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Use of National Defence during Emergencies in Hungary and Poland, in Particular for Problems Related to the COVID-19 Pandemic

Wykorzystanie obrony narodowej w sytuacjach kryzysowych na Węgrzech
i w Polsce, w szczególności do problemów związanych z pandemią COVID-19

INTRODUCTION

The ongoing COVID-19 pandemic proved to be an unprecedented challenge for individuals, society, and states. States and governments faced an extraordinary situation, in which even the provision of essential public utilities and fulfilment of

the most basic public tasks such as education, telecommunication, not to mention health care, turned out to be a challenge. This extraordinary situation, to some extent, required extraordinary measures. One of these extraordinary measures was the armed forces' involvement in providing essential public services to citizens.

The involvement of armed forces therein may be characterised as an “extraordinary measure” since it is a well-established principle in democratic states respecting the principle of the rule of law that the armed forces are tasked with the defence of the State against external armed threats. Therefore, during peacetime, i.e., in the time of the ordinary functioning of the State, armed forces may only take part in the fulfilment of civil, administrative duties as an exception, only if an act adopted by the Parliament explicitly allows this¹. In most Central-Eastern European states, inland deployment of armed forces is considered taboo, which stems from negative historical experiences regarding the imposition of martial law in the past². However, two exceptions to this principle may be identified.

Firstly, an act of Parliament may establish public tasks, the fulfilment of which requires the involvement of armed forces even in the time of ordinary functioning of the State (i.e., not in a state of emergency). This is justified by the unique nature of the public service assignment at issue. For example, under the Act CXIII of 2011 on National Defence and the Hungarian Defence Forces, and on measures to be introduced in the special legal order, the Hungarian Defence Forces military forces are authorised to conduct explosive ordnance disposal activities and guard military facilities even in the time of ordinary functioning of the State.

Secondly, in a state of emergency, in which the Government is empowered with the ability to pass extraordinary measures, governments may resort to deploying armed forces in order to fulfil public tasks that would otherwise fall into the purview of the civil, administrative bodies. This is justified by the situation that forms the basis of the introduction of the State of emergency, such as a natural disaster or a riot which prevents civil administration from providing the public services with the necessary efficiency or from providing it together. Moreover, the Fundamental Law of Hungary (April 25, 2011; hereinafter: the Fundamental Law) recognises this exception expressly, as Article 45 (3) of the Fundamental Law sets out that Hungarian Defence Forces participate in operations aiming to prevent “catastrophes” and mitigate their detrimental effects.

Regarding the COVID-19 pandemic, the second exception was applied. Under Government Decree 40/2020 (III. 11), the Hungarian Government declared

¹ A. Farkas, *Adalékok az állam fegyveres védelmének rendszertani megközelítéséhez*, “Honvédségi Szemle” 2017, no. 1, pp. 54–55; I. Hoffman, P. Kádár, *A különleges jogrend és a válságkezelés közigazgatási jogi kihívásai I*, “Védelmi-biztonsági Szabályozási és Kormányzástani Műhelytanulmányok” 2021, no. 2, pp. 5–8.

² S. Till, *A honvédelem alkotmányos kereteinek hangsúlyeltolódásai a rendszerváltástól az Alaptörvényig*, 2015 (PhD dissertation, non-published), pp. 117–118.

a state of emergency on March 11, 2020, called a “state of danger” based on Article 53 of the Fundamental Law³. This marked the introduction of a particular legal order, as Article 53 (2) allows the Government to exercise excessive powers during a state of danger. However, it was unclear whether this state of emergency allowed the Government to deploy armed forces to fulfil civil, administrative tasks and to what extent. One possible explanation was that Article 45 (3) of the Fundamental Law applied to this state of danger as well, since under § 3 Article 5 of the Act CXXVIII of 2011 on the Disaster Management and Amending Certain Related Acts, the term “catastrophe” includes all situations that may give rise to the introduction of a state of danger. On the other hand, other authors claimed that the declaration of a state of danger does not authorise the Government to deploy armed forces inland to participate in civil, administrative tasks and therefore deemed this practice of the Government to be unconstitutional⁴.

However, these debates concerning the unconstitutionality of inland deployment of the Hungarian Defence Forces were cut short by a decision of the legislation. In June 2020, the Parliament adopted Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger, which introduced several rules into the Hungarian legal system that specifically allowed the armed forces to assist concerning civil administrative tasks. On the one hand, this act of Parliament modified the rules of Act CLIV of 1997 on Health Care and introduced a new, quasi-state of emergency, the so-called “crisis relating to public health”. This can be characterised as a particular legal order not regulated in the Fundamental Law⁵. On the other hand, Act LVIII of 2020 also amended Act CXIII of 2011 with several provisions and specified how armed forces might be involved in providing public services to citizens. It also authorised the Government to adopt further rules on the exact nature of assistance that the military may provide. To summarise, Act LVIII of 2020 unambiguously enabled the Government to use armed forces to fulfil public service assignments that otherwise (in peacetime) do not fall within the purview thereof.

Naturally, the introduction of a state of emergency and the involvement of military forces in the fulfilment of civil, administrative tasks cannot be perceived as a Hungarian speciality. More than a hundred states around the globe have declared some type of particular legal order in conjunction with the pandemic situ-

³ In detail, see Z. Szente, *A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái*, “MTA Law Working Papers” 2020, no. 9.

⁴ I. Vörös, *Különleges jogrend katonákkal – mindörökké?*, http://ekint.org/lib/documents/1610007006-Publ_Voros_Imre_Kulonleges_jogrend_katonakkal.pdf (access: 10.12.2021), p. 31.

⁵ Article 228 of the Act CLIV of 1997 on Health Care. In detail, see I. Balázs, I. Hoffman, *Közigazgatás és koronavírus – a közigazgatási jog rezilienciája vagy annak bukása?*, “Közjogi Szemle” 2020, no. 3, pp. 3–4.

ation⁶, while the importance of civil-military cooperation increased significantly as well, although the extent of this varies from State to State⁷. Therefore, it is of utmost importance to examine the differences between states regarding the exact methods and extent of the involvement of military forces in the fulfilment of public service assignments. In our research, we opted for the examination of the relevant legal framework of Poland.

The aim of this paper is to examine how military forces in Hungary and Poland took part in the fulfilment of public functions during the State of emergency declared as a response to the pandemic, and what were exactly these public tasks the military forces fulfilled. We also touched upon the issue of the organisational background of military involvement. Our paper is based on a jurisprudential method. We primarily focused on the legal regulation and legal framework. Furthermore, the dogmatical questions of the regulatory issues are analysed in our paper as well. Our findings are mainly based on the relevant legal framework of Hungary and Poland. Our research mainly utilised qualitative methods. We focused on the rules of different states of emergency and on the legal regulation regarding national defence forces. We examined these legal norms from two aspects. Firstly, which public tasks were concerned with the involvement of military forces, and secondly, what was the level of the involvement of military forces. That being said, we also touched upon the arising social and security-related aspects of our topic to some extent. We also adopted comparative methods, and therefore in the closing paragraphs of our paper, we compare the Hungarian and Polish legal frameworks.

THE SPECIAL STATUS OF THE HUNGARIAN DEFENCE FORCES IN HUNGARY – WITH SPECIAL REGARD TO THE COVID-19 PANDEMIC

The armed forces of Hungary are the Defence Forces. Their basic tasks are the military defence of Hungary's independence, territorial integrity and borders, the performance of joint defence and peacekeeping tasks arising from international treaties, and humanitarian activities in accordance with the rules of international law⁸. It is essential that the Hungarian Defence Forces carry out their tasks under civilian control, in a system of dependency and strict subordination⁹. Of course,

⁶ M. Lundgren, M. Klamberg, K. Sundström, J. Dahlqvist, *Emergency Powers in Response to COVID-19: Policy Diffusion, Democracy, and Preparedness*, "Nordic Journal of Human Rights" 2020, vol. 38(4), pp. 305–318.

⁷ M. Gad, J., Kazibwe, E. Quirk, A. Gheorghe, Z. Homan, M. Bricknell, *Civil-military cooperation in the early response to the COVID-19 pandemic in six European countries*, "BMJ Military Health" 2021, vol. 167(4), pp. 234–241.

⁸ Article 45 (1) of the Fundamental Law.

⁹ Article 35 (1) of the Act CXIII of 2011.

it is also essential to bear in mind that these tasks are carried out in a system of service and professional superiors, with or without the right to bear arms, with the priority of the service itself¹⁰.

It is clear from the general delineation of tasks given by the Constitution that the primary function of the armed forces is to enforce the state monopoly on the use of force, to provide military defence and to fight in armed combat¹¹.

It can also be seen that the Hungarian Defence Forces have a special legal status, the detailed rules of which are regulated by a cardinal law¹² – the Act CCV of 2012 on the Legal Status of the Hungarian Defence Forces (hereinafter: Act CCV of 2012). The justification for the special status is that the performance of the tasks of the Defence Forces cannot be made dependent on the individual interests of the soldier and that the interests of the service take precedence over individual interests¹³.

The interest of the service is the combination of public interests on the part of the State in the service relationship, which is aimed at the national cause of defence as a constitutional obligation and is embodied in the performance of the tasks of the Hungarian Defence Forces¹⁴.

1. The range of benefits resulting from the special status of the Hungarian Defence Forces and their evolution about the virus situation

Given that the Act CCV of 2012 basically covers professional and contract soldiers, volunteer reserve soldiers on active service, military officer candidates and military non-commissioned officer candidates¹⁵, the Act regulates the special status of these persons. The special status comes with benefits, of course. They also have the same rights to breaks, rest periods and rest days, and basic and additional leave. The preferential nature of this is illustrated in Table 1.

Given the increased demand caused by the coronavirus epidemic, the regulations provided more benefits for soldiers. For example, if a soldier is involved in duties related to a health crisis, he/she is entitled to an increased call-up allowance of HUF 10,000 per day¹⁶. They also benefit from a travel discount – they can

¹⁰ Article 35 (1) and (4) of the Act CXIII of 2011.

¹¹ K. Pál, *Katonaság*, <http://ijoten.hu/szocikk/katonasag> (access: 10.12.2021); Justification of the Fundamental Law.

¹² Article T(4) of the Fundamental Law defines the concept of a cardinal law – a cardinal law is a law which requires the vote of two-thirds of the Members of Parliament present for its adoption and amendment.

¹³ Article 45 (5) of the Fundamental Law.

¹⁴ Explanatory Memorandum to the Preamble of the Act CCV of 2012.

¹⁵ Article 1 (1) of the Act CCV of 2012.

¹⁶ Government Decree No. 548/2020 (XII. 2) on exceptional measures for persons subject to Act CCV of 2012. It is worth mentioning that HUF 10,000 is ca. EUR 26.67.

Table 1. Range of benefits resulting from the special status of the Hungarian Defence Forces – the Labour Code and the Law on the Status of the Defence Force

	Labour Code	Law on the Status of the Defence Forces
Inter-work break	20 minutes for at least 6 hours of work	if the daily working time exceeds 6 hours, 30 minutes per day
	for at least 9 hours of work, an additional 25 minutes	for every additional 3 hours of service, a minimum of 20 minutes of consecutive breaks must be provided
	a collective agreement can provide up to 60 minutes	
Rest period and rest day	at least 11 hours of uninterrupted rest	at least 11 hours for general duty
	8 hours of rest, e.g., for a multi-shift worker	on-call duty and duty organised to provide a continuous on-call service must be provided with at least 8 hours of uninterrupted rest
Basic and additional leave	basic leave is 20 days per year	basic leave is 25 days per year
	additional leave is granted on grounds of age, maternity or invalidity	additional leave is granted with regard to length of service, prevention of ill-health, maternity, place in service
Medical leave	15 days of sick leave per calendar year	leave is granted until convalescence or the onset of permanent disability, but for a maximum of 1 year
Wages	wages	basic salary
	bonus, fringe benefits, allowances in addition to salary	in addition: defence service pay, salary supplement, additional salary

Source: own elaboration based on Articles 103, 104 and 115–121 of the Act I of 2012 on the Labor Code, and on Articles 100, 101, 109 and 110 of the Act CCV of 2012.

use national, regional and local public transport services free of charge, without having to buy a ticket¹⁷. If any member of the Hungarian Defence Forces was involved in response to the COVID-19 pandemic in 2021, they will be entitled to an additional 10 working days of leave in addition to the leave due in 2021¹⁸.

The rules on the payment of sickness benefits also reward the need for increased presence: if the incapacity for work is justified as a result of the suspension of health care due to the COVID-19 outbreak and persists beyond 1 year, sickness benefit may be paid on a fair basis until the end of the 6 month following the end of the emergency¹⁹. The Hungarian Defence Forces will contribute to the

¹⁷ Government Decree No. 582/2020 (XII. 15) on travel concessions during an emergency.

¹⁸ Government Decree No. 327/2021 (VI. 10) on the additional leave granted to employees involved in the response to the consequences of the SARS-CoV-2 coronavirus pandemic.

¹⁹ Government Decree No. 326/2021 (VI. 10) on special emergency rules for the provision of compensatory sickness benefits.

mass vaccination against SARS-CoV-2 coronavirus during the emergency based on the request of the Operational Staff, taking into account its capacities and the feasibility of its other tasks to be performed during the emergency and the epidemic preparedness²⁰. In order to carry out this task, a member of the Defence Staff who is employed outside the scope of his/her appointment shall be entitled to a daily salary supplement of HUF 10,000²¹.

2. The range of tasks to be performed by the Hungarian Defence Forces

Act CXIII of 2011 divides the primary tasks of the Hungarian Defence Forces into two groups: firstly, it defines the tasks to be performed with the right to bear arms and then without this right. Given that the list is taxative, it is impossible to extend the scope of its tasks, except in the case of a special legal order. In particular, it provides for the armed defence of Hungary's independence, territory, airspace, population and material assets against external aggression²²; guarding and protecting the Holy Crown and some of its insignia²³; or even the firefighting clearance of found explosive devices, and other firefighting duties²⁴.

Based on para. 2 Article 24 of the Act CX of 2018 Amending Certain Acts in Connection with the Establishment of the New Organisational Structure of the Hungarian Defence Forces, the duties include participation in the control of the state border during a defence emergency²⁵ – in addition to the right to use weapons – which was observed during the COVID-19 pandemic. One of the critical “innovations” of the COVID-19 pandemic is the task introduced under Article 348 of the Act LVIII of 2020, according to which the Defence Forces shall, upon the decision of the Government, contribute to the tasks related to the emergency under the special legal order and the health emergency under the Health Act – with the right to use weapons²⁶. In this context, it also has the right to use coercive measures, including the right to direct, restrict or stop traffic in the performance of its statutory tasks²⁷.

Tasks without the right to bear arms include, for example, assistance in the performance of tasks related to disaster management²⁸, which is also a task explic-

²⁰ Article 20 (5) of the Government Decree No. 484/2020 (XI. 10) on the second phase of protection measures to be applied during an emergency.

²¹ Article 1 of the Government Decree No. 152/2021 (III. 27) on the exceptional measures for persons subject to Act CXIV of 2018 on the Legal Status of Defence Employees.

²² Article 36 (1) (a) of the Act CXIII of 2011.

²³ Article 36 (1) (b) of the Act CXIII of 2011.

²⁴ Article 36 (1) (g) of the Act CXIII of 2011.

²⁵ Article 36 (1) (j) of the Act CXIII of 2011.

²⁶ Article 36 (1) (k) of the Act CXIII of 2011.

²⁷ Article 54/E. (1) (a–b) of the Act CXIII of 2011.

²⁸ Article 36 (2) (a) of the Act CXIII of 2011; Article 45 (3) of the Fundamental Law.

itly laid down in the Fundamental Law; participation in the performance of state protocol tasks²⁹, or even assistance in the performance of tasks related to public employment³⁰.

However, the special legal regime created by the COVID-19 pandemic has extended the relatively wide range of tasks. Among these, the tasks of the Hungarian Defence Forces in the field of epidemiological preparedness are laid down in the Government Decree 410/2020 (VIII. 30):

- border control and border protection tasks,
- disinfecting certain facilities (e.g., social or educational establishments), if necessary at the request of the Steering Group³¹, or
- also, if necessary, escort tasks related to transit disruptions at the request of the Interior.

Concerning the wording of the decree issued during the emergency, Article 36 (1) (k) of the Act CXIII of 2011 which suggests that the Defence Forces have the right to use weapons in the performance of these tasks. Another new task was to participate in motor racing, in particular Formula 1, to check compliance with the interim protection measures³².

From the point of view of society, perhaps the most striking “innovation” is Article 36 (1) (k) of the Act CXIII of 2011 in tasks related to health crises.

THE CONTRIBUTION OF THE HUNGARIAN DEFENCE FORCES IN THE HEALTH PROTECTION AGAINST THE NEW TYPE OF CORONAVIRUS

The special legal order that was introduced by the Hungarian Government solved the legal basis³³ for the Hungarian Defence Forces to participate in the epidemiological control.

Given that the right to adequate physical and mental health is a fundamental right guaranteed to everyone in Hungary³⁴, the Hungarian State is obliged to ensure and operate an adequate health care system due to its objective obligation

²⁹ Article 36 (2) (c) of the Act CXIII of 2011.

³⁰ Article 36 (2) (e) of the Act CXIII of 2011.

³¹ This is an additional rule compared to the rules on the coronavirus since another emergency government decree (see below) makes it the responsibility of the army to disinfect hospitals, but under this decree, it can be ordered to disinfect any building (i.e., not just a hospital).

³² Government Decree No. 329/2021 (VI. 10) on different rules for the organisation of certain motor races.

³³ Government Decree No. 40/2020 (III. 11) on the declaration of the state of emergency; Government Decree No. 478/2020 (XI. 3) on the promulgation of state of emergency; Government Decree No. 27/2021 (I. 29) on the declaration of state of emergency and the entry into force of emergency measures.

³⁴ Article XX (1) of the Fundamental Law.

to protect health³⁵. In addition to performing armed national defence, life and property security tasks, the Hungarian Defence Forces also contributes to the prevention of disasters, the prevention and elimination of their consequences, so its participation in the health epidemic is ensured at the constitutional level³⁶.

The Act CXIII of 2011, in addition to stipulating per the Fundamental Law that the Hungarian Defence Forces may participate in the performance of tasks related to the special legal situation and the health crisis, as explained in the previous section of our study, also imposes restrictions on the use of the Hungarian Defence Forces. For example, in the course of the facilitator's task, the exact purpose and duration of the deployment, the tasks, the number and equipment of the deployed forces, the armaments, and the geographically defined area must be determined³⁷.

They were considering that the Fundamental Law and the Act CXIII of 2011 – at a general level, keeping in mind the principle of legality – provide the appropriate legal basis for participating in epidemiological defence to the Hungarian Defence Forces. It is worth noting that government decrees define certain tasks of the armed forces. In making government decrees, the Government has considered the finite nature of health care capacities, including the scarcity of human resources for medical, nursing, and health support personnel, not only in the number of people working in the institutional system but also in the finite nature of available expertise. The privileged epidemiological role of the system of health care institutions and the finiteness of its resources justified the deployment and participation of the Hungarian Defence Forces in this field.

For the Hungarian Defence Forces, the tasks assigned by the Government can be divided into three categories:

1. Medical tasks. About the participation of residents serving in the Hungarian Defence Forces, the Government has ordered that the Minister of Defence may designate a health care provider other than the resident's primary place of employment during the emergency. It means that the resident, concerned according to the instructions of the head of the designated workplace (with a few exceptions), is obliged to participate in the performance of the health care activity within the scope of the duties of the designated health care provider³⁸.
2. Ancillary health tasks. In addition to medical activities, the Hungarian Defence Forces also perform health auxiliary tasks, which have been as-

³⁵ Articles II and XX (2) of the Fundamental Law.

³⁶ Article 45 (3) of the Fundamental Law.

³⁷ Article 36 (1) (k), Article 37 (1c) and (3) of the Act CXIII of 2011.

³⁸ See Government Decree No. 107/2021 (III. 5) on certain issues related to the participation of residents in emergency patient care.

signed by government decree. The Government has stated in a normative manner that the Hungarian Defence Forces participates in several additional tasks in hospitals in order to help the uninterrupted operation of the hospitals and the health workers during the emergency. Thus, the armed forces perform entry tasks related to body temperature measurement and participate in patient management, guidance and patient escort. In addition to their patient support tasks, they also perform hospital logistics tasks, as they participate in various drug delivery, computer data entry and administration tasks. The cleanliness and hygiene of the hospitals play an important role in the protection against the virus, so the disinfection of the hospitals was also defined as a task for the army³⁹. It is important to emphasise that the Hungarian Defence Forces participate in the performance of the tasks related to the maintenance and preservation of the health stock, and within this, they also ensures the guarding and protection of certain health care institutions⁴⁰.

3. Health management tasks. Finally, with regard to the health management responsibilities of the Hungarian Defence Forces, the hospital command system was set up by the Government's decision. In order to control the use of medical supplies obtained from the budget, the Minister of the Interior may propose the appointment of a hospital commander for a particular hospital. The Minister of the Interior and the Prime Minister have shared powers to conduct the appointment process. In the first round, the Minister of the Interior only has the right to make proposals based on the proposal the Prime Minister issues a mandate for the Minister of the Interior, so the way for the appointment of a hospital commander for a given hospital is open to the Minister of the Interior⁴¹. Measures taken by the hospital commander in the context of individual instruction (referred to as a "proposal" in a government decree) may be aimed at managing the particular hospital. The head of the health care institution is obliged to implement the hospital commander's proposal to comply with the epidemic risk rules and preserve the medical supply. About the right of instruction, the government decree also sets a substantive limit when it states that the hospital commander may not make proposals or make decisions on medical matters⁴².

³⁹ See Government Decree No. 499/2020 (XI. 13) on the tasks performed by the Hungarian Defence Forces in hospitals during an emergency.

⁴⁰ Article 2 (3) (b) of the Government Decree No. 287/2020 (VI. 17) on measures necessary to preserve the condition of the health stock.

⁴¹ Article 3 (1)–(3) of Government Decree No. 287/2020.

⁴² Article 3 (4)–(5) of Government Decree No. 287/2020.

MILITARY INVOLVEMENT IN POLICING TASKS AND ITS LIMITATIONS

“[Policing] may be defined as a state activity aimed at preventing disturbance of public order, stopping directly disruptive behaviour and restoring the disturbed order”⁴³. Policing is a branch of public administration that protects legal subject matter is public safety. In order to maintain the public security function, authorised bodies may use police measures coercive measures; they have a legitimate monopoly on the use of force, and they may also use covert means⁴⁴. Under the heading of law-enforcement agencies, the legislator refers to the police, the penitentiary service, the professional disaster-prevention service and the civilian national security services⁴⁵.

The Fundamental Law states that the police and the national security services are primarily responsible for maintaining law and order and public security in the country and for protecting the state borders⁴⁶. As we explained at the beginning of our study, the everyday domestic use of soldiers is rare in democratic states and only occurs under exceptional circumstances⁴⁷.

The latter activity is supported, among others, by the Fundamental Law, according to which the Hungarian Defence Forces contribute to the prevention of disasters, the prevention and elimination of their consequences⁴⁸, and the Act CXIII of 2011 also emphasises that the Defence Forces perform their disaster management tasks without the right to use weapons⁴⁹. In the disaster management of Hungary, the Defence Forces are specifically mentioned Act CXXVIII of 2011⁵⁰, which allows the deployment of the army even before the introduction of special legislation⁵¹.

The frequency of the situation is different when there is a particular legal order in the country, which is “on the whole a temporarily diverted system of

⁴³ L. Szamel, *A modern rendészet-fogalom és következményei*, “Rendészeti Tanulmányok” 1992, no. 1, p. 7.

⁴⁴ Z. Balla, *A rendészet fogalmának, tartalmának evolúciója*, “Belügyi Szemle” 2017, vol. 65(5), pp. 105–115.

⁴⁵ Article 1 (5) of the Act XLIII of 2010 on Central State Administration Bodies and the Status of Members of the Government and State Secretaries.

⁴⁶ Articles 46 and 47 of the Fundamental Law.

⁴⁷ See more in the introduction of this study and in G. Buzás, *Rendészet – katonai rendészet*, “Katonai Jogi és Hadijogi Szemle” 2018, no. 2, pp. 25–50.

⁴⁸ Article 45 (2) of the Fundamental Law.

⁴⁹ In addition, Article 36 (1) (k) of the Act CXIII of 2011 grants the right to use weapons to the defence forces during the time of emergency and health crisis.

⁵⁰ Article 2 of the Act CXXVIII of 2011.

⁵¹ B. Müller Tamás, *A hadsereg alkalmazása a koronavírus-járványban*, 2020, https://www.parlament.hu/documents/10181/4464848/Infojegyzet_2020_23_hadsereg_koronavirus-jarvanyban.pdf (access: 11.12.2021).

necessity and proportionality norms implemented for the sustainability of state efficiency, an institution of the last resort nature imposed on the rule of law⁵². However, even in such a situation, the use of soldiers is only allowed if the police and national security services are not sufficient to deal with the crisis⁵³.

The Fundamental Law also defines a “state of danger” as a particular legal order⁵⁴, which is the only one that does not aim at the armed defence of the State. The circumstances that justify the declaration of a state of danger are primarily catastrophic and are therefore regulated in detail in the Act CXXVIII of 2011⁵⁵.

According to the Act CXXVIII of 2011, a disaster is defined as a condition or situation which endangers or damages the life, health, material assets, essential services of the population, the natural environment or natural values of people in such a way or to such an extent that it is capable of leading to the declaration of a state of danger or not reaching the declaration of such a situation, such as the prevention, repair or remedying of the damage exceeds the capacity of the organisations designated for this purpose to protect themselves within the prescribed cooperation framework and requires the adoption of special measures, the continuous and strictly coordinated cooperation of local authorities and public bodies, and the mobilisation of international assistance⁵⁶. According to this law, a human epidemic or a threat of epidemic that causes a mass outbreak of disease is grounds for declaring a state of danger⁵⁷.

Since the declaration of the state of danger, the Hungarian Defence Forces have been involved in numerous tasks.

In the “Corridor Task”, military police officers assist the police at specific rest areas on the M1, M5 and M7 motorways. In addition, military police officers are already carrying out presence-enhancing patrols in public areas in fifteen cities⁵⁸.

Based on Government Decision 1109/2020 (III. 18), the so-called Defence Management Staffs have been established, whose primary task is to ensure vital Hungarian companies necessary for the functioning of the country and epidemic control.

Government Decree 71/2020 (III. 27) on curfew restrictions allowed the police to cooperate with the military police of the National Defence Forces in the control of the restrictions, thus increasing the number of soldiers deployed in the fight against the virus to 1,500 by April 20, 2020.

Government Decree 72/2020 (III. 28) on hospital commanders and the protection of health stocks also involved the army in guarding and protecting health

⁵² S. Till, *Különleges jogrend*, <https://ijoten.hu/szocikk/kulonleges-jogrend> (access: 10.12.2021).

⁵³ Articles 50 and 51/A of the Fundamental Law.

⁵⁴ Article 53 of the Fundamental Law.

⁵⁵ Articles 43–51 of the Act CXXVIII of 2011.

⁵⁶ Article 3 point 5 of the Act CXXVIII of 2011.

⁵⁷ Article 44 (ca) of the Act CXXVIII of 2011.

⁵⁸ B. Müller Tamás, *op. cit.*

stocks and warehouses. Under the direction of the National Hospital Commander and the leadership of the Minister of the Interior, the Hospital Commander System was established. Until April 18, 2020, the Hungarian Defence Forces had delegated 51 hospital commanders nationwide to ensure that the resources needed for defence were distributed and used as appropriately as possible. They do not decide on medical and technical matters, but help hospitals run their operations monitor and ensure stock management.

Government Decree 81/2020 (IV. 1) on emergency measures to protect health and life and restore the national economy also provides for the armed forces' involvement in the implementation of emergency law enforcement measures. Furthermore, it specifies the measures and means of coercion used by the military to carry out their duties in connection with the emergency and control curfew restrictions.

In Hungary, it is natural for the army to be called upon to carry out policing duties or internal security tasks in crises or periods of exceptional law and order. The military's preparedness for crises, its experience, its equipment and its extensive logistical network all contribute to its decisive role in the current fight against the coronavirus⁵⁹.

THE OUTLOOK FOR THE POLISH REGULATION

Nevertheless, in countries such as Germany, Spain, Greece, Portugal or Hungary, the level of detail of regulation is such that it may result in extreme difficulties for the specific legal order of the state institution, making it an excellent target for a possible lawfare⁶⁰ attack⁶¹.

In our research, we have examined European examples and drawn general conclusions for the CEE and V4 regions. However, in particular, for Poland, we have examined the regulation beyond the mention of the special legal order as a possibility at the constitutional level. Of course, the threat of lawfare is also a severe threat for Poland. The Constitution of the Republic of Poland of 2 April 1997⁶² distinguishes three cases of a special legal order. These are the state of emergency declared by the Council of Ministers, and the state of emergency and martial law (martial law)⁶³, which are declared by the President of the Republic and confirmed by Parliament.

⁵⁹ *Ibidem*.

⁶⁰ J.C. Dunlap, *Lawfare*, [in:] *National Security Law*, eds. J.N. Moore, G.B. Roberts, R.F. Turner, Durham 2015, pp. 823–838.

⁶¹ I. Hoffman, P. Kádár, *op. cit.*

⁶² Journal of Laws 1997, no. 78, item 483, as amended, hereinafter: the Polish Constitution. English translation of the Constitution at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (access: 10.12.2021).

⁶³ Article 228 of the Polish Constitution.

In all three cases, the Council of Ministers has the power to adopt emergency legislation. Taking into account the other levels of regulation, the special legal order system in the Polish legal order is exceptionally complex and detailed⁶⁴. For this reason, for reasons of content, we will not go into detail.

Sadurski in 2018⁶⁵ and Markowski in 2020⁶⁶ wrote that there is a strong support for derogation from the general legal order in stressful situations in Poland. Furthermore, they interpret this as a modification of the rule of law. Accordingly, populism and liberalism are beginning to mix, as analysed for the CEE by Bustikova and Guasti in 2017⁶⁷, Cianetti, Dawson and Hanley in 2018⁶⁸ and Stanley in 2019⁶⁹. The authors above find that the most significant manifestation of liberalism is reflected in deconcentration in the case of Poland, i.e., in times of stress, the central Government outsources the responsibility for task organisation to regional government delegates; thus, the State is “reorganised” along the lines of a division by voivodeship. On the other hand, it places the burden on local governments and at the same time allows them to carry out their tasks.

The COVID-19 pandemic has created a new and unprecedented stress situation, so many questions have been raised about the defence architecture of Poland itself. The confusion is not political but legal dogmatic⁷⁰. A democratic resilience for democracy is developing in citizens, in whom internal emotions are beginning to strengthen mobilisation. Nevertheless, Poland, which has entered a special legislative phase, has established the same Governance as in Hungary.

Accordingly, we can draw the following conclusions about some of the “disturbances”⁷¹ already mentioned:

⁶⁴ *Emergency Laws and Regulations in Poland: Executive Summary*, [in:] *Law and Emergencies: A Comparative Overview*, 2016, https://minervaextremelaw.haifa.ac.il/images/Emergency_Laws_and_Regulations_in_Poland_19-Jan2016.pdf (access: 12.12.2021).

⁶⁵ W. Sadurski, *How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding*, Sydney Law School Research Paper No. 18/01, 17.01.2018, p. 104.

⁶⁶ P. Śleszyński, A. Kowalewski, T. Markowski, P. Legutko-Kobus, M. Nowak, *The Contemporary Economic Costs of Spatial Chaos: Evidence from Poland*, “Land” 2020, vol. 9(7), p. 214.

⁶⁷ L. Bustikova, P. Guasti, *The illiberal turn or swerve in central Europe?*, “Politics and Governance” 2017, vol. 5(4), pp. 166–176.

⁶⁸ L. Cianetti, J. Dawson, S.L. Hanley, *Rethinking “democratic backsliding” in Central and Eastern Europe – looking beyond Hungary and Poland*, “East European Politics” 2018, vol. 34(3), pp. 243–256.

⁶⁹ B. Stanley, *Backsliding Away? The Quality of Democracy in Central and Eastern Europe*, “Journal of Contemporary European Research” 2019, vol. 15(4), pp. 343–353.

⁷⁰ Mackie G., *Plebiscitarianism against democracy*, [in:] *Democracy Defended*, Cambridge 2003, pp. 409–431.

⁷¹ *Válság és paradigmaváltás – avagy az állóképesség (reziliencia) kérdései egy közelgő válság előtt és után*, <https://eionet.kormany.hu/valsag-es-paradigmavaltas-avagy-az-allokepesség-reziliencia-kerdesei-egy-kozelgo-valsag-elott-es-utan> (access: 12.12.2021).

1. Technocracy – the pandemic has strengthened the position of the experts (especially virologists and epidemiologists). It, therefore, risks in the future to “take the responsibility” off the shoulders of the legislator, who can do “whatever” he wants since he will not be held accountable.
2. Populism – the most popular leaders use their position to reinforce their political entrenchment through rhetoric alone and reduce instrumental constitutional safeguards (e.g., protection of minorities).
3. Plebiscitarianism – the Government has the chance to exploit the situation to reduce the role of Parliament and thereby undermine or eliminate the opposition’s role and exclude civil society voices from the legislature. Since May 2020, we have seen so-called “illiberal swerving”⁷² in Polish legislation, as evidenced by when and how anti-COVID measures were introduced⁷³.

On March 2, 2020, the entire administration, the budget, was under the control of the Council of Ministers, which relied almost exclusively on committees of experts⁷⁴. The executive power thus became predominant in Poland as well, making the system of checks and balances an interesting one, as the functioning of Parliament was forced to suspend. The courts had to establish new procedures.

Poland immediately introduced a 180-day special legal regime instead of the 90 days provided for by law as an option. It is important to note that their law on sex education (which also amended the Penal Code) and abortion restrictions were also discussed during this period, which continued despite the pandemic; they had to submit them to a mandatory parliamentary vote by May 10, 2020. When the two legislative motions were tabled, a massive wave of protests was unleashed. Despite all the restrictions, civil society took to the streets at the beginning of the pandemic. Even online protests were launched, with balconies and communication through windows to galvanise entire cities⁷⁵. This made the resilience strong; the issue was the government response.

The resilience against autocracy was also tangible in the desire to hold the presidential vote on May 10, 2020 despite all the restrictive measures, as the Law

⁷² Swerving recognizes volatility and uncertainty as an integral part of democracy, without necessarily drawing a causal link to a regime change. The trajectory of illiberal swerving depends on previous episodes, and indeed is often a reaction to the previous episode(s) of a liberal expansion. See L. Bustikova, *Revenge of the Radical Right*, “Comparative Political Studies” 2014, vol. 47(12); L. Bustikova, P. Guasti, *op. cit.*

⁷³ L. Bustikova, *op. cit.*; L. Bustikova, P. Guasti, *op. cit.*

⁷⁴ Act of 2 March 2020 on special solutions related to the prevention and combating of COVID-19, other infectious diseases and the emergencies caused by them (Journal of Laws 2020, item 374), <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20200000374/T/D20200374L.pdf> (access: 12.12.2021).

⁷⁵ P. Guasti, *The Impact of the COVID-19 Pandemic in Central and Eastern Europe: The Rise of Autocracy and Democratic Resilience*, “Democratic Theory” 2020, vol. 7(2).

and Justice (*Prawo i Sprawiedliwość*) side of Government had suggested. When the opposition voted down the proposal, the term of the incumbent President was extended by 2 years. Similarly, on May 5, 2020, the Polish Sejm (the upper house of Parliament) voted down the idea and stressed that postal voting could not be held under any circumstances, even in the case of General Data Protection Regulation compatibility⁷⁶.

The military was not deployed to the protests or the resilience rallies, as it was considered more important to help with the pandemic.

The central focus of our research, in addition to the uses and forms of the extraordinary law, is the participation of the military in the country's pandemic management and other extraordinary measures. The example in Hungary was already discussed in the previous chapters, yet now we turn our focus on how Poland dealt with it. In the following, these solutions will be presented according to their function.

The first solution to the deployment of the military was their involvement in providing public security in Poland. The primary deployment of the army at the outbreak of the pandemic was to rescue Polish citizens in the affected areas, with several military rescue missions to Wuhan and other areas particularly at risk in the early stages of the epidemic (France, Great Britain, Lebanon, Kuwait)⁷⁷. This was conducted on the legal basis of the so-called Border Task Force in accordance with the EU interim regulations.

In addition to the emergency and immediate response, the military was involved in two main public security missions during the period of the particular legal order. One was support to the border police, where some 2,000 Polish soldiers were deployed to the borders to ensure quarantine rules and other border protection tasks. The other public security task was to patrol the streets and ensure quarantine rules and special law and order in cooperation with the police. Thus, there was no crowd dispersal, only monitoring that all quarantine rules were respected, even by the crowd. They were also involved in the implementation of public security measures by the regional administration (voivodship, *województwo*)⁷⁸.

The other area of intervention is in the health sector. Here we have to divide the use of "medical" and conventional military units within the military into two

⁷⁶ A. Koper, A. Barteczko, *Polish Senate rejects postal election rules ahead of May 10 ballot*, 5.05.2020, <https://uk.reuters.com/article/uk-poland-election/polands-senate-leader-accuses-ruling-pis-of-election-by-post-trickery-idUKKBN22H28Z> (access: 12.12.2021); A. Kublik, *Badanie SWPS: Duda wygrywa, ale Polacy nie chcą wyborów*, 4.05.2020, <https://wyborcza.pl/7,75398,25906161,badanie-swps-duda-wygrywa-ale-polacy-nie-chca-wyborow.html> (access: 12.12.2021).

⁷⁷ Ministry of National Defence, *Polish Armed Forces support the nation in fight against COVID-19*, 26.05.2020, <https://www.gov.pl/web/national-defence/polish-armed-forces-support-the-nation-in-fight-against-covid-19> (access: 12.12.2021).

⁷⁸ *Defence Policy and the Armed Forces in Times of Pandemic*, eds. T. Rostoks, G. Gavrilko, 2020, <https://www.kas.de/documents/262055/262104/Defence+Policy+and+the+Armed+Forces+During+the+Pandemic.pdf/e5dc7d95-6526-1c70-59bc-6b907ec6752d?t=1613219837410> (access: 12.12.2021).

parts. Naturally, the medical units were deployed and used in hospitals in Poland as part of the epidemic management, and in addition to their domestic deployment, they also participated in three missions abroad in areas more severely affected by the coronavirus. However, the military branches in the traditional sense were not deployed in the health administration itself, but only in the delivery of food and other necessary supplies to social institutions (e.g., homeless shelters, etc.) in case the traditional sense of delivery would have been hampered by the pandemic⁷⁹. They also assisted in the protection of social housing.

In conclusion, while there were similarities between the use of the military in Hungary and Poland, the use of the military in Poland was much less in the provision of health care and other services, and, proportionally, their involvement in public security was also less than in Hungary. The only area where there was a greater use in Poland was border protection.

CONCLUSIONS

Although military forces were deployed both in Hungary and Poland to assist administrative bodies in fulfilling civil, administrative tasks, the manner and extent of this assistance were different.

One of the most striking differences is the legal basis of the inland deployment of armed forces. While in Hungary, the involvement of armed forces was based on the state of danger declared by the Government, a constitutional emergency regime. However, with vague and obscure rules, Poland was founded on a statute-based special legal order, without declaring the state of emergency regulated in the Polish Constitution. That being said, the introduction of such statute-based special legal orders aiming to bypass constitutional emergencies can be regarded as a common feature, since in the meantime, by decision of the Hungarian Parliament, the so-called “crisis relating to public health” has been introduced into the Hungarian legal system, which is regulated on a statutory level as well. One further example of convergence is the heavy reliance on governmental and ministerial decrees when determining the exact public service assignments that military forces assisted in.

It is also clear that in Poland, the extent of Armed Forces’ involvement was significantly lower compared to Hungary. As a prime example, the nature of the assistance provided in healthcare services was fundamentally different in these two countries. While it is true that military medical personnel were commanded to provide medical assistance in civil health care facilities in both states,

⁷⁹ *Polish Armed Forces Response to COVID-19: Observation, Insights, Lessons*, Bydgoszcz 2020, https://cdissz.wp.mil.pl/u/Polish_Armed_Forces_Response_to_COVID-19_-_Pandemic_Outbreak_and_Lockdown_Phase_Uyi2WhM.pdf (access: 12.12.2021).

there are notable differences regarding ancillary medical tasks and administrative medical duties. For instance, the involvement of Polish Armed Forces in ancillary medical tasks such as disinfecting or guarding hospitals was of significantly lower intensity. Both states relied heavily on military forces to provide material resources vital for the uninterrupted and effective operation of the most important state-operated distribution systems such as health or social care systems and infrastructure. This included transportation and distribution of vaccines, protective gear, food, etc. Considering the increased demand for these products and the spare transport capacities of military forces, this was evident. However, Armed Forces in Poland were not used for administrative purposes in health care facilities, such as assisting with hospital admissions or measuring the body temperature of patients upon entering the premises. Similarly, the Polish military was not tasked with administering and managing health facilities, contrary to Hungary, which introduced a system of military “hospital commanders”.

There are more similarities between Hungary and Poland concerning the involvement of armed troops in law enforcement and public security assignments than we thought. In the pandemic, police forces of both states relied heavily on the assistance provided by armed forces, especially with public service assignments such as monitoring and enforcing public health regulations and lockdown rules or carrying out patrols in public areas. In Poland, Armed Forces’ involvement in border control tasks was of particular importance during the pandemic. In Hungary, this was not an option to be a novelty since the Hungarian Defence Forces had already been tasked with conducting border patrols prior to the outbreak.

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ABSTRACT

The aim of the study was to examine the Hungarian Defence Forces' role in implementing state measures against the spread of the SARS-CoV-2 coronavirus. However, we decided to look at it from a comparative perspective, as we are also examining how and to what extent the Polish Armed Forces were involved in overcoming the COVID-19 pandemic. The legal framework for the involvement of the armed forces in the comparative performance of tasks in this area by the civil administration was also examined.

Keywords: Hungary; Poland; COVID-19; Hungarian Defence Forces; pandemic; civil administration

ABSTRAKT

Celem opracowania było zbadanie roli węgierskich Sił Zbrojnych we wdrażaniu środków państwowych przeciwko rozprzestrzenianiu się koronawirusa SARS-CoV-2. Postanowiliśmy jednak spojrzeć na to z perspektywy porównawczej, ponieważ badamy również to, w jaki sposób i w jakim stopniu polskie Siły Zbrojne były zaangażowane w walkę z pandemią COVID-19. Badaniu zostały poddane także ramy prawne zaangażowania sił zbrojnych w porównawcze wykonywanie zadań w tym zakresie przez administrację cywilną.

Słowa kluczowe: Węgry; Polska; COVID-19; węgierskie Siły Zbrojne; pandemia; administracja cywilna

