

# ORDER SECURITY – NATIONAL SECURITY ADMINISTRATION. NATIONAL SECURITY DEFENSE AS SPECIAL ADMINISTRATION

Zoltán BALLA\*

**Abstract:** *National security administration is the special executive-disposal activity of the national security agencies, the section of the state administration that helps the governmental work by reconnoitering and preventing with secret-servicing methods of the risks that shall harm or endanger the national security's interests.*

*The main operational principles of national security governing are the followings among others:*

- *controlling the operation of national security organization belongs to the executive authority's exclusive competence*
- *building up of national security agencies by military organization*
- *the national security administration is an autonomous special section of state administration*
- *separation of political and professional activities*
- *definition of the professional requirements of national security in public law*

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Reviewing the constitutional fundamentals could convince us about that national security activity is not the governance's world of out of law in the constitutional democracies but doubtlessly such a special section of administration which nature requires special settlement in several ways. Avowing it as special administration whereas presumes experiences, skills and readiness in national security operations, thus such professions that have internal lawfulness. The professional knowledge concentrates on two fields: man has to be expert in those fields where the risks appear (that is why the economical and monetary preparedness can be useful in the economic defense, the engineering qualifications in dangerous technologies, the legal knowledge in crime investigation) and man has to know the tools, methods and forces of reconnaissance. We can say this capability is the heterogeneity of national security's specialized knowledge. The legislator and the factors in governmental position should also respect the multiple preparedness, similar to for example the educational administration can't go without the educator's knowledge or it is practical for the medical government to consider the issues of medicine. Winning the professional authority is the base of stability that is decolonized from the change of political forces. On the other way, it is clear for a prepared specialist that the policy transmits the functional directions and priorities of his profession, substantially much more directly as it is general in other sections of the administration.

## ***The definition of national security administration***

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\*PhD. Habil. Head of the Department of Administrative Law of University "Károli Gáspár" and Head of the Department of Constitutional and Administrative Law of the Hungarian Police College, Hungary.

National security administration is the special executive-dispose activity of the empowered-by-the-law national security agencies, the section of the state administration that *aids the governmental work by reconnoitering and preventing with secret-servicing methods (national security reconnaissance)* of the risks that shall harm or endanger the national security's interests. National security agencies attend also defensive, checking, criminal investigating and some state administrating authority works.

National security administration was generated by a social need: people and communities were unable to prevent the risks that harm or endanger national security, but for that criminal justice and order security administration also have no appropriate authority tools. It is especially important to demarcate it from order security because by this we can identify the separating marks and the common criterions. Furthermore this comparison may decide that question if it is an organizational condition of constitutionality to separate the organization of national security from law enforcement administration or this separation was dictated by a historical situation, as a typical tactical resolution of transition from dictatorship to democracy.

The modern police was born in Europe when privacy separated from public life and public law appeared as special relationship of state and individual, where state already had some obligations towards the dependent (later citizen), like securing the individual's such needs that the individual was not able to supply. One of the first assumes of state was creating public security which needed a professional police empowered with the monopoly of violence. Order security appeared as a danger-averting activity that protects society from unlawful human behaviors. But the authority's intervention was not law-limited for long; the policemen had been entitled with wide discretionary power.

National security as state function is a latter growth that supposes the coming into existence of modern states and the build up of bases of law state in the XIX century. This was when national security reconnaissance was born as primary function of called "high police" (la haute police), against "low police" (la police bass) that secured public order. There are numerous differences in law regulation in the two kinds of police. That prospector has right who – in constitutional states – says police is the "army of law". Against this conception, ideologists in the dictatorships say clearly: "No legal demur shall disturb state's security which has to be adapted to the enemy's strategy."<sup>1</sup> A legal state shall not use this formula (but sometimes there would be claim for it) but order security does not pass into a legal armada in constitutional systems easily.

The first problem is to define the police's social function. "Law enforcement is the protector of public security" definition determines the aim of police's function but it keeps quiet about the ways that lead to the aim. The home researcher of the modern law enforcement-law, Lajos Szamel sensed this absence, and find that the key category of law enforcement, which matches to legal state's requirements is public order that nominates all the laws that make public law order.<sup>2</sup> The law of law enforcement includes all those legal norms that define the demanding, allowing or concessive statement of facts that need law enforcement measures and prescribe the form of the intervention of authority.

In accordance with it, the law of national security reconnaissance is the authorization itself, that does not neither define the general criterions of statement of facts that shall cause intervention, nor the form of intervention. National security administration is substantially needs more breezy and loose legal definition than other sections of administration. The danger-preventing and information-gathering function of national security is close to order administration which appears in the regulation of using coercive tools (violence-monopoly of national security) and gathering secret information.

The professional application of legitimate violence is typical of national defense also, so the relation of national security administration and defense sphere might arise. This latter is especially actualized by the fight against terrorism. It is difficult to find out if it is a war, national security prevention or "only" crime investigation. Many known western social scientist have drawn a parallel between police and army lately. One of the reasons of this interest was that the most serious forms of crime sometimes need the use of army's forces. We can find examples at eliminating terror

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<sup>1</sup> Cited by Loubet del Bayle, Jean-Louis: La police approche socio-politique. Montchrestien, Paris, 1992., p. 112.

<sup>2</sup> „Law enforcement can be defined as a state activity that intents on preventing the disturbs of public order, preventing the directly disturbing conducts and restoring the disturbed order.” Lajos Szamel: The basics of law regulation of law enforcement and police. Law enforcement Essays, BM Law enforcement Researcher Institute, Budapest, 1992/1. page 7.

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attacks, or campaigning against drug empires. On the other hand, lately such military actions took place in the critical zones of Earth. These actions were decided by policy and in this political decision national security reconnaissance played an important role. Then military had to solve public order defense tasks in the occurred operations. We can find examples in Somalia, Cyprus, Kosovo or Iraq.

In the 70's an American researcher made some sociological survey in the United Nations forces in Cyprus.<sup>3</sup> He wanted to know the soldier's opinion about that if a well prepared and trained captain – besides the military knowledge – needs also other special preparations in order to be effective in the order-maintaining service or not. The other question was that if a soldier can be effective in the peace-maintaining activity when physical constraint can be used only in self-defense. 51% of the questioned answered “yes” to both question. The prospector named them as the group of police-ethos-believers, of whom professional activity is ruled by the minimum violence principle. The group of 49% - who's answer was “no” to both question – personalized the military-ethos-believers. They believed in the necessary or sufficient violence principle instead of minimum violence.

These surveys shall be edifying in the cross check of national security and national defense. Examined, with what kind of international obligations and professional arguments can be explained separating the military services. But such an examination is beyond the power of this theme and its writer.

The new challenges of the world generate serious tasks for armies and national security. It seems the users of these two professions have to find the good resolutions in their own competence which not excludes a close cooperation, but the labor-division is rather necessary to be amplified than to be mellowed. As summary it is important to notice that the heart of the matter of national defense is the prevention of the outer violence; law enforcement is a legal answer to unlawful human behaviors and national security administration is the support of the national security interests protecting governmental tasks. National defense's task is to win battles, law enforcement's key-definition is to prevent dangers arising from unlawful behaviors, and national security's main principle is coming to know and analyzing the risks.

### ***Organizational basic principles***

Interpreting national security operations as special administration profits that the institutions doing such tasks can be placed in the state-organization with no doubt. National security agencies are national jurisdiction agencies. They are set up by military principles. Their regional agencies are deconcentrated administrative authorities. The central-set up is their absolute organizational principle. National security task must not get into self-government's competence.

It is separate question to analyze if the most general principles established against the modern public administration are enforceable in national security administration. (The democracy of public administration, common validation of centralization and decentralization, the claim of cost sparing public administration, the secure of social participation and control, the principle of subsidiary etc.) We can answer to this if we comprehend national security defense as part of democratic governmental activity.

As for the operational principles of national security government, we can only reach the fixation of the main criterions by interpreting the text of the Constitution. Reviewing these principles, the followings are worthy to emphasize:

- The first such principle is that *controlling the operation of national security organization belongs to the executive authority's exclusive competence*. But this does not mean a unique governmental authority because national security activity is under the thumb of law, furthermore national security special administration has its own professional requirements that a wise governance does not used to ignore and lastly the Cabinet's this kind of activity is supervised by the parliament, and some decisions belongs to the president of the republic. The Constitutional Court's 48/1991 Resolution says the followings: “Controlling the operation of the armed forces belongs to the Cabinet. The “controlling of operation” in the 35. § (1) section h) point of the Constitution assigns the part that belongs from the controlling power to the executive authority; it includes all the controlling power – that does not belong specifically to the Parliament's or the President's power by the operative law - above the military forces tunelessly with Cabinet that is

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<sup>3</sup> Brodeur, Jean-Paul: *Maintien et imposition de la paix en Somalie 1992-1995*. titled performance alluded to this survey.

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exclusively empowered with executive power. The powers of these three agencies have to include all the fields of the military forces. Controlling the military forces cannot be distracted from the Cabinet's power; but within the confines of separating the power branches and the power of the President, leaving the power of the Cabinet untouched, both the Parliament's and the President's power can be expanded." The Constitutional Court's this kind of constitution-interpretation in point of military forces was born during the content-explanation of the President's legal status in commander of the military forces. I find it lawful to mention it among the constitutional principles of controlling the national security organization because on the one hand two national security services work in the bonds of military forces, on the other hand the civil services are built up by military principles.

- Thus the second organization principle is the *built up of the national security services by military organization*. The VIII chapter of the Hungarian Constitution titled as military forces and police. The realized constitutional modification with the 1989. XXXI. Act effectively transformed the former state-party basis act according to the civil democracy's principles, but in some parts it did not tear with situation evolved after 1945. It preserved the military structure of order defense (and national security's with it) which defined it as an organization that is separated from civil public administration and it is one-type with national defense. This solution is intensified also by the 1996. XLIII. Act – "Hszt." - (service relationship of professional members of military forces) which drew the organization of police, custom guards, penal institution with also the army under the wider definition of order administration. The Constitutional Court said the followings about it: ... Those organizations that belong to the scope of "Hszt." are the organization of order administration altogether. Each of them does its tasks for the inner and outer security of the country and for the defense of public order and maintaining it. During the execution of their tasks they are entitled to use law restrictive measures within certain conditions, comparing to other state organizations they have stronger the subordinate-superior relations, and command plays determining role in the leadership." Furthermore: "The Constitutional Court alludes again to it: the nature of the tasks of military forces, as well as the act that helps by rigid subordinate and superior relations to reach these tasks may contain more attached regulations in point of the people in service relations that are reasonable only at military agencies. This is the reason why without further examinations, the unlawful command and measure – that would not be constitutional in the civil sphere - only in itself cannot be regarded as it comes up against the Constitution. But it's clear, it does not absolve the legislator from that requirement the military agencies only a definitely reasonable rate may diverge from a basic rule of law: everybody must be law abiding and have legal regulation-like behavior. For that, the constitutional explicability of a law regulation for the obligation of executing an unlawful command and measure can be judged only by the reasons that this obligation wants to enforce, and by comparing the values embodied by the rule of law." This latter justification is thinkable for because the primacy of command queries the order administration's bound to law, including national security activity also. That why the next basic principle has to clear if the staff of national security is part of public administration, or it is a higher abstraction thought with formation of national defense?

- National security administration is an *autonomous special section of state administration* that separates from police and is not directed by the Ministry of Justice and Law Enforcement as the legal successor of the former Ministry of the Interior. The operative text of Constitution in 23 October 1989 still reckoned with the fact that national security agencies were within the bonds of police, professional and department direction were not separated. (National security main group functioned as the organization of Department of the Interior and so did ORFK, too.) So in this: the tasks of police are to defend the inner order and public security, we can mean under inner order the summary of the fundamentally determining values of state security. The 40/A §. (2) Claus of the Constitution speaks about national security activities, when it connects its regulation to two-thirds law. But this was modification was made only in 1993, when four separate national security agency were there already, separated from Department of the Interior, under the supervision of a minister without portfolio. The situation in Hungary was like in 1990, that the guarantee was found in separated national security agencies in order not to use them in political battles or to gain the power in violently. (See the 26/1990 MT order made after the Dunagate-case). The doubt if the agency that protects national security is part of the state administration apparatus or it is a separate agency-type is a real problem. If this separation is traceable and sanctioned in the Constitution, then the validating the most important operational principles of democracy cannot be

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questioned. (This question returns in the case of law enforcement. The specialized literature tries to solve that what kind of content is behind the creation of the definition of order defense, why must be police stalled off from the civil public administration and with what can be explained the insistence to military structure.)

- The *separation of political and professional activity* is the requirement of national security constitutional operation that does not brook exception and hard to achieve. The 40/B. § (4) Clause says: "Members in professional substance of armed forces, police and civil national security agencies must not be members of parties and must not keep on political activity."<sup>4</sup> But this prohibition barely brings us closer to the solution of the basic problem. National security activity namely shows a substantially closer connection to governance than law enforcement, because its primary function is securing the indispensable information for the governance decisions. These needs cannot be written in law; they are typically within the range of free discretion. The universal requirement of constitutionality, the self-controlling operation of might, of course hasten the fixation of the limits of this free discretion, but temporarily there is no a worked out solution.<sup>5</sup> On the contrary, the crusade against terrorism denotes to the direction of canceling the extant limits. If we compare this with the Constitutional Court's resolution of the primacy of order and with that the basics of the government operation decided by the parties winning the election, we can see there is a barely recognizable, fairly obliterated limit between policy and national security profession.

- The *definition of the professional requirements of national security in public law* is also a constitutional-like principle. It is worthy to note that the military agencies find the rival of hierarchical might in the professional knowledge. This phenomenon is typical to the whole administration; at the most there are differences only in their rate. The abundant and uncountable changes in the head posts which are very foreseeable around the votes, the inner movements which do not take into account the facilities coming from the division of tasks, the subjective valuation of efficiencies, are all against the build up of professional values. But three factors may revise in this evolving situation. First one is the public law regulation that also bounds the governmental discretion, and protects the staff against absolutism. (In the mentioned 8/2004. CC decision the CC has canceled one of Hszt. Disposition because it bounded the constitutional principle of law to protection in labour dispute of the members in professional substance of national security agencies. It is an example how to revise the quality of law state in this way.) The second opportunity is to partition the tasks of national security and criminal investigation. But the hybrid style of some criminal offenses contradicts to this because in some law-subject hurts the national security and criminal investigation elements are combined. The international tendencies in after 1990 show that the secret securities of the leading civil democracies have found their new tasks in criminality after the disappearance of the two poled world. But if this tendency is explainable not only with the validation of organizational interest but also with the transformation of crime, then the procedural guarantees must be extended to the criminal investigation tasks of national security entirely. The third method of the professional build up is adapting quality improving systems to national activity. The terms of it is the significantly escalated outer (parliamentary) control, and the role of analyzing, evaluating sections within the organization.

- The Government's *immediate measuring obligation* in special terms is the part of the constitutional control of national security activity. The Constitution's clause 19/E. § (1) and (2) determines governmental tasks for the defense of constitutional order in extraordinary situations. The first clause says: "If outer armed groups invade into the territory of Hungary unexpectedly, parrying the assault ....

- Interpreting the extraordinary situation can help us to understand *national security averting danger*. The social function of law enforcement administration is to avert dangers coming from unlawful human behaviors with engaging legitimate violence. Is true to national security administration also? Only with restrictions! First of all, the significant parts of national security risks

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<sup>4</sup> The Human Rights Court in Strasbourg found this prohibition corresponding with the basic principles of human rights, saying the political neutrality of police is a reasonable limitation of basic rights in the temporary term of changing from totalitarian system, which is necessary in a democratic society. But the rate of necessity must be decided by examining the historical-social relations of the given state. Rekvényi contra Hungary case, Court Decisions, 1999/12.

<sup>5</sup> László Sólyom did not find the Constitutional Court's activity satisfying in this case. "The Court did not pass precedent judgments that explain what does it mean in the Constitution that parties must not practice public authority directly although in the parliament and getting into office they are the lords of public authority. And what about with the Constitutional? Eötvös Károly Institute Issue, 2004. p. 17.

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are further dangers undefined by the law, that are cannot be traced back to actionable conducts, or if yes, most of them are out of the bounds of substantive law claims. This is especially true to the intelligence gathering, but also to many inner national security tasks. Secondly, the basic function of national security is not the legitimate violence – although it has authority to it exceptionally -, but intelligence gathering. The basic of intelligence gathering is not the suspicion, but the national security risk, its term of validity expands from the events of past to the events of present and the forecast of future, and its method is the common use of direct, secret and covered channels. Thirdly, the prevention of the revealed danger is usually not a national security task, but it belongs to the jurisdiction of government management, the law enforcement authority and finally to the criminal justice. In the mentioned third case it is a further question if the prevention of danger has other national security methods besides the cooperation with state administration and justice, which is anyway called offensive or active national security activity by the specialized literature. (The disorganization of the groups those are dangerous to national security, distracting their financial funds etc.)

The above described danger averting features of national security raise the contradiction of *legitimacy* and *effectiveness* that is well known from law enforcement management. The solution of it is one of the least of all revealed fields of the state's constitutional working in the concern of national security. If it is true that the significant part of national security risks cannot be defined by the law, the situation is that, we cannot say in which life situations are there the need of national security act. This is worrisome from the aspect of legitimacy and can cause a very expensive intervention from the aspect of effectiveness. Furthermore, if national security acts do not tolerate the procedure form, then there is no any guarantee against it for people and institutes. The operative national security act tries to escape from this trap in two ways. Each of it is compiling a catalogue of the tasks of national security; the other one is defining the procedure rules of secret intelligence gathering. I'm analyzing this latter by cross checking with the statute of criminal procedure.

### ***National security risks***

The Statute of National Security ( Act. No. CXXV. "Nbtv.") does not defines national security risk. But indirectly it can be deduced from the clause 68. § (2). Although it uses this expression only with relation of the significant and confidential employers' defense and check. In general, we can say national security risk is all the facts and circumstances that may cause the effect which violates or endangers national security. With a little hyperbole we can say risk plays the same role in national security as suspicion in criminal procedure. From the recognize of risk decides the set of national security case, the start of activity of agencies and the depth of necessity of intelligence gathering.

In the constitutional countries the freedom rights extend the autonomy of human acts so far that this freedom is the most serious risk factor itself. This is the reason why terrorism can cause serious damages only in democracies on the one part exploiting the freedom, on the other part endangering it.

### ***The defense of national security in constitutional substantive law***

The prohibition of arbitrary restriction of basic rights and the relatively range circle of the entitlements that can be reduced to minimum by normative way in extraordinary situations, show that these guarantees of individual freedom are eligible to evolve and destroy human values both, so if practicing one of the basic rights harms another one, then in this case the limitation is right. (The necessity and proportion test means this, which importance was showed in many Constitutional Court decision.) Furthermore the society may be in an endangered state when some entitlements can be withdrawn without so much as the examination of necessity and proportion would be compulsory in each case. The definition of constitutional substantive law worked out by the Constitutional Court shows to that the bound of basic rights by criminal standards may happen only in exceptional cases. "In constitutional countries the substantive law is not only an instrument but protects and carries values: the constitutional substantive principles and guarantees. The substantive law is the legal basic of practicing substantive might and freedom-letter of protecting individual rights. Although substantive law is a value-protector but as a freedom-letter in the circle of protecting moral values it cannot be the tool of moral clean up." (11/1992. CC decision)

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A peaceful assembly may turn into a subversive activity. Substantive law is in a relatively easy situation because it prohibits the disorderly behavior itself not the subversive intent. (As we can say in disorderly conduct crime in the Hungarian Criminal Code (Btk.) 271/A. §) In quite wider range and not directly deduced from freedom of assembly, in the matter of fact of vandalism that provocatively anti-social violent behavior is punishable which shall cause indignation or fright in others. (Btk. 271. §)

Strike shall be used to political aims, behind the interest-protection shall lurk the intention of weakening the political might and the help to aid the opposition forces into might violently. The religious, ethnical, racial or political impatience shall get act-field in democratic societies by prohibiting discrimination, proclaiming tolerance in the differing confidences and cultures. The constitutional substantive law shall stand against political will if it manifests in such crime which was recognized by civilized nations as crime according to the general law-principles when it was committed. (Act 31. 1993. 7. § clause 2.)

The recognition that the demolished law order shall not be able to protect itself anymore forced the legislator to regulate preparation-like behaviors as overt act in several crimes against the state. The formal marks of plot match with the activity exercised by the freedom of association. The crime of conspiracy against the constitutional order is committed by the person who establishes or leads such an organization which aim is to change violently or threatening with the constitutional order of the Hungarian Republic. (Btk. 139/A. § (1) Treason is committed that Hungarian citizen who get in touch, keep up relation with foreign government or foreign organization for the aim of hurting the independence, the territory or the constitutional order of Hungarian Republic. (Btk. 144. §) The Btk. threatens to sentence because of infidelity that Hungarian citizen who gets in touch, keeps up relation with foreign government or foreign organization abusing with his state service or official charge and with this man endangers the independence, the territory or the constitutional order of Hungarian Republic. (Btk. 145. §) Aiding the enemy is realized by the Hungarian citizen who for the aim of weakening the army of Hungarian Republic, makes contact with, aids the enemy or cause detriment for the own or ally armed forces. (Btk. 146. §) Many appeal, offer, undertaking, together conspiracy, intention and common accord, objective planning, all of them are such behaviors that do not appear in the material world, do not leave traces, cannot be sensed by third person. But we have to reckon with that qualifying conceptually preparation behaviors as sui generis crime is not own of political delictums. The man, who appeals, offers, undertakes, conspires together of terror act in terror group or for the aim of aiding its committal, secures the necessary or unburdening conditions, gives or collects material tools, or any other way supports the activity of the terrorist group, commits crime. (Btk. 261. § (5) Man has to be punished because of accomplice in criminal organization if this man for the aim of committing crime in criminal organization appeals, offers, undertakes, conspires together or for the aim of aiding the commit secures the necessary or unburdening conditions, or supports it any other way. It's not random that the fight against terrorism and organized crime is often called criminal intelligence gathering, indicating that in the expose of these delictums only secret-servicing methods can be effective.

Significant part of the national security threatens are coming from thoughts, opinions. (It's not random that political police is often called as "though-police".) The freedom of thoughts and their free declaration shall turn against the democratic basic values, shall hurt other people's honor and reputation, and shall attack personality rights. Exceptionally the protection of substantive law may appear here also. (See the desecration of national symbols in Btk. 269/A. § and the prohibition of using of symbols of despotism in Btk. 269/B. §) With these latter the Constitutional Court fixed the followings: "The Court have given expression in several decisions that in the temporary period of changing from totalitarian state to democratic society, till the democratic institutions fully consolidate, some of the rights shall be bounded in those cases also, when it would be gratuitous like in a country which democratic development was undiminished. In the Constitutional Court's practice the right of human dignity is a general personality right which has specially appraised cases: the right of freedom of religion and the right of freedom of conscience. The feeling of belonging to a country does not appear as an appraised right but it is also part of the right of human dignity as general personality right. The limitation of freedom of expression of opinion obviates the injury of this right." Because of these the Constitutional Court did not find unconstitutional the punishing of destroy of national symbols because in this case the protection of

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human dignity limits the freedom of expression of opinion in necessary and proportional rate, so in constitutional way. (13/2000. CC decision)

But the Constitutional Court found unconstitutional in the 18/2000. (VI.6.) CC decision the crime of spreading rumors and annulled it from 6. June 2000. "Considering all these aspects The Constitutional Court led to the conclusion that claiming or rumoring false facts, distorting the true facts, even if the claimer knows his act has harmful effect to public peace, and put up with or if requires it, it is beyond the range of freedom of expression of opinion that cannot be limited by substantive law tools. The Constitutional Court finds public peace a constitutional value that is deducible from democratic state. But in the present level of communication possibilities of the society, against the behaviors of spreading rumors the protection of public peace is not such a vigorous society necessity, a cogent public interest that needs the tools of substantive law that necessarily limit the constitutional basic rights." But the Court did not exclude the possibility to re-regulate the spreading rumors as immaterial crime as long as freedom of expression of opinion shall be narrowed because of an extraordinary situation however. This law modification took place with the effect from 4. January 2001. The present Btk. 270. § says spreading rumors is committed by the person who at the scene of public danger, before large publicity claims or rumors such false fact – or distorts the true fact such way – that is able to create disorder or disquiet in larger group of people. (The Nbtv. 5. § j.), that remitted the spreading rumors to the reckoning competence of National Security Office besides the incitement against community, must be modified irrespectively of this, because the realization of spreading rumors carries substantially less national security risk, than the use of symbols of despotism or hurting national symbols. These crimes were defined as punishable acts when the Nbtv. was created.)

But in a former decision the Court pointed out that substantive law shall limit the freedom of expression of opinion in very tight limits: "Freedom of expression of opinion has accentuated role within the constitutional rights, as a matter of fact it is "mother-law" many freedom rights called "communication" basic rights. The appraised rights like freedom of speech and press which latter includes the freedom of all media, furthermore the right to be informed, the freedom of gaining information. In a wider sense the freedom of expression of opinion includes the freedom of artistic, literary composing and spreading the artistic work, the freedom of scientific composing and the freedom of teaching scientific knowledge. The Constitution 70/G. § disposes of respecting and protecting these latter. The freedom of conscience (60. §) and the freedom of religion (62. §) connect to the freedom of expression of opinion. This right-collective allows the individual's established participation in social and political processes. It's a historical experience when the freedom of expression of opinion was limited; the social justice was hurt, and reduced the possibility of evolving human creativity and human skills. The harmful consequences manifested not only in the individual's but also in the society's life and that led to the dead end with lot of suffering of human evolution. The free explanation of the ideas, opinions, and the free manifestation of such unpopular or special conceptions are the basic condition of evolution-capable and truly living society." (30/1192 CC decision)

The Constitutional Court in the decision about "hate-speech" found that punishing the opinion without material endangering cannot be matched with the basic right of freedom of expression of opinion. But the Court pointed out that: ... distributing racial, ethnical, gentilital, religious views that proclaim inferiority or superiority, distributing conceptions of enmity, contempt, exclusion are endangering the values of human civilization... The instigative, abusive, hate and hysteria manifestations against racial, ethnical, gentilital or religious communities take effect namely against the human civilization. The definite performance in front of these symptoms is expectable from everybody exceptionally from the persons of public life. (18/2004. CC decision)

From this last mentioned CC decision we also draw the conclusion: the range of national security risks is much wider than that field where threat of the substantive law shall be effective. That's why only in extraordinary cases shall the substantive law norms be determining the direction of continuing national security protection operations. So it is understandable, every effort that tries to reveal the content of national security task, make a countable and payable strategy to the execution of this state task and be eager for sure legitimacy, must step out from the exactness of substantive law, leave the securing world of administrative law, and make an attempt to recognize the risks and handle them in the social praxis directly.

One of the paradoxes of national security protection is that while the prohibition of the arbitrary limitation of basic rights limits also the secret services, but the improper practice of those

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mentioned rights shall carry such dangers which prevention belongs to the authority of national security. It's quite easy if these endangering acts come up against substantive law. It is more difficult to recognize the stake of national security if the endangering acts have no relation with the exercise of basic rights, cannot be described in substantive law prohibitions, but they are part of the everyday life which is not influenced by the law. Furthermore danger shall be so far and abstract that it is almost impossible to recognize it in the mass of legal and risk-free acts. However these far risks which cannot be valued from the sight of public security, they shall mean recognizing tasks for national security protection.

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