

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

Solti István<sup>1</sup>

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

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

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

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

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<sup>1</sup> *National University of Public Service, Doctoral School of Military Sciences, PhD student*

## Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Conclusion

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

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

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

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

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

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

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

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

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

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



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

## Referred legislation

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