



ZRÍNYI MIKLÓS NEMZETVÉDELMI EGYETEM
HADTUDOMÁNYI KAR
Hadtudományi Doktori Iskola

Col. Pal KADAR

**CURRENT LEGAL AND MANAGEMENT PROBLEMS OF
HUNGARIAN DEFENCE FORCES' CONTROL AND COMMAND**

PhD Thesis

SUMMARY

Academic Supervisor
Prof. Dr. András TORMA CSc
Director of Institute, professor

Budapest
2009.

Scientific Problem

Distinction between command, control, supervision and professional control have been in the focus of legal examinations and management sciences for ages. It is highly important to clarify these questions in a hierarchised organization like the Hungarian Defence Forces (HDF). The connecting legal environment has not been fully analyzed yet, so in my opinion it is necessary to examine it with scientific means – in accordance with the nature of the working of system.

The achievement of high level command and control rules determined by law, the conflicting rules on the same level of regulation's hierarchy and the problems in connection with delegation of power cause everyday difficulties.

The analysis of the Hungarian legal environment and recent operation of MoD draws attention to several problems that generate some embarrassing questions on control of Hungarian Defence Forces.

The academic problem under scrutiny in this thesis is that the rules of MoD and HDF control's and command's in comparison with the legal environment of public administration are not coherent. This situation causes lots of contradictions in the daily practice.

These contradictions emerge mainly when dividing of command's and control's powers and when determining of organizations that have the right for professional control. To avoid these contradictions is highly important so that one could apply the rules in practice.

The topicality of the chosen project is given by the changes which were generated by several facts. Firstly, one of them is the collision between the new Act No. CV of 2004 on the country's defence and the Hungarian Defence Forces (HDF) and the Act No. LVII of 2006 on the central administrative organizations and legal status of members of the Government. Secondly, the permanent transformation of HDF in last 20 years.

The necessity of this research could be explained by other factors as well. Military and its command structure have to stand in the focus of interest because the military defence of the country is a very important task and a significant part of the national budget is spent for this purpose – more than 300 billion HUF in 2008.

The rational, transparent and effective command structure could have a crucial role in performance of HDF's basic tasks. The problem area, the current problems of high level command and control, which is in the focus of study, is complex. On one hand, it requires analysis in the field of law and management science. On the other hand, it has practical projection as well, as it examines the rules of daily working.

Achievements and hypothesizes

- I identify the main theoretical elements of C2 in the public administration. I determine the notion of the professional control as a specific category and the connected requirements.
- I introduce the main events of integration of MoD and Defence Staff, paying special attention to the change of legal environment. With the help of historic facts, I prove that the integration was not fulfilled in one step.

- I map the legal framework of HDF's C2; discover their main practical problems.
- Leaning on the historical analysis and processed legal environment I make a proposal for an optimal C2 structure and I provide some recommendation for developing the current structure of MoD in order to increase the effectiveness without changing the law.

Examining others countries' defence ministries and C2 structures could not be my aim in this thesis as the constitutional environment in other states is totally different from our legal environment and from our regulations.

My hypothesizes:

- Knowing the exact category of command, control and supervision determined by management and administration science is absolutely necessary for high level military leaders as well.
- The several transformations were not able to result in one step the organizational and functional integration of Defence Staff and MoD.
- During the transformation of central public administration beginning in 2006, the problems originated from MoD's specific legal status did not get enough attention. It made the regulation regarding high level C2 of HDF incoherent.
- Without changing the Act No. CV of 2004 on the country's defence and the Hungarian Defence Forces and the connecting rules, the contradictions of C2 could not be cured.
- It is not impossible to elaborate a new model of HDF's C2 that uses right the basic categories of management science and provides a coherent system of regulations.

The methodology of the research

In my work I use both the general and special methods.

Deduction, analysis, synthesis and induction just as the comparative method are applied in the dissertation as well. This is used in connection with comparison of changing organizational charts of MoD and bylaws of central public administrative organizations.

In the progress of research it could not be ignored the use of historical method, with special regard to the analysis of the history of HDF's C2 after the democratic transition.

Due to the examined topic, I had to apply the analytic method to process the secondary literature in archives and libraries. After I had systematized the available material I synthesized them and provided some proposals for several directions of organizational development, with regard to the use of results and methods of management and administration science.

During the writing of my dissertation, I consulted with many respectable experts and specialists.

Deep knowledge of political and legal science and their synthesis had a basic importance as the control of HDF is an integral part of the Hungarian public administration.

Thanks to my position in MoD – parallel with my PhD studies – I had the opportunity to directly observe the transformation of C2. Moreover, in most cases I could take part in the preparation of referred regulations and in the supervision of their operations. All these resulted in my consequences being strongly connected to the reality.

The structure of the dissertation and the analysis fulfilled

The thesis consists of five interacting parts and appendices.

Every chapter contains separate conclusions but the whole thesis should be interpreted as a whole unit. The fields examined in the chapters are deliberately correlated with each other and do not repeat the information that were given in earlier parts of the text.

Secondary literature, candidate's list of professional articles and referred legal sources can be found at the end of the dissertation.

The Chapter I deals with the primary importance of distinction between command, control and supervision. This part is the theoretic base of the dissertation.

In the first part of the chapter I determine the key concepts of management science, the core elements of command, control and professional control and theirs' characteristics concerning HDF– with the help of legal secondary literature – so as to draw attention to the troubles of everyday usage.

In the second part of the chapter I classify the organizations of the defence sector. This is essential to be able to determine the force of each rule – during the analysis of legal environment.

I point out that the professional control as a terminology is not used in other fields of management science that is why it is essential to establish its rules in a governmental resolution.

Referring to historical facts, connecting events, decisions made by Constitutional Court, I prove that the knowledge of management scientific concepts are essential at the home defence organizations responsible for high level command and control.

I review the main relevant attributes of organizations connected to defence sector from management scientific prospect and categorize them. This categorization gives the terminological base of the thesis.

I provide a review about the organizational classification based on HDL, which has never been used before and which is the theoretic base of several latest parliamentary and governmental decisions.

The Chapter II tries to summarize the history of HDF's C2. This should be considered as a historical base of the thesis.

In this chapter I give an outline of the Defence Staff's integration into the MoD. I point out at the advantages and disadvantages of changes and review the professional background and legal circumstances connecting the transformation. I draft the different levels of integration (organizational and structural) and the main elements of their fulfilment.

I establish that the integration came to fruition relatively slowly. Reviewing of the historical facts, I analyze the reasons, emphasizing the major effects of several decisions.

I prove that the main aims of the integration were to strengthen the civil control over the military leadership and to suit the principles of rule of law. Besides it was required to decrease the structural parallelism and to realize a cost-effective working.

I found several elements of integration-process whose incompleteness generated further necessity of transformation.

The Chapter III performs the current legal framework of HDF's C2 and it is the central part of the dissertation.

In this chapter – as far as I know, first in the secondary literature – I analyze the whole effective legal environment regarding HDF's C2, beginning from the constitutional level to the inner regulations. I showed the lack of coherency between the upper level acts and the logic base of the inner regulations and their effectiveness.

I analyze the particular elements of decision making process used in MoD and elaborate a conception of factors influencing the efficiency of management.

During the analysis of the legal environment I showed the limits of delegation of power evaluating from the legal and expediency aspects as well.

Further, in the chapter I present the fulfilment of the General Staff and the MoD's integration inside of the defence sector connected to the reforms of public administration. With scientific means I determine the collisions which could not be solved without changing the law and which influence the system of C2.

I proved that it is *not* possible to clarify the structure and system of professional control of MoD complying with every regulation in the current legal environment.

In the Chapter IV – reckon with the transpired scientific problems – I outline a theoretic organization that could provide a basis for an effective ministry. During this process I could not ignore the presentation of the professional structure which is necessary to represent.

In the chapter I explain my proposals for military and professional chain of command. I prove that without changing the law it is not possible to run a standardized professional control system which is effective for the whole personnel of sector.

I compile the list of requirements which can be important during the modernization of professional control's regulation.

I outline two potential options to develop MoD's organization. These options are basically different from each other. One of them is focusing on ministry's working as a part of central public administration and provides real control and supervision over the whole sector. This means that the Defence Staff and the MoD's integration should be disrupted. The other option drafts the possible way of increasing of efficiency with a minimal correction of legal environment and ensures the integration of military command and central administration.

The Chapter V, in which I give a short summary of main statements, proposals, consequences and clarify possible the contributions to knowledge, closes the dissertation.

Main Consequences

I realized that the MoD is the top level organization of HDF's C2. It should be suitable to work not only as a public administrative organization but also as an organization of military command. The pressure of suiting these requirements caused a continual structural transformation and competition between permanent secretary and chief of defence staff. All these can be recognized especially with the help of analysis of their' competencies before 2006.

Military leaders at a ministerial level face with new challenges generated by ministerial tasks and these can be solved only by knowing the fundamental concepts of administration. Otherwise, it is not possible to operate an administrative organization effectively.

Uniform using of terminology is made difficult by the fact that we do not have legalized rules for professional control of HDF at the law level, it is regulated only by other legal means, for example, by governmental resolutions or ministerial directives. Professional control as a concept

does not exist in other fields of management science, which causes further problems in connection with working. Concerning the current legal environment, professional control can be interpreted only inside of the HDF, taking into consideration the regulations of Home Defence Law. Furthermore, some expectations could be emerged to extend the rules of professional control to other organizations supervised/ controlled/ commanded by the minister because at these organizations serve commissioned officers as well.

In the dissertation I introduced the process of Defence Staff and MoD's integration. This integration resulted in the most meaningful changes of the HDF's C2 system.

The necessity of the integration of the organizations mentioned above cannot be directly deduced from the constitutional rules regarding the defence sector. It is determined by lower legal sources.

The fact that the civil control should be enhanced and the command structure has to be simplified, made it unavoidable to transform the organisations. Cost-efficiency and cutting the headcount of the personnel – as principles – were continually present, too.

Analyzing of the historical facts, the conclusion which could be drawn is that the integration was slowed down by the administration's resistance and by heavy representation of military interests. Nevertheless, this proved to be useful, because the long transition allowed military leaders to recognise the advantages of integration as well. It provided wide possibilities for military leaders to exploit the professional capacities of ministerial organizations not subordinated to the CHOD and assured of retention of highly trained professional personnel at the same time.

The regulation of the MoD and high level military C2 cannot be considered clear at all. It could be proved by several decisions of Constitutional Court. For example, in 1991 the Court had to make a decision about the power of HDF's supreme commander and take a stand on relation of command and control. As regards the terminology an other evidence for uncertainty is the Act No. LVII of 2006 on the central administrative organizations and legal status of members of the Government itself. This act had to determine the fundamental concepts of management science and connecting authorities as well. Efficiency of these rules – but that of the others not – more or less is guaranteed in the defence sector. I would have liked to emphasize the importance of codification's gap in supervision above State Health Centre, too.

With the help of analysis of rules I show that the control of defence sector and control of Hungarian Defence Forces are not the same. If one identifies them as the same, it can lead to malfunctions. It is highly important from the operational aspect to define correctly the several types of control and separate levels of command.

Current organization of the Ministry is regulated by complex legal rules. This legal framework has many discrepancies deriving from inner contradictions of NDL and from collisions between HDL and the Act No. LVII of 2006 on the central administrative organizations and legal status of members of the Government.

Paying regard to the higher level legal problems, minister of defence issued a normative directive about professional control and preparation of inner regulations in order to make MoD be able to operate. However, these provide only necessarily proper framework for operation and without changing the law it is not possible to determine the correct system of HDF's professional control.

Furthermore, I point out that the current structure of the MoD focuses primarily on the HDF's C2 and the ministerial supervision and control gets lower emphasis. The consequence is that the military and public administration experts are forced into dealing with problems out of their competency, e.g. state health care system.

I show the deficiency in regulation regarding CHOD not-subordinated organizations within the ministry and in the background organisations. There are no rules exist that determine the responsibility for military command of these people; it could be clarified only by logic analysis.

We can declare that there could be more options of the MoD's transformation, which has two main directions. One of them is a version that slightly corrects the current integrated structure and makes efforts to develop the efficiency. This option preserves the HDF-focused scopes. The other option finds it possible to disrupt the integrated structure and to re-establish the competencies. This solution would be suitable for introducing the new way of thinking which would give the opportunity of real ministerial supervision and direct control beside ministerial command. To fulfil the latter, which is a mainly theoretical option, several significant major laws should be revised.

Contributions to Knowledge

I outlined the requirements of the professional control's system

I showed hiatus concerned the power of CHOD, determined by HDL, and proved that with the help of the current law one cannot give definite answer whether CHOD has the right to control as a professional arbiter.

I elaborated the main principles for transformation of the MoD in two versions.

I proved in the thesis that during the process of the public administration reform started in 2006 made the legal framework of HDF's high level C2 incoherent and more emphasis had been placed on the rules of central public administration regarding the organization than on the particular rules of the NDL.

I ascertained that the contradictions between regulation of central public administrative organizations and regulations of HDF's C2 cannot be solved without changing the NDL.

Recommendations

I propose the preparation for changing the HDL, resolve of HDL's inner contradictions. It is highly recommended to introduce clear and act-level rules for professional control. It is also recommended to extend the right of ministerial annulment for all of inner regulatory means and find the correlation between HDL and other acts regarding Zrínyi Miklós National Defence University. It would be useful to eliminate the false rules. In my opinion, it would be also good to review the governmental resolution No. 2134. in 2006 on HDF's high level C2 in order to avoid of suspicion of sub delegated rules referring to MoD's bylaw.

I suggest that the personnel of MoD should be obligated to take an public administrative basic or professional exam, depending on the level of their statuses. It can provide a sort of guarantee of administrative working on the general expected level for those who were educated previously primary as military leaders. With the help of these arrangements we could be able to ensure the uniform use of terminology within the organization.

I find it very practical to use consequently the "organizational approach method" in connection with the elaboration of inner regulatory means. It ensures that the effectiveness of several decisions prevail only against those in whose direction the legal framework allows it. This method is in accordance with the current parliamentary resolution No. 106, in 2007 on the headcount of HDF and with the MoD's bylaw. It could be help to avoid issue of professional control means that would not be legally acceptable, as they concern not only the HDF.

I recommend – parallel with proposals above – to define the exact rules of implementation of regulatory means of alliance e.g. STANAGs and Military Committee decisions. Actually, these are

not legal regulatory means but their effects have very important role because they could be executed only by changing the national regulators and issuing inner control and command means.

I suggest that the government should issue a new order that deals with the ministerial right for supervision over the State Health Centre instead of the current resolution level regulation, if its powers is different from the current Act LVII, in 2006.

I recommend for the military leaders in the MoD led by CHOD that they seize the opportunity of using of the wide administrative professional background given by integrated ministerial organization. This background would not be available for them as military leaders, and they cannot avoid using this knowledge during their service as a part of a central administrative organization.

I suggest that the ZMNDU should enhance the education of law – especially the law of the public administration – emphasising the HDF’s high level C2 rules and problems.

Practical use of research results

The dissertation is meant to contribute to the results of both of sciences of law and military science. The results are suitable for developing of these. The content of the thesis could be used in the education of several universities’ faculties of law, and ZMNDU or in connection of general staffs training as well.

The optional proposal can be used to develop the MoD’s structure, too.

Outlining of legal contradictions, collisions and their impacts, definition of professional control and their requirements can mean useful support and background for the legislators and provide help to elaborate “de lege ferenda” proposals as well.

Professional CV

COL Pal KADAR

MoD Department for Planning and Co-ordination

Deputy head of department

DOB: July 5, 1972 in Budapest, Hungary

Qualifications

1993.

Janos Bolyai Military Technical College

Ground based air defence missile branch

Engineer

2001. Science University of Pécs

Lawyer, Doctor of legal science

2006. Miklos Zrinyi National Defence University

PhD Education Centre

2006. legal specialist examination

Language skills

2007. English STANAG 3.3.3.3.

1997. German Zertifikat Mittelstufe Prüfung

Career

1993-1997 GBAD officer, HDF 11th DUNA AD Brigade

1997-1999 commander of guiding system, HDF 11th DUNA Mixed AD Regiment

2000-2001 legal advisor officer, HDF 11th DUNA Mixed AD Regiment

2001-2002 chief of legal service, HDF Signal Command

2002-2004 senior officer, MoD Department for Planning and Co-ordination (DPC)

2004-2006 deputy chief of division, MoD DPC

2006- chief of division, deputy head of department, MoD DPC

Scientific activity

2005. teaching, Law of public administration (Zrínyi Miklós National Defence University)

2005-2008. teaching, Defence administration (Lóránd Eötvös Science University)

2007- teaching, Training for exam of personnel of public administration (Prime Ministers Office)

2002-2005 teaching, Law of public administration (MoD)

2007. lecturer, Lawyer's Conference (Balatonkenese)

2005. lecturer, Centre for Security and Defence Studies Foundation's Conference (Pallas Páholy)

2008. lecturer, Replacement Conference (Göd)

2008. lecturer, Force Planning Training (Göd)

2002- Member of Hungarian Military and Humanitarian Law Association

Publications

Current problems of high level command and control

Factors of Efficiency of HDF's High Level Command; Új Honvédségi Szemle, 2004/3.

Can we handle the HDF's civil servants as a separate group?

Új Honvédségi Szemle, 2007/1.

About the integration of high level military command

Hadtudomány, 2005/3.

Re-thinking of HDF's disaster relief system

Kard és Toll, 2005/1.

Thoughts of system of HDF's inner regulations

Új Honvédségi Szemle, 2006/9.

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Új Honvédségi Szemle, 2007/6.

The transformation of HDF in 2007 and the new structure of MoD

Hadtudomány, 2008/1.

Legal Framework of transformed HDF's high level command and control

Hadtudomány, 2008/3

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Co-writer Imre Bensóczky, HM Tanulmánykötet 2004

A „New Type” of Terrorist Act or Can Hungarian Law Deal with Situations Created by Hijacked Aircraft Used as a Weapon?

Co-writer Ferenc Almási,

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Co-writer Ferenc Almási,

ZMNE Közlemények 2004. November

The role of Hungary in the NATO as a political and military alliance with special regard of the relation of the National Security Strategy to the NATO membership

Co-writer Ferenc Almási,

2005 AARMS vol 4.

Notes on the margin of voluntary reserve system's review

Other activities

During my work I elaborated several regulations, resolutions and directives concerning HDF's C2 on my own and with others contribution. I took part – among others – in codification of Hungarian Home Defence Law, in working out of governmental resolution No 2134/2006. about HDF's high level C2 and its predecessors, in preparation of MoD's bylaw or ministerial directive determining HDF's professional control and inner regulation system.

Lots of my proposals given in my former publications became the part of the legal environment. I perceive as the most important the parliamentary resolution No 106/2007 that involves the “structural approach method” and the elaboration of inner regulatory system. The command structure of home defence disaster relief system is based on my former list of requirements as well.

As a secretary of working group responsible for review of Hungarian voluntary reserve system I had direct impact of the statement of review regarding C2.

Budapest, January 2009