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LEGAL QUALIFICATION OF SUICIDE. POLISH SUBSTANTIVE CRIMINAL LAW AGAINST SUICIDE TERRORISTS

1. INTRODUCTION

Over the last decades, certain incidences of acts particularly dangerous to large numbers of people have prompted legal academics to seek mechanisms which could effectively prevent and eliminate new threats¹. Even though terrorist attacks are not an entirely recent phenomenon, contemporary legal orders still, it would appear, have not developed a sufficiently adequate and comprehensive system of criminal instruments capable of addressing the scale of dangers stemming from terrorist attacks. Combatting such dangers is further hindered by a necessity to find appropriate devices which would not only facilitate successful neutralization of threats, but also ensure respect for rights and freedoms of every individual to the greatest possible extent². Waging an efficient battle against contemporary crises becomes very difficult, if not impossible, if highly liberal standards of a democratic state ruled by law are to be complied with³. Most attempts to eliminate terrorist dangers in a definitive and firm manner have met with considerable criticism⁴.

Recently, one may have observed an increasing frequency of terrorist attacks, as a result of which harm (usually death) is inflicted not only upon third parties, but also upon the perpetrator. Therefore, these are actions within which one may distinguish two constituent elements: on the one hand, they are to cause the death of the largest number of people possible, and, on the other – aside from potential

¹ W. Hassemer, J. Y. Choi, *Criminal Law Facing a New Challenge [Strafrecht Ansichts Neuer Formen von Kriminalität]*, „Corea Univesity Law Review” 2007, Vol. 2, p. 1 *et seqq.*

² Ch. Michaelsen, *Balancing Civil Liberties Againts National Security? A Critique of Counterterrorism rhetoric*, “UNSW Law Journal” 2006, Vol. 29, p. 1 *et seqq.*

³ S. Horn, *Präventive Terrorismusbekämpfung im Rechtsstaat*, “Zeitschrift für Deutsches und Amerikanisches Recht 2014”, issue 3, p. 94.

⁴ M. C. Meliá, *Terrorism and Criminal Law: The Dream of Prevention, The Nightmare of The Rule of Law*, “New Criminal Law Review” 2011, Vol. 14, No. 1, p. 108 *et seqq.*

third party victims – one consequence of the attack is the death of the attacker themselves.

Although criminal qualification of acts which bring about the death of other people is not usually difficult on the grounds of Polish criminal law, here it seems that an unequivocal legal assessment of the suicidal act of the attacker is not straightforward. This question deserves an exhaustive answer as it would condition whether and, if so, how, it would be possible to prevent such acts by having recourse to criminal mechanisms already in existence. In this connection, numerous writers have asserted the illegality of suicide and floated a possibility of treating the actions of persons who counteract a terrorist attack as self-defence. On a side note, it shall be noted that questions regarding the axiological foundations and reasons for a perpetrator's decision to kill themselves in the midst of a terrorist attack, due to their irrelevance to the issues discussed in this article, will not be considered.

In an effort to examine the aforementioned conundrums in the light of Polish law, first, we should generally legally qualify a suicidal act, that is also a suicidal act which is not a manifestation of terrorism (ordinary suicide) and therefore does not trigger any adverse consequences for third parties (as opposed to a suicide which, at the same time, constitutes a terrorist act – aggravated suicide).

Polish law (as well as most contemporary legal systems) does not recognize liability for an act which entails depriving oneself of one's own life. However, the legal character of a suicidal act, as well as personal freedom of disposing of one's life, is not an uncontroversial topic. Numerous jurists have proposed a view according to which suicide is illegal. What serves as a starting point for this position is considering human life as an objective social value, which its holder cannot freely dispose of⁵. A contrary view, that suicide is a legal act, is also prevalent⁶. Other theories also deserve attention, e.g. in the opinion of some academic writers, one has the freedom to dispose of one's own life even in cases where the destruction of the good in question is caused by a third party. Others, on the other hand, believe that suicide belongs to a so-called law-free zone (German: *rechtsfreier Raum*), where the law should refrain from making judgments about a given act⁷.

⁵ See M. Cieślak, (in:) L. K. Paprzycki (ed.), *System Prawa Karnego. Tom 4. Nauka o przestępstwie. Wylączenie i ograniczenie odpowiedzialności karnej*, Warszawa 2013, p. 373; see also: A. Zoll, (in:) A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz. Tom II. Komentarz do art. 117–277 k.k.*, Kraków 2012, p. 320.

⁶ Z. Jędrzejewski, (in:) L. K. Paprzycki (ed.), *System Prawa Karnego. Tom 4. Nauka o przestępstwie. Wylączenie i ograniczenie odpowiedzialności karnej*, Warszawa 2013, p. 91; cf. P. Koniczniak, *W sprawie eutanatycznej pomocy do samobójstwa*, "Państwo i Prawo" 1999, No. 5, p. 72 *et seq.*; see also: J. Małczewski, *Problemy z prawną kwalifikacją lekarskiej pomocy do samobójstwa (art. 151 KK)*, "Prokuratura i Prawo" 2008, issue 11, p. 20 *et seq.*

⁷ Z. Jędrzejewski, (in:) L. K. Paprzycki (ed.), *System...*, 91.

2. FREEDOM TO DISPOSE OF LIFE

Criminal law scholars generally agree that life is a good of the highest standing in the hierarchy of legally protected values. However, it is also argued that this hierarchy is absolutely binding only in a handful of cases⁸ and as a consequence it is impossible to resolve a conflict between legally protected goods solely by reference to their place in the hierarchy. Despite the significance and weight of life as a legal good not being in dispute, deliberations regarding one's freedom to dispose of that good are problematic. One fundamental issue is the nature of consent of the holder of the good to an interference with that good by another. A debate over consent's place within the criminal law has persisted for long. In the contemporary doctrine of criminal law, a view in favour of the heterogeneous nature of consent appears to be dominating. For it is accepted that consent may, in the frames of criminal law, perform two general functions – exclude illegality or the essence of a criminal act (in other words, prevent all elements of the *actus reus* from materializing). Furthermore, consent can, *inter alia*, subsidiarily or unaided, influence the degree of punishment (art. 53 § 2 of the Polish Criminal Code), constitute an element of a justification (art. 27, the so-called justification of experiment) or be part of an *actus reus* (art. 152)⁹.

Where a legal good is perceived individualistically – derived from a democratic-liberal take on relations between an individual and the state, in the light of which the latter is expected to merely guarantee freedom of conduct to the former – consent of the holder of a good to an interference therewith makes it so that no violation of the good occurs¹⁰. On the contrary, in line with a paternalistic account of relations between an individual and the state, one's ability to dispose of one's good is dependent upon the significance of the said good for the public interest; the more important a given good is as a social value, the narrower one's freedom to dispose thereof is. By analogy, in the case of goods placed the highest in the hierarchy of legally protected values – such as life – one's ability to dispose of such a good is excluded altogether, because it is the public interest that preserves certain goods regardless of the wishes of their holders. In turn, in the light of a compromising view of legal goods, individualistic and over-individualistic interests are to be balanced, as it were, against each other. T. Kaczmarek is one

⁸ See P. Konieczniak, *W sprawie...*, p. 77.

⁹ Since the middle of the 20th century, German scholars have favoured a differentiation between two types of consent – *Einverständnis* (consent which excludes the essence of a criminal act, in other words: makes it so that not all elements of the *actus reus* are present) and *Einwilligung* (consent which excludes illegality). For more on this see Z. Jędrzejewski, *Zgoda dysponenta dobrem a struktura przestępstwa*, "Prokuratura i Prawo" 2008, issue 5, p. 36 *et seq.*; V. Vachev, *Rozwój instytucji zgody dysponenta dobrem i jej miejsce w strukturze przestępstwa*, "Internetowy Przegląd Prawniczy TBSP UJ" 2015, issue 1, p. 31 *et seq.*

¹⁰ Z. Jędrzejewski, (in:) L. K. Paprzycki (ed.), *System...*, 85.

Polish scholar who favours the legalization of acts which, in a show of compassion, deprive another person of their life upon their demand (euthanasia)¹¹. Doubtless, on the grounds of Polish criminal law one cannot freely dispose of one's own life (see art. 150 of the Criminal Code), however this does not mean that suicidal acts are illegal, to which I shall return.

3. SUICIDE IN THE LIGHT OF POLISH LAW

Views of Polish legal scholars on the nature of suicide may be divided into two general groups. One group argues that an attack on one's own life is illegal, the other denies that, holding that it is legally indifferent. Of fundamental importance in this context is the notion of illegality (German: *Rechtswidrigkeit*), which constitutes – alongside *actus reus* and *mens rea* – an element that conditions the criminal nature of an act¹². Illegality is one of the most complex and controversial questions in the theory of criminal law, which is why it is necessary to offer at least a cursory account of problems which may have an impact upon the legal qualification of a suicidal act. One of the most contentious issues with regard to illegality is whether it makes up a category of the legal system as a whole (in a formal sense this would trigger incompatibility with the legal system understood as a whole) or whether it should be a notion to be interpreted separately within particular branches of law¹³. Adoption of any of those two views may be consequential when attempting to legally qualify suicide, because supporters of the illegal character of suicide derive its illegality not from it being at variance with criminal norms, but also norms from outside of the system of criminal law.

In the Polish legal doctrine, A. Zoll is the chief proponent of the illegal character of suicide. He has espoused a so-called monistic view of illegality whilst discarding the notion of illegality only of a given branch of law¹⁴. He argues that criminal law does not determine illegality or legality, but only punishability or non-punishability, which is justified by an ancillary function criminal law per-

¹¹ T. Kaczmarek, *Wolność dysponowania życiem a prawo do godnej śmierci*, (in:) *Rozważania o przestępstwie i karze. Wybór prac z okresu 40-lecia naukowej twórczości*, Warszawa 2006, p. 404 *et seqq.*

¹² For more on the topic of illegality and its place in the structure of a criminal offence, see Z. Jędrzejewski, *Bezprawność jako element przestępności czynu. Studium na temat struktury przestępstwa*, Warszawa 2009, p. 23 *et seqq.*

¹³ More on this Z. Jędrzejewski, (in:) L. K. Paprzycki (ed.), *System...*, p. 330 *et seqq.*

¹⁴ See, for example: A. Zoll, *Okoliczności wyłączające bezprawność czynu. Zagadnienia ogólne*, Warszawa 1982, p. 51 *et seqq.*

forms as against other branches of law¹⁵. Perceiving illegality as incompatibility with the legal system as a whole, A. Zoll goes on to maintain that an act which deprives one of one's own life is incompliant with constitutional protection of life enshrined in art. 38 of the Polish Constitution¹⁶. Other advocates of suicide's illegality have also endorsed the paternalistic concept of relations between an individual and the state. M. Cieślak has written that: "It is highly controversial (...) to argue that an individual can freely dispose of their own life. Such an argument does not give requisite weight to the social character of existence and human identity, it also does not recognize (...) the fact that human life constitutes the highest value not only for themselves, but it is a social value, a value for other people and society at large"¹⁷. J. Warylewski explicitly declared that Polish criminal law takes away from a person the right to die, since life as a legal good cannot be considered exclusively from an individualistic perspective¹⁸.

In the eyes of some defenders of the illegality of suicide, criminalization of aiding and abetting suicide as criminal offences *sui generis* in art. 151 of the Criminal Code is an expression of the legislator's condemnation of suicidal acts (on a side note, the adequacy of terms "aiding" and "abetting" in connection with this provision – as a reference to general institutions of aiding and abetting in art. 18 § 2 and 3 of the Code – is not entirely full¹⁹). According to some writers, the fact that the legislator decided to introduce in the system a specific criminal offence constitutes a disapproval of suicide as a social phenomenon. The suicidal act has not been condemned in any other way in the criminal law, because it is impossible to *punish* a person who commits suicide in violation of a public interest. It is true that lack of expressions of disapproval shall not be equated with the legislator's indifference as against suicide. That suicide attempts are not criminalized has been justified by "punishment being nonsensical, irreconcilable with

¹⁵ See A. Zoll, *Karalność i karygodność czynu jako odrębne elementy struktury przestępstwa*, (in:) T. Kaczmarek (ed.), *Teoretyczne problemy odpowiedzialności karnej w polskim oraz niemieckim prawie karnym*, Wrocław 1990, p. 102.

¹⁶ According to A. Zoll "(...) an individual right to life does not exhaust the remit of the justification of protection of life. The value of life as a social good is equally as important (author's emphasis), the holder of which cannot dispose of freely and even though a person who commits suicide does not fulfil the elements of the sanctioning norm prescribed in art. 148 § 1, such a person still infringes the sanctioned norm which mandates protection of each and every human life (...)" (A. Zoll, (in:) A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz...*, p. 320).

¹⁷ M. Cieślak, (in:) L. K. Paprzycki (ed.), *System...*, p. 373.

¹⁸ J. Warylewski, *W sprawie prawnokarnego postrzegania eutanazji*, "Państwo i Prawo" 1999, issue 3, p. 78.

¹⁹ Academic writers have pointed to a fundamental distinction between the general constructs of aiding and abetting and "aiding" and "abetting" related to suicide, in keeping with which one is liable for aiding or abetting a crime as regulated in art. 18 § 2 and 3 of the Polish Criminal Code even if that crime is not in fact committed (formal character of the institution), whereas liability under art. 151 is predicated upon at least actually attempting suicide, even if failingly – see P. Konieczniak, *W sprawie...*, p. 73 and J. Malczewski, *Problemy...*, p. 31.

commonly recognized purposes of punishment. For if somebody, due to feelings of misery or as a result of a mental disturbance, attempted to commit suicide and was saved, punishing such a person, so imposing an additional burden, not only would not perform the functions of specific prevention, but could actually prompt an impulse to repeat the failed attempt to kill oneself. (...) Also, imposition of a punishment would be at least doubtful from the perspective of justice²⁰. It is said that the negative approach of the legislator towards suicide is also manifested by the fact that it is a punishable offence under art. 162 of the Criminal Code not to tender “help” (not interrupt) to a person who commits suicide.

Without delving into the correctness of the above arguments it is difficult not to notice that they do not provide an answer to the fundamental question regarding legal qualification of suicide. An assessment of illegality or legality of an act – even if the monistic theory of illegality is to be accepted – could take place only by reference to relations between a given act and applicable laws. Such abstract notions as *disapproval*, *negative attitude* or *the legislator’s condemnation* are foreign to Polish law (they do not even constitute extra-legal norms of conduct) and therefore cannot serve as a source of illegality without any statutory basis that commands or prohibits a given act.

However, numerous Polish academic writers have advanced a view that suicide is not an illegal act. One of the main arguments in favour of such a proposition is that Polish criminal law does not prohibit, let alone command anybody to commit suicide. In this way it constitutes a legally indifferent act²¹. Supporters of this stance do not believe that criminalization of behaviour referred to in art. 151 of the Criminal Code proves the legislator’s negative view of suicide. P. Konieczniak has argued that the provision’s *ratio legis* is not indirect prevention of acts of suicide, but is aimed at merely allowing individuals to freely make and execute decisions concerning their own lives – without any interference from third parties²². J. Malczewski concludes that art. 151 should not serve to condemn people who commit suicide or contemplate doing so, but it should shield them from the influence of third parties²³. Therefore, the regulation in question was designed to prevent abuse by people who act out of deplorable motives, i.e. those who could benefit from the death of another person.

Another argument of those who reject the illegality of suicide is that the legislator could have expressed its disapproval of suicide in a number of ways, but it has not done so²⁴.

Clear references to the liberal-individualistic concept of a legal good are commonly used by defenders of the legal indifference of suicide. The concept

²⁰ M. Cieślak, (in:) L. K. Paprzycki (ed.), *System...*, p. 373.

²¹ P. Konieczniak, *W sprawie...*, p. 77; see also: J. Malczewski, *Problemy...*, p. 24 *et seq.*

²² P. Konieczniak, *W sprawie...*, p. 75.

²³ J. Malczewski, *Problemy...*, p. 29.

²⁴ P. Konieczniak, *W sprawie...*, p. 77.

has its starting point in refusing to acknowledge the existence of a collective, which, together with an individual holding a given good, is authorized to decide whether that good may be violated due to its value for the collective as a whole. Nobody can make decisions about sustaining life without taking into account the will of the good's holder. The liberal-individualistic view in its radical forms treats as legal not only an attack on one's own life, but also intentional murder so long as the victim consented. Admittedly though, it is rare to encounter such extremely liberal opinions on the subject²⁵. Still, even more moderate views remain clearly inconsistent with A. Zoll's exposition. Whilst in his estimation the constitutional principle which commands protection of human life constitutes a sanctioned norm, transgression of which triggers the illegality of the underlying act, opponents claim that the Constitution, by expressing the principle of protection of human life in art. 38, does not exclude a possibility of legal violation of that good by its holder²⁶.

Stopping short of definitively siding with either proponents or opponents of the illegality of suicide, it shall be stressed that on the grounds of Polish criminal law life cannot be freely disposed of by its holder (see art. 150 of the Polish Criminal Code, which declares killing another at their request a punishable offence). Criminalization of aiding and abetting as a crime *sui generis* is also inconclusive. Although a moral or any other extra-legal assessment of suicide could not impact the qualification of that act, it is wrong to say that the legislator, by criminalizing acts mentioned in art. 151 of the Criminal Code, intended to voice its disapproval of suicide and condemn it. Even if that was the case, it could be asked whether that would have any consequences for the legal qualification of an attack on one's own life without any participation of third parties.

4. ATTACK ON ONE'S OWN LIFE WHILST ENDANGERING OR VIOLATING GOODS BELONGING TO THIRD PARTIES

The theoretical and dogmatic problems signalled so far point to far-reaching discrepancies and doubts already at a very early stage of attempting to legally qualify suicide as an act which brings about harm solely for the person who per-

²⁵ See Z. Jędrzejewski, (in:) L. K. Paprzycki (ed.), *System...*, p. 93 and the literature referred to therein.

²⁶ P. Konieczniak argues that: "(...) the mere fact of declaring legal protection of life does not mean that that good may not be violated by the person to whom it belongs. For life is a good that belongs to an individual (...). The formula of 'everybody has a right to life' cannot be interpreted as 'everybody has a duty to live' – such a construction would in any case be inconsistent with the phrase's literal meaning. The inalienable nature of certain rights is irrelevant as inalienability does not imply a duty to make use". See P. Konieczniak, *W sprawie...*, p. 77.

forms such an act. Matters become even more complicated if a suicidal act generates harm also to another good belonging to a person other than the doer. In other words, we refer here to situations where one event leads not only to the death of the principal agent, but also causes adverse changes in the external world by violating goods of third parties. Terrorist attacks are meant to irreversibly and definitively violate important legally protected goods (which does not mean that a terrorist act cannot have a deeper axiological foundation). Therefore, the example of a terrorist suicide attack puts the question of the value of the terrorist's life in an entirely new light. As noted above, an extremely paternalistic view of relations between an individual and the state dictates that human life belongs not to any particular holder of that good, but, first and foremost, to the society at large due to its societal value. Supporters of this theory (A. Zoll, among others) derive a basis for it from art. 38 of the Polish Constitution which mandates absolute protection of human life. In this connection, we shall consider the value and significance of a suicide terrorist's life. If one were to accept art. 38 of the Constitution may be interpreted in the manner just suggested, it becomes apparent that even the life of a suicide attacker does not lose its societal value. If those who assert the illegality of suicide apply the principle voiced in art. 38 to every human life²⁷, it would be normatively baseless to exclude a terrorist from the objective remit of that regulation. Further, if art. 38 is to be interpreted as widely as to constitute the source of suicide's illegality, proponents of such a view should say that it covers everybody, including a suicide terrorist. Clearly, this standpoint cannot be accepted if one takes into account the weight and significance of goods which may find themselves in conflict with the terrorist's life. Crucially though, we could not have recourse to an analysis of such conflicts if we were to endorse the legitimacy of referring directly to art. 38 of the Constitution as the source of suicide's illegality. If the defenders of this view were to exclude a suicide terrorist from the purview of that provision as they understand it, they could easily be attacked for depriving certain individuals of their ability to be subjects of constitutional rights and freedoms. The provision in question does, without a doubt, refer to the life of every individual – regardless of their characteristics²⁸, and exclusion of certain subjects or individuals from the scope of protection of constitutional rights and freedoms is not possible²⁹.

²⁷ A. Zoll has emphasized that a person who commits suicide violates a sanctioned norm mandating “protection of every human life” by killing themselves (A. Zoll, (in:) A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz...*, p. 320).

²⁸ The Polish Constitutional Court has repeatedly held that the rights to life and to its protection are inherent, and art. 38 of the Polish Constitution merely declares and confirms those rights. See, in this spirit, the judgment of the Polish Constitutional Court of May 28, 1997, K 26/96. See also: T. Sroka, *Komentarz do art. 38*, (in:) M. Safjan, L. Bosek (eds.), *Konstytucja RP. Tom I. Komentarz do art. 1–86*, Warszawa 2016, pp. 925–926.

²⁹ On a side note, the German criminal jurisprudence has attempted to introduce a division of legal subjects into certain categories by reference to different criteria. Günther Jakobs was the

The problems which the paternalistic theory concerning the significance of human life (and therefore the illegal nature of suicide) gives rise to, can be addressed, slightly less controversially, by constructing a new set of legally protected goods which stand in opposition to one another. Resolving a conflict so created could render unconditional realization of the duty to protect life (including the life of a terrorist) in art. 38 of the Constitution obsolete. For whilst in the case of “ordinary” suicide (which does not inflict harm on third parties) the public interest of protecting the life of an attacker is confronted with only one’s personal freedom to dispose of one’s own life, in the case of aggravated suicide (which is also an attack on goods belonging to third parties) other considerations start to come into play. Aside from the said freedom to dispose of one’s own life we have to consider that other values may be potentially violated in the course of committing aggravated suicide, some of which are placed the highest in the hierarchy of legally protected goods – the lives of other people. Therefore, on the paternalistic account, a classic conflict between a *societal good* (life of the person who commits suicide) and an *individual good* (freedom to dispose of one’s own life) transforms into a conflict between a *societal good* (life and other goods of potential victims of an attack) and *the life and other goods belonging to an attacker*.

The theory which considers suicide illegal by reference to art. 38 of the Constitution is incapable of generating solutions to a problem so stated. The situation is different on the grounds of the view that suicide is legally indifferent. If Polish law is indifferent towards suicide so long as it affects only the rights, duties, interests and all other legally protected values belonging to the person who kills themselves, the law’s position with regard to a suicide attack where third parties are hurt is equally clear. Where there is no duty to save or protect the life of the attacker, all conflicts between goods which arise in our hypothetical may be resolved by reference to general principles and institutions of criminal law.

Theoretical doubts have been partially addressed as a result of the passage of the Act on Anti-Terrorist Activities (June 24, 2016)³⁰. Article 23 is worthy of par-

first proponent of this view in the 1980s. Simply put, G. Jakobs divided the legal order into two parts – civic criminal law (German: *Bürgerstrafrecht*) and criminal law of the enemy (German: *Feindstrafrecht*). In G. Jakobs’s view, according to not entirely clear criteria, some offenders belong to a privileged, as it were, category of ordinary offenders, whilst others – to the category of offenders-enemies. Should an offender be considered an enemy of the society, such a person is stripped of all constitutional rights and freedoms and as a “non-subject” becomes an object of all-around state-sanctioned repression. For more on the concept of *Feindstrafrecht*, see G. Jakobs, *Kriminalisierung im Vorfeld einer Rechtsgutsverletzung*, “Zeitschrift für die gesamte Strafrechtswissenschaft” 1985, Vol. 4, issue 97, p. 751 *et seq.*; G. Jakobs, *Bürgerstrafrecht und Feindstrafrecht*, “Online-Zeitschrift für Höchstrichterliche Rechtsprechung im Strafrecht” 2004, issue 3, p. 88 *et seq.*; G. Morguet, *Feindstrafrecht. Eine kritische Analyse*, Berlin 2009. For more on this in the Polish literature, see D. Gruszecka, *Ochrona dobra prawnego na przedpolu jego naruszenia*, Warszawa 2012, p. 207 *et seq.*

³⁰ Journal of Laws of the Republic of Poland from 2016, item 904.

ticular attention as it accords a number of privileged agents³¹ certain special rights of an exceptional character as against not only the general principles of criminal law but also the rules governing competences and procedures of secret services. Article 23.1 of the Law creates a right to a so-called special use of firearms (sniper shot): “Within counter-terrorist activities, if necessary to counteract a direct, illegal and violent attack on the life or health of a person or to free a hostage, and where use of a firearm in a manner inflicting the least harm possible is insufficient and counteraction against such an attack or freeing a hostage is not possible, it is permissible to, with regard to all the circumstances of an event of a terroristic character and the potential to undertake counter-terrorist activities, use a firearm against the attacker or hostage-taker, which may result in the death or direct endangerment of life or health of such a person (...)”.

In the context of protection of every human life (art. 38 of the Polish Constitution), it can be said, as a side note, that the reasons appended to the draft bill which later became the Act on Anti-Terrorist Activities raised many doubts. Introduction of a normative basis for a so-called special use of firearms is said “not to be intended to violate the principle of value of every human life, however in instances where it can be applied, protection of the life of the victim is a superior value to the life of the attacker”³². It is highly debatable to argue that life as a good – regardless of whether we adopt a paternalistic or liberal approach to relations between an individual and the state – may be gradable depending on the characteristics of its holder. Here, the life of the attacker would not be a good of lesser value than the life of the victim. In the light of general constitutional principles and general rules of criminal law they would represent equal value. This should not lead us to believe that criminal law is helpless when faced with such a conflict of equally important or even the same goods (e.g. life against life). On the contrary, the Polish criminal law is equipped with mechanisms to resolve conflicts between values placed equally high in the hierarchy of legal goods. Nevertheless, the sheer normative content of art. 23 of the Act on Anti-Terrorist Activities does not give rise, from a dogmatic standpoint, to larger doubts since the legislator precisely determined both the procedure in which the special use of a firearm may occur as well as the group of agents who are authorized to undertake such actions³³.

³¹ Pursuant to art. 23(4) the following officials are authorized to have recourse to the special use of firearms: police officers, officials of the Border Guard, the Internal Security Agency, servicemen of the Military Gendarmerie or soldiers of the Polish Armed Forces which form part of a group performing counter-terrorist operations, referred to for the purposes of the Act on Anti-Terrorist Activities as a “counter-terrorist group”.

³² *Uzasadnienie...*, p. 25.

³³ On a side note, it shall be emphasized that the Act on Anti-Terrorist Activities contains plenty of regulations which are highly doubtful from a constitutional perspective (the definition of an event of a terroristic character, a possibility of undertaking surveillance operations against non-citizens of the Republic of Poland, seizure, retention and processing of biometric data of non-

Even though, in the realm of the so-called special use of a firearm, the 2016 Act contains regulations of undoubted utility for the purposes of our discussion, these are still mechanisms to be used solely by certain professionals, i.e. officials of certain government services and agencies³⁴. As a consequence, the Act does not allow other individuals to act in any other way than those prescribed by the general principles of criminal law.

5. CONCLUSION

In the light of our analysis to this point, it appears that the Polish law does not warrant a conclusion that suicide is an illegal act so long as it does not cause harm to third parties. Particularly, no backing for such a conclusion is offered by art. 38 of the Polish Constitution. The Polish legal system does not feature any prohibition, let alone any command to commit suicide. Therefore, it is submitted that a suicidal act that does not cause harm to third parties is legally irrelevant. One cannot declare all acts which lead or could potentially lead to violations of goods of *significant social importance* to be illegal only by reference to a socially objective account of legal goods – this is in fact an attempt to introduce limits on conceivable violations of goods without any legal basis. If we were to accept the illegality of ordinary suicide, then, both practically and theoretically, we would encounter potentially insurmountable obstacles on the grounds of aggravated suicide, i.e. one which endangers or violates other goods (including suicide terrorist attacks).

citizens, limits on the right to assemble, blocking of telecommunications data etc.). Due to doubts with regard to the Law's compliance with the standards of protection of rights and freedoms of individuals, the Ombudsman of the Republic of Poland decided to challenge a number of its provisions before the Constitutional Court (complaint of the Polish Ombudsman dated July 11, 2016, VII.520.6.2016.VV/AG). However, the constitutionality of the provision which allows for the special use of a firearm was not disputed in the Ombudsman's complaint on account of the uncontroversial nature of that regulation (the author of this article co-wrote the Ombudsman's complaint to the Constitutional Court).

³⁴ We shall note that the Act on Anti-Terrorist Activities is not an isolated piece of legislation, but it fits into a general tendency of enacting highly repressive law. I refer here to legislation which abridges rights and freedoms of individuals, said to defend "public safety"/"public interests". One example is the new provisions of the Police Act of April 6, 1990 (Journal of Laws of the Republic of Poland from 2015, item 355 as amended) which introduced new principles governing the operational control of telecommunications data. It should be stressed that numerous contemporary legal orders have embraced the penchant for enacting surveillance laws because of the danger of terrorism. For instance, following the 9/11 terrorist attacks not only in the United States, but also in Germany legislatures took comprehensive legislative action aimed at preventing such incidents in the future. For more on this see C. J. M. Safferling, *Terror and Law. German Responses to 9/11*, "Journal of International Criminal Justice" 2006, issue 4, p. 1152 *et seq.*

On the contrary, legal irrelevance of suicide as an attack only on one's own goods makes it possible to use general institutions of criminal law (such as self-defence, necessity) every time the Polish law does not envisage a possibility of using specific mechanisms (e.g. special use of firearms mentioned above). Of course, the practical implication of this view is not an end in and of itself, but a result of its legal-theoretical justification. Even though there is no doubt that Polish law does not authorize people to freely dispose of their lives, it is untenable to consider that freedom inconsistent with the law. In this context, the constitutional principle of protection of every human life is not an adequate basis for the illegality of suicide (even if the monistic view of illegality is adopted) when confronted with the essence of suicide as well as the function of art. 38 of the Polish Constitution. Notwithstanding purely dogmatic problems – as the issue at hand is not free from axiology – we should ask whether, in the case of ordinary suicide, the fact that life, in a moment where it has lost all value for its holder, is still *the highest value for the society*, should have the effect of stripping an individual of their ability to make decisions about it, by subjecting it to protection regardless of the holder's will?

Even having discarded both radically paternalistic and liberal theories, the leeway a person has in the case of a terrorist suicide attack is murky and not precisely delineated. It remains an open question whether general institutions of criminal law are capable of ensuring practicably wider and safer space for acting, or whether additional regulations supplementing the current system of criminal instruments shall be enacted. For it may transpire that due to an act's high level of danger posed to a large number of goods placed the highest in the hierarchy of legally protected values, mechanisms recognized hitherto in contemporary criminal law are insufficiently effective and comprehensive. Legislative action should be taken with a view to adjusting the Polish legal system to modern threats, as has been done with regard to privileged agents. Simultaneously, it should be emphasized that any legislative decisions shall be made in full observance and respect for the principles of a democratic state ruled by law and should therefore be consistent with fundamental rights and freedoms of every individual.

Summary

The paper examines the question of suicide in the light of Polish criminal law. The starting point of discussion is an analysis of actions leading to one depriving oneself of one's own life which, at the same time, do not pose any harm to third parties. Here, the paper strives to answer the question whether suicide is legal or illegal in view of criminal law, as well as whether state interference with such actions is possible and justified. These questions serve as the background for the core part of the paper, in which justifications for the criminalization of suicidal acts simultaneously being attacks on third parties,

i.e. so-called suicide attacks, are sought. The paper sheds light on the latest anti-terrorist laws and formulates conclusions pertaining to its directions of development, particularly in the field of combating suicide terrorist attacks.

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