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THE CONCEPT OF TERRORISM IN LAW AND LANGUAGE

*In a situation of threat of **terrorism** the imagination is taken over by fear against an Alien, the pleasant inattention is replaced by suspicion.*

Edwin Bendyk: A poisoned well. About power and freedom, 2002

Today, no-one needs an explanation of the term terrorism. It has permanently fixed itself in the life of 21st-century society. However, one should be aware that the origin of the concept dates back to very distant times. For decades, the term terrorism evolved and matched its definition to the needs of the current world.

The concept of terrorism comes from the Greek word *terra*, meaning “*trembling, afraid*”, “*get cold feet, escape*” and from the Latin *terror*, i.e. “*fear, anxiety, dismay*”, “*terrible word, terrible news*”¹. However, linguists attribute the origin to the Sanskrit word *tras*, meaning tremor. In literature, however, it is usually confined to the most popular, Latin root, which was disseminated through the French Revolution and the reign of terror (*Fr. terreur*) and hence the widespread use of crimes, repression and murder in order to arouse public fear and anxiety².

According to P. Witkowski, terrorism means “*the use of violence, rape, cruelty to intimidate someone*”³. The PWN Polish Dictionary defines terrorism as “*actions of individuals or groups attempting to using terrorist acts to force certain concessions on the governments of countries*”⁴. The definition indicated above does not explain the exact problem, because to understand it clearly, one would need to define what a terrorist act is and here it can be seen how many problems are raised by defining a seemingly clear concept, because the concepts of terrorism, act of terror or terror should be distinguished at the outset. Although these concepts seem similar, at a closer analysis they turn out to be completely

¹ See <http://www.wos.org.pl>.

² R. Borkowski, *Terroryzm*, (in:) R. Borkowski (ed.), *Konflikty współczesnego świata*, Kraków 2001, p. 115.

³ P. Witkowski, *Pojęcie terroryzmu. Cele i metody działań terrorystycznych*, (in:) D. Kowalski (ed.), *Ochrona osób i mienia. Vademecum*, Lublin 2000, p. 137.

⁴ See <http://sjp.pwn.pl>.

separate. Terrorism cannot be identified with many acts of terror, because a single act of terror is not always a nexus of terrorism, although these concepts involve the pursuit of the same purpose, which is inducing feelings of vulnerability and fear in a society, then the way in which this objective is pursued differs. In the case of terrorism it is based on a kind of strategy combining acts of violence with other methods, like for example the propaganda of purposes, and in the case of an act of terror, it involves the use of drastic and dangerous measures⁵.

There have been many attempts to define the concept of terrorism; despite this, there is no one definition recognized by all. The complexity of this problem is explained by the words: "A person who is a terrorist for some, for others is a freedom fighter"⁶. A similar statement was given by Yasser Arafat, the former leader of the Palestinian National Authority, who concluded that "the difference between a revolutionary and a terrorist comes down to what each of them are fighting for. Whoever defends a just cause, fights for freedom and liberation of his country from invaders, settlers and colonists cannot be called a terrorist"⁷.

Defining terrorism raises many complications, for several reasons. In addition to ambiguities related to the multiplicity of close concepts, often wrongly identified with terrorism, a major difficulty in defining the notion is its constant evolution, and here we can recall for instance eco-terrorism, cyber-terrorism, bio-terrorism, or global terrorism⁸. Another emerging complication is the possibility of many different scenarios of terrorist attacks, and thus a variety of methods and means of action. Although the basic mechanism of the impact of terrorism is to act in accordance with the ancient Chinese proverb "Kill one, scare ten thousand", then these actions may have a different character. For example, there may be an attempt on the life or health of a person or persons, taking hostage/hostages, striving to destroy a particular subject or object or abducting a means of transport and others⁹.

The point of contention is the different approaches of individual countries as well as politicians to the definition and its exclusions. Against this background, there are continuous misunderstandings based on a conflict of interest of countries or their attitude towards state terrorism.

⁵ J. Muszyński (ed.), *Terroryzm polityczny*, Warsaw 1981.

⁶ S. Serwiak, *Cyberprzestrzeń jako źródło zagrożenia terroryzmem*, (in:) E. W. Pływaczewski (ed.), *Przestępczość zorganizowana. Świadek koronny. Terroryzm w ujęciu praktycznym*, Kraków 2005, p. 590.

⁷ Y. Arafat, *Speech at the United Nations Assembly*, November 13, 1974, see B. Hoffman, *Oblicza terroryzmu*, Warsaw 1999, p. 24.

⁸ See S. Wojciechowski, *Global terrorism*, (in:) S. Wojciechowski (ed.), *The Faces of Terrorism*, Poznań 2006, p. 29–34.

⁹ S. Wojciechowski, *Terroryzm. Analiza pojęcia*, "Przegląd Bezpieczeństwa Wewnętrznego" 1990, No. 1, p. 55.

The complexity of the phenomenon causes that some specialists find it impossible to define terrorism precisely due to the breadth of the concept¹⁰. On the other hand literature on the subject includes many articles about this, and when searching for the meaning of the term in Google search engine, you can receive more than 100 million results. Why is it so important to create a proper definition of terrorism? Well, the more exact the definition of this term, the easier it is to make laws to combat it.

The need to systematize and create a general definition is primarily due to practical reasons. Terrorism is one of the most important problems of the contemporary world. Striving to create a structured terminology of the phenomenon aims to create appropriate legislation allowing to fight not only with the effects of the phenomenon but above all with terrorism itself. The first step to achieve this is to review the most important currently functioning definitions.

CIA describes terrorism as the threat of violence or its use for political purposes by individuals or groups, regardless of whether they act in favour or in opposition to the established authority of the state, where these activities aim to frighten or intimidate more people than just the direct victims. In contrast, the US Department of Justice defines terrorism as "(...) violent criminal behaviour mainly aimed at: 1 – intimidating and forcing civilians; 2 – affecting government policy by intimidation or force; or 3 – affecting government policy by assassination or kidnapping." The Federal Bureau of Investigation (FBI) defines terrorism as: "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives"¹¹. The US State Department explains that it recognizes terrorism as: "premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents"¹². In contrast, the Russian Federation defines terrorism as "violence or threat of its use in relation to individuals and organizations, destruction (damage) or the threat of destruction (damage) to property and other objects, which could result in the death of people, which causes significant damage to property or causing the occurrence of other socially dangerous consequences made in order to influence authorities to adopt decisions in line with the thoughts of the terrorists, or meet illegal property and other interests; encroachment on the life of a state social activist to interrupt his state or other political activity or activities regarded as such, an attack on a representative of a foreign state or an employee covered by international protection, also an attack on official rooms or means of transport

¹⁰ W. Laqueur, *The Age of Terrorism*, Boston 1987, pp. 11, 142–156; T. Meisels, *The Trouble with Terror: The Apologetics of Terrorism – a Refutation*, "Terrorism and Political Violence" 2006, Vol. 18, issue 3, p. 470.

¹¹ National Institute of Justice: <http://www.nij.gov/Pages/welcome.aspx> (visited January 17, 2017).

¹² U.S. Department of State <http://www.state.gov/>.

of beneficiaries under international protection if the action is closely related to the provocation of war or complicating international relations”¹³. The most popular in France is the definition recognizing terrorism as “deliberate action aimed at overthrowing democratic institutions or taking control of part of the national territory subject to state power through intimidation or violence”¹⁴. The United Nations (UN) also adopted a position on terrorism. Resolution 49/60 of December 9, 1994 adopted terrorism as “acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism”¹⁵. An interesting definition of terrorism can also be found in the Dictionary of foreign words and phrases. It defines terrorism as the organization of attacks (using weapons or bombs) on members of the government, people associated with the government, on political opponents, on persons of another faith or another race, foreigners or bystanders, kidnapping people or hijacking aircraft in order to gain power, induce a climate of fear, confusion, chaos, expressions of protest, to gain benefits for some groups, cliques or individuals, and finally, with no apparent motivation¹⁶. The PWN Polish Dictionary defines terrorism as “the use of terror, especially activities of some extremist groups attempting to draw public attention to their slogans or force on state governments certain concessions or benefits, through political assassinations, kidnappings of hostages, hijacks of aircraft and similar means”¹⁷.

The need to define terrorism and at the same time the complexity of this issue has led to the need to make certain conclusions. A. Schmid¹⁸ in 1988, when examining 109 definitions of terrorism compiled a set of main elements of their definitions, taking into account the frequency of their occurrence. A full list of features taking into account their frequency (expressed in percentage) was as follows:

- 1) use of violence and force – 83.5%;
- 2) political nature – 65%;
- 3) induce fear and terror – 51%;
- 4) threat as an element of intimidation – 47%;
- 5) effects and psychological reactions – 41.5%;
- 6) distinguish between the concepts: sacrifice – purpose – 37.5%;
- 7) purposeful, planned, systematic action – 32%;

¹³ S. Wojciechowski, *Terroryzm...*, p. 57.

¹⁴ *Ibidem*.

¹⁵ See <http://www.un.org/documents/ga/res/49/a49r060.htm> (visited January 17, 2017).

¹⁶ W. Kopaliński, *Słownik wyrazów obcych i zwrotów obcojęzycznych*, Warsaw 2000.

¹⁷ M. Szymczak (ed.), *Słownik języka polskiego*, Warsaw 1999.

¹⁸ A. P. Schmid, A. J. Jongman, *Political terrorism. A new guide to actors, authors, concepts, data bases, theories and literature*, New Brunswick–London 1988.

- 8) methods of struggle, strategy and tactics of action – 30.5%
- 9) abnormality, conflict with the accepted norms and rules, no humanitarian restrictions in action – 30%;
- 10) extortion, enslavement, causing submission – 28%;
- 11) pursuit of publicity, advertising – 21.5%;
- 12) randomness, impersonality, indiscrimination – 21%;
- 13) victims among civilians, non-combatants, neutral – 17.5%;
- 14) intimidation – 14%;
- 15) emphasizing the innocence of victims – 15.5%;
- 16) perpetrators acting in an organized group, organization, movement – 14%;
- 17) a show of force against others – 13.5%;
- 18) incalculability, unpredictability, surprise attack – 9%;
- 19) clandestine nature of the activity – 9%;
- 20) uniqueness, serial or “promotional” nature of the violence – 7%;
- 21) criminal nature of the attacks – 6%;
- 22) demands made to third parties – 4%¹⁹.

The above statement on the one hand contains elements that arguably should be included in the definition of terrorism, namely the element of violence and force (83.5%), the political nature of the activity (65%) or element of fear (51%). On the other hand, it contains elements that may but do not have to be included in every definition, with an often debatable character like the element of repeatability and serial nature of a terrorist attack.

It can be concluded that the selection of elements of the definition is stipulated in character and depends on the needs of the defining body. A similar study was repeated on today's 73 definitions. The researchers L. Weinberg, A. Pedahzur and S. Hirsch-Hoefler²⁰ re-analyzed the elements of the definitions contained in three journals: “Terrorism”, “Terrorism and Political Violence” and “Studies in Conflict and Terrorism” in the years 1977–2001, and the result of their work was the reassessment of the compilation done by Schmid. The analysis results were slightly surprising, because beyond the first two entries, which also turned out to be the most commonly occurring in modern definitions, other elements took on greater significance²¹. Today's compilation is as follows:

- 1) use of violence and force – 71%;
- 2) political nature – 60%;
- 3) threat as an element of intimidation – 41%;
- 4) methods of struggle, strategy and tactics of action – 31.5%;
- 5) perpetrators acting in an organized group, organization, movement – 29%;
- 6) distinguish between the concepts: sacrifice – purpose – 25%;

¹⁹ B. Hoffman, *Oblicza...*

²⁰ L. Weinberg, A. Pedahzur, S. Hirsch-Hoefler, *The challenges of conceptualizing terrorism*, “Terrorism and Political Violence” 2004, Vol. 16, No. 4.

²¹ S. Wojciechowski, *Terroryzm...*, p. 58.

- 7) induce fear and terror – 22%;
- 8) victims among civilians, non-combatants, neutral – 22%;
- 9) pursuit of publicity, advertising – 18%;
- 10) purposeful, planned, systematic action – 11%;
- 11) intimidation – 11%;
- 12) emphasizing the innocence of victims – 10%;
- 13) clandestine nature of the activity – 7%;
- 14) effects and psychological reactions – 5.5%;
- 15) extortion, enslavement, causing submission – 5.5%;
- 16) a show of force against others – 5.5%;
- 17) criminal nature of the attacks – 5.5%;
- 18) incalculability, unpredictability, surprise attack – 1%;
- 19) demands made to third parties – 1%;
- 20) abnormality, conflict with the accepted norms and rules, no humanitarian restrictions in action – 0%;
- 21) randomness, impersonality, indiscrimination – 0%;
- 22) uniqueness, serial or “promotional” nature of the violence – 0%.

Moreover, certain characteristics changed in frequency, even the first two, that is the use of violence and force and political nature, proved to occur less in the definitions. The result of these studies was the formulation of the following definition: “Terrorism is a method of arousing anxiety by repeated attacks, adopted by individuals, groups or national entities usually acting in secret, chosen due to criminal or political reasons, while – in contrast to assassinations – the direct targets of violence are not the main objectives. Direct human victims of violence are generally chosen randomly, blindly (targets resulting from circumstances), or selectively (representative or symbolic targets) from a target population and they serve as carriers of a message. The threat and communication process based on violence between a terrorist (organization), (threatened) victims and main targets are used to manipulate the main goal (through the community or communities), turning it into a objective of terror, the objective of demands or the objective of drawing attention, depending on whether the offender in a given situation seeks mainly intimidation or propaganda”²².

In 2002 a European definition of terrorism was established, formulated under the Framework Decision of the Council of the European Union dated June 13, 2002 on combating terrorism, in which a terrorist act was recognized as activity consisting in:

- 1) an attack on a person’s life, which may cause death;
- 2) an attack on the personal integrity of a person, kidnapping or taking hostage;

²² *Ibidem*.

3) causing serious damage in relation to the property of the government or the state administration, the transport system, infrastructure, including the information system, oil platform located on the continental shelf, private or public property, which could endanger human life or result in major economic losses;

4) hijacking of aircraft, a ship or other means of public or goods transport;

5) the manufacture, possession, acquisition, transport, delivery or use of weapons, explosives, nuclear materials, chemical weapons, biological weapons and conducting research in relation to the latter;

6) the release of hazardous substances, causing fires, floods or explosions, the effect of which may be a threat to human life;

7) interfering with or interrupting the supply of water, electricity and other basic natural resources, which may result in a threat to human life;

8) the threat to commit any of the above-mentioned acts;

9) the serious intimidation of society;

10) unlawful forcing a government or an international organization to take or refrain from taking any action;

11) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or organization, and activities which could cause serious damage to a country or an international organization²³.

There is no doubt that terrorism is a symbol of our times; in order to effectively counteract it, the state should adopt the proper definition and implement relevant regulations for counteracting terrorism. In a world that is referred to as a “global village”, terrorist attacks, though usually directed against the government of one country, are felt by the entire international community. Therefore, the governments of individual countries are trying to tackle the phenomenon of terrorism not only at the national level but also undertake transnational actions, an example of which could be the Convention of the European Council drawn up in Warsaw on May 16, 2005 on the prevention of terrorism, in which a terrorist offense has been defined. This crime is any criminal offense within the scope of and as defined in one of the treaties:

1) Convention for the Suppression of Unlawful Seizure of Aircraft, concluded at The Hague on December 16, 1970;

2) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on September 23, 1971;

3) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, concluded at New York on December 14, 1973;

4) International convention against the taking of hostages, concluded at New York on December 17, 1979;

²³ Framework Decision of the Council of the European Union dated June 13, 2002, art. 1 (2002/475/JHA).

5) Convention on the Physical Protection of Nuclear Material, concluded at Vienna on March 3, 1980;

6) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, concluded at Montreal on February 24, 1988;

7) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, concluded at Rome on March 10, 1988;

8) The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, concluded at Rome on March 10, 1988;

9) International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on December 15, 1997;

10) International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on December 9, 1999.

Act dated April 16, 2004 on amending the Penal Code and some other acts (Journal of Laws No. 93, item 889) implemented the provisions of the Framework Decision of the EU, introducing into the Polish system the definition of a terrorist crime. According to art. 115 § 20²⁴ “a crime of a terrorist nature is an offense, punishable by imprisonment with a maximum of at least 5 years, committed towards:

1) serious intimidation of many people,

2) forcing public authority of the Republic of Poland or other state or authority of an international organization to perform or abstain from certain activities,

3) causing serious disturbances in the political system or the economy of the Republic of Poland, other state or international organization – as well as threats to commit such an act”.

Although the definition of the Polish Penal Code is distinguishable from the decision proposed within the Framework Council of the EU, it acts as designated by the European Union. It should be emphasized, however, that compared to the Framework Decision, art. 115 defines terrorist offenses too broadly. The Polish Penal Code resigned from the catalogue of terrorist offenses, in return for the inclusion of this type of criminal offenses punishable by imprisonment with a maximum of not less than 5 years.

The Polish legislator does not introduce directly the provisions of the Framework Decision, as stated in the justification of “entering the catalogue of offenses from art. 1 of the Framework Decision seems neither possible nor necessary”²⁵. Such an assumption was accepted, because a large part of the crimes contained in the specific section of the act, by its nature cannot be of terrorist character, e.g. road accident. Hence, the adopted a catalogue of terrorist offenses were lim-

²⁴ Act of June 6, 1997 Penal Code.

²⁵ From the justification to the bill amending the act – Sejms document in 2407.

ited to only the most serious offenses, which are punishable by imprisonment with a maximum of at least 5 years. The catalogue of crimes was broadened in addition by unlawful threats to commit these acts. However, it is alleged that the wording of art. 115 § 20 causes some crimes that are recognized in accordance with the Framework Decision as serious, are not considered terrorist offenses according to the Polish Penal Code, e.g. threat (art. 190 of the Penal Code) is punishable by imprisonment up to three years. Doubt arises because when it comes to discussing crime, the essence of terrorism is still the goal of the perpetrator and not how severe the penalty is for committing it. Nevertheless, it is noted that the achievement of the goal mentioned in the definition does not determine the committing of the crime discussed but committing a crime threatened by sufficiently high imprisonment. Also in this case there are doubts about the obscure proceedings when the perpetrator is clearly a terrorist, but the offense committed, due to the method of acting, made it impossible to achieve this objective. In literature there is a view that in this case it should be resigned from giving this act the terrorist character, as the act did not actually achieve the degree of social harm which would justify the use of tougher penalty provided for offenses under art. 115 § 20. Such an approach appears to be correct, otherwise the perpetrator would be responsible for an act he intended to commit but was not attainable in any way.

The consequence of committing a crime under art. 115 § 20 is to apply in relation to the perpetrator the provisions that are appropriate for repeat offenders (art. 64 § 2) concerning both the sentencing and penal and probation measures (art. 65 § 1).

Although the existing legal regulation appears to be correct, other emerging doubts must be noted than only those mentioned previously. First of all, at the beginning there are ambiguities related to the process of implementation itself, which led to significant differences between the definition of terrorist offenses contained in the Framework Decision and that contained in art. 115 § 20 of the Penal Code. Polish law formulates the definition in a much broader way, recognizing that every offense punishable by imprisonment of at least 5 years may be a terrorist offense, while the Framework Decision provides a catalogue of offenses, the signs of which can be recognized as specific for the *modus operandi* of perpetrators of these offenses²⁶.

An accurate observation is shown by C. Sońta²⁷ noting that the Polish regulation does not provide one *delictum sui generis*, because due to the fact that a terrorist crime is a prohibited act, which either fulfils two conditions jointly, i.e. it is punishable by imprisonment with a maximum of at least 5 years and was committed in one of the three specific objectives or it is a threat of committing the

²⁶ C. Sońta, *Przestępstwo o charakterze terrorystycznym w prawie polskim*, "Wojskowy Przegląd Prawniczy" 2005, No. 4.

²⁷ *Ibidem*.

act, which fulfils the mentioned conditions, it is logical that there is a dichotomy between these offenses into terrorist and other offenses.

A terrorist offense in the science of criminal law is considered a crime of intent, so characterized by its objective, a motive or incentive, which means that in this case the perpetrator acted with a precisely targeted intent²⁸. The most common crimes of intent are committed with direct intent, as in the case of terrorist offenses, which means that the perpetrator of such an offense works as a result of specific motives and incentives in order to achieve the objective. The provision constituting a terrorist offense in the Penal Code allows to qualify the catalogue of offenses in this group which is much wider than the catalogue of offenses specified in the Framework Decision of the Council of the European Union on the fight against terrorism. In Polish law, the achievement of the objective indicated in art. 115 of the Penal Code does not determine a terrorist offense, but only a crime punishable by imprisonment of not less than 5 years.

Considering the subject of enforcement, it is noted that committing a terrorist offense outside the violation of individual legal interests infringes other legal interests, such as: freedom, political system and economic system of the state. The object of attack of a terrorist offense is therefore a multiplicity of legal interests or only one legal interest expressed in an abstract way in its various aspects.

The fact that the mere preparation for a terrorist offense is punishable is extremely interesting. According to art. 140 § 3 of the Penal Code, whoever makes preparations for a terrorist attack is punishable by imprisonment up to 3 years.

At the same time it should be noted that although the act of terrorism is based on violence and is performed usually using weapons or explosives, then basing in the analysis on only the structure of criminal responsibility may be too cursory. Examination of responsibility from this point of view shows only the mode of action of the perpetrator, and taking into account criminal law, it is relevant only when combined with a properly diagnosed intention of the perpetrator, who should play the role of a *differentia specifica* of normative types of crime of a terrorist act. It is extremely difficult, however, to find an offense with the direct intent to use terror, which means that there will be a decreasing number of terrorist crimes if such a crime structure is maintained in the future. This paradox is even greater that in the legislation, on the one hand, committing a terrorist act increases and toughens legal regulations on terrorism and at the same time there are many legal structures to enable mitigation of punishment or even its avoidance, like for example confession, extraordinary mitigation of punishment, crown witness.

The definition of a terrorist offense in the Polish doctrine raises a lot of controversy. First of all, critics of the provision raise the argument of the lack of precision expressed in the fact that the formal criterion, i.e. the upper limit of imprisonment

²⁸ L. Gardocki, *Prawo karne*, Warsaw 2008, p. 81.

is at least five years, is equivalent to almost 250 provisions of the special part of the Penal Code, however, not all of them lead e.g. to intimidating many people. This means that every time the court is forced to investigate whether an offense was intended to achieve one of the objectives set out in art. 115 § 20²⁹.

Moreover, it is noted that outside the scope of the regulation are actions with the characteristics of the objective but not conforming to a formal criterion i.e. punishment of imprisonment with a maximum of at least 5 years. As noted by K. Indeck, the offense that is outside the scope of the definition of the offense under art. 115 § 20 is unlawful threat (art. 190 of the Penal Code), which can lead to intimidating many people³⁰.

Also seemingly legitimate are opinions that draw attention, that accepting the severity of the penalty of imprisonment for which the upper limit is at least 5 years, causes that preparatory acts are not included in the discussed terrorist acts, which are important in the activities of terrorists³¹. Jurewicz points out that “the way of determining the formal condition results in not recognizing preparations for the following as a criminal offense: a violent attack on a unit of the armed forces of the Republic of Poland, destroying or damaging an object or device of significance to defence (art. 140 § 3 of the Penal Code), bringing in hazardous event, bringing universal danger, hijacking a ship or aircraft, placing substances threatening the safety of people or property of considerable value (art. 168 of the Penal Code), bringing a disaster in motion (art. 175 of the Penal Code), abducting people (art. 252 § 3 of the Penal Code), falsification of documents (art. 270 § 3 of the Penal Code)”³². Moreover, this provision does not contain any specific guidance on such issues like, whether the instigator or abettor in the crime, as a result of whom a terrorist “effect” occurs, is subject to punishment? Analysis of the Penal Code causes doubts as to the possibility of an affirmative answer to this question. For the sake of the fact that inciting or abetting to commit some direct offense cannot come down to incurring art. 115 § 20 of the Penal Code Any doubts arising in this regard should be removed, due to maintaining *nulla poena sine lege*. Moreover, it should be noted that although it is obvious that there should be a willingness to accept that a terrorist offense may occur in relation to offenses with relatively little harm, then limiting this crime only to acts punishable by imprisonment with a maximum of at least 5 years, against the background of the contemporary penal code is not justified. The view is therefore justified that if a specific offense, which is committed to achieve a terrorist effect, does not produce a state of emer-

²⁹ K. Indeck, *W sprawie definicji normatywnej terroryzmu*, (in:) E. W. Pływaczewski (ed.), *Przestępczość zorganizowana. Świadek koronny. Terroryzm w ujęciu praktycznym*, Kraków 2005.

³⁰ *Ibidem*.

³¹ J. Jurewicz, *Definicja przestępstwa o charakterze terrorystycznym – art. 115 § 20 kk*, (in:) K. Indeck (ed.), *Przestępczość terrorystyczna. Ujęcie praktyczno-dogmatyczne*, Poznań–Białystok–Łódź 2006.

³² *Ibidem*.

gency, it would be more appropriate to recognize it as an inept attempt to commit a terrorist offense, instead of assuming that a “common” crime was committed³³.

On the other hand, criticizing the definition of a terrorist crime, Indeckci analyzes the phenomenon of so-called false terrorism, when e.g. hospital management is informed of an allegedly planted explosive charge. Under Polish law, such an act will be qualified under art. 66 of the Code of offenses³⁴. However, one cannot disagree with Gardocki, who claims that it reconciles the social sense of justice.

In the literature, we also notice the critical attitude of C. Sońta, who expresses reservations as to how to implement the very Framework Decision on combating terrorism, which has resulted in significant differences in the definition of a terrorist crime under art. 115 § 20 of the Penal Code, in comparison to the term presented in the Decision. The main difference is focused on the adoption by Polish legislature of a much broader meaning of the analyzed concept, in particular by recognizing that a terrorist crime can be any offense punishable by imprisonment with a maximum of at least 5 years, which, when compared with the Framework Decision, proves to be a broad concept, since the decision gives a catalogue of offenses, the characteristics of which are considered appropriate to the *modus operandi* of perpetrators who committed the crime discussed³⁵.

In confronting a terrorist offense occurring in the Polish Penal Code with a wide range of definitions of *terrorism* it can be concluded that such a differentiated approach to the issue of terrorism is not accidental. The lack of a uniform definition means that states can freely and according to their own needs and necessities arising from the political situation interpret the definition of *terrorism*. The result of such activities is the voluntary interpretation and qualification of activities as terrorist activities. In addition, it also allows countries to a fairly loose treatment of their international obligations, and hence less effective counter-terrorism in the international arena³⁶.

It should further be stressed that the modern anti-terrorism regulation can be considered at least as incomplete. Noticeable gaps relate to the corresponding instruments of legal concepts that against specific threats, terrorism, could create an effective tool to combat it in each phase (the issue of preparation) and in any form (the issue of incitement and abetting)³⁷.

The phenomenon of terrorism is extremely varied and complex, both in terms of the multiplicity of definitions, as well as in terms of the lack of uniform rules in international law. Despite attempts to harmonize the notion of terrorism as

³³ R. Zgorzały, *Przestępstwo o charakterze terrorystycznym w polskim prawie karnym*, “Prokuratura i Prawo” 2007, No. 7–8.

³⁴ K. Indeckci, *W sprawie definicji...*, (in:) E. W. Pływaczewski (ed.), *Przestępczość zorganizowana...*

³⁵ C. Sońta, *Przestępstwo o charakterze terrorystycznym...*

³⁶ M. Madej, *Międzynarodowy terroryzm polityczny*, Warsaw 2001.

³⁷ R. Zgorzały, *Przestępstwo o charakterze terrorystycznym...*

well as related concepts, which is extremely important for criminal law, success has still not been reached on the issue. It should be emphasized that a uniform definition of terrorism would facilitate making the typification of prohibited terrorist acts by applying the principle of *nulla poena sine lege*. A uniform definition would allow to adopt the same counter-terrorism strategy common for different countries.

THE CONCEPT OF TERRORISM IN LAW AND LANGUAGE

Summary

Currently, the concept of terrorism, which in recent years has intensified so much, it is still difficult to define, there are huge inconsistencies in both its defining and application. For many years, terrorism was linked with geographically and culturally distant countries, but the 20th and 21st centuries changed the face of this phenomenon, which did not resist globalization and has become one of the major problems that befits to face the modern world.

The issue of terrorism, although investigated by many eminent scientists, and even though there are a great many scientific achievements in this subject, it is still a difficult problem and raises a lot of confusion of a legal-dogmatic nature, which the Author tried to highlight herein.

The article presents the analysis of the concept of terrorism and illustrates the problems associated with the broad catalogue of definitions of this term. The main problems preventing continued unification of definition are presented. Furthermore, the text assumes the analysis of the legal state instrumental for combating terrorism, with particular focus on terrorist crime contained in the Polish Penal Code.

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KEYWORDS

terrorism, terrorist crime, terror, terrorist act, offense

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terroryzm, przestępstwo o charakterze terrorystycznym, terror, akt terrorystyczny, czyn zabroniony