

VÖLGYESI, LEVENTE

The circumstances of the creation of Act VIII of 1903 on the Border Police and its contemporary relevance

Objectives

The peculiarity of the science of legal history is that it provides guidance for the future by presenting the past and drawing its lessons within the framework of political and legal science, more specifically constitutional and administrative law, thus serving the mapping of possible paths of institutional development.¹

The period outlined in this article is the second period of the Austro-Hungarian Monarchy, when the Kingdom of Hungary sought its place in a pan-imperial context, defending its sovereignty and, in the case of its division, its autonomy in the given territories. The parallel is given, since in the European Union, Hungary, aware of its sovereignty, is part of a larger unit, the external and internal borders of which exist, and thus the parallelism of tasks and the drawing of lessons from the past are justified.² From the beginning of the twentieth century, therefore, the laws on border police, or more precisely, a package of laws, provided an advanced regulatory framework, the fine-tuning of which could be effectively managed by ministerial decrees.

¹ Horváth, P. (1991): Általános jogtörténet [General legal history]. Tankönyvkiadó, Budapest. p. 10

² Parádi, J. (2004): A történelmi Magyarország határőrizeti tapasztalatai 1867 – 1913. In: Mezey, B. (ed.): Eckhart, F. emlékkönyv. Gondolat, Budapest. p. 357

Introduction

In 2013, Hungary celebrated the 110th anniversary of the birth of the law on border police. In honour of this, a separate volume of studies was published, in which renowned authors, such as György Nagy, József Parádi, János Sallai, Zoltán Hautzinger and Gergely Virányi, praised the illustrious event from the point of view of law enforcement history.³ The present study does not wish to repeat what was written there, but only seeks to enrich the previous ones with a few additions.

The question also has constitutional historical implications. To draw a parallel with the current situation, when Hungary is a member of the European Union, after the Compromise of 1867, the Kingdom of Hungary had limited sovereignty, given that it did not decide on certain issues independently, but jointly with the Austrian Empire, and this so-called real union also prevailed in areas that affect the topic we are currently discussing.⁴ The question is further complicated by the question of whether border guarding belongs to the field of defense administration or is part of the internal affairs administration. It is a fact that both ministries are present in the history of the Hungarian armed forces, and in addition, the direction and supervision of the Minister of Finance is also present, associated with the Finance Guard.⁵

The other question is to what extent the management of the armed forces can be considered part of the state's tasks and to what extent it is the area

³ Gaál, Gy. (2013) – Hautzinger, Z. (eds.): *A modernkori magyar határrendészet százítás éve* [One hundred and ten years of modern Hungarian border control]. MRTT Határrendészeti Tagozat, Budapest.

⁴ Eckhart, F. (2000): *Magyar alkotmány- és jogtörténet* [Hungarian constitutional and legal history]. Osiris, Budapest. p. 359

⁵ Mezey, B. – Gosztonyi, G. (2020): *Magyar alkotmánytörténet* [History of the Hungarian Constitution]. Osiris, Budapest. p. 436

of administration of the municipalities.⁶ In this regard, centuries-old traditions had to be rewritten, and this caused considerable difficulties and challenges for legislators.⁷ It is evident that the protection of the borders was initially provided by the border counties, later by the border castle system, and then – focusing primarily on the southern ends – by the military border guard regions. This was therefore a strictly military, bellic administrative task, and it had to be replaced by armed forces of civilian character. The transformation of the internal policing is a similarly noteworthy issue: this task was specifically linked to municipalities, and its complete elimination had to wait until the period after the Soviet Republic, when it was replaced by the state police alongside the gendarmerie.⁸

On the basis of the above reasons, it was not clear to the society whether the case belonged to the military administration of the Compromise Act at the time of the birth of the Border Police Act in 1903, whether it would be under the supervision of the Minister of the Interior, and whether the performance of tasks was a municipal or state task. The question is not only theoretical, as the border gendarmerie service, the finance guard and the chief servitor's office in the border areas were simultaneously present in the era.⁹

⁶ Sarlós, B. (1976): Közigazgatás és hatalompolitika a dualizmus rendszerében [Public administration and power politics in the dualist system]. Akadémiai Kiadó, Budapest. pp. 170–172

⁷ Stipta, I. (1995): Törekvések a vármegyék polgári átalakítására [Efforts to transform the counties into civil entities]. Osiris, Budapest. p. 143

⁸ Parádi, J. (1996): A magyar rendvédelem története [The history of Hungarian law enforcement]. Osiris, Budapest. p. 98

⁹ Virányi, G. (2013): Határrendészeti/határőrizeti tisztképzés 1903–1967 [Border guard/border control officer training 1903–1967]. In: Gaál, Gy. – Hautzinger, Z. (eds.): A modernkori magyar határrendészet százít éve [One hundred and ten years of modern Hungarian border control]. MRTT Határrendészeti Tagozat, Budapest. p. 227

The relationship between common affairs and the exercise of sovereign power

One of the most sensitive points of the Austro-Hungarian and Croatian-Hungarian compromises was the military issue. Within its framework, therefore, the question arose whether the individual armed forces belonged to the sphere of a confederation or whether they could be treated as an independent internal affair of each nation. Military affairs were therefore basically a common issue affecting the whole of the Monarchy. Both the Hungarian Parliament and the Reichsrat in Vienna voted on the budgets of the joint army and navy, and they were agreed on through delegations sent from the bosom of the two parliaments.

The joint Ministry of War of the two states (the Austrian Empire and the Kingdom of Hungary) led the joint army and navy from Vienna. The common army was the main armed force of the Austro-Hungarian Monarchy, in a unified organization, with German as a common language. At the same time, the Compromise made it possible for the two states to have separate forces in addition to the common army. Article XL of 1868 on the Defence Forces made provisions on the Defence Forces in the eighth and ninth sections, denominating the Defence Forces and the Popular Uprising. Of course, Austria set up its own internal defense organization in the same way. These were national forces of secondary importance, being auxiliary forces in peacetime to maintain internal defense and order, but in time of war they were subordinated to the common army.¹⁰

The Act on Defence Forces could only fit into the constitutional order if its creation was based on the Compromise Act, i.e., Sections 12-14 of Act XII of 1867.

The Kingdom of Hungary has maintained its previous rights to supplement the Hungarian Defence Forces, the right to recommend recruits, and

¹⁰ Bibó, I. (2004): Eltorzult magyar alkot, zsákutcás magyar történelem [A distorted Hungarian character, a dead-end Hungarian history]. In: Cieger, A. (ed.): A kiegyezés. Osiris, Budapest. p. 325

the determination of the length of service both among the legislature and the executive power. The establishment or transformation of the protection system for Hungary could only be done with the consent of the Hungarian legislature at all times. However, where Austrian interests were also affected, the delegations of the two parliaments consulted. In the civil relations of the members of the Hungarian Defence Forces, the Hungarian government took action.¹¹

In addition to the Defence Forces Act, Act XLI of 1868 on the Defence Forces was drafted on the basis of the authorisation of the Compromise Act, which contained the detailed rules. This was supplemented by Act XXX of 1868 on the Compromise with the Croats, which sanctioned its own right to guard the border by mentioning twelve border guard regiments in Article 66.

Article III of 1881 on the organization of the public security service established the Hungarian Royal Gendarmerie, where the Minister of Defense was authorized to deal with personnel issues, while the Minister of the Interior was authorized to command.¹²

After the Compromise, the former military border guard region was liquidated, and border guarding became a law enforcement task, so it was managed by the Hungarian Ministry of Internal Affairs and, due to the finance guard mentioned later, by the Hungarian Ministry of Finance.

Reasons for the need for the law

The era of Dualism is usually referred to as the "happy times of peace", characterized by the rapid start of civilization and economic development. The results of the Industrial Revolution brought with them the need for the development of law enforcement administration, thus the transformation

¹¹ Csizmadia, A. (1976): A magyar közigazgatás fejlődése a XVIII. századtól a tanácsrendszer létrejöttéig [The development of Hungarian public administration from the 18th century onwards: the council system]. Akadémiai Kiadó, Budapest. p. 192

¹² Section 8 of Act III of 1881

and development of border guarding, because the municipal, as well as internal affairs and financial forces were no longer able to perform their tasks with sufficient force.¹³ By the turn of the century, therefore, there was a serious need for reform. The ministerial explanatory memorandum showed in detail the domestic and foreign policy features and sociological developments that made it necessary to create a modern legislative package.¹⁴

The first spectacular element is that the societal layer of farmers, which had been soil-bound so far, has been liberated. Here we can think not only of the complete abolition of the soil-bound status of farmers in 1848, but also of the social transformation that took place with the Industrial Revolution. Until now, farmers belonged to a specific estate, and they had to fulfil their obligations towards that estate, either in the form of a land terrier or with the obligation to perform similar land lease contracts. Of course, this does not mean that during the neo-absolutism and dualist period, the Hungarian economy would have completely switched to industrial production. A significant part of the population continued to support themselves from agriculture. But the often harsh conditions, such as the fragmentation of farmer lands through inheritance, and the impossibility of living on dwarf estates, have valorized the fact that instead of being soil-bound, *the freedom of movement* could now be perceived in a present way, which appeared not only in the form of internal migration, but often also in the form of emigration, where for many the only goal was to take advantage of the

¹³ Beér, J. – Csizmadia, A. (1966): Történelmünk a jogalkotás tükrében. Sarkalatos honi törvényeinkból 1001-1949. [Our history as reflected in legislation. Key domestic laws from 1001 to 1949.]. Gondolat, Budapest. p. 422

¹⁴ Act IV of 1903 on Emigration; Article V of the Act on the Residence of Foreigners in the Territory of the Countries of the Hungarian Crown; Article VI on passports; Article VII on the establishment of three new gendarmerie districts; Article VIII on the Border Police; Article IX [...] on the outskirts of Spiš county and Gácsország, in the area around the so-called Fishpond, in the matter of the incorporation of the arbitral award made by the arbitral tribunal established in accordance with Act II of 1897 for the establishment of the national boundary line. In detail: Sallai, J.: A határrendészet első kézikönyve [The First Handbook of Border Control]. In: Gaál, Gy. – Hautzinger, Z. (eds.) (2013): A modernkori magyar határrendészet százít éve [One hundred and ten years of modern Hungarian border control]. MRTT Határrendészeti Tagozat. Budapest. p. 61

better opportunities provided by abroad. During a stay abroad, one could have collected enough funds to buy a land and a house at home, thereby creating a decent farmland to ensure financial well-being. Thus, however, it became necessary to regulate the increased willingness to cross the border by law enforcement and administrative means, as well as to control it in a way that is relevant to our topic.¹⁵

Until the middle of the 19th century, Hungary was notorious for its disastrous highways and famous for the traffic of stagecoaches. However, only a few people could travel on these vehicles, and few undertook to travel in the harsh conditions. In 1847, the first railway track was built, which was followed by the enterprises of several railway companies in the following decades.¹⁶ The railway network soon reached the borders of the country and connected to the international lines.¹⁷ In the same way, river steam boating also made it possible to leave the country quickly or enter the country, and to get into the interior of the country in a short time. The transport revolution was therefore the second reason that required the professionalization of border policing tasks.

As already mentioned, the border policing tasks were divided between the joint Ministry of War, the Hungarian Ministry of Defence, the Ministry of Finance and the Ministry of the Interior, and the municipal administration was also added to this. In fact, individual organizations, such as gendarmes, finance guards, chief servant judges, soldiers, etc., coordinated their activities and provided mutual assistance to each other, but there was no independent state organization available for the performance of border police tasks, which could have focused exclusively on this task as part of

¹⁵ Cieger, A. – Egry, G. – Klement, J. (2021): Kérdések és válaszok a dualizmus kori Magyarországról 1867–1918. Kérdések és válaszok [Questions and answers about Hungary during the dualist era, 1867–1918.]. Napvilág, Budapest.p. 103

¹⁶ Gergely, A. (1982): Egy gazdaságpolitikai alternatíva a reformkorban. A fiumei vasút [An economic policy alternative during the reform era. The Fiume railway]. Akadémiai Kiadó, Budapest. p. 21

¹⁷ Pogány, M. (1980): Vállalkozók, mérnökök, munkások a magyar vasútépítés hőskorában, 1845–1873. [Entrepreneurs, engineers, and workers in the heroic age of Hungarian railway construction, 1845–1873.]. Akadémiai Kiadó, Budapest. p. 22

the internal affairs administration, despite the fact that there was a great demand for this by the beginning of the twentieth century.

Although the trauma of Trianon was still a decade and a half away, Hungary's critical geographical location and transit zone nature justified increased border protection. The ministerial justification emphasized that, in contrast to the internal borders, we encountered foreign cultures on our external borders that often had a hostile attitude towards the Kingdom of Hungary, and the infiltration of not only political but common criminals, endangered the peace of the population, the filtering of which and the keeping away of undesirable elements or their expulsion also became in the interest of the state. In addition, in the southern territories, the liquidation of the military border guard area, the withdrawal of militant forces, and the transformation of administration in a civilian manner began in the 1870s. Since this area had one of the longest external borders, its protection in the direction of the "Balkan powder keg" was also a priority state interest.¹⁸

Categories of boundaries to be protected

The government has divided the border lines to be protected into four danger zones. By far the mildest security risk was the border with Austria, so the deployment of any kind of internal affairs armed unit to secure the western border strip or at least to perform law enforcement tasks was not included in the government's plan, not even in the long term. It is another matter that history completely rewrote this intention with the birth of the Kingdom of Hungary, independent of Austria in 1919. In the north, the Kingdom of Hungary bordered primarily Poland. According to criminal statistics, this border crossing area did not carry significant risks, the analysis of which was not covered in the Minister's justification, but only stated as a fact that a lower risk could be expected in this area as well, even if the Hungarian state power was less intensively present in the control of border crossings.

¹⁸ The Minister's justification for the general part of the draft law.

They could not be so optimistic about the north-eastern border strip. Here there is a significant risk that people whose presence is undesirable will arrive in the country. And the legislators could not have guessed that in just over a decade, after the neighboring communist takeover, that border section would still deserve special attention due to bad neighborly relations in the coming peacetime.

The fourth border area, to which the legislator focused the most, primarily, was the problematic nature of the Romanian and Serbian border sections, and the Balkan areas in general. Since the appearance of the Turkish power aspirations, the southern and south-eastern zones required constant readiness, and after the expulsion of the Turks, the military border guard district, administered directly from the Court War Council in Vienna, required constant attention, and after its dualistic liquidation and the establishment of civil administration, the establishment of an independent organization became urgent for the internal affairs government instead of or in addition to the above-mentioned substitute solutions, which was represented by the establishment of the border police.

In the plans of the Ministry of the Interior, we can read the list of the first planned police stations, which, if we place them on the map, can be seen that in the first round they were intended to be located in the places that most need supervision: Pancsova, Orsova, Predealal, Szolyva, Csaca, Királyhida, Čakovec, Rijeka, Zengg, Új-Gradiska, Zimony.¹⁹

¹⁹ The list of police stations finally implemented can be read in the following place: Nagy, Gy. (2013): A Magyar Királyi Határrendőrség felállításának okai, máig ható jelentősége [Reasons for establishing the Hungarian Royal Border Guard, its significance to this day]. In: Gaál Gyula – Hautzinger, Z. (eds.): A modernkori magyar határrendészet százít éve [One hundred and ten years of modern Hungarian border control]. MRTT Határrendészet Tagozat. Budapest. p. 19

Staffing and funding

At the beginning of the era, the rules for the recruitment and training of personnel were still contingent. It is enough to trace the history of the regulation of quality standards for prison guards, which resulted in a serious headache for the Minister of Justice.²⁰ The situation of the Minister of Defence and the Minister of the Interior was so much simpler that the aforementioned Defence Forces and the Defence Act already contained provisions on qualification, and in addition, there were centuries-old traditions of training and directing the personnel of the army, whereas the armed corps of the civil administration only had a system of traditions (e.g. municipal policing) that no longer represented a modern alternative for the era under discussion.

At the turn of the century, a tried and tested system was already in force: several sections of Act I of 1883 on the qualification of civil servants dealt with those positions and the qualification requirements related to them.²¹ Given that the modern performance of law enforcement tasks had a history of at least two decades until the entry into force of the Act on the Border Police, the replenishment, training and deployment of the personnel could already proceed on a well-trodden path.

Regarding the deployment, it is worth mentioning the management: this was realized directly through the Minister of the Interior, who regulated the tasks, rights and duties of the personnel in a service directive.²²

The control of the activities of the border police within the internal affairs administration has arisen as a constitutional issue: how can the executive power be limited in this area? The framework law gave the Ministry of the Interior a wide scope for the establishment of individual police stations. Here, however, the concern arises as to how the control of the legis-

²⁰ Parádi, J.: *op. cit.*, 91

²¹ Act I. of 1883 §§ 5, 23, 27

²² Circular Decree No. 91.000/1905 of the Ministry of the Interior: Instruction on the Implementation of Act VIII of 1903 on the Border Police

lature is realized. The Minister's reassuring answer to this was that the financial framework is included in the current annual budget, so the number of staff can only be increased or new police stations can be established if additional resources are available for this. And the additional funds can exclusively be provided by the National Assembly.

Tasks to be performed by the border police

The performance of tasks was diverse and could be divided into seven major categories. During the Estates era, vagabonds were a serious danger, who, in the absence of permanent work, soon found themselves in the forbidden and formed a group of subsistence criminals. Therefore, during immigration checks, all those who did not have local jurisdiction or could not credibly prove that they were traveling were prosecuted and the appropriate measures were applied to them (e.g., imprisonment, expulsion, etc.). Thus, a trip had to be certified by a passport in each case.²³ The modern age brought with it the freedom to move around, everyone could freely leave their place of residence and even choose a new home for themselves, either in another settlement or in another part of the country. However, this freedom could not only be used but also abused. Even the criminalized elements could move freely, hide in larger cities, and in case of excessive notoriety, they could even change their homeland. Thus, in the case of certain persons or specific activities, the state could impose a passport requirement.²⁴

It already followed from the Defense Forces Act that recruiting was only ensured if the conscripts were in the territory of the country and could be found. Mapping the conscription situation and preventing people from

²³ Kállay, I. (1996): Városi bíráskodás Magyarországon 1686-1848. jelentősége [The significance of municipal jurisdiction in Hungary between 1686 and 1848.]. Osiris, Budapest. p. 162

²⁴ Murber, I. – Nagy, A. (2024): Kerülőutakon. Az osztrák-magyar határ 20. századi történet [Detours. The history of the Austro-Hungarian border in the 20th century]. Kronosz, Pécs. p. 48

leaving the country was a border police task. In the same way, the emigration of those who were on the run had to be prevented, their personal freedom restricted, restrained and produced for criminal proceedings or the prison system.

It was a serious task to find and eliminate individual or even networks of smugglers of people leading a criminal lifestyle.²⁵ A special task was to eliminate the opportunities and routes that arose, to make their mission impossible, to put out illegal immigrants, especially to identify people smugglers.

White slave traffic is an institution similar to human trafficking, which is still flourishing today. According to the minister's presentation, gullible girls were promised a well-paid decent job in the hope of a better life. The end of the sad story was usually always the same: the gullible girls were soon enslaved, their money and documents were taken and the number of prostitutes in one of the brothels in the Balkans was increased. The task of the border police was even more difficult here, because contrary to general human trafficking, the commission of a crime is not obvious at first sight, so it was only possible to take effective action after mapping the criminal organization.²⁶

In addition to humans, the illegal migration of things was at least as much of a problem. In addition to traffic routes, it was also a task to keep an eye on side roads or seemingly impassable calamities by patrolling. The interception, confiscation and possible quarantine of smuggled goods, and in some cases the involvement of public health and veterinary officials also came into the sights of the border police.²⁷

²⁵ A case when the aggrieved parties did not act by the authorities, but settled the case in the framework of self-justice: Farmers' Journal, 24 July 1903, Vol. II, No. 30, p. 5; another case when the authority proceeded: Nyírvidék, 1 January 1905, Vol. 26, No. 1, 5

²⁶ Ernyes, M. (2003): A határrendőrség bűnmegelőzési feladatai a XX. század első negyedében [The crime prevention tasks of the border police in the first quarter of the 20th century]. Pécsi Határrör Tudományos Közlemények II. Pécs. p. 187

²⁷ Rácz, I. (1980): A paraszti migráció és politikai megítélése Magyarországon 1849-1914. [Peasant migration and its political assessment in Hungary between 1849 and 1914.]. Akadémiai Kiadó, Budapest. p. 162

The Minister of the Interior also entrusted the border police with keeping the persona non grata elements away from the country, so it was a task to carry out expulsion and to eliminate illegal migration, primarily by preventing the immigration of dispossessed ethnic elements.²⁸ Thus, it became absolutely clear that the immigration procedure is no longer the primary task of municipalities, but that it must begin at the border, preventing elements that are not legally desirable from infiltrating the interior areas of the country.²⁹

With regard to the fact that in 1903 Article XL of 1879 had been in force for two decades, the Criminal Code of Misdemeanours (Kbtk.), the first section of which provided that certain acts could be declared an offence by law or ministerial decree. In the case of an offence, the border police were given the authority of the first instance to commit an offence. From there, an appeal could be made to the vice-chancellor in the second instance, and then the Minister of the Interior decided in the third instance.

The passing of the law on 14 March 1903 did not mean the implementation of the law.³⁰ The professional preparation was time-consuming, so the first units only started their service on 15 January 1906.³¹ The challenges of the development of modern regulations are well illustrated by the

²⁸ Katus, L. (2021): A modern Magyarország születése. Magyarország története 1711-1914. [The birth of modern Hungary. The history of Hungary from 1711 to 1914.]. Kronosz Pécs. p. 624

²⁹ Pomogyi, L. (2004): Prevenció a rendészeti igazgatásban: a toloncolás jogintézménye [Prevention in law enforcement: the legal institution of deportation]. In: Mezey Barna (ed.): Eckhart Ferenc emlékkötet. Gondolat, Budapest. p. 410

³⁰ Hautzinger, Z. (2013): Prevention in law enforcement: the legal institution of deportation. In: Gaál, Gy. – Hautzinger, Z. (eds.): A modernkorai magyar határrendészet százít éve [One hundred and ten years of modern Hungarian border control]. MRTT Határrendészeti Tagozat. Budapest. p. 179

³¹ Parádi, J. (2013): A dualizmuskori Magyar Királyság határrendőrsége [The border police of the Kingdom of Hungary during the dualist era]. In: Gaál, Gy – Hautzinger, Z. (eds.): A modernkorai magyar határrendészet százít éve [One hundred and ten years of modern Hungarian border control]. MRTT Határrendészeti Tagozat. Budapest. p. 46

fact that in the second year of operation, a serious compilation source material was published in order to perform the tasks efficiently and professionally.³²

Conclusion

The development of the dualistic system can be divided into several phases. The foundations were laid by the Compromise of 1867 and the direct road leading to it. It was here that the principles had to be defined, which meant the assignment of the armed forces of Austria and Hungary to joint and member state competence. Although this division appeared in military and defense issues, the border police, which is relevant to our topic, was clearly subordinated to the internal affairs administration, thus becoming part of the sovereign legal order of the Kingdom of Hungary.

Given that the establishment of the body took place in the first decade of the twentieth century, it was possible to determine organizational and operational issues and work out the rules of cooperation with co-law enforcement agencies based on the experience of the past almost thirty years. With this, it became clear that immigration policing is primarily a state task, and it was also explicitly stated that the basic task of border control is that potential problems coming from abroad do not have to be dealt with by the country's internal administrative bodies, but decisions can be made within the framework of border control, thus preventing undesirable and at the same time illegal acts.

³² Pavlik, F. – Laky, I. (1907): *A határrendészet kézikönyve* [The Border Guard Handbook]. Pátria, Budapest