

Thoughts about crimes committed in connection with overchargings in Budapest

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Preliminaries

September 22, 2010 the US Embassy in Budapest on its English language homepage has repeatedly published the list (name and address)¹ of those mainly downtown bars and restaurants *not* recommended for US citizens as well as citizens of other countries visiting Budapest. The reason for this one can find in the publicity concerning reports and criminal proceedings connected to 'overcharging' which has been characteristic to the capital, nevertheless its qualification from the aspects of criminal law is not unequivocal. In order to unify the practice, Department of Criminal Coordination at Budapest Metropolitan Police Headquarters examined similar crimes committed in 2007-2009 at the territory of its competence (capital) and formed a common position with the Budapest Attorney General's Office.

Statements of the study

As to the jurisprudence in Budapest we considered relevant the activity of the Budapest Metropolitan Police Headquarters' 2nd, 5th, 6th, 7th, 12th, and 14th district Police Offices, the Budapest Metropolitan Police Headquarters' Anti Organized Crime Department, as well as prosecutor's offices supervising their procedures, because at the other police offices of the capital such criminal procedures did not start. In the history of these criminal cases it was common that visitors of these bars and restaurants in question after consumption they received such a big bill that they were not capable of paying or was not acknowledged at all. Readiness to pay was forced either by restriction of personal freedom, threatening or hurting by employees of the bar or restaurant, then usually one person of the company of visitors was lead on to a nearby ATM to the required cash while fellow visitors taken 'hostage' at the bar or restaurant, thus trying to recover debt.

¹ http://hungary.usembassy.gov/tourist_advisory.html

In order to shape the unified standpoint concerning previously applied qualifications, here follow studied states of affairs.

I. Abduction

Criminal Department of Budapest Metropolitan Police Headquarters prosecuted 3 persons because of reasonably suspected abduction. According to governing facts in Summer 2008 a couple of Irish citizens had fun in a night club where the minimal limit of consumption was 18.000 HUF (~ 72 €). Victims after consuming one bottle of beer each, wanted to leave, but employees of the night club demanded 80.000 HUF (~ 320 €) from them. One of the victims initiated to the waiter to negotiate the requested sum out in the street. When his five companions wanted to follow them, two employees standing at the front door stopped it: one of them locked the entrance door, the other one grabbed the hands of the man reaching out to the door handle and tossed him to the wall. Victims were in English threatened to be beat, and told that unless they pay as demanded, they cannot leave. In the meantime the employee out in the street told the Irish man also outside the night club that if he doesn't have the required 80.000 HUF (~ 320 €) in cash, he can use his credit card. The employee lead the victim to a nearby ATM and after having had paid the required sum all victims were let off.

The Budapest Attorney General's Office arraigned a case for six counts of abduction.

A procedure completed by the Budapest Metropolitan Police Headquarters' Anti Organized Crime Department the following facts had been stated. In August, 2008 in Budapest 7th district at a bar three Swedish citizens were spending time. They had 4 bottles of beer and some wine and when they wanted to leave the waiter demanded 445.000 HUF (~1780 €) from them. Victims did not admit the required sum, so perpetrators surrounded them with their unknown fellows; victims were threatened verbally in a rather aggressive way, and also were deprived from leaving, declaring payment as condition for their freedom. After this the waiter accompanied two victims to a nearby ATM while the third Swedish citizen had been detent by two employees at the bar. Having had paid more than 400.000 HUF (~ 1600 €) all three Swedish citizens were set free.

The Budapest Attorney General's Office arraigned a case for abduction.

The Budapest Metropolitan Police Headquarters' Anti Organized Crime Department had conducted an investigation concerning two Spanish and one Venezuelan citizen who in September 2008 had three bottles of beer at a night club in Budapest 6th district. When they wanted to leave a bill of 226.270 HUF (~ 906 €) was presented to them. As victims denied paying such an amount, three employees of the night club surrounded them and demanded the payment by threats of beating. They locked the doors of the night club and declared foreigners' freedom depending on their payment of the above sum. After this two employees forced victims to go to a nearby ATM while their fellows were kept at the night club until the bill had been paid.

The Budapest Attorney General's Office arraigned a case for abduction.

The Budapest Metropolitan Police Headquarters' 5th district Police Office investigated a case about 5 Danish men who May 5, 2008 went to a bar at a frequented street of the district and had 4 beers. Upon their departure they were demanded to pay also for the wine consumed by two ladies joining their table, but the Danish men refused to do so. Later four men with strong physique appeared hurting the foreign detainees at the bar then told them that release would take place only after having paid the bill. One of the foreigners was accompanied to a nearby ATM by two unknown Hungarian men while the remaining three were kept at the bar. After the payment of the demanded amount victims were set free.

In the beginning investigation had been conducted into extortion when the Budapest 5th-13th district Prosecutor's Office supervising this investigation asked the Budapest Attorney General's Office for a resolution. The Budapest Attorney General's Office pointed out in its transcript to the investigating authority that the crime subjected to the investigation is fully appropriate for finding the felony of abduction.

II. Litigation, violation of personal freedom, mayhem

The Budapest Metropolitan Police Headquarters' 2nd district Police Office had been conducting an investigation based on reasonable suspicion into the crime of attempted litigation, violation of personal freedom and mayhem against three Hungarian citizens. In July, 2007 at a restaurant in the district two Mexican and one US citizens were demanded upon their departure to pay 377.000 HUF (~ 1508 €) for their consumption and an additional 180.000 HUF (~ 720 €) for other costs. Victims found the amount too high, they did not want to pay it, and therefore they were threatened, a man with strong physique stood in the way to the entrance door. Above all this, pockets of the victims had been emptied, their cash at hand taken away. Then employees forced one of the Mexicans to take money from his accommodation. When they detected that the victim with the help of the receptionist of his hotel wants to call the police, one of the perpetrators pinched a knife to the victim's neck and also hit him. They took the intimidated victim to a Western Union branch, forced him to assess money, unsuccessfully, so they took him back to the bar. After this one of those two victims kept at the bar, also had been 'accompanied' to their accommodation, where one of the victims took 700 €, then at a Western Union branch he assessed another 1.211 US Dollars. The victim first denied signing the payout document when one of the perpetrators held a burning cigarette butt to the victim's neck threatening to burn him if he refused to sign. As a result the victim signed the payout document and handed the amount to the defendants. During this time the two other victims had been held at the bar.

The investigating authority with the agreement of the supervising Budapest 2nd-3rd district Prosecutor's Office qualified this act as 1 counts of felony of litigation, 3 counts of felony of violation of personal freedom and 2 counts of felony of mayhem.

In our opinion in this case it could undoubtedly be stated that victims' corporal wholeness had directly been threatened thus violating their personal freedom, with a special attention to the fact that restriction of their personal freedom was realized not only in the club but also when they had been forced to their hotels, the bank and the ATM by depriving them

their right to freedom of movement. Perpetrators in the meantime directly threatened their corporal wholeness (with a knife and burning cigarette), one of the victims had been assaulted too, and their freedom was depending upon meeting perpetrators' demands.

An act at the same club at the end of July, 2007 was joined to the above case. Two Dutch citizens at the night club upon their departure were demanded to pay 179.000 HUF (~ 716 €). Victims found the amount illegitimate; they did not want to pay it. The door of the club was held by a strongly built man with pound arms, thus depriving victims from leaving. Employees threatened both victims explaining to them that until paying the bill they were not allowed to leave. Victims influenced by the threat did not resist. Victims' pockets were emptied; their valuables looked through, money on them taken. Then one of them was accompanied to a nearby ATM where forced to withdraw money from his account and the money taken from him. In the meantime the other victim had been held at the club. As the sum altogether did not cover claims and victims continued to argue the claim and wanted to call the police, they had been assaulted, hit and kicked a few times. As a result they handed over another 24.000 HUF (~ 96 €), then victims were driven to an unknown location in Budapest and released there.

The investigating authority with the agreement of the supervising Budapest 2nd-3rd district Prosecutor's Office qualified this act as 1 counts of felony of litigation, 2 counts of felony of violation of personal freedom.

According to our view this legal standpoint the same way as the foregoing contradicted to the standpoint of the Budapest Attorney General's Office explicated in similar cases. In this case too personal freedom of victims had been restricted by directly threatening their corporal wholeness all along, so directly that they had actually been hit, and their release was depending upon meeting claims.

The Budapest Metropolitan Police Headquarters' 5th district Police Office had been conducting an investigation because of suspicion into litigation against unknown perpetrator. In May, 2007 two Chinese citizens were sitting at a bar at a walking street having two bottles of beer, two bottles of wine and also ordered to cans of energy drinks for two ladies working at the bar. As the Chinese were about to leave, they were demanded to pay 164.000 HUF (~ 656 €) which they denied to pay. As a result 4-5 men of strong physique surrounded them and said that they were not allowed to leave until they paid. Their documents and cash were taken, and one of the perpetrators told that if they tried to trick, he would cut off their hands. Victims one after the other had been accompanied to a nearby ATM and forced to get the money while the other victim was withheld at the bar. From one victim's account 75.000 HUF (~ 300 €) could be withdrawn but nothing from the other victim's account, so by threatening perpetrators forced them to have additional money transferred by someone. After a while one of the victims was taken again to the ATM and the newly withdrawn 200.000 HUF (~ 800 €) taken from him immediately. Then they went back to the bar from where victims were released with their documents.

The supervising Budapest 5th-13th district Prosecutor's Office in this case did not amend the qualification of the investigating authority. As in this case perpetrators remained unknown, investigation was terminated.

The Budapest Metropolitan Police Headquarters' 7th district Police Office had been conducting an investigation because of suspicion into litigation against unknown perpetrator. It had been stated during the investigation that in August, 2008 at a night club two Finnish citizens were demanded to pay 101.520 HUF (~ 407 €) for one vodka and a pint of beer. Victims argued the sum and refused to pay it. After this a man introducing as the boss of the club approached them and said if they didn't pay they could be in trouble. Then three men surrounded them, after which victims handed over all the money they had, approximately 280 €. The boss said this was not enough, they should pay more because security guards are already very angry. Influenced by the threats one of the victims went to a nearby ATM accompanied by one of the security guards but the withdrawal was not successful. In the meantime the other victim held at the club had been hit 3-4 times in his stomach.

Investigation into this case had been supervised by the Budapest 6th-7th district Prosecutor's Office. In September, 2009 due to the perpetrators being unknown, investigation was suspended.

III. Concussion

The Budapest Metropolitan Police Headquarters' 14th district Police Office had been conducting an investigation because of suspicion into following facts below. In Budapest at a dawn in October, 2007 two Swedish citizens at a bar unknown to them and later also unidentifiable by them, had consumed 2 bottles of beer and two glasses of wine for which they were demanded to pay 221.000 HUF (~ 884 €). After they argued the amount, several security guards surrounded them and said that they have to pay the bill otherwise there will be trouble. Victims got frightened and in order to avoid physical abuse they cooperated. Perpetrators took them one after the other to a nearby ATM. One victim influenced by the threatening withdrew 100.000 HUF (~ 400 €), 200 € and 1.500 Swedish Krona from his account, while the other one 100.000 HUF (~ 400 €), 130 € and 1.500 Swedish Krona. While one victim at the ATM, the other one was withheld at the bar.

As in this case perpetrators remained unknown, investigation was terminated.

According to our view the qualification was incorrect in the first place because the investigating authority ignored the fact that the felony of is a subsidiary crime; if another crime is committed, there is no place for establishing this one.

IV. Extortion

The Budapest Metropolitan Police Headquarters' 6th district Police Office had been conducting an investigation because of suspicion into extortion following facts below. In December, 2007 at one of the district's night clubs two British citizens consumed a few drinks, for which they were charged 290.000 HUF (~ 1160 €). They argued the amount and denied to pay it. One of the security guards threatened them in English saying unless they pay they'll be beaten. Victims one by one were taken to a nearby ATM while the other one was withheld at the night club. Victims having been frightened by physical abuse paid the demanded sum after which they were released.

Investigation into this case had been supervised by the Budapest 6th-7th district Prosecutor's Office, and due to the perpetrators being unknown, investigation was terminated.

The Budapest Metropolitan Police Headquarters 6th district Police Office conducting also an investigation because of suspicion into extortion stated the following. In August 2008 a British citizen at a night club already known to the authorities had been spending time, upon departure he was charged 155.000 HUF (~ 620 €) which he refused to pay. As a result three men surrounded him and said that it would be advisable for him to pay. The victim asked for calling the police, in vain, and also had been kept at the club. The victim tried to get out from the bar but they grabbed his clothes and threatened him to be killed. The victim realizing the physical dominance got frightened, and took seriously that in case he does not obey instructions, he would really be killed. He by himself walked to a nearby ATM and withdrew the demanded sum, then handed it over and after this he was released.

Investigation into this case had been supervised by the Budapest 6th-7th district Prosecutor's Office, and due to the perpetrators being unknown, investigation was terminated.

V. Questions of qualification and demarcation

According to the above it has been outlined that crimes committed almost similarly the investigation authority and their supervising prosecutor's offices had been qualified four different ways. In our view concerning the above acts there is a difference in the extent and way of threat, or examination of the time and the purpose of the applied violence can imply any difficulty the judgment of which directly affects the substantive qualification of the act.

According to the legal facts of the **felony of abduction**, one who deprives someone from his or her personal freedom by violence or by directly threatening his or her life or corporal wholeness, or abuse his or her incapable condition to perform self defense or expression of will, and his or her release subjects to meeting a demand, commits crime. Crime committing demeanor has two phases: tool act and purpose act. The first phase, the tool act means deprivation of the passive subjects from their personal freedom. In respect of the judgment of this no problem occurred with one exception when the act was qualified as concussion.

The felony of **violation of personal freedom** and abduction compared to each other are related in a special way. However the difference is that in abduction the act defines also the way of perpetration which can mean violence applied against the victim or direct threat to his or her life or corporal wholeness or abuse of his or her incapable condition to perform self defense or expression of will. In the incidents of practice occurred exclusively the violence applied against the victim or the direct threat to his or her life or corporal wholeness.

Violence constitutes a physical power influencing a person directly in order to break his or her resistance. Definition of violence embraces all physical stress applied against the victim's corporal wholeness in order to deprive the victim from his or her personal freedom (or prolongation of the already existing captivity) which is aimed at vanquishing resistance of the passive subject, and as a consequence of which the victim is incapable of behaving appropriately to his or her will.

Threat as defined by par. No. 138 of the Hungarian Penal Code constitutes envisaging such a serious disadvantage which is appropriate to cause serious fear in the intimidated

person. The legal act however requires a **qualified threat**, namely the threat on the one hand has to be aimed **at life or corporal wholeness**, and on the other it **has to be direct** i.e. one should calculate with the immediate or close occurrence of the envisaged serious disadvantage independently from the victim's subjective feeling of being threatened. For the discretion of qualified threat constituting abduction it is extremely important a most thorough procedure to investigate facts which first of all means a most detailed interrogation of victims, as foreign citizens shortly after the crime had been committed, leave our country, and within the framework of an incidental judicial assistance an interrogation implemented months later does not provide an adequate result.

In respect of the realization of abduction it is important whether the threat aimed at hurting the victim can be considered as direct, or how serious it should be qualified in those cases when there is no verbal threat but an implication of threat only. It is evident that the threatening with insult as well as physical dominance of perpetrators had been found appropriate by the Budapest Attorney General's Office for the realization of qualified threat, while district prosecutor's offices on the contrary had not necessarily found it reasonable.

Among questions of demarcation the simplest for us is the case of concussion as being a subsidiary crime, it can be assessed in the absence of other special facts only.

Violation of personal freedom *mutatis mutandis* in case of abduction cannot be considered as is incorporated in it. It can be considered though in the case of litigation, extortion if it is realized in time and space separately from it. One can find examples for this beside other crimes, but principles are feasible here too (e.g. Judicial Decision 1991.91, 2001.2, 2004.448).

Demarcation of extortion and litigation cannot be problematic either. The only difference here is the nature of the demand, for this numerous *ad hoc* judicial decision had been made (1993.718, 1995.80 and 1999.293). It has to be noted though that in case of abduction there is no differentiation (legitimate or illegitimate claim) concerning the intent.

It is obvious that the real problem in practice occurs exclusively in the issue of extortion – litigation – abduction. Principles of demarcation are relatively simple: abduction compared to litigation is special. The only difference between them constitutes in legal facts, i.e. in the way of depriving from personal freedom (opposite to litigation it is possible to be realized by any kind of violence or threat) and that the act of release is depending upon meeting the demand (again opposite to litigation which beside the intent specified by the law, could be aimed at doing, not doing or tolerating anything). On the level of legal theory, there is no problem with demarcation; one cannot even say that concerning this subject that it is not a crime category elaborated by judicial jurisprudence.

One can talk essentially about extortion or litigation if deprivation from personal freedom if realized not by violence or threat of life or corporal wholeness (in practice it is not lifelike), or deprivation does not take place at all because for example victims admitting that they owe a certain sum, also do not indicate their wish to leave. This could be typical for a situation when victims argue the amount on the bill or the way of payment, and meanwhile perpetrators in order to force the payment threaten verbally or act violently. In this case one cannot say that meeting the demand occurs as condition for release. This is simple litigation that during the

time of perpetration necessarily limits also personal freedom, as an absentee – except for applying a communication device – is difficult to threaten.

Inquiry of the presence of violence implies no difficulty in practice, unlike the consideration of the violence performed in a case as legal fact of abduction or not, i.e. the applied violence constitutes really the way of perpetration in order to deprive the victim from his or her personal freedom. In our view violence as a way of perpetration always has to be investigated most thoroughly with a most detailed examination of historical facts of the given case. In our opinion when violence or threat is aimed to deprive the victim from his or her personal freedom or to break his or her will for any escape, this violence definitely constitutes the legal act of abduction. Other acts can be touched upon when the victim starts arguing and does not intend to leave or does not indicate this intention, however from perpetrators no reference is made that the condition for leaving would be meeting the demand.

Judicial practice can be considered unbroken in abduction. It takes place when perpetrators deprive the victim from his or her freedom of movement in order to extort the meeting of any demand, and with violence against a person or by applying direct threat against life or corporal wholeness, the victim is forced to remain with them until their demand – be it legitimate or not – is met (2002.470, 1998.66, 1999.544).

After having overviewed relevant standpoints of specialized literature, judicial and prosecutor's practice, we agree with the jurisprudence represented by the Budapest General Attorney's Office. We underline that the existence of any factual elements all along the investigation has to be examined and interpreted; it cannot be allowed either for or against, that any kind of automatism would function in the judgment of similar cases.

The felony of abduction is considered to be a particularly serious crime; crimes presented here had been followed by increased media interest. These and similar cases can negatively influence foreign evaluation of public safety in Hungary, especially in Budapest. This is the reason why we believe that in these cases rapid, professional and determined action of the police is highly expected.

VI. Statements by the Budapest Attorney General's Office, summary

The Budapest Prosecutor's Office basically agreed with our statements outlined above and supplemented them as follows:

1. Every case has to be assessed as abduction when perpetrators deprive by violence at least one victim threatening his or her life or corporal wholeness or abusing his or her condition of incapability to perform their will, and the victims release is made dependent upon the payment of the billed claim of money, be it the entire amount or a part of it.
2. When there is only one victim who in order to pay the bill by violence or threat is forced to be accompanied to the ATM and withdraw money from his or her account, even if other conditions are present, it does not necessarily result in identifying it as a felony of abduction (this case qualifies as extortion).

3. Physical dominance of perpetrators in itself cannot lead to the assessment of direct threat to life or corporal wholeness.
4. From the aspect of the assessment of abduction, it has no importance that the employee of the bar or restaurant in question applies qualified threat for recovering the amount of a real or an elevated billing debt as the felony can be committed by endorsing real or imagined demand as well.

An effort aimed at shaping the integrated practice for jurisdiction initiated by us proved to be efficient, thus providing a crutch to investigating bodies of Budapest.

Legislation:

- Act No. IV. 1978 about the Penal Code
- Hungarian Penal Code – Comment for practice

Transcripts of the police and prosecutor's offices:

- Budapest Metropolitan Police Headquarters, Department of Criminal Coordination, report no. 01000-47000-1/2009 gen.
- no. 398/2009 transcript of Deputy Attorney General of Budapest
- Budapest Attorney General's Office NF (supervision of investigation) 16831/2008, NF 22916/2008, NF 19334/2009 no. indictments
- no. NF (supervision of investigation) 9265/2009/5-II. transcript of Budapest Attorney General's Office