

Criminal Compliance and Sanctions of Terrorist Financing in Hungary

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Abstract

As a direct result of the post 9/11 period and the war on terror preventing terrorist financing had been recognized as a main objective to be achieved by cutting violent extremists off from to have access to financial institution and from the ability to transfer money. Preventing terrorist financing is a unique objective as part of which standards and regulations are indispensable. Hungarian legal system had paid attention to the challenge from the beginning and ordered both terrorist financing and the failure to comply with the reporting obligation related to combating terrorist financing to be punishable. Combating the financing of terrorism is handled together with the fight against money laundering even if any action against the former seems to be secondary and less effective compared to the latter. Even with improvements in compliance, legislation on combating terrorist financing may remain less effective due to practical considerations and due to its clear difference based on a comparison of money laundering with terrorist financing.

The presentation would give an overview of the criminal law level of terrorist financing and the failure to comply with obligations to the audience.

Keywords: money laundering, terrorism, terrorist financing, criminal compliance

I. Introduction

As a direct result of the war on terror, preventing terrorist financing had been recognized as a main objective to be achieved by cutting violent extremists off from to have access to financial institution and from the ability to transfer money. Preventing terrorist financing is a unique objective as part of which standards and regulations are indispensable. Hungarian legal system had paid attention to the challenge from the beginning and ordered both terrorist financing and the failure to comply with the reporting obligation related to combating terrorist financing to be punishable.

Combating the financing of terrorism is handled together with the fight against money laundering even if any action against the former seems to be secondary and less effective compared to the latter. The paper shall give an overview of the criminal law level of terrorist financing and the failure to comply with obligations to the audience.

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II. Same System with Differences

Criminalizing terrorist financing is a cross-problem of terrorism. Terrorism as a crime generated great interest internationally because financing criminal extremist activities has a particularly strong impact on economies. Countering the financing of terrorism and anti-money laundering are usually regulated by the same legislation considering the fact that we are facing the same phenomena, but with differences. Compared to money laundering, terrorist financing includes any form of financial action, support, or mediation in favor of terrorist groups or for their activities. We have to emphasize that money laundering is a profitable activity and terrorist financing is nearly related to it, that is why it is often referred as a converse money laundering, however with different characteristics¹. The distinctions can be break down into at least four different fields worth to review.

The key areas of differentiation are the motivation, intention, source of financing and typology. Motivation is mostly rather violent than financial because usually hiding the source of funds, or the realization, clean washing of the profit is not an issue. The objective of terrorist financing is providing the necessary financial support for criminal activities. That is why the motivation of terrorist financing is rather ideological than profitable. Regarding intention, unlike money laundering hiding illegally realized capital, that is mostly irrelevant in the case of terrorist financing².

With reference to the source whether we would investigate a single person or a group the acquisition of financial resources is essential. In the event of underfunding, external sources are inevitable which may come from legal or illegal sources, using the financial system, or completely independent and invisible from it. Referring to illegally obtained revenues, terrorists usually prefer crime-types which can be obtained quickly and high in revenue³. These are mostly drug-related crimes, kidnapping or human trafficking etc. Legal financial sources may consist donations, government sponsorship, controlled companies etc. Large amount of support from donations or from other legal business activities are just as harmful as criminal activities. While legal business activities are important elements in terrorist financing, seemingly simple donations are typical in terrorist financing.

In addition the range of sponsors can be wide through individual persons, organizations (including other extremist groups), or states⁴. That is why the wider concept of donation considered as terrorist financing even if in exceptional cases when extremist activities had been supported by certain states, enforcement of criminal law going to be ineffective. Unfortunately supporting terrorist and extremist activities does not necessarily requires higher financial support. Noticeable that people may use their legal incomes and even a smaller amount of capital is sufficient to execute an

¹ I. Gál, F. Dávid, *A terrorizmus büntetőjogi oldala: a terrorcselekmény és a terrorizmus finanszírozása. [The criminal law side of terrorism: the act of terrorism and the financing of terrorism]*, Belügyi Szemle 2015/7-8, pp. 72-87.

² J.J. Rocha-Salazar, M.-J. Segovia-Vargas, M.M. Camacho-Minano, *Money laundering and terrorism financing detection using neural networks and an abnormality indicator*, Expert System with Applications 2020/4 pp. 1-5.

³ L.V. Berry, G.E. Curtis, R.A. Hudson, N.A. Kollars, *A Global Overview of Narcotics-Funded Terrorist and Other Extremist Groups*. Library of Congress, Washington, 2002.

⁴ *Ethnically or Racially Motivated Terrorism Financing*, FATF Report, 2021 pp. 8-20.

impressive terrorist attack⁵. Based on recent experiences, monitoring terrorist financing is mostly untraceable (or remains under radar) when individuals self-financing their future criminal activities. The latter also means that the privatization of financing terrorism may remain a determining factor in the future⁶.

Examining the typology, we may see that the typology of persons and organizations may being involved in terrorist financing are connected to methods, techniques, characteristics and trends. Based on and summarizing the reference to terrorist financing just had been made above, these challenges are: individuals with their own resources of funding, from relatives or terrorist organizations, in which segment political or religious ideologies are important factor, in-which cases often politically exposed people are carrying out activities related to terrorist financing. If we take a shot look at their economic activity, monetary instruments and currency it may becomes apparent that these target groups are using mostly cash in Euro, Dollar, or Ruble and with direct hand-to-hand transfers, where the source of income is wide and can be considered as risky and difficult to detect⁷. Regarding nationality and, or geographic zones being relevant are in line with Financial Action Task Force lists and recommendation including source and target area⁸.

III. Criminal Compliance and Sanctions of Terrorist Financing

Criminal compliance is a system of rules and methods based on countering the financing of terrorism and in line with the Hungarian and international anti-money laundering/countering the financing of terrorism regulation, that includes the necessary compliance conditions – organizational, human, cooperation, information sharing and reporting etc. The international agreement for the suppression of terrorist financing was adopted in 1999 and had been adopted by Hungary in 2002. Under the agreement national parties shall cooperate in the prevention of terrorist financing by taking all practicable measures and by adapting their domestic legislation, if necessary, including measures requiring financial institutions and other professions involved⁹. The purpose of regulation was to weaken the financial basis of terrorism and the regulations for countering the financing of terrorism had been related to money laundering in order to prevent and impede the support of terrorism with money or a thing of expressible value in money. The suspicious circumstances that refer to terrorist financing were to be reported the same as the suspicion of money laundering. The report is obligatory to

⁵ S. Costigan, D. Gold, *Terronomics*, Ashgate, Cornwall, 2007 p. 14; I. Gál, *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata. [Explanation of legislation on money laundering and terrorist financing]*. HVGORAC Kiadó, Budapest, 2012.

⁶ See: Financial Action Task Force (FATF), *FATF Public Statement on the Financing of ISIL, Al Qaeda and Affiliates*. Link: <https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-isil-al-qaeda.html>.

⁷ J.J. Rocha-Salazar, M.-J. Segovia-Vargas, M.M. Camacho-Minano, *cited*, pp. 1-5.

⁸ See: Financial Action Task Force (FATF), *Jurisdiction under Increased Monitoring, October 2021*. Link: <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-october-2021.html>.

⁹ UN 54/109 of 9 December 1999. *International Convention for the Suppression of the Financing of Terrorism*. Link: <http://www.un.org/law/cod/finterr.htm>; See: P. Polt (ed.), *Új Btk. kommentár. [Commentary for the New Criminal Code]*, Volume 6, Special Part, Nemzeti Közszerzői és Tankönyv Kiadó, Budapest, 2013, p. 18.

all kinds of service providers, which have to notify in any case of circumstances which referring to money laundering. From practical point of view banks and other financial service providers observe the transactions with electronic filter-systems and if the names of determinate persons appear they immediately report it to the Financial Intelligence Unit that has been set up in 2007¹⁰.

Notification should be made only by those, in whose case the circumstances respond to those determinate in line with the law as financial service providers this means the following¹¹: Firstly, if they become aware of a trustworthy information that financing terrorism or any other preparation of terrorist act is in progress (for example someone bought explosives) then – as every other citizen – have the obligation of denunciation that they can accomplish at any criminal law authorities (for example police, prosecution etc.). The non-accomplishment of this obligation realizes crime determined in Section 317 of the Hungarian Criminal Code. Secondly, if a data, fact or circumstance referring to terrorist financing arise regarding to someone's work then they have to report it to the Financial Intelligence Department of the National Tax and Customs Administration of Hungary. This obligation typically is formed when a transaction is started in the name of or for the interest of someone on a prohibitive list. The prohibitive lists that are obligatory to be taken into account are made available for the service providers by State Audit Office of Hungary. The omission of the obligation of notification is a delinquency determined in the criminal code, so it is also a crime. Thirdly, if a data, fact or circumstance arises regarding that the subject of a financial or asset restrictive measure disposes of resources or economic resources that are under the effect of the financial or asset restrictive measures on the territory of Hungary, then it is to be reported to the Hungarian Financial Intelligence Department, the same way as the above mentioned. The non-accomplishment of the obligation of notification is also a separate crime but with a higher item of punishment than in the case of the previous two.

With regard to the criminal sanctions of terrorist financing, two separate criminal offense in the Hungarian Act C of 2012 on Criminal Code – the (1) Failure to comply with reporting obligation related to money laundering and the (2) Terrorist financing – had to be highlighted. Terrorist financing is ranked as a crime since 2003 in Hungarian criminal law and became a separate criminal offense with the new Hungarian Criminal Code in 2012. Under the criminal offense of the failure to comply with reporting obligation related to money laundering under Section 401 comes any person who fails to comply with the reporting obligation prescribed by law in connection with the prevention and combating of money laundering and terrorist financing. This misdemeanor punishable by imprisonment not exceeding two years, while under the Section 318 in the base and qualified case under terrorist financing is that 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 an act of terrorist nature, or who provides material assistance to a person who is making preparations to commit a terrorist act, or an act of terrorist nature or to a

¹⁰ See: Law CXXXVI of 2007 on the Prevention and Suppression of the Financing of Money Laundering; Modified: Act II of 2013 on the Modification of the Act CXXXVI of 2007 on the Prevention and Suppression of the Financing of Money Laundering. Nowadays in force: Act LIII of 2017 on the Prevention and Suppression of the Financing of Money Laundering.

¹¹ I.L. Gál, *Új biztonsági kihívás a XXI. században: a terrorizmus finanszírozása. [New Security Challenge in the 21st Century: the Financing of Terrorism]* Szakmai Szemle 2012/1 pp. 10-11; P. Polt, *cited*, pp. 18-19.

third party on his behest is guilty of a felony shall be punishable by imprisonment between two to eight years, while in the case when any person who commits the criminal offense referred earlier 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 years¹².

The experience on the failure to comply with reporting obligation related to money laundering or terrorist financing is very rare. Based on the facts of the Hungarian System of Criminal Statistics, managed by Ministry of Interior and based on closed investigations only six cases of failure to comply with reporting obligation related to money laundering, but none from terrorist financing between 2009 and 2018¹³. We may emphasize that in everyday practice, no one has been condemned for financing terrorism in Hungary. That means that the Hungarian justice administration did not judge even on a legal case. Only the Office of National Security of Hungary¹⁴ and the Immigration and Citizenship Office initiated the expulse of a Syrian doctor from Hungary. The doctor who had been working in the intensive care unit of the clinics of Pécs, transferred 105.000, – HuF (nowadays around 285 Euro) to one of the cover organizations of the Islamist Hamas. He told to the investigation authorities that he did not know that the support request and the account number he had seen on the television channel of Lebanon was in connection with a terrorist organization. In this case his protection was doubtful. Criminal procedure did not start against the doctor because of the new criminal facts of the old (and modified) Criminal Code¹⁵. So had Hungary a case a few years before, but it was impossible to prove a crime against him. If we would like to find the reasons then according to the optimistic view we are still a less infected area, but on the other side the pessimistic explanation states the possible latency as well. The Hungarian legal and institution system against financing terrorism is already developing, but mostly the same institutions are fighting against money-laundering as well¹⁶.

IV. Conclusion

Summarizing the above, as a direct result of the post 9/11 period countering the financing of terrorism had been recognized as a main objective to be achieved by cutting terrorists and violent extremists off from financial institution. Preventing terrorist financing is a unique objective and the Hungarian legal system had paid attention to the challenge from the beginning and ordered both terrorist financing and the failure to comply with the reporting obligation related to countering the financing of terrorism to be punishable. In Hungarian criminal law, if someone helps them with supporting terrorist activities through financing their activity was already qualified as a crime from 2003, but it is a separate criminal offense since 2013. Following a short

¹² See: Act C of 2012 on the Criminal Code; F. Dávid, *Terrorizmus és nemzetbiztonság az ezredforduló jogalkotásában. [Terrorism and National Security in the Legislation of the Millennium]*, Szakmai Szemle 2013/1, pp. 40-52.

¹³ Hungarian System of Criminal Statistics. See: Crime Statistics System, link: <https://bsr.bm.hu>.

¹⁴ See nowadays as: Constitution Protection Office of Hungary.

¹⁵ P. Polt, *cited*, p. 23.

¹⁶ I. Gál, F. Dávid, *Short Overview of the Current Situation of the Fight Against Terrorism in Hungary*, Pravna Rijec 14., Banja Luka, 2017, pp. 364-366.

decade and because of the effect of international legislation, financing terrorism became a separate crime in the Act C of 2012 on Hungarian Criminal Code. Even with improvements in compliance, legislation on combating terrorist financing may remain less effective due to practical considerations and due to its clear difference based on a comparison of money laundering with terrorist financing.

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