

## THE DEVELOPMENT OF LAW ENFORCEMENT IN HUNGARY AND ITS CHARACTERISTICS TODAY

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**ABSTRACT:** *The establishment of modern Hungarian state law enforcement was the outcome of a long process, the beginning of which can be dated to 1920. The objective of law enforcement is security, and it is motivated by migration. The task and institutions of Hungarian law enforcement adapt to the functions and organization of Hungarian public administration. Its public task is to guarantee public security in Hungary on the level of society. Being in possession of the monopoly on the legitimate use of violence, it accomplishes that mainly but not solely with policing measures and coercive measures.*

**KEY-WORDS:** *security; public security; violence; migration; public administration; law enforcement; police*

**JEL Code:** *K42*

Police science in Hungary is one of the youngest branches of science. The start of its development can be dated to the beginning of the last decade of the 20th century, when Szamel Lajos, commissioned by the Hungarian Academy of Sciences, started research on the theoretical, dogmatic and practical questions of law enforcement. After that several researchers examined Hungarian law enforcement, and this short paper endeavours to summarize their achievements.

### 1. A SHORT HISTORY OF THE DEVELOPMENT OF HUNGARIAN LAW ENFORCEMENT

#### 1.1. From the Beginnings to the Civil Revolution

The development of the Hungarian state started after 970 AD, with the unification of tribes and the adoption of Christianity. This process required an army controlled by the king (Stephen I at the time). At the beginning of the development of our state (around 1000 AD), there was no separate law enforcement and police, and the function of law enforcement, related to security (inner and public security), was performed by the army.

a) The first signs of law enforcement activity can be associated with Saint Stephen. The founder of our state reinforced the system of royal counties, which had been established in the 10<sup>th</sup> century, and which were “both a unit of public administration and jurisdiction, and were mainly represented and secured by the “ispán” (count), who acted on behalf of the king as an embodiment of public law.” (Kristó, 1988) The “ispán” –with the exception of church and royal estates—performed functions related to public

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administration and justice, including tasks concerning the public security of the area that he governed. The “ispán” was also head of the military, lead the county army, thus he, in fact, in one person fulfilled all the policing and military tasks of the royal county, in today’s sense. In the policing sense, he enforced the order of fairs, his deputy being the “billogos” (literally: bearer of the branding iron), who had the right to punish citizens who went to the fair, but not to church.

**b)** In the 13<sup>th</sup> century, the royal counties were replaced by the system of noble royal counties. The “ispán” (later “főispán” English: lord-lieutenant, Latin: supremus comes) was still appointed by the king, but its new deputy, the “alispán” (viscount, Latin: vicecomes) and the “szolgabíró” (magistrate, Latin: Iudex nobilium) – who was to act as judge in the disputes between royal servants (szerviens, Latin: serviens regis) and thus embodied a new function – were appointed by the nobility from 1232. Up to the middle of the 13<sup>th</sup> century, in most cases there were four magistrates, while in the processuses (Hungarian: “járás”) set up in the 16-18<sup>th</sup> centuries, it was the chief magistrate and the few substitute magistrates who acted as judges.

The name “várnagy” (castellan, Latin: maior castri) was replaced by the term “várkapitány” (constable).

*As a result of the public administration reform of 1870, the noble royal counties were integrated into the modern Hungarian system of civil public administration.*

**c)** The system of free royal cities, which gained strength in the 14th-15th centuries, is also worth mentioning. The security of these settlements, which became independent of noble royal counties and were only subject to the king, was supervised by the “városkapitány” (literally: city captain). In cities of the Hungarian Plain, street captains (“utcakapitány”) functioned, but in some places these were referred to as lieutenants or corporals (“hadnagy” or “tizedes”). “Other cities were divided into quarters, which were governed by the “fertálymester” (literally: quarter master).”<sup>1</sup> The emergence of three new kinds of establishments due to a law enacted in 1848, during the War of Independence (Paragraph 23 of the Act of 1848), notably: small cities (with a population below 12 thousand), medium size cities (with a population of 12-30 thousand) and great cities (with a population over 30 thousand), provided the objective prerequisite to the birth of the most typical of law enforcement bodies: police. Urban life, a population and property concentrated to a relatively small place, “produced” crime (Finszter, 2013), which could only be combatted by a specialized policing organization.

**d)** During the over-150-year period of Ottoman subjection, which began in the middle of the 16<sup>th</sup> century (after the occupation of Buda in 1541), naturally, there was no Hungarian law enforcement institution to speak of. The Turkish divided the areas occupied into seven administrative units called “vilajet”, which were headed by the “beglerbég”. The next rank below that was the “kádi”, who was among other tasks responsible for the enforcement of order. He was also in charge of judicial tasks, that is, he acted as a judge in cases against violators of order. (Hegyi & Zimányi, 1986)

**e)** The peace treaty of Karlóca, which put an end to the Austrian-Ottoman War (January 26, 1699) also ended the period of Turkish occupation; thus it became possible for the Habsburgs to unify the country politically, territorially and administratively. Absolutism began to develop, which also affected law enforcement. With the

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<sup>1</sup> Emyes op.cit. p. 59.

centralization of the country, the supervision of security, which had earlier been organized from below (Christián, 2011), and had been a privilege of the local nobility, slowly became a state task. The institutionalized form of the process can be associated with the Hungarian Royal Council of Governors (Hungarian: Magyar Királyi Helytartótanács). One of its legal successors is the Ministry of the Interior, which was established in 1848 and still functions today, and which can be called the supreme governing body in terms of public security.

The bureaucracy (numbering 118 in 1784 and 268 in 1818) managed by the *palatine* (“nádor”), who headed the Hungarian Royal Council of Governors, or by the *royal governor* – if the post of palatine was vacant – fulfilled various tasks. Those tasks included policing matters too, which, from the beginning of the reign of Joseph II (1780-1790), were handled by a separate department. Its competence was limited to handling cases related to public security, but they did not issue any binding rules. However, they did make proposals, such as the document issued in 1794, which summarized the measures concerning frequently occurring crimes. (Nagy, et al., 2007)

f) The next period of the development of public order and public security, from 1782, is associated with King Franz. The police ministry or police administration, organized by Franz’s predecessor, Leopold II, but established by Franz in the convent of the Carmelite sisters, was the first such central law enforcement organization. It should be highlighted that Franz set up an ultra-conservative system during his reign. His absolutism was fundamentally shaped by the fact that he felt threatened by the French revolution; by the death of Marie Antoinette (his aunt) and the royal family; and by the movement of the Hungarian Jacobites. Franz did all that he could to prevent national development and the spread of liberal ideologies, and used law enforcement to achieve his goals. The central administration, which he reorganized twice, first in 1801, then in 1814, was an instrument of police rule; and he established a secret cabinet. This institution was the first organization of such nature, and with some simplification we can state that it corresponded to today’s central office of national security. It supervised the operation of the secret network of spies, the secret police, which was first established at border stations and the cities of Buda, Pest, Pozsony, Debrecen, Nagyszombat, Temesvár and Zagreb. The secret cabinet held the whole Hungarian public life under its political control, and its main features were as follows:

Liberal press products were confiscated at border stations, all domestic magazines and books were subject to censorship, correspondences were monitored, frequent travellers were searched, and an espionage network was established, whose members were well paid or were granted a career.

The reign of Franz, which lasted for over 4 decades, undeniably *gave a strong impetus to the development of law enforcement*. He spent vast amounts of money on the operation of an *effective secret police* and on setting up the system of institutions. He established the centralised model which is practically still characteristic of the state security segment of our law enforcement. The *secret instruments and methods* that came into use in the 19th century (secret surveillance, recruitment on the basis of financial interests, monitoring of correspondence) were in many respects very *similar to the instruments and methods* that can be used today. The fall of his violent, absolutist system was started by the parliament of 1825, convened after 13 years. A *period of reforms* began.

g) Parallel to the centralisation of law enforcement described above, the public-security-related bodies of the noble royal county still operated for a while, although with a gradually narrowing range of institutions. Two notable roles in local law enforcement were the “csendbiztos” (town marshal) and its subordinate, the “pandúr” (pandour). (Christián, 2011). The institution of the “csendbiztos” was enforced by the royal decree issued in May 1701, which made the binding declaration that in the Alvidék (southern part of the Hungarian Plain) and in the Tisztántúl region (the region east of the Tisza river) – where the number of crimes had increased – landlords should ensure the improvement of public security. In the following hundred years, town marshals were selected from the military, and the town marshal functioned under the “alispán”. In the exceptional places, where a town marshal was not set up or was only set up late, an organization headed by the “strázsamester” or “örmester” (sergeant) fulfilled the same functions.

Three years after the Austro-Hungarian Compromise of 1867, the system of noble royal counties was abolished, and with that, the *former law enforcement bodies of cities* gradually ceased to exist as well. Public security came to be *organized centrally*.

The first stage of the development of law enforcement in the Reform Era was marked by Act IX of 1840, which established the field police (“mezei rendőrség”). “Subject to this law are... acts endangering external objects of economy and industry.” According to the first paragraph of the act, the field police could take measures against those damaging gardens, vineyards, forests and cemeteries. The law declared that the field police were to be supervised by the processus and district magistrates (“szolgabíró”) operating in counties and by city captains in cities.

That is, the field police system was decentralised, and its successor was the system of rangers (“mezőőr”), which was also organized on a local level.

### **1.2. The Development of Law Enforcement After the Civil Revolution of 1848**

The centralisation of law enforcement continued during the 1848-49 war of independence. Its three milestones were the following:

- On 17 March 1848, the Batthyány government was formed, which involved the establishment of the first ministry of the interior in Hungary. Szemere Bertalan was the first minister of the interior.
- On 20 April 1848, the Hungarian War Council of National Guards (“Országos Nemzetőrségi Haditanács”) was established, which mainly performed military functions, but also had some limited law enforcement powers. After 1849, the body was gradually incorporated into the military.
- On 14 April 1849, the Hungarian Parliament declared the third dethronement of the Habsburg dynasty (after 1620 and 1707; the fourth one taking place in 1921), which enabled Szemere, minister of the interior, to divide the country into 24 police districts. He appointed police commissioners to supervise each. Thus, for the first time in the history of law enforcement, a process of centralisation/ deconcentration started, which facilitated the operation of an organizational framework fundamentally different from the one up to that point, one which embodied unified principles and practice in the questions of law enforcement.

The *establishment of the gendarmerie* opened the next chapter of the development of law enforcement. In the 19<sup>th</sup> century, the gendarmerie (Hungarian: csendőrség, earlier: zsandárság, word of French origin) was a policing body functioning throughout Europe and organized around military principles, which mainly fulfilled public security tasks in

the country. The Hungarian word for gendarmerie (“csendőrség”) appeared in the language of Hungarian law enforcement in 1834, but officially came into use in 1873.

The *Royal Hungarian Gendarmerie* (Magyar Királyi Csendőrség, MKCS) was established in 1881, with powers extending to the whole country. Previous to that, since 1849, an imperial gendarmerie seated in Vienna operated, with the name *Imperial Gendarmerie* (“Császári Zsandárság”), under the leadership of the minister of the interior, Alexander Bach. In the so-called Bach era, the aim of the Habsburgs was to integrate Hungary into the empire completely. Accordingly, the gendarmerie, which operated as an *army for public order policing*, that is, organized along military lines, had the primary task of helping to *put down the 1848-49 war of independence*, and later, after the demise of the revolution, the task of *eliminating social banditry* (“betyárvilág”). To achieve those goals, out the secret methods of law enforcement they mainly used recruitment; Bach and count Johann Kempen, who had been appointed as the head of the supreme police authority, set up an extensive network of agents. The gendarmerie had 8 regiments in 1854, that is, its military structure remained *until its abolition at the time of the Austro-Hungarian Compromise of 1867*.

After that, with the exception of Transylvania, Croatia and the Serbian Vojvodina, the law enforcement powers of the gendarmerie were taken over by the “csendbiztos” of royal counties described above. Their task was encumbered by the lack of proper financing. In the 1870’s, public security in the Monarchy was seriously impaired primarily because of the abolition of the gendarmerie and because the policing activity of the “csendbiztos”/“pandúr” taking its place was professionally rather insignificant.

The reestablishment of the system of gendarme was *a necessity*. This necessity was satisfied by Acts II and III of 1881, initiated by Tisza Kálmán. On January 1 1882, the *Royal Hungarian Gendarmerie* started its policing activity. The *competence* of this organization – up to its dissolution at the beginning of World War I. – naturally only extended *to Hungary*.

As far as the Hungarian Royal Gendarmerie is concerned, we can state that *by the turn of the century, it had become an outstandingly efficient organization, even on a European scale; a law enforcement force with some of the best indicators on the continent*. In the world war of 1914, the gendarmerie, numbering almost 12,000, was ordered to the front and was replaced by veterans unfit for military service. Public security *rapidly deteriorated*. From the spring of 1919, the staff of the gendarmerie was for a few months taken over by the Red Guard. The law enforcement body which operated during the existence of the Hungarian Soviet Republic was dissolved at the beginning of August 1919 by the Peidl government.

Thus, formally the gendarmerie did not cease to exist, but its potential significantly *decreased* during World War I and in the following years. From 1920 it was exclusively supervised by the minister of the interior, and from that year the gendarmerie also performed *policing* tasks.

Its military nature remained and even became more prominent in the Horthy period, while the organization showed police-like characteristics in its tasks and range of instruments. “The gendarmerie was a mixture of military and police, which ensured the fiercest, most brutal kind of terror to the system”<sup>2</sup> as we can read in Holló Ervin’s book.

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<sup>2</sup> Hollós op.cit. p. 86.

In 1928, the gendarmerie obtained *investigative competences*, which further increased its rivalry with the police, which also had such competences. This problem was eased by the coordinating activities of the *State Protection Centre (Államvédelmi Központ)*, established in 1942.

In World War II, the gendarmerie participated in military operations as well as the control of ghettoization and deportations. *In March 1945, the prime ministerial decree No 1690/1945 of the Temporary National Government abolished the Hungarian Royal Gendarmerie. Its complete competence was taken over by the Hungarian State Police.*

### 1.3. The Establishment of the Hungarian Police

The previously described initiatives of emperors Leopold II, Joseph II and Franz of the Habsburg dynasty, and the establishment of the field police were **antecedents** of an independent Hungarian police organization. Its development started in the second half of the 19<sup>th</sup> century.

After the Austrian police ceased to have an influence over Hungary, in April 1861, *Thaisz Elek* was appointed chief police commissioner of the city of Pest. He used to be a member of the Austrian secret police in the 1950 Bach Era, and had earlier been convicted for his participation in the 1848/49 war of independence. Nevertheless, he quite quickly made a career and from 1873, when Budapest was created with the unification of Buda, Pest, Margaret Island and Óbuda (Ancient Buda), he became the *first chief police commissioner* of the capital. He is credited with *organizing the civil police*. The legal base thereof was Act XXI of 1881, which renamed the police of Budapest as “metropolitan police”. The establishment of the modern metropolitan police is *inseparable* from Act XXXVI of 1872, enacted 9 years before, which set up the *legal authorities* of the “Buda-Pest capital”, and thus defined the *metropolitan areas of competence*. It declared that the metropolitan police’s area of operation would include *all urban and suburban territories* of the capital; from 1889 Újpest and Rákospalota, from 1912 Kispest, Erzsébetfalva, Pestszentlőrinc, and from 1916 Csepel too. Paragraphs 20 and 21 of Act XXXVI of 1872 pronounced that the police would operate as a state authority in the area of the capital and that this state-managed police would be independent of the judiciary.

The *organization of the metropolitan police had two parts*: a central office and the police districts. They were supervised by the Ministry of the Interior. The chief commissioner would be proposed by the ministry of the interior and appointed by the king.

Thaisz quit his post on 11.03.1885, and was followed by Török János, an excellent public administration lawyer. He is credited with the establishment of the “detective department”, a predecessor of today’s criminal investigation organization, and he also set up a press service. Under Török’s leadership, the metropolitan police has turned into a modern law enforcement body by World War I.

The nationalisation of the metropolitan police was followed by the *process of centralising country police stations* in the 1890’s. In that development, the *Prime Ministerial Decree No 5047/1919* was crucial, because it can be seen as the starting point of a *unified state police*, which comprised seven headquarters: Budapest, Debrecen, Miskolc, Pécs, Szeged, Székesfehérvár and Szombathely.

From 1940, the state police performed the tasks of investigating crimes, bringing perpetrators to judgement, and public-security-related tasks.

The years between the introduction of the council system in 1950 and 1957 saw the establishment of today's police organization, with 19 county and a municipal (Budapest) police headquarters and (first district and from 1948) city polices.

It can be stated that the establishment of the modern Hungarian state police has been a long, nearly 50 year process, which started with Act XXXVI of 1872 and ended with the Prime Ministerial Decree No 5047/1919. This latter law:

- nationalised the city police, which had earlier been under the fragmented control of local governments,
- made it possible to extend the governing powers of the minister of the interior to local police bodies.

## 2. THE CHARACTERISTICS OF HUNGARIAN LAW ENFORCEMENT TODAY

### 2.1. Approach to Law Enforcement

*Security.* As we will see later on, this is the word that describes the essence of law the most concisely.

Security has assumed different meanings through history. In ancient society, it meant the struggle against the deadly dangers of nature (frost, fire, water, etc.) or for food, or the fight against hostile tribes; in class societies, the exclusion of factors that negatively affect the quality of life on a micro level, while in our days, on a macro, even global level. The processes of economic and political relations, which go beyond the borders of countries and continents, are gradually arranging states into a global set and system, which changes their mutual relationship. Dependencies are generated in various fields, as well exemplified by the dependence on energy. The inner security of a given state is fundamentally affected by the unfavourable situation, when, lacking energy sources of its own, it cannot ensure heating in winter and a minimal level of energy supply to its citizens.

The sciences that deal with the *scientific study* and analysis of security are:

- military science and
- police science, which is presently taking shape. (Balla, 2014)

“On the side of military science, the military elements of security are to be sought.” (Dr. Vida, 2014) Most generally, those military elements are to be observed in warfare and its strategy, tactics and logistics, which are determined by the defence of the population and the land of the country. That is, military science studies the question of security within the framework of military warfare.

As opposed to that, Hungarian police science, which is just taking shape, focuses on the system of relationships related to security (mostly but not exclusively) within the state. Exploring questions concerning the regular, danger-free lives and daily operation of subjects of society, it analyses the various material aspects of the state and private sphere. That is, its systems of concepts, institutions, laws and instruments, its past, development, present and perspectives.

In some recently published Hungarian works, we can encounter a special approach to security, inasmuch as they relate it to the question of migration and security. “Migration is essentially a permanent change of location aiming at satisfying the need of security and other needs; which can hinder or endanger the satisfaction of the security-related and

other needs of other, affected groups of people, but in some cases can also facilitate it.” (Ritecz & Sallai, 2016)

## 2.2. Law Enforcement in Hungary

*The development of law enforcement in Hungary was primarily influenced by 19th century works of German scholars.* “Die Polizeywissenschaft” by Robert Mohl, published in 1932 should be highlighted, which “served as a primary source for the Hungarian researchers of the subject and which traces the development of the science of public law enforcement and the institution of public law enforcement as part of a more narrow field.” (Sallai, 2015) If we study the impact of German scholars, we must not miss Lorenz von Stein, a legal scholar, who is considered as an “economist or sociologist, but was a true lawyer by qualification, and one of the founders of the study of public administration.” (Koi, 2013) The forth volume of his seven-volume standard work of reference (Vervaltungslehre) deals with policing law (Polizeirecht), where he points out that “law enforcement is a sum of all the forms in which the government intervenes in administration and law enforcement is a part of public administration”.<sup>3</sup>

*In Hungary, policing law is part of public law.* “Researchers of administrative law earned imperishable merits in the exploration of the public nature of the police”. (Finszter, 2014) As far as its legal control is concerned, the police, as the primary body of law enforcement (we will elaborate on this point later), is first of all and primarily regulated by *administrative law*, secondly by substantive and procedural criminal law and finally by minor offence law. The actual bodies of law enforcement – with the exception of the Parliamentary Guard – are characteristic parts of the *institutions* of public administration and within that, especially, *of state administration*; all the manifestations of law enforcement activity are public tasks, public services typical of public administration with an eye *to public affairs* (Paty & Varga, 2012). Public administration as “the greatest administrative complex of society”<sup>4</sup>, fulfils its social mission – which is primarily the enforcement of *public interests* – by performing a great variety of functions. Public administration, following the orders of the Fundamental Law of Hungary and taking other regulations into account, that is, within the framework of *public law*, implements the will of the legislative, by accomplishing all the various kinds of its manifold tasks. One of its branches, which can be clearly separated from the other functions, is the implementation of *law enforcement tasks*. Its constitutional base is Article 46 of the Fundamental Law of Hungary, where paragraph (1) states that “The core duties of the police shall be the prevention and investigation of criminal offences, and the protection of public safety, public order, and the order of state borders.”, while the other law enforcement task, which concerns national security, is defined in paragraph (3) of Article 46: “The core duties of the national security services shall be the protection of the independence and lawful order of Hungary, and the promotion of its national security interests.” Both in the case of the police and in the case of national security, the Fundamental Law of Hungary designates the Government as the *governing* body, and thus also defines the immediate coordinates for the organisation and management of state administration.

<sup>3</sup> Sallai op.cit. p. 39.

<sup>4</sup> Finszter: (dr. Bajor & Kiss, 13 December 2012)

### 2.2.1. The basic principles of public administration from the perspective of law enforcement

With respect to Hungarian public administration, we can name two obvious requirements, which can also be formulated for the system as a whole:

- lawfulness and
- efficiency (Fazekas, 2015)

These basic principles partly define the organizational objectives of the institutions, and are rather “scientific constructions with a political content” (Lőrincz, 2010); from the content point of view they are not or only partly identical with the basic principles of public administration and policing law. We can see them as identical inasmuch as public administration principles defined on a general level have to be applied in all the various substantive and procedural provisions of public administration. The difference is shown by the fact that the basic principles of public administration embody the expectations of society on a higher level of abstraction, avoiding the possibility of normativity.

Lőrinc Lajos has included *democracy* in the list of public administration principles<sup>5</sup>, while the relevant materials of the UN<sup>6</sup> list the following, as factors of “good government”:

- participation
- the rule of law
- reactivity
- consensus seeking
- fairness
- effectiveness and efficiency and
- accountability

In the Charter of Fundamental Rights of the European Union<sup>7</sup>, the effect of the principles of “good government” is described in the “European Code of Good Administrative Behaviour”<sup>8</sup>.

In our view, the requirements that more directly affect law enforcement are the first two of the above list.

#### a) The lawfulness or legality of law enforcement

As we have previously mentioned, one of the points that distinguishes law enforcement from the other branches of public administration is the *monopoly on the use of physical force*, which – within very strict legal constraints – enables it to *restrict fundamental human rights* or even to *end a human life legally*.

In a state governed by the rule of law, it is natural that a breach of fundamental rights to serve public interests can only occur within the constitutional framework, in strict compliance with the relevant substantive and procedural criminal provisions.

The legality of law enforcement has to be examined with respect to the Fundamental Law in the first place. *Lawfulness*, as a constitutional requirement can be derived from the following principles of the Fundamental Law:

- The rule of law as set out in paragraph (1) of Article B.),

5 Lőrincz op.cit. p. 72.

6 [www.unescap.org/pdd/prs/ProjectAktivities/gg/gorenance.pdf](http://www.unescap.org/pdd/prs/ProjectAktivities/gg/gorenance.pdf).

7 <http://eur-lex.europa.eu>

8 [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu)

- The separation of powers as set out in paragraph (1) of Article C.),
- The principles of the hierarchy of sources of law as set out in:
- Paragraph (4) of Article 15
- Paragraph (3) of Article 18
- Paragraph (3) of Article 32
- Paragraph (5) of Article 41, furthermore,
- The right to seek judicial remedy, regulated by paragraph (7) of Article XXVIII.

The legality of law enforcement within the framework of the regulations of the Fundamental Law mentioned above, has to include compliance with *all of the five points* below:

- All the actions taken by law enforcement authorities must be tied to the law, that is, every act must be based upon a relevant law or decree of the Fundamental Law of Hungary<sup>9</sup>
- All the law enforcement bodies are to proceed strictly within the limits of their competence and powers
- Legal protection has to be ensured against the decisions of law enforcement, that is, it has to be guaranteed that a legally controlled form of review is available for all measures taken by authorities.
- Law enforcement has to fulfil its legally prescribed public functions for the public good in compliance with laws and enforcing laws
- Law enforcement needs to have both legality and legitimacy, that is, law enforcement not only has to comply with each of the relevant legal regulations, but also with the subjective dimension that is based on appreciation and acceptance by the majority of society.

b) The effectiveness or efficiency of law enforcement

Efficiency, which is extremely hard to measure, and can never be measured with absolute accuracy, has *several aspects*. For instance, it can refer to making a decision concerning a firearm licence or a permit of assembly within the deadline, or to the completion of an investigation in the shortest time possible, but it can also refer to organizing a public security operation, and the most cost-effective execution thereof. The question is, in comparison to what and against what we measure efficiency.

Legality, as described in point a) and efficiency can conflict, or can have a negative influence on each other. It can be proved that lawfulness usually requires extra expenditure; let us for instance consider the establishment and operation costs of the Independent Police Complaints Board. This body, as an institution of legality, seeks to promote lawfulness; however, that invokes an expenditure of hundreds of millions of forints annually (material and personnel costs).

The operation of law enforcement is *effective* and efficient if considering and comparing the work aimed at maintaining a socially acceptable level of public security and the results achieved, we can prove that the *objectives designated can be reached with the least possible effort and use of financial and other resources*. This ideal state can be hindered by several factors, such as the tight subordination of the law enforcement body that executes the law enforcement tasks in question (e.g. national security), to politics; or

<sup>9</sup> See also: Patyi András – Varga Zs. András, (Szilvásy, 2010) pp. 240-242.

problems with the coordination needed for achieving the law enforcement objective in question (e.g. between a national security body and a policing body) related to professional prestige; or scarce financial resources, or the underdevelopment of professional skills.

In general, we can state that law enforcement is effective from the *political point of view*, if the majority of the various forums and the population is satisfied with its operation. “Up to this day, public administration bears traces of the not properly-considered modifications made before and during the regime change. The modifications have blurred and conserved a not-properly-separated relationship between the governing bodies of public administration and between their activities of public authority/authority and of public policy (dr. Bajor & Kiss, 13 December 2012), which has in some cases caused malfunctions in law enforcements that affected its efficiency, such as in the case of handling the events of 2006.

Whether law enforcement bodies operate according to the basic principles is monitored by a unique control system. In the following sections, we will present that system, although we cannot aim at anything like completeness.

### 2.2.2. Control Above the Hungarian Law Enforcement

The control above law enforcement bodies can be categorized in several aspects. They involve ones with public power (court, prosecutor’s office) and other ones with no public power (Constitutional Court, Ombudsman), a body carrying out civilian control (Independent Police Complaints Body) and State Body (all others).

The categorization is used by us if the control body can be identified *as an outside or an inside* body comparison with law enforcement.

#### 1. Outside control bodies

- Constitutional Court, courts, Parliament’s Committees, Fundamental Right Commissioner, Prosecutor’s Office, Independent Police Complaints Body.

#### 2. Inside control bodies

- control bodies inside law enforcement

#### *The Most Important Features of the Outside Control Bodies*

##### a) Constitutional Court:

The control activity of Constitutional Court above law enforcement is based on the Article 23 of the Fundamental Law of Hungary and the Act CLI. of 2011 on Constitutional Court (Abtv.) which, of course, spreads on the *constitutional control* of police bodies’ operation. It mainly means the normcontrol of the police bodies, but the implementation of law enforcement authority is indirectly affected by it. The normcontrol – which is always additional – spreads on regulations carried by law enforcement and instruments responsible for controlling public law (normative-decision or normative instruction). (Szilvasy, 2010)

In the cases of them the Constitutional court – the norm according to the Fundamental Law of Hungary - studies its possible infringement of the international contract, in the case of unsuitability or infringement the Court eliminates the norm. The Constitutional Court based on the paragraph (2), item d.), Article 24 of the Fundamental Law of Hungary can examine the individual court decision if it is in coherent with the Fundamental Law of Hungary. In this context in a law enforcement judicial decision (for example: a judicial decision taken in the exercise of the right of assembly (Merkl, 2015)) if it infringes the

Fundamental Law of Hungary, the Constitutional Court can eliminate the individual court decision and it can instruct the court for a new procedure.

b) Courts

*The right of appeal* opposite the decisions of law enforcement comes from paragraph (7), Article XXVIII of the Fundamental Law of Hungary and according to it: „Everybody has the right to appeal against such a judicial, official and other administrative decision, which infringes his/her right or legitimate interest.” The paragraph (2), Article (25) on Court of the Fundamental Law of Hungary defines the decision-making right of the court in relation to the legality of administrative – also in law enforcement – decisions. Within this power the court can eliminate and instruct the law enforcement agency to a new procedure.

c) Committees of the Parliament

*Two Committees of the Parliament* perform specific control function above law enforcement activity: These are:

- Committee for Ministry of Defence and Police
- Committee for National Security

These committees *with no public powers* are the bodies of political control. More important law enforcement aspects of their power:

- in personal sense: they may hear the first manager and the head of the given police agency before his/her appointing (minister, national manager), and give opinions on issues of suitability,
- in subject sense: they may carry out enquiries about issues in law enforcement, people may be questioned, they may issue on opinions, ask for statements and prepare a decision,
- in other sense: they give an opinion on the plan of budget.

d) The Commissioner for Fundamental Rights

The substantive task of the Commissioner for Fundamental Rights is to study the violation of rights relating to *human rights*. Within this system it can carry out wide scale investigations referring to law enforcement both in activities or in exploring the irregularities in failure.

It has no public power, it is not able to carry out a decision in order to implement. It must be stressed, that legal entity may turn to the Commissioner for Fundamental Rights only, in that case if the entity exhausts his/her ordinary appeal right (typically the appeal) opposite the individual specific law enforcement decision. Although it is also the barrier of the Ombudsman proceeding if the judicial proceeding has been being started in that case or there was a decision made by the Court earlier in that case, or if one year has passed after the final law enforcement decision.

The Commissioner makes a statement about the studied case and the explored facts, which is sent to the police body at issue. It is correct to reply to the Commissioner and respect the admissible proposals in the context of the European legal culture, and accordingly to take measures and inform the Commissioner about it.

e) Prosecutor's Office

Our prosecutor's office is a *judicial protection body on the basis of the prokuratura model* and it has a *major importance* in the operation of law enforcement (as well). Its status can be established from the Fundamental Law of Hungary. The second sentence of paragraph (1), Article 29 of the Fundamental Law of Hungary lays down: „The

prosecutor's office prosecutes crimes, takes action to other infringing activities and defaults, and promotes the prevention of unlawful acts." Based on the paragraph (2), item d.), Article 29 of the Fundamental Law of Hungary the prosecutor's office practises different tasks and powers „as a defender of public interest determined by the Fundamental Law of Hungary of Hungary or other regulations." The prosecutor's office – based on this authorization of the Fundamental Law of Hungary – can prosecute the *infringing acts of law enforcement*, which means the exercise of two basic powers:

- on the one hand, the powers of control,
- on the other hand, the power of the initiative

Accordingly, „the prosecutor's office in order to preserve the public interest contributes to the provision of the compliance with the law by everybody" (Law section CLIII, Section 1 paragraph (2) of 2011 of prosecutor's office). It can carry out investigations and controls at any bodies of law enforcement, if it lays down violations of the law, it initiates *a call* for its elimination. If the elimination does not happen despite the call in the case of infringement of rules – in cases and ways determined by law – *it takes action for legality* and initiates judicial proceeding as an applicant in its own distraction. In the infringement files carried out by police bodies, the prosecutor's office task, on the one hand, is to approve coercive measure previously (eg. detention in infringement proceeding) laid down in legislation. On the other hand, as an infringement appeal body the prosecutor can assess the complaint against the decision taken by authorities detecting infringements.

f) The Independent Police Complaints Body (IPCB)

In the case of the police measures (Buzás, 2013), their default and the use of the coercive measure, the legal entity whose fundamental rights were infringed by any of the actions named above, can ask the major of the general or special police bodies to assess his/her *complaint* on the subject after the investigation carried out by *IPCB*, depending on the identity of the competent police body.

The establishment of the *IPCB* in 2008 – according to political will – defined by law section XC of 2007. The system has *several features* compared to other law enforcement control bodies. The more important ones:

- Its establishment can be related to a concrete social tragedy, so called the series of police brutality due to social events in 2006,
- it can control only the police action but it cannot control the other law enforcement authorities
- it is a classical civilian authority, its five members can be such a person who has outstanding experiences in the field of the fundamental rights protection,
- The five members of the *IPCB* are elected for six years by the Parliament with the two-third part of the presenting representatives,
- it shall present its activities for the Parliament in every third year and it shall inform the Committees of the Parliament possessing tasks in cases of police and human rights.

It seems to be a justified question, why it is necessary to have *IPCB* over the other law enforcement control authorities, mainly the Ombudsman and the prosecutor's officer. If we study the *European System*, we can see a *various picture* in the view of the question. We can find a similar or a same institution system to ours in the UK, Belgium, Czech

Republic, Denmark, North-Ireland, Croatia, while there is only an Ombudsman system in Austria, Estonia, Finland and France. Furthermore, the Line Ministry is responsible for legal supervision in Bulgaria, while a specific control inside the police operates in Greece, Poland, Latvia and Lithuania. (Rónai, 2015)

The system operates very special, so the question cannot be replied. Based on our hypothesis it also cannot be replied if we can see *the quite modest control powers* of FRP. The people's hypothesis, who have doubts on the existence of FRP, can be strengthened by the appearance rather than the existence of potent jurisdiction.

The IPCB can ask information from the police (the prosecutor and the Ombudsman as well), can have the right of access into the documents (the prosecutor and the Ombudsman as well), can get to know details of data, circumstances, facts, procedures (just as the prosecutor and the Ombudsman as well) and may issue an opinion that may be sent to the major of the police, just as the prosecutor and the Ombudsman as well. Based on the overall picture, *the IPCB cannot be called an authority being the possession of strong control.*

#### *The More Important Features of the Inside Control*

At the law enforcement bodies, *the inside control* - from legal relationships within the public administration - belongs *mainly to the control relationship and in a smaller extent to the supervisory authority.*

The control relationships can be found between the government administrations – and law enforcement can be found mainly in this hierarchy. Based on the paragraph (2) and (4), Article 46 of the Fundamental Law of Hungary the operation of the police and the national security services is led by the Government. (Hautzinger, 2015) The other central government administrations of law enforcement (the organization of penitentiary and prison, the official emergency body) are also led by the government and the designated sector minister (for internal) according to organisational regulations. The Management of the Minister is prevailed in the field of the rights of foreigners (Hautzinger, 2016) and the excise duties as well. But strict control relationship applies in the relation between law enforcement bodies. There are *five legal instruments* of the governance (the right of creating norms, the right of decision making process, the right of giving instructions, the right of custody, the right of control). *The right of giving instructions applies the most here in the form of command.*

In professional sense, *the supervision over any law enforcement bodies of the local government* (supervision of public property, game warden, etc.) *is exercised by the police.* This gains a meaning in controlling over the legal operation. *The right of control* is a coherent part of the supervision and governance, which can be realized on the area of professional, mainly financial and application of law.

Finally, we would like to refer to the special international and European Union institutions of control over law enforcement. It will transform the levels of international law enforcement co-operation in the future. (Nagy, 2014)

### **2.2.3. The Appearance of the Definition of the Hungarian Law Enforcement, the Priority of Public Security**

As it has mentioned earlier *the security is a protected legal subject by law enforcement.* There are many kind of safeties (industry safety, food safety, road safety, international safety, etc.) (Balla, 2015), that is why it is needed to *find the adequacy of law enforcement*, which is the so called: *public security.* The simplified task of law

enforcement is to guarantee the community's security from the born of modern police appeared in the 18th century. In the period of citizenship, with the division of private life and public life, the state guaranteed the institutional services of public security for every unlawful behaviour and event offending security. Its normative bases were strengthened in the 19<sup>th</sup> century.

*The first written proof of the inseparable relationship between law enforcement and public safety – as we have seen before – is given by the Prussian General Legal Code published in 1794. Paragraph 10 of the 1st part of the 17<sup>th</sup> title in Allgemeines Landrecht für die Preussischen (ALR) has concluded the concept of law enforcement for the first time based on the social purpose of law enforcement which has been explained with the same content in different „interdisciplinary publications or other various articles.”* From Ignác Zsoldos is the one of the first representatives of the professionals interested in the Hungarian public administration-science who wrote a book “about the field of police in 1844 which was the earliest publication about one part of the national law enforcement management” (Koi, 2013) through the eminent scientists in the 19-20<sup>th</sup> century (Károly Kmety, Győző Concha, Móric Tomcsányi, Emil Récsi, Zoltán Magyary, Ágoston Karvasy, Gusztáv Ladik, Károly Mártonffy, József Valló) who dealt with law enforcement (police), originated from the definition above and used its content as well.

By the way it is the fact that a monographic or *summary* article was *not published* from 1794 until the end of the 20th century. Thus, in the Hungarian legislation in force at that time „...the German terminology - originated in the period of the Austrian-Hungarian Monarchy - was passed in today through the Horthy-period...” (Szamel, 1990) written by Lajos Szamel in 1990.

In 1794 *the definition of law enforcement related to its tasks* was given by ALR but the comprehensive theoretical analysis of the subject has not yet been prepared. Certainly the development has not stopped yet. The first milestone was put by *Győző Concha* with his article written in 190, titled „The nature of police and its status in a free state.” He emphasised the service nature of the police agreeing with the concept that is also true today... and the discretionary nature of law enforcement measures.” (Katona, 2006) Concha's view is accepted by Móric Tomcsányi, József Tóth and Vilmos Szontagh but in a different way and form. (Szontagh, 1928) The following qualitative information was provided by *Móric Tomcsányi* after the first world war, when he analyzed the judicial control above the *discretionary measures*. The third step can be confined to *Zoltán Magyary*, who put law enforcement into the institutional system of *public administration*.

A significant result about the *theoretical development* of law enforcement could not be presented in a form of a monography until the Hungarian regime change. Law enforcement started to develop rapidly in 1990. The process can be confined to *Lajos Szamel* on behalf of the Hungarian Academy of Sciences, the Program Office of the Political Science Research. Lajos Szamel was *the first person* who gave the *general description* of law enforcement. By the way the content of the definition given by him corresponds to the definition of ALR: “Law enforcement is such an action by the government which relates to the prevention of the disturbance of public order, the inhibition of anti-social behaviour and the restoration of the disturbed order.”<sup>10</sup>

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<sup>10</sup>Szamel i.m.: p. 30.

Thus, the public peace and public security was left by the excellent scientist from the definition of ALR but public order was used *as a central element* in it. It was explained that legal order is public order as well, but which is different from the total legal order. Every unlawful behaviour infringes the legal order, but not all unlawful behaviour offends public order while every public order disturbance means the infringement of legal order. “The method of legislation...is to clarify which behaviour types can be considered the infringement of public order.”<sup>11</sup>

The definition of public order given by Szamel in 1990 was followed by *a smaller polemic* in the next years. Some people (Katona, Kántás, Buzás) *identified* law enforcement with the defence of public order based on Szamel’s approach, others used it as a *changeable word pair* with public security (Berényi, Finszter, Szikinger), while others emphasized *public order as a central element* of law enforcement (Balla, Nyíri).

It is interesting to state that according to the explanatory of the administrative act of the Prussian law enforcement of 1931 explains that public order – compared to the legally controlled...public security – which has become a classic definition...is that totality of unwritten rules, and their following (Szikinger, 1998) is needed to the normal citizen coexistence. In other words, in this approach public order has nothing to do with law enforcement, what is more it means a non-legislative status and a relationship without legal rules. We can speak about a good public order when the members of the community keep their common rules, for example, dwellers of collective buildings observe the order, but the citizens’ volunteer cleaning of their environment or the selective rubbish collection is also considered to be good public order.

In the context of the change and the development of law enforcement, the change of the word-pair, public order/public security connected to law enforcement and *the question of primatus can be laid down and replied based on the 13/2001. (V.14.) CC decision.*

The CC lays down with *principal undertone* that:

- the defence of public security is the responsibility of the State bodies primary,
- public security is an indispensable condition of the operation of the rule of law’s institutional system and the democratic society,
- public security (not public order) is constitutional purpose and value on the basis of the above,
- the nature of public security in the context of public order is the subject of scientific discussion, CC does not want to express its position but the review of legal system’s relevant elements shows that various values can be found in public security from the viewpoint of its content,
- public order has undoubtedly constitutional values.

On the basis of the above it can be stated that the discussion about the legal subject protected by law enforcement in 1990-2000 was resolved - based on CC decision - in favour of public security, according to our viewpoint it is not wrong to replace public security with the expression public order, as a similar indefinable general expression. Thus, public security is the legal subject protected by law enforcement, and public order is its alternative expression. It is not contradicted by the Article 46 of the Fundamental Law of Hungary, when the protection of public security and public order is concluded as core tasks for the police – as the primary law enforcement body.

<sup>11</sup> Szamel i.m. p. 31.

#### 2.2.4. Characteristics of the Definition of Public Administration and Law Enforcement

The development of law enforcement definition reached its present status in 2014 when it was compared with *the content-based features of public administration*. One fixed point of the results is that public administration tasks „can be concluded from those community necessities; individuals and their civilian communities are not able to meet their needs without the maintenance of public authorities.<sup>12</sup> One of its most typical cases is to *guarantee the public security by the State in view of the public interest*.

Law enforcement is definitely the part of public administration – as we have seen before – and consequently the definition, the content of law enforcement can be concluded (Balla, 2014) from the definition of public administration in part-whole context, thus „the general items of public administration can be recognised in law enforcement management.”<sup>13</sup>

Concluding the definition of law enforcement from public administration is strengthened a few because consensus-based definition has not been born so far by the professionals of that science. On the contrary there is no dispute in the content of the definition, so we also focus on these elements. Based on this *the content-based statements* of public administration and *those references to law enforcement* are the followings:

a) Public administration is emphasised by politics on a macro-level. It is proved from personal side that the middle and top leaders (sometimes the lowest) (prime minister, ministers, central agencies, county government offices etc.) of public administration come from the inner circle of the party won the election. It is also true for law enforcement, particularly at central level. The different first leaders of law enforcement are changed after the parliamentary elections based on the demand of the new political government force.

The political motivation can be also seen from the subject side, after all we consider that the first government programme is the same as the election programme of the winner party, which always has a chapter about law enforcement.

b) Public administration always fulfils some public tasks in the view of public interest. In particular, it manages economics, tax, maintain public and higher education etc.

*The maintenance of (public) security is the public task of law enforcement in the light of the public interest*. It has its own *special set of instruments* just as all other sectors, namely the application of:

- law enforcement measures,<sup>14</sup> coercive measures,
- the legitimate force monopoly,
- and secret instruments.

It is an interesting question that the administrative procedure - carried out against those foreigners who are not allowed to enter the country - if it is a directly public security or law enforcement procedure. Particularly is it a foreign police procedure? „The foreign policing is an official law enforcement activity carried out against non-Hungarian civilians staying in Hungary unlawfully or those people who are not allowed to travel into

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<sup>12</sup> Finszter 4. footnote: p. 43.

<sup>13</sup> Finszter 4. footnote: p. 48.

<sup>14</sup> 39. footnote: p. 89.

the country. The fundamental characteristics of the concept “foreign policing procedure” is that it can be carried out only against non-Hungarian people and only if the foreigner’s entry or residence is contrary to the legal provisions in this field.” (Hautzinger, 2016) On the basis of the quoted lines *the questions can be answered with yes*, by the way the situation is strengthened by the fact that *the authorities dealing with foreigners can not apply any coercive measures, legitimate forces, secret instruments, their organization cannot be ordered into the family of law enforcement bodies, their public tasks cannot be linked to the public security. Based on the facts the organization cannot be called law enforcement or foreign policing.*

c) The acts of public administration are linked to law strictly, actions taken by authorities, thus the activities of public administration bodies are subordinated by the Fundamental Law, or the Hungarian and the EU legislation. The decision can be completely separated from discretion (legally completely determined) or based on discretion. The discretion means legal obligation, because this possibility also has to be stated by the legislation about the case. *Actions coordinated by law enforcement authorities are attached to rights strictly.* On the one hand, one of the features of the actions taken by law enforcement authorities is that the decision autonomy is more frequent - particularly in police administration - than in other administrations. On the other hand, the discretion can be realized here in some cases. The public administration implements, has the right of disposal, organizes. It implements the legislative will, thus it creates regulations and does any organization work covering the whole society.

*Law enforcement also implements, has the right of disposal, organizes in order to implement the laws.* The Fundamental Law of Hungary and the Police Act gives the social purpose, core tasks of the police and then they are detailed in the Home Affairs Regulation, which is the Staff Regulation itself, in the interest of the implementation. Furthermore, it provides a wide range of management tasks, eg. in the conducting of conferences (political, sports etc.).

The public administration occurs in the possession of public authorities in several times and sets out certain rights, obligations which can be enforced if they are not obeyed.

Law enforcement *goes together with the public authority* thus, there is no law enforcement without the public authority. Every Governmental Entity and Governmental Law Enforcement Body has public authority of administrative law but the Governmental Law Enforcement Body has no public authority of criminal law (investigation authorities), while the sector of Governmental Entity indeed the police has public authority of criminal law as well but not limited.

- The public administration has special institutional system. It has two base units, namely the hierarchical state administration and the local governmental administration without any hierarchical relationship, while special subsystems are created by atypical public administration bodies, also known as paraadministration (public utilities, public bodies, public institutions etc.).<sup>15</sup>

*The institutional system is one of the most features law enforcement. This structure can be divided into five subsystems based on*

- the power and quality connection to public security,

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<sup>15</sup> Lőrincz 30. footnote: p. 249.

• and the powers allocated to it, and the application of the legitimate force and the secret instruments.

So, we can distinguish the:

- primary law enforcement agency from the
- secondary law enforcement agencies, these can be distinguished from
- different joint bodies dealing with law enforcement tasks, which can be also distinguished from
  - the law enforcement agency of legislative power,
  - while there are other different kind of law enforcement agencies without exercise of public power.<sup>16</sup>

*The general police* are the primary law enforcement agency without the National Defence Services (NDS) and the Centre for Counter Terrorism (CCT), because *the most law enforcement and coercive measures can be applied over the secret instruments.*

The secondary law enforcement agencies, such as:

- the civilian national security, prison service, the excise body of NTCA, NDS, and CCT, The Organization of Disaster Prevention
- can use fewer instruments of law enforcement and coercive measures.

*Some joint bodies dealing with law enforcement tasks can be divided into two further subsystems, on the one hand, the group of local governmental law enforcement agencies:*

- the supervision of public space, fishing guard, forestry personnel, the guard of local government nature protection area, the guard of field,
- and on the other hand, *other law enforcement agencies:*
- armed security guard, the guard of nature protection area, the member of the forest protection service, the guard of mountains, official hunter.

It has already been shown above that the management of law enforcement is distinguished from another sector of

public administration because of its core tasks and the necessary instruments for the implementation provided by law. However, there is lack of *special difference (diferencia specifica)* at the organization of disaster prevention, that is why it is not correct to order it into law enforcement agencies. It is also not correct to order the emergency service into law enforcement agencies; it has to prevent life just as disaster prevention but paramedics cannot apply any coercive measures or secret instruments, so in their case there is no question of the nature of law enforcement.

*The National Tax and Customs Authority* is not considered a law enforcement agency by law on central administration, even though the Principal Directorate of Criminal of the authority – *in the most classic sense - is involved into law enforcement agencies.* Considering the public security, it has the power of investigating, and it applies secret instruments and several coercive measures.

*The Parliamentary Guard* is the law enforcement body of the legislative power from 2013 and its commander is elected by the House Speaker.

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<sup>16</sup> A korábbiakban a szervezeti rendszer négy alrendszerben került megjelenítésre.[The organizational system has been appeared in four subsystems earlier.] See also: Balla Zoltán: Rendészeti igazgatás. NKE Vezető és Továbbképző Intézet. Oktatási segédanyag. 2013.

It is a special and strange organization and its establishment has been influenced more by political motivations rather than professional demands.

*Some law enforcement authorities without the exercise of public powers can be found in the civilian sector. They have no public power, cannot carry out legitimate physical forces, but their duties are basically linked to the public security. They are the civilian patrols, the private security guards, and the private investigators.*

- Its special personnel are the last defining characteristics of the public administration. We can speak about the official public servant system, about that professional personnel, involving hundreds of thousands of government official. public servants, private sector employees. The special personnel are typical parts of law enforcement; as mostly professional employers prevent the public security (we can read about it in detail later).

Based on the above, in our opinion is that *the rethinking of the definition of law enforcement found in ALR of 1794 or another aspect of this approach seems to be justified.* For this purpose, the content-based elements of the new definition can involve the following theses:

a) *law enforcement – as the part of the public administration – is motivated by the politics on a macro level,*

b) *the public task of law enforcement is to guarantee the (public) security on social level, and it carries out implementation – disposing - organizing activities with the monopoly of the legitimate force,*

c) *law enforcement with public authorities carries out special but legally completely determined application of the law by authorities*

*Law enforcement has special institutional system and personnel.*

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