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**The overview, experiences and conclusions of the integration of our National Defence to
NATO from legal aspects**

Summary of PhD theses by the Author

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IDENTIFICATION OF THE SCIENTIFIC PROBLEM

Two international organizations, especially important from the security and defence aspects of our country, the NATO and the European Union (EU) and their **new, European members, also their armed forces face to new and enhanced challenges**. The attention of the science is focused on the research of the relationships and interdependence existing beyond the events happened in the defence sphere during the international integration process, and also on the exploitation of the experiences and conclusions learned from the analysis of the problems. **One outstanding field of this scientific activity is the research in defence legislation**, it expounds on the issues of the legal background and problem-management of military and political changes.

I **have verified** on the base of the experiences of my work in the field of international law in the Ministry of Defence, my former scientific activity dealing with the international legal background of national defence, the experiences of my official trips abroad and my new knowledge in military studies acquired as a doctorant in Zrínyi Miklós National Defence University, **that the process of NATO integration** belonging to the competence of Ministry of Defence **contains several problems in the field of law, which are separable and worth of research from scientific point of view**. I intend to elaborate those in my dissertation, and starting it, to outline as follows:

a) **Processing the legal background of the integration of our defence sector to NATO has not been performed from scientific points of view by now**. NATO integration itself meant tasks for several ministries, but for the Ministry of Defence first of all, regarding the content and the distribution of the legal rules and documents. There is an **intellectual activity, behind the rules and contracts** - especially those concerning the international cooperation - **supporting them while utilizing significant scientific resources**.

The subject of hundreds of legal rules, ministerial orders, international or interministerial agreements deal with given questions of the Hungarian integration to NATO. There were only general summaries published on these issues. **The legal background of the procedure was not introduced by system-forming survey**, the milestones and areas having an outstanding importance were only touched in the published works. **It is a significant task itself, from scientific view, to provide a systematizing introduction, helping to overview the available norms and documents**. It is important also because of the fact that more and more experts of the examined period get retired and the documents illuminating the circumstances of the elaboration of the legal instruments get sorted out as well.

Scientific processing **even on time**, makes the work of the future researchers considerably easier, as they - in lack of the personal knowledge about the circumstances of the subject period - would hardly get on with the task helped by the collection of legal rules.

b) Legal experiences, acquired during NATO-integration and solving problems by rules and contracts, based on them, are also have not been explored yet. Mainly professional articles elaborated actual topics – with legal problems - of the given period, as permitting troop movements, role in PfP, use of military installations, etc. **A collecting, systematic and evaluating research of the solved or unsolved legal problems** is necessary for enabling us to support the process of integration, still lasting a longer time, more effectively.

c) Regulations and arrangements relating to the research field were enforced in different effectiveness during the implementation. I deem important to **examine this question**, especially the reasons within the periods designated by me, especially in the case of norms, when the regulated content depended on international decisions, the intent of foreign partners.

My scientific interest is motivated and focused to answer the question: how could we eliminate lacks and bureaucratic obstacles, unclear interpretations etc., which emerged in and out of our sector.

d) Issues of other sciences, behind but in connection with the law, **processed insufficiently should also be examined** in order to better understanding the **contexts between the legislation as a decision-supporting activity and the political processes**.

The procedure of integration contains a number of scientific problems **in fields of social studies**, which are relatives to the science of law. For example: expressions in security studies, widely used **definitions**, as defence interest, terrorism, allied obligation, European values, etc. can differently interpreted in details, their content cannot be precisely determined, but in the same time, the appliers of law must be sure of their Hungarian legal definition - if any- or of the typical scientific ones.

The nearing and modified Hungarian relation to NATO has meant a **change in tendency of values too**, which can also be experienced in the dinamic connection of national and international values even today. It is necessary for the legislation to pay attention on these factors, and **that legacy should remain a symbol of stability**, to ensure that its implementers might trust and find way in the rules. I consider it especially true for the international law which is being exposed to erosion in latest times.

RESERACH AIMS

Considering the above mentioned factors, **the following research aims have been identified** by me:

- to separate and characterize the periods of the integration to NATO by the help of important legal rules and public legal decisions,
- to determine and explain the major legal instruments (source documents) of the main tasks of the NATO-integration in Hungary and the main foreign legal sources this documents were effected by,
- to introduce the enforcement of the content of international agreements, the hierarchy of the status-agreements (SOFA) and the typical differences between important, concluded bilateral and multilateral agreements on similar topic, regarding given countries, in the domestic legal documents,
- to describe the special (internal and external) legal and other problems, exerting influence on the elaboration of the content and later on the implementation of the domestic legal documents, and international agreements,

- to prove and group the tasks directly originated from the NATO basic legal documents of non-status subject,
- to reveal and analyze the legal dilemmas of the combat against international terrorism and other new military missions reflected by the actual international and domestic political and military developments and internal legal conditions,
- to make proposals for the expectable tasks of legislation and internal regulation in reflection of further integration to NATO and the requirements of legal harmonisation originated from joining to EU,
- to draw conclusions in the field of international agreements, preparation of contracts and the desirable law-enforcement.

RESERACH METHODS

I have **analyzed the** long domestic legal regulation **process**. I **compared the available legal instruments** in the different periods of the integration with that, **how properly applied them** the legal and defence-administration experts, the rolers of public law. I examined what a result the activity had led to and - if it brought no results - what difficulties it caused later.

I have **treated** in my work **documents** (legal rules, international agreements and arguments, drafts of those, different regulations by MoD) which were at my disposal continuously in the past decade, domestic **rules not belonging primarily to** the competence of **MoD**, other legal tools of the state direction and the available, relevant **professional literature**.

I have studied the **documents of NATO** and - less of those - **EU**, the foreign explanations connected to them.

I **made use of my personal experiences, memories**, especially in field of different service trips abroad and receptions, negotiations.

I collected data in the **library of ZMNDU, MoD, ELTE Faculty of State and Law Sciences, Parliament**.

I **followed** the changes of the researched topic **by informatic means** (Internet, internal communication, websites), and used the **statements** of the ministerial or other **official communication sources, regarding the topic**.

I **consulted** – mainly during the period of writing and the workshop debate of the essay - **with lawyers and governmental administration experts** owing experiences in the field of the research, in order to form my position and make it more precise.

I **changed experiences with lecturers and observers**, – **partly named in the literature** - possessing results in my topics. I compared some results, explored by them, with my consequences being formed out.

I participated in conferences and discussions in connection with the subject (I mention my participation in military lawyer basic course in USA in 1993., and in a legal course of NATO School in Oberammergau, in November 2004. as the beginning and end of my such research sources.

BRIEF DESCRIPTION OF THE COMPLETED WORK ACCORDING TO THE CHAPTERS

The **dissertation consists of three theme-oriented chapters** as it is reflected in its title and a **concluding**, closing **one**. I illustrate the former ones in a chart (page 12.) where I summarize the researching method and the essence of the content of the chapters.

Chapter 1. (Overview the legal background of the integration process of our National Defence to NATO) has been completed with primarily chronological **descriptive and systematic method**. A decade-long process has been analysed, from the adoption of National Defence Act of 1993. to the amendment of the Constitution in the end of 2004. and the simultaneously adopted **Act CV. of 2004. on National Defence and Hungarian Defence Forces**.

This first main part of my essay speaks about the **survey of the legal harmonisation activity** (establishment of the legal background), which is an integral part of the integration process of our National Defence to NATO. Its subchapters - after explaining fundamental legal and scientific definitions as the alliance -, extend on the introduction of the democratic transformation in the legal system in field of defence as preparation of public law conditions of integration to NATO, then they turn on the changes in legislation and internal regulation during the so called Partnership for Peace period.

I introduced there the status agreements of NATO (SOFA). I engaged in details the steps of bringing **acts closely necessary for joining NATO and** finally the legislative and internal regulating activity towards **deepening the integration** to NATO. I performed the subdividing of the more particular topics and made distinction from other ones, for example in respect of SOFA agreements and operational troop movements.

I made efforts to pick up those **results of legislation, which had solved important regulative tasks and provided elements for constructing new norms**. I explored the legal and literatural environment and background in this circle and referred to it by footmarks. The legal and scientific data and viewpoints, covered by this chapter, provide **the structural coherence and references of the whole essay**, the further chapters are built on the statements of this.

I explored the "non legal" **security-policy background or source documents** of the negotiated legal rules and explained them in my work as far as it was necessary, for example in case of the strategic concepts of the Alliance. On the other hand, I draw even high level new legal rules or modifications into the scope of my research only up to **the measure, within they are proved to be in connection with the requirements of NATO-integration**.

Annex 1. and 2. connected to this chapter may promote the knowledge of the researched field, by their definitions and titles of acts, connected with NATO.

Chapter 2. of the theses (**Experiences of integration of our National Defence to NATO in legal professional fields**) analyses and illuminates by examples the legal concerns of daily cooperation, the efforts of treatment of problems. I concentrated on four groups of legal and defence-administration source materials (defence rules, international agreements, political and military documents of NATO, other legal means of state administration).

I carried out the division of the more detailed topics of the research, in 4-6 points, each focused on typical military activities, **within the problem-groups of legislation, international agreements and implementing regulation** as subchapters.

I illuminated the **special effect of the national constitutional frames** and the **actual regional and military political events** on the legislation; several problems in the public law of the casual permissions of troop movements, - especially connected with the contribution to the crisis-management in Kosovo and Iraq, - furthermore the overguaranteed constitutional provisions, which made the concluding of international agreements difficult, the **experiences of settlement of international damages**, the legal problems of **use of military installations by foreigners and of the larger procurements and investments**, handling the particular elements of the „*NATO acquis*”, furthermore **the problematics of the so called non Article 5. operations** (including the questions of the combat against terrorism and the contexts of the classified periods, summarized in *Annex 3.*), building the legal background of integrated air defence, other new regulation dilemmas, tasks of integration within the structure of MoD.

I paid particular attention to the **different interpretations** and discussions of the identified **concepts** of players in decision making, in legislation and preparation of agreements. I showed up examples, when the legislators finally **had successfully concluded experiences**, especially in constitutional and decree-level regulation of troop movements.

I have identified several context-revealing statements, - beyond the known context of legacy, politics and military life conditions, on the base of my statements in this chapter (especially based on the analysis of the serie of public law problems appeared in decision making, in the chart on page 58.).

I deem especially verified that the **content of the international (Allied) decisions gives a determinable direction and frame for regulation** for the new defence rules and bilateral agreements in which the national conditions and peculiarities are to be enforced as well. The systematically occurring **problems of peacetime military cooperation** (troop movement, use of objects, interpretation of international treaties etc.) in respect of the foreign partners **can be and is necessary to treat by the tools of the defence legislation**, which prescribes procedure for the Hungarian implementing organs and conditions for the foreigners.

My additional conclusions expound on the **defence related public law characteristics of the governmental decision-making** (they deal with the typical submission periods of drafts of acts, to the effect of the discussion of casual decisions on the content of the normative rules following them, the connection of the level of the regulation and the intensity of the critics from the parliamentary opposition).

I laid down hypotheses and endeavoured to prove them in **Chapter 3.** of the theses (**Conclusions of the integration of our National Defence to NATO, from legal aspects**) on base of actual and expectable changes in defence, indicated in the works of well known military experts.

I have studied two acknowledged expert's **essays**, who earlier had leading positions in governmental and military high management in the Mod - that they wrote few before my one - **regarding the present situation of the NATO and the other of the Home Defence Forces.** I tried to emphasize some problems and create recommendations from these.

My conclusions and the **recommendations marked by bold italics letters** concern the legal possibility of bringing the **national public law** particulars and the **international (Allied) obligations in accordance**, the effect of the change of the „weight” tasks (as they were indicated in the studies) on the modification of regulations, - with special regard to the EU-related legal harmonisation and the integration of the new member states in legal field. My conclusions touch the deregulation of the obsolete rules, the modernisation of the permitting procedure of troop movements. They designate fields of lack of regulation or a need to modify that.

In the **field of contracts** my remarks and recommendations concern the possibilities of issues of cooperation, better satisfying the rules of the different partners, and other questions of the improvement of the practice in concluding contracts. Last but not the least, I have tried to indicate the possible ways of the modernisation of administrative and international cooperation and the possible ways to develop the interoperability capabilities of the military lawyers and their activity.

The **closing chapter** of my essay implies the habitual summarizing conclusions concerning the special legal professional requirements, it is followed by the summary of the scientific results and the proposals connected with their exploitation, the defining of areas worth of further research and expression of particular thanks.

SUMMARIZED CONCLUSIONS

I have described the legal background of our National Defence in my theses, I reported the gained actual professional experiences and established particular conclusions as well. Now I summarize my final conclusions as follows:

The expectable developments of the National Defence and the existing legal rules basically determine the tasks and the fields of activity of the defence law. The situation-analysations and predictions given by authentic **military experts** are important for the sake of the identification of expectable developments.

The **science of law** is not an abstract science, it **may not be independent of the life conditions regulated by law**, neither the defence law - as a branch of science - is independent of defence and its real situation, problems.

International and domestic **political decisions** relating to defence **are followed by the defence legislation** after a shorter or longer time. It can choose from two main solutions, by **adjusting** the legal background to the really needed regulation **within the existing significant public law limits or by further modification of the acts** – maybe the so called 2/3 acts (the former is faster, but it ensures a limited change, and inversely).

My further statements relating each chapters:

I have analyzed **the historical events and legal documents** – having international and internal importance - of the Hungarian joining to NATO and the integration process of our national defence connected with it, **in the first chapter**. I divided the tight decade-long period according to the important subperiods of the integration, **I outlined** – within these – the determining **results** in legislation or in concluding agreements, which ensured the legal background, necessary for the realisation of the membership and implementation of the allied tasks.

I am convinced, that it succeeded **to arrange the extremely wide legal background material of the researched period for overview** and to call the attention of the concerned or interested experts on the further legal and scientific sources, that may help them in further researches.

In the second chapter I gathered and illustrated with examples the problems of the public law, international agreements and finally the experiences collected in implementing legislation and internal regulation. In the field of the legislation for example, I have explored the effect of the timely domestic constitutional frames, and actual events on the realized legislation, and the complex problems of approval of troop movements. I emphasized the elaboration by - text and chart - of a **serial of public law problems**, consisting of 30 cases.

At the end of the chapter I have drawn conclusions connected with the varied effectivity of the public law decision making process and of concluding agreements.

The essence of the **third chapter** according to the results of the examination, can be and is expedient to summarize in in the following recommendations.

RECOMMENDATIONS

I recommend for the Hungarian Defence Forces to consider the following:

*The completion of the basical frames of the integration to NATO in public law has been completed by 2004., that's why the **further harmonisation of the national and international obligations should mainly be performed by implementing legislation and regulation within the existing frames of public law.***

Allied decision brought by consensus or a mandate originated from international organizations evaluated of utmost importance by Hungary should stand behind the casual legal decision on bearing obligations in international operationsn.

Particular attention must be also devoted to the legal harmonisation tasks, connected with EU in the field of defence.

Integration of new member states of NATO should be facilitated by transfer of domestic experiences and providing help in their adaptation.

Further simplification of the approval of troop movements should be carried out mainly by filling the gap of regulation, (especially at those which cannot be planned) and by better exploitation of the relating governmental decree.

It is necessary in the field of international agreements, to strive for:

- *making use of the elements in content and form, which have proven successfully applicable,*
- *cooperation better fitting to the material and procedural rules of the partners,*
- *measuring and elimination of the typical difficulties in field of contracts,*
- *forecast of developing relations.*

In the field of implementing regulation and conditions concerning given sectors of international cooperation we have to:

- *make use of the actual possibilities of modernisation of state administration and ways of international coordination, as process-management or informatic tools,*
- *- enforce the new tasks originated from entering into force of Act CXL. of 2004. on the general rules of the procedure and service of public authorities,*
- *- strive for the reveal and deleting obsolete rules and for identification of neglected and therefore problem-making regulation (or the one to be modified), for guidelines of reasonable rules, for improvment the capabilities in international cooperation of military lawyers.*

NEW SCIENTIFIC RESULTS

I have realized my research purposes and the designated tasks and I think I managed to attain some results by it.

I am evaluating as new scientific results – the following:

1. I have performed systematization of legal material and legal problems and - in addition to it - documentation resource reveal and its explanation.

2. I have shaped complex issue-revealing statements, which can be utilized scientifically, relating to the decision-making in public law and regulating procedures of the national defence in the researched period.

3. I have completed a recommendation package, connected with new, actual defence tasks, which is significant in legal view point too, its partial recommendations have not been collected until now; they all together are of scientific value.

In my opinion each large part of my essay (Chapters 1-3.) can be connected together with one scientific results, marked by same number above.

PRACTICAL USE OF RESEARCH RESULTS

Both in science of law and military sciences scientific results can be expected, after processing this essay, which **may contribute to the development** of these sciences and the success of further researches conducted there, however it is difficult to estimate these results yet.

The development of military sciences, - concerning their research topics – is in close connection with the situation of public legal rules and international agreements, determining the framework of the activities and international connections of defence sphere. So the results regarding the topic treated in my PhD theses can contribute to the development of military science.

The content of the first chapter of the essay may contribute to the instruction of law in military educational institutions, as well as defence and security policy theories at civilian higher educational institutions and instruction of defence law at state and law faculties.

The content of the second and third chapters is also useful for the education and scientific work, but it provides the most **practical help to the application of law**, both in this ministry and others cooperating with it, and organizations belonging to these. It may help to continue those legal and professional administration solutions, which have proved useful and to avoid the repetition of the less successful ones, to make basement for further steps of regulation. It supports the practising lawyers mainly by making them **acquainted with working methods, and relevant material and procedural rules of international public law and contract system**, in respect of Allied forces.

FIELDS, WORTH OF FURTHER RESEARCH

Collecting and detailing data, mentioned in chapter 1. of my essay and by possible use of both figures on page 29, the **operational troop-movements, concerning our country are worth of further researching from legal aspects**.

There are number of possibilities in researching the administratively **more rational** – less influenced by actual policy – **ways of public law decision making** scientifically, - the adoption of the chart on page 58. is recommended - and results can be expected from the detailed studying of some particularly problematic approval of operational troop-movements.

It is also advisable to examine the practice of **division of the jurisdiction of the receiving state** (over its territory) and the **sending state** (over its citizens) in relation of given states, considering for example the SOFA agreements of certain European countries and their legal practice.

Other fields may basically be defined by special capabilities and requirements of experts having scientific interest, for them further basis is presented by the footmarks of the detailed topics of my essay.