

## National security services in Hungary

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The status of the Hungarian national security services – following the regime change – were determined parallel with the principles of democratic rule of law. As a first step, at the beginning of 1990 a new regulation was adopted that came into force on 14th February, namely the Act X of 1990 on the temporary regulation of the special means and methods of secret services. This act did not regulate the responsibilities and organizational structure of the national security services but declared that the national security services – which were established for the protection of sovereignty and constitutional order of the Republic of Hungary – are entitled to use the means and methods of secret services under the law.

The adoption of this bill was a milestone from the prospect of national security services, due to the fact that the drafted Constitution of the Republic of Hungary did not contain regulations for national security services, consequently their responsibilities were not enacted either. With this non-regulation issue, the Constitution delegated its power for establishing of national security services or dividing these responsibilities between other authorities to all-time legislation authority, and this power was delegated – at first – to the cabinet council and – later – to the government by the Act X of 1990.

The cabinet council passed a regulation, namely the 26/1990. CC decree and, adjusting to the political and social morale in those days, a quite separated system of national security services was established in Hungary. Firstly, a Security College (consisted of several ministers), finally – from the middle of that year – the Political Minister of State of Prime Minister's Office was appointed to the direction and control of the civil national security services.

This act – which was tended to be an interim regulation at the adoption thereof – was only changed on the 26. March 1996 by the Act CXXV of 1995 on the National Security Services (hereinafter: NSS Act) which has been in effect since then. This new act mainly preserved the former directional structure, but modified the organizational structure, through that the Special Service for National Security was established from the National Security Office Special Service and Operational Technical Directorate. With this step, such an organizational structure was created which had not had previous international version or experience, even we can declare that it has been fulfilled the expectations for nearly twenty years.

The structure of direction of national security services was revised and modified – following fruitless attempts through several years – in autumn of 2000. In the course thereof, direction of the civil counter-intelligence service – rena-

med from National Security Office to Constitution Protection Office – and the Special Service for National Security was transferred to the Minister of Interior, while the direction of Information Office was transferred to the Minister of Foreign Affairs at first, then (from 7. July 2012) to the Prime Minister. The military national security services remained under the direction of the Minister of Defence.

The year of 2011 – when The Fundamental Law of Hungary came into force – is another milestone from the perspective of the regulations of Hungarian national services. Under the Article 46 of The Fundamental Law of Hungary – contrary to the former Constitution – the national security services are defined, and their main tasks and responsibilities are declared. Thanks to this concept, there is declared on the level of Fundamental Law “the core duties of the national security services shall be the protection of the independence and lawful order of Hungary, and the assertion of its national security interests”, thus the institutionalization of national security services and the declaration their main tasks and responsibilities are off the legislation authority's beat. The Fundamental Law of Hungary also declares – indirectly – that Hungary will not follow the example of that countries where the model of existence of one national security service was built up.

The structure of Hungarian national security services was remodified from 1. January 2012, when – after the integration of Military Intelligence Office and Military Security Office, – Military National Security Service was established, lessened the number of military security services with this step to one.

In spite of the fact that there were modifications in the recent years, we can declare that these were not fundamental structural changes. Beyond the reform of control regime and the integration of military national security services, the structural model of the national security services with the civil and military separation and in the case of civil national security services the counter-intelligence and the intelligence separation, and the independent technical information gathering service still remained.

## **National security services in Hungary and their responsibilities**

### **a) Information Office of the Hungarian Republic (IO)**

The IO carries out – since its establishment – intelligence tasks, its responsibilities did not changed substantially. The IO collects information on foreign countries or of foreign origin required for government decisions, detects any endeavours and activities of foreign secret services interfering with or threatening the sovereignty, or the political, economic, or other important interests of Hungary. The IO detects any foreign intentions and actions aimed at the threatening of the security and financial situation of the national economy, and participate in the

detection of the illegal circulation of internationally controlled products and technologies.

In the scope of law enforcement activity, the IO collects information on organized crime abroad threatening national security, in particular, on terrorist organizations, illegal drug and arms trafficking, as well as on the illegal international circulation of weapons of mass destruction and the components thereof, and the materials and means required for their production.

Furthermore, the IO is responsible for the security of the Hungarian establishments (institutions) and facilities abroad that are important to the activities of the government, and carries out the tasks of national security and operational protection of individuals and facilities falling within its competence. The IO carries out the internal crime prevention and crime detection monitoring tasks concerning to its own staff members and performs the additional supervisions of its own procurements under the government decree on the special rules of procurements affecting classified data, the country's fundamental security or national security interests, or requiring special security measures.

The IO has a special task that is not a task which must be performed by a national security service, thus the IO performs the cryptographic supervision and classification tasks of ciphering activities and algorithm used for protection of classified data and the cipher devices used out of the national border, and produce a code book.

## b) Constitution Protection Office (CPO)

The Constitution Protection Office – in the structure of secret services – is responsible for counter-intelligence tasks, operated under the name of National Security Office from its establishment to 2010. Beyond the change of the name, there were changes in the tasks as well, when the responsibilities for detection and warding off terrorist acts were terminated directly. Indirectly of course constitution protection can justify detections against suspect terrorist groups or individuals.

Under its national security activities, the Constitution Protection Office detects and wards off any endeavours and activities of foreign secret services interfering with or threatening the sovereignty, or the political, economic, defence, or other important interests of Hungary; and the concealed endeavours aimed at the alteration or disturbance of the constitutional order of Hungary through illegal means; and finally the concealed endeavours threatening the economic, scientific and technological, and financial security.

In the scope of law enforcement activity, the CPO detects illegal drug and arms trafficking; pursues the detection of attempts against the state, criminal acts against humanity, criminal acts of escaping abroad, insurrection, jeopardizing of military preparedness. The CPO acquires information on criminal acts against national, ethnic, racial, or religious groups, disclosure of top secret and

secret data, imposing hazard to the public, violation of international legal obligations, hijacking of aircraft, incitement against the community, scaremongering, threatening with public menace.

Besides the above-mentioned tasks, the CPO provides for the security guarding of establishment (institutions) and facilities that are important with regard to the activities of the central state power and the government, carries out the tasks of national security protection and clearing of individuals falling within its competence. The CPO carries out the clearing, and related tasks, individuals applying for residence permit, asylum status and Hungarian citizenship, as well as, of individuals submitting visa applications.

The CPO contributes to detecting, preventing and impeding the illegal trade in internationally controlled products and technologies and devices and services of military technology, and to review their legal trade. Upon the request of the Head of the National Security Authority, the CPO conducts the industrial security clearances within its competence.

#### c) Military National Security Service (MNSS)

When the MNSS was established, the former two agencies delegated their power thereto, due to this fact the MNSS is responsible for counter intelligence and intelligence tasks as well. In the scope of law enforcement activity, we can notice expansion there through the MNSS received extra legitimacy concerning to acts of terrorism and arms trafficking, moreover a new task was delegated thereto, namely the MNSS – the only one among national security services – acquires information on any cyber-activity and cyber-organisations.

In the scope of national security activity, the MNSS detects any endeavours aimed at Hungary, implying offensive intentions; detects and averts foreign secret services' efforts affronting Hungary's sovereignty and defence interests, collects military political, defence industrial and military information that contributes the government's decision-making process.

Furthermore, the MNSS detects and averts in its area of responsibility any relevant covert efforts aimed at disturbing or changing Hungary's constitutional order by using unlawful and/or illegal means. The MNSS collects information on any effort and activity threatening the Hungarian Defence Forces' units and personnel deployed in the operations and takes part in their national security protection, training and support. The MNSS provides any relevant information to support the operational planning activity of the General Staff concerning its international missions. As a new task, the MNSS collects information on any cyber-activity and cyber-organisations violating Hungary's defence interests. The MNSS also collects information on terrorist organisations threatening national security, provides data on information protection planning activity of the Ministry of Defence (MoD) and the General Staff.

In the scope of law enforcement activity, the MNSS collects information on illegal arms trafficking threatening national security, organised crime jeopardising the MoD and the HDF in carrying out their legal tasks, including illegal drug and arms trafficking.

In the field of its activity, the MNSS – until an investigation is ordered – pursues the detection of attempts against the state, criminal acts against humanity, criminal acts of escaping abroad, insurrection, the jeopardizing of military preparedness, acts of terrorism. The MNSS collects information on criminal acts against national, ethnic, racial, or religious groups, disclosure of top secret and secret data, imposing hazard to the public, violation of international legal obligations, hijacking of aircraft, incitement against the community, scaremongering, threatening with public menace and the violation of obligations regarding the circulation of internationally controlled products and technologies. Furthermore the MNSS detects all kind of criminal acts which can jeopardise the implementation of the legal responsibilities of the MoD and the HDF. Finally, the MNSS performs the relevant national security-related tasks in relation to any defence industrial research and development, production and trade-related activity at the competent MoD or HDF organs.

Besides the aforementioned task, the MNSS participates in the detection, prevention and hindrance of the illegal circulation of internationally controlled products and technologies, and of military hardware and services, and the control of the legal trade thereof. The MNSS provides security and protection to the relevant strategic military organisations, installations as well as the governmental and military command and control facilities that are important with regard to the activities of the Government, performs the tasks of national security protection and clearing of individuals falling within its competence, and carries out the internal crime prevention and crime detection monitoring tasks and integrity test concerning to its own staff members.

Upon the request of the Head of the National Security Authority, the MNSS conducts the industrial security clearances within its competence.

#### d) Special Service for National Security (SSNS)

The Hungarian structure mostly differs from the international practice with the existence of SSNS, because there is nowhere – except the USA – an independent agency for supporting secret information gathering. But the American NSA or NRO differs from the Hungarian solution, because the SSNS not only act in the field of technical support for secret information gathering, but provides nearly all types of technical and operational support for secret information gathering. The consequence of this special situation is a polemic concerning to the status of the SSNS, because the SSNS fulfils and supports only the secret information gathering activity from the wide range of national security activities, and even these tasks are carried out upon request of competent authorities, not for its

own initiation. Furthermore, the SSNS provides this support activity not only for the national security services, but for the law enforcement agencies (Police, National Protective Service, Counter Terrorism Centre), the National Tax and Customs Administration of Hungary, and the Prosecution as well. Thus we cannot apply the differentiation that we used concerning to the aforementioned services, due to that fact that the SSNS does not have indirect tasks in the field of national security and law enforcement, but has technical ones, supporting governmental activity and public authorities. Hence the SSNS can be considered rather an agency than a typical national security service.

The task of the SSNS under the law is that – upon written request – to provide services, using the special means and methods of intelligence gathering and covert acquisition of data and support the secret information gathering activities of organizations authorized by the law to do so, and to provide the special technical tools and materials necessary for their secret intelligence gathering activities. The SSNS provides special telecommunications connection for users specified by the Government. The SSNS supervises, in its administrative authority, the protection of security documents; pursues expert consulting – and under the rules of other special legislation – forensic activities. Finally, the SSNS provides security check of individuals falling within its competence, and carries out the operational protection of its premises.

## **Characteristics of the Hungarian national security organisational structure**

The organisational structure of Hungarian national security services and their competence is regulated at the highest possible level. The Fundamental Law of Hungary contains the fundamental regulations, and the further regulations are detailed in laws, and decrees. The Hungarian organisational structure – established at the time of the regime change – is a competitive structure where national security services compete with each other and with the law enforcement agencies as well.

The tasks of the national security services were determined in relation to each other, still there are duplications, but the conflicts of competences can be avoid using the regulations of jurisdiction. The interdependence of the two traditional national security services is the consequence of their tasks, but their activity in the territory of Hungary is not unambiguous under the NSS Act. There is no satisfactory distinction between the law enforcement tasks of national security services and tasks of the crime-detection either, which can lead to conflicts of competences with the Police.

The modified direction and control system – after the change of Government in 2010 – can lead to drifts to different directions in the case of national security

services. The characteristic of competitive services is that they compete for the attention of the decision maker with the information acquired and evaluated by them. In this area, the IO – which is under the direction of the Prime Minister – can become the dominant governmental information source, due to the fact that the relationship between the Prime Minister and CPO or MNSS is not so direct.

The CPO is under the direction of the Interior Minister, who controls the Police as well, thus the law enforcement characteristic of the CPO can become stronger. The SSNS is also under the direction of the Interior Minister, so there can be an increase in its capacity rate for the law enforcement tasks for the Police, and the consequence thereof is that the means and methods of secret information gathering will be less available for the IO and the MNSS. To compensate this situation, these services can improve their capacity in this field, which can result duplications.

The background of a structure, which consists of several organisations, is the high operational cost. This is compensated some level with the centralization of technical intelligence in Hungary, because the concentration of the rather costly means in the SSNS can lead to positive figures of the budget. Furthermore, it allows that the latest technical equipment can be uniformly used by all the services and the level of technical development is not depend on the budget of the economically independent services.

## **Data processing by the national security services**

The national security services – to fulfil their responsibilities – acquire data and information from different sources, they classify and analyse these collected data, and finally they come to conclusion.

In the course of acquiring data, it is unavoidable that personal data might be collected as well, or the collection of certain data might violate the privacy law.

Under the principle of data processing, personal data may be processed when the data subject has given his consent, or when processing is necessary as decreed by law, and that way as it is laid down in the regulations. The NSS Act provides authorization for processing personal data and data of public interest to the services and declares the data collection sources. Under the regulation, the national security services collect data through the voluntary or compulsory, as prescribed in the NSS Act, supply of data by the person concerned; from open sources; through the supply of data by the organisation processing the data; through the gathering of intelligence.

The Act – besides that it declares the sources of information – defines the order between the sources which has a main role in the application of the requirements of necessity and proportionality. Under the principle of necessity, national security services are obliged to use means that are essential for attain-

ning the given objective and, at the same time, restrict the personal rights of the person concerned the least. Which means that, if the necessary data is available from an open source, the services are not allowed to request for information or use secret information collecting means or if there is necessity for using secret information collecting means which violate the privacy law, the usage of less restrictive mean has priority?

The third principle of data processing is the principles of purpose limitation, so data processing is possible for the origin purpose thereof. Corresponding to this, the NSS Act declares that national security services process data exclusively for fulfilling their responsibilities under the law and they use the data they acquired only for the purpose serving as legal basis for the ordering of the acquisition of data unless the data imply the realization of the fact of a criminal act to be prosecuted ex officio, or form a basis for the obligation of providing information for another national security service.

There was a relevant change concerning to the control of lawful data processing at the beginning of 2012, when the regulations related to the Commissioner of Fundamental Rights were set aside.

## **Secret information gathering**

The national security services may pursue the secret information gathering. This is a way of information gathering which restricts the human rights in a certain way, furthermore the fact of information gathering remains hidden before the person concerned. The Hungarian services are entitled to use that means and methods solely that are exhaustively listed in the law.

Those rights that can be restricted:

- right to personal freedom,
- right to inviolability of premises,
- right to privacy and correspondence,
- right to the protection of personal data,
- right to access data of public interest,
- right to the protection of property.

Under the principle of necessity, the national secret services apply the means and methods of secret information gathering if the data – required for the fulfilment of the tasks – cannot be acquired in any other manner. The restriction of rights has to satisfy the requirement of the principle of proportionality as well, according to this that means or methods must be chosen in the course of action which is the least restrictive to person concerned. From the prospect of the level of the restriction of rights, the Hungarian jurisdiction differentiates



between secret information gathering not subject to outside authorization and subject to outside authorization.

The secret information gathering not subject to outside authorization involves those activities, which restrict the rights in a lower level, due to this fact that the application of these restrictive means can be authorized in the procedure of the internal authorization-controlling structure and high level of control is not required. Activities belong thereto, partly means of the secret information gathering (secret contacts with private individuals; interception of conversation), partly methods of the secret information gathering (asking for information, covert information collection), and partly supportive activities (usage of covert document, establishment of information system). There is another opportunity in this field: an “impunity agreement” can be concluded to the public prosecutor in that case if the national security interest in the co-operation with the person concerned is of higher importance than the interest in the assertion of the penal claim of the state. The conclusion of the impunity agreement, per se, is not a method of information gathering, but it is a supportive activity for the fulfilment of information gathering, due to the fact that this opportunity is only the means of conviction of the secret contact.

The Hungarian national security services can apply the most restrictive means under an outside authorization solely. The reason for that, is the fact that the application of these means violates the rights of the person concerned and those who are in connection therewith, on a very high level, therefore an independent authority – separated from the national security sphere – is required for the decision in the question of necessity and proportionality of the application. The entity of the authorizing body depends on the responsibilities of the national security services, in the case of secret information gathering concerning to the national security tasks, the authorizing body is Minister responsible for justice, but in the case of secret information gathering concerning to law enforcement tasks, the authorizing body is the court.

Under the regulations of the secret information gathering subject to outside authorization, the national security services are entitled to search an apartment in secret, monitor and record events in the apartment, open private correspondence, intercept phone and fax communications. The NSS Act was modified finally – expected for years – from 01. January 2011, and thanks thereto, the national security services became entitled to use new means. The introduction of these new means were necessary – which had been recognised for years – due to the fact that the information society came into existence and ways of communication and contact between people were not the letter, phone or e-mail anymore, but the social network, and communication via internet have come into front.

The national security services – with this new authorization – can control the content of the computing devices without that they search it, take it and record the content thereof in physically in the apartment. They are entitled to monitor

files and directories continuously stored on computers, laptops, smart mobile phones, E-books, or tablets. They can search and select between the data, and they are entitled to use special functions, like the following: print-screen, pictures of camera, saving GPS data, recording keyboard presses. This secret information gathering means – beyond the former static data which existed at the time of the secret search of the apartment – provide the opportunity for the continuous control, through that the activity of the person concerned can be followed all day long.

The opportunity of the interception of wire communication expands the opportunity of the interception of communication via electronic communication services. Data transmitted via this channel – for examples communication via internal communication network, or a peer-to-peer communication of two devices, or control of WIFI hotspot – could become controlled.

With the introduction of this new means, the national secret services are entitled to use spy wares, Trojans and different male wares, but there is no authorization for one activity, namely they are not entitled to cause damage in the computing system.

## Bibliography

- Bejczy Alexa: Titkos Információgyűjtés vs. Jogállam, Phd. értekezés, Eötvös Lóránt Tudomány Egyetem Állam- és Jogtudományi Kar Büntető Eljárásjogi és Büntetés-végrehajtási Jogi Tanszék, Budapest, 2011.
- Dezső Lajos - Hajas Gábor: A nemzetbiztonsági tevékenységre vonatkozó jogszabályok. Budapest, HVG - Orac, 1998. ISBN 963-821-375-2
- Finszter Géza: Ismét a nemzetbiztonságról. In: Belügyi szemle, 1999. 47. évf. 4-5. sz. –pp. 5-19. p. ISSN 1218-8956
- Hetesy Zsolt: A titkos felderítés, Phd. értekezés, Pécsi Tudományegyetem Állam-és Jogtudományi Karának Doktori Iskolája, Pécs, 2011. [http://nbsz.gov.hu/docs/pub\\_Hetesy\\_nyilv\\_ertekezes.pdf](http://nbsz.gov.hu/docs/pub_Hetesy_nyilv_ertekezes.pdf)
- (2012.11.09.)
- Szikinger István: A nemzetbiztonság védelmének alkotmányos alapkérdései. In: Belügyi Szemle, 1999. 47. évf. 4-5. sz. –pp. 112-122. ISSN 1218-8956
- A nemzetbiztonság általános elmélete. Szerk.: Dobák Imre, Budapest, Nemzeti Köszolgálati Egyetem, Nemzetbiztonsági Intézet, 2014. ISBN 978-615-5305-49-8
- Case of Klass and Others v. Germany (Application no. 5029/71) Judgment of September 1978,
- <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57510>
- (2013. augusztus. 25.)
- Act X of 1990 on the temporary regulation of the special means and methods of secret services
- Act CXXV of 1995 on the National Security Services
- 31/2001 (VII.11.) AB határozat, Forrás: Az Alkotmánybíróság határozatai 2001. -pp 258-286
- ([http://www.mkab.hu/letoltesek/2001\\_0029\\_0572\\_tuh\\_mk.pdf](http://www.mkab.hu/letoltesek/2001_0029_0572_tuh_mk.pdf), 2013.03.09.)
- 2/2007 (I.24.) AB határozat, Forrás: Az Alkotmánybíróság határozatai. Első kötet. 2007. –pp 65-106.
- ([http://www.mkab.hu/letoltesek/2007\\_i\\_1\\_1125.pdf](http://www.mkab.hu/letoltesek/2007_i_1_1125.pdf), 2012.10.04.)