



Hungarian Helsinki Committee

BRIEFING NOTE

MILITARY FORCES ASSIGNED TO PRIVATE COMPANIES AS A COVID-19 RESPONSE MEASURE IN HUNGARY

6 April 2020

SUMMARY

On 19 March 2020, assigned military forces appeared at over 70 private and state-owned Hungarian companies with the task to prepare a take-over by the Hungarian State. Just a few days after the Hungarian government declared the state of emergency as a response to the COVID-19 pandemic on 11 March, a task force led by the Minister of Defense was created and entrusted with identifying the enterprises that are to be deemed as essential infrastructure in the pandemic situation. The military-led Task Force was also mandated to take steps needed to prepare assuming state control of these companies. According to the Minister of Defense, approximately 140 companies were identified as essential in the pandemic situation, and by 2 April 2020, military forces had been deployed to 93 companies.¹ The list of companies was not announced in advance, therefore there is no publicly available information about the additional approximately 50 companies that have been qualified as essential. The affected enterprises are informed on the spot, simultaneously with the arrival of the military personnel.

Although Hungarian legislation on the state of danger does allow the state to assume control over an individual company, the actual steps taken by the government fail to comply with these legal provisions and lack the guarantees set out by law. Beyond giving rise to general constitutional concerns that once again prove the Hungarian government's disrespect towards rule of law requirements, the situation also threatens the right to property. The non-transparent selection of affected companies and the unclear competences of the allocated military task forces also involves the threat that the COVID-19 pandemic may be used as basis for arbitrary discrimination of, or a disguised restriction on foreign-owned companies, thus threatening the principle of free movement of capital within the EU.

With the entry into force of the Emergency Law on 31 March 2020, the government gained the right to maintain and extend military presence at Hungarian companies irrespective of the preconditions and guarantees originally foreseen by law for the state of danger.

BACKGROUND

On 11 March 2020, the Hungarian government declared a state of danger to address the threat resulting from the COVID-19 pandemic² as of 15:00 pm of the same day. The state of danger is a special legal order under the Hungarian constitutional system that allows the government to take extraordinary measures and derogate from certain legal provisions within the framework set out by a cardinal law (the Disaster Management Act).³

On 14 March 2020, the government established the Task Force in Charge of the Safety of Essential Hungarian Companies (Task Force) led by the Minister of Defense, and entrusted it with identifying the enterprises that shall be deemed as essential for the operation of the country in the pandemic situation. The Task Force was also mandated to take preparatory steps for taking state control over these companies.⁴

On 18 March 2020, the government established the Commanding Military Corps (Commanding Corps) responsible for ensuring effective communication and cooperation of the essential enterprises with the

¹ <https://honvedelem.hu/cikk/ujabb-strategiai-fontossagu-vallalatoknal-biztositjak-a-mukodest-a-honvedelmi-iranyito-torzsek/>

² Government [Decree No. 40/2020](#) (III.11.) on declaration of the state of emergency

³ [Act CXXVIII of 2011 on Disaster Management](#) in its version applicable at the relevant time

⁴ Government [Resolution No. 1101/2020](#) (III.14.) on further measures necessary to control the Coronavirus

government and the Task Force.⁵ The respective governmental resolution mandated the Minister of Defense and the Minister of Interior to select the members of the Commanding Corps.

On 19 March 2020, the Minister of Defense announced that 140 companies had been identified as essential, without publishing the full list of these companies. Only 71 companies were named from the list: the ones where task units already started work in the morning of the same day. The affected companies were mostly state-owned, but also comprised significant private entities, such as retail supply undertakings and a motor vehicle manufacturing company. As communicated by the Minister of Defense, the allocated task units comprise military staff as well as personnel of the police and disaster protection forces. The management of the companies concerned was informed via a paper-based note that had been handed over on the spot, simultaneously with the arrival of the allocated unit.

On 25 March 2020, further 13 companies were included in the circle of essential enterprises with immediate allocation of task units. This second round comprised the biggest retail suppliers, telecommunications and pharmaceutical companies.

On 1 April 2020, the Minister of Defense announced the extension of military presence to 9 more companies, stating that private companies are included in the scope of enterprises supported by the military "on a voluntary basis".⁶

RELEVANT LEGAL PROVISIONS

The military presence at companies completely lacks a legal basis and is not prescribed by law. The Disaster Management Act regulating the state of danger expressly allows the government to take state control over individual companies subject to the following preconditions:

- (i) The state control must be introduced by a governmental decree.
- (ii) The state control has to be justified by a direct threat of the aggravation of the state of danger and has to effectively serve its prevention.
- (iii) The state control is to be exercised by the minister responsible for the budget or a special government commissioner acting as the representative of the Hungarian State.⁷

The Disaster Management Act stipulates the competences of the Hungarian State under state control⁸ and sets out the rules on liability of the Hungarian State towards the company.⁹

LEGAL CONCERNS

Clearly, none of the preconditions of state control as prescribed by the Disaster Management Act are met.

ad (i) The government failed to adopt the government decree on taking state control over the companies. Instead, it ordered the Task Force led by the Minister of Defense in a government decision to take preparatory steps for assuming eventual state control. Although military forces are factually present to date at 93 individual companies, the measure is addressed as a preparatory step and thus legal preconditions of taking state control have been circumvented.

ad (ii) The government failed to provide a transparent justification for the selection criteria of such companies and is also reluctant to announce the full list of the companies identified as essential. The efficiency of the measure is also obscure. It is not clear how military presence at professional companies is expected to serve

⁵ Government [Resolution No. 1109/2020](#) (III.18.) on professional support of the activities of state-owned and private companies that are crucial for the operation of the country.

⁶ <https://honvedelem.hu/cikk/tobb-mint-szaz-korhaz-elere-kerult-egyenruhas-korhazparancsnok/>

⁷ Section 48(1) of the Disaster Management Act

⁸ These comprise the revision of assets of the company, the right to approve the undertaking of obligations by the company and the right to take decisions falling in the competence of shareholders /owners of the company.

⁹ Liability of the State is radically limited: it is subject to the fact that the Constitutional Court declares the government decree ordering state control to be unconstitutional, and is restricted to the actual loss suffered by the company as a consequence of measures taken in the period when the decree was declared to be unconstitutional.

the prevention of the pandemic. Taking state control would be well-founded if supplied with a justification made on an individual basis with respect to the company affected and included in the decree ordering state control.

ad (iii) In full contradiction to the rule that serves to guarantee the involvement of a professional management, the head of the Task Force is the Minister of Defense and the personnel on ground are soldiers and police officers. This circumstance also questions the efficiency of the measure and raises further concerns of responsibility: instead of the person prescribed by law and vested with the right to act as a legal representative on behalf of the state, the companies face military units vested with non-transparent competences and liabilities.

By circumventing the legal provisions regulating state control over companies in a state of danger, the government has practically switched off all the legal guarantees attached to such an extraordinary measure.

In the absence of a declared state control, the competences of the task units are unclear. According to the underlying governmental decision, the task of the military units is to “facilitate the communication and cooperation” of the company with the government, the Commanding Corps and the Task Force. In contrast to the Disaster Management Act that clearly enumerates the rights of the representative of the Hungarian State under state control, the competences of the currently operating military task units are completely uncertain. This situation can serve as a basis of an uncontrolled intervention and may lead to a severe breach of the right to property. In lack of clear powers and responsibilities as prescribed by law, the military task units may press for rights or request the enforcement of orders that interfere with the competences of the company’s management or owners. The unregulated military presence at private companies carries a high confidentiality risk. On the one hand, the task units may have access to or get acquainted with data that contains the company’s business secret or protected know-how. On the other hand, confidentiality obligations of companies towards clients (such as business secrets, banking secrets and securities secrets) may suffer breach. As opposed to regular employees obliged by a non-disclosure agreement, it is not clear how confidentiality obligations can be kept vis-à-vis the military personnel.

In addition to the above, the non-transparent selection of affected companies and the unclear competences of the allocated military task forces also involves the threat that the pandemic is used as basis for arbitrary discrimination of, or a disguised restriction on foreign-owned companies. Such an outcome would seriously undermine the principle of free movement of capital within the EU.

The application of military forces is in clear contradiction with the general rules on the state of emergency. Nonetheless, with the adoption of the Emergency Law¹⁰ on 30 March 2020, the government gained unconstrained powers to rule by decree and an express authorization to deviate from the Disaster Management Act. In addition to the severe rule of law concerns raised,¹¹ the Emergency Law allows the government to maintain and extend military presence at Hungarian companies irrespective of the preconditions and guarantees foreseen by the Disaster Management Act on the state of danger.

¹⁰ [Act XII of 2020](#) on the Containment of the Coronavirus

¹¹ Hungarian Helsinki Committee: [Background Note on Act XII of 2020 on the Containment of the Coronavirus](#), 31 March 2020