

# The Polish Legal and Organisational Solutions Combating Terrorism

**Bernard Wiśniewski**

*Police Academy in Szczytno, Poland*

**Abstract.** *Legal solutions adopted over the past few years in Poland indicate that attempts are being systematically made to improve the mechanism for counteracting terrorism. Terrorism in Poland has been opposed for a long time. The commencement of such systematic solutions took place on the 25<sup>th</sup> of October 2006 through the appointment by the Prime Minister of the Inter-ministerial Team for Terrorist Threats and ended ten years later, on the 10<sup>th</sup> of June 2016, by the adoption of the law on anti-terrorist activities. For the above-mentioned reasons, the two main parts are devoted to the issues of the commencement of legal and organisational undertakings in the fight against terrorism and the characteristics of systemic statutory solutions are preceded by considerations with conclusions. The article discusses the issues of initiatives undertaken by the government administration and presents the circumstances in which it tried to face up to the problem of developing draft laws of the law now in force. In consequence, this serves to present the areas of responsibility and tasks of government administration bodies specified in the said Act. The considerations presented in this study indicate that global and national experience gained in recent years has shaped the "Polish model of combating terrorism", which has recently found its confirmation in the relevant legal provisions. The basis for the development of this article is the interest in improving the effectiveness of combating terrorism which, for obvious reasons, is not reducing and remains very substantial. This applies to both theoreticians and practitioners. This results first of all from the needs of the challenges and threats that are subject to dynamic changes. Secondly, through the adaptation of the tools used by the state, including those mainly legal of a legal nature. These must be improved from the moment of their implementation.*

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## Introduction

Security is most often perceived in the context of state, process and value. It is also defined in many ways depending on the field and scientific discipline represented by the researcher. It happens that these definitions are more or less accurate. More or less interdisciplinary. A similar situation concerns the criteria for the division of security and, consequently, its types. "Due to the multifaceted nature of this issue, it is the subject of exploration and analysis of researchers representing various disciplines and scientific subdisciplines, various schools and theoretical orientations, as well as methodological and research approaches (...). For understandable reasons, representatives of various disciplines focus on selected levels, dimensions and security problems in accordance with the subject and methodology of the science they represent. However, regardless of the field in which research and analysis are conducted, we are dealing with a focus on achieving strictly cognitive

goals as well as achieving practical goals. “<sup>1</sup> Security is one of the most important needs, the satisfaction of which determines the conditions for the development of human civilisation. This problem has long been a field of intensive action, considered to be one of the most important political priorities all over the world. In recent years, this has mainly been the case for internal security. Common efforts to achieve internal security have been, are and will continue to be one of the things most important to governments and organisations that need to work together to achieve the desired result. Existing legal regulations and legislative actions are aimed at preventing and controlling phenomena that may turn into threats and consequently constitute the source of a crisis situation. For these reasons, cooperation and the exchange of information at national and international level provide an opportunity to safeguard against the threat of terrorism, the most dangerous phenomenon in the modern world. However, in addition to knowledge and information, international and national law is the most effective tool for combating terrorism effectively. Apart from many types of state security, which are briefly hosted in discussions by theoreticians and practitioners, there are also those which, despite differences in interpretation, have become a permanent feature of the scientific studies, legal regulations and many documents used in the current activities of state institutions. One of them is undoubtedly the internal security of the state mentioned above. For the purposes of this report, understood as a situation achieved as a result of the state performing an internal function within the framework of the strategic national security policy, manifesting itself in the protection of the life and health of citizens, protection of national assets against illegal actions, as well as protection against the effects of natural and technical disasters. The growing level of threats to internal security means that states, in fulfilling their obligations towards the beneficiaries of all their activities, initiate the introduction of new international provisions regulating security issues. They are subject to continuous improvement. An important feature of these provisions is that “the provisions of international law already include an unquestionable obligation for states to cooperate in order to maintain international (...) security”<sup>2</sup>. States are obliged to fulfil this obligation by the relevant legal acts of members of international security organisations with global, regional<sup>3</sup> or bilateral reach. In this context, it should be noted that it is equally important that the determinants of the provisions of contemporary international law are the general principles of law recognised by civilised nations. These principles constitute the binding basis for the actions of states in international relations, binding when concluding agreements, including those which regulate the issues of broadly understood security. The circumstances presented above are equally important for national solutions. There is no doubt that they can be seen in the legal solutions developed in the Republic of Poland over the last few years in order to effectively fight terrorism. **The beginnings of system solutions.** The phenomenon of terrorism, which is ubiquitous in the world, especially in Europe, is also perceived as a serious threat for Poland, which actively participates in the anti-terrorist

<sup>1</sup> Hołyst B, *Bezpieczeństwo. Ogólne problemy badawcze. Volume I.* Warsaw: PWN, 2014, p. 10.

<sup>2</sup> *More: Balcerowicz B, Obronność RP, a dialektyka wojny i pokoju na progu XXI wieku, Studium (part I).* Warsaw: AON, 2000, p. 26.

<sup>3</sup> This is mainly about the United Nations Charter and the Final Act of the Conference on Security and Cooperation in Europe.

coalition of countries, mainly Western, with a high level security culture. The last decades, especially the period from the destruction of the World Trade Center to this day, prove that the phenomenon of terrorism appears to be an extremely important problem concerning the national security of the Republic of Poland and international security. "The problem, which in its essence relates depending on the point of view, on the stability of the international system through the security of individual states, to the point of reference, which is guided by the average citizen living in a democratic state."<sup>4</sup> The same citizen ceased to feel safe in his own country as a result of events that were associated with terrorist attacks.<sup>5</sup> This is one of those phenomena that "has grown degraded in all its complexity. Practically, the knowledge of most people around the world is limited only to the unclear knowledge of the concept of terrorism, manifested mainly in the statement, existence of its very fact. Not knowing the specific, precise and exhaustive definition of the concept of terrorism results, inter alia, from the fact that there is no precise definition of this concept even in all legal acts. It should also be pointed out that the lack of precision in defining and understanding this concept is also very much influenced by the media themselves."<sup>6</sup> Everyday practice also reveals that every particularly violent act of violence is perceived as an action against society and very often it is classified as a terrorist activity. This position does not consider whether such actions are directed at the same anti-government dissidents or government action, or organised syndicates of crimes, ordinary criminals or rebellious crowds, where there are people actively involved in protest.<sup>7</sup> Therefore, it should be noted that the numerous (unfortunately increasingly) terrorist attacks reveal to "optimists that the world of people has always functioned according to established principles, and the violent physical force finally determines not only the manner and rate of development of civilisation, but above all the quality of life of nations and, consequently, the existence of mankind. The false assumptions of some strategists about the possibility of completing this process and moving to a stage where the fundamental issues of the development of the world will be based only on market forces turned out to be as worthwhile as the 19th century utopian socialism. The selective treatment of terrorism (but thus convenient for politico-sensorial imaging) results in a multitude of definitions and a lack of international agreement on a common terminological approach in this regard. This is primarily a consequence of the fact that it is such a highly politicised phenomenon that it is difficult to perceive it differently than in connection with politics (a resultant of politics). In this situation, the question arises: is the political dimension of terrorism the correct perception of it, or is it just the 'appropriation' of terrorism by politics? The concept of terrorism has already been defined in several dozen ways (there are almost 200 definitions

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<sup>4</sup> Wiśniewski B, Zwalczenie terroryzmu, [in:] Ścibiorek Z, Wiśniewski B, Kuc R.B, Dawidczyk A (Eds), Bezpieczeństwo wewnętrzne. Podręcznik akademicki. Wydanie drugie poprawione. Toruń: Publishing House Adam Marszałek, 2017, p. 318.

<sup>5</sup> Madej M, Międzynarodowy terroryzm polityczny. Warsaw: Ministry of Foreign Affairs, 2001, p. 5.

<sup>6</sup> Wiśniewski B, Wars P, Ustalenia terminologiczne, [in:] Jałoszyński K, Wiśniewski B (Eds), Terroryzm (Diagnoza, zadania administracji publicznej w przeciwdziałaniu zjawisku). Bielsko-Biała: College of Administration, 2007, p. 14.

<sup>7</sup> Hoffman B, Oblicza terroryzmu. Warsaw: Grupa Wydawnicza Bertelsmann Media, 2001, p. 11.

of terrorism<sup>8</sup>) and most of these terms contain as much scientific and factual truth as mere noisy information for the purposes of defining it. It can therefore be assumed that the current definitions of terrorism are only a partial and politically distorted picture of a problem that is still open and evolving<sup>9</sup>.

These circumstances make countries with a high level of security culture attach great importance to effectively tackling this brutal phenomenon of terrorism. Such a state is also the Republic of Poland, which for many years has been trying to regulate the fight against terrorism by introducing statutory solutions. At this point, it is important to recall a significant step in this direction. It is connected with the appointment of 25 October 2006 by the Prime Minister of the Inter-ministerial Team for Terrorist Threats, as “a subsidiary body of the Council of Ministers, which ensures cooperation of government administration in the field of recognition, counteracting and combating terrorism”.<sup>10</sup> It was as a result of the above mentioned team that on 10 June 2008, on the basis of Decision No. 5 of the Chairman of the Inter-ministerial Group on Terrorist Threats, the Task Force for the systematisation of national regulations and legal solutions concerning counter-terrorism was established (...). In the final conclusions of the Team’s work, among other recommendations, the creation of a law comprehensively regulating the subject matter was positively assessed, proposing the establishment of an inter-ministerial team to draft a law on the collection and processing of information in order to identify terrorist threats.<sup>11</sup>

The next ‘milestone’ on the way to statutory regulations was the entry into force of the Act amending the Act on crisis management on 17 July 2009.<sup>12</sup> “The President of the Republic of Poland, submitted a complaint to the Constitutional Tribunal concerning the incompatibility with the Constitution of the Republic of Poland of certain provisions of the amendment to the Act on crisis management. The decision in this respect was to concern, among others, the following In this connection, on 21 December 2009, the Deputy Head of the Internal Security Agency asked the President of the Inter-ministerial Group on Terrorist Threats to prepare a decision suspending the work of the Task Force to prepare Detailed Assumptions to the Act on Identification, Counteracting and Combating Terrorism (...).<sup>13</sup> Since then, despite the fact that work on a draft law regulating the fight against terrorism has been discontinued, it has never disappeared from the sphere of interest of authorities responsible for internal security of the state, and especially for public security. This problem was recognised in the strategic directive documents and government programmes. It is difficult to prioritise them, but one of them should be pointed

<sup>8</sup> Since so many take such a divergent stance on terrorism, it must be assumed that this is either such a complex problem that it is difficult to reach a common definition, or it is deliberately ignored to examine the right methods and is perceived through inappropriate (biased) criteria — such as political criteria.

<sup>9</sup> Jakubczak R, Wybrane problemy obrony terytorium państwa w warunkach zagrożenia terroryzmem, [in:] Wiśniewski B, Fehler W (Eds), Edukacja obronna społeczeństwa. Białystok: NWSP, 2006, p. 22.

<sup>10</sup> Zubrzycki W, Dzieje ustawy antyterrorystycznej w Polsce, [in:] Polska ustawa antyterrorystyczna — odpowiedź na zagrożenia współczesnym terroryzmem. Szczytno: WSPol, 2016, p. 248.

<sup>11</sup> *Ibid.*, p. 249.

<sup>12</sup> Journal of Laws of 2009 No. 131, item 1076.

<sup>13</sup> Zubrzycki W, *op. cit.*, p. 256.

out here, namely the “National Anti-Terrorist Programme of the Republic of Poland for the years 2015–2019”, which addresses the problems of combating terrorism in a comprehensive manner. Without taking into account any of the competences of authorities responsible for state security, the leading role indicated in the above mentioned documents is played by government administration bodies responsible for internal security.<sup>14</sup>

## Act on Counter-Terrorism Measures

This road to systemic solutions briefly outlined above ended with the entry into force of the Act of 10 June 2016 on Counter-Terrorism Measures.<sup>15</sup> It is therefore eight years since the Task Force for the Systemisation of National Regulations and Legal Solutions concerning Counter-Terrorism was established.

The aforementioned Act on Counter-Terrorism Measures introduces a number of important organisational solutions in terms of perception of activities related to ensuring an acceptable level of internal security of the state.

Firstly, the provisions of the Act define the rules of cooperation between authorities competent in the field of counter-terrorism activities. Secondly, and this is not without significance, they define basic concepts and terms that are important for the precision of decisions and, therefore, also for competence. The concepts and terms in question are, in particular, counter-terrorism and counter-terrorism activities, public administration infrastructure, the place of a terrorist event and a terrorist event.

An important issue addressed by this law is the identification in Article 3 of the authorities responsible for effectively combating terrorism and their essential responsibilities in this respect. According to this article, the Head of the Internal Security Agency is responsible for the prevention of terrorist incidents and the Minister in charge of the Interior is responsible for preparing to take control of terrorist events by means of planned projects, reacting in the event of such events and restoring the resources intended for responding to such events. Such provisions indicate the leading role of the most important body in the internal security system of the state in the fight against terrorism, entrusting it with tasks in the phases of preparation, response and reconstruction (which in the context of crisis management were discussed in the previous subchapter). The provisions of the Act also assign to the Head of the Internal Security Agency tasks typical for the prevention phase.<sup>16</sup>

Being aware of this, the prevention of terrorist threats gives the most effective guarantee of security. In Article 6 of the Act, the legislator defined the tasks of the head of the Internal Security Agency, who is obliged to maintain lists containing information about:

- persons engaging in activities for terrorist organisations or for organisations associated with terrorist activities, or members of such organisations;
- persons conducting terrorist activity or persons suspected of committing terrorist offences, against whom an order on detention has been issued

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<sup>14</sup> More: Wiśniewski B, *Zwalczanie terroryzmu, op. cit.*, p. 319.

<sup>15</sup> Journal of Laws of 2016, item 904, 1948.

<sup>16</sup> More: Wiśniewski B, *Zwalczanie terroryzmu, op. cit.*, p. 321.

in the Republic of Poland, search or a decision to search by guest letter, as well as those wanted on the basis of a European Arrest Warrant;

- persons in respect of whom there are reasonable grounds for believing that they may be engaging in acts aimed at committing a terrorist offence, including persons who pose a threat to the security of civil aviation;
- persons participating in training for terrorist purposes or undertaking a journey with the purpose of committing a terrorist offence.

On the other hand, the tasks of reacting on the spot to terrorist events, including counter-terrorist activities, boil down mainly to determining in Article 18 of the Act who may be appointed and from what group of people who may direct counter-terrorist activities? According to the provisions of this article, the leader of the activities is:

- a Police officer designated by the Police Chief Constable, and in matters of urgency — by locally competent Regional Police Headquarters Commandant, especially in case of presence of other services and organs on the scene of the incident of terrorist character;
- a soldier designated by the Minister of Defence, and in matters of urgency, by the Commander of the Military Police, in case of an event of terrorist character in the area or a facility belonging to organisational units and cells subordinate to the Minister of Defence or supervised by him/her or administered by these organisational units and cells.

Importantly, the Act also determines the responsibilities of organs by operation of law responsible for fighting terrorism and powers of the above-mentioned person in control of the activities.

From the point of view of the essence of the deliberations presented in the following subsection it is noteworthy, in line with the Article 15 section 1 of the Act on anti-terrorist activities, that in a situation of a threat of a terrorist incident occurrence or in occurrence of such incident it is possible to introduce one of four emergency levels.<sup>17</sup>

Due to the dynamic character of anti-terrorist activities, important regulations of the Act are provisions of the Article 23 section 1. According to it, in counter-terrorist activities, if it is necessary to counteract a direct, unlawful, violent attack on human life or health or to free a hostage, and using firearms in a way causing the least possible harm is not enough and countering such attack or freeing a hostage in other way is not possible, it is allowed, taking into account all circumstances of an incident of terrorist character and the possibility of counter-terrorist activities, to use firearms against a person carrying out the attack, or taking or holding a hostage which may result in death or a direct threat to life or health of this person hereinafter referred to as 'special use of firearms'. It is noteworthy, however, that in section 2 of this article, the legislator specifies, that the use of firearms takes place in accordance with rules referred to in the Act of 24<sup>th</sup> May 2013 on the Use of Force and Firearms.<sup>18</sup>

The issue which has been noticed by the legislator is also the influence of organisation and quality of cooperation on the efficiency of combatting terrorism. The legislator expressed it in Article 4 of the Act, by stipulating that organs of public administration, owners and holders of facilities, installations, public infrastructure elements

<sup>17</sup> *More: Ibid.*, p. 321.

<sup>18</sup> Dz. U. poz. 628 i 1165 oraz z 2014 r. poz. 24 i 1199.

or critical infrastructure cooperate with organs, services and institutions competent in terms of security and crisis management while conducting antiterrorist activities.

## Conclusions

The modern environment of state security identified 'is characterised by remarkable multitude of factors affecting it, but also a really high dynamism in respect of coping with challenges of the modern functioning of the country, including its society. Bearing in mind the specificity of threats, and above all their destructive influence on the entity (state, nation, citizen) the most important direction of their activities in terms of providing security is preventing them. The lack of damage, casualties, injured and above all preventing destabilization of state structures' functioning advocate the rationality of such a view'.<sup>19</sup> It seems, that it is particularly important nowadays in the state of growing level of terrorist threat, using unconventional and systematically surprising *modus operandi* by terrorists.

In conclusion, it is to be noted, that the system of combating terrorism has been working in Poland in accordance with the legal regulations of the highest level since 10<sup>th</sup> June 2016. The system requires involvement of a large number of entities and it results mainly from the fact that the targets of terrorist activities and the number of facilities and areas of activities which might be in the area of the interests of terrorists is huge. The possibilities to oppose these are, on the other hand, limited. In this context, it also needs to be noted, that effective opposition to terrorism is possible only by perceiving this phenomenon in terms of war. Since war is the domain of uncertainty<sup>20</sup> — therefore it acquires significant autonomy — as a process, 'whose development is not expressly predictable, which means that it is not always possible to proceed in accordance with ones own assumptions. The lack of certainty regarding the course of war and its steerable development does not mean the lack of organised activities during its course. Such perception of the essence of war requires the applied tools to be flexible and sustain the ability to undertake various challenges'.<sup>21</sup> Speaking of the efficiency of combating terrorism, one needs also to remember that effective opposition against terrorism requires cooperation of many entities, which by operation of law have the possibility for mutual support in terms of opposing these threats, which remain in the sphere of competence of the cooperating entities and elimination of the effects of terrorist activities.

The essence of legal regulations regarding the effective opposition against terrorist threats in Poland is to provide the state with undisturbed functioning. This can be achieved through defence against threats. Such defence comes down to taking actions in accordance with the rules of the art of war, whose objectives according to Clausewitz are aimed at surviving the blow and countering the

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<sup>19</sup> Lubiewski P, *Przeciwdziałanie zagrożeniom terrorystycznym w Polsce — w kierunku doskonalenia koordynowania działań służb specjalnych*, [in:] Wiśniewski B (Ed.), *Racjonalizacja zarządzania jednolitymi formacjami umundurowanymi odpowiedzialnymi za bezpieczeństwo wewnętrzne*. Warsaw: Szkoła Główna Służby Pożarniczej, 2017, p. 48.

<sup>20</sup> *Compare*: Clausewitz C, *O wojnie*. Lublin: wyd. TEST, 1995, pp. 47–48.

<sup>21</sup> Czupryński A, *Siły zbrojne w operacjach wojennych na i poza terytorium państwa*. Warsaw: AON, 2008, pp. 8–9.

opponent's attack.<sup>22</sup> Simultaneously, each state needs to provide its citizens with a level of security acceptable by them. In terms of internal state policy this is related to social, economic and personal security, protection of tangible goods, and above all the highest goods: life and health, from criminal activities, which include terrorism.

(tm), (akl), (jm)

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### About the author

**Bernard Wiśniewski**, professor, is an academic teacher at the Institute of Social Sciences of the Police Applied Sciences at the Police Academy, Szcztytno. He specialises in the issues of: internal security, state security management, defensive preparations of the state and education for security. He is the author and co-author of more than 250 papers published in Poland and a dozen of European countries. Correspondence: *Wyższa Szkoła Policji w Szcztytnie, Poland, ul. M.J. Piłsudskiego 111. E-mail: bfwisniewski@o2.pl.*

<sup>22</sup> Clausewitz K, *op. cit.*, p. 7 and 35.

**Streszczenie.** Rozwiązania prawne przyjęte w ciągu ostatnich kilku lat w Polsce wskazują na to, że systematycznie podejmowane są próby doskonalenia mechanizmu przeciwdziałania terroryzmowi. Terroryzmowi w Polsce przeciwstawiano się od dawna. Początek rozwiązań systemowych miał tak na dobrą sprawę miejsce dopiero 25 października 2006 roku powołaniem przez Prezesa Rady Ministrów Międzyresortowego Zespołu do spraw Zagrożeń Terrorystycznych a zakończył się dziesięć lat później tj. 10 czerwca 2016 r. przyjęciem ustawy o działaniach antyterrorystycznych. Z przedstawionych powyżej powodów dwie zasadnicze części opracowania poświęcone zagadnieniom początków przedsięwzięć prawno-organizacyjnych walki z terroryzmem oraz charakterystyce systemowych rozwiązań ustawowych poprzedzono wprowadzeniem do rozważań i zwieńczono konkluzjami. W artykule poruszono zatem zagadnienia inicjatyw podejmowanych przez administrację rządową oraz przedstawiono okoliczności w jakich próbowała się zmierzyć z problemem opracowania projektów przepisów prawa powszechnie obowiązującego. Posłużyło to w konsekwencji do przedstawienia obszarów odpowiedzialności i zadań organów administracji rządowej określonych w przywołanej ustawie. Przedstawione w niniejszym opracowaniu rozważania wskazują na to, że doświadczenia światowe i krajowe zdobyte w ostatnich latach ukształtowały „polski model walki z terroryzmem”, który w ostatnim czasie znalazł swoje potwierdzenie w stosownych przepisach prawa. U podstaw opracowania niniejszego artykułu leży zaangażowanie poprawą skuteczności zwalczania terroryzmu z oczywistych powodów nie słabnie i jest nadal ogromne. Dotyczy to zarówno teoretyków, jak i praktyków. Wynika to po pierwsze z potrzeb niesionych ze strony wyzwań i zagrożeń, które podlegają dynamicznym zmianom. Po drugie zaś z dostosowania wykorzystywanych przez państwo narzędzi, w tym głównie prawnych w przeciwstawieniu się temu zjawisku. Muszą być one doskonalone i to już od momentu ich wdrożenia.

**Резюме.** Законодательные акты, принятые в течение последних нескольких лет в Польше свидетельствуют о том, что систематически предпринимаются попытки совершенствования механизмов в сфере борьбы с терроризмом. Польша уже давно решительно выступает против терроризма. Однако, началом процесса введения системных решений, на самом деле, надо считать создание 25 октября 2006 года премьер-министром Межведомственной группы по борьбе с террористическими угрозами, а окончанием процесса — принятие закона о борьбе с терроризмом почти десять лет спустя, то есть 10 июня 2016 года. По вышеуказанным причинам двум основным частям статьи, посвященным вопросам, связанным с началом правовых и организационных мероприятий по борьбе с терроризмом, а также характеристике системных законодательных решений, предшествует введение в тему рассуждений. В конце статьи помещены выводы. В работе обсуждаются вопросы, связанные с инициативами, предпринимаемыми государственной администрацией, а также представлены обстоятельства, при которых органы пытались решить проблему разработки положений действующего законодательства. В результате это привело к определению сфер ответственности и задач органов государственного управления, предусмотренных данным законом. В статье, указывается на то, что мировой и национальный опыт, накопленный за последние годы сформировал «Польскую модель борьбы с терроризмом», которая недавно нашла свое подтверждение в соответствующих правовых положениях. Основой этой статьи стала заинтересованность в повышении эффективности борьбы с терроризмом, которая по очевидным причинам не ослабевает и по-прежнему огромна. Это касается как теоретиков, так и практиков. Во-первых, это связано с потребностями со стороны вызовов и угроз, которые подвергаются динамическим изменениям, во-вторых, с приспособлением инструментов, используемых государством, в том числе в основном правовых, применяемых в сфере противодействия данному явлению. Они должны совершенствоваться с момента их применения.

(mj)

