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STATUTORY REGULATIONS IN THE FIELD OF ANTI-TERRORIST ACTIVITIES IN POLAND. NOTES ON THE SPECIAL USE OF WEAPONS

INTRODUCTION

Terrorism is currently one of the main threats not only to global and regional security but also to the security of individual states. Terrorism constitutes a threat not only to the life and property of individuals but has become a serious problem of the modern world. Due to its essence, it may threaten the social order, international relations and with the use of mass destruction means even the existence of humanity. Terrorism manifests itself in unlawful acts such as, for example, aircraft hijacking, abduction of other means of transport with passengers as hostages, acts of economic sabotage, assaults, burglaries, ransom demands, assassinations on life, health or freedom of government officials, known persons, kidnapping and detaining people from other countries as hostages, using explosives, automatic weapons and missiles in public places or taking hostages[1].

In order to improve the effectiveness of the Polish anti-terrorism system, increase thesecurity of citizens and lead to greater coordination of services, on 10 June 2016 the Act on anti-terrorist activities was passed in Poland (here in after

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[1] K. Sławik, entryTerrorism, [in:] Nowa Encyklopedia Powszechna PWN, vol. 6, Warszawa 1997, pp. 370-371.

the AT Act)[2]. Until the AT Act was adopted, the regulations were dispersed in a number of legal acts and concerned many entities responsible for state security. The Act is the result of improving and supplementing the existing regulations. The initiatives undertaken in Poland, aimed at improving regulations in the area of counteracting and combating terrorist threats, until 2016 did not lead to the development of a comprehensive law regulating taking action in the field of counteracting and combating terrorist threats.

TERRORIST ATTACKS AND THEIR CONSEQUENCES

A breakthrough in the development of modern terrorism was the attack on the WorldTradeCenter, the headquarters of the Pentagon and the State Department in Washington. Representatives of Al Qaeda directed the hijacked passenger planes at the buildings of the two World Trade Center towers and the Pentagon. The total number of victims is estimated at 5856, including 266 passengers of the hijacked planes. The United States, after the terrorist attacks of September 11, 2001, began building an anti-terrorist coalition, in which international organizations engaged, such as the United Nations, the European Union, the Organization for Security and Cooperation in Europe, the North Atlantic Treaty Organization and the League of Arab States.

After September 11, a series of terrorist incidents took place. For example, between 23-26.10.2002, an attack of Chechen terrorists on the TheaterCenter in Dubrovka took place, in which 173 people were killed, including 133 hostages. On February 6, 2004, a suicide terrorist (20-year-old Chechen) detonated a bomb on a Moscow subway train, resulting in 39 people being killed and 122 injured. On March 11, 2004, bombs exploded on trains bringing people from suburban areas to work in the capital of Spain, resulting in the death of 198 people. On September 1, 2004 in Beslan, the Caucasus terrorists occupied primary school taking over 1.1 thousand hostages, mainly children, and about 400 people died then. On July 7, 2005, during the morning rush hours, explosions paralyzed the center of London during the G7 summit[3], 52 people were killed and about 700 were injured.Subsequent terrorist attacks are listed as examples: March 29, 2010 in Moscow – terrorist attacks on two Moscow subway stations (39 people were killed and 102 were injured), April 15, 2013 – a terrorist attack during a Boston marathon (3 people were killed and 264 were injured), October 31, 2015 – a bomb explosion on the Russian Boeing A 321 in Egypt (224 people were killed), March 22, 2016 in Belgium – two suicide bombers detonated explosives at the airport in Brussels (32 people were killed, 340 were injured), June 28, 2016 – a bomb attack at the international airport in Turkey (48 people were killed and 239 were injured).

[2] Journal of Laws of 2016, item 904.

[3] A group of seven most influential countries in the world: France, Japan, Germany, the United States, Great Britain, Italy, Canada.

The increase in the level of a terrorist threat in Europe in recent years has made it necessary not only to strengthen the preparation of services to prevent and react to terrorist events, but also to implement legal solutions adequate to new forms of terrorism.

All these events in the face of the wave of terrorist attacks in European countries indicated the need to take systemic measures to counteract terrorist threats.

LEGISLATION FOR SECURITY IN THE EUROPEAN UNION

Following the attacks on the World Trade Center, the European Union has taken a number of steps to prevent and combat terrorism. In 2003, the European Union adopted the European Security Strategy of December 3, 2003. In this document, terrorism is counted among the greatest threats to European security. On August 25, 2004, the European Council adopted the Declaration on Combating Terrorism. It indicated the directions of activities related to combating terrorism. The annex to the declaration contained the specific objectives of the current Action Plan on Combating Terrorism of September 2001. The second important document was the EU Counter-Terrorism Strategy of November 30, 2005, which obliges the countries associated in the EU to fight terrorism while respecting human rights.

On May 16, 2005, the Council of Europe Convention on the Prevention of Terrorism was adopted in Warsaw. Its aim was to strengthen efforts to prevent terrorism and the negative effects that terrorism has on the full enjoyment of human rights (in particular the right to life) through international cooperation as well as at the national level. The Convention obliged its signatories to the penalization of a number of offenses related to terrorist activities, such as public coercion to commit a terrorist offense or recruitment and training for terrorism[4].

In this context, the EU Internal Security Strategy – Towards a European Security Model of 25 and 26 March 2010 should be mentioned, which defines the most important areas of cooperation in the field of justice and home affairs within the European Union and with the third countries.

LEGISLATION FOR COMBATING TERRORISM IN POLAND

The Republic of Poland, being a member of an international anti-terrorist coalition, may be threatened by terrorist attacks and therefore the possibility of planning and carrying out an attack also in our country should be taken into account. However, there was no legal regulation of the tools to counteract terrorist threats and to combat these threats. There were also no clear rules and procedures of responsibility for a given area of activities. Therefore, it was necessary to

[4] On September 8, 2006, the UN General Assembly adopted the Global Counter-Terrorism Strategy as an instrument to strengthen efforts to combat terrorism at the national, regional and international levels..

develop legal tools allowing the effective opposition to terrorism, defining the manner of functioning of state institutions in the event of a threat of a terrorist attack. Until the adoption of the AT Act, there were no legal solutions which would allow the services not onlyto strengthen the coordination mechanisms of the activities carried out, but also an effective and rapid response already at the time of suspicion of conducting terrorist activities. It was necessary to centralize responsibility for preventing and combating terrorism and to increase the effectiveness of cooperation between entities involved in counter-terrorist activities.

Individual countries undertake actions to protect the state and, in particular, its population against terrorist attacks. The issues relating to the recognition and fight against terrorism were dispersed in many legal acts: national, Community and international. In Poland, after 2001, no regulations aimed at combating terrorism and clarifying the cooperation between authorities in this area were proposed. On the one hand, there was no single legal act regarding this phenomenon, on the other hand, legal regulations in the context of the threat of terrorism were dispersed in various legal acts.

Poland's adaptation to international standards resulted in the introduction of appropriateregulations to legal acts, such as the Act of June 6, 1997 the Penal Code[5]; Act of June 6, 1997 Code of Criminal Procedure[6]

- Act of October 28, 2002 on the liability of collective entities for actions prohibited under penalty[7]
- Act of October 12, 1990 on the protection of the state border[8]
- Act of November 16, 2000 on counteracting money laundering and financing of terrorism[9]
- Act of April 26, 2007 on crisis management[10]
- Act of April 18, 2002 on the state of natural disaster[11]
- Act of 21 June 2002 on the state of emergency[12]
- Act of August 29, 2002 on Martial Law and on the competences of the Supreme Commander of the Armed Forces and the principles of his subordination to the constitutional authorities of the Republic of Poland[13].

Regulations were introduced to the Acts regulating the activities of particular formations

- Act of April 6, 1990 on the Police[14]
- Act of October 12, 1990 on the Border Guard[15]

[5] Consolidated text Journal of Laws of 2017, item 2204.
[6] Consolidated text Journal of Laws of 2017, item 1904
[7] Consolidated text Journal of Laws of 2016, item 1541
[8] Consolidated text Journal of Laws of 2017, item 660
[9] Consolidated text Journal of Laws of 2017, item 1049.
[10] Consolidated text Journal of Laws of 2017, item 209.
[11] Consolidated text Journal of Laws of 2017, item 1897.
[12] Consolidated text Journal of Laws of 2017, item 1928.
[13] Consolidated text Journal of Laws of 2017, item 1932.
[14] Consolidated text Journal of Laws of 2017, item 2067.
[15] Consolidated text Journal of Laws of 2017, item 2365.

– Act of May 24, 2002 on the Internal Security Agency and the Foreign Intelligence Agency[16].

It should be added that the Penal Code of 1969 did not register the term "terrorism", and this Code was in force until 1997, i.e. until the entry into force of the Penal Code of 1997. By means of Regulation No. 162 of October 25, 2006 of the President of the Council of Ministers, the Inter-ministerial Team for Terrorist Threats was established[17].Within its framework, the Task Team for Systematization of National Regulations and Legal Solutions Concerning Counteracting Terrorism was established. The Team was established on June 10, 2008 on the basis of decision No. 5 of the chairman of the Inter-ministerial Team for Terrorist Threats[18].

The Team's tasks were, among others:

– monitoring terrorist threats, their analysis and evaluation, as well as presenting proposals and opinions for the Council of Ministers;
– developing the drafts of standards and procedures in the field of combating terrorism;
– initiating, coordinating and monitoring activities undertaken by competent government administration bodies (among others in the use of information and recognition, counteracting and combating terrorism);
– organizing cooperation with other states in the field of combating terrorism;
– initiating training and conferences regarding the fight against terrorism;
– applying to appropriate ministers for taking legislative action aimed at improving methods and forms of combating terrorism.

The task of the Team was also to review the existing legal provisions in Poland on counteracting terrorism and combating terrorism, and to develop proposals for new legal and organizational solutions in the field of preventing terrorist threats and combating terrorist threats. Within the framework of the Inter-ministerial Team for Terrorist Threats, work was started on a document that was not a normative document, but it was a document of a strategic nature. The result of this work was the adoption of the "National Counterterrorism Program for 2015-2019"[19]. It pointed to the necessity of implementing legislative solutions.

In 2015, the Task Team for the Review of Legal Solutions Relating to Terrorist Threats was established (by Decision No. 24 of the chairman of the Inter-ministerial Team for Terrorist Threats of March 26, 2015). The aim of the

[16] Consolidated text Journal of Laws of 2017, item 1920

[17] Regulation No. 162 of the President of the Council of Ministers of October 25, 2006 regarding the creation of an Inter-ministerial Team for Terrorist Threats. It was amended successively by Regulation No. 95 of the President of the Council of Ministers of September 4, 2008, Regulation No. 74 of the President of the Council of Ministers of September 21, 2009, Regulation No. 18 of the President of the Council of Ministers of 3 April 2014, Regulation No. 84 of the President of the Council of Ministers of September 18, 2015 and Regulation No. 86 of the President of the Council of Ministers of July 5, 2016.

[18] W. Zubrzycki W. *Dzieje ustawy antyterrorystycznej w Polsce*.. [in:] *Polska UstawaAntyterrorystyczna – odpowiedź na zagrożenia współczesnym terroryzmem* Ed. W. Zubrzycki, K. Jałoszyński, A, Babiński. Szczytno 2016, p. 249.

[19] Adopted by Resolution 252 of the Council of Ministers of December 9, 2014 on the "National Counterterrorism Program for 2015-2019".

Team was to present changes in the existing legal acts[20]. The Team developed recommendations that were accepted by the Inter-ministerial Team for Terrorist Threats on 2 July 2015.[21].

THE ACT OF JUNE 10, 2016 ON ANTI-TERRORIST ACTIVITIES

The starting point for the draft of the AT Act were the recommendations presented by task teams within the Inter-ministerial Team for Terrorist Threats, conclusions from the implementation of the "National Counterterrorism Program for 2015-2019" and the provisions of the Additional Protocol of May 19, 2015 to the Council of Europe Convention on the Prevention of Terrorism[22]. In the justification to the bill on anti-terrorist activities, attention is paid to the greatest challenge in the context of ensuring security in both a global and regional or national perspective, which is terrorism[23]. The increase in the level of a terrorist threat was also highlighted, in particular in the countries of Western Europe. Terrorism assumes more and more diverse forms, and the adopted solutions are to allow individual authorities and services for more effective fight against detected threats as well as taking preventive actions.

The Act of June 10, 2016 on anti-terrorist activities was announced in the Journal of Laws of 2016 under the item 904. The Act was amended once, and this was due to the establishment of the National Fiscal Administration (Journal of Laws of 2016, item 1948). The AT Act has 65 editorial units, almost half of which concern changes in other acts. As part of the AT Act, the following chapters have been distinguished:

Chapter 1. *General provisions* (art. 1.-art. 3);

Chapter 2. *Anti-terrorist activities preventing terrorist events* (art. 4-art. 14)

Chapter 3. *Alarm levels* (art. 15-art. 17);

Chapter 4.*Anti-terrorist activities at the place of terrorist events, including counterterrorist activities* (art. 18-24);

Charter 5. *Special provisions regarding pre-trial proceedings* (art. 25-26)

Charter 6. *Changes in provisions* (art. 27- 58);

Chapter 7. *Transitional, adaptive provisions and the final provision* (art. 59-65).

[20] P. Chrobot: *Ustawa o działaniach antyterrorystycznych. Komentarz do niektórych regulacji* [in:] Burczaniuk P., *Uprawnienia służb specjalnych z perspektywy współczesnych zagrożeń bezpieczeństwa narodowego. Wybrane-zagadnienia*, Warszawa 2017, p. 63.

[21] Reply to interpellation No. 33629 regarding the existing threat to the growing potential of the Islamic Statehttp://sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=642162CB [access on 04/08/2015]

[22] M. Cichomski, M. Horoszko, I. Idzikowska *Przygotowanie do przejmowania kontroli nad zdarzeniami o charakterze terrorystycznym oraz reagowanie w przypadku wystąpienia takich zdarzeń w świetle rozwiązań ustawy o działaniach antyterrorystycznych – w kontekście zadań resortu wpraw wewnętrznych*, [in:] Zubrzycki W., Jałoszyński K., Babiński A., ed., Polska Ustawa Antyterrorystyczna – odpowiedź na zagrożenia wspolczesnym terroryzmem (PolishAnti-TerrorismAct - response to threats of modern terrorism), Szczytno 2016, p. 281.

[23] https://legislacja.rcl.gov.pl/docs//2/12284561/12348751/12348752/dokument218005.pdf [access: 04/01/2018]

The Act of June 10, 2016 on anti-terrorist activities is one of the most important legal acts regulating such an important issue as undoubtedly the protection against terrorist attacks. It granted Polish services various types of competences, including new operational and reconnaissance powers in the field of preventing terrorist events. While preparing the text of the AT Act, it was important to properly balance the adequacy of means and tools granted to the services that would be effective in preventing acts of terrorism. At the same time, however, they will not violate the essence of constitutional freedoms as well as human and civil rights, which, as it seems, has been achieved successfully.

The Act contains a glossary of basic definitions (art. 2) and discusses the concepts of "anti-terrorist activities", "counterterrorist activities", "place of a terrorist event", "terrorist event". Art. 3 of the AT Act contains regulations regarding the division of competences in the field of anti-terrorist issues. Until the adoption of the AT Act, there was no such clear separation of competence responsibility in this area. Based on art. 3 paragraph 1 of the AT Act, the head of the Internal Security Agency is responsible for the prevention of terrorist events. According to art. 3 paragraph 2, the minister competent for internal affairs is responsible for preparing to take over control of terrorist events by means of planned undertakings, reacting in case of occurrence of such events and restoring resources intended to react to these events. Counterterrorist activity should be understood as actions towards perpetrators, people preparing or assisting in committing a terrorist offense referred to in art. 115 § 20 of the Act of June 6, 1997 – the Penal Code[24]. Such actions are conducted in order to eliminate the immediate threat to life, health or freedom of persons or property and use specialized forces and resources and specialist tactics of action (art. 1 of the AT Act).

REGULATION OF THE SPECIAL USE OF WEAPONS IN THE AT ACT

The most important regulation in the area of counterterrorist activities was granting the services the right to the special use of weapons. In art. 23 of the AT Act, the possibility of the so-called special use of weapons was introduced, referred to as a "rescue shot" or a "sniper shot": *As part of counterterrorist activities, if it is necessary to counteract a direct, unlawful, violent attack on human life or health or to release a hostage and the use of firearms in the way that causes the least damage is insufficient and counteracting such an attack or freeing a hostage is not possible in another way, it is allowed [...] to use a firearm against the person carrying out the attack [...] "*.(Chapter 4 art. 23 paragraph 1).

The point here is about the possibility of using a firearm against a person carrying out an attack, which may result in death or imminent threat to the life or health of that person. This will be justified if it is necessary to counteract an

[24] Journal of Laws of 1997, item 553, as amended 2.

immediate, unlawful, violent attack on human life or health. The legislator limited the subject matter of this provision because it concerns only officers performing counterterrorist activities, who are part of specialized counterterrorist groups (art. 23 paragraph 4 of the AT Act). The above-mentioned entitlement was granted to Police officers, Border Guard officers, Internal Security Agency, Military Police or soldiers of the Armed Forces of the Republic of Poland, compare art. 23 4. *The special use of weapons may be made by Police officers, Border Guard officers, Internal Security Agency, soldiers of the Military Police or soldiers of the Armed Forces of the Republic of Poland, forming part of a group performing counterterrorist activities, hereinafter referred to as the "counterterrorist group".*

It should be added that the special use of weapons is carried out according to the rules set out in the Act of May 24, 2013 on means of direct coercion and firearms[25], subject to the separations provided for in this article and in art. 22 paragraph 7 (Chapter 4, art. 23, paragraph 2). Therefore, the possibility of applying and using means of direct coercion and firearms is carried out in the manner provided for in art. 3 paragraph 2a of the Act of November 21, 1967 on the general obligation to defend the Republic of Poland[26],subject to the acceptability of the use of firearms in the cases specified in art. 23 paragraph 1. For the special use of weapons, the provisions of art. 7 paragraph 1 and art. 48[27]of the Act do not apply, referred to in paragraph 2. (Chapter 4, art. 23, paragraph 3) and from which it follows that means of direct coercion or firearms are applied or used in a way that causes the least possible damage (art. 7.1). On the basis of the Act of May 24, 2013 on means of direct coercion and firearms art. 48), the use of firearms should take place in a manner that causes the least possible damage, and the person using such a possibility should, among others, call a person to act in accordance with the law and warn against using the weapon.

In the light of art. 22 paragraph 3, for the special use of weapons, the provisions of the Act on means of direct coercion and firearms do not apply, stipulating that: 1) means of direct coercion or firearms are applied or used in a way that causes the least possible damage (art. 7paragraph 1 of the Act on means of coercion) and 2) before using firearms, the authorized person undertakes a number of actions, including, among others, the identification of the formation and calling a person to act in accordance with the law (art. 48 paragraph 1 of the Act on means of

[25] Act of May 24, 2013 on means of direct coercion and firearms (Journal of Laws of 2013, item 628, as amended).

[26] Consolidated text Journal of Laws of2015, item 827 as amended.

[27] Art. 48.1. „*before using firearms, the authorized person undertakes a number of actions:*
1) identifies his formation or service by an exclamation indicating its full name or statutory abbreviation and in the case of the authorized person referred to in art. 2, entities authorized to apply and use means of direct coercion and firearms paragraph 1 point 20 – with a shout: "Security!";
2) calls a person to act in accordance with the law, and in particular to:
a) immediate abandonment of a weapon or another dangerous object the use of which may endanger the life, health or freedom of an authorized or another person,
b) stopping the escape,
c) withdrawal from the use of violence" (Act of May 24, 2013 on means of direct coercion and firearms Journal of Laws of 2017, item 1120)

coercion).

THE CONTROVERSY ABOUT THE SPECIAL USE OF WEAPONS

This regulation was introduced in order to save the life of a victim threatened by acts of a terrorist. One of the basic forms of attacks is taking and detaining hostages, which often leads to death[28].The introduction of the special use of weapons is aimed at saving the victim's life threatened by the terrorist.

The discussion about the special use of weapons has been going on for a long time. In Poland, until the adoption of the AT Act, the actions to be taken by the Police after exhausting the possibility of conducting negotiations with the perpetrator were not clearly defined. The police conduct negotiations in crisis situations, in particular in the case of events: taking and detaining hostages, announcements of suicide, threats of using a weapon, dangerous tool or material in relation to persons and property. The scope and manner of conducting police negotiations are defined in Regulation No. 4 of the Police Commander in Chief of March 26, 2002[29].

Despite numerous cases in which it would be desirable to use a sniper, the Polish law did not provide for the situation of giving a rescue shot, as well as a shot on order[30].

In the justification to the draft law on anti-terrorist activities and amendments to some other acts[31], the protection of the victim's life and not the perpetrator of the attack is considered to be the superior value. At this point, one should recall the situations in which hostages were taken and the negotiations did not bring the desired effect. The police in the situations in question would most likely not have suffered a defeat if there was a legal option to use a sniper[32]. In any case, the perpetrator, knowing about the presence of a sharp shooter, would be aware that he might be killed.

The first situation took place in the prison in Sieradz on March 26, 2007, where three policemen arrived to take the detainee for interrogation. The prison guard fired at their car with a machine gun from the watchtower. Two officers were killed on the spot, and the third in critical condition was taken to hospital, where he died despite surgery. A wounded detainee was also taken to hospital. Anti-terrorists and negotiators came to the place. Conversations with the guard who barricaded himself in the watchtower did not bring any effect. There was a shootout between the policemen and the guard, who – wounded in the hand

[28] On the legal and tangential aspect of the special use of weapons. W. Wosek: *Specjalne użycie broni – konieczność działań a prawa człowieka*. [in:] Zubrzycki W., Jałoszyński K., Babiński A., ed., *Specjalne użycie broni. Stan obecny, zagrożenia, propozycje rozwiązań*. Szczytno 2017, pp. 11-20.

[29] J. Stawnicka: *Uwarunkowania prawno-organizacyjne prowadzenia negocjacji policyjnych*, [in:] Stawnicka J., ed. Komunikacja w sytuacjach kryzysowych III, Katowice 2012, pp. 61-68.

[30] . Potejko, A Bryńska, *Negocjacje – kiedy koniec staje się początkiem*, [in:] Potejko P., ed., *Komunikacja w sytuacjach kryzysowych IV*, Katowice 2013, p. 70.

[31] Polish Parliament (Sejm), VIII term, Print No. 516, p. 25.

[32] P. Potejko, A Bryńska, *Negocjacje – kiedy koniec staje się początkiem*..., 3, pp. 70-71.

– finally gave up[33].

On January 10, 2013 in Sanok, a 32-year-old man barricaded himself in an apartment with a 17-year-old girl. Earlier, the man who was to be detained in connection with the murder was shooting from the apartment window at an unmarked police car. Negotiators tried to make contact with the man and the woman for many hours and persuade them to give up, but to no avail. At night anti-terrorists who stormed the apartment found the bodies of the 33-year-old perpetrator and his 17-year-old girl[34].

According to art. 398 of the Constitution of the Republic of Poland, every human being has the legal protection of life. The right to life is the natural right of every human being. No person can decide about the possibility of depriving the other person of his/her life. Article 41 of the Constitution provides that everyone is guaranteed personal inviolability and personal freedom. Deprivation or restriction of liberty may only take place under the terms and in the procedure specified in the Act. Means of direct coercion undoubtedly interfere with the sphere of legally guaranteed basic human rights and freedoms. Nevertheless, it should be pointed out that the institution of a rescue shot may find legal grounds and does not have to be incompatible with the Constitution of the Republic of Poland[35].

In the justification to the bill, it is stated that the possibility of depriving life in defense of a person against unlawful violence is provided for in art. 2 paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[36]. On January 19, 1994, Poland ratified the European Charter of Human Rights, whose Article 2 states „*Everyone's right to life shall be protected by law* (...). *However, it is not excluded to deprive life in special cases*:

Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

a) in defense of any person from unlawful violence;
b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
c) in action lawfully taken for the purpose of quelling a riot or insurrection.

[33] https://wiadomosci.wp.pl/zabil-trzech-policjantow-dostal-dozywocie-6037261047547009a [access 26/10/2010]
[34] http://www.nowiny24.pl/wiadomosci/sanok/art/6179051,najnowsze-informacje-mezczyzna-zabarykadowal-sie-w-mieszkaniu-trwaja-negocjacje,id,t.html
[35] P. Potejko, A Bryńska, Negocjacje – kiedy koniec staje się początkiem (Negotiations - when the end becomes the beginning) ..., pp. 73-74.
[36] Justification to the bill..., p. 25.

OPINION OF THE RPO (THE COMMISSIONER FOR HUMAN RIGHTS) ON THE SPECIAL USE OF WEAPONS

It should be pointed out that the Act on anti-terrorist activities was partly challenged by the Commissioner for Human Rights to the Constitutional Tribunal[37]. The Commissioner for Human Rights first reviewed the Act[38]. Subsequently, he applied to the President of the Republic of Poland and the Constitutional Tribunal for a declaration of non-compliance with the Constitution of some provisions of the Act on anti-terrorist activities of June 10, 2016.[39]

As stated in*the Opinion to the draft law on anti-terrorist activities*[40], Article 2 of the European Charter of Human Rights is too broadly formulated and does not prejudge the compatibility of the special use of weapons with the provisions of the Convention[41] (p. 14). In the Opinion, when referring to the Commentary on Article 2,it was pointed out that in the light of settled case-law of the European Court of Human Rights created on the basis of Article 2 of the Convention, the activities of public authorities in the event of disturbing or even the possibility of disturbing the public order should always be aimed at its protection. On the other hand, human death can only be a side effect of such actions, never their main goal[42]. Attention was also drawn to the case of the judgment of the European Court of Human Rights of 22.3.2001 in the case of *Streletz, Kessler and Krenz against Germany.* This case concerns the officers of the communist authorities of the GDR, F. Streletz and H. Kessler, and E. Krenz, who fired at the refugees and were responsible for the deaths of the people who tried to escape the country. Shooting at the refugees was not an exceptional situation of deprivation of life.

At this point, I will refer to the article by Tomasz Kalita*"Legal Countertypes of the Right to Life in the European Convention on Human Rights"*[43]in which the ban on depriving a person of life was discussed, with particular reference to the legal countertypes of the right to life regulated in Article 2 paragraph 2 of the European Convention on Human Rights, covering such situations as: defending any person from unlawful violence, effecting a lawful arrest or preventing the escape of a person lawfully detained, or actions lawfully taken for the purpose of quelling a riot or insurrection. Deprivation of life by an officer can take place

[37] The case is run at the Constitutional Tribunal under reference number K 35/16. It should be noted that 10 provisions of this Act have been challenged. Cf.: http://trybunal.gov.pl/sprawy-w-trybunale/art/9112-ustawa -antyterrorystyczna/ [dostęp: 24 IX 2017].

[38] Opinion of the Commissioner for Human Rights, Adam Bodnar of May 19, 2016 to the bill on anti-terrorist activities (parliamentary print no. 516) – letter II.520.2.2016; seehttps://www.rpo.gov.pl/pl/sprawa/ustawa-antyterrorystyczna [access: 22.06.2016]

[39] The applications of the Commissioner for Human Rights of July 11, 2016 to the Constitutional Tribunal to declare non-compliance with the Constitution of some provisions of the Act on anti-terrorist activities of June 10, 2016 - letter VII.520.6.2016 VV/AG (https://www.rpo.gov.pl/pl/content/rzecznik-praw-obywatelskich-skar%C5%BCy-ustaw%C4%99-antyterrorystyczn%C4%85-do-trybuna%C5%82u-konstytucyjnego [access 11.07.2016 r.)

[40] Opinion of the Commissioner for Human Rights, Adam Bodnar of May 19, 2016.

[41] The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, OJ of 1993 No. 61, item 285.

[42] Opinion of the Commissioner for Human Rights, Adam Bodnar of May 19, 2016...p. 15.

[43] T. Kalita, Kontratypy prawa do życia w Europejskiej Konwencji Praw Człowieka, *Przegląd Prawno-Ekonomiczny* 20014/2, pp. 88-97.

only in the situation of the defense of a person, therefore, an action aimed at protecting other values, disproportionate in relation to human life should be considered unjustified[44].

The Opinion refers to the axiological and philosophical justification of the introduced regulation, bearing in mind the issue of human life as a good occupying the highest place in the hierarchy of legally protected goods and can not be gradable, e.g. in the case of recognizing the victim's life as a value superior to the value of the perpetrator's life[45]. In addition, since according to art. 6 paragraph 2 of the European Convention on Human Rights and art. 42 paragraph 3 of the Constitution of the Republic of Poland, every man is considered innocent until proved guilty, it is impossible to administer justice and deprive the person who holds the hostages of life because no guilt has been proved.

Returning to the cited European Convention on Human Rights, it should be noted after W. Zubrzycki that the enumeration of situations in which depriving a human being of life is permissible if it occurs as a result of the absolutely necessary use of force creates a closed list and does not allow of any arbitrary interpretation[46]. The requirement of the absolute necessity of using coercive measures which may lead to the death of a human is emphasized.The perpetrator of a terrorist incident also has the right to life. However, in the face of his unlawful act, his right to life should be treated as inferior to an identical right of the victim (Zubrzycki, The Special Use ..., p. 31). Thus, the victim's right to life is a higher value than the right to life of the perpetrator, and the fact of detaining hostages already meets the traits of crime.A better solution seems to be permission to make a rescue shot than to allow the victim (victims) to be killed through legislative abandonment[47]. The solutions adopted by the Polish legislator seem to meet expectations, however, they clearly lack explicit qualitative criteria, in particular the identification of the situations justifying the use of weapons to deprive a man of life and the circumstances and ways in which it can occur[48].

The introduction of the special use of weapons is a partial regulation of the problem of establishing explicit provisions and defining clear forms of the use of weapons by sharpshooters and guaranteeing them adequate legal protection. In any case, terrorist threats will always require undertaking often radical solutions[49]. The possibility of making a rescue shot is provided for by the regulations in the UK and Germany (Bavaria, Brandenburg, Saxony, Thuringia and Baden-Württemberg). Whereas the rules for the use of firearms at the federal level in the United States are not reflected in the Polish legislation. These legal acts do

[44] T. Kalita, Kontratypyprawa do życia(Legal Countertypes of the Right to Life)p. 89

[45] Opinion of the Commissioner for Human Rights, Adam Bodnar of May 19, 2016...p. 16

[46] W Zubrzycki, Specjalne użycie broni (The Special Use of Weapons), p. 28

[47] K. Jałoszyński, *Jednostka kontrterrorystyczna – element działań bojowych w systemie bezpieczeństwa antyterrorystycznego*. Szczytno, p. 117

[48] A similar view was shaped in the Polish doctrine of law, see B. Gronowska, Judgment of the European Court of Human Rights in Strasbourg of March 17, 2005 in the case of Bubbins versus the United Kingdom (regarding Police intervention with the use of firearms in the context of the human right to life), [in:] "ProkuraturaiPrawo" ("Prosecutor's Office and Law") 2005, No. 7- 8, p.239

[49] W. Wosek, Specjalneużyciebroni...(The Special Use of Weapons....) p. 16

not contain records about a „rescue shot" contained in the AT Act[50].

ENDING

IS THERE A BOUNDARY BETWEEN HUMAN RIGHTS AND SECURITY?

To sum up, it should be stated that the Act on anti-terrorist activities introduced fundamental changes regarding the use of firearms as part of anti-terrorist activities carried out. The adoption of the Act on anti-terrorist activities was a turning point in the formal and legal regulation of the "rescue shot". It speaks of the "special use of weapons". The legislator introduced a limitation in the special use of weapons only to the occurrence of a terrorist offense. But what if the rescue action/operation to release a person/persons detained against their will is not related to the activity of a terrorist nature, and is, for example, a criminal situation?[51] Such a situation does not in fact refer to the „special use of weapons". In the AT Act, the right to the special use of weapons is given only in relation to terrorist events. Since in the face of modern threats there is a lack of time and information about the perpetrator and the aim of his action, is it possible for officers arriving at the scene to undertake actions assigned to them by the AT Act? The special use of weapons does not refer to situations in which the perpetrator acts, for example, from personal or criminal motives. Considerations made by experts raise a question about the full legal protection of officers taking actions to save the victim's life in a situation unrelated to terrorist activity. Therefore, the adopted solutions require further discussion of universal solutions regarding the special use of weapons. Also, the author of this article would like to discuss the issue of the special use of weapons. As part of this discussion, ways of expressing the meaning of the order, prohibition, permission and the lack of an order in the AT Act as well as the regulation of the special use of weapons in the legal systems of the European Union and the United States will be examined.

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[50] W. Olsztyn,*Uwarunkowania formalno-prawne dotyczące specjalnego użycia broni przez siły policyjne USA,*[in:] Jałoszyński K., ZubrzyckiW., Stelmach J., ed., *Specjalne użycie broni. Stan obecny, zagrożenia, propozycje rozwiązań*. Szczytno 2016, Szczytno 2017, p. 134.

[51] J. Stelmach, *Działania antyterrorystyczne w kontekście identyfikacji znamion przestępstwa ocharakterze terrorystycznym* [in:] Zubrzycki W., Jałoszyński K., Babiński A., ed., *Polska Ustawa Antyterrorystyczna – odpowiedź na zagrożenia współczesnym terroryzmem*. Szczytno 2016, p. 467.

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Summary: In the issues of terrorist threats, which constitute one of the most serious threats to national security, numerous state organs and institutions are involved, and the effectiveness in combating terrorism depends to a large extent on the coordination of their activities. Increasingthe competence of state bodies in this area can notlead to disproportionate restrictions in exercising freedoms and rights by citizens. The Anti-Terrorism Act enacted by the Parliament in June 2016 does not provide forsuch guarantees. The article analyses the adopted solutions and indicates regulations that raise the greatest doubts.

Keywords: terrorism, national security, human rights, Anti-Terrorism Act

REGULACJE USTAWOWE W ZAKRESIE DZIAŁAŃ ANTYTERRORYSTYCZNYCH W POLSCE. UWAGI O SPECJALNYM UŻYCIU BRONI

Streszczenie: W kwestii zagrożeń terrorystycznych, stanowiących jedno z najpoważniejszych zagrożeń dla bezpieczeństwa narodowego, włączone są liczne organy i instytucje państwowe, a skuteczność w zwalczaniu terroryzmu w dużej mierze zależy od koordynacji ich działalności. Zwiększenie kompetencji organów państwowych w tym obszarze nie może prowadzić do nieproporcjonalnych ograniczeń w korzystaniu z wolności i praw przez obywateli. Ustawa antyterrorystyczna uchwalona przez parlament w czerwcu 2016 r. nie przewiduje takich gwarancji. Artykuł analizuje przyjęte rozwiązania i wskazuje regulacje wywołujące największe wątpliwości.

Słowak luczowe: terroryzm, bezpieczeństwo narodowe, prawa człowieka, ustawa antyterrorystyczna