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The characteristics of people smuggling in Hungary



2021/1-2



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WELCOME

Dear Readers,

In 2018, the Police Scientific Council launched *Police Studies* (Rendőrségi Tanulmányok). The aim of the Council and the police leaders was to create a scholarly journal for researchers and practitioners of police science that would provide a suitable publication platform for the readers.

After four years, I can safely say that the journal has exceeded all expectations, with 14 periodical and one special issue published so far. As a proof of its recognition, *Police Studies* is now listed by the Hungarian Science Bibliography (Magyar Tudományos Művek Tára, MTMT) and has been assigned an international digital object identifier (DOI) by the Hungarian Academy of Sciences.

All these efforts have yielded remarkable achievements, and today the journal can boast not only of publications in Hungarian, but also in English.

It is my hope that the English issue of *Police Studies* will help police researchers to share their experiences, insights and scientific results in English with their colleagues abroad.

In order to achieve this, I wish all my colleagues successful research, strength and good health!

Budapest, 13 October 2021

Dr. Németh József PhD police colonel
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JUDIT BORSZÉKI

The role of domain experts in the development of the course *English for Border and Coast Guards*

Introduction

The growing significance of international border policing and law enforcement cooperation in European security policy is undisputed. The success of the related operational and training activities largely depends on the efficiency of the English communication of those involved in them. International and Hungarian professional and legal documents discussing the training of police and customs officers and border guards¹ have pointed out the deficiencies in this field and the need for further training courses in foreign languages several times.² The fact that specific-purpose English language courses continue to be important content elements of the curricula both of national law enforcement training institutions and of the two largest EU agencies involved in the training of police officers and border and coast

¹ For the purposes of this paper, the term ‘border guard’ will be used in accordance with the Schengen Borders Code, meaning “Any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out ... border control tasks”.

² Borszéki, J. (2019): E-learning anyagok használata az angol rendészeti szakmai nyelvi oktatásban. *Rendőrségi Tanulmányok* 2019/3. 115-149; Magasvári, A. (2018): What is a good entrant into the labour market? The expectations of the National Tax and Customs Administration, *Tudásmenedzsment*, 2018, Issue 2. 123-130.; Borszéki, J. (2015): A Rendőrség határrendészeti feladatokat ellátó állományának idegen nyelvi ismeretei és érdeklődése a nemzetközi határrendészeti tevékenységek iránt. In: Szelei, I, Berki, G. (eds.) *A hadtudomány és a 21. század*, Tanulmánykötet. Budapest: DOSZ Hadtudományi Osztály, 2015, pp. 163-196; Ürmösné Simon, G. – Barnucz, N. (2020): Az Idegennyelvi és Szaknyelvi Lektorátus múltbeli és jelenlegi tevékenységei, valamint a jövő perspektívája. In: Bocz, Zs. – Besznyák, R. (ed.) *Porta Lingua 2020. Szaknyelvoktatás és -kutatás nemzetközi kontextusban* SZOKOE: Budapest.

guards (CEPOL and FRONTEX³) proves that the abovementioned problem still exists. (See also Borszéki).⁴

The FRONTEX Sectoral Qualifications Framework also defines effective communication in a foreign language at every level of border guards' training but only a limited number of border guards has the opportunity to access institutional training.⁵ (Similarly, experts of the EU customs community in collaboration with the Directorate General of Taxation and Customs Union of the European Commission carefully defined their common values and recommendations in competency standards and started assessing higher education programmes of the Member States. For the university programmes that meet the high standards of EU Customs Competency Frameworks the European Commission started to grant recognition certificates since 2019).⁶ The need for developing the ESP (English for Specific Purposes) competences of border guards resulted in the the FRONTEX Training Unit launching the “*Training in English Communication for Border Guards*” project in 2010, with the aim to build language capabilities among EU Member States (MS) and Schengen Associated Countries (SAC) border guards so that they will be able to communicate in English

³ European Border and Coast Guard Agency

⁴ Borszéki, J. (2016): Training border policing experts in English for specific purposes (ESP): Uniform trends in EU member states. [in:] Kaljula, D (Ed.) SISEKAITSEAKA-DEEMIA TEADUSARTIKLID: Valikkogu. Tallinn: Sisekaitseakadeemia, 31-65.

⁵ FRONTEX (2015): Sectoral Qualifications Framework for Border Guarding VOL. I. FRONTEX: Warsaw 122. VOL. II. 49.

⁶ The Customs BA programme of the Faculty of Law Enforcement of the University of Public Service received such recognition certificate in 2019. See Csaba, Z. et al. (2020): Kompetenciaalapú vámügyi felsőoktatás az EU tagállamokban. In: Csaba Z., Szabó, A. (eds.) Közös kihívások – egykor és most. Budapest, Magyar Rendészettudományi Társaság Vám- és Pénzügyőri Tagozat. 35-52. <https://doi.org/10.37372/mrttvpt.2020.1.2>; European Commission Directorate General for Taxation and Customs Union (2019): The EU Customs Competency Framework: modernising customs through competency based human resource management. EU Publications Office, Luxembourg.

Source: <https://data.europa.eu/doi/10.2778/043467>

performing daily tasks and during joint operations coordinated by FRONTEX.⁷ The phase of the project that started in 2015 focuses on creating self-access, online language courses. Its first product is the course entitled “*English for Border and Coast Guards Level 1*”⁸, available online since 2018. Level 2 of the same course is being developed now.

One aim of this paper is to present the specific course development methodology through the process of the development the abovementioned digital tool, conducted by non-language specialists, i.e. domain experts. The other aim is to prove that, under certain circumstances, the use of such methodology that is different from traditional ESP practice can be and is justified.

Needs analysis and course development for ESP courses in the latest special literature

The literature that discusses the methodology used for the creation of specific-purpose curricula and syllabi links these abovementioned activities. The process of planning, realisation and assessment of specific-purpose language teaching is fundamentally based on needs analysis⁹, and thus it is a key part of course development.¹⁰

The recent studies written on this subject show new tendencies. During task-based needs analysis¹¹ for specific-purpose language teaching tradi-

⁷ FRONTEX (2011): Basic English for Border Guards at Airports, Introduction. (electronic learning material); FRONTEX (2013): Mid-Level English for Border Guards at Airports, Instruction Booklet, (electronic teaching material on DVD)

⁸ Originally English for Border Guards, which was changed after the European Border and Coast Guard was established by the regulation (EU) 2016/1624.

⁹ Kurtán, Zs. (2003): Szakmai nyelvhasználat. Nemzeti Tankönyvkiadó: Budapest, 198

¹⁰ Basturkmen, H. (2010): Developing Courses in English for Specific Purposes. Palgrave Macmillan: New York 19., 25., 71-86., 143

¹¹ Long, M. (2005). Overview: A rationale for needs analysis and needs analysis research. In Long, M. (ed.): Second Language Needs Analysis. Cambridge University Press: Cambridge. 1-16. DOI: <https://doi.org/10.1017/CBO9780511667299.001>; Flowerdew, L.

tionally involving the analysis of the target and the present situation, learners' lacks, wants, means, subjective means, educational context, discourse analysis etc.¹², qualitative and ethnographic methods¹³ and complex approaches are becoming more and more prominent. Serafini et al¹⁴ come to the conclusion that needs analysis should be task-based and qualitative and quantitative research, the triangulation of methodology relying on both open- and close-ended questions, data collected from several sources should be applied. The model suggested by Huhta et al¹⁵ is language user-centred, as opposed to the earlier "top-down", designer-centred approach. Based on the holistic approach of needs analysis and communication, it focuses on sociological aspects rather than those of descriptive linguistics. It was created in the framework of the CEF Professional Profiles Project, whose aim is to adapt the recommendations of the CEFR (Common European Framework of Reference)¹⁶ for (general) languages to specific-purpose languages, to precisely define the needs of various fields and thus make it easier for language teachers working in secondary and higher education to design specific-purpose language courses. This type of needs

(2013): Needs Analysis and Curriculum Development in ESP. In: Paltridge, B. – Starfield, S. (eds.) (2013): *The Handbook of English for Specific Purposes*, First Edition. John Wiley & Sons, Inc.: Oxford.

DOI: <https://doi.org/10.1002/9781118339855.ch17>

¹² Basturkmen, H. (2010): *Ibid.*; Uricska, E. (2020): Proper interactive communication of the police as a(n e-) trust building strategy. *Introducing the term policing digilect*. *Kosice Security Review*, 10. 2. sz., 185–195.

¹³ Dressen-Hamouda, D. (2013): *Ethnographic approaches to ESP research*. In: Paltridge, B. – Starfield, S. (eds.): *The handbook of English for specific purposes*. Wiley-Blackwell: Boston.

DOI: <https://doi.org/10.1002/9781118339855.ch26>

¹⁴ Serafini, E. et al. (2015): Needs analysis for specialized learner populations: Essential methodological improvements. *English for Specific Purposes*. vol. 40.

Source: <http://www.sciencedirect.com/science/article/pii/S088949061500037X>.

DOI: <https://doi.org/10.1016/j.esp.2015.05.002>

¹⁵ Huhta, M. et al. (2013): *Needs Analysis for Language Course Design: A Holistic Approach to ESP*. Cambridge University Press: Cambridge.

¹⁶ Council of Europe: *Common European Framework of Reference for Languages: Learning, Teaching, Assessment*. Electronic source: <https://rm.coe.int/16802fc1bf>

analysis does not only consider the individual but also the language activities he/she conducts in his/her special field, in various speech situations and contexts as a member of various social groups (See also Uricska¹⁷ and Ürmösné Simon¹⁸. Using the method of thick description, this needs analysis model was used to set up profile descriptions for five fields of secondary and higher education (business, healthcare, social services, law and technology) that can serve as samples for other sectors. (The adapted version of this profile for border policing can be found in an earlier study¹⁹.)

The aforementioned paper written by Serafini et al also mentions the promising phenomenon that the research done in ESP needs analysis often consults the domain experts, i.e. the non-linguist representatives of the various fields. Other studies also point out their role e.g. in measuring specific-purpose linguistic competences and often come to the conclusion that non-language specialists and language experts assess the performance of the same person at an ESP test differently and have different views on what efficient communication means. The former focus on whether the knowledge of the given discipline has been proved and the communication as a whole has been carried out with success. The latter tend to consider

¹⁷ Uricska, Erna. (2021): A rendészeti közösségi oldalak alkalmazása a szaknyelvoktatásban. *Educatio*. 29. 4. sz. (forthcoming).

¹⁸ Ürmösné Simon, G. (2019): Miben segítik a nyelvi ujjnyomok a nyomozást? In: *Magyar Rendészet* 2019/1. DOI: <https://doi.org/10.32577/mr.2019.1.4>; Speech accommodation acts i.e. to whom we talk, determine how we assimilate to the speaker, and considering social strata, prestige norms, the expectation of the subculture, subordination, and gender, are all key factors, and also have an enormous impact on language usage. Ürmösné Simon, G. (2015): Érák, szubkultúrák, szocializáció, férfi-kontra női egy a gendernyelvészet tükrében. *Magyar Rendészet* 2015/2; Ürmösné Simon, G. (2017): A case study, based on a spontaneous discourse of Greek - Hungarian bilinguals, in respect of interjections, swear words and syntactical mistakes, as regards gender. *Magyar Rendészet* 2017/4.

¹⁹ Borszéki, J. (2017): The Definition of Specific-Purpose English Language Competences Needed in Border Control and Their Development Potentials, I. The Issues of Defining Specific-Purpose Language Competences. *Magyar Rendészet*, 17/4. 135

only the linguistic aspects, often punishing linguistic mistakes that actually do not hinder communication in the given situation.²⁰

Another group of studies highlights the importance of cooperation between linguists and non-linguist experts²¹, and discusses the important role of the latter in needs analysis.²² Basturkmen²³ showcases the development of an English course for police officers in Australia from needs analysis to

²⁰ Knoch, U. (2014): Using subject specialists to validate an ESP rating scale: The case of the International Civil Aviation Organization (ICAO) rating scale 2014, *English for Specific Purposes* 33, 77-86.

Source: <http://www.scopus.com/inward/record.url?eid=2-s2.0-84888019246&partnerID=MN8TOARS>

DOI: <https://doi.org/10.1016/j.esp.2013.08.002>

²⁰ Elder, C. et al. (2017): Interrogating the construct of communicative competence in language assessment contexts: What the non-language specialist can tell us, *Language & Communication* 57. DOI: <https://doi.org/10.1016/j.langcom.2016.12.005>; Whyte, S. (2019): Revisiting Communicative Competence in the Teaching and Assessment of Language for Specific Purposes. *Language Education & Assessment*. 2/1 1-19

²¹ Fischer, M. (2016): Mit üzennek előadásaink, mit rejtenek írásaink? In: Bocz, Zs. – Besznyák, R. (szerk.): *Porta Lingua 2016. A szaknyelv rétegződése a szakmában, az oktatásban és a kutatásban*. SZOKOE: Budapest. 7-12; Spiczéné Bukovszki, E. (2015): Műszaki szaknyelvtanítás: új válaszok a régi kihívásokra. In: Bocz, Zs. (szerk.) (2015): *Porta Lingua 2015. A XXI. századi szakmai, szaknyelvi kommunikáció kihívásai: tanári és tanulói kompetenciák*, SZOKOE: Budapest. 253-266; Ürmösné Simon, G. (2019): *Ibid.*

²² Hajdu, Z. – Czeller, M. (2015): A vállalati szaknyelv oktatásának eszközei és módszerei egy projekt tapasztalatainak tükrében, In: Bocz, Zs. (szerk.) (2015): *Porta Lingua 2015. A XXI. századi szakmai, szaknyelvi kommunikáció kihívásai: tanári és tanulói kompetenciák*. SZOKOE: Budapest. 205-212; Jasso-Aguilar, R. (1999): Sources, Methods and Triangulation in Needs Analysis: A Critical Perspective in a Case Study of Waikiki Hotel Maids. *English for Specific Purposes*. 18/1. 27–46; Korotchenko, T. – Matveenko, I. – Strelnikova, A. (2016): Models of syllabus design in teaching ESP (Geoscience). In: 16th International Multidisciplinary Scientific GeoConference, SGEM 2016: Science and Technologies in Geology, Exploration and Mining - Conference Proceedings (Vol. 3, pp. 899-906). International Multidisciplinary Scientific Geoconference.

DOI: <https://doi.org/10.5593/SGEM2016/B53/S22.115>

²³ Basturkmen, H. (2010) *Ibid.*; Kovács, É. (2021): The experiences of running "Advanced Technical English" courses for engineering students at Donát Bánki Faculty of Mechanical and Safety Engineering, Óbuda University, *Biztonságtudományi Szemle 2021/1* (forthcoming)

course development and evaluation. Similarly to border guards' work, because of the frequent presence of classified information, conducting observation and research of professional communication related to police officers' activities is often a challenge. However, in the case presented in this study, the course developers received significant help from the police officers, who even allowed them to go on car patrols with them and explained to them investigative interviewing techniques.

Development of the “English for Border and Coast Guards” course

In this chapter I am going to compare Basturkmen's needs analysis and course development model with the processes before and during the development of the EBCG course. Basturkmen represented the three main areas of course development (Analysing needs, Investigating specialist discourse and Determining the curriculum) in the form of a multi-layered pyramid, pointing out that the first two (she calls them 'below the surface' levels) are the solid basis that the third component (the 'above surface' level, manifested in the learning material) should be built upon. (Figure 1.)

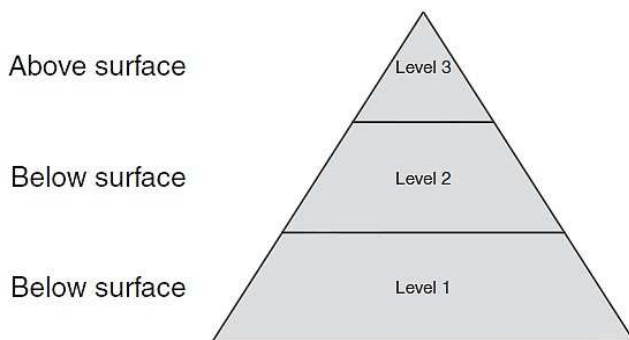


Figure 1: Representation of ESP course development²⁴

²⁴ Basturkmen, H. (2010): Ibid., 143.

Level 1: Analysing needs

Considerations:

Situation analysis: What tasks are involved in the work or study area and what are the standards for their performance? Can the tasks be divided into subtasks?

What type of needs to investigate (for example, objective and/or subjective, immediate/long term, skills and/or tasks)?

Which language-based skills or tasks do the students find difficult?

What is the nature of the students' difficulties in these language-based skills or tasks (for example, linguistic, conceptual, cultural)?

Table 1: Level 1²⁵

The first product of the abovementioned Training in English Communication for Border Guards project was the A2/B1 level e-learning tool entitled “*Basic English for Border Guards at Airports*”, (hereinafter: EBGA) for border guards of EU Member States (MS) and Schengen Associated Countries (SAC) at airports, aimed to give the opportunity for border guard staff to develop their skills by self-access learning.²⁶ The CD was followed by a DVD for B2 level in 2013. They were made accessible in the EU and the Schengen area, exclusively for law enforcement staff. The project for its development involved experts from 24 EU and Schengen member states and six third countries. The aim was to help develop the key language skills related to oral interaction, based on real-life situations. Border guards with many years of empiric experience wrote the dialogues performed in such situations. They focused on a range of border guarding vocabulary defined by them, so as to model language activities that correspond to the typical

²⁵ Basturkmen, H. (2010): Ibid., 143.

²⁶ FRONTEX (2011): Ibid.

domains of language use (See Borszéli²⁷ in detail), including the risk mitigative²⁸ and multiagency approach at the borders that are both fundamental provisions of the European integrated border management framework²⁹.

I had the opportunity to join the FRONTEX working group, an international team of experienced border guards and English teachers in 2015. Our task was to develop a tool (firstly, its Level 1, for A2/B1 English level) similar to the EBGA ones but relevant for all the three types of borders, involving modern ICT solutions and accessible on the internet by a wide range of staff, even outside the framework of formal education. Thus, I was able to interview the colleagues who had been involved in the development of the EBGA tools. I learnt that no traditional needs analysis had been made for those learning programmes. Situation analysis or investigation regarding the would-be students' needs were not carried out this time (for the EBCG tool), either. However, FRONTEX published its “*Common Core Curriculum*”³⁰ (CCC), “*EU Border Guard Basic Training*”, revised in 2012³¹, used in all the EU member states, which, categorised according to professional topics, gives a detailed description of all the contexts and speech situations in which border guards need to communicate in English and also lists the English knowledge, skills and competences that can be

²⁷ Borszéli, J.: The Principles of Modern Language Teaching Represented in an EU Training Tool for Border Guards II. *Hadtudományi Szemle* 2014/2. p. 106–122.

Source: www.epa.oszk.hu/02400/02463/00023/pdf/EPA02463_hadtudomanyi_szemle_2014_02_106-122.pdf

²⁸ Border control vocabulary is necessarily embedded in the context of the areas of responsibility of all the relevant border agencies, e.g. Customs, Phytosanitary and Veterinary inspection services etc. with partly overlapping territories; cf. Csaba, Z.: Border traffic risk assessment. *Academic and Applied Research in Military and Public Management Science* 2012/2. p. 273–285.

²⁹ cf. Article 3, Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

³⁰ Kiss, L.: The Presentation and Evaluation of the Project „Core Curriculum for Border Guard Training” *Casopis Policajna Teoria a Prax* 2016/1. p. 47-59.

³¹ FRONTEX (2012): *Common Core Curriculum. EU Border Guard Basic Training*. FRONTEX: Warsaw

expected at B1 level. This section of the CCC was compiled by experienced border guards and English teachers.

No particular analysis of lacks was done for the EBCG tool, either, but it is obvious that the decision about the development of an English course accessible by many professionals was made because of the deficiencies in this specific-purpose English within the discourse community. FRONTEX as the agency responsible for the training of European border guards and its department, the Training Unit received feedback from border guards working in all the areas of border control that a large part of the border guarding staff do not have the level of proficiency in English for Border Guards that allows for high-standard professional activities. Border guards invited to the meetings of the abovementioned team frequently highlighted the problem that many colleagues do not know and cannot appropriately use Schengen and FRONTEX terminology, which regularly hindered communication during joint operations. My investigations have also confirmed this problem. The majority of those applying to get into the Hungarian pool of European Border and Coast Guard Teams fail at the English for Border Guards oral examination at the Border Policing Department of the National Police Headquarters³².

Level 2: Investigating specialist discourse

Considerations

Which linguistic forms and features to investigate (for example, those the students are weak in or unaware of, those members of the community of practice stress as important)?

What data to collect (for example, do relevant literature, descriptions and corpora already exist or does primary data need to be collected)?

³² Borszéki, J.: Az angol szaknyelvi kompetenciák szerepe a határrendészeti szervek nemzetközi együttműködése megvalósításában, fejlesztésük lehetőségei. Doktori (PhD). értekezés, NKE, Hadtudományi Doktori Iskola. Budapest. 2016. p. 149., 171

Source: http://uninke.hu/feltoltes/uni-nke.hu/konyvtar/digitgy/phd/2016/karosi_zoltanne_borszeki_judit.pdf.

<p>What approach to use in the investigation (for example, ethnography and/or text analysis)?</p> <p>What primary data to collect (texts, marked scripts of students' writing, observations, self-reports, such as interviews)?</p> <p>How to analyse the texts/discourse from the target community of practice or discipline (for example, whole or part of the texts, for specific features)?</p> <p>How to devise pedagogical descriptions of discourse in the specialist area?</p>

Table 2: Level 2³³

The manager and the sub-manager of the EBCG project decided not to analyse the speech situations defined in the abovementioned CCC (2012 edition), but to follow the methodology of the earlier EBGA tools for data collection. In accordance with this, each member state was requested to delegate one or two border guards (with a good command of English for Border Guards and profound professional knowledge), who attended one-week workshops focusing on each type of border (air, land and sea). They were given a list of professional topics and speech situations, and, based on them, they wrote dialogues that, according to their daily experience, typically take place during so called first-line checks. They also compiled a list of key terminology, the items of which (680 in all) and 350 sentences were embedded in the dialogues.

The basic concept for Level 1 of the course was that speech situations related to first-line border control usually required B1 level of English. This involves procedures during which the border guard verifies whether the passenger reporting for entry or exit (in certain cases an undocumented irregular migrant) fulfils the conditions of crossing an external border defined by EU regulations. If a suspicion arises that the person does not meet these criteria, the border guard refers the case to the second line for a more thorough examination. This is a more complex task, both professionally

³³ Basturkmen, H. (2010): Ibid., 143

and linguistically, therefore the dialogues in EBCG Level 1 always end at this point.

The question arises whether the triangulation of various methods and sources used for needs analysis and the collection of data recommended in the literature was applied in this case. Definitely, needs could have been mapped more precisely by e.g. some quantitative research. It is also worth considering whether the “first-hand” corpus that defined the target situations in detail suffices, with no linguistic discourse analysis (vocabulary frequency, genres etc.) done.

Level 3: Determining the curriculum

Considerations:

How to focus of the course (for example, wide- or narrow-angled)

How to deliver the course (for example, web-based, classes, workshops, on-site or off-site)?

What units to include in the syllabus and how to sequence them (for example, genres, features of spoken discourse, conceptual content, easy to difficult, immediate to less immediate needs)?

How to evaluate learning (for example, with reference to the final or way-stage criteria or performance objectives used in the community of practice)?

What materials to develop and what types of tasks to include (for example, pedagogical descriptions of discourse and tasks that make use of activities of the work or study area)?

Table 3: Level 3³⁴

In the case of the EBCG course, the abovementioned particular elements of course design were defined by the managers of the project and the English teachers in the team. They were formulated in the course description, too. The target group for the course are border guards working in the first line of border control whose command of general English is at A2/B1 level

³⁴ Basturkmen, H. (2010): Ibid., 143

and who wish to develop their specific-purpose English skills. Due to its nature, the e-learning tool mainly develops receptive skills, the knowledge of terminology and to a limited extent, spelling skills, too. With the help of these skills, the border guard will be able to conduct more efficient communication in English with passengers, irregular migrants and foreign colleagues during joint operations. The course is available both on PCs and mobile devices. As it is embedded in the password-protected learning management system (LMS) of FRONTEX, in the Virtual Aula, it can also be used offline, the activities of the user are recorded and are updated after online access. Registered teachers can create virtual classrooms and monitor their students' learning patterns. The learning material is organised in a linear structure. It includes a compulsory, *General* module and three other, optional modules corresponding the three types of border. The modules contain thematic units with two or three subunits that present 3 to 8 dialogues. The learners get formative feedback about their progress at the end of each module, after they have done the tasks in the Assessment section.

The structure of the course was defined by the English teachers of the team. After they corrected the linguistic mistakes in the dialogues created by the border guards and supplemented them with a few reading comprehension texts. Based on the topics and speech situations, they sorted the dialogues into subunits within which the graded them according to difficulty. The teachers also defined the method of working with the units; the most frequent related vocabulary is presented at the beginning of each unit. Visual and listening elements help the learner understand, read, pronounce and learn these items. (Also cf. Barnucz³⁵.) After that the learner watches/listens to the video/audio recordings of the dialogues, each complemented by tasks to help/check understand them. After each subunit revision exercises help the learner deepen their knowledge gained in this way and practise the usage of the terminology.

³⁵ Barnucz, N.: IKT eszközök szerepe az angol nyelv oktatásában. *Educatio*. 2019/2. 403414.

DOI: <https://doi.org/10.1556/2063.28.2019.2.14>

Of course, the tasks and exercises were also made by the English teachers in an electronic format, who made sure that the lexical items to be acquired are presented in varied contexts, with the necessary frequency. The recording of the dialogues and the final formatting of the electronic material were organised by the FRONTEX Training Unit, also employing third-party companies. The audio recordings were made with the help of border guards from the Warsaw headquarters of FRONTEX with a native level of English, while British actors made the video recordings. As compared to the EBGA tools, the EBCG course was a step forward in terms of both graphic design (See Figures 2 and 3) and language teaching methodology, as this time the concept of the language teachers was offered a larger scope.

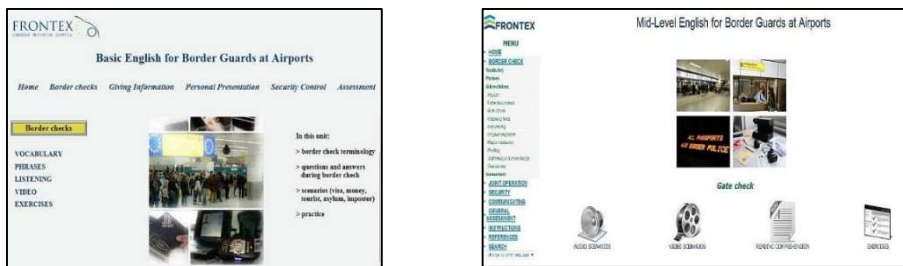


Figure 2: Screens from the EBGA tools

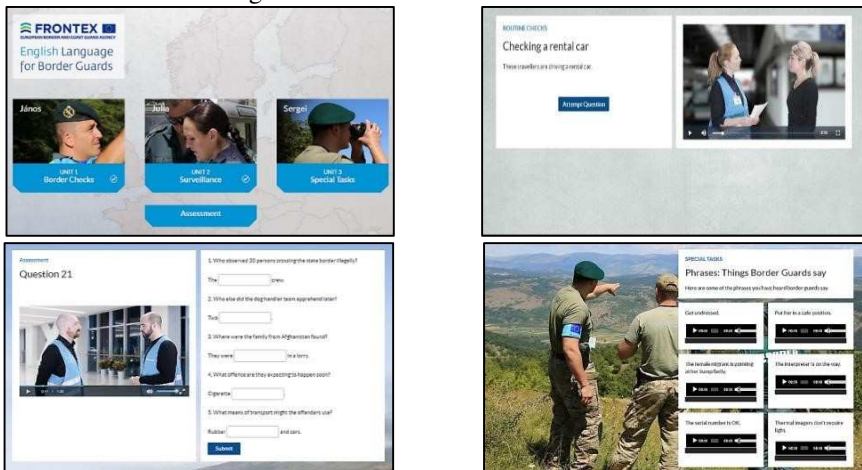


Figure 3: Screens from the EBCG tool, Level 1

The advantage of the online tool discussed here is that the language learner is not confined to place and time, can proceed at their own pace and can get immediate feedback about their progress. The learner's motivation can be enhanced by the fact that the content is comprehensive, varied, the user interface is aesthetic, easy to use and the structure of the learning material is clear and transparent. The programme has several functions (word search, simultaneous access to several windows showing different media) that traditional, printed textbooks lack. Learning is more flexible and more economical than in the case of residential or classroom courses (need to provide teachers, absence of trained staff for the duration of the course) (Also cf. Barnucz³⁶).

Such tools, however, have their limitations; they mainly develop receptive and reproduction skills. We like to call them interactive but in fact this only means that the user is not merely a passive spectator of the learning material but they have interaction with the tool through the "human computer interface"³⁷, that is, for example, they react to various stimuli after understanding and memorising a certain amount of "input". As the programme has to respond to every answer given by the user, the tasks cannot be open-ended. Thus, the tool is not capable of developing (oral and written) production skills that require creative solutions. Communication-centred language instruction traditionally defines three phases of the learning/teaching process, such as Presentation, Practice and Production).³⁸

³⁶ Barnucz, N.: IKT-eszközökkel Támogatott (Rendészeti) Nyelvoktatás. Magyar Rendészet 2019/1. Nemzeti Közszerológálati Egyetem. Budapest.
DOI: <https://doi.org/10.32577/mr.2019.4.1>

³⁷ Dzandu, M – Tang, Y: Beneath a learning management system – Understanding the human information interaction in information systems. 6th International Conference on Applied Human Factors and Ergonomics (AHFE 2015) and the Affiliated Conferences, AHFE 2015, Procedia Manufacturing.

Source: https://ac.els-cdn.com/S2351978915002401/1-s2.0-S2351978915002401-main.pdf?_tid=b0d24fb4-9f24-4c53-8cb9-64699fdf0f56&ac-dnat=1543005334_d796e216a0eae6f15b0a813a823d1db3

³⁸ This approach is often challenged. According to the task-based method, these phases should be applied in a more flexible way, so that learners can be involved more actively. Consequently, these phases, too, should be named differently: Pre-task, Task, Planning,

When using the EBCG course and similar e-learning tools we cover only the first two phases. During practice there are so-called pre-communicative, structured, close-ended exercises at the users' disposal, which provide the opportunity for controlled practice of the target vocabulary and speech functions (e.g. asking for and giving information). The next phase, using the learnt items independently, perhaps even in a new situation or context would follow only after that. Luckily, the members of the target group can do this in their everyday work, while fulfilling daily duties and they can test their progress by how successful their real-life communication is. Professional feedback and the correction of mistakes, however, can only be provided with the help of a language teacher. Practising in simulated, near-life situations involving unexpected elements so important in communication and the joint activities of students can only be realised in the framework of classroom tuition. Therefore, the EBCG tool can be an important constituent of a blended learning course, for example.

No research has been done about the efficiency of the course but we have some feedback on the first EBGA tool, which was made with a similar methodology. After it was introduced for training and self-access use in the member states between 2010 and 2012, FRONTEX made qualitative and quantitative analyses, based on a survey done in 21 countries, which showed that the language skills of the border guards who used the CD did develop. Almost all users stated that they wanted to continue their studies at a higher level. This led to the publishing of the B2 level EBGA tool. According to the data in the Virtual Aula, Level 1 of the EBCG course had 3500 users in January 2021.

The course has been presented to the staff of several units in the FRONTEX headquarters and it was a unanimous success. For example, the department involved in managing joint return operations, achieved that a supplementary module on Returns has been added to the EBCG Level 2

Report, Analysis and Practice, see Willis, J. (1996): *A Framework for Task-based Learning*. Longman: Harlow and Borszékí (2014), *Ibid*.

course, being developed now, using the same methodology that we had in the case of Level 1.

Conclusion

The present paper introduced a method different from the usual needs analysis and development process applied for ESP courses, which is not managed by the language teacher or a linguist appointed to do the course development. The development of the course is initiated by non-linguist experts. The needs are defined on the basis of the topics listed in a curriculum compiled earlier (and for a somewhat different purpose). The domain experts create the corpora that model the language activities corresponding to the typical domains of language use. These texts constitute the basis of the course material and are adjusted to the given learning purposes by the language teachers who develop the learning material. I still think that this unusual method is effective, because of the features of the given domain detailed below.

I consider it particularly important that the teaching tool is primarily designed to develop the skills needed for oral communication³⁹, and it is very difficult to gather the necessary professional language corpus for this. In the working group, the English teachers were able work on texts that could have been compiled, for example, using the aforementioned CEF Professional Profile. This model would include visiting Border Crossing Points, recording English dialogues conducted by border guards and interviewing them, which, on the one hand, is a very lengthy process, and, on the other hand, in most cases is not even permitted for English teachers who are not professional police officers/border guards.

The language activity in question accompanies professional processes that are very precisely defined by law and regulations. The curriculum fo-

³⁹ Barnucz, N – Uricska, E. (2021): Innovatív nyelvtanulási módszerek és módszertan a rendészeti szaknyelvi képzés vizsgálatában. Új Pedagógiai Szemle 2021/9-10.

cuses on a special part of the professional field, therefore almost all occurring speech situations can be modelled and displayed in a limited number of dialogues that can be realistically processed in the course. Due to the previously detailed limitations of the tool, the range of communicative skills to be developed with its help is also limited. Also, the aim is not to take the user to a higher language level. The emphasis is on the acquisition of specific-purpose language elements.

The hierarchical nature of FRONTEX as an institution and of border policing in general, the high degree of their organisation made it possible for non-linguist domain experts to be available and to spend a relatively significant part of their working time contributing to the project.

Perhaps the fact that the Agency has the financial resources that make it possible to apply a high-tech electronic content development tool and proficient programmers, thus providing the right didactic basis and attractive graphic design for the learning material, should not be overlooked, either.

As mentioned earlier, using the methodology discussed in this paper, applying all the lessons learnt from the work on Level 1, Level 2 of the EBCG course is being developed now. The course focusses on second-line border control, with additional modules on Pre-return, Return and Document examination, which gave the opportunity for the English teachers in the working group to gain more experience in these fields, too.

GÁBOR ÉBERHARDT

The relationship between human migration and spirituality

Introduction

The phenomenon of migration is also emerging in the field of spirituality and classical disciplines, as there are global challenges in the world that can only be addressed on the merits with the consent of the leading representatives of science and religion, jointly developed and accepted, represented methodologies. There is no uniformly accepted concept of human migration, however, several common elements are present in them, e.g. mobility, purpose, pattern, etc. One element of these purposes may be religious migration based on religion, during which the migrant lives and realizes his migration as a kind of mission. One consequence of this process may be a change in the state religion of the destination country at the social level.¹ Human migration is a social phenomenon in which both religion and materialism play a role in both its development and its management, therefore solutions, too, must build on each other.²

Interfaces between migration and spirituality

Ancient Vedic scriptures also impart knowledge of the fates caused by ourselves, other living beings, and the demigods who control the forces of nature, as well as the suffering caused by natural disasters, which may directly or indirectly trigger the migration of peoples, tribes, groups, individuals, but karma also plays a significant role in it. Following the example of the

¹ Hautzinger, Z. (2018): A migráció és a külföldiek büntetőjogi megjelenése. [Migration and the appearance of foreigners in criminal law.] *AndAnn*, Pécs. 19

² Varga, K. (2016): Spiritualitás és migráció. [Spirituality and migration.] *Magyar Tudomány*. 1127

analogy of conservative philosophy, not only the individual soul existing in the material world has karma, but there is also group karma that can be applied to a particular people, even a country. No one can escape their karma, its occurrence is independent of place and time. There is a definite reason for being born in a given place, which, depending on the circumstances, can even become a mission by finding the real meaning of human life by staying in the same place, by migrating, or by using peaceful or conflicting means.

The theory of the clash of civilizations emerged in the 1990s. According to the Harvard political scientist noted as the father of a theory that provoked significant controversy, future international conflicts are expected to emerge from major cultural debates rather than ideological ones. In his theory, he identified eight morally and politically incompatible civilizations, between which tensions can lead to real conflicts. One means of these conflicts could be armed struggle, for example, the way in which the Islamic world had, in written history, tried to occupy Europe twice to achieve ummah, which, however, failed after centuries of war. In a globalised world, the third attempt is the “*Muslim demographic invasion*”.³

According to the ecological evolution theory developed by Lenski, the theory of migration and colonialism, and the sociological approach to violence developed by Malešević, the four theories fit together well, providing a comparative framework for interpreting biblical and archaeological data.⁴

For the spiritual interpretation of migration, Wright carried out his analysis from the formation of religions through the continuous change and development of faith, from tribal societies to the age of “Y” generation technology, using an anthropological, historical, and sociological approach. The question of the struggle between civilizations, the tension between

³ Huntington, Samuel P. (1996): *The Clash of Civilizations and the Remaking of World Order*. Simon & Schuster, New York. 89-141.

⁴ Pitkänen, P. (2016): *The ecological-evolutionary theory, migration, settler colonialism, sociology of violence and the origins of ancient Israel*. Gloucestershire. 1-23.

DOI: 10.1080/23311886.2016.1210717

Judeo-Christian, Western societies and the Islamic world is raised as a provocative question. As a solution, he recommends mutual tolerance and the existence of a God whose mercy embraces the global world. “*Globalisation has now made the planet too small for powerful religions to confront each other peacefully. If the God of Abraham - the God of the Jews, the God of Christians and the God of Muslims - does not promote tolerance, we are all in trouble.*”⁵

The connection between modern migration and the description of migration in religious history

Religion is a universal and comprehensive concept that is difficult to define: “*an experiential encounter with the saint and the response of a man determined by the saint.*”⁶ Based on the research findings of apologists, five world religions can be considered large because the number of their followers is among the highest, widespread on all continents, and they have a universal (worldwide) sense of mission. According to the data available today, they define and influence human life as follows: Christianity (31%; 2.4 billion believers), Islam (25%; about 1.9 billion believers), Hinduism (15%; about 1.2 billion), Buddhism (7%; 500 million), Chinese universalism (6%).⁷ According to 2020 data, unlike in individual countries, there has been no substantial change in global ratios.⁸

⁵ Wright, R. (2010): Isten evolúciója, vallások és kultúrák. [The Evolution of God, Religions and Cultures.] HVG könyvek, Budapest. 396

⁶ Mensching, Gustav (1947): Soziologie der Religion. Bonn, Röhrscheid. 2

⁷ Glasenapp, Helmuth Von (1992): Az öt világvallás - Bráhmánizmus, buddhizmus, kínai univerzizmus, kereszténység, iszlám. [The five world religions - Brahmanism, Buddhism, Chinese universalism, Christianity, Islam.] Akkord kiadó, Budapest. 4-32

⁸ Figures of followers of world religions.

Source: http://www.globalreligiousfutures.org/explorer#/?subtopic=15&chartType=bar&year=2020&data_type=number&religious_affiliation=all&destination=to&countries=Worldwide&age_group=all&gender=all&pdfMode=

Accessed: 26.12.2020

In his publication published in 2013, Nagy drew attention to the fact that once all the arguments for receiving and helping refugees have run out, there are still great religions, all of which make recommendations for such phenomena. *“The great religions and customs associated with them, as well as theological teachings and interpretations are rich in regulations relating to escaping. Some of them apply to everyone or specifically describe the protection to be given to people of other religions from the point of view of the given religion. Others - explicitly or implicitly - cover only those belonging to the same religion, religious trend or sect.”*⁹

The interpretation of the Catholic religion about migration

In the words of Jesus, *“And there shall be fugitives with you always.”* In the Bible, considered to be the written teaching of religion, the issue of migration is linked to the terms *alien, newcomer, homeless, stateless, hiding, and wanderer* in the thousands of years old holy book. According to the description, the fratricidal murderer Cain was the first person condemned by God to be an *“outlaw and a wanderer”* on Earth. Abraham and Sarah set out on God’s command and wandered many hundreds of miles to carry out God’s funding plan. According to the interpretation used today, Jacob and his family were economic immigrants when they moved to Egypt during the long periods of need, and the child Jesus was also forced to flee with his parents from the mass violence controlled by Herod.

In the Christian religion, several elements of modern theories emerged as the root cause of migration. It also formulates several recommendations for dealing with the phenomenon, including the love of strangers and the command of cleansing, to which the Pope repeatedly draws attention in his message on the occasion of the World Migrant and Refugee Day (September 27).¹⁰ In the Old Testament, some vulnerable newcomers are forced to

⁹ Nagy, Boldizsár (2013): A menekültek védelmének lehetséges indokairól. [On possible grounds for the protection of refugees.] Fundamentum, Budapest. 10-11

¹⁰ Pope Francis's message for World Day of Migrants and Refugees.

Source: <https://www.vaticannews.va/en/papa/news/2020-05/ferenc-papa-uezenete-a-migransok-es-menekueltek-vilagnapjara.html>

live in a foreign land, for a longer period, and therefore they need protection and the care of the host community. However, some of them, such as the hostile aliens endanger the people even in their existence. God protects his people from them to preserve religious purity. As described in the holy book, alien influences, pagan cults are existing sources of danger, because of which God warns his people against alien influences, mixing with strangers and marrying strangers, also by saying, according to the first Divine commandment, "*Thou shalt have no other God beside me.*". At the same time, Christian humanity also offers a solution to address migration through the "*Do not exclude – control!*" principle, which is based on an ancient Eastern custom. According to this, the wanderer on the road cannot stay in the open air for the night, and it is obligatory to provide accommodation and food for him. Before this happens, the wanderer is interrogated first. If the Levite is aware of his situation, he does not make claims or demands and accepts the conditions of his admission, he must be provided with it.

The interpretation of migration by the followers of Islam

The word Islam is of Arabic origin and means obedience, devotion, reassurance in the will of God. The Islamic religion also knows the phenomenon of migration, the cause of which are economic, religious problems, or simple relocation. The Qur'an bears witness to several waves of migration and migration among the followers of the Muslim faith. It allows and even recommends oppressed and weak people to migrate from their place of living to another land of the Prophet, and those who have the power to do so must help the migrants and the refugees with that. Although the modern world has set up geographical boundaries and checkpoints to divide nations and stop the flow of migration, in the teaching of Islam, every country belongs to God and every person is a servant of Allah. According to Muhammad's teachings, people must get to know the refugees, they must be listened to, given the opportunity to integrate into their chosen environment,

and if they accept the rules of the receiving people, they must be provided with all possible assistance.¹¹

The relationship between Buddhism and migrants

According to contemporary descriptions, the Buddhist Church was established in the 3rd century BC, and the monks compiled a collection of sacred documents of Buddhism, the Tipitas. According to the doctrines of the faith, they know the concept of the wanderer, the refugee, and according to the teachings, depending on the possibilities, these people should be helped. Because of their vulnerability, more attention needs to be paid to women and children than to others. Assistance cannot be infinite and unconditional, its purpose is to enable the refugee to return to his or her homeland and people. According to the followers of the faith, the reasons for escape may change, different religions do not cause migration themselves, but certain people and groups justify their aggression against the believers of other faiths in the name of their religion, serving the doctrines preached by their God.

The connection of universalism with migrants

Chinese religion does not form a unified system of beliefs and practices but can be understood as a complex whole of interacting religious and philosophical traditions. Within the framework of universalism, but as an independent religion, Taoism was born in the 6th century BC. Its master was Lao-Tze, and the most important summary of the doctrine remained in the work Tao Te Ching (The Book of the Way and of Virtue) for posterity. At the heart of the system of thought is the Tao, the Universal Law, which is the ancient cause of all that exists. One's job is to strive to embrace and understand the Tao in a contemplative way. This contemplative, conflict-

¹¹ Saritoprak, Zeki (2011): The Qur'anic Perspective on Immigrants: Prophet Muhammad's Migration and Its Implications in Our Modern Society." John Carroll University. Source: <http://jsr.shanti.virginia.edu/back-issues/vol-10-no-1-august-2011-people-and-places/the-quranic-perspective-on-immigrants/>
Accessed: 11.01.2021

avoiding spirit also appears in the recommendations related to migrants and refugees, which teaches the followers of the religion to help those in need as much as they can.

The system of relations between the Jewish religion and migration

According to the Bible, the appearance of the ancestors of the Jews in the territory of present-day Israel can be dated to the first half of the 2nd millennium BC. According to the legend, forefather Abraham left the Mesopotamian Ur and then Haran with his family and a group of semi-nomadic tribes and, in search of his homeland, wandered in the land which God (Elohim) showed him. When the Jews left their houses to continue their journey to the Promised Land, the nation, which received the word of the Creator from Moses, already lived under the rule of the Torah. The Torah contained both the history and the laws of the people. The most important group of laws is the Ten Commandments, which God gave to Moses engraved in two stone tablets during the forty-year migration after the Egyptian exodus. Followers of the religion of the “*chosen people*” accept destitute migrants and persecuted refugees by following the provisions of the law. It considers it a duty to assist both groups of vulnerable people, but only after checks designed to strengthen the security of the Jewish people have been conducted. The law also assumes that the refugee will convert to Judaism, which is a guarantee that the assisted newcomer has no bad intentions.

Summary

In the course of researching the effects of human migration, there is a fundamental need to research, examine and analyse the conceptual scope of migration. While doing so, apart from the encyclopaedic, historical, and scientific interpretations, I have examined the phenomenon going back to the period of the emergence of written human history. Both spirituality and the five world religions studied describe their teachings in an identifiable way in the context of human migration. The outcomes of the research draw

our attention to the finding that the “state religion” of a given country determines the legal status of people of other religions and their integration process.¹² Abstraction of the cumulative assessment of different religions concerning human migration in the current context shows that controlled, recorded migration is preferred with applied elements that presuppose the compliance of incoming migrants in their new environment for the safety of the host society, as well as assistance to those in need.

¹² Ádám, Antal: Az egyház és az állam viszonya. Internetes Jogtudományi Enciklopédia. Egyházjog rovat. [The relationship between the church and the state. Internet Law Encyclopedia, Church Law column.]
Source: <http://ijoten.hu/szocikk/az-egyhz-s-az-llam-viszonya>
Accessed: 19.01.2020

PÉTER FÁBIÁN

European Union counter-terrorism strategy and provisions

Cross-border terrorism is classified in transnational criminal activities: it violates international interests, and it can only be counteracted if the international community cooperates.¹

The European Union is at the forefront in cooperation: shortly after 11 September 2001 attacks the EU started the development of the Counter-Terrorism Strategy, while at the same time it also made it clear that each Member State must take part in the implementation of this strategy.² The legal basis for this is provided by Article 83 of the Treaty on the Functioning of the European Union (TFEU) which provides power for the European Parliament and Council for the establishment of minimum rules in the case of extremely serious criminal offences, particularly in the case of terrorism committed in several Member States.³

The counter-terrorism strategy was adopted by the Council in 2005. The four pillars of the EU strategy are the following: prevention, protection, pursuit and response. The prevention strategy means the development of actions and programmes that help prevent people from turning to extremist ideologies. Therefore, the identification and eradication of the underlying causes of radicalisation are of the utmost importance. The two-way protection means the protection of citizens as well as the targeted protection of terrorist targets.

In the latter case, particular attention is paid to the security of external borders, busy public places and IT systems. The strategy of pursuit is the

¹ Bartkó, A terrorizmus, p. 105.

² Bartkó, A terrorizmus, p. 162.

³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ L 326, 26.10.2012, 47–390).

development of responses to terrorist attacks. The EU strives to locate terrorist cells but this alone is not enough. Extremist elements must be prevented from obtaining weapons, explosives and precursors for the manufacture of explosives. Terrorists must be deprived of their financing instruments and means of communication which requires the increased effectiveness of the localisation of and investigation against terrorists.

The response includes preparation for terrorist attacks and minimisation of consequences. The latter includes not only the development of crisis management and crisis response mechanisms, but also the reinforcement of civil protection and the assistance to victims.⁴

In 2017, 68 people died and an estimated 844 people suffered smaller or major injuries due to terrorist attacks in the EU. 1219 people were arrested in the EU for terrorism-related offences, 412 of those in the United Kingdom, 411 in France and 91 in Spain. Half of the arrested people were EU citizens. The 2018 Eurobarometer poll shows that the majority (about 77 percent) of Europeans are dissatisfied with the EU's counter-terrorist effort.⁵

In the following chapters, the European Union's counter-terrorism arrangements between 2015 and the spring of 2019 will be presented.

Strategy to fight the radicalisation of young EU citizens

According to conservative estimations, about 5,000 EU citizens have joined terrorist organisations and military formations in the Middle East or North Africa. Presumably, most of them has decided to join the Islamic State and Jahbat al-Nusra.

In its resolution of November 2015, the European Parliament urged the development of a strategy that—when distributed in education institutions,

⁴ Council of the European Union. The European Union Counter-Terrorism Strategy Source: <https://data.consilium.europa.eu/doc/document/ST-14469-2005-REV-4/en/pdf>

⁵ European Parliament, "Terrorism. How Parliament is addressing the threat," Source: http://www.europarl.europa.eu/infographic/europe-and-terrorism/index_en.html.

prisons and via the Internet—can prevent the radicalisation of young Europeans and their recruit for terrorist organisations. Such strategy can only work if the information exchange between the Member States, and between the Member States and the Europol runs smoothly. Therefore, the Parliament called for the setting up of an EU blacklist containing the data of jihadists and jihadist terrorist suspects. The resolution also stressed the need for a common definition of “foreign fighters” because it is essential for the initiation of criminal proceedings against them when they return to the EU.

The Parliament called on Member States to ensure that foreign fighters were put under judicial control and, if necessary, in administrative detention upon their return to Europe until due judicial prosecution takes place. Such measures can include the confiscation of passports and immediate freezing of financial assets. According to the Parliament’s proposal, different support systems shall be created, such as hotlines where families, friends and neighbours can get help quickly if they fear that someone around them is being radicalised or may be about to join a terrorist organisation. The resolution also covers the role of public education: in the educational institutions and beyond, in disadvantaged neighbourhoods—by organising courses, cultural events, forums—the dialogue needs to be facilitated between the disadvantaged members of society and members of mainstream society, and the latter should be sensitised in order to become more tolerant and inclusive. Researches show that the environment of prison establishments favours the spread of extremist views, and therefore, radicalised inmates should be separated from the others.⁶

⁶ European Parliament, “EP calls for joint EU strategy to fight radicalisation of young EU citizens,” November 25, 2015.

Source: <http://www.europarl.europa.eu/news/en/press-room/20151120IPR03612/ep-calls-for-joint-eu-strategy-to-fight-radicalisation-of-young-eu-citizens>.

Mutual defence clause

After the terrorist activities carried out in November 2015 in Paris, France requested aid from its EU partners for its fight against the Islamic State in the Foreign Affairs Council by invoking the Mutual defence clause of the Treaty on European Union (TEU).

Article 42(7) of the TEU states that “[i]f a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power”.⁷ France requested two things: firstly, the pooling of capabilities and support for the operations in Iraq and Syria. Secondly, the country requested support for operations in other regions to allow France to redeploy troops so that they could only focus on fighting against the Islamic State. The TEU does not define the method of assistance, but it is important that the assistance shall not contradict the commitments under the North Atlantic Treaty Organisation (NATO).

The aid does not necessarily have to be a military aid, thus states pursuing a policy of neutrality—such as Austria, Ireland, Finland and Sweden—can also take part in the cooperation whose details must be recorded by the countries concerned in a bilateral agreement.

For all these reasons, the role of the European Union is formal in this matter, and it is limited to the facilitation and coordination of the process. In this regard, the Parliament adopted a resolution in January 2016 which included a proposal for the strengthening of the common security and defence policy and for the enhancement of EU engagement.⁸

⁷ Article 42(7) of the TEU

⁸ European Parliament, “Mutual defence clause: what the requirement to help out other member states means,” Security, January 20, 2016.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20160119STO10518-/mutual-defence-clause-what-the-requirement-to-help-other-member-states-means>.

Data protection reform

In April 2016, the European Parliament adopted the data protection rules. On the one hand, the aim of the new rules is that Internet users could have a greater control over their own personal data, for example they have the right to be forgotten and the right to be informed when a personal data breach has occurred. On the other hand, the rules set minimum standards on the use of data for law enforcement and judicial purposes. The reform promotes the cross-border cooperation of criminal investigative authorities, prosecutor's offices, courts; in addition, the rules further ensure the personal data protection of victims, witnesses and suspects of crime.

“The main problem concerning terrorist attacks and other transnational crimes is that member states’ law enforcement authorities are reluctant to exchange valuable information”, said Parliament's lead MEP on the directive Marju Lauristin (S&D, ET). “By setting European standards for information exchange between law enforcement authorities, the data protection directive will become a powerful and useful tool which will help authorities transfer personal data easily and efficiently, at the same time respecting the fundamental right to privacy.”⁹

Updated powers for Europol

European Police Office (Europol) headquartered in The Hague has been operating as the European Union's law enforcement agency since 2010. It deals with major crimes such as human smuggling, human trafficking, money laundering and cybercrimes. Europol provides aid for national authorities through intelligence, provision of data, further training and counselling. Having regard to the terrorist threat, the European Parliament adopted a resolution on the expansion of Europol's powers in November 2015.

⁹ European Parliament, “Data protection reform - Parliament approves new rules fit for the digital era,” April 4, 2016.

Source: <http://www.europarl.europa.eu/news/en/press-room/20160407IPR21776/data-protection-reform-parliament-approves-new-rules-fit-for-the-digital-era>.

Shortly after, a preliminary agreement was concluded between the Parliament and Europol, and the proposal adopted under that entered into force on 1 May 2017. On the basis of the new rules, Europol can set up specialised units more easily so that it can respond faster to emerging threats, and can increase staff number to improve effectiveness. In some cases Europol can also exchange information with private companies. For example, Europol can ask Facebook to remove objectionable content, webpages run by Islamic State.¹⁰

New cybersecurity rules

In July 2016, the European Parliament adopted the cybersecurity package on the basis of which firms operating in key sectors and supplying essential services—e.g. for energy, transport, banking and health—will have to improve their security systems to withstand cyber-attacks. The regulation also imposes certain obligations on some digital service providers, thus for example the providers of online marketplaces, search engines and cloud services will also have to take measures to ensure their security, and they will have to report major incidents or if their systems are attacked immediately to national authorities.

The Member States have double responsibility. On the one hand, they are required to adopt a national network and information security (NIS) strategy; on the other hand, they have to set up special security teams to handle reports and attacks by cooperating with the same units operating in other Member States. The European Network and Information Security Agency (ENISA) will play a key role in coordination.

¹⁰ European Parliament, “Fight against terrorism: Parliament approves updated powers for Europol,” October 5, 2016.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20160509STO2639-7/fight-against-terrorism-parliament-approves-updated-powers-for-europol>.

"Cybersecurity incidents very often have a cross-border element and therefore concern more than one EU member state. Fragmentary cybersecurity protection makes us all vulnerable [...]. This directive will establish a common level of network and information security and enhance cooperation among EU member states, which will help prevent cyberattacks on Europe's important interconnected infrastructures in the future", said Parliament's rapporteur Andreas Schwab (EPP, DE).¹¹

Means of criminal law against foreign fighters and lone terrorists

In March 2017, the Council adopted a directive to alleviate the threat posed by foreign fighters and lone terrorists returning to Europe. Under this directive, the following acts will be criminalised:

- travelling within the EU, to the territory of the EU or to third countries for terrorist purposes (for example when the passenger's specific aim is to join a terrorist group or to commit a terrorist attack);
- the organisation and facilitation of such travel (such as route planning, provision of assets or means of transport, ticket purchase);
- participation in or organisation, provision of a training for terrorist purposes (such as providing information on the production of explosives, acquisition and use of firearms, compiling or distributing such training material);
- providing or collecting funds related to terrorist offences or activities.¹²

¹¹ European Parliament, "Cybersecurity: MEPs back rules to help vital services resist online threats," July 6, 2016.

Source: <http://www.europarl.europa.eu/news/en/press-room/20160701IPR34481/cybersecurity-meps-back-rules-to-help-vital-services-resist-online-threats>.

¹² Council of the European Union, "Timeline: foreign terrorist fighters and recent terrorist attacks in Europe," 2019.

Source: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/foreign-fighters/history-foreign-fighters/>.

Up to 15 years of imprisonment may be imposed on perpetrators of such terrorist offences.

The directive further improves the existing rules on the rights of victims of terrorist attacks. The directive includes a list about the special services the victims are entitled to: for example they can have access to medical and psychosocial treatment, practical guidance and assistance relating to legal and compensation claims.¹³

“We need to stop the perpetrators before they commit these acts [...]. We have struck a good balance between improving security and strictly upholding fundamental rights, because there is no point in having security without rights,” evaluated the directive Monika Hohlmeier, German MEP.¹⁴

Increased border controls, stronger external borders

In July 2017, the European Parliament adopted the legislation to strengthen control at the external borders of the EU: everyone entering or leaving the EU – whether EU citizen or third country national – must be systematically checked against databases, thus also against the Schengen Information System. Firstly, the purpose of this is to determine if the documents of the person in question is lost or stolen. On the other hand, the control must also determine if the person concerned poses a security threat.

However, an additional rule empowers the Member States to shift to targeted checks if they consider that systematic checks slow border traffic

¹³ Council of the European Union, “EU strengthens rules to prevent new forms of terrorism,” March 7, 2017.

Source: <https://www.consilium.europa.eu/en/press/press-releases/2017/03/07/rules-to-prevent-new-forms-of-terrorism/>.

¹⁴ European Parliament, “Preventing terrorism: clampdown on foreign fighters and lone wolves,” February 16, 2017.

Source: <http://www.europarl.europa.eu/news/en/press-room/20170210IPR61803/terror-ellenes-intezkedesek-a-kulfoldi-harcosok-es-maganyos-elkovetok-ellen>.

too much. This, however, shall be preceded by a risk assessment, and targeted checks can only be commenced if the assessment has shown that this would not lead to increased threats.

In the case of airports, however, this exemption only applies to a transitional period – within 6 months from the entry into force of this regulation – and the transitional period may be extended (to additional 18 months) in certain exceptional cases, for instance where the airport is technically not prepared for systematic checks.

According to rapporteur Monica Macovei, Romanian MEP, “[s]ecuring our external borders means building up a strong shield against terrorism in Europe and preserving the right to life, [...] and systematic checks against databases are a mandatory step towards this minimum protection [...]”.¹⁵

The Council adopted a regulation provided for the establishment of the European Travel Information and Authorisation System (ETIAS) on 5 September 2018.¹⁶ The system can be used for the monitoring of third-country nationals who can travel without visa to the territory of the European Union. Those concerned will be required to fill in an online application form and pay 7 euros per application as a travel authorisation fee. The system cross-references the information provided in the application forms with other EU and Interpol databases, and if no matches are found in the system, the permit will be granted automatically. Otherwise, the application will be examined by the competent authorities: first, ETIAS Central Unit will check if the data in the application coincide with the data provided in the matching results. If they find a match, further data analysis will be

¹⁵ European Parliament, “Stopping foreign fighters at EU external borders,” February 16, 2017.

Source: <http://www.europarl.europa.eu/news/en/press-room/20170210IPR61804/foko-zott-hatarellenorzesek-a-kulfoldi-harcosok-megallitasara>.

¹⁶ REGULATION (EU) 2018/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of ... establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.

Source: <http://data.consilium.europa.eu/doc/document/PE-21-2018-INIT/en/pdf>

required, and the application will be forwarded to the ETIAS Central Unit of the competent Member State. In either case, a decision shall be made about the application within up to 96 hours from its submission.

The regulation also imposes an obligation on carriers: prior to boarding, they are obliged to check if the third-country national travelling without visa is in possession of a valid travel authorisation.

In the first three years of the operation of ETIAS, this obligation only applies to air and sea carriers, after three years, however, it will also apply to international carriers transporting groups overland by coach. However, it is important that travel authorisation will not automatically mean that the passenger can enter the territory of the EU: border guards will make the final decision on the basis of an individual assessment.

The validity of the travel authorisation is not limitless, under the regulation it shall be valid for three years, but it can only be used until the end of validity of the travel document registered during the application.

The automated authorisation system must be introduced in every EU Member State by 2020.¹⁷ The operation of ETIAS will be assisted by the new Entry/Exit System (EES), for the establishment of which MEPs voted in October 2017, and which is also expected to become operational in 2020. Upon entering and leaving the EU and upon refusal of entry of third-country nationals, EES records data, facial image and fingerprints of third-country nationals as well as the date and place of entry or exit. Data will be recorded for both visa-required travellers and travellers accepted without a visa, and will be kept for three years by default and for five years in case of overstays. The information will be accessible to border authorities, visa-issuing authorities of Member States as well as Europol.

However, the Member States' asylum authorities cannot have access to these data. The system mostly facilitates the work of those working at the

¹⁷ Council of the European Union, "European travel information and authorisation system (ETIAS): Council adopts regulation," September 5, 2018.

Source: <https://www.consilium.europa.eu/en/press/press-releases/2018/09/05/european-travel-information-and-authorisation-system-etias-council-adopts-regulation/>.

external borders since it helps to detect those wishing to enter without permission and overstayers. In addition to the countries of the Schengen area, Romania and Bulgaria will also be included in the system, and states whose Schengen evaluation has already been undertaken or countries that are passive members of the EU Visa Information System will also be able to use the system.¹⁸

In April 2019, the European Parliament decided to unify six different migration, border security and criminal records into one database: the Schengen Information System (SIS), the Visa Information System (VIS), the fingerprint database of Eurodac, the European Criminal Records Information System (ECRIS), European Entry/Exit System (EES) and the European Travel Authorisation System (ETIAS).

The databank called Common Identity Repository (CIR) will include 350 million EU and third-country nationals' personal data (name, place and date of birth, passport No.) and biometric data (facial image, fingerprint). No information is currently available of how and in what way the protection of our personal data will be guaranteed.¹⁹

In May 2019, Passenger Name Record (PNR) commenced its operation: Airlines operating flights from outside the EU to Europe are obliged to transfer certain data of the passengers to Member State authorities. The reporting obligation applies to the passenger's name, travel date, itinerary and payment method. PNR data must only be used by law enforcement agencies in the case of suspicion of terrorist offences, human smuggling

¹⁸ European Parliament, "Strengthening security checks at Europe's borders," October 25, 2017.

Source: <http://www.europarl.europa.eu/news/en/press-room/20171020IPR86543/strengthening-security-checks-at-europe-s-borders>.

¹⁹ European Parliament, "Upgraded EU visa information database to increase security at external borders," March 3, 2019,

Source: <https://www.europarl.europa.eu/news/en/press-room/20190307IPR30744/>.

"350 millió ember biometrikus adatait sűriti gigaadatbázisba az EU, a GDPR szabályai ellenére," April 24, 2019,

Source: <https://qubit.hu/2019/04/24/350-millio-ember-biometrikus-adatait-suriti-giga-adatbázisba-az-eu-a-gdpr-szabályai-ellenere>.

and similar serious criminal offence. It is essential that during the data collection, no sensitive data (revealing racial origin, political opinion or religion, health or sexual orientation) shall be revealed.

Moreover, data must be kept for five years except for certain personal data (such as the passenger's name) which can only be preserved for six months.²⁰

In the end, it needs to be mentioned here that the European Parliament also made a proposal for the strengthening of the external borders of the European Union. According to this proposal, the number of the officials of the European Border and Coast Guard Agency must be increased.

The agreement concluded in 2019 is about the setting-up of a standing corps of 10,000 staff. The unit to be set up by 2027 will support the work of the national border guards, primarily they will take part in border surveillance, authorising entry and exit as well as in return tasks. They will be able to perform their tasks only with the agreement of the host Member State. Member State authorities will remain responsible for taking return decisions.²¹

Stricter gun control rules

During the Paris terror attack of January 2015, the perpetrators used deactivated and converted weapons. The earlier 1991 EU Directive has proved to be quite permissive concerning the deactivation and conversion of firearms, in some Member States for example, such weapons were allowed to be sold and purchased without a license. Therefore, the European Parliament decided to tighten the rules concerning the controls of alarm guns, blank-firing and deactivated weapons in March 2017.

²⁰ European Parliament, "How to stop terrorism: EU measures explained (infographic)," March 22, 2018.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20180316STO9992-2/terrorizmus-elleni-kuzdelem-az-eu-intezkedeseinek-magyarazata-infografika>.

²¹ European Commission, "European Border and Coast Guard: The Commission welcomes agreement on a standing corps of 10,000 border guards by 2027," April 1, 2019. Source: http://europa.eu/rapid/press-release_IP-19-1929_en.htm.

The revised Directive requires that weapons covered by it should be sold and acquired only with a licence, and the licensing process should be as strict as in the case of real weapons. The new regulation obliges Member States to automatically exchange gun control information.²²

The Commission has set up a working group of national experts to develop the uniform technical specifications – applicable to all types of firearms – for the permanent deactivation of firearms. As a result of this, the Commission has adopted its implementing regulation in March 2018. According to this, disarmed weapons must be clearly and irremovably labelled with a unique identification mark, and Member States are obliged to appoint an administrative body that properly testifies that the deactivation has been done in accordance with the technical specification set out in the regulation.²³

Home-made bombs

The Council of the European Union adopted the rules on the use and sale of chemicals that could be used to make homemade explosives. The regulation adds new chemicals to the list of banned substances, and defines strict licensing and screening systems for the sale of dangerous chemicals. The explosives precursors are chemical substances that can be found in several everyday products (such as fertilisers, detergents, machine oils) but by applying the appropriate method, they are also suitable for the production of homemade explosives. The regulation makes a distinction between the two categories of explosives precursors: the so-called restricted explosives precursors cannot be commercialised, private persons cannot

²² European Parliament, “Parliament approves revised EU gun law to close security loopholes,” March 14, 2017

Source: <http://www.europarl.europa.eu/news/en/press-room/20170308IPR65677/parliament-approves-revised-eu-gun-law-to-close-security-loopholes>

²³ Commission Implementing Regulation (EU) 2018/337 of 5 March 2018 amending Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (OJ L 65/1 08.03.2018 EN).

purchase, possess them and cannot bring them into the territory of the European Union. The regulated explosives precursors can still be used by authorised undertakings (by “professional users” such as miners or fireworks manufacturers), but traders must report suspicious transactions to the authorities.

The new rules shall also apply to the online sale of dangerous chemicals. The reason for the restriction is the recognition that homemade explosives were used in 40% of terrorist attacks committed between 2015 and 2017 in the EU.²⁴

The importance of the EU budget for 2019

The EU budget for 2019, in which the Parliament gives priority to migration management and security, was accepted in October 2018; and EUR 74.7 billion has been allocated to related programmes and the support of the agencies.

Headings	2019 EU budget (in € billion)	
	Commitments	Payments
1. Smart and inclusive growth	80.527	67.557
1a. Competitiveness for growth and jobs	23.335	20.522
1b. Economic, social and territorial cohesion	57.192	47.035

²⁴ European Parliament, “Terrorism: stricter EU rules to prevent home-made bombs,” February 28, 2019.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20190222STO2840-8/szigorubb-szabalyokkal-lep-fel-a-hazi-keszitesu-bombak-ellen-a-parlament>.

2. Sustainable growth: natural resources	59.642	57.400
3. Security and citizenship	3.787	3.527
4. Global Europe	11.319	9.358
5. Administration	9.943	9.945
Special instruments	0.577	0.412
TOTAL	165.796	148.199

Table 1: EU budget for 2019, main headings
Source: Council of the EU 2018

Table 1 shows the main headings of the 2019 budget: the commitments has increased by 3.2% (to EUR 165.8 billion) compared with the 2018 budget as amended; the total amount of the payments has increased by 2.4% (to EUR 148.2 billion) compared with the previous year. EUR 1.1 billion has been earmarked for migration management (which means an increase of 55.9% compared with 2018) while EUR 534 million has been allocated to the Internal Security Fund. Additional funds have been voted for several organisations and agencies in charge of responding to the migration crisis and security challenges (such as Europol, Frontex, eu-LISA, European Asylum Support Office).²⁵

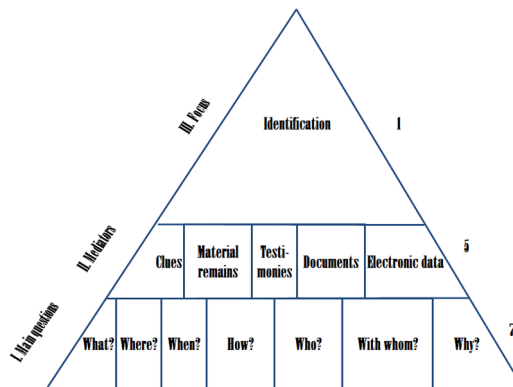
²⁵ “Council of the EU Press release Council endorses agreement on EU budget for 2019,” Source: <https://www.consilium.europa.eu/en/press/press-releases/2018/12/11/council-endorses-agreement-on-eu-budget-for-2019/>
Accessed: 12.10.2018.

The electronic data as the constituent of the 751 pyramid model of criminalistics

The Pyramid Model of Criminalistics

In the first part of our paper, we will outline a model of the central questions, methodology, system of mediators, and the ultimate goal of criminalistics, by now a sophisticated, meticulous and diversified empirical science of facts. It is hoped that the model is presented in a simple form which is clear to everybody and can be used in theory, in everyday practice as well as in education.

For purposes of diagrammatic representation, the shape of a pyramid, composed of 7-5-1 building blocks from bottom up, seems most appropriate. The pyramid model can be called the 7-5-1, or simply 751- model. Consider the diagram below.



Level I: PRINCIPAL QUESTIONS IN CRIMINALISTICS.

At the bottom of the pyramid, as in the physical world, we find the most solid basic building blocks—the seven basic questions, already consolidated in the technical literature: WHAT? WHERE? WHEN? HOW? WHO? WITH WHOM? and WHY? (I/1-2-3-4-5-6-7). (Sieben Golden Fragen, 7 Main Questions, 7 W Questions)

Some theoreticians in forensic science have expanded these questions up to twelve, adding, for example, To whose gravamen? With what means? For what reason or purpose? Causing what damage? etc. It may be noted that question no. 6, With whom?, need not be asked, as if more than one person was involved, then, according to the rules of English grammar, the answer to question no. 5, Who?, will contain the names of accomplices too. Nevertheless, the “7 WH-questions” formula, adopted here, has become a conventionally and internationally accepted concept in forensic science (as well as the practice of criminalistics).¹

It is no coincidence that the first among the seven short questions is “WHAT?”, as the answer to the essential question “What happened?” not only gives the impetus but also decides whether the authorities need to start a criminal investigation at all or instead proceed to take public administration, labour, etc. measures, to mention only a few of countless alternative possibilities and areas. If the answer to that question is “a criminal act”, that will immediately decide about the personnel to be deployed, the expertise required, methods and devices to be employed, and some further basic questions will immediately become sharper. The word “immediately” receives special emphasis here, as the question of time becomes important

¹MALEVSKY, H.-JOUDEKAITÉ-GRANSKIENÉ, G. (eds.): Criminalistics and Forensic Examination: sciences, studies, practice. Mykolas Romeris University, Vilnius, 2013.; METENKO, J.: Kriminológická taktika. Akadémia Policajného Zboru v Bratislave, Bratislava, 2012; HAUTZINGER, Z.: Gondolatok a kriminalisztika elméleti rendszeréről. [Thoughts about Theoretical System of Criminalistics.] Jura 2019/1. 86.

instantly not only because of the need for a speedy investigation and the rapid uncovering of the facts but also because the “WHEN?” question comes to the foreground. The triplet of questions, WHERE-WHEN-HOW, begin to compete for priority as soon as the “WHAT?” question is answered. They arise almost simultaneously and urgently, demanding accurate answers in the shortest possible time, because without them the rest of the questions (WHO, WITH WHOM?) cannot be explored.

Now it seems appropriate to skip the boxes on the second level of the pyramid and move directly to the single block at the top, on level III.

Level III—THE FOCUS OF CRIMINALISTICS

This represents the point of focus, the goal of the entire struggle to learn about the past, the target of all the basic questions every time and in every detail, namely IDENTIFICATION.

This goal, printed in huge letters in red above the chalk board on a wall in the “forensic laboratory” in Pécs (Hungary), used to remind everybody of what constantly guides (and needs to guide) criminalists in each move in their search for noise-free answers to the seven questions.

We identify the type of act—whether it was a criminal act, or perhaps an accident, a natural disaster or self-violence.

If (and only if) we are dealing with a criminal act, we may move on from the primary question to the rest of the questions, that is, we need to identify the scene or scenes, we need to identify the time and manner of the commission of the act, its motive (and sometimes also the aggrieved party), and finally (all of) the perpetrator(s).

How do we get from the basic questions at the bottom to the top of the pyramid? In other words, what are the methods and instruments of identification? The answers can be worked out from the three blocks on Level II, the intermediate level of the pyramid.

Level II—CRIMINALISTICAL INSTRUMENTS (WAYS and PATHS)

The terms “ways” and “paths” suggest that it is through or along them that we work our way from clarifying and ascertaining data relevant to the main questions at the bottom through identification, that is, giving straight answers to them at the top. We can call them the media or “mediators”, which deliver all the necessary information provided that you know how to “talk to them” or understand them. The set of all possible paths, instruments and media can be divided into three main groups—CLUES, MATERIAL REMAINS, TESTIMONIES, DOCUMENTS, ELECTRONIC DATA (II/1-2-3-4-5).

An overview of our demonstration system, the kinds of evidence specified in criminal procedure law (demonstration procedures), makes it apparent that the means of demonstration worked out in theory or employed in practice (instruments of demonstration) fall into one of the three categories. Witness testimonies, accused testimonies, hearings at the scene, facial recognition tests, testimonies at confrontations² and polygraph tests³ all fall within the category of testimonies, which may also include experts’ opinions as well as their (parallel) hearings. The list is not exhaustive. We must add that expert opinions overlap with traces and material remains, as the former chiefly testify about results from studying and identifying the latter, which they may find identical or otherwise.

Physical evidence emerging from surveys is, in reality, traces and material remains or their causers or carriers. (Consider, for example, the means of perpetration, the thing(s) affected by the criminal act or things that come to exist as a consequence of a criminal act.)

² ANTAL, D. (2011): Confrontation as a Special Criminalistic Method. In: Jozef Metenko, Sona Masnicová and Magdaléna Krajníková (eds.), *Pokroky v Kriminalistike 2011 EU SEC II/B*. Akadémia Policajného zboru v Bratislave, Slovakia. 68-83

³ BUDAHÁZI, Á.: Poligráf a büntetőeljárásban [The polygraph in the criminal procedure.] *Belügyi Szemle* 2011/12. 104-117

Documentary evidence, too, is a carrier of traces or material remains, and frequently appears in the form of expert opinions. In addition, it also “testifies”, as it presents the statements it contains.⁴

Evidence obtained in a secret manner can also be classified into the three categories,⁵ as

- a) it contains statements, assertions, communications, such as, for example, intercepted conversations, correspondence, computer data, which, although appear in documentary format in the circle of evidence in accordance with procedural rules, may be considered testimonies or traces from a forensic perspective;
- b) it delivers physical evidence, traces or material remains (any drug is material remains in a forensic sense), for example, in the course of secret searches or pseudo-purchases.

The order of boxes on level II is not arbitrary. Traces (clues) and material remains are intentionally mentioned first and second, respectively, preceding testimonies. This is for the theoretical and practical reason that traces and material remains are “incorruptible witnesses”, that is, according to modern theories of evidence and criminalistics, their validity surpasses that of personal testimonies (compare the level of validity of dactyloscopy or individual identification by DNA samples), which are often distorted, especially in the circle of witnesses and suspects. The idea accords well with tendencies in criminalistics in the 21st century, one of which happens to assert precisely the primacy of forensic techniques over forensic tactics. The desire is to raise forensic techniques to the level of scientific

⁴ TÓTH, Cs.-MÉSZÁROS, B.-FENYVESI, Cs. :, Examinarea documentelor suspecte [Questioned Document Examination] Revista De Criminologie, De Criminalistica Si De Penologie, Societatea Romana De Criminologie Si Se Criminalistica. Cluj Napoca, (Roumania) 3/2010. 152-160

⁵ MÉSZÁROS, B (2019): Fedett nyomozó alkalmazása a bűnüldözésben. [Covered Agent in the Criminal Investigation.] Dialóg Campus Kiadó, Budapest.

knowledge, characterized by outstanding validity, as opposed to the, albeit non-malevolent, inaccuracy and unpredictability of testimonies.

The electronic data

Based on the latest Hungarian Criminal Procedure Law Act (year 2017. number XC.) paragraph 165, which declares: evidence are: a) the witness statement, b.) the statement of the suspect/accused, c.) expert opinion, d.) opinion of the parole officer, e.) factual/material evidence including documents and records, and f.) electronic/digital data.”)

Interpreting electronic data

The real question is whether the digital data formerly detailed in our essays and theses⁶ is different or similar to the electronic data mentioned in the legal texts. We might as well ask the following chain of questions: In the case that one is part of the other, what is their relation to each other and what is the content and core feature of the electronic data?

This bundle of questions is even more relevant since in the last few years the attribute “digital” has arisen in connection with electronic information in essays and in professional circles. According to the Criminal Procedure Law (Act XC. of 2017 which is also the IV. Criminal Procedure Law) subsection (1) of section 205,

“Electronic data is every aspect of facts, information or concepts that is suitable to be processed by an information system, including the program which ensures the execution of a function by the information system.” The lawmaker’s choice of words seems appropriate when using the term electronic and not digital data.

⁶ Further on this topic: FENYVESI, Cs. (2016): The importance of line-up and digital data in the case of pornographic crime. *Belügyi Szemle* 2016/9. 119-129; The importance of digital data in criminalistics. *JURA* 2016/2. 50-59; ORBÁN, J (2018): Bayes-webs in criminal cases, PhD thesis PTE ÁJK Pécs.; DOMOKOS, A. – ORBÁN, J.: The past and future of identification. *Miskolci Jogi Szemle* 2017/2. 5-18

In our opinion the information system in relation with the criminal procedure law has a narrowing meaning.

According to our choice of words the electronic data is a component - containing information - produced, processed, forwarded or recovered in an electronic system. Including the case when one of the elements of the aforementioned chain is realised due to light, sound, or radiofrequency. The electronic data incorporates the information both in analog and digital form. A purely analog signal can be the sound of an old vinyl record or a purely digital information can be the green or red signal of the traffic light. By digital data we mean binary numbers in other words the binary system consisting of ones and zeros which has seemed sufficient so far. The traffic light signals at least three but more likely four state. Stating this seemed important because the electronic miniaturization will soon reach physical boundaries and then one of the ways of increasing information density is the sign of many phases which might mean the return to the analog electronic information-carrier.

Based on subsection (1) of Paragraph 204 of the Criminal Procedure Law Act it can be summarized that the electronic evidence is factual evidence based on electronic data (also information), which possesses relevant data in relation to the crime. And so for instance it carries the clues of the committing of the crime or in relation to that of the perpetrator which exist due to the committal of the crime or was used as instrument or the crime was committed to gain it.

Part of the electronic data is volatile⁷ thanks to its physical characteristic and after removing the pressure from the system in question the data irreversibly perishes⁸. Other electronic data can be destroyed by mechanic

⁷ The evidence detected in the electromagnetic fields can be seen as volatile unless an act prescribes its enforceable recording.

⁸ Such is the group of data stored in the computer's operative memory. Furthermore the data can be saved in the case of a computer in stand-by mode and thus the information before hibernation can be saved.

force (too), but it must be added that the data can only be electronically altered.⁹

In our opinion the electronic evidence includes both the electronic analog and the electronic digital evidence. The investigative and verifying work in connection with the electronic evidence might need the cooperation of multiple authorities¹⁰. The examination in connection with the transmitted radiofrequency signals usually managed by authorities¹¹ monitoring newscast activity. The transmitted information is a digital bundle of signals¹² embedded in analog radiofrequency waves. The message recovered from the bundles of information is the actual content.

Communication in the case of IT devices is based on the concept by Shannon¹³. Based on the content it means:

- 1) The source produces the message (or a chain of messages) and wants to forward it to the receiver. The message can be a sound, text, picture, etc.
- 2) On the side of the source the message must be converted into signals in a way that it could be transmitted by the communication channel (coding).
- 3) In most cases the message/statement becomes damaged due to it being added to the information. (Eg.: the scratching noise on the

⁹When destroying confidential data found on electronic data storage devices, the one responsible for handling data orders the physical demolition of the data storage device. Especially since some data deleting methods only change the way of visibility of the information, but depending on the method the original condition can be restored. In conclusion the physically intact but seemingly deleted data storage device can always hide the necessary electronic evidence.

¹⁰ In our essay we do not deal with the national security and military adaptation.

¹¹ In Hungary the National Media and Newscasting authority.

¹² Since digital broadcasting gained popularity analogue broadcasting is less common nowadays. Permanent exception from this rule is the analogue sound based communication between the pilot of an aircraft and a moderator in an air traffic control center.

¹³ SHANNON, C. E-WEAVER, W. (1998): *The Mathematical Theory of Communication*. University of Illinois Press. Urbana and Chicago. 34

radio, hardly understandable phone call, flickering screen). The message reaches the receiver via a communication channel.

- 4) On the side of the receiver the signals must be restored (decoding).
- 5) And thus the restored information arrives at its destination. The statement/announcement is the information transmitted by the channel, or in other words the content.

In a communication channel there are three ways to commit a crime:

- a) transmitting radio frequency signals without permission
- b) disturb one's permitted and legal transmission
- c) illegal content during a permitted transmission. In this latter category belong the hate speech¹⁴ transmitted via a radio or TV broadcast, furthermore any record containing child pornography that is shared or acquired on internet based sites, furthermore that is stored in any kind of electronic format or that is forwarded.

Broadcasting radio frequency signals without permission can cause the economic¹⁵ or physical discontent¹⁶ of others as well.

¹⁴ ORTIGOSA, A-INGLEZAKIS, I. (2017): D4.1b: FAQ on Responding to online hate speech Monitoring and Detecting Online Hate Speech.

Source: http://mandola-project.eu/m/filer_public/3e/32/3e32fcaa-e420-4868-b3e2-070e2a7983cb/d41b_faq_final.pdf.

Accessed: 26.08.2018.

¹⁵ Here can be mentioned the devices that make it impossible to use cell phone or GPS to determine location.

¹⁶ Due to its cost and size the experimental usage of radiofrequency weapons causing pain and personal harm is only common in the military. But since technology develops at an alarmingly rapid rate it might be possible that wealthy criminals gain access to these devices. Crimes committed using these devices would be impossible to prove with traditional methods. At the same time certain devices can be manufactured at home. Such a thing can cause the death of a person who is relying on a pacemaker and there would be no outer traces that would determine the cause of death.

Due to the above mentioned points it is palpable that the electronic evidence consists of a much larger area than just the digital evidence or the data that can be acquired in connection with computer related crime.

The classification and sources of electronic data

The classification holds significance not only for the theoretic criminalist. Classification might help manage the data correctly, and extract and interpret the immanent information.

As Flórián Tremmel has said: “it can be traced back to important theoretical and pragmatic aspects, and thus they are worth our attention.”¹⁷

Keeping Tremmel’s subdivision¹⁸ but taking into consideration the specialities of electronic evidence further aspects of subdivision can be introduced. In our opinion this subdivision might be significant in a pragmatic viewpoint.¹⁹

Various aspects (1-9.) can determine the classification.

- I. The “classic” approach states that the basis shall be the analog and digital classification.
- II. The way of feasibility determines three possible groups:
 - a) Instantly feasible (audio, video, documentum)
 - b) Can be used after processing
 - c) Evidence with mixed ingredients

¹⁷ Tremmel, F. (2006): Bizonyítékok a büntetőeljárásban [Evidence in the criminal procedure.]. Dialóg Campus Kiadó. Budapest-Pécs. 82

¹⁸ Tremmel referencing the technical literature differentiates organic and derivative evidence; personal and factual evidence; inculpatory and saving evidence; and finally direct and indirect evidence. Tremmel, *ibid* 82.

¹⁹This is especially true in the case of the operative measures or the creation of a program that helps computer investigation.

The first or group „A” requires no further explanation. The evidence requiring processing cannot be interpreted in their acquired state. They do not have probative value on their own. It is especially easy to realise in the case of coded information that it needs decryption. To be translated or interpreted requires the special knowledge and tools of an expert. It is called mixed, because not only the audio and visual data must be transmitted but the so called metadata that is connected to the call as well.

- III. The method of perpetration (modus operandi) based classification includes the evidences of crimes that were supported by using radiofrequency weapons, computers or communication devices.²⁰
- IV. Based on where the crime was committed and whether there is evidence to be found there are physical and cyber crimes. Cloud based services gained popularity in cyberspace. Its undeniable benefit is a fatal vulnerability at the same time. The rightful user can access the content but the perpetrator can commit the crime far from the victim.

Traces of crimes committed in real or physical space can be recorded via electronic signals that is why the electronic trace recording belongs here. (for instance: digital photo, digital site plan.)²¹

²⁰ It must be added that the military usage incorporates the guided energy microwave weapons, which forces the victim to do or not to do something by heating up the human tissue, paralyzing the sensory organs and the nervous system. The weapon requires no ammunition or bullet. Due to the rapid development of technology the microwave weapons will be available in the near future for the masses as well.

²¹ The FORLAB (Forensic Laboratory for in-situ evidence Analysis in a post blast scenario) task force of the European Commission summarises in its report the problems of trace recording in a blasting scene and lists possible solutions as well. The laser 3D recording enables the reconstruction of traces and material remains. The non-GPS based system works at a 10 cm accuracy both outside and inside. Amongst the used technologies LIF (Laser Induced Fluorescence) is mentioned which is laser sweeping recording sensing the polymer and plastic debris. LIBS (Laser Induced Breakdown Spectroscopy which with the help of a laser beam heats up materials of picogram amount to plasma state and then estimates the ingredients) and the Raman analysing system used in chemical industry which enables the remnants of the explosive material to be separated from the non-significant debris. Amongst the recommended tools there is NLJD (Non-Linear Junction Detector)

- V. Based on source the evidence can be wired or wireless and also a source classification can be created and reached via an electronic information holding device.
- VI. Based on durability volatile and durable data are differentiated.

As an explanation it must be added that evidence (its formation, acquisition, preservation, introduction) is handled differently based on what type it is. It is especially true in the case of the lifecycle of the electronic evidence. In certain cases the only option is to acquire it at the time of formation. Storing itself is the cause in some cases of the decaying of the quality of the evidence. An example for this is the radiocommunication between perpetrators, or the group of data that is stored in the cloud or in the memory of the computer. Many theses²² and monographies²³ focus on the problem of the forensic preservation of the latter one. The data on cell phone usage is kept on the devices of the service provider and so for this amount of time they are obtainable.

device, which shows the electronic devices on the scene, regardless whether they are on or off.

It is important that due to the evidence being forwarded at once to the headquarters that coordinates the investigation, the scene can be reconstructed from a distant location, the following of a lead without any technical delay, the identification and catching up to the perpetrator. A further advantage is that the scene before the crime can be reconstructed as well.

Source: https://cordis.europa.eu/result/rcn/191750_fr.html.

Accessed: 05.08.2018.

²² PURNAYE, P. - JYOTINAGAR, V. : Cloud forensics: Volatile data preservation. International Journal of Computer Science Engineering Vol. 4 No.02. March 2015

²³ TERMANINI, R. (2016): The Cognitive Early Warning Predicting System Using the Smart Vaccine. The New Digital Immunity Paradigm for Smart Cities and Critical Infrastructure. CRC Press Taylor & Francis Group, Boca Raton.

- VII. Based on types of communication crimes committed or supported by wired devices, cell phone or radiotransmitter²⁴ can be differentiated.
- VIII. Sources can be classified *based on content*.
- a) data
 - b) metadata
 - c) direct
 - d) to be interpreted content.

The class of data includes the direct data.

Metadata is embedded deeper into the electronic data and thus usually stays hidden from the user. Such as: the circumstances of the creation of the data, information referring to the creator, and any further fact that the creator of the structure deemed remarkable. Here can be mentioned the digital photos containing the date of production, manufacturer and type of the device, resolution, color depth, exposure time, and in the case of more recent devices - whether GPS is allowed to be used on the device - the precise coordinates of the place of production. In the case of forwarding text messages - besides its content - the time of forwarding and reading can both be extracted from the system. When talking on a mobile phone the number of the parties²⁵ and the length of the phone call can be obtained from the devices. Information such as the speaker's geographic coordinates, the vector of their movement, and further confidential, hidden data can be obtained only from the service providers. Based on vectoral data the means of transportation can be determined.

²⁴ Out of the three instrument groups the latter one needs to be further clarified. Using legally owned transceiver during the perpetration of a crime. It is illegal to broadcast if the one with the permit oversteps the boundaries set down in the permit or in other restrictive documents or broadcasts content that violates law.

²⁵ In the case of a conference call more than two parties can take part in the discussion.

The subdivision of direct content means the evidence that can be acquired via perceiving textual, audio, visual, video content.

The subdivision of to be interpreted content is de facto coded, or classified information, furthermore it includes the facts that hold a special meaning in a certain age and in society.²⁶

IX. Based on appearance electronic data (evidence) can be categorised as follows:

- 1) electronic audio evidence
 - a) analog audio record
 - b) digitalised or digitally recorded audio
- 2) visual evidence
 - a) still information (face, iris, retina, etc.)
 - b) fixed directed source with motion picture²⁷
 - c) infra camera (in case of a poorly lit surroundings)
 - d) visual evidence obtained via manual tracking system
 - e) motion picture visual tracking system controlled by artificial intelligence
- 3) imaging systems through which evidence can be obtained:
 - a) medical imaging systems (DRTG, CT, MRI, FMRI, etc.)²⁸
 - b) criminal personal body screening systems (devices with THz frequency)
 - c) infracamera to make body heat map²⁹

²⁶ Hate speech and slang changing with every generation might be good examples for the latter one.

²⁷ The subject of collecting evidence is the monitored area.

²⁸ The evidential significance of dental X-rays has been common knowledge for a long time. Modern devices not only make identification possible but due to the time stamp the alibi of the person in question can be justified or refuted.

²⁹ By studying body heat maps one can deduce the bigger objects hidden underneath the clothing or recognise the state of excitement due to the increased body temperature.

- d) X-ray baggage screening devices with reduced energy³⁰
- e) underground imaging systems (eg.: ground radar)
- f) surface imaging systems (vehicle screening system)
- g) atmospheric imaging systems (the location and tracking of not monitored devices moving in the atmosphere for criminal purpose)³¹
- 4) electronically sensed scent information³²
- 5) radiofrequency evidence
 - a) passive radiofrequency tracking information
 - b) radiofrequency semi-active³³ evidence (RFID³⁴)
 - c) active radiofrequency evidence
- 6) evidence existing in a limited information technology environment³⁵

³⁰High energy industrial X-ray machines are used during the study of matter for measuring. Searching baggage is conducted by lower energy X-ray radiation. The imaging system artificially colours the objects inside the baggage based on spectral attributes.

³¹ The non-monitored air space is a concept of air traffic control. In this part of air space the organisation responsible for air traffic control only gives information. The exploration of air space is either not guaranteed or with certain limits.

³² There are such entry systems already in use where the examined person goes through a small so called floodgate channel and the exhaled breath is examined by sensory detectors and presume the lack of drugs and explosives. See: HORVÁTH, O.: A kriminalisztikai szagazonosítás jelene és jövője [Criminalistical Scent Identification's Present and Future.]. *Belügyi Szemle* 2013/2. 88-101

³³ A semi-active device can only be used in a radiofrequency environment, it is not suitable to identify the evidence in a still state. In a suitable radiofrequency environment it absorbs energy. From the energy it radiates its characteristic data with radiofrequency transmission. In certain cases for example in controlled species the absence of mandatory implants is the basis of suspicion. (Fraud, smuggling, theft.)

³⁴ RFID (Radio Frequency IDentification) is a device implanted into modules, goods, or living creatures which contains the information specific to that object or creature or the information of the owner. Such devices are product protection devices or the chips used for identification of animals.

³⁵ In the case of limited IT environment it is simpler to acquire evidence. In the case of their destruction there is a specific group of individuals who are the perpetrators. At the same time the crime-like nature of external "black hat" intrusions - except the so called "white hat" intrusions serving as legal methods to inspect the safety of the system - is the basis of malicious intent.

- a) in IT data storage devices and components (CD, DVD, pendrive, hard drive etc.)
- b) in intelligent mobile communicational and informatics related devices (smartphone, tablet, e-book, notebook, laptop etc.)
- c) in off grid computer systems³⁶
- d) in smaller networks including WIFI
- e) in IT systems protected by medium level firewalls
- f) in IT systems protected by high level firewalls and VPN³⁷
- 7) evidence existing in cyber space
 - a) data on the open internet (Facebook, LinkedIn, Twitter, Videia, etc.)
 - b) data forwarded and stored on illegal networks³⁸
- 8) evidence reconstructed by IT tools
- 9) evidence of the systems following and reconstructing the activity
- 10) evidence revealed via electronic investigation that cannot be listed elsewhere

Summary

In our opinion by the effective exploration of the electronic data (including digital data) that belongs to the group of so called “second generation” evidence (relevant to criminal law) by secret or well-known criminalistical methods and also the safekeeping and using can significantly help the crime-fighters (the digit-commandos) with answering in the most precise

³⁶ The main characteristic of off grid is that neither the wired nor the wireless devices are in connection with any other device outside of the network. The criminal data found in the system is in direct or indirect connection with the users of the network. Illegal IT intrusion requires physical presence.

³⁷ VPN: Virtual Private Network

³⁸ Individuals and organisations operating such networks serve criminal organisations dealing with drugs and arms trafficking. Furthermore establishers and maintainers of sites containing childpornography, sadistic content for entertainment purposes, or showing ordered homicidal actions.

way the seven basic questions at the base of the criminal pyramid, with the identification process of a person, object or action. It also enables the crime-fighters to look into the past with sharp eyes, to see a clear image in the mirror, and at last to be able to reveal the facts as they are.

The characteristics of people smuggling in Hungary

Introduction

In our globalising world, persistent mass migration is a growing transnational security risk and threat. Due to the geographical location and infrastructural characteristics of Hungary, the land routes of irregular migration to the European Union continue to cross its territory.

The scale of irregular migration in Hungary peaked in 2015, when the number of irregular migrants exceeded 400,000. As a result of the integrated measures introduced to protect the ordered conditions at the state border (increased law enforcement and military presence in the border area, physical implementation of the temporary security border barrier for border surveillance purposes and the continuous development of the legal environment), the level of irregular migration decreased considerably (to 36.5 thousand) in 2016. The downward trend continued; in 2017, 20,000 offences related to illegal migration were recorded, in 2018 less than 18,000, but in 2019 the number of these offences exceeded 25,000 again.¹

¹ To quantify illegal migration, the following sets of offences recorded by the police were used; people smuggling, facilitation of unauthorised stay, infringement of an exclusion order, forgery of public documents related to illegal migration, offences related to the border barrier, as well as illegal border crossing and the attempt to do so and the offences related to the policing of foreigners. Source: Országos Rendőr-főkapitányság Határrendészeti helyzetkép 2015-2019 [The situational picture of border policing 2015 to 2019] Source: <http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet> Accessed: 20.10.2020.

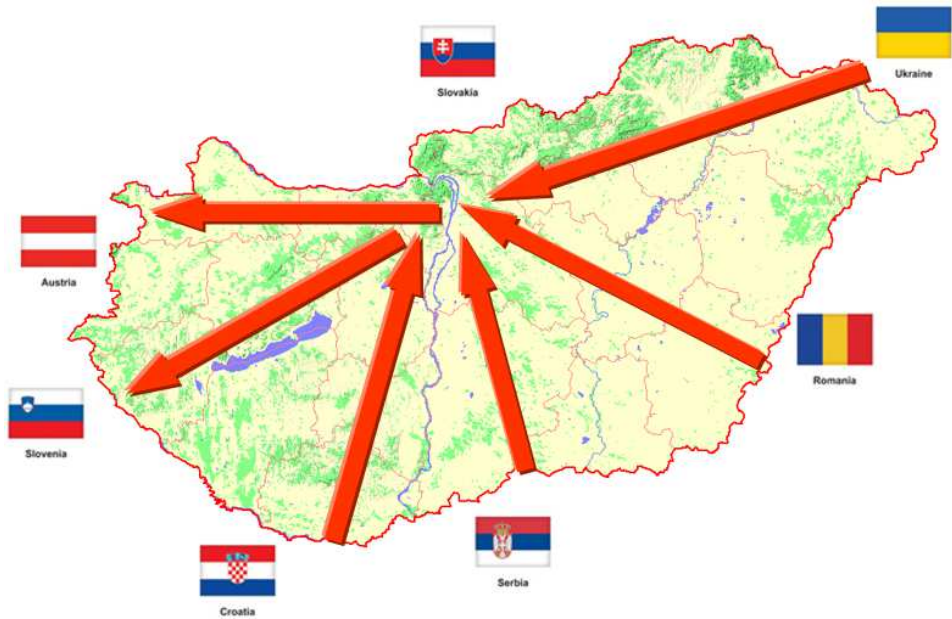


Figure 1: The main directions of illegal migration in Hungary (2015 to 2019)

Offences related to illegal migration

Among the classic examples of prohibitions under criminal law related to the unlawful forms of migration (including unauthorised entry and stay), we can think of illegal border crossing, the illegal stay of foreigners in the country or the facilitation or support of such reprehensible conduct, such as people smuggling, facilitation of illegal stay or – perhaps – the illegal employment of foreigners.

The element that forms a direct link between these behaviours and illegal migration is that they all aim to punish and thus discourage migration caused by violations of the rules related to human migration, long-term stay and settlement.

Illegal migration can be supported not only by facilitating the illegal crossing of the state border, but also by facilitating illegal residence, employment of the illegal resident and ultimately by establishing family ties for the purpose of stay. Criminal law measures have been taken to discourage such behaviour, too, resulting in the codification of offences such as facilitating unauthorised residence² or the unlawful employment of third-country nationals³ in the Hungarian Criminal Code.

The facilitation of unlawful residence is essentially an updated version of the offence of facilitation of unlawful residence inside the country, which is a recurring fact in the old criminal codes. According to the fact formulated in the Criminal Code, this offence can be committed by a national of a Member State of the European Union or of another State party to the Agreement on the European Economic Area or by a national having the same legal state as the nationals of such a state, who provides assistance to an unlawful stay in the territory of his or her state for the purpose of obtaining financial gain. Any person who, for financial gain, facilitates a foreign national's unlawful residence in Hungary shall also be punishable under this offence. This subsidiary offence is performed if a more serious offence (typically people smuggling or trafficking in human beings) has not been committed, if the offence has been committed for financial gain and, last but not least, the assisted person is not a national of a Member State of the European Union, of another State party to the Agreement on the European Economic Area (e.g. Norway, Iceland, Liechtenstein) or of a State having the same legal status (e.g. Switzerland).

In order to reduce illegal residence, the Hungarian Criminal Code also criminalises the abuse of family ties. This can be committed by a person of adult age who establishes a family relationship for financial gain, solely for the purpose of obtaining a document certifying the right of residence, or a person who consents to a statement of paternity of full effect. This is also

² Hungarian Criminal Code (hereinafter CC) § 354

³ CC § 356

a subsidiary offence, but it should be noted, as a distinction from the offence referred to above, that, while the offence *facilitation of unauthorised residence* is intended to punish only the facilitation of the unauthorised stay of persons who do not have the right of free movement, the abuse of family ties is an act of pretence intended to legalise, by intellectual means, the otherwise unlawful stay of a third-country national.

The illegal employment of a third-country national was a criminal offence already under the previous Criminal Code, albeit formulated by one of its last amendments. At the heart of this offence is the employment of a third-country national who does not have the authorisation to undertake gainful employment and who is employed without such an authorisation, regardless of whether they are residing in the country legally or illegally. The main reason for the creation of this offence is Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The Directive requires the Member States to provide for criminal sanctions in their national legislation in serious cases, as specifically defined in the Directive.⁴ Thus, the criminalisation of this offence, by implementing the provisions of the Directive in Hungary, proscribes illegal employment linked to migration with regard to the EU rules, too.

According to the wording of the special statutory provision, a person who employs a third-country national on a regular basis or frequently without authorisation or a substantial number of third-country nationals at the same time shall be guilty of a misdemeanour. Those who a) employ a third-country national without authorisation to undertake gainful employment under particularly exploitative working conditions or b) employ a third-country national without authorisation to undertake gainful employment who is the victim of trafficking in human beings shall be guilty of a felony. For the purposes of the relevant section, ‘substantial number’ shall mean

⁴ Polt Péter (chief ed.) (2013): Új Btk kommentár. 6. kötet. [New Criminal Code Commentary, Vol. 6] Budapest. Nemzeti Közszerkesztési és Tankönyv Kiadó. 177 (The cited section was written by Balázs Gellér.)

at least five persons, whereas ‘particularly exploitative working conditions’ shall mean the concepts defined by the Act on the Admission and Residence of Third-Country Nationals. These include, apart from conditions which are discriminatory on grounds of sex or other grounds, conditions which are manifestly disproportionate to the terms and conditions of employment of legally employed workers, where this discrepancy affects in particular the health and safety of workers and which violates human dignity.⁵

In the context of criminal legislation in relation to the illegal employment of third-country nationals, in order to enforce secondary EU legislation, the European Commission carried out a comprehensive investigation into the application of the sanctions directive, which was published in a communication.⁶ According to the Communication, “*in all Member States bound by the Directive now prohibit the employment of irregular migrants and only a few have allowed an exception for those whose removal has been postponed.*” Several Member States have decided to go beyond the scope of the Directive, applying it also to third-country nationals who are staying legally but whose residence permit does not allow them to perform an economic activity. Certain Member States (e.g. Romania), however, do not specifically penalise illegal employment in cases of particularly exploitative working conditions or in situations where the employer was aware that the worker was a victim of human trafficking (Czech Republic, Estonia and Latvia). This is primarily due to the idea that the relevant illegal conduct is covered by national law on trafficking in human beings. This concept is actually based on the above-mentioned Anti-Trafficking Directive, which itself refers to the Sanctions Directive and sets out the criteria for the

⁵ Act on the Admission and Residence of Third-Country Nationals. §2, s)

⁶ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals

unlawful employment of a victim of trafficking in human beings.⁷ The sanctions provided for in national criminal laws therefore vary considerably between Member States, raising doubts as to whether they are always effective, proportionate and sufficiently deterrent.

Presently, in the Hungarian Criminal Code⁸ acts related to the criminalisation of illegal migration include the Facilitation of Unauthorized Residence (CC §354), the Abuse of Family Ties (CC §355) and the Unlawful Employment of Third-Country Nationals, but, above all, People Smuggling (CC §353).

People smuggling as a classic delict supporting illegal migration

People smuggling as a phenomenon was initially not criminalised in law. For example, in the Act on the border police passed at the beginning of the 20th century, it is formulated that the organisation was established to carry out tasks such as preventing the smuggling of women breaching passport rules, illegal return or prosecuting offences committed by violating the rules on the registration and residence of foreigners at first instance.⁹ However, the legal provisions of the time – also because crossing the state border was relatively easy – may not have defined the smuggling of women as conduct related to people smuggling in the modern sense, but its criminal

⁷ According to paragraph 26 of the preamble to Directive 2011/36/EU of the European Parliament and of the Council, Directive 2009/52/EC provides for sanctions against employers of illegally staying third-country nationals who have not been charged or convicted of trafficking in human beings but who engage the services or labour of a person knowing that the person concerned is a victim of trafficking in human beings. Also, Member States should consider the possibility of applying sanctions against persons who use any services of a victim of trafficking in human beings while they are aware that the person is a victim of trafficking in human beings. This additional criminalisation could include acts committed by employers of legally residing third-country nationals and EU citizens, as well as persons who use the sexual services of a victim of trafficking, irrespective of their nationality.

⁸ Act C of 2012 on the Criminal Code

⁹ § 2 j) and n) sections of Act VIII of 1903 on the Border Police

nature at the time was more similar to the criminal conduct related to trafficking in human beings mentioned above.

As a specific statutory element in criminal law, a norm strictly prohibiting the facilitation of unlawful crossing of the state border, people smuggling – similarly to illegal border crossing – appeared in the early 1960s, in the Criminal Law of the Hungarian People's Republic, which replaced the Csemegi Code (the first Hungarian Criminal Code, introduced in 1878). According to this law, this offence was committed by anyone who provided, offered or conspired to provide commercial assistance in illegal border crossing.¹⁰ An interesting feature of this offence was that, despite its commercial nature, it was only applicable if a more serious offence had not been committed.¹¹ The offence of people smuggling appeared in the Criminal Code of 1978 in a broader formulation, but with the same punishment. It stated that *"anyone who assists, offers to assist or undertakes to assist an illegal border crossing for the purpose of asset acquisition or as a member or on behalf of an organisation facilitating such shall commit a criminal offence."*¹² The offence was qualified as a more serious case if it was carried out on a commercial basis. Also, following the relevant provision of the previous Criminal Code, the perpetrator of people smuggling was also subject to confiscation of property as a secondary punishment to sanction the assets derived from criminal conduct, while the perpetrator was also subject to a ban, in order that he would not be able to use his local knowledge necessary for the commission of the offence. In this case, the offence was worded in two ways: on the one hand, assisting (offering or undertaking to assist) anyone for gain was penalised, and on the other, the criminal sanctions were provided against members and agents of people smuggler organisations.

The wording of the crime did not change for more than a decade. Owing to the relaxation of the penalties for border-related offences, the text in

¹⁰ § 204, Act V. of 1961

¹¹ Horváth, Tibor (ed.) (1973): Magyar Büntetőjog II. Különös rész. [Hungarian Criminal Law II. Special Part] BM Tanulmányi és Propaganda Csoportfőnökség, Budapest. 338

¹² § 218. par. (1), Act IV. of 1978

force as of 1 January 1990, relaxed the penalties on the one hand and created a misdemeanour form of the felony on the other. The latter was committed by anyone who assisted in the illegal (armed) crossing of the border for financial gain or as a member of or on behalf of an organisation. The former was committed by anyone who did the same to help the crossing of the state border of the Republic of Hungary without permission or in an illicit way, which no longer constituted a criminal offence.¹³ This way a privileged case of people smuggling was also created, which was unfortunately badly worded,¹⁴ and which penalised the facilitation of unarmed perpetration. The above-mentioned facts were later amended to include an aggravated offence, which, by modifying both the definition of the felony and the misdemeanour, sanctioned the commission as a member of a criminal organisation or on its behalf as an aggravated offence and also specifically provided for the punishment of the preparation for any form of people smuggling.¹⁵

A major change to the legal definition of people smuggling came into force 1 April 2002. It removed the link between the specific statutory offence of people smuggling and the state border of the Republic of Hungary. According to its wording, the offence in question was committed by *"whoever assisted another person to cross a state border (a) without authorisation, (b) in an unauthorised manner."*¹⁶ There are a number of combined factors behind the change in the base case. On the one hand, the facts of the offence of people smuggling were linked to the illegal border crossing as an armed offence, which thus exhausted the offences of misuse of explosives or explosive devices (§ 263 of the Criminal Code) and the misuse of

¹³ Established by § 20 par. (2) of Act XXVIII of 1989 on Travelling abroad and passports.

¹⁴ Erdősy, Emil – Földvári, József (1994): *A magyar büntetőjog különös része* [The Special part of Hungarian Criminal Law]. Janus Pannonius Tudományegyetem Állam- és Jogtudományi Kar, Pécs. 196

¹⁵ Established by §29 of the Act LXXIII of 1997 on the modification of Act IV of 1978 on the Criminal Code.

¹⁶ Established by §27 of the Act LXXIII of 1997 on the modification of Act IV of 1978 on the Criminal Code.

firearms or ammunition (§ 263/A of the Criminal Code).¹⁷ On the other hand, the law linked each form of people smuggling to the state border of the Republic of Hungary. In order to eliminate the former parallelism, the legislator repealed the offence of illegal border crossing, and, due to the latter one, the law removed the restriction referring to the Hungarian state border, which resulted in the fact that the offence now could be connected to the border of any sovereign state. In addition, it made it an aggravated offence when committed for the purpose of obtaining financial gain or by helping several persons to cross the state border, and an even more severely punishable offence if committed armed with a firearm or explosive, by torturing the smuggled person, or for commercial purposes. Preparation remained as an element of the facts registered in the law, but only expulsion was defined as an ancillary punishment.

The currently effective Criminal Code continues to penalise the crime of people smuggling, retaining its classic function it punishes facilitating the crossing of the state border illegally (or more precisely, by violating the legal provisions).¹⁸ The purpose of obtaining financial gain and assistance to more than one person remained elements of aggravated cases, and the range of more serious cases was supplemented – in addition to the torturing of the smuggled person and committing it while armed with a firearm or explosive – by committing it while carrying a deadly weapon, in a business-like manner or in criminal conspiracy. Preparations for people smuggling continue to be punished, while the ban on entry is no longer named among the punishments, either. The wording of the Criminal Code in the Hungarian Gazette was changed in 2015 regarding the aggravated offences and increasing certain penalties for people smuggling. It was the result of the migration situation and happened at the same time when the above-mentioned crimes related to border closure were codified. Such a new case was

¹⁷ Gaál, Gyula (2013): Az embercsempészség helyzete Magyarországon az ezredfordulón [The state of people smuggling in Hungary at the turn of the millennium]. In: Gaál, Gyula – Hautzinger, Zoltán (eds.): A modernkori magyar határrendészet százöt év. Magyar Rendészettudományi Társaság Határrendészeti Tagozat, Budapest. 133

¹⁸ Cf. par. (1) §353, CC

committing the offence while destructing or damaging a facility or device ensuring the protection of the ordered conditions at the state border. Also, certain – more serious – cases of an organisers or managers of people smuggling must be treated as aggravated cases.¹⁹

The evolution and modus operandi of people smuggling in Hungary

Organised criminal groups help the majority of migrants to enter the European Union and reach their destination. The countries of origin are far from the borders of the European Union, leaving migrants vulnerable to the exploitation of people smuggling organisations.

The main problem has been the activity of the Western Balkan migration route for years. Inward migration and organised people smuggling are concentrated on the Serbian-Hungarian border section.

¹⁹ Cf. §32 of Act CXL of 2015 on the modification of certain acts related to the management of mass immigration

	2015	2016	2017	2018	2019
Air	1	0	0	0	2
Ukrainian	13	3	6	3	11
Romanian	63	29	40	14	31
Serbian	550	93	48	95	57
Croatian	83	10	8	0	14
In the territory of Hungary	467	118	39	21	40
Total	1177	253	141	133	155

Table 1: The distribution of offences people smuggling and facilitation of unauthorised stay according to the various types of border and areas 2015-2019 ²⁰

People smuggling organisations are organised according to citizenship and form a closed community. The organisation is mainly based on kinship or ethnicity. The basic goal of criminal groups is financial gain; the more migrants are sent to the destination countries, the more income they get.

Organised criminal groups are not very fragmented. Some trustees, attached to the leader, are in direct contact with people in the countries of origin, transit and destination, who appear during the crime process. The responsibilities of these people can be divided into the following activities:

- recruiters in the countries of origin;
- transporters and facilitators who help find accommodation in neighbouring countries (Serbia, Romania, Croatia);
- persons helping with crossing the green border (‘walkers’);

²⁰ The table was compiled by the authors, based on the data of the Border policing situational picture

Source: http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet_

Accessed: 20.10.2020.

- persons transporting the migrants onward to another country (Hungarian citizens or people from the country of destination);
- persons harbouring migrants until further travel is organised (owners of private houses, employees of guest houses and hotels);
- persons receiving irregular migrants in the countries of destination.²¹

The fact that the leaders of these criminal organisations²² operate on Turkish, Greek, Serbian, Macedonian, Bulgarian and Romanian territory makes it difficult to tackle people smuggling organisations, and close cooperation with the competent authorities in these countries is therefore important.

The country of origin of the organisers and managers is usually the same as that of the migrants, but members of criminal organisations are also present in transit countries along the illegal migration route. The ratio of Hungarian offenders among facilitators is increasing, the majority of them acting as transporters or organisers.

In Hungary, people smuggling can be divided into two main types of activity. In the first case, organised criminal groups are involved in getting the migrants into the Schengen area illegally, while in the second case they assist in the onward travelling of irregular migrants to Western European countries.

²¹ Balog, Gábor (2016): Az embercsempészás elleni bűnüldöző munka nemzetközi vetületei, tapasztalatai [International aspects and experiences of combating people smuggling], Belügyi Szemle, 2016/12. 95-96

²² “Criminal organization shall mean when a group of three or more persons collaborate in the long term to deliberately engage in an organised fashion in criminal acts, which are punishable with five years of imprisonment or more.” (§ 459, par. (1) 1, Act C of 2012 on the Criminal Code)

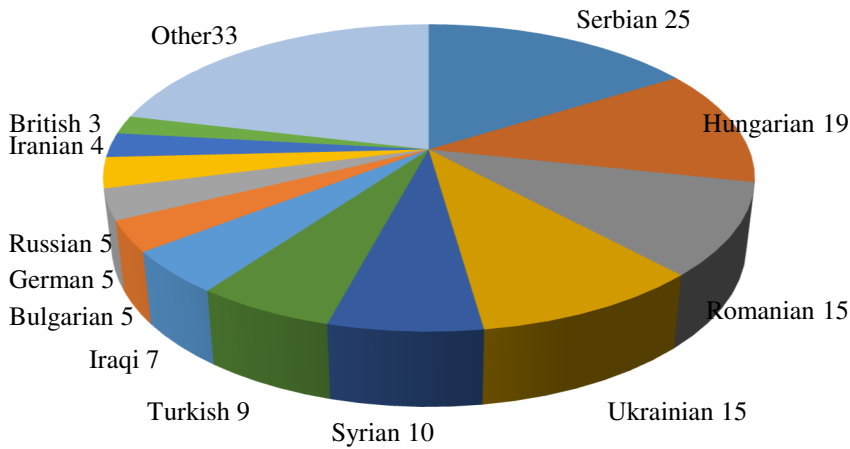


Figure 2²³

The distribution of offences people smuggling and facilitation of unauthorised stay according to nationality in 2019

Members of criminal organisations place great emphasis on conspiracy in their communications. They share only the most essential information, usually in pre-arranged jargon. The means of communication are often exchanged and combined. They consciously use infocommunication platforms (Viber and WhatsApp). Money is rarely transferred between irregular migrants and people smugglers. The negotiated amount is usually deposited in the countries of origin and the actual payment is made only after the successful transportation and arrival in the country of destination.

Increasingly, so-called "guaranteed delivery" is used, when smugglers guarantee to deliver irregular migrants to the destination country for a higher price. In these cases, even if the migrants are apprehended, they try to get them to the country of destination again, without any extra charge.

²³ Source: The chart was compiled by the authors, based on the data of the Border policing situational picture

Source: <http://www.police.hu/hu/a-rendorsegrol/statisztikak/hatarrendeszet>

Accessed: 20. 10. 2020.

Tracing assets from people smuggling is difficult. Some members of organised criminal groups sometimes hold shares in companies as a front. In many cases, criminal organisations also have contacts with people with legal and economic expertise.

The Serbian-Hungarian border saw an increase in smuggling activities starting from the summer of 2016, primarily facilitated by the use of various methods to cross the temporary security border fence for border surveillance purposes (digging under and climbing over it). The smugglers used hand-held thermal cameras and drones in the Serbian territory to continuously monitor Hungarian police and military staff. When the illegal crossing of migrants was considered risky, they would wait for several days in the area on the other side of the border. They tried to conceal their movements until onward transport was assured.

Diversion was also among the methods used. Irregular migrants were pre-arranged, sometimes drawn by lot, as to who would be the "bait." The Hungarian authorities were distracted by small groups of migrants moving parallel to the border line and by damaging the border fence so that others would be able to enter Hungarian territory across the possibly unguarded section of the border. They mainly used ladders to cross the border. After crossing the state border, they abandoned their clothing in order to deceive the Hungarian authorities.

As a result of the legislative changes²⁴ of 28 March 2017, the smuggling routes were shifted to the common border between Serbia and Romania and Serbia and Croatia.

In recent years, the criminal people smuggling networks in Serbia and Romania have been taken over by Syrian, Afghan and Turkish facilitators with links to perpetrators in Austria, Italy and Germany. The members of the criminal networks arrived in Hungary only for the time while they committed the crime. A significant number of the perpetrators were Pakistani,

²⁴ See Act XX of 2017 on the Amendment of Certain Acts Relating to Strengthening the Procedure Conducted in Border Surveillance Areas

Iraqi, Afghan and Serbian nationals with long-term residence permits in Austria.

A significant ratio of irregular migrants travelled from Romania to Austria, Germany, Slovakia and Poland via Hungary. Migrants arrived in Romania from Bulgaria and Serbia illegally and applied for asylum immediately after they were apprehended.

Groups of migrants also arrived in Hungary from Croatia, mostly from the Serbian-Croatian-Hungarian triple border area. However, from Croatia, smugglers typically transported migrants onwards towards Slovenia. From Serbia, migrants' attempts to cross the border were concentrated in the triple border area and in areas where the border barrier provides limited protection due to natural circumstances. Crossing the Tisza river into Hungarian territory using rubber boats emerged as a new *modus operandi*.

People smugglers could not pick up the migrants immediately after they got across the state border and the location was constantly changing, so the migrants often had to walk long distances. Smugglers were often unable to reach the area further away from the border or the transporters were intercepted by the Hungarian authorities. Facilitators also used false foreign registration plates for the transports. They sometimes cloned the number plates of vehicles stolen abroad, vehicles awaiting dismantling or with cancelled registration certificates, or used the same number plate on several vehicles. It was common for large groups of migrants to go from Romania to Germany and Poland via Hungary by hiding in the cargo holds of lorries of Turkish and Bulgarian origin.

Summary

Based on the geography of migration, Hungary's geographical location and the characteristics of its infrastructure make it an important area for international illegal migration and the organised people smuggling activities based on it. Hungary is affected by irregular migration routes as a transit country. The development of the routes is determined by the geographical distance between the irregular migrants' countries of origin and destination,

the natural conditions, the infrastructure of transport and the settlement networks in the transit countries. The changes in these routes are influenced by the mode, duration and costs of the transportation of illegal migrants, as well as by the successful actions of border policing and law enforcement agencies against criminal people smuggling organisations.

The activities of smuggling organisations fully reflect one of the defining aspects of organised crime: the low risk of detection and the high profits that can be relatively easily made in a short time and with minimal effort. Depending on the degree of organisation, the distance and the conditions of the transportation, the fees for people smuggling vary widely, from a few hundred euros to several thousand euros, and the illegal proceeds can be measured in billions.

Practical problems of electronic contact in the criminal proceedings in Hungary

Introduction

The Act XC of 2017 on criminal proceedings (Criminal Procedure Code, hereinafter referred to as: CPC) has significantly altered criminal procedure in its structure and its content. The Act XIX of 1998 (hereinafter referred to as: old CPC) followed the earlier (socialist) criminal procedure laws (in contrast with basic concept), the traditional investigation - (intermediate procedure) – governed the criminal procedure within a judicial procedure system. Effective laws however allow for a lot more leeway for criminal procedures based on agreement, respectively confession by the defendant (acceptance of the facts) enable a number of simplifications. Through this, the progression of the criminal procedure (possible outcome) is a lot more complicated and diversified as in the earlier linear procedure:

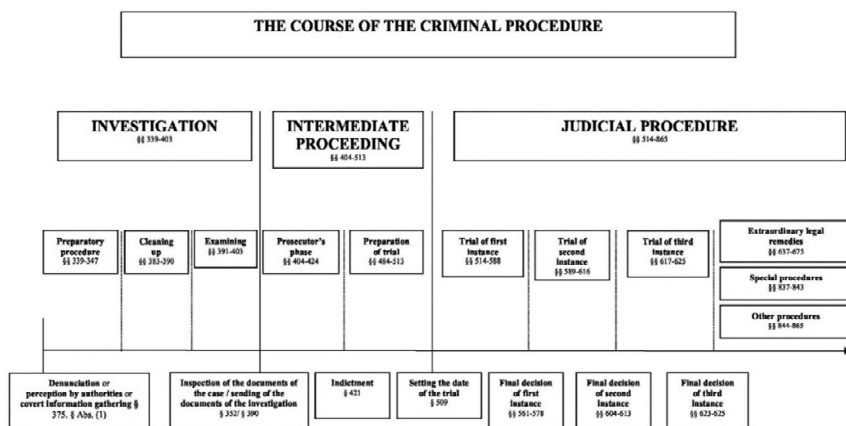


Figure 1: Progression of the criminal procedure

As can be seen from the illustration, the investigation in Hungary can consist of three stages:

- 1) preparatory procedure,
- 2) cleaning up and
- 3) examining¹.

The CPC makes electronic contact widely available (mandatory). This concerns primarily the defence counsel and that is the reason for its significance in the course of the examining².

Main rules of electronic contact

The Law on E-administration (Axt CCXXII of 2015) § 17. Subsession 1 regularizes the conformity of declarations of electronic administration. There are two conditions:

- electronic identification of the declarant is done adequately (with electronic identification service, adequate electronic identification instruments (eIDAS) or by electronic identification service that is pronounced suitable by the body ensuring electronic administration) and
- it is ensured that the delivered electronic document complies with the document approved by the declarant.

¹ For more details, see Herke Csongor: Criminal procedure law. Pécs, 2018. p. 166.

² Electronic contact has become of particular importance since the advent of the COVID-19 virus. Garzuly, Éva (2020): A koronavírus hatása az elektronikus kapcsolattartásra. *Ügyészek Lapja*, 2020/2-3. 69-78

Electronic contact can have the following forms:

<p>Facultative electronic contact (§ 149.)</p>	<ul style="list-style-type: none"> – a non obligated participant or his/her representative that is not qualified as a legal representative undertake it – suitability of electronic declarations – contact must with authority via electronic way and vica versa – if the authorities deliver in paper, they will inform the addressee on the electronic possibility – motion presented without declaration: the authority shall warn the person electronically that contact shall be kept electronically in the future
<p>Mandatory electronic contact (§ 150.)</p>	<ul style="list-style-type: none"> – mandatory participants shall present all petitions electronically to the authority and the authority shall deliver electronically too – the person whose right to electronic contact is suspended is exempt from electronic administration
<p>Electronic contact with the expert (§ 151.)</p>	<ul style="list-style-type: none"> – usually concerns the expert whose electronic contact is mandatory – the expert that is not obligated can choose for electronic contact: <ul style="list-style-type: none"> a) by registering in the forensic expert database b) experts not in this database: registering with the authorities – the expert with mandatory electronic contact (and the one that chooses for this) can present his expert opinion (and other files) electronically to the authority/the

	<p>authority shall send all files electronically to the expert</p> <ul style="list-style-type: none"> – the expert that proceeds paper-based can be summoned to submit the expert opinion on a data carrier if this needs to be delivered electronically
<p>Electronic contact among the authorities and between other bodies (§ 152.)</p>	<ul style="list-style-type: none"> – the authorities are in electronic contact with each other/bodies ensuring electronic administration by law/bodies appointed by the government that perform public tasks

In case of electronic contact by the commissioned defence counsel and legal representative, the electronic or digitalised commission shall be enclosed to the first submitted motion (except if his commission is recorded in the disposal register)³. The authority can summon the above-mentioned to submit the original commission (in order to determine uniformity). The represented participant that has no mandatory electronic administration can submit a paper-based commission withdrawal (and declares whether there will further be a defence counsel or legal representative; if yes, the commission shall be enclosed too).

In case of paper-based documents and electronic contact exists, the participant himself shall ensure of digitalisation and of safe-guarding of the paper-based documents. If this does not take place, the authority shall digitalise this within 10 working days. However, if a paper-based document needs to be presented, it does not need to be submitted electronically.

In connection with electronic contact, the forwarding of documents at the disposal in electronic form to the e-mail address shall be mentioned. The participant can motion for this, if the document is available at the

³ The electronic contact can directly affect (and infringe) the right to the defense. On the principle of the right to a defense, see Fantoly, Zsanett (2018): Alapelvek az új büntetőeljárási törvényben. In: Ünnepi kötet dr. Nagy Ferenc egyetemi tanár 70. születésnapjára. Szeged. 237-252

authority. In this case, the document shall be forwarded in electronic form, electronic document or electronic copy of a paper-based document (§ 159.).

Practical problems related to electronic contact

With regards to electronic contact the following main problems have arisen:

- a) lack of a uniform system,
- b) shortage of criminal administrative data forms,
- c) inflexibility of the E-paper system,
- d) problems of the mixed paper based and electronic proceedings in the case of electronic contact,
- e) documents sent with improper format,
- f) problems related to the authorization of the defender⁴.

ad a) The first and most fundamental problem with the electronic contact is the lack of a uniform system. Electronic contact with the Courts (in connection with civil and financial cases) occurs through the “ÁNYK” system (ÁNYK=General Form Filling Framework). Specifically, the participant mandated for electronic contact (or the participant undertaking it) must download the ÁNYK program (if he has not downloaded it yet), subsequently he must download the forms applicable to the given submission from the <https://birosag.hu/eljarasok-nyomtatvanyai/bunteto-elektronikus> page.

As I have mentioned, one of the main problems with electronic contact in criminal cases is that the method of electronic document submission is not uniform. Specifically, the herein mentioned ÁNYK system may only be used for electronic contact with the Courts, while electronic contact with

⁴ Similar problems arise in the civil procedures. Juhász, László (2016): A felek, jogi képviselők és a bíróság közötti elektronikus kapcsolattartásra vonatkozó szabályok kérdései. *Gazdaság és Jog*, 2016/11-12. 3-13

the police, the Prosecutor's Office and other authorities (local government bodies, tax authorities⁵, etc.) occurs through the <https://epapir.gov.hu/> page (on so-called electronic paper or abbreviated on E-papir=E-paper). As in the case of ÁNYK, here the electronic identification according to effective legal regulations also happens through the Point of Contact (though, in the case of ÁNYK the documents may be sent with an electronic ID or phone identification with the use of the so-called 'Token'). The difference is that in the case of a document sent through the ÁNYK system the identification is not required for the preparation of the document, only for its electronic signature marking and sending it through the Point of Contact, while in the case of E-paper the Point of Contact identification is required for logging in. The main items appearing on the E-paper are filled in subsequently.

ad b) Even though, in criminal cases mandatory electronic contact was introduced as of 1st of January of 2018 (the new CPC only took effect on 1st of July of 2018, thus there was half a year available to eliminate practical problems), initially there was a severe shortage of forms related to criminal cases. Therefore, among attorneys it became the accepted practice that they used the B23-19-02 form named „Form for other submissions” (and still use it today), because on this form practically any petition may be submitted (e.g. for postponement), including motions (e.g. legal remedy).

These forms were basically developed in an ad hoc manner, it would be difficult to explain why these specific motions and petitions were given a separate form. Anyhow, the use of the “Other” form is still available, and I have no knowledge of a case when a motion was rejected for format reasons in a criminal proceeding because the defender failed to use a special form, rather used the „Other” form.

ad c) The E-paper system is relatively inflexible. Generally, documents are best sent with the marking of the Point of Contact ID, after marking this, it is best to mark which authority we are sending the document to (as well as the Law Office/Private organization) (not to the tax authority as a

⁵ For the electronic contact with the tax authorities, see Nemes-Somogyi, Krisztina (2018): Gyors és korszerű ellenőrzés: elektronikus kapcsolattartás az adóhatósági ellenőrzésekben. Számvitel, Adó, Könyvvizsgálat, 2018/1. 8-10

general investigative authority, and not marking the name and tax number of the attorney), since interestingly countless documents can only be sent to certain authorities. Thus, if we first mark it by case groups into the one named “Submissions related to criminal cases (report, motion, complaint, notification, petition)”, a case group that may be considered rather generic, then the document will only be sent to the Police Prosecutor’s Office. Similarly, if we narrow down the subject to the logical “Criminal” group, the only the Tax Authority as a general investigative authority appears.

Of course, in the case of both the ÁNYK system and the E-paper system, the document can be submitted in a printed format, but you can also attach a pdf format document to your submission. Sometimes sending in the submission itself takes a longer time, connection and sending through the Point of Contact is difficult (this is particularly true for the ÁNYK system).

ad d) In practice numerous other problems have arisen since the introduction of electronic contact. To this day it is rather frequent that the defender who is not mandated for electronic contact (this generally occurs if the case commenced before 1st of January of 2018) receives a paper format response to his electronic submission (even though by sending in his submission electronically he became an electronically communicating participant, despite not being mandated for it). In practice it has also happened that after a suspect was caught committing a criminal act, a public defender for the suspect was ordered at the questioning. The suspect authorized a defense attorney on the next day, who then submitted his authorization electronically and at the same time made a justified complaint against the suspect’s arrest. Thus, according to the CPC, after this the legal ordering of the public defender was cancelled together with the other authorization. But the Prosecutor’s Office sent its resolution rejecting the complaint in paper format to the previous (public) defender, at the same time the Prosecutor’s Office notified the public defender that his status was cancelled because of the authorization.

ad e) In the same way, it may be problematic if the individual participating authorities fail to send the documents in the proper format to the participants (primarily the defense). Specifically, while the defender may only

submit the documents and its attachments in pdf format, the authorities can also attach files in formats that are generally applied in the Robocop as well as in Court/Prosecutor's Office systems. For example in case number B.273/2017 the Kaposvár District Court sent a file with .dosszie extension to the defense, and failed to send the proper file within the deadline even upon request. It is questionable how the right to legal remedy is exercised in such cases, since in my opinion the delivery of an illegible file cannot be considered a validly served delivery with legal effect.

ad f) Finally we must mention a problem that points to illegal practice by the authority. As it is described in the brief information on www.birosag.hu, if the suspect (or another participant of the proceeding) wishes to authorize an attorney as defender (legal representative), according to the E-Administration Act, he may do this in the Motions' Registry. The declaration pertaining to the defender's authorization only becomes valid and effective with the acceptance of the authorization and the recording of the acceptance declaration in the Motions' Registry. The acceptance declaration in the Motions' Registry must be reported to the proceeding court, prosecutor and the investigative authority, and it is only valid and effective as of the reporting. However, the practice of these types of authorizations is not widespread yet⁶.

The cases are much more frequent where the defender (legal representative) proceeding based on the authorization, if using electronic contact, adds the authorization available as an electronic document or one digitized by him as an attachment of his first submission. In the case of a digitized authorization, the court (Prosecutor's Office, investigative authority) re-

⁶ Similar problems have arisen with regard to legal representation in the civil procedures. Gelencsér, Dániel: Eljárásjogi problémák az elektronikus kapcsolattartással összefüggésben: rövid összefoglalás. Kúriai Döntések. Bírósági Határozatok, 2017/9. 1338-1344

quests the defender (legal representative) to present the original authorization for the purpose of determining if they are identical, if a reasonable question arises in this regard⁷.

In the latter case (meaning the electronically submitted authorization) is less problematic if the defender joins the proceeding in its late phase. At the same time, it is very frequent that the suspect wishes to authorize a defender at the first questioning. In many cases the authorities request the electronically submitted authorization at this time, which may be very difficult. Specifically, at this time, if the suspect who is detained by the investigative authority (because he was caught committing a crime) wishes to give an authorization to the defender, then the thereby signed authorization must be scanned by the defender, must be uploaded electronically, and he may only participate in the proceeding after this. And if the defender is so well-equipped that he can actually do all this (takes a photo of the authorization with his phone, then with an application on his phone converts the photo to pdf format, and also with his phone uploads it to the E-paper system), there comes a surprise: the investigator states that electronic documents cannot be directly handled by an investigator, they are handled by the system administrator, who is absent at the moment/happens to be on vacation/is otherwise engaged, thus cannot check if the authorization has really been uploaded. This means that the defender would also have to print the acknowledgement regarding the uploading of the authorization into the system. Thus, a modern defender must arrive to a questioning equipped with a scanner, mobile internet and a printer, and must hope that these devices are not held up by the porters for security reasons.

But, fortunately the CPC solved the problem, specifically pursuant to Article 155 Subsession 4 it is not mandatory to use the rules of electronic contact during a proceeding when the defender is personally present, in the

⁷ For the civil procedures see Wellmann, György – Orosz, Árpád: A Kúria Polgári Kollégiuma tanácselnöki értekezletének állásfoglalásai az elektronikus kapcsolattartással összefüggésben felmerült eljárásjogi problémákról. Kúriai Döntések. Bírósági Határozatok, 2017/9. 1337

case of a submissions or pieces of evidence, including the immediate submission of the original authorization given onsite or during the proceeding. Thus, if the investigative authority in such a case demands immediate electronic submission, it is sufficient to cite this provision. And if the defender was authorized earlier, but this is the first proceeding that he participates in (and forgot to upload his authorization electronically), there is the possibility that his client may not be mandated for electronic contact (in the majority of cases he is not), thus the defender can hand the authorization to the client and the client can hand it to the authority, because a paper based submission must be accepted from the client.

ÁDÁM KALMÁR

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 Headquarters ²⁶. 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.

The right for the family members of the defendant to refuse testimony in the context of the new Code of Criminal Procedure

This study is a shorter, edited and updated version of an essay awarded 1st prize in the competition run by the Scientific Council of the Hungarian National Police. The original essay examined the right to refuse to testify among family members in Act XC 2017 on the Code of Criminal Procedure Code (Be.) including the examination of basic concepts, such as “civil partner” or “suspected person”.

The aim of this study is to examine how the obstacles of the testimony affect the judicial stage of the criminal procedure.

It is to be highlighted that Act XLIII of 2020 modified Be. and introduced the concept of the “person reasonably suspected of committing a crime”. Before examining this new concept, we give a short overview of the basic concepts in connection with the defendant.

The defendant

The concept of the defendant has not changed in Be. The defendant is the person against whom the criminal procedure is pursued.¹ The Be. also defines that the defendant is called suspect during the investigation, accused person during the court stage, and convict after the final judgement. The question is *when* we can declare that a criminal procedure is being “pursued” against a certain person.

¹ Art. 43 Section (1) first sentence of Act XIX 1998 on the Code of Criminal Procedure Code (further: previous Be.); Art. 38 Section (1) first sentence of the Act XC 2017 on the Code of Criminal Procedure Code (further: Be.)

This study - in accordance with the professional experience of the author of the original essay - mostly focuses on the concept of the suspect. The reason for this is that the concept of the defendant is less problematic at the court stage, and those problems may mostly arise from the misinterpretation during the investigation.²

a.) The suspect

Similarly to Be., Act XIX of 1998 (the previous Be.) says that the defendant is called suspect during the investigation. Strictly speaking the suspect is the person who is interrogated by the investigating authorities *as* a suspect based on a reasonable suspicion of committing a crime. In a broad sense, a suspect is a person against whom a reasonable suspicion exists. This is also called “possible suspect” by academic writers, however, this concept is not defined by the Be. or by any other legal instrument.³

In a narrow sense, a suspect is a person who is interrogated as a suspect in a particular case by the investigation authorities. However, it can be notably different when the person is actually interrogated and when the reasonable suspicion is well founded.⁴

The interrogated person is informed about most of his rights and duties just when the first interrogation begins. Some of the defendant’s rights are the following:

- the right to be informed on the nature and the cause of the suspicion

² See further in the original essay [Koncsag, Katalin - Egy kihallgató szemszögéből - Hozzá tartozók közötti vallomásmegtagadási jog az új Be. tükrében (Rendőrségi Tanulmányok 2018/4)]

³ Belovics, Ervin (2015): A büntetőeljárás résztvevői. In.: Belovics, Ervin – Tóth, Mihály: Büntető eljárásjog. HVG-ORAC Lap-és Könyvkiadó, Budapest. (further: BELOVICS, 2015) 88; Ambrus, István – Fantoly, Zsanett – Gácsi, Anett – Juhász, Zsuzsanna (2011): Bevezetés a büntetőeljárás és büntetés végrehajtási jogba. Pólay Elemér Alapítvány. Szeged,. (further: AMBRUS – FANTOLY – GÁCSI – JUHÁSZ, 2011) 55; Belovics, Ervin (2017): A büntetőeljárás résztvevői (In.: Belovics Ervin - Tóth Mihály: Büntető eljárásjog. HVG-ORAC Lap-és Könyvkiadó Kft, Budapest. (further: BELOVICS, 2017) 94

⁴ Art. 43 Section (1) of the previous Be. and Art. 38 Section (1) of Be.

- the right to testify and to refuse to testify
- the right to present evidence, submit comments and motions.⁵
- Duties:
- obligation to inform the authorities about any changes in personal data⁶
- obligation to be registered in the criminal records

However, the potential suspect becomes aware of the fact of being interrogated as a suspect before the actual interrogation.

The Be. states that the investigation authorities shall conduct the first interrogation within a “reasonable time”⁷ from the reasonable suspicion.⁸ However, the exact length of time is not explicitly defined by the Be.^{9 10} This “deadline” is not defined by the current procedural code and it was not defined by previous codes either. One should not draw significant conclusions from the fact that the investigation authority does not address the reasonable suspicion. It might only mean that the authority has not considered the suspicion reasonable yet.¹¹

⁵ Art. 43 Section (3) of the previous Be. and Art. 39 Section (1) of Be.

⁶ Art. 43 Section (5) of the previous Be. and Art. 39 of Be.

⁷ Art. 179 first sentence of Section (1) of previous Be. and Art. 39 Section (1) pont b) of Be.

⁸ Except the suspect who is deprived of liberty (Art. 179 Section (1) part 2 of the previous Be.

⁹ BODOR, 2016 for Art. 179 of Be.

¹⁰ Except the suspect who is deprived of liberty (Art. 179 Section (1) part 2 of the previous Be.

¹¹ Varró, Krisztián (2008): A megalapozott gyanú közlésének időpontja és az ezzel kapcsolatos dilemmák. *Ügyészek Lapja* 2008/1. (further: VARRÓ, 2008) 15

b.) “The possible suspect”¹²

Persons to be interrogated are not suspects in a narrow sense, but a reasonable suspicion already exists in their case. However, certain rights (such as the right of defence) and duties are connected to the fact that a person is informed about becoming a suspect in the near future. Restrictively, empowering a defence lawyer is a right for the defendant, and as such, the power of attorney shall be given after the reasonable suspicion has been announced to the suspect.^{13 14 15} In reality the possible suspect either requests a defence lawyer before the first interrogation, so the interrogation begins in the presence of the lawyer, or the suspect arrives at the interrogation together with the defence lawyer. In all the three cases, the power of attorney is submitted before the interrogation. Seemingly, this practice does not conform with the Be. However, the Fundamental Law uses the term “person under criminal procedure”, which means that the right to defence is applicable, therefore an attorney may be empowered at any stage of the criminal procedure.¹⁶ In accordance with this, the Joint Ministerial Decree of the Minister of Justice and the Minister of Interior 23 of 2003 prescribes that the right of the defence must be guaranteed from the first investigative actions of a procedure. This decree does not clearly define

¹² Government Decree 100 of 2018. VI. 8. (Hereinafter: Nyer) already made a distinction between a suspect and a person who is reasonably suspected of committing a crime.

¹³ Art. 6 of the European Convention on Human Rights regulates the right to a fair trial and says everyone charged with a criminal offence has the minimum right to defend himself through legal assistance. In this context “charged” is used as the broadest expression, so it is the same concept as “defendant” in this study.

¹⁴ Art. 44 Section (2) of the previous Be. and Art. 39 Section (1) point b) of Be.

¹⁵ Directive 2012/13/EU OF the European Parliament and of the Council Art 3. (1): “*Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively: the right of access to a lawyer;*”

¹⁶ Art. XXVIII Section (3) of Fundamental Law

what the first investigative actions are. They can be the coercive measures applicable before the first interrogation or it can be the inspection.^{17 18 19}

The previous Be. also prescribed a guarantee that requests for sensitive data on the possible suspect or on the denounced person can only be made with the authorization of the prosecutor. This condition, however, was not applicable to data requests on witnesses.²⁰

In our view extending the concept of the defendant would help to clarify the defendant's rights and it would also solve the legal uncertainties mentioned above

c.) The denounced person

The term denounced person is used, if a denunciation was made against a specific person, and the procedure is pursued against this person until becoming a possible suspect. If a suspicion occurs based on the denunciation, the denounced person is considered a possible suspect. If the suspicion becomes reasonable against the denounced person, he must be interrogated

¹⁷ Joint Ministerial Decree of the Minister of Justice and the Minister of Interior 23 of 2003 Art. 4 Section (2)

¹⁸ Joint Ministerial Decree of the Minister of Justice and the Minister of Interior 23 of 2003, in accordance with Government Decree 100 of 2018 prescribed:

„If the investigation authority reveals that a defence lawyer is a mandatory right before or during the procedural act, and the suspect does not have a lawyer or requests for powering a lawyer

a) the investigation authority provides the possibility for the suspect or the possible suspect to power a lawyer within a reasonable time before the procedural act. The investigation authority shall also interrupt the procedural act to provide such rights for the suspect.

b) assign a lawyer”

¹⁹ Act XLIII 2020 set up the concept of a person reasonably suspected of committed a crime giving certain rights such as powering a defence lawyer.

²⁰ Art. 178/A. of the previous Be. *„After undertaking the investigation, the prosecutor, or the investigating authority (with the consent of the prosecutor) may request for medical records or trade secrets connected to the suspect (or the denounced person or the possible suspect) if it is necessary in order to investigate the relevant facts of the case.”*

This regulation has been changed in the Be. giving an exhaustive list of data requests that are subject to authorisation. The regulation is based on the status of the requested data, not on the inspected person. Art. 261-266 of Be.

as a suspect. If certain measures are applied before the interrogation (such as summoning for the first interrogation as a suspect) the concept of a “person reasonably suspected of committing a crime” must be used.

If the suspicion becomes reasonable, the concept of the denounced person cannot be used any longer, because after that, the denounced person shall be interrogated as a suspect. In the period between the reasonable suspicion and the actual interrogation the concept of possible suspect may be used.

In private prosecution the denounced person typically becomes the accused person. Some points of the procedural code also refer to the denounced person, however, it is not clearly defined by law, even though in some cases denounced persons have procedural rights, and the authorities also have obligations towards them.^{21 22}

However, the status of the denounced person is not regulated when we come to the right to refuse to testify for family members. In our view the lack of such regulations violates the principle of legal certainty and equal treatment.

d.) The connection among the three above mentioned concepts

As it was previously mentioned, of the three concepts, only the suspect was defined by Be.²³ It is only implied that the possible suspect or the denounced person may also be the subject of the criminal procedure. These three concepts may be interpreted as broader or narrower personal scope, however, this may be misleading.

Namely, not every suspect was a denounced person before, and it is not certain either that a denounced person will become a suspect later. Denunciation can be made against an unknown person. In this case the person who noticed the crime makes a denunciation against an unknown person,

²¹ Art. 178/A of the previous Be.

²² Art. 710 Section (3) of Be.

²³ The concept of the person reasonably suspected of committing a crime is also defined since 1st January 2021

so there is no denounced person in a classical sense. If a certain person comes to the attention of the authorities, either the (reasonable) suspicion occurs, or the person emerges as a witness. In these cases, this attended person becomes a possible suspect or a witness immediately. It is also possible that suspicion does not become reasonable after a denunciation.

If reasonable suspicion against the denounced person is absent by any reason, interrogation as a suspect will not be conducted.

The connection between the possible suspect and the suspect is the same. It is possible to have a reasonable suspicion against someone without being interrogated as a suspect. It can happen if some kind of justifying circumstance (such as an underaged perpetrator) occurs, or there are grounds for the extinction of criminal liability (such as the death of the perpetrator).²⁴ On the other hand, the status of being a suspect must always be preceded by the status of possible suspect. The question is the length of time from the reasonable suspicion (becoming a possible suspect) to the first interrogation (becoming an actual suspect).

e.) “A person reasonably suspected of committing a crime”

Act XLIII of 2020 came into force 1 January 2021, and established a new concept of “a person reasonably suspected of committing a crime”.²⁵ It is to be emphasized that such person is not considered as a defendant by the law. Section (3) prescribes that a person reasonably suspected of committing a crime is someone who is arrested because of committing a crime, who is summoned by the authorities as a suspect, or against whom a broadcast or an arrest warrant has been issued.

From another point of view, this new concept refers to someone against whom there is a reasonable suspicion, but who has not been interrogated as

²⁴ This distinction is not right from the point of view of the substantive criminal law since an underaged or a death person cannot be a perpetrator at all. Grammatical interpretation of reasonable suspicion however requires a human act that may be interpreted from a procedural point of view but not from a substantive point of view.

²⁵ Art. 38 Section (2) of Be.

a suspect yet. The legislator clearly defines when a person is reasonably suspected of committing a crime.²⁶ The rights may be executed after these conditions are fulfilled. Accordingly, the concept of a person reasonably suspected of committing a crime is not the same as the concept of the possible suspect.

With this modification of Be. some point of the Nyer. had to be modified and amended. These modifications focus on how the defence lawyer may join the procedure. Art 137 Section (2) of Nyer refers to Art 386 of Be. that defines the obligation of the investigation authority to provide the necessary information, and defines how the defence lawyer may join the procedure. Before 1st January 2021 Art 386 Section (2) of Be. restricted the rights of the defence lawyer before the interrogation as a suspect to the right to contact their client and to consult without any control.²⁷ Other rights were not to be exercised at this stage. For example, if the investigation authority did not interrogate the client as a suspect based on practical reasons, even if other measures were applied (such as arresting the suspect), the defence lawyer did not have the right to take part in these procedural actions and did not have the opportunity to represent the client.

The original essay did not examine the concept of a person reasonably suspected of committing a crime,²⁸ however, it already pointed out some concerns about the approach the previous legislation dealt with the right to refuse to testify. The legislator takes out this concept from the concept of the defendant. The distinction is made later in the Be., where the certain rights are regulated and also defined in the Nyer. It is, however, a great deficiency that the person reasonably suspected of committing a crime is not listed in at Art 171 of Be. In our view it is not enough to provide the right to the witness not to answer certain questions, but it should be generally provided for the family members of the denounced person, the possible

²⁶ Art 38 Section (2) of Be.; Art. 144 Section (8) of Act XLIII 2020, Art. 39 Section (8) of Be.

²⁷ Before the first interrogation as a suspect the defence lawyer only has the right to contact the client and consult without any control.

²⁸ Art 386-387 of Be.

suspect and the person reasonably suspected of committing a crime to refuse testimony. With the right to refuse to testify the witness may not only deny the answer on the particular circumstances that may accuse his/her family member, but may only withhold all the general information that might be incriminatory to the suspect. This idea is elaborated on in the second part of the essay.

How does the refused testimony at investigation affect the judicial stage of the criminal procedure?

According to the previous Be. if a witness refused to testify either during the investigation or during the court stage, neither this person's previous testimonies and statements, nor the documents or physical evidence provided by the person were allowed to be considered.²⁹

This was highly problematic when the criminal offence was committed against a family member of the offender. It was typical in domestic violence cases that at first the victim made a testimony against the offender, however, after they reconciled with each other, the victim refused to testify. It could happen that the prosecution brought charges against the defendant based on the testimony of the victim, but after the refusal of the testimony at the court hearing, the accused had to be acquitted due to the lack of evidence. In a fortunate case, the victim refused to testify during the interrogation, thus the investigation authority or the prosecutor was able to close the case at the investigative stage.

²⁹ Bodor, Tibor – Csák, Zsolt – Máziné, Szepesi Erzsébet – Somogyi, Gábor – Szokolai, Gábor – Varga, Zoltán (2016): Nagykomentár a büntetőeljárásról szóló 1998. évi XIX. törvényhez. Wolters Kluwer Kft., Budapest. – 82.§ Right to refuse testimony among family members (further BODOR, 2016); BH2015.273 618/2012 EBH; BH1994.470.II. and see further in Gácsi, Anett Erzsébet (2016): A jogellenesen megszerzett bizonyítékok értékelése a büntetőeljárásban. Iurisperitus Kiadó, Szeged. (Bodony, István – Hack, Péter – Herke, Csongor – Ignácz, György – Kadlót, Erzsébet – Mohácsi, Barbara (2015): Kommentár a büntetőeljárásról szóló 1998. évi XIX. törvényhez) (further GÁCSI, 2016)

If the witness refused to testify at the first interrogation, it was not allowed to interrogate the witness later.^{30 31} If the witness later decided to testify, previous testimonies were to be read out or to be reviewed, unless the witness refused to testify again.³² Special provisions had to be applied on witnesses during the retrial procedure.³³

The Be. made a significant change in the use of testimonies. The witness must be informed that if he/she decides to testify after the required warnings have been made, his/her testimony may be used in the actual case or in any other cases even if he/she refuses to testify later.³⁴ This provision is to be applied in criminal procedures started after 1 July 2018,³⁵ and with some conditions in procedures under the scope of the previous Be. as well. Namely, the testimony of the witness may be used if he/she is warned according to the new Be.³⁶ Theoretically, this new provision may be applied to testimonies made after 1 July 2018. In practice, it is supposed to be possible to warn the witness again in line with the Be. and ask if the previous testimony is still maintained after the new warnings.

In our view, if the witness is interrogated after 1 July 2018 and the previous testimony after the new warnings is maintained, the previous testimonies are considered to be made with the knowledge of the new warnings. As a result, if the testimony is refused later, previous testimonies may be used as evidence.

The Prosecutor General applied for a uniformity decision at the Curia of Hungary. The application was based on similar reasons mentioned above and it was supported by the Curia as well.

³⁰ Erdei, Árpád – Hack, Péter – Holé, Katalin – Király, Eszter – Koósné, Mohácsi Barbara (2015): Büntetőeljárás jog II. Elte Eötvös Kiadó, Budapest. (further HACK, 2015) 49

³¹ Art. 296 Section (3) of the previous Be.

³² AMBRUS – FANTOLY – GÁCSI – JUHÁSZ. 2011. 98

³³ Opinion no 94 of the Criminal Department of the Curia “*At the retrial procedure the testimony of the witness who refused to testify during the main proceeding is considered as a new evidence.*”

³⁴ Art. 176 Section (1) point b) of Be.

³⁵ Art. 871 Section (1) of Be.

³⁶ Art. 871 Section (2) of Be.

In concrete cases, courts had hearings after 1 July 2018, but warned the witnesses according to the provisions of the previous Be. In other cases, courts made warnings according to the Be. in every hearing after 1 July 2018 even if the criminal procedure began under the scope of the previous Be.³⁷

In agreement with the panel of Budapest-Capital Regional Court, the Curia made the following decisions on the necessary warnings and the usage of previous testimonies:³⁸

“Where a witness entitled to refuse to testify but not having refused to testify under the rules of the former Act on Criminal Procedure wishes to avail himself of this right and refuses to testify at his repeated hearing made after the entry into force of the Act on Criminal Procedure, his formerly given testimony shall not be used after the entry into force of the Act on Criminal Procedure.”

The uniformity decision, however, did not deal with other concerns, such as how can courts and investigation authorities retake evidence that has been lost due to the refusal of testimony. It is still a question if the court is allowed to summon a witness who previously refused to testify. It is possible that a witness who refused to testify during the investigation changes his/her mind and is willing to testify at the court stage.

The procedural code allows interrogating anyone who may have knowledge of the relevant facts of the proceeding.³⁹ The question is if the judge needs to review this after each hearing.

In our opinion, this would make procedures unreasonably longer. Although it is not impossible that a witness still wants to testify. This decision is a discretion of the witness and as so he should not be summoned before

³⁷ Order no. 24.Bf.5552/2019/2. of Budapest-Capital Regional Court

³⁸ If a witness who has the right to refuse to testify made a testimony under the scope of the previous Be.than, after hearing the different warnings in accordance the Be.refuses to testify, his previous testimony may not be used. 4/2020 BJE

³⁹ Art. 168 Section (1) of Be

the court. The court, however, may inform the witness about the hearing and the fact that he/she can testify if he/she changes his/her mind.

Due to the above mentioned concerns we suggest the following modifications to the refusal of testimony.

Possible solution 1

In order to create a comprehensive regulation, it would be possible to prescribe the constitutional principle of *nemo tenetur* at the rights to refuse testimony. The exact wording of Art. 171 of Be. would be “*the family members of the defendant, the denounced person, the possible suspect or the persons reasonably suspected of committing the crime may refuse to testify. The testimony may be refused if the witness would incriminate himself.*”

This would be applicable only if the investigation authorities do not want to interrogate the witness as a defendant later. It would be unfair to interrogate the denounced person or the possible suspect as a witness, just because the witness is obliged to tell the truth.

Restrictive interpretation of the concept of the defendant has caused many problems during the investigation or at the court stage even under the effect of the previous Be. On the other hand, an arbitrary broad interpretation of the concept could cause unacceptable differences in the jurisprudence, and as such it would violate the right to fair trial and equal treatment. In our view, either the concept of the denounced person or that of the possible suspect should be defined, and they should be guaranteed the right to refuse to testify.

Clear definition and consistent application of these concepts would solve the above-mentioned problems. If the Be. is not modified, these questions may be corrected at the court stage by the following interpretation of the existing regulation.

Under the scope of the previous Be. restrictive interpretation of the concept of the defendant may have caused difficulties at the court stage. If the family member of the denounced person or the possible suspect had not

been warned on Art. 82 Section (2) Point a), the witness could only have the right to refuse to testify based on Point b). Later, if the family member of the witness became an accused person and refused to testify at court, the previous testimony was also excluded from the procedure. Because of this, the accused person could have been acquitted due to the lack of evidence. This unwanted scenario could have been prevented if the witness refused to testify during the investigation, and so charges had not been brought either.⁴⁰

According to the Be. modified warnings shall be communicated to every witness at the beginning of the first interrogation. It would be disproportionate and unfair to warn the witness for Art. 176 Section (1) Point b), but not to warn the person for Art. 171 and use his testimony later.

The following case could have happened under the scope of the previous Be. so the provisions of the previous Be. should be applied.

Criminal proceedings were initiated against a gardener called B.Z. of committing professional misconduct. 22 May 2018, at 2:25 pm, B. Z. stabbed a spade in the foot of his co-worker, who is also his wife, when they were working in the garden. The victim was immediately taken to the doctor and then she was transferred to the regional hospital, where she immediately underwent a surgery. According to the first medical report, she suffered a serious injury that took more than 8 days to heal. Criminal proceedings were initiated ex officio based on the denunciation of the doctor.

Inspector Krisztina Szabó from Piripócs PD acquired medical records and other documents, interrogated the doctor, the ambulance service and the neighbours as witnesses. The neighbours did not have any relevant information on what actually happened. After that, the inspector interrogated the victim as a witness. She warned her of the provisions of Art 172 of the previous Be. Based on the testimony of the victim, the police interrogated B.Z. as a suspect, and he confessed to committing the crime.

⁴⁰ It is to be emphasized that these concerns occur in proceedings where the testimony is a decisive factor (such as the testimony of the victim in a crime of causing bodily harm) or there are more family members to be interrogated (such as domestic violence cases).

Piripócs District Prosecutor brought charges against B.Z. for committing a professional misconduct. At the court stage a medical expert was commissioned to examine the injuries of the victim. The expert's opinion confirmed the charges. At the court hearing, the victim refused to testify and also revoked her previous testimony, and so did the accused person. Both the fingerprints of the victim and of the accused person were found on the spade. The accused was acquitted due to the lack of evidence.

The doctor executed his official duty with the denunciation. When the victim was interrogated, her husband was not a defendant in a narrow sense, and so the victim did not have the right to refuse to testify. The prosecutor put charges, but the court still acquitted the defendant.

The victim was interrogated as a witness on 15 July 2018. She was also warned that her testimony may be used later. After the warnings, the victim did not have to totally refuse to testify. After the prosecution, at the court hearing either the defendant or the victim refused to testify. Since the court had the possibility to use their previous testimonies, the defendant was convicted.

Although the objective truth may be achieved with this new regulation, the outcome can become suboptimal.⁴¹

If the concept of the defendant would be broader, these concerns could be prevented earlier without bringing accusations before court. Based on the previous example:

Before beginning the interrogation, the inspector informed the victim that the denounced person is her husband, B.Z. and as so, she has the right to refuse to testify. The victim refused to testify. Based on the other pieces of evidence, the police interrogated B.Z. as a suspect, but he also refused

⁴¹ It is also possible that if the family member of the defendant does not have the right to revoke her previous testimony, and because of this she significantly modifies her previous statement at the court hearing.

to testify. The police eliminated the criminal proceedings due to the lack of evidence.

Possible solution 2

If the above mentioned modifications are not accepted by the legislator, these concerns might be corrected in another way during the court stage. To this other solution the warnings of the witnesses need to be amended as follows. Before court, the witness has the right to refuse to testify on the ground of being a family member of a person who was a witness during the interrogation but become a defendant later. In this case the witness was not warned about the right of refusal, because at that time his family member was not a defendant yet. In order to meet fair trial principle, it is possible to solve these cases according to the regulation of the previous Be. This means that if the witness refuses to testify before court, the testimony given during the investigation shall not be used. If, however, the witness maintains the previous testimony after the new warnings, the whole testimony may be used. As an example:

Investigation was ordered due to the suspicion of budgetary fraud on 11 July 2018. The tax authority summoned and interrogated S. L. on 22 August 2018 as a witness. S.L. is the brother of one of the leaders of QUERTZ Co. At that time the procedure was pursued against an unknown perpetrator. As the result of the investigation, more persons, including S.A., the brother of S.L. became suspects. The case was prosecuted without the further interrogation of S.L. S.L. was summoned to the court hearing, where he refused to testify.

In our view in this case the testimony of the witness shall be excluded. Let us take a look at what happens if the witness testifies before court as well.

At the beginning of the hearing S.L. is warned that he has the right to refuse to testify considering that he is the brother of one of the defendants.⁴² If he does not refuse to testify, he needs to be asked if he maintains his statement given during the investigation. If he answers yes, his previous testimony may be used, because he upheld it even after the warnings on Art. 172 Section (1) of Be.

This correction should be applied, when the witness is warned for the first time *after* his family member becomes a defendant in a narrow sense. Otherwise, we would do nothing but re-establish the regulation of the previous Be. which is also opposed by the authors.

Final remarks

People working at various stages of a criminal procedure may face problems unknown to each other. The origin of these problems are often ignored, and misinterpretations can lead to severe and unwanted consequences at the later stages of the procedure. The authors of this study tried to highlight the difficulties faced by the interrogators at each stage of the criminal procedure emphasizing the importance of communication and cooperation. Without this approach, it is not possible to give comprehensive solutions to the problems detailed above.

⁴² Only in the parts that are connected to the criminal liability of his brother.

ATTILA SUHAJDA

Thinking about predictive policing

Introduction

The intention of predicting the future is actually as old as humanity itself. Nowadays, the dynamic change in society as well as the economic crises of the recent years generates that increasing demand for predictions. According to this demand, a serious amount of literature and methodology of futurology has been established from the 1930s. Futurology appeared in Hungary in the 1970s in an institutionalised form, and this process has made an impact on the work of the police agencies as well.

The introduction of some predictive method

For bringing the concept of futurology closer to the reader of this document, I would like to introduce some predictive methods which can predict events for a longer time-frame.¹ One of the most general methodological possibility is to assume that the value of the examined indicator will continue its way in the same direction and with the same extent. This method does not count with the change of the existent trend (such constancy is nowadays rarely possible), nevertheless, this potential future perspective also has a right to exist, thus cannot be ignored. Another method is when we are counting on the recurring pattern of the examined indicator. This method appears for example, in the theory of the Kondratiev-cycle in economics. The third predictive method is useful for examining multiple indicators together with applying the choice of convergency (the value of the indicators approaching each other) and divergency (the gap between the value of the indicators widens further) for the conclusion. Other possible

¹ Robert, M. Clark (2016): *Intelligence Analysis: A Target-Centric Approach*. CQ-Press.

methods are the application of correlation and regression.² The most basic method for involving the analyser's way of thinking is the estimation method, which is for estimating the indicator's future value and interval. The method of projection, as a possible means of prediction, requires the examination of the environment of the indicator as well, in the way of identifying the factors and forces shaping the examined indicator, and examining the potential consequences of making the impact of one of the factors or the forces more intense.

The methods introduced above can be found in one of the possible methods of creating scenarios. This method of scenario creation also puts emphasis on the driving forces of the examined indicator. According to this way of examination, it establishes 3 scenarios:

- 1) The first is the scenario of interpolation, in which the strength of acting forces remain unchanged;
- 2) The second is the scenario of projection, in which one part of the factors' function remain unchanged, but the other part of the factors change their impact on the indicator;
- 3) In the third type of scenario, all the factors and forces are changing constantly, and other new forces can appear to have impact on the indicators.

In futurology, next to choosing the appropriate method, it is also important to give special attention to the impacts, that are strengthening each other as well as to the feedbacks.³ The forecasts of the future can happen in various levels and time dimensions, however, this perspective will not be discussed in this essay, owing to the limitation of length. In the following parts, fresh recent experiences on the Austrian and German side will be discussed.

² Nemes-Nagy, József (ed.) (2005): Regionális elemzési módszerek [Regional analysis methods.]. ELTE Regionális Földrajzi Tanszék MTA–ELTE Regionális Kutatócsoport.

³ Robert M. Clark: c.b.

Foreign experiences on the predictive policing

The society's demand on forecasts and prediction have reached the policy agencies as well because of the intensifying tensions concerning the global terrorism and irregular migration.⁴ As a consequence, "predictive policing" became established, which tries to draw conclusions and prevent future crimes according to crime data (primarily geographical coordinates) of the past. This method was initiated in the USA in the 1990s, primarily in State of New York, and was later applied with success in Chicago and California as well, consequently improving the performance of the police in law enforcement. However, it was not a resounding success, since two major problems appeared in connection with the method of predictive policing. One of them was the problem with the source and depth of the input data, the other problem was generated around the conclusions drawn from the data and the consumption of these conclusions later on. The main problems were defined from one point as the scale of unreasonable consumption of personal data and from the other point that as the crime maps⁵ on some of the areas with detrimental conditions were made public it contributed to the further and deeper misjudgment of these areas. In the case of the source of input data, two main direction exists: one uses data in connection with committed crimes (coordinates of the location of the crime, statistical environment of the society, method of crime), the other adds personal data as well. The latter solution has been applied in the USA, GBR and Switzerland.⁶

⁴ Mátyás, Szabolcs – Sallai, János – Tihanyi, Miklós – Vári, Vince (2019): A rendőrségi elérhetőség és a bűnözés közötti térbeli összefüggés térbeli elemzése. In: Területi Statisztika, 2019/2. [Police contact and spatial analysis of the spatial relationship between crime. In: Territorial Statistics, 2019/2.]

Source: <http://www.ksh.hu/docs/hun/xftp/terstat/2019/02/ts590202.pdf>
Accessed: 23.04.2019

⁵ Sallai, János (2014): Bűnözésföldrajz: a rendőrség szolgálatába állított tudomány [Criminal geography: a science put at the service of the police.]. Belügyi Szemle, 2014/9.

⁶ Tobias, Knoblauch: Vor die Lage kommen: Predictive Policing in Deutschland: Chancen und Gefahren datenanalytischer Prognosetechnik und Empfehlungen für den Einsatz in der Polizeiarbeit – Bertelmann Stiefung.

Another challenge in predictive policing lies in the different kind of algorithms that can be used up to the prediction of the next crimes, not to mention those ethical and professional questions that are possible to arise. In this case, I consider the German professional conference held in 2018 April a good exercise, where regional policy agencies, researchers and representatives of the civil sphere took equally part. The dilemma of choosing softwares for performing predictive algorithms' activity can be also shown on German examples. In this case, the role of market is also significant, because of the tremendous amount of money being invested into the development of such predictive softwares. In those regions of Germany applying the method of predictive policing, three solution exist: they apply a purchased software, or apply a software of their own, or apply a further developed software that was once purchased. Applying the method of predictive policing in practice requires some preparatory process, thus in Germany three level of application exists: a test phase, test in practice and finally the regular application in everyday life.⁷

Source: <https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/Graue>
Accessed: 15.08.2018

Publikationen/predictive.policing.pdf. Accessed: 23.04.2019

⁷ Tobias, Knoblauch: Vorausschauende Polizeiarbeit: mit Algorithmen „vor die Lage kommen“.

Accessed: 23.04.2019



Figure 1: The levels of application in the case of predictive policing in the regions of Germany – January 2018⁸

In Hungary, a university note on predictive policing was published in 2019, and there has been an attempt to apply predictive policing in everyday work located in the 3rd district of Budapest – they even created a software of their own with the name BÖBE.⁹ The possibility of linking “Robotzsaru Neo” and the method of predictive policing would deserve a separate study in this topic.

Crime geography, which is related to predictive policing, is a topic of several Hungarian studies. These studies made an analysis on the crime geography condition of some area units (Hungary, XV., V., IX., XII. district, Budapest between 1960 and 1985, Debrecen, Hajdú-Bihar county,

⁸ Source: <https://www.spiegel.de/panorama/justiz/kriminalitaet-in-deutschland-polizei-setzt-auf-computer-vorhersagen-a-1188350.html>

Accessed: 23.04.2019

⁹ Mátyás, Szabolcs (2018): Az utazó bűnözés és a szervezett bűnözés kapcsolatrendszere [The relationship between traveling crime and organised crime]. In: Frigyer, László (ed.): Nemzetközi jelleg - szervezett bűnözés nyomozásának kutatása információáramlási szempontból. 189–205

Hungarian border¹⁰), and made separate studies on the crime geographical analysis of organised crime¹¹ as well as the educational possibilities of criminal geography.¹² From the perspective of the theoretical approach in criminal geography, Korinek László's definitions of „crime emitting areas” and „crime attracting areas” are worth to be mentioned and would also deserve a separate study in this field.¹³

The Austrian example

In the following part I will analyse the conditions of predictive policing in Austria. With this field deals the Criminal Analysis Department of the Federal Criminal Police Office, which consists of 6 persons, mainly psychologists and sociologists, whose study field incorporates cartography and criminology.

These professionals try to define the criminals' future attitude with analysing the number of cases and help the police in their investigations. The Criminal Police have used only the registered criminal data so far, but from 2019 they incorporate open source data in their analysis as well, for example, income data assigned to residence. This method is defined by the Austrian Police as Risk-Terrain-Analysis.

¹⁰ Kobolka, István – Ritecz, György – Sallai, János (2003): A MK államhatárának ezredfordulós kriminál földrajza [Criminal geography of the state border of the MK at the millennium]. Szakmai tudományos közlemények. Katonai Biztonsági Hivatal. 82-97

¹¹ Mátyás, Szabolcs (2018): A szervezett bűnözés kriminálgeográfiai vizsgálata [Criminal geographic investigation of organized crime]. In: Frigyer László (ed.): Nemzetközi jellegű szervezett bűnözés nyomozásának kutatása információáramlási szempontból – Tanulmánykötet II, Budapest. 134–168

¹² Sallai, János – Mátyás, Szabolcs (2016): Criminal Geography as a New Subject in the Hungarian High Education. *Magyar Rendészet*, 2016/2. 139–146

¹³ Mátyás, Szabolcs (2017): Magyarország általános bűnözésföldrajzi helyzete [The general geographical situation of crime in Hungary.]. *Hadtudomány*, 2017/4.

Source: http://epa.oszk.hu/02400/02463/00037/pdf/EPA02463_hadtudomanyi_szemle_2017_04_497-505.pdf

Accessed: 23.04.2019

In practice, there is a record for every crime that has become known. Every information is available in the internal system of the police in the so-called PAD (which means in German: Protokollieren, Anzeigen, Daten). Until 2019, only this information was used. „We are not using up traffic and administrative data, or data about terrorism, as Germany” – declared Vincencz Kriegs-Au, the Austrian BKA’s press spokesman in an interview.¹⁴

For the analysis, they choose such cases from the system which can be related to data about the location, time and method of the crime. During the analysis, they do not use personal data. According to the experiences from the USA and Austria, the most essential points of the analysis are the data of location and the time of perpetration.

In the next step, the collected data will be analysed with various methods. The information gained from the analysis will be shared with all the federal crime offices as well as the police offices, for making the task fulfillment of the police more effective. For Germany, the Austrian predictive policing’s data process is set as an example. As every federal state in Germany is independent and owns independent police as well, transfederal crimes and information can cause problems, especially because federal police agencies are not bound to cooperate with each other. Therefore, it is hard to establish a data base which covers the territory of the whole country.

¹⁴ Muyazen, Al-Youssef (2019): Predictive Policing: Wie die Polizei Verbrechen voraussagt.

Source: <https://www.derstandard.de/story/2000091840678/predictive-policing-wie-die-polizei-verbrechen-voraussagt>

Accessed: 23.04.2019

Forecast, analysis, warning

Predictive policing can be basically divided into 3-4 steps. The simplest step is the hotspot- analysis, when the location of the perpetration is highlighted with a point on the map.¹⁵ In the following steps these points became visualised based on the number of recently committed crimes in each area. This will be done on every type of crime belonging to one time period, chosen by the analyser. Choosing a very long time period can be unfortunate and inadequate to lead us to our target. The Austrians usually use the half-year period, which is, according to the experiences, proved to be successful with its good results.

After this process it is possible to compare the different time periods with each other. During the analysis, the displacement of some crime nodes can have strategical meaning. But this method cannot be applied to every form of crime, for example, in the case of murder hotspot analysis makes no sense. The predictive analysis can be relevant in those cases where the committed crimes draw a certain territorial pattern and possess high number of cases, which is fortunately not the feature of murders. The cases related to each other can often possess a common motive, and this can be determined during the analysis, but it is, nevertheless, not hundred percent sure that the analysis can effectively help the executive activity of the police, because the predictive method of analysis can only provide useful results in the case of the crimes occurring frequently. Kriegs-Au, the Austrian Federal Crime Department's spokesman once provided for this fact a good example: *"In the period before Christmas, the cases of stealing bags in Wien increased with such a speed that the area of Rathausplatz turned red on the map"*.¹⁶

¹⁵ Mátyás, Szabolcs (2017): A térinformatika rendészettudományi alkalmazási lehetőségei [Possibilities of GIS application in law enforcement]. In: Boda, József – Felkai, László – Patyi, András (ed.): Ünnepi kötet a 70 éves Janza Frigyes tiszteletére. 371–377

¹⁶ Muyazen Al-Youssef: Ibid.

The method related to those cases that repeatedly occur close to each other on the map is also frequently used. In the case of a professionally committed crime, the next case often occurs near to the location of the previous one. According to the leader of the Crime Analyser Department, in this time the work of the police can be compared to the research made on earthquakes. *“The main earthquake is followed by others, which can be manifested near to the epicentre”*.¹⁷ The analysis of recurring cases basically work in this way in *predictive policing*.

According to a case study, the number of burglaries during the nightfall period has increased. The reason for this is that in wintertime the burglars can take advantage of the longer dark hours. The analyser can sense the connection between time and space related to the crime, and after the prognosis he/she can make suggestions on the method of prevention, how to make the criminal's work more difficult, or how to catch the criminal. In the example explained above, the place and the time of the next crime can be predicted with great probability.

The prediction of the perpetrator's moves can be helped by the method of analysing the cases occurring repeatedly near to each other. However, in the case of occasional burglars and thieves, the situation is not so easy, because their movements cannot be predicted with this method. As Kries-Au explains: *“The situation can be imagined easily when someone walks home on a street and observes that the window of a shop is open, he/she suddenly comes up with the idea of entering that shop in order to look around and bring something home”*.

The methods of predictive policing can be applied for supporting the fight against travelling groups of burglars.¹⁸ These groups travel across Austria, commit their crimes and travel forth. This usually happens under some days, therefore, the prognosis must be set up under a considerably short period of time.

¹⁷ Muyazen Al-Youssef: Ibid.

¹⁸ Mátyás, Szabolcs: Ibid. 189–205

On the basis of analysis, the forces at disposal have to be regrouped. In the case of burglaries committed at nightfall, prevention plays a crucial role, therefore, the police forces of the area intensify their presence in that given part and in that given time. Along with these steps happens the re-grouping of the detective groups as well, and for such cases establishing specialised groups of investigators are frequent.

There are cases when the Police of Wien sends a warning via Facebook: “There has a great possibility that burglary occurs (in the area)” – this message appears on the screen of mobile phones in order to reach those people who can potentially be concerned for warning them and giving them advices. As a criticism on predictive policing appeared the phenomenon that sometimes the perpetrators committed their crime somewhere else and in another time, not as it was previously assumed. All the same, there are positive opinions on the method as well: “As far as I can see, this method has more positive values than negative, think just only to its deterrent nature”.¹⁹

Predictive policing follows two intervening strategies: the prevention and the reaction. The analyser relies on the fact that the defined state can help the work of the police from one point, because the intensified presence of the police on the critical points can have a deterrent impact on the potential perpetrators with urging them to give up their intentions, and simultaneously this can increase the sense of security in the society. Moreover, this method can help the process’ speed and efficiency in resource-consumption for deterring perpetrators.

Analysis of territorial risks

The method of analysing the territorial risks has been in the test phase since 2016, in which the official and statistical data are part of the analysis additionally to the time parameters. Such data can be, for example, the data of the infrastructure and the data of the Austrian Statistical Office – data on demography and income. With these data they try to identify the risk areas.

¹⁹ Said Kriegs-Au in his interview.

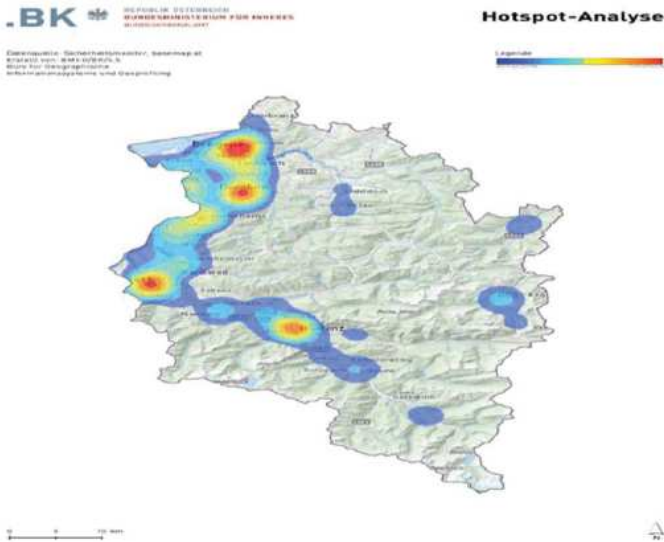


Figure 2: An example for the hotspot analysis.²⁰

The data have to be as detailed as it is possible, raster-like and cell-level data are required. For ensuring the provision of such data, the establishment of cooperation between the organizations accessing data bases is required. This method has been in use from 2019 in Austria.

Critics

Predictive policing had some critics in the past. Although the Austrian police does not use personal data, the method, nevertheless, generated criticism from the side of the Fundamental Rights NGO-Epicenter Works. One of the critics addressed the questionable impact of predictive policing because it cannot be stated clearly whether the wrong prognosis or the presence of the police is responsible for the prevention of the crime in case

²⁰ Muyazen, Al-Youssef: c. b.

when the police visits the place, where an alleged crime will be committed in the future.²¹

Efficiency

According to the Austrian police officers, this method is the appropriate one for using up the accessible abilities and resources in the targeted way. The Austrian police puts a great emphasis on transparency, and they consider the method of predictive policing to be efficient. One of the studies on the field explains that the Police of Milano was with 8% more successful in solving cases of burglary with using the methods of predictive policing than were other police agencies who did not use such methods. This fact proves that despite its circumstantiality, predictive policing can work properly.²²

Conclusion

The key concerns of predictive policing on the basis of the international experiences are the following: the source of the data analysis, the usefulness and publicity of the data, the methodology of the analysis as well as choosing the best software for the task. According to the Austrian experiences, with predictive policing it can complete and support the work of law enforcement efficiently. Therefore, this study's aim is to encourage the development of the Hungarian law enforcement with the recommendation of using predictive policing methods more frequently in the everyday work.

²¹ Muyazen Al-Youssef: c. b.

²² Source: <http://www.hec.unil.ch/documents/seminars/deep/1587.pdf>. 6
Accessed: 23.04.2019

ANDRÁS TEKE

Current theoretical and practical questions of security, law enforcement/policing and migration research
(Dilemmas of a Hungarian researcher)

Introduction

Security, law enforcement/policing and migration research have a special place in scientific and professional research. “Security science” and “police science” are already established, now the term “migration science” has been published in some papers. However, despite the scientific definition, the given topics cannot be described as monodisciplinary.

There is no consensus-based definition of security/safety or of policing, and there is a debate about the “location” and role of law enforcement/policing. It can also be said that there is no “uniform” definition of migration.

A particular science (study) has its own methodology. In many cases, this implies “technical knowledge”. The use of authentic and validated methods is the authentic practice of science. The cultivation of science at a given time depends on the self-determination, past, present, traditions and socio-political environment of a given science. It is therefore important to recognise what views, paradigms, expectations and objectives determine the application of research methods. If we talk about methodology in general, it should include methodics as well.

In the course of the scientific activity one can isolate

- 1) the process of scientific recognition,
- 2) the paradigms and methods of research,
- 3) the characteristic and determining methodology of measurement,
- 4) the conditionality of the conduct of experiments (methodology).

This is accompanied by

5) critical thinking.

Scientific thinking is based on “confirmability” and “refutability.” Scientific evidence of allegation is based on certain criteria, with only few scientific claims that would not have been refuted. This does not mean that there are no irrefutable allegations. Evidence found later supports or refutes a previous theory. The timeliness of social security/safety, policing and migration theories can also be examined within the framework of this process, which in itself raises serious dilemmas.

It should be emphasised that there is a discrepancy between scientific and everyday thinking, which often makes it difficult to understand the essence of the processes. (This can be complicated by the media acting as an “interpreter”.) In this field it is important to interpret and apply logic, induction and deduction. The representation of scientific knowledge can usually be classified as determinism or reductionism. (Vulgarisation is also common.)

Unfortunately, in many cases, false explanations are not uncommon, used in order to produce scientific results at all costs. The above, of course, has an impact on hypotheses, as well as on the foundation of new theories. All scientific-professional researches can be categorised on the basis of both theoretical and practical aspects.

Measurement data and observations can usually be quantified. (Note: in many cases, the method of quantification also has a deterministic effect on the result.) The available data and information can be divided into two distinct groups. One is quantitative, the other is the qualitative research group, based mainly on observation and organisation of non-numerical experiences. The quantitative group operates with series of data, the qualitative is more descriptive. The two methods are not mutually exclusive, but are complementary to each other. Scientific research may be distorted if one attempts to “quantify” qualitative results at all costs. On the one hand, security/safety, law enforcement/policing and migration can be described quantitatively (numerical data), but social contexts are not always quanti-

fiable. The survival of paradigms may interfere with the relationship between the two methodological groups. If we look at strategies for obtaining data, information and knowledge, we get a heterogeneous picture both at national and international level.

The basic methods of research utilise different measuring instruments. The measurement itself seems simple. Delimit what you want to measure, select one or more measuring instruments, and organise and interpret the data obtained. This could result in statistics. The phenomena associated with society to be measured are constantly changing and moving. The “mass” to be measured changes, the conditions and the relationship system vary, so the method and result of comparability will not always be reliable. The size of the cluster and sampling also do matter. The above is usually based on a model. The model also plays a major role in measuring what we really wanted. It is also important that there is no confusion between the results obtained and the real processes. That is why it is important to know the validable methods of measurement of the phenomenon or process to be investigated. In scientific research, well-received questions, doubts play an important role. The answers can be obtained by observation and creating circumstances during which changes and events can be identified. This is the experiment. An experiment is a delicate matter, because you need to know how long you can interfere with the processes so that they do not change as a result of the intervention. Modelling is also important for experiments. The most fundamental factors of research and experimentation are questions related to research, the identification of hypotheses, dependent and independent variables, implementation of control and the selection of control groups (if necessary). The realisation and credible implementation of the above do not guarantee the effectiveness of scientific research alone if it is not accompanied by critical thinking.

Treating “received” results as irrefutable facts can be a basic source of error. The essence of critical thinking is that all facts, data and information in relation to the subject and environment of the research must be reviewed and interpreted over and over again. This means examining the sources. This introduction outlines an ideal state, but what is reality? If you think

about the above, dilemmas may emerge in relation to theory and practice. The “dilemmas” compiled from the author’s writings published in the Pécsi Határőr Tudományos Közlemények¹ between 2008 and 2020 are presented here but not in the order of importance.

Dilemmas

The term dilemma itself refers to forced choices in difficult situations, between at least two (or more) equally bad or good options. Dilemmas are also based on the fact that theories, approaches

- 1) explain and/or describe things, phenomena (especially afterwards);
- 2) they seek seemingly causal mechanisms, in which the cause is not always clear;
- 3) mix the “subject” and “object”, which makes it unclear who the real actors and real objects in the process are;
- 4) theories often involve “cost-benefit calculation” even if it is not applicable, or can be interpreted at several levels;
- 5) decisions on security/safety, law enforcement/policing and migration management are highly differentiated;
- 6) the problem and relationship between spontaneity and organisation in process management are not always clarified;
- 7) theoretical exclusivity strongly predominates in the approaches;
- 8) empirical results do not always coincide with theories, and adjustment is not always a priority;
- 9) the methodology, conditions and compatibility of the environment are not always relevant;
- 10) measurements cannot always be reproduced due to changing conditions;
- 11) forecasts cannot always be based on previous theories and experience;

¹ Review of Border Guard Scientific Studies, Vol. IX-XXII.

- 12) theories usually cover only one segment of the total volume and therefore contradictions between theories are common;
- 13) there is a lack of comprehensive and/or integrated and, as a main problem, abiding theories and models;
- 14) integrated approaches are hampered by the heterogeneity of databases and (also) by interest-motivated processes;
- 15) in many cases individual theories spend more energy to refute each other than to solve problems.

One could obviously come up with further points. In terms of security/safety, law enforcement/policing and migration management, the role of hierarchical bureaucratic organisations and institutions is crucial. This role is derived from the functional designation. The way these organisations and institutions relate to scientific professional research is therefore an essential issue. In many cases, this system of relations can also be decisive in the “extraction” of scientific values.

Undetermined determination

There are many definitions of security/safety, law enforcement/policing and migration. However, there is still no unified, consensual solution. (The situation is similar for other concepts, e.g. human rights, human development and human security.) The above concepts are considered self-evident in important political, international documents, laws and scientific-professional essays. International organisations also use these concepts self-evidently. Even arguments are based on them. In many cases, non-consensual definitions can later play a role as a political and even legal argument. If someone with power and interest-based influence applies the term, the original meaning may be distorted. It is often difficult to determine which definition is relevant, which is applicable and which is not.

An in-depth outlook

Despite its big volume, the literature related to security/safety, law enforcement/policing and migration is rather intra-twined. Although many people write about them in many ways, they usually refer to certain (identifiable) author-researcher circles and documents, often in a way that makes it difficult to trace them. It is often difficult to “trace” the original and real essence of the underlying reference and the basis itself. In essays about the theories and models of security/safety, law enforcement/policing and migration, it is common to refer to “someone that said something” about them. The repeated and varied arrangement of these references is fundamentally the backbone of the “professional” literature. In addition, the emphasis is reorganised from time to time. This also generates a loop-trap, because in many cases the precedents also do determine the scope researchers are allowed to manoeuvre in.

Priority of events

Another approach is referring to events, conventions, decisions, conferences, book releases, statements by someone, by institutions, by an organisation. It also starts a chain of references. References to political declarations and international acts often give a modified picture concerning the real interpretation of security/safety, law enforcement/policing and migration. Politics tends to use any (pre-)concept as a reference, and justify their choice by the original justification for the very same concept. The interpretation of theories, models, policies and strategies, programmes and initiatives is also heterogeneous. Theories and models interpret and describe processes, phenomena, while policies and strategies represent management, in other words the essence of the practical side. Often, these appear mixed together.

Process and systematic approach

Everyone talks about it, and it is often referred to in writings, but the product often does not reflect it. The process features a beginning, a middle and an end, stages can be identified, the process itself can be described. This is different for hierarchical bureaucratic organisations. There are regulations, working documents that regulate certain areas, but not the whole process. That is why the descriptive analysis of processes in security/safety, policing and migration management areas is limited. The limitations of the system approach can also be attributed to the above. Any change to the system affects the operation of the entire system. Ignorance of the approach also affects the distortion of the relationship between “the whole and the part”.

Interpretation of decision levels

Often, in the context of security/safety, law enforcement/policing and migration management, ideas are formulated in a theoretical way, or in general. In practical application, it is important to display decision and application levels. Nationally, there are

- 1) central,
- 2) regional or territorial, and
- 3) local levels.

They can also be called

- 1) strategic,
- 2) tactical and
- 3) operational or executive levels.

Organisations and institutions with the appropriate authorisations are associated to them. In the functioning of the EU, the so-called operational level, which directly implements the strategy, is “wedged in” between the

strategic and tactical levels. On national level it appears at the local level. There is therefore a shift in consistency between EU and national decision-making and implementation levels. An EU operation takes place in the states at the local level, whose authorisations are not compatible with it. Similar issues may arise in the application of Frontex and other EU agencies in a national context. If the researcher fails to see the synchronisation or asynchrony of the decision and execution levels, he may draw false conclusions.

Divergence of designations

The EU mass-produces “strategic” labelled and differently named documents (e.g., their programme is a match for a strategy, their strategy is more like an action plan, etc.). These documents are not always properly integrated into the existing document system and into processes. Sometimes certain processes are “conspicuously” not completed as another “strategic” document emerges. In many cases, the classical logic of strategic thinking is violated. Document hierarchy does not always prevail. There is no horizontal consultation. There is a general policy, there are professional policies and sectoral policies. Policies are converted into concepts that form the basis of strategies, and there is a plethora of strategies. The strategies are implemented via action plans, which are broken down into programmes and projects. The projects are based on individual measures. This also implies a clear document hierarchy. This is what the names should be adapted to. For example, the name of the Stockholm programme intended to be a strategy may be misleading. A pact or declaration might be of strategic importance, but it is not a strategy if it actually does not meet the formal and contentual strategic criteria. Ignoring the above may lead to erroneous conclusions.

Authentic translation or misconstruction?

A problematic factor is the translation of foreign language material, especially English, into Eastern and Central European languages. Since the texts on security/safety, law enforcement/policing and migration are mainly published in English, it is important to translate them into their native language. In essence, Anglo-Saxon thinking and mentality characterise the writings related to security/safety, policing and migration. This has also been included in the communication of international organisations, and this way of thinking is not always easy to integrate into the European continental or sovereign state point of view. There are several expressions in English whose meaning is not only slightly different from that of in other languages. For example, in many cases this has not been and is not taken into account in Hungarian translations, so the original idea is often distorted, which can be misinterpreted.

Assessment of organisational operations

Organisations with a hierarchical structure are difficult to assess in the same way. In certain situations, the existence and functioning of the hierarchy may be detrimental.

- 1) The management of organisations concentrates on keeping the system operational, and the "connecting" relations between the elements often seem more important for the functioning of "the whole";
- 2) When you concentrate on the elements of hierarchical organisations, the substance of the elements becomes more important;
- 3) The high number of the elements of the hierarchical system and the links between them might exceed the limits of predictability, making the systems rigid and difficult to manage, and also making them difficult to assess.

This also influences the perception of security/safety, law enforcement/policing and migration management.

Result vs. output, efficiency vs. effectiveness

Assessing a system or a process results in a kind of value judgment. This may vary depending on the nature of the investigation. It can be considered a result if the target has been achieved or a positive shift has been made from the original state. Result is not the same as output. An output can be identified without an identifiable result, for example, if a document has been published, a decision has been made, even if the consequences are not measurable. Efficiency is generally approached from an economic perspective, in a cost vs. return or investment vs. benefit relation. In social processes, this is difficult or impossible to measure, or a longer period of time must be taken into account. Efficiency can also be interpreted as the minimum possible cost or the best possible result in achieving the desired target. Effectiveness (efficacy) is based on the measurement of the actual results. This is the mechanism of consequence. In the case of security/safety, law enforcement/policing, migration management, result, output, efficiency and effectiveness can only be interpreted by using a process and system approach. Output and efficiency in terms of results are difficult to convert into a measurement unit in social processes.

Analysis, synthesis, adaptation and integration

When approaching issues, enforcing the concept proves to be important. Applying good practices is fundamental. The basic conditions for analysis, synthesis, adaptation and integration are the reliable, primary data-based, credible and up-to-date integrated databases. The lack of this prevents meaningful progress. Many researchers consider adaptation vulgarly and as a simple cloning. They do not take into account environmental, system operating factors. Integration does not mean coexistence, but operating as a whole. Therefore, the method of the analysis, the degree of differentiation

and selection during the synthesis and how much attention is paid to the organisational, activity and environmental alignment of the elements do matter. In this context, in the world of globalisation the spread of so-called standard products, services, technologies and models becomes naturally dominant. This affects not only consumption and habits, but also people's way of thinking. While managing security/safety, policing and migration, the processes may include non-integrated elements as well. Sometimes managerial and marketing techniques not typical for hierarchic organisations might be applied. These do support current politics, but the effectiveness of solutions cannot always be justified.

Perspective and considerations for the examination

The accepted phenomenon in scientific and professional research is the application of dimensions, aspects, components, relations, levels, etc. as considerations. If something is interpreted differently by a professional, a scientist, a politician and an average person, it is not easy to explore the nature of a particular system of relations. Sometimes the dominance of the prevailing approach hinders the practical implementation of full-scale, actor-oriented approaches. Approaching the problem can therefore be very complex, but can also be narrowed down to a handpicked element. In addition to the above-mentioned elements, there is also a reference to focus, priority and the "centre of gravity" etc. Will it result in a valid answer, if we examine a certain dimension from a certain point of view, focused on certain handpicked details of certain elements, set in a certain timespan, along certain priorities? This dilemma also highlights the interpretation of the relationship between the part and the whole.

Mechanisms and consequences of causal chains

In the global world, processes are complex, resulting in specific cause-consequence chains. In these chains, a consequence might additionally act as a cause as well, even more than once. One should always investigate

whether what has been tackled is a “cause” or a “consequence”. Understanding and interpreting this exceeds the limits of traditional thinking. Einstein’s much quoted saying fits well here: *“We cannot solve our problems with the same thinking we used when we created them.”*

Scientific research usually does not examine the whole “chain”, only individual segments of it and draws conclusions from it. This poses a threat to understanding real processes.

Problem approach and hierarchy

The leaders of hierarchical organisations prefer “instant” scientific or perceived scientific results, those used to justify a subsequent “scientific” decision or to simplify the problem. At the same time, scientific decision-making is usually seen by hierarchical organisations as a distraction. If scientific methods are applied in hierarchical organisations, three directions can be observed: (1) “how” to quickly solve the task or problem, how responsibility can be shared, what “creative” tools and methods can be involved in the search for solutions; (2) “what” should be done (hierarchy does not like this, because by the time it is answered, it is usually too late); (3) focusing on “why”, which often requires a scientific explanation to support self-justification. In hierarchical organisations, the “freedom” of science is effectively counterweighed by the rigorous rules and short-term expectations of the leadership.

Researches based on primary and secondary data

A scientific research can be based on primary or secondary data. The specialties in security/safety, policing and migration areas are either distinct or not available. Secondary data is existing data recorded by others for their own research. This is where the paradoxical situations arise for the three areas mentioned earlier. Sometimes “specified” researches are based on existing, derived secondary data of other researches, which makes the actual results of the research questionable.

Formal conditions

In an organisational environment dealing with security/safety, law enforcement/policing and migration issues, scientific research can work only within a hierarchical framework. If such research is ordered at all, it is usually linked to daily work or current (political) problems. Existing organisational elements with scientific functions are operated under different classifications and competences within each organisation. They are regulated by job descriptions. These elements might become disturbing, as they might concern issues that are considered sensitive by the top management. Scientific research is partially driven by the informal flow of information based on informal relationships, which assumes a functioning network-approach. Sometimes it is hindered by formal regulations. Scientific researches are traditionally classified as basic, applied and development (action) researches. Each has its own *raison d'être* and function, and they might be based on one another. It would be necessary to regularly review the results of previous basic researches, however, the need to do so is generally not a motivating force.

Forced choices within a closed system

The institutional systems of security/safety, policing and migration management remain closed, despite their declared openness. This is reflected in the links between organisational and professional cultures. Despite the need for integrated operation, the dominance of a narrowed-down approach is still present, which limits the application of the process and system approach.

According to Russian mathematician V.P. Maslov,² “*The existence of a solution of an ill-posed problem is equivalent to the convergence of a regularization process.*” This is also reflected in the pursuit of a solution at all costs, which represents the competition for resources within the organisation. Decisions are usually affected by the lack of, or only limited knowledge of the possible solutions.

Scientific works for extraordinary, crisis or unique situations

It is interesting to note that a significant part of researches and writings on security/safety, law enforcement/policing and migration do not examine the “normal situation”, but rather the issues related to crisis or extraordinary phenomena. They draw general conclusions on the latter, which are also considered to be applicable to the “normal situation.” (Applying conclusions, gained by examining non-normal situations is disputable itself in normal situations.) Examining unique situations without taking their context into consideration is another phenomenon, whereas unique situations should not be generalised, either.) Examining normal situations on scientific level is “unwanted” and unmotivated, as “professionals” consider their area to be “regulated enough” or “as good as it can possibly be”. Extraordinary situations require a different method. Emergency management usually results in only a temporary release of tension, as they lead to further questions to be answered and further issues to be solved.

² The existence of a solution of an ill-posed problem is equivalent to the convergence of a regularisation process.

Source: http://www.mathnet.ru/php/archive.phtml?wshow=paper&jrnid=rm&paperid=5640&option_lang=eng_

Accessed: 02.06.2011

The victors always want to fight the next war based on the experience of the previous war

The idea applies to science as well. However, in the ever-changing world, what used to be learned from the past, we now have to learn from the thoroughly analysed present and the assumed future. The pursuit of continuity may be an organisational value, but it does not necessarily support progress. The recognition of current and expected trends and orientating towards the future should be preferred.

Dealing with real-time or unstructured data on organisational level

As a result of technical developments, it has become possible to ensure real-time information flow also for security/safety, policing and migration management activities. There is real-time (online) and non-real-time (offline) data and information flow, depending on whether the parties are “connected” to the communication channels.

Due to the efficient usage of systematically organised tools, geodata of relevant security/safety, policing and migration events and activities is available. Scientific researches, however, gain only limited access to it, they only have access to past-time data about events that have already taken place.

Complex or integrated?

We often use the terms “integrated” and “complex” for all two categories indicated in this chapter. Integration means fitting, merging previously separate parts into a greater whole, in which a (new) network of relations defines the way of operation. The basis of integration is the realistic/effective interconnection of the modules that carry out the tasks of certain elements, processes and sub-levels independently. (Obviously, the test criteria should take these into account.) “Complex” and “integrated” are not synonyms. Complex means complicated, but it also means the pursuit of completeness,

everything related to the subject, without leaving anything out. (A complex system is complete.) The term integration assumes a functional approach, which is relevant for the proper functioning of the system. The term complex does not properly express the essence of integration. System operation is truly integrated when there is no need for separate (event-tracking) data/information transmission and (manual) control between different sub-systems/modules.

Expectations, demands and satisfaction: what researches usually lack

In addition to the usual institutional-activity approach in the investigation of security/safety, policing and migration management, there are a number of components that are not “taken into account”. It is appropriate to examine how needs and demands, the utilisation of security and police services and the consistency between the needs of security and police services come into effect, if at all. Answers are needed about how the appropriateness of management, economical efficiency, technical and technological quality, strategies and objectives, risk and change management and the satisfaction of stakeholders are addressed. Furthermore, how equal opportunities, equity, accessibility and the coordination of activities are achieved, and what scientific and technical quality supports all that. The principle of “good and well” should also be applied in the areas of security/safety, policing and migration management, by means of an effective, high-quality decision making mechanism and high-quality enforcement, along with appropriate ethics.

Interpretation of “hazard interpretation”

Currently, there is neither an internationally accepted standard for the interpretation of hazards, nor is the concept of hazard defined in a consensual way in the literature. Law enforcers tend to make a comparison between law interpretation and hazard interpretation. The first step in applying the law is to establish the facts. In the case of hazard interpretation, this is the

identification of the hazard. In the case of the application of the law, the next step is to interpret the relevant legislation. In the case of hazards, it is important to decide what the hazard means in itself and how it might affect the processes and systems. The third step in the application of the law is to make a decision. In the case of hazards, this stage is similar, but the decision differs in its content, as it should contain the necessary actions to be taken, too, provided that institutional mechanisms do not approach it differently (prejudication). Similarly to regulations, hazards can be interpreted along multiple approaches, but interpretation should always comply with the particular value, ethical, legal, social and cultural framework and the principles of process and system approach. However, the interpretations of hazard and safety are different categories.

The “embeddedness” of thinking

In the case of paradigms, the “business as usual” approach survives generations even if the user is not even aware of the original starting point and the changes that have taken place since then. Researchers and organisations involved in security/safety, policing and migration management usually think the “DRM” (determined, reducing and mechanistic) way, and “time-tested” solutions are paradigmatically preferred, regardless of the nature of the problem, which is a barrier to changes. Furthermore, the horizontal separation between sectors, disciplines and institutions is still present. The basic reason for this is thinking along tasks and institutions and statistics and criminal policy. The way of thinking also affects the willingness of adapting external influences, including scientific results. One of the characteristics of hierarchical bureaucratic organisations is the preference for linear thinking. This way of thinking is vertical, based on regulations. We should note that current regulations are based on a specific technical, technological and scientific environment, and it takes a long time to change them, except when a suddenly emerged need or interest forces them to be

overwritten. The linear way of thinking aims to find a solution based on already existing capabilities and experiences (see 2.18).

Influenced by cultures and identities

Security/safety, law enforcement/policing and migration management are determined by political, professional and organisational cultures their top managers represent. (The same applies to scientific researchers.) The attitude of individuals who cultivate it towards society, their occupation, their vocation and their peers is culture-specific. It is crucial to understand the way they are viewed as professionals by society, politics, and their narrow or wide environment. Identity determines the possible directions of scientific research, predestines its intra-twining, and reveals its professional limitations.

Organisational culture is also reflected in the thinking and behaviour of the members of the organisation. It is based on the expectations of the management and the values shared and followed by the employees. Political culture is always determined by the specific history and characteristics of the particular country. Political cultures have been shaped by the same factors that resulted in the dominance of the political system. The political system barely tolerates conflicts, it is barely able to arrive at compromises, which also affects scientific activity. If a political culture prefers current politics, realistic politics are overshadowed.

The relationship of cultures, identity and science is a structured question to be answered, a hint, a need for clarification about our role, when objectives and the ways to achieve them are theoretically set.

Reliability of data

Without authentic, valid and compatible databases, confusion might emerge. During the ten-year period between censuses vital demographics data is scarce. There is no unified registration of the movements of persons

András Teke: Current theoretical and practical questions of security, law enforcement/policing and migration research (Dilemmas of a Hungarian researcher)

between countries. Categories, classifications, accessibilities and actualisation are different, sometimes even within a single country. The ability and capacity of unstable states to provide information is also limited. In the name of political correctness, important data cannot be accessed, and without them, correct conclusions cannot be drawn.

Drifting between sciences

In the context of security/safety, law enforcement/policing and migration research, there is a need and opportunity for interdisciplinary space. We can talk about monodisciplinary, intradisciplinary, multidisciplinary, interdisciplinary, crossdisciplinary and transdisciplinary research.

The combination of the above may result in the creation of a new eclectic discipline, or in an originally independent discipline partially disappearing or losing its professional identity over time. In this context a number of ethical, philosophical and compatibility issues may arise, which do not fit within the framework of this study. The problem also concerns how interdisciplinarity and inter-organisationality can be distinguished. For example, an actual consequence of “crossing over” is the mixing of law enforcement/policing and military terminology and the non-professional-specific character of approaching the problems. In terms of security/safety, law enforcement/policing and migration, monodisciplinary approaches are not realistic.

Conclusion

The issues referred to as dilemmas in chapter 2 are not of equal weight, nor do they always fall into the same categories. However, their existence influences processes, thinking, decisions, scientific research and the reception of its results. These are valid dilemmas at present, but have also been valid for the last forty years. They are connected to global processes. In the

late 1980s major changes took place in the world, described as “mega-trends”³.

In 1982, John Naisbitt identified 10 of these trends regarding the USA:

- 1) Transition from the industrial to the information society;
- 2) instead of technical pressure, advanced technology and relationships;
- 3) from national economy to world economy;
- 4) from short-term thinking to a long-term perspective;
- 5) centralisation or decentralisation;
- 6) from institutional assistance to self-help and self-care;
- 7) from representative democracy to participatory democracy;
- 8) from hierarchy to networks;
- 9) North vs. South conflict;
- 10) from “either-or” to a number of alternatives.

According to Naisbitt, we live in a society of events, and the heat of the current events make us forget about realising connections, which is particularly dangerous in the global and digital world.

Four decades have passed since the publication of this book, but these trends seem to continue to live on. Events are usually consequences and there are “many” of them, which determines how they should be handled. Recognising and identifying actual processes can reduce dilemmas and provide the opportunity to answer new, important questions.

³ Naisbitt, John: Megatrends. Ten New Directions Transforming Our Lives Warner Books, New York 1982© 290; Hungarian translation: John Naisbitt – Megaterendek. Országos Műszaki Információs Központ és Könyvtár.

Summary

Borszéki, Judit: The role of domain experts in the development of the course English for Border and Coast Guards (6-23)

The paper presents the English for Border and Coast Guards (EBCG) international project conducted by FRONTEX (European Border and Coast Guard Agency) since 2015 and its first product, the EBCG e-learning tool. It also examines the needs analysis and course development trends discussed in the related literature on specific-purpose language tuition and compares their elements with the steps in the development of the EBCG tool. A special feature of this process is that it is initiated and managed by non-linguist (domain) experts, who create the specific-language corpus, which serves as the basis of the learning material.

Éberhardt, Gábor: The relationship between human migration and spirituality (24-31)

One of the most important areas of human migration in the research of resources is spirituality. Written teachings from human prehistoric times and from the time when world religions were formed already knew the phenomenon of migration and made recommendations to believers. These teachings can be interpreted and applied to the migration patterns and the actors of today's modern world.

Fábián, Péter: The counter-terrorism strategy and provisions of the European Union (32-46)

Cross-border terrorism is classified among transnational criminal activities: it violates international interests, and it can only be counteracted if the international community cooperates. The European Union is at the forefront of cooperation: shortly after the 11 September 2001 attacks the EU started the development of the Counter-Terrorism Strategy, while at the same time it also made it clear that each Member State must take part in the implementation of this strategy.

Fenyvesi, Csaba – Orbán, József: The electronic data as the constituent of the 751 pyramid model of criminalistics (47-63)

In the first part of this paper the authors outline a model of the central questions, methodology, system of mediators, and the ultimate goal of criminalistics, by now a sophisticated, meticulous and diversified empirical science of facts. It is hoped that the model is presented in a simple form which is clear to everybody and can be used in theory, in everyday practice as well as in education. In the second part you can read about electronic data as an important mediator tool for the identification as the focus of the pyramid model: interpreting, classification and sources of electronic data. The authors believe that the effective exploration of the electronic data (including digital data) that belongs to the group of so called “second generation” evidence (relevant to criminal law) obtained by secret or well-known criminalistic methods and also the safekeeping and use can significantly help the crime-fighters (the digit-commandos) with answering the seven basic questions at the base of the criminal pyramid in the most precise way, and with the identification process of a person, object or action.

Gaál, Gyula –Hautzinger, Zoltán: The characteristics of people smuggling in Hungary (64-79)

Based on the geography of migration, Hungary's geographical location and the characteristics of its infrastructure make it an important area for international illegal migration and the organised people smuggling activities based on it. Hungary is affected by irregular migration routes as a transit country. The activities of smuggling organisations fully reflect one of the defining aspects of organised crime: the low risk of detection and the high profits that can be relatively easily made in a short time and with minimal effort. Depending on the degree of organisation, the distance and the conditions of the transportation, the fees for people smuggling vary widely, from a few hundred euros to several thousand euros, and the illegal proceeds can be measured in billions.

Herke, Csongor: Practical problems of electronic contact in the criminal proceedings in Hungary (80-89)

The Act XC of 2017 on criminal proceedings (CPC) has significantly altered criminal procedure in its structure and its content. Among the new rules, the CPC makes electronic contact widely available (mandatory). Firstly, the study describes the main rules and forms of electronic contact (facultative electronic contact, mandatory electronic contact, electronic contact with the expert and the electronic contact among the authorities and between other bodies). Then the author points out some practical problems related to electronic contact (lack of a uniform system, shortage of criminal administrative data forms, inflexibility of the E-paper system, problems of the mixed paper based and electronic proceedings in the case of electronic contact, documents sent with improper format and problems related to the authorisation of the defender).

Kalmár, Ádám: Principles and rules of the involvement of the Hungarian Defence Forces in border surveillance (90-111)

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. The study reviews the practical steps of the development of the joint military-police border surveillance in Hungary. This joint activity is now considered one of the good practices of integrated border management in terms of legal regulations and effectiveness.

Koncsag, Katalin – Márók, Soma: The right for the family members of the defendant to refuse testimony in the context of the new Code of Criminal Procedure (112-127)

The principle of legal certainty – A principal right, which has to be respected by the court, and during the investigation as well. The job of law enforcement is to guarantee the uniform manner during the whole process, including the testimonies. However, real life brings us cases that are not

regulated by the law and cause problems during the investigation. Using practical experience, the authors point out the deficiencies of the (new) Hungarian regulation and with *de lege ferenda* suggestions show alternative solutions to the identified problems.

Suhajda, Attila: Thinking about predictive policing (128-139)

At the beginning of this study I generally examine Prediction and some techniques of Prediction, and then I briefly mention the international and the Hungarian experience of Predictive Policing, primarily introducing the Austrian experience in details.

Teke, András: Current theoretical and practical questions of security, law enforcement/policing and migration research (140-159)

One of the characteristics of modernity is the increase in the number and frequency of changes and the reduction in the period of changes. Changes also determine everyday life. Recognising, identifying, interpreting and managing changes is a major challenge. In many cases, traditional approaches no longer work. In the world of the Internet, the scientific researcher encounters more uncontrolled, unrealistic data and information than credible sources. The expectations for the methodology have also changed. This study attempts to outline the essence and impact of current challenges on security, policing and migration research.