

# POLAND



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## NATIONAL POLICY

Terrorism is at present one of the most serious threats to international and national security. Since terrorist actions have in most cases a global dimension and create tensions and instability at an international level, Poland's policy underlines the importance of strengthening the role of international co-operation, international law and international organisations. Even the best national structures are not able to eliminate the threat alone.

Due to the severity of the terrorist threat, Poland is also taking the necessary measures at national level to suppress and prevent terrorism. In 2004, the Polish Penal Code was amended and the concept (together with a definition) of an offence of terrorist nature was introduced. At present the appropriate steps are being taken to ensure better institutional co-ordination, involving the establishment of the National Co-ordinator on Combating Terrorism.

## LEGAL FRAMEWORK

### Penal law

The Polish Penal Law (Penal Code of the Republic of Poland of 6 June 1997) penalises individual terrorist acts on the basis of general criminal provisions (i.e. crimes against peace, humanity and war crimes, crimes against the Republic of Poland, crimes against defence, crimes against life and health, crimes against public security, crimes against safety of transportation, crimes against public order etc.) The provisions of the law prohibit any such action, and sanctions reflecting the seriousness of these acts are envisaged.

Article 115 (20) of the Penal Code of the Republic of Poland contains the definition of an offence of a terrorist nature. It is a criminal act subject to a penalty up to 5 years or more of imprisonment, committed with the aim of seriously intimidating the population or forcing a public authority of Poland or another country or an international organisation to act or not to act, or to cause considerable interference in the economy or

constitutional structure of Poland, another country or an international organisation.

The above-mentioned definition provides for the possibility of introducing more severe sanctions for the perpetrator of an offence of a terrorist nature<sup>1</sup> and of applying the Polish Penal Code to Polish nationals, Polish organisational entities and aliens who have committed an offence of a terrorist nature abroad.<sup>2</sup>

Article 258 of the Penal Code contains provisions concerning terrorist organisations. It stipulates that whoever participates in an organisation of which the objective is to commit an offence of a terrorist nature, shall be punished with between 6 months' and 8 years' imprisonment. Whoever forms or leads such an organisation is subject to a minimum of 3 years' imprisonment.

## Procedural rules

In Poland there are no different procedural rules which apply to persons accused of committing terrorist offences. In those cases the regular provisions of the Code of Penal Procedure shall apply.

In the fight against organised crime and terrorism there are number of special legal instruments that are successfully applied, i.e. special investigating teams, special investigating methods, the use of undercover agents, sting operations, key witness procedures, incognito witnesses, witness protection programmes.

## Other relevant legislation

With regard to the prevention of financing terrorism, the Law on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism of 16 November 2000 (with amendments) sets forth the standards for the procedure of combating money laundering and the financing of terrorism in Poland. On the basis of the regulations of the Law, an Inspector General of Financial

<sup>1</sup> Article 65 (1) of the Penal Code.

<sup>2</sup> Article 110 (1) of the Penal Code.

Information has been nominated and the Department of Financial Information has been created as the Polish Financial Intelligence Unit.

The basic tasks of the Inspector General of Financial Information and the Department of Financial Information are to collect, keep, process and analyse information according to the procedures provided for in the Law. The tasks encompass, in particular:

- current co-operation with the domestic institutions charged with preventing money laundering and the financing of terrorism,
- current co-operation with domestic and international institutions and organisations associated with the Polish financial system,
- administration of the data received from designated institutions,
- analysing information on controls carried out by institutions indicated in the Law,
- drafting of relevant legal acts,
- drafting of periodical reports on the Inspector General of Financial Information's activities.

Under an amendment to the Law on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism of 27 September 2002, the Inspector General of Financial Information is instructed to:

- prevent the financing of terrorism,
- co-operate with foreign institutions dealing with preventing the financing of terrorism,
- suspend bank transactions or freeze bank accounts in relation to the financing of terrorism,
- transmit information about entities reasonably suspected of having connections with terrorist acts to the designated institution.

Pursuant to the Law, the following institutions are obliged to combat the financing of terrorism:

- banks, foreign bank branches,
- brokerage houses,
- banks carrying out brokerage activities and other non-banking entities engaged in brokerage activities,
- entities conducting activities involving games of chance, mutual betting and automatic machine games,
- insurance companies,
- main branches of foreign insurance companies,
- investment funds, investment funds societies,
- co-operative savings and credit banks,
- state public utility enterprises - Polish Postal Service,
- notaries public (for the procedures concerning property deals),

- residents engaged in currency exchanges,
- entrepreneurs running auction houses or antique shops; conducting leasing and factoring activities, activities involving trade in precious and semi-precious metals and stones, commission sales; giving loans on pawn (pawnshops); and real estate agents.

The Inspector General collects information about natural and legal persons who are suspected of the offence of financing terrorism. A database with a list of these persons and entities is updated on a regular basis. On the basis of this information the Inspector General informs the designated institutions if there is a well-grounded suspicion that they are linked to the financing of terrorism. The designated institution shall inform the Inspector General immediately about transactions involving the suspected person or entity and about accounts kept on behalf of them.

The Inspector General is entitled to perform transaction suspension procedures, i.e. temporary (period not exceeding 48 hours following notification) restrictions on the disposition and use of material assets, consisting in preventing the performance of a specific transaction by a designated institution and account blocking procedures, i.e. temporary (period not exceeding 48 hours following notification) preventing the disposition and use of all material assets accumulated in an account, including by a designated institution.

The public prosecutor may, by a decision, suspend transactions or block accounts for a definite period, however not exceeding 3 months following receipt of the Inspector General's notification. Pursuant to Chapter V of the Penal Code, the court may order the forfeiture of items directly derived from the offence, which have been used or are suspected of having been used in the commission of the crime. The Law of 9 September 2000 amending the Code of Criminal Procedure provides for forfeiture and constitutes the legal basis for incoming and outgoing requests in this respect.

Under Article 44 of the Penal Code, the court shall order the forfeiture of items directly derived from an offence, unless they are to be returned to the injured person or to another entity. The court may decide on the forfeiture of items which served or were intended for the commission of the offence unless they are to be returned to another entity. The forfeiture described above shall not be applied if it would not be commensurate with the severity of the offence committed. In such a situation the court may impose a supplementary payment to the State

Treasury. The court may impose the obligation to pay a pecuniary equivalent of their value in the event the perpetrator has intentionally prevented the possibility of imposing the forfeiture of the items specified above. If the court concludes that a conviction pertains to the offence of violating a prohibition of the production, possession or transporting of or dealing in specific items, it may decide on the forfeiture thereof. Property subject to forfeiture shall be transferred to the ownership of the State Treasury at the time the sentence becomes final and valid.

With regard to the measures to prohibit offences related to recruitment to terrorist groups, the key provision is contained in Article 258 of the Penal Code (see Penal Law).

The Law of 29 November 2000 on external trade in goods, technologies and services of strategic importance, both for state security and for maintenance of international peace and security, applies to the issue of the supply of weapons to terrorists, the mechanisms and procedures for controlling the trade in strategic goods, technologies and services relevant to national security, as well as to the maintenance of international peace and security. Poland is a party to the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and their destruction.

With regard to the legislation and procedures for denying safe haven to terrorists, this is regulated by the Law on Aliens of 13 June 2003. The Law on Aliens stipulates that an alien may be refused a visa or entry clearance on the territory of the Republic of Poland if there is reasonable suspicion that the alien engages in terrorist activity, participates in such an activity, organises or is member of a terrorist organisation. Additionally, the Law on Aliens stipulates that an alien may be also refused a visa and entry if there is a reasonable suspicion that he or she is transporting arms, munitions, explosive materials, radioactive materials or drugs or psychotropic substances across the border without the required authorisation, or that he or she participates in or organises such an activity, or is a member of an organisation engaged in such an activity.

An alien may be denied entry to Poland if his or her entry or stay is undesired due to the obligations resulting from the provisions of ratified international treaties to which Poland is a party or if it is undesired due to another threat to national security and defence or due to the need to protect public order. The Chairman of the Office for Repatriation and Aliens is, on the basis of this law, the competent authority to maintain the list

of undesired persons. The list, which is updated on a regular basis, is forwarded to the diplomatic missions and consular offices of Poland abroad. Every visa application is verified against the list and undesired persons will be denied visas or entry permits. Co-operation between the competent authorities ensures the strict implementation of the requirements of international law binding Poland in this matter. For the same reasons, on the basis of Article 52, an alien may be expelled from the territory of Poland, on the basis of an administrative decision issued by the competent authority.

Article 258 of the Penal Code (Chapter XXXII - Crimes against public order) provides for measures to prevent terrorists from acting against other states or citizens from Polish territory.

The Law of 21 May 1999 on arms and munitions determines detailed principles relating to the issuance and withdrawal of permits for arms; acquisition, storage, disposal and deposition of arms and munitions; transport through national territory; import and export of arms and munitions; and principles governing the possession of arms and munitions by aliens. The acquisition and possession of firearms is subject to a special permit issued by the competent police body. The Law specifies cases where permits may not be issued to persons who do not meet specific requirements or have infringed the conditions and obligations set forth in the Law. The same conditions apply to the withdrawal of permits. Firearms should be registered and the owner must have a special document confirming possession of arms. The provisions of the Law apply to aliens accordingly. There are specific provisions in the Law related to the possession of arms and munitions by members of diplomatic missions and consular offices, or other persons with equal status, who can possess arms and munitions on the basis of international agreements or on the principle of mutuality. In this case the possession of arms is subject to a temporary permit issued by the competent police body. The Law contains penal sanctions and provisions on seizure of arms and munitions. There are executive regulations in the Law which relate, *inter alia*, to: types of especially dangerous arms and munitions for which a permit may be issued; the medical and psychological examination of persons who apply for or possess a permit; model declarations of importation of arms and munitions from abroad and the procedure for transmission to the Police of information on the importation of arms and munitions by customs services; the procedure and conditions for the issuance of arms permits to the members of diplomatic missions and consular offices and

persons having equal status; detailed principles on the deposition of arms and munitions; models of required documents, etc.

The Law of 21 June 2002 on explosives for civilian use determines principles related to the issuance and withdrawal of permits for acquisition and storage of explosives; the basic requirements in relation to explosives intended for trade; principles governing the transport of explosives and its control; procedures for assessing conformity and marking of explosives. A permit is required for the acquisition and storage of explosives for civilian use. This permit is issued by chief of provincial administration (the representative of the Government in the province), who is competent for the registered office of the requesting person. The Law specifies the information required for the issuance of a permit, the conditions to be met by persons wishing to obtain a permit, as well as cases where the permit should be denied or withdrawn. The transport and transit of explosives requires the consent of the Minister for Economy and Labour. There are executive regulations in the Law which determine, *inter alia*, requirements for the training and examination of persons who have access to explosives; model registers for explosives, model permit requests. There are separate legal provisions relating to the possession and use of firearms and explosives by state bodies and their officers who are responsible for maintaining national security and public order, as well as the armed forces.

The provisions concerning the principles of economic activity relating to the manufacturing of and trade in explosives, arms, munitions and products and technologies for military and police purposes are contained in the Law of 22 June 2001. The executive regulations of this Law specify: the conditions of sale; scope and means of verifying compliance with these requirements; quality assessment requirements; registration of these sensitive materials; and the principles of management in terms of environmental protection and protection of human life and health.

The Law of 26 April 2007 on crisis management governs the system of crisis management and specifies the competent institutions in this realm. The law envisages:

a) the establishment of "Plans of crisis response" and "Plans of critical infrastructure protection", which constitute key components of the crisis management system. The plans will aim: to identify any threats to and weak points in the system of state security, to designate the competent institutions and specify the rules of

their co-operation, and to determine areas of activity in order to eliminate or contain the threats, which prominently include the terrorist threat;

b) in the institutional area, the law envisages the establishment of:

- Crisis Management Teams: at the level of the cabinet, central institutions (ministries and their subordinate or supervised units) and at descending levels of state administration – from the *voivodship* down to the commune. The teams will be tasked with preparing these institutions to provide effective crisis responses, including the institution of 24-hour duty shifts to ensure continuous flows of information for the needs of crisis management and coordination with the entities assigned specific tasks, in order to prevent threats and respond to any crises, or even war;
- Crisis Management Centres: at the level of ministries and central organs of state administration competent in matters of state security, which will be tasked with coordination in the event of crisis situations, including 24-hour duty shifts to ensure continuous flows of information for the needs of crisis management;
- Government Security Centre, which will be a permanent organ of the Council of Ministers, tasked with its crisis-management support, including provision of analysis on current threats and preparation of crisis management procedures, supervision of the validity of crisis response plans and coordination of the institutions and services competent in matters of crisis management;

c) introduction in the entire country of a graded crisis-threat alert, also in the event of a terrorist threat, which specifies the factual basis (degree of probability defined on the basis of information concerning threats to the territory of the Polish state or its immediate neighbourhood) for the introduction by the Prime Minister of successive alert levels, leading to the activation of corresponding crisis management procedures.

## INSTITUTIONAL FRAMEWORK

In Poland, two agencies play a leading role in anti-terrorist action: the Internal Security Agency (ABW) and the Police. Although there is a clear division between their responsibilities, the two services co-operate very closely, since terrorism is a serious threat of public concern.

The Internal Security Agency is responsible for issues connected with the protection of the State's internal security and its constitutional order. The main task of the Agency is to combat all kinds of threat to the State's internal security, such as the crimes of espionage and terrorism, ABC proliferation and drug trafficking on an international scale. The Agency has investigation powers allowing it to conduct various legal procedures.

The Counter-Terrorism Department was established at the Agency of Internal Security on 19 September 2005, following the amendment of Regulation 73 of the Prime Minister of 26 June 2002 concerning the institution of the charter of the Agency of Internal Security. The Department is tasked with:

- reconnaissance, countering and preventing of terrorist threats;
- reconnaissance and prevention of threats to the internal security and constitutional order of the Polish state stemming from the activity of organisations and persons whose programmes invoke the totalitarian methods and practices of Nazism, fascism and communism, and also those whose programmes or activities envisage racial and ethnic hatred, the use of violence to gain power or influence state policy, or envisage clandestine structures or membership.

The Police, who are generally responsible for public order, have within their structure the Central Investigation Bureau (CBS), which deals with the most serious crimes, and the Antiterrorism Task Force (IOA KGP).

Other institutions involved in anti-terrorist activities are the following:

- the Foreign Intelligence Agency (AW)
- the Inspector General of Financial Information (GIIF)
- the Military Intelligence Services (WSI)
- the Border Guard (SG)
- the Government Protection Bureau (BOR)
- the Custom Service

Additionally, two other bodies, which do not take part in operational activities, should be mentioned:

The National Security Council (RBN), which is an advisory body to the President of the Republic of Poland, is responsible for determining general plans and objectives concerning security, international relations and the armed forces.

The National Security Bureau (BBN), which is a part of the President's Chancellery, provides technical and material support to the RBN and acts as a think-tank.

Since 2004 various improvements were introduced to the co-ordination and monitoring of the threat of terrorism.

On 26 October 2006, the Prime Minister signed Regulation No. 162 on the establishment of the Inter-Ministry Team on Terrorist Threats, which came into force the same day. The document elaborates the tasks, composition and procedures of the Team, which is an auxiliary organ of the Council of Ministers. It is responsible for coordinating the reconnaissance, prevention and combating of terrorism at the government administration level. The team is chaired by the Deputy Prime Minister, who is also the Minister of the Interior and Administration.

Legislative works are currently in progress to amend Regulation No.162, extending the composition of the Team through the addition of the Secretary of State at the Chancellery of the Prime Minister, the Secretary of the Special Services Board, and the Head of the National Security Bureau.

The basic tasks of the Team include:

- monitoring of terrorist threats, their analysis and evaluation, and the submission of opinions to the Prime Minister;
- elaboration of counter-terrorism standards and procedures, with special reference to standards for the assessment of threats;
- initiating, coordinating and monitoring the activity of the competent organs of state administration, with particular attention to the follow-up of information and the reconnaissance, prevention and suppression of terrorism;
- submission of proposals to the competent ministers concerning legislative initiatives aimed at upgrading the methods of combating terrorism;
- organisation of training courses and conferences on combating terrorism.

Currently, priority is assigned to the establishment of a Counter-Terrorism Centre. The concept of the Centre has been jointly approved by the Deputy Prime Minister/Minister of the Interior and Administration and the Acting Head of the Internal Security Agency.

As regards the first two pillars of the EU (the EU has adopted four pillars in the fight against international terrorism: prevention, protection,

pursuit and response), the Polish system of counter-terrorist protection incorporates two levels:

- the strategic – implemented by the Prime Minister and his subordinate organs, primarily including the Inter-Ministry Team on Terrorist Threats and its auxiliary structure, i.e. Permanent Experts Group;
- the executive (tactical) – implemented by the national services and institutions involved in the counter-terrorist protection of the country (including the Internal Security Agency, Intelligence Agency, Border Guard, Police, Customs Service, General Inspector of Financial Information, Prison Service).

On 13 February 2008, the Head of the Internal Security Agency (acting pursuant to Article 20.4 of the Law on the Internal Security Agency and the Intelligence Agency, in connection with the decision of the Deputy Prime Minister/Minister of the Interior and Administration, of 31 January 2008) established a panel tasked with the elaboration of the concept of a Counter-Terrorism Centre within the ISA.

**INTERNATIONAL CO-OPERATION**

Poland regards international co-operation in the fight against terrorism as a matter of a great importance. Since terrorism is a phenomenon of international dimension, the necessary commitment at the international level is essential to suppress the terrorists' activities.

From Poland's point of view, the fostering of legal co-operation between states is crucial. Therefore Poland is a party to many bilateral agreements concerning extradition, mutual assistance and countering organised crime. Poland is also a party

to a number of multilateral treaties devoted to that subject.

Poland has signed all 13 United Nations Anti-Terrorism Conventions and has ratified 12 of them. At present the procedure for the ratification of the International Convention for the Suppression of Acts of Nuclear Terrorism, signed in New York 14 September 2005, is pending.

On 3 March 2008, the President of the Republic of Poland signed the instrument of ratification of the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005.

Poland has implemented 8 special recommendation of the FATF and is pursuing an active policy with the aim of joining the Group.

**Measures in the EU framework**

Poland supports the strengthening of anti-terrorist co-operation at the EU level. Poland shares the views expressed in the European Council Declaration on the fight against terrorism and the Revised Plan of Action on combating terrorism and is making necessary changes to its national law. Moreover, with a view to the implementation of the Framework Decision on a European arrest warrant, the appropriate changes were introduced to the Code of Penal Procedure in May 2004.

Poland is of the opinion that co-operation at the European level, exchanges of information and experience between states and appropriate legal solutions play a key role. Taking into account the free movement of people, services, capital and ideas it is impossible to observe security issues only from a national point of view. In that case the broader perspective is indispensable.

Relevant Council of Europe conventions – Poland	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	13/09/95	30/01/96
Amending Protocol (ETS 190)	15/05/03	-
European Convention on Extradition (ETS 24)	19/02/93	15/06/93
First Additional Protocol (ETS 86)	19/02/93	15/06/93
Second Additional Protocol (ETS 98)	19/02/93	15/06/93
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	09/05/94	19/03/96
First Additional Protocol (ETS 99)	09/05/94	19/03/96
Second Additional Protocol (ETS 182)	11/09/02	09/10/03
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	-	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	5/11/1998	20/12/2000
Convention on Cybercrime (ETS 185)	23/11/01	-
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	21/07/03	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	16/5/2005	3/4/2008
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	16/5/2005	8/8/2007