

## SECURITY OF PRISONS IN HUNGARY FROM THE PERSPECTIVE OF THE THREAT OF TERRORISM

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### I. Security and Terrorism

The issue of security attracts political and public attention more than anything else in Europe. This is a consequence of the rapid political and economical changes that have been taking place the early 90's in Hungary and other Central European countries and also affecting the earlier EU member states.

According to Professor *Hans-Jörg Albrecht*, security politics is exposed to such changes both on national and international levels that have absolved the previously strict division between internal and external security, state and private security, prevention and repression as well as the that of the institutions subordinated to respectively separated from them. The differences between internal and external security and between police and military security are the first to get terminated (providing room for a security conception verifying a humanitarian intervention).<sup>1</sup>

As regards the changes in the concept of security, the most widespread trend, which now already has considerably literature, is the so called human security concept that was made internationally known by the report of the United Nation Development Program (UNDP) titled „Redefining Security: the Human Dimension”, published in 1994.<sup>2</sup>

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<sup>1</sup> HANS-JÖRG ALBRECHT: Der Wandel im Konzept der Sicherheit und seine Folgen für die europäischen Innen- und Rechtspolitik. *JURA* 2005/2, 7.

<sup>2</sup> SZÁRAZ, ENIKŐ: A nemzetközi biztonság felfogása a 21. században – a humán biztonság dimenziói. *Acta Humana* 2004/2, 10.; SZÁRAZ, ENIKŐ: A biztonság új dimenziói. *Külgügyi Szemle* 2003/2, 204.: “The above-mentioned report of UNDP contains the results of a global survey on the danger sources afflicting the Earth and its residents made within the frameworks of the UN (United Nations). This is the first report to use the human security concept whose main components can be defined as follows: 1. The concept of human security is a universal concept of security. 2. The categories included in human security are interdependent. 3. The most simple and effective means of human security is prevention. 4. It is not the state but the individual standing in the focus of this concept.”

According to *Ferenc Kondorosi*, the need for security is one of the most significant values in the world of human necessities. One of the oldest and most fundamental functions of a state is to save the territory serving its operation and to save the life and goods of the people living there.<sup>3</sup>

As Professor *Antal Ádám* stated, it is difficult to give a brief yet appropriate definition of security since security has innumerable varieties depending on the scope of possible and actual subjects, the objects concerned and their real contents. Yet, we can accept the highly general and not too meaningful definition which according which security is in correlation with the lack of security. Whereas the lack of security means threat, harm, injury and detriment and causes fear, pang and suffer. In view of this, security means lack of threat, danger and harm, respectively effective protection and defence against them.<sup>4</sup>

One of the factors posing the greatest danger to security is terrorism. There are several definitions of terrorism in international literature that I do not wish introduce, rather, I quote some from the Hungarian literature.

In the opinion of professor *László Korinek*, terrorism is a systematic use of violence that is deriving from different systems of ideas, is obeying specific logics and is having various forms. It aims at attaining political goals by making the victim, the audience, the state or the society behave in a compromising way. The goal announced is usually to enforce political, ideological, religious or ethnical, etc. changes and the series of actions applied as its means to reach this goal is basically a violent crime against the public.<sup>5</sup>

*László J. Kiss* calls the attention to the fact that there has been a so-called delibellisation process developing in the international system and the XXI century can be described not as one having 'great wars' but, rather through the threat of terrorism spreading in all directions in the global sphere and with a new type of war, i.e. the global anti-terrorist war used as response thereto.<sup>6</sup>

As *Professor Zsolt Rostoványi* stated, terror has since 11 September 2001 entered the foreground of attention as being the primary source of danger. However, global anti-terrorist solidarity should not divert attention from other identically threatening danger sources. Even more so, because armed fight is not the primary method in the long term fight against terrorism.<sup>7</sup>

<sup>3</sup> KONDOROSI, FERENC: A biztonsághoz való jog a jogbiztonság és a közbiztonság tükrében. *Acta Humana* 2004/2, 21.

<sup>4</sup> ÁDÁM, ANTAL: Biztonság, felelősség, kötelesség. *Jogtudományi Közlöny* 2005/7–8, 307–308.: "In the opinion of Professor Antal Ádám, 'elaboration of a complex security concept considering all traditional and new dangers threatening human community' can be observed."

<sup>5</sup> KORINEK, LÁSZLÓ: A terrorizmus. In FENYVESI, CSABA – HERKE, CSONGOR (ed.): *Emlékkönyv Vargha László egyetemi tanár születésének 90. évfordulójára*. (Studia Iuridica Auctoritate Universitatis Pécs Publicata 132.) Pécs: PTE ÁJK, 2003, 169.

<sup>6</sup> KISS J., LÁSZLÓ: A „külpolitika vége?“, avagy a kül-és biztonságpolitika új dimenziói. *Külgügyi Szemle* 2002/1, 24.

<sup>7</sup> ROSTOVÁNYI, ZSOLT: Civilizációk a civilizációk ellen? A hidegháború utáni nemzetközi rendszer antinómiái. *Külgügyi Szemle* 2002/1, 39.

László István Gál wrote that the identification and destruction of the networks supporting terrorism have become the primary goal of the war against terrorism. It is a feature of terrorism that it is often linked with money laundering.<sup>8</sup>

I think *Sebestyén Gorka* aptly calls our era an age which can be characterised by a horn full of threats.<sup>9</sup>

## II. Terrorist Act – De Lege Lata

While discussing the threat imposed on prisons by terror we cannot evade Hungarian legal regulations concerning terrorism.

In Hungarian criminal law, there is no specific Act on governmental actions against terrorism; nor does the Hungarian Criminal Code [Act IV of 1978] include separate chapter or title on terrorist crimes. The Criminal Code [CC] includes one crime statement regarding terrorism, namely<sup>10</sup> “Acts of Terrorism”. The crime determined in Article 261 of CC was introduced into the Act on 1 July 1979 and has been modified several times since then. The legislator explained introduction of the regulation with that there had been a rise in the number of crimes where criminals capture one or more persons or seize significant material goods and then address blackmailing claims to state organs. Then, they threaten with murdering the captured persons or destroying the goods if their claims are not fulfilled.

As *Professor Emil Erdősy* phrased, it can be concluded from the recent events that terrorist acts should basically be treated as a new form of warfare. Terrorist war is different from warfare actions to the extent that there are no governments and military technologies facing each other but, rather, ideological and economical beliefs are confronting with each other. Ideological belief frequently turns into fanaticism owing to its strong emotional saturation. However, the fanatic persons are not motivated by common sense but only by a single factor, namely to serve the idea. This is why neither human nor material obstacles can divert them from executing the order received or the target set.<sup>11</sup>

<sup>8</sup> GÁL, ISTVÁN LÁSZLÓ: A pénzmosás és a terrorizmus finanszírozása. In KORINEK, LÁSZLÓ – KÖHALMI, LÁSZLÓ – HERKE, CSONGOR (ed.): Emlékkönyv Irk Albert egyetemi tanár születésének 120. évfordulójára. (Studia Iuridica Auctoritate Universitatis Pécs Publicata 134.) Pécs: PTE ÁJK, 2004, 40–41.

<sup>9</sup> GORKA, SEBESTYÉN: A nemzetbiztonság halála? A demokrácia védelme a hidegháború utáni világban. *Külgügyi Szemle* 2004/3–4, 118.

<sup>10</sup> Other Crimes of Terrorist Nature: Attempt to Overturn Constitutional Order by Force [§ 139 § CC], Riot [§ 140 CC], Sabotage [§ 142 CC], Genocide [§ 155 CC], Apartheid [§ 157 CC], Homicide [§ 166 CC], Coercion [§ 174 CC], Kidnapping [§ 175/A CC], Violence Against a Person Under International Protection [§ 232 CC], Escape of Prisoner [§ 245 CC], Riot of Prisoners [§ 246 CC], Public Endangerment [§ 259 CC], Interference with Works of Public Concern [§ 260 CC], Seizure of Aircraft, any Means of Railway, Water or Road Transport or any Means of Freight Transport [§ 262 CC], Illegal Possession of Explosives or other Destructive Devices [§ 263 CC], Illegal Possession of Firearms or Ammunition [§ 263/A CC], Threatening with Public Danger [§ 270/A CC] and Involvement in a Criminal Organisation [§ 263/C CC].

<sup>11</sup> ERDŐSY, EMIL: A közrend elleni bűncselekmények. In ERDŐSY, EMIL – FÖLDVÁRI, JÓZSEF – TÓTH, MIHÁLY: *Magyar büntetőjog – Különös rész*. Budapest: Osiris Kiadó, 2004, 321.

When re-codifying the law the following international (European) regulations were taken into account:

- Convention of the European Council on Suppressing Terrorism done in Strasbourg, on 27 January 1977 (published by Act No XCIII of 1997).
- Convention on Suppressing Terrorist Bombing [International Convention for the Suppression of Terrorist Bombing], international convention accepted in New York, at the 523rd Session of the General Assembly of the United Nations on 15 December 1997 (published in Act No. XXV of 2002)
- Convention on Suppressing the Financing of Terrorism [International Convention for the Suppression of the Financing of Terrorism], international convention accepted in New York, at the 54<sup>th</sup> Session of the General Assembly of the United Nations on 9 December 1999 (published in Act No. LIX of 2002)
- framework decision of the Council of 13 June 2002 on the Combat against Terrorism, 2002/475/IB [Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA)].

The *legal object* of terrorist acts is public security manifesting itself in the undisturbed operation of governmental organs and other states and international organisations, particularly the social requirement that these organisations should be allowed to assert their own decisions without any force.

*The types of criminal behaviour* realizing the crimes are as follows:

a) Committal of

- violent crimes against person
- crimes causing public danger
- crimes in connection with arms.

(Section 261(9) gives an itemised list of these crimes belonging.<sup>12</sup>)

b)

- capturing of significant material goods while stipulating conditions

The first section is the general form of illegal capturing of material goods, which includes that the control, carrying away, damaging or destruction of material goods

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<sup>12</sup> For the purposes of this Section: „violent crime against a person and crime of public endangerment that involves the use of firearms” shall mean homicide [Subsections (1) and (2) of Section 166], battery [Subsections (1)–(5) of Section 170], wilful malpractice [Subsection (3) of Section 171], violation of personal freedom [Section 175], kidnapping [Section 175/A], crimes against transportation security [Subsections (1) and (2) of Section 184], endangering railway, air or water traffic [Subsections (1) and (2) of Section 185], violence against public officials [Section 229], violence against persons performing public duties [Section 230], violence against a person aiding a public official [Section 231], violence against a person under international protection [Section 232], public endangerment [Subsections (1)–(3) of Section 259], interference with public works [Subsections (1) and (2) of Section 260], seizure of an aircraft, any means of railway, water or road transport or any means of freight transport [Section 262], criminal misuse of explosives or explosive devices [Section 263], criminal misuse of firearms or ammunition [Subsections (1)–(3) of Section 263/A], arms trafficking [Section 263/B], criminal misuse of radioactive materials [Subsections (1)–(3) of Section 264], criminal misuse of weapons prohibited by international convention [Subsections (1)–(3) of Section 264/C], crimes against computer systems and computer data [Section 300/C], vandalism [Section 324] and robbery [Section 321].

becomes possible for the perpetrator. It is another condition to establish terrorist acts that the material goods getting under the power of the perpetrator must be significant. Significance can be measured in quantity or quality. Value can be used as the measure of quantity and the classification circumstances of crimes against property can also be applied and considered authoritative. Accordingly, value is considerable if it exceeds HUF 2 000 000 HUF (? EUR 7 500).

*Ervin Belovics* wrote that objects of material objects include those whose value cannot be expressed in money but the ‘intangible value’ of which is extremely high or the value of which does not attain HUF 2 000 000 (? EUR 7 500) but it is, for instance, indispensable and, thus, has value well exceeding its real pecuniary value.<sup>13</sup>

The second section is delivery of claim to a government or international organ. In the opinion of *Ferenc Sántha*, a claim is a stressed demand aimed at that the addressee does, does not do and endure something according to the perpetrator’s will.<sup>14</sup>

*Attempt* – as *Béla Blaskó* stated – is realised if the terrorist act comes to a halt following presentation of either or both actions whereas the perpetrator’s intention extends also to further acts (delivering demand).<sup>15</sup>

Terrorist act is an *immaterial* crime. The Act orders that already the *preparation* for the two basic types of these crimes is punished. Anybody can become *subject* of the crime as perpetrator. The crime can only be committed *intentionally* and all its variations are biased.

Considering the extreme danger of terrorist acts for the society, the Act prescribes an obligation to report to the police. Whoever receives reliable information about that terrorist act is planned to be committed, must notify the authority. Not even relatives are excluded from this obligation to denounce!

According to *Ágnes Balogh*, criminal political considerations explain why the legislator grants *impunity* for crimes that have not been commenced, respectively *unlimited mitigating possibility* for perpetrators fulfilling certain conditions once the crime is in progress.<sup>16</sup>

### III. Prison Security and the Threat of Terrorism

Ever since the democratic change of the regime in 1989/90, it is known from the research of the most famous Hungarian authority, *István Bökönyi* that prisoners committed terrorist acts several times (on 10 occasions during 15 years) and they “were planning” to prepare terrorist acts in approximately 100 cases.<sup>17</sup>

<sup>13</sup> BELOVICS, ERVIN: A közrend elleni bűncselekmények. In BELOVICS, ERVIN – MOLNÁR, GÁBOR – SINKU, PÁL: *Büntetőjog – Különös rész*. Budapest: HVG-Orac Lap-és Könyvkiadó Kft, 2005<sup>5</sup>, 333.

<sup>14</sup> SÁNTHA, FERENC: A közrend elleni bűncselekmények. In CSEMÁNÉ VÁRADI, ÉRIKA – GÖRGÉNYI, ILONA – GULA, JÓZSEF – LÉVAY, MIKLÓS – SÁNTHA, FERENC: *Magyar büntetőjog – Különös rész II*. Miskolc: Bíbor Kiadó, 2002, 109.

<sup>15</sup> BLASKÓ, BÉLA: A közrend elleni bűncselekmények. In BLASKÓ, BÉLA – MIKLÓS, IRÉN – SCHUBAUER, LÁSZLÓ: *Büntetőjog – Különös rész II*. Budapest: Rejtjel Kiadó, 2000, 20.

<sup>16</sup> BALOGH, ÁGNES: *Büntetőjog II. – Különös rész*. (Jogi Szakvizsga Segédkönyvek) Budapest – Pécs: Dialóg Campus Kiadó, 2005, 303.

<sup>17</sup> BÖKÖNYI, ISTVÁN: Threat of Terrorism with respect to Hungarian Prison Administration. *Börtönügyi Szemle* 2004/3, 23.

*Béla Nádasi* and *Tibor Sztodola* are of the opinion that, from the point of view of Hungarian prisons, the most important issue is to explore the *motivational background*, namely to map the reasons that may trigger terrorist acts in the penitentiaries. The following may be such reasons:

- Total despair due to the *negative effects* of the prison, unfavourable changes in maintaining relationships and accumulated problems. As prevention, it is expedient to control the relationships of prisoners and the changes occurring in their moods.<sup>18</sup>
- *Dissatisfaction* with prison conditions. Prisoners may feel aggrieved at the possibilities to work, the conditions of housing, the quantity of food or the treatment of the staff.
- Requirements of the prisoners with respect to their *legal* position, e.g. they attempt to obtain preference by committing a terrorist act.
- Possibility to escape by taking *hostages*.
- *Paradox phenomena* observable in penitentiary institutions. The more the technical conditions of security systems are strengthened, i.e. the risk of classical escaping attempts of prisoners is thus minimised, the higher grows the possibility that prisoners will try to escape by committing terrorist acts.<sup>19</sup>

According to *István Bökönyi*, Hungarian penitentiary institutions are threatened by perpetration of particularly the following terrorist acts:

- Mutiny of prisoners by taking hostages and causing public danger.
- Escape of prisoners by taking hostages from inside, threatening with public danger and causing public danger.
- Abduction of prisoners from outside by persons or groups attacking and entering the prison with automatic weapons.
- Abduction of prisoners by lifting them with helicopter or blasting of wall.
- Entry into the prison of persons or groups armed with automatic weapons and collection of weapons and ammunition stored in the gun storage there to commit further terrorist acts using them.<sup>20</sup>

The measures to be taken against terrorist acts are established in Para c) Section 2(3)<sup>21</sup> and Para b) Section 26(1)<sup>22</sup> of Act No. CVII of 1995 on Penal Institutions, whereas it allows the members of the professional force to use firearms<sup>23</sup> and to act in unit formation in case of terrorist acts.

More attention should be paid to the prevention of terrorist acts. The duties stemming from this are summarised by *Béla Nádasi* and *Tibor Sztodola* as follows:

- Elaboration of the *long term strategic concept* of prison administration concerning terrorist acts. The legal and social traditions of the given state as well as the

<sup>18</sup> NÁDASI, BÉLA – SZTODOLA, TIBOR: A magyar büntetés-végrehajtás terrorcselekményi fenyegetettsége. *Börtönügyi Szemle* 2004/2, 77.

<sup>19</sup> NÁDASI – SZTODOLA (2004) i. m. 77–78.

<sup>20</sup> BÖKÖNYI i. m. 23–24.

<sup>21</sup> SZTODOLA, TIBOR-NÁDASI, BÉLA: A lőfegyverhasználat és a fogolyszökés. *Börtönügyi Szemle* 2003/3, 75.

<sup>22</sup> Uo.

<sup>23</sup> Decision No. 9/2004 (30 March) of the Constitutional Court of Hungary declared unconstitutional and repealed those regulations of the 1994 Act on Police that allowed use of firearms to capture a person who had committed homicide intentionally or to impede his escape.

requirement that the concept should be free from any actual political interest are of material importance.

- Full compliance with and causing full compliance of the penitentiary *rules* and establishment of effective control system. Regulations are to be applied with the same strictness on everyone, e.g. one should let in an acquaintance policeman saying a light “Hello” but he should also be required to present his pass and keep all further safety regulations.
- Theoretical and practical instructions are to be given to potential hostages regarding proper behaviour in case of terrorist acts. Hostages can rely on themselves only in the first minutes following hostage-taking and it is not all the same if he becomes a victim or injured party. (International experience shows that hostage-taking results in death mostly in the first half an hour because of the incorrect reaction of hostages.)<sup>24</sup>

#### IV. Suggestions to Overcome the Threat of Terrorism

The classic saying of the great criminologist, *Beccaria* is fitting in all fields of criminality, and also in respect of terrorism: it is better to prevent crime than to punish it.<sup>25</sup> In agreement with Professor *György Vókó*, the target should not be else but to elaborate, in today’s terms, a proactive concept in connection with terrorist acts.<sup>26</sup>

I believe the measures below are necessary to be taken to make the Hungarian prisons prepared against possible terrorist attacks:

- The primary task is to train and prepare the professional staff on the procedure to be followed in case of terrorist attacks.
- A so-called hostage negotiator is to be trained in each institution, for the cases of hostage-taking or threatening with public danger.
- Establishment of a central prison action team (intervening unit).
- Application of means of secret service.
- Monitoring the experience of foreign prison organisations regarding their actions taken against terrorism.<sup>27</sup>

Naturally, the list could be supplemented with further useful suggestions to increase safety.

Finally, it is important to mention, in agreement with *Géza Finszter*, that terrorism could not do greater damage than if constitutional states, allowing to the illusion of protected status and inviolability, terminated freedom itself. A society like should then really not fear terrorism since it would be self-supporting in it.<sup>28</sup>

I hope this study will give you an insight into the terrorist threat of Hungarian prisons.

<sup>24</sup> NÁDASI – SZTODOLA (2004) i. m. 79–80.

<sup>25</sup> BECCARIA, CESARE: *Dei delitti e delle pene*. Budapest: Eötvös József Könyvkiadó, 1998, 62.

<sup>26</sup> VÓKÓ, GYÖRGY: Igény a szigorra. *Börtönügyi Szemle* 1999/3, 31.

<sup>27</sup> BÖKÖNYI i. m.

<sup>28</sup> FINSZTER, GÉZA: Az alkotmányos jogállam esélyei a terrorizmus elleni küzdelemben. *Belügyi Szemle* 2002/6–7, 166.

