

The Hungarian criminal law on financing of terrorism

Dr. JÁNOS PÁL

Assistant lecturer

National University of Public Service, Budapest

Abstract:

In order to stop terrorist attacks and the growing number thereof it is not enough to study the phenomenon of terrorism and terrorist persons independently, we have to dig deeper and find the crucial interconnected points and alliances that are realised in financing terrorism.

Financing of terrorism is problem of great importance that cannot be solved on the basis of biased and marginal opinions. Only complex view can guarantee a better understanding of the elements of terrorism and thus help the prevention thereof. Such complex view can be obtained by studying the criminalized behaviours of financing of terrorism more comprehensively. To this effect, this essay introduces the criminal elements of financing of terrorism – as part of a comprehensive problem solving method -, and also informs the reader about the legal history, aspects and features of this criminal act.

Present terrorism and the financing thereof constitute such a negative social and political influence which presents a new kind of challenge and demands a consistent solution. The main question is what kind of tools of international and nation criminal law we can protect the public security with besides the civil, administrative and operative responses, meaning that it should be defined how much the legal, in particular the criminal norms should interfere with the lives of the citizens.

Keywords: *financing of terrorism, terrorist act, providing funds, collecting funds, providing material assistance, supports the activities of the terrorist group.*

1. The history of the regulation on financing of terrorism

The Hungarian criminal law has been criminalising financing of terrorism since 1st of March 2003. The former Criminal Code (Act IV of 1978, hereinafter: former CC) included this punishable act as part of the criminal offence of terrorist act and not independently¹, but as a sui-generis (punishable for itself) criminal act.² The Hungarian Parliament promulgated the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations in resolution 54 of 9 December 1999 by Act LIX of 2002 (hereinafter: Convention). Article 18 of this Convention says:

¹ See: R. Bartkó: *A terrorizmus elleni küzdelem kriminálpolitikai kérdései* [The criminal political questions of the fight against terrorism], UNIVERSITAS - Győr Nonprofit Kft., Győr, 2011.

² M. Tóth: *A terrorcselekmény büntetőjogi szabályozásának és gyakorlatának változásai* [Changes in the criminal regulation and practice of terrorist act] In: HADTUDOMÁNY: A Magyar Hadtudományi Társaság és MTA Hadtudományi Bizottság Folyóirata. XXIII. évfolyam, 2013/1-2, p. 30-40.

“States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.”³

Recognising the connection between the numbers and seriousness of international terrorist attacks and the financial funds attainable by terrorists, the Convention took measures to prevent and eliminate the funding of terrorists and terrorist groups. The contracting parties considered it important to connect the system of reporting and identifying provisions aimed at preventing money laundering with the impairment of the financial foundations of terrorism. To that end they encouraged the states acceding to the Convention to – irrespective of whether the financing is direct or indirect (e.g. with the help of organisations which actually or allegedly aim to realise charity, social or cultural purposes), or it is a result of an illegal activity (e.g. trade in arms or drugs, or blackmail) – adopt regulations preventing and eliminating the transfer of funds intended to be used for terrorism, also to enhance the exchange of information on the international transactions of such funds. For this reason the Hungarian rules also connect financing of terrorism with money laundering.

The preamble of Act CXXXVI of 2007 on the prevention and combating of money laundering and terrorist financing highlights the importance of the fight against financing of terrorism:

³ International Convention for the Suppression of the Financing of Terrorism. Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999.

“The objective of this Act is to effectively enforce the provisions on combating money laundering and terrorist financing with a view to preventing the laundering of money and other financial means derived from criminal activities through the financial system, the capital markets and other areas exposed to potential money laundering operations, as well as to help combat the flow of funds and other financial means used in financing terrorism.”

Section 261 (4) ad (5) of the former CC on terrorist act included the provisions on the Hungarian criminal rules on financing of terrorism. With regard to this, section 261 also provided provisions on the obligation to report a terrorist act and thus obliged every citizen to report the preparation of any terrorist act. Moreover, according to Act CXXXVI of 2007, any suspicious circumstance indicating terrorist financing should be reported (as it is even today), similarly to the suspicion of money laundering. Thus the failure to report money laundering⁴ is also connected thereto as a related criminal offence.

The report of 2010 of the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism listed as a shortcoming that the Hungarian Criminal Code did not provide for an offence of a 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. Besides, it was unclear whether the financing of terrorist organisations' day to day activities are incriminated and provision or collection of funds for terrorist organisations' day to day activities is covered. The provisions of the former CC did not cover cases where for example someone funded the training of a terrorist or with regard to this someone funded the living of the family of a future terrorist.⁵

When the new Criminal Code (Act C of 2012, hereinafter: CC) was adopted financing of terrorism constituted a new criminal offence, thus since 1 July 2013 it is punishable independently to provide or collect funds with the intention to be used in order to carry out terrorist acts and also to provide material assistance to a person who is making preparations to commit a terrorist act.

2. 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 Subsection (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

⁴ See: I. L. Gál: *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata* [Interpretation of Statutory Regulations on Money Laundering and Financing of Terrorism], HVG-ORAC Lap- és Könyvkiadó Kft, Budapest, 2012.

⁵ According to the Reasoning of Act C of 2012.

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.”⁶

2.1. Legal subject

The legal subject⁷ of the crime is public safety just like in the case of the criminal offence of terrorist act. Considering its content this includes the social interest in the uninterrupted functioning of state, state bodies, international organisations, the interest in public safety, also in life, health, personal freedom and the immunity of material goods.⁸ The perpetrator actually endangers public safety by their accomplice-like behaviour when supporting terrorists or terrorist groups with financial means.

2.2. Subject of perpetration

The subject of perpetration is the material assistance. Material assistance is determined by section 318 (3) of the CC, according to this material assistance shall mean 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.

This Council Regulation constitutes the background for the criminal offence and it defines the exact meaning of material assistance. According to this funds, other financial assets and economic resources shall mean: assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2.3. Acts of perpetration

Acts of perpetration of the criminal offence are as follows:

- providing funds,
- collecting funds,
- providing material assistance,
- providing any other kind of support.

Providing funds should mean the handing over the possession, the disclosure and the delegation of right of disposal of any financial asset listed as subject of perpetration of the crime. In the view of realisation of the crime, providing the funds can take place directly or indirectly, but also secretly or openly.

The crime is realised, if the financial asset leaves the possession of the perpetrator and another natural or legal person obtains the right of disposal in order to ensure the necessary conditions of a terrorist attack. Thus, the criminal offence is committed by the handing over of the financial fund in any kind of manner, thus by transferring the

⁶ Act C of 2012 on the Criminal Code.

⁷ See: J. Földvári: *Magyar büntetőjog. Általános rész* [Hungarian Criminal Law General Part], Osiris publisher, Budapest, 2002, p. 91-96.

⁸ E. Belovics, M. G. Molnár, P. Sinku: *Büntetőjog II. - Különös Rész* [Criminal Law II – Special Part]. Negyedik, hatályosított kiadás, [editor: B. Busch], HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2015, p. 524-525.

exercise of the right of disposal. According to this, it is not a necessary requirement to realise the criminal offence to use the funds to actually commit the terrorist act. Typical means of perpetration is to transfer funds or hand over cash to a terrorist group.⁹

It is also irrelevant whether the financial asset comes from legal or illegal source, it does not affect the realisation of the criminal offence. The features of forms¹⁰ of terrorism and the covering up of the functions and existence of terrorist acts justified the decision of the legislator to pay special attention to legally obtained financial means used for the support of terrorism and regard it as an enhanced danger. In many cases terrorists get the major part of their financial support from legal sources, like for example the donations of charitable organisation and legitimate businesses, but individual offers are typical as well.¹¹

Collecting financial means include every kind of act that is intended to create a financial base and support for terrorist organisations and for the commission of terrorist acts. Collecting financial means should be aimed at giving the necessary means to commit a terrorist attack. Thus, in order to be able to realise the criminal offence it is enough for the perpetrator to collect financial assets for realising terrorist goals so these financial assets does not actually have to reach the recipient. In this case the realisation of the statements of facts, thus the completion of the criminal offence only depends on this. The special feature of the act of perpetration is that the financial assets actually do not leave the possession of the perpetrator. The perpetrator collects the financial assets with an active behaviour, typically from other persons and the completion of the criminal offence can be established, if the financial assets are received from at least one person.

Besides the perpetrator who collects financial assets those commit the crime of terrorist financing as well who are aware of the purpose for what they give their support, in particular, according to the aforementioned act of perpetration, namely according to “providing funds”. However, if the person is not aware of the purpose of their financial support, or the perpetrator succeeds deceiving them, then their error – as a ground for preclusion of punishability – precludes their criminal liability and only the perpetrator collecting the financial assets can be called to account. On the other hand, if the perpetrator forwards the received financial assets then they can be punished because of providing funds.

The third act of perpetration is providing material assistance for a person preparing to commit a terrorist act or another person on behalf of such a person. Providing material assistance means a guarantee to use, apply and enjoy the material assets. However, the assistance must be connected to the person preparing to commit a terrorist attack or another person on behalf of such person (e.g. relative, friend). The other person can actually be anybody who the person preparing to commit a terrorist act is in a dependent, supporting or emotional relationship with and the terrorist

⁹ I. L. Gál: *A közbiztonság elleni bűncselekmények* [Offenses Against Public Security]. In: Új Btk. kommentár 6. Különös rész [Commentaries on the New Criminal Code. Volume 6. Special Part], [editor in chief: P. Polt], Nemzeti Közszerkelet és Tankönyv Kiadó, Budapest, 2013, p. 21.

¹⁰ L. Korinek: *A terrorizmus* [Terrorism]. In: K. Göncöl, K. Kerecsi, L. Korinek, M. Lévy: *Kriminológia – Szakkriminológia* [Criminology - Specialized Criminology]. Complex Kiadó Jogi és Üzleti Tartalomszerkeletadó Kft., Budapest, 2006, p. 447-465.

¹¹ I. Görgényi, J. Gula, T. Horváth, J. Jászó, M. Lévy, F. Sántha, E. Váradi: *Magyar Büntetőjog - Különös Rész* [Hungarian Criminal Law - Special Part], [editors: T. Horváth, M. Lévy], Complex Kiadó Jogi és Üzleti Tartalomszerkeletadó Kft., Budapest, 2013, p. 428-429.

considers it important to support this third person with financial assets (e.g. the person planning a suicide attack can be greatly motivated by knowing that the people important to them are in financial security after the commission of the attack). As a matter of fact, this is an indirect but very important kind of support for the person preparing to commit a terrorist act.

The assistance can be only a one-time deal or can also be periodic. The act of perpetration also includes providing the material assistance for the training of a terrorist person, but the act meets the requirement of the statement of facts even if the assistance actually ensures the terrorist person enough to live on. It is not a condition for establishing the criminal offence that the terrorist attack is committed or attempted by using the received assistance. It is enough to establish the completion of the crime that the material assistance reaches the person preparing to commit a terrorist act or another person on behalf of such person since the acceptance of the material assistance for the purpose of perpetration puts the criminal offence in the preparatory phase for the person preparing to commit a terrorist act.

Section 318 (2) provides the rules for the act of perpetration realised by providing any other kind of support to the terrorist group's activity. The essence of this act of perpetration is the act of the perpetrator has to be connected to an already existing terrorist group, however, this act cannot be connected to being part of the group but only to the maintenance of the activities thereof. The perpetrator is a person who does not belong to the terrorist group and whose participation is only indirect. Their act can include any kind of behaviour that is intended to support the activities of the terrorist group and it can be any kind of help with the exception of material assistance: e.g. documents, hiding-place, and vehicle. Besides, it can include information service, logistic and telecommunication support helping the activities of the terrorist group.

2.4. The perpetrator

The perpetrator and the conspirator can be anybody. The perpetrator of the crime of terrorist financing can also be the perpetrator of a terrorist act, if they supports other terrorists or terrorist groups with material assistance. Due to the lack of direct connection to the perpetration of the terrorist act, with regard to the distant criminal connection, the perpetrator of terrorist financing cannot be accomplice to a terrorist act even if the act is committed.

2.5. Immaterial criminal offence

Terrorist financing is an immaterial criminal offence; the statement of facts does not require achieving a specific result.

2.6. Criminal liability

The crime can only be committed intentionally, in particularly, for the sake of the given purpose, thus, only by direct intention (*dolus directus*). The perpetrator has to be aware of the fact that their action is going to enable a terrorist act. Thus, the perpetrator collects and provides the material assets for the purpose of guaranteeing that the conditions of the terrorist act are met, or for the sake of the person preparing to commit a terrorist act or another person on behalf of such a person. The perpetrator has to know the terrorist character of the person or organisation or the aims thereof, since for

the lack of such knowledge the criminal offence of terrorist financing cannot be established.¹²

2.7. Phases

Attempt of the crime can be established from the moment the act is commenced but it is only theoretically possible. It is completed, if the act of perpetration is realised entirely.

2.8. Unity and cumulation

The counts of the criminal act depend on how many persons or terrorist groups preparing to commit terrorist acts were given financial funds to. However, giving assistance to the same terrorist act or terrorist group several times falls under the term of continuing offence. Formal cumulation of the criminal offence is apparent in connection with the preparation of the terrorist act, since due to the identical penalty and with regard to the principle of speciality only terrorist financing can be established. If the act of the perpetrator is in formal cumulation with money laundering, only terrorist financing can be established due to the principle of consumption, since this bears a more serious penalty. However, if the perpetrator participates in the commission of the terrorist act after committing terrorist financing, then they can only be called to account for the terrorist act since in this case terrorist financing, according to the rules of apparent material cumulation, is qualified as an unpunished preparation-like act because of the smaller violation regarding the protected legal subject.

Assistance given for different terrorist acts or to different terrorist groups is considered as perpetration of several crimes by the same offender (cumulation).

The CC punishes more severely if the perpetrator commits the act of perpetration prescribed in section 318 (1) with the aim of committing a terrorist act in a terrorist group or to support a member of a terrorist group, or supports the activities of a terrorist group in any other form. The criminal political reason behind this aggravating circumstance lies within the fact that the more organised the crime is the more danger it poses to the society and thus it deserves a higher penalty. This means that the imprisonment of two to eight years that is prescribed for the basic case of the criminal offence is increased to imprisonment of five to ten years regarding the qualified case of the offence.

References

R. Bartkó: *A terrorizmus elleni küzdelem kriminálpolitikai kérdései* [The criminal political questions of the fight against terrorism], UNIVERSITAS - Győr Nonprofit Kft., Győr, 2011;

E. Belovics, M. G. Molnár, P. Sinku: *Büntetőjog II. - Különös Rész* [Criminal Law II – Special Part]. Negyedik, hatályosított kiadás, [editor: B. Busch], HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2015, p. 524-525;

J. Földvári: *Magyar büntetőjog. Általános rész* [Hungarian Criminal Law General Part], Osiris publisher, Budapest, 2002, p. 91-96;

¹² M. Tóth, Z. Nagy: *Magyar büntetőjog. Különös rész* [Hungarian Criminal Law. Special Part]. Osiris publisher, Budapest, 2014, p. 335-339.

I. L. Gál: *A közbiztonság elleni bűncselekmények* [Offenses Against Public Security]. In: Új Btk. kommentár 6. Különös rész. [Commentaries on the New Criminal Code. Volume 6. Special Part], [editor in chief: P. Polt], Nemzeti Közszerkálati és Tankönyv Kiadó, Budapest, 2013, p. 21;

I. L. Gál: *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata*. [Interpretation of Statutory Regulations on Money Laundering and Financing of Terrorism], HVG-ORAC Lap- és Könyvkiadó Kft, Budapest, 2012;

I. Görgényi, J. Gula, T. Horváth, J. Jacsó, M. Lévy, F. Sántha, E. Váradi: *Magyar Büntetőjog - Különös Rész* [Hungarian Criminal Law - Special Part], [editors: T. Horváth, M. Lévy], Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., Budapest, 2013, p. 428-429;

L. Korinek: *A terrorizmus* [Terrorism]. In: K. Göncöl, K. Kerezi, L. Korinek, M. Lévy: *Kriminológia – Szakkriminológia* [Criminology - Specialized Criminology]. Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., Budapest, 2006, p. 447-465;

M. Tóth: *A terrorcselekmény büntetőjogi szabályozásának és gyakorlatának változásai*. [Changes in the criminal regulation and practice of terrorism] In: HADTUDOMÁNY: A Magyar Hadtudományi Társaság és MTA Hadtudományi Bizottság Folyóirata. XXIII. évfolyam, 2013/1-2, p. 30-40;

M. Tóth, Z. Nagy: *Magyar büntetőjog. Különös rész* [Hungarian Criminal Law. Special Part]. Osiris publisher, Budapest, 2014, p. 335-339.