

Таким образом, как представляется, необходимо провести более комплексный анализ обозначенной проблемы с целью выработки предложений по ее нивелированию, что не позволяет объем настоящей публикации.

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### **THE OFFENCE OF TERRORIST TRAINING IN POLISH CRIMINAL LAW**

The very concept of terrorism was introduced into Polish criminal law in 2004 when Poland joined the European Union. Since then there have been many modifications introducing new terrorist offences into the system. While any offence which meets the statutory requirements specified in Art. 115 § 20 of the Polish Criminal Code (henceforth referred to as CC) may become “an offence of terrorist character” which implies, first of all, the aggravation of punishment for the offender. There are also many offences which are described with the use of that concept and which refer to some preparatory activities of terrorists which cannot be considered to fulfil the requirements of Art. 115 § 20 CC and need to be punished on separate bases. One of such offences is the misdemeanour known as “terrorist training” described in Art. 255a § 2 CC. It was added into the Polish criminal law system under the influence of the requirements of the EU law referring to the issue – at present it is the directive of the EU Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6–21). According to Art. 8 of this legal act, Member States shall take the necessary measures to ensure that receiving instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or

on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1) is punishable as a criminal offence when committed intentionally (these points refer to offences which should be treated as terrorist offences in the meaning of the directive).

The Polish law-maker decided to add the new offence in 2016 (the statute of 5 May 2016 on anti-terrorist activities (Journal of Laws position 904). According to Art. 255a § 2 CC whoever, with the aim of committing an offence of terrorist character, participates in a training which could facilitate the commission of such an offence, should be punished with imprisonment from 3 months to 5 years.

As is stressed in literature, the forbidden activity in the form of participation should be understood broadly, as any type of contact between the instructor and the participant. This contact may be through electronic means, the parties involved need not know each other personally, yet – the contact must be such that there is an intellectual connection, the participant should be able to ask questions and receive answers. If somebody is only gaining access to some training material placed on the Internet without any contact with the author of that material, the requirements of Art. 255a § 2 are not met, though the author, but not the recipient, of such materials can be held responsible for the offence described in Art. 255 § 1 CC – the spreading or presenting in public of content which may facilitate the commission of an offence of terrorist character with the intention that such an offence should be committed (2, p. 355).

Training should be understood according to its linguistic meaning as all forms of learning, obtaining extra knowledge in a given sphere. It does not have to be a long lasting process, also one-off training can fulfil the statutory features of the discussed misdemeanour. The training has to have one key feature – the knowledge given to the participants must be of such a kind that it could facilitate the commission of an offence of a terrorist character (i.e. according to Art. 115 § 20 CC an offence punished with maximum imprisonment of at least 5 years committed with the aim of 1) seriously intimidating many persons, 2) compelling a public authority body of the Republic of Poland or of another state or an international organisation to perform or abstain from performing certain acts, 3) causing serious destabilisation in the political system or economy of the Republic of Poland, - or the threat thereof). It should be stressed that the training itself does not have to be an illegal one, the offence is committed as long as the offender participates in it with the aim to commit an offence of terrorist character, though in the case of such a legal training the persons conducting it may not be held responsible for the offence if they were unaware of the intention of the participant. Since the training has to be such as to be able to facilitate the commission of a terrorist act, it should be established that the very possibility of committing the intended offence depended on the knowledge provided during the training. Therefore, i.g. learning a foreign

language to make it easier to function in a foreign country where the terrorist attack is to take place cannot be considered the kind of training described in Art. 255a § 2 CC (2, 355).

The above indicated Directive distinguishes between receiving and providing training for terrorism. The last one is mentioned in Art. 7, according to which Member States shall take the necessary measures to ensure that providing instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally. The Polish law-maker has introduced no such distinction, yet – since Art. 255a § 2 CC speaks of “participation” and not “obtaining” or “providing” instruction, it can be argued that the person conducting the terrorist training also participates in it and therefore can be considered the perpetrator of the offence (3, p. 781, 4, p. 1237). It should be also stressed that the phrase describing the mens rea of the offender (“with the aim of committing an offence of terrorist character”) does not seem to require that the offence should be personally committed by the offender, but it is also possible to meet this requirement when the perpetrator’s intention concentrates on the commission of such an offence by another person – this interpretation would make it possible to assume that the discussed offence was committed e.g. by a person who was giving necessary instruction to a person intending to commit a terrorist suicide attack (2, p. 355).

The offence described in Art. 255a § 2 CC can only be committed with direct intention (*dolus directus coloratus*) – the offender has to participate in the training with the specific aim to commit an offence of terrorist character (1, p. 1639).

The punishment for the participation in terrorist training is not very severe, yet one should remember that this is the punishment for the type of activity which otherwise would be considered preparation to commit an offence (and as a rule preparing to commit various offences is not forbidden unless the statute states otherwise) and which precedes the acts which are truly socially harmful.

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