

Response of Hungary to the survey of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination

Introduction:

The problem of the use of mercenaries as a means of violating human rights has never been a relevant issue for Hungary; however, the *Act IV of 1978 on the Criminal Code* regulates in its Section 154 the “Prohibition of Recruiting” by saying that

(1) any attempt to recruit personnel in the territory of Hungary for military service - other than for any allied forces -, paramilitary service in a foreign armed body, or any procurement of volunteers for such service shall be construed a felony and punishable by imprisonment between one to five years.

(2) any Hungarian citizen who voluntarily joins or offers to join any foreign armed body - other than the allied forces - that is involved in an armed conflict (national or international), or who participates in training in such an armed body shall be punishable in accordance with Subsection (1).

This Section 154 can be found in Title I of Chapter XI of the Criminal Code which intends to regulate crimes against peace and as such being considered as one of the most serious types of crimes. According to the registration of the Prosecutor General's Office no case was found in relation to the above mentioned prohibition of recruiting or in relation to criminal measures relevant to private military and/or security companies or their personnel, including laws relating to the jurisdiction of Hungarian courts over offenses committed abroad by Hungarian companies or individuals.

On the 1st of July, 2013 the new Criminal Code (*Act C of 2012 on the Criminal Code*) is going to enter into force. A new subsection will be added to the Section of the Prohibition of Recruiting (Section 146 according to the new Criminal Code), saying that

(3) if the person recruited or procured for military service or paramilitary service in a foreign armed body in the territory of Hungary, is under the age of eighteen, the recruiter or procurer shall be punishable by imprisonment between two to eight years.

Police:

In Hungary at present 5000 civil persons, while for executing general police tasks (further: police) 1000 professional persons fulfil armed security guard tasks regulated by *Act CLIX of 1997 on armed security guards, environmental protection and field rangers*.

National defence:

Fundamental requirements relating to the functioning of private firms – including firms performing military and/or security tasks – are defined by *Act IV of 2006 on business associations*. Regulations relating to the performance of security, guarding-defensive type of tasks are to be found in *Act CLIX of 1997 on armed security guards, environmental protection and field rangers*.

In regard to the personnel it can be stated that the concept of reserves, including the voluntary defensive reserves is defined by the *Act CXIII of 2011 on national defence and the Hungarian Defence Forces and on measures that may be introduced in case of a special legal order*. This personnel is recruited for guard posts established in the regular military registration of military organizations and in time of peace they are employed as armed

security guards of HM Ei Zrt. in order to perform guarding-defensive tasks of objects of the Hungarian Defence Forces.

The activity of the HM Ei Zrt. is determined by the *Act CXXXIII of 2005 on the rules of personal and property protection activities and private investigation*; by the *Decree 27/1998. (VI. 10.) of the Ministry of Interior on the issue of the operational and service rules of armed security guards*; and by the *Decree 22/2006. (IV. 25.) of the Ministry of Interior on the implementation of Act CXXXIII of 2005 on the rules of personal and property protection activities and private investigation*.

Private security-defence companies:

In addition to the above, employees fulfilling armed service in companies specialized in personal and property protection activities and private investigation shall be normative under the *Act CXXXIII of 2005 on the rules of personal and property protection activities and private investigation (further: SZVMt.)*.

The SzVMt. shall be applied for personal and property protection activities as well as planner-repairer activities of property protection systems (further: planner-repairer activities) and private investigation activities performed either by a private entrepreneur, or rather in a private company or business association (further: enterprise) or personally. Under the application of personal and property protection in the SzVMt.:

- a) the protection of lives and physical integrity of natural persons,
- b) the surveillance of property and premises,
- c) the escort of shipment and transport of cash and valuables,
- d) the cover of events and
- e) the organization and management of activities listed in points a)-d) shall be understood.

1. The personal and property protection activities:

The SzVMt. separates the rules concerning personal and property protection activities; and the planner-repairer and private investigation activities. The personal and property protection activities are regulated by *Article 56 of the Treaty of Rome – dealing with the freedom of movement for services* – however, the *Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market* cannot be applied for these activities since the private security services are excluded from the scope of application of the Directive by its Article 2 (2) k).

In case of the private security services the optional “Handbook on implementation of the Services Directive” of the European Commission gives direction in its Point 2.1.2. and sub point 14., stipulating that private security services are the surveillance of property and premises, protection of persons (bodyguards), security patrols or supervision of buildings as well as the depositing, safekeeping, transport and distribution of cash and valuables.

2. The planner-repairer and private investigation activities:

Contrarily the planner-repairer and private investigation activities are regulated by *Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market* and by its implementary *Act LXXVI of 2009 on the general rules of the start and continuity of service activity*.

In the framework of an enterprise, personal and property protection activities may be performed upon the request of the enterprise in case of the possession of an operational licence issued by the Police if there is no exception in SzVMt. The conditions of the issue of the operational licence are determined by Article 5 (1) a)-b) and (2) of SzVMt.

Requirements:

In the framework of an enterprise, planner-repairer and private investigation activities may be performed only by fulfilling all the conditions laid down in the SzVMt. The purpose of the activities shall be reported to the police according to the SzVMt.

A special certificate issued by the police is necessary to the personal performance of activities defined by the SzVMt. (including the organisation and direction of the private investigation) if there is no exception. Certificate, upon request, can be issued for a Hungarian citizen or a resident entitled to free movement, who has the capacity to exercise rights as well as owns a qualification or equal education defined by certain law and at least has a graduation from secondary school to perform private investigation activities.

The issue of the certificate must be denied, if the requesting person is subject to a provision excluding the performance of activity/ exclusion clause/. During the procedure for the issue or extension of the certificate, the requesting person shall justify the conditions under he performs activities provided that he is not subject to the exclusion clause under the SzVMt. or an exclusion to exercise any activities as professional member of armed forces. Article 6 (3)-(4) of SzVMt. determines who is excluded from performing any activities under this law (public safety conditions.)

Control:

The official control of activities under the SzVMt. shall be conducted by the police which shall cover the lawfulness of the practice of activity, the existence of liability insurance contract, the actuality of data registered by the police, the authenticity of data have been registered in records compiled by the police, and the changes in the conditions of the authorisation or the performance of the activity.

During the official control aiming at controlling the conditions of public safety determined by Article 6 (3)-(4) of the SzVMt., the police has the right to take over data directly concerning the conditions laid down in Article 6 (3)-(4) of the SzVMt. from the registration of criminal offenders, and registration of individuals subject to adverse consequences without committing any crime and the registration of individuals subject to criminal procedure. The police conducts the official control annually. In case the police ascertain that there is a condition excluding the performance of activity, the police shall withdraw the operating license and the certificate or in case of planner-repairer and private investigation activities, the continuation of the performance of the activity shall be prohibited.