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The Civilian Control of the Hungarian Armed Forces – Institutional and Legal Background

The Hungarian Case

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The Hungarian legal system of civil control is examined here according to three main categories. The first level of civil control is composed of those state bodies and organizations, which have direct control and command rights related to the armed forces. Those organizations, which do not possess direct, but only certain controlling functions, belong to the second level. The third level of civil control is composed of all those civilian organizations, initiatives and movements, which do not take part in the national-defense related decision-making, nor have control functions, but still can influence the national policies in questions of national security and defense, either by conducting research, or representing social interests, etc.

The authors present a descriptive, mostly linear analysis, from an institutional-legal perspective. Due to the limits on length, more emphasis is put on the problems and processes of the transition period in order to demonstrate the hardships of creating a functioning civil control system among the circumstances of establishing the parliamentary democracy. In order to demonstrate the developments of the 17 years passed since the transition, the current system of putting the army in action, namely the regulations of sending troops abroad is also briefly analyzed. Due to the fact that the principles of the democratic control over the army in Hungary are laid down in the Constitution, the authors relied mostly on this particular legal source.¹

1. Historical Introduction

The current institutional and legal system of civil control in Hungary can be neither understood, nor interpreted without studying its preliminaries, namely the relevant practice of the Warsaw Pact-era, from which the new, democratic system of civil control had to be developed.

Hungary, as a relatively newly established democracy never had any kind of real civil control over its armed forces. Until the dissolution of the Austro-Hungarian empire in 1918 the armed forces were led by the imperial central command in Vienna, subordinated to the Emperor. Between the two World Wars Hungary kept the legal status of a monarchy, though without a king. The control of the armed forces belonged to the regent, Admiral Miklos Horthy, formally the Supreme Commander of the armed forces. To the late 1930s he managed to centralize all military-related powers in his own hands. After the Second World War Hungary remained being occupied by the Soviet Union. The democratic period between 1945-1948 proved to be short-lived, and from 1948 the Communist party took over the country. From the late 1940s the new Hungarian armed forces established after the end of the Second World War, were hastily re-organized along Soviet patterns. The official name of the Hungarian Defense Forces was changed to the Hungarian People's Army in 1951. In the same year Soviet-style uniforms were introduced and the official salutation became the Communist 'comrade'.

The defeated uprising in 1956 achieved a significant result in relation with the armed forces. The dreaded Communist secret police, the State Defense Authority was

1 This was also because while the Constitution is easily accessible in English, foreign readers might have serious problems in trying to look up the translations of the relevant defense-related legislation on the level of laws, Parliamentary decrees, etc.

disbanded, with its staff and tasks partially subordinated to the police and the Ministry of Interior. Instead, a civilian-based, but militarized organization, the so-called Workers' Guard was set up, which was under the direct control of the ruling party. However, the Workers' Guard had neither inspection, nor other policing duties, and it was rather a party militia, which never saw live action.

1.1 The Heritage of the Warsaw Pact and the Beginnings of Civilian Control

Until the 1989-90 political transition the armed forces of the Hungarian People's Republic were strictly controlled by the Communist party. The ruling Hungarian Socialist Workers' Party was involved in each and every level of the military-related decision-making. The armed forces had domestic tasks as well, namely 'supporting the rule of the Hungarian Socialist Workers' Party.' The army was formally under the control of the Ministry of Defense – even in spite of the fact, that almost all ministers were active or former soldiers, and that there was hardly any military decision-making autonomy in the context of the Warsaw Pact,² especially with the presence of the occupying Red Army, 'temporarily stationed on Hungarian soil.'

There was a wide range of official 'civilian' organizations working as background institutions of the armed forces, all of them under direct state control. The National Peace Council was established to provide the only framework of civilian initiatives, thus preventing all real civilian, bottom-up movements from coming into existence. The Hungarian National Defense Alliance, subordinated to the Ministry of Defense was responsible for all military-related youth activities, such as drivers' trainings, diving, etc. Involved party members, youth trainers, and soldiers of all ranks were obliged to regularly report on the problems and experiences. All in all, the ruling party and the MoD Directorate General for Political Affairs managed to keep strict control over all army-related social activities and initiatives.³

The People's Army was a conscription-based force of altogether approximately 200.000 soldiers. The duration of the compulsory service had been gradually reduced to 18 months, but very few exceptions were made, thus even in 1990, already one year after the transition there were more than 50.000 conscripts serving in the army.

The first, real civilian organizations approaching military-related issues in Hungary were born in connection with the conscript system. Most of these movements were based on the ideas of anti-militarism and the respect of human rights, while some were related to illegal religious organizations sporadically present in Hungary, such as the Witnesses of Yehova, the Nazarene Church, the Reform-Adventists, etc. What was common in them was that they all maintained close relations to the democratic, liberal opposition of the system.

From the mid-1980s their main demand was the abolishment, or at least the reform of the compulsory military service. They used illegally published leaflets, organized underground networks, thus spread the information about the tensions and problems related to the conscript service. The most spectacular action of these movements took place in 1988, when they organized a mass demonstration in front of the Parliament. However, one has to note that before the adoption of the Law on Associations (Act II of

2 Szemerényi, p. 194-195.

3 Molnár p. 30-31.

1989.) the establishment of any kind of civilian association was against the law, thus activists had to face 10-36 months of imprisonment.

Due to the intense protests, and connected to the on-going political reform processes, just months before the transition the Hungarian military leadership agreed to elaborate the concept of the alternative (thus non-armed and non-uniformed, though still compulsory) conscript service. The final decision was passed in late 1989. This was the only military-related achievement of the civilian movements before the political transition.⁴

2. The First Level of Civil Control

The first level of civilian control is made up of state bodies, organizations and positions, which have direct controlling and commanding rights related to the armed forces. Due to the already discussed heritage of the past, the Hungarian legislation is characterized by the fact that the most important principles and regulations concerning the use of the armed forces are put down in the Constitution. This includes not only the determination of the rights and obligations of the relevant state bodies, but the description of certain processes as well.

2.1 The New Constitution and its Impacts on National Defense

After the transition the new Hungarian democracy was built up on the tacit consensus that any kind of possible anti-democratic takeover has to be avoided by every possible institutional measure. The amendments⁵ of the Constitution set minutely detailed rules to the use of the armed forces. Many checks and balances were integrated into the system in order to exclude any kind of misuse. According to the new legislation, in the Parliament a two-third majority of votes became necessary to pass any resolution related to the use of the armed forces. Moreover, the army can be effectively put into action only if the Parliament introduced extraordinary legal status. The Constitution recognized three types of special legal statuses: state of war, state of national crisis (in case of war, or imminent threat of war) and state of emergency (in case of armed efforts to overthrow the constitutional power, internal crises and natural disasters).

If the Parliament is obstructed, the President can take over some of its defense-related rights, thus has the right to declare the state of war or the state of national crisis and to establish the National Defense Council (to be discussed later), or to introduce the state of emergency. He can introduce these and other necessary measures – declared in the Law on National Defense, and other relevant laws - through presidential decrees, though has to immediately inform the Speaker of the Parliament. The obstructed status of the Parliament can be declared only with the joint consent of the Speaker of the Parliament, the President of the Constitutional Court, and the Prime Minister, which is an important check in the constitutional system. As soon as the Parliament is able to meet again, it immediately reviews the legislation passed during its obstructed period.⁶

4 Molnár, p. 30.

5 Constitution of the Republic of Hungary, 19–19/D. §, 28/A §, 40/B § (2).

6 Kelemen p. 122-123.

Problems of Efficiency

All in all, due to the concerns related to the peaceful nature of the transition, the Hungarian constitution contains many checks and balances against the unlawful use of the armed forces. A certain kind of fear can be observed in the legislation, for example if the executive power intends to misuse the army – consequently the government is not even mentioned among the formal decision-makers. However, taking into account that when these amendments were passed, not only the Soviet Red Army was still stationed on Hungarian soil, but the Hungarian People's Army was still more or less intact, and the first free elections had not taken place yet, these concerns are quite understandable.

However, in case of unexpected events these checks and balances can render the whole system useless, simply because of its complexity. If an extraordinary situation emerges at a time, when the Parliament is not working, the above mentioned three top officials need first to decide whether the use of the armed forces is necessary. Then the President of the Republic introduces the state of national crisis, but the army still cannot be put into action. This can be ordered only by the National Defense Council, after the state of national crisis has been introduced.

The National Defense Council exercises the powers of the Parliament in times of state of national crisis, if the Parliament is not sitting. If the Parliament is working, it can decide on the use of the armed forces itself, or can transfer this right to the National Defense Council. The National Defense Council is composed of the President of the Republic, the Prime Minister, the Speaker of the Parliament, the Ministers, the floor leaders of the political parties represented in the Parliament, and the Chief of Staff of the Hungarian Armed Forces.⁷ However, it is obvious, that an organization of such high number of participants, as the National Defense Council cannot be quickly summoned and made being ready for action. In case of an unexpected attack, such as an air strike the system would collapse. The Antall-government (1990-1993) recognized the problem, and after long consultations even the opposition parties agreed on such a modification of the constitution, that would enable the government to take a quick action: *In the event that the territory of Hungary is subject to an unexpected attack by foreign armed units, immediate action shall, in accordance with the defense plan approved by the Government and the President of the Republic, be taken - with forces that are commensurate to the gravity of the attack and equipped for such a role - prior to the declaration of a state of emergency or a state of martial law in order to repel such attack, defend the territorial integrity of the country with the active air and air defense forces of the Hungarian and allied armed forces, ensure constitutional order and the security of lives and property, protect public order and safety.*⁸ Following such an action, the government is obliged to inform the Parliament in order to let it take the necessary measures. The complicated wording still reflects mistrust, but at least it permits military action even in unexpected situations.⁹

Here appears one of the most crucial principle of the civil control, namely that it can be interpreted only together with military efficiency. Solutions constructed purely in accord with the legal principles may hamper, or even disable the army, which is especially dangerous in extraordinary situations. Another important element is that

7 Ibid. p. 123.

8 Constitution of the Republic of Hungary, 19/E §

9 Kelemen p. 123-124.

democracy cannot be guaranteed with measures, which block the functioning of the democratic institutions, including the government.¹⁰

The Hungarian legislation is especially characterized by the fact, that the Parliament – or if it is not sitting, the National Defense Council¹¹ – can take back, or review the competencies¹² transferred either to the President, or to the National Defense Council almost any time. Moreover, it can also suspend the extraordinary measures introduced by the President.

2.2 The Rights of the President related to the Army

Article 29 of the Constitution of the Republic of Hungary states that the President of the Republic is the commander-in-chief of the armed forces. This statement has been intensely debated since its creation. President Árpád Göncz intended to keep his right to issue orders to the armed forces, referring to his commanding position guaranteed by the constitution. However, Minister of Defense Lajos Für disagreed and turned to the Constitutional Court in 1991.¹³

The President had well-founded reasons to try his best to keep his position of commander-in-chief, as he already had to use this right. In the evening of 25th October 1990 the taxi and truck drivers of Budapest started to set up blockades on the main roads and bridges of the capital as a response to the large scale fuel price-hike announced by the government. On the next day Hungary was almost disabled by the blockade and negotiations began between the government and the representatives of the demonstrators. In the morning Minister of Interior Balázs Horváth, substituting Prime Minister József Antall, hospitalized at the time, made a declaration that from 12 a.m. he would try to 'liberate' the blocked roads and bridges using even the army, 'if it becomes necessary.'¹⁴ This immediately resulted in huge outcries, thus President of the Republic Árpád Göncz made a statement banning the involvement of the army in the conflict. He referred to his constitutional position of being the commander-in-chief of the armed forces. The Supreme Police Commander of Budapest also declared that he would resign immediately in case use force against the demonstrators was ordered. Thus the President excluded even the possibility of any solutions based on violence. Finally the situation was settled peacefully after a few days of intense negotiations.

From the legal point of view, President Árpád Göncz had no right to issue orders for the army. According to the already discussed 1989 amendments of the constitution, the use of the armed forces could have been allowed only in case of war, state of national crisis or state of emergency. None of these special legal statuses were introduced during the blockade, neither was the Council of National Defense summoned, the President acted alone.

10 Ibid. p. 122-124.

11 KUKORELLI p. 300.

12 Ibid. p. 280.

13 Kelemen p. 124.p.

14 It is a general misbelief, that the minister wanted to open fire. According to the authors' opinion this would have been not necessary at all. The usual riot control measures and tools of the police would have been sufficient for removing the protestors from the barricades, after which the roads could have been cleaned by using the various engineering vehicles of the army.

The Constitutional Court supported the minister's point of view,¹⁵ declaring that in this particular case the Constitution must not be interpreted literally, but its whole spirit and its other articles have also to be taken into consideration. Hungary was a parliamentary republic, where executive power belongs to the government, and not to the President. Consequently, the command of the armed forces is primarily a governmental competence. In case the competence of any other state organs (Parliament, President, National Defense Council) is not stated exclusively, all rights related to the armed forces belong to the government, thus in most cases to the Minister of Defense.¹⁶ The President of the Republic should be granted only a symbolic commanding function in order not to violate the relevant article of the Constitution. Following such a decision by the Constitutional Court, the effective commanding position of the President could not be put on the agenda any more.

The Constitutional Court also declared the necessity of separating the functions of control and command.¹⁷ Control means outside influence, while command is a function inside a given organization. The President of the Republic is an outside actor, consequently he can only exercise controlling functions, but cannot take over the lead, and cannot issue orders, as he has no political responsibility. If he did that, it would mean that the civil control exercised by other actors (the Parliament, the government, the Minister of Defense) applies to the President as well, as if he was a person authorized to issue commands, which is clearly an absurd.¹⁸ The commander-in-chief is a constitutional function, neither a rank, nor a position.¹⁹ The commander-in-chief is not a superior of any armed forces, the command is exercised by the commander of the Hungarian Defense Forces, and of the Border Guards.²⁰ The controlling competencies of the President derive from his right to substitute the Parliament in extraordinary situations, and from his few other direct military-related functions discussed below. Consequently, according to the Constitutional Court the commander-in-chief position of the President is composed only of his controlling rights.²¹

The rights of the President to substitute the Parliament, declare a state of national crisis and summon the National Defense Council were already analyzed. In addition to these, according to the Constitution the commander-in-chief has the right to appoint and promote generals, to appoint and discharge the chief of staff of the Hungarian Defense Forces, and to give his consent to the plans on the armed defense of the country. However, in peacetime all his military-related rights can be exercised only together with the counter-signature of the Minister of Defense.²² The principal reason behind the ministerial consent is the professional and military-political overview of the presidential decisions.

15 Constitutional Court resolution No. 48/1991. (IX. 26.).

16 Kelemen p. 124-125., KUKORELLI p. 302.

17 The authors used the words 'control' and 'command' as the literal translation of the Hungarian terms 'vezetés' and 'irányítás' respectively.

18 Kelemen p. 125.

19 Fapál (1995) p. 63.

20 By the time of this declaration the Hungarian legal system recognized two armed forces, the Hungarian Defense Forces and the Border Guards. Since the adoption of the Law on National Defense in 2004 the Hungarian Defense Forces are the sole armed force of Hungary, as the Border Guards is subordinated to the Ministry of Justice and Police.

21 KUKORELLI p. 302.

22 Ibid. p. 302.

The Law on National Defense adopted in 1993 added two more, civilian control-related functions to the rights of the President. According to the new legislation, all the plans concerning major organizational changes in the structure of the armed forces had to be sent to the President, so were the draft laws. Moreover, the President could request information from the government on any questions connected to the army.²³ A military advisory bureau was set up in order to support the President's activities related to the armed forces. In addition to all these, the right to sign international agreements, and the right to donate troop flags are also among the competencies of the President.²⁴

2.3 The National Defense Council

In state of war, state of national crisis and state of emergency the Parliament has to summon the National Defense Council. In case the Parliament is obstructed, this measure must be taken by the President of the Republic. The Council is chaired by the President, its members are the Prime Minister, the Speaker of the Parliament, the Ministers, the floor leaders of the political parties represented in the Parliament, and the Chief of Staff of the Hungarian Armed Forces. Concerning the extraordinary situation, the main operational principle of the National Defense Council is efficiency, and not civilian control. In such situations the Council is the supreme leader of national defense, and has the highest commanding authority over the armed forces as well. The Council can exercise all the rights transferred to it by the Parliament, (or in case it is obstructed, its whole competence), the rights of the President and of the government. No law or other legal act contradicting its decisions and measures can be executed.

However, the Constitution gives certain limitations on the wide competence of the National Defense Council. It cannot suspend the application of the Constitution, cannot limit the Constitutional Court in its operation, and cannot suspend or limit the fundamental constitutional rights of the individuals to a larger extent than justified by the extraordinary situation. During the state of national crisis, neither the President, nor the Parliament can disband it.

In case the mandate of the Parliament expires meanwhile, the term of the National Defense Council gets automatically extended until the cessation of the state of national crisis. If the Parliament disbanded itself, the President can summon it again, if a situation arises, which may justify introducing the state of national crisis. In such a situation the Parliament itself shall establish the National Defense Council.

An important brake in the system is that all the decrees and measures of the National Defense Council automatically lose their validity by the cessation of the state of national crisis, unless the Parliament extends them. This, and the personal composition of the Council ensures the restoration of civilian governance. As soon as the war or the danger of war is over, the army shall return to its barracks, and the measures of civilian control shall be fully reinstalled. Thus the danger of a military dictatorship can be avoided.²⁵

23 Kelemen p. 125.

24 Fapál (1995) p. 64.

25 Ibid. p. 65-66.

2.4 The Parliament

As the operator and supervisor of the whole state administration, the Parliament has a decisive role in the control of the armed forces as well. Its main rights related to the national defense²⁶ and civil control include

- establishing the general norms regarding the armed forces in the Constitution,
- electing the President of the Republic,
- adopting the principles of the country's national security and defense policy,
- adopting the laws concerning the tasks and organizational structures of the armed forces. All laws related to the armed forces have to be passed with a two third majority.
- Providing the necessary funds for the armed forces to operate via adopting the national budget,
- signing international treaties and acknowledging all defense-related international treaties and agreements signed by any other state organization,
- deciding on questions of war and peace,
- introducing special legal status (state of war, state of national crisis, state of emergency),
- in case of a foreign attack, can order total or partial mobilization, and can put the army into the state of wartime preparedness.
- taking decision on the domestic and foreign use of the armed forces. The armed forces can cross the national borders only with its prior consent. In this regard the NATO or EU-mandated foreign use of the army is an exception since 2004, as for such missions a simple government decision is enough. Peacekeeping missions with UN authorization and international military exercises are also exempt of obligatory parliamentary consent.

Regarding the efficiency of parliamentary civilian control the Hungarian parliament has to face two main groups of problems. First, the possibilities of the parliamentary opposition to intervene are sometimes very limited. Especially as due to the secret or confidential nature of the most important defense-related information, questions of the highest importance cannot be debated publicly. Perhaps the most demonstrative example was the case of the modernization of the fighters of the Hungarian Air Force, when the final decision in favor of the Swedish-made Gripens was made in a highly untransparent way.²⁷

26 Ibid. p. 62-63.

27 There were four main competitors for the contract, the French Rafale, the Swedish Gripen, while the United States applied both with F-18s and F16s. The Parliament mandated the government to modernize the air force with NATO-compatible fighters, but no other specifications were made, particularly due to the lack of information. Finally the government – more precisely then Prime Minister Viktor Orbán personally – decided in favour of the Gripens, even though the fighters planned to be leased were not fully NATO-compatible, as they lacked air-to-air refuelling capability, and the financial conditions were also not too favourable. However, the Parliament had no ways to intervene, as the necessary information were not publicized that time. As a consequence, the contract had to be modified by the next government. For more information on the circumstances of the first Gripen-contract see

Another demonstrative case was the issue of the American-initiated missile defense shield, as there were plans to build one of its facilities in Hungary. Even though confidential discussions had been going on since late 2001, not a single hearing was held in Parliament, in spite of the fact that some sporadic information was published in the press on 'secret negotiations', and government representatives were asked twice in the Parliament about the issue. However, finally the decision that Hungary will stay out of establishing the missile defense system in Europe was made without a single parliamentary debate or vote.²⁸

The second difficulty the Hungarian Parliament had to face regarding civilian control over the decisions related to the armed forces was that in many cases the neutrality of the individual MPs turned out to be an illusion. All MPs are connected to some interests groups, though to a different extent. However, experience shows that in questions of national security and defense those MPs tend to be the most active who have not only the relevant professional background, but also some other particular connections to the various lobby groups as well.²⁹ These MPs generally become members of the competent parliamentary committees, in which the level of professionalism is already lower than among the asked military leaders. The question arises whether professional and political considerations are in balance in the civilian control exercised by the parliamentary committees. Such problems *per se* do not affect the principle of civilian control over the military, however, seriously question its efficiency.

2.5 The Government and the Ministry of Defense

According to the constitution, the government exercises all control functions over the armed forces, unless the competence of another state organ is explicitly defined. The government is responsible to the Parliament in conducting duties related to the questions of national defense. In addition to this, the government is obliged to submit an annual report on the realization of the security and defense policy objectives.

All in all, the main armed forces-related competences of the government are composed of:

- submitting the draft resolution on the principles of Hungary's national security and defense policy to the Parliament,
- making decisions on the fulfillment of the military commitments based on international treaties, and coordinating their realization,

http://www.honvedelem.hu/hirek/hazai_hirek/a_gripen_program

28 For more information on the missile defense debate, see Rácz, András: 'Hungary: A Most Reluctant Ally.' In: Contemporary Security Policy. Vol. 26. No. 3. (December, 2005.) pp. 544-557.

29 Perhaps the most well-known, and widely publicized case demonstrating this was also connected to the already mentioned fighter tender. In 1999 31 MPs and 3 state secretaries, all members of the governing coalition led by the Fidesz, signed a joint letter to the President of the United States requesting the removal of then Ambassador to Hungary Peter Tufo. Moreover, they intended to get Steven Jones appointed to Ambassador, who that time was the Budapest representative of the Lockheed-Martin aerospace holding, producing company of the F-16s. The piquant nature of the issue was given by the fact, that the leader of the initiative, MP Gabriella Selmeczi lived together with a direct subordinate of Steven Jones. After being publicized, the effort of surprising diplomatic clumsiness was turned down, however, mass resignations did not follow the case.

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- ensuring the defensive preparedness of the country,
 - organizing the armed forces, and maintaining their proper status,
 - exercising operational control over the armed forces,
 - planning the budget,
 - signing international treaties,
 - defining the defense-related tasks of the ministers and other organizations of national competence,
 - defining the activities of the local defense administration organizations.³⁰

On the government's side the main person responsible for questions of national defense is the Minister of Defense. However, experience shows that in national defense issues of crucial importance or sensitivity (such as the already mentioned air force modernization programme, the case of the missile defense, the abolition of conscription, etc.) the real decision is taken away from the Ministry by the Prime Minister.

The reason behind this is twofold. First, according to the Constitution, the ministers are responsible directly to the Prime Minister, not to the Parliament, which results in a relatively strong Prime Ministerial position inside the government. Moreover, almost all Prime Ministers of Hungary have been charismatic leaders with rather strong personalities, for whom it has been almost 'natural' to take away decision-making competencies from the ministries on a time-to-time basis. Especially because due to the deep dividing lines in the Hungarian domestic policy, almost all issues, even low-level and definitely professional ones become immediately politicized on the national level, and are used as political ammunition against either the government or the opposition. The high level of domestic political tension induces the constant necessity of the Prime Minister getting involved.

Second, in democratic Hungary there is no tradition of having a 'strong' minister and ministry of defense. This is partially a result of the continuous budgetary restrictions, and concerning the 1990s, of the constant competence-related debates between the ministry and the General Staff (to be discussed later). Consequently, the Ministry of Defense is an authority of a rather executive nature, and has no wide freedom of movement, sometimes even in purely professional issues.

Another problem that Ministry of Defense has to face since the transition is the lack of well-trained civilian experts. In the Warsaw Pact era there was absolutely no military-related education available for civilians, except a few engineering specializations at various technical universities. Almost all civilians, who worked in the ministry had mostly low-level, administrative and maintenance duties. Civilian experts and scientists were excluded from the security and defense policy-related decision-making, and there was absolutely no civilian research on such topics. Consequently, after the transition Hungary – together with the other former Warsaw Pact countries – experienced a grave lack of civilian expertise.

The situation improved slowly, as during the 1990s more and more civilians – mostly with degrees in law, modern history and international relations - made it to the ministry. The most important step was taken in 1997, when the first degree programs available for civilians were launched at the Zrínyi Miklós National Defense University. However, the

30 Fapál (1995) p. 64.

low number and high fluctuation of civilian professionals working in the MoD is still a problem, the origins of which are twofold. First, the salaries in the state administration sector are far from being competitive with the private sector, especially in lower positions. Second, due to the deep domestic political divisions, each and every new government makes it its first task to 'politically cleanse' the ministry, which has resulted already several times in the loss of experienced civilian professionals. Consequently, the civilian control over the military administration is still rather limited.

2.6 The Relations between the Ministry of Defense and the General Staff

Before the systemic change both the general staff and the Ministry of Defense were parts of the Hungarian People's Army. The Minister was the highest ranking military leader: one can mention four stars general Lajos Czinege, who held this position between 1960 and 1984 or his successor, General István Oláh. The deputy minister was also a soldier, in 1963-1973 three stars general Károly Csémi, followed by István Oláh until 1984, when the position was taken over by General József Pacsek. Changing the sole military control over the armed forces was an obvious objective of all opposition political forces.

In the last months of the transition the Hungarian Socialist Workers' Party made one of their last army-related moves, which later proved to be a crucial source of institutional problems and tensions. In December 1989 the Ministry of Defense and the Command of the Hungarian Defense Forces (e.g. the General Staff) became separated. While the Ministry was subordinated to the Prime Minister, the Command was under the control of the President of the Republic – a new institution established by the transitional laws. The Communists probably hoped that this way their control over the armed forces could be preserved as reform-Communist Imre Pozsgay was expected to be elected the first President of the Republic. However, in 1990 the opposition writer Árpád Göncz became the president, and the Hungarian Socialist Party³¹ suffered a decisive defeat in the first free parliamentary elections.

Thus the separation of the MoD and the General Staff did not reach its original objective, but became perhaps the most serious hindering element of establishing democratic control over the Hungarian armed forces. The direct control of the armed forces was still exercised by the military itself, e.g. by the General Staff. Its commander was connected to the ministry only at the top of the hierarchy, otherwise the two institutions were two separate structures. This obviously hindered the establishment of an effective parliamentary control, and resulted in serious debates since the mid- 1990s. The unclear competences led to the creation of overlapping institutions with sometimes unclear tasks. A crushing example was the case of the socio-political department of the

31 The Hungarian Socialist Party (Magyar Szocialista Párt, MSZP in Hungarian) was de jure not the successor of the former ruling party, the Hungarian Socialist Workers' Party. (Magyar Szocialista Munkáspárt, MSzMP in Hungarian.) It was newly registered, and was built up according to the democratic standards described in the relevant laws. Former MSzMP members had to submit a new application in order to be member of the MSZP, and from the legal point of view it had nothing in common with the former ruling party. However, the prominent members of the two parties were almost identical, and the MSZP managed either to keep direct control over most of the properties of the Hungarian Socialist Workers' Party, or transform the property rights to its supporters. The country-wide network of party offices and the relevant infrastructure was also inherited.

ministry, originally created for handling social conflicts related to the armed forces. However, it soon had to be disbanded as continuity with the former – already mentioned - Directorate General for Political Affairs was strongly suspected.³²

As a consequence of structural duplications, the early and mid-1990s were characterized by constant conflicts between the Minister of Defense and the Commander of the Hungarian Defense Forces. Already in 1990 the commander, General Kálmán Lőrincz resigned, stating that the activities of Minister Lajos Für hindered him in exercising his rights as a commander, thus he could not fulfill his constitutional duties. The President finally did not accept his resignation.

The already discussed decision of the Constitutional Court in 1991 clarified the rights of the President, and declared the superiority of the Minister in the on-going Ministry versus General Staff debates. The decision had eased tensions, and provided the necessary theoretical fundamentals of Hungarian civilian control.³³ However, the theoretical declaration did not solve the problems of implementation. The rivalry between the parallel organizations with overlapping competences went on. In 1994 the Boross government passed a declaration on the integration of the General Staff into the Ministry, but the Horn government (1994-1998) nullified it, stating that it was not properly prepared. All in all, the situation was a bit less tense between 1994 and 1998, as then Minister of Defense György Keleti also had a military background, thus for him it was easier to reach the necessary compromises. However, more flexibility from the Ministry's side resulted in the slower pace of reforms. One has to add, that the delays were partially due to the serious economic restrictions, which had to be introduced in 1995, and which had their own impact on the defense sector as well. In 1995-1996 several studies were prepared in the MoD on the necessity of integration, but altogether little has been actually done.

Following the Orbán government coming to power in 1998 the debates became intensified again. This happened mostly due to the appointment of the energetic, but completely unprofessional János Szabó³⁴, delegated by the Smallholders' Party as Minister of Defense. However, being an absolute outsider, Minister Szabó was not connected to any of the internal lobbies, thus – partially also due to the impacts of NATO accession in 1999 – he finally managed to finish the integration of the Ministry and the General Staff in 2001.³⁵ The decision played an important, but not exclusive role³⁶ in the resignation of General Ferenc Végh, Chief of the General Staff. His successor became the

32 Szabó, János Dr.: A honvédség és a politika kapcsolata a '90-es években p. 260.

33 Kelemen p. 126.

34 The former minister János Szabó must not be mixed up with the well-known military sociologist Dr. János Szabó, currently the Rector of the Zrínyi Miklós National Defense University.

35 Molnár p. 32.

36 The main point of the debate was the hierarchy between the Chief of the General Staff and the State Secretary of Public Administration. General Végh did not accept the plans of subordinating his position not only to the Minister, but to the Senior State Secretary as well. Another element behind the resignation of the Chief of Staff was, that he wanted to protest against the numerous, and sometimes quite obvious professional mistakes (primarily the ones, which resulted in Hungary's extremely poor performance in the NATO – Hungary did not manage to meet a single commitment!) committed by either the Minister personally, or by his direct subordinates, also connected to the Smallholder's Party. Interestingly enough, the new Chief of Staff General Fodor managed to strengthen his political position, thus finally the State Secretary, Tamás Wachsler – delegated by the governing party Fidesz! – had to resign as well.

more flexible General Lajos Fodor, who could cooperate with the Minister better. Thus the relative independence of the General Staff was gone, and an integrated Ministry of Defense was established, which is a general standard in NATO countries.

However, the 2001 decision established the integrated MoD only from the legal point of view. In reality many duplications and overlapping competencies remained, and functions of control and command were still mixed up in certain fields. Finally the situation was solved only in 2005, by the government resolution No 2008/2005, which established a unified leadership over both the MoD and the army with the Minister at the top of the hierarchy. He exercises his military-related duties through the Chief of the General Staff, while his defense administration tasks are coordinated by the senior state secretary.³⁷

2.7 The Current Legal Conditions of the Use of the Hungarian Armed Forces

According to Law CV. (2004) the Hungarian Armed Forces are the sole armed force of Hungary. Formerly the Border Guards also belonged to this category, but now they are subordinated to the Ministry of Justice and Law Enforcement, and their integration with the police is already under way.

The armed forces of Hungary can be used internally only in case state of emergency is introduced, and the forces of the police are not sufficient to handle the emergency. However, some exceptions are allowed by the Law on National Defense adopted in 1993. The army can be used for certain internal duties, but only in tasks supporting the work of the civilian authorities in the following cases:

- providing support in case of natural or industrial disaster, and in case of a malfunction of critical public service providers,
- participating in humanitarian aid,
- providing assistance in solving problems, which require special expertise and equipment, however, this last service needs to be paid for.

There are strict limitations concerning the third option. If the action involved less than 100 people, and does not last longer than 21 days, the Chief of the General Staff has the right to approve it, but if it is either bigger, or longer, the consent of the Minister of Defense is necessary. If 3000 or more people need to be put into action, the Prime Minister has to inform the Parliament.³⁸ The precisely detailed regulation was introduced following experiences from the past, for example the already mentioned plan of Minister of Interior Balázs Horváth to use the army against the blockading taxi drivers, etc.

The state borders can be crossed by the armed forces only with the prior consent of the Parliament. The international peacekeeping or crisis management missions mandated by the NATO or the EU are exceptions, as for these a governmental decision is enough, however, at the same time it is obligatory to inform the Parliament as well. Foreign troops cannot cross the borders, or be stationed on Hungarian soil without the approval of the Parliament. However, the Constitution subordinates the national regulation to international treaties,³⁹ thus those can have different regulations. This means for example

37 For more information, see either the Resolution No. 2008/2005 (25th January), or Fapál (2006), p. 69.

38 Gazdag p. 218.

39 KUKORELLI p. 279-280.

that NATO exercises can be conducted on Hungarian soil by a simple governmental decision.

3. The Second Level of Civilian Control

As stated in the introduction, those organizations and state bodies belong to the second level of civilian control, which have certain controlling functions in questions of national defense. These organizations are basically civilian by nature, however, in certain cases they have competencies related to the armed forces. Because of the length limits of this paper and the relatively high number of such institutions, this study gives a taxative overview only.

3.1 The Constitutional Court

Its main controlling function is the overview and in case of necessity, the reconsideration of the legal acts related to national defense, in accord with the word and spirit of the Constitution. In addition, the Constitutional Court has a few other direct competencies as well, derived from its functions in the Constitution (for example, suiting the commander-in-chief, e.g. the President, participating in declaring the obstructed situation of the Parliament, etc.)⁴⁰

3.2 The Committee on National Defense of the Hungarian Parliament

The continuously operating committee of the Parliament is competent in questions of national defense. Its main activities are composed of formulating proposals, advising and controlling the Parliament in exercising its defense-related rights, including legislation. In addition, the committee controls the performance of the armed forces in fulfilling its tasks, the level of its preparedness and equipment, and - last, but not least - the use of the provided budgetary funds. The committee can initiate laws, and is obliged to give its opinion on the draft laws and ministerial reports submitted to it. Before the President of the Republic appoints either the Chief of the General Staff, or the Commander of the Border Guards, a hearing is held, and the committee gives its opinion on the candidate. This opinion does not oblige the President, however, it is required to hear the committee in order to have the appointment entering into force.

All in all, the main task of the committee is the continuous control and supervision of the defense-related decision-making. Everyone, both individuals and organizations are obliged to provide the data and information requested by the committee, the ministers have to appear at the hearings if so required and answer the questions asked. Moreover, ministers are obliged to present the drafts of each and every organizational change to the committee, which either affects more than 1000 people, or starts another activity, or cancels an ongoing one. In case of a state of national crisis the Committee can take back all its rights, if it has transferred the given rights to any other actor.⁴¹

40 Fapál (1995) p. 66.

41 Fapál (1995) p. 67.

Members of the committee are delegated by the parties represented in the Parliament, according to the number of seats they have. The committee has a standing number of 21 members. The Chairman is delegated by one of the governing parties, while at least one of the deputy chairman positions is given to the opposition. As members of the committee are regularly provided with 'sensitive' information – though to not such an extent as the members of the Committee on National Security – prior to their appointment they are subjects to a national security clearance.⁴²

3.3 National Audit Office

It supervises the elaboration and the implementation of the income and expenditure plans of the Ministry of Defense in relation with the central budget. The results are to be reported to the Parliament.

3.4 Governmental Controlling Office

An office directly subordinated to the Prime Minister's Office. Its main task is to supervise the financial and economic activities of the state organizations, including the Ministry of Defense.

3.5 The Parliamentary Ombudsman of Civil Rights

The main task of the Parliamentary Ombudsman of Civil Rights is to examine the tensions and contradictions related to fundamental constitutional rights. In order to solve the problems, he has the right to initiate individual or general measures.⁴³ However, his suggestions are only recommendations, they are not obligatory. His basic tasks and responsibilities are mentioned in the Constitution as well.⁴⁴ As a general rule, one can state that the actions taken and the recommendations made by the Ombudsman tend to make the state administration work faster on the given issue. The Ombudsman tends to play a mediating role between the state and the society. This is important especially in examining individual cases, and in supporting the work of different grass-root interest-representing organizations.

The Ombudsman played an important role related to the defense sector, when in 1995-1996 he made an extensive study on the respect of fundamental constitutional rights inside the army. Given the success of the examinations, e.g. the number of changes made following his actions, he made a significant contribution to the increase of the respect of the army in the society.⁴⁵

42 Kuti, Ferenc: 'A nemzetbiztonsági (katonai biztonsági) szolgálatok polgári ellenőrzésének néhány kérdése.' In: Védelmi Tanulmányok. No. 50. Bp, SVKK, 2003. p. 33-34.

43 Fapál (1995) p. 66.

44 Constitution of the Republic of Hungary, Chapter V.

45 Murányi p. 240-41.

3.6 The Courts

After the transition the separate military courts were abolished. Since 1st January 1992 the crimes committed by soldiers belong to the competence of the Military Council of the Budapest Court, and of the military councils of the county-level courts.⁴⁶ An important preliminary element of change was the adoption of the Law XXVI/1989, according to which the possibility of launching military trials against civilians (for example in case of crimes violating national defense interests) was abolished.⁴⁷ There is a possibility to appeal against the sentences of the courts.

3.7 The Military Prosecution Service

The main task of the military prosecution service is to fight all crimes and criminal activities endangering the independence, the national security or the constitutional order of the country. The military prosecutor is to ensure that inside the military all organizations and individuals respect the law. The military prosecution service has the right to control all activities of either the Ministry of Defense or the army, and in case of necessity it can initiate legal processes in order to restore the rule of law.

In certain types of crimes committed either within the army, the police, the border guards and the secret services the military prosecution service has the right to conduct investigations, while in other cases it exercises legal supervision over the investigation conducted by the police, or – in a few minor cases – by the commander of the accused soldier. In military criminal processes it makes the accusation, and represents it during the trial.⁴⁸ Besides, the military prosecution service is responsible for the protection of the rights of the soldiers and public servants employed by the Ministry of Defense.⁴⁹

4. The Third Level of Civil Control

Those organizations belong to the third level of civil control, which do not participate either in the control or the command of the armed forces, nor do they have official controlling functions, but still might have significant influence on the military-related decision-making, and might provide worthy contribution to it.⁵⁰ There are five main categories to be briefly examined:

- the controlling functions of the trade unions,
- the role of the press in the civil control,
- the importance of the universities and independent research institutions,
- the cultural organizations related to the defense sphere,

46 KUKORELLI p. 387.

47 KUKORELLI p. 405.

48 Fapál (1995) p. 67.

49 Murányi p. 240.

50 Kelemen p. 120.

- the protest organizations.⁵¹

4.1 Trade Unions

In Hungary the most important army-related organization of this kind is the Lobby Alliance of Armed Forces and Law Enforcement Employees.⁵² With its approximately 42.000 members, the organization regularly steps up in protection of employee's rights, conducts wage negotiations, and from time to time organizes mass demonstrations as well.

4.2 The Role of the Press

In the Warsaw Pact era there was no independent press dealing with issues of security and defense, all periodicals dealing with such topics belonged either to the Ministry of Defense, or to the Ministry of Interior. The civilian press was also affected by the state control, the censorship prevented the publication of any military-related article, unless checked in advance. The first exceptions happened only in the late 1980s, when a surprisingly intensive public debate was started about conscription.⁵³ Regarding the role of the press in civilian control in a democratic society, the main contradiction is that even though a democratic army has to work in a transparent way, certain information must be kept secret from the public because of its crucial importance. This dichotomy affects the Hungarian press as well.

Currently the role of the Hungarian press dealing with security and defense issues has to be studied in two separate parts. The state-owned, army related newspapers and periodicals are rather scientific and information fora, they have no real civilian control functions, as they are not 'civilian' ones. Stepping out of the official line is not tolerated, which is a more or less logical consequence of the hierarchic structure of the armed forces.⁵⁴

The civil press has more freedom of action, however, in this case the lack of precise and up-to-date information is the biggest problem. Currently in Hungary there is no such newspaper or periodical, which would mainly deal with issues of national security and defense without being connected to the state organizations. There are a few private journals for fans of airplanes and military technology in general, but they have no influence on decision-making. Civilian press, especially the main dailies and periodicals dealing with politics and economics tend to discuss issues of national security and

51 The system of categorization is based on Molnár p.21-22.

52 The Hungarian original is 'Fegyveres és Rendvédelmi Dolgozók Érdekvédelmi Szövetsége.'

53 Molnár, p.30.

54 This applies even to Ministry-operated internet fora – a famous case happened in February 2005, when a Hungarian captain serving in Afghanistan published an open letter to then Minister of Defense Ferenc Juhász. He wrote about dubious cases of corruption and dangerous amateurism concerning the high-level military leadership of the Hungarian contingent in Afghanistan, and the Ministry in general. The Ministry reacted with closing down the particular forum, starting a legal case against and dismissing the captain, despite of the army-wide, though anonymous gestures of support and sympathy towards him.

defense, and sometimes host quite intensive public debates.⁵⁵ All in all, their main influence consists of public awareness-raising, which often results in the high-level politicization of the issue.

4.3 Universities and Independent Research Institutions

The main question of the civilian control-related functions of the universities and independent research institutes is whether they manage to channel-in their expertise to the decision-making process. In Hungary the necessary institutional mechanisms are just being developed, as formerly independent researchers had only a very limited influence, and even that was based mostly on their informal contacts. However, the current administration relies on outside expertise on a much larger scale: civilian academics took part in the development of the new Foreign Policy Strategy, and a foreign policy advisory board was set up beside the Prime Minister, composed of leading civilian experts.

Currently in Hungary there are 2-3 main research institutions, more or less independent, where academic studies are conducted on questions related to the security and defense policy of Hungary. However, one has to add that this 'independence' always has to be interpreted with caution, as formal independence does not exclude the dependence on the provider of financial resources.⁵⁶

The most important organizations dealing with foreign and security policy research in Hungary are the Hungarian Institute of International Affairs (former Teleki László Institute) related to the Ministry of Foreign Affairs and the Centre for Strategic Defense Studies, working in the framework of the Zrínyi Miklós National Defense University. The Center for Security and Defense Studies Foundation has been the first really independent academic non-governmental organization dealing with security and defense research, founded by Ret. Col. Péter Deák in 1990.

Besides, there are a few more organizations of either smaller size or less clean profile, which also deal partially with security and defense policy research, such as the Council of Geopolitics, the International Centre for Democratic Transition, the Institute for Transitional Democracy and International Security, etc. In addition to these, there are a few university-based research centers as well. Though their direct political influence is practically non-existent, their importance comes from the fact that they can serve as open fora for discussion, both domestically and internationally.

4.4 Cultural Organizations

The cultural organizations related to the military play an important role in maintaining and developing the relations between the armed forces and the society. This is especially true on the regional and local levels. In the 1990s most defense-related cultural organizations worked in subordination to the MoD, which hampered both their efficiency and legitimacy, not to mention the constant financial hardships originating from the direct dependence on the decreasing defense budget. The situation changed in 2001 with the

55 The two most present defense issues widely debated in public was the question of professionalization of the army, and the NATO early warning radar system to be built on Mt. Zengő, which mountain is close to the Southern Hungarian city of Pécs.

56 Szabó, p. 280-281.

establishment of the MoD Zrínyi Public Foundation, which works as a framework organization for the various army and defense-related cultural organizations. This structure grants more freedom of movement for the cultural NGOs (they can apply for outside funding much easier than if they were directly connected to the state) and the expenses of the MoD have decreased as well.

4.5 Protest Organizations

The first civilian efforts to influence the military were connected to informal organizations protesting against the compulsory military service in the late 1980s. During the transition the adoption of the Law No. II in 1989 permitted the establishment of associations, thus these movements became institutionalized. The two most important organizations were the pacifist Alba Kör, being active between 1990 and 2004, and the League Against Conscription. The topic of compulsory military service characterized the relation of the protest organizations and the military until November 2004, the abolition of the conscription.

Currently there are no important protest organizations explicitly against the military, the few pacifist movement have no real influence. However, in particular issues various other organizations, such as human rights activists or environmentalists might have an influence on questions of national security, and sometimes even defense.⁵⁷

5. Conclusions

The institutional and legal conditions of an effective civil control over the military are fully developed and are functioning properly in Hungary. As a heritage of the concerns about the peaceful nature of the democratic transition, the most important checks and brakes are included in the Constitution. In peacetime the President of the Republic has only symbolic rights related to the armed force, which is under the control of the government. Regarding the direct control and command of the military, the professional army and its top leadership is clearly subordinated to the Ministry of Defense. The mechanisms of outside legal and financial control are also established, so is the protection of fundamental constitutional rights.

The main civilian control-related difficulty is rather connected to the influence of civilians inside the army. The shortage of well-trained, experienced civilians is a constant problem for the whole defense sphere, including both state-level policy-making and the administration. The relatively low wages, and the high level of fluctuation connected to the political changes are among the key reasons of the problem.

The influence of the non-governmental sector on the civilian control over the military is mostly composed of awareness-raising by the press. The role of academic analyses and

57 In case of taking a broader view of security, which involves domestic security as well, the protests of human rights organizations against actions of the riot police during the September-October 2006 raids in Budapest are definitely to be mentioned. Concerning defense-related issues, the resistance of various environmental and local development organizations – backed by the opposition parties – has forced the Ministry of Defense to reconsider its plans to build a NATO early warning radar station to the Mt. Zengő, where rare plant species are living, moreover, the location is very close to the city of Pécs.

studies prepared by civilian experts has been relatively limited, mostly due to the closed nature of the security policy decision-making structures, though this is gradually changing. Another important activity of the civil society is to organize and host scientific fora and debates on issues related to the armed forces. Since the abolition of the compulsory military service the army-related protest movements have become mostly inactive, however, in particular issues environmentalists and human rights activists may still have an influence on the policies of the military.

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