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## TOUGH LIBERTIES: PERPLEXED ABOUT TERRORISM

### FOREWORD

Very little is known about Hungary's war on terrorism though it seems that terrorism has become the most commonly cited reason of a governmental body's explanation of any of its restrictive policies. Since 9/11 the Hungarian government has issued several decisions with regard the fight against terrorism,<sup>1</sup> which consist of inter alia legislative tasks (such as drafting acts on judicial co-operation), establishing anti-terrorist co-ordinating bodies in police and intelligence fields, implementing EU regulations, linking and exchanging databases and providing financial means for the counter-terrorism activities. The list of the Hungarian measures is impressively long. The greatly consists of reiterations of EU measures but is also supplemented by some Hungarian ideas. The Hungarian way of handling the terrorism issue doesn't differ much from the EU's attitude not only terms of the similar legal basis, but also in terms of their attempts to obscure the aims and means of the new regulations.

The civil liberties group Statewatch has made an analysis of the 57 proposals on the table at the EU Summit on 25–26 March 2004 in Brussels (which followed the tragedy in Madrid) that “shows that 27 of the proposals have little or nothing to do with tackling terrorism — they deal with crime in general and surveillance”.<sup>2</sup> Although the Hungarian case still lacks a similar analysis and there are only a few issues which are scrupulously examined by human rights authors, it is quite easy to find cases which correspond with this tendency. In this paper two cases are to be presented I would like to note in advance that these cases are much more lessons in communication than lessons in human rights in Hungary, although the two spheres are deeply connected. The first case, in illustrating the technique of disregard, details how the government has neglected all of the actors in society whose role it is to maintain control in a democratic system. The second case is trivial one on the rhetoric of a dubious enterprise of the Ministry of Interior.

### THE BIOMETRIC PASSPORT CASE IN HUNGARY

By the last months of 2004, the biometric passport issue has become the most discussed human rights topic in the EU. The U.S. has proclaimed that each state which wants to further participate in its visa-waiver programme shall make their passports more secure, which means they shall comply with the standards of the ICAO.<sup>3</sup> According to these standards, every passport shall include at least one piece of biometric identification (a special biometric photo) and shall optionally include another one (fingerprint, iris image). The European Council has committed itself in favour of two identifiers (photo and fingerprint), although only one would have satisfied the U.S. requirements.<sup>4</sup> According to the Council's decision with regard to the introduction of the new system, any European citizen who applies for a new passport will have to provide not only his facial image but his fingerprints as well as a compulsory security feature, whose data will be stored on an RFID<sup>5</sup> chip readable at a few meters distance.

There was no public debate on the proposal and the data protection guarantees of the identifiers were also missing. The proposal introducing the new passports has come out in the form of a draft council regulation, and the European Parliament had only the authorisation for a consultation procedure, which meant very little opportunity to inhibit the acceptance of the regulation.

At the end of November 2004 the Privacy International, Statewatch and the European Digital Rights asked the Hungarian Civil Liberties Union (HCLU) among others to join the open letter written to the members of the European Parliament on biometric passports.<sup>6</sup> The petition has also reached Attila Péterfalvi (the Parliamentary Commissioner for Data Protection) and László Majtényi (the former Parliamentary Commissioner for Data Protection) and some other human rights NGOs as well. Apart from seven European data protection commissioners, the open letter was signed by both the commissioner in office and the former commissioner, forty-five human rights organisations (three of which are Hungarian), and many European citizens concerned

about privacy. The HCLU sought all the Hungarian members of the European Parliament (EP) with a letter of the same content, but unfortunately the EP has passed the draft.<sup>7</sup>

Along with the open letters, we have started an intensive media campaign in order to foster a public debate on biometric passports when not in the European Parliament then at least in Hungary. We are undertaking these activities because we feel that the position of the government should be clarified, as it is the ministers of the EU member states that will decide on the proposal in the end. The print and the electronic media were discussing the issue for days. On behalf of the Hungarian state — not counting the Parliamentary Commissioner — an employee of unknown assignment from the Central Bureau of the Ministry of Interior has answered the questions of the journalists (explaining only technical details), and Etele Baráth, the Minister for European Affairs has once made a statement to the reporter of a commercial channel just before leaving for Brussels on the way to the ministerial meeting. He explained, “I know that it affects the right to privacy, but nonetheless we have to raise the question, whether security or this right is more important for the country and for the society”.<sup>8</sup> The government has more or less concluded the debate, or rather it did not want to get deeper involved in it.

While it was never made public, it is known that the Minister of Justice, the Minister of Interior, the

Minister of Foreign Affairs and the Minister for European Affairs have gathered in order to finalise the position of Hungarian government before sending the Hungarian delegation to the European meeting. Although they did not invite the Parliamentary Commissioner for Data Protection to this meeting, it must have been evident to them that the draft council regulation on biometric passports is contrary to the Hungarian Constitution. Hungary would have had the possibility to vote against the proposal giving the chance of further discussion into the ambiguous details. However, the Hungarian government has voted without any debate for the regulation which was considered by the Hungarian DP Commissioner as the fingerprints have been used for identifying the criminals until the 21st century and “it would not be desirable if all citizens of the union were to go on quasi criminal records”. The regulation has entered into force the 18th January 2005.<sup>9</sup>

After the commencement of the regulation, the system required that the handling and producing of the special biometric photos should be established within 18 months and the fingerprints within 36 months. As some questions in the passport issue are still undecided, it is unsure if the personal data will be stored in an RFID chip or in a database from which the data of the passport owner shall be downloaded on a case by case basis.<sup>10</sup>

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## THE HUNGARIAN CIVIL LIBERTIES UNION

The Hungarian Civil Liberties Union (HCLU) is a law reform and legal defence organisation. When the founders were looking for a model to follow in 1994, they finally chose the American Civil Liberties Union (ACLU) because its organisational structure, principles and values it seemed to be the most appropriate. Only five years after the change of the regime, the founders created their NGO in Hungary based on the American model.

HCLU works independently from political parties, churches, the government, the state or any of its institutions, and it does not use resources from the above organisations. HCLU's activities are financed by large private foundations — domestic and international, and increasingly from Hungarian individuals. Fundraising is a great challenge for HCLU as well as for the other NGOs in the country and in the Eastern European region the tradition and practice of individual donating is lacking. Fundraising also requires the formation of a strong base of individuals who are identified with HCLU's values and goals.

HCLU's aim is to promote the fundamental rights and principles that are laid down by the Constitution of the Republic of Hungary and by international conventions. Generally it has the goal of building and strengthening the civil society.

HCLU has chosen to focus its work on the following areas: drug policy and drug use, Patients' Rights, Data Protection and the Freedom of Information, and the defence of Political Liberties (such as Freedom of Expression, Freedom of Assembly, opinion etc.). Professional experts are working full time with the help of well known advisors in each of these areas of concentration.

Their work mainly consists of promptly reflecting upon the questions coming from the society that are related to the expert's field that in addition to providing recommendations and guidelines to Hungarian authorities and institutions. Associates represent HCLU's point of view in the media and in public appearances, write studies and make surveys on the recent issues. Besides these activities, HCLU organises and participates in

Because the biometric passport is an issue of major concern, it is worth recalling some of the problematic details without the intention of being exhaustive. Both the system based on chips and the database system have their perils. The RFID chips have the risk of being read by unauthorised persons or manipulated without even giving the owner the chance of being aware of the data flow. The real danger of the database is “function creep”: once a huge amount of biometric data is collected, it will be used for purposes which have not much to do with the original aims of the regulation.<sup>11</sup> There is a strong temptation to use a database, which contains the personal data of hundreds of millions of people, for the purposes of dozens of different activities of the state in addition to border control purposes. No doubt every new purpose will have serious grounds. Even if the passport and the database are invulnerable and the data controllers never abuse the personal data, there is still an inevitable problem. Whoever is willing to sacrifice his life in a suicide attempt won’t have any scruples about giving up his identity and applying for a passport with false data. The biometric data will surely comply with the biometric features of the owner; only the identity will be of someone else. Thus, the biometric passport will give an unfounded feeling of security for the people and mislead the authorities for whom relying on the correspondence of the biometric identifiers will be more comfortable than examin-

ing the passengers. The biometric passport is a very grave restriction of our informational self-determination, and, in return for this restraint, it won’t give more security. The constraints on our right to privacy do not stand the constitutional test of necessity and proportionality.

It is clear that this issue raises several important questions, regardless of the fact that the government which represents the Republic of Hungary in the European Council has not considered this topic important enough to take up in a public debate. The ground of this attitude is obscure, but the government has supported a measure with unforeseeable consequences so as to reduce the risks of terrorism without asking for anyone’s opinion. The voters expect the government to do everything for their security but it is highly unlikely that they would like to obtain a new risk in addition to an already existing one.

## THE CCTV FEVER

The United Kingdom is a very important instance in crime prevention and in prosecuting crimes in Hungary. Both on a theoretical level and in practical sense, the British model is considered as worth following. A fine example of this imitation is the use of the video surveillance. In Budapest there are twenty three districts, and in the two thirds of them CCTV

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conferences, workshops and trainings, coordinates partnerships, cooperates with and provides information to other organisations.

HCLU is up-to-date on the activities of several important institutions and organisations such as the European Union, the Council of Europe, the WHO, the UN and the World Medical Association. HCLU follows up on the recommendations and guidelines, issued by these organisations, which regard HCLU’s areas of concern. HCLU sometimes makes these documents accessible in Hungarian language.

HCLU’s objective is to achieve a Hungarian legal system that is in accordance with the most recent international legal norms, which necessitates that laws and other legal instruments be adjusted.

HCLU consistently monitors the formulation of new pieces of Hungarian legislation that fall within its competence, from the initial conception of a draft law all the way to its enactment. Before working out a statement, HCLU seeks counsel from eminent experts on the topic at issue — typically jurists, lawyers and physicians.

By the time parliamentary discussion of the issue opens, HCLU gives politicians, journalists and experts their prepared statements. In the annex attached to the Statements, HCLU provides the Members of Parliament who are most directly involved in the legislative discussion with a commentary on the bill and recommendations for alternative wording of several of the bill’s articles.

### HCLU’s Programs

#### *Drug Policy Program*

In the beginning HCLU only dealt with individuals having drug use-related legal problems. Since 1998, HCLU has been cooperating with harm reduction service providers and outpatient drug treatment clinics. HCLU also provides legal assistance to arrested methadone doctors, street outreach workers and needle exchange program operators.

Within the Drug Policy Program, HCLU recently initiated the Media Monitoring project which aims to monitor the drug related information released in Hungarian media (regardless the type of the medium). The goals

systems are operated by the police which means about five hundred cameras. In the major cities of the country, numerous CCTV systems were installed in the last decade. The first system watching public area was introduced around 1993–94. Although the video surveillance is widely used in Hungary, no survey has ever been made in order to ascertain its effects either before installing a system or after its start.<sup>12</sup> There is no one in Hungary who is able to judge if the CCTV could reduce the crime in public area anywhere in the country or not. The costs of the installation of the surveillance systems in the capital cost approximately 6 million euros, and the annual cost of operating them is about 1.5 million euros.

While the reasons for the CCTV boom are various, the following is the most likely scenario. The fear of criminality is relatively high among the Hungarian population. The image of criminality differs much from the official criminal statistics. About 14% of the population thinks that Hungary is among the first three countries in terms of the frequency of crime, and about 50% believe that the country is among the first ten countries in Europe on this list. In reality, however, Hungary is one of the safest countries according to the crime rates per 10000 inhabitants. When asked to estimate the number of crimes committed in the year of 2002, 60% of those surveyed

guessed a number below 100 000, whereas in the reality this value is around 500 000.<sup>13</sup> Due to the effects of the media, the frequency of violent crimes is overestimated. If people imagine criminality as a mass of violent crimes, no wonder they are afraid of it even when the statistics don't back up their fears.<sup>14</sup> The local governments and the mayors are resolute on tackling the local "crime problem" and they are looking for solutions. A wide-spread solution is the CCTV which can be easily presented as the silver bullet against crime on the streets, and it is also easy to find local companies which install the system. The population receives what they need: a fancy crime prevention system that fights imaginary crime. The crime issue seems to be resolved for a while, and there is not much discussion about the financial and privacy consequences of the project.

This is the peaceful local level, but there is also a central level of crime prevention. The Ministry of Interior has a very different role in the fight against crime and the war on terrorism as they work on national level. They also need spectacular projects to demonstrate the quality of their work. In Hungary, the CCTV is a perfect subject in this field too, not in the least owing to its success on a local level. After the July 2005 London bombings, the Ministry of Interior reported that the CCTV systems of the

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of the project are filtering out and correcting false information in order to avoid misunderstanding and the spread of ignorance among the public as well as providing credible data and sources on certain drug related issues.

#### *The Patients' Rights and HIV/AIDS Program*

The Patients' Rights Program focuses on such serious issues as the right to health care, the right to freedom of choice, informed consent, right to refuse treatment, access to medical records, substituted decision making, right to participate in decision making related to health care and the right to self-determination in cases such as abortion and euthanasia.

#### *Data Protection and Freedom of Information Program*

HCLU is governed by the principle that the citizens have a right to control the use of their personal data and that they should have access to documents of public interest. The Program deals with questions like right to the privacy of personal data (including protection of medical data, disclosure of medical data, protection of personal data in the media), access to public interest information and protection of basic information rights on the Internet.

#### *Legal Advocacy — HCLU's Legal Aid System*

HCLU provides legal aid and, in special cases, legal representation free of charge. This practice involves the provision of personal consulting hours once a week by two lawyers who can also be reached by telephone, mail or online during office hours every weekday. Those who are in need can only reach HCLU if their problem or case relates to the fields with which the organisation deals. In exceptional cases, HCLU represents a client in order to promote a certain issue in public.

The statistical figures of HCLU's ten years of existence also serve to illustrate its activity. HCLU has served over 4000 clients, dealt with 200 criminal cases and 40 civil suits, issued 200 official statements, commented on 100 rules, made 20 proposals to the Constitutional Court and released approximately 100,000 copies of 150 different publications. The experience of HCLU clearly shows that strategic litigation can be a tool in public interest advocacy even within the continental legal system.

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buildings in potential danger should be revised with special concern given to their use for defence purposes.<sup>15</sup> As another newspaper reported, the “Ministry of Interior is planning to connect the CCTV cameras into a unified system in step with the experience of the terrorist attacks. According to the information of the Magyar Hírlap [a daily newspaper] the ministry would speed up the installation of the systems and the connection of the existing systems.”<sup>16</sup>

As seen in these reports, the government has used the London terror attacks either to promote the CCTV, the necessity of which has been questioned lately by human rights groups and journalists, or else they could not find any other measure which could be well communicated as a sign of their firmness. Both conclusions are very sad. In the *first case* the government has chosen the strategy of confusion. The ministry has cynically utilised the population's fear of crimes and terrorism and their belief that the CCTV protects them from crime. The logic is as follows: “if something protects from crime, then it will also protect against terrorism and even if the cameras are infringing upon privacy and might be unconstitutional in ‘common’ crime prevention, it may be used against the bigger danger of terrorism. Consequently, Hungary needs more cameras, and it doesn't matter if we install them against criminals or terrorists, it must be useful against both. We install them and if there is no terror attack, or if the cameras won't prevent them, at least they will be useful against minor crimes.”

The probability of committing a “common” crime on the street is quite high in considering the annual 500 000 crimes. The probability of a terrorist attack on a street under surveillance is quite low — even if we don't take the current Hungarian tendencies in terrorism risk as a basis for our prediction.<sup>17</sup> If the use of CCTV in prevention of crimes with high probability is questionable on constitutional grounds, then it will be even more difficult to constitutionally justify their existence in the prevention of terrorist attacks. The ministry has not taken such arguments in consideration. They were also not taking into consideration the fact that, even if the cameras were effective in reducing “common” crimes, they provide no protection against terrorism, due to its specific nature. A suicide-bomber doesn't care about being recognised by the cameras and thus held accountable. He who sacrifices his life won't be scared of any punishment. Hundreds of thousands of cameras were not able to prevent the tragedy in London.

The *second* conclusion is also very dismaying. The government is not cynical. They truly believe, in spite of the lack of proof of the effectiveness of the

video surveillance and the extensive literature on unsuitability of CCTV systems, that these techniques are useful against terrorists. As they don't have a better idea for the prevention of terrorism, they communicate the installation of bigger and better CCTV systems.

## CONCLUSION

If either of these offers a sound conclusion, it can be said that the government is not very well prepared for the new era. Parallel with the uncritical adoption of all EU ideas and measures, the Hungarian government has failed to show that they have a single original idea in preventing terrorism applicable to the Hungarian legal and political environment. The issues discussed here are only examples of governmental embarrassment. Alone they are not sufficient to show the consequences of the lack of reason in tackling terrorism, but they shed light on the profound problems of this area. Apparently, the only answer for the risk of terrorism is the mass surveillance amalgamated with the well-known routine of the communist era in refusal of any communication, public debates, sharing information and doing research. It is rather uncertain whether the state of affairs in the Hungarian government is really so bad and the country has not developed in this sense over the last fifteen years, but unfortunately until now no evidence in refutation of this conclusion has come into existence.

## NOTES

1. 2286/2001. (X. 11.) Gov. decision; 2112/2004. (V. 7.) Gov. decision; 2151/2005. (VII. 27.) Gov. decision.
2. Statewatch “Scoreboard” on post-Madrid counter-terrorism plans.
3. International Civil Aviation Organization — [www.icao.org](http://www.icao.org).
4. Presumably the European Council has taken its decision under the influence of the G8 group, See Tony BUNYAN: *Countering Civil Rights*. Nottingham, Spokesman Books, 2005. at 11.
5. RFID radio freq.
6. [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-85336&als\[theme\]=BTS%20Biometric%20Passports](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-85336&als[theme]=BTS%20Biometric%20Passports).
7. The MEPs has supported the draft with 471 yes votes, against 118 nay, 6 abstention. The Hungarian MEPs voted according the following:  
YES: *EPP-ED*: Barsiné Pataky, Becsey, Glattfelder,

- Gyürk, Járóka, Olajos, Őry, Pálfi, Schmitt, Schöpflin, Surján, Szájer; *PSE*: Dobolyi, Hegyi, Herczog  
 NAY: *ALDE*: Szent-Iványi  
 ABSTENTION: —  
 NOT VOTED: *EPP-ED*: Gál; *PSE*: Fazekas, Gurmai, Harangozó, Kósáné Kovács, Lévai, Tabajdi; *ALDE*: Mohácsi
8. See Data protection worries about the fingerprint passports [Adatvédelmi aggályok az ujjlenyomatos útlevél miatt], Mtv, 11th December 2004 <http://www.hirado.hu/cikk.php?id=12114>; We will have passports with fingerprint [Ujjlenyomatos lesz az útlevelünk], TV2.hu - 13th December 2004 [http://www.tv2.hu/Archivum\\_cikk.php?cikk=100000097551&archiv=1&next=0](http://www.tv2.hu/Archivum_cikk.php?cikk=100000097551&archiv=1&next=0).
  9. Tanács 2252/2004/EK rendelete (2004. december 13.) a tagállamok által kiállított útlevelek és úti okmányok biztonsági jellemzőire és biometrikus elemeire vonatkozó előírásokról, lásd [http://europa.eu.int/eur-lex/lex/LexUriServ/site/hu/oj/2004/l\\_385/l\\_38520041229hu00010006.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/hu/oj/2004/l_385/l_38520041229hu00010006.pdf).
  10. According to the British government's paper Liberty and Security — Striking the Right Balance this question seems to be undecided, although the regulation consists the first solution.
  11. Statewatch analysis — From the Schengen Information System to SIS II and the Visa Information (VIS): the proposals explained. See [www.statewatch.org](http://www.statewatch.org).
  12. The HCLU has started a survey which aims collecting data on CCTV systems operated by the police. We have asked all the police chiefs of the districts of Budapest, the leaders of the police offices in the chief towns of the counties and the responsible officials of the Ministry of Interior if they could provide a study on the effectiveness of the video surveillance systems. Their reply was consistent: they do not have any research in this field.
  13. Hungary has about 10 million inhabitants.
  14. Kó József: *The fear of criminality* [A bűnözéstől való félelem]. In: *Áldozatok és vélemények*, Budapest, Országos Kriminológiai Intézet, 2004. 68—70.
  15. Preparing for the terror [Felkészülünk a terrorra], index.hu, 14. July 2005. <http://index.hu/politika/belfold/0714lmpertth>.
  16. The Ministry of Interior would observe the country through cameras [Bekamerázná az országot a Belügyminisztérium], index.hu, 22. August, 2005, <http://index.hu/politika/belfold/cctv7805>.
  17. The government and the terrorism experts share the opinion that Hungary is a low risk country inter alia due to its low media presence in the world.