of the armed forces and other institutions in the field of national security; preparation of the population, economy and territory for defense; budgetary allocations for ministries and services with responsibility for defense, public order and national security and, most importantly, presents the chief of defense for approval the plans for using military forces in peacetime, in crisis and war.

Of major importance in the constitutional mission of the Council, with organizational and operational impact on the military government, is it’s the responsibility to approve (Law 415, 2002, art. 4, letter f): completing military structures with members, according to organization during peacetime; bringing military structures in the state that allows them the passage, on command, to fulfill combat missions; action plans on instatement of a state of mobilization and war; action plans of the state of siege and state of emergency; the project for the national economy and the draft state budget for the first year of war; the plan on population preparation stage for defense through mobilization drills and exercises; training objectives for the territory to ensure the operational needs of the national defense system forces; multi-annual programs on national defense system forces endowment; militarization, under the law, of economic operators whose business is directly related to providing resources necessary for the defense; organizational structure and powers of the National Military Command Center; setting up, closing, deployment and redeployment, in peacetime, on the national territory of large military units from the brigade echelon, upwards, for instance the main military government decentralized structures.

The Constitutional Court – It is a political-judicial body with absolutely unique role, specialized in securing and guaranteeing, through the exercise of constitutional control, the supremacy of the Constitution in the national legal system. Specifically speaking, the control exercised by the Constitutional Court on the military administration is done through the materialization of its powers to examine those laws implemented in the military sector, passed through the legislative process, but not yet signed by the President, after examination process ruling whether or not they are in full compliance with the letter and spirit of the Constitution thus, by exercising the “constitutional control” (Law 47, 2010, art. 2, par. 1)

The Ombudsman – Constitutionally entitled “to defend the rights and freedoms of individuals” (CR, 2003, art. 58, par. 1), this institution is an “autonomous public authority and independent from any other public authority”, of which main functional feature is that “in exercising its duties (...) it does not replace the public authorities”. (Law 35, 2004, art. 2) Conceived and organized solely to protect individuals against possible abuses to which they may be subjected by government authorities, “in violation of the rights or freedoms”, (Law 35, 2004, art. 13, par. B) the Ombudsman institution through the specific control that it can exercise, implicitly by the knowledge it can reach, could help solve counterproductive situations that can impede the activity in the army. To the institutional amount of extent it can give the military administration, “the Ombudsman can be consulted by the initiators of bills
and ordinances, which by regulations content concern the rights and freedoms provided by the Constitution” (Law 35, art. 27), with the aim of avoiding, in this chapter, any transgression of the letter and spirit of the Constitution.

Court of Auditors – It is an autonomous public authority, exclusively intended for “exercising control over the formation, administration and use of financial resources of state and public sector.” (Law 94, 2014, art. 1, par. 1) From this perspective, the military body as well, the military administration in fact, as a legal entity of public law, is subject to review by the Court of Auditors on the utilization of the funds allocated from the state budget.

4. Conclusions

In conclusion, we find that on the military administration, in its entirety, the public administration exercises control actions only at the government institutional level, set up and established as such by the Constitution. The local public administration equated as level of representation to decentralized bodies of the military administration, does not have rights to control them, but to cooperate on multiple levels therewith, especially in situations requiring imposition of a state of siege, a state of emergency, declaring mobilization or specific actions to prepare the population, economy and territory for defense. It is also clear that at this level, and to this specific control, the critical knowledge of military administration operation and sectorial assessment of its performance against assumed objectives and tasks is mandatory. Meanwhile, the institutional nature of public administration exercising the control over the military administration also confers its specificity, meaning that we deal with, legislative control, judicial control, executive-administrative control, financial control, economic control, technical specialty control. However, also at conclusions level, it is imperative to recognize that the effectiveness of government control over the military administration is significantly determined by: the constitutional and legal powers, rigorously defined and perfectly applied; the quality, experience and practices manifested in this area; proven quality of proper competence resources of the authors of the control exercised by the government; the nature and quality of political will, obvious in case of parliamentary control. Finally, as a condition of its institutional effectiveness, public administration control over the military administration, should be subsumed to the action vector of the following requirements: to have a constant evaluative nature; to manifest operating measures of coercion and imposition; to have an ethical nature, expressed by the action of desirable moral norms for democratic construction of a society; to emanate permanent social value of the institution exercising the control, as proof of its interests representation.

REFERENCES


