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Thoughts on the Purpose and Significance of Legal Education in Military National Security Training

Some level of legal education can be found in almost all Hungarian undergraduate and Master's degrees. In Hungarian national security education there is a complex system of legal subjects, at the centre of which is the subject of the three-semester national security law. The most important legal subjects in military national security training are basic legal knowledge, national security law I–II–III, security challenges and criminal law, and military law.

Keywords: national security education, basic legal knowledge, national security law, security challenges and criminal law, military law, Department of State Security, Institute of National Security

1. The purpose of teaching legal subjects in national security education

There are many definitions of the concept of law all the way back to Roman law. In short, the law can be defined in the most general sense as a set of rules of conduct, the establishment of which is always linked to public bodies, which is why they are generally binding in a given society and are ultimately enforced by public bodies. An ordered set of laws that exist in a given country at a given time is called the legal system of that state. Based on the grouping of the famous Roman jurist Ulpianus, the legal system can be divided into two major areas: public law and private law. The fundamental difference between the two areas is that in public law, in each case, the state exercising public power is at least one of the actors, i.e. the typical characteristic is subordination, while in private law there are legal entities in a subordinate relationship with each other. The legal system is also divided into rights. Legislation regulating the

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same type of social relations in the same way belongs to one branch of law. Examples of such rights are civil law, administrative law, constitutional law, criminal law, etc.²

Some level of legal education can be found in almost all Hungarian undergraduate and Master's degrees. In Hungarian national security education there is a complex system of legal subjects, at the centre of which is the subject of the three-semester national security law. As such, "national security law" does not exist in the Hungarian legal system as an independent right. This is an intersecting field of law, that is, the body of law that we are currently teaching in university and college training in national security in the 21st century. These rights belong to public law without exception. Administrative law provides the backbone of the material of national security law, but it also has serious areas of constitutional, criminal and international law. In addition to law in the field of national security, we teach a number of other legal subjects in both undergraduate and graduate courses, such as basic legal knowledge, constitutional law, the organisation and operation of public administration, law of war, and so on.

Legislation related to national security has appeared in Hungarian legal history relatively late. Their taxative enumeration would stretch the scope of this study. Therefore, we only point out that an article of Act III of 1921 is considered one of the precursors to the Convention on the Protection of the State and Social Order.³ If we want to go back even earlier in the Hungarian legal history, we can mention the service instructions issued in 1850, which legally established the Evidenzbüro, an organisation performing military and civilian response to the Austro–Hungarian Monarchy.⁴

All the legal predecessors of the Hungarian national security organisation system taught the most important provisions of the legislation necessary for the work, within the framework of various courses, and the teaching of national security (then still state security) legal norms in Hungarian higher education began half a century ago. The "forerunner" of the current Hungarian national security training started its operation with the establishment of the Police College in September 1971 under Statutory Decree No. 39 of 1970. The most important task of the Department of State Security, established at that time, was to ensure the protection of the socialist social and economic system. "The task of the Department of State Security has been to provide advanced training for State Security Operations officers who can be employed in any job as a response officer. The theoretical work was mainly based on the experience of the Police Officer Academy, which taught the principles, tools and methods of state security work, while the Foreign Language College taught the methods of counterintelligence and used the knowledge of a specialist group on the

² István László Gál (ed.): *Nemzetbiztonsági szakági jogi alapismeretek* [Basic Knowledge of National Security Law]. Budapest, Nemzeti Közszerzői Egyetem Közigazgatási Továbbképzési Intézet, 2018. 7.

³ See Pál Agyal: *A magyar büntetőjog kézikönyve 4. Az állami és társadalmi rend hatályosabb védelméről szóló 1921. III. t.-c.* [Handbook of Hungarian Criminal Law 4. Act III of 1921 on the More Effective Protection of State and Social Order]. Budapest, Athenaeum Irodalmi és Nyomdai Rt. Kiadása, 1928.

⁴ Péter Jagadics et al.: *A magyar katonai elhárítás története 1918–2018* [The History of Hungarian Military Counterintelligence 1918–2018]. Budapest, Metropolis Media Group Kft., 2018. 16.

study of the enemy.”⁵ In addition to teaching professional subjects, the Department of State Security also taught special legal knowledge, and even the staff of the department participated in the opinion of the legal guidelines for state security work and the draft legislation.⁶

In 1990, the Department of State Security at the RTF (the former police academy of Hungary) was abolished, graduating students were issued with an advanced state examination, and first- and second-year students were transferred to the field of crime. After that, for a few years, national security training disappeared from the range of Hungarian higher education, and it continued within the framework of courses. In Hungarian military higher education, we have been teaching national security at college level since 2005 and at university level since 2009, during which I have been participating in the teaching of legal subjects since 2010. “Also with regard to national security training – although the elaboration work started earlier and a number of special training initiatives appeared – the establishment of an independent course, which mainly serves the training needs of the military in the field of national security, could only take place at the Zrínyi Miklós National Defence University. The next significant step was the establishment of the Institute of National Security in 2012, providing an opportunity for a focused appearance of military and civilian national security training.”⁷

The teaching of legal subjects has been practically unchanged since 2012, adapting to the constant changes in the legislation. The special role of legal education in the basic training of military national security is also underlined by the fact that the only exam during the six semesters is the legal exam, which consists of three subjects (four subjects in total): law in national security I–II, military law and constitutional law. “Employees working in the field of national security need special knowledge and professional qualifications (competencies) that can be easily separated from other areas and occupations. As it is not possible to obtain the necessary knowledge about the labour market, and it is not possible to acquire this special expertise before entering the career due to understandable security reasons, the services must ensure the training and professional preparation of the employees.”⁸ Due to the special nature of the training, almost all subjects contain some form of legal knowledge, as the entire sphere of national security has been built up under strict legal regulations within the framework of the rule of law since 1990. The most important legal subjects in military national security training are basic legal knowledge, national security law I–II–III, security challenges and criminal law, and military law.

⁵ Béla Révész: Az állambiztonsági szervek politológiai kutatásainak kérdéséhez [The Question of Political Science Research on State Security Agencies] *Acta Universitatis Szegediensis: Acta Juridica et Politica*, 66, no. 17 (2004). 29.

⁶ Révész (2004): op. cit. 37–38.

⁷ György Fialka et al.: Az állambiztonsági felsőoktatás rendszerváltozás előtti kerete és annak lezárása [The Framework of State Security Higher Education before the System Change and Its Closure]. *Nemzetbiztonsági Szemle*, 8, no. 3 (2020). 42.

⁸ István Héjja: A katonai nemzetbiztonsági képzések helyzete (1990–2012) [The Situation of Military National Security Training (1990–2012)]. *Nemzetbiztonsági Szemle*, 2, Special Issue 1 (2014). 16–17.

2. Basics of law

The leaders of the states, the shapers of political decisions can make effective and reasonable decisions only if they are well-informed, rely on credible and reliable information, know the relevant circumstances influencing their decisions, the aspirations of others and forecast the consequences of their planned actions.⁹ The aim of the Basic Law course is to acquaint the students of the national security training with the basic institutions of the Hungarian legal system, the hierarchy of legal sources, the methods of legal formation, the concept and stages of the application of law. The acquisition of basic knowledge of the state, the forms of state, the concept of the political system, and political parties will facilitate the successful completion of subsequent studies.

3. National security law

As we have already pointed out, the law of the field of national security is not a separate law, but rather consists of the legislation of an overlapping field of law, i.e. several fields of law. In my opinion, the Hungarian national security law is the totality of the legal regulations that form the legal framework for the structure and operation of the Hungarian national security services and the legal environment for the day-to-day performance of the tasks of the national security services. Thus, it is primarily the rules of administrative law, constitutional law, criminal law, criminal procedural law and international law that constitute this area of public law (which is therefore not an independent branch of law). It was necessary to arbitrarily designate the topics taught, which could be included in the subject matter within the number of hours provided by the training.

Within the framework of the subject national security law I of the Legal Knowledge in the field of National Security, we teach the most important provisions of Act CXXV of 1995 (Nbtv.), including the first five years after the change of regime, when Act X of 1990 regulated this area. In the sphere of national security, the date of the “regime change” can be dated 5 January 1990, when the Danubegate scandal on the destruction of documents of state security bodies broke out. One of the consequences of the scandal was the transformation of the entire Hungarian state security structure. As a result of the events, state security agencies were reorganised in a short period of time to bring their operations in line with the new constitutional requirements.¹⁰ Partly as a result of the Danubegate scandal, the National Assembly enacted Act X of 1990 on the Temporary Application of Special Secret Service Tools and Methods after the regime change, thus authorising the national security services to use such tools and methods. The government also adopted Decree 26/1990 (II.14.) on the temporary regulation of the performance of national security tasks. This regulation

⁹ Jenő Izsa: *Nemzetbiztonsági alapismeretek A titkosszolgálatok működése* [Basic Knowledge of National Security. The Functioning of Secret Services]. Budapest, ZMNE, 2009. 24.

¹⁰ See Géza Finszter – József Pajcsics: Az állambiztonsági tevékenység alkotmányos szabályozása [The Constitutional Regulation of State Security Activities]. *Magyar Jog*, 37, no. 1 (1990). 31–41.

defined in sufficient detail the organisational structure of the new national security services and the tasks of each national security service. It also stipulated that the services could not exercise official authority.¹¹

The subject matter is in line with the structure of the Act on National Security Services, adopted in 1995 and still in force:

- the organisation and status of national security services
- tasks of national security services
- management and direction of national security services
- parliamentary scrutiny of national security services
- personnel of national security services
- operating principles of national security services
- measures to be taken by national security services
- data management of national security services
- secret collection of information under the Nbtv.
- national security protection and control

Within the framework of this subject, students learn the most important provisions of Act CLV of 2009 on the protection of classified data. The growing importance and value of information is the main reason why intelligence organisations operate in all developed states. Even the states allied with our country often do not want to share certain information with us.¹² At the same time, the Hungarian state has secrets to protect, and of course we want to keep secret the methods and sources¹³ by which we obtain such information. These are primarily protected by the national security services dealing with counterintelligence (in Hungary, the Office for the Protection of the Constitution and the Military National Security Service), and one of the means of protection is through Hungarian criminal law, misuse of classified information and various types of espionage.

It is also essential for the smooth operation of state bodies and other bodies performing public tasks that certain data related to their operation should not be disclosed or made known to unauthorised persons. These data may be of different significance and should be taken into account when providing criminal protection.¹⁴ The cross-border information economy has become an indispensable part of modern politics today, and the dynamics triggered by cross-border information processes have redefined security in a radical, sometimes inconvenient way.¹⁵ For this reason,

¹¹ József Boda: A Nemzetbiztonsági Szakszolgálat helye és szerepe a rendvédelemben [The Place and Role of the Special Service for National Security in Law Enforcement]. In Gyula Gaál–Zoltán Hautzinger (eds.): *Tanulmányok „A biztonság rendészettudományi dimenziói – változások és hatások” című tudományos konferenciáról* [Studies from the Scientific Conference Entitled “Dimensions of Security in Law Enforcement – Changes and Effects”]. Pécs, Magyar Hadtudományi Társaság Határőr Szakosztály Pécsi Szakcsoport, 2012. 120.

¹² Mark M. Lowenthal: *Intelligence: From Secrets to Policy*. Washington, D.C., CQ Press, 2012.

¹³ Protecting resources is also a basic requirement for intelligence and response. Not only a legal and professional requirement, but also an ethical one: “One element of an intelligence ethic is the protection of resources against external and internal threats. In practical terms, this means protecting the resource not only from the enemy, but even within our own organization” (Shlomo Shpiro: *Speak No Evil. Intelligence Ethics in Israel*. In Jan Goldman (ed.): *Ethics of Spying*. Lanham–Toronto–Plymouth, the Scarecrow Press, 2010. 62).

¹⁴ József Földvári: *Büntetőjog. Különös rész* [Criminal Law. Special Part]. Budapest, Tankönyvkiadó, 1978. 143.

¹⁵ Henry Farrell – Abraham L. Newman: *Of Privacy and Power*. Princeton, Princeton University Press, 2019.

it is justified to examine the possibilities and limitations¹⁶ of criminal law protection and the connection of facts protecting the same or similar legal subject matter as criminal offenses related to classified data to the protection of the secrets of the Hungarian state.¹⁷

The subject entitled National Security Law II is also part of the undergraduate curriculum. Within the framework of this subject, we will teach the knowledge of criminal law and criminal procedure that may be useful for the performance of the duties of the Military National Security Service. The tasks of the national security services include the detection of certain high-profile, usually serious crimes, but they may also have access to relevant information in connection with other crimes. In addition, there are crimes that can be committed by the personnel of national security services if they are unfamiliar with criminal law provisions. Until the investigation is ordered, the reconnaissance can only be carried out successfully if the personnel of the services carry out their work with basic knowledge of criminal law and criminal procedure. However, an investigation is not ordered in all cases. In such a case, it may be possible to recruit a person who is reasonably suspected of having committed a criminal offense on a charge basis within the limitation period. In addition, it is possible to conclude an agreement with the perpetrator, provided that the national security interest in the case is higher than the state's criminal and social interest in punishing the perpetrator, in full compliance with the relevant legal provisions.

The detection of criminal offenses is generally dealt by the legal staff of the services, but all staff must be aware of the most important criminal law provisions. It is necessary to know at a basic level the provisions of the General Part of the Penal Code, and the nature of the offences covered by the Special Part, the detection of which falls within the competence of the given national security service.¹⁸

National Security Law III is taught in the Master's program. Special topics include legislation on military equipment and dual-use items, specific accounting provisions in the field of national security, certain fundamental rights restricted in the course of professional service, the protection of personal data and the disclosure of data of public interest, and major constitutional court decisions affecting the operation of national security services. As this subject is part of the Master's program, we already assume the basic professional and legal knowledge (primarily the knowledge of the Nbtv. and the Mavtv.) on which the curriculum is based.

¹⁶ Over the past decade and a half, more and more Western authors have criticised the current rules on state secrets in light of the balance between constitutional rights and branches of power. According to a couple of authors, the current U.S. regulations, for example, weaken the balance of power and also harm the public interest (William G. Weaver – Robert M. Pallitto: State Secrets and Executive Power. *Political Science Quarterly*, 120, no. 1 (2005). 85–112). It is also criticised that the role of the judiciary in controlling and restricting secrecy has been greatly weakened (Meredith Fuchs: Judging Secrets: The Role Courts Should Play in Preventing Unnecessary Secrecy. *Administrative Law Review*, 58, no. 1 (2006). 131–176). Nowadays, therefore, researchers dealing with the topic also intensively deal with the problem of the legitimacy and scope of state secrets (See Loch K. Johnson (ed.): *The Oxford Handbook of National Security Intelligence*. Oxford, Oxford University Press, 2010. 657–672).

¹⁷ István László Gál: *A magyar állam titkainak büntetőjogi védelme* [Protection of Hungarian State Secrets under Criminal Law]. Budapest, Ludovika Egyetemi Kiadó, 2021. 14–15.

¹⁸ Gál (2018): op. cit. 58.

4. Security challenges and criminal responses

The aim of this special law course is to present the students' responses to the security challenges of the 21st century through the legal regulations of both Hungary and some key foreign countries. The effectiveness of criminal law regulation also depends to a large extent on other legislation and the current situation of the socio-economic environment, so the examination of the topic requires a complex approach. Topics include money laundering as a global economic security challenge, terrorist financing, the international arms trade, trade in military and dual-use goods, artificial intelligence and criminal law, blockchain technologies and cryptocurrencies as criminal challenges, and epidemic crises, as well as legislation and possible criminal responses to the migration crisis.

5. Military law

The teaching of the subject of military law also plays a key role in the basic training of military national security. This study is also part of the legal examination. The subject of the course is the following:

- application of international law and armed violence: *ius ad bellum* and *ius in bello*
- principles of international military law
- history of international military law, the development of the military law system (defining events, causes, conventions)
- the scope of international law of war, international and non-international armed conflicts and the consequence in terms of applicable rules
- What does it mean to be a warrior (combatant) who is eligible for this status?
- identification of military targets
- applicable combat equipment and methods of warfare
- protection of the civilian population during warfare
- specially protected persons and objects
- prisoners of war
- International Committee of the Red Cross and its tasks
- prosecution of cases of violation of the law of war before Hungarian judicial forums
- prosecution of international criminal judiciary for violations of the law of war

The importance of military law knowledge has also been highlighted by the recent South Slavic crisis and the current Russian–Ukrainian conflict (war). As their acquisition is a basic requirement within legal knowledge, we teach military law in basic training.

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