

UNIVERSITY OF PÉCS
FACULTY OF LAW AND POLITICAL SCIENCE
DOCTORAL SCHOOL

ANNA VIKTÓRIA NEPARÁCZKI

**MEANS OF COMBATING TERRORISM
IN HUNGARIAN AND GERMAN SUBSTANTIVE CRIMINAL LAW**

PhD dissertation theses

SUPERVISOR:

Dr. habil. László Kóhalmi

PÉCS

2017

Manuscript closing date: April 16, 2017

I. SUMMARY OF THE RESEARCH PROJECT, RESEARCH OBJECTIVES

Effective action against terrorism has become undeniably important nowadays. The phenomenon is addressed by many disciplines, where it is approached from different perspectives. The present dissertation examines the current problem of combating terrorism only from the aspects of substantive criminal law, with the main aim of facilitating the criminal prosecution of terrorist offender(s). For this purpose, the comprehensive analysis and interpretation of statutory facts providing for criminal action against terrorism is performed in this dissertation by using Hungarian and foreign (mainly German) legal literature and the results of case law.

The research topic of this dissertation can be considered to be neglected in Hungarian monograph literature. Róbert Bartkó's monograph titled "Criminal Policy Issues of Combating Terrorism (A terrorizmus elleni küzdelem kriminálpolitikai kérdései)" published in 2011 is the first and so far the only scientific work in Hungary which investigates anti-terrorist combat from a dogmatic criminal law approach and analysis a criminal policy aiming at effective action against terrorism.²⁵ Bartkó's monograph presented a comprehensive demonstration of the criminal policy and criminological aspects of countering terrorism, the various conceptual approaches to the terrorism phenomenon, examined terrorist acts as international criminal acts or as "quasi-European crimes", as well as revealed precisely the history of Hungarian regulations, so this dissertation does not include the repeated investigation of these aspects.

The cross-border nature of terrorism poses a serious threat to our society today, and therefore, it represents a particularly timely, common problem for states under the rule of law. The "notorious and infamous" New York and Washington terrorist attacks on September 11, 2001 have led to the conception of new legal documents for action against terrorism.²⁶ The terrorist attacks on March 11, 2004 in Madrid, on July 7, 2005 in London and on April 15, 2013 in Boston had repeated impacts on legislation on international, European and national level, as well.²⁷ In the summer of 2014, the terrorist group named the Islamic State gained control over significant areas in Syria and Iraq.²⁸ Since then, news reports all around the

²⁵ Bartkó, 2011: 1-267.

²⁶ Sieber – Vogel, 2015: 1.

²⁷ Lehner, (manuscript): 1.

²⁸ TE-SAT 2015; Selján, 2014: 63-74.

world have featured serious crimes: hostage taking, killings with special cruelty and other crimes have been committed by members of the terrorist group. However, the Islamic State does not only pose a threat in the Middle East. It even threatens the security of Europe indirectly through the wave of refugees and directly through the attacks of terrorist cells²⁹ which is an undoubted fact since the terrorist attacks on November 13, 2015 in Paris, on March 22, 2016 in Brussels, on July 14, 2016 in Nice, on December 19, 2016 in Berlin. Criminal action is a vitally important part of the fight against international terrorism.³⁰ Several legal documents have been published in recent years both at an international and European level, and new legislation on the national level has also been adopted, the systematic presentation and interpretation of which is needed for legal experts specialized both in theoretical and/or practical criminal law.

Considering the above, the primary purpose of this doctoral dissertation is to analyze the facts related to criminal acts necessitating action against terrorism regulated in the light of international experience and amended multiple times - including acts of terrorism in accordance with § 314-316 of Act C of 2012 on the Criminal Code³¹, failure to report terrorism according to § 317 of the CC. (Criminal Code) as well as financing terrorism according to § 318 of the CC. – while revealing dogmatic issues and formulating solution proposals for the latter in order to promote effective enforcement of the law.

The dissertation also gives an overall description of the German substantive criminal legislation aimed at combating terrorism. For the purpose of legal comparison, I considered the choice of Germany to be appropriate on the one hand because the relationship between Hungarian and German criminal law has a long history - encompassing a period of time from the Middle Ages to the present day -, and can be traced through positive law, literature and personal relationships as well. The German statutory examples, the results of modern German jurisprudence have always had a significant impact on the development of Hungarian criminal law³², many of our Hungarian legal institutions have German roots. On the other hand, the relevant facts have been repeatedly applied in the German case law, so it can be explored by foreign outlook and comparing criminal regulations whether the same persons are to be subjected to criminal responsibility as terrorists in the two countries and if so, foreign experience will be usable in legal practice in the course of Hungarian penal action. In

²⁹ Zsebe, 2015: 23.

³⁰ Zöller, 2009: 289.

³¹ Hereinafter: CC.

³² Nagy, 2008: 21-46.

addition, a full review of the German legislation in force and its comparison with Hungarian law represent a novelty in themselves.

Another objective of the doctoral dissertation is to examine whether the Hungarian substantive criminal law in force is in full compliance with international standards and during this process, legislative gaps can be explored, and *de lege ferenda* solutions for the latter need to be formulated to create the required consistency.

II. DESCRIPTION OF RESEARCH METHODS, TESTS AND ANALYSES PERFORMED

METHODS USED IN THE RESEARCH PROJECT

I have used the relevant classic legal research methods in the dissertation. In addition to relevant German and Hungarian laws and legislative materials (primary sources), I have examined and evaluated the available Hungarian and a large body of foreign - mainly German - literature (monographs, textbooks, commentaries and specialist studies). In addition, the relevant findings of the case law have been explored and applying during analysis of the facts. In order to establish a theory-practice synthesis, findings related to the case law have not been summed up in a separate chapter, but they have been incorporated into descriptive sections applying a theoretical approach. For a systematic presentation of international requirements, I have used the legal documents of various international organizations (United Nations, Council of Europe, FATF, Moneyval) as well as the European Union legal documents (secondary sources). To make international requirements more transparent, I have used specific tables to illustrate the requirements of international documents.

In view of the complex nature of the research topic, several methods were necessary not only chapter by chapter, but also within individual chapters. In analyzing facts for criminal action against terrorism, apart from dogmatic-focused, practice-oriented approaches, I have used traditional methods of legal interpretation, i. e. grammatical, logical, systematic and teleological methods of interpretation, as well.

According to the requirements of functional legal comparison, I have presented as a starting point the existing regulatory structure of Hungarian and German criminal facts aimed at counter-terrorism and then analyzed in detail the relevant provisions of the Hungarian and German Criminal Code, respectively. For the purpose of comparison, I have been trying to find the common denominator in the legislative facts of the two countries both belonging to the continental legal system based on shared traditions but still having very different rules of

criminal law. In clarifying certain German concepts - different from those of the Hungarian legal system, I have also used the hermeneutic method. In exploring dogmatic problems and examining compliance with international standards, the application of the critical-analytical approach was essential.

COURSE OF INVESTIGATIONS PERFORMED AND DISSERTATION STRUCTURE

The dissertation consists of five chapters. The topic chosen as research subject is introduced by Chapter I on the current need of legal action against terrorism, the difficulties of conceptual definition of terrorism as well as approaches concerning criminology and criminal justice. Then, the three chapters forming the center of gravity of the study will follow. Chapter II provides a holistic analysis of the facts giving rise to criminal action against terrorism in Hungary, Chapter III includes a similar analysis of facts giving rise to criminal action against terrorism in Germany. These chapters have been structured as "mirror images" to facilitate functional legal comparison. Thus, the determination of taxonomic position of facts and their systematic review (II.A. and III.A.) follows the legal subject of individual criminal acts and the analysis of facts (II.B. - II.F. and III.B. - III.G.). In connection with terrorist offenses, the dissertation briefly discusses the concepts in the German theoretical literature, thus, the so-called enemy criminal law and the so-called symbolic criminal law (III.H.) Chapter IV deals with international expectations regarding the facts aimed at anti-terrorist action. The relevant rules of international documents have been presented by systematically organizing the relevant provisions of the United Nations, the Council of Europe and the European Union, proceeding according to facts aimed at combating terrorism in Hungary and separating various versions of criminal acts. Then, in Chapter V of the dissertation, to achieve the objectives of the research project, I arrive at relevant conclusions for creating harmony between Hungarian substantive criminal law and international requirements, the Hungarian and German criminal facts are compared, similarities and differences are explored, dogmatic problems revealed in connection with the Hungarian legislation are resolved, moreover, *de lege ferenda* proposals are made in order to perfect the Hungarian substantive criminal law. Finally, in Chapter VI of the dissertation is presented a short summary.

III. SUMMARY AND UTILIZATION OPTIONS OF RESEARCH RESULTS

SUMMARY OF RESEARCH RESULTS

The need for action against terrorism has become undeniably important nowadays. For this purpose, terrorism has been examined by several disciplines, which seek to define it and aim at solving the problem and exploring necessary and sufficient means for solution. As regards the definition of terrorism and/or international terrorism, there is still no generally accepted definition at an international level,³³ but numerous international and EU documents urging uniform action against terrorism have been created. These legal documents consider acts committed by terrorism as criminal acts,³⁴ and wish to take action against this undesirable phenomenon by criminalization of certain forms of terrorism. In view of this, criminal action represents a vitally important tool in the fight against terrorism.³⁵

In the dissertation, the Hungarian and German substantive criminal legal action against terrorism has been analyzed in the light of international expectations. The main aim of the dissertation is to facilitate criminal prosecution of terrorist perpetrator(s), promote efficient law enforcement and draft proposals for amending/complementing legislation for Hungarian legislators. In order to achieve this main objective, the dissertation aimed at achieving three research objectives.

1. The first research objective was to explore dogmatic problems posed by legal facts giving rise to criminal action against terrorism in Hungary, which may hamper effective legal enforcement. To this end, I have comprehensively analyzed the substantive criminal legislation in my dissertation, through the use of the relevant literature. I have also considered the last amendment of the CC. prior to the closing of the manuscript and analyzed the facts concerning variations of criminal acts newly enacted by Act LXIX of 2016 amending certain laws related to combating terrorism - such as organizing a terrorist group according to § 314 paragraph (2) point b) of the CC., travel for the purpose of joining a terrorist group according

³³ On the attempts at defining the concept of terrorism and the difficulties, see Bartkó 2011: 17-56.; Póczik 2005: 1269-1278.; Zöller, 2009: 99-132.

³⁴ See. UN Decision 40/61, the findings of which regularly resonate in the preamble in the UN conventions against terrorism, as well as Zöller, 2009: 131.; Griesbaum, 2010: 365.; Tálas 2007: 5-6.

³⁵ Zöller, 2009: 289.

to § 316 point b) of the CC., as well as incitement for supporting terrorism according to § 331 paragraph (s) of the CC.

As a result of the research project, it can be established that the following dogmatic problems arise in the substantive criminal legislation representing an instrument for the fight against terrorism:

- As regards the stages of the first basic case of a terrorist act, i. e. committing a serious crime for terrorist purposes [CC. § 314 paragraph (1)], it is disputed whether a crime can take place in an experimental stage.
- In relation to the crime of threatening to commit a terrorist act [CC. § 316 point a)], a dogmatic problem arises on the one hand with regard to subjective factual elements, namely that the criminal act is intentional and purposeful; or that the threat of committing a terrorist act is an intentional crime, so it can also be established for a perpetrator acting without a terrorist intent. On the other hand, the criminal act of threatening to commit a terrorist act raises stage-related problems as well by the fact that in legal technical terms, the legislator regulated the completed formations of the terrorist act and following the sui generis preparatory version in the legal facts. It is questionable whether the criminal act of threatening to commit a criminal act is a completed version of a criminal act, a privileged case or a criminal act foreign to the system, in a so-called ante-preparation stage.
- As regards the crime of financing terrorism (CC. § 318), the definition of the legal subject protected by the criminal act arises on the one hand as a dogmatic problem. It is disputed whether the crime of financing terrorism has an independent legal subject separate from the legal subject of the crime of a terrorist act (CC. § 314-316), or whether the legal subject of financing terrorism is fully or partly identical to the legal subject of a terrorist act. Furthermore, the subjective factual elements of the crime of financing terrorism are controversial, namely that the criminal act can be committed intentionally, or intentionally and purposefully.

As a result of the research project, it has also been established that the legal literature fails to explain the concept of a terrorist group set forth in § 319 of the CC and the individual conceptual elements, which makes it specifically more difficult to create an efficient criminal law enforcement and to prosecute the perpetrator in proportion to their action when implementation may become necessary in the future. In this regard, the dissertation includes

an elaboration of the conceptual elements of a terrorist group neglected so far. To interpret the individual conceptual elements of the terrorist group, judicial findings in relation to the concept of a criminal organization based on an established judicial practice have been used.

2. The second objective of the research is to compare the Hungarian criminal legislation to the traditionally close German criminal legislation in order to identify whether the same persons are to be subjected to criminal prosecution as terrorists in the two countries. For this purpose, it was inevitable to present the statutory facts providing for German anti-terrorist action in the German Criminal Code³⁶, which has been done in a structure applied in the description of the Hungarian legislation to facilitate comparison. For better clarity, I first outlined the structure of existing regulation German criminal facts³⁷, which was followed by the analysis of the facts of individual criminal acts. In the dissertation, the criminal facts shown in the following table have been examined:

Structure of German criminal legislative facts in force aimed at countering terrorism³⁸:

- 1) Preparation of severe violent acts endangering the state [StGB. 89a. §],
 - 2) Establishing contact for committing severe violent acts endangering the state [StGB. 89b. §],
 - 3) Financing of terrorism [StGB. 89c. §],
 - 4) Providing guidance for committing severe violent acts endangering the state [StGB. 91. §],
 - 5) Establishing a terrorist association [StGB. 129a. §]:
 - a) Establishing a terrorist association for committing particularly severe crimes [StGB. 129a. § paragraph (1)],
 - b) Establishing a terrorist association with goals beyond actions [StGB. 129a. § paragraph (2)],
 - c) Establishing a terrorist association with a threatening objective [StGB. 129a. § paragraph (3)],
- + Jurisdictional rules and procedural condition for conducting a criminal procedure for criminal acts committed abroad [StGB. 89a. § paragraphs (3)-(4) , 89b. § paragraphs (3)-

³⁶ Bundesrepublik Deutschland Strafgesetzbuch (Criminal Code of the Federal Republic of Germany): In the version of the publication of November 13, 1998 (BGBl (Bundesgesetzblatt: Federal Law Gazette). I S. 3322). (German Criminal Code dated November 13, 1998). Hereinafter: StGB (Strafgesetzbuch: Criminal Code) or German CC.

³⁷ For a structural review of facts in force, I have relied on the structure prepared by *Mihály Tóth* for the regulation of terrorist acts according to Act IV of 1978 on the Criminal Code (old CC). Tóth, 2013: 36.

³⁸ The table has been edited by the author.

(4), 89c. § paragraphs (3)-(4), 129b. § paragraph (1)],

+ Statutory instruments of prevention:

- Raising the prospect of unlimited mitigation or avoiding punishment [StGB. 89a. § paragraph (7), 89b. § paragraph (5), 89c. § paragraphs (6)-(7), 91. § paragraph (3), 129a. § paragraphs (6)-(7)],

- Requirement regarding reporting obligation [StGB.138. § paragraph (2), 139. § paragraph (1), (3)-(4)]

+ Special sentencing rules [StGB. 89a. § paragraph (5)-(6), 129a. § paragraphs (8)-(9), 129b. § paragraph (2)],

After examining the facts of German criminal law, the dissertation briefly discussed in connection with terrorist offenses the concept in the German theoretical literature describing worrying trends arising in the course of criminal action against terrorism, thus, the so-called enemy criminal law and the so-called symbolic criminal law.

3. The third objective of the research project was to examine whether the Hungarian criminal legislation fully complies with international and EU standards. The relevant rules of international documents have been presented by systematically organizing the relevant provisions of the United Nations, the Council of Europe and the European Union, proceeding according to facts aimed at combating terrorism in Hungary and separating various versions of criminal acts. For the sake of clarity and comparability, I concluded every chapter with a summary.

4. Conclusions have been formulated in a separate chapter in the dissertation. In the last chapter, I examined the compliance of individual Hungarian versions of criminal acts with international standards and carried out a comparison with German criminal legislation, as well as resolved dogmatic problems to realize the objectives of the research project while making *de lege ferenda* proposals.

4.1. As a result of my research projects, examination of compliance with international standards have led to the following results.

4.1.1. The first problem pertaining to the Hungarian substantive criminal legislation with regard to committing a terrorist act is that the CC does not declare the control of a terrorist group punishable in accordance with Article 2 paragraph (2) point a) of the European Union's Framework Decision of 2002. Identically to the positions represented in Hungarian

legal literatures³⁹, I am also of the opinion that it would be necessary to prescribe punishment as an explicitly named act of perpetration for control/leadership of a terrorist group, namely that the acts committed by these perpetrators at a higher level of societal risk should be threatened with more severe punishment than an aggravated case of a sui generis preparatory version. Along with the latter, it would be reasonable to criminalize any call for leadership of a terrorist group, as well.⁴⁰

Further deficiencies of the Hungarian substantive criminal law in force are represented by the following factors, to be eliminated by legislators:

- regulation of a public document forgery for the purpose of financing a terrorist group as a criminal act related to a terrorist act /on the basis of Article 3 point c) of the Framework Decision 2002/475/IB on combating terrorism by the Council of the European Union adopted on June 13, 2002⁴¹, the need for which has been sustained by Article 3 point f) of the Framework Decision of 2002 amended by the Framework Decision of 2008/919/IB⁴² of the Council of the European Union adopted on November 28, 2008/,
- criminalization of any call for financing terrorist groups /according to Article 3 paragraph (1) point b) of Framework Decision of 2002 as amended by the Framework Decision of 2008/,
- criminalization of organization and management of committing the act of financing terrorism by others /on the basis of Article 2 paragraph (5) point b) of the Convention on the suppression of financing terrorism adopted on December 9, 1999 in New York, as well as FATF recommendation of 2012 point 5 interpretative notes point B/11 subpoint b)/.

In addition to the above, I have concluded that a criminally relevant translation error can be discovered in the official translations to different languages in the definition of a terrorist group according to Article 2 paragraph (1) sentence 1 of the Framework Decision of 2002. Despite the above, the concept of a terrorist group according to § 319 of the CC includes the conceptual element "organized for a longer period of time" corresponding to both the grammatical and teleological interpretation of Article 2 of Framework Direction of 2002 - but identical to the official German translation - so in this respect, a wording of a *de lege ferenda* proposal was unnecessary.

³⁹ Bartkó, 2011: 232.; Ligeti, 2012: 201.; Bartkó, 2016: 538.

⁴⁰ Bartkó, 2015: 49.

⁴¹ Hereinafter: Framework Decision of 2002

⁴² Hereinafter: Framework Decision of 2008.

4.1.2. Within the scope of criminalizing the preparatory acts of terrorism, I have called attention to the fact that a Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA shall enter into force in the near future.⁴³ The Directive 2017 would further expand the scope of criminal substantive action against terrorism in order to prevent terrorist acts. Criminal acts related to new, planned terrorist acts include traveling abroad for the purpose of terrorism, which could be committed for three purposes. Among the latter, if traveling abroad is done for training terrorism or participation in terrorist training, the criminal behavior could be actually committed prior to the sui generis preparatory version of the criminal act, representing a preparation for the latter. The German legal literature⁴⁴ has pointed out even in relation to training terrorists that it may lead to the realization of a terrorist act depending on several interim decisions prior to committing the actual terrorist offense. If this imaginary chain of events is interrupted somewhere (i. e. the terrorist act is not committed for some reason), in the absence of the relevant correlation, an undesirable act take place which is not worthy of punishment in itself. Thus, criminalizing travel to a different country for the purpose of training terrorists or participating in terrorist training would be contrary to criminal law committed to the principle of rule of law since extension of criminal liability to the preparation of already completed behaviors of sui generis preparatory nature would point towards a perpetrator-based criminal law. However, if the Directive 2017 shall enter into force, the Hungarian legislature (also) has to create consistency with the expectations of the European Union and the legislation pertaining to travel for the purpose of joining a terrorist group [CC § 316 point b)] must be amended. In this regard I am of the opinion that the facts of the criminal act stipulated in § 316 point b) of the CC must be supplemented by the objective of committing a terrorist act, promotion of committing a terrorist act, training terrorists and participation in terrorist training.

4.1.3. In connection with the threat of committing a terrorist act, I agree with the position expressed in the legal literature⁴⁵ that the Hungarian legislator has disregarded Article 5 paragraph (3) sentence 2 when transposing the Framework Decision of 2002. In this regard, I am also of the opinion that in order to meet international expectations, it would be necessary to sanction the commission of threat with a terrorist act in a terrorist group as an

⁴³ Hereinafter: Directive 2017.

⁴⁴ Gierhake, 2008: 401.

⁴⁵ Bartkó, 2013: 51.

aggravated case, and in accordance with this amendment - mutatis mutandis - the concept of the terrorist group specified in § 319 of the CC should also be extended to threats of terrorist acts.⁴⁶

In addition, a more severe penalty must be imposed on the leader of a terrorist group with a threatening aim for the purpose of prevention.⁴⁷ Namely, Article 5 paragraph (3) sentence 2 of Framework Directive of 2002 on sanction states the following "[...] In so far as the offence referred to in Article 2(2)(a) refers only to the act in Article 1(1)(i), the maximum sentence shall not be less than eight years". Article 2 (2)a) of the Framework Decision of 2002 requires Member States to criminalize the direction of a terrorist group. Within the scope of harmonizing the rules of Member States regarding sanctions, a relevant provision can be found on the basis of which the version of terrorism committed by a threat should be sanctioned by Member States even if it is related to an organized commission of terrorist act. According to Article 5 (3) sentence 2, the leader of a terrorist group is also criminally liable if the relevant organization has only been created to commit a terrorist threat. Since even the commission of a threat of a terrorist act in a terrorist group appears as a shortcoming in the Hungarian criminal law, apart from criminalizing the latter, the specific criminal sanctioning of a leader of such terrorist group should also be ensured in order to create full consistency.

4.1.4. The criminal act of financing terrorism according to § 318 paragraph (1) of the CC almost fully satisfies international requirements - undertaken by Hungary at the time of completion of the manuscript. However, commission, planning, preparation or participation in a terrorist act or providing terrorist training or traveling for participation in a terrorist training are manifest as deficiencies of the substantive criminal legal regulations in force, to be eliminated by the legislature /FATF Recommendations of 2012, point 5, point B/3 of interpretative notes for financing terrorism/.

In addition, it should not be overlooked that the Directive 2017 would further expand the substantive criminal legal action against the financing of terrorism. Within this scope, a criminal act related to new, planned terrorist acts is the organization of travel abroad for the purpose of terrorism or promoting the same in any other manner. The fact of organizing travel abroad for the purpose of terrorism or promoting the same in any other manner would legislate the accomplice behaviors of the sui generis preparatory version of travel abroad for the purpose of terrorism as a sui generis version of an accomplice character. In this manner, the act of organization or promotion represents a fairly distant threat to a legal object, and the

⁴⁶ Bartkó, 2013: 56.; as well as in relation to § 261 of the old CC: Bartkó, 2009: 538.

⁴⁷ Similarly Bartkó, 2011: 247-248.; Bartkó, 2015: 46-47.

punishability of a conduct is only based on a perpetrator's intentional action - because the proposed new fact does not include the relevant purpose - thus, it also points to a perpetrator-based criminal law. However, if the Directive 2017 shall enter into force, the Hungarian legislature (also) has to create consistency with the expectations of the European Union. In this regard, the legislature will have to regulate the organization of a trip abroad for the purpose of terrorism or otherwise promoting the same as a sui generis criminal act.

4.2. As a result of the research projects, the following have been established when comparing Hungarian and German criminal law.

German criminal action against terrorist - similarly to Hungary - is based on several facts. However, there is a fundamental difference manifest in the fact that the StGB does not include a criminal fact which would bear the name of terrorist act, and terrorist acts do not even appear as separate offenses in the substantive criminal legislation, either. In the German criminal law, the "central" terrorist offense is the formation of a terrorist association according to § 129a of the StG. Establishing a terrorist association is a so-called organized criminal act, i. e. the common feature in individual variants of offenses is that they are always directed to an association. Thus, the terrorist criminal act (cataloged offense) can be committed by an association with definite objectives; the conduct of each person will be punishable in his/her relationship to the association with independent goals and activities.

In order to create the opportunity for the most efficient possible criminal measures against perpetrators not related to a terrorist association, the German legislature has criminalized the offenses for preparation of severe violent acts endangering the state according to § 89a of StGB, establishing contact for the purpose of committing a severe violent act endangering the state according to § 89b of StGB, financing terrorism according to § 89c of StGB and provision of guidance for the commission of a severe violent act endangering the state according to § 91 of the STGB. Based on these facts, even those perpetrators could be held accountable for whom there was no evidence of involvement in a terrorist association because the penalties are imposed for preparatory acts of so-called lone offenders acting in isolation.

As a summary, it can be stated that the facts giving rise to substantive criminal legal action in Hungary and Germany show a heterogeneous picture despite common roots and international expectations regarding both countries, the relevant comparison per version of criminal offense could be made by interpretation of the necessary factual element, the criminal conduct.

4.3. In resolving dogmatic problems, I have arrived at the following conclusions as a result of my research.

4.3.1. As regards the stages of the first basic case of terrorist acts, i. e. committing severe criminal acts for terrorist purposes [CC § 314. paragraph (1)], I have determined that even an attempt at this criminal version is possible. The grammatical interpretation of the fact (the wording "commit" indicates a completion of a criminal act of instrumental nature) is also confirmed by the interpretation according to Community law, since Article 4 (2) of the Framework Decision of the European Union also provides for the necessity of criminalizing an attempt at a terrorist act within the national criminal law. ("Each member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) [...] with the exception of possession as provided for in Article 1(1)(f) [...] is made punishable"). However, it is indeed necessary for establishing the fact of a terrorist criminal act (either as a completed act or an attempt) that when committing a criminal act of an instrumental nature, the perpetrator's intent should not only be aimed at committing an offense that is violent, endangers public safety or involves a weapon against a person specified in paragraph (4), but it should also involve a terrorist purpose specified in paragraph (1) points a)-c). The presence or absence of a terrorist intent distinguishes a criminal act against a given person that is violent, endangers public safety or involves a weapon from a terrorist act, but its existence does not render a criminal offense in its attempted stage a completed criminal act.

4.3.2. In the case of a stage-related problem arising in relation to the crime of threatening with a criminal act, I am of the opinion that from the legal technical solution namely that the legislator regulates/has regulated in the fact the criminal act of threatening to commit a terrorist act following the basic cases of a terrorist act and the sui generis preparatory version does not follow that the legislature thus created a so-called ante-preparatory stage which is incompatible with the system. In the Particular Part of the CC, in the case of individual criminal acts, criminalization of preparation - i. e. the sui generis preparatory version - or the negligent version follows the basic case(s) and aggravated case(s), followed by privileged case(s) and the regulation of other interpretive provisions. Thus from the legal technical solution used in relation to the criminal act of terrorist by the legislature - compared to the other criminal acts with similar structures regulated in the Particular Part of the CC - the very conclusion follows that the Hungarian legislature imposes a sanction on a threat to commit a criminal act as an independent, completed criminal act "raised to the rank of a basic fact" which - considering the placement following the sui generis preparatory version - is sanctioned by a milder punishment compared to the basic case(s) as a privileged

version of the terrorist act. This legal technical solution is consistent with the provisions of the Framework Decision of 2002: the terrorist act has been regulated as an independent, completed criminal act of terrorism - and raising the prospect of a punishment according to the relevant severity.

As regards the subjective factual elements of the criminal act of threatening with a terrorist act, I am of the opinion that this criminal act can be committed intentionally because the legislature did not include the terrorist intent among the elements of the statutory facts. At the same time, I am also of the opinion⁴⁸ that the legislature would need to supplement the facts by the terrorist purpose.

4.3.3. In relation to the legal subject of the crime of financing terrorism, I have arrived at the conclusion that its primary legal object is in fact identical to the legal object of the crime of a terrorist act since the legislature has ordered to punish related, sui generis accomplice behaviors by nature. However, in my opinion, the criminal act provides a secondary protection for the confidence in the functioning of the financial system, as well since a perpetrator aiding terrorism by financial means contributes to guaranteeing the conditions of a terrorist act with financial means from both legal and illegal sources, using the legal banking system, by clandestine means.

Considering the subjective factual elements of the crime of financing terrorism, I have established that the statutory fact of the basic case of the criminal act does not include the terrorist purpose and thus, we are talking about a fact enabling criminal prosecution in a fairly broad range. The first phrase of an aggravated case of financing terrorism has been worded as a deliberate and intentional criminal act: the perpetrator commits the crime of financing terrorism for the purpose of facilitating the commission of a terrorist act in a terrorist group or serving the interest of a member of a terrorist group. However, the second phrase does not include the objective assessed by the relevant law, i. e. supporting the activity of a terrorist group in any other manner is a deliberate criminal act.

⁴⁸ Deák, 2014: 57.

UTILIZATION OPTIONS OF RESEARCH RESULTS

1. I have chosen the Hungarian and German substantive criminal legal action against terrorism as my research subject. The success of combating terrorism is crucial in both countries so the primary aim of my dissertation is to facilitate criminal prosecution of terrorists as perpetrators. This aim can only be achieved if the relevant criminal legislation is coherent and free of dogmatic problems. In addition, effective law enforcement is greatly facilitated if comprehensive explanation and systematic interpretation of criminal law provisions are available. As such, analyzing Hungarian criminal legislation aiming at combating terrorism in a clear system may provide clues for practicing lawyers during their work.
2. Exploring and resolving the dogmatic problems of the Hungarian legislation; moreover, a complex analysis of German criminal measures against terrorism as well as description of concepts appearing in the German academic literature will be useful for experts of theoretical criminal law in the course of their research related to the topic.
3. The German criminal legislation in force represents a good example for a different avenue of combating terrorism. A different conceptual approach of statutory facts and the method of legislation may assist the legislature in the course of modifying, supplementing or reconsidering the relevant facts.
4. I hope that my *de lege ferenda* proposals submitted for full compliance with international requirements and perfecting Hungarian criminal legislation can be also utilized in the legislative process.
5. Students interested in anti-terrorist action could use the dissertation in undergraduate and postgraduate studies.

IV. LIST OF THE AUTHOR'S PUBLICATIONS IN THE SUBJECT MATTER OF THE THESIS

1. A terrorcselekményt előkészítő magányos elkövetőre vonatkozó szabályok a Büntető Törvénykönyvben. (*Terror & Elhárítás*. 2015/I. 1-22.
http://www.tek.gov.hu/tt_pdf/2015/drneparaczki.pdf
2. A terrorcselekménnyel fenyegetés büntette a nemzetközi elvárások és a hazai jogirodalom fényében. *Magyar Jog*. 2015/12. 690-702.
3. Terrorist financing: Is it a crime against public security or an economic crime? In: Čičkánová, Daniela – Hapčová, Ivana – Mičátek, Vladislav (Eds.): *BRATISLAVA LEGAL FORUM 2015: Collection of Papers from the International Academic Conference Bratislava Legal Forum 2015 organised by the Comenius University in Bratislava, Faculty of Law*. Comenius University in Bratislava, Faculty of Law. Pozsony, 2015. 1293-1299.
http://lawconference.sk/archiv/bpf_2015/www.lawconference.sk/bpf/sprava/files/zborniky/9.sekcia.pdf
4. A terrorcselekmény bűncselekményének szabályozástörténeti előzményei. In: Koncz István - Szova Ilona (Eds.): *Hiteles(ebb) tudományos prezentációk. II. kötet. PEME VIII. Ph.D. – Konferencia*. Professzorok az Európai Magyarországért Egyesület. Budapest, 2014. 85-96.
www.peme.hu/userfiles/Orvos%20-%20Jog%20-%20Tájépítészet%20szekciók.pdf
5. Személyes biztonsághoz való jog mint alapjog?: A terrorizmussal szembeni fellépés a szabadsághoz és a személyes biztonsághoz való jog tükrében. In: Varga Norbert (Ed.):
Az új Alaptörvény és a jogélet reformja. Szegedi Jogász Doktorandusz Konferenciák
2. Generál Nyomda. Szeged, 2013. 207-215.

6. A terrorista csoport rendszerbeli helye és fogalma a Büntető Törvénykönyvben. *Ügyészek Lapja*. 2013/3-4. 59-68.

7. Right to security of person as a human right? The Interpretation and Application of Article 5 of the European Convention on Human Rights and Fundamental Freedoms. (Co-authors: Aradi Csilla, Kővári Krisztina) *Ügyészek Lapja*. 2013/3-4. 133-152.

8. 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. (Co-authors: Karsai Krisztina, Szomora Zsolt) *Sistema Penal & Violencia*. 2012/1. 75-107.
<http://revistaseletronicas.pucrs.br/fo/ojs/index.php/sistemapenaleviolencia/article/view/11378/8094>

9. A terrorizmus elleni büntetőjogi fellépés két lehetséges útja: A magyar és a német szabályozás összevetése, különös tekintettel az elkövetési magatartásokra. In: Juhász Zsuzsanna - Nagy Ferenc - Fantoly Zsanett (Eds.): *Sapientia sat: ünnepi kötet Dr. Cséka Ervin professzor 90. születésnapjára*. Acta Universitatis Szegediensis. Acta Juridica et Politica. Tomus LXXIV. Szeged 2012. 377-391.

10. Bűnszövetség, bűnszervezet, terrorista csoport (A magyar büntetőjog globális problémákra adott válasza): Conspiracy, criminal organizations, terrorist groups (Hungarian criminal law's answer to global problems). In: Csányi Erzsébet (Ed.): *11. Vajdasági Magyar Tudományos Diákköri Konferencia (VMTDK 2012): Rezümékötet*. Vajdasági Magyar Felsőoktatási Kollégium. Szabadka, 2012. 143-144.

11. The Statutory Definition of Terrorist Offences in Hungarian Criminal Law. In: He, Bingsong (Ed.): *The Basic Situation and Strategy of the International Fight Against Terrorism in Post-Bin Laden Era*. Zhongguo min zhu fa zhi chu ban she. Peking, 2012. 501-508.

12. Büntető anyagi jogi problémák a terrorcselekmény harmonizációjával összefüggésben. In: Bencsik András - Fülöp Péter (Eds.): *Jogász Doktoranduszok I. Pécsi Találkozója – Tanulmánykötet*. PTE ÁJK Doktori Iskola. Pécs, 2011. 254-261. [http://old.ajk.pte.hu/files/tiny_mce/File/karikiadvanyok/Jogász%20Doktoranduszok%20I.%20Pécsi%20Találkozója%20-%20tanulmánykötet.pdf](http://old.ajk.pte.hu/files/tiny_mce/File/karikiadvanyok/Jogasz%20Doktoranduszok%20I.%20Pecsi%20Talalkozoja%20-%20tanulmánykötet.pdf)
13. Die Vorverlagerung der Strafbarkeit am Beispiel der Terrorismusverfolgung aus ungarischer Perspektive. In: Sinn, Arndt – Gropp, Walter – Nagy Ferenc (Eds.): *Grenzen der Vorverlagerung in einem Tatstrafrecht: Eine rechtsvergleichende Analyse am Beispiel des deutschen und ungarischen Strafrechts*. Universitätsverlag Osnabrück. Osnabrück, 2011. 401-424.
14. Deutsche und ungarische Vorverlagerungstendenzen im Bereich der Terrorismusverfolgung: Rechtsvergleichende Beobachtungen. (Co-author: Volker Bützler) In: Sinn, Arndt – Gropp, Walter – Nagy Ferenc (Eds.): *Grenzen der Vorverlagerung in einem Tatstrafrecht: Eine rechtsvergleichende Analyse am Beispiel des deutschen und ungarischen Strafrechts*. Universitätsverlag Osnabrück. Osnabrück, 2011. 425-438.
15. „In vielfalt vereinigt”? Die strafrechtliche Regelung des Terroraktes in der Europäischen Union. In: Motica, Radu I – Bercea, Lucian – Pasca, Viorel (Eds.): *Studii si cercetari juridice europene = European Legal Studies and Research: Conferinta internationala a doctoranzilor in drept = International Conference of PhD Students in Law*. Editia 3. Universul Juridic Timisoara. Temesvár, 2011. 426-436.
16. A terrorista bűncselekmény szabályozása Németországban. *Jogelméleti Szemle*. 2010/1. 1-16. <http://jesz.ajk.elte.hu/neparaczki41.html>

LIST OF LITERATURE USED IN THE THESIS

Bartkó, 2009 = Bartkó Róbert (2009): *Büntetőjogi aggályok a terrorcselekmény tényállásával kapcsolatban*. Jogtudományi Közlöny, 2009/12. 535-540.

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

Bartkó, 2013 = Bartkó Róbert (2013): *Kritikai észrevételek a terrorcselekmény 2012. évi C. törvény szerinti szabályozásával kapcsolatosan*. In: Szoboszlai-Kiss Katalin – Deli Gergely (Eds.): *Tanulmányok a 70 éves Bihari Mihály tiszteletére*. Universitas-Győr Nonprofit Kft., Győr. 48-58. Source: <http://dfk-online.sze.hu/images/egyedi/bihari/bartk%C3%B3.pdf>

Bartkó, 2015 = Bartkó, Róbert (2015): *A terrorcselekmény tényállásának értékelése az uniós követelmények tükrében*. Belügyi Szemle. 2015/7-7.39-51.

Bartkó, 2016 = Bartkó Róbert (2016): *Változások a hazai terrorizmus elleni büntetőjogi küzdelemben*. Magyar Jog. 2016/9. 535-539.

Deák, 2014 = Deák Zoltán (2014): *A Szegedi Ítéltábla döntése a terrorcselekménnyel fenyegetés és a közveszéllyel fenyegetés elhatárolásáról. A fenyegetés fogalmának értelmezése*. Jogesetek Magyarázata. 2014/2. 46-57.

Gierhake, 2008 = Gierhake, Katrin (2008): *Zur geplanten Einführung neuer Straftatbestände wegen der Vorbereitung terroristischer Straftaten*. ZIS. 2008/9. 397-405. Source: www.zis-online.com

Griesbaum, 2010 = Griesbaum, Rainer (2010): *Strafrechtliche Bekämpfung des Terrorismus auf nationaler und internationaler Ebene*. DRiZ. 2010/11. 365-368.

Lehner = Lehner, Andrea: *Die Straftatbestände zur Bekämpfung der Terrorismusfinanzierung. Eine rechtsvergleichende Untersuchung der österreichischen und deutschen Bestimmungen unter Berücksichtigung internationaler und europäischer Rechtsinstrumente.* Manuscript, Wien

Ligeti, 2012 = Ligeti Katalin (2012): Anti-terrorism related criminal law reforms and human rights in Hungary. In: Galli, Francesca – Weyembergh, Anne (Eds.): *EU counter-terrorism offences. What impact on national legislation and caselaw?* Editions de l'Université de Bruxelles, Bruxelles. 195-210.

Nagy, 2008 = Nagy Ferenc (2008): Die deutsch-ungarischen strafrechtlichen Beziehungen in der Vergangenheit und Gegenwart. In: Karsai Krisztina (Ed.): *Strafrechtlicher Lebensschutz in Ungarn und Deutschland. Beiträge zur Strafrechtsvergleichung.* Pólay Elemér Alapítvány, Szeged. 21-46.

Póczik, 2005 = Póczik Szilveszter (2005): *A nemzetközi terrorizmus fontosabb összetevőiről.* Magyar Tudomány. 2005/10. 1269-1278.

Selján, 2014 = Selján Péter (2014): *Harc az Iszlám Állam ellen.* Nemzet és Biztonság. 2014/5. 63-74. Source: www.nemzetesbiztonsag.hu

Sieber – Vogel, 2015 = Sieber, Ulrich – Vogel, Benjamin (2015): *Terrorismusfinanzierung. Prävention im Spannungsfeld von internationalen Vorgaben und nationalem Tatstrafrecht.* Duncker & Humblot, Berlin

Tálas, 2007 = Tálas Péter (2007): *A nemzetközi terrorizmus és a szervezett bűnözés hatása a nemzetközi biztonságra és Magyarország biztonságára.* Budapest. 1-19. Source: <http://www.kisebbsegkutato.tk.mta.hu/uploads/files/archive/904.pdf>

Tóth, 2013 = Tóth Mihály (2013): *A terrorcselekmény büntetőjogi szabályozásának és gyakorlatának változásai.* Hadtudomány. 2013/1-2. 30-40. Source: http://mhtt.eu/hadtudomany/HT_2013_1-2_mhtt.pdf

Zöller, 2009 = Zöller, Mark (2009): *Terrorismusstrafrecht: Ein Handbuch*. C.F. Müller Wissenschaft Verlag, Heidelberg

Zsebe, 2015 = Zsebe Zsolt (2015): *Külföldi harcosok az Iszlám Állam mellett*. Nemzet és Biztonság. 2015/1. 23-29. Source: www.nemzetesbiztonsag.hu