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Principles and rules of the involvement of the Hungarian Defence Forces in border surveillance

Introduction

In order to conduct strict surveillance of the Schengen external borders, the Hungarian Police had been provided considerable manpower for the guarding of the most active Serbian-Hungarian border section even before the massive influx of illegal migration in 2015, but since that year the tightening of entry conditions and of ordered conditions at the state border has become unavoidable. The Hungarian Government decided that, in line with the legislative decision of the National Assembly of Hungary, the Hungarian Defence Forces had to be involved in certain tasks, too. This study briefly introduces the Hungarian border management system with special regard to the reasons and legal background of the involvement of the staff of the Hungarian Defence Forces in the border surveillance system at the Hungarian-Serbian and the Hungarian-Croatian sections of the border. The author also reviews the joint command structure maintained during the special legal order and the practical issues of the joint police and military patrols.

Regarding irregular migration movements, Hungary currently, too, has the role of a transit country in the northern part of the Western Balkans route. It is one of the most important migratory directions coming from Turkey to Greece, then leading further, passing through North-Macedonia, Kosovo and Serbia, less frequently from Montenegro leading through Bosnia-Herzegovina. From Serbia irregular migrants use various different ways to reach Hungary's borders, most often directly from Serbia or by crossing Romania, or by crossing the river Danube via Croatia. At present they also approach the Hungarian-Croatian border section in small numbers

on foot, coming from the camps located in Bosnia-Herzegovina via Croatia, too. The number of people apprehended for illegal border crossing in 2020 was 3,081 at national level (which is 73% higher than it was in the previous year), mostly in the counties located along the Romanian, Serbian and Croatian border sections. Also, last year 29,643 people were stopped and escorted across the border barrier along the Serbian-Hungarian border, which means an increase by 125%. This occurred mostly at the Serbian border, but under the current legislation the whole country was concerned by the apprehensions, due to the high level of implementation of control activities within the country. The two figures add up to a total of 32,704 individuals, which is the number of irregular migrants subjected to measures taken by the Hungarian law enforcement authorities (primarily, of course, the police reinforced with the Hungarian Defence Forces) last year. This means that on average almost 90 irregular migrants were apprehended daily, mainly Syrian, Afghan, Libyan, Moroccan and Palestinian nationals, but irregular migrants arrived from 73 different countries of origin. The number of arrests of human smugglers helping irregular migrants also doubled in 2020; 455 people were arrested altogether, mainly in Komárom, Csongrád-Csanád, Győr, Bács-Kiskun, Baranya and Békés counties. In terms of their citizenship, mainly Romanian, Ukrainian, Hungarian, Serbian and Syrian people tried to organise the route of migrants and transport them.¹

The pressure of illegal migration was not equally distributed during last year; it was influenced by several factors. Such a factor was that the Court of the European Union made a decision issued on 14th May 2020² concerning the Hungarian asylum system, according to which the procedure in the transit zones was qualified as detention. Serbia considered the return of

¹ ORFK Rendészeti Főigazgatóság Rendészeti Elemző Osztály Határhelyzetkép [The situational picture at the border]. 2020.

² Judgment of the Court (Grand Chamber) C-924/19.PPU. and 925/19. in the proceedings of PPU. FMS, FNZ, SA, SA junior v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság és Országos Idegenrendészeti Főigazgatóság.

Source: <https://curia.europa.eu/juris/documents.jsf?num=C-924/19>

Accessed: 02.04.2021

persons leaving the transit zone to their country unlawful. These people would have had to face sanctions for this, so they could not actually leave the transit zone legally. By leaving the transit zone they also risked the termination of the asylum procedure. Respecting the decision, the Hungarian Government closed the transit zones on 22th May 2020. According to the relevant government regulation, in the future applicants will be able to submit an application for international protection only at a Hungarian embassy located in a non-EU country. Another similar EU decision was that escorting migrants back, to the other side of the border fence was declared unlawful. According to the decision of the European Court of Justice on 17th December in 2020³, forced escorts to the other side of the border are considered a forced return by European law. This news temporarily caused a significant increase in the number of apprehensions. The COVID-19 pandemic caused by the SARS-CoV-2 virus acted as a temporary reducing factor for illegal migration. Its first wave induced the introduction of an extraordinary curfew in the neighbouring Serbia, as a result of which asylum seekers kept in the guarded camps did not appear at the green borders of Hungary, therefore there were few interceptions at the state borders between the end of March and the end of May.

The above challenges are to be addressed by the border management system. The border management system is a complex system which slightly differs from country to country but the main elements are the same in all the Schengen Member States. The countries of Europe have deep concern about uncontrolled illegal migration moving towards their own territory

³ Judgment of the Court (Grand Chamber) C-808/18. Failure of a Member State to fulfil obligations – Area of freedom, security and justice – Policies on border checks, asylum and immigration – Directives 2008/115/EC, 2013/32/EU and 2013/33/EU – Procedure for granting international protection – Effective access – Border procedure – Procedural safeguards – Compulsory placement in transit zones – Detention – Return of illegally staying third-country nationals – Appeals brought against administrative decisions rejecting the application for international protection – Right to remain in the territory. Source: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=HU&mode=req&dir=&occ=first&part=1&cid=18386411>
Accessed: 02.04.2021

and the Member States have taken extraordinary measures in the past 5 years to reduce it. Handling illegal migration is one of the biggest challenges not just for Europe but also for other host countries around the world. In order to provide safety and security for the European citizens, to tackle geopolitical instability and to prevent serious and organised cross-border crime and terrorism, relying on the European Border and Coast Guard Agency (EBCGA), the European Union issued the Technical and Operational Strategy for European Integrated Border Management⁴ as the tool for effective migration management. Member States and Schengen Associated Countries have the main responsibility for the management of their sections of the external borders, however, the document emphasizes that successful border management is a shared responsibility. Based on this strategic concept Hungary published a document including its own short-term strategy goals,⁵ too, which is in line with the strategic and horizontal components of the European Integrated Border Management and involves the Hungarian Defence Forces in the integrated control system of our national borders regarding border surveillance in exceptional situations.

The place of the Hungarian Defence Forces in the system of Integrated Border Management

The aim of the European Integrated Border Management (IBM) is the efficient management of the crossing of the external borders and addressing migratory challenges and potential threats at those borders, thereby contri-

⁴ Technical and Operational Strategy for European Integrated Border Management.

Source: <https://op.europa.eu/en/publication-detail/-/publication/2123579d-f151-11e9-a32c-01aa75ed71a1>

Accessed: 20.12.2020

⁵ Magyarország Nemzeti Integrált Határigazgatási Stratégiája 2019-2021.

Source: <https://2015-2019.kormany.hu/download/6/eb/a1000/Magyarorsz%C3%A1g%20Nemzeti%20Integr%C3%A1lt%20Hat%C3%A1rigazgat%C3%A1si%20Strat%C3%A9gi%C3%A1ja%202019-2021.pdf>

Accessed:2020.12.20

buting to combating serious organised crime that has a cross-border dimension and ensuring a high level of internal security within the Union, while acting in full respect for fundamental rights. The first key dimension in this concept is border control – including border checks and border surveillance – as defined in the Schengen Borders Code⁶. This activity is based on risk analysis and also contains criminal intelligence. Border control includes measures to facilitate legitimate border crossings and, where appropriate, measures related to the prevention and detection of cross-border crime, such as human smuggling, trafficking in human beings and terrorism, and measures related to the referral of persons who are in need of, or wish to apply for international protection, too. Border surveillance is carried out between border crossing points to prevent persons from circumventing border checks. This risk-analysis-based activity is performed by stationary and mobile units in line with its defined requirements. The second dimension is the detection and investigation of cross-border crime in coordination with all competent law enforcement authorities. The third dimension is the frontier access control model⁷ including measures in third countries, cooperation with neighbouring countries, border control at the external borders and control measures within the area of free movement, including return. Besides all the listed elements another very important one is inter-agency cooperation concerning border management (between police, customs, national security agencies and other relevant authorities, such as the national defence forces) and international cooperation.

⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) page 8, Article 2, point 10.

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>
Accessed: 09.11.2020

⁷ Updated EU Schengen Catalogue on External borders control, Return and readmission, Point 2.3.

Source: <https://data.consilium.europa.eu/doc/document/ST-7864-2009-INIT/en/pdf>
Accessed: 09.11.2020

One of the most important elements of the Integrated Border Management system is inter-agency cooperation. This includes inter-agency cooperation in each member state among the national authorities responsible for border control or for other tasks carried out at the border and among the relevant EU institutions and agencies; including the regular exchange of information through existing information exchange tools, such as the European Border Surveillance System (EUROSUR)⁸. Inter-agency cooperation takes place at European, national and local levels, with the aim of ensuring the coordination of border management activities, in order to fill gaps, avoid duplication and use synergies of each other's activities. The mandate and competences of various actors might occasionally overlap, creating space for competition in some areas between the authorities. In Hungary, the obligation of national authorities involved in integrated border management to cooperate and the principles of cooperation are laid down in legislation. The main actors of the inter-agency cooperation system of the Hungarian Police are the National Directorate-General for Aliens Policing, the National Tax and Customs Authority, the Counter Terrorism Centre, the Special Services for National Security, the Counter-terrorism Information and Criminal Analysis Centre, the National Disaster Management Authority and, of course, the Hungarian Defence Forces.

Undoubtedly, in Hungary the main agency responsible for border control – including border surveillance – is the Police. The Fundamental Law of Hungary states that “*the core duties of the police shall be the prevention and investigation of criminal offences, and the protection of public safety, public order, and the order of state borders.*”⁹ The Act on the Police, on

⁸ The European Border Surveillance System (EUROSUR) is a common framework for the exchange of information and for the cooperation between Member States and the Agency in order to improve situational awareness and to increase reaction capability at the external borders of the Member States of the Union for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

⁹ Article 46 (1) of the Fundamental Law of Hungary.

Source: https://njt.hu/translated/doc/TheFundamentalLawofHungary_20191213_FIN.pdf
Accessed: 09.11.2020

the other hand, defines the place and method of border surveillance. “*Border surveillance shall be implemented by continuous activity in the border zone.*”¹⁰

The organisation of the border surveillance system on national level consists of elements built on each other. In the first tier, a multi-line border surveillance system of 21 border policing offices and – only at the Hungarian-Croatian border section – of 5 police stations located in the border zone must be implemented. All of these organisational elements at the local level carry out border surveillance activities in their own area of responsibility¹¹. In the first tier, border surveillance must be carried out in at least two lines, but, according to the experiences in Baranya County, the three-line system is the most effective. The first line of border surveillance is in the green border zone, 1 to 5 kilometres from the state border. Between the border crossing points on the state border a complex border surveillance system can be found at the Hungarian-Serbian border section, where a 2-line border obstacle was installed with attached thermo- and laser cameras and headlights. Along the Hungarian-Croatian border section, however, only a one-line fence was established, combined with a razor-wired obstacle. The main tasks in the first line are patrolling on foot, in vehicles or in thermo-vision vans, carrying out constant surveillance. The camera and sensor system established by the Police on the border barrier continuously transmits live images to two Regional Remote Monitoring Centres. It is an important element of the EUROSUR, too. Based on risk analysis, a trap camera system was set up along the Hungarian-Croatian border section, exclusively on trees next to side roads and agricultural land in hidden places, helping the Police to detect any illegal immigration activity in the border zone. The vast majority of the staff of the Defence Forces are deployed

¹⁰ Article 62 (2) of the Government Regulation of 30/2011. (IX. 22.) on service regulations of the Police

¹¹ Balla, József (2017): Határőrizeti intézkedések a migrációs válság kezelésére és megszüntetésére [Border surveillance measures to manage and eliminate the migration crisis]. In: Tálás, Péter (ed.): Magyarország és a 2015-ös európai migrációs válság. Dialóg Campus, Budapest. 87-88

in this first line, to carry out joint patrols with the Police. The second line in the border area is located 5 to 10, and the third line 10 to 20 kilometres from the state border. In the second line, the activity is focussed on the checks at the crossings of side roads leading from the border to the north, and on the surveillance of the exit points of the settlements by car patrols or by mobile units. During the planning of the activities in this line special attention should be paid to risk analysis to determine the riskiest time intervals and directions of the possible illegal border crossings. In the third line, patrols and local criminal investigators (carrying out patrolling in covert police cars) have to prevent irregular migrants from being picked up and transported towards the main roads or closest motorways which provide fast movement for the facilitators.

In the second tier of border surveillance in this context, the 8 police headquarters of the counties having Schengen external border sections have to organise the activities of their Inland Checks and Public Area Support Divisions. This border surveillance tier has to complement the system built in the first tier, basically the county police headquarters concerned should maintain it from their area of jurisdiction outside the border area towards the depths of the country. The county police headquarters concerned should deploy their own staff to carry out the control activities in this tier. In the second tier the competent mobile units have to check cars at important road crossings, they should identify suspected human smugglers' cars and prevent the transporters-facilitators from reaching the highways after picking up irregular immigrants, or they should detect suspicious cars on the motorway, based on their own sightings or on intelligence received.

In the third tier, irregular migration routes leading through the country should be controlled by the staff of the Riot Police having jurisdiction to take measures in the whole territory of Hungary, primarily in cooperation with the Inland Checks Divisions of the county police headquarters concerned. This is called Operation Raptor, carried out on the Hungarian motorways. In this tier, inland checks as a compensatory measure are carried out by designated police and customs units, carrying out aliens policing checks,

checks of motorways inside Hungary and of cargos, buses, trains, accommodation facilities and construction sites. This is a very important element of the system, too, because recently law enforcement authorities have identified an old-new modus operandi, namely that irregular migrants, after having entered across the green border by circumventing the patrols, change their clothes to nice and neat ones, exchange Hungarian currency and use mainly the railway to attempt to reach the Hungarian-Austrian border area. To perform this prevention task, a staff from various counties of Hungary must be provided and, of course, it needs national co-ordination, too.

The background to the involvement of the Hungarian Defence Forces in border surveillance

One of the reasons for the migration and refugee crisis of 2015 was that the European Union and its Member States – including Hungary – were experiencing an unexpected wave of illegal immigration and asylum seekers and these countries were completely unprepared for it. They could not cope with the situation, even though, according to the statistics, only 1.3 million asylum seekers arrived in that year, which does not appear to be a significant number compared to the EU population¹². By the summer of 2015, however, it became obvious that migration management organisations with the original legal mandates for a normal migratory situation, with their former organisation, technical support and regular procedures were not able to handle the enormous irregular migration influx. Our national law enforcement resources for migration management were soon exhausted, even though the Chief of the Hungarian Police established two Border Policing Directorates within the organisation of the Riot Police by September 2015.

¹² Szuhay, Ilona –Tálas, Péter (2017): A 2015-ös európai migrációs és menekültválság okairól és hátteréről [About the reasons and background of the 2015 migration and refugee crisis in Europe]. In: Tálas Péter (ed.): Magyarország és a 2015-ös európai migrációs válság. Dialóg Campus, Budapest. 16

In this situation it was inevitably important to reinforce the Hungarian police force and make it capable to stop the enormous irregular migration pressure at the Schengen external borders of Hungary.

After analysing the situation, involving all the relevant actors, the Hungarian Government issued an order on 17th June in 2015,¹³ in which it decided to seal off the border at the Hungarian-Serbian border section. It also commissioned the Defence Forces to build a four-meter high and approximately 175-kilometre long temporary border fence – combined with rapid razor-wired obstacles – along the Hungarian-Serbian border section. The Police had to take the necessary security measures during the construction. Soldiers, mainly those having engineering qualifications were assigned to carry out the practical phase of the construction work from 1 till 31 of August 2015¹⁴. This was the first step of the involvement of soldiers in border management-related tasks, but at that time there was no mention of their application in other fields. Already in May 2015 the Operative Staff for Border Surveillance was established, which practically dealt with the distribution and transportation of the irregular migrants who had managed to enter the country. On 15 September 2015 the Central Operative Staff was formed in the Ministry of Interior. After that the Riot Police set up its Operative Staff in the Law Enforcement Secondary School of Szeged, which coordinated the implementation of the border surveillance tasks in Csongrád county, while a partial public order staff of the Police was set up in the

¹³ The Government Decision of 1401/2015. (VI. 17.) on certain measures to deal with exceptional immigration pressure.

Source: http://njt.hu/cgi_bin/njt_doc.cgi?docid=176161.294520
 Accessed: 09.11.2020

¹⁴ 47/2015. (HK 8.) HM KÁT – HVKF joint provision of the State Secretary for Administration of the Ministry of Defence and the Chief of the General Staff. on the establishment of a temporary security border barrier for border guarding purposes. Honvédelmi Közlöny 2015/8.

Source: <http://www.kozlonyok.hu/kozlonyok/Kozlonyok/13/PDF/2015/8.pdf>
 Accessed: 10.04.2021

Bács-Kiskun County Police Headquarters. Creating this three-level protection (legal, technical and manpower) opened a new chapter in the management of large-scale irregular immigration.

After the construction of the temporary border barrier, the creation of the new legislation and starting the implementation of the tasks of the Border Policing Directorates, the route of illegal migration almost immediately diverted from the Hungarian-Serbian border to the Hungarian-Croatian border, where more than 185,000 irregular migrants arrived in the country in a month. After 15 September 2015, detections dropped significantly at the Hungarian-Serbian border and in the areas inside Csongrád county, together with the number of facilitators who had been actively involved in the illegal transportation of the illegal immigrants within the country before. The new border barrier system (a 105.5-kilometre long border fence and a 68-kilometre long rapid razor-wire obstacle were built as an urgent action at the Hungarian-Croatian border section in the territory of Baranya, Somogy and Zala counties) had been completed by then but the situation did not require the deployment or use of the reinforcement staff of the police and the military forces at this border section. After closing the Hungarian-Croatian border section on 17 of October 2015, the main migration route circumvented the southern borders of Hungary, turned to Slovenia to go further towards Western Europe and then was gradually minimised. For security reasons, from 18 October 2015 the temporary reintroduction of border control became necessary along the Hungarian-Slovenian border section, too. After that, once the temporary border barrier was operational, the massive scale of irregular migration temporarily ceased and the Operative Staff finished its work on 15 December 2015¹⁵.

According to the government's regulations, the Hungarian Defence Forces were given new general tasks in the irregular mass migration crisis. The first was supporting the Police in border-related tasks. The soldiers

¹⁵ Kovács, Gábor (2017): A rendőrség vezetésirányítási rendszerének sajátosságai a migrációs válsághelyzet kezelése során [Characteristics of the police command and control system in the management of a migration crisis]. In: Tóth, Péter (ed.): Magyarország és a 2015-ös európai migrációs válság. Dialóg Campus, Budapest. 143-144

also had to carry out humanitarian activities in accordance with international law when required by the asylum situation. Apart from this, they had to perform tasks requiring military expertise and specialised tools, and in addition, the Defence Forces were supposed to provide food supply for the police staff engaged with the above mentioned tasks, but this was not typical in Hungary. By the end of 2017, the daily average of attempted illegal border crossings at the external border had decreased from 140 to 10 cases. Hungary achieved this result with the support from the Defence Forces and it gave the opportunity to the Police to develop the border surveillance system technically and thus to reduce the number of the Defence Forces staff deployed at the external borders.

The legal and institutional framework of the involvement of the Defence Forces in border surveillance

In order for the Defence Forces to be involved in border surveillance, Hungary had to amend a number of regulations. Before that – apart from the conscripted border guards – soldiers were deployed at the state borders in peacetime only in exceptional situations, therefore there was no appropriate legal basis for this. (For example, in 1991, when radio reconnaissance units had to be deployed at the present Croatian border section after the outbreak of the Yugoslav crisis.)¹⁶ The main legal basis for the involvement of the Hungarian Defence Forces in border-related tasks is obviously Article 45 of the Fundamental Law of Hungary, which states that:

“Hungary’s Defence forces shall be the Hungarian Defence Forces. The core duties of the Hungarian Defence Forces shall be the military defence of the independence, territorial integrity and borders of Hungary and the performance of collective defence and peacekeeping tasks arising from international treaties, as well as carrying out humanitarian activities in accordance with the rules of international law.” In the 5th section of the same

¹⁶ Békés, Sándor (1999): *Lángoló Határ* [Burning border]. Reprint Kft. Kiadó, Pécs. 60

Article says: *“The detailed rules relating to the organisation, tasks, command and control, and operation of the Hungarian Defence Forces shall be laid down in a cardinal Act”*

The Fundamental Law does not contain an exclusive list of the tasks and the military defence of the national borders does not contain support for the police in border policing tasks, therefore this problem had to be solved on the level of a cardinal law referred to by this paragraph¹⁷. After the modification of the Act on the Hungarian Defence Forces¹⁸ point h) of the new paragraph 36 (1) defines new state border-related tasks for the Defence Forces, during the special legal order caused by mass migration, such as participation in border surveillance, in the execution of the measures necessary to deal with a conflict situation directly threatening the order of the state border, those necessary for the management of mass migration and in repelling violent acts against the order of the state border, too. Paragraph 54/D of the same law, which refers to the Act on the Police,¹⁹ defines that a soldier carrying out border surveillance tasks has the right to take certain measures and to use coercive means, such as the identification of persons, enhanced control, clothes, luggage and vehicle search, apprehension and – in some cases – short-term arrest, aliens policing measures or control and restriction or suspension of road traffic. It should also be mentioned that

¹⁷ Farkas, Ádám-Horváth, Tibor - Padányi, József – Petruska, Ferenc (2017): A Magyar Honvédség feladatai, szerepének és helyzetének jogi aspektusai a tömeges migráció kapcsán [The tasks and legal aspects of the role and position of the Hungarian Defence Forces in the context of mass migration]. In: Tálás Péter (ed.): Magyarország és a 2015-ös európai migrációs válság. Dialóg Campus, Budapest. 163

¹⁸ Act CXIII. of 2011 on national defence and the Hungarian Defence Forces, as well as on measures that can be introduced in the special legal order, 36.§. modification was installed by 4. Par. of Act CXLII of 2015

Source: http://njt.hu/cgi_bin/njt_doc.cgi?docid=139266.386437

Accessed: 09.11.2020

¹⁹ Act XXXIV. of 1994 on Police.

Source: http://njt.hu/cgi_bin/njt_doc.cgi?docid=21269.386016

Accessed: 09.11.2020.

according to paragraph 80/G of the modified Asylum Act,²⁰ during crisis situations caused by mass migration, along with the police, the Defence Forces may also participate in the registration of asylum seekers and related activities, following the request of the Minister of Interior and the decision of the Minister of Defence.

These special rules are solely applicable when a migration crisis situation is declared for the whole territory of Hungary, as stated in Government Regulation No. 41/2016 (III.09.)²¹. This legal act has been regularly updated since 2016, currently it is in force till 7 of September 2021²². The joint directive of the Minister of Interior and Minister of Defence²³ stipulates that a cooperation agreement should be concluded between the Chief of the Hungarian Police and the Commander of the Defence Forces of Hungary about joint tasks to be carried out. It defines that a police officer has the right to request the soldier to participate in the joint tasks regarding migration management and gives information on specific rules of the joint

²⁰ Act LXXX. of 2007 on Asylum, 80/G. §. modification was installed by 16. §. of Act CXL of 2015.

Source: Nemzeti Jogszabálytár (njt.hu)

Accessed:09.11.2020

²¹ Government Regulation of 41/2016 (III.09.) on the imposition of a crisis situation caused by mass immigration on the entire territory of Hungary and on the rules related to the ordering, existence and elimination of a crisis situation.

Source: http://njt.hu/cgi_bin/njt_doc.cgi?docid=194421.388623

Accessed:09.11.2020

²² According to the Government Regulation 41/2016. (III. 09.).

Source: <https://njt.hu/jogszabaly/2016-41-20-22>

Accessed:20.02.2021

²³ Joint directive 25/2015. (IX. 14.) of the Minister of Interior and the Minister of Defence on the order of contribution of the Hungarian Defence Forces in the execution of the police duties.

Source. http://njt.hu/cgi_bin/njt_doc.cgi?docid=177669.358441

Accessed: 09.11.2020.

guarding and patrol duties. On the basis of the legislation mentioned, a Cooperation Agreement²⁴ was concluded between the National Police Headquarters and the Ministry of Defence. It covers the joint preparation for a crisis caused by mass immigration in accordance with Act LXXX of 2007 on Asylum, and, since 15 September 2015, it has defined the implementation of the tasks required in the event of a crisis caused by mass immigration in a coordinated manner, too. At the Hungarian-Serbian border section, on the regional level, the cooperative partners, the leaders of the Defence Forces and the Police have formulated the Recommendation on Joint Standard Operational Procedures to be used by the Hungarian Defence Forces and the Hungarian Police while carrying out joint tasks in border surveillance. It is used on a daily basis but its details are not public.

The system of command and co-operation of the military and police units

In order to support the border surveillance tasks of the police, a Temporary Military Unit on the (Hungarian) Plain (in Hungarian: Alföldi Ideiglenes Alkalmi Kötelék, abbreviated as MH AIAK) has been created from different Hungarian military units. Its objective is to support law enforcement forces by designated military forces and means and to carry out tasks independently or in co-operation in the mass migration crisis situation in the southern border zone of Hungary. The task is carried out in peacetime, by activating temporary operational command elements, by creating a temporary military unit, without introducing the special legal order under the Fundamental Law (excluding the declaration of the state of emergency according to Article 53, declared in the entire territory of Hungary for the elimination of the consequences of the SARS-CoV-2 coronavirus pandemic). A temporary commander leads the organisation of the Temporary Military Unit, its headquarters is located in Hódmezővásárhely. Temporary

²⁴ 29000-129/13/2015. Emü. Cooperation Agreement concluded between the National Police Headquarters and the Ministry of Defence (2015. szeptember 14.) ORFK Tájékoztató 2017/17.

companies support border surveillance in Bács-Kiskun and in Csongrád-Csanád Counties, and if necessary in Baranya County, too, accompanied by special-purpose subunits and groups (e.g. a unit with tactical intelligence capability or an unmanned reconnaissance unit)²⁵. The temporary military unit has its own independent logistical and health support. The forum system, established jointly with the police, is based on joint monthly meetings. AIAK leaders and representatives of the reconnaissance groups, as well as the heads of border policing services of the county police headquarters concerned also attend the monthly information meetings held via Skype, due to the Corona-virus pandemic.

The Operative Staff run by the National Police Headquarters in order to coordinate tasks related to the mass migration situation is at the top of the joint command and control structure of the units of the police and the Defence Forces involved in border surveillance tasks. It is located in Budapest, similarly to the Strategic Operations Centre of the Defence Forces, which delegates one liaison officer 24/7 to the police Command Staff of the National Police Headquarters²⁶. On regional level there is a command officer at the county police headquarters, subordinated to the Operative Staff. Also, the Border Surveillance Remote Monitoring Centres in Mórahalom and in Bácsalmás support the management of the local level operations. Regarding the Defence Forces, on the middle level there is the Temporary Military Unit Command located at the Hungarian-Serbian border section, subordinated to the Joint Forces Command of the Defence Forces. It delegates one liaison officer to the police structure of the same level. At the local level of the joint command structure, the representatives of the police are the border policing offices and local operation centres which, in cooperation with the military shift commanders, control and command joint patrols via sector commanders.

²⁵ Gulyás Attila (2012): A nemzeti különleges műveleti erők felderítő támogatása [Reconnaissance support for national special operations forces]. In: *Hadmérnök*, 2012/3. 136

²⁶ Section 6.2 of the Cooperation Agreement between the National Police Headquarters and the Ministry of Defence (14 September 2015)

The deployment of the military units in practice

There are many special tasks carried out by certain defence forces supporting police activities. The reconnaissance units of the Hungarian Defence Forces conduct covert monitoring, even in camouflage, to detect human smuggling activities. The use of reconnaissance groups has become necessary both in the vicinity of the border line and in the territory of Hungary to detect irregular migrant movements. They also use special reconnaissance devices for their activities, such as military reconnaissance radars and unmanned aerial vehicles (special short-range military drones). Field Liaison Teams (FLTs) collect a lot of valuable information from the inhabitants in the farms at the border and in the depth of the country and also participate in the detection of people helping human smugglers. They map farmhouses suitable for hiding migrants and have debriefing interviews with detained irregular migrants, with the help of native speaker interpreters. Mobile groups of the Defence Forces support police units in closing and searching the territory when irregular immigrants succeed in getting over the second line of the border fence. Keeping contact with inhabitants during the construction works of the border obstacle was the main task of the Civil-Military Cooperation groups (CIMIC). Joint measures of the Police and the Defence Forces in settlements located at the border area have been effective in maintaining the subjective sense of security of local communities.

There are special rules of carrying out joint patrol services in the first line of border surveillance. Acting in his own area of responsibility, the police officer may request the soldier only to take measures defined in the Defence Act. The request may be refused only if the measure specified in the request

*“(a) would be unlawful to carry out, or
(b) its lawful and professional execution cannot be expected from the soldier, or would not be possible in the given circumstances.”*

The requesting person shall be warned of this.²⁷

The development of the border surveillance system is the task of the head of the border policing office or the head of the police station located near the Hungarian-Croatian border section. Sector commanders of the police and the Defence Forces do their shift and brief, reallocate and debrief their joint police and military patrols together. A policeman and a soldier carry out patrolling in pairs or in patrol groups, on foot or in a vehicle – sometimes in a special vehicle – or reinforced with a duty dog in a particular sector or on a patrol route. The police officer and the soldier carry out joint patrolling in 12-hour shifts, which ensures continuous military presence in the border area. The joint task is to prevent illegal border crossings through the temporary border barrier. In order to reach this aim, the joint patrol service may be a mobile activity (on foot or in a vehicle) or a stationary one, when an observing soldier is placed in the installed observation post. Joint patrols primarily carry out observation or interception patrol duties²⁸. When carrying out joint guarding or patrolling tasks, the patrol leader is always the police officer, while the soldier must provide support and secure the police officer's work. The same number of police officers and soldiers must be assigned to a joint patrol service.

The joint patrol must not deviate from the assigned patrol path and the designated patrolling sector must not be left without permission. While guarding the assigned border section, the patrol leader must inform the sector commander immediately if he notices any change or damage to the border fence, and after that they must secure the site. The joint patrol must identify civilian persons appearing in the territory of the operation, establish the legality of their being there, and then report it immediately to the sector

²⁷ According to the 4. §. section (2)-(3) of the Joint directive 25/2015. (IX. 14.) of the Minister of Interior and the Minister of Defence on the order of contribution of the Hungarian Defence Forces to the execution of police duties

²⁸ According to the Police regulation on patrol and guarding duties 13/2017. (III.24.) points 64-75

Source: <https://net.jogtar.hu/jogszabaly?docid=A17U0013.ORF&txtreferer=0000000-1.txt>

Accessed: 25.02.2021

commander. The soldier is equipped with his own military hand-held radio tuned to police frequency and a night vision device. Based on the experience of the checks, the soldiers are well acquainted with the patrol sector and the content of the briefings, their situational awareness is appropriate and they have the necessary information about the incidents that have happened in the system of border policing. The quality of their patrol equipment and clothing is better than that of the police.

According to the practical experiences the soldier is allowed to keep a maximum distance of 150 meters in the daytime and maximum 50 meters during night shift from the patrol leader police officer. In the case of an irregular migrant detected in the patrol area, the patrol is obliged to apprehend the person, and if necessary, to use coercive tools and report them immediately to the sector commander. During the surveillance tasks carried out in an observation tower all incidents or movements of irregular migrants detected must be reported by the patrol directly to their sector commander. During the implementation of a task, the patrol must use the protective equipment and disinfectants provided whenever they contact intercepted persons or those subjected to measures. During joint patrols, any measure must be initiated and implemented by the patrol leader (the police officer), while direct securing measures are being taken by the soldier. If a circumstance requiring actions is detected by the soldier, he is allowed to initiate the action independently only if he is not in direct contact with the patrol leader or has an obligation to take immediate action. The soldier in the patrol constantly monitors the persons subjected to the measures taken and must be prepared to prevent their escape or a possible attack²⁹. A special military regulation has been issued for the use of the soldier's weapons and coercive tools in a crisis situation caused by mass immigration³⁰.

²⁹ According to the § 8 sections (1)-(2) of the Joint directive 25/2015. (IX. 14.) of the Minister of Interior and the Minister of Defence on the order of contribution of the Hungarian Defence Forces to the execution of the police duties 30 240/2015. (HK 9.) HVKF provision of the Chief of the General Staff on the rules on the use of force by the armed forces involved in dealing with the crisis caused by mass immigration. Honvédelmi Közlöny 2015/9.

The patrols must respect fundamental rights and while carrying out their border surveillance patrolling activities they must take measures humanely, with respect for human dignity. They are obliged to take into account the prohibition of torture and of inhuman or degrading treatment or punishment, the rights and best interests of a child. Their measures against irregular immigrants must be taken without discrimination on any grounds (e.g. gender, racial, ethnic origin, generic features, language, religion or personal belief, nationality, political opinion, member of any minority, property, birth, disability, sexual orientation or any discriminative status). The use of coercive tools must be legal, necessary and proportional, not exceeding the reasonable force. They can be used, with due respect to the rights of the person, only when strictly necessary, on persons who resist passively or actively or in the case of whom there is a risk of absconding, or if they may cause injury to themselves or to other persons.

Prior to the completion of the temporary border barrier and before the statutory provisions entered into force, Defence Forces had joint trainings with the Police in Szolnok. The aim of these was to make the soldiers understand and practise the rules and the techniques of applying coercive measures and tools while carrying out border surveillance related tasks, so that the division of tasks of the police and military joint patrols would be the most effective³¹. The concerned personnel of the Hungarian Police and Defence Forces serving at the temporary border barrier attended a training course which focused on the development of communication skills regarding multicultural topics, and which aimed at guaranteeing the respect of

Source: <http://www.kozlonyok.hu/kozlonyok/Kozlonyok/13/PDF/2015/9.pdf>,
Accessed: 15.04.2021

³¹ According to point 3 of the provision 60/2015 of the State Secretary for Administration of the Ministry of Defence. (HK 9.) HM KÁT on certain tasks related to the establishment of the temporary security border barrier, the “HATÁRORZOTT FELLÉPÉS 2015” operation, and the management and the preparation for the crisis situation caused by mass immigration,

Source: <http://www.kozlonyok.hu/kozlonyok/Kozlonyok/13/PDF/2015/9.pdf>
Accessed: 10.04.2021.

different religious and cultural customs and habits. Besides the core curriculum that covered basic border surveillance knowledge (Integrated Border Management principles, structure of the Hungarian border surveillance system, police organisations carrying out border surveillance tasks, their reinforcement staff available, technical equipment used for border surveillance, exchange of information), considerable emphasis was put on the improvement of joint practical skills (basics of patrolling the green-border, rules of joint patrols, police measures tactical training, exercise of apprehension on the spot, practice of controlling border violations by large crowds). Members of the Hungarian Defence Forces had already performed such activities during military missions earlier abroad, but not in Hungary, nevertheless this capability does exist and has to be further developed.

Closing thoughts

The pressure of illegal migration on the southern borders of Hungary has required the soldiers of the Hungarian Defence Forces to carry out joint border surveillance patrol service together with the police forces in the last five years, mainly in Bács-Kiskun and Csongrád-Csanád counties, but also partly in Baranya County. Thus, the Hungarian Defence Forces have also become part of the integrated border management system. In the year of the refugee crisis, it meant a great challenge to organise the joint work of the two enormous organisations. The legal bases had to be established, the chain of command and the joint patrol service had to be coordinated, a common forum system had to be set up and common training had to be provided for the staff involved. It has proved to be a job well done. The cooperation established at the Hungarian-Serbian and Hungarian-Croatian border sections lived up to the expectations, increasing the subjective sense of security of the inhabitants and significantly slowing down uncontrolled illegal migration compared to 2015. However, the numbers of cases in 2020 and the various methods of illegal migration (for example digging tunnels) have proved that the border barrier established at the state border and developed into a complex border surveillance system cannot function as a

mental or physical deterrent to those who intend to cross it. Well-organized human smuggling groups – in spite of the significant results achieved – have been able to get people who could afford it to Hungary, without being detected by border surveillance signalling systems. For this very reason the increasing cooperation between the police and the Defence Forces is of paramount importance, as without a well-trained and well-equipped staff it is impossible to run an effective border surveillance system.