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Editorial Office: Faculty of Law of Széchenyi István University, Győr, Hungary.
Mail: H- 9026 Győr, Áldozat u. 12. Hungary. Fax: [Hungary: 36]-96/310-336. E-mail: egresi.katalin@ga.sze.hu

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THE CRIMINAL POLITICAL QUESTIONS OF THE FIGHT AGAINST TERRORISM

BARTKÓ, Róbert *

Introduction

From the view of the fight against terrorism the events of 11 September 2001 constitute a sharp caesura both in international and in national level. Indeed before this event the international community concentrated rather on the sui generis crimes committed within the scope of terrorism and the efficiency of intervention against these actions.

While the Hungarian Criminal Code – with regard to the former § 261 – did not actually regulate facts of act of terrorism in the classical sense. Moreover, the crime rarely appeared in Hungarian criminal statistics. The change of attitude was caused by the above-mentioned tragic events, since after that the forming of a complex front started which was built from the fundamental fact - both in international and in national level - that the essential preconditions of a successful intervention is the harmonization of different disciplines.

The more and more researchers on terrorism published their research results in the field of up till then unexploited theme in significant number in the national special literature and also in the level of international community. Furthermore, in the European Union a claim was formulated with a view to forming legal and operative-administrative means of a comprehensive antiterrorism strategy. In Hungary researches had mainly the direction of security policy, military policy, criminology, forensic science or sociology, and until now only a few people have dealt with the opportunity of criminal law dogmatic approximation, and as a matter of fact one can not find a comprehensive, monographic analysis of criminal policy characteristic of fight against terrorism in our country.

According to the above-mentioned reasons the main aim of the work was creating such a comprehensive work, in which the parameters relevant from the view of the criminal law front of the fight against terrorism will be demonstrated and analysed. In this respect we tried to concentrate on prevailing opinions published in international studies “being ahead of us in this topic” and on results drafted on the level of the European integration, so our work aims at contributing to the national improvement of criminal law intervention against terrorism.

Therefore during the preparation of the work we were making an effort to the most complex approximation possible within the field of substantive criminal law, starting from conceptual basics through the critic of effective regulation to the creating of proposals de lege ferenda. Our defined aim – that is prevalent through the whole structure of the work –

* Assistant professor at Széchenyi István University Deák Ferenc Faculty of Law and Political Sciences



was dealing with all of the sub-fields which are in close connection with the criminal law basis of the international and national fight against terrorism. Our researches naturally referred to other areas of science such as criminology or sociology because of the interdisciplinary nature; however, these are referred only in such part, which does not divert the work from its main topic. Furthermore, our researches also include the world of international criminal law, whose status has a more and more powerful effect also on national dogmatic development with the implementation of international results.

Unfortunately, there is no doubt about the currency of the topic, since the change of international and European criminal policy after the murderous attempts of 2001 has taken effect permanently until now, continuously improving the effectiveness of horizontal cooperation between states and the operation of the agreement system. Eloquent testimonies of this development are the aspirations to rethink the range of international crimes in international criminal law, which constitute an important pillar of this work. Otherwise the structure of this work was determined by the nature of the theme and also by the above-mentioned fundamental aims. Therefore we tried to give such direction at the choice of the order of analysis, which is suitable for foundation of a well arranged unit.

Summary of the dissertation

The work divides into three parts, which distinguishes on the basis of the direction of research. The first part deals with standard work on terrorism, in which our aim was to give those ranges under which the later proper criminal law analysis will take place. The first structural unit of the work is also an introduction, in which we touch upon terrorism, the definitive elements of the act of terrorism and the terrorism as the criminological nature of crime. To lay down the conceptual bases, the work starts with the difficulties of creating definition, which is followed by specifying the direction of proper definition creation.

In view of the national scientific special literature we would like to emphasize that it is not possible to create an exact definition, therefore we should summarize results of several aspects in order to define exactly our “enemy”. Guided by this knowledge we dealt with the interpretation of responses from the world of political science, law science and criminology. As our general aim is a complex research and the summary of the connected scientific results, under the establishment of principle we deal with the criminological relations of terrorism, also taking into consideration that it is indispensable for the opening of an effective criminal law front and working up successful criminal policy to deal with understanding the terrorists and reasons of using this extreme form of force. Within the criminological aspect we touch upon the relation of terrorism and globalization at the same time trying to explore the corner points relevant from the point of view of the fight against terrorism. After that we attempt - with a reformative intent - to outline a new possible criminal policy strategy, whilst we deal with the different levels thereof separately in a more detailed manner. As both foreign and national special literature pay significant attention to the respect of human rights under the range of global and national intervention against terrorism, in the closing of the first part we pointed out these limits in a separate sub-chapter too.

Nevertheless, we remark that the work is made from criminal law motivation, thus in this structural unit we deal with human rights and their nature only to the necessary extent, furthermore we try to present examples from the Strasbourg case law, too. 6 In the second part – after the above-mentioned - we deal with the international aspects of criminal law intervention against terrorism, opening space for dogmatic analysis in the frame of the work.

The level of international interpretation is extracted actually in three smaller parts. We examined the outlining criminal policy in the international fight against terrorism and its main pillars, furthermore connected with it the opportunities and practical models of the raising of criminal authority against international delinquency to international level. These sub-chapters put the central element of the second part in a frame, which deals with cross-border terrorism as an international crime. We emphasize the significance of this issue in the work not only because many international special literature deal with it increasingly, but in our view, mainly because the enlarging of the range of international crimes in a narrower sense could be an important pledge of the effectiveness of the fight against international terrorism in the future. In this chapter we distinguish the act of terrorism committed in war or in peacetime, pointing out also the indifferent nature of terrorism in the classical sense to a certain degree. In addition, we try to demonstrate the directions appearing in the international community about handling cross-border terrorism – because of the characteristic breach of peace and security – not only as a simple transnational crime adjustable by bilateral agreements between nations but rather as a much more dangerous crime that induces all states based on the rule of law to a unified and comprehensive intervention.

The international aspect is followed by the European viewpoint under which our examination divides also into two parts dealing with on the one hand the European criminal policy and on the other hand the dogmatic interpretation of cross-border terrorism. In the latter field – through the overview of treaties – we try to arrange the act of terrorism in the definition of quasi European crime. Closing the second part we try to make perceptible the complex nature of terrorism as a crime, thus we sum up briefly those important crimes, which the terrorism in modern sense seems to combine more and more organically with, emphasizing the most important legal documents within the framework of the institution of the European integration, too. The third part of the work deals with the national regulation, narrowing the extent of examination to the framework of Hungarian legislation. In this structural unit we deal with the facts of the act of terrorism specifically, examining the 7 issues relevant from the aspect of dogmatic analysis. This part divides only into two chapters, in which on the one hand we concentrate on the history of the factors which constitute the act of terrorism, on the other hand on the critics of the effective regulation, together with creating a draft *de lege ferenda*. With reference to legal history, we try to run such period limits, which shows well the development of national criminal policy in the field of the fight against terrorism in Hungary. In this domain – following the general practice established by works published in the field of legal history – our examination starts from the time of the Csemegi Code, and we carry out this scrutiny until the passing of the current regulation. For the sake of demonstrating the course of development we refer to legal texts in this chapter, but only to the extent necessary. As closure, we take the valid regulation

under close critical-analysis and we try to shed a light on the shortcomings of the legal facts only on the basis of criminal law dogmatic considerations. After that we close our work with a proposal for legal norm, creating the closed logical unit of the work and setting our targeted complex criminal law examination in a frame.

Our proposal for an appropriate legal norm is the following:

„Sec. 261 (1) Any person who commits a violent crime against one of the persons referred to in Subsection (11) 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 ten to fifteen 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

non-governmental organizations in exchange for refraining from harming or injuring said assets and property or for returning them shall be punishable according to the Subsection (1).

(3) Any person who threatens to commit the crimes specified in Subsection (1) and (2) is guilty of a felony punishable by imprisonment between two to eight years.

(4) The punishment of any person who:

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

b) confesses his or her conduct to the authorities;

c) confesses his or her conduct referred to in Subsection (3) to the authorities and cooperates with the authorities to prevent or mitigate the consequences may be reduced without limitation.

(5) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under Subsections between (1) to (3) or any

person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for the 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.

(6) Any person who is engaged in the conduct referred to in Subsection (5) for the purpose of committing crimes referred to Subsection between (1) to (3) 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.

(7) Any person who leads a terrorist group for the purpose of committing crimes referred to Subsection between (1) to (3) is guilty of felony punishable by imprisonment between five to fifteen years.

(8) The perpetrator of a criminal act defined in Subsection (5) and (6) shall not be punishable if he or she confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal act.

(9) The punishment of the person who committed a crime defined under Subsection (7) may be reduced without limitation if he or she stops leading the terrorist group and confesses the members of the group and its operation to the authorities before they become aware of it.

(10) 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.

(11) For the purpose of this Section:

a) violent crime against a person and crime of public endangerment that involves the use of firearms' shall mean: homicide /Subsections (1) and (2) of Section 166/, battery /Subsections (1)-(5) of Section 170/, willful malpractice /Subsection (3) of Section 171/, violation of a personal freedom (Section 175), kidnapping (Section 175/A), crimes against transportation safety /Subsections (1) and (2) of Section 184/, endangering railway, air or water traffic /Subsections (1) and (2) of Section 185/, violence against a person aiding a public official (Section 231), violence against a person under international protection (Section 232), public endangerment /Subsections (1)-(3) of Section 259/, interference with public works /Subsections (1)-(4) of Section 260/, seizure of any 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 /Subsections (1)-(3) of Section 263/A/, criminal misuse of military items and services and dual-use items and technology /Subsections (1)-(3) of Section 263/B/, criminal misuse of radioactive materials /Subsections (1)-(3) of Section 264/, criminal misuse of weapons prohibited by international convention /Subsection (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 Subsections (1)-(3);

c) threat: such a written or an oral statement addressed by the perpetrator to the state agencies or to an international organization or their representative or to the general public which show the intend to conduct the unprepared form of the crimes defined in Subsection (1) and (2) and which are capable of instilling serious fear in the recipients".

Conclusions

We do not think by any means that our work would contain a complete elaboration on terrorism. In our view, it is not possible in a single monograph because when one would like

to deal with terrorism, he should necessarily touch upon more sciences, and it is not possible to create the amalgam thereof in a single volume. In medium and long term, the fight against terrorism can be taken up effectively only if the results of the scientists working in the certain relevant sciences are applied combined in practice. Significant progress can be demonstrated both in the international and in the national special literature, furthermore in legal manifestos, whose further and continuous development is indispensable for the future of democratic nations. The author of the work believes that he managed to summarize the factors relevant from the view of legal science and to contribute to the creating of an effective criminal law front serving as a basis of comparison regarding the fight against terrorism in long term.