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## THE PROTECTION OF THE STATE SECRET IN THE LEGAL HISTORY OF EUROPE

**Abstract:** *The legal regulation of the protection of the state secret have appeared relatively late in European legal history over the last two centuries. The secrecy provisions have always been in accordance with the standards of the given age, in most cases relatively neutral regulations, and a certain development arc can be observed. It can be seen in the gradual modernization of the rules and, on the other hand, in the increase in the number of guarantee elements from the end of the socialist era. With regard to criminal law, there is a tendency for criminal offenses regarding to state to gradually less and less severe. The various rules of state secrecy and related crimes has eased in most European countries' criminal law regulation since 1989.*

**Keywords:** *secret, state secret, classified data, classification, state security, Code Csemegi, perduellio, Evidenzbureau, State Protection Authority.*

### 1. THE GENERAL CONCEPT AND THE HISTORY OF SECRET AND STATE SECRET

Several famous philosophers, including Kant, dealt with the general concept of secret, although his interest was mainly of a religious-moral nature.<sup>1</sup> The works of a twentieth-century German philosopher, Niklas Luhmann, also contain reasoning about the concept of secret. “As we can see from cosmology, all great things are secret by nature.” – wrote<sup>2</sup> examining the subject from a less theoretical point of view, the starting point may be that secrecy is typically a social phenomenon. According to the unanimous opinion of several authors, the core element of secret

<sup>1</sup> Kant Fischer, *Kant vallásfilozófiája, (Kant's philosophy of religion)* Sárospatak 1868, 745

<sup>2</sup> Niklas Luhmann, *Látom azt, amit te nem látsz. (I see what you do not see)* Budapest 1999, 153

is the immanent quality of man that he hides.<sup>3</sup> It is expressed when a conflict situation develops between people or groups of people. Secret as a phenomenon therefore always occurs only in relation to humans, the camouflage behavior of animals cannot be considered a secret. Secret is to some extent synonymous with the concept of “ignorance,” so knowing it in practice always means acquiring some kind of knowledge. While in the process of normal communication the receiving party remains passive, the communicating is the active party; in the communication process related to secrecy, the two roles change: the communicator confronts the communication, it is considered an undesirable recipient for the addressee. The process of concealment, as Nikolov aptly put it, “means not only a lack of communication, but the active and specific retention of knowledge, in the form of secrecy, against a real or potential interest.”<sup>4</sup>

The science of communication considers secrecy and secret itself to be negative communication. According to the science of communication, secrecy is chosen by the individual when he or she otherwise has very strong emotions about something, but does not want to show them.<sup>5</sup> Unlike animals, man is capable of secrecy, and even only man is capable of it. This ability was not innate, but developed slowly during becoming human. J. Simmel considers the ability to maintain secrecy to be one of the greatest achievements of mankind, which he justifies primarily because this ability is an important and indispensable part of human individualization. The ability to maintain secrecy is thus a socio-historical product.<sup>6</sup>

Thus, only man is able to construct and maintain secrecy, since the ability to maintain secrecy is also a product of social development and human individualization. A secret usually refers to an event that happened in the past, but it is always updated in the present (its time dimension is from the past to the future, a secret that is never revealed is rare.<sup>7</sup> The general concept of secrecy and the special concepts associated with each type have been defined by many, in many ways, in recent centuries, as this topic is one of the basic concepts of security policy and national security science. István Resperger perfectly summarizes the formation of the secret in a historical approach, so this can be the starting point of our definition search experiment. In his view, the presence of secrets in human society coincides with the emergence of humanity, and throughout history, since becoming human and the formation of human society, secrets have also been present

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<sup>3</sup> Even in the early primitive societies man had secrets, these secrets played a significant role partly in the subsistence and partly in the battles with the enemy. (Tamás Földesi, *A Janus arcú titok, A titok titka. (The secret on Janus' face. The secret of the secret.)* Budapest 2005, 9)

<sup>4</sup> Elit Nikolov, *A titok. (The secret.)* Budapest, 1973, 7-21

<sup>5</sup> Karl Erik Rosengreen, *Kommunikáció (Communication)* Budapest 2008, 104

<sup>6</sup> T. Földesi, 188

<sup>7</sup> Géza Balázs, *A titok antropológiája és szemiotikája (The anthropology and semiotics of secrecy.)* Budapest 2019, 17

continuously. Even the first humans tried to hide secrets from their external and internal enemies. The range of secrets was at first cultic and religious in nature, and later diplomatic and military secrets also appeared in contact between nations. In the Middle Ages, the chief possessor of secrets was already the ruler, sharing confidential information only with subordinates holding the highest positions closest to him. In a later age, during civic development, state secrets fell into the hands of the highest practitioners of power (heads of government, ministers, etc.), and by this time various rules had already developed for the special handling of documents that contained secrets. István Resperger also points out that civil and military secrecy have only been separated since the 18th century. This is due to the large amount of classified information generated in military secrecy, but it was handled in a strictly regulated, closed circle. In contrast, civil secrecy mainly meant the encryption of decisions in diplomacy, finance, law enforcement, and the highest levels of the executive, which meant a much wider range of qualifiers and insiders. These rules are also fundamentally found in modern secrecy.<sup>8</sup> The general concept of secrecy was first defined in the Hungarian criminal law by Pál Angyal, with the greatest thoroughness.<sup>9</sup> In one of his books, Pál Angyal outlines a general concept of secrecy, including the concept of state secrets: “A secret is what the person concerned wants to keep secret and what no one else knows except the closed circle of individuals who are obliged or willing to keep it secret. State secrets are secrets that affect the important interests of the state. Not all official secrets are state secrets. The subject of the secret can be a past, present or future fact. The fact that has been betrayed and made known to a larger number of unauthorized people is no longer a secret.”<sup>10</sup>

According to Jellinek’s brief and practical definition, a secret is a fact that is secret and that must be kept secret by the will of a person.<sup>11</sup> According to Endre Bócz, a secret is a fact or thing, procedure, method or explanation that has been withheld from others. And the essence of the secret is to prevent or at least make it difficult to obtain knowledge.<sup>12</sup> According to Karlheinz Probst, we can talk about

<sup>8</sup> István Resperger, *A nemzetbiztonság elmélete a közzolgálatban (Theory of national security in the civil service)* Budapest 2018, 355-356

<sup>9</sup> Pál Angyal, *A magyar büntetőjog kézikönyve (Handbook of Hungarian criminal law.) 6. Személyes szabadság megsértése, A titok büntetőjogi védelme, Magánlaksértés,* Budapest 1929, 56

<sup>10</sup> Pál Angyal, Gyula Isaák, *A Kihágási Büntető Törvénykönyv (The Penal Code for Violation.)* Budapest 1941, 627

<sup>11</sup> Walter, Jellinek, „Der Umfang der Verschwiegenheitspflicht des Arztes und des Anwalts“ (Az orvos és az ügyvéd titoktartási kötelezettségének hatóköre.) (Scope of the doctor’s and lawyer’s duty of confidentiality.) *Monatschrift für Kriminalpsychologie und Strafrechtsreform*, vol. 3. 1906, 658

<sup>12</sup> Endre Bócz, „Az ügyvédi titok és az ügyvédi iratok védelme a büntetőeljárásban“ (Protection of legal professional privilege and legal documents in criminal proceedings) *Belügyi Szemle*, vol. 3. 1996, 4-5

secrecy if there is a will that an objectively unknown thing must remain unknown or known only to a well-defined circle of persons. This circle of personnel who know the secret can be particularly large or very small. As long as the members of this circle of personnel feel obligated to keep the matter a secret, the secret remains.<sup>13</sup>

Examining the general concept of secret as a legal concept, László Gergely Szőke concludes that, based on the Hungarian secrecy regulations, it is very difficult to give a concept of secrets that clearly covers all types of regulated secrets. If we want to define it, we can only say with great certainty: in the Hungarian legal system, a secret is what is recognized as a secret by law.<sup>14</sup>

The general concept of a secret was defined by Mihály Tóth as follows: “a secret is any data, fact, circumstance or thought which, in principle, can be known to anyone – and the embodiment of all this – but which is known only to a limited number of individuals, and whose secrecy is in the legitimate interest of those who know the secret.”<sup>15</sup>

There are so many kinds of secrets these days, in parallel. Their formation is a consequence of socio-historical processes. According to Béla Révész’s position on this, which in my opinion is considered to be the most logical and today accepted view: The primary elements of the traditionally formed types of secrets are the nature of the communicator and the message, and only secondarily are the moments of the recipient and the effect. When war secrets, state secrets, economic or scientific secrets are discriminated against in the literature, it is obvious at first sight that they are grouped according to the content of the non-communicated information. At the same time, it is inseparable from the non-communicating subject, since certain circles of information are related to statuses that can be precisely defined in the structure of the social-power division of labor. Thus, the quality of the secret owner is inseparable from the type of confidential content. The receiving person or group may be related to the typification as an important element in that it responds to the extent of the particularity of the person or group (s) excluded from communication. Finally, the efficiency of the non-communication process is not only a function of the information retention performance of the secret owner, but also an important indicator of whether it can generate spontaneous communication processes such as e.g. the false news, the horror news.”<sup>16</sup>

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<sup>13</sup> Karlheinz Probst, *Wirtschaftsverrat und Wirtschaftsspionage (Gazdasági árulás és gazdasági kémkedés.) (Economic treason and economic espionage)* Inauguraldissertation, Graz 1972, 42

<sup>14</sup> Gergely László Szőke, „Gondolatok a hazai titokvédelmi szabályozás rendszeréről” (Thoughts on the system of Hungarian secrecy regulations.) *JURA* vol. 2. 2018, 252

<sup>15</sup> Mihály Tóth, „Titkokkal átszőtt büntetőjog” (Criminal law interwoven with secrets.) *Iustum Aequum Salutare* vol. 1. 2005, 57

<sup>16</sup> Béla Révész, *A titok, mint politika, A titkosszolgálatok politológiai kutatásának lehetősége (The secret as politics. Possibilities of political science research of secret services.)* Szeged 2007, 9

In my point of view, secrecy, in the broadest sense, is a category inherent in human nature that appears at a certain quality of the process of becoming human. A secret is anything that only a certain number of people know about, and whose secrecy for a specified period of time, regardless of its value, is in the interest of one or more people or society, and the holder of the secret has taken appropriate measures to keep it secret. If we examine the secrecy of secrecy, which is also protected by law, as a kind of special legal relationship, we can make the following conclusions about it: – always present in humans, – an absolute legal relationship (everyone is obliged to tolerate that the secret owner only shares the secret with whom he wishes), – always exists within a specified time frame, – its subject-matter is information of a valuable nature which requires and deserves legal protection, and – the loss, destruction, disclosure or making available to an unauthorized person of this information has legal consequences governed by different rights. After defining the general concept of secrecy, we turn to the examination of state secrecy, first also in general. The three indispensable components of the concept of state are territory, population, and sovereignty. Preserving the security and integrity of all three essential components today is closely correlated with the ability and efficiency of the state to preserve information whose disclosure or acquisition by unauthorized persons or bodies could harm or jeopardize the legitimate interests of the state. Already Max Weber points out, every bureaucracy strives to strengthen the sense of superiority of its members with professional knowledge by keeping their knowledge and intentions secret. The bureaucratic administration always strives to be the “administration of secret meetings” as much as possible, hiding its knowledge and actual activities from possible criticism. The concept of “official secret” is a specific invention of the bureaucracy, which is why it is also fanatically defended by the bureaucracy.<sup>17</sup> Other types of secrets, such as economic secrets, can be conceived as personal secrets, but one of the distinguishing features of state secrets is that they are of a social nature, directly or indirectly affecting the security of the state, and therefore inconceivable only as personal secrets. Nowadays, the developed legal systems use the category of “classified data” instead of the concept of state secrets.

## 2. THE DEVELOPMENT OF THE PROTECTION OF STATE SECRETS

Researching the universal legal-historical roots of secrecy, our first important finding may be that military and civilian secret were not sharply separated at first,

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<sup>17</sup> Max Weber, *Essays in sociology* (Szociológiai tanulmányok) 233-34 (H.H. Gerth & C. Wright Mills trans. and eds., 1946), idézi: Heidi Kitrosser, „Classified information leaks and free speech” (Minősített adatok kiszivárogtatása és szólásszabadság.) *University of Illinois Law Review*, vol. 3. 2008, 3, 889 )

developed together for a long time, and then civilian secret gradually emerged from military secret (in the terminology of the time: diplomatic). So until civil and military secrecy were sharply separated, there was no doubt that military secrets were of greater importance. References to the secrets of the state have appeared since ancient times, but mainly in military-related sources. We cite two of these. In 11-century Vei Liaozi, one of the most significant works of ancient Chinese military science (named after its author, Commander-in-Chief Vei Liao, who lived in the 4-3. centuries BC), writes the following about the secrecy of the Chinese art canon: “Those who are careless in discussions are easily interrogated in secret; those who attack without following the rules can be destroyed; the army of those who attack like water, zigzagging like lightning, is easily confused.”<sup>18</sup> One of the classic works of ancient China on military science, the *Military Revelation*<sup>19</sup>, states: “It is desirable to keep the plans of a warlord secret. It is desirable to unite officers and warriors. It is desirable to do it quickly by attacking the enemy.”<sup>20</sup>

In ancient times, the primary significance of the secret was almost exclusively that the enemy should not become aware of the intentions of the military and / or political leader. However, in the struggle to gain and retain power, not only external but also internal enemies had to be confronted. The concept of state secrets in its present sense was also unknown in ancient Roman law. The term “secretum” is not found in the *Digesta*, nor is the term “arcana imperii” only in Tacitus (Tac. Hist. I. 4; Tac. Ann. II, 36) in connection with the election of princeps and officials, and Tac. Ann. II, 59 (in relation to the princeps and Egypt) appears. Thus, the concept of state secrets cannot be found in a legal source, but it already has its roots in the legal literature. However, there were also rules in Roman law under which persons who violated state secrets could be severely punished, the sanction being a qualified death penalty. The sanction of state secret, which fell within the conceptual scope of *perduellio* (i.e., treason),<sup>21</sup> was a qualified death penalty. It was one of the few crimes to be persecuted from the earliest times and was already included in the XII panel law.<sup>22</sup> Moreover, the importance of the crime is underlined by the fact that it was one of the two ancient crimes known under Roman law (the other was the *parricidium*, i.e., homicide).<sup>23</sup> According to an excellent monograph summarizing Roman criminal law<sup>24</sup>, “the crime was very widely

<sup>18</sup> Zsolt Tokaji, P. Sándor Szabó, (szerk.) *A kínai hadtudomány klasszikusai (Classics of Chinese military science.)* Budapest 2018, 153

<sup>19</sup> *Ibid.*, 177

<sup>20</sup> *Ibid.*, 182

<sup>21</sup> Pál Angyal, *A titok védelme anyagi és alaki büntetőjogunkban (Protecting secrecy in our substantive and formal criminal law.)* Budapest 1908, 36

<sup>22</sup> András Földi, Gábor Hamza, *A római jog története és intézményei (History and Institutions of Roman Law.)* 23. átdolgozott és bővített kiadás. Budapest 2019, 572

<sup>23</sup> Róbert Brósz, Elemér Pólay, *Római jog (Roman Law.)* Budapest 1974, 466

<sup>24</sup> János Zlinszky, *Római büntetőjog (Roman Criminal Law.)* Budapest 1995, 108



applied in the early days, also to citizens, but also to allied cities that entered the *fedus* with the Roman people and then switched to the enemy.” According to Roman terminology, the external enemy was called the *host*, and the *perduellis* was the internal enemy. Within the organization of the ancient Roman army, there was already a secret service, the *frumentarii*, their uniformed members served in the legion, their main task being to ensure the supply. They traveled extensively and employed agents to explore local communities and gather information (including enemy secrets). In the III. century, this organization was dissolved by Diocletian. Later, a more efficient organization called *agentes in rebus* was created. The scouts were later referred to as “shepherd dogs who joined the herd of wolves”.<sup>25</sup>

Secret protection was later an important part of the self-defense mechanism of states in medieval Europe, even after the collapse of the Roman Empire. Machiavelli gives detailed advice to the prince on what and how to listen in order to take effective action against both the external and internal enemies.<sup>26</sup> Germanic human rights punished the betrayal of both military and state secrets. In addition, in medieval Europe, ecclesiastical law also played a particularly important role in protecting secular social relations. It also included the breach of secrecy as a punishable act, and in addition to the secrecy of confession, the betrayal of state secrets was also punishable. The latter was punished by perjury.<sup>27</sup>

The protection of secrecy also played a particularly important role in the Venetian Republic, where the Council of Ten was formed in 1310, originally to explore the details of the Tiepolo conspiracy. From 1335, this body declared itself an inherited body of state security.<sup>28</sup> The Council of Ten was not only a police but also a judicial institution, with all locks open to its secret agents. Its members wore masks when acting on official matters. If they had to prove themselves, they lifted their cloak, which was lined with the letters C. X. D. (*Consiglio dei Dieci* – Council of Ten).<sup>29</sup>

The Council of Ten was also extremely effective in intelligence and response, so it also needed a high level of age-appropriate secrecy, which the Republic of Venice also had. The Venetian Soro, who died in 1544, for example, entered the history of the secret services as the “father of cryptography”.<sup>30</sup>

The protection of the secrets of the state also played a very important role in medieval Asia, as the condition for the existence and development of any effective

<sup>25</sup> Alfred Roolington, *Hírszerzés a 21. században, A mozaikmódszer (Intelligence in the 21st century. The mosaic method.)* Budapest 2015, 76-77

<sup>26</sup> T. Földesi, 49

<sup>27</sup> P. Angyal, 1908, 36-38

<sup>28</sup> Gergely Bárándy, *Velence fénykora (The heyday of Venice.)* Budapest 1999, 154

<sup>29</sup> József Boda, „Szigorúan titkos!”? *Nemzetbiztonsági almanac (“Top secret!”? Almanac of national security)* Budapest 2016, 33

<sup>30</sup> Harry Howe Ransom, *Central Intelligence and National Security (Központi hírszerzés és nemzetbiztonság)* Cambridge 1959, 116

state is the protection of its fundamental interests, and this is inconceivable without the protection of secrets. To substantiate the above finding, it is interesting to note that secrecy played a prominent role in the peoples of the East, even in the earliest times, not only in ancient China, but also in the medieval Tartars effectively protecting their vital secrets to their state existence. In addition to the conquests, the grandmother did not neglect the protection of secrecy at all. A constant recurring element in contemporary records is that the enemy spies were immediately executed locally by the Mongols. An excellent example of successful secrecy is the 1221 campaign in Hvar, when the enemy was surprised by the Chinese-origin throwing machines used during the siege of the capital and the various gunpowder-like materials used to make the siege faster – and bloodier than expected.<sup>31</sup> There has been no trace of the criminal law protection of state secrets in Hungarian legal history for many centuries. However, this does not mean that such behaviors would have gone unpunished in practice, as Pál Angyal points out: There is not even a mention of the betrayal of a state secret where it should be, t. i. in the list of cases of infidelity (Hk. I. 14., 1715. VII. act., 1723 IX. act.), however, it is completely inconceivable that this – perhaps rare – delictum naturale could have avoided punishment would be. If the “subtractores castrorum” (Hk. I. 14 § 10) were held liable in the name of infidelity, that is, those who insidiously played the castle of their masters into foreign hands, there is no doubt that the traitors of secrets interested in the existence of the state did not escape their worthy punishment.<sup>32</sup>

Tamás Földesi rightly points out that “the fact that before the Enlightenment there was a substantial lack of human rights enshrined in law, and perhaps enshrined in the constitution, and within that freedom of communication, also contributed to the reign of secrets for thousands of years. This meant that the ruler and the circles close to him were uncritical, but it was also the political and social order that ensured domination, and censorship and other means of power ensured that secrets were not revealed.”<sup>33</sup> To all this we can add that formal rules of protection of secrecy were not absolutely necessary before the constitutional criminal law was enacted, because retaliation for breaches of secrecy or acts considered a breach of secrecy could have taken place quickly, efficiently, without guarantee rules. In both the Middle Ages and the Early Modern Age, secrecy has not yet been sharply separated from other crimes against the state. I mentioned that in Roman law it was an element of treason, later we can find it among several cases (including in Hungary) among the cases of infidelity. Binding distinguished between infidelity in peace, war, diplomatic infidelity, infidelity with state documents, and breach of state secrecy, while van Calker said the correct classification is more: threat to

<sup>31</sup> József Boda, Kund Regényi, *A hírszerzés története az ókortól napjainkig* (*The history of intelligence from antiquity to the present day*) Budapest 2019, 50

<sup>32</sup> P. Angyal, 1908, 44-45

<sup>33</sup> T. Földesi, 52



peace, military infidelity, disloyal patronage, insult and secrecy, breach of secrecy, state documents disloyalty.<sup>34</sup>

### 3. EUROPEAN REGULATORY EXAMPLES IN THE 19-20. CENTURY

The concept of state secrets has not been uniform in the history of law for a long time, it could be basically divided into military and diplomatic secrets, and for centuries, both state secrecy and espionage were partly intertwined crimes. France was the first to recognize the inaccuracy of an earlier perception that, in order to punish espionage, it was imperative that the perpetrator act with the intention of notifying some foreign state. A French law dated 1886 already penalizes any unauthorized intrusion into the secrets of the state, for whatever purpose. This example was followed successively by England in 1889, Italy in 1889, Russia in 1892, Germany in 1893 and 1914, as well as the 1912 Austrian proposal. But not only mere espionage without any specific purpose, but also the unauthorized acquisition of secrets in the absence of such purpose is punished by the said French law and the German law of 1914 (“gegen den Verrat militärischer Geheimnisse”). Interestingly, we note that the 1926 Fascist Italian Penal Code provided a modern-day regulation of the crime of state secrecy, entitled Obtaining News of State Security.<sup>35</sup> At the end of World War I, in the days following the fall, an extraordinary destruction of documents took place at the headquarters of the secret service of the Austro-Hungarian Monarchy. They have successfully prevented the victorious powers from gaining possession of the most important diplomatic and military secrets. “The reports of intelligence officers and spies serving in World War II did not fall into hostile hands. After the collapse, when socialist rule in Vienna seized power and enthusiasts in the Ministry of Defense slammed their tent trees, they could not grab the many thousands of reports. Although the entrance to the building was strictly guarded, which led directly to the »Evidenzbureau«, at the initiative of Colonel Ronge, the honest officers who had in their hands the lives and deaths of many hundreds of successor states carried away and burned the documents at night. By the time the “winners” realized where the archive was and wanted to process the material, they had just found a cool place.”<sup>36</sup>

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<sup>34</sup> Pál Angyal, *Fel ségsértés, Királ ysértés, Hütlenség, Lázadás, Hatóságok büntetőjogi védelme (Infringement, Disloyalty, Rebellion, Criminal protection of public authorities)* Budapest 1930, 58

<sup>35</sup> Pál Angyal, György Rác, *Az olasz büntető törvénykönyv (Italian Criminal Code)* Budapest 1937, 80

<sup>36</sup> Árpád Botár, *A láthatatlan hadsereg, Kémek, merénylők, árulók (The invisible army Spies, assassins, traitors)* Tapolca 1937, 10-11

The first written Hungarian penal code (which is named today from its creator, Károly Csemegi, the “Code Csemegi”), already included the criminal protection of state secrets. At that time, the concept of state secrets did not exist in the present sense: it was divided into two parts by the names diplomatic secrets and military secrets. The first was protected by civil criminal law, so it was already found in the Code Csemegi. At that time, the military secret was protected by the military penal codes with the tools of criminal law, first the Austrian Military Code of 1855, which was enacted in Hungary by an open order of Franz Joseph I., and then the II. Article 1 of the Criminal Code, the first Hungarian military criminal code. In summary, in pre-1945 Europe, among the crimes committed to state secrets, we usually encounter two types of separation in each of the penal codes. Legislation distinguishes between military secrets on the one hand and state or political or diplomatic state secrets in the strict sense, on the other, and further differentiation is based on offending behavior: while in the case of breaches of political secrecy, only disclosure, betrayal, disclosure, etc. punishable, in the meantime, in the case of violation of secrets, espionage itself is a punishable act.<sup>37</sup>

#### 4. PROTECTION OF STATE SECRETS IN SOCIALIST LEGAL SYSTEMS

After 1945, the community of developed states split into two major camps, with the Eastern Bloc becoming part of the socialist legal system for four decades. Although, according to official ideology, the state would have died during the transition from socialism to communism, “there were no signs of this at all in the power relations of the leading power of socialism, the Soviet Union, the legal system showed development rather than decline. Stalin has already stated, in the light of the real processes, that the state is getting closer to extinction through strengthening, which in any case brought with it the development of traditional institutions of public power, albeit in a specific order of governance and operation.”<sup>38</sup> After Stalin’s death, Khrushchev also talked about the importance of preserving state secrets: “We must also stipulate in the rules of organization that a party member has a duty to preserve party and state secrets, to be politically vigilant and that blasphemy of party and state secrets is a crime against the party and is incompatible with party membership. This addition is necessitated by the fact that the symptoms of political frivolity and chatter, the facts of the chatter of party and state secrets, are quite widespread among the Communists.”<sup>39</sup> Soviet

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<sup>37</sup> P. Angyal, 1908, 52

<sup>38</sup> László Korinek, *Kriminológia I (Criminology I)* Budapest 2010, 172

<sup>39</sup> Nyikita Szergejevics Hruscsov, „Módosítások az SZK(b)P szervezeti szabályzatában, A Szovjetunió Kommunista (bolsevik) Pártja XIX. Kongresszusának beszámolója” (Amendments to

criminal law was also taught in law faculties in Hungary in the 1950s. According to a contemporary textbook, one of the most serious crimes, treason, was classified by the Soviet Penal Code as the disclosure of military or state secrets in addition to espionage. Although the crime could only be committed intentionally, judicial practice has established intent even when, for example, German prisoners of war have, against their will, released military or state secrets as a result of torture in enemy captivity.<sup>40</sup> Thus, anyone who was in possession of state secrets as a Soviet soldier and was taken prisoner by Germany during World War II, or by the army of another state allied with the Germans, could realistically expect even the most severe criminal consequences when he returned home. The regulation was thus not only strict but also downright inhumane, and also contradicted the classical principles of traditional criminal law. The same contemporary Soviet criminal law textbook summarized other criminal law provisions related to the protection of secrecy: “Vigilance is the duty of every Soviet citizen. Particular vigilance should be required of those members of the Soviet state machinery who, by virtue of their duties, had received information which was a state secret or not to be disclosed. Defamation of a state secret, even if there is no counter-revolutionary intent, is a serious crime defined by the Legislative Decree of 9 June 1947 on “Liability for the Defamation of State Secrets and the Loss of Documents Containing State Secrets”. Chattering information that does not constitute a state secret but cannot be disclosed by an official is classified as an official crime by law.”<sup>41</sup>

By decree of June 8, 1947, the Council of Ministers of the Soviet Union issued a list of data constituting state secrets. That list also contained a precise list of information of a military, economic and other nature declared confidential, as well as information on inventions, discoveries and technical improvements.<sup>42</sup> This legislation became a model for secret lists also introduced in the socialist states a few years later. The essence of the regulation of the era was that the concept of state secrecy was not defined primarily in a formal but in a material sense, ie there was not necessarily a need for a formal classification decision or classification marking. As a consequence, it was very easy to initiate (as did) criminal proceedings against persons who were not even aware that they had committed a crime of state secrecy, as no formal classification procedure was required during this period to obtain a data. as a state secret, as mentioned above. In addition to the Soviet Union, socialist criminal dogmatics developed in Eastern Europe until the

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the organizational regulations of the SZK (b) P. Communist (Bolshevik) Party of the Soviet Union XIX. Reports of its Congress.) *Társadalmi Szemle* vol. 10. 1952, 1080

<sup>40</sup> *A szovjet büntetőjog Különös rész, (Special part of the soviet criminal law.)* Budapest 1954, 55

<sup>41</sup> *A szovjet büntetőjog Különös rész, (Special part of the soviet criminal law.)* Budapest 1954, 273-274

<sup>42</sup> Péter Barna, Az államtitok védelme (Protection of state secrets) *Jogtudományi Közlöny* vol. 5. Nr. I., 1955, 285

early 1950s. One of the essential features of this was its strong ideological hue. Some Eastern European textbooks have written openly that socialist criminal law is one of the most important tools in the “fight against exploiters,” and the classified curriculum is still clearly articulated. A textbook written for the purpose of educating the staff of the Hungarian State Protection Authority, marked “for official use only”, saw the essence of socialist criminal law as follows: “Socialist criminal law is not a further development of bourgeois law, but a new type of law. Socialist criminal law, like socialist law, was created as a result of the victory of the socialist proletarian revolution. Socialist criminal law was created by the popular masses. The revolutionary legislation was organized by the proletarian dictatorship. It serves as a weapon of socialist criminal law, the fight against exploiters. Socialist law, socialist criminal law, is the engine of building socialism. It expresses the will of the working masses, a means of strengthening and developing socialist social relations.”<sup>43</sup> The criminal law regulations of the socialist countries of Eastern Europe have, of course, followed the Soviet example since the early 1950s, with relatively minor differences. We refer only to some of these regulatory differences. In connection with the definition of the concept of state secrets, the socialist legal systems of Eastern Europe used three types of regulatory methods. The Criminal Code given a definition in Czechoslovak, Yugoslav and Romanian criminal law, or in the Criminal Code referred to the registration of the secret by a competent body (the best example of this was Soviet criminal law). Finally, there was a code that did not provide a definition at all (such as the Bulgarian Criminal Code), but merely referred to legislation prohibiting the disclosure of data. Regarding the content of the secret, there were quite detailed regulatory solutions (such as the Socialist Romanian Criminal Code), separating military and diplomatic secrets, other codes provided a material definition without any detail (such as the Yugoslav and Czechoslovak codes).<sup>44</sup>

Article XI of the Bulgarian Penal Code, published on 9 February 1951, on crimes against social order. 295 to 302 of Chapter 4. It included in the clauses “Crimes against State Secrets” the offenses that could be committed in violation of state secrets, and criminalized not only those in official or military service, but also other persons. He also punished anyone who communicates, discloses or collects information of a military, economic or other nature in any way, which is not a state secret, but the disclosure of which is prohibited by law or regulation. The Czechoslovak Penal Code, which entered into force on 1 August 1950, contained in Part 2, entitled Crimes against the Security of the Republic, Articles 88-92. §§ 112-115. §§ contained rules on the threat to economic and service secrecy,

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<sup>43</sup> Péter Barna, *Büntetőjogi ismertetek, Államvédelmi tankönyv* (Criminal law knowledge, State Defense textbook) Budapest 1955, 21

<sup>44</sup> *A Magyar Népköztársaság Büntető Törvénykönyve. (Criminal Code of the Hungarian Republic.)* Igazságügyminisztérium 1960, 305-306

ie differentiated economic, service and state secrets.<sup>45</sup> In the history of Hungarian law, initially objective, descriptive rules gradually became colored by ideology after 1919, and from 1951 this process intensified. A formal classification procedure and classification marking was not necessarily required for a data to be considered a state secret, which violated legal certainty in our present terms both between and after the two world wars, in the era of socialist secrecy. Nevertheless, if we evaluate the regulation according to the time of the day, it can be said that the Hungarian secrecy provisions have always been modern, relatively politically neutral regulations corresponding to the level of the given age, and a certain development can be observed during the continuous change of the regulation. which can be seen on the one hand in the gradual modernization of the rules and on the other hand in the increase in the number of guarantee elements. With regard to the Hungarian criminal law regulation, there is a tendency that the facts have gradually eased, in addition to the Criminal Code. In particular, they have become more and more “backward,” more and more distant from crimes against the state during codification. There has always been an unwritten rule for the Special Part, chapters of facts involving more serious offenses tend to move forward (there are, of course, exceptions to this), and within chapters, the law moves from more dangerous crimes to less dangerous ones. The least common multiple in socialist criminal law was the predominantly material definition of the concept of state secrecy. The essence of this was that even in the absence of a formal classification procedure and formal requirements (such as a classification mark), it was possible to prosecute the perpetrators. This has led to a high degree of legal uncertainty in today’s eyes, and with a little exaggeration we can say that almost anyone who has been accused by the prosecutor of this could be convicted of a breach of state secrecy.

## 5. CLOSING REMARKS

In summary, the administrative and criminal law rules of classified data have appeared relatively late in European legal history over the last two centuries. Evaluating these, we can state that initially objective, descriptive rules gradually colored with ideology in the socialist era. A formal classification procedure and classification marking was not necessarily required for a data to be classified as a state secret, which violated legal certainty in our current terms, in the era of socialist secrecy. Nevertheless, if we evaluate the regulations according to the age at that time, it can be said that the secrecy provisions have always been in accordance with the standards of the given age, in most cases relatively neutral regulations, and a certain development arc can be observed. it can be seen in the gradual

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<sup>45</sup> P. Barna, 1955, 2

modernization of the rules and, on the other hand, in the increase in the number of guarantee elements from the end of the socialist era. With regard to criminal law, there is a tendency for criminal offenses regarding to state secret to gradually less and less severe. The various rules of state secrecy and related crimes has eased in most European countries' criminal law regulation since 1989, and instead of the concept of state secrets, the category of classified data according to modern Western terminology has already been used by Eastern European states.

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## Заштита државне тајне у правној историји Европе

**Сажетак:** Правно регулисање заштитне државне тајне појавило се у европској правној историји релативно касно у последња два века. Одребе о тајни су увек биле у складу с датим добом, у већини случајева релативно неутралне уредбе и може се зајачити одређени ток напрема. Он се може видети у посматраној модернизацији правила и, с друге стране, у броју заштитних елемената од краја социјалистичког периода. С аспекта кривичног права, у погледу кривичних дела против државе постоји тенденција све блаже казњавања. Разна правила која се односе на државну тајну и кривична дела с њом у вези ублажена су од кривичним законодавствима већине европских земаља од 1989.

**Кључне речи:** тајна, државна тајна, поверљиви подаци, поверљивост, државна безбедност, Чемеијев законик, *perduellio*, *Evidenzbureau*, Агенција за заштиту државе.

Датум пријема рада: 31.05.2022.

Датум достављања коначне верзије рада: 14.07.2022.

Датум прихватања рада: 21.09.2022.