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25th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Sofia (9-10 October 2003)

- **INTERNATIONAL CO-OPERATION IN THE
FIGHT AGAINST INTERNATIONAL
TERRORISM AND IMPLEMENTATION OF
THE RELEVANT INSTRUMENTS OF THE
COUNCIL OF EUROPE**

- **THE RESPONSE OF THE JUSTICE SYSTEM
- CIVIL AND CRIMINAL - TO TERRORISM**

Report presented by the Minister of Justice of

POLAND

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I. Conditions for fighting terrorism

The effectiveness of fighting terrorism is mostly conditioned by the position regarding its evaluation which the whole international community is capable of adopting, and by the measures which the international community is willing to apply. In this respect, the most significant tasks and undertakings to be fulfilled by the international community should include:

1. Expression of objections to all forms of terrorist acts, irrespective of the motives of perpetrators of such acts, consideration of each form of terrorism as the most severe violation of universal values, such as rights to human dignity, freedom, equality and solidarity, and consideration of terrorism as a threat to democracy, to human freedom and human rights and to economic and social development.
2. Accession to and ratification of 12 international law instruments aimed at fighting terrorism, as discussed in the report submitted by the Bulgarian party, which were accessed to and ratified by Poland, as well as the United Nations Convention against International Organized Crime, adopted on 15 November 2002 by the General Assembly of the United Nations, whose regulations provide both for prosecution of perpetrators of terrorist acts and of international co-operation in this respect.
3. Participation of all democratic states in anti-terrorist coalition.
4. Introduction of adequate anti-terrorism instruments in the internal law.

II. Poland's activity in fighting terrorism

In the political aspect, Poland has put forward the initiative of preventing terrorism on a regional level. On 6 November 2001 in Warsaw, the so-called Warsaw Anti-Terrorist Conference was held, which was an important step towards forming a wide coalition. The participants in the Conference - Heads of Central, Eastern and Southern-Eastern European states, in solidarity with the United States of America and other NATO members, considered international terrorism to be the most serious threat of the 21st century. As a follow-up to their evaluation of the scale of events and the immense nature of the threat, they adopted Action Plan in the following fields: intelligence, police co-operation and elimination of sources financing terrorism. In the case of Poland, the adopted position has resulted in legislative and organizational measures which continue to be carried out with the goal of fighting terrorism.

1. Legislative measures

The Polish legal system does not define terrorism as a phenomenon. Despite that fact, numerous legal acts for a long time have used the terms of: terror, terrorism and terrorist act. To some extent this results from the legislative tradition, and to some other extent this is a result of the previous implementation of international law instruments which refer directly to concrete forms of terrorist acts. They can be found in various chapters of the Penal Code which contain definitions of certain crimes, for instance crimes against peace, humanity and war crimes - chapter XVI; crimes against the Republic of Poland - chapter XVII; crimes against the defence system of the state - chapter XVIII; crimes against general safety - chapter XX; crimes against traffic safety - chapter XXI; money laundering - in chapter XXXVI regarding crimes against economic turnover. In recent

time, a number of new legal solutions have been adopted in Poland aimed at fighting terrorism.

In particular, we should mention the amendment to the Act of 16 November 2000, adopted by the Parliament on 30 August 2002, on Prevention of Financial Circulation of Property Values Originating from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism (Journal of Laws No. 116, item 1216, as amended), which was adopted as a consequence of Poland's signing the Convention on Counteracting the Financing of Terrorism, drawn up on 9 December 1999 in New York. One of the most important solutions adopted in this act is its extension to issues concerning the counteracting of the financing of terrorism.

Another solution adopted in the aforementioned act, relevant from the point of view of fighting terrorism is the appointment of the General Financial Information Inspector and specification of the rules of control of the so-called suspicious financial operations. The act also formulates the notion of a terrorist act, which is considered to constitute a crime against peace, general safety and the following crimes: an attempt on the life of the President of the Republic of Poland (Art. 134 of the Penal Code, hereinafter referred to as "pc") and assault on the head of a foreign country or an accredited head of a diplomatic representation of such country or another person covered by a similar immunity (Art. 136 pc).

Considering the critical evaluation of the current system of dealing with the terrorism phenomenon carried out after the events of September 2001 (the criticism concerned both too low statutory levels of penalties and lack of penalisation of certain acts), a draft amendment to the Penal Code (submitted to the Parliament in December 2001 and currently constituting an object of its consideration) was prepared. The proposed changes generally concerned the imposition of stricter penal liability and introduction of new types of crimes, namely:

- a) it is proposed that the minimum level of statutory penalty is increased to 3 years of imprisonment for the crime of the deliberate causing of a disaster affecting general safety (Art. 163§1pc);
- b) penalization of penal liability for taking control over a vessel or an aircraft (Art. 166 pc), it is proposed that the scope of this penalization should be extended to "public means of land transport". The latter change is also proposed in the provision of Art. 167 § 1 pc which stipulates penal liability for placement in a vessel or on board of an aircraft of any device or substance which threatens the safety of persons or property of a significant size. It is also proposed to increase the sanctions for such an act;
- c) as regards the crime of causing danger to life of health of persons or danger to property of a significant size (Art. 165 § 1 pc), it is proposed that the statutory penalty of imprisonment is increased;
- d) the issue of punishability for false alarms and acts connected with the creation of appearances of danger, aimed at evoking panic, it is suggested that a new type of crime is introduced (as described in new Art. 172a pc).

Relevant changes in penal law, which will be useful in fighting terrorism, are also anticipated in the draft of another amendment to the Penal Code and the Penal Proceedings Code (the draft was adopted by the Council of Ministers in August 2003). The goal of the aforementioned amendment is to implement the provisions of the following instruments in the Polish law:

Convention of the European Council on Cyber-Crime (signed by Poland on 28 November 2001),

Convention on Protection of Financial Interests of the European Communities; and Framework Decision of the European Council of 13 June 2002 on the European Arrest Warrant and Procedures of Transfer of Persons Wanted under the Warrant between Member States of the European Union.

The amendments indicated above, in addition to the regulations of the Penal Proceedings Code, being in application since 1996, providing for witness protection by granting a witness the status of an anonymous witness, and the regulations of the Act on Crown Witness, being in application since 1998, providing for immunity of a member of an organized criminal group in the event s/he discloses the activity of such organized criminal group, form a coherent system of fighting the most dangerous criminal phenomena, including terrorism.

2. Organizational measures

In Polish conditions, the basic tasks in the fields of identification, prevention, and detection of terrorist crimes as well as prosecution of perpetrators of such crimes are entrusted to the Internal Security Agency (hereinafter referred to as "ISA"), established pursuant to the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency. ISA may implement its tasks in Poland and, in particular cases, abroad in connection with its activities in Poland. ISA may implement its tasks through the application of:

- a) operational control (Art. 11 of the aforementioned Act on ISA) which consists of control of correspondence, contents of postal packages, application of technical measures providing for obtaining information and evidence in a secret manner and the recording of the same, in particular telephone conversations and other information transmitted via telecommunications network;
- b) controlled purchase (Art. 29 of the aforementioned Act on ISA) which may consist of secret purchase or take over of objects of criminal origin;
- c) controlled delivery (Art. 30 of the aforementioned Act on ISA) which consists of secret control of production or transfer of objects of criminal origin.

Identification of international terrorism, extremism and the tracing down of international criminal groups are the tasks of the Intelligence Agency, which implements its tasks abroad. Tasks connected with identification, prevention and fighting terrorism of a criminal nature are entrusted to the Police. The Police, by applying similar operational measures as those applied by ISA, may, depending on the changing international situation, undertake co-operation with: the European Police Anti-Terrorism Working Group (PWGT), liaison officers of the Polish Police and liaison officers of the Police of other countries who are in Poland, with Interpol and Europol.

As regards tasks concerning counteracting the financing of terrorism, they are implemented by the General Financial Information Inspector, acting pursuant to the aforementioned Act of 16 November 2000 on Prevention of Financial Circulation of Property Values Originating from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism. Sector tasks connected with prosecution of phenomena most dangerous for legal order are entrusted to a number of state bodies and institutions.

Therefore, in order to ensure concentration of their efforts, the Prime Minister, by means of the Ordinance of 30 April 2002, appointed the Inter-sector Centre for Fighting Organized Crime and International Terrorism. The Minister of Internal Affairs and Administration is the Chairman of the Centre. The Centre has co-ordination and operational competence deriving from individual competence of the institutions which it is formed of: the Police, the Border Guards, the Internal Security Agency, and the General Financial Information Inspector. The National Prosecutor, acting in the capacity of a representative of the Minister of Justice, co-operates with the Centre.

III. Citizens' rights and freedoms versus the fight with terrorism.

The most significant limitations of individual rights and freedoms, currently observed, are and will continue to be connected with the control of human traffic and traffic of goods which is performed by the land, marine and, foremost, air traffic control services. Activities undertaken in this field limit both the freedom of movement of individuals and the freedom of movement of goods, in particular tools which may be used for the commitment of terrorist acts. Another important direction of limitation is the control of the financial turnover, in particular the flow of funds which may serve to finance a terrorist activity. In the Polish conditions, it will be noticed in the activity of the General Financial Information Inspector aimed at counteracting such phenomena.

It is not easy to answer the question whether the basic human rights and freedoms can be sacrificed in the fight with terrorism. However, it seems that in the situation of real global threat posed by terrorism, a proof of which was 11 September 2001, no other answer can be given to the above question but a positive one.

