

THE GROUNDLINES OF THE STATES ARMED DEFENCE AND ITS EVOLUTION AFTER THE AUSTRO-HUNGARIAN COMPROMISE

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Summary of research objectives

The doctoral dissertation is examining the state's ability to use institutionalized force, as well as its theoretical, historical, and systemic questions. The dissertation concludes that this subject has been neglected in many respects by the Hungarian political science and jurisprudence, therefore, in the present changing security environment the legislature is compelled to amend and reform this field in the absence of considerable academic background. The subject is especially relevant in view of the adversely changing, dynamic security environment, the shifting international relations, the new types of security challenges and based on this, the development and reform of the state's defence abilities.

In the field of armed defence, despite the actualities in the last decades, ad hoc changes responding to specific challenges were dominating, although the system of armed defence established in 1989 also needs to be reviewed for some time now. The reason for this is the fact that the 1989 construction was established in a completely different security and international environment and internal political milieu. However, such a review necessitates the comprehensive evaluation of the armed defence as well as supporting the decision makers with scholarly findings where Hungary was found to be lacking regarding theoretical, systemic, and historical aspects. This research wishes to contribute to reducing this gap by using the results of the last years' academic studies, the practical experience acquired at the Legal Department of the Ministry of Defence and the synthesis of the these.

I have started this research at the end of an era where, apart from the major powers – particularly their leadership –, it was considered to be a premise in the Western civilization that state violence and armed defence are a subsystem that needs to be maintained only to the minimum extent. The idea has held up long that the post-Soviet Union world is not warranting armament and reformation, instead, underlining the economic relations, it promises a more peaceful, open and inclusive world, for which it is enough to have a state with minimum classical power characteristics involving the deduction of defence costs based on the shrinking significance of the function. The

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interrelation of state and violence, the self-defence capability and the necessary and periodic development of the concerning regulation as basic premises seem to have left the European thinking.

At the beginning of the new millennium, it became apparent that this type of approach has failed. Involving a high toll of victims, the military settlement of the Yugoslav crisis, the terror attacks in the early 2000s in the United States of America, the ‘Arab Spring’, the collapses in North-Africa and the Middle-East, the Syrian civil war and the rise of the Islamic State, the Ukrainian crisis, the following Russian hybrid warfare, the renewed European terror threat and the migration have highlighted that the 21st century is not as peaceful, safe, and rejecting regarding the necessary defence as expected by many in the early 90s (in order to increase financial gain and welfare services).

The most significant proofs of this are not only the nation states’ specific steps and efforts, but also the decisions of the North Atlantic Treaty Organisation regarding the need to enhance military capabilities, the strengthened presence in the Eastern part of the Organisation, and the recognition of cyberspace as a domain of operations. However, this involves certain budgetary challenges as well as significant theoretical, organizational, and ultimately, political and jurisprudential challenges for those states where the exact opposite of this trend was observed in the last decades. Based on this, the research required the review of several fundamental issues before presenting a systemic approach.

In light of the above, the dissertation’s starting point is the historically and theoretically fundamental character of the state’s capability to use force as well as the state- violence relationship. On this basis, I have assessed the nature of armed defence as an organizational and regulatory function. In this scope, regarding the regulation’s systemic nature, I found it necessary to review the Anglo-Saxon and German models and construct concepts for the institutions representing the capability of state violence. I have labelled them *bodies of military character* in order to apply theoretical classification and a systemic approach. I have described the national subsystem and totality of functions as the *state’s armed defence system*. The latter also serves the national transformation of the Anglo-Saxon ‘national system of security’ approach based on which I have assessed the possibility of legal replication and potential directions of development of the armed defence. The first part of the dissertation covers the theoretical and systemic analysis.

I found it necessary however to conduct a wider historical overview, which forms the second part of the dissertation. The main conclusion of it was that armed defence as a national subsystem built up from differentiated defence functions is a result of the last 200 years of state development. The reason for this is that the military dominated armed defence (based on the armed forces) has been replaced by a differentiated national armed defence system divided into several defence sectors, internal and external defence tasks and bodies only in the 19-20th century because the complex security conception has started to strengthen only at time of the Cold War.

Between 1967 and 1944 in Hungary, the development and regulation of military defence served as the basis of reform since this time the system of national defence was

tantamount to level of comprehensive protection. Therefore, I believe it is vital to review the civil development of national defence and thereby underline the conclusions of the first part.

In summary, the objective of this dissertation is to highlight the fundamental relationship between state and institutionalized violence, to assess their conceptual, theoretical, institutional, and regulatory characteristics according to the rule of law criteria, and taking into consideration the civil background of national legal history as well as to propose the elaboration and adoption of a new, systemic approach.

The hypotheses research methods and structure of the dissertation

The triad of state – power – violence relationship is to be reconsidered and renewed in which it seems reasonable to specify a type of violence that is further refined in its criteria: the qualified violence as a rule of law criterion.

The legal subsystem of armed defence is fragmented and contradictory because of the lack of academic structure and systemic approach. Against this background, it is necessary to establish new conceptions and principles on the basis of which by further long-term research, the field's theoretical system can be developed. In this sphere, I suggest the introduction of a three-way – subsystem, sectoral and organizational – approach within which the system of armed defence can be conceived as a national subsystem, i.e. a common set. Within this common set, certain defence sectors can be represented as subsets comprising more organizations and defence functions of similar character. Within the sectors, the level of specifically regulated armed defence organizations can be set as a specific level.

The theory of the system of armed defence should be complemented with a legal foundation. In this area, a legal approach of subsystem level as well as a system able to display the specificities of the certain sectors' legal representation shall be developed which can be useful in the reform of the regulation. It is appropriate to widen this systematic approach with a conception that is better suited for the specificities of the system of armed defence in the typology of rule of law control. *Utilizing the results of the theoretical and systemic approach, the major direction of future development regarding the regulation of armed defence can be well established - determining the subjects of further research at the same time. The established theoretical-methodological system of armed defence and its legal representation can be determined by the organic development tendencies and solutions of the similar regulation of civil state development between 1867 and 1944, and these can be utilized for both filling the existing gaps and establishing theoretical results.*

The methodology of the research

The research regarding the armed defence of the state had to assess complex challenges. The subject of the research as a sum of state and legal institutions is not an end in itself

but it exists – like the state – for the society. Therefore, it is necessarily linked and adjusted to the change of the social environment.

Based on the above, it was necessary to apply a *philosophical and political-philosophical outlook* regarding the questions of violence as well as violence and state development. The *legal theory perspective* is built on this, since the inherent nature of violence in certain supposedly predominant state and legal concepts had to be revealed, too. These theoretical conclusions have been synthesized by the *systemic approach*, mostly through *constitutional and functional assessment*. This enabled the institutional and functional mapping of national armed defence as a state subsystem. All these have been based on a wide literature review of certain disciplines supported by the outlook focusing on academic and sectoral results linked to certain sectors of armed defence. Therefore, it was necessary to include *the results of security-, science-, military-, and law enforcement-related science* into the dissertation, containing the results of certain fields' historical study, too. The comprehensive assessment of the concerning national regulation is built on theoretical-systematic conclusions. In this regard it was necessary to consider and assess the constitutional, statutory, organizational, and in the defence sector, internal regulatory levels.

Apart from the theoretical and systematic analysis, the dissertation's character is clearly determined by the *historic approach* and the *systemic review of constitutional history*. In the view of present author, avoiding or handling superficially the historic background of certain fields in the area of reform and development can lead to confusion just as much as overdoing or poorly interpreting the reform of historic traditions. In order to avoid this, in the research I focused on the armed defence-related regulatory tendencies in the first civil era (1867-1944), prioritizing the major sources of law as well as the main conclusions of the *contemporary literature*.

The structure of dissertation

The most important topics of the dissertation:

- the characteristics of violence and its national and power-related aspects;
- defining state violence as qualified violence;
- the appearance of qualified violence in the armed defence system;
- historic and functional simplification of armed defence and its basic principles;
- state's and law's relationship to institutionalized armed violence;
- the separation of armed violence regulation in the Anglo-Saxon and German development of law;
- conclusions regarding the legal representation of national armed defence;
- control typology regarding national defence;

- an outline and the possible development directions of contemporary national armed defence, and the background of armed and especially military defence before the legal development in the civil era of 1867-1944;
- the 1848 basis of the civil development of military defence;
- the determinative context of the first civil era's armed defence development;
- the legal framework and characteristics of armed and especially military defence development;
- major regulatory and development trends in the national armed and especially military defence between 1867 and 1944.

The structure of the dissertation is following a line of reasoning along the above topics which – based on theoretical conclusions and assumptions – outline the armed defence system and its boundaries (with a contemporary outlook), and which are supported by the historical analysis regarding the first civil era's armed and especially military defence. In doing so, apart from treating armed defence as a separate state subsystem, the historical analysis outlines obvious civil development tendencies, which cannot be found in the existing regulation, Therefore, its critical transposition can be regarded as a possible development direction taking into consideration the contemporary challenges and state development factors.

Summary and applicability of the scientific results of the research

One of the major objectives of the research was the theoretic elaboration of the state armed defence system taking into consideration the Anglo-Saxon model of 'national system of security'. To that effect, I have introduced violence as an attribute essential but not sufficient enough for the state. The institutionalized framework of violence is provided by the state armed defence system. I have approached the national armed defence system in a historic and functional scheme. As a result, its development into a subsystem and the general and specifically Hungarian character of the structure and division was perceivable. The dissertation concludes that within the system of armed defence, the national defence, law enforcement and national security sectors can be regarded independent and within these sectors also certain bodies of military character. However, it has to be highlighted that regarding technological developments and new types of security challenges one has to consider the legitimacy of inter-sectoral functions and bodies, especially in the fields of fight against terrorism and cyber defence as well as – with certain reservations – in the fields of border surveillance and border protection. Following this system, one can establish the legislative structure of (state) armed defence in which subsystem, sectoral and organizational regulation are to be separated, and based on that, the most significant regulatory fields can be identified. These fields are for example the right to armed defence, the right to national defence, the right to law enforcement, the right to national security and within these, certain organizational rights

and special fields on subsystem and sectoral level, which – based on their regulatory extent or distinctive features – cannot be fit into the subsystem or sectoral regulations.

In the next step, *certain principles are establish with regards to the (state) armed defence system*, which penetrate the subsystem, sectoral and organizational levels and are theoretically and historically justifiable. Based on the research, these principles are the following:

- the principle of same violence,
- the principle of the division of powers,
- the principle of civilian control,
- the principle of rule of law,
- the principle of operability.

A review has been prepared with the help of this theoretical system, or rather, *a map of the Hungarian system of armed defence*. Based on this, I have concluded that *in the field of national regulation of armed defence, this systemic nature exists only fragmentally and the different levels are confused*. These defects may raise the question of loss of efficiency and amplify the regulatory trend according to which mostly the current answers to ad hoc challenges determinate legislation. In order to rectify it, among the possible directions of regulatory development, I have proposed the following: the review of defence constitution; regulation according to the levels of armed defence and the revision necessary for this purpose; and legislation covering exercise of functions in peace-time or ordinary legal order, crisis management in ordinary legal order as well as exercise of functions in special legal order. The related institution development proposal – following the regulatory directions – aims at subsystem level coordination and supervision improving the Government's cabinet system; to support this, the establishment of a subsystem-level professional apparatus/administration with an appropriate governmental status, i.e. the reform of defence administration; the reconsideration of presidential powers concerning control; and the separation of bodies intended to handle new types of threats.

The other objective of the dissertation was the historical analysis of the armed defence system focusing on its civil precedents. The historical analysis does not only fill a gap, it also serves the historical support of the theoretical and systemic conclusions. In the historical overview, the focus is on military defence. This was justified by the historical objectivity according to which at the beginning of the first civil era, military defence had been the archetypical and major form of resorting to state violence. The other armed defence sectors had only started to become independent, nation-wide and subject to detailed national legislation. In comparison, the regulation of military defence has already had significant legislative foundation and was on an innovative development path, which extended the state's armed defence system by a whole range of military basic laws that fit into the historical constitution and which included several law enforcement and national security functions, too.

The historical analysis therefore has reviewed the emergence of military defence in the era's public law system and the constitutional characteristics of the concerning legislation as well as the major subjects of regulation. This approach has been complemented by the defence constitution and an inter-sectoral outlook concerning the establishment of the armed defence system, i.e. by the outline of institutional development concerning the law enforcement sector as well as by recognizing the signs of the secret service sphere to become independent.

The main conclusions of this analysis

The question of armed defence had been a constitutional matter following the compromise, and the development of this field has continued in spite of the debates. Several requirements of the parliamentary rule of law have appeared in the legislation as well as the strengthening of the division of powers and the requisite of laws regarding fundamental rights.

At first, legislation was characterized by fragmentation, by the dominance of organizational regulation and acts dealing with special matters together with the implementation of the principle of same violence. The latter has appeared mostly in involving military power in internal defence tasks. The legislation regarding military defence has covered areas not constitutionally regulated at the end of the 19th century (e.g. military criminal procedures és military criminal law) and reforms stemming from state and technological developments (e.g. special power in time of war or the regularizing air defence), too. Act II of 1939 on National Defence has represented a comprehensive, sectoral legislation completing the development of military legislation in the civil era *The third objective of the dissertation was complementing the theoretical and systematic conclusions with a historical overview in a way to present the historical foundations of the proposed theoretical construction and its integral development precursors.* In this regard, the main conclusion was that the state's armed defence system as a state subsystem is fundamentally an achievement, result of the civil state development. Its development therefore serves the progression and strengthening of civil statehood and the support of contemporary defence.

The practical applicability of the research results

The primary objective of the research was to promote the academic reception of the systemic defence approach. It is the view of present author that without a systemic approach and defence organization, no state can be sufficient and efficient in a world where the complexity of security intensifies constantly and network-related challenges are increasingly blending with certain security challenges. A state's competitiveness requires therefore performing systematic defence functions and a comprehensive defence organization of a network level. In this regard, apart from the need to carry out further

research, the applicability of the research results set forth also the following development and intervention directions:

The comprehensive review of the state's armed defence regulation and its reform is to be considered. This has to be infused by a systemic regulation approach adapting to the changing security environment which takes advantage of the subsystem, sectoral and organizational levels of legislation.

It is suggested to review and improve the different types of regulation regarding the armed defence cooperation, i.e. the solutions for enforcing the principle of same violence. More particularly: It would be advisable to consider the possible cooperation forms justified by the security environment in the short, medium and long term from a holistic perspective of armed defence. The review of the crisis management legislation for normal legal order shall be considered. Following the above, the legislation dealing with special legal order shall also be revised. One should re-evaluate the question of defence administration from the academic, regulatory and organizational standpoints in order to replicate the administrative system of armed defence.

The control system of armed defence should be re-evaluated. In this regard: I suggest being more flexible regarding the static (regulatory) control in relation to armed defence, especially along the development of certain inter-sectoral regulations. Proportionately to making static control more flexible, I suggest strengthening dynamic, i.e. political, supervisory, internal monitoring and judiciary control, too. In this regard, I find it important to reconsider the reform of the presidential powers, options and apparatus. Regarding synthetic control (working from dynamic towards static), it is essential to further academic research and their institutionalization, as well as their communication and raising awareness for these results amongst the general public and decision makers.