CRIMINAL OFFENCES RELATED TO TERRORISM IN HUNGARY AND IN ROMANIA – HAS THE TRANSPOSITION OF EU RULES BEEN SUCCESSFUL?

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ABSTRACT: *The instruments of the substantive criminal law can be considered as important elements of the strategy related to combating terrorism. In the EU, there are a lot of minimum rules to be followed are regulated by the European common legal step decided by the European Parliament and the Council. This legal document is the Directive 2017/541 on combating terrorism which replaced the former legal cooperation based on framework decisions. Taking account that according to the Article 28 of the Directive the Member States should bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 8 September 2018, our aim is to make a comparative analysis concerning the Hungarian and the Romanian criminal law and to answer the scientific question: has the transposition of the rules been successful in these two countries.*

KEYWORDS*: fight against terrorism, criminal law, Hungarian Criminal Code, Romanian Separate Act, act of terrorism, offences related to terrorism*
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1. GENERAL REMARKS

The European Parliament and the Council adopted Directive 2017/541 on Combating Terrorism[1] (hereinafter: the Directive) on 15 March 2017, as one of the latest steps in the fight against terrorism at the European level. The Directive replaced the previous Council Framework Decision 2002/475/JHA of 2002 (hereinafter: the Framework Decision), and member states were required to comply with the provisions of the Directive by 8 September 2018.

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[1] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

Nowadays, terrorism represents one of the most serious threats to the universally recognised values of the international community, fundamental rights, and freedoms. Certain forms of its manifestations, the so-called strategic terrorist acts (Répási 2016: 13-28.) already threaten international peace and security and it has been argued by various representatives of the relevant legal literature that the terrorist attack on the United States on 11 September 2001 (9/11) was a crime against humanity (Proulx 2003).

Although the scale of the 9/11 attack is unprecedented to date, recent events show that the threat posed by terrorism has not diminished, but has increased and transformed. For example, the migration that started in 2015 could be both a tool and a catalyst for terrorist acts (Hautzinger 2016: 35-36), and explicitly facilitated the entry of terrorists into states targeted for their purposes (Bartkó 2017: 479). Moreover, the threat of what has been referred 'foreign terrorist fighters' has increased significantly, with a growing number of people travelling to conflict zones, particularly to Syria and Iraq, to fight alongside terrorist groups or receive training. In many cases, these individuals return to EU states not only to carry out attacks but also to radicalise others, recruit potential terrorists or finance future terrorist acts.[2] The fight against the phenomenon of foreign terrorist fighters is also a priority within the UN framework since the Security Council has provided in its resolution 2178/2014 for the criminalisation of both the travel of individuals to third countries for terrorist purposes and the organisation or financing of such travel.[3]

The digital revolution and the widespread use of new information technology devices have also offered new opportunities for terrorists. Mass media allow for effective propaganda, namely the widespread dissemination of terrorist organisations' messages and objectives, and new technologies also provide new opportunities for recruitment and communication.

Finally, we have not previously found an example of a terrorist organisation fighting for statehood, but we have already had to face this in the form of the Islamic State (ISIS). As a result of the above factors, the public attitude to danger has increased, as illustrated by the intense reactions to the recent terrorist attacks in Europe (Dornfeld–Sántha 2017: 1.).

Since 9/11, the fight against terrorism has had two main forms (Neparáczki 2017: 9.). The US declared war on terrorism (the Bush Doctrine), used mainly military action to prevent further terrorist attacks and actively confronted all countries considered to be sponsors of terrorism. At the same time, at both global and regional levels, several international legal instruments have been adopted to promote a more effective fight against terrorism. The primary aim of the first group of these international legal sources is to incriminate certain forms of terrorism and to define the criminal offences related to terrorism. The other group of international instruments has a much broader scope, including institutions for international criminal cooperation between states, instruments for freezing and diverting funds and economic resources, measures to prevent financial support for terrorism, etc. In this study, we focus on the first group of the instruments,

[2] See Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism. 2015/0281 (COD) 2-3.
[3] See *Resolution 2178 (2014)* adopted by the Security Council of the United Nations at its 7272nd meeting on 24 September *2014. 6.*

with an emphasis on the legal sources that have been adopted within the framework of European organisations.

2. CRIMINAL OFFENCES RELATED TO TERRORISM IN THE LEGAL SOURCES OF EUROPEAN ORGANISATIONS

It should be noted that the fight against terrorism in Europe is taking place on several fronts, and, in addition to the European Union, we should briefly mention two important law sources adopted within the Council of Europe. The main benefit of the European Convention on the Suppression of Terrorism (1977) was the promotion of cooperation in criminal cases between states.[4] The Convention on the Prevention of Terrorism (2005) provides the definition of „terrorist offence" and explicitly lists and defines sui generis preparatory acts related to a terrorist offence.[5] The Additional Protocol to the above Convention (2015) further extends the scope of punishable acts that do not require an actually committed terrorist offence.[6]

As regards the legal sources adopted within the framework of the European Union, the Council Common Position 2001/930 set out the measures to be taken immediately to fight against the financing of terrorism, exchange of information between Member States and prevent terrorist acts.[7] Similarly significant is the Council Common Position 2001/931, which was the first at EU level to define „terrorist act" as a separate crime and the concept of the terrorist group.[8]

However, as the Preamble of the Directive states, Council Framework Decision 2002/475/JHA[9] was the cornerstone of the Member States' criminal justice response to counter terrorism. The Framework Decision established the basis for harmonizing criminal law provisions in the Member States on criminal offences related to terrorism, defined the concept of terrorist offences, set out the sanction system and rules of jurisdiction applicable to the legislation of the Member States, and provided for the liability of legal persons. In 2008, as a response to the growing threat of terrorism, Council Framework Decision 2008/919/JHA[10] added three additional offences to the relevant offences of public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism. Although the Directive replaced the provisions of the amended Framework Decision, it should be stressed that many of its provisions are incorporated, often in an unchanged form.

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[4] According to the Convention, terrorism-related offences shall not be regarded as a political offence or as an offence connected with a political offence and thus cannot constitute a prohibition to extradite. See European Convention on the Suppression of Terrorism, Strasbourg, 27.I.1977.

[5] Such acts include public provocation to commit a terrorist offence (art 5), recruitment for terrorism (art 6) and training for terrorism (art 7). See Council of Europe Convention on the Prevention of Terrorism, Warsaw, 16.V.2005.

[6] See e.g. the participating in an association or group for the purpose of terrorism or travelling abroad for the purpose of terrorism. Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Riga, 22.X.2015.

[7] Council Common Position of 27 December 2001 on combating terrorism (2001/930/CFSP).

[8] Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP).

[9] Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA).

[10] Council Framework Decision 2008/919/JHA of 28 November amending Framework Decision 2002/475/JHA on combating terrorism.

3. THE PROVISIONS OF DIRECTIVE 2017/541 IN THE LIGHT OF THE CURRENT HUNGARIAN AND ROMANIAN CRIMINAL LAW

The Directive is the most important legal source both for Hungary and Romania since the Directive sets out the goals that all EU countries must achieve. The harmonisation with the Directive is provided by the Articles 314 – 316/A of the Hungarian Criminal Code (hereinafter: the HCC) in Hungary and by a separate act – Act 535/2004 on the prevention and combating of terrorism (hereinafter: the Separate Act) – in Romania.

As regards the structure of the Directive, following the definitions of the subject matter and definitions, criminal offences related to terrorism can be divided into three parts. In Article 3, the Directive provides the definition of *terrorist offence as a separate crime* ("terrorist offences"), Article 4 incriminates conducts related to an organized group („offences relating to a terrorist group") and finally, Title III contains sui generis preparatory and accessory acts („offences related to terrorist activities"). After the provisions defining the offences, the Directive deals with the criminalisation of participation (aiding, abetting and inciting) and attempt, sets the minimum requirements for the applicable criminal penalties and the mitigating circumstances. The Directive then regulates the questions of jurisdiction, the liability of legal persons and the applicable organizational sanctions, and has a separate title on the rights and protection of victims.

In this study, we focus on the analysis of criminal offences related to terrorism from a substantive criminal law perspective and briefly examine the question of whether the terrorist offence as a separate crime and other offences related to terrorism as regulated by the Hungarian and Romanian criminal law is harmonised with the provisions of the Directive.

3.1. THE DEFINITION OF TERRORIST OFFENCE AS A SEPARATE CRIME

The crime of "terrorist offences" as defined in Article 3 of the Directive, which is the same as in the previous Framework Decision, is a complex crime with three distinct parts:

The first is the set of offences listed in point (1) (a) to (j), which may be described as a kind of *predicate act of the terrorist offence. These are intentional offences of high substantive gravity*, punishable separately in national law which are committed as a tool: attacks upon a person's life which may cause death, attacks upon the physical integrity of a person, kidnapping or hostage-taking, seizure of aircraft, ships or other means of public or goods transport, the release of dangerous substances, or causing fires, floods or explosions, etc., or threats to commit such offences.

The second element, based on the grammatical interpretation of the wording of the norm, is the *specific characteristic of the predicate act*: these offences „given their nature or context, may seriously damage a country or an international organization."

Finally, the third part of the terrorist offence is the three alternative *purpose*s: a) seriously intimidating a population; b) unduly compelling a government or an international organisation to perform or abstain from performing any act; c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

In Hungary, relating to the terrorist offence as a separate crime, the requirements of the Directive are devoted to fulfilling Article 314 (1) of the HCC. The structure and logic

of the statutory definition of the crime are similar, a so-called "common offence" – which can be an offence involving violence against a person, offence causing public endangerment, or offence involving the use of arms[11] – is qualified as a terrorist offence if the perpetrator is guided by one of the three purposes[12] defined in the Code.

In Romania, the regulation of the Separate Act is also similar but more complicated, since there are two types of terrorist offence. The more serious case[13] involves the commission of 17 offences of high substantive gravity[14], as defined by the Act, with terrorist purpose. The definition of the three alternative terrorist purposes is provided by Article 1 of the Act[15], adopting almost verbatim the related provision of the Directive. In the case of the less serious form of terrorist offence,[16] the predicate acts are five offences against public security or causing public endangerment[17], as defined by the Act, which are qualified as terrorist offence if these crimes are committed with the abovementioned terrorist purpose.

Both the Hungarian and the Romanian statutory definitions of the terrorist offence broadly correspond to the provisions of the Directive, but obvious at first glance that *the texts lack the second element of the Directive's definition: the predicate acts can only be intentional crimes which, given their nature or context, may seriously damage a country or an international organization.* It is clear that the Directive narrows down the relevant offences. One could argue that the intentional crimes can only be considered a terrorist offence if they are inherently so serious as to cause serious damage to a state or an

[11] The offences are listed by Article 314 (4), including homicide, battery, kidnapping, violation of personal freedom, offences against transport security, endangerment of railway, air or water transport system, misappropriation of radioactive materials, assault on a public official, etc.

[12] The three alternative purposes of the HCC are the following: a) to compel a governmental body, a foreign state, or an international organization to do, omit or acquiesce in something; b) to intimidate the population; c) to change or disrupt the constitutional, economic or social order of another state, or disrupt the operation of an international organization.

[13] This form of terrorist offence shall be punishable by the penalty prescribed by law for the offence (the predicate act) committed, the special limits of which shall be increased by half, without exceeding the general maximum penalty.

[14] See Article 32 (1) a) – q) of the Separate Act. Examples of such offences are actions and inactions directed against the life, bodily integrity or health of persons or resulting in death, injury to bodily integrity or impairment of physical or mental health of the person; unlawful deprivation of liberty; destruction and aggravated destruction; communication of false information which endangers the safety of the flight or navigation of a ship or aircraft; committing, by means of a device, weapon or substance, an act of violence against a person at a civilian airport, if the act endangered safety and security at that airport, as well as committing any act of physical or psychological violence against a person on board a civilian aircraft in flight or in preparation for flight or against its flight crew, etc.

[15] a) to intimidate the population or a segment of the population by producing a strong psychological impact; b) the unlawful coercion of a public authority or international organisation to perform, refrain from performing or refrain from performing a specific act;
c) serious destabilisation or destruction of the fundamental political, constitutional, economic or social structures of a State or international organisation.

[16] This form of terrorist offence shall be punishable by imprisonment for a term of 7 to 15 years.

[17] See Article 32 (3) a) – e) of the Separate Act. These crimes include the production, acquisition, possession, transport, supply, use or transfer to other persons, directly or indirectly, of chemical or biological weapons, explosive devices of any kind; cause fires, floods or explosions or disruption or interruption of the supply of water, electricity or any other fundamental natural resource, which have the effect of endangering human life; destroying, damaging or rendering inoperable a nuclear or radiological installation containing radioactive material, etc.

international organisation. The other possible interpretation is that the intentional crimes may, given their nature or context, cause serious damage to a country or international organisation, if they are committed with terrorist purpose (Borgers 2012: 70-71.).

The question to be answered is whether *is it necessary to amend the Hungarian and the Romanian definition of terrorist offence* to comply with the Directive and whether is there a legal obligation to do so.

Directives establish mininum standards for the statutory elements of criminal offences and the applicable penalties. That means that the national legislator has to regulate the behaviour as a criminal offence and is not allowed to add a further element to the statutory definition, since this would narrow the scope of criminalization (Karsai 2008: 443.). It is, however, possible for a Member State to apply stricter rules than the provisions of the Directive (Udvarhelyi 2013: 309., Borgers 2012: 73.), and currently both the Hungarian and the Romanian criminal law follow precisely this approach: the statutory definition of the terrorist offence does not contain the characteristic of the predicate offence that it may cause serious damage to a country or an international organization.

Based on the above, *there is no legal obligation to amend the definition of the terrorist offence*. However, the question is relevant because, for example, in Germany, Belgium, or Greece this element has been incorporated into the statutory definition of the crime. According to the Proposal for the Directive, the evolution of terrorist threats requires a long-term, proactive and comprehensive approach, to achieve greater harmonisation of the elements of the criminal offences regulated by national laws and eliminate divergences. Furthermore, „EU's Member States have always been determined not to qualify minor acts as terrorist acts and have tried to promote the same criminal policy at the international level" (Dumitriu 2004: 595.). On this basis, narrowing the scope of the relevant predicate offences is a legal solution. This can be achieved by incorporating the second element of the Directive's definition into the statutory definition of the terrorist offence, which should also be considered with the Hungarian and Romanian legislation. In Hungary and Romania, there are no "classic" terrorist attacks with many victims. Obviously, this is not the problem, but for example in Hungary, criminal courts have qualified specific 'kidnappings' – perpetrators who had a personal or family problem took the victim hostage and then made some demands to the police – as terrorist offence punishable by life imprisonment (Tóth 2013: 37-38.). However, the statutory definition of terrorist offence is not designed to criminalise such and similar conduct.

Finally, it is important to note that in the mentioned Article 3 ("terrorist offences"), the Directive criminalises *the threatening to commit terrorist offences*, which is rather classified as „offences related to terrorist activities." Based on the Directive, a threatening to commit a predicate offence listed in Article 3 (1) (a) to (i) are qualified as terrorist offence if it committed with one of the terrorist purposes. Article 316 of the HCC in Hungary and Article 32 (4) – (5) of the Separate Act in Romania also provide for the punishment of threatening to commit a terrorist offence. This criminal behaviour covers each kind of the perpetrator's expressing his/her will to carry out the predicate offence. It can happen either orally, in written form, or by a conduct implying his/her intent. This type of terrorist offence can be considered as a kind of *ante-preparation* (it constitutes criminal liability even for conduct that does not reach the level of preparation), and represents an extremely broad scope of criminal liability and is, therefore, more than questionable.

3.2. OFFENCES RELATED TO TERRORIST ACTIVITIES IN THE HUNGARIAN AND ROMANIAN SUBSTANTIVE CRIMINAL LAW

As it can be seen, the Directive tries to strenghten the criminal actions of the Member States (Mitsilegas, 2016. 240-241) in the fight against terrorism. The Directive's aim to punish the offences related to terrorism stands in accordance with the Union's counter-terrorism policy[18] (Murphy, 2014. 168-169.) because it coincides with its two pillars, namely, with pillar of prevention and pillar of protection as well. The pillar of prevention as the first part of the strategy focuses on combating radicalization and recruitment of terrorists by identifying methods, propaganda and any other instruments used by terrorists. The pillar of protection, as second part of the policy, concentrates on protecting citizens and infrastructures and reducing vulnerability to attacks.

From this point of view – as in the Preamble of the Directive declares – the crimes related to terrorism are such activities which have serious nature and on the one hand they have the potential to lead to the commission of the elements of crime on terrorism, and on the other hand they enable the terrorists to maintain and develope their activities. The aim mentioned above is in accordance with the new scientific concept in the modern substantive criminal law called „enemy-criminal law" (Nagy, 2007. 65-75) which makes the authorities enable to detect and punish people who can be suspected of being terrorists by bringing forward the opportunity of criminal liability. Namely, the legislators which follow this criminal policy, want to make clear that their aim, by creating new statutory definitions which punish numerous perpetrations committed before the commission of an terrorist attack, to filter out still in time from the society the suspected terrorist persons. With regard of the tendency mentioned, substantive criminal law tries to respond to the newer and newer security challenges of the world, furthermore, it wants to punish acts related to terrorism at an early stage (Sieber, 2016. 15.).

According to the provisions of the Directive the Member States shall take the necessary measures and legal steps to ensure that the offences related to terrorists activities will be punishable based on the national law. This regulation of the Directive and the new statutory definitions created by this legal document clearly show that the fight against terrorism has become total and it had the criminal responses changed. The line between war and law enforcement has begun to disappear (Albrect, 2005. 4.). These crimes – which will be the main topic of this chapter and mentoned above - are the following: public provocation to commit a terrorist offence; recruitment for terrorism; providing and receiving training for terrorism; travelling for the purpose of terrorism; organizing and otherwise facilitating travelling for the purpose of terrorism[19].

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[18] For more details, see: The European Union Counter-Terrorism Strategy – 30 November 2005 (14469/4/05/REV 4). The new Counter-Terrorism Agenda was announced in the EU's Security Union Strategy (Commission Communication on the EU Security Strategy, 24.7.2020. – COM (2020) 605 final.

[19] We shall state that according to the Article 4 of the Directive the Member States shall also ensure the punishability of offences which link to a terrorist group. However, these elements of crimes are not considered as offences related to terrorism in the scope of the Directive, therefore, we do not deal with them in this chapter. However, we want to underline that not only the directing but also the participating in a terrorist group are also qualified as crime in the Hungarian (see Article 314. par. /2/ point b., and Article 315. Par. /2/ of the HCC) and in the Romanian substantive criminal law (Article 35 of the Separate Act). There is only one thing is different in the analyzed criminal laws: the definition of the terrorist group. According to the HCC it needs at least three persons, while the Separate Act prescribe participation of at least two persons.

In this chapter our aim is also to compare the Hungarian and Romanian legal regulations in the mentioned field. We don't want to make a very deep dogmatic analysis, however, we try to examine the internal rules which examination can be fit for making a good comparison with special reference to the European requirements. We are going to follow the logical order of the Directive on the way the analysis, however because of the limits of our paper we won't deal with financing terrorism. According to our opinion the detailed dogmatic analysis in this field shall be topic of an other paper.

3.2.1. Public provocation to commit a terrorist offence (article 5)

The Directive – taking into account the terrorist attacks in the past and their related „propaganda campaign" – stipulates that the Member States shall also punish any behaviour which – for the purpose of invitation to commit a terrorist attack – indirectly or directly, but - before broad publicity - glorifies it or advocates the commission of a terrorist attack. It shall be emphasized that in this case the perpetrator doesn't connect with this punishable conduct to a concrete terrorist act, but advertises it to the public as a tool which can be cause a high risk of committing a terrorist crime as a result of the mentioned inciting behaviour.[20]

Therefore, it is important to state that the incitement or continuation of propaganda assessed in this statutory definition[21] isn't related to a concrete terrorist attack, but it clearly carries the risk of such or similar extreme behaviour, and on the top of all that, it can become a cause of radicalization. This is the main reason why it is necessary to punish the public provocation to commit a terrorist offence[22]. The mentioned conduct seriously threatens the public security.

It shall be noted that not only the Hungarian but also the Romanian legislation predated the Union's, because the public provocation as a new statutory definition related to the terrorism had already earlier inserted into the substantive criminal law of the countries mentioned above. The Hungarian legal solution which entered into force in 17 July 2016, placed the crime mentioned inside the statutory definition of the war incitement in the Chapter of Crimes against Public Peace. This new crime is regulated as a subsidiary crime which means that this conduct is punishable only in case if the act doesn't result an other crime of greater gravity. According to the Hungarian legal solution /Article 331. Par. (2) of the HCC/ the public provocation related to terrorism is punishable if the perpetrator before broad publicity incites for promoting terrorism or continuates propaganda to this. The perpetrator if commits this crime shall be punished by imprisonment between one to five years.

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[20] As the preamble of the Directive under its par. 10 states: „the offence of public provocation to commit a terrorist offence act comprises, inter alia, the glorification and justification of terrorism or the dissemination of messages or images online or offline, including those related to the victims of terrorism as a way to gather support for terrorist causes or to seriously intimidate the population."

[21] According to the Article 5 of the Directive the Member States have to ensure that the distribution, or otherwise making available by any means (online or offline) of a message to the public, with the intent to incite the commission of a terrorist act defined by the Directive, furthermore, that the conduct which – by glorification of terrorist acts- advocates the commission of terrorist offences, is punishable as a criminal offence when committed intentionally.

[22] It shall be underlined that the EU tries to reach and the Directive declares that – through other operative measures – the Member States shall cooperate with each other and the third countries in seeking to secure the removal of online content constituting a public provocation to commit a terrorist offence from servers within their territory.

The Romanian legal solution is stricter in comparison with the Hungarian one, because according to the Article 33.2 Par. (4) of the Separate Act: „the promotion of a message by propaganda by any means in public with the intention of instigating the commission of an act of terrorism, regardless of whether or not the message directly supports terrorism or whether or not such offences have been committed, shall constitute an offence and shall be punishable by imprisonment between two to seven years".[23]Interesting thing that not only the public provocation but also the repeatedly accessing terrorist propaganda materials is a terrorism related crime according to the Romanian substantive criminal law, except if it's committed for scientific or academic aim /Article 38.1. Par. (1) of the Separate Act[24]/.

According to the two statutory definitions analysed above it can be underlined that both legislation create the criminal legal base of the punishability if the perpetration doesn't link to a concrete terrorist attack, however, involves the opportunity of radicalization.

3.2.2. Recruitment for terrorism (article 6)

It shall be emphasized that already the last amendment of the framework decision 2002/475/JHA (Karsai et al, 2012. 75-107.) in 2008[25] classified the recruitment of terrorists as a crime related to terrorism. Keeping the EU's previous legal policy in this field, the Directive under its Article 6 requires that the Member States shall declare the soliciting other person to commit or contribute to the commission of an terrorist offence as a crime. However, it shall be underlined that not only the Hungarian but also the English version of the legal text use the word „soliciting" which – according to the Hungarian law – can be considered as a preparatory action of the crime, because the soliciting coincides with the conduct of invitation which means an unsuccessful incitement for the commission of the crime (Bartkó, 2011. 241.). We shall note, that according to our opinion the EU couldn't have set only the goal to persecute only the ineffective recruiting behaviour, therefore, we would like to deal with the effective and ineffective recruitment calls as well.

If the recruitment call is ineffective, namely, no further conduct which can be qualified as a terrorist offence follows it, the perpetrator shall be punished because of invitation which can be considered as a form of the preperation. If the call is effective, the perpetrator shall be punished as abettor for the linked terrorist act. Not only the HCC[26]

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[23] It must be pointed out that the Romanian Separate Act also ensures the punishability the abetting if it links to a concrete terrorist offence, or any other crime regulated by the Act, however, in this case the perpetrator commits not the public provocation but the concrete crime as an abettor which her or his conduct links to.

[24] According to the regulation mentioned above: „Repeatedly accessing terrorist propaganda materials, by means of computer systems or other means of electronic communication, as well as possessing such materials, for the purpose of appropriating terrorist ideology, as part of a radicalization process, shall constitute an offence and shall be punishable by imprisonment between six months to three years or a fine".

[25] See Framework decision 2008/919/JHA,

[26] See the Article 14. Par. (1) and Article 314. Par (1)-(2), furthermore, the Article 315. Par. (1)-(2) of the Code. According to the Article 14. Par (1) the abettor is a person who intentionally persuades another person to commit a crime. The Article 314. Par. (1)-(2) content the statutory defintion of the act of terrorism in accordance with the Directive's regulation. The Article 315. Par. (1)-(2) regulate the following: any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined under Article 314. Par. (1)-(2) shall be punishable. Furthermore, the punishment is higher if this conduct links to a terrorist group.

but also the Romanian Separate Act[27] guarantee the punishabilty of both conducts mentioned above.

The dogmatic problem with regard to recruitment is caused by the rule according to Article 13, based on which the criminality of recruiting behavior must be ensured even if it has no connection with a terrorist crime. According to our opinion the ineffective recruiting behaviour which is not related to a concrete terrorist offence cannot be classified as a preperation, because in this case the invitation as a preparatory conduct is not committed for terrorist purpose, so it has not definitely contact with a specific and concrete terrorist offence. Therefore, such a conduct like mentioned above shall be punishable based on the statutory definition of public provocation to commit terrorism.

3.2.3. Training for terrorism (article 7-8)

Article 7 and Article 8 declare that the Member States shall take the necessary measures to ensure that the providing and receiving instruction for the purpose of committing or contributing to the commission of a terrorist offence (hereinafter: training) are punishable as a criminal offence in the internal criminal law when they were committed intentionally. In other words, any behavior that is aimed at transferring or acquiring the knowledge necessary to conduct a subsequent terrorist attack must be classified as an act related to terrorism and punishable. In this round, the Hungarian legislator chose the solution of evaluating the above behaviors as preparatory acts before a specific terrorist act and punishes them: as (a) providing of a crime condition required, or (b) as facilitating that, or (c) as undertaking the perpetration, if these conducts link to a concrete terrorist offence.

The problem in relation to the Hungarian legal regulation - in the same way as the recruitment activity - lies in Article 13 of the Directive, which prescribes that the behavior of trainers and trainees shall be punishable even if their connection to a specific terrorist crime cannot be established. In this case, it means that the material of the training is transferred or acquired with the knowledge that the trained person will later become a deployable terrorist by joining a terrorist organization or by committing a "lonely terrorist attack." In our opinion, the criminality of these behaviors is currently not resolved in the HCC. Indeed, if the Hungarian legislator were to punish behavior related to educational activity in itself - of course, in connection with the fact that it may also be suitable for conducting a terrorist act -, the above dogmatic problem would become solvable.

The Romanian Separate Act's legal solution is not to bear comparison with the Hungarian one, because it follows the Directive's regulating method. The Article 33. Par. (1) point b)-c)[28] use the "instruction" word which is same word as used by the Directive,

[27]With regard of the dogmatic problem analyzed by the paper – here – the following rules are very important concerning the Separate Act. The Article 33.1 constitutes as a crime the act of soliciting directly or indirectly, by any means to commit or support a commission of an act of terrorism. We can link to this topic the Article 33.2. Par. (1) and (3) as well, which regulate the following: „(1) The offence of inciting the public, verbally, in writing or by any other means, to commit offences provided for by this Law shall be punishable by imprisonment for a term of six months to three years or by a fine, which may not exceed the penalty prescribed by law for the offence to which the instigation was given; (3) If the public instigation resulted in the commission of the offence instigated, the penalty shall be that prescribed by law for that offence."

[28]According to the Separate Act, it shall be a criminal offence and shall be punished by imprisonment between five to twelve years: (b) „giving instructions on the manufacture or use of explosives, firearms or any other weapons, noxious or dangerous substances, or on specific techniques or methods of committing or assisting in the commission of an act of terrorism, knowing that the skills provided are or may be used for that purpose",

and it links it to explosives, firearms, or any other weapons, noxious or dangerous substances, or on specific techniques or methods of committing or assisting in the commission of an act of terrorism. It can be seen that the Romanian legislator chose the legal way which regulates this crime under a separate statutory definition and did not want to place it in a preparatory element of crime as the Hungarian law solved it. According to our opinion the Romanian legal solution is more transparent and noticeably clear and also gives an appropriate legal answer for the dogmatic problem mentioned above related to the Hungarian regulation, however, it narrows the scope of training because it concentrates only on the weapons and dangerous substances mentioned above.

Namely, the Directives prescribes that receiving or providing training for terrorism "includes obtaining knowledge, documentation or practical skills"[29] as well. As the Directive states: "self-study, including through the internet or consulting other teaching material, should also be considered to be receiving training for terrorism when resulting from active conduct and done with the intent to commit or contribute to the commission of a terrorist offence."[30]From this viewpoint the more general Hungarian legal version can be considered as better than the Romanian one.

3.2.4. Travelling for the purpose of terrorism (article 9-10)

Taking account of the special cross-border nature of the terrorism, the Directive declares that every Member State shall ensure the punishability of the travelling abroad, or the transit and the coming back if it has connection with terrorism. This aim is underlined by the fact that a lot of attacks were committed by foreign terrorist fighters in the recent years, therefore, these persons pose a high risk and threat to the society (Vestergaard, 2018. 257.).

If we analyze the Hungarian and Romanian legal solution, we can state that both regulations meet the European requirements and the punishability of the relevant conducts is ensured in the internal substantive criminal laws. According to the Article 316/A of the HCC not only the entering the territory of Hungary but also the transit and the travelling abroad are also punishable if they have a connection with terrorism (for example for the purpose of committing or contributing of the commission of a terrorist offence, or for the aim of joining a terrorist group and any other acts of organizing or facilitating assists in travelling for the purpose of terrorism).

The Article 35.1 of the Romanian Separate Act[31] also guarantees the punishability of the movement of a person if it has terrorist intent. However, until in the Hungarian

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and (c) „receiving or acquiring instructions by self-documentation on the manufacture or use of explosives, firearms or any other weapons, noxious or hazardous substances, or on specific techniques or methods of committing or supporting the commission of an act of terrorism"

[29]See the Preamble par (11) of the Directive.

[30] See ibid.

[31]According to the mentioned regulation: „(1) The movement of a person from the territory of the State of which he is a national or from the territory of which he has his domicile or residence to or within the territory of a State other than that of which he is a national or resident, for the purpose of committing, planning, preparing or participating in terrorist acts or for the purpose of giving or receiving instruction or preparation for the commission of a terrorist act or for supporting in any way a terrorist entity, shall constitute movement for terrorist purposes and shall be punishable by imprisonment between five to twelve years …"; (3) „Any act of organizing or facilitating the provision of assistance to any person to travel abroad for terrorist purposes, knowing that the assistance so provided is for such purposes, shall be punishable by imprisonment for a term of 2 to 7 years .."

criminal law the punishment of the traveller and the organizer is the same (imprisonment between two to eight years), the Romanian law punishes with a greater imprisonment the traveller than the organizer (the traveller's punishment is imprisonment between five to twelve years, in case of organizing the extent of the imprisonment is between two to seven years).

In the following table we would like to summarize the result of our comparison:

Offences related to terrorism	**Hungarian Criminal Law**	**Romanian Criminal Law (the Separate Act)**
Public provocation	Art. 331. Par. (2)	Art. 33.2. Par. (4), Art. 38.1. Par. (1)
Recruitment	Art. 14. Par (1), Art. 314. Par. (1)-(2), Art. 315. Par. (1)-(2)	Art. 33.1., Art. 33.2. Par. (1), (2)
Training for terrorism	Art. 14. Par (1), Art. 314. Par. (1)-(2), Art. 315. Par. (1)-(2)	Art. 33. Par. (1) point b)-c)
Travelling for terrorist purpose	Art. 316/A	Art. 35.1 Par. (1), (3)

4. FINAL REMARKS

In the above – within the framework defined by the paper – we have tried to present firstly the punitive material legal regulation of Hungary, and secondly Romania related to the fight against terrorism, with particular regard to the implementation obligations arising from the Directive. It was not our aim to give a detailed dogmatic analysis of the internal criminal legal provisions of the analyzed Member States, rather, the subject of our evaluation was the exploration of the different legal technical solutions and the directions of amendments that could be formulated in relation to domestic criminal substantive legal provisions. We also did not touch on the topic of financing terrorism, because we believe it should be the subject of another paper, partly due to its scope and partly due to its relationship with other legal institutions which basically belong to other branches of law.

On the other hand, in relation to the comparative analysis carried out in our paper, we can clearly state that the analyzed internal laws are basically in harmony with the requirements set out in the Directive, and no cardinal need for amendments will arise in the future in order to fulfill the obligations arising from the Directive. It shall be emphasized that there are some differences between the Hungarian and Romanian legal solution (and not only concerning the source of the rules), but rather in the method of the regulation which gives the opportunity for a broader or narrower interpretation, but it cannot be considered such a big difference in comparison with the Directive that the examined Member States should repeal or basically amend their rules. In our opinion, even with the indicated amendment proposals, it can be stated that the criminal law of Hungary and Romania is prepared for the expansion of the international fight against

terrorism and can provide effective legal protection to the citizens against the perpetrators of terrorist crimes.

REFERENCES

Albrecht, Peter-Alexis (2005): Kriminolgie 3. Aufl. Beck, München.

Bartkó, Róbert (2011): A terrorizmus elleni küzdelem kriminálpolitikai kérdései. UNIVERSITAS Győr Nonprofit Kft.

Bartkó, Róbert (2017): The new European Challenge – The relationship between the illegal migration and terrorism. In. SGEM International Multidisclipinary Scietific Conference on Social Sciences. Sofia, STEF92 Technology Ltd.

Borgers, Matthias J. (2012): Framework Decision on combating terrorism: two questions on the definition of terrorist offences, New Journal of European Criminal Law, issue 1, pp. 68-82.

Dornfeld, László–Sántha, Ferenc (2017): A terrorizmus és a terrorcselekmény, mint nemzetközi bűncselekmény aktuális kérdései. Jog-Állam-Politika 3. szám. pp. 69-106.

Dumitriu, Eugenia (2004): The E.U.'s Definition of Terrorism: The Council Framework Decision on Combating Terrorism, German Law Journal, Vol. 05 No. 05, pp. 587-602.

Hautzinger, Zoltán (2016): Idegen a büntetőjogban, AndAnn Kft., Pécs.

Karsai, Krisztina (2008): Büntetőjogi jogközelítés az Európai Unióban, In: Kondorosi Ferenc–Ligeti Katalin (szerk.): Az európai büntetőjog kézikönyve, Magyar Közlöny Lap- és Könyvkiadó, Budapest, pp. 439-449.

Karsai, Krisztina et al (2012): The approach to terrorist offences by means of criminal law in Hungary: A national report to the Third Session of International Forum on Crime and Criminal Law in the Global Era. Sistema Penal and Violencia 4:1.

Mitsilegas, Valsamis (2016): „The European Union and Preventive Justice. The Case of Terrorist Sanctions." EU Criminal Law after Lisbon: Rights, Trust and the Transformation of Justice in Europe. Oxford: Hart Publishing Ltd.

Murphy, Cian C. (2014): "Counter-Terrorism Law and Policy: Operationalization and Normalization of Exceptional Law after the 'War on Terror'." EU Security and Justice Law: After Lisbon and Stockholm. Ed. Diego Acosta Arcarazo and Cian C. Murphy. London: Hart Publishing Ltd.

Nagy, Ferenc (2007): Az ellenség-büntetőjogról, a jogállami büntetőjog eróziójáról. Magyar Jog 2. szám. pp. 65-75.

Neparáczki, Anna Viktória (2017): A terrorizmus elleni fellépés eszközei a magyar és a német büntető anyagi jogban, PhD értekezés, Pécs.

Proulx, Vincent-Joel (2003): Rethinking the Jurisdiction of the International Criminal Court in the Post-September 11th Era: Should Acts of Terrorism Qualify as Crimes Against Humanity. American University International Law Review 19, no. 5. pp. 1009-1089.

Répási, Béla Krisztián (2016): Az Európai Unió terrorfenyegetettsége a 21. század elején, Doktori Értekezés, Budapest.

Sieber, Ulrich (2016): The paradigm shift in the global risk society: from criminal law to global security law – an analysis of the changing limits of crime control. Journal of Eastern-European Criminal Law vol.1. pp. 14-27.

Tóth, Mihály (2013): A terrorcselekmény büntetőjogi szabályozásának és gyakorlatának változásai, Hadtudomány 1-2. szám, pp. 30-40.

Udvarhelyi, Bence (2013): Büntető anyagi jogi jogharmonizáció az Európai Unióban, Publicationes Universitatis Miskolcinensis. Sectio Juridica et Politica, Tomus XXXI. pp. 295-315.

Vestergaard, Jørn (2018): "'Foreign Terrorist Fighters'—De-Radicalisation and Inclusion vs Law Enforcement and Corrections in Denmark." The Needed Balances in EU Criminal Law: Past, Present and Future. Ed. Chloé Brière and Anne Weyembergh. Oxford: Hart Publishing.