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THE IMPORTANCE OF WELL-ADJUSTED PUBLIC REGULATION AND THE IMPACT OF DEFICIENCIES ON THE FUNCTIONING OF THE STATE IN CRISIS SITUATIONS – THE EXAMPLE OF THE CZECH REPUBLIC IN THE EUROPEAN CONSTITUTIONAL CONTEXT

Jan Kudrna[1]
Charles University, Czech Republic
E-mail: kudrnaj@prf.cuni.cz

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Abstract. This article is dedicated to the importance of well-adjusted public regulation and the impact of deficiencies on the functioning of the state in crisis situations, using the example of the Czech Republic. The present article focuses on those parts of the constitutional system of the Czech Republic (in comparison with other comparable countries) which regulate special procedures in ensuring the security of the state and the fulfilment of international obligations, for example in the field of common defence against attack. Some of the provisions analysed have not yet been applied, while others have and there is sufficient evidence from their daily application and practice. The first group of cases includes the procedure for declaring a state of war, which is a legal condition for the application of a number of measures necessary for the defence of the state and the support of treaty allies. The second group includes in particular the issue of sending the Czech Armed Forces abroad, which is closely related to the Czech Republic's obligations towards NATO and its VJTF forces. The constitutional procedure for the approval of flights of foreign armed forces over the territory of the Czech Republic is not feasible in its current form. A legal comparison shows the importance of balanced constitutional and legal regulation on the one hand. On the other hand, the potential problems that, under the rule of law, inappropriate legal regulation can bring not only for the state itself, but also for its partners in the international community are highlighted. The article presents, through comparative legal methods, the notion that that although most European states with a parliamentary form of government are rather restrained players in the use of armed forces outside their territory, a significant proportion of them do give the executive the possibility to dispose of these armed forces. This can only occur if necessary, with subsequent parliamentary control, and not under the full control of the parliament through its consent given in advance.
Possible proposals to address the problems described are also offered. The analysis shows that, in comparison with other states with similar sizes, power, history and needs, political representation in the Czech Republic is in a kind of mental trap. This could even complicate the fulfilment not only of the security interests of the state, but also of its obligations to its partners in the international community.

Keywords: Constitution, Czech Republic, security, NATO, VJTF, flights, transfers, armed forces.

Introduction

One of the main and traditional tasks of the state is to provide security for its population. This issue is more pronounced in times of acute security threats, such as those we now face. Every state performs a security function, and it can be said that this is one of the reasons leading to the establishment of states (Jellinek, 1906; Maršálek, 2018). Security can be understood as the absence of threat. Threats can be of many kinds, and the concept of security can be understood in both a broader and narrower sense.

In a broader sense, security would also involve ensuring, for example, a socially or environmentally safe area in which the individual is not exposed to distress or threats to life and health from a polluted environment (Víšek et al., 2023).

In a narrower sense, the concept of security is often interpreted as relating to ensuring the undisturbed existence of the state, including the preservation of its sovereignty and territorial integrity, together with the stability of the existing political regime. These are the basic prerequisites for the functionality of the state and the fulfilment of

[1] Associated professor of the Department of Constitutional Law at the Law Faculty of Charles University in Prague, Czech Republic. ORCID number 0000-0001-8009-4294, Scopus ID 57197853204, WoS ID HGD-6499-2022. The paper was prepared in the framework of the research project "Cooperation/Law".

its other tasks, which may include ensuring public order and security within the state, including the protection of the life, health and property of its inhabitants.

Usually, matters of ensuring the defence of the state are enshrined to varying degrees at the constitutional level. The conceptual need to enshrine and limit defence issues at the constitutional level emerged with the onset of constitutionalism. This line of legal philosophy is based on the premise of individual liberty, with the state being established to protect it. Therefore, the state is supposed to be limited and controlled to prevent the abuse of power and, above all, the deprivation of the freedom of the population. Then, of course, there must necessarily be an answer to the problem of how to provide sufficient instruments to maintain and restore public order and security even in emergency situations, on the one hand, and how to ensure that a temporary emergency does not become permanent, on the other. In other words, it is crucial that the freedoms hard won under a monarch, often absolutist, should not be removed again in the name of the need to restore the security of the state. For this reason, there is a move towards constitutional regulation (Garlicki, 2000; Lee, 2009), parliamentary control and the proportional use of power – even in cases of the defence of the state. Regarding proportionality, international obligations are expressed, for example, in Article 4(1) of the 1966 UN International Covenant on Civil and Political Rights, which speaks of "the extent required by the exigencies of the situation". Similarly, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) stipulates, in Article 15, provisions "to the extent strictly required by the exigencies of the situation".

A definition at the constitutional rather than statutory level implies a certain stabilization of the rules if this definition is regulated by a rigid constitution. At the same time, this means that constitutional rules such as guarantees of human rights and freedoms or rules of separation and control of powers are suspended by a rule of the same legal force as the one under which they were established.

Placing the promulgation, or at least abolition, of emergency measures in the hands of parliament ensures control over the executive, which is strengthened and partially freed from control in emergency situations. It also means greater legitimacy for decisions, as parliament is a more representative body than the government.

In any case, however, the regulation of these issues should not endanger the defence of the state. From this point of view, it may be interesting to think about constitutional regulation and its development using the example of the Czech Republic as a member state of the European Union and NATO. As will be shown below, legal regulation in the Czech Republic is not only not comprehensive, but in some respects is not fully functional and could complicate the fulfilment of the international obligations of the Czech Republic and its defence interests.

When we talk about a state's international obligations, it is obvious that a state's internal affairs may also affect its treaty partners. In this respect, the description of this issue also has an international legal and political aspect. This is also worthy of comparison.

In the present article, a number of methods will be used, first among which is a description and analysis of the existing legislation – especially, but not only, in the Czech Republic. In the overwhelming majority of European states, the constitutional system is based on the so-called parliamentary form of government. Individual cases with certain modifications exist, but these do not go beyond the basic division of power between the supreme constitutional bodies, as is typical of the parliamentary form of government.

At the same time, most European states are not military powers with great weight in the international community, which would (co-)shape this community and its rules through their active foreign policy and possibly with the usage of armed forces. Thus, as will be shown using comparative methods, although most European states with a parliamentary form of government are rather restrained players in the use of armed forces outside their territory, a significant proportion of them do give the executive the possibility to dispose of these armed forces. This can only happen with subsequent parliamentary control, if necessary, and not under the full control of the parliament through its consent given in advance. As will be shown, the Czech Republic is one of those states which, on the one hand, is aware of the necessity of operational procedures, including the fact that these procedures are both in the state's interest and in the interest of compliance with international obligations. On the other hand, its politicians have so far been unwilling to initiate a serious discussion on changing the restrictive rules, whatever the outcome.

The present topic may therefore be of interest to the reader in the context of, among other things, the current crisis in which states are searching for or re-examining the role they should play.

A legal comparison can show the importance of a balanced constitutional and legal regulation on the one hand. On the other, it can point out the potential problems that, under the rule of law, inappropriate legal regulation can bring not only for the state itself, but also for its partners in the international community.

1. On the Czech Republic's constitutional arrangements

The constitutional regulation of ensuring the defence and security of the state in the Czech Republic is incomplete and, in some respects, even unclear. Even the term "armed forces" needs complex interpretation (Skoruša et al., 2022). The Constitution of the Czech Republic (1993) regulates matters directly related to the defence of the state in its Article 43. Its rather extensive provisions regulate the declaration of a state of war and the participation of the Czech Republic in the defence systems of international organisations to which the Czech Republic entrusts a part of its armed forces under direct command. Furthermore, the article regulates the procedural conditions for sending Czech armed forces abroad and for receiving foreign armed forces on the territory of the Czech Republic. As a special matter, the article also regulates the conditions for flights and transfers of foreign armed forces above and through the territory of the Czech Republic.

In addition to the above-mentioned provisions of the Constitution of the Czech Republic, there is also the Constitutional Act on the Security of the Czech Republic (1998). This act regulates the state of national emergency and the state of emergency, both of which may be used in certain situations related to threats to the security of the State and which were not included in the original wording of the Constitution (Grinc, 2019).

The next part of this article will describe the shortcomings of each part of the constitutional regulation and possible solutions to these problems in the future.

2. The vagueness and incompleteness of the constitutional regulation of the state of war in the Czech Republic and its comparison with the constitutions of other European states

If we focus on the specific legislation and its formulation, then, with regard to its structure, the first thing to pay attention to is the question of the constitutional regulation of the state of war. This is mentioned twice in the Constitution of the Czech Republic (1993) – in Article 43(1) and Article 39(3). The first provision determines when a state of war may be declared and by whom; the second specifies the procedure.

A state of war is declared in the Czech Republic by Parliament if the Czech Republic is attacked or if it is necessary to fulfil international treaty obligations on common defence against attack. The declaration requires a supermajority of all members of both houses of Parliament. This much is clear from the constitutional provisions. However, some matters are open in Czech law – for example, the question of on whose initiative the Parliament can declare a state of war. In this respect, both the constitutional and statutory provisions are silent. This is contrary to a state of national emergency, the declaration of which is clearly described in Art. 7(1) of the Constitutional Act on the Security of the Czech Republic (1998). This provision states that a state of emergency is declared by the Parliament on the (exclusive) proposal of the Government. Presumably, the declaration of a state of war should be also done on the proposal of the Government. This conclusion is supported by the fact that the Government is responsible for ensuring the defence of the state by virtue of the Act on the Provision of Defence of the Czech Republic (1999). Furthermore, it is the Government – or rather individual ministries, typically the Ministry of Foreign Affairs and the Ministry of Defence – which is equipped with the powers and tools to give clear information on whether one of the two situations envisaged in Article 43(1) of the Constitution of the Czech Republic (1993), under which a state of war can be declared by Parliament, has occurred. Alternatively, the analogy with the declaration of a state of national emergency, where the Government is clearly designated as the initiator, can also be used in this interpretation.

The ambiguities associated with the current legal regulation of a state of war can therefore perhaps be overcome by interpretation. However, certain reservations can be outlined regarding the way in which a state of war is declared. The current mechanism in the Czech Republic requires a decision of the Parliament, taken by a majority of all its members in both chambers. This mechanism may prove to be rather cumbersome in certain circumstances, especially if there are time pressures. It should be noted that a number of measures to ensure the defence of the State are linked to the formal declaration of a state of war, without which they cannot legally be implemented. These may include general mobilisation, which is linked to a declared state of war by Art. 23(3) of the Act on Conscription (2004), or certain economic measures, which are also linked to a declared state of war, in this case by Art. 23 of the Act on Economic Measures for States of Crisis (2000).

If a situation were to arise in which the Parliament of the Czech Republic could not meet – such a limitation of state bodies action could arise through conventional warfare, hybrid warfare (Havlík, 2022), cyberattacks (Filipec & Plášil, 2021), psychological operations (Mlejnková, 2022; Modrzejewski, 2018), or influential activities in cyberspace (Divišová, 2022) – it would not be possible to declare a state of war because Czech law does not provide any alternative.

Therefore, it would be worth considering an alternative way of declaring a state of war in the event that there was a risk of a time delay before Parliament were to meet, as the extra-legal approaches are not generally accepted (Ondřejek, 2020). An alternative method, as is also known to other constitutional arrangements, could consist of the declaration of a state of war by the President of the Republic on the proposal of the Government, with the understanding that Parliament would confirm such a measure at the earliest opportunity and, if it failed to do so, the state of war would immediately be repealed.

The constitutions of many European states place the task of ensuring the defence of the state directly in the hands of the head of state in cooperation with the Government (under the control of the parliament). Other European states count on the top executive bodies in cases of emergency, when the standard working procedures of the parliament are not possible. Both solutions are based on the presumption that a smaller or even monocratic constitutional body is more capable of maintaining the ability to react, even in case of unexpected danger, and acting quickly in the area of legal regulation. Such a capability should be preserved – especially if the legal procedures and law as a whole are to be kept consistent in different kinds of states of emergency, as is supposed by international treaties protecting human rights, for example. In other words, if the rule of law principle is to be binding in all situations, including extreme ones, then an alternative way in which to ensure the capability of the state to work in the area of law has to exist – especially if the standard procedure is very strict, as in the Czech Republic.

The Polish constitutional arrangement even provides for the declaration of a state of war by the President of the Republic on the proposal of the Council of Ministers as a standard procedure. The Constitution of the Republic of Estonia of 28 June 1992, in its Article 128(2), gives the President of the Republic the power to declare a state of war in the event of aggression against the Republic without waiting for a decision by Parliament. Similarly, the Constitution of the Republic of Lithuania of 25 October 1992, in its Article 142(2), offers the same provision. The Constitution of the Republic of Latvia of 15 February 1922, re-promulgated on 6 June 1993, in its section III, point 44, echoes this. To leave the Baltic area, we can draw on the example of the Constitution of the Republic of Romania of 21 November 1991, specifically Article 92(3) thereof, which again provides for this power. The conferral of the power to declare states of emergency on the President of the Republic is not surprising in the case of the Russian Federation, whose Constitution of 12 December 1993 provides for this matter in Article 87. The Constitution of the Republic of Albania of 28 November 1998 establishes this power in Article 162(1). The President of Belarus does so on the basis of Article 84(29) of the Constitution of 15 March 1994. The President of Bulgaria is endowed with such power by virtue of Article 100(5) of the Constitution of 12 July 1991. The Constitution of the Republic of Macedonia of 17 November 1991 also opts for a similar solution in Article 124(3). The case of Slovenia, whose Constitution of 23 December 1991 contains an alternative mechanism for the declaration of states of emergency and the use of armed forces in Article 92, is similar.

However, it is not only the constitutions of Central and Eastern European countries that contain similar solutions. The strong role of the President of the Republic is not surprising in France, where the Constitution of 4 October 1958 addresses the matter in its Article 16. However, the German Federal Constitution of 23 May 1949, although making very strong provisions for the approval of emergency measures by the Bundestag and the Bundesrat, also provides for a decision to be taken by the Joint Committee in the event of difficulties in convening them. The Dutch Constitution of 17 February 1983 provides, in Article 100, for the deployment of the armed forces by decision of the Government (within the limits of the law) and with the consent of Parliament, but in cases where prior approval would not be possible, the provision is made for a subsequent hearing. The Italian Constitution of 22 December 1947 also provides, in Article 77(2), for the possibility for the Government to issue decrees with the force of law in cases of necessity, subject to the subsequent approval of Parliament. According to Art. 167 of the Constitution of Belgium (originally adopted in 1831, as amended until today), the King commands the armed forces; he states that there exists a state of war or that hostilities have ceased. The King of Belgium acts in cooperation with the Government.

Among the new constitutions, reference may be made to the Republic of Finland and its Constitution of 11 June 1999. Article 23 of the Constitution provides that states of emergency shall be proclaimed by Government decree, which shall then be submitted to Parliament for approval. Furthermore, although the Finns have made a major shift from a semi-presidential to a parliamentary system, Article 129 of their constitution provides that the mobilisation of the armed forces is to be declared by the President of the Republic on the proposal of the Government. Similarly, the Swiss Constitution of 18 April 1999 entrusts the mobilisation of the armed forces to the Federal Council in Article 185 and the subsequent consideration by the Federal Assembly. Similarly, we can point to the Republic of Hungary and its Constitution of 25 April 2011, which provides for the delegation of the power to declare the necessary measures to avert aggression to the President of the Republic in its Article 48(3).

However, we should not forget the Constitution of the Slovak Republic of 1 September 1992, which, in Article 102(1)(m), confers the power to declare states of emergency and mobilisation, following a proposal by the Government, on the President of the Republic.

It can be summarised that the alternative method of declaring states of emergency or taking decisions to avert them is neither unknown nor exceptional in the constitutions of European states.

3. The constitutional mechanism of allowing flights over the territory of the Czech Republic and its infeasibility

When evaluating other parts of Article 43 of the Constitution, it can be said that the establishment of a special mechanism for approving the Czech Republic's participation in the defence systems of an international organisation of which the Czech Republic is a member is useful and functional. Here we are talking in particular about the NATINAMDS system (Korecki & Adámková, 2018).

However, from the point of view of the existing constitutional arrangements, attention should be paid to the mechanism for authorising flights over the territory of the Czech Republic. In this respect, the existing constitutional regulation is fundamentally dysfunctional and has long been outdated in terms of facts.

Permitting flights – in principle, ground transfers need not be problematic, as their number is smaller and they can be planned in advance – over the territory of the Czech Republic is regulated by Article 43(5)(a) and (6) of the Constitution. The decision-making power in this matter is vested in the Government, according to Article 43(5) of the Constitution of the Czech Republic. However, according to Article 43(6), the Government is obliged to inform both chambers of Parliament without delay, and Parliament may annul the Government's decision. The dissent of one chamber, expressed by a majority of all of its members, is sufficient for annulment.

It follows from the Constitution of the Czech Republic that the Government is obliged to inform the Parliament without delay. Although the meaning of "without delay" is often questioned or relativized by politicians, it does not require any special interpretation. The Government is supposed to act without any delay, i.e., not to delay or postpone the transmission of information. The action of the Government must allow the Parliament to exercise its control powers and, potentially, to block this action. The Parliament must have a chance to review and possibly

cancel the decision before it is implemented. This conclusion follows from two arguments. Firstly, it would not make sense for the constitution-maker to want Parliament to decide on and possibly overrule decisions that have already been enacted. Secondly, there is the argument regarding Parliament's function of control over the activities of Government. The author considers the first argument to be decisive because the opposite interpretation leads to absurd conclusions.

However, the difficulty lies in the fact that the above constitutional mechanism is practically impossible to comply with. The reason for this is the very high number of flights over the territory of the Czech Republic. An analysis titled "Analysis of the existing legal regulation of the current practice of consenting to overflights and passages of armed forces of other states through the territory of the Czech Republic" was prepared in 2015 by the Ministry of Defence, was then on the programme of the Government meeting on 22 July 2015 as governmental document No. 875/15, and was accepted by Government Resolution No. 580 of the same date. The Analysis stated that the number of flights over the country's territory was 500–700 per month, with most being requested or notified by the partner state at very short notice, usually less than 7 days. The Ministry of Defence further stated that some requests for overflights, particularly in crisis situations such as the sudden need to evacuate the armed forces or the population or to transport the wounded, are made only a few hours before the flight takes place.

There are several reasons for this high numbers of flights over the territory of the Czech Republic, certainly including the country's geographical location, but also its membership in various international organisations – first and foremost, the North Atlantic Treaty Organisation – and the resulting commitments in these alliances.

At the same time, it should be noted that the Czech Republic itself has similar interests to its allies or foreign partners, and situations arise when it is necessary to evacuate Czech citizens from abroad (including, e.g., the evacuation of Czech nationals affected by the tsunami in Thailand in 2004) or injured members of the Army of the Czech Republic (in recent years, this has mainly involved evacuations from Afghanistan) or to replace and supply Czech troops abroad.

This means that the principles of reciprocity and alliances, in which the Czech Republic has a clear interest, must be considered. Although the principle of reciprocity does not apply automatically and without exception, its observance nevertheless has an impact on decision-making in individual cases. Similarly, the principle of alliance means that the Czech Republic should not, by its decision-making practice and its mechanisms, make allies uncomfortable – e.g., by making a decision just before a flyover takes place.

As can be seen from the above, the decision-making mechanism defined by the Constitution cannot be fulfilled in practice. In the case of sudden situations requiring an immediate response within hours, it is almost impossible even to obtain the consent of the Government, let alone to hold a debate in Parliament.

In practice, the mechanism proposed by the Ministry of Defence at the turn of the millennium is followed. Each year a list is drawn up of countries whose armed forces are granted Government approval for 1 year for the purpose of transit or overflight through the territory of the Czech Republic. In the case of other states, the procedure is ad hoc. Parliament is then informed of the passages and overflights that have taken place. In some years, the frequency of informing was every 6 months, in others it was quarterly. The first time this procedure was followed was in 2001, under Government Resolution No 1322 of 10 December 2001. A similar procedure has been followed in subsequent years up to the present day.

As far as the countries included in the first group above are concerned, these were originally NATO member states and participants in the Partnership for Peace. However, this division turned out to be inconvenient because the group of states to which ad hoc procedures were applied was very large and a high number of states were important for the Czech Republic in terms of their location for the implementation of its provisions. Thus, the first group was gradually expanded to include the states of the European Defence Agency (EDA), but above all to include states that, "on the basis of reciprocity, operatively issue diplomatic permits for overflights of the Czech Army aircraft". According to the Report of the Government of the Czech Republic to both Chambers of Parliament (2023) in 2023, 78 states belonged to the first group and 123 states belonged to the second group.

To implement the described mechanism, an Agreement on the Authorisation of Flights of State Aircraft (hereinafter – the Agreement) was concluded pursuant to Resolution No. 136 of the State Security Council of 20 November 2000. The current version of the Agreement was concluded on 27 September 2004 pursuant to National Security Council Resolution No. 130 of 13 July 2004. The Agreement is concluded between the Ministries of Defence, Interior, Finance, Transport and Foreign Affairs. The Ministry of Defence is responsible for arranging overflights by the armed forces of other States and does so through the Military Transport Department. Government approval for a period of 1 year is therefore not an unlimited form of permission, either in time or number of overflights by aircraft from the states included in the first group, but a prerequisite for the quick and easy processing of permissions for individual overflights. All of the above-mentioned ministries are involved in this process within the limits of their respective competences.

However, even this practice has not proved to be sufficient for the clearance of overflights from States belonging to the second group. At the same time, as already mentioned above, the principle of reciprocity prevented the operational approach of the partner state when it was not applied by the Czech Republic. Whereas this has been crucial for the Czech Republic many times, even in the second group of states the Czech Republic has used the most operational decision-making procedure.

Therefore, the Ministry of Defence proposed a new mechanism to the Government in 2007, which consisted of the Government giving prior approval to all countries recognised by the Czech Republic for overflights for 1 year, but with the proviso that these countries would continue to be divided into the two groups mentioned above. In the case of the former, permission for a single overflight is issued by the Department of Military Transport without further delay. In the case of the latter, this is subject to further conditions, which are: the absence of objections by the Ministry of Foreign Affairs to carrying out the flight in question; permission can only be of a one-off nature and is valid only for 72 hours; and any permission so issued is specifically marked in the Report of the Government of the Czech Republic to both Chambers of Parliament (2022). There are very few overflights by the armed forces of the countries of the second group. According to the regular semi-annual governmental reports to Parliament, flights in the second group of states represent around 1% of all flights allowed over the territory of the Czech Republic. The described procedure was firstly approved by the Government on 19 December 2007 by Resolution 1437. A similar procedure was followed in the following years.

As can be seen, the authorisation and implementation of flights of foreign armed forces over the territory of the Czech Republic is a very extensive and demanding matter, and practice has repeatedly encountered the limits of existing procedures and rules, which had to be changed. At the same time, the existing constitutional arrangements are unworkable. Although the above analysis asserts that the current practice is consistent with the constitutional order, for the reasons detailed above, this conclusion can be questioned. Government officials are also aware of this, as is evident from the Amendment to the Constitution (2022) that has been repeatedly submitted by Minister of Defence Jana Černochová as a Member of Parliament.

The constitutional mechanism for authorising flights of foreign armed forces over the territory of the Czech Republic should be changed. Given that even the Government's consent is not sufficiently operative in critical circumstances, the Constitution of the Czech Republic should be amended to give the Government the ability to determine the rules for allowing overflights. At the same time, the controlling power of the Parliament should be reformulated, which should not approve overflights, but should assess and control the rules set by the Government for allowing overflights. In this way, the existing practice, which is satisfactory, could be the starting point for the modification of the constitutional order.

4. On some of the limits of the current constitutional arrangements in the event of an expanded role for NATO

In 2002, at its Prague Summit, NATO decided to establish the NATO Response Forces (NRF) (Talbott, 2002). Two years later, it was announced that the NRF had achieved operational capability. The NRF is intended to have the capability to intervene anywhere in the world and to perform a variety of tasks, including civil protection, peacekeeping operations, or the use of force. They are multinational units established on a rotational basis. Thus, each Member State participating in the NRF provides part of its armed forces under NATO command (Zlatohlávek, 2007). At its 2014 Summit in Wales, NATO decided to establish the NATO Very High Readiness

Joint Task Force (VJTF) (Weber et al., 2014). This part of the NRF is expected to be even more capable, with deployment within 48 to 72 hours (Karásek, 2018).

The Czech constitutional arrangements imply fundamental limits for the fulfilment of NATO commitments depending on the task to be performed, especially by the VJTF. The mission of both the NRF and the VJTF implies the deployment of the Czech Armed Forces outside the national territory. Such a move is, depending on the circumstances, subject to either the consent of the Parliament or, in the cases listed in Article 43(4) of the Constitution of the Czech Republic, the consent of the Government.

The above-mentioned Article 43(4) states:

The government may decide to send the armed forces of the Czech Republic outside the territory of the Czech Republic and to allow the stationing of the armed forces of other states within the territory of the Czech Republic for a period not exceeding 60 days, in matters concerning the
a) the fulfillment of obligations pursuant to treaties on collective self-defense against aggression,
b) participation in peace-keeping operations pursuant to the decision of an international organization of which the Czech Republic is a member, if the receiving state consents;
c) participation in rescue operations in cases of natural catastrophe, industrial or ecological accidents.

Parliament's decision may not be sufficiently flexible, especially for the activities of the VJTF and their high operational capability and flexibility of deployment, which are envisaged. Even the Government may find it difficult to meet the 48–72-hour limit, which is a maximum and not a desirable limit for some types of units. In any case, the Government is better-placed to meet and decide on this.

However, the Government is limited by clearly stated constitutional conditions as to when it can make decisions instead of Parliament. It is questionable whether some of the missions that the VJTF could be designed for do not go beyond these limits. Article 43(4)(b), which presupposes the consent of the receiving state, could be a limiting provision. If a VJTF peacekeeping operation were to be envisaged without the consent of the receiving state, then parliamentary approval would be required in terms of the Constitution of the Czech Republic. There may also be a similar situation involving intervention in a so-called failed state, where there is no one to give consent. However, in this case, regardless of the severity of the situation, the participation of the Czech Armed Forces in the VJTF mission would be possible only with the consent of the Parliament.

Parliamentary consent, of course, ensures both greater control and, above all, greater legitimacy for a decision which, in its consequences, has serious political and legal international implications. On the other hand, however, a situation may arise in which the Czech Republic is not realistically able to fulfil its commitments to NATO.

Many European states use more flexible constitutional regulation, allowing wider decisions of the executive bodies. The first example may be the Constitution of Belgium, which in Art. 167 puts decisions formally into the hands of the king, but materially these decisions are transferred by royal decree to the Government. The Constitution of Greece of 1974 states that command of the armed forces is executed by the Government in the way specified by law. According to the Constitution of Poland of 1997, it is the task of the Government to ensure the internal and external security of the country (Art. 146) in the way specified by laws. This also includes the issue of the deployment of Polish armed forces abroad. The same legal situation exists in the Constitution of Portugal of 1976 (Art. 275), in the Constitution of Spain of 1978 (Art. 8), in the Constitution of Slovenia of 1991 (Art. 124), and in the Constitution of Romania of 1991 (Art. 92). A very specific and traditional constitutional situation exists in France and Britain, where the usage of the armed forces is in the hands of the president of the republic in France and the Government in Britain.

The Constitution of the Czech Republic should also be amended in the above-mentioned direction to allow, in specific urgent situations, the Government to make a decision under supervision by the Parliament. The top political representatives of the Czech Republic are aware of this. The above-mentioned draft amendment to the Constitution of the Czech Republic submitted by the Minister of Defence to the Parliament includes the modification not only of the procedure for approval of military flights over the territory of the Czech Republic, but also of the constitutional conditions for sending the armed forces of the Czech Republic abroad. At the same

time, it is obvious that this is a highly sensitive and potentially controversial issue, as many interventions on the territory of a foreign state without a UN mandate threaten to violate the UN Charter, specifically the principle of non-interference in the internal affairs of a Member State. On the other hand, public international law does not consider the use of force to protect a country's own citizens in the territory of a foreign state as illegal, even without its consent (Shawn, 2008, pp. 1143–1146). This should make any discussion more thorough. However, the current constitutional arrangements do not allow for the full implementation of the Czech Republic's obligations towards its allies.

Conclusions

As was stated in detail above, the current constitutional arrangements in the Czech Republic contain several shortcomings, both in terms of their design and specific provisions.

The area that deserves change is the regulation of the declaration of a state of war. As far as the procedure for declaring a state of war is concerned, it is necessary to consider the possibility of declaring it in an alternative way. This should be provided for in a situation where a declaration by Parliament is not feasible – for example, because Parliament cannot meet due to ongoing or imminent aggression.

A similar situation arises regarding the mechanism for approving the flights of foreign armed forces over the territory of the Czech Republic. The current constitutional procedure is unworkable. An appropriate solution would be to give the Government the power to prepare rules for the approval of overflights, while at the same time subjecting them to parliamentary control. The approval of specific overflights under these rules should already take place outside Parliament.

The last area that deserves some flexibility and clarification is the Czech Republic's involvement in the NATO Rapid Reaction Force. Here, too, the approval procedures should be relaxed, and the role of the Government strengthened. The current Czech constitutional arrangements are not capable of meeting the requirements arising from its commitments to its allies.

The whole situation described above is even more serious because it is not a recommendation aimed only at a certain improvement or rationalisation of procedures. A substantial part of the problems identified prevent, or at least threaten to prevent, the proper functioning of the state in crisis situations in accordance with constitutional provisions. Others may touch very closely on fundamental principles of public international law and the rules of the international community.

In conclusion, under the current constitutional setup of the Czech Republic, Parliament is empowered to take almost any decision in the matter of ensuring the security of the state. The only limit to its decision-making is Article 1(2) of the Constitution of the Czech Republic, which speaks of respect for the Czech Republic's obligations under international law. The conferral of broad decision-making powers on Parliament ensures the highest legitimacy of the decisions taken and ensures control over the executive. At the same time, however, it must be said that parliamentary decision-making can be cumbersome and time-consuming, and that it may be in direct conflict with some of the Czech Republic's international obligations.

The Constitution of the Czech Republic requires a reassessment in this respect, and the solution lies in making the existing constitutionally established mechanisms more flexible. Specifically, the ideal solution would be to transfer several above-described decision-making powers from the Parliament to the Government. The Parliament would continue to have only to approve the legal framework within which the Government would take its decisions. Naturally, it would also have to continuously monitor the exercise of the Government's powers, with the possibility of intervening at any time. Only in this way can the Czech Republic fully and reliably fulfil its obligations to its allies as a NATO member state.

As has been shown in the comparative passages of the text, especially in part two, there is no reason why it should be systematically impossible for a state with a parliamentary form of Government that is not a military power to have flexible rules for the limited disposition of its own armed forces for use abroad, or for the reception of allied forces on its own territory in an emergency. A significant number of EU and NATO member states in Central and

Eastern Europe envisage such a possibility. It is therefore more a question of a political decision, which is, of course, also defined by a certain legal framework – in particular, the international legal obligations of the state towards its own partners. It can be summarised that the Czech Republic, or rather its political representatives, are in a certain mental trap: on the one hand, they declare their commitment to their partners, especially in NATO; on the other hand, they are aware of the limits of the existing constitutional framework, which significantly complicates the fulfilment of all of their international legal obligations. This could be understood as a symptom of a crisis – especially if examples of good practice exist in states of similar sizes, possibilities and histories, such as Poland, Lithuania, Latvia or Estonia.

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