

The mind of a military judge

Article courtesy of Lt Col Shantha Balakrishna

Photo: F Sgt Amelda Strydom

Lt Col Shantha Balakrishna is a military judge of the SANDF and is currently based at the Legal Satellite Office, Thaba Tshwane. She is the proud mother of three daughters and matriculated two years after the birth of her youngest daughter. Prior to joining the legal profession she worked as a table-hand/cutter/machinist in the clothing and shoe industries for seven years. She has completed her BA (Law), LLB and an Honours Degree in Philosophy. She is currently studying for a Master's Degree in Fundamental Rights.

For several years she was involved in the establishment and management of numerous organisations that participated in the struggle for a democratic South Africa, such as the Azanian Student Movement at the University of Durban-Westville (1987-1988), the Black Consciousness Movement, Durban and Districts (1988), the Azanian Students Convention as National Vice-Chairperson during 1989, the Black Lawyers Association and the National Association of Democratic Lawyers (1997-2000).

She practised as an attorney for approximately nine years and specialised in human rights litigation. Her decision to join the SANDF Reserve Force in 2002 was a conscious one with the intention of contributing towards the transformation process and the whole culture of constitutionalism within the organisation. In April 2004 she was appointed as a Regular Force member from among the ranks of the Reserve Force contingent of the SANDF.

Lt Col Balakrishna believes in the value of legal positivism which regards law as a system that integrates the norms of both state and society. She sees the weaknesses and problems in society as deficiencies in the existing law. Thus the task of judges is

misconstrued as that of technicians to formulate new norms and perfect the existing ones.

She stresses the fact that military judges are guided by basic values, which do not, for example, flow from public opinion surveys nor from populism sweeping our soldiers, although all these things are important because they might permeate the soul of the Defence Force and eventually transform it. In this connection she says: "Until that happens these are not standards that should be guiding judges. Hence the military judge has the obligation to protect the right of each individual soldier and therefore an obligation to protect the military community. Where there is no security for the military community there is no existence for the individual soldier. Securing the former is a necessary prerequisite for the existence of the latter".

Lt Col Balakrishna advocates the idea of transformative adjudication and takes the view that the legitimacy of this idea does not hinge on the availability of an objective legal method, which enables military judges to apply the law and norms in a neutral and determinate manner. It hinges rather on the capacity of our military judges to become involved in democratic accountability. The question that often strikes the mind of the public and in particular the military public is: *How does a military judge who is also a member of the military society, manage to maintain his or her independence and objectivity in the courtroom?*

"I am a product of my period and objectivity would not seek to tear me off from my surroundings. It enables me instead to properly formulate the fundamental principles of my period. The purpose of objectivity is to stimulate the military judge to make use of her past, her education, her experience, her faith and her values in order to reflect as truly as possible the fundamental values of the military society. In the same breath the military judge must exercise self-restraint that



Lt Col Shantha Balakrishna, a military judge of the SANDF.

enables her to separate her personal feelings from the inner feelings of the military society. A military judge who imposes on the military society all that is subjective in her will create tension between herself and her environment. This tension may ultimately damage the status of the military court and the military public's confidence in it. Although there is not much one can do with only the military public's confidence in adjudication, without it one cannot do anything."

She subsequently pointed out that what this meant was that a military judge had to free herself as far as she could from all personal preferences and that the work it dictated neutrality in the process of balancing and a reflection on the deep consensus and shared values of the military society. "The military judge through a process of mental accounting must acknowledge her characteristics and must make a conscious effort not to make a decision on the basis of these subjective traits."

Lt Col Balakrishna is extremely passionate about her work and sees herself as an agent of meaningful change within the SANDF. 