

# Legal Regulation of Joint Protection of State Border by Border Guard Units of Ukraine and Hungary

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*Unilateral protection of border is costly and insufficiently effective. Therefore, counteraction to numerous cross-border threats will be provided in case of the joint protection of the Ukrainian-Hungarian border by border guard divisions of the State Border Guard Service of Ukraine and units of Border Police of Hungary. Their cooperation is performed in forms of investigation of violations of the border regime, interaction during control of the border crossing, joint patrolling and exchange of information. In order to achieve the goal of the joint protection of the state border of Ukraine and Hungary, it is necessary to implement an effective scientifically grounded system of counteraction to cross-border threats which would be adequate, foreseeing and flexibly reacting to changes of the situation.*

**Keywords:** law-enforcement activity, border security, border protection, joint protection of the Ukrainian-Hungarian border, border guard divisions, State Border Guard Service of Ukraine, Border Police of Hungary

In the conditions of globalization of world processes, convergence of values and interests of Ukraine and the countries of the European Union, their political association and economic integration, the problem of the reengineering of the securitization system is extremely topical. Taking in consideration the present-day threats, as well as the geo-political, geo-economic and geo-strategic position of Ukraine, guaranteeing its national security must be carried out at the national, regional and global<sup>3</sup> levels. In this very architectonics of security, the significant role belongs to ensuring border security. In turn, the border security is defined by two components. First – by the condition of

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protection against border and trans-border threats and secondly – by the degree of implementation of international law and the national legislation of states in the field of border management, creation of conditions for providing the basic human rights and freedoms concerning free movement, legal cross-border activities, etc. In general, the European practice does not generalize the concept of “open but well controlled and secure borders”. Such tasks are the object of activity of different subjects of security and defense sector of the states which functions are related to the control of cross-border flows and the development of border infrastructure.

In Ukraine, the border guard divisions (hereinafter – BGD) of the State Border Guard Service of Ukraine (hereinafter – SBGSU) are the main subjects of direct-acting protection of the State Border (SB). The political mutual understanding between the EU and Ukraine created the preconditions for review of the existing approaches to the protection of the common borders. So, for example, it has been established that unilateral protection of the SB is costly and insufficiently effective due to the lack of information, forceful support, possible corruption, etc. Therefore, in order to get rid of these negative aspects, the joint protection in cooperation with the border guard units of the adjacent states as well as closer information exchange at the local, territorial, regional and national levels have been implemented.

*The aim of this article is to analyze and systematize the legal regulation of the joint protection of the state border by border guard units of Ukraine and Hungary.*

The overall situation in the Ukrainian-Hungarian border area can be estimated from the following facts.

The length of the SB between Ukraine and Hungary is 136.7 km, including the river sector of 85.1 km.

It is important to emphasize that the fifth international transport corridor passes through the common Ukrainian-Hungarian border sector, connecting: Venice – Trieste/Koper – Ljubljana – Maribor – Budapest – Uzhhorod – Lviv – Kyiv. In order to create the conditions for implementation of human rights and freedoms, legitimate cross-border activities, 5 highway and 3 railway border crossing points function on this border. About 5.5 million people and 2 million vehicles cross the common SB annually. In 2014, an increase in number of persons and vehicles which crossed the common SB of 4.1% was observed.

The measures of cross-border cooperation are actively implemented at this border sector. Thus, on September 26, 2014, within the Hungary-Slovakia-Romania-Ukraine program, the ceremonial opening of the reconstructed border crossing point “Veľké Slemence” took place. On July 16, 2014, the presentation of the cross-border project on development of transport infrastructure “Road Master Plan” (the other name “The Fifth Transport Corridor between Western and Eastern Europe”) took place with the purpose to prepare further development of the highway connecting Záhony – Chop – Uzhhorod”.

The concept of the coordinated development of border territories of Ukraine and Hungary, developed by a group of the Hungarian and Ukrainian specialists, aimed at the economic development of the region, assistance to public consolidation, improve-

ment of living standards of the population which lives on these territories, and the maximum use of the available opportunities of cross-border cooperation is worth noticing in this plan. Social and economic, natural and geographical and historical interrelations, the need to solve similar problems as well as the need to stimulate the economic development of border areas were the basis for preparation of the Concept. Thus, the target territories (border areas) in the Concept are the Szabolcs-Szatmár-Bereg region of Hungary and the Transcarpathian region of Ukraine.

The daily local (small) border traffic is organized in the settlements (244 Hungarian and 384 Ukrainian) which are located in 50 km zone along the common border. Provided that persons who live constantly in border settlements for three years (their list is defined in the relevant agreement) are allowed to enter the territory of the border area of the adjacent country and to stay there (if they have a permit for the simplified border crossing) without getting of any other additional permissions.

At the same time, the favorable geographical position of the common border sector substantiates presence of *border and cross-border threats* on it. The results of the risk analysis which was carried out by the Administration of SBGSU according to the CIRAM 2.0 methodology can be represented with the following matrix.

<b>P R O B A B I L I T Y</b>	<b>↑</b> <i>h i g h</i>  <i>a v e r a g e</i>  <i>l o w</i>	Trafficking of the stolen vehicles into Ukraine.	Trafficking of synthetic narcotic substances on channels of passenger transportation to Ukraine.	Illegal migration to EU countries beyond border crossing points by citizens from the countries of the Southern and Central Asia, the Middle East and Africa and with documents of other people and forged documents.
		Illicit movement of military goods and of double use through border crossing points across the SB.	Trafficking of counterfeit cigarettes to EU countries both at border crossing points across the SB and beyond them.	
		Trafficking of counterfeit alcoholic products across the SB.	Infiltration of persons involved in terrorist and extremist activities into Ukraine.	Trafficking of the weapons, ammunition and explosive substances. Smuggling of heroin and cocaine over the transit channels of freight automobile transportation.
		<i>low</i>	<i>average</i>	<i>high</i>
		<b>INFLUENCE</b>		

Figure 1. The results of the risk analysis

In order to counter the threats, Hungary continues to strengthen the technical component of the protection system along the border with Ukraine. In particular, the system’s video surveillance was established. The mobile groups of rearward control will also work. In the area of responsibility of the border law-enforcement headquarters of “Záhony”, the system of thermal imaging sensors is being constructed along the border.

One of solutions of the designated range of problems is in consolidation and approval of efforts of border guard agencies of both states.

On December 11, 1999 the European Council adopted the Common Strategy of the EU concerning Ukraine. The important direction of this memorandum is more intensive cooperation of the EU with Ukraine in the field of construction of facilities and protection of the SB in order to fight against organized crime, illegal migration, smuggling, etc.<sup>4</sup>

This document became the legal predicate for development of the relations between the border protection units of Ukraine and EU countries (Poland, Slovakia, Hungary and Romania) which gave over a little bit after their becoming EU members.

During the last years, the Action Plans on development of cooperation and accomplishing practical measures between the border guard agencies of Hungary, Poland, Slovakia and Ukraine in the fight against illegal migration and human trafficking was executed according to which the simultaneous joint operations on border were performed, the exchange of statistical information was implemented, a number of expert meetings on operational search problems and works with foreigners were organized, the experience of functioning of contact points was studied.

In particular, the Ministers of Internal Affairs of Austria, the Czech Republic, Poland, Slovakia, Hungary, Slovenia, Croatia, Bulgaria and Romania during the forum (June 19, 2014, in the inhabited locality of Modra-Harmonia) discussed the problem of the situation in Ukraine and reached the agreement to create the joint body staffed with the personnel of the border guard agencies of the specified countries for providing weekly operational exchange of information upon the migratory situation and other aspects of the situation on borders. And on June 27, 2014, the Council of Europe adopted a number of decisions concerning the need to improve the system of protection at external borders.

At the present stage, the control and coordination of cooperation on external borders of the European Union are performed by the European Agency for the Management of Operational Cooperation at the External Borders of the EU "FRONTEX" (Warsaw, Poland).

In Luxembourg, during the meeting of Ministers of Justice and Internal Affairs in the format "Ukraine – the EU triad", the Working Agreement on establishment of operational cooperation between Administration of the SBGSU and FRONTEX Agency was signed.

On the basis of the risk analysis performed by FRONTEX Agency, the joint border operations are periodically performed with the assistance of border guards of Ukraine, Poland, Slovakia, Hungary, Romania, etc. Also the FRONTEX Agency organizes the series of conferences on border problems where the heads and experts on border security from the member states of the European Union and the neighboring states are invited. The activities of this organization promote the training of the personnel of the BGDs of SBGSU and the joint protection of the SB of Ukraine with the EU.

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4 Common Strategy of the European Union on Ukraine: The Memorandum of the European Council of December 11, 1999. Art. 35.

Alongside with border cooperation which is performed between SBGSU and border bodies of the EU, border guard divisions directly perform joint protection of the SB with border guard units of Hungary.

The BGDs and border guard units of the police of Hungary build cooperation on the basis of the agreement between Ukraine and the Hungarian Republic “On the regime of the Ukrainian-Hungarian SB, cooperation and mutual assistance on border issues”.<sup>5</sup> Investigations of violations of the SB regime, interaction during the control of the trans-border trafficking (movement of persons, vehicles, items which are their property, cargoes (goods) across the SB), the joint patrol and exchange of information are the directions of such joint work.

In case if the fact of regime violation of the Ukrainian-Hungarian border is identified, the border guard representative can initiate the joint investigation. The joint commission staffed with the officials of both states was created for this purpose.

During the investigation of circumstances of violations of the SB regime and other cases which need their involvement, the members of the commission can hear witnesses, experts and take other measures for collecting evidences concerning the committed violation. Such actions of border guard representatives shall not concern the competence of law enforcement agencies of their state.

After investigation of violations of the SB regime and other cases which involve the work of commissions of border guard representatives and making decision concerning them, the protocols are drawn up in duplicate Ukrainian and Hungarian. The materials of this investigation are added to the protocol on investigation of violation of the SB regime.

The investigations of cases on which the sides of both states did not come to a mutual agreement during 14 days are submitted the Chief Border Guard Representative.<sup>6</sup>

The officials of the BGDs and police of Hungary interact during the control of trans-border traffic in order to exchange information. The control of the trans-border movement is the related service activity of officials of Ukraine and Hungary which is performed at the border crossing points on the SB defined for the trans-border traffic or other places defined for control, according to the legislation of the states of the contractual parties which is directed at conducting legitimate admission of persons, vehicles, objects which are their property, cargoes (goods), prevention of illegal crossing of the SB as well as prevention, detection and termination of other types of unlawful activities.<sup>7</sup>

In an effort to reduce the waiting time, prevent and remove obstacles concerning crossing the border, officials inform each other on arising obstacles, terms of expectation and periodic restrictions for crossing as well as measures for enhancing the control. In order to prevent or eliminate obstacles and lines on the SB, the officials of the BGDs and border guard of Hungary make coordinated arrangements.

5 On Regime of the Ukrainian-Hungarian Border, Cooperation and Mutual Assistance on Border Issues: The agreement between Ukraine and the Hungarian Republic of May 19, 1995.

6 Agreement between Ukraine and the Republic of Hungary of May 19, 1995. Art. 23–25.

7 On Control of Border Traffic at Highway and Railway Border Crossing Points: The agreement between the Cabinet of Ukraine and the Government of Hungary of May 04, 2012.

In some cases, the joint contact points at border crossing points are established for the purpose of information exchange between bodies which exercise control of the border traffic.

- The main objectives of assistance points are exchange of information on such issues:
- changes in the legislation of the states (especially which concern border management);
  - circumstances which lead to complications during crossing of the SB;
  - emergency situations at border crossing points and on access roads;
  - on the situation which can affect the organization of the joint protection of the SB;
  - on violations or attempts to violate the legislation of the states during crossing of the SB.

In our opinion, in view of conditions of service and category of the personnel involved at assistance points, it is reasonable to determine *their additional tasks* to control the operating conditions of border crossing points and to participate in conducting procedural measures in the cases of violation of the current legislation of Ukraine by citizens of the adjacent state revealed by the Ukrainian control bodies on the territory of Hungary.

The joint patrolling on the Ukrainian-Hungarian border is performed within the area of responsibility of border units and on the basis of petition of the Border Representatives of the countries. Its purpose is: to ensure control over the regime of the common Ukrainian-Hungarian border, to prevent illegal border crossing beyond the border crossing points; to counteract to organized, illegal migration and the crime connected with it; to check persons and vehicles which are near the border in order to counteract to illicit movement across the border of the subjects prohibited or limited to turnover according to the legislation of the states of the parties; to counter the movement across the border of vehicles beyond the border crossing points or stolen ones; to supervise the sectors which can be used for illegal border crossing; to provide public order within the territorial limits of border crossing points, and also on access roads leading to border crossing points; to exchange of experience on ensuring protection of the SB.<sup>8</sup>

The joint patrolling of the Ukrainian-Hungarian border is performed on the basis of the petition of the border guard representatives of the parties. Such a petition shall contain:

- information on the purpose and the planned time of the joint patrolling;
- the planned number of patrolmen;
- information on the rendezvous point for border guard details (number of the border sign).

If the border guard representative accepts the provided offers of the other party, the monthly schedule of joint patrolling is made up till the 15<sup>th</sup> day of a current month.

The intended officials of border protection units take part in the joint patrolling. For the joint patrolling only those persons are assigned who know the official language of the other party or other language which makes it possible to communicate. While preparing for patrolling, the border guard agencies of Ukraine and Hungary carry out

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8 On Joint Patrolling of the Hungarian-Ukrainian State Border: The protocol between Administration of the State Border Guard Service of Ukraine and Police of Hungary of October 29, 2013. Art. 2.

the corresponding special training directed at training of experts of the other party including those which concern legal norms.<sup>9</sup>

The patrolmen cross the SB at border crossing points when they are operating under the terms defined by the existing international treaties of Ukraine and Hungary. Patrolmen, who take part in the joint patrolling on the territory of the state of other party, perform patrol with service uniform on, without weapons and special means. The patrolman of the host party is the senior of the patrol. Patrolmen, who take part in the joint patrol on the territory of the state of other party, have no right to apply any means of enforcement.<sup>10</sup>

The joint patrolling is performed according to the legislation of the state on the territory of which it is carried out. The senior on patrol of the host party bears responsibility for personal security of the patrolman of the other party. It is also his duty to make an official report about the results by filling out the certain form after finishing each joint patrol.<sup>11</sup>

The way to improve the organization of the joint patrolling of border by BGDs with units of police from Hungary is to breakaway from its monthly initiation by the border guard representative. In our opinion, such actions should be carried out more systematically, and for this purpose, the number of patrols should be defined in quarter plans of border guard representatives, and the preparation and implementation of them to be the responsibility of chiefs of border protection units.

The BGDs takes part in exchange of information between border protection bodies of Ukraine and units of police of Hungary about:

- a) the general statistical data concerning the admission of persons and vehicles across the Ukrainian-Hungarian SB;
- b) the general statistical data about illegal actions on the SB (nationality, reasons and backgrounds of detention, etc.), namely:
  - 1) illegal crossing of the SB (or its attempt);
  - 2) forgery of documents;
  - 3) organization and implementation of illicit trafficking of persons across the SB;
  - 4) human trafficking;
  - 5) abuse of rules of stay;
- c) general statistical data about the persons who were refused (deported) crossing the SB (nationality of refused persons, reasons for refusal, direction of crossing, etc.);
- d) general statistical data about cases of detection and detention of contraband goods and cargoes on the SB (nationality of offenders, estimated value of contraband goods, classification of the detained contraband goods, etc.);
- e) general statistical data about cases of detection and detention on motor transport on SB (stolen, with invalid and forged documents, etc.);

9 Protocol on Joint Patrolling of the Hungarian-Ukrainian State Border. Art. 3–4.

10 Protocol on Joint Patrolling of the Hungarian-Ukrainian State Border. Art. 5.

11 Protocol on Joint Patrolling of the Hungarian-Ukrainian State Border. Art. 6.

- f) general statistical data about cases of detection and detention of weapons, ammunition, explosive and radioactive materials on the SB (classification of the detained weapons, ammunition, explosive and radioactive materials, etc.);
- g) general statistical data about detection and detention of narcotic substances and precursors on the SB (classification of the revealed narcotic substances, precursors, etc.).

Such exchange of information is implemented for the purpose of coordination of measures which are carried out by border protection bodies on the Ukrainian-Hungarian border and directed at prevention of illegal crossing the SB by persons, vehicles, cargoes and other property as well as the solution of other problems of their competence.<sup>12</sup>

So, we can note that the joint protection of the SB by units of border guard agencies of Ukraine and Hungary is the activity within multilateral cooperation at the level of bilateral agreements and in the framework of interdepartmental cooperation. Analyzing the agreements of Ukraine and Hungary on border issues, it is necessary to notice that today the interstate legal space is still formed extremely slowly and not entirely consistently. The system of interaction of border guard agencies of Ukraine and Hungary in the field of the joint protection of the SB needs conceptual design.

The efficiency of providing law and order on the SB by the border guard divisions can be reached in case of implementation of the adequate protection of the SB together with the units of the border guard agency of Hungary which would consider realities, dynamic needs of the present, violation of the principle of inviolability of the SB by the Russian Federation and the features of development of modern international migration which constantly demand improvement and use of the integrated approaches directed at the development and deployment of effective evidence-based system of counteraction to border and cross-border threats.

To achieve the goal of the joint protection of the SB by the BGDs with units of border protection of Hungary, it is necessary to continue organizational and legal registration of such system. It needs to be designed on the grounds which meet the requirements of optimization and are directed at accomplishment of the main objectives. Such provisions are:

- providing proper security conditions of the SB under which an offense becomes inexpedient, unprofitable for a potential migrant or criminal;
- influence on travelers across the SB, on them consciousness when the belief in inexpediency of violation of the migratory legislation turns into the constant moral paradigm;
- expenses on the joint protection of the SB shall be so structured and distributed that they could become the most useful to decrease risks to the optimum level;
- the system of protection of the SB shall be designed in such a way that the optimum ratio between its firmness, achievement of necessary level of security and level of ensuring compliance with the conventional human rights in the border guard sphere could be reached.

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12 On Information Exchange: The Protocol between Administration of the State Border Guard Service of Ukraine and Head Department of Police of the Hungarian Republic of May 25, 2010.



Organizational and legal support of the joint protection of the SB by the units of border protection of Ukraine and Hungary is of special significance. First of all, this cooperation of border police of Hungary with units of BGDs of the SBGSU in the framework of interstate and interagency agreements. Conducting of joint investigations of violations of the SB regime, interaction during the control of border crossing, joint patrolling and exchange of information are the achievements of such cooperation.

As an important perspective of improvement of cooperation between the border police of Hungary with units of BGDs of the SBGSU, it is necessary to settle the joint border control in the interstate and national regulatory legal acts, and also to implement the joint preventive operations on detection and the ceasing of channels of cross-border criminal activity.

Besides, it is necessary to provide the opportunity to have the individual equipment necessary for survival (for example, during service at mountain and river sectors of the SB), and also weapons for self-defense for the personnel who are involved in patrolling on the adjacent territory.

Considering the shift of paradigm of fellowship and peaceful coexistence on Post-Soviet territories due to the armed aggression of the Russian Federation, according to our belief, the main efforts of legal regulation of the joint protection of border by the BGDs with border units of the adjacent states should be directed by integration of Ukraine into very architectonics of the European and world security systems.

The performance of coordination and interaction of border units at site depends on the clearly formulated common goals of operational and strategic levels, complete vision of the developed situation, the weighed estimates of tendencies and forecasts, availability and application of the corresponding scientific and methodical tools. Only in that case practical cooperation in the field of ensuring border security, mutual enrichment with the theory and operational and service experience, joint use of available forces and facilities merge in the powerful unidirectional vector of effective ensuring inviolability of borders and territorial integrity of the states, and thus to direct efforts to creation of a basis of a complete system to ensure border security at the joint borders and maintenance of stability in border area.

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## ABSZTRAKT

### **Az ukrán és a magyar határőrizeti szervek együttműködésének jogi szabályozása**

LIASHUK Roman – KUPRIYENKO Dmytro

*Az egyoldalú határőrizet költséges és nem hatékony. Ezért a határon átnyúló fenyegetések elleni fellépést az ukrán-magyar államhatáron Ukrajna és Magyarország határőrizeti szerveinek közös határőrizeti tevékenysége biztosítja. Együttműködésük kiterjed a határrend megsértésének közös kivizsgálására, a határforgalom ellenőrzésére, a közös járőrszolgálatra és az információcserére. Ukrajna és Magyarország államhatárának hatékony őrzése érdekében olyan tudományosan megalapozott rendszerre van szükség, amely ellenáll a határon átnyúló fenyegetéseknek, megfelel a követelményeknek, kiszámítható, és rugalmasan reagál a változó körülményekre.*

**Kulcsszavak:** *bűnüldözés, a határok biztonsága, a határvédelem, ukrán-magyar államhatár közös őrzése, határőrizeti kirendeltségek, Ukrajna Határőrizeti Szolgálat, Magyarország határőrizeti szerve*