

Sistema Penal & Violência

Revista Eletrônica da Faculdade de Direito
Programa de Pós-Graduação em Ciências Criminais
Pontifícia Universidade Católica do Rio Grande do Sul – PUCRS

Porto Alegre • Volume 4 – Número 1 – p. 75-108 – janeiro/junho 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*

A abordagem aos delitos terroristas pelo direito penal na Hungria

*Um relatório nacional para a Terceira Sessão do Fórum Internacional
sobre Crime e Direito Penal na Era Global*

KRISZTINA KARSAI
ANNA NEPARÁCZKI
ZSOLT SZOMORA

DOSSIÊ TERRORISMO

Editor-Chefe
JOSÉ CARLOS MOREIRA DA SILVA FILHO

Organização de
FÁBIO ROBERTO D'ÁVILA
JOSÉ CARLOS MOREIRA DA SILVA FILHO



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*

A abordagem aos delitos terroristas pelo direito penal na Hungria

Um relatório nacional para a Terceira Sessão do Fórum Internacional sobre Crime e Direito Penal na Era Global

KRISZTINA KARSAI*
ANNA NEPARÁCZKI**
ZSOLT SZOMORA***

Abstract

This paper aims at giving a detailed overview about the approach to terrorist offences by means of criminal law in Hungary, a little European country fortunately not affected by the grave consequences of international or domestic terrorism. Legal measures provided by both substantive and procedural criminal law will be described, and the participation of our country in international counter-terrorism activities and legal instruments will be outlined. Human rights aspects of counter-terrorism will also be kept in view. In this respect, it is to emphasize that the attempts of the Hungarian legislator to weaken procedural guarantees for the sake of more effective criminal proceedings in case of terrorism (and many other selected offences) have been found unconstitutional by the Constitutional Court of Hungary.

Keywords: Terrorist offences; Offences related to terrorism; Covert means and methods to detect terrorism; Human rights guarantees; International counter-terrorism activities.

Resumo

Este artigo pretende proporcionar uma visão geral detalhada sobre a abordagem dos delitos terroristas pelo Direito Penal na Hungria, um pequeno país europeu felizmente não afetado pelas graves consequências do terrorismo internacional ou doméstico. Serão descritas medidas legais proporcionadas tanto pelo Direito Penal substantivo como processual e a participação do nosso país em atividades contraterroristas e instrumentos legais internacionais. Questões relacionadas aos Direitos Humanos no contraterrorismo serão levadas em conta. A este respeito, é preciso enfatizar que as tentativas do legislador húngaro em enfraquecer as garantias processuais em prol de procedimentos criminais mais efetivos no caso do terrorismo (e de muitos outros delitos selecionados) foram consideradas inconstitucionais pela Corte Constitucional húngara.

Palavras-chave: Delitos terroristas; Delitos relacionados ao terrorismo; Meios dissimulados e métodos para deter o terrorismo; Garantias de Direitos Humanos; Atividades contraterroristas internacionais.

*Dr. habil., associate professor, vice dean of the Faculty of Law. Member of the Department of Criminal Law and Criminal Procedure at the University of Szeged (Hungary).

**Public prosecutor, Budapest (Hungary). <anna.neparaczki@gmail.com>.

***Dr., associate professor. Member of the Department of Criminal Law and Criminal Procedure at the University of Szeged (Hungary).

1 Hungary – Basic information

Hungary is located in the Carpathian basin of Central Europe, and its territory covers 93,000 sq km (35,919 sq mi). It shares borders with Slovakia in the north, Ukraine in the northeast, Romania in the east and southeast, Serbia in the south, Croatia in the south and southwest, Slovenia in the southwest, and Austria in the west. The country is landlocked.

The population of Hungary is 9,990,000 in 2010; population density is 108/sq km (279/sq ml). According to the data of the last census conducted in 2001, 17% of the population (1,778,000 people) lived in Budapest, the country's capital. Apart from Budapest, there are eight towns with a population of over 100,000, the largest being Debrecen, Miskolc, Szeged, and Pécs. Only Debrecen exceeds a population of 200,000. Also based on the 2001 census, 96.6% of the population speaks Hungarian; thus, the country can be considered a monolingual nation state. Among national and ethnic minorities, the Roma population represents the highest proportion, followed by German, Slovak, Croatian and Romanian minorities.

According to the Hungarian constitution, the country's economic system is a social market economy based on fair market competition and a minimum economic security guaranteed by the state for everyone. Hungary, a member of the Organization for Economic Co-operation and Development (OECD), is considered a rich and developed country based on its economic performance, though it ranks among the poor countries within the European Union. In 2008, Hungary's Gross Domestic Product (GDP) was about 26,500,000,000 Hungarian Forints (HUF). The GDP per capita has a medium standard deviation. The richest region of Hungary is Central Hungary; the poorest is the Southern Great Plain.

On a world scale, the wages in Hungary are high, but pay is relatively low in comparison to the EU average. After the turn of the millennium, the rate of unemployment was relatively low, about 7%; however, it reached 10% in 2009 as a result of the world economic crisis. The capital-intensive sectors, offering jobs for the highly qualified employees, tend to acquire a greater role in the Hungarian economy. Structural unemployment is high among people with uncompetitive and lower qualifications, and poverty is significant.

Under Arts 1 and 2 of the Constitution, Hungary is a republic, an independent and democratic state founded on the rule of law. The main organs of the political system are as follows: the Parliament, the Government and the Prime Minister, the President of the Republic and the political parties.

The President of the Republic, elected by the Parliament every five years, has a largely ceremonial role, but the powers of the office include appointing the Prime Minister. The Prime Minister selects cabinet ministers and has the exclusive right to dismiss them. Each cabinet nominee appears before one or more parliamentary committees in consultative open hearings and must be formally approved by the President. The unicameral, 386-member Parliament is the highest state authority body and approves legislation initiated usually by the government. A party must win at least 5% of the national vote to get into the Parliament. National parliamentary elections are held every four years; the most recent was in April 2010. Hungary joined NATO in 1999 and the EU in 2004.¹

2 Terrorism in Hungary

Hungary enjoys a relatively stable security environment but saw an increase in political unrest, being often violent, between September 2006 and July 2009. Since August 2009, this violent political unrest has significantly subsided. Small, fractional fringe element groups of Neo-Nazis, Skinheads, and other far right wing extremists continue to be present in Hungarian society. Their activities, particularly rallies and demonstrations, are strictly limited and monitored by police.

The Europol report² does not treat Hungary as a country threatened by international terrorism, the only Hungarian reference goes to the so called Hungarian Arrows National Liberation Army, a Hungarian separatist terrorist group that had existed until its leader and members have been arrested (early 2010).³ In the past, this indigenous, right wing extremist group, the Hungarians' Arrows National Liberation Army, claimed responsibility for firebombing the homes of several Hungarian politicians and the home of the former minister who headed the National Security Services. To date, the majority of its members have been arrested or are under house arrest. The Government of Hungary considers the Arrows an indigenous terrorist organization but a legal possibility has not yet occurred to qualify them as such under current Hungarian law.

The statistical data shown below refer to the number of terrorist offences and their perpetrators. However, there are a few years where no data are available. The source of statistics is official information of the Hungarian Central Statistical Office given upon our request and based on the common database of the General Public Prosecutor's Office and the Police.⁴

Year	Terrorist offences (incl. omission to report such offences)	
	Number of registered offences	Number of registered offenders
1980	5	–
1981	3	2
1982	–	2
1983	–	2
1984-1987	–	–
1988	1	–
1989	–	2
1990	–	1
1991	–	–
1992	5	8
1993	9	7
1994	6	9
1995	4	2
1996	–	–
1997	1	1
1998	–	–
1999	2	8
2000	–	–
2001	2	1
2002	2	1
2003	1	–
2004	3	4
2005	2	2
2006	6	6
2007	4	1
2008	3	2
2009	7	4
2010	6	3

The absolute number of terrorist offences is very low each year, however, it has to be emphasized that terrorist offences can have very grave consequences; the mere numbers therefore cannot give a correct and

informative picture concerning the significance of terrorism in a country. Should three railway stations and two airports be exploded by terrorists each year, it would have a tragic effect on a certain country (despite the low number of the offences). In order to clear this picture, a brief outline will be given now about the features of the cases Hungarian courts has recently had to deal with:

- “*Terrorist offence of everyday*” [mostly Art. 261, par. 1 CC (type I)]⁵ – The main characteristics of these cases are that the offender wants to achieve something and for this reason s/he addresses demands to the police while s/he takes hostages. Examples: An offender wanted to get in touch with a woman, he held her down, the victim shouted for help, the police arrived and the offender asked the policemen to give him firearms and let him away. As his demands were not met, he stabbed one of the policemen with a knife causing serious injuries.⁶ Another offender wanted to obtain firearms from the police the same way as in the previous case.⁷ The offender affected by a serious family conflict took his mother hostage and demanded a car, pizza and coke from the police.⁸ Cases also occur where the offender is caught by the police and s/he takes hostages in order to escape.⁹
- *Threatening to commit terrorist offences* [Art. 261, par. 7 CC (type IV)] – The offenders of these cases make false pronouncements threatening to commit terrorist offences in order to make officials meet their demands. An offender threatened to explode a busy shopping centre unless his friends are released from prison.¹⁰ Another offender wanted to achieve that his declaration would be read via television broadcast; for this purpose he threatened to bring about bombings.¹¹ An offender wanted to compel the Government to pay him 90 million HUF (about 333.000 EUR), otherwise he would randomly explode railways and public buildings.¹²

Considering the typical two groups of cases written above and the low number of terrorist offences committed a year, the conclusion can be drawn that Hungary is not at all affected by the gravest forms of national or international terrorism.

3 Legal answers to terrorism

In this Chapter we go into details about the approach to terrorism by means of criminal law in Hungary. First, the grounds of jurisdiction, then, the statutory definition of terrorist offences and its history will be discussed. Offences related to terrorism will be outlined and criminal procedural means against terrorism will finally be discussed.

3.1 Jurisdiction

In Hungary, there are no special jurisdiction rules for terrorism. According to Art. 3 par. 1 CC, the principle of active personality has the same ranking as the territorial principle. If a Hungarian citizen commits a criminal offence abroad, Hungarian criminal law shall be applied. Persons with dual citizenship (Hungarian and that of another country) fall under this rule as well. This principle applies to any criminal offences under Hungarian criminal law that were committed by Hungarian citizens abroad.

The applicability of criminal law to offences committed outside Hungary and by non-Hungarians represents an exception to the two basic principles. The legislature has accepted the active personality principle, the universality principle and the state protection principle (*principium reale*). The universality principle (or universal jurisdiction) allows the application of domestic criminal law against persons whose alleged criminal

offences were committed outside the country, regardless of nationality, country of residence, or of any other nexus with the prosecuting state. Concerning these criminal offences, the international law obligations are binding for all states; the principle therefore embodies the mutual solidarity of the states. The protection principle promotes the state's interests and allows the application of criminal law to offences that may harm the security of the country.

Art. 4 par. 1 CC contains a list of cases in which Hungarian criminal law is applicable to offences committed outside the country by non-Hungarian perpetrators. Keeping in mind that Hungarian citizens while travelling or living fall under Hungarian criminal law without restriction, the groups of offences committed by non-Hungarian perpetrators are as follows:

- criminal offences under Hungarian law that are also punishable acts in accordance with the law of the location of commission (including espionage against allied armed forces under Art. 148 CC);
- criminal offences against the state (except espionage against allied armed forces under Art. 148 CC), regardless of whether the offence is punishable in accordance with the law of the country where committed; and
- criminal offences against humanity or any other criminal offences, the prosecution of which is prescribed by an international treaty (*e.g.*, money laundering, crimes against environment, drug offences).

There is an important distinction in the first group, since the rule of the double criminalization relates only to this case; that is, it is required only in this case that the conduct should be a punishable act abroad. Should any circumstance of impunity according to the foreign law exclude the punishability, Hungarian criminal law cannot be applied.

In these cases of extraterritorial jurisdiction, the prosecution can be only ordered by the General Public Prosecutor.¹³

3.2 Terrorist offences

The terror is a ruthlessly violent method of action to enforce any demands by using the potentials of intimidation,¹⁴ and as such has long been known in political life.¹⁵ However, the terrorist offence as a criminal offence *sui generis* was first enacted by the Criminal Code of 1978 (CC), its historical roots still date back to the first Criminal Code of Hungary that was enacted in 1878 (Code Csemegi).¹⁶ The historical forms of terrorist offences as offences threatening the security of the legal order by violent attacks can be found among the criminal offences against the state in the Code Csemegi. The main characteristics of these early regulations can still be observed in the statutory definition of terrorist offences under Art. 261 CC in force.

It has to be stressed that the latest regulation has added new features to the terrorist offences compared to those early forms against the state. Terrorist offences under the current regulation can be motivated not only by political aims but also by retaliation against persons or pecuniary gain. However, the terrorist offence is directed not only against the person or the property of an individual, but it also endangers the social life and the security of assets in general, it therefore continues to be a particularly dangerous crime. This characteristic can also be seen in the form of the legal regulation currently in force: Art. 261 CC has numerous common features with criminal offences against the state, the latter followed by the most severe sanctions of criminal law.

In this part of the paper, Art. 261 CC is to be analysed, the components of the statutory definition and the problems posed by them will be discussed. The review of the historical background shall primarily

highlight the common features of the current regulation and its history, the overall presentation of criminal offences against the state seems not necessary, it would go beyond the aims and framework of this paper.

The presentation of both the recent and former approach to terrorist offences by means of *substantive* criminal law will be structured as follows:

First, the legal interests protected by the rules of the CC, second, the special purpose (aim) of terrorist offences will be analysed, the latter making possible to differentiate between terrorist and other offences, primarily those against the state. The main characteristics of the statutory definition are also to be highlighted. This will be followed by a parallel outline of the legally protected interests and the regulation methods relevant to the offences against the state.

Subsequently, the approach to terrorist offences by means of substantive criminal law will be presented in line with *the single types laid down in the statutory definition* in Art. 261; the history of these types of the offence will be briefly discussed as well. Since the incorporation of the rules of terrorist offences into the CC dates back only to 1978, the history of the regulation should be outlined in two parts: first, the related features of certain offences against the state under the regulation before 1978, second, the original version of the rules of the terrorist offence and its amendments from 1978.

3.2.1 The statutory definition of terrorist offences (Art. 261 CC)¹⁷ and its history

A) Legally protected interests and other main characteristics

a) Legally protected interests

Terrorist offences are regulated in Title I of Chapter XVI of CC, that is, among the criminal offences against public security. The protected legal interests are the states', governmental bodies' and international organizations' acting free of coercion and the freedom of people on the one hand, and the undisturbed livelihoods of the population and guaranteeing the inviolability of material goods on the other.¹⁸ According to this, the regulation on terrorist offences is to protect complex interests (komplexes Rechtsgut) where the social life and security of property are the interests to be protected primarily.

In view of the international character of terrorist offences, other states – irrespective of their political and social system¹⁹ – and international organizations are also covered by the rules of the CC, so they belong to the scope of legally protected interests.

b) The means of prevention

Terrorist offences do lead to considerably harmful consequences, thus, they are among the most serious offences under CC. There exists an important public interest in everyone's cooperating for prevention. Art. 261 par. 8 CC therefore prescribes a *general obligation to report*; this obligation affects any person – including family members of the perpetrator – who have become aware of the preparation of terrorist offences and this knowledge can be deemed credible. Credibility means that the knowledge obtained has to be taken seriously, that is, one can rely on the truth of the data and statements, according to the general life experience.²⁰ The obligation to report covers only terrorist offences in the stage of preparation and does not affect attempted or completed offences.

Any person committing the *preparation of a terrorist offence*, which has been enacted in form of a sui generis offence (see *infra* 3.2.4.), is granted the possibility of the termination of punishability under Art. 261 par. 6. This serves also the goals of prevention: the society has an important interest in becoming aware

of criminal offences seriously endangering the public life, so that possible losses, harm and disadvantages could be avoided. The advantages that can be achieved by prevention outweigh the interest in prosecution of the perpetrator. The CC lays down requirements for the perpetrator remaining unpunished: s/he has to reveal the circumstances that make possible to discover other perpetrators and to disclose their relationship and activity in connection with the offence.²¹ So, it can be seen that the mere abandonment of preparation grants no impunity yet, which is also an *important consequence following from the sui generis character* of the special provision on preparation. Let us summarize these consequences: first, the rules on preparatory acts under the General Part of CC may no longer apply²², thus, the sui generis character of preparation makes the incorporation of a special provision on abandonment necessary, the possibility to abandon would otherwise completely be excluded. Second, the existence of this special provision makes possible for the legislature to prescribe further requirements compared to the General Part of CC, which requirements can serve the goals of prevention more effectively.

In contrast to the stage of preparation, the general rules on *voluntary abandonment of attempt* may apply if a terrorist offence has been attempted. Based on considerations of criminal policy on the interests of prevention and the significant gravity of this offence, the legislature has granted a possibility to mitigate the penalty even in case *the terrorist offence has been completed*. Art. 261 par. 3 provides two main conditions for mitigation. First, the general condition is that no grave consequences have been brought about yet. Second, the perpetrator has to abandon his conduct, either voluntarily or due to external circumstances or other persons' behaviour. This condition can also be fulfilled if s/he reveals his/her offence to authorities under par. 3 lit. b), even if the detection of the offences has already been started by the authorities.²³ Thus, a mere passive behaviour is not sufficient for abandoning a terrorist offence; voluntary and active cooperation is in fact required. It is therefore irrelevant whether the continuation of the perpetration ceases against the perpetrator's will and independent of him/her.²⁴ But, like mentioned, cooperation after the abandonment has to be active and voluntary, which follows from the further conditions. According to CC, it is not sufficient for the perpetrator to reveal his/her conducts, the circumstances and aims of the perpetration and his/her personal relationships; s/he rather has actively to assist in avoiding and mitigating the consequences of the offence, discovering further perpetrators and preventing the commission of further criminal offences.²⁵

c) The structure of Art. 261 CC

The structure of the provisions on terrorist offences in Art. 261 CC has been developed in order to entirely comply with the international obligations Hungary has entered into in the framework of the UN²⁶ as well as the EU.²⁷ The regulation is based on *four single types of terrorist offences*; each one will be discussed in details in the following:²⁸

1. Offences involving violence against a person, public endangerment or being in connection with firearms, and committed with terrorist aims – Art. 261. pars 1 and 9 CC;
2. Seizure of considerable assets or property and addressing demands with terrorist aims – Art. 261 par. 2 CC;
3. The preparation of terrorist offences including preparation in a terrorist group – Art. 261. pars 4 and 5;
4. Threatening to commit terrorist offences – Art. 261 par. 7.

The provisions aiming at prevention by way of terminating punishability or granting the possibility to mitigate the penalty have been discussed above (Art. 261 pars 3, 6 and 8).

d) Terrorist aim

A central element of the statutory definition is the *terrorist aim* being relevant in case of each single type of the offences listed before. The ministerial explanatory notes to Art. 261 emphasize that the terrorist aim is an especially important component of the statutory definition since it makes possible to differentiate between terrorist offences and other offences involving violence against a person, public endangerment or being in connection with firearms (these offences are exclusively listed in par. 9). The legislature provides, following the provisions of the Framework Decision 2002, three different types of terroristic aims.

Under Art. 261 par. 1 lit. a), the perpetrator's aim itself does not affect natural persons; it covers government bodies, another state or international organizations. The element 'governmental bodies' covers Hungarian bodies as well as foreign ones.²⁹ 'Another state' means each state except the Republic of Hungary. 'International organizations' are those founded by intergovernmental treaties. The perpetrator aims at depriving these subjects of their freedom to act so that they act according to the perpetrator's will.

Under lit. b), the perpetrator aims at intimidating the population. It has however to be stressed that this may not be an end in itself; a public situation has moreover to occur that leads to disregard and negation of the fundamental interests of the state, its bodies and the executive authorities.³⁰

The aims prescribed by lit. c) are the change or disruption of the constitutional, economic or social order of another state, or disruption of the operation of an international organization. These aims cover only foreign states (or international organizations) since acting with such aims against the Republic of Hungary constitutes criminal offences against the state (Chapter X CC).

B) Rules prior to the incorporation of terrorist offences. The legally protected interests in regard to the offences against the state from the Csemegi Code until present

The criminal offences against the state threaten or violate the system of the state power, its existence, functioning and basic institutes that are laid down in the Constitution of the state concerned, as well as the independence and territorial integrity of the state. The statutory definitions of these offences usually prescribe a special intent of the perpetrator directed against the existing political, power system.³¹ Since the concept of the offences against the state is closely connected with the governmental structure of the state concerned, the regulations reflects different approaches and their scope were changing in history.³² Hereunder, a brief overview about the history of the regulation on criminal offences against the state shall be given; *particularly focusing on those that can be regarded as antecedents of terrorist offences.*

The relevant offences provided by the Code Csemegi (1878) can be divided into two main groups: first, offences against the existence and basic institutions of the state, second, offences endangering the peaceful functioning of the state. Two severe offences belonged to the first group: high treason (violent acts to destroy the state and its essential components)³³ and treachery (assault against the external security and the international position of the state).³⁴ The second group consisted of the offences as follows: anti-constitutional sabotage; violence against the members of Parliament and officials; incitement against the constitution, the law, authorities and officials.³⁵ It has to be emphasized that the offences provided by the Code Csemegi, which followed the doctrines of the so-called classical school, were based on the *act of a sole perpetrator*. Nevertheless, regarding the particular dangerousness of these offences, *the preparation of these offences as well as conspiracy and omission of the report were punishable*. These forms of perpetration mentioned were in general not punishable; an exception was made in connection with the offences against the state.

The general collapse of the country after the World War I made the Hungarian legislature aware that the elaboration of a new legal regulation is unavoidable in order to protect the state and social order under the

changed circumstances.³⁶ In recognition of this fact was the Act III of 1921 about the more effective protection of the state and social order (Átv) elaborated.³⁷ The explanatory notes to the Átv make clear that this Act represents a new way of approach to the criminal offences against the state and supplement the Code Csemegi according to this approach. That is, the Átv aimed at severely punishing any conducts and conspiracy that are directed to destroy the existing legal order, and at intervening at the earliest stage possible. Opposite to Code Csemegi, the rules of the Átv were based not on the conducts of a single perpetrator but on conspiracy intending to violently destroy the state or the social order. The Act XVI of 1938 made a supplement to the scope of the conspiracy offences laid down in Átv.

The Act VII of 1946 (Dátv),³⁸ reflecting on the political and social changes following World War II, abrogated the preceding Acts mentioned above and introduced some new statutory definitions that aimed at the protection of the democratic order of the state and the republic. This regulation provides a penalty for *both the action of single perpetrator and organized perpetration as well* in case they are directed to disrupt or overthrow the democratic government or to change the republic as the form of government.³⁹

The first Criminal Code of uniform structure of the communist era, subsequent to the Code Csemegi, was enacted by the Act V of 1961 (CC 1961),⁴⁰ which placed the criminal offences against the state in Chapter I of the Special Part. The crime of conspiracy (Art. 116), which can be characterized by an organized and secret way of perpetration, was the most serious one among the offences against the state and replaced the similar offence previously provided by the Dátv. Like the Code Csemegi, the CC 1961 also punished the other basic form of the offences against the state, namely those endangering the external security of the state (high treason, treachery, espionage). The offences threatening the peaceful functioning of the state were as follows: riot, sabotage, assault and causing damage.

Regarding the topic of this paper, it has to be pointed out that the Law Decree 28 of 1971 (LawD 1971)⁴¹ supplied an important supplement to CC 1961 by introducing the statutory definition of the *unlawful seizure of an aircraft*.⁴² This new offence was placed among traffic crimes that did not constitute a single Chapter in CC 1961 but were regulated among the offences against public order and public safety.

The original version of the CC 1978 included ten different offences against the state, the common protected interest of which were the state, social and economic order of the People's Republic of Hungary.⁴³ The ministerial explanatory notes to the CC point out that one part of these offences can be characterized by the perpetrator's conduct being objectively directed against the existing order of the state (e.g. riot, conspiracy, treachery), while the other part of these offences presupposes such a subjective purpose of the perpetrator as well (e.g. sabotage, high treason, incitement).⁴⁴ Like in CC 1961, the offence of conspiracy remained the most serious crime among those against the state, covering both the overthrow and the weakening of the state, social and economic order of the People's Republic of Hungary. It was the *CC of 1978 that enacted the terrorist offence as a criminal offence sui generis* in Art. 261 as one of the offences against public security, that is, not as an offence against the state. The dreadful, qualitatively new forms of organized and professional criminality were given as grounds for the codification of terrorist offences.⁴⁵

In the course of the transition of the political regime in 1989, the criminal offences against the state needed to undergo extensive changes by the Act XXV of 1989 in order to lay down and fulfil the basic guarantees of a state founded on the rule of law ("Rechtsstaat"). The constitutional order of the Republic of Hungary was regarded as the basis for the formation of the new regulation. This new legal approach eliminated the statutory definitions being questionable from point of view of the rule of law (e.g. assault or incitement), declared only real preparatory actions punishable and covered only the violent changing of the constitutional order.⁴⁶ The former definition of conspiracy got substituted by two offences, namely violent changing of the

constitutional order and conspiracy against the constitutional order (Arts. 139 and 139/A CC 1978). A common feature of them is their being directed towards a violent changing of the constitutional order. However, a fundamental difference is made out by the fact that the *violent changing of the constitutional order* (Art. 139 CC 1978) as the most serious crime against the state is based on the *conduct of a single perpetrator*, going back to the conception of the Code Csemegi. On the other hand, the statutory definition of *conspiracy* (Art. 139/A. CC 1978), which covers an *organized form of preparation*, provides milder penalty in accordance with the real gravity of the offence and the requirements of the rule of law. The idea of rule of law has had its roots already in the Code Csemegi but was put into shade by the Átv and Dátv reacting to the shock triggered by World War I and II, and then was completely put aside and forgotten by the criminal law of the communist era.

3.2.2 Type I of terrorist offences (Art. 261 CC par. 1)⁴⁷ and its history

- A) Offences involving violence against a person, public endangerment or being in connection with firearms, and committed with terrorist aims – Art. 261. pars 1 and 9 CC

The *statutory conduct* of type I of terrorist offences is the perpetration of a criminal offence involving either violence against a person or public endangerment, or being in connection with firearms. Art. 261 par. 9 exclusively lists the criminal offences that are relevant to terrorist offences, thus, they serve as so-called base offences for terrorist offences in case they are carried out with *terrorist aim* (see supra 3.2.1.A). The list of the base offences has been specified for the Hungarian CC according to Art. 1 of the Framework Decision 2002.

Due to this special dogmatic structure (carrying out another ordinary *sui generis* offence with terrorist aim), it is controversial in Hungarian criminal law literature whether and how this type of the offence can be attempted (stage of attempt).⁴⁸ In our view, *the type under Art. 261 par. 1 is completed as soon as a base offence (under par. 9) has been attempted*. In case of attempting one of the base offences, the perpetrator's conduct under par. 1 as a prerequisite for completion is given and the terrorist aim as a subjective component of the statutory definition doesn't need to be objectively realized for the offence's being completed. We do not agree with the opinion, in which attempting but not completing a base offence constitute the attempt of the terrorist offence.⁴⁹ This view disregards the fact that the base offences lose their independent character in the framework of terrorist offences and they function "only" as the perpetrator's conduct, a statutory element of terrorist offence. Let us take an example in order to fortify our view: if the terrorist shoots one of his/her hostages in order to kill him/her but the hostage's life can be saved in the end, the terrorist's conduct constituted an attempted homicide that will be consumed by a completed terrorist offence. It would be absurd to say that the terrorist offence has only been attempted by reason that the injured victim has not died.

- B) History

a) Common features with the offences against the state

Type I of terrorist offences shows common features with the basic type of *high treason* as provided by Art. 126 Code Csemegi 1878. This statutory definition covers all conducts that destroy or threaten the conditions enabling the monarch to exercise his sovereign rights.⁵⁰ Nevertheless, Art. 126 Code Csemegi listed the perpetrator's conducts explicitly and exclusively and differentiated between three groups of them: first, assault against the life of the monarch, second, assault against the health and bodily integrity of the monarch, third, assault against the personal freedom of the monarch.⁵¹ Thus, *a range of exclusively listed ordinary criminal offences, serving as the means of high treason, was qualified as more serious crime* due to endangering the existence and the functioning of the state.⁵²

A similar method of regulation can be next find in Art. 126 CC 1961. The statutory definition of *assault* covered terroristic acts that were carried out against specific groups of persons (e.g. a member of an authority) because of their activity serving the communist system (the latter being the perpetrator's inducement). Thus, the victims deserved an intensified protection due to their official activity serving the political aims of the communist system, and the perpetrator's conduct against them and laid down in the definition of assault was that of an ordinary serious bodily harm or homicide, just like it was the case with high treason. *The way of definition of assault, disregarding the directly political component, bears the marks of the statutory definition of terrorist offences. Furthermore, it has another common feature with terrorism due to its potential to cause a climate of fear, a feeling of uncertainty and panic not only among officials but also among those who sympathize with the system.*⁵³

b) History of the statutory-definition

Although it was the CC 1978 that had provided a sui generis statutory definition for terrorist offences for the first time, the current par. 1 of Art. 261 was enacted in 2003. This modification of the CC aimed at fulfilling the UN-Convention 1999 and the Framework Decision 2002. The amendment enacted four single types of terrorist offences and provided an internationally conform regulation in Art. 261 pars 1 and 9 by determining the list of terrorist acts (ordinary offences serving as means of perpetration) and the terrorist aim. Type I of terrorist offences has since been maintained in this form.

3.2.3 Type II of terrorist offences (Art. 261 par. 2 CC) and its history

A) Seizure of considerable assets or property and addressing demands with terrorist aims – Art. 261 par. 2 CC

Type II of terrorist offences is, unlike the first one, a so-called delictum compositum. It is constituted of two conducts that are in a 'means-and-purpose-relation' to each other: first, seizure of assets and property as 'conduct as means' and second, addressing terrorist demands as 'conduct as purpose'. Seizure of considerable assets or property can be carried out by way of illegally taking possession of them. By the term 'assets or property', both moveable objects and immoveable property are meant. As for movable objects, seizure of them usually happens by way of unlawfully obtaining them from their possessor (e.g. violent obtaining or obtaining by wilful deceit). As for immovable properties, the perpetrator can seize them without taking their possession in fact if s/he can actually dispose of them in another way (e.g. the perpetrator does not need to invade a building or a factory in order to seize it in case s/he uses an explosive device s/he can blow up by a remote controller at any time).

The person of the owner is irrelevant in terms of the statutory definition; the range of possible owners is not limited to states, governmental bodies or international organizations, natural persons as owners of assets or property may also be affected. However, the value of the assets has to be considerable, which condition is usually fulfilled if the seizure of them gives the impression that the person the terrorist demand is addressed to can consider this as a severe demand.⁵⁴

The 'conduct as purpose' shall be achieved by way of threat; threat can be carried out either by announcing that the assets obtained will be damaged or even by realizing a part of the damages announced. Among the terrorist aims listed in Art. 261 par. 1, it is only one relevant in terms of type II of terrorist offences: compel a government body, another state or an international body to do, omit or acquiesce in something. The body or the state the demand is addressed to can be named precisely or at least the content of the demand allows

a conclusion on the body or state affected.⁵⁵ Acts of the perpetrator *without a terrorist aim* may constitute coercion (Art. 174 CC) or blackmail (Art. 323 CC), just like it is the case if those the demand is addressed to are no states, governmental bodies or international organizations.⁵⁶

In contrast to type I of terrorist offences, type II can be attempted. The perpetrator is punishable for attempt from the moment s/he starts to carry out the conduct of seizure with terrorist aim. This type of the offence is completed as soon as those affected become aware of the perpetrator's demand. Nevertheless, fulfilling the demands is not necessary for the completion of the offence.

B) History

a) Common features with the offences against the state

As mentioned above, the way of definition of type II of terrorist offences is similar to that of type I: the offence consists of a conduct serving a terrorist aim (enforcing a terrorist demand by way of threat) and a conduct carried out as means of perpetration (seizure of considerable assets or property). In addition, however, this type II can rather be regarded as “coercion of the state”: its important differentiating component is that the demands are addressed to government bodies or international organizations. Furthermore, it can be committed only by one kind of a ‘conduct as means’ of perpetration that, unlike type I of the offence, has not been defined as a *sui generis* criminal offence.

Among the offences against the state provided by Code Csemegei, it was riot and violence against authorities that show common features with type II of the current regulation of terrorist offences. In case of both offences, the perpetrator wanted his illegal will to prevail over the state or social factors.⁵⁷ However, riot could be committed only in a group and was directed against a particularly important governmental body named in the statutory definition, while violence against authorities could also be committed by one person and was directed against a member of any public authority.⁵⁸

Type II of terrorist offences can be placed between the two offences mentioned above: the perpetrator addresses his demand to a governmental body⁵⁹ that has not necessarily to be one of the major represents of state power. Thus, *in respect of those the demand is addressed to*, the terrorist offence is milder compared to riot but more serious compared to violence against authorities. This conclusion can be made *regarding the perpetrators of the offences* as well. Like mentioned, riot could be committed in a group, while violence against authorities both by a single perpetrator and in a group; terrorist offences are based on the conduct of a sole perpetrator but committing the offence in a terrorist group⁶⁰ is also possible and shall be punished with a heavier penalty.

b) History of the statutory definition

The current rules laid down in Art. 261 par. 2 are those originally codified as terrorist offence in CC 1978, among the offences against public security (in Chapter XVI: offences against public order). The interest protected by this statutory definition was the public security that manifests in the uninterrupted functioning of the state and social bodies, particularly the expectation of the society that the activity of these bodies shall be determined by their own decisions free of coercion.⁶¹ The legislature gave the following reasons for the introduction of the new regulation: “the professional and organized criminality [...] uses qualitatively new forms of coercion and blackmail that are more dreadful than any forms known before. Their common feature is that the perpetrator(s) (a person or a group) seeks to exclude the possibility of failure by gaining assurance in advance.”⁶² Nevertheless, not only seizure of considerable assets and property but also depriving persons of their personal freedom was meant as gaining assurance in advance. These two conducts provided alternatively in

the statutory definition were the “conducts as means” that served the “conducts as purpose”, that is, addressing a demand to a governmental body or international organization.⁶³ Thus, the original form of terrorist offence meant that the perpetrator wanted to assure that his will prevails over that of the governmental body by way of threat the ‘conduct as means’ included.⁶⁴ Death or causing particularly serious loss, or committing the offence in war time was provided as qualifying circumstances.⁶⁵

The first amendment to this type of terrorist offences was made two decades later and was reasoned explicitly by referring to the terrorist attacks against the United States of America on 11 September 2001.⁶⁶ The Act LXXXIII of 2001 aimed, in accordance with the UN-Convention for the suppression of financing terrorism, at an effective prevention of money laundering, it therefore made punishable persons that provide funds for carrying out terrorist offences.

It was Act II of 2003 that completely restructured the statutory definition of terrorist offences, particularly taking the provisions of the Framework Decision 2002 into consideration. This amendment has created the current form of type II of terrorist offences as laid down in Art. 261 par. 2 CC.

3.2.4 Type III of terrorist offences (Art. 261 pars 4 and 5 CC) and its history

- A) The preparation of terrorist offences including preparation in a terrorist group – Art. 261 pars 4 and 5

Art. 261 par. 4 is in connection with type I and II of terrorist offences (pars 1 and 2) as it makes their preparation punishable,⁶⁷ in form of a *sui generis* criminal offence. That is, “preparation-like” conducts are provided as a completed offence of a perpetrator. The statutory definition leads to the perpetrator’s punishability without his/her attempting any of the first two types of terrorist offences; the conducts provided here are carried out before the concrete terrorist offence.

Art. 261 par. 4 contains statutory conducts that *partially are equal to those provided in* Art. 18 par. 1, *the general provision in CC on preparatory acts*: 1) invite for the perpetration of a terrorist offence, 2) offer or 3) undertake the perpetration, 4) agree on joint perpetration, or 5) for the purpose to aid such criminal offence, provide the conditions that are necessary for the perpetration or facilitate the perpetration.⁶⁸ The last preparatory act can be regarded as a *catch-all clause* that applies to each and every action that, first, needs to be made to be able to commit a terrorist offence or, second, that facilitates the perpetration. Examples include providing a gun or producing the poison for homicide, waiting in a car on the street for the victim to come in case of kidnapping; both being base offences for terrorist offences. It has to be stressed that, due to the perpetrator’s terrorist aim, this type of terrorist offence can be committed even by preparatory acts to base offences (under par. 9) the preparation of which is otherwise unpunished (*e.g.* deprivation of personal freedom).

In comparison to the general preparation clause in Art. 18 CC, there is one more conduct specified in Art. 261 par. 4: providing or raising funds in order to facilitate the perpetration of a criminal offence.⁶⁹ This conduct was first enacted by the amending Act LXXXIII of 2001 in order to comply with the requirements of the UN-Convention 1999. The reason for the modification was given by the legislature as follows: before 2001, only “providing funds” to terrorist offences was punishable, but, also cases could occur where funds are raised but eventually not provided for the perpetration. That is, the funds that had been raised with the purpose to be used for a terrorist offence were finally not used for the perpetration. In the legislature’s words, the dangers brought about by terrorism legitimize the intensified combat against them and give acceptable reason for criminal liability in such an early phase of the perpetration.⁷⁰ In case these funds are directly connected with the perpetration of a terrorist offence, the person who raised and/or provided them is liable as abettor

accessory to the terrorist offence committed by the perpetrators, even if the abettor did not take part in the commission of the terrorist offence directly.⁷¹

In our opinion, these arguments of the legislature had lost their validity by the next amendment to the CC in 2007 that introduced the *sui generis* preparatory offence in its current form. The facts the legislature intended to cover in 2001, referring to the UN-Convention, could have been covered by the *sui generis* rules on preparation since 2007. The specification of this conduct in the statutory definition became superfluous since it no longer has an independent scope due to the before-mentioned catch-all clause. Providing the conditions that are necessary for or facilitate the perpetration (Art. 261 par. 4 conduct Nr. 5) completely covers providing or raising funds for the purpose of perpetration. It has to be stressed that the offender may be liable on the ground of this catch-all clause only if the funds were eventually not provided and the offender “got stuck” in the stage of preparation (cf. *supra* the reasoning of the legislature). Have the funds been provided, the person who raised them is liable as an abettor for type I or II of terrorist offences, just like it is the case with the specified conduct “providing and raising funds” (as mentioned above). Thus, the maintenance of the specification after 2007 unnecessarily makes the regulation more complicated; it rather should have been erased by the amendment 2007.⁷²

Compared to the general preparatory acts, it has to be pointed out again, that prescribing these conducts in the statutory definition of terrorist offences deprives them of their preparatory character to some extent and makes them a completed *sui generis* offence, that is, a single type of terrorist offences. Each conduct shall be directed to type I or II of terrorist offences. A negative condition of the liability for this type is that the base offences in par. 9 may not have been attempted (this results in the completion of type I like mentioned above), nor may type II of the offence have been attempted (this results in attempted terrorist offence like mentioned above). In case of an attempted (or completed) terrorist offence, the previous conduct falling under par. 4 turns into perpetration of the attempted (or completed) type, or into instigation or abetting accessory to the relevant type and depending on the character of the conduct carried out previously.⁷³

Art. 261 par. 5 has to be regarded as a qualified type of par. 4 since it provides a higher range of penalty in case the conducts specified in par. 4 are carried out in a terrorist group. Par. 5 consists of two clauses: 1) carrying out the preparatory-like conducts in order to commit type I or II of terrorist offences in a terrorist group, 2) supporting the terrorist group in any other form.

The first clause of par. 5 is in connection with the organization of a terrorist group. The statutory conducts (invitation etc.) relate either to a joint perpetration in a terrorist group or another person’s participating in the perpetration of the offence in the framework of a terrorist group. The statutory conducts in par. 5 are equal to those in par. 4, however, they have another direction. Perpetrators embraced by par. 4 prepare at least one terrorist offence, either type I or II, while perpetrators embraced by par. 5 first organize a terrorist group in order to commit terrorist offences (type I or II) in its framework later. Therefore, the statutory conducts relate to the organization of a terrorist group and not to a concretely planned terrorist offence.

The second clause of par. 5 presupposes the existence of a terrorist group. Consequently, the supportive perpetrator has to be an outsider of the group. The statutory conduct means the general support of the existence or the activity of the terrorist group, either psychically or physically. However, the support has to be objectively suitable to promote the realization of the group’s purpose.⁷⁴ Examples include supplying the members of the group with information and money, providing equipment or armament, financing of the member’s training or providing a flat or a vehicle. The support may never be directly linked with a base offence (in terms of pars 1 and 9) or a ‘conduct as means’ (in terms of par. 2). Should this be the case, that is, a person provided funds

that were directly used for the commission of a terrorist offence, but s/he did not participate in the perpetration, s/he is though liable as an abettor for type I or II of the offence. Because, in such a case, it is not the terrorist group that has been supported “in any other way”, but it is the concrete terrorist offence the commission of which has been promoted directly. Especially, the errand of explosive devices, firearms, vehicles, falsified documents, or the provision of necessary information for the purpose of committing an offence under par. 1 or 2 embodies abetting according to these types and is not covered by par. 5.⁷⁵

Terrorist group is defined in Art. 261 par. 9 CC: a group of three or more persons organized for a longer period and operating in accord in order to commit criminal offences defined in paragraphs (1)-(2). This definition fully complies with the provision of the Framework Decision 2002.⁷⁶ In terms of Art. 2 of the Framework Decision a terrorist group is not randomly formed for the immediate commission of an offence and it does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Under Hungarian criminal law, the terrorist group is a *specific kind of a criminal organization* the speciality of which is embodied by its purpose to commit one or more terrorist offences. This relation of speciality has the consequence that a terrorist group has always to be regarded as a criminal organization, so we have to make clear their differentiation, particularly concerning the range of the penalty applicable (infliction of penalty).

The definition of criminal organization is laid down in Art. 137 nr. 8 CC: ‘A criminal organization is a group of three or more persons organized for a longer period of time and operating in accord in order to commit intentional criminal offences punishable with imprisonment of five years or more.’ The sanctioning rules of criminal organization are very stringent in Hungarian criminal law as they prescribe an obligatory and significant increase of the penalty. The increased range of penalty is laid down in Art. 98 CC: If someone commits an intentional criminal offence punishable with imprisonment of at least five years in a criminal organization, the upper limit of the penalty shall be doubled but must not exceed twenty years (the latter being the general maximum of fixed-term imprisonment in Art. 40 par. 2 CC). Furthermore, persons that have been convicted of offences committed in a criminal organization are excluded of the possibility of conditional sentence, they may not be granted conditional release and their penalty must be executed in a prison of highest security level.

The differentiation between Art. 261 par. 5 and the (very severe) consequences of a criminal organization (Art. 98 CC) can be made on the ground of the phase (preliminary stage) of the concrete offence. *The sui generis offence of a terrorist group* under Art. 261 par. 5 relates only to the *preparatory phase of terrorist offences*. Consequently, should a terrorist offence at least *be attempted in the framework of a terrorist group*, the perpetrator is no longer liable for Art. 261 par. 5 but for terrorist offence type I or II where the sanctioning rules concerning *criminal organization* (like discussed above) have to apply.

B) History

a) Common features with the offences against the state

As described above, the legislature, taking the particular dangerousness of the types laid down in Art. 261 pars 1 and 2 CC into consideration, made their preparatory acts in form of a *sui generis* offence punishable. If these preparatory acts are carried out in order to commit terrorist offences in a terrorist group, the perpetrators and those supporting the terrorist group are punishable under Art. 261 par. 5. Consequently, the historical antecedents of type III of terrorist offences can be found among those related to Art. 261 pars 1 and 2 CC, their preparation, and offences characterized by conspiracy.

As pointed out [see supra 3.2.2.B], type I of terrorist offences (Art. 261 par. 1 CC) can be traced back to the offence of high treason under Code Csemegi. The preparation of offences was unpunished in general in Code Csemegi, the legislature though made conspiracy as a *sui generis* preparation of high treason punishable, taking the particular dangerousness and serious consequences of the offence into account.⁷⁷

The modifications introduced by Átv (1921) (and later Dátv) made preparatory conducts punishable that can be regarded as “first steps” in respect of the offences against the state under Code Csemegi and that had been unpunished before.⁷⁸ The initiation of a conspiracy was also regarded as particularly dangerous by the legislature after the World War I. The punishable conducts connected to conspiracy were as follows: initiation, leading, active participation and aiding.⁷⁹ *These preparatory acts differ only in their names from the conducts laid down in Art. 261 par. 5, where the perpetrators perform their activity in order to organize a terrorist group.*

The Dátv (1946) extends the scope of punishability also on those providing a considerable financial support for the conspiracy, which was reasoned by the importance of the assets standing behind the conspiracy.⁸⁰ *This kind of conduct is very similar to that laid down in Art. 261 par. 4 CC* (providing or raising funds to finance the activities) if it is carried out for the benefit of a terrorist group under par. 5.

The CC 1961 has maintained the above mentioned regulation of the Átv and Dátv.

b) History of the statutory definition

The CC 1978 has enacted the terrorist offences in Art. 261 and provided penalty also for the stage of preparation, relying on the importance of prevention and criminological experiences.⁸¹ It has however to be stressed that the preparation in this original version of 1978 was made punishable under referring to the general provision on preparatory acts in the General Part of the CC⁸², that is, not in the current form of a *sui generis* (completed) offence.

The amending Act XXVII of 2007 to the CC affected the preparation of terrorist offences because the Hungarian regulation had still not been completely accordant to the UN-Convention 1999. This amendment created the new provision of Art. 261 pars 4 and 5 on the *sui generis* offences of preparation. The UN-Convention provides that raising and providing funds for terrorist offences is punishable even in case the terrorist offence is not committed in a terrorist group but alone or by more offenders who, however, do not embody a terrorist group.⁸³ Furthermore, Art. 2 par. 4 of the UN-Convention declares also the attempt of these conducts punishable, which has an important effect on the scope of criminal liability considering the fact that the punishability of attempting preparatory acts according to the General Part of the CC is excluded. It therefore represents an important modification compared to the original version of the CC 1978. The content of Art. 261 par. 5 has not been changed; the method of regulation has though been simplified as the conducts laid down in par. 4 are no more repeated in par. 5, the latter refers back to par. 4 and makes those conducts in connection with a terrorist group punishable.

3.2.5 Type IV of terrorist offences (Art. 261 par. 7 CC) and its history

A) Threatening to commit terrorist offences (Art. 261 par. 7 CC)

This type of terrorist offences can be committed by the perpetrator’s threatening to commit a terrorist offence, which covers each kind of the perpetrator’s expressing his/her will to carry out the conducts laid down in par. 1 and 2 in a serious form. This can happen either orally, in written form or by a conduct implying his/her intent.⁸⁴ A negative condition to this type is that none of the base offences listed in par. 9 nor type II of

terrorist offences under par. 2 have reached the preparatory phase yet. Should this be the case, the perpetrator is liable for the preparation of terrorist offences and not for type IV of the offence.⁸⁵

Nevertheless, there are critical voices pointing out that the provision of the Framework Decision 2002 on threatening with terrorist offences has not been correctly implemented since it is listed in relation to the base offences of terrorism (type I), that is, threatening to commit any of the base offences with terrorist aim shall be punishable. However, the Hungarian CC provides a single type for this offence where the placement of this type of the offence separated from and after the preparatory acts results in constituting a kind of ante-preparation (like just mentioned above), that is, it constitutes criminal liability even for conducts that do not reach the level of preparation. This solution represents an extreme broad scope of criminal liability and is therefore more than questionable.⁸⁶

B) History

This type of terrorist offences, since being a kind of ante-preparation, has no antecedents in Hungarian criminal law.

3.3 Offences related to terrorism

There are many criminal offences, which can be related to terrorism in many different ways. Criminology categorizes the phenomenon of terrorism from different points of view (classification by place, purpose, target, issue, tactics and also by modes of attack or types of used weapons).

We prefer the following classification for the purpose of this report:

- a) conventional terrorism by using ‘conventional’ firearms and explosive devices,
- b) non-conventional terrorism, which is also called as NBC terrorism (nuclear, biological, chemical⁸⁷) or as technological terrorism,
- c) cyberterrorism or digital terrorism by way of using computer technology,
- d) narcoterrorism.⁸⁸

3.3.1 Offences related to conventional terrorism

The “traditional terrorism” – with specific terrorist intent – is almost always connected with other crimes. The misuse of firearms and explosives is a typical co-activity with terrorist attacks; these means can cause serious harms and damages on relatively “low” costs.

Hungary’s establishment of restrictions on foreign and domestic trade of firearms and explosives helps prevent terrorists from obtaining weapons. Government Decree No. 253/2004 (VIII. 31.) covers domestic trade of civilian firearms and ammunitions, and establishes conditions for acquisition of civilian firearms by natural persons. Natural persons are not allowed to possess military designated (eg. automatic) weapons and ammunitions (eg. steel-core, tracer), which is the exclusive privilege of the armed forces.

The law prohibits the illegal production, possession, trade, export, import of firearm or/and ammunition and also if somebody gives his weapon legally possessed to a person not entitled to. The penal provisions are laid down in Art. 263/A CC. The same activities are prohibited in connection with explosives (Art. 263 CC) and dual-use weapons as well (Art. 263/B CC). These criminal offences have certain severity in the context of Hungarian criminal law, because the punishment is 2 to 8 years imprisonment and 5 to 10 or 10 to 15 years imprisonment in qualified cases. For instance, the perpetrator trades with firearms or explosives commercially.

Important to note, that also the preparation of these offences is punishable (with imprisonment up to five years).

3.3.2 Offences related to mass destruction terrorism

Several measures have been taken to prevent acts of nuclear (and biological) terrorism in Hungary. The International Convention for the Suppression of Acts of Nuclear Terrorism was ratified on 12 April 2007. Act LXXXII of 2006 on the enactment of the Agreement and the Protocol concerning the implementation of Art. III (1) and (4) of the Treaty on the Non-Proliferation of Nuclear weapons, entered into force on 11 November 2006.

Art. 264 CC contains the misuse of radioactive substance (punishable with up to five years imprisonment), and Art. 264/C CC defines an offence for the case if the perpetrator produces, uses, acquires, possesses, exports, imports or hands over weapons prohibited by an international convention to another person. This criminal offence is very dangerous, the legislator therefore provided a maximum penalty of 15 years imprisonment, and imprisonment up to 20 years or life-imprisonment in qualified case (if the offences is committed in a criminal association).

3.3.3 Offences related to the cyber terrorism

In Hungary, there are no special provisions to ban the misuse of the cyberspace for terrorist purposes. Misuse of cyberspace may be considered in Hungarian criminal law as a preparatory act to a terrorist offence but breaching computer systems and computer data in general (i.e.: without terrorist purpose) is punishable, too.

According to Art. 300/C CC ('computer offence') it is punishable if somebody gains unauthorized entry to a computer system or network by compromising or defrauding the integrity of the computer protection system or device, or overrides or infringes his user privileges. The qualified form of this offence is if the perpetrator, without permission, alters, damages or deletes data stored, processed or transmitted in a computer system (network) or denies access to the legitimate users. If the misuse of computer systems aims at financial gain or advantage, the punishment is imprisonment up to three years, but can be increased up to ten years depending on the damage caused. This severe punishment is laid down for material damages over 500 million HUF (appr. 2,5 million US dollar).

Both the technical supporting of 'computer offence' and the sharing of know-how concerned are also punishable by the law (Art. 300/E CC).

3.3.4 Financing of terrorism

The terrorism needs financial support, and the source of financial means derives often from criminal activities. Therefore, the law shall try to set back any possibility to finance terrorism legally and to ban any channels of financing. The related law regimes are called AML (anti-money laundering) and CFT (combating the financing of terrorism) regimes.

The core elements of Hungary's AML/CFT regime are established in the Hungarian Criminal Code and the Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (AML/CFT Act).

The Section 4 Art. 261 CC⁸⁹ defines as terrorist offence even the support of terrorism with financial means, but it could happen that there is no such direct link between financing and terrorist activity, these are the cases of money laundering.

In Europe, the AML/CFT are European issues; the European Union has launched three directions in order to lead the Member States to a common level of suppression. Also the relevant UN and Council of Europe instruments are followed by Hungary.

Today, the Third Money Laundering Directive and Commission Directive 2006/70/EC is in force and its implementation into Hungarian legislation by the mentioned AML/CFT Act entered into force on 15 December 2007. 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 (Preamble).

Hungary has adopted and implemented a risk-based approach to AML/CFT, particularly in relation to customer/beneficial owner identification and verification requirements. Pursuant to the AML/CFT Act, financial institutions are entitled to specify the extent of customer due diligence measures on a risk-sensitive basis. The scope of the Act covers financial and investment services, commodity exchange services, postal money orders and transfers, real estate agents, auditors, accountants, tax advisors, casinos, jewellers, lawyers and notaries. The Act introduces more specific and detailed provisions relating to customer and beneficial owner identification and verification. This Act provides for the freezing of funds (financial assets) and economic resources of terrorist by administrative measures.

Besides the special identification and verification requirements, the Act prescribes also an obligation of report about suspicious circumstances. In the event of noticing any information, fact or circumstance that may suggest money laundering or terrorist financing, the concerned employee of the institution shall, without delay, file a report to the national financial intelligence unit. The report shall contain the data and information, fact or circumstance suggesting money laundering or terrorist financing. According to the law, the institution (bank, insurance service, investment office, other financial services etc.) can even suspend a transaction where it knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted (Art. 23-24).

The obligations of customer due diligence and reporting prescribed in AML/CFT Act shall apply to attorneys if they hold any money or valuables in custody or if they provide legal services, with exemption of providing the defence in criminal proceedings or legal representation before a court or at any time thereafter (Art. 36). The lawyer cannot be held liable for reporting if it proves to be unfounded later. Also, reporting is not considered the violation of professional secrecy.

It is worth to note, that in the period from 1 January 2005 to 31 December 2009, there were 235 cases reported on suspicious transactions relating to money laundering offences to law enforcement agencies. No cases have been forwarded regarding terrorism-financing offences.

The money laundering constitutes also an offence in Hungarian criminal law: Art 303 and 303/A contain the various forms of money laundering:

- a) “classic” ML (in order to conceal the origin of a thing obtained from criminal activities committed by other), it is called also as dynamic ML;
- b) so-called static ML (without concealing purpose, if the perpetrator “simply” being aware of the true origin of the thing at the time of commission);
- c) the self-laundering (in order to conceal the origin of a thing that was obtained from his/her criminal activities) and
- d) the negligent money laundering, when the perpetrator is negligently unaware of the criminal origin of the thing.

The penalty is up to eight years imprisonment in case of qualifications of the intentional offences (like commission in business-like manner, substantial or greater amount of money is concerned, ML is committed by

an officer or employee of a financial institution, or by a public official or by an attorney-at-law). The maximum imprisonment for negligent ML is up to three years.

As already mentioned, the administrative AML/CFT regime prescribes an obligation to report for certain persons who are “working with money”. The CC defines a criminal offence also concerning this obligation: if anyone intentionally fails to fulfil his/her obligation to report provided for by the AML/CFT Act may be punished with a sentence of up to two years imprisonment (Art. 303/B).

According to the last MONEYVAL report, as a consequence of Hungary’s strategic location in central Europe, a cash-based economy, and a well-developed financial services industry, money laundering in Hungary is related to a variety of criminal activities, including illicit narcotics-trafficking, prostitution, trafficking in persons, fraud and organised crime. Other prevalent economic and financial crimes include official corruption, tax evasion, real estate fraud, and identity theft. Although there is a domestic terrorist organisation, the risk of the country being used as a base for terrorism or financing of terrorism is *estimated as being low*.⁹⁰

3.3.5 Abetting after the fact

Art. 244 CC contains a general offence for the case if somebody helps a perpetrator of another crime without any prior consent in order that the perpetrator escapes or to hinder the criminal procedure (*e.g.* cover the tracks). This is, however, an incidental offence but the “abettor” will be held responsible as perpetrator of the offence laid down in Art. 244 (‘Abetting after the fact’) and not as an accessory of the other person’s offence (for instance of terrorist offences).

3.3.6 Responsibility of legal persons

Hungarian law acknowledges criminal liability for legal persons. Act CIV of 2001 on the criminal measures applicable against legal persons lays down the conditions for application of the measures to legal persons, procedure to be followed etc. The Hungarian regulation has been elaborated on the basis of the so-called ‘measure model’, by which measures are imposed on legal persons without establishing their criminal liability but only if a certain natural person was found guilty. Further conditions are that the offence was committed intentionally by the natural person, and the committed offence was aimed at or has resulted in the legal entity gaining benefit.

Since terrorist financing offence is an intentional criminal offence, if all the statutory conditions set out in the mentioned Act are met, the relevant measures could be applied to legal persons for terrorist financing offence. Nevertheless, the MONEYVAL report criticises the latter requirement on the base that terrorist financing offences are not in general committed for gaining material benefit. Therefore, the requirement of “benefit” would make the implementation of the criminal measures to legal persons impossible for terrorist financing offences. The critic is reasonable, and the legislator hopefully will accept it and modify the rules.⁹¹

3.4 Criminal procedure in case of terrorism

3.4.1 Introduction

A) Basic information on Hungarian criminal procedural law

The main legal source of Hungarian criminal procedural law is the Act XIX of 1998 on the Code of Criminal Procedure (CCP)⁹², which entered into force in 2003 and, like CC, is a single code of uniform structure, that is, its provisions cover the whole scope of criminal procedure. The *general principles* governing and prevailing in criminal proceedings in Hungary are laid down in the first Chapter of CCP; placing them

right at the beginning of the CCP stresses their significance. Hereunder, we cannot go into details about these principles, we just briefly refer to the fact that Hungary has been a member of the Council of Europe since 1990 and Hungarian criminal procedural law has succeeded in adapting to the *human rights standards prescribed by the European Convention on Human Rights* concerning criminal proceedings.

The criminal proceedings are carried out by the police, the prosecution service and the courts.⁹³ The criminal proceedings can be divided into two parts: the *investigation* in the pre-trial stage and the *court procedure*.⁹⁴ The *investigation* is a unified stage of the criminal procedure⁹⁵ carried out by the investigating authorities and the public prosecution service until filing the indictment. The general investigating authority is the police having competences also in investigating terrorist offences. The public prosecution service itself can carry out investigations or, in case the police investigate independently, has supervising competences over the activity of the police.⁹⁶

The *system of trial jurisdictions* comprises the municipal courts, the county courts, the regional high courts of appeal and the Supreme Court. The jurisdictional system of Hungary is established uniformly, with no special courts for e.g. criminal trials, juvenile offenders or military procedures. Each criminal and civil procedure falls within the competence of the uniformly established court system; professional judges specialize in certain types of proceedings within the framework of court boards on the county level (e.g., judges of the penal board are entitled to adjudicate criminal offences). The trial jurisdiction in criminal matters can be divided into first-, second- and third-instance jurisdictions.⁹⁷ The criminal courts of first instance are the municipal courts and the *county courts*, the latter *entitled* to deal with criminal proceedings instituted for *terrorist offences* (Art. 16 CCP).

Hereinafter, some further information on investigation will be given since this is the stage of criminal proceedings that has special features in case of terrorism compared to other criminal offences, and compared to the stage of the court procedure.

B) The characteristics of investigation in case of terrorist offences

The investigation can begin either on *data* that have come to the knowledge of the public prosecutor or the investigating authority within their official competence, or on complaint (Art. 170 par. 1 CCP). Both the complaint and the data must refer to the suspicion of a criminal offence, which can be defined as a level of probability concerning certain facts that can constitute a criminal offence.⁹⁸ Thus, an investigation may be started if a criminal offence has probably been committed (cf. Art. 6 par. 2 CCP).

The *relevant data* can derive from other official procedures (e.g. customs examination or customs control, road traffic control, tax procedure), official databases and records of the investigating authorities, or even *covert data gathering*, the latter having particular significance in preventing and detecting terrorist offences. In case of terrorist offences, a special stage primarily based on *intelligence activities* often predates the investigation itself.⁹⁹ The rules on intelligence activities are provided by the Act XXXVI of 1994 on the Police (Rtv)¹⁰⁰ and the Act. CXXV of 1995 on the National Security Agencies (NBtv).¹⁰¹

Although the evidentiary rules of the Hungarian CCP follow the free system of evidence, the CCP still catalogues the means of proof and provides *rules for the exclusion of evidence*. An important guarantee is embodied by Art. 77-78 CCP providing that the human dignity, the personality rights and right of reverence of those involved shall be respected in the course of the acts of the evidentiary procedure, and unnecessary disclosure of data on privacy shall be prohibited. Furthermore, facts derived from means of evidence obtained by the court, the prosecutor or the investigating authority by way of committing an offence, by other illicit methods or by the substantial restriction of the procedural rights of the participants must not be admitted as

evidence (Art. 78 par. 4 CCP). Complying with these standards is essential even in case of terrorist offences and particularly concerning intelligence activities.

Terrorist offences are particularly grave offences that seriously threaten the social coexistence; the state and the society therefore have a significantly high interest in terrorist offences' coming to their knowledge in the earliest stage possible. The detection and prevention of terrorist offences, due to the extreme high risks concerning national security, cannot lack covert methods and intelligence activities in most cases.¹⁰² *Regarding the legal possibilities*, there are two groups of covert methods that can be used in preventing and detecting terrorist offences (and a range of other offences as well). On the one hand, *CCP* provides the so-called *covert data gathering* that can be carried out in the framework of criminal proceedings (i.e. after the criminal procedure has been instituted). On the other hand, *Rtv* and *Nbtv* provide rules on the so-called *covert intelligence activities* carried out by special agencies and prior to the institution of criminal procedure.¹⁰³

The newest amendments concerning these investigation methods and relevant to terrorism were enacted in 2010 (Act CLXXXIII of 2010 and CXLVII of 2010) affecting both the rules of CCP and those of Rtv and Nbtv. Both the authorities entitled to carry out covert intelligence activities and the covert methods they use were concerned by the modifications. First, the authorities within the competence of which the intelligence activities on terrorist offences fall and, second, the covert methods they use (covert data gathering and covert intelligence activities) will be outlined.

3.4.2 Institutional system

A) The tasks of the national security services in combating terrorism

The national security services form a part of the executive; they are governed by the competent Minister of Government and controlled by the Commission of National Security of Parliament. Art. 2 par. 1 of Nbtv distinguishes between *civilian national security services* (Information Agency, Agency for the Protection of the Constitution, Specialist Service for National Security) and *military national security services* (Military Intelligence Agency and Military Security Agency). It is the *Information Agency* among the civilian national security services that deals with counter-terrorism tasks: to this end, it gathers information on foreign organized crime endangering national security, especially terrorist organizations, illegal drugs and arms trade, incl. trade of components of arms suitable for mass destruction (Art. 4 Nbtv). The *Military Intelligence Agency* has similar tasks concerning terrorism: it gathers information on illegal arms trade threatening national security and terrorist organizations threatening the security of Hungarian Defence Forces (Art. 6 Nbtv). It is the *Military Security Agency* that has broader functions in counter-terrorism: it detects and prevents the foreign powers', persons' or organizations' efforts to commit terrorist offences against the bodies of the Hungarian Defence forces, and detects terrorist offences (Art. 7 Nbtv).

Art. 31 Nbtv provides the guarantee that the national security services may not function as an investigating authority, consequently, they have no powers and competences in criminal proceedings. Furthermore, the activity of the national security services has to comply with certain principles, such as: the use of means and methods requires authorization and must be lawful; the means and methods used must be necessary, predetermined for specific purposes, suitable and proportionate to the threat; the activity must be documented.¹⁰⁴

B) The tasks and competences of the police in combating terrorism

Since the 2010 amendments mentioned above, the combat against terrorism has been included in the general competences of the police. Art. 1 par. 2 Rtv contains a particular provision: the police *detect* the terrorist organizations being active in the territory of the Republic of Hungary, *prevent* them from committing criminal

offences; *prevent* terrorist organizations' being supported financially or in any other ways by any organizations or persons in the territory of the Republic of Hungary.

Since 1 January 2011, these functions have fallen within the competences of the *Counter-Terrorism Unit* (TEK – abbreviation in Hungarian) in the framework of the police. With the increasing threat of terrorism after 9/11 in the United States and bombings in Madrid and London, it has become an EU requirement for each member state to have an organisation set up with a clear profile of combating terrorism.¹⁰⁵ Several countries in Europe are exposed to terrorism threats, and TEK must stay prepared to provide help by preventing potential terrorists from using Hungary as an escape route, harbouring in the country, launching operations or keeping money in accounts. TEK operates on an annual budget of 13 billion forints (EUR 47 million) and a staff of 750-800 officers with jobs for another 200. The centre, which reports to the interior ministry, works in close cooperation with the police and has carried out 50 successful operations leading to the arrest of armed perpetrators of violent crimes.

The organizational structure and responsibilities of the TEK are clear, prevention, detection and elimination are well integrated thus enabling an accelerated flow of information. Although in most Western-European countries the substantial counter-terrorism organizations were established after the attacks, Hungary is among the first to recognize the importance of a well-structured, effectively functioning organization which is able to prevent tragedies.¹⁰⁶

The regulation establishing the TEK declared country-wide territorial competence for the centre operating under the general budget of the Ministry of Interior. The TEK protects both the Prime Minister and the President of the Republic as well as analyzes and evaluates the level of terrorist threat in the country. Its tasks include detection and suspension of the following crimes: terrorist offences, kidnapping, seizure of aircraft, rail, sea, road, public transport or freight vehicle. Upon request by investigative authorities, public prosecutors and law enforcement agencies, it is also responsible for arresting an armed person suspected with committing a criminal offence, interrupting criminal offences involving violence against a person, arresting those representing self- or public threat.

The TEK, just like the national security services, does not function as an investigating authority; its functioning primarily has a proactive, operative feature.

3.4.3 Covert means and methods

As for covert intelligence activities, the *national security services* are entitled in Art. 3 Nbtv to carry out their tasks both by way of open and covert intelligence activities, the latter divided into two types: those requiring external authorization and those not requiring this. The *TEK*, in order to carry out its tasks, is also entitled by Art. 7/E par. 2 Rtv to covert intelligence activity, both to that requiring judicial authorization and that not requiring this. A limitation however prevails in respect of covert intelligence activity requiring judicial authorization since it may be carried out only and exclusively for detecting criminal offences.

As for covert data gathering, the CCP entitles the investigating authorities and the public prosecution service to covert data gathering with judicial authorization in case of serious criminal offences exclusively specified in Art. 201 par. 1.¹⁰⁷ The covert means and methods may be used in order to identify the perpetrator, detect his/her location and arrest him/her as well as to detect means of evidence. The covert data gathering is carried out without informing those affected and it is limited to a period between the institution of the investigation and its closing (until the defendant and the defence counsel were notified that they have the right and opportunity to inspect all the documents produced during the investigation).

As shown above, covert intelligence activity and covert data gathering are carried out in a different period of time and by different authorities. The essential question of how data obtained by way of covert intelligence activity prior to the institution of the investigation can be used as evidence in the criminal procedure is regulated in Arts 206-206/A CCP in details. The most important condition is that covert intelligence activity has to fulfil each requirement covert data gathering must comply with under CCP, otherwise the data obtained are excluded as evidence.

Covert means and methods that can be used in the course of detecting and investigating terrorist offences are abstracted in the following table:

Means applicable during covert data gathering under CCP (always requiring judicial authorization)	Means applicable during covert intelligence activity under Rtv		Means applicable during covert intelligence activity under Nbtv	
	Means not requiring judicial authorization Art. 64 par. 1 Rtv	Means requiring judicial authorization Art. 69 par. 1 Rtv	Means not requiring external authorization Art. 54 par. 1 Nbtv	Means requiring external authorization Art. 56 Nbtv
a) keep under surveillance and record the events in a private home with a technical device; b) open and control letters and personalized sealed packages, learn and record with a technical device their content as well as communication made by way of electronic systems; c) learn, record and use data transmitted or stored by way of a computer devices or system.	a) employ informants, confidants or other persons in secret cooperating with the police; b) gather information and control data by way of concealing the purpose of the activity or employing a covert investigator; c) issue and use documents, establish and run cover institutions in order to conceal and protect its own staff and other cooperating persons as well as to conceal the capacity as police; d) observe and gather information about persons that can be suspected of criminal offences and other persons being in contact with him/her, about premises, buildings and other objects, route sections, vehicles and events that can be associated with criminal offences, and record with a technical device the data detected; e) use a trap not suitable to cause injuries or damages to health in order to identify the perpetrator or for the purpose of evidence; f) for the purpose of trial purchase, employ informants or confidants, covert investigators or other persons in secret cooperating with the police; and use a covert investigator authorized by the public prosecutor for the purpose of simulated purchase, integration into a criminal organization or controlled transportation; g) if no other means are available for preventing and detecting the criminal offence or arresting the perpetrator, substitute and take over the role of the victim by a policeman in order to protect the victim's life and bodily integrity; h) gather information from communication systems and other data storages.	a) search a house in secret and record with a technical device the data detected; b) keep under surveillance and record the events in a private home with a technical device, c) open and control letters and personalized sealed packages, learn and record with a technical device their content as well as communication made by way of electronic systems, d) learn, record and use data transmitted or stored by way of a computer devices or system	a) ask for information; b) gather information by way of concealing national security capacity; c) make secret contacts to private persons; d) create and run systems enabling the gather of information; e) use a trap not suitable to cause injuries or damages to health; f) issue and use documents in order to conceal and protect its own staff and other cooperating persons as well as to conceal the capacity as national security; g) establish and run a cover institution; h) keep under surveillance persons affected by the service's task and other associated premises, buildings and other objects, route sections, vehicles and events, and record with a technical device the data detected; i) apart from the cases requiring external authorization, eavesdrop on conversations and record with a technical devices the data detected; j) gather information from communication systems and other data storages.	a) search a house in secret and record with a technical device the data detected; b) keep under surveillance and record the events in a private home with a technical device; c) open and control letters and personalized sealed packages, learn and record with a technical device their content; d) same means concerning communication made by way of electronic systems; e) learn, record with a technical device and use data transmitted or stored by way of a computer devices or system.

3.4.4 Latest developments concerning the investigation and court procedure dealing with terrorist offences

The recent amendments to CCP enacted by the Act LXXXIX of 2011 came into force early July 2011 and introduced a special procedure of the court in “*priority matters*” (Art. 554/A – 554/N CCP). The modifications affected a huge list of criminal offences, hence discussing them would go beyond our paper. Now, the relevance of terrorism will briefly be mentioned.

The amending Act exclusively listed the criminal offences that had to be dealt with as priority matters in the course of the criminal proceedings. *Type I of terrorist offences in case it involves intentional homicide* (Art. 261. par. 1 in connection with par. 9) had to be regarded as priority matter. Consequently:

- the defendant could be arrested (coercive measure not requiring judicial decision) for a period of maximum 120 hours, which was significantly longer than 72 hours in normal matters;
- the public prosecutor could order that the defendant arrested must not contact his/her defence counsel during the first 48 hours of arrest;
- the defendant arrested had to be heard for the first time only within 72 hours, which is triple the period of 24 hours in normal matters;
- the minimum sum of bail were fixed (HUF 3 million ~ EUR 11.000) unlike normal matters where the sum has no limits fixed by CCP;
- the General Public Prosecutor could order that the indictment should be filed to a court designated by him/her irrespective of the provisions of CCP on territorial competence if, in his/her opinion, priority cannot be guaranteed by the court having territorial competence for the proceedings.

These modifications were reasoned by the legislature by the need of an effective and fast criminal procedure.¹⁰⁸ In our view, these rules reflect a clear approach of “*Feindstrafrecht*” that has had no signs in Hungarian procedural law before. These amendments were contested before the Constitutional Court of Hungary in December 2011, they proved to be unconstitutional and to violate the European Convention on Human Rights as well, consequently, they were annulled by the Decision Nr. 166/2011 (XII.20.) AB. The annulled modifications violated the *fair trial principle*, the *fundamental right to defence* and the *right to personal freedom* (habeas corpus rules).

4 Participation in international activities and measures

4.1 Afghanistan

Hungary made a long-term commitment to continue its leadership of a Provincial Reconstruction Team in Afghanistan, and proceeded with plans to increase its deployments there to more than 200.

4.2 Guantanamo

In September 2009, Hungary announced that the country would accept one detainee from the Guantanamo detention facility. This decision was controversial, but won cross-party support. In late November, the detainee was transferred to Hungary.

4.3 Acknowledgement of Conventions and Other International Instruments

There are a number of classical multilateral treaties under the auspices of the UN and the Council of Europe that involve obligations to extend the scope of criminalization and that have been ratified by the Hungarian legislature. On the other hand, the membership of the country in the European Union is of growing

importance in the field of criminal legislation. Hungary is a party to all of the general international instruments in the field of mutual legal assistance in criminal matters and extradition, and the special counter-terrorism (and AML) measures. Hungary follows a dualist system of law regarding the relationship between international and domestic law; therefore, every international convention requires ratification. Without ratification, an international agreement cannot be source of criminal law. Nevertheless, Art. 7 par. 1 of the Constitution sets out that the legal system accepts the universally recognized rules and regulations of international law and harmonizes the internal laws and statutes of the country with the obligations assumed under international law.

The work of the *United Nations* in the area of international counter-terrorism is fully supported by Hungary. The country has signed and ratified all the related conventions and protocols on terrorism.¹⁰⁹

Hungary is fully committed to the *Council of Europe's* work to combat terrorism. The list of instruments drawn up in the Council of Europe which have been signed or ratified by Hungary is attached below. Work is currently underway in Hungary to enable the ratification of the remaining instruments, especially the Council of Europe Convention on the Prevention of Terrorism (ETS 196).¹¹⁰

Hungary	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	3/5/1996	6/5/1997
Amending Protocol (ETS 190)	15/5/2003	
European Convention on Extradition (ETS 24)	19/11/1991	13/7/1993
First Additional Protocol (ETS 86)	19/11/1991	13/7/1993
Second Additional Protocol (ETS 98)	19/11/1991	13/7/1993
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	19/11/1991	13/7/1993
First Additional Protocol (ETS 99)	19/11/1991	13/7/1993
Second Additional Protocol (ETS 182)	15/1/2003	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	8/11/2001	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	8/11/2001	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	6/11/1997	2/3/2000
Convention on Cybercrime (ETS 185)	23/11/2001	4/12/2003
Council of Europe Convention on the Prevention of Terrorism (Warsaw, 2005)	16/5/2005	
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	-	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	10/10/2007	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	14/4/2009	14/4/2009

Hungary is a party to other international conventions and treaties relating to terrorism and cross-border cooperation of law enforcement authorities in other international frameworks as well.

*European Union:*¹¹¹

- The 1995 Europol Agreement (announced by the Act XIV of 2006);
- The 1990 Convention on the application of the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the gradual abolition of checks at their common borders;
- The 29 May 2000 Convention, adopted by the EU Council of Ministers on Mutual Assistance in Criminal Matters and its Protocol of 16 October 2001 (announced by the Act CXVI of 2005);
- The Treaty of Prüm on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (Act CXII of 2007).

These agreements, inter alia, allow for the exchange of information and intelligence between law enforcement authorities, in order to strengthen the co-operation in the fight against terrorism.

The same purposes – inter alia – are followed by the non-EU organisations, like the Southern European Cooperative Initiative (SECI)¹¹² and the Interpol.

As Hungary is a committed participant of the fight against terrorism, several bilateral agreements have been concluded with other states on cooperation to fight against terrorism, organized crime and illicit trafficking of drugs in the last decade. Among others, Hungary has bilateral agreements in this field with Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, China, Cyprus, the Czech Republic, Egypt, Estonia, France, Greece, Croatia, the United Kingdom, the United States, Ukraine, Ireland, Israel, Jordan, Kazakhstan, Kuwait, Poland, Latvia, Lithuania, Italy, Malta, Morocco, the Netherlands, Romania, Russia, Slovenia, Slovakia, South-Africa, Serbia, Switzerland, Spain, Sweden, Turkey, Tunisia and Vietnam.¹¹³

Notes

¹ The overview is a short version of the information given in *Karsai/Szomora: Criminal Law in Hungary*, Kluwer Law International, Alphen aan den Rijn 2010, p. 17-19.

² TE-SAT 2011 EU Terrorism Situation and Trend Report, 2011. Source: www.europol.eu

³ Beyond internet propaganda and blogging, the terrorist group's activities included Molotov cocktail attacks, handgun shots at politicians' properties, preparing improvised explosive device and triacetone triperoxide based bombs and also recruiting and training their members by military standards. The evaluators were informed that financing of most of these activities was possible due to the donations of members, friends and supporters. One of the leaders ran his own business (selling folk and traditional items, clothes etc.) and possibly applied part of his profit. The authorities advised that so far they have had no evidence of financial support received from domestic or international political or criminal organisations or sources arising from any criminal activity. No assets have been frozen. [See Anti-Money Laundering and Combating the Financing of Terrorism (MONEYVAL). HUNGARY. Report on fourth assessment visit of Hungary – 30 September 2010. Nr. 13.]

⁴ It has to be kept in mind that the number of registered offences relates to the mere fact of how many proceedings were instituted a year because of terrorist offences. These data does not allow to take consequences regarding the number of terrorist offences committed in a certain year or the outcome of the proceedings. These numbers include even matters where the procedure was terminated due to the facts examined constituting no terrorist offence.

⁵ Here we just shortly refer to the certain type of the terrorist offence; on the four types of terrorist offences in Hungarian Criminal Code see 3.2. in details. CC refers here and hereunder to the Act IV of 1978 on the Criminal Code of Hungary, which is still in force and has since undergone numerous amendments.

⁶ Győr-Moson-Sopron County Court B.714/2003/95.

⁷ Komárom-Esztergom County Court 6.B.468/2005/42.

⁸ Baranya County Court 7.B.267/2008/19

⁹ In a case dealt with by the Metropolitan Court, the offender committed bank robbery and took hostages in order to escape the police (7.B.61/2010/32.).

¹⁰ Metropolitan Court 21.B.812/2009/2.

¹¹ Metropolitan Court 7.B.855/2009/33.

¹² Metropolitan Court 14.B.1103/2009/16.

¹³ Karsai/Szomora 2010, p. 55.

¹⁴ Vida/Szomora: A terrorcselekmény [Terrorist offences], in: Nagy (ed.): A magyar büntetőjog különös része, Hvgorac, Budapest 2009, p. 396.

¹⁵ Erdősy/Földvári/Horváth: A magyar büntetőjog különös része II [Special Part of Hungarian Criminal Law]. Tankönyvkiadó, Budapest 1989, p. 120.

¹⁶ This first Criminal Code of Hungary created by and named after assistant minister *Károly Csemegi* was enacted in 1878 and came into force in 1880. It shall be hereunder referred to as Code Csemegi.

¹⁷ On the text of Art. 261 CC in its recent form, see ANNEX 1.

¹⁸ Belegi: Terrorcselekmény [Terrorist offences], in: Berkes: Magyar büntetőjog. Kommentár a gyakorlat számára, Hvgorac, Budapest 2006, p. 628.

¹⁹ Vida /Szomora 2009, p. 399.

²⁰ Belegi 2006, p. 632/1.

²¹ Belegi 2006, p. 632.

²² On these rules, see ANNEX 2.

²³ BH 1993. 597. The abbreviation BH refers to *Bírósági Határozatok*: Journal of Court Decisions; cases referred to by year and number of decision.

²⁴ BH 2003. 277.

²⁵ Belegi 2006, p. 631.

²⁶ The most important relevant UN-Convention is that for the suppression of financing terrorism of 9 December 1999 (hereunder shall be referred to as UN-Convention 1999). On further international conventions Hungary is a party to, see 4.3.

²⁷ Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA) (hereunder shall be referred to as Framework Decision 2002); Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism.

- ²⁸ The discussion follows the structure laid down in *Neparáczki*: Die Vorverlagerung der Strafbarkeit am Beispiel der Terrorismusverfolgung aus ungarischer Perspektive, in: *Sinn/Gropp/Nagy* (ed.) Grenzen der Vorverlagerung in einem Tatstrafrecht Eine rechtsvergleichende Analyse am Beispiel des deutschen und ungarischen Strafrechts V&R unipress 2011, p. 401-424.
- ²⁹ This interpretation can be given on the basis of the Act CXXXV of 1995 on the National Security Agencies and the Act CIV of 2002 on preventive criminal measures applicable against legal persons.
- ³⁰ *Belegi* 2006, p. 630.
- ³¹ *Vida/Szomora* 2009, p. 19.
- ³² *Finkey*: A magyar büntetőjog tankönyve [Studybook of Hungarian Criminal Law]. IV. átdolgozott kiadás, Grill Károly Könyvkiadó, Budapest 1914. p. 583.
- ³³ Ministerial Explanatory Notes to the Code Csemegi.
- ³⁴ *Vida/Szomora* 2009, p. 19.
- ³⁵ *Vida/Szomora* 2009, p. 20.
- ³⁶ *Angyal*: A magyar büntetőjog kézikönyve IV [Handbook of Hungarian Criminal Law]. Az állami és társadalmi rend hatályosabb védelméről szóló 1921: III.tc, Athenaeum Kiadó, Budapest 1928. p. 1.
- ³⁷ Hereunder shall be referred to as Átv.
- ³⁸ Hereunder shall be referred to as Dátv.
- ³⁹ Explanatory notes to Art. 1 of Act VII of 1946.
- ⁴⁰ Hereunder shall be referred to as CC 1961.
- ⁴¹ Hereunder shall be referred to as LawD 1971.
- ⁴² The unlawful seizure of an aircraft was a typical way of committing so-called conventional terrorist offences in the 1970s.
- ⁴³ The constitutional form of Hungary had been a people's republic up until the declaration of the Republic of Hungary on 23 October 1989.
- ⁴⁴ Ministerial Explanatory Notes to Chapter X of CC 1978.
- ⁴⁵ Ministerial Explanatory Notes to Art. 261 of CC 1978.
- ⁴⁶ *Vida/Szomora* 2009, p. 21.
- ⁴⁷ On the text of the statutory definition, see ANNEX 1.
- ⁴⁸ On the preliminary stages of criminal offences in Hungarian criminal law, see ANNEX 2.
- ⁴⁹ *Belegi* 2006, p. 630; *Sántha*: Terrorcselekmény [Terrorist offences], in: *Horváth/Lévay* (ed.): Magyar Büntetőjog Különös Rész 2. kötet, Complex, Budapest 2009. p. 354; *Kis/Hollán*: A magyar büntetőjog tankönyve II. [Studybook of Hungarian Criminal Law II.], Budapest 2008, p. 443; *Székely*, Terrorcselekmény [Terrorist offences], in: *Czibalmos* (ed.), A Büntető Törvénykönyv Magyarázata 2., Budapest 2004, p. 904; *Vaskuti*, Terrorcselekmény [Terrorist offences], in: *Czibalmos* (ed.), A Büntető Törvénykönyv Magyarázata 2., Budapest 2009, p. 979.
- ⁵⁰ *Angyal*: A magyar büntetőjog kézikönyve VII [Handbook of Hungarian Criminal Law VII]. Felségsértés. Királysértés. Hütlenség. Lázadás. Hatóságok büntetőjogi védelme. Athenaeum Kiadó, Budapest 1930. p. 11.
- ⁵¹ *Finkey* 1914, p. 585.
- ⁵² Assaults against the King not affecting him in his capacity as a monarch were qualified as "majesty-insult" under Art. 139 Code Csemegi and had a milder penalty.
- ⁵³ *Földvári*: Büntetőjog különös rész [Special Part of Criminal Law]. Tankönyvkiadó, Budapest 1969, p. 47.
- ⁵⁴ *Vida/Szomora* 2009, p. 399-400.
- ⁵⁵ *Belovics*: Terrorcselekmény [Terrorist offences], in: *Busch* (ed.): Büntetőjog Különös Rész. Hvgorac, Budapest 2009, p. 361.
- ⁵⁶ *Sántha* 2009, p. 354.
- ⁵⁷ *Angyal* 1930, p. 78.
- ⁵⁸ *Angyal* 1930, p. 94.
- ⁵⁹ Or to an international organization that, following from the legally protect interest, has no relevance in the history of offences against the state.
- ⁶⁰ See under 3.2.4.
- ⁶¹ *Erdősy/Földvári/Horváth* 1989, p. 121-122.; *Fonyó* (ed.): Magyar büntetőjog különös rész [Special Part of Hungarian Criminal Law]. BM Könyvkiadó, Budapest 1981. p. 347.
- ⁶² Explanatory Notes to CC.
- ⁶³ *Fonyó* 1981, p. 348.
- ⁶⁴ *Erdősy/Földvári/Horváth* 1989, p. 123.
- ⁶⁵ To this qualified type of the offences, even capital punishment was possible to be applied up until its abolition by the Constitutional Court of Hungary [Decision Nr. 23/1990 (X. 31.)].
- ⁶⁶ General Part of the Explanatory Notes to Act LXXXIII of 2001.
- ⁶⁷ On preparation and the preliminary stages of a criminal offence, see Annex 2.
- ⁶⁸ On preparatory acts under General Part of CC, see ANNEX 2.
- ⁶⁹ In this respect, see the so-called AML- and CFT-regimes under 3.3.4.
- ⁷⁰ Explanatory Notes to Act LXXXIII of 2001.

⁷¹ Vida/Szomora 2009, p. 403.

⁷² We hold our position even being aware of the critique MONEYVAL has expressed concerning the current regulation of Art. 261 par. 4. (MONEYVAL 2010, Nr. 115 and 120-123)

⁷³ On parties to criminal offences in Hungarian criminal law, see Annex 3.

⁷⁴ Kis/Hollán 2008, p. 444.

⁷⁵ Vida/Szomora 2009, p. 403.

⁷⁶ Art. 2 par. 1 of the Framework Decision: “a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences”.

⁷⁷ Angyal 1930, p. 25.

⁷⁸ Explanatory Notes to Act III of 1921.

⁷⁹ See on them Angyal (1928), p. 29.

⁸⁰ Explanatory Notes to Act VII of 1946.

⁸¹ Ministerial Explanatory Notes to CC 1978.

⁸² On that, see ANNEX 2.

⁸³ As interpreted by Explanatory Notes to Act XXVII of 2007.

⁸⁴ Belovics 2009, p. 362.

⁸⁵ Vida/Szomora 2009, p. 400.

⁸⁶ Bartkó: Büntetőjogi aggályok a terrorcselekmény tényállásával kapcsolatban [Concerns about the statutory definition of terrorist offences]. Jogtudományi Közlöny, December/2009, p. 537-538.

⁸⁷ Sometimes, radioactive weapons are also included in the abbreviation (NRBC). The sequence of the letters can differ.

⁸⁸ ‘Narcoterrorism’ is generally understood to mean attempts by drug traffickers to influence the policies of a government or a society through violence and intimidation, like it has been the case in Colombia, in particular. The term has expanded to mean known insurgent/guerrilla organisations that engage in drug trafficking activity to fund their operations and gain recruits and expertise. [O’Brien/Yar: Criminology: the key concepts. Taylor & Francis, 2008. p. 172.]

⁸⁹ See 3.2.4.

⁹⁰ MONEYVAL 2010, Nr. 4.

⁹¹ MONEYVAL 2010, Nr. 130.

⁹² Hereunder shall be referred to as CCP.

⁹³ Certainly, there exist more services and authorities (e.g. the prison system, the Probation Service or the bar) that are entitled to carry out important tasks concerning criminal procedure, their introduction is however not closely related to terrorism, we therefore dispense with discussing them in this paper. On a detailed overview of the Hungarian criminal justice system see Karsai/Szomora 2010, p. 23-35.

⁹⁴ Cséka et al.: A büntetőeljárás jog alapvonalai I. [Basics of criminal procedural law I], Bába, Szeged 2006, p. 29.

⁹⁵ That is, there are no substantive subdivisions in the course of the proceedings and the institution of judicial inquiry does not exist in Hungary.

⁹⁶ On the relationship between the police and the prosecution service, see in details Karsai/Szomora 2010, p. 141-143.

⁹⁷ It has to be noted that a second appeal is permissible only exceptionally and in a limited scope, namely, if the decisions of the first- and second-instance courts differ concerning the guilt of the defendant (e.g. if an accused convicted in first instance was acquitted by the appellate court, or inversely).

⁹⁸ Cséka et al 2006, p. 343.

⁹⁹ Finszter: Az alkotmányos büntetőeljárás és a nyomozás [Constitutional criminal procedure and investigation]. Fundamentum 2/1997, p. 114.

¹⁰⁰ Hereunder shall be referred to as Rtv.

¹⁰¹ Hereunder shall be referred to as Nbtv.

¹⁰² Urbán: A nemzetbiztonsági szolgálatok és a terrorelhárítás [National Security Services and counter-terrorism]. Író Gergely Alapítvány 1/2002. (Source: <www.iroga.hu/biztonsagpolitika/urban.htm> 20.06.2011).

¹⁰³ Fekecs: Titkos információgyűjtés, vagy titkos adatszerzés? [Covert intelligence activity or covert data gathering?]. Belügyi Szemle 6/2005, p. 47.

¹⁰⁴ Urbán 2002, p. 2.

¹⁰⁵ The tasks of counter-terrorism had been carried out in a fragmented structure within the police before.

¹⁰⁶ Gilles de Kerchove, 1.9.2010. at the inaugural ceremony of the TEK. (Source: <www.kormany.hu>)

¹⁰⁷ Some further examples besides terrorist offences: other criminal offences committed intentionally if they are punishable with imprisonment of 5 or more years; further offences (basic types) punishable with imprisonment of 3 years, such as trafficking in human beings, child pornography, abuse of office, abetting after the fact, bribery, offence against the nature or environment. The attempt and preparation of these offences can be also subject to covert data gathering.

¹⁰⁸ Explanatory Notes to Act LXXXIX of 2011.

¹⁰⁹ Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (promulgated by Law-decree no. 24 of 1971); Convention for Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970 (promulgated by Law-decree no. 8 of 1972); Convention for Suppression of Unlawful Acts Against the Safety of Civilian Aviation, signed at Montreal on 23 September 1971 (promulgated by no. 17 of 1973); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (promulgated by Law-decree no. 22 of 1977); International Convention

against the Taking of Hostages, adopted at New York on 17 December 1979 (promulgated by Law-decree no. 27 of 1987); Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 (promulgated by Law-decree no. 8 of 1987); Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 (effective for Hungary from 21 June 1998); International Convention for the Suppression of Financing of Terrorism, adopted by the general assembly of the United Nations on 9 December 1999 (promulgated by Act LIX of 2002); Convention on the Suppression of Terrorist Bombings concluded at New York on 15 December 1997 (promulgated by Act XXV of 2002); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (promulgated by Act LXVIII of 2003); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988 (promulgated by Act LXVIII of 2003); Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (promulgated by Act XXXVII of 2004); International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 13 April 2005 (promulgated by Act XX of 2007).

¹¹⁰ Source: OSCE Code of Conduct on the Politico-military Aspects of Security. Annual information exchange on the implementation of the Code of Conduct. Republic of Hungary, 2011. OSCE.FSC.DEC/2/09. <www.osce.org>.

¹¹¹ To the framework decisions of the European Union on combating terrorism by criminal law is referred to under 3.2.

¹¹² Agreement on the cooperation in the fight against cross-border crime in the framework of the Southern European Cooperative Initiative (SECI) signed in Bucharest, on 26th June 1999 (announced by the Act CXV of 2000).

¹¹³ Source: OSCE 2011.

ANNEX

1 The statutory definition of terrorist offences – Art. 261 CC*

- (1) Any person who commits a criminal offence, which is referred to in paragraph (9), involving violence against a person or public endangerment, or being in connection with firearms in order to
 - a) compel a government body, another state or an international body to do, omit or acquiesce in something;
 - b) intimidate the population;
 - c) to change or disrupt the constitutional, economic or social order of another state, or to disrupt the operation of an international organization;
 - d) commits a felony punishable with imprisonment from ten to twenty years, or life imprisonment.
- (2) Any person who seizes considerable assets or property for the purpose defined in paragraph (1) lit. a) and addresses demands to a government body or an international organization in exchange for refraining from harming or injuring said assets and property, or for returning them, shall be punishable according to paragraph (1).
- (3) The penalty of any person who
 - a) abandons commission of the criminal offence defined under paragraphs (1) and (2) before any grave consequences have occurred; and
 - b) confesses his conduct to the authorities
 in such a manner as to cooperate with the authorities to prevent or mitigate the consequences of such criminal offence, discover other perpetrators, and prevent other criminal offences, may be mitigated without limitation.
- (4) Any person who invites for, offers or undertake the perpetration of any of the criminal offences defined under paragraphs (1) and (2), or agrees on joint perpetration, or any person who, for the purpose to aid such criminal offence, provides the conditions that are necessary for the perpetration or facilitate the perpetration, or provides or raises funds, commits a felony and shall be punishable with imprisonment from two to eight years.

* The text is up to date as of 1 August 2011.

- (5) Any person who carries out the conducts specified in paragraph (4) in order to commit any of the criminal offences defined under paragraphs (1) and (2) in a terrorist group, or supports the terrorist group in any other form, commits a felony and shall be punishable with imprisonment from five to ten years.
- (6) The perpetrator of a criminal offence defined in paragraphs (4) or (5) shall not be punishable if he confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal offence.
- (7) Any person, who threaten to commit any of the offences specified in paragraphs (1) and (2), commits a felony and shall be punishable with imprisonment from two to eight years.
- (8) Any person, who has credible knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities, commits a felony and shall be punishable with imprisonment of up to three years.
- (9) For the purposes of this Article:
 - a) criminal offence involving violence against a person or public endangerment, or being in connection with firearms shall mean homicide [Art. 166 pars 1 and 2], causing bodily harm [Art. 170 pars 1 to 5], endangering by malpractice [Art. 170 par. 3], violation of personal freedom (Article 175), kidnapping (Article 175/A), offences against traffic safety [Art. 184 pars 1 and 2], endangering rail, ship or air traffic [Art. 185 pars 1 to 5], violence against officials (Art. 229), violence against persons performing public duties (Art. 230), violence against a person aiding an official (Art. 231), violence against a person under international protection (Art. 232), public endangerment [Art. 259 pars 1 to 3], disruption of public works' functioning [Art. 260 pars 1 to 4], seizure of an aircraft, any means of railway, water or road transport or any means of freight transport (Art. 262), criminal misuse of explosives or explosive devices (Art. 263), criminal misuse of firearms or ammunition [Art. 263/A pars. 1 and 2], criminal misuse of military items and services, and dual-use items and technology (Art. 263/B pars 1 to 3), criminal misuse of radioactive materials [Art. 264 pars 1 to 3], criminal misuse of weapons prohibited by international convention [Art. 264/C pars 1 to 3], criminal offences against computer systems and computer data (Art. 300/C), robbery (Art. 321), and damage to property (Art. 324);
 - b) 'terrorist group' shall mean a group of three or more persons organized for a longer period and operating in accord in order to commit criminal offences defined in paragraphs (1)-(2).

2 Basic information on attempt and preparation in Hungarian criminal law*

Two preliminary stages of intentional criminal offences are dealt with by both Hungarian criminal law doctrine and the CC: preparation and attempt. The preparation is punishable only if the CC specifically prescribes it attached to certain criminal offences in the Special Part (Art. 18, par. 1). In these cases, the CC always provides a lower range of penalty than that provided for completed offences. For example, the preparation of homicide shall be punished with imprisonment not exceeding five years (Art. 166, par. 3), while completed basic homicide shall be punished with imprisonment from five to fifteen years (Art. 166, par. 1).

While the *punishability of preparatory acts is exceptional, attempt is punishable generally* – that is, in case of all intentional criminal offences (Art. 16 CC). The CC provides the same range of penalty for attempt as that for completed offences (Art. 17, par. 1); the fact that the criminal offence has not yet been completed can be regarded as a mitigating circumstance during the infliction of penalty. Moreover, the CC provides the possibility of a so-called mitigation by two degrees of penalty (Art. 87, par. 3) in case of attempt.

* On this topic in details see Karsai/Szomora 2010, p. 90-94.

One might have the impression of an extensive criminalization in Hungarian criminal law because the preparation of a criminal offence can also be punishable. To provide a more accurate picture of the scope of criminalization, we shall also discuss how the line is drawn between the preliminary stages of criminal offences. The scope of attempt is rather narrow in Hungarian criminal law as the definition of attempt is based on the so-called formal-objective doctrine. Consequently, any action of the participant that is different from the perpetrator's conduct laid down in the statutory definition of a certain criminal offence does not constitute an attempt and can only be punishable as preparation at most, if the CC specifically prescribes.

The *definition of preparation* in Art. 18 par. 1, CC is as follows: A person who, for the purpose to commit a criminal offence, provides the conditions that are necessary for the perpetration or facilitate the perpetration, who undertakes or offers the perpetration, invites for it, or agrees on joint perpetration, shall be punishable for preparation if this Act specifically prescribes.

Of the five preparatory actions listed in this Art., four can be regarded as 'verbal forms': undertaking or offering a criminal offence, inviting for the perpetration of a criminal offence or agreeing on joint perpetration. The remaining preparatory act can be regarded as a catch-all clause that applies to each and every action that, first, needs to be made to be able to commit a certain criminal offence or, second, that facilitates the perpetration. Examples include providing a gun or producing the poison for homicide, waiting in a car on the street for the victim to come in case of kidnapping, and installing photo printing and editing software in case of counterfeiting money.

Each of these actions must be carried out in order to commit a concrete criminal offence; the perpetrator must have this special purpose and act with direct intent. The purpose of a concrete criminal offence is the (subjective) key aspect for distinguishing punishable preparatory actions from impunitive conducts (such as sitting in a car in the street waiting for somebody to give him a lift) or from other completed offences (illegally providing a gun constitutes a criminal offence *sui generis* under Art. 263/B CC but can also constitute a preparation of homicide if carried out with the purpose to kill another person).

Another (objective) limiting aspect is that none of the preparative actions may embody a perpetrator's conduct laid down in the statutory definitions of criminal offences in the Special Part; otherwise the criminal offence is not more prepared but at least attempted.

With a few exceptions, preparation for the most severe felonies is primarily punishable by the CC, such as homicide (Art. 166), kidnapping (Art. 175/A), crimes against the state (Chapter X), causing public danger (Art. 259), terrorist offences (Art. 261) or robbery (Art. 321). However, the amending Acts to CC of 2008 and 2009 show a tendency of increasing the number of criminal offences the preparation of which is punishable, such as in case of causing bodily harm (Art. 170), child pornography (Art. 204) or enforced statement (Art. 227).

3 Basic information on parties to criminal offences in Hungarian Criminal Law*

Hungarian criminal law distinguishes between two main categories of parties to criminal offences: In Art. 19 CC, the *participants* are the *perpetrators* and the *accessories*. Thus, Hungarian criminal law follows the so-called dualistic system of participants with a restrictive concept of perpetrators. Under Art. 20 CC, perpetrators are the *sole or direct perpetrator*, the *indirect perpetrator* and the *joint perpetrators*. Under Art. 21 CC, the accessories are the *instigator* and the *abettor*.

As the term 'accessories' shows, the participation of accessories in criminal offences and their criminal liability have an *accessory character*; that is, the participation of accessories presupposes a perpetrator's offence, and their

* On this topic in details see Karsai/Szomora 2010, p. 94-103.

criminal liability is generally related to the qualification of the perpetrator's offence. Furthermore, the liability of accessories requires, following from the legal definitions of accessories (Art. 21 CC), an intentional participation in the commission of criminal offences; an accessory participation by negligence is excluded.

The penalties provided for perpetrators by the Special Part of CC shall apply also to accessories; that is, type of participation is irrelevant concerning the range of penalty on the statutory level but can have a role during the judicial infliction of penalty.

As for the differentiation between perpetrators and participants, Art. 20 par. 1 CC *draws a clear line between perpetrators and accessories* (objective doctrine): "Perpetrator is a person who realizes the statutory elements of a criminal offence." This description relates not only to the direct perpetrator but is also significant concerning the basics of the law of participants. It stresses that one can be a perpetrator only if his/her conduct falls within the statutory definition of an offence; any other participants may only be regarded as accessories.