

# NEMZETBIZTONSÁGI

# SZEMLE

MMXVII. V. ÉVFOLYAM KÜLÖNSZÁM

KÜLÖNSZÁM

SPECIAL ISSUE / 2017.



NEMZETI KÖZSZOLGÁLATI EGYETEM  
NEMZETBIZTONSÁGI INTÉZET  
BUDAPEST

# **NEMZETBIZTONSÁGI SZEMLE**

A Nemzeti Közsolgálati Egyetem  
Nemzetbiztonsági Intézetének  
elektronikus (online) megjelenésű tudományos folyóirata

**KÜLÖNSZÁM / 2017.**

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## **NATIONAL SECURITY REVIEW**

**JOURNAL OF  
NATIONAL SECURITY INSTITUTE  
NATIONAL UNIVERSITY OF PUBLIC SERVICE**

**SPECIAL ISSUE / 2017.**

**HU ISSN 2064-3756**

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# The secret police of the Socialist Federal Republic of Yugoslavia

Boda József<sup>1</sup>

## Absztrakt:

A polgári biztonsági-hírszerzési tevékenység intézményi kereteit 1899-ben hozták létre először Szerbiában. A Központi Államigazgatás módosításáról szóló törvényt 1899 októberében fogadták el a Népi Nemzetgyűlés Nisben tartott ülésén. Létrehozták a Belügyminisztériumban a titkosrendőrségi munka osztályát, amelynek feladata a belső államrend és a világi biztonság megőrzése volt. A polgári biztonsági-hírszerzési tevékenység első jogi keretei megszilárdításának napját Szerbiában, a jelenlegi biztonsági szolgálat, a Biztonsági Információs Ügynökség október 17-én ünnepli. A cikkben a szerző a különböző jugoszláv hírszerző szervezetek történetét tekinti át, és mutat be az 1944 és 2002 között titkos tevékenységeire néhány példát.

**Kulcsszavak:** gyilkosságok, elhárítás, hírszerző szolgálatok, titkosrendőrség, állambiztonsági szolgálat

## Abstract:

The civil security-intelligence work has been institutionalized for the first time in Serbia in 1899. A Law on amendments of the Central State Administration was adopted on October 5/17 1899 on the session of the National Assembly held in Nis. The Department for Secret Police Work was established within the Ministry of Internal Affairs, with task "to ensure the preservation of the internal state order and worldly security in general". Respecting the significance of the first legal structuring of civil security-intelligence work in Serbia, the current civil security service the Security-Information Agency celebrates October 17 as its day.<sup>2</sup> In this article the author goes through the history of different Yugoslavian intelligence organizations and introduces some examples on their secret activities from 1944 to 2002.

**Keywords:** Assassins, counterintelligence, intelligence organizations, secret police, state security service

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<sup>2</sup> *Security Information Agency website, <http://www.bia.gov.rs/eng/istorijat/vremeplov-006.html> (downloaded: 30 April 2017)*

## Introduction

The Kingdom of Yugoslavia (between 31 October 1929 and 6 April 1941) then Federal Republic (between 10 August 1945 and 3 February 2003) was situated in the Balkan Peninsula. On 25 June, 1991 Slovenia and Croatia became independent countries, they were followed by Macedonia on 8 September, 1991. Bosnia and Herzegovina proclaimed independence on 1 March, 1992. On 3 June, 2006 Montenegro, then on 17 February, 2008 Kosovo too proclaimed independence. The territory of the Socialist Federal Republic of Yugoslavia was 255 804 km<sup>2</sup>. Population: 21 155 000 people. Capital: Belgrade. Form of government: federal republic.<sup>3</sup>

### 1. The establishing of the Yugoslavian intelligence organizations

In the army of Yugoslavian partisans led by Josip Broz Tito (1892-1980) intelligence and security tasks were carried out by different organizations. Department for Protection of the People, (Орган Заштите Народа Армије, ОЗНА, Oddelek za zašćito naroda- OZNA) was formed in 1944 with the leadership of Aleksandar Ranković (1909-1983), which was the first (military) security agency of the Socialist Federal Republic of Yugoslavia (established in 1943). All OZNA tasks were divided into four groups:

1. intelligence
2. counter-intelligence
3. army security
4. technical/statistics<sup>4</sup>

OZNA had six divisions:

1. intelligence work,
2. counter-intelligence service in liberated territory,
3. counter-intelligence service in the army,
4. for statistics and technology,
5. for detecting and countering activities of foreign services (as of January 1945) and
6. for counter-intelligence protection of transportation objects and institutions in the country (as of April 1945).

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<sup>3</sup> RADÓ Sándor (szerk.): *Képes politikai és gazdasági világtatlasz*, Kartográfiai Vállalat Budapest, 1979., 224. o.

<sup>4</sup> Military Security Agency, [http://www.mod.gov.rs/multimedia/file/staticki\\_sadrzaj/skolovanje/katalozi/military\\_security\\_agency.pdf](http://www.mod.gov.rs/multimedia/file/staticki_sadrzaj/skolovanje/katalozi/military_security_agency.pdf) (downloaded: 30 April 2017) 2. o.

In 1946 OZNA split and the Administrative Directorate for Security of Yugoslav Army (Kontra-Obaveštajna Služba-KOS) was created and a civilian counterpart under the name of Administrative State Security Directorate which was transferred from the Ministry of National Defence to the Ministry of Interior.

## **2. The Administrative State Security Directorate (Uprava Državne Bezbednosti known as UDBA)**

The *Yugoslavian intelligence*, the Administrative State Security Directorate (UDBA) operated in a centralized structure. The organization was established on 13 March, 1946. UDBA was composed of six semi-independent secret police organizations — one for each of the six Yugoslav federal republics — they were coordinated by the central federal office. It was primarily responsible for internal state security. The UDBA targeted "domestic enemies", "right-wing bourgeois", Serbian, Croatian, Slovenian, Bosnian Muslim, Albanian separatists, Orthodox, Roman Catholic, and Muslim religious leaders, former Ustasha officials, Serbian royalist Chetniks, members of the Cominform, separatists, and nationalists.<sup>5</sup>

Throughout the years the UDBA underwent numerous reorganizations. Between 1946 and 1947 the UDBA was organized into districts. Following the reorganization in 1950 the intelligence and security activities concentrated more on internal security. The organization, as a state security directorate, was under the direction of the Ministry of Internal Affairs.

In August 1950 military-defense intelligence, which was handled by the 2nd Department Counterintelligence Service of the Yugoslav People's Army, and the regional and district departments of the I. Intelligence Division were combined, and as a result a decentralized, *united intelligence organization* was created. The majority of the officers in the organization started their careers in the partisan war and gained invaluable experience about the German and later the western intelligence organizations.

Following the abolishment of the Department for People's Protection (OZNA), intelligence and counterintelligence duties were carried out by the different ministries.

The Ministry of Internal Affairs coordinated the State Security Department (SSD).

The tasks of SSD were: organising service, undertaking measures and performing governing tasks with the aim of detecting and preventing activities oriented towards undermining and disrupting constitutionally determined economic, political and legal order and gathering information to this effect.

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<sup>5</sup> CARL Savich: *Yugoslav dissidents during the Cold War*  
<http://www.serbianna.com/columns/savich/090.shtml> (downloaded: 30 April 2017)



### **SSD had eight departments:**

1. Intelligence department,
2. Political department (struggle against internal enemy),
3. Counter-intelligence department,
4. Relations and keeping of records
5. Service for material and technical protection and financial affairs,
6. Counter-intelligence protection of the highest state and party officials,
7. Cryptography protection of secret data and
8. Personnel department.

State security work was decentralised, transferred to the newly established republic and provincial security services within republic or provincial secretariats responsible for internal affairs, and directed, coordinated and harmonised by Federal Secretariat for Internal Affairs (SSUP).<sup>6</sup>

The Service of Investigation and Documentation (SID) was transferred under the direction of the Ministry of Foreign Affairs.

The 2nd Directorate of the General Staff of the Yugoslav Peoples' Army co-ordinated the military counterintelligence service. SDB was authorized to utilize all instruments and methods for the sake of gathering intelligence. During its activity, the State Security Administration (SDB) enjoyed a wide range of powers, including classical police powers (identifications, interrogations, and arrests).

During the conflict with the Soviet Union the main focus of the Yugoslav intelligence services was on the number, location and armament of the Soviet troops stationed in Hungary. However, on the list of priorities, gathering intelligence on the Hungarian armed forces, internal security and the Yugoslav emigrants in Hungary were just as important.<sup>7</sup>

### **3. The State Security Service (SDB)**

During the Fourth Plenary Session of the Yugoslav Communist Party in 1966, a decision made and UDBA was reorganized as a State Security Service (SDB). The following tasks were given to SDB:

1. to act against the internal enemies of Yugoslavia;
2. to protect Yugoslavia from foreign intelligence services;
3. to act against anti-Yugoslav political émigrés;
4. to protect Yugoslav political and public officials;
5. to protect civil defense structures;
6. to engage in criminal prosecution;

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<sup>6</sup> Security Information Agency website, <http://www.bia.gov.rs/eng/istorijat/vremeplov-006.html> (downloaded: 30 April 2017)

<sup>7</sup> RITTER László: *Titkos háború Magyarország és Jugoszlávia között, História, 2010. 12. sz.*



7. to inform of any enemy activities against Yugoslavia.<sup>8</sup>

Until the death of Tito (1980) the organization was united but the republics were given a wide range of authority. Following the conflict in Kosovo, at the end of 1980, their authority was significantly downgraded.

SDB had a special unit the “liquidators” which assassinated perceived opponents of Yugoslavia in the USA and the Western Europe. These assassinations were the Yugoslav version of “targeted killings” and were conducted in the US and in Western Europe. Dragisa Kasikovic, the editor of the Serbian-American journal *Sloboda-Liberty* and his successor were suspected to have been assassinated by the UDBA in USA. Dragisa Kasikovic was stabbed to death along with his nine-year-old step-daughter Ivanka Milosevic in Chicago, Illinois in 1977. The UDBA was also suspected in the following murders of prominent Serbian dissidents: Ratko Obradovic in Munich, West Germany in 1969, Sava Cubrilovic in Stockholm, Sweden in 1969, Jakov Ljotic in Munich, Germany in 1974, Boro Blagojevic in Brussels, Belgium in 1975, Miodrag Boskovic in Brussels in 1976, Dusan Sedlar in Dusseldorf, West Germany in 1980, and Petar Valic in 1975.

During the 1970s and 1980s, more than 40 people were killed in West Germany by the SDB.<sup>9</sup>

After 1986 many people started publicly criticizing the SDB. As a result the party organizations were abolished in the SDB, and parliamentary control began by appointing a commission to monitor the work. The commission had no investigative powers and the head of the service was tasked simply to deliver requested information, even classified, to the commission. The above-mentioned events undermined the morals of the SDB, which formulated its own, unpublished regulations.

In 1990 the first democratic multi-party elections were held, which enhanced the process of democratization. Following the Croatian war in 1991, every republic formed its own secret police and united with the state security service of the Serbian Republic.

#### 4. The State Security Directorate

After the breakdown of the Socialist Federal Republic of Yugoslavia (SFRY), the State Security Directorate of the Republic of Serbia was established in the Republic of Serbia within the Ministry of Interior by the Law on Internal Affairs and

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<sup>8</sup> CARL S. i. m.

<sup>9</sup> CARL S. i. m.

the Decree on principles for internal organisation and systematization of working posts in ministries and specialised organizations from 1991.<sup>10</sup>

The State Security Administration (SDB) recruited criminals to carry out assassinations against the enemies of the Tito regime, the Yugoslav emigrants in Western Europe. These criminals were given false identifications, passports, the secret service rented apartments for their use and they were also promised impunity by the SDB.

The organization was so effective that between 1965 and 1990 they murdered more than 100 emigrants. Željko Ražnatovi Arkan started his career as an „assassin“, and became a popular icon as the leader of the Serb „Tigers“, a paramilitary formation, as well as the lord of the criminal underworld in Belgrade.

Following the breakup of Yugoslavia the new State Security Service, (*RDB - Resor Drzavne Bezbednosti*), located in Belgrade, continued the dubious activities. The service also recruited criminals in the paramilitary formations, who then were sent to the frontline in Croatia, Bosnia-Herzegovina and Kosovo. Such paramilitary units were not strong military forces but they willingly took up any dirty jobs without questions and they are known to have been responsible for the deadly episodes of ethnic cleansings.

Following the war in Bosnia and Croatia a special unit was formed in Serbia called „crveni bereci“ the „Red Berets“, which was built up of the veterans of the above mentioned paramilitary units, theoretically capable of carrying out counter terrorism duties.

The regime under Slobodan Milošević (1941-2006) also supported smuggling rings which helped to circumvent the sanctions imposed against the Federal Republic of Yugoslavia by the UN in May 1992.

The main leader of such rings was Mihalj Kertes (1947- ), the director of Federal Customs Bureau of Federal Republic of Yugoslavia, who remained a close associate and man of trust of President Slobodan Milošević until the last moments.

It was very revealing in terms of the regime's corruption that not long after the fall of Slobodan Milošević (March 2001), 624 kilograms of heroin, cocaine and hashish were found in the bank vaults of certain state security leaders and directors of the Ministry of Internal Affairs.

The Serbian political and business elite too had ties to the criminal underworld. Marko Milošević, the son of former Serbian President Slobodan Milošević, was the head of one of the largest cigarette smuggling rings.

According to the employees of an American research institution during the Milošević's regime the Serbian government bodies became a network of kleptocratic organizations, which main goals were to manipulate the bank system and

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<sup>10</sup> Security Information Agency website, <http://www.bia.gov.rs/eng/istorijat/vremeplov-006.html>, (downloaded: 30 April 2017)

to systematically ransack public property, to monopolize the profitable smuggling rings and to make profit of the war.

Among the main beneficiaries were the Milošević administration (SPS), Mirjana "Mira" Marković's (Milošević's wife) left wing party called the Yugoslav Left (JUL), the State Security Service as well as some politicians of the opposition and some criminals. Strong ties with organized crime of course led to many conflicts and the affected politicians and their circles were not exempt from the retributions.

Public safety got worse in 1998 when Radomir "Rade" Marković succeeded Jovan "Jovica" Stanišić as head of the State Security Service (RDB). Following the appointment of Marković a series of political assassinations started which forced Zoran Đinđić and Vuk Drašković, the leaders of the Serbian opposition, to flee to Montenegro for a while.

After the fall of Milošević, when the coalition of the Democratic Opposition of Serbia (Demokratska opozicija Srbije - DOS) came to power, they were sent clear messages at once that if they wanted change, they should get ready for war.

The first car that was blown up in the beginning of 2001 belonged to representative Čedomir "Čeda" Jovanović who was a close associate to Zoran Đinđić (1952-2003). A couple of months later a former State Security Colonel Momir Gavrilović was executed by the Serbian mafia.

The new leadership was unable to avoid confrontations with the Serbian mafia for long. The Zemun clan, which was the most powerful criminal organization in Serbia, started to carry out political assassinations as soon the Prime Minister of Serbia, Zoran Đinđić, made the first major steps to end organized crime.

The Mafia used the criminal members and commander of the well-known paramilitary unit the Red Berets to carry out the crimes. The peak of the series of murders was the assassination of Zoran Đinđić, which was carried out by Zvezdan Jovanović, a former Special Forces operative. The assassination of Zoran Đinđić made the governing politicians realize that not only the political stability of Serbia was in danger but their own physical existence as well.

Immediately after the assassination of Đinđić, the Prime Minister of the new government, Zoran Živković, declared a state of emergency and during the so called Operation Sabre they eliminated the Zemun and Surčin clans. Dušan Mihajlović Minister of Interior of Serbia declared that anyone who resisted police would be liquidated.

During the operation more than 10 thousand people were interrogated and 26 thousand people were arrested, among them the murderer of Zoran Đinđić, who was later convicted of his assassination. There were neither taboos nor „untouchable“ people any longer. Among the detainees were the widow of Željko Ražnatović (Arkan), Svetlana Ražnatović, known by her stage name Ceca, who was one of the most popular singers in Serbia, the head of military intelli-

gence as well as Rade Bulatović, who was the security adviser for Vojislav Koštunica, the president of Yugoslavia.

Operation Sabre was a critical turning point in the history of Serbia: the government defeated its most dangerous enemy and split with the unsustainable politics when the government not only tolerated but used organized crime for its own purpose.

The new circumstances made the leaders of the government to redefine the goals and interests of the nation. Following the breakup of Yugoslavia the state security organizations were transferred to Serbia.

The **Security Information Agency** was established in July 27, 2002 by the Law on Security-Information Agency. According to the law, for the first time in modern Serbian history civil security-intelligence work is separated from the Ministry of Interior.<sup>11</sup>

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<sup>11</sup> Security Information Agency website, <http://www.bia.gov.rs/eng/istorijat/vremeplov-006.html>, (downloaded: 30 April 2017)

# Is the prostitution a threat/danger to a country's (national)security?

Dr. Kovács István PhD<sup>1</sup>

## Absztrakt:

Veszélyt jelent-e a prostitúció egy ország (nemzet)biztonságára? A tanulmányban a szerző két nézőpontot vizsgál: vannak-e prostituáltaknak olyan kliensei, akik olyan információkkal rendelkeznek, amelyeknek kiszivárogtatása egy ország biztonságát veszélyeztethetik, szuverenitását sérthetik, ezáltal a hatalmat lerombolhatják? De facto egy másik nézőpontból: alkalmasak lehetnek-e a prostituáltak arra, hogy a „ hírszerzés eszközeként ” egy adott állam hatalmi pozícióját nemzetközi viszonylatban gyengíthetnék vagy erősíthetnék? A tanulmány a szerző PhD kutatási munkájának részeredményeit dolgozza fel, különös tekintettel a prostituáltak kliensi körének meghatározására.

**Kulcsszavak:** prostitúció, nemzetbiztonság, hírszerzés, államhatalom, alkotmányos jogok

## Abstract:

Two points of view were examined by the author in the study: are there informations holder clients, who can endanger the country's security, violete the sovereignty, and destruct the authority? De facto an another view: can we use the prostitutes as “central intelligence tools”, can they weaken or strengthen the country's authority in the national field? The study is processing the author's PhD research partial results, particular the definition of the clients of the prostitution.

**Keywords:** prostitution, national security, central intelligence, state power, constitutional rights

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*“Silence can be interpreted in many ways. For example, as a sign of intelligence: the more we listen, the more we hear.”<sup>2</sup>*

## Introduction

Due to the accelerated world – globalization, urbanization, etc. – the role of the intelligence activities, information management (collection, recording, organization, storage, processing, and recovery) and troubleshooting has become increasingly important. With all of this, countries can gain more favorable position in global economy/in world politics, they can enforce their interests. According to Várhalmi (2009), in the field of national security protection besides open diplomatic negotiations there are operative background activities as well, which can help enforcing the countries’ interests.<sup>3</sup> Hungary’s geopolitical position, its internal and external political situation presumes an advantageous position. (Geopolitics has political importance by clarifying the tasks of governments, diplomats, and government agencies, which are destined for perpetuating and creating the future position of the country they are to serve in the world.)<sup>4</sup>

Hungary owes many advantages to its geographical location: for example in the past the Carpathians were for many centuries a natural border and protected the country, now the mountain is the transporting connection link between East & West, and North & South.<sup>5</sup> Therefore the transit role of the country has many advantages and disadvantages too.<sup>6</sup> This is Catch 22: by its traffic routes the state has one of the most determinative positions in Europe, but it is also in a vulnerable position as far as safety related risks and threats concerned. To define safety related risks and threats, I use Resperger’s (2013) study: *threat is a form of danger (including concrete action intentions), which aim is to influence the destination state’s behavior in order to enforce the interests of the country.*<sup>7</sup> Risk can be interpreted in security dimensions. Therefore danger can be nothing

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<sup>2</sup> Contribution from the Twin peaks series (<http://welcometotwinpeaks.com>) (downloaded: 25 October 2016)

<sup>3</sup> VÁRHALMI Miklós: A hírszerzés-felderítés szerepe és jelentősége a XXI. századi Európai Unió számára. In: *Hadtudományi Szemle*, 2009. 2. évf. 1. sz. – p. 51-59.

<sup>4</sup> KOMJÁTI-GARDÓ Simona: A geopolitika, mint tudomány haszna az államok számára. In: *Politikatudományi Tanulmányok*, 2014. – p. 87-97.

<sup>5</sup> BÁRDOS-FÉLTORONYI Miklós: *Bevezetés a geopolitikába.* – Bp.: L’harmattan Kiadó, 2006.

<sup>6</sup> HORVÁTH Attila: Magyarország megváltozott geopolitikai helyzete a közlekedés-földrajzi viszonyok tükrében az ezredfordulón. In: SZÓNOKYNE Ancsin Gabriella (szerk): *Határok és Euróregiók* – Szeged: SZTTK, 2007. – p.:205-215.

<sup>7</sup> RESPERGER István ezredes Dr.: *Biztonsági kihívások, kockázatok, fenyegetések és ezek hatása Magyarországra 2030-ig.* In: *Felderítő Szemle*, 2013. XII. évf. 3. sz. – p. 5.

else but the objective possibility of the conflict of interests (methods of the direct/indirect & positive/negative interests enforcement). (I have to explain what positive interests enforcement mean: positive interests enforcement is when there is a consensus between two states, however it has negative interests enforcement to a third party, see for example the Snowden case).<sup>8</sup> Artificially created threats, risks and dangers, independent from geopolitics, are always devices to demonstrate a state's power and authority in order to gain the best position worldwide. The basic difference between power and authority is that power is related essentially to the personality of the individuals, while authority is always connected with social situations/positions and roles. The power marks of the state's authority are shown through a five-factor system by Dahrendorf (1976).<sup>9</sup>

1. The power relations are always connected to hierarchical relationships
2. It is socially expected, that the subordinate should be checked and influenced by the superordinate (boss)
3. the expectations are legitimate ones
4. authority/power applies to the individuals, and to the social sphere, within which the power-exercise is allowed
5. disobedience of the orders may be punished by the power-practitioner

The above mentioned characteristics of power marks and power position will be shown through the New York Convention of 1950 (by the United Nations).<sup>10</sup>

1. By signing the Convention a hierarchical relationship is generated;
2. Complying with the Convention – application and exercising of law – is controlled by the Council of the United Nations
3. expectations are legitimate
4. it can and should be applied to the individuals and to the social sphere
5. violation of the Convention entails sanctions.

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<sup>8</sup> GREENWALD Grenn: *A Snowden-ügy.* – Bp.: HVG Könyvek, 2014. (Edward Joseph Snowden (born June 21, 1983) is an American computer professional, former Central Intelligence Agency (CIA) employee, and former contractor for the United States government, who copied and leaked classified information from the National Security Agency (NSA) in 2013 without prior authorization.)

<sup>9</sup> DAHRENDORF Ralph: *Class and Class Conflict in Industrial Society.* – London: Routledge, 1976.

<sup>10</sup> 1950. évi New Yorki Egyezmény – az emberkereskedés és mások prostitúciója kihasználásának elnyomásának tiltása érdekében -, hatályba lépett: 1950 március 01-jén. (<http://prostitutio.hu/new.york-i-egyezmeny.php>) (downloaded: 25 October 2016)



Germany isn't a member of the Convention, but Hungary ratified the Convention in 1955.<sup>11</sup> While in Germany organized prostitution is allowed, thither in Hungary the institutionalized prostitution is prohibited. Therefore in Hungary the underworld is giving an impression of legitimacy to the prostitution with massage salons.

With this „legitimate girl-trafficking’ (Hungarian girls, Hungarian routes) we leave room to organized crimes, thus inducing the objective possibilities of threats between states. (Many organized criminal groups settle in Hungary in order to import Hungarian girls to Germany.) The boundary of the sovereignty of a state is always marked by the relation of international law to international judicial system which has primacy to national law. That is, a state is as sovereign as international law allows it.<sup>12</sup> Smugglers who traffic girls from Hungary do not violate German law – and since Germany did not ratify the Convention, they do not violate international law either –, therefore they cannot be punished. It is also not against the law to go to work abroad, so Hungarian girls can freely travel to Germany to offer sexual services, for which they cannot be punished. There is no contradiction here, since this isn't a human trafficking crime, it's an intermediation for legitimate work. De facto fight against organized crime is an objective risk for Hungary. Germany harms – directly/indirectly – the interests of Hungary, which can be punished by international law.

The report of the Hungarian Coordination Center against Organized Crime (SZEBEK) also underpins the above mentioned statements, as it says that organized crime is a significant threat to the state's internal security. However, in 2012 the evaluation report of the European Union Serious and Organized Crime Threat Assessment (EU SOCTA) did not mention prostitution and the sexual aimed human trafficking crime as the center of the crimes, neither can we find it among the profiles of criminal organizations.<sup>13</sup> The European Commission published statistics about the victims of the sexually aimed human trafficking crime between 2010-2014. In the first 2 years of the survey (between 2010-2012)

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<sup>11</sup> 1955. évi 34. törvényerejű rendelet - Az emberkereskedés és mások prostitúciója kihasználásának elnyomása tárgyában New Yorkban, 1950. évi március hó 21. napján kelt nemzetközi egyezmény kihirdetéséről -, hatályba lépett: 1955. év május 01-jén. ([http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=95500034.TVR](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=95500034.TVR)) (downloaded: 25 October 2016)

<sup>12</sup> KARDOS Gábor: Nemzetközi jog a hidegháború után. In. RADA Péter (szerk.): Új világrend? – Bp.: Grotius, 2007. – p.: 37-40.

<sup>13</sup> KENEDLI Tamás Dr.: Magyarország nemzeti biztonsági stratégiája és a belőle származtatható nemzetbiztonsági feladatok. In. DOBÁK Imre Dr. (szerk.): A nemzetbiztonság általános elmélete – Budapest: NKE-NBI, 2014. – p.: 88-92.

more than 30.000 persons were registered in the 28 member-states.<sup>14</sup> The data concerns the 28 member-states in Europe, and more importantly, only the registered victims. If in the one fourth of Europe so many victims were registered over two years, how many persons are there all over the world whose wretched fate we do not know anything about?

This is just one particular problem which has to be faced by Hungary. Nowadays challenges are complicated, they affect many scopes, and their effects are increasingly difficult to be predicted. It is the duty and responsibility of the government to interfere, and to guarantee the safety and protection of the country, of the nation, of the communities living in the country, of their values. The army, the police and the national security agencies have to solve this problem. The intervention, aptitude and creativity of the defensive agencies can solve the problems, they can ensure – with the help of intelligence activities, and the information management – the most important resources of the 21. Century: the future success and viability of the international federation of nation states.

## Intelligence

Crime is as old as humanity, it cannot be eliminated. However, it is worth thinking about how we can take an advantage of this fact. For example: we are able to prevent crimes with the information-using which are given by prostitutes (maybe on the field of national security), even though that the prostitution is somewhere a criminal offense. There is a strong parallel between the two: both are one of the oldest professions, both are going back to the root of humanity. Both are surrounded by mystery originated from their intrinsic features, and from the lack of, or distorted information for a layman. There is no generally accepted international or national definition of intelligence.<sup>15</sup> However, there are some common features of the different interpretations: intelligence is closely related to data, information and research, inquiry. Its basic function is to protect the country's values and interests and to support enforcing interests. Its main activity is to collect, analyze and interpret information. This paper analyses the elements of intelligence (collection, recording, organization, storage, processing, and recovery) within the theoretical framework of my hypothesis, from the point of view of subtasks performed concerning prostitution. These can be the information collecting tasks. This does not mean that prostitutes will be trained as spies, though they can be used as the human resources of secret information collection. The hypotheses can be criticized for stating that in the age

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<sup>14</sup> CERCONE Michel: *Trafficking in human beings 2010-2014*. – In.: *Press release of victims, 2014*. 1. sz. – p.: 1-3.

<sup>15</sup> BÉRES János Dr.: *A hírszerzés feladatrendszere*. In. DOBÁK Imre Dr. (szerk.): *A nemzetbiztonság általános elmélete* – Budapest: NKE-NBI, 2014. – p.: 117-118.

of advanced technology data acquisition is more accurate, faster and professional, but the fact that technique cannot read behaviors, thoughts, and intentions of the groups of individuals, make us think that human resources can be the only helpful thing. As I have mentioned, it is not spies or covert agents we need. All we want is to have someone transmit the obtained information to the appropriate location where data are rated and analyzed. I would have intended to compare my hypothesis with another authors' works, but I didn't find anything concerning the connection between prostitution and secret information collection.

Betlen (2007) recalls his personal memories from the year 1970: there was a prostitute who, as she told, worked under the control of the Ministry of the Interior. She had to give information gathered from influential clients to the Ministry, and in exchange the Ministry helped her to get out from prostitution.<sup>16</sup> Personal experiences could be true, but they are wrecking in the world of sciences without support. I could access foreign-language works due to technical development, but unfortunately, they are passing the subject only tangential. A similar case was raised by Raymond (2012): in her publication "an another US scandal is swelling". She said, that the American intelligence (civil-, and military) have used prostitutes in Columbia to collect secret data. (According to General Dempsey, "Americans were being confused for Columbia, but they weren't sure what exactly was happening".) Although human smuggling (human trafficking) is a serious crime in the USA, however, the supplied data proved that the deployed soldiers took part in exploiting women living by prostitution. This could be linked with the club called "Club Play" (in Cartagena) where US officials spent several nights, and bought food, drink and women through soldiers. This may confirm Senator Collins' (Officer of the Homeland Security and Governmental Affairs Committee) worry, whether the leaked information might endanger the country's safety and the president's security.<sup>17</sup> The problem, critics may say, is that if the information collection is secret, than there can hardly be any literature dealing with the topic. In my view, however, practical use, or the current operation is far from drawing up theoretical background and experience summation. The aim of the present paper is to draw up the theoretical background of possible practical use.

## The research

The present paper is based on the results, and their interpretations, achieved through the combined use of qualitative and quantitative techniques exploring the social representations of the phenomena scrutinized in conjunction with

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<sup>16</sup> BETLEN Anna: *A férfi ősi jussa*. – In. *Ezredvég*, 2007. 17. évf. 3. sz. – p.:1-28.

<sup>17</sup> RAYMOND Janice: *The Secret Service Prostitution Scandal: It's About More Than National Security* – In. *Coalition*, 2012. – p.: 1-3.

prostitution, relating to the scientific domain of psychology, based on my empirical research efforts. Due to the latency of this phenomenon, I had to conduct my research amongst hidden, hardly accessible populations (i.e. police officers, and prostitutes in particular), and therefore, I applied the so-called snowball method to be used for hardly accessible populations for devising the samples. I conducted semi-structured interviews with the persons involved. I analyzed the body of the text with the help of the sequential-transformative model of content analysis. (The essence of the model is that quantitative, 'scalable' variables are identified via encoding the components of topical texts carrying identical meanings.) The encoding also extended to specifying the logical relationships of "part of something" between each of the text components, on the basis of which I identified hierarchies of meanings. With the help of a non-frequency analytical approach (a nonparametric procedure), mathematical and statistical processing was ensured through McNemar tests (relative significance of components conveying meanings within a group).<sup>18</sup> By using chi-squared tests, I explored the significance of components conveying identical meanings between test groups. (A detailed analysis of the qualitative and quantitative research method I applied is included in the chapter containing the description of the research.)

## Results

To verify my hypothesis, first it was necessary to check that the client notion can be found in the interviews of police officers and prostitutes. Clients are defined as those people, who use sexual services for financial reward. The client representation was illustrated by the interview texts.

**"All kinds come, from top leaders to small polski-guy. Everyone turns around."  
„From workers to fathers, from business men to taxi drivers."  
"From the lower layer to the upper."**

The hierarchy of the tested groups was built up from the client's status main code group, and from the civil clients', and police clients' codes. The codes were integrated under the main code group. Those are illustrated by the I. table.

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<sup>18</sup> EHMANN Bea: *A szöveg mélyén: A pszichológiai tartalomelemzés. – Bp.: Új Mandátum, 2002.*

I. table: Profession of the client

| The components of the code system   |
|-------------------------------------|
| the clients' profession (main code) |
| Civil client (code)                 |
| Police client (code)                |

The only common element of the two reality interpretation was that the clientele was created by men working in the civil area. The common code in the code's layer was only the „civil” code. I have to mention that the law enforcements working groups were bumped up in the clients' circle. Policemen weren't represented, as clients („civil client” 52/94% vs. „police client” 14/6%) in any of the groups. Those are illustrated by the II. and III. table.

II. table: The client's status

|                   | Police        | Prostitute    |                   |                       |
|-------------------|---------------|---------------|-------------------|-----------------------|
| Common main codes | Frequency (%) | Frequency (%) | Worth of $\chi^2$ | Level of significance |
| Clients' status   | 60            | 94            | 16,318            | $p < 0,01$            |

The McNemar values were given by the mathematical calculations below, which are illustrated by the I. diagram:

I. diagram: The clients'  $\chi^2$  worth's:

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**Khi-négyzet-próba (df = 1):  $\chi^2 = 16.318^{**}$**

III. table: The results of the clients' status

|                          | Police        | Prostitute    |                   |                       |
|--------------------------|---------------|---------------|-------------------|-----------------------|
| Significant common codes | Frequency (%) | Frequency (%) | Worth of $\chi^2$ | Level of significance |
| Civil                    | 52            | 94            | 22,374            | $p < 0,01$            |

The McNemar values were given by the mathematical calculations below, which are illustrated by the II. Diagram:

II. diagram: The clients'  $\chi^2$  worth's:

**Khi-négyzet-próba (df = 1):  $\chi^2 = 22.374^{**}$**

The results of the data above prove the hypothesis that prostitutes have a chance to contact with interred people from the private sector and public administration. Among the economic interest enforcement to the public interest enforcement, there are people, who use prostitutes. Ad absurdum the opportunity, that the information leak, can be possible. (It depends much on the conspiracy, but the opportunity is given.) To check my hypothesis concerning secret information collection I used the code group hierarchy of the police. The code of secret information collection contains all contents which expressed that the studied subject, as part of his police tasks, recruits the prostitute as an informant to obtain information. The secret information collection code is illustrated by the help of the delivered data texts.

**"I know that a prostitute collaborated with us, she has called us and helped the police's work..."**

***„My personal experience was that I met with an old, retired lieutenant-colonel, who told me that we should try using prostitutes and taxi drivers as informants.”***

By the hierarchy of the tested groups the secret information collection code was integrated under the police work main code group. Those are illustrated by the IV. table.

IV. table: The police work

| The components of the code system    |
|--------------------------------------|
| Police work                          |
| Higher instructional task (code)     |
| statistics (code)                    |
| burden (code)                        |
| Secret information collection (code) |

We may think that the above results would affect the measure culture, and the prostitutes' relationships, so we have to examine, whether the secret information collection can be a dominant component of the police reality or not.

III. diagram: The secret information's Khi2 worth's:

**McNemar-féle szimmetria-próba a 'teher4' és 'titkosi4' változó eloszlásának összehasonlítására:  $\chi^2(1) = 6.259^*$**

V. table: Results of the secret information collection

| The components of the code system | Worth of $Z^2$ :<br>$\cong 9,86$ | Level of significance | Is a social representation or not |
|-----------------------------------|----------------------------------|-----------------------|-----------------------------------|
|                                   | Worth of $\text{Khi}^2$          |                       |                                   |
| Secret information collection     | 6,259                            | n.sz.                 | ✓                                 |

Based on the results, it was determined, that the “secret information collection” code is an element of police reality in the examined group (even if only in low numbers).

In connection with these results it can be stated that the recruitment of prostitutes as informants is regarded by the police as an optional alternative. The chance that interred validation national security information can be given to the prostitutes by the clients, is proved. How can the police use this to our interest? I am trying to give now a few proposals.

## Proposals

The first legislation of secret reconnaissance in Hungary was the X. law from the year 1990.<sup>19</sup> Afterwards operative work was regulated independently by several acts. Thus came the definition of secret information collection and secret data acquisition. The XXXIV. law from the year 1994., the CXXV. law from the year 1995., provides for secret information collection, and the XIX. law from the year 1998 provides for secret data acquisition.<sup>20, 21, 22</sup> In their essence they are similar: the laws provide a framework within which it is possible to use human resources as means of secret information collection; but the limitations are filled by internal instructions. In my opinion within legal frameworks nothing impedes this type of utilization of human resources. As for practical use and usability the acquisition of some qualification may become adequate. Therefore, potential candidates should be trained (theoretically and practically) in accordance with the task. The person responsible for the implementation of the training should be a member of the given body. Following the theoretical training and successful exam human resources could be deployable. As to what task should be given to the recruited person, the decision is up to the special division of the competent authorities.

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<sup>19</sup> 1990. évi X. törvény – a különleges titkosszolgálati eszközök és módszerek engedélyezésének átmeneti szabályozásáról -, hatályba lépett: 1990.02.11-én, (<http://mkogy.jogtar.hu/?page=show&docid=99000010.TV>), (download: 25 October 2016)

<sup>20</sup> 1994. évi XXIV. törvény – A rendőrségről -, hatályba lépett: 1994.05.01-jén, ([http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99400034.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99400034.TV)), (download time: 2016. október 25.)

<sup>21</sup> 1995. évi CXXV. törvény - a nemzetbiztonsági szolgálatokról -, hatályba lépett: 1995.12.28-án, ([http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)), (download time: 2016. október 25.)

<sup>22</sup> 1998. évi XIX. törvény – a büntetőeljárásról -, hatályba lépett: 2003.07.01-jén, ([http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99800019.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800019.TV)), (download time: 2016. október 25.)



The implementation would be ensured by creating specialized units within the body. However prior impact assessment and subsequent assessment is essential. The assessments must be carried out in all cases, first to calculate the promised result, than to evaluate the expedient percentage. If the results of the prior and subsequent impact assessments are coherent, further measures, law-additions/modifications needed, for using operative human resources in a wider sense.

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# Law Enforcement reform in Mongolia

Ganbadrakh Tsend-Ayush<sup>1</sup>

## Absztrakt:

A jelenlegi mongol rendvédelmi struktúra megértéséhez fontos a mongol hagyományok társadalmi, kulturális, politikai és történelmi aspektusainak megértése. Mongólia rendvédelmi rendszerében számos hatás tükröződik vissza, beleértve a kulturális hatásokat és a korábbi időkre jellemző, mélyen gyökerező eszméket és meggyőződéseket. Mongólia rendvédelmi rendszerét külső erők is befolyásolják, úgy mint a szovjet bűnüldöző rendszer és a nyugati jogi elvek keveredése, valamint a kontinentális európai országok szabályozásai. Az 1990-es békés politikai és gazdasági rendszerváltozást követően a mongol rendvédelmi szervezetekre jelentős hatást gyakoroltak a nemzetközi rendvédelmi standardok. Az elmúlt 25 évben Mongólia számos törvényt és rendeletet vett át különböző nemzetközi forrásokból. A rendvédelmi szervek jogi, szervezeti és működési vonatkozású átfogó reformja azonban elmaradt az államigazgatás egyéb területeitől. Voltak kísérletek, hogy modernizálják az egész rendszert, a rendvédelmi szervek alapelvei azonban még mindig nem különböznek a korábbi kommunista időszakra jellemzőektől. Sürgős feladat a demokratikus kormányzás jelenlegi elveinek és értékeinek megfelelő, hatékony és eredményes intézményi működéshez általánosan elfogadható nemzetközi normák befogadása és átvétele.

**Kulcsszavak:** rendészeti szervezet, reform, a szolgáltatások, a személyzet fejlesztése, paradigmaváltás

## Abstract:

In order to develop an understanding of contemporary Mongolian law enforcement institution, it is important to appreciate the social, cultural, political, and historical aspects of Mongolian tradition. Mongolia's law enforcement system reflects a number of influences including the culture and deeply rooted ideas and beliefs of previous times. Mongolia's law enforcement system is also influenced by external forces such as the mixture of the Soviet law enforcement system and Western legal principles such as the codes of continental European countries. After the peaceful change of the state political and economic system in 1990, Mongolian law enforcement organizations were influenced heavily by the international law enforcement standards. Over the last 25 years, Mongolia has adopted a number of laws and regulations from various international sources. But the overall reform of law enforcement institutions in terms of legal, organizational and operational

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aspects lagged behind of other sectors of public governance. There were some attempts to modernize the whole system. The basic principles of law enforcement organizations are still not different from previous communist period. It is urgent to accommodate and adopt universally acceptable international standards for the effective and efficient operation of the institutions compatible to current principles and values of democratic governance.

**Keywords:** Law Enforcement organization, reform, services, personnel development, paradigm shift

## 1.Introduction

The Mongolian law enforcement organizations have the rich history of existence (more than 90 years). They were the protectors of the fundamental interest of state and society (common understanding). Due to the historical condition, they were shaped by the forces of the specific time. The main mission of communist era law enforcement organizations was to defend the core interests of state and political leadership (communist party totally lead the state and society), huge centralized horizontal management system, strict law application and the militarized approach to the activities.

According to the Mongolian Human Rights Commission, the law enforcement system is characterized by red-tape, delays, a 'bribing epidemic', 'systemic corruption', tribalism and cronyism.<sup>2</sup>

### The definition of “law enforcement”

Aftermath of peaceful political *revolution* (not all researchers agree with that description of “revolution”) authorities scrambled to formulate and implement new policies dealing with law enforcement services in Mongolia. The rules and regulation were fragmented and separated among law enforcement organizations. Otherwise, there were not any single legal documents regulating the activities of law enforcement organizations. Almost for 70 years (1921-1990), law enforcement institutions such as intelligence, investigation and police did not have unified standards in terms of operations. Therefore it was necessary to formulate and implement the new concept aimed to bring together all organizations tasked with enforcing the law in society.

Therefore, the post communist and other countries modernizes the structure, organization, and activities of the law enforcement organizations in order to reduce social damages of the crime, terrorist attacks, and armed conflicts and to eliminates their roots in the society.<sup>3</sup>

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<sup>2</sup> Dr. Todd Landman, Marco Larizza, Claire McEvoy: *State of democracy in Mongolia, A desk study*, Human Rights Centre, University of Essex, Ulaanbaatar, Mongolia, 2005,p.10 [http://www.openforum.mn/res\\_mat/State%20of%20Democracy%20in%20Mongolia.pdf](http://www.openforum.mn/res_mat/State%20of%20Democracy%20in%20Mongolia.pdf) (Viewed 17 Feb 2017)

<sup>3</sup> Myagmarjav, G.: *Reform, modernization and perspective of the security organization of Mongolia*, Geneva-Ulaanbaatar, Mongolia, 2005, pp.23-41 <http://www.dcaf.ch/Publications/Reform-Modernisation-and-Perspective-of-the-Security-Organization-of-Mongolia> (Viewed 17 Feb 2017)

The previous government (2012-2016) tried to transform the overall structure and organizational functions of the law enforcement agencies by implementing “Justice System Reform” program. The current government (2016-2020) has quite different agenda and objectives.

The main initiatives which the previous government made were the separation of police and investigation function, application of the unified law to all law enforcement agencies (including also tax and customs offices). The main principles of the transformation of law enforcement institutions were unified approach toward dealing with corruption in law enforcement agencies, transparent procedure towards the conflict of interest and leading principle of all activities is the adherence of human rights and dignity (Figure 1).

**The definition of “law enforcer”**

The batch of laws defining the differences between “lawyers” and “law enforcement officers (law enforcer)” were enacted in the last couple of years with direct inspiration and support of the President of Mongolia. The public positions related to the category “lawyer” are included professional lawyers (advocates, advisors and consultants), judges and public prosecutors. The rest of public officials related to the category of “law enforcer” must be regulated by different acts, rules and standards which were on par with respective international standards.



**Figure 1:** Mongolian Law Enforcement organizations (translated from Mongolian into English by author)<sup>4</sup>

<sup>4</sup> Oyunbold, G.: REFORM OF LAW ENFORCEMENT OPERATION, *Law Enforcement Journal*, 2014, #1 (01), pp. 8-12

**Paradigm shift in understanding the law enforcement**

During the communist period Mongolian law enforcement organizations were the part of military forces. In case of war or other extraordinary situation, they followed the command and control systems of defense forces. It means that the national military command has the ultimate control and leadership over all law enforcement institutions. According to some experts, it severely compromised the civilian security.<sup>5</sup> Over the last two decades, we made some significant achievements in building up new public administration system.

But the establishment of well functioning public administration did not fully realize the transformation of law enforcement branch. That’s why it was very urgent and important to make the status and responsibilities of law enforcement institutions clear (Figure 2). The main postulate which defines the paradigm shift is that the law enforcement officers’ activities are aimed at providing the condition for the execution of law. They are in contact and communication with citizens. In this respect they are neither the public administration nor the military organization. Certainly, they should be regulated by different laws, policies and rules.



**Figure 2:** Paradigm shift- Division of Military and Law enforcement services  
(translated from Mongolian into English by author)<sup>6</sup>

<sup>5</sup> Oyunbold, G.: REFORM OF LAW ENFORCEMENT OPERATION, *Law Enforcement Journal*, 2014, #1 (01), pp. 8-12

<sup>6</sup> Ibid.

The main initiatives of the previous government (2012-2016):

- The Mongolian “Justice System Reform” program;
- The innovation of law enforcement operation;
- Redefinition of “law enforcer”;
- Transformation from *Military* to *Civilian* oriented “law enforcer”;
- Implementation of “*Civil Councils*” in all law enforcement services.<sup>7</sup>

The key objective of the reform is to build up self-sufficient, relevant and unified law enforcement system in Mongolia. In the previous years, the police could be responsible for the activities related to the Marshal, immigration, forensic and even civil registration services. The eagerness to restructure the duties and responsibilities in a more coherent and efficient way was the distinct characteristics of the authorities of that time.

By new law, it would be possible to bring all law enforcement activities under a single set of standardization. The law enforcement community’s institutional change could not only bring impetus to the dynamic development but also could provide quality assurance to the service provided and bring closer the personnel working at the respective branches of law enforcement services and citizens.

The two factors define the future success of the implementation of law enforcement community reform in the long term perspective: *the clear strategy* and *the attitude change*. The latter issue is difficult to be achieved in a short term period even with sufficient financial resources. In addition to it, the attitude change is a more time consuming process.

The personnel attitude change requires well formulated rules and regulations, in concern with the specific management skills based on the *holistic approach*. For example, in terms of personnel development the principles of competition, provision of relevant education and training must be implemented to deepen the reform of the law enforcement organizations.

Any reform is implemented due to its internal and external environments and on its own ways of development. The whole concept of the reform has started to develop in our country from the beginning of 1990s when our internal situation needed a radical reform after the emergence of confluence of the following factors such as changing nature of international relations due to the end of Cold War hostility, breakdown of the world’s social system, and comprehensive advancement of multilateral relations. In that situation, Mongolia grasped opportunity to build up democracy and market economy and modify the foreign

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<sup>7</sup> Oyunbold, G.: REFORM OF LAW ENFORCEMENT OPERATION, *Law Enforcement Journal*, 2014, #1 (01), pp. 8-12



policy priorities toward more openness and inclusiveness in global institutions of governance thus adopting international norms, values and rules respectively. The outcome was that Mongolia's political, social and economic system was tried to be close to the new realities.

The law enforcement services had also followed the trend of the time. But the change was more superfluous. It was rather dictated by time and lacked the initiative. It was more formal (quantitative) and less abundant in content (qualitative).

Depending on specifics of the law enforcement services we could define the following set of actions made by then authorities and applicable to all services:<sup>8</sup>

- *The legal aspect of the reform*: After the development of "National Security Concept", "National Foreign Policy Concept" and "National Defense Concept" all newly organized law enforcement services adopted different sectoral policy documents. Specific laws dealing with particular activities (for example, Police Act and State Border Act) were amended.
- *Redefinition of all services' strategy* (vision, mission, objectives, organization and structure): Under the new structure, management and organization each of law enforcement services formulated and articulated totally different visions, missions and objectives. All government agencies divided into two types of organizations: regulating and implementing agencies according to the designated functions. New public management principles of transparency, accountability, effectiveness and efficiency were promoted to the internal motions of the organizations. But it was rather ad hoc initiatives which were strongly resisted by personnel because of lack of experience and strategic distrust.
- *Professionalization of personnel and capacity development*: In order to strengthen the law enforcement organizations' capability, the following internal units were established in each service by scratch: the unit responsible for the security, relevant educational institutions, relevant professional ensembles, and unified hospital for all law enforcement servicemen and their family members. Law enforcement organizations' professional oriented personnel or servicemen would include officers, sergeants and contractual military (paramilitary) staff. It resulted in decrease of fixed-term service staff<sup>9</sup>. In order to improve personnel's professi-

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<sup>8</sup> Oyunbold, G.: *REFORM OF LAW ENFORCEMENT OPERATION*, *Law Enforcement Journal*, 2014, #1 (01), pp. 8-12

<sup>9</sup> Myagmarjav, G.: *REFORM, MODERNIZATION AND PERSPECTIVE OF THE SECURITY ORGANIZATION OF MONGOLIA*, Geneva-Ulaanbaatar, Mongolia, 2005, pp.23-41  
<http://www.dcaf.ch/Publications/Reform-Modernisation-and-Perspective-of-the-Security-Organization-of-Mongolia> (Viewed 17 Feb 2017)

onal skills, numerous personnel development programs are promoted. In practical area, for instance, sergeants' seminars were organized to enhance motivation, qualification, responsibility and professional skills. Significant number of personnel were sent to the both domestic and foreign educational institutions. It was urgent to prepare a new generation of highly qualified servicemen. Previous government (2012-2016) integrated all the educational institutions of all the law enforcement services into the Law Enforcement University. The University improved its curriculum, followed the new program of training to prepare law enforcement staff, to improve their qualification in accordance with international standards. It has also brought forward pragmatic training with practice to improve law enforcement officers' skills and capacities.

In terms of international relations, they cooperate both with educational institutions of Russia, China, Republic of Korea and designated specific international organizations with abundant expertise and they involved "Interpol", which has worldwide activity and operations. One important initiative which would have far more wider implication to the future development of law enforcement organizations was the application of new codes of ethics. Every officer could obtain the "Certificate of Moral Principles" after officially getting ranking or position in the relevant law enforcement services. It was completely new procedure without the previous tradition in the law enforcement services.<sup>10</sup>

- *Developing international cooperation:* The foreign relations were further extended to the current well established cooperation with the Russian Federation and the People's Republic of China; the organization of permanent visits and meetings, information sharing, finding the common ground to solve the current problems faced in respective law enforcement services and active collaboration with similar organizations of other countries such as USA, Germany, Republic of Korea, India, Hungary, Israel, and Egypt.<sup>11</sup>
- *More close communication with local authorities and citizens:* The new activity which was realized during the implementation of new policies was the joint coordination and cooperation during the conduct of security operation of law enforcement services. The aim of the engagement with civilians was to inform the public (awareness) about the new rules and regulations. In addition, it was very vital to hear public opinions to

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<sup>10</sup> Myagmarjav, G.: *REFORM, MODERNIZATION AND PERSPECTIVE OF THE SECURITY ORGANIZATION OF MONGOLIA*, Geneva-Ulaanbaatar, Mongolia, 2005, pp.23-41  
<http://www.dcaf.ch/Publications/Reform-Modernisation-and-Perspective-of-the-Security-Organization-of-Mongolia> (Viewed 17 Feb 2017)

<sup>11</sup> *Ibid.*

make some changes in priorities and policies. In area of community relation the law enforcement servicemen could strive to better communicate with public. *The public opinion analysis and the information based service are the key to the progress in that direction.* It is known that public support is vital in building confidence among personnel.

- *Utilization of new technological concepts* (Information and communication technology and other technical and technological solutions): The reform made it possible to modernize the current communication systems of all law enforcement organizations. Nearly all units have the Internet access, and internally used computer and communication system, which was really a challenging task to be implemented given the territorial size of Mongolia (1.5 million km<sup>2</sup>). The intelligence service was equipped with the state of the art intelligence signaling system. Specific equipments dealing with security processing such as signal intelligence apparatus, monitoring equipments to examine any documentation with accuracy, special equipment to disclose any bombings, fire guns and so on were widely utilized.<sup>12</sup> Faced with increasing range of tasks and limited financial resources resulted in intensified search for new innovative and creative technologies and solutions.<sup>13</sup>

The part of that entity is the Information and Communication Technologies (ICT). New technological innovations have been developed to monitor and to improve the performance of the law enforcement services, but we know little about how and why ICT are adopted, and the consequences of its application.

- *Greater social support of the personnel* (education and training, social welfare benefits): Many families of servicemen in frontlines got new places of accommodation. The specialized resort center was opened on the shore of the lake of Khubsugul.

## **The issue of public accountability of law enforcement organizations**

During the communist era, law enforcement institutions had predominantly privileged status in society. In Mongolia, as nearly any other communist country,

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<sup>12</sup> Myagmarjav, G.: *REFORM, MODERNIZATION AND PERSPECTIVE OF THE SECURITY ORGANIZATION OF MONGOLIA*, Geneva-Ulaanbaatar, Mongolia, 2005, pp.23-41 <http://www.dcaf.ch/Publications/Reform-Modernisation-and-Perspective-of-the-Security-Organization-of-Mongolia> (Viewed 17 Feb 2017)

<sup>13</sup> U.S. Congress, Office of Technology Assessment: *Criminal Justice, New Technologies, and the Constitution*, OTA-CIT-366 (Washington, DC: U.S. Government Printing Office, May 1988), p.31, <https://www.princeton.edu/~ota/disk2/1988/8809/8809.pdf> (Viewed 4 Dec 2016)

all the law enforcement organizations directed under the unified umbrella of the so-called “the Ministry of Public Security”. The ministry could able to accumulate vast amount of financial and human resources. The nature and way of their activities were classified and therefore it was difficult to get open information to the public. As mentioned before, they were highly centralized and militarized organizations. Even today, under the current legal condition (especially the law on State Secret) it is virtually impossible for the public to gain information about the law enforcement, which in turn makes the whole process of reform totally meaningless and worthless.

However, some attempts made to bring the law enforcement organizations’ activity accountable to the public. The permanent committee on Security and Foreign relation of Parliament has the power to evaluate the complex operation and activities; and organize the hearings related to the security and law enforcement services’ activity. The National Audit committee could monitor the inflow and allocation of financial resources of the law enforcement services. The General Prosecutor Office could conduct the investigation. All law enforcement organizations have the internal control and monitoring units. The citizens and legal entities could lodge the official complaint related with activities of law enforcement services to the following organizations: Public prosecutor, Human Rights Commission, to the head of the specific law enforcement agency or to Parliamentarian specific committee (“Complaint Committee”). In concern with other international security institutions such as Geneva Center of Democratic Control of Armed Forces, the law enforcement organizations tried to define security organizations’ principles of accountability and transparency.<sup>14</sup> Although there were immense transformation of public attitudes to the norms, believes and values; activities, structure and responsibility of institutions responsible for law enforcement of the society haven’t really transformed. One obstacle in transformation of the above institutions is the nature of their specific activities or secrecy. Because of it they still tended to avoid informing the public of the result of their activities.

## **2. Law Enforcement and Security organizations in Mongolia**

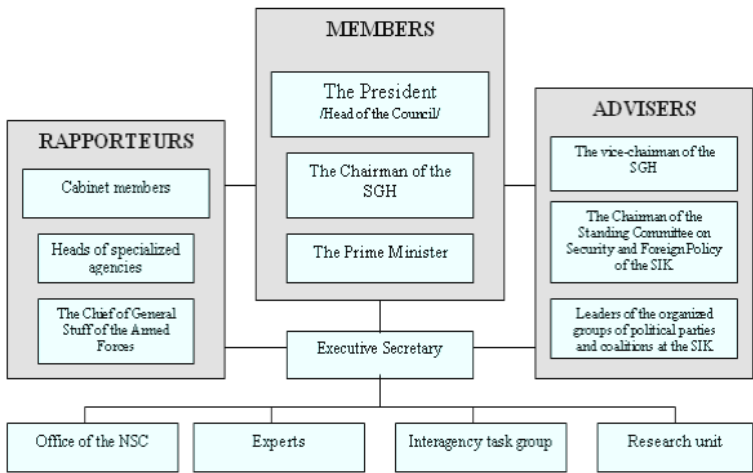
The Law Enforcement and Security organizations are directed and guided by the set of legal documents which have the existential meaning for the functioning and operations of those organizations.

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<sup>14</sup> Myagmarjav, G.: *REFORM, MODERNIZATION AND PERSPECTIVE OF THE SECURITY ORGANIZATION OF MONGOLIA*, Geneva-Ulaanbaatar, Mongolia, 2005, pp.23-41  
<http://www.dcaf.ch/Publications/Reform-Modernisation-and-Perspective-of-the-Security-Organization-of-Mongolia> (Viewed 17 Feb 2017)

**The Constitution (BASIC LAW):** The Constitution is the supreme source of law in Mongolia. The Constitution (1992) laid out the democratic principles of the separation of state powers and the fundamental rights of citizens.

**The Law on National Security Council (1992):** Analyzes the country’s political and social life, ensures the security of the existence of Mongolia , strengthen the state and social structure as stipulated in the Constitution, reinforce national unity, guarantee human rights and freedom, and safeguard the security of the population and its gene pool.



**Figure 3.: STRUCTURE OF THE NATIONAL SECURITY COUNCIL (NSC)<sup>15</sup>**

Prime Minister is a sole supervisor of General Intelligence Agency. The Deputy Prime Minister is directing the activity of National Emergency Management Agency. The Ministry of Justice and Home Affairs supervises such organizations as General Police Agency, Border Protection Agency, The General Executive Agency of Court Decisions and Mongolia Immigration Agency.

**NATIONAL SECURITY CONCEPT OF MONGOLIA:<sup>16</sup>** It is one of the basic documents which direct the activities of law enforcement and security organizations. Some extracts:

<sup>15</sup> Oyunbold, G.: REFORM OF LAW ENFORCEMENT OPERATION, *Law Enforcement Journal*, 2014, #1 (01), pp. 8-12

<sup>16</sup> NATIONAL SECURITY CONCEPT OF MONGOLIA, <http://www.nsc.gov.mn/sites/default/files/images/National%20Security%20Concept%20of%20Mongolia%20EN.pdf> (Viewed 14 April 2017)

- Mongolia's national security shall mean ensuring favorable external and internal conditions for securing and protecting the genuine national interests of Mongolia.
- The prime purpose of ensuring national security shall be safeguarding and guaranteeing national independence, sovereignty and unity.
- Parliamentary governance built on respect for human rights and freedoms, the rule of law as well as a democratic state structure built on social stability shall be the preeminent guarantee for the assurance of national security.

*Internal Security:* The foundation of internal security shall rest on ensuring human rights and freedoms, adherence to the Constitution, respect for the rule of law, continuity of the Mongolian state governance and national unity, support for political parties, civil society, free press and media, individual liberties as well as safeguarding public order and social stability.

**COUNTER-TERRORISM MANAGEMENT IN THE SECURITY SYSTEM OF MONGOLIA:**<sup>17</sup> For Mongolia, counter-terrorism is as much about fostering inter-agency cooperation and facilitating foreign cooperation as it is about securing the country from a largely *theoretical threat*. The enactment of the Law of Combating Terrorism and the National Counter-Terrorism Coordinative Council (NCTCC) in 2004 made it possible to shape the concept of counter-terrorism in Mongolia.

The NCTCC carries the mandate of coordinating counter-terrorism efforts between 11 ministries and 4 agencies, including the General Police Agency, the Armed Forces, the Ministry of Foreign Affairs, the Ministry of Environment and Green Development, the Ministry of Health, the Ministry of Road, Transportation, Construction and Urban Development, the General Border Protection Agency, the Professional Inspection Agency, the National Emergency Management Agency, the Prison Agency, the Customs General Agency, the General Taxation Agency, the General Registration Agency, and the Immigration Agency.

Lack of cooperation and information sharing has long been an obstacle toward collective action within the Mongolia government. The NCTCC also has the potential to play an important role in Mongolia's foreign policy. Mongolia has plans, for example, to develop a counter-terrorism capacity on par with the nation's current peacekeeping forces, which would allow it to engage in international counter-terrorism activities with partner organizations such as the Shanghai Cooperation Organization or North Atlantic Treaty Organization.

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<sup>17</sup> Dr. Jeffrey Reeves: *MONGOLIA'S COUNTER-TERRORISM ARCHITECTURE: IMPLICATIONS FOR DOMESTIC DEVELOPMENT AND FOREIGN PARTNERSHIP*, OCTOBER 2014, ASIA PACIFIC CENTER FOR SECURITY STUDIES <http://apcss.org/wp-content/uploads/2010/03/Terrorism-in-Mongolia-Reeves-Oct2014.pdf> (Viewed 12 April 2017)

**GENERAL INTELLIGENCE AGENCY:** The agency was established in 1922. The General Intelligence Agency of Mongolia's (GIA) employees number are around several hundred people and act as an early warning system to alert the Mongolian government. It collects and evaluates information on a variety of areas such as international terrorism, organized crime, weapons and drug trafficking, money laundering, illegal migration and information warfare<sup>18</sup>. Its mission is to protect Mongolian vital national interests through detecting potential external and internal threats by methods of intelligence collection, prevention and suppression and timely conveying to the Mongolian state authorities. The goal of the agency is to develop and implement policies to coordinate the activities of intelligence community, and ensuring national security by intelligence methods.

Central Intelligence Agency consists of the following departments: Foreign intelligence, Counterintelligence, Military and Strategic intelligence, Border intelligence, Data analysis and Information security support center, Investigation unit, Internal control and Security and Administration and Management unit. *Affiliated organizations of the agency* are the Academic Institute, Training and Research center (specialized archive), Security and Training units; Sports rehabilitation center.

**CYBER SECURITY CENTER (independent department of GIA):** The mission is to ensure public information and communications security of Mongolia. The main functions:

- To prevent and respond to cyber-attacks, detect threats posed by the cyber network;
- Assessment of risk related to cyber security, information security of the governmental organizations ;
- To develop a written policy on cyber security;
- To organize awareness on cyber security among the public;
- To organize secured communication network for public and private organizations;
- To develop innovative cyber domain;
- To ensure secure transmission of state secrets between the government and other institutions.

Cyber Security Center was established at the basis of state communication service, which was controlled by state secret police during the communist period. The State Communication Service was first opened by the support of Russian

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<sup>18</sup> [https://en.wikipedia.org/wiki/General\\_Intelligence\\_Agency\\_of\\_Mongolia](https://en.wikipedia.org/wiki/General_Intelligence_Agency_of_Mongolia) (Viewed 18 April 2017)

Emperor in 1913.<sup>19</sup> In 1922, under the Ministry of Internal Affairs the Department of Cipher and Coding had been operated.<sup>20</sup> In 1933, centralized and independent “State Communication Unit” started to operate.<sup>21</sup> The State Communication Service was renamed as Cyber Security center in 2011 by the government executive order #312.<sup>22</sup>

The legal framework of the center is the National Security Concept, the Intelligence Act, the Communication Act and the set of executive orders and decrees.

**THE GENERAL POLICE AGENCY:** *History of the police organization:*<sup>23</sup> The establishment of the modern Police organization dates back to 1921. In 1921, the People’s Parliament of Mongolia resolved to establish the “*Preventive Militia*”, mandated with the modern police functions, to ensure implementation of the law, fight crime, and to maintain public order.

Since 1921 until 1990s, the police organization belonged to Ministry of Interior and Ministry of Public Security to enforce the law, ensure public safety, and to fight crime in metropolitan and local areas with integrated organizational management and preformed state mandated responsibilities with public participation.

As a result of the political and socioeconomic transitions towards democracy and market economy in 1990s, Mongolian police organization underwent to a drastic transformation and has been reestablished as a National Police Agency-Regulatory Agency of the Government of Mongolia mandated to combat crime, maintain public order and public safety on a national basis.

The mission is to provide society with reliable and sincere service based on public support and trust.

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<sup>19</sup> <http://www.gia.gov.mn/articles/medee/71> (Viewed 17 April 2017)

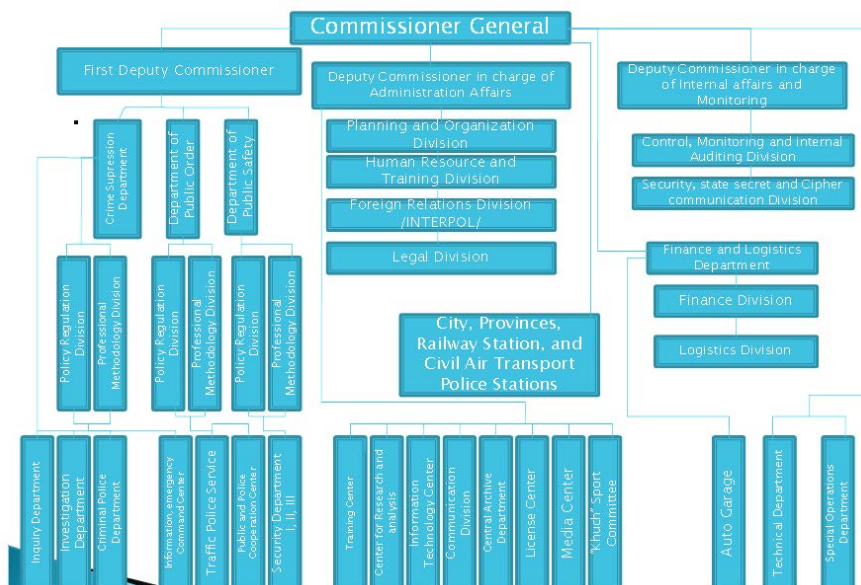
<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> <http://eng.police.gov.mn/> (Viewed 22 April 2017)





**Figure 4.: ORGANIZATIONAL STRUCTURE OF POLICE<sup>24</sup>**

**CRIMINAL POLICE DEPARTMENT:** Main function of the Department: Organize intelligence operations and designated investigation operations of Police Organization and provide central and local police organizations with professional guidance. Within the new structure of the department investigation units were established in the economic crime, anti-narcotics, and organized crime divisions, to fight, intercept, prevent, detect, and investigate emerging crimes without delay.

The following human rights problems were noted: police abuse of prisoners and detainees; uneven enforcement of the law and official impunity; poor conditions in detention centers; arbitrary arrest, lengthy pretrial detention, and corruption within the judicial system; secrecy laws and a lack of transparency in government affairs.<sup>25</sup>

<sup>24</sup> <http://eng.police.gov.mn/> (Viewed 22 April 2017)

<sup>25</sup> MONGOLIA HUMAN RIGHTS REPORT 2015

<https://www.state.gov/documents/organization/252995.pdf> (Viewed 22 April 2017)

*THE INTERPOL NATIONAL CENTRAL BUREAU OF MONGOLIA* (NCB) is staffed by the head of NCB, the secretary and two police officers. The main duties of the bureau:<sup>26</sup>

- Deal with requests from the INTERPOL community and from local law enforcements agencies on transnational crime and criminals;
- Exchange information between the INTERPOL community and local and foreign law enforcement agencies needing information on transnational crime and criminals;
- Provide the police of Mongolia with information on criminal situations in foreign countries and information on wanted criminals and modus operandi;
- Inform the law enforcement agencies of Mongolia about international cooperation methods for fighting transnational crime;
- Ask the INTERPOL community for advice on legislation and experiences in fighting crime;
- Coordinate the exchange of extradition documents and proceed with extradition when required.

*POLICE EMERGENCY RESPONSE:* The Police Agency continues to improve its emergency response system in Ulaanbaatar and has the ability in most instances to pinpoint the exact location of an emergency call, to include some cell phone calls. However, if the call is placed by a person who does not speak Mongolian, the caller will face a language barrier. The National Police do not have fluent English speakers for emergency dispatch call centers. Ulaanbaatar does not have a dedicated tourist police unit; nor does it have a centralized incident reporting system.<sup>27</sup>

*PARTICIPATION IN UN PEACEKEEPING OPERATIONS:* The first time in 2016, two Mongolian police officers have been participating in *UN MISSION- South Sudan* (human rights and community security).

The goals of the mission:

- In cooperation with other police officers, to bring the peace and security;
- To promote the Mongolian foreign policy;
- To enhance the image of the state in the international arena;
- To improve the skills and capabilities of law enforcement staff.

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<sup>26</sup> <https://www.interpol.int/Member-countries/Asia-South-Pacific/Mongolia> (Viewed 17 April 2017)

<sup>27</sup> "Mongolia 2015 Crime and Safety Report," Overseas Security Advisory Council (OSAC), Bureau of Diplomatic Security, U.S. Department of State  
<https://www.state.gov/documents/organization/252995.pdf> (Viewed 22 April 2017)

**The Legal framework of Police: Police Act (2014):**<sup>28</sup> *Police system:* Police consists of Headquarter of National Police Agency, territorial police units and attached office. The National Police Agency consists of combating crime, maintenance of public safety, public security and supporting organizational structures. The unit of internal control and security will be established in the Headquarter. The Commissioner General of National Police Agency will appoint and release the chief of a territorial police unit. The Governor of a city shall appoint a chief of a city police unit.

*The main functions of police:*

- Combating crime is, conducting law enforcement service in order to preventing crimes and investigating;
- Maintenance of public safety;
- Maintenance of public security.

The General Commissioner of the National Police Agency shall be appointed and discharged by the Government of Mongolia based on the proposal made by the government member responsible for justice (Minister of Justice and Home Affairs). The National Police Agency shall have a First Deputy Commissioner in charge of suppressing crime, ensuring public safety and public security and a Deputy Commissioner in charge of providing support. Head of the unit in charge of Internal Control and Security shall be a Deputy Commissioner of the National Police Agency.

The designated minister for Justice shall appoint and discharge the First deputy and Deputy Commissioners. A supernumerary council will operate beside the General Commissioner of the National Police Agency to advise him/her on issues attributed to his/her duties.

*Community Police Officer:* Municipal authority shall employ a community police officer for public safety and prevention of crime. Community police officers have the rights to check documents, protect the evidence, establish whereabouts, necessary to protect and detain the perpetrator and deliver him/her to police organization.

Community police officers are responsible for the following duties:

- Violation penalties prescribed by the Law;
- Explain to citizens about Law and legislation;
- To participate in the work organized by legal entity and law enforcement concerning public security.

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<sup>28</sup> *Police Law of Mongolia* <http://www.police.gov.mn/media/PoliceLaw.pdf> (Viewed 22 April2017)

*Monitoring for activities of police agency:* Central governmental organization for legal affairs shall monitor activities of Police agencies according to law on legal state government agency.

Special monitoring subcommittee of the Parliament shall monitor classified investigative operations by police agency in terms of implementation of laws and regulations. Court and prosecutor agency shall monitor classified investigative operations by police agency according to procedure based on law. The National Human Rights Commission shall monitor activities of Police agency and police officers for implementation of Constitutional law, applicable laws, regulations, international human rights and freedom acts.

### **External factors affecting the police:<sup>29</sup>**

*Remains of the totalitarian regime:* The most pervasive factor affecting the police department and the functioning of the police are the vestiges of the old communist regime. In 1990, Mongolia made the transition from a centralized Soviet system to a free-market democracy. However, remnants of the old system remain entrenched in the law-enforcement sector, meaning that the police department is still undergoing a transformation from a state enforcement body to a service organization.

*Police enforcement role during democratization:* During the communist era, the police had the title of “*sergiilekh*” (meaning “security”), despite being a state enforcement agency. Since 1990, there have been a number of changes, including an increase in the number of police officers, and changing the police title from “*sergiilekh*” to “*tsagdaa*” (meaning to “guard, control”). However most of the changes that have taken place have reinforced the police’s enforcement role, rather than promoting the concept of public service.

*No legal provisions stipulating the relationship between the police and citizens:* Police and lawyers complain that there are no detailed legal provisions that articulate specific policies regarding the relationship between the police and citizens.

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<sup>29</sup> MONGOLIA SURVEY: COMMUNITY-ORIENTED POLICING IN MONGOLIA, Ulaanbaatar, Mongolia 2008 <https://asiafoundation.org/resources/pdfs/COPsurveyreportSept1608.pdf> (Viewed 12 April 2017)

## Internal factors affecting police<sup>30</sup>

*Police culture:* Police operates within a hierarchical structure, with age often the most salient determinant of seniority. Those more senior in years have been informally empowered to dictate to and direct junior officers. Rank is closely correlated with age, not merit.

*Police personnel evaluation system is product, or revenue-driven:* This includes the number of people who have been fined, the number of crimes investigated, and the number of arrests that have been made. Police officers' work is evaluated on the basis of the number of such "products" they supply.

*Complaints against police:* There are two predominant types of complaints that are lodged against the police: complaints concerning criminal activity that are referred to the General Prosecutor's Office, and complaints concerning police morality, which are passed on to the relevant authorities within the police department.

**MONGOLIA IMMIGRATION AGENCY:** With the adoption of the Law on the Border Checkpoint (2014) brought forward the General Department for Citizenship and Migration of Mongolia (Immigration of Mongolia). Immigration of Mongolia delivers its service to public through Central office, 3 local departments, 4 regional departments.

*Main functions of the agency:*

- To prevent Mongolian citizens violation of human right in abroad;
- To control exit/entry of passenger and vehicles at the Mongolian Border;
- To issue visa, visa and residence permit, private invitations for foreigners;
- To change visa classification, type, duration and register foreign residents;
- To inspect, investigate, arrests and deport foreigners in violation of immigration regulations and other Law of Mongolia;
- To receive and process applications related to Mongolian citizenship and transfer to the appropriate authority.

**MONGOLIA BORDER PROTECTION AGENCY:** It was established in 1933 under the Directorate of Interior Defense Affairs as a separate agency. Now there are four key government agencies that are responsible for securing the state borders:

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<sup>30</sup> *MONGOLIA SURVEY: COMMUNITY-ORIENTED POLICING IN MONGOLIA*, Ulaanbaatar, Mongolia 2008 <https://asiafoundation.org/resources/pdfs/COPsurveyreportSept1608.pdf> (Viewed 12 April 2017)

- *The Border Protection Agency (BPA)*: Responsible for managing operations, inspections, and border patrol tasks;
- *The Customs Service*: Deals with commercial operations, inspection of goods, drug interdiction procedures, and state protective services;
- *The Immigration Agency*: Manages investigations, alien custody, and deportations;
- *The Professional Inspection Agency*: Responsible for inspecting food and medical products and other goods going through the border.

The agency is regulated by the following State Border legal documents: The Mongolian-Chinese border treaty (1962), Mongolian-Chinese border regime agreement (2011), Mongolian-Russian border regime agreements (1958, 1976, and 2006).

Border Protection Agency's main departments are Intelligence, Weapons, Engineering, Hospital, Logistics and supply; Culture, sports, education and Research unit.

In the light of strategic environment transformations, which have been evolving around the globe, it is urgently vital for Mongolia to modify its border security policy. The changes in Mongolia's foreign policy and its socio-economic situation, changes in regional and worldwide military and political circumstances, and changes in the trends of relations between neighboring countries have impacted the current and future development of Mongolian border security.<sup>31</sup>

In this information-technology-dominated new century, the guarantee of a nation-state's border security and protection requires that its traditional security practices be creatively adjusted to fit modern international standards and the latest scientific and technological trends.<sup>32</sup>

*Mongolian current border protection system:*<sup>33</sup> Mongolia shares a 3,543-kilometer-long border with Russia and 4,709.658 kilometers with China from its total 8,252.895-kilometer border. There are forty-four border checkpoints functioning on Mongolia's borders, of which twenty-nine are on the Mongolian-Russian border, thirteen are on the Mongolian Chinese border, and two are at airports. The checkpoints are classified into four types: eleven are international; eleven are two-sided and permanent; eleven are temporary operations and se-

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<sup>31</sup> Dashtseren, D.: *BORDER PROTECTION AND NATIONAL SECURITY OF MONGOLIA*, 2006 [http://calhoun.nps.edu/bitstream/handle/10945/2360/06Sep\\_Dashtseren.pdf?sequence=1](http://calhoun.nps.edu/bitstream/handle/10945/2360/06Sep_Dashtseren.pdf?sequence=1) (Viewed 5 may 2017)

<sup>32</sup> *Ibid.*

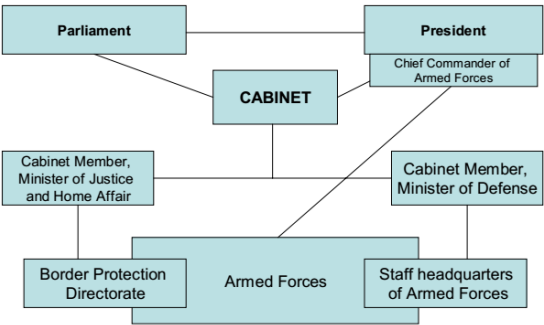
<sup>33</sup> *Ibid.*

ven transit. The main challenges are that the influx of illegal Chinese immigrants as well as workers and traders overstaying their visas.

*Legal framework:*<sup>34</sup> Mongolia’s State Policy on Borders was adopted in 2002. It defines the main directions of the state’s policy on borders and their implementation. The Law on the Borders of Mongolia, adopted in 1993, defines the purpose of the state border system, procedures for safeguarding the border, the organizational chart, functions of the border-protection authorities, and procedures for involvement in border protection by citizens and organizations.

The mission statement of the border protection authority includes the following:

- Conduct the state policy on border protection and organize it;
- Ensure the implementation of the duties of Mongolia in accordance with its international treaties and agreements on border issues;
- Protect from unauthorized changes the borderlines and border posts and settle any border issues in accordance with Mongolia’s laws;
- Prevent border offences or violations and ensure the enforcement of the state borders and near-border regimes;
- Arrange cross-border movement of passengers and vehicles in compliance with relevant regulations.

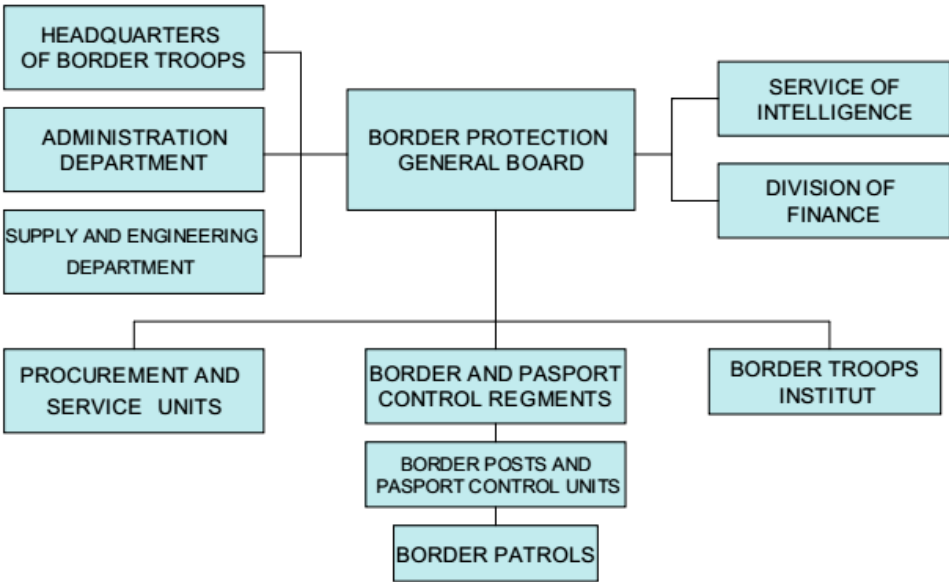


**Figure 5.: MONGOLIA’S BORDER PROTECTION SYSTEM<sup>35</sup>**

<sup>34</sup> Dashtseren, D.: *BORDER PROTECTION AND NATIONAL SECURITY OF MONGOLIA*, 2006 [http://calhoun.nps.edu/bitstream/handle/10945/2360/06Sep\\_Dashtseren.pdf?sequence=1](http://calhoun.nps.edu/bitstream/handle/10945/2360/06Sep_Dashtseren.pdf?sequence=1) (Viewed 5 may 2017)

<sup>35</sup> *Ibid.*

The agency is subordinate to the Ministry of Justice and Home Affairs. Border guards are equipped with armored personnel carriers, helicopters, and modern weaponry. Some of the border is patrolled on horseback (camels), and dogs are specially trained to work with the guards. Much of the border is plowed, to assure that footprints are identifiable, and equipped with manned guard towers and searchlights to maintain continuous observation.



**Figure 6.:** BORDER PROTECTION ORGANIZATION CHART<sup>36</sup>

*Improving its border protection system:* Most reform proposals to improve border security fit into one of four broad categories:

- Appropriate legal and organizational frameworks;
- Effective exchange of information and data;
- Development of common border posts including training and equipment;
- Improvement of living conditions and integration into local communities.

<sup>36</sup> Dashtseren, D.: *BORDER PROTECTION AND NATIONAL SECURITY OF MONGOLIA*, 2006 [http://calhoun.nps.edu/bitstream/handle/10945/2360/06Sep\\_Dashtseren.pdf?sequence=1](http://calhoun.nps.edu/bitstream/handle/10945/2360/06Sep_Dashtseren.pdf?sequence=1) (Viewed 5 may 2017)



This reform should concentrate on the following areas of concern:

- 1) The agency needs to be restructured. Mongolia should unite all agencies involved in border protection under one umbrella. At present, there is a lot disagreement among these agencies;
- 2) Concentrated border enforcement strategies should be developed for and implemented in specific segments of the international border.

Today, managing borders has become an ever more challenging task, as states try to maintain as open a border as possible in order to integrate into the global economy. Mongolia's existence today is based on equal and friendly relations with its neighbors, as it is completely land-locked between gigantic neighbors, with a huge landmass but a small population.

Successful implementation of a State Border Protection Policy requires having the right combination of highly trained and well-equipped border protection personnel, integrated detection and sensor technology, and strategically placed tactical infrastructure. Partnering with other state and local law enforcement organizations like Customs, Immigration, Intelligence, and the Police Department provides better coordination and productivity for border protection operations.

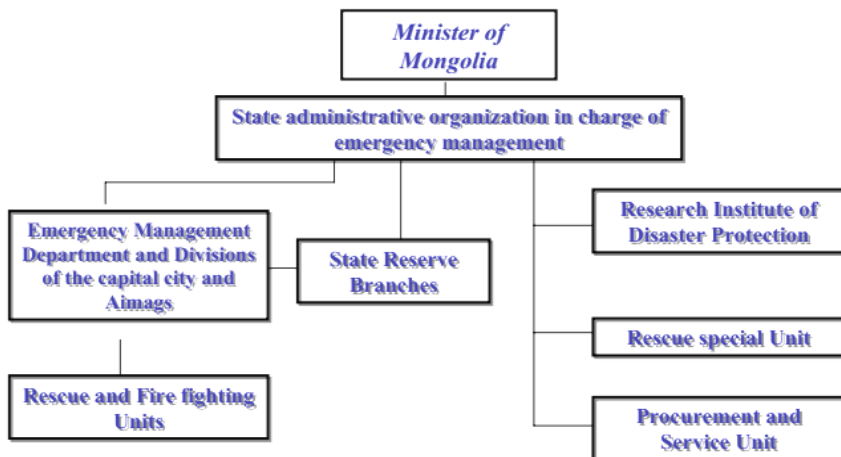
#### **THE NATIONAL EMERGENCY MANAGEMENT AGENCY (NEMA):<sup>37</sup>**

*The main duties:*

- To evaluate disaster risk and vulnerability;
- To implement activities on disaster prevention, disaster reduction, disaster preparedness in all levels;
- To organize search and rescue work, response;
- To restore main infrastructures and rehabilitation;
- To strengthen capacity of national disaster protection;
- To cooperate with foreign countries and international organizations in disaster protection field;
- To implement policy on state reserve.

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<sup>37</sup> <http://nema.gov.mn/> (Viewed 27 April 2017)



**Figure 7.:** STRUCTURE OF THE NATIONAL EMERGENCY MANAGEMENT AGENCY<sup>38</sup>

#### **The capacity of National Emergency Management Service:<sup>39</sup>**

Emergency management department and divisions -22;

Fire brigade -41;

Rescue sub-unit -10;

State reserve branches -32;

Research Institute of Emergency Management organization -1;

Rescue Specialized Unit -1;

Supply and Procurement Unit -1;

The State Disaster Protection Service -11 (group -37, state serviceman -3,068);

Local Disaster Protection Service in 21 territorial unit -198 (serviceman -594);

Part time professional team -1,981 (servants 44,866);

Total number of servants:

**Full time -3,148;**

**Part time -48,528.**

**THE GENERAL EXECUTIVE AGENCY OF COURT DECISIONS (PRISON SERVICE):** In communist era, Mongolia maintained both prison camps and correctional or educational colonies in the 1980s. There also were detention camps for minor offenders, designed to rehabilitate them by "socially useful labor." Such labor

<sup>38</sup> <http://nema.gov.mn/> (Viewed 27 April 2017)

<sup>39</sup> *Ibid.*

included town-improvement projects: cleaning the street, and repairing buildings. Those performing this labor received neither wages nor food; they purchased their food or depended on their families to provide it. Local jails existed for brief detentions (twenty-four hours or less) of intoxicated persons and those awaiting indictment.<sup>40</sup>

The prison system in Mongolia is the responsibility of the General Executive Agency of Court Decisions (GEACD). The agency made up of two main departments, namely, the Department of Court Decision Execution and the Department of Court Decision Enforcement. The latter one is dealing with daily operation of Mongolian prisons. The agency is part of the Ministry of Justice. The daily operation of the agency regulated by the Constitution of Mongolia, the Criminal Code, the Criminal Procedure Code, the Court Decision Execution Act and others.<sup>41</sup>

According to the Court Decision Execution Act, the main function of the GEACD is to provide the condition for the effective implementation of the court decisions. The new law adopted in 2000. In the past, the implementation of the court decisions were regulated by three separated laws, which made it complicated the realization of main function of the prison service. The structure, organization and the management of the prison service was united under the single governance.<sup>42</sup>

#### *Mission of Prison service:*<sup>43</sup>

- To execute the organization's operation with the international rules and standards;
- To provide necessary condition for the effective implementation of the court decisions according to the legal framework;
- To direct the responsibilities of civilian and criminal decisions made by the courts allocated to the different units at the service;
- To formulate human resource policy, training other related duties related to the employment policy of prison staff;
- To formulate and implement the financial and economic policy of the service;
- To organize and promote the international relations of the service;
- To establish the effective mechanism of the partnership of NGOs, business groups and relevant prison service providers;

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<sup>40</sup> Library of Congress, June 1989 <https://www.loc.gov/> (Viewed 22 April 2017)

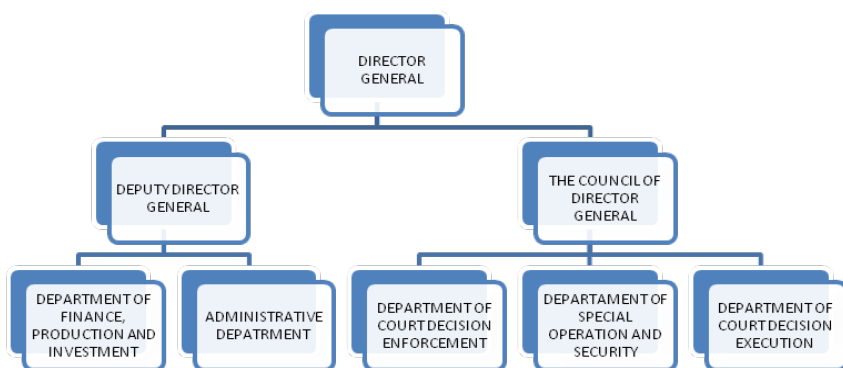
<sup>41</sup> Lkhagvaa, A.: *Mongolia Court Decision Execution Act explained, 2004, Ulaanbaatar*, pp. 248-255

<sup>42</sup> *Ibid.*

<sup>43</sup> <http://cd.gov.mn/mn/> (Viewed 20 October 2016)

- To monitor and report the prison service providers' activities, whether they abide by the UN Standard Minimum Rules for the Treatment of Prisons.

*The GEACD control and monitoring functions:*<sup>44</sup> According to law, public prosecutor has a special mandate to monitor the daily activities of the prisons. Parliament's Justice committee and the National Audit service have the right to conduct inquiries at the prison service. The internal monitoring has a very important role on the activities of the prison service. The internal unit was officially established at the GEACD. They conduct a permanent audit and monitoring of their subordinate organizations.



**Figure 8.: ORGANIZATIONAL CHART OF AGENCY<sup>45</sup>**

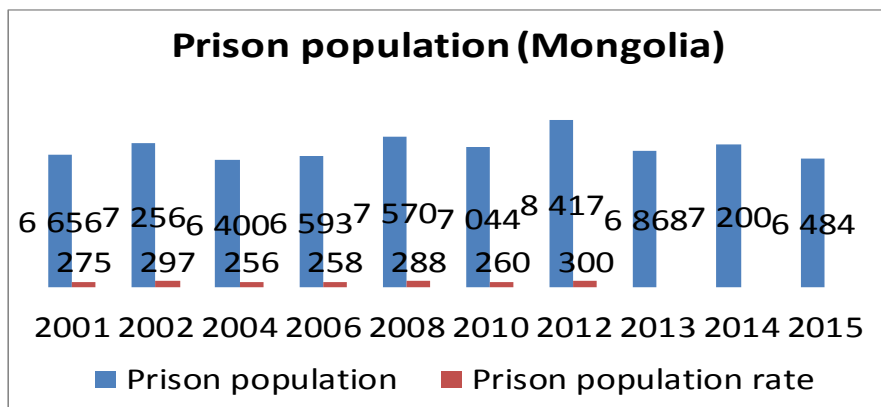
In Mongolia, penal institutions play very important role in the criminal justice system. At the moment, there are 24 prisons operating in Mongolia.<sup>46</sup>

- Local facilities, pre-trial detention centers- 21;
- High security prison (for life sentenced offenders) – 1;
- Juvenile prison (closed public school) - 1;
- Women prison - 1.

<sup>44</sup> <http://cd.gov.mn/mn/> (Viewed 20 October 2016)

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*



**Figure 9.: PRISON POPULATION TOTAL** (World ranking -104th, Asia ranking – 26th), 2015<sup>47</sup>

*The main purposes of prisons are:*

1. Effectively execute the court decisions by isolating sentenced offenders in prisons. The isolation of offenders from the community is the most unique function of the state. But during the execution of court decisions basic human rights of offenders must be strictly implemented.
2. Academic and moral education. Offenders must have an access to the educational facilities and have chance to get some training related to providing law abiding behavior.
3. Healthcare. Offenders have a right to get a necessary health service.
4. Employment. Prisons have to provide offenders with job.
5. Compensation. Offenders must pay back to the society for their wrongdoing.<sup>48</sup>

*Key elements of the effective operation of prisons:*

1. The prison system is indispensable part of judiciary. After the court decides to isolate an offender the prison as a sort of public institution is fully obliged to provide suitable conditions for the offender to spend his/her sentence term. Before adoption of new Court Decision Executive Act, the prison system had been regulated by three different laws, which made it complicated for the prison staff to execute their duties. Not only criminal but also civilian decisions made by the court are now executed by a single organization.
2. Prison officers. They have independent status and privileges equal to military officers in terms of uniform, training<sup>49</sup>.

<sup>47</sup> <http://cd.gov.mn/mn/> (Viewed 20 October 2016)

<sup>48</sup> Mongolia Court Decision Execution Act, 2002. <http://cd.gov.mn/mn/> (Viewed 23 October 2016)

*The legal rights of the prison officers:* A prison officer can be a person who reaches the age of 18, has no criminal records and has a concrete professional skill. The prison system has an independent ranking system. The officer has to give an oath, wear a special uniform. In addition, the officer is legally bound by the disciplinary rules.<sup>50</sup> The breach of the rules may bring the following sanctions: Three months reduction of bonuses, the reduction of a certain amount of the salary, or demotion or free from duty.

*The following laws have direct impact on the activity of a prison officer:*<sup>51</sup>

- Civil service law;
- The law about the pension and social insurance of military servicemen;
- The Court Decision Execution Act.

The prison officers belong to the category of special public military servicemen.

*Difference between regimes:*<sup>52</sup> According to Criminal Code, prisons' regimes divided in following four categories: Regular, strict, special and high-security.

*The prisons with regular regimes:*<sup>53</sup> It is a basic unit of the prison system. Prisoners with light crimes usually transferred there. The majority of juveniles belong to this type of regime. The regime has more advantages such as more sentence reduction, the chances of early release.

*The strict regime features:*<sup>54</sup> Re-offenders and offenders with serious crimes usually transferred there.

*Special regime prisons features:*<sup>55</sup> Re-offenders and offenders with very serious crimes usually transferred there. *High-security regime features:*<sup>56</sup> Prisoners at the high-security prison are isolated from each other in special equipped rooms. Offenders with serious crimes to the public security and capital punishment receivers transferred there. If capital punishment receivers pardoned from President, they could get life sentence (no less than 30 years).<sup>57</sup>

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<sup>49</sup> Mongolia Court Decision Execution Act, 2002. <http://cd.gov.mn/mn/> (Viewed 23 October 2016 )

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> LKHAGVAA, A: *Mongolia Court Decision Execution Act explained, 2004, Ulaanbaatar, pp. 248-255*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> Mongolia Criminal Code, 2002 <http://cd.gov.mn/mn/> (Viewed 25 October 2016)

The problems which made Mongolia prison system vulnerable and ineffective:

- Lack of resources;
- No access to vocational and academic training;
- Prison officers' low morale;
- Management and organizational vacuum;
- Lack of employment.<sup>58</sup>

Since 1980s, an average 64.0-72.2 % of all offenders were punished by sentencing to prison. It means that there is something wrong with whole Mongolian criminal justice system. The clear trend is that in last decade the whole prison population fixed around 6,000.<sup>59</sup>

In 2012, the government adopted new program aimed at implementing a comprehensive alternative ways of punishing offenders. For instance, the government has been planning to establish community based service. In 2013, Ministry of Justice allocated financial resources for the building of modern prison complex, thus replacing old barracks.<sup>60</sup>

*Probation service:* Although the government made some steps in the direction of creating probation service, there is not any meaningful institutionalized system of aftercare service in Mongolia. The concept and practice of developing re-entry plans are in the process of development.

*The control and monitoring:* There is no ombudsman's office to respond to prisoner complaints.<sup>61</sup> The law allows prisoners and detainees to submit uncensored complaints to judicial authorities and to request investigation of prison conditions.<sup>62</sup> The Prosecutor General's Office was tasked with monitoring prison and detention center conditions.<sup>63</sup> The Prosecutor General's Office and the National Human Rights Commission conducted multiple scheduled, unplanned, and complaint-based investigations of prisons, pretrial detention centers, and police detention centers.<sup>64</sup>

*The perspective:* There were defined the following set of problems:

1. The experts advise to bring forward new mechanisms of punishing the offenders other than incarceration. Mongolia still does not have any effective probation service;

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<sup>58</sup> *Mongolia Criminal Code, 2002* <http://cd.gov.mn/mn/> (Viewed 25 October 2016)

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Country Reports on Human Rights Practices for 2014: Mongolia* Bureau of Democracy, Human Rights and Labor, U.S. Department of State <https://www.state.gov/> (Viewed 12 April 2017)

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

2. We need to formulate a new penal policy;
3. The total reorganization of the agency. It means to find more appropriate model of agency with clear structure, organization and management.<sup>65</sup>

### 3. Conclusion

There are a lot of discussions about how to reform the Mongolian law enforcement organizations. The experts define the following set of problems, which need an urgent solution in current situation:

1. Deepen and broadening the overall system by improving the legal domain (*amendment of State Secret Law*).
2. The Mongolian concept of law enforcement service is blurred. It means we need to implement new unified concept.
3. The dynamic continuation of reform. The reform of law enforcement organizations is not a one-time phenomenon. It must be ongoing, uninterrupted and consistent with its strategic objectives. Despite the reform, there are still obstacles to be overcome. Law enforcement personnel can be reluctant to drastic changes. They feel more satisfied with current status quo and are more willing to follow the current rules and procedures.
4. The establishment of interagency coordination and cooperation center (related to the operations and effective information sharing).

Another critical point related to the future of Mongolian law enforcement services is the degree of involvement of other organizations and the citizens. More transparent and accountable law enforcement service means more legitimate and reliable service in the future. The political willingness and public support will determine the future trajectory of the law enforcement organizations. It is very important to the maintenance of democratic society. The reform of law enforcement organizations could facilitate the establishment of rule of law.

In order to outline the whole picture about the reform of law enforcement organizations, the multifactor analysis is necessary. In order to resolve current problems in Mongolian law enforcement organizations, which are far different than the problems faced by other nation-states, we need to change the attitude in first place.

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<sup>65</sup> ALTANGEREL, U: *Some issues to improve the effectiveness of prison sentence*, Ulaanbaatar, April 2014, <http://criminology.mn/index.php?option=newsm&id=173&lang=1> (Viewed 25 October 2015 )



Some countries' experiences show that they paid special attention to reform the law enforcement organizations by adding some indigenous qualities and principles which were well applicable to the specific conditions for over periods. These qualities and principles were vital for the existence and shaped the law enforcement system from beginning. But the qualities and principles cannot be integrated from other country's law enforcement organizations without slight modification.

The Mongolian law enforcement agencies are planning to reform by applying some well established experiences of other countries. The most vital thing for improving the current conditions is finding the right combination of well-established approaches from other successful countries with inextricable traditional principles which were firmly based and defined the Mongolian law enforcement institutions for many years.

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# Secret information gathering during the temporary period following the regime change in Hungary

Solti István<sup>1</sup>

**Absztrakt:** A magyar nemzetbiztonsági szolgálatok és rendvédelmi szervek a szocialista rendszer bukását követő időszakban új feladatokkal és új kihívásokkal néztek szemben, és mindehhez új jogszabályi kereteket megalkotására került sor. Az 1990-ben kialakított szabályozás a tervek szerint csak egy rövid átmeneti időszakra szólt, a kormányzat tervei szerint még abban az évben megszülettek volna a teljes szektor tevékenységét szabályozó véglegesnek szánt törvények. Ezzel szemben az átmeneti szabályok végül a rendőrség esetében az 1994-ben elfogadott rendőrségi törvény, a nemzetbiztonsági szolgálatok esetében az 1995-ös nemzetbiztonságról szóló törvény hatályba lépéséig tartott. A szolgálatok így fél évtizedig tevékenykedtek az átmeneti szabályozás mentén és alakították ki a jogállami elvárások szerint működésüket. A szerző a tanulmányban azt a kérdést vizsgálja meg, hogy az átmeneti szabályozás milyen alapokat biztosított a szolgálatok alaptevékenységének elvégzéséhez és végül arra a megállapításra jut, hogy a szolgálatoknak az átmeneti időszakban tanúsított visszafogott magatartása elsősorban nem a törvényi szabályozás által kialakított rendszer minőségének, hanem a szerveket működtetőknak volt köszönhető.

**Kulcsszó:** különleges eszközök, nemzetbiztonság, rendészet, titkos információgyűjtés

**Abstract** In the temporary period following the collapse of the socialist regime, the Hungarian national security services and law enforcement agencies faced with new tasks and new challenges and above all the frameworks of a new regulation were adopted as well. This regulation – adopted in 1990 – was intended to exist for a short period of time, and according to the intention of the government the final acts – which regulate the whole area of this field – should have been adopted in the same year. On the contrary, this provisional regulation was in effect until 1994 in the case of the police, and until 1995 in the case of national security services, when the new Act on Police, and the Act on National Security Services came into force. So the national security services operated under the regulations of the provisional act during half a decade and developed their operations in accordance with the rule of law. The author in this essay examines the fundamental elements of this provisional act provided for the operation of the security services and finally comes to the conclusion that the moderate behaviour of the security services during this temporary period was due to the direction thereof, not to the quality of the legal system developed under the law.

**Keyword:** special means, national security, law enforcement, secret information gathering

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## Introduction

In Hungary the secret information gathering activity of security services and law enforcement agencies was publicly regulated at first in the year of the regime change. The Parliament adopted the Act X of 1990 on the Provisional Regulation of the Authorization of the Special Means and Methods of Secret Services in the first month of 1990.<sup>2</sup> The new act broke with the vocational terminology of the one-party state and did not use the terms such like “secret operational means and methods” or “operational technical regulation”, instead of these, with re-naming them in the title, the activity was laid on the foundations of the rule of law. After the adoption, according the prevailing opinion – which was widespread in professional and scientific circles as well – the act was satisfactory for that the operation of secret information gathering activity would be under the framework of rule of law until the final development of the comprehensive regulations for the security services and law enforcement agencies. Scrutinizing the act from the prospect of a quarter of a century we can notice such deficiencies and inaccuracies which can not be reckoned merits thereof.

One of the merits of the act – that I intend to emphasize – was that the regulation had not only given name to the activity of the secret detection, but provided the definition thereof. Apart from this positive development, it was a very negative element that the act did not specialized, listed the secret means and methods which belonged to the “special means and methods of secret services” under the regulation. In consequence, the selection from the applicable means or methods of security services and law enforcement agencies depended on the discretionary power of the users.

Due to the aforementioned statement, in this essay I present the variety of secret means and methods that were or would have been available under the provisional regulation, the consequences of the application, and their potential limits.

### The issue of the term of “special means and methods of secret services”

In relation to the term of the secret information gathering in those period of time, some experts<sup>3</sup> draw attention to the inaccuracy thereof, especially the

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<sup>2</sup> The law was adopted in 25th January 1990, and came into force on 14th February 1990.

<sup>3</sup> Zsolt Hetesy in his Phd essay expressed his opinion concerning to the term, that: „this term was already misleading in 1990. The most important characteristics of these means are not that the secret services are entitled to use them, but the information gathering is covert from the concerned people, and these means restrict their fundamental rights thereof. HETESY, Zsolt: Titkos felderítés, Phd értekezés, PTE ÁJK, Pécs, 2011. 8. p

indicative which was the “secret service”. We can declare that as well, this term – introduced in 1990 – has its effect in nowadays both in the jargon of professionals,<sup>4</sup> and in the public's. According to my opinion, the term of “secret services” – beyond to its inaccuracy – has further effect to the respect of the secret services, because this indicative has a negative connotation among the public.

It can be also declared that – in conjunction with the opinion of Mr. Zsolt Hetesy but completing it as well – the inaccuracy of the term could be seen in many points already in the year of the adoption:

1. During decades prior to the regime change, besides the Hungarian secret services, the investigation departments of the Hungarian law enforcement agencies were entitled to carry out telephone interception, observation of apartments, mail checking, surveillance (person and environmental interception), social inquiry report (information gathering by concealing the security nature thereof) etc. Furthermore, not just the investigation departments were entitled to carry out secret information gathering, but reconnaissance units of the border guard authorities were entitled to use agents.<sup>5</sup>
2. Convention of United Nations<sup>6</sup> signed and declared by Hungary expressly allowed – besides the goals of national and state security – the application of secret means and methods for the purpose of crime detection and crime prevention.
3. In the second half of the last century, means and methods of the secret services – exceeding the scope of activity of national and state securities – gained increasingly important role in the area of law enforcement in the vast majority of the states.<sup>7</sup>

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<sup>4</sup> For examples: lecture notes of Imre Kedves: *A különleges titkosszolgálati eszközök alkalmazásának története, különös tekintettel a 20. századra*, and Bence Mészáros in his PhD essay defines the covert detective as secret service means (page 7) and the Institute of Karoly Eötvös used this term in its paper to the Court of Human Rights in Strasbourg in 2015 ([http://www.ekint.org/ekint\\_files/File/tek\\_panasz\\_lenyege.pdf](http://www.ekint.org/ekint_files/File/tek_panasz_lenyege.pdf))

<sup>5</sup> JOBST, Ágnes: *A Belügyminisztérium működésének szabályozása 1956 nyarán*, Be-tekintő, 2011/1.

<sup>6</sup> *The Universal Declaration of Human Rights was adopted by UN General Assembly in 10th December 1948. After this adoption, the UN had set itself the objective of codifying the human rights, result of that in 16th December 1996 the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted. The second convention was ratified and declared by statutory law 8 of 1997 in Hungary.*

<sup>7</sup> See main article: CSONKA, Istvánné – MÁRAMAROSI, Zoltán: *Az operatív munka gyakorlata külföldön*, *Rendészeti szemle* 1991. 29. évf. 7. sz., 106-112. p.

4. After the provisional regulation, the adopted new Act on Police, and the Act on National Security Services in 1994, and 1995 did not use the previous term, but they created a new one, namely “secret information gathering”.
5. The aforementioned acts finally provided the opportunity to apply the secret means and methods both to the criminal departments of the police and to the national security services.<sup>8</sup> In the course of the Parliamentary debate it has been suggested<sup>9</sup> that police should not have been entitled to apply these special means, but this proposal was already light at that historical moment.

Zoltán Gál the State Secretary of the Interior Ministry emphasised in the course of the debate: *“law enforcement agencies are not in the position to cease applying special means and methods against criminals for the purpose of crime prevention, and – I underline – detection (...) because of the internationalisation of crimes, in the territory of detection police intends to take part in international cooperation. The fulfilment of our obligations – occurring in different international treaties, for instance detection of drug crimes or counterfeiting – would be impaired if the police could not have been entitled to use certain special means within proper barrier.”*<sup>10</sup>

The Parliamentary Committees supported this part of the proposal, and dr. Csaba Keresztes presented their opinion *“the committee – concerning this question – declares that this opinion mirrors the recent distrustful atmosphere, but from the time of Fouchet every single state uses the secret means (...) Every developed country we know uses this kind of means for the purpose of reducing crime level. According to my private opinion the application of these means can be debated from the prospect of state security, but it would be a mistake if we debate it from the prospect of serious common criminal offences. It would be a mistake because we modified the rules of the criminal procedure on the last parliamentary session. We widened – properly – the rights of the*

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<sup>8</sup> 1990. évi X. törvény 6. § (1) bekezdés

<sup>9</sup> Miklós Gáspár Tamás suggested the deletion of paragraph 6 as the opinion of his party (SZDSZ) in the parliamentary debate, because according to their opinion providing the means of interception and mail checking to the police would be a serious mistake concerning the committed serious abuses and infringement of law in the previous period. Even the SZDSZ did not exclude completely the application of these means, so they expressed that this question should be debated concerning the police act further be drafted. *Az Országgyűlés Naplója V. KÖTET 65-83. ülés (1989. XI. 21.-1990. III. 14.), Budapest, 1998. 6146 p.*

<sup>10</sup> Same: 6137 page

*suspected persons and the defence thereof, and seeing the increasing number of the committed crimes I think the police can not be deprived from its effective detective means.”<sup>11</sup>*

Parallel with the intention of the legislator, the representatives of science and law enforcement profession agreed that one of the main condition of the effective fulfilment of the task of crime prevention and crime investigation is that the secret means would be available for the police. Among others, Zoltán Máramarosi the Deputy Head of Department of the Police Academy presented<sup>12</sup> that – for the purpose of effective operation – the modern police bases its operation on open and secret technical and personal information bases. Besides Máramarosi, József Horváth the Head of Department of the Police Academy dedicated a whole essay<sup>13</sup> for presenting the importance and relevance of the availability, and he expressed that the secret forces, means and methods – which enhance the chance of the police against criminals – must be available for the law enforcement.

We can declare that – seeing the aforementioned arguments – the main characteristics of the secret means and methods in 1990 was already not that they were exclusively used by the security services. It is unequivocally proven that, besides the secret services, the law enforcement agencies were equal party in the field of secret means and they developed the framework of the application concerning their special tasks.

### **Critical examination of the term of “special means and methods of secret services”**

As I mentioned in the introduction, the provisional act had a high importance concerning that it was the first time when a definition was provided for the secret activity in Hungary. This definition: *“special means are all means and methods which are applied without the knowledge of the concerned people and the application of which could infringe the right of private life and home, and right of privacy and correspondence, and right to personal data protection.”<sup>14</sup>*

This term of secret information gathering had a new point of view for defining which means and methods belongs thereto. We can distinguish two main characteristics of the term. One of them is the “application without the

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<sup>11</sup> Same: 6159 p.

<sup>12</sup> MÁRAMAROSI, Zoltán: A bűnügyi operatív munkáról. Rendészeti szemle 1991. 29. évf., 9. sz., 3-8. p.

<sup>13</sup> HORVÁTH, József: A rendőrség bűnügyi operatív munkája, Rendészeti szemle, 1991. 29. évf., 3. sz., 21-28. p.

<sup>14</sup> 1990. évi X. törvény 1. § (2) bekezdés



knowledge of the concerned people”, and the other is the “infringement of human rights”.

Thus those secret means were special means as well, the application of which infringed the above-mentioned rights, but the rate or the risk of the infringement were not evaluated. I would like to emphasize the importance of this part of the definition, due to the fact that the law enforcement labelled its activity under this new criteria in its everyday operation. So if the applied means did not even risk those constitutional human rights that were mentioned in the act, those were not special means, so the stricter procedural principles and rules were not in effect thereto. Due to the fact that the act did not have the exhaustive list of the special means and methods, the law enforcement was under the pressure of the legal interpretation thereof.

Besides the mentioned deficiency – contrary to those who were involved in this issue those times<sup>15</sup> – a question can be raised: whether the effect of the Act X covered all means and methods applied by the services in the time of the one-party state or only to those ones that were mentioned in the paragraph 3 and the application of which were subjected to the authorization of the Minister of Justice. This question can be derived from the title of the act which was “Provisional Regulation of the *Authorization* of the Special Means and Methods of Secret Services “. But in the Act there was not a single regulation for the authorization of those means and methods which did not belonged to those circle which were authorized by the minister, not even an enabling provision for codifying them. The Act was silent on this issue.

In my opinion the Act referred only implicitly to that there were other – not subjected to the authorisation but for the minister – special means and methods, because at first the special means and their goals were defined generally and following that there was a specialization<sup>16</sup> according to that, in which the certain means were subjected to ministerial authorisation. From the silence of the Act a conclusion<sup>17</sup> can be drawn which is that the full panoply of the special means and methods are applicable for the operation of secret services and law enforcement agencies, but the means and methods can be applied under their

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<sup>15</sup> Nobody raised that question which secret means and methods are under the force of the Act during the adoption procedure of the bill or following that period. There was no professional debate either thereon.

<sup>16</sup> 1990. évi X. törvény 3.§ „Out of the special means...”

<sup>17</sup> Zoltán Márián represented this opinion „Prior authorization – if it is possible – had to be used in the case of increased risk of infringement and if the character of the means demanded it. The exceptions from this general rule were those actions which could not be bound by the authorization because of the nature of investigation (for examples: surveillance of persons, using agents, collaborators); MÁRIÁN, Zoltán: *A titkos információgyűjtés vázlatos története, Rendvédelmi Füzetek*, 2001. 49. sz. 7. p.

internal regulations, taking into consideration of the whole legal environment, context. According to my opinion this technical solution did not satisfy neither the constitutional requirements, nor the social expects. It would have been more preferable if the Act had regulated this issue explicitly.

According to my interpretation, it unequivocally appears from the regulations of the Act that the services were entitled to apply the full panoply of secret means<sup>18</sup>. The most of the applicable secret means and methods were available without outside control due to the fact that the legislator specialized three of them and only those ones were subjected to the authorisation of the Minister of Justice. That is the reason why I did not share that opinion – which was stressed at that time and since then – the Act X of 1990 had proper provisions for regulation in the temporary period, furthermore I could not agree with the point of view that “the act reduced the applicable means and methods compared to the prior opportunities...”<sup>19</sup>. I believe that during the temporary period there was no reduction in the field of the applicable means, only the application of the most well-known and the most feared (mail checking, interception) means were restricted.

Obviously I did not claim with my prior statement that the services at that time continued their procedure (which were declared illegal<sup>20</sup>), but I would like to call the attention to the fact that the new Act did not exclude any means and methods – except the secret arrest and secret short-time arrest – from that, which were applied during the one-state party regime, merely the application was authorized under a publicly available – not under a classified – Act. The fact that the services moderate the application of the secret means during the temporary period was the consequence of perplexity and seeking ways, not of the regulations of the new Act.<sup>21</sup>

In the light of the definition, we should realize that it provided a very large scale for the interpretation for the law enforcement. If we focus on the grammatical interpretation of the definition, we find that every means which could have been used in the course of the operation of a secret services were or should have been involved thereunder. Not just that means were relevant which

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<sup>18</sup> *The applicable means by the state securities were specialized in the 1/1975. direction of the Vice-president of the Council of Ministers on the applicable means and methods for the defence of the state security which were in effect until 22th January 1999.*

<sup>19</sup> *MATEI, László: A titok fogalom értelmezése a bűnügyi operatív munkában, Rendészeti Szemle, 1990. XXVIII. évf. 9. szám 72. p.*

<sup>20</sup> *An investigating committee – set up by the Interior Minister – presented a report concerning the illegal procedures in 1990. The report: a belügyminiszter által kiküldött vizsgálóbizottság jelentése, 1990. január 16.*

<sup>21</sup> *In this issue I agree with Géza Finszter, presented his opinion from a different point of view in the essay on the national security.*

were applied for gathering the necessary information carrying out detection and averting, but those ones which were applied for the operation of influence, disruption or even information. Because in the course of the last mentioned operations, the secret services could infringe the specialized human rights and could operate without the knowledge of the concerned person. For instance a covert person can be applied for providing information, but for many other purposes as well such as disinformation, generating conflicts between people or groups.

## **Special means subject to the authorisation of the Minister of Justice**

The Act of 1990 specialized three special means from the panoply of services and subjected their application to the authorisation of the Minister of Justice, and that

1. information gathering by technical means,
2. mail checking and
3. secret entering to apartments.

Another inaccuracy of the Act – besides the aforementioned ones – was that there were no exact definitions of the specialized means thus the tasks to settle the details remained on the government, the law enforcement, the authorization bodies and the professionals. Scrutinizing the essence of special means, first of all I would like to call the attention to that the list is quite mingled.

Out of the three means, *“mail checking”* is – beyond doubt – a special means for direct information gathering. On the contrary *“information gathering by technical means”* is a general term for many other secret information gathering means. And the last referred *“secret entering to apartments”* is not even an information gathering method in regard to that entering to an apartment per se – even if it happens in secret way – has no information value. Secret or covert entering to an apartment is the condition of preparing or fulfilling of the information gathering activities by the services but it can serve other – not information gathering – purposes such as compromising. Secret entering is considered as a “predicative offence” which is the condition of the success of secret services and within this scope it is integral part of secret means but it can not be classified as a secret information gathering means or methods.

In the case of “mail checking” under the relevant law and social relations at that period we could make the conclusion that – similar to Zsolt Hetesy's<sup>22</sup> – the services under this activity were entitled to open letters with a non-destructive manner and check the letters and other postal matters posted to a direct per-

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<sup>22</sup> According to Hetesy after 1990 in the case of foreign mails there were no opportunity for the general information collection, or the „delaying” checking and he did not mention the forfeiture of letters either.

son. In the period of one-party state there was provided facility to forfeit letters in certain circumstances and to carry out general mail checking by the virtue of a defined information claim,<sup>23</sup> but these two were terminated at the regime change.

The other inaccuracy of the Act – while the “mail checking” is quite an unambiguous, information gathering methods since ancient times – the exact determination of the toolkits of “*information gathering by technical means*” – which is a broadly described expression – may cause difficulties.

If we resort to the teleological – searching for the aim of the Act – interpretation<sup>24</sup> in that case all information gathering methods carried out by technical means – and not just by human sources – belongs thereto, which were applied by the services for data recording or surveillance of behaviour. According to this interpretation, the following less human rights restrictive means are included among others: radio-detection, surveillance using photo machine, video camera, night vision, thermal imager or electronic tracking devices. But even the “secret social inquiry report” may include if during the operation the mentioned things are covertly recorded by voice, still images or video machines on the site.

However according to my opinion the following seriously abridging means are not included, such as secret search of apartments, clothes and luggages. In the context of the secret search of the apartments, clothes and luggage, there was no information gathering or recording activity by technical means. Secret search was a special separate means per se, the aim of which was finding the certain object or a document and locating its position and which activity could have been carried out in the course of a combination. For the fulfilment of the secret search and for the documentation its results, technical means were applicable, but they were separate actions such like the prior activity for the entering which was called with the proper terminology “secret entering”, and the following phase was called “documentary recording”. Thus if lock-opener technical means were used for opening the locks of the entrance route or furniture or luggage or photo-technical machines were used for recording the found objects

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<sup>23</sup> BORVENDÉG, Zsuzsanna: „Ez nem spiclikedés, hanem felderítés” A levéllenőrzés módszertana és szervezeti felépítése 1945–1962 között. Betekintő, 2011/2

<sup>24</sup> The teleological interpretation intends to reveal the aim and the comprehensive function of the regulation or legal text through the grammatical interpretation. According to the debate documented in the Parliamentary Minutes, the aim of the legislation was the restriction of the operation of the services and the constitutional fulfilment of the operations. This could be granted that way if the applicable means subjected to outside authorization are as wide range as possible. As László Matei presented in his essay: “from the spirit of the Act it is perceptible that the legislators accounted these means as the necessary evil thus their application were authorized in the exceptional circumstance.” MATEI, László, i.m. 72. p.

or documents – even in the case of the widest interpretation – we cannot conclude that they were such means that were subject to ministerial authorisation.

If we scrutinize the essays on this topic from the time of the regime change, we find that services defined the “information gathering by technical means” in a wider sense – with wider range of means and methods – than the “operational technical regulation” meant before 1990. In the essay of Péter Zalai<sup>25</sup> published in *Belügyi Szemle*<sup>26</sup> in February 1990, the author did not categorised the secret procedure but he expressed that secret surveillance was also information gathering methods by technical mean<sup>27</sup>, besides the mail checking, interception and interception of apartment. But he did not include the secret social inquiry report, the covert search,<sup>28</sup> the covert inspection,<sup>29</sup> the covert application of forensic means,<sup>30</sup> or the connection network. In another essay<sup>31</sup> of Péter Zalai which was published in September 1990 he did not reckon the secret surveillance as secret information gathering means despite the fact that he offered the authorisation of the usage of photo, video or voice recording devices during the surveillance.

István Komáromi<sup>32</sup> categorised the applicable secret information sources into three groups: operational force, means and methods. Operational force included the collaborators such as official (active and unclassified secret relations, reservists, pensioners) and social relations (relations in or outside the network, activists, specialists, consultants), the “operational technical regulation” and mail

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<sup>25</sup> ZALAI, Péter: *A rendőrség titkos eszközeiről*, *Belügyi Szemle*, 1990. XXVIII. évf. 2. szám 42-46. p.

<sup>26</sup> The essay was written in July 1989 before the drawing up the Act X of 1990.

<sup>27</sup> “Secret surveillance: following in secret the movement or relations of a certain people or his movement in apartments by the member of law enforcement and recording the observation with using technical means” ZALAI: *A rendőrség titkos eszközeiről*, i.m. 44. p.

<sup>28</sup> „Covert search: when the member of the law enforcement scrutinizes a locked apartment or vehicle concealing his police nature or the real operation” ZALAI: *A rendőrség titkos eszközeiről*, i.m. 44. p.

<sup>29</sup> „Covert inspection: when the member of the law enforcement visually inspects a spot, or an object concealing his police nature or the real operation” ZALAI: *A rendőrség titkos eszközeiről*, i.m. 44. p.

<sup>30</sup> “Covert application of forensic means: setting up chemical, mark, electronic or other kind of trap by the law enforcement” ZALAI: *A rendőrség titkos eszközeiről*, i.m. 44. p.

<sup>31</sup> ZALAI, Péter: *A titkos nyomozás jogi szabályozása*, *Belügyi Szemle*, 1990. XXVIII. évf. 9. szám 47-52. p.

<sup>32</sup> KOMÁROMI, István: *Az operatív munka alapelvei*, *Rendészeti szemle* 1991. 29. évf., 2. sz., 55-61. p.

checking was considered operational means and the secret search was operational methods.<sup>33</sup>

On the contrary, if we use the method of the historical interpretation, we come to the conclusion that the technical information gathering means – which were the operational technical regulations and operational technical methods – according to the terminology of the state security in that period were the follows<sup>34</sup>: telephone interception, interception of apartments, visual monitoring of apartments, documentary recording.

If we use the method of the grammatical interpretation, we come to the same conclusion with one amendment, which is the radio interception. Pursuant to the definition, those secret means are included therein, with which the information is gathered via technical equipment. So technical equipment – and not human sources – were used for information gathering and special adapted technical systems were used for transmitting the information to the services, for recording, and for analyzing. These equipments definitely belonged to this field due to the fact that the information gathering activity was carried out via the operational technical means of the state security – except the “documentary recording” – which was previously established the technical system<sup>35</sup> under the regulation of technical parameters without the necessity of human intervention. The “documentary recording” is an exception because in this case there wasn’t any previously established technical system, but despite of this fact I list this means thereto. In the course of the “documentary recording”, photo-, film- or video recording equipment – directly taken into the apartment for the time of the operation – were used on the spot for the purpose of visual recording the location of the certain objects or documents, the environment and the subject thereof. Thus the essence of the “documentary recording” is simply the visual recording of the activity of a certain person, and the subsequent analysis of the recorded data by the services.

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<sup>33</sup> *Komáromi considered all the objects that supported or were applicable for an operation as operational means, and operational methods were those procedure when the forces carried out their tasks with the means. KOMÁROMI, István i.m. 56. p.*

<sup>34</sup> *Due to the fact that the newly established services in 1990 inherited their whole technical and technological equipment from the state securities and the collaborators used for the operation of the technical equipment and the colleges of the services mostly remained in their positions thus nearly the same persons operated the same technical means approximately with the same technological methods in the course of the technical information gathering than previously.*

<sup>35</sup> *Technical backgrounds of the telephone interception was an automatic interception system, of the interception of apartments or visual monitoring of apartments were a special interception system set up in the apartments and provided transmission, of the radio interception was a set up direction detective and interception station system.*

According to my opinion, taking into consideration the aforementioned examples we can reach the conclusion that the specialization of the means under integrated criteria missed in the field of the regulation and the professional level as well. From this fact, it derives directly the great defectiveness of the “information gathering by technical means” which was the possibility of wide range of interpretation for the law enforcement (executive and authorizing bodies). The Act allowed the services to decide whether the non-specialized means are technical or non-technical ones.

### **Secret information gathering means not subject to authorization of the Minister of Justice**

A researcher faces a more serious difficulty – extends that one which occurred in the case of the “information gathering by technical means” – when he intends to define those special means which are not under the effect of the special means subject to the ministerial authorization. In my opinion the limitation of the relevant means can be approached from two aspects, criteria.

One of the aspects, criteria is the circle of the means subject to authorization but as it was presented these means could not have been defined accurately either. Its consequence was that the interpretation of law enforcement highly influenced the elements of the mutual territory thus an exhaustively list could not have been declared.

The other aspect, criteria leads to a coherent system, but this aspect is outside the scope of national security and law enforcement and includes to the constitutional principles. The chapter XII of the Hungarian Constitution regulated the fundamental rights and duties, under which in the Republic of Hungary everyone had the right to freedom, to life and to human dignity and no one should be deprived of his/her freedom except on the ground and in accordance with procedure specified by law. That was the reason why certain means were prohibited for the services - such as secret arrest or secret short-term arrest - in the absence of authorizing regulation. Above all, pursuant to the regulation of the Constitution all activities that threatened the life or violated the human dignity were illegal. Thus in the course of the operation of national security services or law enforcement agencies no one could have been subjected to torture or physical punishment or inhuman and humiliating treatment, and usage of drugs or psychoactive products were prohibited for gathering information. Due to this fact certain information gathering methods such as torture, detention or medical treatment were eliminated.

It can be declared that there were no other aspects, criteria to define the generally available means for the authorities thus those means which were not prohibited by the aforementioned two aspects, criteria, could be applied by the newly established national security services and law enforcement agencies. In

other words, all means were applicable which were out of the scope of the two exclusive regulations.

## **Application conditions of special means and methods of secret services**

The application of special means and methods were not allowed to the services without limitations, so – beyond the previously presented ministerial authorization – the purposes of the application and the criteria of necessity and proportionality were declared as well.

Special means could be applied by the secret services on those cases when:

- confidential information was necessary for the enforcement of economic and defense interests of the Republic of Hungary through the governmental activity;
- covert activities threatening the sovereignty, or the economic or defense interests of the Republic of Hungary should be detected and averted;
- important facilities and armed forces should be secured;
- persons in important and confidential positions should be protected;
- security clearing should be carried out concerning of immigrants and individuals applying for refugee status;
- detection was ordered in the following crimes and against the perpetrator: criminal acts against the state, and humanity, criminal acts of terrorism, hijacking of aircraft, incitement against the community, scaremongering, criminal acts of escaping abroad, insurrection, and the jeopardizing of military preparedness.

Police were entitled to use special means for prevention and detection of all crimes which were punishable by imprisonment for up to five years or more.

In the case of three special means, the Act prescribed other – beyond the general principles – conditions when it was declared that the application should be subject to authorization of the Minister of Justice. According to the explanatory memorandum of the Act<sup>36</sup> those means are qualified as means subject to the authorization of the Minister of Justice where the opportunity of infringement of rights appears increasingly. From this prospect, the legislator reckoned the following means were more infringing: the full range of the interception, but not the full range of the secret entering, only the “secret entering to apartment”.

The expression of the apartment as a qualifying indicator occurred here at first in the system of the Hungarian secret information gathering, used it with its general meaning because the Act did not have interpretative regulations there-

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<sup>36</sup> *Minutes of mutual meeting of the Legal, Administrative and Justice Committee and the Defense Committee in the lunch break of plenary session in 23th January 1990.*



for. Thus the temporary period after the regime change all kinds of the interception (telephone, radio, apartment, conversation tapping outside an apartment) were subject to outside authorization irrespectively the location and the circumstances but this statement did not expand to the secret search. Ministerial authorization was expected to the secret search only those cases when it was applied in the course of an apartment and the entering was carried out not in a covert but in a secret way thereto. So other objects and places could have been searched without authorization.

Due to the fact that none of the agencies - from the newly established national security and law enforcement structure in 1990 - were under the authority of the Minister of Justice, with the outside authorization a new and an unusual procedure was established for the participants. So the agencies had a new control over their operations, even it was from the same branch of power. And whether the assignment of the authorizing position based on a deep theoretical consideration or not, we can make the conclusion from parliamentary adoption of the Act.<sup>37</sup>

The other restrictive regulation of Act for the application was that the time frame could not have been endless not even with ministerial authorization. The validity of the permission was a relatively short period of time, up to 30 days which could be extended once by another 30 days. Beyond the general aim, the special means subject to ministerial authorization were applicable if the concrete aim were defined thereof. The condition of the authorization or the extension was that the aim of the application was reasoned in detail by the law enforcement. But there were no specification concerning the criteria of the aims in the absence of regulation. I would like to emphasize that the purpose limitation

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<sup>37</sup> *The proposal which were submitted by the government had two options for the authorizing entity. One of the options was the Attorney General, the other one was an elected commissioner therefor. During the decision procedure after the in-depth debate of the proposal there were not enough members of the Parliament in the chamber for the adoption of the constitutional act, thus none of the proposals got the enough votes. On the following day two parliamentary committees – Legal, Administrative and Justice Committee and the Defense Committee – discussed the proposal and submitted both version again. The number of member of the Parliament was proper on that day but none of the version got enough votes either. After that Miklós Németh the Prime Minister offered a new version as a compromise, according to what the Minister of Justice would be the authorizing entity for a temporary period. About this new proposal – because of the time scarcity – the committees and the members of the parties established their opinion in the break and in the afternoon two standing committees set it in the Act as a third version. Finally, the parties adopted this committee's version as a compromise, but preliminary for the sake of dr. Kálmán Kulcsár who was the Minister of Justice at that period, a person who was guaranty for them. Az Országgyűlés Naplója i. m.*

principle did not extend to the means not subject to ministerial authorization because there were no binding regulations thereto.

Beyond the appearance of the purpose limitation principle, there were other restrictions to the application of special means. The services were obliged – by the regulation of one aspect of the principle of necessity – to apply the special means except for that case if the required data could not have been acquired in any other manner. In my opinion we have to emphasize as the consequence of the principle of the necessity – and not the purpose limitation principle – that the application of the special mean had to be terminated before the deadline if it had attained the objective or it became known that it was not proper to reach its goals. But beyond this, the legislator did not regulate the manner of the application with which it let this to the administration and the law enforcement and the analyst.

Besides the principle of necessity, one aspect of the principle of proportionality was also declared, namely that the national security services could apply the special means subject to the outer authorization if there were serious threat to the sovereignty and to the constitutional order of the Republic of Hungary.<sup>38</sup> Naturally, the Act did not provide more details for the interpretation of term of “serious” so we face with the same difficulty as we did in the case of the principle of necessity. The principle of proportionality were more concrete in the case of the police, because under the paragraph 6 section 2 the application was provided if the crime was punishable up to five years or more.

## Conclusion

First of all, I would like to emphasize that I presented my opinion in the essay on the ground of the known legal environment and the results of the representatives of law enforcement profession. For presenting the means of the national security services and law enforcement agencies in practice on a thorough taxonomic level we should know the ministerial directives which specialized and put the regulations of the Act more concrete but it could not happened in this essay due the fact that these regulations are classified.

Use the available chances, I presented in the essay that in the temporary period following the regime change, in the course of the development of the Hungarian secret information gathering system, a regulation was adopted that established some new, previously unknown restrictive measures such as

- that part of the activities of the secret services which infringed the fundamental rights became open for the public;
- certain special means were regulated on a legislative level, recognizable

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<sup>38</sup> Act X of 1990 paragraph 3

- by everyone;
- the constitutional principles were planted in the field of secret procedures;
- introduced institution of outside authorization which was independent from the law enforcement.

In the presented system, the significant portion of the activities carried out by special means remained in the internal issue of the services due to the fact that the means not subject to the authorization of the Minister of Justice – mainly carried out by human sources – were not regulated in an open act, thus they were not in the focus of professionals and public.

Furthermore, because the previously established system was repealed generally<sup>39</sup>, the national security services and law enforcement agencies could apply what they defined new, not introduced secret means and methods adjusting their necessity. For examples it occurred<sup>40</sup> that the search of clothes and luggage and the covert inspection should be declared as a special means per se, and the new interpretation of the trap as a means of criminal forensic. Besides those, we find that radio inspection remained relevant only for the national security services, then other means – for examples covert search, covert inspection – became significant by the application of the police.

| Special means subject to authorization of Minister of Justice                                                                                                                                                                                                                                                                                                                                         | Special means subject to authorization of Minister of Justice under the decision of law enforcement                                                    | Special means not subject to authorization of Minister of Justice                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>mail checking</li> <li>information gathering by technical means               <ul style="list-style-type: none"> <li>interception</li> <li>interception of the apartment</li> <li>visual monitoring of the apartment</li> <li>tapping of conversation in open space</li> <li>radio interception</li> </ul> </li> <li>secret entering into apartment</li> </ul> | <ul style="list-style-type: none"> <li>surveillance</li> <li>secret search</li> <li>secret search of luggage</li> <li>documentary recording</li> </ul> | <ul style="list-style-type: none"> <li>collaborators</li> <li>covert detective</li> <li>expert, consultant</li> <li>cover social inquiry report</li> <li>covert search</li> <li>covert inspection</li> <li>secret or covert search of clothes</li> <li>covert search of luggage</li> <li>trap</li> </ul> |

<sup>39</sup> *The Interior Minister repealed all the regulations concerning the special means and methods by its directive in 22nd January 1990.*

<sup>40</sup> *ZALAI: A titkos nyomozás jogi szabályozása, i. m.*

Summarizing, the Act X of 1990 – with its discretionary power – provided a wide range of freedom for the authorities for both, the introduction of secret means and the application thereof. It could have happened despite the opposite aim of the legislator. As my conclusions in the following table I present those special secret information gathering means which were applicable by the services according to my taxonomic evaluation at the beginning of 1990's.

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|-----------------------------------------------|------------------------------------------------|
| lehallgatás                                   | interception                                   |
| helységmegfigyelés                            | observation of premises                        |
| figyelés                                      | surveillance                                   |
| titkos kutatás                                | secret search                                  |
| postai küldemény ellenőrzés                   | mail checking                                  |
| dokumentáló képrögzítés                       | evidence recording                             |
| titkos információgyűjtő eszközök és módszerek | secret information gathering means and methods |
| környezettanulmány                            | social inquiry report                          |

# National security aspects of the Chinese headway

Attila Kasznár<sup>1</sup>

## Absztrakt:

A Kínai Népköztársaság nemzetközi tényerése a más nagyhatalmak esetében tapasztalt történelmi sajátosságokhoz képest szokatlan formában zajlik. A kínai migráns hálózatok stabil alapot teremtenek ahhoz, hogy a pekingi törekvések elősegítői legyenek. Ezeknek a hálózatoknak, valamint a kialakulásukat elősegítő vallási-filozófiai háttérnek a feltárása kiemelt nemzetbiztonsági szükségességgel bír.

**Kulcsszavak:** Kína, nagyhatalom, migráció, biztonsági kihívás, diaszpóra hálózat

## Abstract:

The international headway of the People's Republic of China is going on in a different way from the other superpowers' historic peculiarities. The Chinese migrants' networks give a solid base to promote the intentions of Beijing. Discovering these networks and its religious-philosophical background fostering their formation has an outstanding national security importance.

**Keywords:** China, super power, migration, security challenge, diaspora network

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There are more and more signs of a particular practice of power-building in the international politics of the People's Republic of China. This policy is something out of the ordinary for the western World since it is not only peculiar, but cannot be handled either by the western type of democracies. Nowadays, the People's Republic of China is a kind of superpower which has completely reshaped the global security policy.

According to the terminology of the security policy of the 21st century the People's Republic of China is going to become a formation meeting the criteria of a superpower which is able to enforce its interest in different and variable forms not only nationally but globally<sup>2</sup> as well and it is very likely that it can preserve this capability at least for this century.

China is a country with the size of a continent, with all the problems and peculiarities, as the Chinese proverb says, "Everything is true of China and so is the opposite of everything" In this country of contrasts, just as the European mind imagines, medieval situations can occur, while at the same time the most advanced high-technology is also present.

The philosophical-religious system defined by Hans Küng<sup>3</sup> – a special mixture of Confucianism, Taoism and Chinese Buddhism – has a fundamental impact on the role of the People's Republic of China in international politics.<sup>4</sup> As a result, the rules set up by western states cannot be considered as fully compatible with China's international activities. Accordingly, China's development to become a superpower most probably will happen under very different circumstances than it historically happened earlier with other superpowers. In my opinion this is an special method of hybrid warfare.<sup>5</sup>

The family based mentality can lead to a result in the actions of a new type of superpower which can be very unusual in the international arena. Several states are not prepared to resist Beijing's increasing global advance under the conditions of the new type of "conquest". Beyond the well known facts such as the deterioration of domestic industry, China's global extension also entails national security risks. Some other fundamental aspects threatening the functioning of the political system also arise. Such threat could be, for example, if the Chinese minorities are treated in certain countries as nationalities or even the

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<sup>2</sup> SZUNOMÁR Ágnes (2012): *Kínai külpolitika, kínai hatalmi politika: folyamatosság és változás. Külügyi Szemle. 2012/2. pp. 125.*

<sup>3</sup> KÜNG, Hans – CHING Julia (2000): *Párbeszéd a kínai vallásokról. Palatinus Kiadó. Budapest.*

<sup>4</sup> KASZNÁR Attila (2013): *A Kínai Népköztársaság a nemzetközi erőterben. Terror&Elhárítás 2013/2. pp 19.*

<sup>5</sup> RESPERGER István (2016): *„Nomen est omen„ nevében a végzet(e)? – A hibrid fenyegetésekre adható válaszok, a kontrahibrid műveletek. Terror&Elhárítás 2016/1. pp 3.*

opposite situation. Both can be a source of social tensions never seen before. “The majority of Chinese migrant communities live in line with their very own – philosophical-religious – rules that greatly hinder, among others, the successful actions of immigration, social security, law enforcement and tax authorities.”<sup>6</sup>

China’s global expansion always goes hand in hand with the appearance and development of Chinese migrant communities with their own special mentality. These communities create a new type of superpower foundation that contributes greatly to the process of Chinese “empire building”. This form of “empire building” along the philosophical-religious – mostly Confucian – rules raises the possibility that superpowers developing in this kind of way are less exposed to the challenges than those built in accordance with western dogmas. Therefore it is possible that the People’s Republic of China might become a superpower which is more unpredictable for western societies than any other superpower before, and at the same time it might be a more stable and more unyielding player in international politics.

The out flux of the Chinese migrants and the way they maintain the contacts with each other and with their motherland in harmony with the common religious-philosophic values is a certain asset for Beijing in the process of building its worldwide economic power.

The development of the global network of the Chinese philosophical-religious system through the migrant communities can be considered as one of the key components in China’s global headway process. This religious network provides an ideal background for the migrant communities to support those who stayed home, their relatives and the Chinese state by conviction.

When analyzing the characteristics of the Chinese worldwide economic expansion we must be aware of the extremely special and unique way of its expansion. Based upon the same will which usually motivates any other country to do so, China has chosen its own way to satisfy the same basic demands – supply of raw materials, increasing its share in the markets. The further international headway of the People’s Republic of China can be forecasted without any risk. The restructuring of the opportunities of exploiting raw materials in the World during the past decades - they mostly have become Chinese assets - cardinally changed the relations of power and having questioned the competitiveness of the western societies. The People’s Republic of China has become the most important or primordial economic - in many cases even financial – partner in the inter-state (inter-governmental) relations. This peculiar ‘conquest’ significantly supported by the internal philosophical-religious environment and its presence in the communities of Chinese migrants and the East- and South-East Asian states seems to be unstoppable.

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<sup>6</sup> KASZNÁR Attila (2016): *Vallás és kormányzat Kínában. Bíbor Kiadó. Miskolc. 2016. pp. 176.*



From historical point of view the numerous communities of Chinese migrants living in different countries all over the World may also be considered as peripheries of an empire. These communities as it has been mentioned above have tight relations with the motherland maintain permanent links and operate as peripheral communities of the empire.

The implementation of the special Chinese form of being a superpower or an empire brings up some new kinds of security problems. The functioning of the Chinese communities following the model of a global network hides a significant risk for the national security of the hosting country.<sup>7</sup>

There is nothing to condemn in the expansion of the People's Republic of China, it shall be considered as a phenomenon within the process of the global historical evolution. Therefore, a rational, credible and trustworthy analysis and forecast upon solid real base focused on the national security interest of Hungary can be made just by putting aside the previous models of superpowers and using other methods taking into consideration the Chinese peculiarities of building an empire.

Examining the peculiar Chinese headway and its impacts it will be indispensable to answer the following wide-range questions of national security, economic and social character:

- Can China become a real superpower in the classical sense of the word, i.e. are the general rules applicable to superpowers compatible with China's rise?
- Does China really tread a special path as a superpower due to its philosophical-religious system? What is the difference between the Chinese way and the classic scenario?
- To what extent do the Chinese migrant communities and their ideological network contribute to building superpower positions of the People's Republic of China, and what special features do such activities have?
- Can this process be considered as a superpower's political game based on religion, or as a power's self-positioning struggle?
- Do the Chinese migrant communities have the willingness to integrate into the social structure of the hosting country, or do they behave differently, as an advanced bastion of China and as a religious-cultural conqueror?

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<sup>7</sup> DOBÁK Imre (2017): *Tömeges migráció a mobilkommunikáció tükrében. Szakmai Szemle 2017: (1) pp. 101-111.*

- If the Chinese communities live mostly by their own rules, to what extent will the intervention be more difficult in issues related to these communities on behalf of the immigration, social security, law enforcement and tax authority? How does this benefit the People's Republic of China in international politics?
- To what extent are western states prepared for the process of China's becoming a new type of superpower, and for the cooperation with such a superpower; do they recognise the imminent possible national security risks?

It is not easy to respond to these questions, it requires wide, never-done-before research including international fields which special professional aspects shall also be found.

Nevertheless, this network model can also make such competences to prevail which can make the People's Republic of China more successful when facing the new challenges of the changing world as for example the terrorism. The worldwide appearance of Chinese communities based upon a solid religious-philosophic base and having a determining role in the economy of the hosting country and protecting their own interests can play a significant role in thwarting the radical groups.<sup>8</sup>

The international expansion of the Chinese migrants' communities is a new phenomenon both in the evolution of the superpowers or empires and in the policy of the People's Republic of China as a superpower and concerning its security policy as well. It has a high probability that Beijing can achieve significant advantages from this peculiar situation in the struggle for the position of the leading country of the World. However, we should not disregard that being a superpower also means significant responsibility.

The appearance of a new superpower on the international arena can impact numerous interests. The rising of some nations and the decay of others significantly affects in every case the destiny of other nations. From the point of view of small nations such as Hungary it is indispensable to discover the peculiarities of the new determining protagonists of the international affairs in order to keep their relative stability, to assure their economic, social and national security interests. It gives a chance to elaborate countermeasures, to meet the new challenges successfully and the changing international conditions. Actually, one of the key players of the changing global system is the People's Republic of China thus it is Hungary's utmost national security interest to carry out the widest possible researches related to China.

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<sup>8</sup> BÁC S Zoltán György (2017): *A radikalizáció és a terrorizmus kapcsolata, egyes formái, gondolatok a megelőzés lehetséges perspektíváiról. Nemzetbiztonsági Szemle MMXVII. V. évfolyam I. szám pp. 5-26*

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