

Original article

The Territorial Defense Force in the fight against terrorism – institutional and legal issues

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INFORMATIONS

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ABSTRACT

The Territorial Defense Force is of great interest to politicians, the media and public opinion. A great deal of misinformation and misconceptions have arisen about the subject related to the newly created type of the Polish Armed Forces. Therefore, the aim of the article is to familiarize the reader with the role, place and tasks of the Territorial Defense Force in the national system of combating terrorism based on the provisions of the law in force in Poland. The article attempts to determine the opportunities and threats under the provisions of the Act on Anti-Terrorism of June 10, 2016, and the Act amending the Act on the Universal Obligation to Defend the Republic of Poland and certain other acts of November 16, 2016, to the Territorial Defense Force and for the security of the country. Comparative analysis of the legal acts mentioned above seems necessary for a better understanding of the peculiarities of the operation of the Territorial Defense Force in the Polish legal system and the security system.

KEYWORDS

Territorial Defense Force, anti-terrorism, Ministry of Defense, Act on Anti-terrorism



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Introduction

The Territorial Defense Force (TDF) was formed as the fifth branch of the Polish Armed Forces officially on January 1, 2017, according to the Act of November 16, 2016, amending the Act on the Universal Obligation to Defend the Republic of Poland and certain other acts [1]. However, before the legislator changed the provisions of the applicable law, the process of preparation and formation of a new type of troops had lasted for several months. The idea behind the establishment of the units consisting of volunteers trained in the weekend mode aroused numerous controversies from the very beginning. With the solidification of the TDF structure and the crystallization of priorities and the concept of their use, the image of the Territorial Defense Force also changed. Nevertheless, the combat value of the newly-created units is subject to constant criticism. After the statement of the then Minister of National

Defense, Antoni Macierewicz, about facing the Russian Spetsnaz units by the Territorial Defense Force, the discussion triggering the wave of criticism and divagations about the lack of preparation and skills to fight against special forces flared up in the national media [2]. The words of the Minister of Defense, indeed being a kind of metaphor, were intended to illustrate the characteristics of the tasks and activities to which the TDF was appointed. In most cases, apart from actions in natural disaster situations, the TDF will conduct broadly understood irregular operations in the field of green tactics. Do these tasks also include anti- and counterterrorism activities?

1. The Territorial Defense Force – tasks

The tasks of the Territorial Defense Force are described in detail in Article 11c, item 2(5), of the Act of November 16, 2016. These included:

- combating natural disasters and eliminating their consequences,
- property protection,
- rescue and rescue activities and protection of human health and life,
- participation in the implementation of tasks in the field of crisis management [1, Art. 11c, item 2(5)].

On its website, the Ministry of National Defense has clarified the tasks of the Territorial Defense Force compared to the legislative provisions. The TDF's tasks listed on the Ministry of National Defense's website cover:

- conducting military operations in cooperation with operational forces (in the event of a conflict). These actions will aim at destroying or stopping the troops of a potential enemy,
- protecting the population from the effects of natural disasters, liquidating their consequences, protecting property, search and rescue operations, and protecting human health and life, as well as participating in the implementation of crisis management tasks,
- protecting local communities against the effects of destabilization and disinformation,
- cooperation with elements of the state defense system, in particular with voivods and local self-government bodies,
- protecting local communities against the effects of attacks in cyberspace,
- dissemination of the idea of patriotic education in society [3].

It does not follow directly from the specified tasks that the legislator predicted the use of the TDF units in the fight against terrorism. The main tasks of the TDF is to be broadly understood protection and help to the local community, which is a special feature and one of the ideals of establishing the TDF, i.e., acting in the local environment, in the place of residence of the TDF members. On January 26, 2017, during the meeting with the Parliamentary Defense Committee, the TDF commander, Maj. Brig. Wiesław Kukuła, pointed out that: “the structure of the Territorial Defense Force is designed in such a way as to best contribute to helping the public and services specialized in providing this assistance by supporting local communities during natural disasters, catastrophes and other non-military threats” [4].

Capturing the specificity of locality combined primarily with the TDF's non-military activities, and next with strictly military/combat operations aimed at supporting line units of the Polish Armed Forces in the event of threat or violation of the borders of the Republic of Poland, does not include the TDF in the anti- and counter-terrorist system of actions.

2. The Territorial Defense Force and anti-terrorist actions

In Poland, the spectrum of actions in the event of a terrorist threat or a terrorist attack is determined mainly by the Anti-Terrorism Act of June 10, 2016. Pursuant to the Act, the anti-terrorist activities are: "actions of public administration bodies consisting in the prevention of terrorist events, preparation for taking over control over planned operations, responding in case of occurrence of such events and removing their effects, including reconstruction of resources intended to react to them" [5, Art. 2(1)].

The legislator has defined counter-terrorist actions as activities: "against perpetrators and people who prepare or assist in the commission of a terrorist offense referred to in Article 115 § 20 of the Act of June 6, 1997 – Penal Code (Journal of Laws, item 553, as amended) conducted to eliminate the immediate threat to life, health or freedom of persons or property using specialized forces and resources and specialized tactics of operation" [5, Art. 2(2)].

The general definitions of anti- and counter-terrorism activities do not allow to state clearly whether and in what way it is possible to use the means and resources of the Territorial Defense Force in combating or counteracting terrorist phenomena on the territory of the Republic of Poland. The Head of the Internal Security Agency (ABW) [5, Art. 3] is responsible for all actions aimed at preventing acts of terror. And the services coordinated by the Head of the Internal Security Agency in the event of a threat or a terrorist attack are:

- the Internal Security Agency,
- the Foreign Intelligence Agency,
- the Police,
- the Border Guard,
- the Government Protection Bureau,
- the State Fire Service,
- the Customs Service,
- the General Inspector of Financial Information,
- the General Inspector of Fiscal Control,
- the Military Police,
- the Government Security Center [5, Art. 5(1)].

The Head of the Internal Security Agency provides information on a terrorist threat to the following organs of the central authorities:

- the President of the Republic of Poland,
- the Chairman of the Council of Ministers,
- the Minister of Internal Affairs,
- the Minister of National Defense,
- the Minister of Foreign Affairs,
- the Minister Coordinator of Special Services [5, Art. 7].

No provisions directly or indirectly related to the TDF units can be found in the Anti-Terrorism Act. This is mainly caused by the time of adoption of the Anti-Terrorism Act, which entered into force six months earlier than the Act establishing the Territorial Defense Force, and the tasks which the legislator provided for the Territorial Defense Force. Nevertheless, the provisions of the Act of June 10, 2016, allow to a certain extent the hypothetical possibility of using the TDF units in the event of a terrorist threat. Article 22 of the abovementioned Act referring to the alarm levels provides for the use of branches and subunits of the Polish Armed Forces to assist the Police forces in the case where the Police units and subunits used are insufficient to control the situation resulting from a terrorist incident [5, Art. 22(1)]. The possibility of using Polish Armed Forces units when there is a threat of terrorism exists only after introducing the third or fourth alert level [5, Art. 22(2)].

The provisions of the Act of June 10, 2016, on anti-terrorist actions allow the introduction of one of four alert levels, varying on the nature of a terrorist threat. The first alert level – ALFA – can be introduced after obtaining information about a possible occurrence of a terrorist event, the time, type and scope of which are difficult to predict [5, Art. 15(3)]. The second alert level – BRAVO – is introduced in the case relating to the first level, with the difference that the risk of occurrence of acts of terror is increased and predictable, however, the purpose of the attack remains unidentified [5, Art. 15(4)]. The third alarm level (which is of key importance for this work) – CHARLIE – may be introduced by the central authorities in a situation where an event occurred that indicates a probable target of a terrorist attack directly threatening:

- security or public order,
- security of the Republic of Poland,
- security of other state or international organization provided that the event may potentially pose a threat to the Republic of Poland,
- obtaining reliable and confirmed information about a planned terrorist event on the territory of the Republic of Poland,
- obtaining reliable and confirmed information about a planned terrorist event, the effects of which may affect Polish citizens living abroad or Polish institutions or Polish infrastructure located outside the borders of the Republic of Poland [5, Art. 15, item 5(1-3)].

The fourth, highest, alert level – DELTA – is introduced in cases when a terrorist event occurred that poses a threat to:

- security or public order,
- security of the Republic of Poland,
- security of other state or international organization provided that the event may potentially pose a threat to the Republic of Poland,
- when the information obtained indicates an advanced stage of preparations for a terrorist event on the territory of the Republic of Poland,
- when the information obtained indicates an advanced stage of preparations for a terrorist event and that event may concern Polish citizens staying abroad or in Polish institutions or Polish infrastructure located outside the borders of the Republic of Poland, and the collected information indicate at the same time the inevitability such an event [5, Art. 15, item 6(1-3)].

The decision on the use of the Polish Armed Forces to support the Police forces in the fight against terrorism after the announcement of the third or fourth alert level is issued by the Minister of National Defense at the request of the minister competent for internal affairs, who defines the scope and form of assistance. After issuing the decision, the Minister of National Defense is obliged to immediately inform the Supreme Commander of the Armed Forces – the President of the Republic of Poland and the Prime Minister [5, Art. 22(3)]. The decision of the Minister of National Defense on the use of the Armed Forces, whose task it is to support the Police units, includes the composition of troops and subunits designated to support the Police units, their tasks and numbers. Moreover, the area of operation of the Armed Forces units and possible restrictions referring to the use of their equipment is specified in the decision of the Head of the Ministry of National Defense [5, Art. 22, item 4(1-3)]. Units of the Polish Armed Forces assist the Police forces have the right to use means of direct coercion and firearms on the terms provided for soldiers of the Military Police. This provision does not apply to Special Forces operators who have the right to use weapons as enshrined in Article 3(2) of the Act on the Universal Obligation to Defend the Republic of Poland of November 21, 1967. Military troops supporting the Police units in the event of a threat or a terrorist attack remain in the system of commanding the Armed Forces of the Republic of Poland, however, the coordination of their actions is directed by the competent Voivodeship Police Commander – in the case where the scope of activity is limited to one voivodeship, or the Chief Police Commander in a situation where the actions of police and military forces cover an area larger than one voivodeship [5, Art. 22(6-9)].

Conclusion

Can units of the Territorial Defense Force be used in the fight against terrorism? The answer is positive both in theory and practice. This is permitted by the provisions of the Anti-Terrorism Act of June 10, 2016 that provide for the use of units of the Polish Armed Forces in exceptional situations. The Territorial Defense Force are the fifth branch of the Polish Armed Forces, thus, they are predisposed for use in accordance with the provisions of the Act on Anti-Terrorism. The provisions of Article 22 of Act in question are particularly important since they clearly and legibly define the role and tasks of the Minister of National Defense and units of the Polish Armed Forces designated by him/her to support the Police forces in the fight or counteracting terrorist events only after the announcement of CHARLIE or DELTA alert levels. It is obvious that in the first place in the occurrence of a terrorist threat, the units and subunits included in the Special Forces, which are properly trained and equipped to carry out anti- and counter-terrorist tasks, will be delegated to help the Police units.

Nevertheless, one can see the role and place of the TDF units in the situations provided for in the third and fourth alert levels. Units of the Territorial Defense Force will certainly not perform “line” or “hit” tasks, they will not be used for carrying out kinetic actions and operations, because special units of the Police, Internal Security Agency and Special Forces are predisposed to fulfil out such tasks. In the event of a terrorist attack the TDF soldiers will be able to secure critical infrastructure facilities, support the Police forces in ensuring the safety of citizens, e.g., by performing a joint patrol service with prevention subunits, and realize other tasks in the field of crisis management provided for in the Act on Crisis Management of April 26, 2007 [6]. The use of the TDF units as auxiliary units that perform tasks on the periphery of events resulting from a threat or a terrorist attack seems to be the right and

desirable action that can significantly improve, facilitate and strengthen the state security system. The words of the TDF Commander, Maj. Brig. Wiesława Kukuła, on the role and tasks of the Territorial Defense Force are meaningful: “We will not substitute for other services, but rather supplement their abilities (...) Such an example may be the use of drones with thermos-vision heads, which will be on our equipment for, for example, searching for missing persons. If the soldiers effectively support the society in the crisis response system, they will not let down during a war” [4].

The Territorial Defense Force are not intended to implement tasks in the field of anti- and counterterrorist activities, however, thanks to appropriate legislation provisions, in the event of a terrorist threat or a terrorist attack, they can serve as auxiliary units to the entire state security system, performing the role and carrying out tasks to which they have been appointed.

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Conflict of interests

The author declared no conflict of interests.

Author contributions

The author contributed to the interpretation of results and writing of the paper. The author read and approved the final manuscript.

Ethical statement

The research complies with all national and international ethical requirements.

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Wojska Obrony Terytorialnej w walce z terroryzmem – uwarunkowania instytucjonalno-prawne

STRESZCZENIE Wojska Obrony Terytorialnej są przedmiotem dużego zainteresowania polityków, mediów i opinii publicznej. Wokół tematyki związanej z nowopowstałym rodzajem Sił Zbrojnych RP narosło wiele niedomówień i błędnych przekonań. W związku z tym celem artykułu jest przybliżenie czytelnikowi roli, miejsca i zadań Wojsk Obrony Terytorialnej w krajowym systemie zwalczania terroryzmu w oparciu o zapisy obowiązującego w Polsce prawa. W artykule została podjęta próba określenia szans i zagrożeń, wynikających z zapisów Ustawy o działaniach antyterrorystycznych z dnia 10 czerwca 2016 r. oraz Ustawy o zmianie ustawy o powszechnym obowiązku obrony Rzeczypospolitej Polskiej oraz niektórych innych ustaw z dnia 16 listopada 2016 r. dla Wojsk Obrony Terytorialnej oraz dla bezpieczeństwa kraju. Komparatystyka ww. aktów prawnych, wydaje się niezbędna dla lepszego poznania specyfiki działania Wojsk Obrony Terytorialnej w polskim systemie prawnym oraz systemie bezpieczeństwa.

SŁOWA KLUCZOWE Wojska Obrony Terytorialnej, antyterroryzm, MON, ustawa o działaniach antyterrorystycznych

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