

movable or immovable property with the intention to finance a terrorist offense or to make them accessible to a terrorist organized criminal group or association or to a person who participates in such a organization (this is punished with imprisonment from 2 to 12 years).

Another relatively new offense directly covering terrorist activity (the so called: terrorist training) was introduced in 2011. According to Article 255a § 1 PCC the punishment of imprisonment from 3 months to 5 years should be imposed on the person who spreads or presents in public content which may facilitate the commission of a terrorist offense with the intention that such an offense should be committed. A new provision added in 2016 (art. 255a § 2 PCC) also penalizes the participation, in order to commit a terrorist offense, in a training which could make possible the commission of such an offense (an identical punishment can be imposed).

The last so far important modification of the Criminal Code was introduced in 2016 by creating a new offense in Article 259a which is to protect the territory of Poland from entry by terrorists. According to that provision, whoever crosses the border of Poland in order to commit on the territory of another state a terrorist offense or the offense described in Article 255a or 258 § 2 or 4 PCC shall be punished with imprisonment from 3 months to 5 years. At the same time the law-maker, in Article 259b, created incentives for the resignation from criminal activity of this type – if the offender gives up his plans and reveals all the information about the offense to prosecution organs he is to be granted obligatory mitigation of punishment on the prosecutor's motion.

The above described regulations of the Criminal Code are, of course supplemented by provisions regulating the transfer of money so as to make the financial system immune to money laundering and terrorist financing and by provisions regulating the rights and scope of activity of the various state bodies responsible for terrorism prevention and fighting. This last sphere seems to be the key one for effective counter-terrorism actions (even the best substantial criminal law regulations will not work if the police and other agencies do not have the instruments or the ability to fight and prevent terrorism activity), yet, these problems reach far beyond the scope of this paper.

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## **THE PRINCIPLE OF EQUALITY OF ARMS IN THE NEW HUNGARIAN CRIMINAL PROCEDURE ACT**

The *right to fair trial* is a principle originating from anglo-saxon system with the aim to establish a framework for fair trials within which government

bodies shall bring decisions in individual cases affecting the rights of citizens. The essential elements of this right were first declared internationally in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms dated 4th November, 1950 in Rome, Italy (hereinafter referred to as the «Convention»). In Hungary (a country that applies a civil law system), this principle and the individual elements thereof can be found in Article XXVIII of the Fundamental Law. The right to fair trial is not regulated within the framework of the Code of Criminal Procedure currently in place in Hungary (Act XIX of 1998 – *A büntetőeljárásról szóló törvény*, hereinafter referred to as the «Be.»); however, it has been included in the draft for the new Code of Criminal Procedure (currently under development) as early in the document as the Preamble chapter. (The new version of the Code of Criminal Procedure is expected to be enacted in summer 2018.)

One of the commonly known and recognized essential elements of the right to fair trial is the *principle of equality of arms* [1, p. 391], even though it is specifically named neither in the Convention, nor in the Hungarian Fundamental Law. This principle, fabricated through legal theory and legal practice over time, has the purpose of ensuring that, in criminal proceedings, the prosecution and the defence have equal chances and opportunities to express their opinions and take their positions with regards to factual and legal matters. It is to be noted that, even though the application of the principle of equality of arms does not always mean that the prosecution and the defence have completely identical rights, this principle does require that the defence be provided with such rights that is comparable with that of the prosecution.

This study focuses on such points of the draft for the new Code of Criminal Procedure that either seem to empower the principle of equality of arms the most or indicate legal facilities and/or legal systems in which this principle has not been regulated so far.

**1. More consistent enforcement of functional allocation (*principle of division of tasks*):** The new Code both retains the mixed criminal proceedings system and strengthens the characteristics of the accusatory system. Consequently, the aim of the criminal proceeding, provided through the acts of multiple procedural parties, is to reveal justice. Even though decisions shall be based on true facts, the court cannot be obligated to reveal the facts ex officio; it can only be obligated to clarify the facts within the framework established by the motions of the parties (i.e. the prosecution and the defence). Consequently, failure of the court to obtain means of evidence due to the lack of motion by the (public) prosecution shall not render the court's decision unfounded. The way the principle of equality of arms is strengthened here is that, during the judicial stage, not only the defence but the prosecution (public prosecutor) also has interests in making evidence motions that support the defence or the prosecution, respectively. At the same time, it relieves the court of the obligation to obtain incriminating evidence without motion.

**2. The right to effective defence:** The right to defence will continue to be a core (basic) principle provided for in the new Code of Criminal Procedure currently under development. However, the legislator has added the attribute word «effective» to the word «defence» («The defendant shall have the right to effective defence across all stages of the criminal proceeding»). However, the appearance of this attribute word (that has been included in the wording of the new Code based on the established practices of the Convention, the Hungarian Fundamental Law, the European Court of Human Rights and the Constitutional Court of Hungary) shall not be interpreted to subject the court, the public prosecutor and/or the investigating authority to additional obligations in future criminal proceedings compared to the obligations already set forth in the current Hungarian legislation. The right to effective defence is essentially an expectation set for attorney-at-laws who fulfil defence tasks as the appointed defence counsel system currently in place in Hungary cannot be honestly considered to be effective. Therefore, the principle of equality of arms imposes additional tasks on the defence. Even though it might look like an unusual solution (since, in legal practice, the principle of equality of arms is normally required to broaden the rights of the defence side), it is closely related to fair trials.

**3. Introduction of worthwhile and concentrated trial preparation:** The new Code simplifies the court proceeding across several points in order to take into account the requirement of making criminal proceedings quick and effective. Amongst these points, the principle of equality of arms appears prominently in *worthwhile and concentrated trial preparation* to be introduced as a new system. The aim of this new «facility» is to ensure that the contents, means and methods to be applied by the prosecution and the defence can be implemented in criminal proceedings as quickly and simultaneously as possible. It could allow the framework for the evidence procedure conducted in the judicial stage to be clarified at the beginning of the judicial proceeding as much as possible. In light of the foregoing, the new Code primarily focuses on the written preparation of the trial and on the preparatory session which serves as an important place for addressing the possible forms of cooperation with the defendant and for concentrating the evidence procedure to be conducted in the trial. Therefore, the way the principle of equality of arms appears here is that it will serve as a place for the parties (i.e. the prosecution and the defence) to set the basic direction for the evidence procedure under judicial control.

#### *Literature*

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