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Author's Summary

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**The secret information gathering, the principles, means and
methods thereof, opportunities of the application in the territory of
national security**

Booklet of PhD thesis

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SCIENTIFIC DECLARATION OF THE ISSUE

The topic of my scientific research is the procedure of an information collecting methods using for the effective crime detection, intelligence and counter intelligence activity by the state, namely the secret information gathering. The intelligence - evolving parallel to the development of the states - became the secret methods of the state authority. By using this method, states were able to monitor their neighboring countries, noted the hostile intentions thereof in time, or they could find the proper time for conquest. The counter intelligence evolving against the external threats developed in line therewith and finally the secret means appeared in the territory of law enforcement. In the sectoral acts concerning to the national security services and law enforcement agencies (Act on national security services, police, the public prosecution, custom authority and criminal proceedings) the secret information gathering is regulated as a separate legal instrument with the same content on purpose. By the virtue of the aforementioned starting point this study raises the following issues:

- We can generally observe in the results of domestic researches that the state authorities define their procedures which are closed to the public under one collective name, which is the “secret intelligence”. Furthermore they use the term of the “secret intelligence” and the term of the “secret information gathering” as synonyms. *Taking into consideration that the secret information gathering is an exact legal institution on legislative level, and the secret intelligence is a vocational term, the question must be raised what is the relationship between these two procedures used as synonyms in the national security and law enforcement procedures.*
- In spite of the fact that the competent authorities fulfill their tasks under the legislative rules which use the same terms, it is clear that the different sectors interpret these same terms differently. *The question could be derived therefrom, whether the different interpretations are based on different matter of principles or the issues which influence the secret information gathering are non-sectoral and define the same requirements all the members.*
- Recently the Constitutional Court and international courts declared in their judgements that the regulations laid down in acts do not necessarily provide the rule of law. And without doubt the surveillance of citizens with a procedure as an end in itself, or the restriction of their lawfully exercised rights or disorganization of their legally binding contracts could not be the goal of the secret intelligence. The tasks of the competent authorities are restricted to the detection of those persons or activities who and which cause danger to the

national security and they have to provide liberty to exercise rights by those persons who are not concerned. But an adequate system assumes that the term of secret information gathering are known and acknowledged by the legislator and the law enforcement as well for which such a definition is required that are exact and incorporates features from all sectors. *But that is a question whether one exact definition could be presented in the line of the different targets for which the secret information gathering are used for or it is more appropriate if the definitions are given sector by sector.*

- The technological development highly challenges the taxonomy of secret information gathering. The industrial technologies and modernization have reached such a high level, that lead to the explosion of information sources and the discovery of data sent via technical devices become decisive. *This leads to that new means and methods of secret information gathering are developed, and the integration of these needs the revision of the theoretical thesis.*
- From the middle of the last century the model of the state having care of its citizens and serving thereto was established. This has affect to the information gathering as well because it influences which secret information gathering means or methods could be used under which restrictive regulations by the authorities. In our days the principle ‘the end justifies the means’ could not be applicable, thanks to the rule of law and such restrictive instruments – legality, necessity and proportionality or even the ethical requirements – that could be derive therefrom. *As the consequence thereof, in the territory of information gathering the question must be raised whether which means and methods could be used by the national security services and law enforcement agencies and what are the limits of the usage.*
- The major goal of my study is to answer the following question: *how should be the taxonomy of secret information gathering modified to meet the requirements the principles of rule of law and the social demand as well.*

HYPOTHESIS

For the examination and presentation of the issues mentioned in the first chapter, I set the following hypothesis:

1. Actions against national security and the level of risk posed to society by the serious crimes present continuous challenge for national security services and law enforcement agencies. Harmful actions of foreign entities to national security and behaviors relevant under

criminal law appear in different forms inside or outside the country border. In the case of breaches of national security and law enforcement interests, the state authorities - operate on the requirement of rule of law - use the means of secret intelligence for the effective operational. They use the means and methods of secret information gathering as well for collecting the relevant data and information. *Secret intelligence could be differentiated from secret information gathering when the secret information gathering is only one mean of secret intelligence and where the forces, means and methods of secret information gathering have non-sectoral feature thus the secret information gathering can be taken as a non-sectoral and unified system.*

2. During the operation, the national security services and law enforcement agencies use the same term with different content. According to my opinion the most important reason for the existence of the different interpretations is that there is no one non-sectoral definition for the secret information gathering accepted by all members, even though the basic terms have the same meaning in all sectors. *The taxonomical basis of a uniformly interpreted secret information system is a non-sectoral definition.*
3. There is high probability for collision between the operation of national security services and law enforcement agencies and the constitutional and legal provisions. *Avoiding this collision, the usage of principles concerning to the entire taxonomy of secret information gathering are essential, taking into consideration of the requirement of all principles.*
4. The sectoral acts and the entire legal framework have high influence on the level of the taxonomy of secret information gathering. *Public acts – suitable for the requirement of fundamental principles and uniformly regulating the taxonomy of secret information gathering – are necessary for the effective operation of national security services and law enforcement agencies and for the termination of different interpretation by sectors.*

RESEARCH TARGET

For the purpose of affirming or dis-affirming the hypothesis, I set the target to scrutinize and present whether the secret information gathering applied by the national security services and law enforcement agencies constitutes a coherent system or not.

If it is coherent, we could agree on a definition, which is acceptable by the subsystems. In my opinion it is necessary that the concepts of the secret information gathering be interpreted in the same way in different subsystems, and the requirement for that the taxonomic content of the elements of definition of the secret information gathering should be defined.

It is also an important target to examine the principles which influence the taxonomy of the secret information gathering from a closer aspect, to develop the list of the relevant principles, and detailed the content of these principles. Meanwhile an unambiguous requirement system concerning to all segments should be set up for the practice and the science as well.

As a last target, I intend to scrutinize the provisions of the secret information gathering act in force. In the Hungarian taxonomy be in force and come into force, I will search for those incoherent regulations – if they exist – which affect adversely the whole system, and for the purpose of improving the provisions I will present some recommendations for the legislation and law enforcement.

RESEARCH METHODS

My research concentrated into the taxonomy be in force and applied in the time of preparing. But for the cognition of the relevant terms and phenomena, looking back to the near history was necessary. I started the examination of the taxonomy from the end of the Second World War. The Hungarian Parliament adopted new acts on 13th June 2017., which modify significantly the system of secret information gathering. This new system will come into force on 1st July 2018. The examination of these new regulations - impacting the national security- was not avoidable. In my research I use primarily the method of theoretical-logical research. I analyse and compare the scientific approaches of several disciplines and compare it with the acknowledgeable practice. I do the analysis and synthesis of scientific results, relevant provisions of acts, court judgements. It is important the relevant elements of taxonomy - developed in different areas - be presented, and the common multiple should be found.

Beyond the comparative method, I used the method of abstraction, generalization, induction, deduction and analogy. In the case of acts and court judgements I used the method of jurisprudence.

Because my target was to approach the secret information gathering from the aspect of national security, I did not presented the Hungarian taxonomy in detail, but I analysed the anomalies, elements of requirements - derive from democratic social structure – which are in need of improvement.

A BRIEF FROM THE EXAMINATION CHAPTER BY CHAPTER

In the first chapter, I present the taxonomical elements of secret information gathering from 1945 to 1990 using the searchable documents. I analyse the social system independent functions

of the means and methods of secret information gathering and the features of the application. I specify the secret means of the social regime, the special procedural characteristic of the applications and I prepare the list of the means of secret information gathering. I examine the characteristic of the secret means developed in line with the different functions and their position in the state security and law enforcement.

In the second chapter, I analyse the new elements of the secret information gathering which appeared as the consequence of the regime change. I scrutinize the new terms of the taxonomy, the meaning and the contingent content thereof. I make an attempt to prepare the list of the applicable means of secret information gathering under the first regulation of rule of law and I critically analyse the legal framework of that time.

In the third chapter, I present in four steps the non-sectoral definition of the secret information gathering. As I first step, I examine the system and the elements of the content of the secret information gathering under the acts in force. This part is followed by the negotiation of the relationship between the jurisprudence and the secret information gathering. I come to the conclusion that the jurisprudence accepts the operation of the secret information gathering under the rule of law and above all expects the principle of effectiveness of the fundamental rights. As the third step, I analyse the thesis of the military science where I position the secret information gathering in the intelligence cycle and I present its relationship to the open source intelligence. In the last step, I deal with thesis of the law enforcement science. I examine the possible effects of the new code of criminal procedures to the present system. I present the mutual factors on the different scientific territories and upon that base I draft the non-sectoral definition of the secret information gathering.

In the penultimate chapter, I negotiate the principles of the secret information gathering. I review the potential principles, I search for the principles prepared by the different disciplines and vocational areas and I examine the concerning attitude of the international organizations. I analyse the primary principles from different aspects and I thoroughly interpret their instructions concerning to legislator and law enforcement.

In the fifth chapter, I examine the legal framework of the secret information gathering from the perspective of polemics of the operation of national security. Besides the polemics revealed during the research, I explain the judgement of Szabó, Vissy case of the European Court of Human Rights, in which the inconsistencies of the Hungarian system are specified. In the first part of the chapter, I examine the taxonomy of the secret information gathering come into force

from 1st July 2018 from the perspective of elimination of these inconsistencies then I examine the application of the secret means in the new system.

In the final part of my study, I summarize those conclusions that I reached during my research, I confirm the hypothesis of my research, I define the new scientific results, then I present the applicability of the study and I provide recommendations for further research in this field.

SUMMARY OF THE RESEARCH RESULTS

In my study, I analyzed those subsystems where the secret information gathering are applicable through examination of the elements of the secret information gathering used for the purpose of national security, prosecution and law enforcement. I carried out a comprehensive research concerning to the fundamental issues of the secret information gathering. I searched for and found that key elements with which the secret information gathering could be exactly defined, I drafted those specifications with which the secret information gathering could be filled with content.

As the result of my analysis, I presented that the secret information gathering carried out by the national security services and law enforcement agencies is such an operation with integrated forces, means and methods which serves the effective fulfillment of the secret intelligence in line with its procedure developed in practice and the application of its toolkit.

Its legitimacy is independent from the existence and the form of the legal regulation, it is important means of the all-time state authority. The systems consist of subsystems distinguishable upon general purposes, but there is no reason for categorization upon the type of entities.

The secret information gathering - within the territory of secret intelligence - could be specified with specific features, I identified it as the part of the procedure which has special means and set of rules. I presented the feature of the elements of the secret information gathering available in the present taxonomy and the applicable toolkit. I identified the currently valid features of the secret information gathering through the analysis of the supportive forces, means and methods applied in the socialist regime and with analogy to refer to present days and with the analysis of the regulations after the regime change. Accordingly, the national security services and law enforcement agencies are entitled to apply human and technical means and methods of the secret information gathering activities and they can use supportive human sources and technical devices as well.

I analyze the features of the subsystems in the taxonomy for the purpose of a consistent definition and legal interpretation. I revealed the defectiveness of the different Hungarian taxonomical titles. I came to the conclusion that the taxonomic title of secret information gathering could be supported, which is in the title of the present study.

In my research, I compared the features of secret information gathering applied for the general purpose of the secret intelligence which helped me to present the features of this diverse activity. I came to the conclusion that the most common features of the subsystems are the follows:

1. fundamental definitions with the same text and content and
2. principles which determine the primary criteria of the system.

When I examined the dynamics of the definition of secret information gathering, I came to the conclusion that there is no one definition thereof accepted by all subsystems.

Through the analysis the vocational and legal regulations available to the public from the second half of the last century, I took through the empiric features of the taxonomy, I revealed the characteristics of the approaches applied by different disciplines and I determined their common elements. These common elements are the follows:

1. it can be solely applied by state authorities which are entitled in acts,
2. it contains solely to those forces, means and methods which are regulated in acts, with the procedural elements regulated in acts as well,
3. the application is hidden form the concerned person, it infringes the fundamental rights of the concerned person,
4. it does not contain to the preparation, analysis or assessing of the collected data.

During the preparation of specialties, I defined the relationship of the secret information gathering to other information collective procedures and I set up the distinctive characteristics from the open source intelligence. Thus information gathering of public data which are available to anyone using legal methods therefor could not be regarded as secret information gathering activity.

I make a non-sectoral definition for secret information gathering through the common elements of the empiric features presented in detail, and the scientific approaches.

Besides the definition, the fundamental principles define the taxonomical content of the secret information gathering. I set up the system of the fundamental principles through the examination of the relevant disciplines and vocational areas. In this taxonomy, the principles

of the secret information gathering could be specified as a two-tier structure. On the first tier, there are those principles which determine the theoretical and operational framework of the entire taxonomy, which I classified as Primary Principles. Primary Principles could be directly deduced from the democratic structure of the rule of law and vocational requirements. The second tier of the principles is called Vocational Minimum, under which those principles could be found that determine the conduct of the members of law enforcement and could be derived from the Primary Principles.

Thus I set up the list of the Primary Principles, which contains six fundamental principles: legality, necessity, proportionality, purpose limitation, control requirement, confidentiality. I detailed the content of the Primary Principles, I defined their meanings concerning to the legislator and law enforcement and the obligatory behavior standards derived therefrom. I prepared the list of Vocational Minimum as well and I presented their relationship to the Primary Principles.

During the examination of the application of the forces, means and methods of the secret information gathering by national security services, the third elements which influences the taxonomy is the legal framework. I identified several problems during the examination which adversely influences the coherency, homogeneity and the fulfillment of national security tasks in both regulations be in force and come into force from July 2018.

The modifying regulations to be imposed will bring significant changes in the subsystems of the secret information gathering. The law enforcement secret information gathering will be the part of the criminal procedure and the toolkit will be taken into different positions. This new toolkit system will be introduced nearly with the same content into the other subsystems. The existing division in the case of the application of toolkit upon the authorization will be maintained but the authorization of prosecutor will be introduced into the criminal procedure in the case of law enforcement secret information gathering. In my study, I draw the attention to those provisions which adversely influence the effective fulfillment of the task of the secret information gathering.

I identify as a further taxonomical problem the fact that those elements that were declared unlawful and principle-infringing in the judgment of the international court have not been modified yet. In my research, I presented significant contrasts between the Hungarian system and the opinion of international organizations detailed in the chapter IV. and V. Through examples and court cases, I demonstrated that according to the international affairs in the last

years there is the emphasis on the increased protection of the fundamental rights and the effective application of the secret means. Upon the study, multi-level authorizing and controlling system should be set up which – through the owned decision-making authority – could enhance the coordination of the lawful and professional fulfillment.

The problematic elements of the system demonstrably hold back the effective fulfillment of the secret information gathering and cause problems to the members of the law enforcement agencies in their daily routines. Difficulties could be occurred in the territories of the interpretation of the same terms, the data transfer between two subsystems, and the usage of data. This phenomena renders more difficult the unified representation of the interest of the national security services and law enforcement agencies. Several modifications because of the non-proper wording restrict the application of the concerned means and methods in an undesirable extent in the case of all subsystems, involving the national security tasks.

In my study I prove that the new regulation - against its stated intentions - does not improve sufficiently the cohesion of the subsystems, and in few territories it definitely hinders the secret intelligence. I propose a new exact categorization upon the forces, means and methods for all subsystems on the level of act.

The termination of the adverse effects and the introduction of the triple division of forces, means and methods could be fulfilled by modification of the adopted regulations at least. The essential statement of my study is that this issue is not only a vocational challenge on the level of subsystems, but it is highly important from the prospect of the defense of human rights. In addition the means listed in the concerning chapters of the sectoral acts of the secret information gathering constitute the restriction of rights of the involved authorities thus the revealed taxonomical inconsistencies could endanger the constitutional consideration of the secret intelligence. As a consequence thereof, I propose few concrete measures and the taxonomic standardization of the system of forces, means and methods.

In the study, I present that the ideal solution would be the development of a new legal structure. In this structure, the general provisions of the secret information gathering would be withdrawn form the sectoral acts and the code of criminal procedure and these general provisions would be regulated in one act concerning to all those authorities which carry out secret information gathering. The sectoral acts would contain the following provisions: the authorization for the fulfillment of the secret intelligence procedure, the listing of the means of secret intelligence, the procedural provisions for authorization, process control, post-control, remedy and data

management. The regularization of the secret information gathering, as one part and one means of the fulfilling procedure would be drafted in a separate act. With this structure the confusion of coherency derives from the direct legal framework of the certain subsystems and the inconsistency of the taxonomy would be terminated, and the integrated approach of secret information gathering would be unequivocally expressed.

THE NEW SCIENTIFIC RESULT

1. I proved with scientific methods that the secret information gathering – independently from the goal of the fulfillment – is a sui generis activity, practice it in an integrated force, mean and methodology system. In addition I proved that the secret information gathering has an own taxonomy and consists of subsystems distinguishable on the ground of general purposes.
2. I presented with the method of document analysis and observation the required conceptual elements of secret information gathering and I drafted the content of these conceptual elements and I laid down the non-sectoral definition of the secret information gathering.
3. I justified the list of the principles of the taxonomy of the secret information gathering by the method of analytic research and I defined the complete content requirements of the listed principles.
4. I proved with scientific methods the inconsistencies which could be found in the acts of secret information gathering and the taxonomic problems derived therefrom, I verified the necessity of termination concerning to these problems. I gave taxonomic proposals for the solution.

RECOMMENDATIONS

1. The relationship between secret intelligence and secret information gathering should be revealed in a research.
2. Further researches are proposed to reveal the sectoral features of the forces, means and methods of secret information gathering applicable in different subsystems.
3. The fulfillment of secret information gathering should be scrutinized in the different intelligence branches.
4. A research working group should be established from the members of military science, law

enforcement and jurisprudence which could provide the non-sectoral, consensus-based criteria of the secret information gathering for the legislator

USAGE OF THE RESEARCH RESULTS

In my study, I did the analysis of the status of the secret information gathering. I thoroughly analyze certain elements of the taxonomy, the conceptual definitions, the system of the principles, the legal framework, the dynamics of the toolkit, its procedural specifications, the taxonomic requirements of the rule of law and profession. The practical conditions of applicability is the presentation of the taxonomy of the secret information gathering and those certain elements which have not been drafted earlier by the involved persons:

1. the positioning of the secret information gathering activity in the system of secret intelligence carried out along different purposes,
2. the clarification of the primary definitions of the secret information gathering, and drafting the non-sectoral interpretation thereof,
3. the comprehensive presentation of the international and Hungarian environment which specify the rules of conduct of the secret information gathering,
4. by the comparison of the subsystems of the secret information gathering, the definition the catalog the toolkit usable upon vocational standards and the features of certain means,
5. through the catalog, the presentation of the relationship between certain activities, the rule of interaction and counteraction and the analysis of the taxonomical tensions,
6. the analysis of the potential effects of the modifications form 2018.

The study use the hypothesis that the Hungarian and the international law – along the defense of fundamental rights – limit the taxonomy of the secret information gathering into frameworks. These frameworks are continuously varied by the professional practice and case-law. Through the analysis and the systematization of the frameworks, it is a possibility to compare the legal background of the Hungarian secret information gathering against the entire requirements. In the drawn conclusions, I propose the modification of the taxonomy-determining regulations for the solution of the described problems. In the proceeding modification period, I propose to take into consideration that statement according to which the establishment of the national consistency of the secret information gathering could not be reached without the continuous advancing of the sectoral acts. There is a need for radical simplification of the provisions

through drafting one non-sectoral secret information gathering act. While doing so, these can necessarily happen:

1. the entire taxonomical revision of the different toolkit regulated in the sectoral acts, especially the means not subject to outside/judicial authorization,
2. the regulation of the requirements of Primary Principles concerning to the legislator on the level of act and their enforcement,
3. the termination of the revealed deficiencies in the system of the authorization of the secret information gathering, the development of the requirements of the provisions for the means not subject to outside/judicial authorization,
4. the reformation of the controlling mechanism and appeal system in the present and the adopted regulations which were found not proper by the court.

The study provides a comprehensive and a novel description from the taxonomy of the Hungarian secret information gathering, the taxonomy-determining factors and elements. Thus I recommend it to those ones who are interested in the past, the present and the future of the secret information gathering or wants to get a general view from this topic and its status from the near future. It could be used by those ones who intend to carry out scientific researches in the open-ended questions derivable from the applied, slightly unconventional approach which I used.

It could be useful for professionals who can receive theoretical background for confirmation or rebuttal of their daily routine and they can get practical advices on certain areas. Directors responsible for implementation could be able to decide on the strategic direction of the fulfillment of secret information gathering and the followed professional culture in their department upon their own evaluation of the scientific approaches and the theoretical deduction. It could provide clues for corrections or strengthening the human resources. In my opinion the presented results could be used on the academic trainings of National University of Public Service, Faculty of Military Science and Law Enforcement and the bachelor, masters and PhD. programs of the National Security Institute even as a school note.

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