



LEGISLATION ON COMBATTING TERRORISM IN THE REPUBLIC OF POLAND

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Keywords: terrorism, law, legislation, antiterrorism, Poland

ABSTRACT

Legal regulations related to terrorist threats are crucial for undertaking successful actions by institutions tasked with combating terrorism. The antiterrorism law in Poland was introduced in 2016 and is one of the latest sets of legal regulations concerning terrorism in the world. Moreover, it is one of the newest acts in the European Union. Its solutions include a number of measures aimed at maintaining state security that are very effective - so far, there has not been a single terrorist attack in Poland. It is essential to analyse this law, as well as present its key points that constitute its basis. It should also be pointed out that legal solutions should be constantly updated to evolving threats. Thus, the article indicates which parts should be changed in order to improve the antiterrorist system in Poland.

INTRODUCTION

At the outset of the analysis of the act¹ on anti-terrorism operations of 2016, it should be pointed out that from the moment Poland gained independence on 11 November 1918 until 10 June 2016, there had been no uniform law that would have universally obliged the selected and delegated entities to fight terrorism (Gałęzowski and Ruman 2010). The Polish government's response to the threats that occurred in Europe in 2015 (Bigo et al. 2015) was to create a new law that would systematise the actions necessary for undertaking counter-terrorist/anti-terrorist² operations. The new regulations also introduced significant amendments to the matter of immediate response – the use of counter-terrorist units, among others (Gabriel-Węglowski 2018). The law regulating the elimination of terrorist threats has become the key element of the whole system of combating terrorism in Poland.

The multiplicity of terrorist attacks in the European Union's member states made it necessary to take systemic action to combat terrorism. The affiliation of the Republic of Poland with international organisations, and thus anti-terrorist coalitions, has in a way forced a response to the emerging threats (Olechnowicz 2017). A risk of assaults or cyber-terrorist attacks in the territory of Poland constituted a real threat that could have prevented the state from proper functioning (Tyburska and Jewartowski 2016). The actions taken by Poland were aimed not only at increasing the level of security in the country, but also strengthening ineffective and unstable international structures allowing for free travel within the EU

¹ Bills are proposed legislation presented before the parliament. An act is a bill that has been approved by the parliament after voting. It is the law applied to the whole country, and if anyone disobeys it, they are punished. All acts were bills before the approval, and any change required in them has again had to be approved by the parliament, which is a time-consuming process. Some acts are passed only to remove the old act.

² Typically, the terms “anti-terrorism”, “counter-terrorism” and “the fight against terrorism” are used interchangeably in international literature, because the actions taken in the various stages come down to countering the terrorist threat. Accordingly, the detailed distinction could change considerably if one looks at the activities of individual institutions – interventions with weapons, tracking a suspected terrorist, taping of conversations, analysis of non-cash transactions, activity on the Internet or operational arrangements aimed at verifying whether a person may have connections with terrorist or criminal organisations. What distinguishes them is the character of their actions, methods, means and powers. Counter-terrorism is more active action carried out by units/troops. Anti-terrorism has a more general character.

borders (Popa 2016). The European Union's general anti-terrorism policy would not have been sufficient if it had not been for national solutions and a long-term strategy to combat terrorism (Masiul 2015).

At present, the most significant legal act regulating the fight against terrorism in the Republic of Poland is the act of 10 June 2016 on counter-terrorism operations with the notice of the Marshal of the Sejm of the Republic of Poland of 9 February 2018 on the announcement of the consolidated text of the act on anti-terrorism activities.

The purpose of this article is to analyse the legislative process leading to the introduction of anti-terrorism law in Poland and demonstrate the application of anti-terrorism law. Defining a coherent security policy in the context of contemporary threats of a terrorist nature is of key importance for the security of the state. Moreover, the author points to the substantial elements that have been amended and now constitute a basis for the implementation of counter-terrorism operations, and analyses of important modifications in the Criminal Code. Fundamental sources consist of national bills, acts, legal comments, the penal code, scientific articles in the field of law and terrorism, reports from think-tanks, as well as, national authorities, and press releases.

Research on this scale conducted in English, focused on law against terrorism in Poland, has been published to a very limited extent. This study allows valuable conclusions to be drawn, which shall be the basis for further research on anti-terrorism legislation in the world. Furthermore, it is a signpost for other countries in Central and Eastern Europe on how to develop their own anti-terrorism law.

Poland has noticed only 2 terrorist cases in the 21st century, however, more than a dozen attacks were prepared, but perpetrators had been stopped. It clearly demonstrates that anti-terrorism law and the jurisdiction given to anti-terrorist services are crucial in preventing terrorist activity in the country.

1. ACT'S MAIN ASSUMPTIONS

The fundamental purpose of enacting the Anti-Terrorist Act was to provide relevant legal and organisational instruments in the face of growing terrorist threats. So far, the provisions in force in this area had a decentralised character and did not guarantee proper cooperation between the specified entities. In view of the intensification of terrorist acts in Europe, their cross-border nature and the variety of methods employed by terrorists, it was necessary to create adequate tools for proper identification and assessment of threats and their subsequent effective elimination (Europol 2016). The relevant services in Poland had to be prepared to take decisive and immediate actions in case of a terrorist attack, as well as to remove its aftereffects. In order to achieve an appropriate level of cooperation, the basis for a system that would involve all services, authorities and institutions (including local authorities, the private sector and civil society) in a multi-faceted effort to combat terrorism had to be created (Gabriel-Węglowski 2018, 43–64).

In accordance with the act on anti-terrorism operations and the National Anti-Terrorism Programme 2015-2019, the Internal Security Agency is the institution delegated to provide comprehensive protection against terrorist threats to the Republic of Poland (Act of 24 May 2002 on the Internal Security Agency and the Intelligence Service). It has statutory rights to undertake actions of operational and exploratory, analytical and informational, as well as of an inquiring and investigative nature. These operations are carried out in order to recognise, detect, and prevent terrorism-related crimes and prosecute persons responsible for them. In addition, a key role is played by the Polish National Police, whose main task is to protect human health and life as well as property from attacks, to protect safety and public order, and to ensure order in public places and on public transport. The Police also undertake preventive and educational activities (Act of 6 April 1990 on the Police).

The legislator explicitly identified in the Act four phases of action to combat the spread of terrorism:

- (1) Prevention - anticipation and sanctioning of events bearing the hallmarks of terrorism.

- (2) Preparedness - development of a plan of action to take control and stop the negative events caused by terrorism.
- (3) Response - organising and reorganising actors whose task is to eliminate threats and limit the negative consequences of terrorist attacks.
- (4) Recovery - reconstructing systems with the necessary modifications to improve future responses and to restore lost assets (Stelmach 2016).

Although the successive phases of counter-terrorism operations do not have to ensue consecutively, they constitute the components of anti-terrorism operations and the basis for functioning of the Polish system for combating terrorism. The head of the Internal Security Agency, together with the delegated to co-operate entities of competence,³ are responsible for the validity and effectiveness of the actions taken. In this manner, a permanent system of combating terrorism in the Republic of Poland is being established.

Due to the nature of the carried-out activities, it is important to pay attention to the area and the incident, which are closely related to the occurrence of terrorism. The legislator stresses the importance of both the place of the incident and its nature. The act singles out:

- (1) The place of an event of a terrorist nature – to be understood as an open or closed space in which an event of a terrorist nature occurred or in which its result occurred or was to occur, and a space in which threats related to a terrorist event occur.
- (2) The event of a terrorist nature – to be understood as a situation which is suspected to have arisen as a result of an offence of a terrorist nature listed in article 115 § 20 of the Criminal Code.⁴

³ This refers to: Internal Security Agency, Intelligence Agency, Military Counterintelligence Service; under these actions the following entities are also used: Police, Border Patrol, Parliament Guard, State Protection Service, State Fire Service, National Revenue Administration, Military Gendarmerie, Government Centre for Security.

⁴ “serious intimidation of many people, forcing a public authority of the Republic of Poland or another state or an authority of an international organisation to undertake or abandon specific actions, causing serious disturbances in the economic system of the Republic of Poland, another state or international organisations.”

1.1. ALARM LEVELS

In accordance with the recommendations of the Act, the four-stage alert system in force in NATO in the event of terrorist threats was introduced, including CRP alert levels. They may be introduced by order of the Prime Minister (following consultation with the minister in charge of internal affairs and with the Head of the Internal Security Agency). In the event of a terrorist threat or any other danger, one of the four alert levels is introduced:

1. ALFA – the first alert level
2. BRAVO – the second alert level
3. CHARLIE – the third alert level
4. DELTA – the fourth alert level (Kamiński 2018, 109–110)

If a terrorist threat that directly affects the ICT system of public administration authorities or ICT systems that form part of the critical infrastructure or an event with similar characteristics occurs, one of the four CRP alert levels is introduced:

ALFA - CRP – the first alert level

BRAVO - CRP – the second alert level

CHARLIE - CRP – the third alert level

DELTA - CRP – the fourth alert level

Higher alert and CRP levels may be activated omitting transitional levels. They can also be introduced in parallel or independently. Alert levels are to be lifted as soon as the threat which gave rise to them has been reduced or eliminated.

In the event of a terrorist attack on the territory of Poland and the lack of an appropriate and effective reaction of the Police (i.e. if forces and resources prove insufficient to combat the danger), support in the form

of the Armed Forces of the Republic of Poland may be called for, adequately to their specialist preparedness, equipment and weaponry at their disposal, and the needs which have arisen. This occurs when the third or fourth alert level is introduced (Act of 24 May 2002).

2. ACT'S ORIGIN

Until the entry into force of the act of 10 June 2016 on anti-terrorism operations, in the Polish legislation there had been no coherent legal act regulating issues of undertaking anti-terrorism operations, counteracting or combating existing terrorist threats, including those of an international nature. At that time, the basic regulations used to stop and fight terrorism, as a supplement to the undertaken activities, had been the following acts:

- Act of 6 June 1997 – the Criminal Code with the definition and description of offences of a terrorist nature.
- Act of 16 November 2000 on counteracting money laundering and financing of terrorism – defining the rules, regulations and procedures for counteracting the financing of terrorism.
- Act of 26 April 2007 on crisis management – characterising and defining events marked as terrorist attacks.

The main assumption of establishing the act on anti-terrorism activities was an attempt to strengthen the anti-terrorism system of the Republic of Poland, which relied on combining into one act the powers and responsibilities of individual entities. In order to implement the proposed assumptions, the following main objectives strengthening the system for combating terrorist threats were presented:

- (1) Defining the tasks assigned to particular entities.
- (2) Development of skills and improvement of existing abilities to prevent and stop terrorist threats.
- (3) Training and preparation of services, institutions and relevant entities in the event of a terrorism occurrence, not only on the national scale, but also the international one.
- (4) Development of capacities and capabilities for responding in a proper manner in the event of terrorist threats.

- (5) Improving the ability to use the forces and means established to prevent and combat threats of a terrorist nature.
- (6) Verification of the modern anti-terrorist strategy and its optimisation in the face of emerging threats.
- (7) Strengthening of international cooperation to combat and stop the spread of terrorism.
- (8) Permanent training of counter-terrorist units, due to the evolution of terrorist threats.
- (9) Education and training in order to raise awareness of terrorist threats.
- (10) Ongoing national and international cooperation to maintain the required level of national security (Michalczak 2016, 66–67).

The tasks and competences in the field of anti-terrorism and counter-terrorism have also been organised into one act. Among others, the duties of public administration entities have been amended and the powers of selected entities responsible for combating terrorism on the territory of the Republic of Poland i.e. officers of the Police, Border Guard, Internal Security Agency, soldiers of the Military Police or soldiers of the Armed Forces of the Republic of Poland have been assigned, delegated or increased. At the same time, the adopted law had been drawn in accordance with European Union law (Bill on anti-terrorism 2016).

2.1. THE COURSE OF THE LEGISLATIVE PROCESS OF THE ACT ON ANTI-TERRORISM OPERATIONS

The legislative process in Poland refers to all actions undertaken in order to adopt a law. The most important acts regulating the legislative process are the following: the Constitution of the Republic of Poland, the Standing Orders of the Sejm of the Republic of Poland, and the Rules and Regulations of the Senate of the Republic of Poland. The legislative process begins with submitting a bill in writing to the Sejm exclusively

by certain entities with the right of legislative initiative, i.e.: MPs, the Senate of the Republic of Poland, the President of the Republic of Poland, the Council of Ministers, and a group of at least 100,000 citizens with the rights to elect the Sejm (so-called citizens' initiative; art. 118 of the Polish Constitution). The bill is submitted with a justification (Standing Orders of the Sejm, item 34 section 2). It may concern not only enactment of a new law on matters that have not been regulated thus far, but also amendments to the law already in force (amendment). Bills are submitted in writing to the Marshal of the Sejm (Borski 2018, 39–56).

The main objective of the anti-terrorism act was to increase the effectiveness of the counter-terrorism system in order to eliminate emerging threats. It was also essential to adjust the new regulations to the standards in force in other EU countries. It was supposed to increase the level of security in the whole European Union, as well as combat cross-border threats occurring in some countries of Western Europe. Poland should have had appropriate tools for correct verification and analysis of terrorist threats and to counteract their occurrence. Equally important is the competence to respond in an adequate manner and deal with an attack's aftereffects. Before the adoption of the act on anti-terrorism operations, the regulations had been of a de-concentrated nature and had not guaranteed application of the adequate legal and organisational tools from the perspective of threats of a terrorist nature occurring in Europe.

The act on anti-terrorist operations was made public on 22 April 2016 on the platform of the Government Legislation Centre, and selected elements of the new regulation had already been discussed a month earlier on 24 March 2016 at a press conference of the Minister of the Interior and Administration Mariusz Błaszczak and Minister – Special Services Coordinator Mariusz Kamiński. The project was proceeded separately due to the urgent preparation of regulations caused by the intensification of terrorist activities in the world, including some Western European countries, as well as the need to ensure the security of the international events planned for July 2016, i.e. World Youth Day, the visit of Pope Francis to Poland, and the North Atlantic Treaty Organization summit (Act of 16 March 2016 on special solutions concerning the 2016 Warsaw Summit of the North Atlantic Treaty Organization in the Republic of Poland). The bill was authored by the Governmental Council for Special Services, operating at the Chancellery of the Prime Minister, in

cooperation with the Ministry of Interior and Administration. It was not decided to conduct public consultations of the bill.

The project was discussed by the Standing Committee of the Council of Ministers on 21 and 28 April 2016. The inter-ministerial Team for Terrorist Threats, chaired by the Minister of the Interior and Administration, was responsible for its draft. Subsequently, on 28 and 29 April, working meetings were held to agree on the bill at the Government Legislation Centre. Already at the Standing Committee of the Council of Ministers stage, the Minister of National Defence, the Minister of Digital Affairs, the Minister of Foreign Affairs, the Minister of Infrastructure and Construction and the Minister of Finance issued comments to the bill. Therefore, it was necessary to prepare yet another bill by the Governmental Council for Special Services. It was forwarded on 5 May to the Standing Committee of the Council of Ministers. The bill was adopted by the Council of Ministers on 10 May 2016.

Upon analysing the bill on anti-terrorism operations, as well as hearing comments from individual ministers, the Council of Ministers referred it to the Sejm. On 16 May 2016, the Marshal of the Sejm referred the bill on anti-terrorism operations and amendments to some other acts with executive order bills for first reading. After the first reading on 20 May, the bill was dealt with by the Administration and Internal Affairs Committee, as well as – for the purpose of issuing an opinion – the National Defence Committee and the Special Services Committee. On 8 June 2016, the second reading took place and the bill was referred again to the Administration and Internal Affairs Committee in order to examine the amendments and verify the recommendations made. The third reading was held at a meeting of the Polish Parliament on 10 June 2016. The law was passed with 279 in favour, 173 against and 10 abstentions. The law was referred to the Marshal of the Senate of the Republic of Poland on 13 June 2016, but the assembly did not table any amendments. The President of the Republic of Poland signed the act on anti-terrorism operations and amendments to certain other acts together with executive order bills on 22 June 2016 (Babiński 2016, 241–242). It was published on 24 June 2016 in the Journal of Laws under item 904.

It is worth considering the nature of works on the act. Its dynamics are certainly remarkable, especially when it comes to such an important

and dangerous phenomenon as terrorism. Such a great involvement of various entities and a quick legislative process once the approval by the Standing Committee of the Council of Ministers had been granted was important because of the need to maintain the state's security in conditions of terrorist threat in Europe (Babiński 2016, 243). At the same time, the urgency of adopting the regulation arose from the need to ensure security concerning the activities which were being planned at that time. As mentioned earlier, in July 2016, international-scale events were to take place, thus it is understandable that a special procedure would be adopted in order to maintain security. On the other hand, it is worth taking into account the international situation at that time, as it was changing rapidly due to the migration crisis, conflict in Ukraine and a number of attacks in Western Europe (especially in the French Republic.) An accuracy and meticulousness in drafting an anti-terrorism law would have to be of utmost priority. Due to special powers given to the services, as well the nature of emerging threats, the regulation would have had to be fine-tuned, as it would constitute the basis of the system for combating terrorism in the Republic of Poland. Moreover, as it results from the Regulatory Impact Assessment (RIA,) the bill was already drafted in 2006 by the inter-ministerial team for terrorist threats established on the basis of the ordinance 162 of the Prime Minister of 25 October 2006. The most appropriate means would have been to implement amendments in stages, starting from the implementation of the first ideas that emerged already 10 years prior (Olech, 2021). The combating terrorist threats system should have then been improved and strengthened on the basis of changes in the geopolitical security environment in Europe, adjusting it to the existing needs and requirements (this would have been done by constantly observing and analysing international threats and the situation in the European Union.) Modern legislation on combatting terrorism, despite a very fast process of its adoption, in fact, came into being a decade ago, therefore some of its regulations will soon need to be amended. Apart from that, what also lacked were both scientific consultations with Polish experts and a realistic assessment of the situation in other countries threatened by terrorist attacks, such as the French Republic, together with the use of their experience in the fight against terrorism (Olech, 2021).

2.2. NATIONAL ANTI-TERRORISM PROGRAMME 2015-2019

The regulations of the anti-terrorism act comply with the National Counter-Terrorism Programme 2015-2019, which marks contemporary terrorist threats, presents determinants of the assessment of terrorism levels in Poland and ultimately sets out the functioning of the counter-terrorism system in Poland on the basis of the crisis management phases which include the following: prevention, preparation, response and reconstruction (Skomry 2010, 27–64). The main objective of the programme is to verify actions necessary to fight terrorist threats and thus to strengthen the anti-terrorism system by preparing the state for responses in case of threats of a terrorist nature (Cichomski and Więcek 2014, 313–327).

The Anti-terrorism Programme 2015-2019 complies with the premises and objectives of the Efficient State 2020 strategy, Long-term National Development Strategy – Poland 2030, The National Security Strategy of the Republic of Poland of 2014, the Strategy for the Development of the National Security System of the Republic of Poland 2022, The Europe 2020 Strategy, and complies with the guidelines adopted, among others, in the National Crisis Management Plan, The National Security Threats Report, and The Defense Concept of the Republic of Poland. The adopted premises and proposed solutions comply with the research and observations conducted by the Anti-Terrorism Centre of the Internal Security Agency. They define current threats on the basis of the obtained information and in connection with the dynamically-changing situation in the world. In addition, the level of terrorist threat in Poland is assessed on a monthly basis (Makarski 2010, 101). The Anti-terrorism Programme 2015-2019 has defined the budget needed to undertake the fight against terrorism and it amounted to PLN 12.9 billion in total⁵.

The programme also defines international cooperation with such entities as: North Atlantic Treaty Organization (NATO,) the European Union (EU,) the UN Counter-Terrorism Committee (CTC,) the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), and the Global Initiative to Combat Nuclear Terrorism (GICNT).

⁵ About 3 billion EUR.

3. MAIN AMENDMENTS TO THE POLISH LEGISLATION

The Act regulates amendments to 32 other acts, primarily defining new types of offences related to international terrorist activities. This is a response to increased migration to Europe and the growing threat from newcomers. Persons who are identified as foreign fighters (who do not have Polish citizenship and are suspected of terrorist activities) may be expelled from the territory of the Republic of Poland (Globsec, 2019). This is particularly important for terrorists who may treat Poland as a transit country, a point of monitoring operations carried out in other countries or as a place of refuge (Ptak, 2015).

The Act passed makes it possible for selected entities to take decisive action against individuals who pose a potential threat. Upon the request of the Head of the Internal Security Agency or the Military Counterintelligence Service, the Minister of Internal Affairs may expel from the country a foreigner suspected of conducting terrorist activities. Such measures were taken, among others, in relation to a 28-year-old Austrian citizen who was detained during the World Youth Day in Poland (Defence24, 2016).

It was significant for the proper functioning of the system for combatting terrorist threats in Poland and the reordering of the existing organisational process of anti-terrorism and counter-terrorism activities to establish detailed tasks of the Internal Security Agency.

The agency was obliged to continually supervise the identification, detection and prevention of threats which could undermine the state's security and the continuity of its proper functioning (including threats to critical infrastructure, energy, water and sewage, heating and ICT systems and networks).

The legal solutions adopted in the act on anti-terrorism operations are to contribute to increasing the level of security of the citizens of the Republic of Poland and other persons present in its territory. The author characterises the legislation concerning fighting terrorist threats in the Republic of Poland and offers a kind of assessment of the functioning of the systems to counter terrorist threats and the emerging challenges.

Changes required to improve anti-terrorist activities are also identified, as the process of improving structures should be permanent. The evolution of terrorist threats requires a continuous response and the discussed act on terrorism is responsive.

3.1. FIREARMS USE UNDER THE ANTI-TERRORISM ACT

The act also regulates the use of firearms against the person making an assassination attempt, even if such an action will result in the attacker's death. This is a new provision that expands the operational range of the intervening troops. Thus far, Polish law had not regulated this matter. The current amendment is crucial for the services responsible for security. Although a shot can be fatal for the terrorist, it is permissible in order to protect defenseless people from unlawful violence or aggression. The decision to fire such a shot is made by the sharpshooter (if, in their opinion, such action is justified) or the officer in charge of an operation. Officers of the Police, Border Guards, Internal Security Agency, soldiers of the Military Police or the Polish Armed Forces have the right to special use of a weapon. However, the act does not provide a detailed definition of firearms: it only entails the use of any multiple-barrel firearm which fires one or more bullets (Gabriel-Węglowski 2018, 189).

The hitherto use of weapons had involved the use of a so-called "rescue shot" (or shot on command) against a potential terrorist. The divergences and doubts related to its use were so significant that the issue was reconsidered in the act on anti-terrorism operations in order to present new competences to officers (Pawlaczyk 2017, 193–204) undertaking counter-terrorism operations. This is a very significant regulation in connection with the continuing terrorist threat in Europe, allowing for the detention of the terrorists taking active actions in the territory of Poland. Nowadays, officers, engaging in activities in a dynamic environment, have powers to respond, should it be necessary for the effective prevention of crimes (Olechnowicz 2017, 33–42).

This solution made it possible to give considerable competences to the formations in charge of responding to terrorist threats, with full awareness and ability to carry out high-risk operations without fear of firing

a shot that could save the life and limb of dozens of citizens and the shooter himself (art. 23). If human life is at risk, every element of the system to counter terrorism – in this case the officer – must decide to do what is necessary and eliminate the threat (Stelmach 2016, 465–468). These measures may be taken if the following conditions are met:

- It is necessary to prevent a direct, unlawful and violent attack on human life or limb and to secure the release of a hostage.
- A shot from a firearm that would cause minimal injury to an opponent is not possible.
- It is necessary to take action to eliminate the assailant or to free a hostage when there is no other way to carry out rescue operations.
- Weapons must be used only against a person who has been identified as the aggressor, carrying out an attack or holding a hostage (Gabriel-Węglowski 2016, 191).

However, the special use of weapons may not be applied in the case of the protection of property – even though it may be a viable terrorist target – regardless of the value of that property.

The decision to take a shot raises doubts. Determining whether the person at the scene of the incident is a terrorist shall have to be rapid. A protracted decision may have an impact on human life. At the same time, a decision that is too rapid can deprive an innocent person of their life. An example worth mentioning in connection with the use of weapons to fight terrorism is the reaction of the French forces during the attacks at the Bataclan Theatre on 13 November 2015. Since the beginning of the terrorist attack (at 9:30 p.m.) for almost three hours no counter-terrorist action took place, despite the emergence of specialised units (Research and Intervention Brigade - BRI and Recherche, Assistance, Intervention, Disassasion - RAID) in front of the building after about 50 minutes (assault on the bombers took place at 12:20 a.m., and 7 out of 8 terrorists were killed (Jalabi et al. 2015; Dupont-Aignan 2017)).

The solutions adopted in the anti-terrorism act were significant for strengthening the powers of entities combating terrorist threats. The

regulations are crucial for initiatives ensuring the required level of security in the country and allow the forces to respond much more extensively, covering several levels of counter-terrorism operations. It will be crucial to translate theoretical recommendations into practical actions, when a rapid response is essential. Special shot is the ultimate method in the fight against terrorists, yet it has also been introduced for this purpose.

Given the circumstances, it is recognised that special use of firearms can primarily occur in two types of situations:

1. Actions taken by a “counter-terrorist group”⁶ against persons (terrorists) in a specific location.
2. The (sharp)shooter’s recognition that the terrorist is committing an attack on human life or health, which requires an immediate response (Gabriel-Węglowski 2016, 194).

3.2. SIM CARD REGISTRATION AS A CUSTOMER OBLIGATION UNDER THE ACT ON ANTI-TERRORISM OPERATIONS

An important solution regulated by the new legislation is the statutory obligation to register a SIM card (decommissioning of pre-paid telecommunications services) (art. 23). Mandatory real-name registration of a phone number is a significant element of stopping the emerging terrorist threats. On several occasions, terrorists in France and Belgium have contacted each other using recently-purchased SIM cards. Although the new regulation is described by many critics as a form of restriction of civil liberties, it is undoubtedly a key element strengthening security on the Polish territory. The information obtained facilitates the work of the investigating authorities and makes it possible to identify the perpetrators, which may multiply the chances of apprehending potential terrorists (The Act on Anti-Terrorist Activities).

⁶ Police, Border Patrol, Internal Security Agency, Military Gendarmerie, Armed Forces, after: Act on anti-terrorism operations. Art. 23.

It is worth adding that telecommunications entrepreneurs are obliged to store and share user data at their own expense for a period of 12 months (data retention.) This is of utmost importance for counter-terrorist activities (Dąbrowski 2018, 265–266).

The de-anonymisation of persons with unregistered SIM cards is not novel in most European countries. While card registration systems vary and individual operators have their own requirements for the process itself, the policy remains the same. The purpose is to identify the SIM card owner. It should be taken into account that the restrictions introduced in no way affect the cost of using the mobile network, and registration can take place either at any point selling SIM cards, or online. Similar restrictions have also been introduced in Germany, the UK, Spain, Bulgaria and Hungary⁷.

In the French Republic, operators also require registration, but with Lycamobile, for instance, one can bypass this protection by topping up the card and using the Internet. As a result, it is possible to make calls using phone apps such as WhatsApp or Facebook Messenger. Therefore, the introduction of the restriction into the Polish legislation was necessary (Act of 17 February 2005 on computerisation of activities of entities performing public duties). The next step should definitely be to verify the effectiveness of the measures taken. According to the figures regarding the situation, six months after the introduction of the mandatory registration of SIM cards in Poland, the number of false reports concerning explosive devices placed under public institutions decreased by 46 percent (from 249 to 134 reports). Meanwhile, the number of active cards decreased, with 6 823 million deactivations recorded (Adamska 2017).

3.3. AIRBORNE THREAT PREVENTION – USE OF UNMANNED AERIAL VEHICLES BY TERRORISTS

Article 39 of the anti-terrorism law is also of considerable interest as it gives the services the right to destroy or take control over unmanned ships, i.e. drones (Gabriel-Węglowski 2016, 39). This is currently the

⁷ Timeline of SIM Card Registration Laws, “Privacy International” <https://privacyinternational.org/long-read/3018/timeline-sim-card-registration-laws> [accessed: 28 October 2019].

least recognised operational method undertaken by terrorists, and at the same time – highly lethal. It allows for the use of a 22-inch diameter unmanned vehicle carrying a bomb or bacteria (A. Fellner, Mańka, R. Fellner 2016, 35–40). Therefore, such a use of drones must be considered in an anti-terrorism concept within terrorist threat prevention. The technological development causes an increasing number of dangers to arise from anonymous attacks on the state's strategic objects (Tanchum 2019, 1–6). According to the provisions of the act, an unmanned aircraft, including a flying model, may be destroyed, immobilised or the control over its flight may be seized.⁸ Thus, threats to the Republic of Poland have been redefined due to the dynamically changing international situation in the area of security.

⁸ The officers of the Police, the Border Guard, the Government Protection Bureau, the Internal Security Agency, the Intelligence Agency, the Central Anti-Corruption Bureau, the Military Counterintelligence Service, the Military Intelligence Service, the Customs Service and the Penitentiary Service, guards of the Marshal's Guard, soldiers of the Military Police and the Armed Forces of the Republic of Poland as well as employees of specialist armed protection formations are entitled to destroy or immobilise an unmanned aircraft or take control over its flight.

4. NEED FOR AMENDMENTS TO THE ACT

Due to the importance of coordinating operations aimed at combating terrorism, some of the provisions of the act on anti-terrorism operation, in the author's opinion, must be called into question:

- No instructions or guidelines on how to supervise, update and monitor terrorist threats have been included. These assumptions should constitute the basis for the implementation of counter-terrorist activities, as they possess the most important function of the system for combating modern-day and future terrorist threats.
- The act provides no definition of coordination, which is extremely important during the implementation of activities, especially in legal circumstances.
- The provisions of the act do not provide for a permanent process of coordination of the system for combating terrorist threats.
- There is no actual and reasonable description of the cooperation between the entities in regards to the information transfer. The act imposes an obligation, but does not indicate procedures, methods and tools.
- No attempt has been made to specify detailed methods of international cooperation to combat terrorism.

Thus, it is of utmost importance for the security of Poland to determine the direction of operations and cooperation within the framework of coordination of particular elements of the system for combating terrorist threats which are carried out by the designated entities (Liedel 2016, 451–452).

Michał Gabriel-Węglowski (2016, 38) indicates that the Act on Anti-Terrorist Activities does not refer in any of its Articles to operational intelligence activities undertaken by the Police or secret service, and, at the same time, does not expand the powers of the entities on the issue of stopping or fighting terrorism. As a result, there are no changes in this field that could significantly improve the actions taken to date which are

essential in countering terrorist threats. The new law should - by extending the powers of the security services - have a positive impact on the security situation in the country.

The act's lack of definition on when counter-terrorist operations begin and end has also been criticised. This notion is not equivalent to the introduction or termination of an alert (also CRP alerts.) It involves an ambiguous determination of the threat that may occur both when a terrorist attack happens and when there is a risk of an occurrence of such an offence. This depends on the circumstances of the event, which must be assessed and verified on an ad hoc basis by the persons appointed to be in charge of a situation of terrorist nature or an attempted crime (Gabriel-Węglowski 2016, 38).

Despite the irregularities presented above, it is worth pointing out that the act is considered by many specialists one of the best in the world and is put forward as a model counter-terrorism policy. Jukka Savolainen, The Director of Security at The European Centre of Excellence for Countering Hybrid Threats (Hybrid CoE)⁹ has stated that the legal solutions adopted in the Polish act deserve to be considered model and should contribute to the development of other legislation of the European Union's member states. As it is, the act integrates previously dispersed legislation covering the fight against terrorist threats.

⁹ Hybrid CoE (Finnish: *Euroopan hybridiuhkien torjunnan osaamiskeskus*) is an international intergovernmental analytical centre with headquarters in Helsinki focused on responses to hybrid threats under the auspices of the European Union and NATO.

5. AMENDMENTS TO POLISH CRIMINAL CODE

The essence of analysing Polish legislation in regard to combating terrorist threats is primarily to determine what constitutes a crime. Although the Criminal Code does not contain a definition of a crime, in his studies, Lech Gardocki (2013, 29–41) proposes the following description: “a crime is an act (action or omission) of a human being, prohibited by law under penalty as a felony or a misdemeanour, committed intentionally or unintentionally, and socially harmful to a degree greater than negligible”. Here, it is worth underlining the role of a human being, whose actions are decisive in the implementation of operations, including those of a terrorist nature, as well as the propensity to commit a crime is taken into account.

The anti-terrorism act has introduced a number of amendments to the Criminal Code (art. 2, 32 of anti-terrorism law). They have been essential for maintaining order in the country and constituted a tool for the detention and rehabilitation of potential terrorists. The regulations in the Criminal Code refer mainly to the responsibility for the preparation of acts of a terrorist nature and complicity in committing such offences. The legislation of 2016 clearly indicates organisational motives, such as crimes against humanity, financing of terrorism, crimes against security or freedom. By their specific nature, these provisions modify the principles of the Code of Criminal Procedure, presenting law enforcement authorities with tools to effectively search for perpetrators of crimes of a terrorist nature (Golik 2017).

Article 115 § 20 of the Criminal Code defines what a terrorist offence is, specifying it constitutes a criminal offence (including the threat of committing such an act,) punishable by imprisonment with the upper limit of at least 5 years, committed with the following intent:

- (1) To seriously intimidate many people.
- (2) To force a public authority body of the Republic of Poland or another state, or an international organisation body to undertake or abort specific actions.

- (3) To cause serious disturbances in the system or economy of the Republic of Poland, other state, or international organisation.

It is worth noting that an unintentional crime cannot be defined as a crime of a terrorist nature. The essence of such an action is the specific intention, as well as the achievement of a planned goal (Golik 2017).

There is no doubt that a crime of a terrorist nature must have a directional intention. This means that the perpetrator takes action in order to achieve a specific goal. As such, according to Robert Zgorzały (2007, 66), the Criminal Code does not regulate the following issues:

- 1) Whether arrangements for a terrorist offence shall be penalized.
- 2) Whether the instigator and the aide to a crime triggering a terrorist attack shall be penalized.
- 3) How to qualify and describe a terrorist offence.

Article 110 of the Criminal Code regulates liability for offences committed abroad. Polish criminal law applies to foreigners who commit a terrorist offence abroad, directed against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or an organisational unit without legal personality. In the cases indicated by the act, the Internal Security Agency, the Police and the Border Guard will have the right to take fingerprints, biological material used to determine DNA, as well as to record the image of the foreigner's face. This will be possible, e.g. in case of suspicion of illegal crossing of the Polish border or illegal stay in the country, and suspicion of being connected with events of a terrorist nature or participation in terrorist training.

Due to a multi-stage process of combating the financing of terrorism, it is important to dispense justice to those supporting such operations (Filar ed. 2016, 984-993). Article 165a § 1 of the Criminal Code regulates that the person who collects, transfers or offer means of payment, financial instruments, securities, foreign currencies, property rights or other movable or immovable property in order to finance a terrorist offence is subject to the penalty of deprivation of liberty from 2 to 12 years.

The essence of maintaining the security of the state is also to continuously educate the community regarding the punishable offences. In addition, it is worth emphasizing the need for involving the local community in cooperation with law enforcement authorities. All persons holding credible information about a punishable arrangement, attempt or execution of a criminal act or an offence of a terrorist nature, who will not immediately notify the authority appointed to prosecute the crime, are subject to the penalty of imprisonment of up to 3 years (art. 240 of the Criminal Code). All information which may be of significant value to the functioning of the system for combating terrorist threats is essential in the process of taking counter-terrorism measures.

Given the modern public availability of the Internet, social media and ease of contact via ICT networks, it was crucial to regulate the matter of sharing content related to terrorist activities. It follows from Article 255 of the Criminal Code that anyone who disseminates or publicly presents content which may facilitate the commission of a terrorist offence with the intent to commit such an offence is punishable by imprisonment from 3 months to 5 years. In addition, a person who, with a view to committing a terrorist offence, participates in arrangements which may enable someone to commit such an offence, shall be subject to the same penalty.

The legislator drew attention to the collective nature of terrorist activity. Most often, the assassins are part of a larger extremist group. The operations of a terrorist nature require the involvement of several members, and – if they are in a territory which is located far from the country where other assassins are stationed (e.g. Syria,) it is more difficult for them to undertake proper effective agency, but they can do so upon returning to their country. Therefore, attention was also paid to the nature of the undertaken journey (Lizis 2016, 58). Addressing the consequences for participation in an organised group, organisation or branch whose aim is to commit a terrorist offence is an important step in anti-terrorism legislation. The perpetrators of such activities are penalised by imprisonment from 6 months to 8 years. The person leading or forming such a group is punishable by imprisonment of not less than 3 years (art. 258 of the Criminal Code).

With open borders in the Schengen area, illegal migration and the prolonged conflict in Ukraine, which borders on Poland, an important regulation was Article 259 (of the Criminal Code), which pointed out that persons who cross the border of the Republic of Poland in order to commit a terrorist offence on the territory of another country are subject to the penalty of imprisonment from 3 months to 5 years. Law enforcement authorities offer extraordinary leniency to persons who reveal to them all essential circumstances of committing an act, or prevent an intended crime from happening (e.g. by acting in a terrorist group.)

According to Polish legislation, an act of terrorism is not an act of detonation of an explosive device carried out by an undetermined perpetrator whose aim is not to force a certain action from the state authorities and society, but to cause damage to the insured person's property (Judgement of 26 June 2003...).

6. ASSESSMENT OF THE IMPLEMENTED ACT

In view of the importance of coordinating counter-terrorism activities, some of the provisions of the Act on Anti-Terrorist Activities should be challenged:

- It does not include dispositions and guidelines on surveillance, updating and monitoring of terrorist threats. These assumptions should be the basis for the implementation of anti-terrorist activities, as they are the key function of the system to counter contemporary and future terrorist threats.
- There is no definition of coordination in the Act, which is extremely significant when implementing actions, especially under legal circumstances.
- No permanent process for coordinating the system to counter terrorist threats has been put forward in the provisions of the Act.
- There is no description of the actual and legitimate cooperation between entities in relation to the transfer of information. The legislation imposes an obligation but does not indicate procedures, methods or tools.
- No attempt has been made to identify specific methods of international cooperation to fight terrorism.

For this reason, it is so important for the security of Poland to determine the direction of action and cooperation as part of the coordination of individual elements of the system to counter terrorist threats, which are carried out by previously designated entities.

The Act on Anti-Terrorist Activities does not refer in any of its Articles to operational intelligence activities undertaken by the Police or secret service, and, at the same time, does not expand the powers of the entities on the issue of stopping or fighting terrorism. As a result, there are no changes in this field that could significantly improve the actions taken to date which are essential in countering terrorist threats. The new law

should - by extending the powers of the security services - have a positive impact on the security situation in the country.

The failure of the Act to specify when anti-terrorist activities begin and end has also been criticised. The concept is not equivalent to the introduction or termination of an alert level (including CRP). This is related to the ambiguous definition of the threat that can occur both when a terrorist attack takes place and when there is a risk of such an offence being committed. This varies depending on the circumstances of the event, which must be assessed and verified on an ad hoc basis by those appointed to command during a terrorist situation or attempted commission of an offence.

In addition to the reservations raised above, it should be noted that all coordination tasks are currently vested by the Head of the Internal Security Agency. Thus, for terrorist attacks, which are usually unexpected, sudden and dynamic, and are commonly carried out in the city centre, an immediate response is required. Therefore, the major decisions regarding the first steps to be taken in response to a threat should be delegated to the provincial police headquarters.

CONCLUSIONS

The enacted law aims to strengthen the Polish anti-terrorism system by combining the operations of entities which are responsible for the prescribed areas of security. Individual provisions of the act are closely related to the rapidness and correctness of the issued decisions, which are linked with a long-term strategy for combating terrorism. The implemented regulations indicate the direction of changes in selected units. This will enable the development of intra-state cooperation aimed at increasing the effectiveness of current activities. The coordination and supervision allow for the acceleration of the decision-making process, which is of utmost importance in combating terrorist threats.

Modern legislation in Poland related to combating terrorist threats indicates progressive changes towards unification of national and international law. The ongoing legislative changes in other EU member states constantly affect the Polish legal order. Future international solutions will also constitute an important element in the process of further changes in the development of Polish anti-terrorist law.

It is extremely relevant to constantly analyse the changing situation in the geopolitical environment, not only in Europe, but also in other continents. Terrorist attacks and the methods employed by terrorists must be urgently scrutinised. As a result, it will be possible to implement a law in Poland which will enable the security services to take appropriate action to combat terrorist threats.

Countering terrorist threats has become one of the greatest challenges to the security of states and international organisations in the 21st century, not only because of the repetitiveness of attacks, but also due to governmental and military actions leading to the repression of individuals not associated with terrorist organisations. The test for modern governments is to ensure security in the state using available methods and means, while respecting human rights. The activities of the police, secret service, army and other bodies assigned to the fight against terrorism must be subject to legal regulation, which in the case of anti-terrorist (counter-terrorism) operations must ensure the security and fundamental rights

of citizens. This is an issue that requires a re-examination of the legislation in relation to existing terrorist threats.

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