

Essay

(Mis)Perceptions of Terrorism in Hungary. Some remarks on history, criminal law and legal practice

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ABSTRACT

Hungary is usually not considered as a country particularly associated with terrorism. Nevertheless, in a somewhat broader context, politically motivated violence has been present in Hungary for decades, and some of the acts committed may even qualify (with a somewhat retrospective aspect though) as genuine acts of terrorism. Against this context, the author gives an overview of the history of politically motivated violence in Hungary since the period between the two World Wars. Evolution of the concept of act of terrorism is analysed in detail since the first codification in 1978. Last but not least, some contradictions in the practice of court when applying the law are also presented, the most striking example of which is the case of the serial murder against Roma persons in 2008-2009. As a conclusion, the author finds that the legislation in force and its rather restrictive application is misleading: a much more complex (and maybe more realistic) picture on the prevalence of terrorist behaviour could be drawn with some minor amendments to the existing legal provisions and by another methodology. Based on such findings and recalling an earlier incident now mostly forgotten, the public opinion as regards the existence of terrorism in Hungary might shift, too.

Keywords: terrorism, criminal law, history

Hungary is usually not considered as a country particularly associated with terrorism. Having worked more than a decade in Hungarian public services, I have often encountered statements that terrorism is even non-existent in Hungary. I have always had problems with such simplistic approaches. In this paper I try to confute three common perceptions of the public opinion and of practitioners, as follows:

- Terrorism is unknown in Hungary.
- The Hungarian legislation covers all forms of terrorism.
- Hungarian authorities apply the law properly.

To avoid misunderstandings, of course, I admit that, luckily, Hungary is not a target country of the currently predominant international terrorist threat. Nevertheless, on the one hand, this might change in the very volatile international environment, and, on the other hand, one should not forget that terrorism is much more than that, represented mostly by Islamist terrorist groups.

Having said that and before going into details, I have to clarify one more issue. In the following, my starting point is that I would not deal with terrorism in a positivistic sense that equals terrorism with what is called terrorism in the Criminal Code. I will rather use the term terrorism as a concept of politically motivated violent acts of particularly serious nature that aim to reach effect beyond their immediate target. This concept, although it has much in common with the latest developments in criminal law¹ as regards the problem of definition of terrorism or acts of terrorism, may refer to several offences of the Criminal Code in a given moment.

Traditions of politically motivated violence in Hungary

In this part of the paper, I will turn to the first (mis)perception, namely, that terrorism would be unknown in Hungary. In my view, it is not: although not prevalent, but it has been present in the history of the country throughout the 20th century and ever since. Terrorism (in the meaning provided above) appeared in Hungary after the First World War, and in the period between the two World Wars, politically

motivated violent acts were even quite frequent, especially in the early '20s and late '30s, mostly committed by militant extreme right-wing groups, sometimes, to a lesser extent, by extreme left-wing groups (similarly to many other European countries). These incidents have become mostly forgotten by now, nevertheless, it is worth giving a brief overview of the most important ones.²

27 July 1920: bomb attack against a café in Budapest, committed by a group of extreme right-wing militants, with several victims.

20 October 1921: in the course of a failed attack to regain his throne, former king Charles IV of Habsburg and his followers seize an aircraft in Switzerland and force it to fly to Hungary (this case being the first known plane hijacking in the world).³

16 January 1923: failed plot to attack a theatre in Budapest by extreme right-wing militants.

20 February 1923: failed bomb attacks against the editorial office of an opposition newspaper and against opposition politician Károly Rassay.

16 February 1926: attack against MP Vilmos Vázsonyi by extreme right-wing militants.

13 September 1931: a railway bridge near Budapest explodes under the Vienna-Budapest express train (22 people die). The outrage is attributed to a mentally disturbed person Szilveszter Matuska – nevertheless, his apparent contacts to extreme right-wing circles who planned a coup d' état remain unclear.⁴

9 October 1934: assassination of King Alexander of Yugoslavia and French Foreign Minister Barthou in Marseille by Croatian Ustasha terrorists – investigation reveals that they were previously trained in Hungary.

26 June 1937: violent clashes between activists of the Hungarian Social Democrat Party and the far-right Arrow Cross Party in Budapest.

16 September 1937: attack by communist and social democrat activists against the Budapest headquarters of the Arrow Cross Party.

12 November 1938: attacks of extreme right-wing activists against leftist facilities in Budapest.

3 February 1939: bomb attack against the main synagogue in Budapest by Arrow Cross activists, leaving 13 people wounded.

Even this short list that concentrates only upon those incidents that were recorded in the literature used by historians demonstrates that politically motivated violence had been present in Hungary between the two World Wars. Although a bit retrospectively, but one may even state that at least some of these acts were, under present terms, acts of terrorism. Undoubtedly however, they serve as an evidence that politically motivated violence does have a tradition in Hungary.

After the Second World War, as well-known, Hungary became a part of the Communist bloc, and a dictatorial, Soviet-type state emerged in the course of 1947-1948. It goes without saying that state oppression made resistance, especially armed resistance impossible, except for the period of the revolution in October and November 1956 (one may state that politically motivated violence in this period was exercised by the state itself). Nevertheless, sporadically, there were cases of violent or even armed resistance: of course, I would not dare to identify these and their perpetrators with terrorism, on the other hand, their courage to act against a dictatorship deserves appraisal. However, if we use the concept of politically motivated violence in a value-neutral manner, these acts also underscore of approach, namely, the existence of a tradition of politically motivated violence in Hungary.

The incidents I refer to are the following:

4 January 1949: hijacking of a domestic flight. The perpetrators use the airplane to flee to West Germany, where they are granted asylum.⁵

13 July 1956: hijacking of a domestic flight. The perpetrators use the airplane to flee to West Germany, where they are granted asylum.⁶

15 October 1956: failed attempt to hijack a domestic flight. The security personnel of the plane kills one of the perpetrators, the rest escape trial due to the subsequent revolution.⁷

16 August 1958: two Hungarian emigrants attack the Hungarian embassy in Bern, Switzerland. Security personnel of the Embassy kills one of the attackers, the other one will be arrested by Swiss police (receives later on a very mild sentence).⁸

7-12 January 1973: two sons of a Border Guard officer take hostage of several schoolgirls at a dormitory in Balassagyarmat (near the Czechoslovakian border), using firearms stolen from their father. Inspired by news of terrorist attacks in the world, the siblings demand money and free passage to the West. Police kills one of the perpetrators, the other one receives prison sentence. This case can be considered the first „modern” terrorism or terrorism-like incident in Hungary and it contributed to the codification of the relevant offence (Act of Terrorism), as we will see it later.⁹

We have to note that the *modi operandi* in these cases are very similar to the typical terrorist attacks of the first huge wave of international terrorism in the '70s (namely, hijacking airplanes and attacking embassies). Another peculiarity is the fact that, among Cold War circumstances, in some cases the perpetrators were granted asylum: something that will become contrary to the relevant instruments of the international community some two decades later, when, at least in theory, consensus emerges that terrorists should be punished by all states regardless of political motivations. Last but not least, except for the attack in Bern, perpetrators used violence in order to leave the country: hence, the political motivation in these cases is much more remote, and it is questionable, whether there was any aim to reach effect beyond the immediate target.

Due to effective consolidation of the communist regime after the revolution in 1956, politically motivated violence became more or less obsolete in Hungary in the last decades. The transition from socialism to democracy in 1989-1990 was peaceful as well. After very sporadic incidents, politically motivated violence erupted in the autumn of 2006, after the publication of a speech by Prime Minister Ferenc Gyurcsány. The Prime Minister's statements he delivered some months earlier at a closed meeting with MPs of his party, admitting the poor conditions of the state budget and using „lies” to win the elections, provoked violent protests in Budapest. In the subsequent months and years, the political life became extremely polarized and a prolonged political crisis situation emerged. Against this background and due to the detrimental effects of the global economic crisis that hit Hungary particularly hard, legal, semi-legal and illegal radical groupings took shape, some of which did not refrain from using

politically motivated violence, planning and in some cases executing actions, that can easily be defined as terrorist, even in terms of criminal law. Public life consolidated after the elections in 2010 and such actions are currently not taking place. Nevertheless, as we have seen, a possible political destabilization might create similar tensions in the future.

Looking back upon the last century of Hungarian history with this particular optics, one may state that, although not prevalent, but politically motivated violence (which, in my view, is more or less equal to terrorism) has been present in Hungary. Hence, the perception I referred to at the beginning of my paper (namely, that terrorism is unknown in Hungary) deserves some reconsideration.

Development of the concept of terrorism in the Hungarian penal law

Terrorist behaviour became a *sui generis* criminal offence with the adoption of the second „socialist” Criminal Code in Hungary, namely Act IV. of 1978. This Code, that has replaced the previous Act V. of 1961 entered into force on 1 July 1979 and (although with more than hundred amendments) remained in force until 1 July 2013. The offence „Act of Terrorism” was already included in the original version of the Act. This offence (Section 261) found its place among the offences against law and order (Chapter XVI of the Code), under Title I within the Chapter, namely among the crimes against public security.

During the codification, the above-mentioned hostage-taking case of 1973 certainly had an impact on the concept of the offence. Back in 1973, the authorities had difficulties in finding the proper offence within the Criminal Code enabling to punish the surviving perpetrator in a way that could match the seriousness of the actual deed. At the end of the day, the basis of the conviction was the attempt of homicide on multiple persons, enabling to impose 15 years of imprisonment, nevertheless, the peculiarities of the hostage-taking action could not be reflected in the sentence.

The ministerial justification of the new Criminal Code in 1978 put the emphasis on this kind of criminal behaviour, underlining that

terrorism is seen „as a qualitatively new form of constraint and blackmail, more horrendous than the ones previously known... the perpetrator tries to exclude the possibility of failure by obtaining previous safeguards. He detains another person against his will or seizes considerable assets or property, and makes demands to government agencies or non-governmental organizations in exchange for the release of the person or refraining from doing harm or injury, or the return of said assets and property.”¹⁰

As we can read out of the language of the offence, the legislator aimed to target this particular behaviour of hostage-taking as act of terrorism, if the demands are addressed to government agencies or non-governmental organizations (hence, the same behaviour with demands addressed to private persons did not qualify as an act of terrorism). By doing so, beyond the 1973 case, the first wave of international terrorism of the 1970s and the typical *modi operandi* were certainly taken into account, just as the relevant instruments adopted under the umbrella of the United Nations.¹¹ Hence, including this offence in the Criminal Code was also a step to align domestic law with obligations under public international law.¹²

The 1978 codification has introduced additional elements that have become parts of the concept of the offence ever since, i.e. the penalisation of preparation and the failure to report the crime, just as the possibility of mitigation in case of voluntary abandon. Some of the language reflects the „socialist” legal environment, e.g. the qualified case of war-time, or the reference to „non-governmental organisations”.¹³ All in all, one may say that this concept, although having somewhat narrow scope, concentrating upon one particular type of terrorist behaviour, corresponded to the circumstances of the time of the adoption of the Act and it can be seen as a very progressive approach by that time.

The language of the offence remained practically unchanged until 2001, when the 9/11 terrorist attacks against the United States changed the international environment drastically. The only amendment that affected the offense was of a general nature, namely, the abolishment of the death penalty in 1990, by one of the first decisions¹⁴ of the newly created Constitutional Court, a landmark of transition from the communist dictatorship into democracy.

In 2001 and 2002, two subsequent amendments transformed the text of the offence, introducing a completely new and much broader approach, motivated by the change of the international legal environment, already in progress for years but finally catalysed by the 9/11 attacks. As a first step, Act LXXXIII of 2001 that was adopted in December 2001 introduced the financing of terrorism, as a part of the offence, with the same penalties.¹⁵ This amendment was part of an Act that was aimed to align Hungarian legislation with UN Security Council Resolution 1373, directly after the 9/11 attacks, with a focus on anti-money laundering and terrorism financing issues.¹⁶

One year later, following the adoption of a new instrument by the European Union (namely, Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism), that became immediately a part of the *acquis communautaire* for candidate countries to comply with and the ratification of the 1997 International Convention for the Suppression of Terrorist Bombings¹⁷ and of the 1999 International Convention for the Suppression of the Financing of Terrorism¹⁸, the offence was, finally, completely changed. Act II of 2003¹⁹ tried to align the Hungarian legislation with the above-mentioned EU instrument, creating a much more complex offence with a broader scope.

The ministerial justification of Act II of 2003 emphasized the changing nature of terrorism as the main reason of the amendment, stating: „In the past years, the goal of terrorist actions have become destruction and demolition, the offenders not formulating any kind of demand... this has already appeared in terrorist behaviour prior to 11 September 2001 and the international legal development responding thereto; nevertheless, it is even more true as regards the events since that date... the Framework Decision on combating terrorism adopted by the Council of the European Union on 13 June 2002 has a particular importance from the point of view of our accession to the European Union.”

The amendment, leaving the name of the offence unchanged, has introduced several new punishable actions, using a very complex approach, making the text somewhat complicated. Altogether six variations of the offence can be distinguished:²⁰

a) „New types of terrorist behaviour”: the new paragraph 1 of the Section created a *delictum compositum* following the logic of the EU Framework Decision, using an exhaustive list²¹ of violent crimes against persons referred or a crime that endangers the public or involves the use of a firearm that are committed by one of three possible *sui generis* motivations, as follow:

[in order to]

- coerce a government agency, another state or an international body into doing, not doing or countenancing something;
 - intimidate the general public;
 - conspire to change or disrupt the constitutional, economic or social order of another state, or to disrupt the operation of an international organization.
- b) The traditional hostage-taking behaviour remained punishable by paragraph 2 with minor amendments. The *actus reus* became limited to seizing considerable assets or property, as the involvement of persons as hostages became punishable under paragraph 1, kidnapping becoming one of the listed offences. Furthermore, the motivation for this kind of action was limited to the first type of motivation mentioned above (i.e. „to coerce a government agency, another state or an international body”). Thirdly, the old notion of „non-governmental organisations” was deleted from the possible addressees of the demands.
- c) The new formulation retained the possibility to penalise the preparation for both previous behaviours (paragraph 4), using the general notion of preparation, not specifying any particular behaviour under this paragraph.
- d) As a new element, the membership in a terrorist group became punishable, and the financing of terrorism was also included, in paragraph 5. The terrorist group was defined following the pattern of the definition of criminal organisations in an explanatory provision in paragraph 9 within the Section.

- e) As a new behaviour, threatening to commit the first two cases mentioned-above became *sui generis* punishable under paragraph 7.
- f) The failure to report a planned act of terrorism remained punishable under paragraph 8.

It is arguable, whether the reformulation of Section 261 had an actual added value. As Professor Mihály Tóth points out²², this might be seen rather as a demonstrative, than a substantial step of legislation, as nearly all of the offences that could have been applicable under the Hungarian law in force in the case of the 9/11 attacks were already punishable by life sentence. Nevertheless, implementation of the EU Framework Decision was a necessity and, undoubtedly, the amended text of Section became mostly compliant with that instrument.

From 2003 to 2012 (adoption of the new Criminal Code), three additional amendments affected Section 261, out of which two were merely of technical nature.²³ The only substantial amendment took place in 2007, by Act XXVII. of 2007. The main reason behind this amendment were the findings of the third round evaluation report of the MONEYVAL expert group of the Council of Europe, adopted in 2005 as regards terrorist financing provisions of the Criminal Code.²⁴ This report stated that the offence [of financing terrorism] had been defined in relation to the financing of the activities of terrorist groups, while the financing of individual terrorists is only covered through ancillary offences and recommended that the criminal provision should cover all conduct constituting terrorist financing as set forth in the UN International Convention for the Suppression of the Financing of Terrorism. This led to a reformulation of paragraphs (4) and (5) of Section 261.²⁵ Another element of this amendment was to lower the punishment foreseen for these two types of behaviour, for which the ministerial justification gave the explanation that the previous wording was „far too harsh within the structure of the offence and compared to the other offences of similar significance”.

The new Hungarian Criminal Code (Act C. of 2012) that has entered into force on 1 July 2013, has split the former single offence of Act of Terrorism into three separate offences, namely:

- act of terrorism (Sections 314-316)
- failure to report a terrorist act (Section 317)
- terrorist financing (Section 318)

These offences are placed under Chapter XXX (crimes against public security²⁶). According to the ministerial justification of the Code, the law was meant to be made more transparent by this division. Nevertheless, beyond this restructuring, there were only a few major changes compared to the previous Code from a substantial point of view.²⁷

These changes mostly affected the offence of terrorist financing, once again, due to the recommendations by MONEYVAL. In the report of the follow-up round in 2010²⁸, the group stated that the Criminal Code did not provide for an offence of terrorist financing in the form of provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used by an individual terrorist for any purpose, it was unclear whether the financing of terrorist organisations' day to day activities are incriminated, and collection of funds for terrorist organisations' day to day activities were not covered. The new concept of terrorist financing under Section 318 of the new Code tried to address these concerns, by broadening the scope. The introduction of a definition of funds, referring back to Council Regulation (EC) No. 2580/2001 of 27 December 2001 is certainly a step towards more clarity of the law, also as a result of the MONEYVAL report.

As regards Section 315, one must note that these preparatory offences (paragraphs 1 and 2) entered into force on 1 July 2013 with an already amended wording, as Act CCXXIII. of 2012 has amended the Criminal Code at this point even before the entry into force of the original text. The reason for that was to create full compliance with the 2005 Council of Europe Convention on the Prevention of Terrorism that was ratified by Hungary in 2011.

Having taken a quick look to the evolution of the substantial criminal law as regards the penalisation of terrorism in Hungary, one may have the following remarks *de lege lata*:

- One peculiarity is the relative stability of the text of the relevant sections. While the former Criminal Code was amended more

than hundred times during the 35 years of its existence, the section on acts of terrorism was only affected by three major amendments.

- It is also remarkable that the evolution of the concept in criminal law was clearly driven by external factors (i.e. the process of accession to the European Union and the activities of the periodical evaluation mechanism by MONEYVAL).

Furthermore, if we go back to our starting point („the Hungarian legislation covers all forms of terrorism”), we can state that the Hungarian penal law is mostly in line with the relevant international requirements. Nevertheless, some discrepancies remain:

- Either the previous or the new Criminal Code does not incriminate the direction of a terrorist group, which is clearly non-compliant with Framework Decision 2002/475/JHA that stipulates that directing a terrorist group should be a *sui generis* criminal offence with a more severe punishment than the one foreseen for membership in it.

- It is questionable, whether the notion supporting a terrorist group „in any other form” is proper to be included under the offence „financing of terrorism”, as the material element may be lacking from such supporting behaviour.

- Training and recruiting to terrorism are only covered by general notions of criminal law, which might give rise to concerns as regards the practical implementation in concrete cases.

- Although there is no international obligation for doing so, but Hungary does currently not criminalizing the public glorification of terrorist acts and the obtaining of terrorist training (skills or special knowledge) if there is no direct link established to an actual act of terrorism.

- As regards the latest developments, it is too early to determine, whether the Hungarian penal law is compliant with the provisions of UN Security Council Resolution 2178 (adopted on 24 September 2014) that aim to tackle the phenomenon of the so-called foreign fighters (persons travelling to crisis areas to join an armed conflict, one of the parties of which is considered to be a terrorist organisation).²⁹

Misleading statistics, questionable practice

Notwithstanding the evolution of the penal law, the number of criminal cases linked to terrorism has remained low in the last decades.³⁰ According to statistics³¹ of the Hungarian Ministry of Interior, from 1980 to 2014 (first semester), there have been 92 registered criminal offences, 180 criminal proceedings launched and 62 prosecutions. These figures, at a first glance, could correspond to the statements emphasizing that in Hungary, there is hardly any terrorist threat. Nevertheless, if we look behind the numbers, we find some disturbing issues.

Firstly, 92 acts of terrorism are not that few for a country claiming that it is not directly affected by terrorism. The explanation for this is quite simple, though: the overwhelming majority of the cases known represent actually no genuine terrorist action. There are no statistics showing the differentiation among the particular variations within the given Sections of the Criminal Code: however, empirical evidence underlines that nearly all of the cases concerned represent the „hostage taking” scenario, hence, the original concept of the 1978 codification: „a person detains another person against his will or seizes considerable assets or property, and makes demands to government agencies in exchange for the release of the person or refraining from doing harm or injury, or the return of said assets and property”. In practice, these actions are often results of family conflicts, sometimes committed by mentally disturbed perpetrators.³² By a mechanic application of the text of the law, holding a knife against one’s throat and telling a policeman „Let me go or I kill him/her” results quite often in a conviction for an act of terrorism: a behaviour falling within the definition of the objective element, nevertheless, it appears to be quite far removed from the essential concept of genuine terrorist behaviour, as set out in the EU Framework Decision.

Another issue of concern is the concept of „another state” in the law. As it was explained above, the main motivation of the act of terrorism is „to coerce a government agency, another State or an international body into doing, not doing or countenancing something”. This means that, if a terrorist action does not aim to coerce a government agency that can be defined in a certain situation (e.g. the police) but it is directed against the public authorities of Hungary as

a whole (which would be typical in a genuine terrorist case), this action would not be punishable as an act of terrorism: it would qualify as an offence against the state, under Chapter XXIV of the new Criminal Code (and Chapter X. of the former one). I admit, that only a few cases of this kind of offences occurred, nevertheless, my impression is that these are usually left out of the scope of any study or analysis of actual terrorist threat or terrorist activities in Hungary.

Another striking issue is the high number of dropped cases (i.e. criminal proceedings launched not resulting in a prosecution). Certainly, this has to do with difficulties of evidence and the temptation for police and prosecutors to build up cases based on another sections of the Criminal Code, which are easier to prove in front of a court. Nevertheless, some case studies³³ demonstrate an enduring reluctance by the authorities to apply the provisions of the offence of act of terrorism even if everything seemed to be in place for doing so.

In the first case, in August 1986, a mentally disturbed person seized a Tintoretto painting in a museum in Budapest. With a knife in his hand, he requested the Minister of Health to arrange his operation to change his sex, in exchange of leaving the painting unharmed. Guards managed to neutralise him and save the precious artwork. Although this case is clearly an example of an act of terrorism within the meaning of the criminal law in force of the time of the perpetration, both the prosecution and the judgement were based on another offence (attempt of deterioration).

In the second case, which happened in early 2007, a person was apprehended, and 102 kg of different substances and other means that were necessary for the production of improvised explosive devices (IEDs) were seized at his flat. Both the confession of the suspect and his e-mail messages proved his intention to create an explosion at a public gathering (as mentioned at the beginning of the paper, this period was characterized by a surge of politically motivated violence in Hungary). Although the suspect was prosecuted for preparation of an act of terrorism, the sentence was only applied for a minor offence of pyrotechnics.

In the third case, a serial of murders took place in in 2008-2009 against persons of Roma origin: a group of four persons committed

nine attacks killing six victims (among them a child) and leaving several others injured. The motivation of the perpetrators was racism: according to their statements, their aim was „to restore order as a response to the atrocities and crimes alleged to Gypsies. They intended to shake up the country and drive people against Gypsies and ignite ethnic rioting.” In my view, this is very straightforward case of an act of terrorism, as defined by the Criminal Code (both by the previous one and the current one), namely under the motivation of „intimidation of the general public”. However, both the prosecution and the sentence of first instance were based on other offences (i.e. homicide, planned in advance, for a base reason or purpose, committed in criminal conspiracy).³⁴

Conclusions

What conclusions can be drawn? *De lege ferenda*, some proposals could be considered in order to obtain a concept in the criminal law that would reflect the intentions of the legislator more properly and that would bring along a more accurate picture as regards the prevalence of terrorism in Hungary. My first proposal would be to fine-tune the text regarding the hostage taking behaviour, introducing a higher threshold, requiring actual political motivation behind the demand, beyond the mere fact that the addressee of the demand is a state agent (e.g. a policeman). Secondly, the differentiation between Hungary and „other states” as the passive subjects of coercion should be reconsidered. These two simple legislative steps would result in a much more clear-cut optics of the law. It could also bring along a better acceptance of these offences among practitioners which could actually lead to a more correct application of the provisions. My impression at this point is that terrorism so far has been considered and perceived by the community of legal practitioners as something strange and remote- we could see how much the evolution of these offences in the Criminal Code has been determined by purely external factors, with steps of codification carried out as compulsory homework, without going into detailed considerations on the genuine added value of it.

Furthermore, beyond legislation, I would call for a shift from the positivistic approach that identifies terrorism with one or several sections of the Criminal Code to the use of the broader concept of politically motivated violent acts of particularly serious nature. I am convinced that we could have a much more precise picture about the actual presence of terrorism in Hungary- which, luckily enough, may be not particularly serious, nevertheless, it might be more severe, than it is commonly perceived, taking into account the existing traditions of politically motivated violence and the anomalies of the legal environment I tried to demonstrate above.

Bibliography

¹ E.g. the Council Framework Decision 2002/475/JHA of the European Union on combating terrorism.

² For this list I used the Historical Chronology of Hungary, Band III (1848-1944) (*Magyarország történeti kronológiája*. Akadémiai Kiadó, Budapest, 1983).

³ <http://iho.hu/hir/kiralypuccs-a-vilag-also-repulogeteritese-111027>

⁴ For the latest results of historical research, cf. Gyula Vargyai, “A Plot Against the Plot. The Attack of Biatorbágy” (Merénylet a merénylet ellen. A biatorbágyi merénylet), *Hadtörténelmi Levéltári Kiadványok*, Budapest, 2002. Electronic version available: <http://mek.oszk.hu/04900/04964/html/#d1e1924>.

⁵ cf. endnote 3.

⁶ cf. endnote 3.

⁷ For a detailed description of the case cf. Balázs Ábrahám, “Attempt to hijack a plane on the eve of the revolution” (“Repülőgép eltérítési kísérlet a forradalom előestéjén”) at *Betekintő.hu* URL: http://www.betekinto.hu/2009_4_abraham#_edn9.

⁸ For a detailed description of the case, cf. Zsolt Krahulcsán: „Our warning was a bit radical” („*A mi figyelmeztetésünk egy kicsit radikális volt*”) at <http://www.betekinto.hu/en/node/115>.

⁹ Original documents of this case are available at http://www.nogradarchiv.hu/index.php?action=gallery&category_id=320.

¹⁰ The complete wording of the offence was, as follows:

Section 261

(1) Any person who detains another person against his will or seizes considerable assets or property, and makes demands to government agencies or non-governmental organizations in exchange for the release of the person or refraining from doing harm or injury, or the return of said assets and property is guilty of a felony and is punishable with imprisonment of between five to fifteen years.

(2) The punishment shall be imprisonment from ten years to fifteen years or life imprisonment or capital punishment, if the act of terrorism is committed

a) causing death or an especially grave disadvantage,

b) in war-time.

(3) The person who perpetrates preparation for an act of terrorism, shall be punishable for a felony with imprisonment from one year to five years.

(4) The person who credibly obtains intelligence suggesting that the perpetration of an act of terrorism is being prepared, and fails to report that to the authorities as soon as he can, commits a felony, and shall be punishable with imprisonment of up to three years.

(5) The punishment of the person who abandons an act of terrorism before any grave consequence has arisen therefrom, may be mitigated without limitation.

¹¹ Hungary has ratified most of these instruments by law-decrees of the Presidential Council, the collective body acting as Head of State under the socialist Constitution, the first one being the 1963 Tokyo Convention on Offences and Certain Other Acts Committed On Board Aircraft, ratified by law-decree 24 of 1971.

¹² The subsequent Section 262 under the name of „Seizure of Aircraft” served similar purpose.

¹³ The English translation does not reflect the peculiarity of the Hungarian original „*társadalmi szervezet*”, which was a typical notion of socialist law, meaning organisations, that were not directly state authorities but private entities either, e.g. trade unions, etc.

¹⁴ Decision 23/1990. (X. 31.) of the Constitutional Court.

¹⁵ This amendment added the words „as well as any person who provides material means to abet any act of terrorism” to the main provision (paragraph 1) of Section 261, leaving the rest unchanged.

¹⁶ Beyond the 9/11 attacks, the direct reason behind the adoption was that the Hungarian legislation on money-laundering was assessed as non-compliant with the international obligations by the Financial Action Task Force, which was a key issue in the process of the accession to the European Union.

¹⁷ By Act XXV. of 2002.

¹⁸ By Act LIX. of 2002.

¹⁹ Actually adopted in December 2002, but the promulgation of the law took place in early 2003.

²⁰ The text of Section 261 as amended by Act II. of 2003 was, as follows:

Section 261

(1) Any person who commits a violent crime against persons referred to in paragraph (9) or commits a crime that endangers the public or involves the use of a firearm in order to:

- a) coerce a government agency, another state or an international body into doing, not doing or countenancing something;
- b) intimidate the general public;
- c) conspire to change or disrupt the constitutional, economic or social order of another state, or to disrupt the operation of an international organization;

is guilty of a felony punishable by imprisonment between five to fifteen years, or life imprisonment.

(2) Any person who seizes considerable assets or property for the purpose defined in point a) and makes demands to government agencies or non-governmental organizations in exchange for refraining from harming or injuring said assets and property or for returning them shall be punishable according to paragraph (1).

(3) The punishment of any person who:

a) abandons commission of the criminal act defined under paragraphs (1) and (2) before any grave consequences are able to materialize; and

b) confesses his conduct to the authorities;

in such a manner as to cooperate with the authorities to prevent or mitigate the consequences of such criminal act, apprehend other coactors, and prevent other criminal acts may be reduced without limitation.

(4) Any person who prepares to commit any of the criminal acts defined under paragraphs (1) and (2) is guilty of felony punishable by imprisonment between five to ten years.

(5) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under paragraphs (1) and (2) in a terrorist group or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities or by providing or raising funds or supports the terrorist group in any other form is guilty of felony punishable by imprisonment between five to fifteen years.

(6) The perpetrator of a criminal act defined in paragraph (4) or (5) shall not be liable for prosecution if he confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal act.

(7) Any person threatening to commit the crimes specified in paragraphs (1) and (2) is guilty of a felony punishable by imprisonment between two to eight years.

(8) Any person who has positive knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities is guilty of a felony punishable by imprisonment for up to three years.

(9) For the purposes of this Section:

a) 'violent crime against a person and crime of public endangerment that involves the use of firearms' shall mean homicide [paragraphs (1) and (2) of Section 166], battery [paragraphs (1)-(5) of Section 170], willful malpractice [paragraph (3) of Section 171], violation of personal freedom (Section 175), kidnapping (Section 175/A), crimes against transportation safety [paragraphs (1) and (2) of Section 184], endangering railway, air or water traffic [paragraphs (1) and (2) of Section 185], violence against public officials (Section 229), violence against persons performing public duties (Section 230), violence against a person aiding a public official (Section 231), violence against a person under international protection (Section 232), public endangerment [paragraphs (1)-(3) of Section 259], interference with public works [paragraphs (1) and (2) of Section 260], seizure of an aircraft, any means of railway, water or road transport or any means of freight transport (Section 262), criminal misuse of explosives or explosive devices (Section 263), criminal misuse of firearms or ammunition [paragraphs (1)-(3) of Section 263/A], criminal misuse of military items and services, and dual-use items and technology (paragraphs (1)-(3) of Section 263/B), criminal misuse of radioactive materials [paragraphs (1)-(3) of Section 264], criminal misuse of weapons prohibited by international convention [paragraphs (1)-(3) of Section 264/C], crimes against computer systems and computer data (Section 300/C), robbery (Section 321), and vandalism (Section 324);

b) 'terrorist group' shall mean a group consisting of three or more persons operating in accord for an extended period of time whose aim is to commit the crimes defined in paragraphs (1)-(2).

²¹ Provided by paragraph 9.

²² Tóth Mihály, “Changes of regulation and practice of acts of terrorism in criminal law” (*A terrorselekmény büntetőjogi szabályozásának és gyakorlatának változásai*). In: *Hadtudomány*, 2013/1-2, 30-40.

²³ Act LXXIX. of 2008 amended the list of basic offences in paragraph 9, while Act LXXX. of 2009 raised the maximum length of imprisonment to be imposed from 15 to 20 years, as part of a general amendment to the Code.

²⁴ http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL%282005%2917-I_Rep-HUN_en.pdf

²⁵ The text of these two paragraphs were, following this amendment, as follow:

„(4) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under paragraphs (1) and (2) or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities or by providing or raising funds to finance the activities is guilty of felony punishable by imprisonment between two to eight years.

(5) Any person who is engaged in the conduct referred to in paragraph (4) or in the commission of any of the criminal acts defined under paragraphs (1) and (2) in a terrorist group, or supports the terrorist group in any other form is guilty of felony punishable by imprisonment between five to ten years.”

²⁶ There are no separate Titles within the Chapters in the new Code.

²⁷ The text of Sections 314-319 of the new Criminal Code is, as follows:

Acts of Terrorism

Section 314

(1) Any person who commits a violent crime against the persons referred to in Paragraph (4) or commits a criminal offense that endangers the public or involves the use of arms in order to:

a) coerce a government agency, another State or an international body into doing, not doing or countenancing something;

b) intimidate the general public;

c) conspire to change or disrupt the constitutional, economic or social order of another State, or to disrupt the operation of an international organization;

is guilty of a felony punishable by imprisonment between ten to twenty years or life imprisonment.

(2) Any person who seizes considerable assets or property for the purpose defined in Paragraph *a)* and makes demands to government agencies or international organizations in exchange for refraining from harming or injuring said assets and property or for returning them shall be punishable according to Paragraph (1).

(3) The punishment of any person who:

a) abandons the commission of the terrorist act defined under Paragraph (1) or (2) before any grave consequences have resulted therefrom; and

b) confesses his conduct to the authorities;

in such a manner as to cooperate with the authorities to prevent or mitigate the consequences of such criminal act, apprehend other coactors, and prevent other criminal acts may be reduced without limitation.

(4) For the purposes of this Section, violent crime against the person, or criminal offense that endangers the public or involves the use of arms shall include:

a) homicide [Paragraphs (1)-(2) of Section 160], battery [Paragraphs (2)-(6) and (8) of Section 164], professional misconduct with intent [Paragraph (3) of Section 165];

b) kidnapping [Paragraphs (1)-(4) of Section 190], violation of personal freedom (Section 194);

c) offenses against transport security [Paragraphs (1)-(2) of Section 232], endangerment of railway, air or water transport systems [Paragraphs (1)-(2) of Section 233];

d) misappropriation of radioactive materials [Paragraphs (1)-(2) of Section 250];

e) assault on a public official [Paragraphs (1)-(5) of Section 310], assault on a person entrusted with public functions (Section 311), assault on a person aiding a public official or a person entrusted with public functions (Section 312), assault on a person under international protection [Paragraph (1) of Section 313];

f) unlawful seizure of a vehicle [Paragraphs (1)-(2) of Section 320], public endangerment [Paragraphs (1)-(3) of Section 322], interference with works of public concern [Paragraphs (1)-(3) of Section 323], criminal offenses with explosives or blasting agents [Paragraphs (1)-(2) of Section 324], criminal offenses with firearms and ammunition [Paragraphs (1)-(3) of Section 325];

g) criminal offenses with weapons prohibited by international convention [Paragraphs (1)-(5) of Section 326], criminal offenses with military items and services [Paragraphs (1)-(3) of Section 329], criminal offenses with dual-use items [Paragraphs (1)-(2) of Section 330];

h) robbery [Paragraphs (1)-(4) of Section 365] and vandalism [Paragraphs (1)-(6) of Section 371];

i) breach of information system or data [Paragraphs (1)-(3) of Section 423].

Section 315

(1) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined in Paragraph (1) or (2) of Section 314 or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities is guilty of a felony punishable by imprisonment between two to eight years.

(2) Any person who is engaged in the conduct referred to in Paragraph (1) or in the commission of any of the criminal acts defined in Paragraph (1) or (2) of Section 314 in a terrorist group, is punishable by imprisonment between five to ten years.

(3) The perpetrator of a criminal act defined in Paragraph (1) or (2) shall not be prosecuted if he confesses the act to the authorities first hand and unveils the circumstances of the criminal act.

Section 316

Any person threatening to commit a terrorist act is guilty of a felony punishable by imprisonment between two to eight years.

Failure to Report a Terrorist Act

Section 317

Any person who has positive knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities is guilty of a felony punishable by imprisonment not exceeding three years.

Terrorist Financing

Section 318

- (1) Any person who provides or collects funds with the intention that they should be used in order to carry out an act of terrorism, or who provides material assistance to a person who is making preparations to commit a terrorist act or to a third party on his behest is guilty of a felony punishable by imprisonment between two to eight years.
- (2) Any person who commits the criminal offense referred to in Paragraph (1) in order to carry out an act of terrorism in a terrorist group, or on behalf of any member of a terrorist group, or supports the activities of the terrorist group in any other form is punishable by imprisonment between five to ten years.

(3) For the purposes of this Section ‘material assistance’ shall mean the assets specified in Point 1 of Article 1 of Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, including legal documents and instruments in any form.

Interpretative Provision

Section 319

For the purposes of Sections 315 and 318 ‘terrorist group’ shall mean a group consisting of three or more persons operating in accord for an extended period of time whose aim is to commit acts of terrorism.

²⁸ http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/HUN-MERMONEYVAL%282010%2926_en.pdf

²⁹ The recently adopted UNSCR 2178 (2014) requires all States to establish in their domestic legislation as serious criminal offences the following:

- travel or attempt to travel for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
- financing of such travel
- organisation, or other facilitation, including acts of recruitment, of such travel.

³⁰ In this sense, I refer to criminal proceedings launched on the basis of Section 261 of the previous Criminal Code and Sections 314-318 of the new Code.

³¹ Data regarding the last 5 years has been made public at <https://bsr.bm.hu/SitePages/Nyitolap.aspx>. Historical data (data preceding 2009 was disclosed to the author as a courtesy by the Coordination and Statistics Unit of the Ministry of Interior.

³² Another typical case is that of a robbery, if perpetrators take hostage in order to ensure their free passage- it goes without saying that this behaviour lacks any political motivation as well.

³³ The first two cases described below are referred to by Mihály Tóth, *op. cit.*, cf. footnote 23. Detailed description of the third case in English is available at <http://ciganyvadaszat-per.blog.hu/tags/english>.

³⁴ The procedure of appeal is still in progress. Three out of the four offenders received life sentence at first instance.