

# LEGAL AND POLITICAL CHARACTER OF LEGISLATIVE AND EXECUTIVE POWER RELATIONS IN THEORY AND PRACTICE

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## Abstract

One of the main features of modern legal political systems is a joint decision-making of legislative and executive authorities. As a rule, the constitution of a specific country formally determines its relations. The system of mutual control and restrictions between the different branches of state powers, in theory, is known as *checks and balances*, to a greater or lesser extent is present in most countries of the democratic political and legal structure. Parliamentary control of the executive power is a relatively "new" discipline<sup>19</sup> in transition countries. In this sense, the work on its development and improvement, represents an issue of special priorities and moreover a *condition sine qua non* of ensuring legitimate and democratic form of government in every state. Parliamentary control is the key to democracy, because Parliament by the nature of his constitutional legal position can substantially influence the actions of government. Countries in transition represent, tentatively, new systems with many challenges in the future. They are in the period of constitution of democratic political and legal system, as well as creating of a quality model of parliamentary control of the executive power within it.

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**Keywords:** Parliament, Government, Control, Legislative, Administration

## Introduction

The relations between the legislative and executive authorities in each country are drawing attention in both theory and practice. These relationships are often the cause of political and legal polemics. Basically, the reasons are related to the fact that from the quality control mechanisms of the Parliament towards the executive authority depends on the level of democratic legal and political system. That systematically affects many other social relations and processes in the field of economics, economy, education,

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<sup>19</sup> The term "new" should be understood conditionally.

etc. Parliamentary control and its mechanisms are different from system to system, but they have most of the principally same forms and, of course, the same objective - supervision of the Parliament as the representative body - over the organs of executive authority, in the first place over the Government.

Taking into account that in terms of parliamentary control over the executive and administrative authority, each country has its own specificities, when analyzing the relations between the legislative and executive authorities, should consider the existence of differences in the way of division of political power and influence separation, which each branch of government has in relation to the conduct of official policy. In any case, the two opposing tendencies are obvious regardless of which system we observe. It is on the one hand the tendency of *domination of the executive authority over the other authorities* and on the other hand, *the tendency of the legislature - the Parliament, to limit that dominance and control.*

To the Parliament, as the representative body of the citizens, in a certain sense belongs the power to control the executive authority. There is a legitimate question - why? The answer to this question is not too complicated taking into account the concept of separation of powers into the legislative, executive and judicial. Primary task and mission of the Parliament - the Assembly, as a body that is formed on the basis of the results of the people's will, expressed in the parliamentary elections, is to legislate. As a representative body, the Parliament has in its composition the represents of all those political structures that in democratic elections won necessary number of votes of the people. After the parliamentary elections in a country, the specific composition of the Parliament is determined, and it starts with its work. As a politically heterogeneous body, the Parliament, by the will of political parties represented in it, adopt or reject the proposed laws. The laws that are, in compliance with democratic procedures, adopted by the Parliament of a country, represents the legal basis for the action of the following form of government and that are executive and administrative authorities. The adoption of the law, their practical implementation, in the great extend, belongs to the executive power, or more broadly speaking - to the *public administration*. Complete regulation of social processes in each its segment, is done through the activity of executive or administrative authority, that is, the public administration as its broadest framework, which has a *social regulation* in the description of its work. Social control carried out by the public administration itself is now becoming a *fundamental* social process and makes an important assumption of economic efficiency, cultural

development and general social progress in the conditions of a developed industrial and urbanized society.<sup>20</sup>

To make the process of implementation of social regulation successful, *public administration must be constantly monitored and controlled*. Precisely the Parliament as a legislative and representative body of the citizens, therefore, has as one of its main function to control the public administration, and thus the executive or administrative authority.

### **The position and role of the Parliament and executive authorities**

Under the position of the general government we consider its place in the political and constitutional system, while the role of authorities involves the totality of basic tasks and activities performed by authorities and which primarily arise from the Constitution and the law. The position and role of government are defined based on the principle of separation of authorities, parliamentarism and political pluralism.<sup>21</sup> In that context, by the laws, which determine the position and role of the government, government relations are closely regulated: towards other state bodies (eg., the assembly), their mutual relations; towards the judicial authorities, towards the local authorities, as well as to other entities (for example, citizens, companies, nongovernment and other organizations, etc.).

The specificity of Parliament in relation to other types of state powers is contained in the fact that Parliament is composed of representatives of all political parties, the parliamentary majority and the opposition. In contrast to the government, which, as a rule, entirely consists of representatives of the governing party or coalition, the Parliament consists of different representation of all political groups. The very fact that the opposition has its place in it, makes the Parliament "the most democratic" authority. This "the most democratic"<sup>22</sup> for the reason that it is composed of political representatives of all citizens, grouped into political parties, which passed the electoral threshold and constitute the Parliament, according to their number and strength, presented on the parliamentary elections. As such, it means composed of the representatives of all citizens, Parliament sets the rules of behavior (legislate).

This is its important legislative functions, for which it draws legitimacy from the support that political party as its constituents got in the elections, by votes of the citizens. Its right to legislate, to determine the rules of behavior, it is possible to explain, among other things, with *the theory of the social contract*. The citizens constitute the state and its authorities (and consequently the Parliament), not as an expression of a surreal needs to have

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<sup>20</sup> Compare: Eugen Pusic, *Social regulation*, Zagreb, in 1989.

<sup>21</sup> Compare: Stevan Lilić, *Government and the executive in parliamentary and presidential system of separation of powers*, Archive for Legal and Social Sciences, no. 2, in 1994

<sup>22</sup> Demos - the people, the citizens.

a state as formal framework in which fit the territory and citizens, but because the existence of a state enables the realization of rights and obligations, quality standard of living and protection against the acts of lawlessness and injustice, no matter from which side they come from.

Therefore, since that the state and its authorities guarantee all kinds of protection and framework to the citizens, citizens by the transfer of one part of their sovereignty to the Parliament, accept that body as someone who sets the rules of behavior which refers to the country as a whole and all of them together. Parliament is one of the three main pillars of power in a state. Separation of authorities between the legislature (Parliament), executive or administrative (public administration) and the judiciary (courts), besides the limitations and mutual control of different branches of government, as one of the main objectives of this separation, has another important goal. This is the separation of certain types of powers and functions between these authorities.

So, *within the competence of the Parliament* as a representative body, there is mentioned legislation as its primary function. In *the competence of the executive and government in general* is the execution of these laws and regulations - their application in specific situations on the relations government with citizens and legal entities. In *the competence of the judiciary*, in its broadest sense, is the adjudication of disputes concerning various types, also through the application of laws adopted by the Parliament. Although this general definition of an “effects area” of three main branches of government act very precisely defined, there are in some cases certain overlaps and inconsistencies of the functions description of each of three branches of government with the aforementioned model.

### **Parliamentary control of the executive authority as one of the main roles of the Parliament**

For the object of our study one special, control function of the Parliament is relevant. It is a parliamentary control over the executive or, broadly speaking, control of the entire public administration. Few centuries earlier, in the eighteenth century, during the period of the establishment of the legal state, through the process of legal institutionalization of the governance, the Parliament has become the institution for the prevention of abuse of governmental authority. Through legislative function, the Parliament got a central role in civil society.<sup>23</sup> Besides legislative function, the role of Parliament in limiting executive power, reflected therefore in its control function. Constitutional systems of most countries nowadays, regardless of the adopted organizational system of government (presidential,

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<sup>23</sup> "Limitation of self-willness and abuse of governmental power in a democracy is achieved by giving the right place to the parliament," Jovan Djordjevic, Contemporary French Democracy, Belgrade, 1936, p. 24.

parliamentary or assembly), predict a number of (more or less) control institutions that modern Parliaments have in relation to the government.

Overall, the means by which the Parliament exercises control over the government can be divided into two groups: the first includes *means by which the Parliament is informed of the government work*, and the second *means by which is used to start the political responsibility of the government in the Parliament*. These means can also be divided into permanent and occasional.

#### **a) Permanent means of control of the Parliament over the government**

Permanent means of the Parliament control over the government are *permanent commissions* and *committees of the Parliament*. In this regard, it is worth noting *parliamentary hearings*. The practice of some developed countries is familiar with the institute of *parliamentary hearings* (public hearings), which can be defined as a mechanism for collecting information used by parliamentary committees. Parliamentary hearings may be conducted on issues such as the lack of specific legislation, but it is much common the conduction of parliamentary hearings for proposed laws and other regulations. The purpose of the parliamentary hearing is to monitor the fulfillment of the programs and activities of the government. Parliamentary hearings provide the opportunity for citizens to participate in the formation of attitudes about specific issues and also assist in building public opinion on any measure or matter. Most of the parliamentary hearings take place at the headquarters of the Parliament but sometimes working body of the Parliament may decide that there is a need to conduct a parliamentary hearing on the ground.

Nongovernment organizations can provide a rich source of information to parliamentary committees. Highly educated people and members of various organizations are often willing to support the committees, through the presentation of actual data, analyzes and statements. Previous studies show that the testimony in front of a parliamentary committee, during the parliamentary hearing, is an important and effective method of influencing legislation. Besides the aforementioned, through the process of consultation with experts and stakeholders, committees receive information and help from ordinary people who have direct experience in relation to the proposed legislative act and that will be directly affected by decisions taken by the Committee and the Parliament.

#### **b) Occasional means of control of the Parliament over the government**

Occasional means of control of the Parliament over the government work are: *Survey Commission*, *parliamentary questions* and *interpellation*.

*Survey commissions* - This type of committee is formed for questioning some important issues, which in the near or distant relation to the government's work.

*Parliamentary questions*<sup>24</sup> - Parliamentary questions are the mechanism by which the representatives of the Parliament can request information from the chief executive and call them to explain their actions regarding the implementation of policy measures. They are a traditional form of the supervision in the parliamentary systems. Although their origin is in the British House, this practice is nowadays common throughout the world. Parliamentary questions are best known in its oral form. Then opposition members question the government or any of its members on issues related to specific policy measures in the forum known as the "time for questions". *Time for questions* is as a rule dynamic and very public process. Time for questions has basically two purposes. One of them is *supervision*. The obligation of the executive is to answer questions, to enable to the deputies and the general public to review and evaluate government policies and measures. The second purpose is of the political type. Parliamentary questions provide an opportunity to the ruling as well as to the opposition parties to engage in party debate, often for the benefit of all interested parties. A parliamentary question is specific question which deputy raises to a certain members of the government or to the government of a state authority in written or oral form. It must be clear and must not have feature of discussion on a particular issue or contain qualifications of people or events. The answer to a parliamentary question, is given at the same session at which a deputy set it or at the next session of Parliament, in each case during the same session. A deputy has the right to set maximum of three parliamentary questions at one session. After a reply to a parliamentary question, the debate is not conducted in the Parliament.

The deputy who has raised the question has the right to a three-minute comment on the response of the government member to his questions or to ask a supplementary one. This implies that a member of the government who provided a response could take the word again, but with that the whole point of the parliamentary question should be completed. As shown, with parliamentary questions, there are a deputy who asks and a government member who answers the question. About parliamentary question is not debated or voted. The aim of the parliamentary question is a notice, which may result in compromising of the government, which could lead to eventual political accountability of the government in the Parliament.

*Interpellation* - Interpellation is a qualified question addressed to a member of the government or to the government in general. At least one-quarter of the deputies in the Parliament may submit an interpellation to debate certain policy issues related to the work of the Government. Interpellation is submitted to the President of the Assembly in written form,

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<sup>24</sup> Eng. question time - in the literal sense of „time for questions“.

a issue to be considered must be clearly formulated and explained. The President of the Assembly immediately pass the interpellation to the deputies and to the Government. If during the debate of interpellation, some deputies give it up, and the number of members who have submitted it falls below one quarter of members, it will be considered that the interpellation is withdrawn. The debate of the interpellation can end with the conclusions on the issues raised, and can be completed without decision making. In the interpellation, in contrast to the parliamentary question, the main is debate while the Parliamentary question is asked specifically and a response is given to it, therefore the debate can not be reached.

### **Means for starting the political responsibility of the government**

From the means for starting the political responsibility of the government, classic means in the parliamentarism is a *proposal for vote of non-confidence of the government*.

*Non-confidence of the government* - Proposal for the vote of non-confidence of the government, must contain the reasons for proposing the vote of non-confidence. About the proposal for the vote of non-confidence of the government, at the Parliament's session a debate is opened. Before the opening of the debate, the representative of the proposer shall be entitled to present a proposal and the Prime Minister to answer the question. After the end of the debate, comes the vote of non-confidence of the government. The issue of confidence in Parliament may set up the government itself.

The question of confidence on behalf of the government is set up by the President of the government and has the right to explain it. After completed debate, comes the vote of confidence. Suggestions for voting of no confidence in the government, raises a certain number of members of the Parliament. That the government loses the confidence of the Parliament, it is necessary that the proposal is adopted by the same majority of deputies which has been needed for the government's election. But the government itself may, in order to put pressure on the Parliament, to set up the issue of its confidence in the Parliament. If it does not get necessary number of votes, the government loses the confidence of the Parliament. Loss of confidence in the Parliament obligates the government to resign.

The vote of confidence is more common in coalition governments, whose fractious nature sometimes causes fallout of one or more parties and their voting against the government. A number of vote of no confidence can be lead to instability as the government constantly changing (Italy is a good example). To avoid this situation, some countries have followed the example of Germany and established a "constructive vote of no confidence." This provision, contained in Article 67 of the German Constitution<sup>25</sup>, requires that

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<sup>25</sup> See Article 67 of the Constitution of Germany.

the proposal of no confidence in the government includes the name of the new Prime Minister (or Chancellor).

According to their practice, "constructive vote of no confidence proved to be the backbone of the political stability of Germany. However, it is more difficult to get the majority which will elect a new man to replace the current individual holding this position". In some countries, such as Canada, any vote on the government's proposals is also potentially a vote of confidence. In other words, the tradition of strict party loyalty dictates that the majority party supports all government proposals. If that does not happen, the government actually loses the confidence of the Parliament. Hungary and Poland have the option of vote of confidence in a particular Minister, which does not represent the referendum on the overall government policy, rather than on the work of that person. Former Polish deputy, *Jerzy Wiatr* describes the procedure as "a very unpleasant experience for the Minister... His critics come to the podium and speak about his faults. He can not defend himself, but has defensive attitude. That has been shown on television so citizens could watch."

According to *Wiatr*, the final result of the vote is not very important, since the government majority will anyway outvote the opposition. "But all of these criticisms remain in the memory of the people. Therefore, it is important to avoid such a situation. It gives a certain advantage to the opposition."<sup>26</sup> In the Parliament of Montenegro, the proposal for a vote of no confidence of the government must contain the reasons for proposing a vote of no confidence. About the proposal for a vote of confidence in the Government at the Assembly session the debate is opened. Before opening the debate representative of the submitter has the right to explain the proposal and the Prime Minister to answer the question. After the debate, comes the vote of no confidence in the Government.

A vote of confidence in Parliament may set up the Government itself. If it does not get necessary number of votes, the government has lost the confidence of the Parliament. Loss of confidence in the Parliament obligates the government to resign.<sup>27</sup>

### **Criminal responsibility of the Ministers in front of the Parliament**

The exercise of criminal responsibility of Ministers to Parliament is the oldest form of ministerial responsibility. However, until today, parallel with the development of the ministerial functions, it has evolved greatly. Today, the criminal responsibility of the minister to Parliament occurs in relatively few countries. Entrusting to the parliamentary the research of

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<sup>26</sup>[http://www.ndicrnagora.org/index2.php?term=G&sess\\_id=PNYXMuNa0J4Ntixc&sub=RJEENIK%20DEMOKRATIJE](http://www.ndicrnagora.org/index2.php?term=G&sess_id=PNYXMuNa0J4Ntixc&sub=RJEENIK%20DEMOKRATIJE)

<sup>27</sup> Assembly rules of procedure of the Republic of Montenegro, Official Gazette of the Republic of Montenegro ", no. 51/06 of 04.08.2006, 66/06 of 03.11.2006, Articles 137-140

criminal responsibility of ministers, in modern conditions is related to certain advantages, but also for the numerous and significant flaws. The main advantage of this solution lies in the fact that the Parliament, as the most important political body in the country, is the most competent to appreciate the political nature of specific criminal responsibility of ministers. It is always present to some extent in this type of liability.

It occurs not only in the process of criminal prosecution of ministers, but sometimes in the trial phase. The competence of the Parliament in this case, is particularly evident for the purposes of assessing certain political elements, which exist in some specific criminal offenses of Ministers. However, there are more reasons that speak against such a role of the Parliament in the case of criminal responsibility of ministers. Their range is very wide. It ranges from a purely theoretical nature to very important practical reasons.

First of all, entrusting of one species (pairs) of judicial functions to the legislative body, particularly in the case when ministers as the highest representatives of the executive power should be tried, is in direct contradiction with the principle of separation of powers. In addition, the Parliament as the most important political body in the country, in its work is mainly guided by political interests. Therefore, in this body, there are not enough guarantees for the respect of the fundamental principles necessary for the administration of justice, objectivity and impartiality<sup>28</sup>.

In the case of criminal responsibility of Ministers in front of the Parliament, adequate legal security can not be guaranteed to the ministers. They can never be sure that they won't be, maybe even for purely political reasons, criminal accused and convicted, rather than because of a political disagreement with the majority in the Parliament, to be removed from the position in the process of political responsibility<sup>29</sup>. Then the Parliament presents, from organizational perspective, a very bulky body, often consisted of several hundred members, whose way of working is related to the complicated mechanism of collective decision-making.

Therefore, it does not represent the body that is suitable for implementation of one, to the smallest details regulated legal procedure, such

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<sup>28</sup> From the Assembly should take away the jurisdiction of placing the Ministers under the court under, as it is bad for the Court and the Justice, when is done by politicians. "Lj. Radovanovic, Legislature and its function, Archives of Legal and Social Sciences, 1925, p. 286.

<sup>29</sup> One in the theory of rarer, older authors, who justified the judicial functions of the Parliament over the Ministers (the Senate according to the Constitution of France in 1875.) was a Léon Duguit. He considers that the character of the state body which judges to the ministers depends on the nature of the liability which is achieves in front of it (political or criminal). Thus, "the Senate when it is constituted as a criminal court, ceases to be a political assembly and becomes the court in a full sense of the word, L. Duguit, *Traité de droit constitutionnel*, 3-e édition, Ancienne Librairie Fontemoing & Cie Editeurs, Paris, 1930, p. 581.

is the procedure of criminal responsibility of ministers. Also, the level of legal competence, which is necessary for the implementation of such procedure, within the Parliament has never been satisfactory<sup>30</sup>. For all these reasons, the Parliament as a whole, or even just one of his houses, rarely occur as the authority responsible for the criminal trial of ministers in modern states.

As such, the Parliament is the most competent to decide in case of criminal responsibility of the Ministers in those legal systems in which the ministers have the responsibility for their irregular actions (violation of state interests).

Therefore, the criminal responsibility of Ministers in front of the Parliament today occurs in only in a small number of countries of Anglo-Saxon's law system, which recognize the impeachment proceedings. In this regard, there are two models of the criminal responsibility of Ministers in front of the Parliament: English and American model. According to the English model, the Ministers, based on the criminal charges submitted by the lower house (House of Common), and which can be related to any illegal act or violation of state interests, are always judged by the upper house (House of Lords). The House may impose any sentence of a criminal - law character to the Ministers. It may be the same or different, both in kind and measure, compared to a general criminal law regime.

This decision of the authority competent for the trial with the special the criminal responsibility of Ministers in theory does not cause attention, and therefore any criticism. The main reason for this is probably the fact that in England there have never been set a question of violation of the principle of separation of powers in the case when one of the chambers of the Parliament (House of Lords) perform judicial duties. House of Lords has always had the judicial function as the Supreme Court of the Kingdom. After all, the House of Lords was created from the Magnum Concilium.

However, its judicial functions over the Ministers today has more symbolic than real importance. Hence, in this fact should be looking for an answer for the relative lack of interest in the theory for such solution<sup>31</sup>. According to the American model, the body responsible for the criminal trial of Ministers (state secretaries) on charges submitted by the Lower house (House of Representatives), it is also the Upper house (the Senate). However, after having conducted an impeachment, Ministers may be imposed sanctions by the Senate that are more of political -disciplinary than criminal

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<sup>30</sup> "The procedure of the trial to the Ministers should, as well as any other criminal case, have as an aim the establishment of the material truth, a purely political body is unable to adequately meet this demand." Kasapović, Josif, *Ministerial responsibility in the Serbian public law*, Beograd, 1911, p. 167.

<sup>31</sup> View: Sefko Kurtovic *Impeachment and political responsibility in England*, Proceedings of the Faculty of Law in Zagreb, no. 1/1977, p. 19-45.

character (removal from position and disqualification to perform public services).

The real criminal case, if the Minister with the same act did offense also punishable under the general criminal law regimes, is performed after that, in front of a court. Thus, only that court could give a real criminal sanction, which would be adequate to the gravity of the criminal offense. Therefore, the responsibility of ministers in front of the Parliament, which is achieved according to the American model, can not even be considered as criminal liability in the true sense of the word.

### **The danger of the parliamentary corruption**

To all countries, especially those that are in the transition period, threatens a dangerous phenomenon that can be characterized as a *parliamentary corruption*. This form of corruption is of the system type and represents a direct threat to the quality parliamentary control of the executive. As mentioned earlier, the separation of powers on the legislative, executive, and judicial means that Parliament legislates and the Government executes them.

By the feedback system, the Parliament controls the implementation of those laws in practice and measures the Government's behavior. Unfortunately, when in one country the existence of the parliamentary corruption is "diagnosed", it usually means that the givers of bribes - such as the lobbies gathered around huge capital, already have took control, not only over the executive but also the government authority. Then, naturally, they want to eliminate the effects of parliamentary control over the Government, in order to preserve the business interests and to strengthen their financial position.

The second, more important reason, is lobbying in the parliaments for enactment of such legislations, which suit to the interests of huge capital, which are often opposite to the interests of these states and their citizens. Over the parliamentary corruption, businessmen, who rarely enter politics and show themselves in public, get the laws that suit them and block those who would endanger their capital. There is corruption in all Parliament countries that develop democracy and its deputies are not immune to it, because it is a disease that is systemic and that distorts everything.

In a large number of countries in transition almost all institutions are collapsed, almost nothing is functioning, there are no basic rules of behavior and there is no respect. Corruption is most dangerous when it's practically not punishable, then it is very cost effective, as is exactly the case of countries in transition. How to fight against parliamentary corruption and how to force deputies to resist it? Corruption in Parliament is the same as anywhere else. It is criminal offense and, therefore, falls within the scope of the judiciary response. There is also a political liability, independent media,

there is pressure from the public or government control at multiple levels, not only the control of criminal responsibility.

However for this type of control are necessary built society and institutions that are mutually independent but can control each other. In countries where it does not exist - there is corruption. This kind of corruption is actually a trade of impacts. After all, in extreme cases in these countries, laws are adopted by the various forms of political "trade." In fact, certain centers of power buy deputies and through them determine which laws will be adopted and which will not. In such cases, the laws are adopted with the intention to bring to someone a certain material benefits. A model of such a move is this: huge capital lobbies have their deputies and then their own private interest enter into the law and set it as a general matter.

That's why there are laws that are intentionally made with certain disabilities so that they can not be applied later. In these countries, in practice, there is a proposal to adopt a code of ethics for deputies and elected officials. Whether it could reduce corruption? Certainly it is good to have a code of ethics, and whether it will be applied, it is quite another thing. In fact, any code, regardless of the fact that has no force of law, should have the instruments that will be obligating and specific institution to implement it. That's why it is important that, when creating the code, immediately provide the institutions that will be powerful enough to be able to insist on the application of rules and standards.

When the law provides a specific institution that will be responsible for the application, then no one will dare to ignore it. The Code would also be a step towards the establishment of rules and standards, as there is great resistance to the introduction of certain norms of behavior. The issue of the division of spheres of influence is evident in the practice of many countries. Those who are in a position to by the abuse of authority take full advantage for legally unjustified enrichment, are now powerful enough to finance political parties, political activities, the media, they can do whatever they want. It is obvious that there are tacit agreements about who finance in which in sphere, or what is whose sphere of interest, and then loyal party people are "installed" there to carry out the tasks. There is a great danger of "feudalization" of such states, that a political group brings their own party people and friends to the position of the director of public companies, in fact to all the important points that are inside their circle of interest, and through them, they do what they want. And behind all of this there is a clear large financial interest.<sup>32</sup> Is there then a successful fight if they who should investigate and determine the truth do not do that<sup>33</sup> and if the judiciary is

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<sup>32</sup> <http://www.dragas.biz/content/view/823/85/> (accessed November 27th 2006).

<sup>33</sup> *Quis custodiet ipsos custodes* – (lat.) Who guards the guardians?

bad? The main key to success in the fight against any form of corruption, with adequate parliamentary control is also the judiciary.

However, in situations similar the above mentioned, that are often seen in practice, and it is powerless to the executive and for having such a system, but also for having a weak and corrupt from within. Therefore, we can fight corruption if something is improved in this area, and that a lot depends on the people working in the justice system, but also of great pressure and the will of the citizens to better the laws and their application. No government, not even the one that has the results, it is not good if it is not controlled. The judiciary would be better if it is forced to be better. On this way, a great help can be European standards that for politically proclaimed strategic objectives, must be applied in countries in transition.

### **Conclusion**

The Role of the Parliament in limiting executive power besides the legal limitations of its activity (legislative function), is also achieved through its control function. Parliamentary control of executive power or the Government can be: legal and extralegal (political). Legal parliamentary control is evaluating the legality of the administration, or checking the respect of normative disposition by the administration in the performance of its activities. The subjects of legal control of the executive power are only a general acts (regulations) and not the individual acts. Since that the Parliament is not specialized in the assessment of (non) legality, from this form of parliamentary control it is more significantly effective the control exercised by the courts (judicial control of administration) or the actual government (on the basis of devolutionary appeal).

The essence of parliamentary control over the executive is reflected in political control. The subject of political parliamentary control over the executive is assessment of the political purposefulness of its work, therefore checking if it meets the tasks imposed by the Parliament and how the executive works in order to protect the public interest when performing of discretion estimates that are at its disposal. The mechanism of political parliamentary control over the executive power is achieved through the institution of the political responsibility of ministers. The relation between the Parliament and ministers is the relation of political trust.

When this balance is disturbed (either because the executive does not act on the orders of the Parliament or because the discretion estimates does not perform in the way that Parliament considers it is expedient), it may lead to a parliamentary sanction - dismissal of the minister. Other executive officers lower than the Minister, since that they have only legal responsibility for their work (not political), are not the subject of the parliamentary control.

When performing control, the Parliament can use a number of control instruments: The parliamentary questions and interpellations, surveys,

investigations examining citizens' complaints about the work of administration, consideration of the report on the work of government, the parliamentary committees, individual control activity of deputies annual reports of the Ombudsman, etc. Parliamentary control is largely determined by the system of the government. It is most effectively achieved in the Parliamentary and the Assembly system (with some differences between countries in terms of control instruments). In a presidential system, due to consistent application of the principle of separation of powers, parliamentary control of executive is done in an informal form.

The effectiveness of parliamentary control in a country, besides constitutional, is caused by many other factors such as the tradition of parliamentary life, the shape of the party system, the level of political culture, the degree of depoliticization of governance and the same. Due to the fact that in the transition countries significant changes took place, mainly in the constitutional and legal systems, so far only the assumptions are established for the exercise of parliamentary control over the executive. Just with development of other factors, parliamentary control in those states will be able to have the real meaning of an important form of control over the executive, which it has in established democracies.

The executive plays the role of an arbitrator in a huge number of the most diverse relations of citizens in the state. As such, it often makes mistakes, violating the rights of citizens and other subjects in the social process. For this reason, there is the need to control its operation in detail, among other things, by the Parliament as a representative body of citizens.

By the intense development of the Parliament as an institution, its procedures and services, as well as all other democratic institutions, a favorable democratic environment is being created. The parliamentary control over the work of the executive power will be enough effective means for ensuring the rule of law, the overall development of the state and welfare of their citizens.

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