

Some relationships between border security, public safety, public security and personal safety

Abstract : As a consequence of the Schengen agreements, the member states of the European Union can compensate the security deficit caused by the abolition of border control at the internal borders mainly by intensified border control carried out at the external borders. Several state organisations with public authority are involved in border controls but they do not have a monopoly in this activity any more. Private organisations, profit-making companies and business organisations play an important role, particularly at air and water (sea, river and lake) border crossing points. In summary, we can state that border security is not only a factor strengthening public safety but it is also its component. They are linked to each other in many ways and they together make up an important element of the security systems of the EU and its member states. Border controls should facilitate the fight against illegal immigration and trafficking in human beings and prevent threats to public policy, internal security, public health or the international relations of the member states.

Keywords : border security, public security, Schengen Implementing Convention, The Integrated Border Management Model, Lisbon Treaty

Every day, the means of mass communication reinforce our feeling that public safety in Europe is deteriorating. This leads us to the conclusion that increasing public safety still remains a major task for the state.

At the same time, it is a world-wide phenomenon that, together with other impacts, the loss of the masses' confidence in state institutions weakens this role of the state. (This problem is analysed in details by Péter Szigeti in his study titled *Vázlat a közbiztonság három dimenziójáról; világrendszer – nemzetállami szint és lokalitás* [An outline of the three dimensions of public safety; global and nation states' level and locality].) As a result of losing confidence because of social and economic controversies (encountered not only in Hungary) "social fears escalate and people take provision for their personal safety back from the states everywhere."¹

The legitimacy of the states' law enforcement organisations has diminished. Under the conditions of market economy, security has been transformed into a commodity and local government and private security organisations have appeared on the security market. The staff of professional officers of law enforcement organisations and the civilian staff, i.e. public servants employed by the state and in local administrative areas work on enhancing security, simultaneously with the skilled workers of private companies, i.e. personal and property security guards.

As a consequence of the Schengen agreements, the member states of the European Union can compensate the security deficit caused by the abolition of border control at the internal borders mainly by intensified border control carried out at the external borders. As a result of the enlargement process, certain member states do not have external borders any more where they could enforce their interests directly, therefore they strive to set up an institutional network responsible for border controls that will enable them to enforce these interests indirectly, through the decision-making, coordinating and financing mechanisms of the EU.²

Thus, border controls experts, too, have had to face unexpected developments. Considering the changes we should study again the systems of social and professional

¹ <http://jesz.ajk.elte.hu/szigeti3.html> 2010-04-24

² Dr. Csaba Bajtai, Dr. József Gubicza, Dr. József Kónya: Az Európai Unió határpolitikája, a határbiztonság és az integrált határigazgatás fejlődésének alternatívái. Based on the workshop discussion of the outcomes of a research project. 2008.

relationships as well. It is also inevitable to examine the conditions typical of the relationships between today's border security, public safety, private security and personal safety.

A note on the problem of border control abolished at the internal borders

Many of us saw it with displeasure that after border control ceased to exist at the Hungarian-Austrian border we were not allowed to cross it by car in many places because 'No entry' signs were put up on its Austrian side. Small communities of Austrian citizens did not believe what their own state and the Union told them about the benefits of free movement, or at least they expressed criticism concerning the new situation. They had (and still have) fears about threats to their safety; the growing traffic in the area caused by cars arriving from the associated neighbouring country, the potential appearance of criminals in their streets, fields and neighbourhood. The official statements issued by Austrian state agencies claim that they cannot solve these issues because the road signs were put up on the local governments' own authority or because they are located on private roads. No resolution has been brought about even though Austrian and Hungarian members of the European Parliament demonstrated together at the scene in order that authorities would bring a settlement matching European standards to the problem.

Acceding eastern-European countries have grievances, too. While enjoying the benefits of free movement, we also have to bear the consequences of drugs arriving unhindered in our countries from the west. The number of accidents caused by cars coming in growing numbers from the west is on the increase; offenders come to Hungary from the 'promised land' as well; Furthermore, we encounter new types of crimes.

The state of repair of some of the former border crossing points located at the internal European borders (several years after the reason for their existence ceased) is extremely dismal. Furnishings have been stolen in many places. Buildings have been appreciably deteriorating and waste is piling up. Demolition has been started. When thinking about further utilization, we must take into consideration that public highways should be restored to their original conditions, devices hindering traffic should be done away with but in such a way that authorities will be able to restore border control if needed. There is also a justified social demand to preserve and profitably employ as many of the assets as possible. A task not easy to carry out. Because of the requirements concerning motorways, most of the buildings simply have to be pulled down and the roadways have to be straightened. The joint work and close cooperation of several organisations is needed in order to accomplish these tasks. In most member states, the territory and buildings of border crossing points are state property. In Hungary, the Customs and Excise Guard transferred the asset management rights to the Hungarian State Holding Company. It is the responsibility of the Hungarian Roads Management Company to restore public highways to their original conditions. The conditions for restoring border controls should be provided by the Police. The question of what to retain as state property and what should be put at the local governments' disposal, what should be sold or leased has had to be looked into but no final decisions have been made yet.

The Schengen regulations provide an opportunity for the member states to temporarily reintroduce border controls at their internal borders when there is a serious threat to public policy or internal security. It has happened several times in the western part of the EU but countries that joined the Schengen zone in 2007 have never used this option.

The public safety content of border controls

Border security and public safety usually appear in the mass media as different concepts. Therefore, I think the public safety content of border controls should be highlighted,

particularly its aim to take measures already at the state borders in order to prevent risks threatening the public safety of the Union and the member states.

Many people considered the entry conditions defined for third country nationals to be the spirit of the Schengen border control system. They were laid down in paragraph 1 of Article 5 of the Schengen Implementing Convention. It represents standing value, which is also symbolically proved by the fact that the Schengen Borders Code implementing more detailed regulations in this area sets them out in the same section:

“Article 5

Entry conditions for third-country nationals

1. For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document or documents authorising them to cross the border;

(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [17], except where they hold a valid residence permit;

(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.”

In the 6th paragraph of the preamble of the SBC there is also a clear reference to the public safety content of border controls. The passage stipulates that “Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.”

In paragraph 8 it is specified that “Border control comprises not only checks on persons at border crossing points and surveillance between these border crossing points, but also an analysis of the risks for internal security and analysis of the threats that may affect the security of external borders. It is therefore necessary to lay down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance.”

Thus, the aim of border checks is to avert threats to the national security and public safety of the Schengen contracting parties, as well as to combat illegal immigration. These objectives have also gained clear confirmation in view of the grave terrorist attacks committed in the member states of the EU in the last few years. As the reasons behind the deplorable losses were revealed, it was established that border control offers good opportunities for the authorities in the fight against terrorism. However, as the iron curtain that used to sunder Europe has been dismantled, now that we can enjoy the freedom of movement in both the western and the eastern half of the EU, we should select from the available methods and procedures of checks very carefully. In the light of the experience gained so far it will readily

be conceived that Europe must not become a fortress beleaguered by third country nationals and stateless persons.

Nowadays, too, checks at the external borders performed according to uniform principles and regulations, are differentiated, well founded in law, based on a systems approach and are supported by up-to-date technology. They are carried out efficiently because they are based on refined and proportionate methods and procedures.

Where are the boundaries of public safety, private security and personal safety?

The Borders Code defines in the 7th paragraph of its preamble that “Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.”

In practice this imposes strict restrictions on the border guarding authorities and adhering to them requires increased legal sensitivity on the part of every border guard, too.

All the travellers must be identified as they undergo border checks. According to Council Regulation (EC) No 2252/2004 of 13 December 2004 biometric passports and other travel documents issued by Member States shall include a storage medium which shall contain a facial image and also include fingerprints in interoperable formats. Thus, both the technical conditions and the technological potential are available for the employment of automated border checking systems. Because of the benefits to be expected concerning the security, speed and culture of checks, both state and private organisations would have been willing to bear the costs before. Still, because of the legal requirements and especially the reservations about data protection, there has been no mass deployment so far. The practices to handle personal details stored in passports developed by various border guarding authorities worldwide are very different. Besides, it could easily happen that private individuals will gladly give their details to the official organisations of one or two countries but they will be keen on hiding or protecting them from the authorities of others. Nowadays it is easy for unauthorised persons to have access to personal details stored in passports; therefore a lot of people will shield their up-to-date digital passports with plastic sheets. Because of all these reasons, it is only those volunteering and registering in advance that undergo automated checks even in the pilot systems. The EU, however, is planning to use them widely in the near future.

As the visa agreement was being concluded between the USA and Hungary, the general public, too, was able to recognize the problems raised by data protection. In 2008, the Hungarian National Assembly had to ratify the last agreement needed for the visa waiver to the US twice, after the head of the Hungarian state sent it back to the Parliament. Pursuant to the agreement on the exchange of criminal data, the authorities of the two countries will, inter alia, make DNA samples and fingerprint records available for each other. The agreement between Hungary and the United States was concluded on October 1st and was ratified by the Parliament on October 13th but President László Sólyom sent the document back to the National Assembly a week later. It should be pointed out that visa free travel still applies only to Hungarian citizens who have digital travel documents.

As we can see, it is difficult to draw the boundaries between public safety, private security and personal safety. Besides the need to harmonise the interests of the Atlantic Alliance, the EU and the individual member states, the issue of the citizens' basic rights cannot be circumvented and universal human values must not be questioned.

Division of labour between state and private organisations and business organisations

Several state organisations with public authority are involved in border controls but they do not have a monopoly in this activity any more. Private organisations, profit-making companies and business organisations play an important role, particularly at air and water (sea, river and lake) border crossing points. The range of the operators of the facilities, of the organisations involved in managing border traffic is extremely versatile and human rights and charitable organisations are also present. It would be very difficult to create legislation applicable to all these organisations, therefore the Borders Code places the coordination of operating conditions and activities under the responsibility of the national authority in charge of border controls.

According to the regulations concerning air border crossing points, “The competent authorities of the Member States shall ensure that the airport operator takes the requisite measures to physically separate the flows of passengers on internal flights from the flows of passengers on other flights. Appropriate infrastructures shall be set in place at all international airports to that end.

Member States shall ensure that the airport authorities take the requisite measures to channel passenger traffic to facilities reserved for checks. They shall ensure that the airport operator takes the necessary measures to prevent unauthorised persons entering and leaving the reserved areas, for example the transit area.”

Especially at land borders and mainly at road border crossing points, cooperation with the similar organisations of the neighbouring countries and their business organisations and the division of labour is taking on an international character. Furthermore, at the Hungarian-Romanian border, for example, which functions as an EU internal but a Schengen external border, the border guarding authorities of the two countries share the tasks and cooperate in carrying them out. One of the spectacular results of this is that the traveller is made to stop only once when crossing the state border.

The Integrated Border Management Model

The conditions of the Hungarian border control changed as Hungary became a member of the EU and of the Schengen area. The Hungarian border security system was also based on the integrated border management system of the EU. The comprehensive filtering system (activities in the source countries of migration; international law enforcement cooperation; border control at the external borders; inland checks carried out within the countries and near internal borders) is operated through building and maintaining close working relationships involving both EU member states and countries concerned by migration routes.

“It is the comprehensive approach towards security and cooperative and coordinating attitude that create the conditions for up-to-date activities, which have to be carried out in a restricted financial environment and in a competitive situation.”³

However, law enforcement agencies are less and less capable of coping with the whole problem of illegal migration. In the last few years, working together with NGOs, engaging them in joint activities has gained momentum. Special forms of cooperation need to be established between the police force and the civilian auxiliary police, in order to work efficiently in the regions of both internal and external borders and in the territory of the

³ András Teke: Az integrált rendvédelmi működés stratégiai összefüggései. Határrendészeti Tanulmányok. 2007/2. Budapest. Scientific and professional publication of the Scientific Council of the Hungarian Border Guard p. 26

country. The active involvement of the civilian auxiliary police in crime prevention and in the actual performance of the tasks related to public safety should be increased.

The establishment of a unified European border guarding organisation has begun and, according to certain experts, it could be finished in two decades.

Summary

In summary, we can state that border security is not only a factor strengthening public safety but it is also its component. They are linked to each other in many ways and they together make up an important element of the security systems of the EU and its member states. Border controls should facilitate the fight against illegal immigration and trafficking in human beings and prevent threats to public policy, internal security, public health or the international relations of the member states. Local government and private organisations and more and more NGOs have an increasing role in the provision of border security as well. In the last few years, new phenomena and problem situations (already known in the area of public safety, private and personal safety) have emerged in border security, too. To solve these difficulties, we need, first of all, increased sensitivity to problems, a systems approach and extensive cooperation and reconciliation of interests. The significance of the role of border policing organisations as coordinators in the provision of border security and at the same time of public order and public safety is increasing.

All the aforesaid is in harmony with the Lisbon Treaty, which confirms in its Article 67 that "The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. [...] The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws."

References

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Kľúčové slová: bezpečnosť, Európska únia, Kódex Schengenských hraníc, hraničná kontrola, Lisabonská zmluva

Súhrn

Problematika garantovania bezpečnosti a verejného poriadku sa stáva dôležitou súčasťou priestoru slobody, bezpečnosti a spravodlivosti. Zo strany členských krajín schengenského priestoru nevykonávajúcu kontrolu na vonkajších hraniciach je dôležité aby posilnili svoju bezpečnosť ovplyvňovaním rozhodovacích procesov orgánov Európskej únie v oblasti spolupráce a financovania štátov, ktoré uvedení kontrolu vykonávajú. Riziká

ovplyvňujúce bezpečnosť nových členských krajín schengenského priestoru súvisia s realizáciou slobodného pohybu a pobytu osôb a novými formami trestnej činnosti. Neoddeliteľnou súčasťou bezpečnosti je vykonávanie hraničnej kontroly. Samotná hraničná kontrola a jej právna úprava obsahuje prvky bezpečnosti a jej cieľom je okrem kontroly migrácie osôb aj boj proti cezhraničnej trestnej činnosti. V spojitosti s bojom proti terorizmu je hraničná kontrola dôležitým prvkom. V systéme hraničnej kontroly je dôležité dodržiavať európske zásady ochrany osobných údajov subjektmi, ktoré uvedenú kontrolu aplikujú.

V súčasnosti garantovanie bezpečnosti v jej univerzálnej či personálnej povahe nie je možné bez spolupráce štátnych orgánov a inštitúcií s privátnymi bezpečnostnými organizáciami. Uvedená spolupráca sa realizuje v takých oblastiach ako je ochrana civilnej leteckej dopravy či zabezpečenie bezpečnosti cestujúcich v prístavoch. Tieto skutočnosti zdôrazňujú obmedzenie monopolu štátu v oblasti garantovania bezpečnosti. Z uvedeného dôvodu je dôležité definovať z hľadiska teoretického aj aplikačného vzťah bezpečnosti na štátnych hraniciach, verejnej bezpečnosti a osobnej bezpečnosti. Autor článku načrtol možnosti skúmania týchto vzťahov z európskej perspektívy. Záver článku sa sústreďuje na možnosti vytvorenia jednotného systému ochrany vonkajšej hranice Európskej únie z hľadiska organizačného a inštitucionálneho.

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