

Ferenc Szép c. lieutenant: The Border Guard, as an investigating authority – from a criminal point of view

In this publication of mine I would like to introduce the importance of the ex-Criminal-Investigating Service, as the investigating office of the late Border Guard. Moreover the consequences of its fragmentation. Later on throughout an interview the Migration Case Department of Csongrád County Police Headquarters will be examined thereby examining the cooperation between the border police and the criminal offices.

The criminal acts moving through the country or connected to it has become the most dynamically improving category nowadays, which initiates serious danger for the membering countries of the EU.

The base of the abnormality in the illegal migration that awakes a bigger and bigger anxiety.

The main reason of this is the assisting illegal immigration, the forging public documents and futhermore the other delinquencies connected to the state border.

The Border Guard – being dissolved – on 1st January 2008 – was aware of that – in Hungary- after the accession to the EU the souther borders of the Union should be guarded at a length of hundreds of kilometres in accordance of the roles that had been accepted in the Schengen achievements.

This task defined the border-guarding checking the movings at the border and the consequences of the reformation of the association.

The future outer borders the reinforced executing elements, whose task was to check the border, remained. At the border law enforcement branch offices significant increase of number of staff has been made.

Beside the promulgation of the Immigration Act⁶⁶ on 1st May 2004 we may consider an overriding importance of the promulgation of the border guarding bill⁶⁷ on the score of regulation of the former Border Guard's living conditions.

On the other hand as a new element, the Border Guard has been given investigational power⁶⁸.

⁶⁶ 1993. évi LXXXVI. törvény a külföldiek beutazásáról, magyarországi tartózkodásáról és bevándorlásáról

⁶⁷ 1997. évi XXXII. törvény a határőrizetről és a Határőrségről

⁶⁸ Tóthné Demus Mária: A határőrség lehetséges bűnmegelőzési feladatai a leendő belső határok térségében. Pécs Határőr Tudományos Közlemények II. Tanulmányok „a Határőrség szerepe a bűnmegelőzésben” című tudományos konferenciáról. Pécs. 2003. 206 oldal.

The law LXXV. of the year 1991 against organised crime empowered our authorities for the application of such utensils of the secret service that need judicial permission in order to be more efficient against the criminal organisation.⁶⁹

1.1. The former Criminal Case – Investigating Service, as “an independent territorially disposed investigating office’s”⁷⁰ structural conformation, cognizance and power.

The Border Guard did its action before the integration in the investigation agency’s structure, 1st November 1997.

The Criminal Case – Investigating Department. At the inception Criminal Case-Investigating Departments were formed at ten Border Guard Directorates.

They made up department status, inner structural division, an independent professional unit.

In the subordination of the Criminal Case – Investigating Departments such criminal case – investigating departments territory that were comprehensive over the area of the directory.

The cognizance of the CCID applied to the complete operating area of the directory.

1.2. The Border Guard’s actions against the malfeasances before the Schengen accession.

Fulfilling the Schengen-requirements, in favour of building up the all-inclusive law-harmony in the life of the former Border Guard according to the Act No. XIX. year 1998’s modification coming into force on 1st July 2006 was highly defining.

Regarding the fact that the investigational competence was expanded with the later border-connected criminal activities⁷¹, involving the former legally⁷² doubled stated status institutions. Compared with the foregoing they were able to treat the law breakings in

⁶⁹ Halmi Béla, Letenye Város Polgármestere: „A Rendőrség és a Határőrség integrációjának hatása az önkormányzatok és a határterületi lakosság körében.” Határrendészeti tanulmányok 2009/3. különszám. Bp. 2009. 9. oldal.

⁷⁰ Magyar Rendészettudományi Társaság: Rendészettudományi szöszedet. Bp. 2008. 96. oldal.

⁷¹ A büntetőeljárásról szóló 1998. évi XIX. törvény módosításáról szóló 2006. évi LI. törvény 17.§ (2) bekezdés alapján a Határőrség hatáskörébe utalt bűncselekmények köre kiegészült a visszaélés okirattal (Btk. 277. §), a fegyvercsempészet (Btk. 263/B. §), a bűnszervezetben való részvétel (Btk. 263/C. §), a személyi szabadság megsértése (Btk. 175. §), és végül, de nem utolsósorban az emberkereskedelem (Btk. 175/B. §) bűncselekményekkel.

⁷² Egykori kettős jogállású szerv: Európában egyedülálló, szovjet mintájú Határőrség kettős jogállású szerv volt, egyszerre látott el rendészeti-adminisztratív és katonai jellegű határvédelmet.

connection with the illegal immigration in a more efficient way, which made the border control more effective.

The Article No. 22 of the Act No. XXXII. the year 1997 determined the circle of the performable tasks falling under the security range for the former Border Guard from 1st January 2005 as a law enforcement agency.

According to its second paragraph ‘The Border Guard fills office its counter crime tasks referred to its competence, fulfilled the investigational actions implied in this act as falling under its competence, proceeded as an investigational authority in criminal cases falling under its circle of influence.’⁷³

According to the legal regulations of that time the forms of infringements the illegal immigration are:

The criminal acts determined in the Penalty Code namely the act No. IV. year 1978 as falling under the competence of the Border Guard:

- breaking the entry and abstaining denial (Penalty Code Article 214)⁷⁴
- contribute to illegal abstaining (Penalty Code Article 214/A)
- assisting illegal immigration (Penalty Code Article 218)
- vandalizing landmarks (Penalty Code Article 220)⁷⁵
- forging the travelling document, the documents of travelling into the country, through the country or the documents of leaving the country (Penalty Code Article 274)

During its tasks the Border Guard has had an important role in fighting against international delinquency. The Crime and Investigating Department directed the exposing and enforcing fight against the illegal immigration assisting bands, the passport-falsifiers, smugglers of drugs, dangerous materials, stolen cars.

During the prevention and interruption of crimes in connection with the state border they had a tough relationship with the neighbouring authorities and with the acquired state, civilian, security, social and economical organisation.

In the view of the infringements mentioned above after the interrogation or the report (from an individual, or other authority’s criminal agency, or other agency) the investigation was made by the Border Guard if the crime was noticed during its actions in connection with

⁷³ Határőrségről szóló 1997. évi XXXII. törvény.

⁷⁴ Büntető Törvénykönyvről szóló 1978. évi IV. törvény. Hatályon kívül helyezte: 2012. évi CCXXIII. törvény 36. § (9). Hatálytalan: 2013. II. 1-től.

⁷⁵ Büntető Törvénykönyvről szóló 1978. évi IV. törvény. Hatályon kívül helyezte: 2012. évi CCXXIII. törvény 36. § (9). Hatálytalan: 2013. II. 1-től.

border guarding, and reports because of crimes connected to any kind of activity done by Border Guard were made here.

Beside its fast reacting ability the organisation was characterised as the comprehensive application of tools and methods the power of secret information collecting.

The duties carried out the exposing work against the organised crime or rather the open process at one place, which seemed to be a productive antiserum.

Throughout the country for the process of crimes in their competence area the ex-Border Guard Department.

From the year 2001 the Central Investigating Department was established at the Border Guard National Command with a national competence, which was an acknowledged improvement at the field of an international complicated law enforcement colligation.

The ex-BG's investigating offices made enormous power in order to be able to reveal crimes connected to their competence, catch the perpetrators of crimes and to give up them to justice.

Due to the new organisational unit and application of secret agency tools the authorization conferred by law the number of illegals caught have significantly risen, which might have contributed to the visibility and cognition of the organized crime's background of the perpetrator's circle.

Before the integration we could say that the B.G. 'was fully aware of the existence of organisations and actions'.⁷⁶

This resulted in that in the law enforcement and the prevention of crime it gained an outstanding achievement compared with the other European Union countries.

1.3. The Crime Case Investigating Service after the integration

With the termination of Border Guard and with the integration of Police a precedent Crime Case Investigating Service was made redundant.

So far 444 persons have been engaged in the criminal and investigating works in the national, undivided organisation.

These persons were such ones with many years of criminal theoretical and investigating practice. Some of them retired,' the other ones who did not leave were basically employed in the local level Border Guard Directorates at criminal areas. Although only a small part of

⁷⁶ Dr. Gubicza József, Laufer Balázs: Magyarország schengeni csatlakozása és a migrációs törvények 2010. évi módosítása közötti időszak tapasztalatai. Ajánlások a biztonsági struktúra korrekációjához. Határrendészeti Tanulmányok 2012/1. különszám. Bp. 2012. 10. oldal.

them remained at the investigating area and their attention was likely to be diverted to the more often appearing delinquencies.’⁷⁷

As the increment of the termination in the years to come the illegal immigration showed a growing tendency from 1st January 2008. The activity of illegal immigration organisations has grown in a significant way.

Those relevant relations (the possibility of action and exposure of operative powers), through which these all could have been controlled, expired. The check-up of the criminal organisations was not possible.

As matter stand in Hungary about 72 policemen are on duty in point of criminal offense in connection with state border (as a part of some kind of department, group, subdivision).

People working at the Against Illegal Immigration Dep. of National Detective Office International Against Crime Department.

According to this we can say that the independent Border Guard finished its actions on 31st December 2007 but border law enforcement still exists in a form of being applicable to the changes. Integration was a conscious, planned step and it did not happen from one day to the next.⁷⁸ It was a product of a process, sith later on with the Schengen accession of Romania an Croatia the length of the outer borders does not reach the 20%.

We can say that from 1989 to these days an epoch-making change supervened at the former Border Guard and at the present ‘new Police’.

The aim of guarding the border, its methods have basically changed. The whole organisation has radically changed.

Today the task of the policemen is not to lock up the citizens of Hungary among the borders, but to hinder the entrance of persons non gratas one Europe’s safety’s behalf, and to fight uncessantly against assisting illegal immigration and other forms of international delinquency.

1.3.1. Immigration Cases Department, as the ‘successor office’ of Crime Case Investigating Service

During the cohesive process of, Border Guard and Police the exposed Crime Case Investigating Service’s strength fulfilled its tasks at different status because of the lack of

⁷⁷ Lipics László: A határrendészeti és a bűnügyi szolgálati ág együttműködésének megvalósulása az integrált határbiztonsági rendszerben, a belső határokon. 1 old. <http://rendeszet.hu/hatarrendeszetitagozat/lipcs2.pdf>

⁷⁸ Németh József r. alezredes: A Rendőrség feladatai az illegális migráció és a nemzetközi terrorizmus elleni fellépést terén, különös tekintettel a Balkán biztonsági helyzetére. (PhD értekezéslet) Bp. 2010. 63. oldal.

professional organisation's line-up.⁷⁹ After the integration in 2009 in the organisation of the CSMRFK, the Bács-Kiskun MRFK, the Szabolcs-Szatmár-Bereg MRFK at the direct subdivision of Criminal Cases Directorate the Immigration Cases Department was born.

With the legal status of department it cases out its investigating actions connected to the border part belonging to its territory, like the 'former organisation'.

Above all these the investigations on criminal offenses in connection with illegal immigration are done by the On-Alert Police Against Illegal Immigration Department of International Against Crime Department National Detective Office, the Hajdú-Bihar MRFK and the Békés MRFK's Criminal Directorate Investigating Department subdivision's Immigration Cases Subdivision, and in the Győr-Moson-Sopron MRFK's Border Law Enforcement Service operating Immigration Cases Group.

2.1. CSMRFK Immigration Cases Department at their examinations

During my research I visited the CSMRFK Immigration Cases Department's leader, who had a high level of proficiency. I was looking for the answers for the questions written by myself.

2.1.1. Please talk about the circumstances of the CSMRFK Immigration Cases Department's birth, how it works these days, what kind of competency tasks it has?

At the integration of Border Guard and Police there wasn't any kind of theory about that the former border guard CCIS's whole strength should be overtaken at a common organisational system by the Police. The task was entrusted to the county police headquarters. Earlier in our country 2 Border Guard Crime Case Investigating Service – the one in Nagylak and the other one in Szeged – did their tasks. According to the plans of the county headquarter at the Romanian border area. The number of the Criminal Department of Makó Police was not increased. Those who were directed here, got an established positions. On this these persons

⁷⁹ Éberhardt Gábor: „A Rendőrség és a Határőrség integrációjának hatása a Szegedi Határrendészeti Kirendeltségre.” Határrendészeti tanulmányok: 2009/3. különszám. Bp. 2009. 51. oldal.

functioned by fulfilling the police department's criminal cases and they could hardly deal with their previous tasks. During the years this led to a decrease in efficiency of reconnaissance at the Romanian part of the border. Though the Border Guard expositors, who came to the Exposing Department of the Headquarter, continued the tasks of the area of expertise as a group. The experienced head owned a special knowledge of place and person, ensuring that at the Serbian part of the border the activity against illegal migrations be continuous. A further professional improvement occurred during the participation in other kinds of cases. The management of the headquarter noticed at the same time that at the Serbian border part to be able to handle the pressure of illegal migration the border guard offices needed more information that were concrete and daily useable. Due to the notice a decision was made about that – at the third place after Bács-Kiskun and Szabolcs-Szatmár-Bereg Counties – in Csongrád county the Migration Case Department had to be established, which was to serve the law enforcement activity of realization against illegal immigration.

2.1.2. In the region what is the immigration situation like, in highly consideration of illegal immigration' changes?

In the past years the illegal immigration has grown at the Serbian border part and in a smaller standard at the Romanian border part. In relation to Csongrád County we can say that the events happened in the 2 respects associated with the illegal immigration split by 90-10% between the Serbian and the Romanian border. That is the reason why the deciding attention was aimed at the Serbian part. One the area of the Szeged Border Guard Branch – this is the most busiest part of the Schengen land border – mostly citizens of Afghanistan, Pakistan and Kosovo have made attempts to cross the border illegally since 1st January 2013. Subotica functioned as a regional smuggling centre, where foreigners arrived from refugee campus of Greece.

The smuggling of citizens of Afghanistan, Pakistan. and Kosovo were organized by people of their own nation, the Serbians and the Hungarians fulfilled only the part-tasks, mostly the border-crossing at the Serbian-Hungarian border. In Subotica an illegal camp was born in the forest, at the waste disposal site, where the foreigners who were waiting to be (able to be) delivered or in the motels, rooms, houses and farm as well. Half of Subotica lived on this. Only a small number of those who were caught asked for refugee status, since they were put under detention and this was not proper for them. Since 1st January 2013, as the result of law amendment the situation has dramatically changed.

Those who wanted to get refugee status were put up in the institutions of the Immigration and Citizenship Office, and these were open. From here they could easily set off toward Austria and towards their final European destination. In the first four months of 2013 the number of caught foreigners doubled every month and reached the number of caught in the whole year of 2012. But those who asked for refugee status disappeared in a great number from the camp, which proves that they want to avoid the immigration control rules by abusing the refugee administration process. This lightening resulted in that such nations appeared from Greece who had formerly chosen the way through the water. They come from the most exotic countries and inform those who remained in Greece generating further illegal immigrating crowd.

2.1.3. What necessary investigative steps do you take against the investigation and inspection of organized crime?

The assisting illegal immigration across the globe is the third most profitable illegal activity. There is a demand for it, and therefore there will be a supply for it. The perpetrators of acts have no moral reservations in connection with their deeds because they assisted activities that have no tangible victim either. This is important because, for example near the Serbian-Hungarian border, because of poverty and poor living conditions, many people readily agrees to "make people walk across the borders", "to be set aside" or to carry people. The human trafficking in the region does not appear in classical, hierarchical organizations, but so-called cell or chain type crime organisation. This means that the different tasks are carried out in small groups, which work and cooperate with any group of any employer. The organizers are in Afghanistan, Iran, Greece and Kosovo, the migrants 'appear' at them and pay, respectively they discuss the method of payment. Subsequently, the organizers coordinate the activities with the leaders and organisers of the local groups, and the locals decide whom to involve in the actual smuggling. I often call this project-based smuggling, as smuggling each group through customs points is a project for which a permanent organization is made up.

Of course, the experienced people are employed a lot, but there is evidence that a walker works for more employers, and that local organisers are often bailed out by each other. We had a case where one of the Serbian organisers had some problems with the delivery, and he turned to another competitor organizer, who "lent" his own people to implement the task.

Typically, Hungarian people only participate in the implementation of the tasks, the smuggling across the Serbian border is predominantly done by Afghan or Kosovar people.

In this system, the investigation is very difficult.

In case of apprehension, the foreigners tell as much information as needed to make their case treated as a single incident, so that their case can be settled in court.

Results can be only achieved by using the secret information gathering. However, it should be realized that since the organization is not in the country, the options are very limited.

Therefore, the investigation can be effective only with technical data collection combined with human intelligence. The foreign acts are extremely difficult to investigate with human intelligence, both legally and in implementation, it is even difficult to talk about this matter because of the nature of the topic. The Hungarian regulation is not conducive to this method, because in legal practice there is not much difference between the investigating nature of the information collection, provocation and incitement. The technical intelligence options were significantly limited in recent years, especially in capacity terms. It is a serious problem that the task has to be completed in a foreign language, which supposes the existence and use of such interpreters who are limited in number.

The basis of effective criminal action is cooperation. To cooperate with criminal and border agencies, in both Hungarian and international level. Accordingly, we also keep in touch with the Austrian, Slovak and Serbian police forces, and of course in this area we try to play within the legal possibilities of the one-stop international exchange of information but also from “wall to wall”.

2.1.4. How do you work together with the Szeged Border Police in the Schengen external border and other international partner organisations in the fight against illegal migration?

In 2012 the supreme leadership of the police defined as a strategic direction that the Border Police should fight against the growing illegal migration by having all the proper information. This is to be implemented by the information exchange of the criminal authorities working in this field and by the close cooperation between the Border Police and criminal authorities.

It should be clear that there is no uniform system in place in this area. In connection with illegal immigration there are three counties in the country, and such authorities as the

Migration Affairs Department, two divisions in two places, and a group within the operation body of the Border Policing Service. Such information is collected and investigations are carried out by the Emergency Police National Bureau of Investigation Anti-Illegal Migration Department, and by its territorial departments. In several counties the referents and the contact persons were assigned within the Criminal Intelligence Directorate or the Investigating Department. In October 2012 there was a meeting in Szeged at which the leaders of the criminal-operative bodies of Schengen external borders met. Here it was agreed that the participants should mutually inform each other of the situation in advance, of the information obtained by them and if necessary they contribute to investigations and realisations. The process has begun, but since there is no central body that would embrace the flow of information and coordinate activities, the success of this is potential.

Our cooperation with the Border Police is outstanding, in my view it is exemplary. This system has been developed for a while. We are in a good position, because in the Serbian border there is just one and in the Romanian there are two branch offices and their leadership to work with, which schedule our time properly.

The division of tasks works in a developed system. The offices are knowingly engaged in information gathering, because the basic principle is that in each case a commander or a leader has to make a decision about the surveillance of borders regardless of how much information is at his/her disposal. For making a decision we have to recognise the general border-operational situation. Accordingly the branch agencies carry out analysing and evaluating activities and the leadership formulates policing tasks and need for information for the executive staff.

The need for information covers the composition of illegal migrants, the characteristics of their unlawful acts, the area, the possible directions and the dates. They developed an outstanding relationship with the home guard and they do serious crime prevention activities, since they consciously build and operate the forms and channels of keeping in touch with the public.

During this activity the Migration Affairs Department is also continuously presented. In the monthly management the relevant period is evaluated in terms of investigation, highlighting the methodological results and errors. Here they directly determine what legal information the intelligence services need. This method increases the lieutenant commander staff commitment and provides a more efficient task execution. For collecting open information, one of the best forces is the border policing office. The police officers and the trained ones live in that area or they go out there for service. We prepared them not only to look but to see as well. In case of

an identity check at a suspicious place, in addition to the obligatory questions we prepared them what other questions they should ask, what they should inquire about, what to look at, what to detect, and also how they should record these data and how they should send them to the Migration Affairs Department. This happens through command guidance, the patrols write a report of any incidents, identity checks, events or a person to the commander, and a copy of this report is sent to the office. The professional or commanding staff of the office immediately (and in 24 hours a day) notifies the Migration Affairs Department about the seemingly more significant information. To make this effective a person from the office is always assigned to the CSMRFK Criminal Emergency Service, who can react to all the open and operative situations and can give methodological or specific legal assistance to the branch offices.

It is important that the leadership of the CSMRFK recognised in time that although the Border Policing Agencies do not have criminal powers, but they have their own strong information gathering. In Hungary, in 2008 a unique one-month crime-operative course was organised in the Headquarters and this training continued for years. For these courses the border agencies also sent students, who mastered the basics of open information gathering and so by these professional activities they were able to meet such need for information of the agency. However the cooperation does not only come true in information exchange but in everyday life too. Joint actions are implemented, the office takes part in the increased control of the border policing service, and we also help each other with transfer and redeployment of forces and assets. In our county, it has been a practice for a long time and it is an expectation from the national leadership that the information and situations about illegal migration shall be given to the border police to “handle them”. In Csongrád County it can be said that the border police and the criminal branch of service do not only cooperate but carry out their mission on a daily basis.

Makó, 25 February 2014.

CONCLUSION

In this work of mine above I wanted to introduce the importance of the ex-Criminal-Investigating Service, as the investigating office of the late Border Guard. After this through an interview I examined the co-operation between the border guarding and the criminal institutes of the Csongrád County Police Headquarter's Immigration Cases Department working on the outer parts of the Schengen border. In the introduction part I started my work, called 'The Border Guard, as an investigating authority – from a criminal point of view' with these thoughts, which is a publication as well.

In this work I let the reader get to know the official structure, the jurisdiction and competence of the former Crime Case Investigating Service, as 'an independent placed investigating office'. Henceforth the Border Guard's against crime actions - in connection with the border – was introduced before the accession to Schengen. I dealt with the life of the Crime Case Investigating Service after the integration and its descendant offices.

Finally in the last chapter of my theme the Csongrád County Police Headquarter's Immigration Department was introduced from a co-operation point of view.

Author:

Ferenc Szép c. lieutenant, investigating officer of the Csongrád County Police Headquarter, Makó Police Department Investigating Department.

Literature:

- Magyar Rendészettudományi Társaság: Rendészettudományi szószedet. Budapest. 2008. p.96.
- József. Dr. Gubicza, Balázs, Laufer: Magyarország schengeni csatlakozása és a migrációs törvények 2010. évi módosítása közötti időszak tapasztalatai. Ajánlások a biztonsági struktúra korrekciójához. Határrendészeti Tanulmányok 2012/1. különszám. Budapest. 2012. p.10.
- Act No. XXXII from the year 1997 on Border Guard
- Act No. IV from the year 1978 on Penalty Code
- Béla, Halmi, Mayor of Letenye Town: Határrendészeti tanulmányok: 2009/3. special edition. Budapest. 2009. p.9.

- László, Lipics: A határrendészeti és a bűnügyi szolgálati ág együttműködésének megvalósulása az integrált határbiztonsági rendszerben, a belső határokon. p.1. <http://rendeszet.hu/hatarrendeszetitagozat/lipcs2.pdf>
- József, Németh lieutenant-colonel: A Rendőrség feladatai az illegális migráció és a nemzetközi terrorizmus elleni fellépést terén, különös tekintettel a Balkán biztonsági helyzetére. (PhD értekezéslet) Bp. 2010. p.63.
- Act No. LXXXVI. from the year 1993 on entry, abstaining and immigration of foreigners
- Act No. XXXII. from the year 1997 on border guarding and Border Guards
- Mária, Tóthné Demus: A határőrség lehetséges bűnmegelőzési feladatai a leendő belső határok térségében. Pécs Határőr Tudományos Közlemények II. Tanulmányok „a Határőrség szerepe a bűnmegelőzésben” című tudományos konferenciáról. Pécs. 2003. p. 206.
- Halmi Béla, Letenye Város Polgármestere: „A Rendőrség és a Határőrség integrációjának hatása az önkormányzatok és a határterületi lakosság körében.” Határrendészeti tanulmányok 2009/3. special edition. Budapest. 2009. p. 9.
- Gábor, Éberhardt: „A Rendőrség és a Határőrség integrációjának hatása a Szegedi Határrendészeti Kirendeltségre.” Határrendészeti tanulmányok: 2009/3. special edition. Budapest. 2009. p.51.

Makó Rendőrkapitányság

6900 Makó, Csanád vezér tér 13. sz.

Tel.sz.: 06 62 511 260, 06 30 413 8103

BM: 33/44-21