

THE AHMED H. CASE

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**Some Thoughts about Terrorism and Human Rights in
Hungary: the Ahmed H. Case**

Abstract

Terrorist acts are one of the most dangerous criminal offenses. Their protected legal interest is the public interest with regard to the forceless and uninterrupted operation of states, governmental agencies, furthermore the population's uninterrupted, calm way of life that is free of fear. ²

Introduction

The basic motivation behind terrorism at the end of the past century were anarchism and nationalism; although this is the past for today's terrorism, many components of their ideals are to be

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² BELOVICS Ervin – MOLNÁR Gábor Miklós – SINKU Pál (2012): Büntetőjog II. a 2012. évi C törvény alapján [Criminal Law II in accordance with Act 2012 C] HVG-ORAC Lap- és Könyvkiadó Kft. Budapest. 471. o. (Hereinafter: Belovics-Molnár-Sinku: Büntetőjog II. a 2012. évi C törvény alapján)

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seen in the justification of terrorist acts in following eras and are the motivating power behind those acts. Their set of instruments differed as well (daggers, poison, bombs), they committed a sequence of attacks against Heads of States and monarchs – from the French president Carnot at the top of the list down to Queen Elisabeth.³ Nevertheless, it can be stated that terrorism is distinctly a phenomenon of the 20th century and has developed into a severe problem after World War II and in three main geographic regions: Western Europe, the Middle East and Latin America.

“Terrorism is the systematic use of force or threats to use force drawing upon different ideologies, abiding by a specific logic and taking on different forms. Its aim is to achieve political endeavours by developing opportunism amongst victims, the audience, within the state and the society. The declared objective usually is of political, ideological, religious, ethnic etc. nature enforcing a radical change; a sequence of acts applied in order to achieve the objective. However, the tool used for the achievement is a common and violent criminal offense.”⁴ The most crucial challenges to be faced in the future are nuclear terrorism, ecoterrorism, biological terrorism, cyber terrorism as well as the acts of radical religious terrorist groups, which have to be seen as an increasingly serious problem. Studies addressing terrorism agree that it is mainly a political phenomenon based on both structural and psychological factors. It is considered that

³ SZÖVÉNYI György (1998): A terrorizmus jellegzetességei az ezredfordulón. [The characteristics of terrorism at the turn of the millennium] Európai Tükör, 1998. 3. szám 92. o.

⁴ KORINEK László (2006): A terrorizmus. [Terrorism.] In: Kriminológia – Szakkriminológia [Criminology]: Eds: Gönczöl, K. – Kerezsi, K. – Korinek, L. – Lévay, M. CompLex Kiadó. Budapest. 447. o.

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modernisation, democracy and tension undealt with may lead to conditions resulting in terrorism.

The danger in terrorist acts lie in their unpredictability and in their fast and mobile striking effect. The change between the terrorism of previous eras and today's terrorism is based on quality but the main differences developed through history.⁵ 9/11 can be considered as a main turning point in the history of terrorism (and potentially in the history of mankind). The structure and the method of financing terrorist organisations have changed.

In the past 50 years, when this phenomenon started to become an unprecedented threat, many international conventions have been emerged in connection with terrorist acts, which were fully implemented into the Hungarian Criminal Code.⁶

Terrorism is such a crime, which is strongly affected to the human rights, and the policy of war on terror is also strongly affected to human rights too.⁷ "In the War on Terrorism, what becomes of international human rights? It seems beyond dispute that the war model poses a threat to international human rights, because honoring human rights is neither practically possible nor theoretically required during war."⁸ "Terrorism aims at the very destruction of human rights, democracy and the rule of law. It

⁵ GERGELY Attila (1994): A terrorizmus természetrajza. [The nature of terrorism.] *Kapu*, 1994. 10-11. szám 92. o.

⁶ See more: KASZNÁR Attila (2017): A terrorizmus megjelenése Magyarországon az 1970-es és 1980-as években *Terror & Elhárítás* 2017. 1-2. szám 98-101. o.

⁷ See more: KŐHALMI László (2015): Az önvédelmi korrupció koncepciója. *Jura*. 21. évf. 1. szám 65-69. o.

⁸ LUBAN, David (2002): The War on Terrorism and the End of Human Rights (In: *Philosophy & Public Policy Quarterly* Vol 22. No. 3. 2002. 13. p.)

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attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.”⁹

“A 2009 study conducted by the University of North Carolina concluded that the most commonly utilized counter-terrorism tactics, such as extrajudicial killings, torture, forced disappearances, and political imprisonment are, in fact, themselves acts of terror. To terrorize in the name of combating terrorism is ironically hypocritical. When counter-terrorists use the tactics of terrorists in order to counter terror, they descend to their moral level and just add more terror to the world. And if that were not enough, when counter-terrorists terrorize people, they generate more terrorists. In addition to civilian casualties, governments insidiously conspire to abuse other basic rights in the name of fighting terrorism; they tighten security to an unreasonable degree, impose petty rules and regulations, and censor the masses, hence, creating police states devoid of freedom and instilled with fear - the perfect breeding grounds for terrorism. Thus, we are faced with a vicious cycle: counter-

⁹ <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf> (17. 09. 2017.)

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terrorism breeds more terrorism, and then more terrorism breeds more counter-terrorism, and so on, ad infinitum.”¹⁰

In my paper I will examine the current legal background and law enforcement measures in the field of the fight against terrorism, keep tabs specially on the terrorist financing worldwide and in Hungary.

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In the past 5 years (2012-2017) an average of 3 terrorist acts took place in Hungary. However, these cannot be seen as terrorist acts in “classic” criminological terms, but as criminal offenses, which have been declared as terrorist acts by the increasingly spreading scope of criminal law. Pursuant to the Hungarian criminal law the common criminal offenses listed in the section “Acts of Terrorism” of the Criminal Code have been declared as terrorist acts, when e.g. the objective of the perpetrator is to intimidate the general public, coerce a government agency, another State into doing, not doing or countenancing something; or to disrupt e.g. the operation of an international organization.

One of the cases attracting huge interest in the press has been the criminal proceeding against Ahmed H. Due to the “situation caused by mass immigration” in Hungary, the state of emergency was declared on 15th September 2015 and on the same day new

¹⁰ HUFFINGTONPOST: Fighting Terrorism Without Violating Human Rights http://www.huffingtonpost.com/lydia-canaan/fighting-terrorism-withou_b_9513034.html (17. 09. 2017.)

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rules in asylum and criminal law became applicable. This reform on the Asylum Act obliges refugees to file their asylum requests within one of the newly established transit zones along side the Schengen external borders. The transit zones on the Hungarian-Serbian border - Röszke and Tompa - opened on 15th September 2015, but in the beginning only hundred requests were allowed per day. The border crossing at Röszke, where thousands were previously able to enter the EU per day, was basically closed overnight. As a consequence, thousands of people were trapped; not able to move forward anymore and not knowing what was happening.¹¹

After declaring the state of emergency as a consequence of mass immigration hundreds of migrants assembled on the Serbian side of the road border crossing Röszke-Horgos on the 16th of September 2015. The peaceful minded groups of people with the aim to enter Hungary became aggressive over time, trying to tear down the fence, some of them throwing stones at the policemen on the Hungarian side. Many policemen were injured during the confrontation. According to the judgement of the Court of First Instance Ahmed H. threatened with breaking down the cordon and attacking the police. The suspect has addressed the mass several times with a megaphone, threw stones at the police three times himself and has illegally entered Hungary after opening the gate closing down the crossing point. Ahmed H. then returned to the Serbian side and could only be detained 3 days later. According to prosecution this act has to be considered a terrorist act because the suspect did use force against the representative of public authority in order to force the police to let him enter the country.

¹¹ <http://no-racism.net/article/5234> (17. 09. 2017.)

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On 30th November 2016 Ahmed H. was convicted in Szeged to 10 years imprisonment on account of illegally crossing the border and a terrorist offense. In addition, he was expelled from the Hungarian state territory indefinitely. On 15th June 2017 the appeal hearing took place in Szeged: resulting in the procedure being resubmitted to the first instance court, whilst the accused remains in pre-trial detention. Ahmed H. has been detained since September 2015 and has therefore been imprisoned for almost 2 years now. In addition to national press and 2 representatives of the international media, Amnesty International Hungary, one delegate of the Swiss Democratic Lawyers (ELDH member organization) and supporters of Ahmed H. were also present and attended the hearing.¹²

Pursuant to Hungarian criminal law what Ahmed H. committed is a terrorist act. The perpetrator of Syrian nationality was convicted of a terrorist act and of the illegal crossing of the border at first instance by the General Court of Szeged. As a consequence, he was sentenced to imprisonment of 10 years in a high secured prison and has been expelled from Hungary. The Court of Appeal of Szeged repealed the decision. The proceeding is still ongoing in the autumn of 2017.

In Hungary, the detection and prevention of terrorist acts falls within the correspondence of the Counter Terrorism Centre [Hungarian name: Terrorelhárítási Központ, TEK]. This state agency is specialized on prosecution and intelligence service. Pursuant to the relevant legislation (Government decree 295/2010. (XII. 22.) its main tasks are as follows:

¹² <http://no-racism.net/article/5234> (17. 09. 2017.)

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- a) It analyses and evaluates the threat of terrorism on Hungary.
- b) It organises and coordinates the activity of state agencies for the prevention of and response on terrorist acts, performs preparational, implementation and administrative tasks in connection with the Counter Terrorism Centre.
- c) It contributes towards developing the national program on the protection of critical infrastructure, evaluating the level of threat and the elaboration of plans on security action plans, furthermore – according to a specific contract –, it is responsible for the protection of the critical infrastructure being important in terms of terrorist threats.
- d) Pursuant to the government decree on the protection of individuals and designated establishments it provides protection for the General Prosecutor and the Prime Minister, and fulfils other tasks regarding the protection of persons, which were temporarily or on case-by-case basis assigned to it by the Minister of Policing.

At intelligence level the Counter Terrorism Centre (TEK) plays an essential role. Although they can use the police powers under the Chapter 7 of the 1994 Police Act (covert operations), the TEK does not conduct investigations, but operates exclusively in the area of collecting intelligence. Their sources include human intelligence, financial intelligence, technical intelligence (telephone/wiretapping, internet and other communication surveillance) and foreign counterpart information. The information is classified until the TEK decides to file a report on suspicion of terrorism-related offences to the law enforcement authorities. Though the TEK has not yet specifically focused on financing terrorism, this aspect has come up in other intelligence actions, for instance with regard to suspicions of business activities being

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used to financially support terrorist organisations (which were however later not confirmed). The TEK is clearly well-informed and aware of terrorist threats, even if until now it has not found concrete indications of terrorist-related activities and considers that there is not yet need for immediate action, while at the same time recognising the importance of raising awareness for the terrorist threat.¹³

Conclusions

One reason for why no “traditional” terrorist attack took place in Hungary that needs to be highlighted is the effective operation of the Counter Terrorism Centre. This agency is subject to the responsibility of intervention before the commitment of a terrorist act and in this case misuse of firearms will be registered within the criminal statistics, as the perpetrator has been detained before he/she could commit a criminal offense with his/her illegally obtained firearm. Other possible reason could be that we had luck in the past decades. We cannot prove, what is right, but the point is the same: there was no serious terrorist attack in Hungary up to this day. This doesn't mean, that we don't have to prepare and we will never have a serious terrorist attack in the future in Hungary. We have to find the best practice and the balance between the human rights and the security in the next years too.

¹³ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-Hungary-2016.pdf> (17. 09. 2017.)

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