

ANTI-TERRORIST FINANCING REGULATIONS IN POLAND – PAST AND PRESENT ISSUES

Introduction

Since September 11th, 2001, and the events which followed there have been numerous initiatives regarding fighting terrorism from a financial standpoint. There are standards regarding the creation of a coherent and solid system of targeting terrorists' funds. These include the United Nations Convention for the Suppression of the Financing of Terrorism of 1999, Financial Action Task Force on Money Laundering – 9 Special Recommendations, acts of the European Union¹ and the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism of 2005.

They all set some minimal requirements or guidelines for states in order to create a common approach against the phenomenon of terrorism. However, the way they are implemented varies from country to country which can be seen e.g. in the mutual evaluations, reports and opinions of experts. This is crucial for establishing an efficient system. Sometimes, however, putting all of the standards together also produces confusions and problems. In this respect Poland serves as an example. Since 2002, there were three major changes in the legal system regarding fighting and preventing terrorist financing, the last being in 2009, which brings Polish regulations closer to EU standards.

1 See: C. Sořta, *The Crime of Terrorist Character in Polish Law*, *Wojskowy Przegląd Prawniczy* 2005, No. 4, pp. 3-24.

Criminalization of terrorist financing

Definition of crime of terrorist character

In 2004, the Polish Criminal Code (PCC) was amended in order to fulfill international obligations², especially European Union efforts to address the problem of terrorism. For the first time in the Polish legal system, the definition of a crime of terrorist character – Art. 115 para. 20 PCC, was introduced³. It lists the offenses for which there is a penalty of imprisonment with an upper limit of not less than 5 years. However, application of that regulation is restricted to several serious crimes, and furthermore, there has to be some specific intention of that criminal activity, such as:

- to seriously intimidate a large number of people,
- to make the authorities of Poland, other country or international organization undertake or abstain from undertaking certain activities,
- to initiate serious disturbance in the political order and economy of Poland, other country or international organization, as well as the threat of conducting such offense.

According to the opinion of Polish academia, this definition is very unclear and may be worthless⁴. Equally, It does not include some existing points of view expressed in current criminal law doctrine⁵. However, it resembles the definition given in the ‘Council Common Position’ of December 27, 2001,⁶ on the application of specific measures to combat terrorism⁷. It is not a precise translation but comes close to being so. The definition omits from its scope some activities typical to terrorism, such as: Criminal Threat (Art. 190 para.1 PCC) and Coersion (Art. 191 para.1 PCC), since the upper penalty limit for both is less than 5 years imprisonment – 2 and 3 years respectively, and also, because such behaviour could be used to describe, as terrorist activity, an act of civil unrest or demonstration against the government or authorities⁸. Similarly, it does not differentiate the activities of say an

2 Polish Official Journal of 2004, No. 93, item 889.

3 See: W. Grzeszczyk, Changes in Criminal Law Introduced by the Act of April 16, 2004, „Prokuratura i Prawo” 2004, No. 9, pp. 77-88.

4 See: O. Górniok, The Crime of Terrorist Character, *Przegląd Sądowy* 2004, No. 10, pp. 3-11 and K. Indecki, In Pursuit of Legal Definition of Terrorism, [in:] E.W. Pływaczewski (Ed.), *Organised Crime, Immunity Witness, Terrorism in Practical Aspects*, Kraków 2005, pp. 261-295

5 See: K. Indecki, Criminal Law in Relation to Terrorism and Terrorist Act, Łódź 1998 and K. Indecki, Polish Substantive Criminal Law, Against Terrorism (Selected Issues), *American Behavioral Scientist* 2004, No. 48(6), pp. 710-742.

6 Official Journal L 344, 28.12.2001.

7 See: P. Goleń, New EU Regulations Regarding the Prevention of Money Laundering and Terrorist Financing, *Prawo Bankowe* 2004, No. 7-8, pp. 123-136 and J. Ryszka, International Sanctions within The European Union Regarding Combating Terrorism, *Katedra Prawa Europejskiego SGH w Warszawie, Studia z dziedziny prawa Unii Europejskiej* 2005, No. 5, pp. 59-87

8 See: N. Vennemann, Country Report on the European Union, [in:] C. Walter, S. Vöneky, V. Röben, F. and Schorkopf (Eds), *Terrorism as a Challenge for National and International Law: Security versus Liberty?*, Springer, Berlin 2004, pp. 217-266.

organized criminal group who, may for example, threaten to detonate an explosive device if one of their number is not immediately released from custody or detention.

There is also a new crime – being or becoming a member of an organized group or association which has the aim to commit crime of a terrorist character – Art. 258 para. 2 PCC. The group is less organized than the association which has a stronger hierarchical structure. However, the criminal code does not give any specific guidelines how to understand these words. It is left to academia, scientists and the courts to interpret their meaning. The same situation occurs with the term organized criminal group or association in Art. 258 para. 1 PCC⁹.

The problem is that Polish criminal law does not describe any differences between organized crime and terrorist groups (associations) as far as their structure is concerned. Art. 258 PCC, has been used to fight organized crime and its interpretation by courts clearly reveal the existence of the so-called ‘Mafia syndrom’ or paradigm¹⁰, this being, that an organized criminal group or association possesses an archetypical structure, much in the form of that depicted in the film ‘Godfather’ that we are familiar with. However, the same approach cannot be applied to the structure of terrorist organizations which tend to be decentralized and more loosely constructed¹¹.

Classification of terrorist financing

Poland signed the United Nations Convention on the suppression of terrorist financing in 2001. However, to-date it has not been ratified even though the Polish Parliament has granted permission for the proper authorities to do so (the Act was published in the Polish Official Journal of 2003, No 44, item 374).

Naturally, Art. 115 para. 20 PCC, is a starting point for other legal considerations concerned with the fight against terrorism using criminal law. For years there has been no separate offence concerning terrorist financing. The problem was that there were at least three possibilities of how to classify any one of a number of activities which may lead to the financial support of terrorist organizations. It depended mostly on whether an offender was gathering money in order to commit an act of terror by himself or within a group, or whether or not he or she was directly involved in such act. However, some of these points of view were regarded as controversial in criminal law doctrine.

9 See: K. Laskowska, Theoretical and Practical Aspects of Criminal Liability under Article 258 of Criminal Code, *Prokurator* 2004, No. 1, pp. 20-32.

10 See: D.F. Pace, J.C. Styles, *Organized Crime, Concepts and Controls*, Second Edition, Prentice-Hall Inc., Englewood Cliffs 1983.

11 See: C. Morselli, The Efficiency/Security Trade-off in Criminal Networks – paper presented at the 5th Annual Conference of the European Society of Criminology, in August-September, 2005, Cracow (Poland).

The first type of offence could be classified as preparation to commit a crime, either by an individual or by a group of people working together – Art. 16 para. 1 PCC. However, this was only valid in situations where the offender(s) was apprehended before carrying out the intended act, otherwise, he or they would stand accused of committing the crime, not its preparation. Furthermore preparation is punishable in Polish criminal law only in a limited number of offences. This may lead to a situation where, for the preparation of some acts of terrorism, nobody could be held responsible. For example: if a person made preparations to seize hostages with the ultimate intent to kill them (Art. 148 para. 2 point 2 PCC), this is not punishable under Polish law.

Such legal construction might not be widely accepted among lawyers or academia since preparation means a situation when somebody undertakes necessary actions to create situations with an aim to commit a crime and that situation subsequently makes possible to attempt to commit an offence (Art. 16 para. 1 PCC). According to Polish criminal law there are 3 stages of criminal act: preparation, attempt to commit a crime, and finally – committing a crime. Preparation is punishable only in selected cases of very serious crimes (Art. 16 para. 2 PCC). Attempt to commit a crime is punishable to the same degree as committing a crime (Art 13 and 14). Financing a crime is an activity which can occur earlier e.g. to buy arms or explosives or to make initial preparations. The second possibility was the institution of accessory. A person who assisted another (or others) to carry out a terrorist act, would stand accused of being an accessory Art. 18 para. 3 PCC. The condition is that the person has to be knowingly aware that he is helping to commit a crime of terrorist character (or that such crime is highly probable), personally wishes it to happen (or accepts that it may happen), and undertakes to provide such assistance without which committing the crime might be difficult to achieve.

These requirements may make it very difficult to prove a person's involvement in terrorist financing. The accused can always claim that he was misled by others about the intended use of the donations.

And the third possibility was connected with crime covered by Art. 258. para. 2 PCC. The terrorist group usually consists of two sets of members¹². There are members who are directly involved in committing acts of terror – the operative cell. The main goal of the second cell is to support the first one – the supporting cell. It is connected with the division of tasks. These two types of cells cannot exist without each other. In that situation somebody who gathers money 'for the cause' usually is a member of organized terrorist group or association because this is his task. In other words his actions fall under the Art. 258 para. 2 PCC – being a member of an organized group or association which has an aim to commit a crime

12 See: J.R. White, *Terrorism, An Introduction*, Third Edition, Wadsworth Thomson Learning, Toronto 2002.

of terrorist character. On the other hand, such a person could only be a sympathizer not a member. It made the legal classification of his act more difficult.

However, there has not been a single criminal investigation or court case in which a public prosecutor or judge has had the opportunity to test these concepts.

This short analysis shows that it was not easy to find a single article of Polish Criminal Code which criminalizes terrorist financing. In order to avoid such problems, the Polish legal system needed to have a separate offense which would describe it precisely¹³. Furthermore it needed to be compliant with Art. 2 of the United Convention on suppressing terrorist financing.

In 2009, the Polish legislature introduced changes to the Polish Criminal Code. Since that moment in time, there has been a separate type of crime described under Art. 165a PCC. One may say that the legislator understood the situation and wanted to create a coherent anti-terrorist financing regime – not necessary¹⁴.

This type of offence is described as gathering, in which a person provides or collects funds for the purpose of financing a crime of terrorist character; funds meaning assets of every kind whether tangible or intangible, movable or immovable, together with legal documents or instruments of any kind evidencing title to or interest in such assets. The penalty for this crime is imprisonment for a period of 3 to 15 years. There are no restrictions as far as the description of an offender is concerned. In other words, according to Polish criminal law, any adult can commit such a crime.

This provision is supposed to provide security against threats posed by terrorist attacks. However, it is incorporated in Chapter XX of the Polish Criminal Code – Crimes Against Public Security, which covers other crimes such as arson, causing explosions, bringing about a catastrophe, piracy, illegal possession of explosives materials, etc. These crimes relate to activities which pose a direct threat to human life and/or damage to property on a large scale. Financing terrorism addresses a different kind of threat to security. Its character is indirect and it is connected specifically with the activities of terrorist groups or associations. In my opinion, the new article should be placed in Chapter XXXII – Crimes Against Public Order, which encompasses crimes such as being a member of a terrorist group or association, otherwise it may lead to misinterpretation of its provisions. The two chapters represent different criminal objectives and likewise they protect different values of society. There is a list of activities which explain what ‘financing’ means. The first one is gathering. Gathering, as mentioned before, can be described as

13 See: W. Filipkowski, Polish Regulations Concerning the Prevention of Terrorist Financing, [in:] T. Dukiet-Nagórska (Ed.), *The Issues of Contemporary Criminal Justice*, Wydawnictwo STO, Bielsko-Biała 2006, pp. 189-202.

14 See: E.M. Guzik-Makaruk, W. Filipkowski, *Kryminalizacja finansowania terroryzmu na tle prawnoporównawczym*, *Studia Prawnoustrojowe* 2009, No. 10, pp. 43-65.

personally providing or collecting from others, assets of any kind as previously described. Legal dependency is on the use of such assets to finance future terrorist activity not their actual monetary value, which could be very little or conversely might amount to many millions of dollars. Two counterparts of such transaction commit a crime. One person can be punished for offering, the other for gathering.

Transfer, refers to the act of one person handing over possession of such assets to another. As before the two counterparts to such transaction commit a crime, one for transferring the assets the other for gathering them in order to finance a crime of terrorist character. This type of activity is described in Art. 165a PCC as ‘offering’. It illustrates a situation where one person puts forward the objects or rights to another in order to support terrorist crime. This may be done for payment, without payment, or under any legal title. This definition is simple and it brings us closer to international standards. However, there is a question of its efficiency. Placing the direct goal of a perpetrator into the description of an offense may lead to a situation where a law enforcement agency or court may not be able to provide evidence of this and subsequently no one will be prosecuted of that crime¹⁵. In fact the three previously mentioned concepts may become helpful after all.

The terrorist act according to anti-ML&TF act of 2000

General remarks

Two sets of regulations were incorporated in the Anti-ML&TF ACT of 2000¹⁶, one concerning money laundering and the other terrorist financing, with some regulations being applicable to both phenomena. On comparing these two sets, it became apparent that the second set was much more restricted in scope. The regulations were not as effective as they were supposed to have been and fell short of those related to money laundering. However that situation has changed in 2009.

The fight against both phenomena is being led by the Ministry of Finance and Polish financial intelligence unit called Generalny Inspektor Informacji Finansowej (the General Inspector of Financial Information – GIF) – Art. 3 section 1 Anti-ML&TF ACT. The latter is primarily responsible for preventing and fighting money

15 See: K. Wiak, *The Criminalization of Financing of Terrorism in Polish Criminal Law*, *Palestra* 2010, No. 7-8, pp. 57-65.

16 This act was titled *Act on counteracting introduction into financial circulation of property values derived from illegal or undisclosed sources of 2000* (Official Journal of 2000, No 116, item 1216). In December of 2002 the title was amended by adding the phrase ‘and on counteracting the financing of terrorism’ (Official Journal of 2002, No 180, item 1500). However in 2009, the legislator has shortened the title: “on prevention of money laundering and terrorist financing”. While writing this paper the changes in law have not been published in the Polish government Official Journal, as yet. In this paper it is referred as *The Anti-ML&TF Act* or *anti-ML&TF regime*.

laundering¹⁷. That type of institution is a standard model in many countries. In 2002, there has been an important amendment to the Anti-ML&TF ACT of 2000. Several articles have been changed or added. Before this happened there were no special regulation dedicated to fighting terrorist financing.

The GIFİ's main tasks are:

- acquiring, gathering, processing and analyzing relevant information and then
- taking all necessary actions against money laundering and terrorist financing (Art. 4 sec. 1 Anti-ML&TF ACT).

Such actions include among others:

- analyzing financial transactions,
- conducting procedures for holding back transactions and blocking accounts,
- making decisions connected with “frozen assets”,
- managing financial information and related documents,
- overseeing the execution of obligations placed on different institutions and entities,
- cooperating with foreign financial intelligence units and other institutions which prevent terrorist financing (Art. 4 sec. 1 point 8 Anti-ML&TF ACT).

Definition of terrorist act

Polish legislature has introduced the definition of terrorist act into the Anti-ML&TF ACT. This happened about eighteen months before the above mentioned changes in the Polish Criminal Code took place. In Art. 2 point 7 Anti-ML&TF ACT, it was described as crimes against:

- peace, humanity, and war crimes – Chapter XIV of PCC,
- public security – Chapter XX of PCC, as well as two individual offences:
 - Art. 134 PCC – assault on the president of Poland with the intent to kill him and
 - Art. 136 PCC – all forms of assault (physical and verbal) on the representatives of foreign authorities or international organizations (persons who enjoy special legal status quo according to international standards and agreements, e. g. ambassadors, consuls, diplomats, and their families).

All of the regulations of the Anti-ML&TF ACT were applicable only to those crimes, not others.

17 See: J. Sieńczyło-Chlabicz, W. Filipkowski, The Polish Financial Intelligence Unit: A New Institution in the Polish Legal System. *Journal of Money Laundering Control* 2001, No. 5(2), pp. 150-157.

That definition was inconsistent with the one of the Criminal Code¹⁸. They overlapped partially. There were some crimes of terrorist character which did not fall into the category of terrorist act given in Art. 2 point 7 Anti-ML&TF ACT. As a consequence, the proper legal in regard of tracing terrorist assets did not cover all such crimes. On the other hand there were some terrorist acts which were not recognized as crimes of terrorist character by the PCC. They were treated as common crimes. The main reason was being that the lower limit of penalty was below the “5 years of imprisonment” threshold.

That was an example of poor legislation technique. One could argue that the terrorist act covered the most important types of crimes and therefore the Anti-ML&TF ACT was preventing their financing. However, the definition of Art. 2 point 7 contained few minor crimes which did not support that view. On the other hand, the crime of terrorist character included some serious crimes about which financial information should be gathered by GIFI in order to prevent them. But they were not regarded as being a terrorist act.

In 2009, there was another novel Anti-Money Laundering Act. It has introduced a completely new definition of terrorist act. Right now it states that it is the same as the crime described in Art. 165a PCC. Well, it has taken 5 years for Polish legislature to realize that those previous regulations were inconsistent with each other.

Other institutions fighting terrorist financing

It has to be stressed that according to the Polish anti-money laundering regime there is a wide range of so called “obliged” institutions which have obligations to help fight these two phenomena (Art. 2 point 1 Anti-ML&TF ACT). That term encompasses among others:

- financial, credit and investment institutions such as banks (including the National Bank of Poland), institutions dealing with electronic money, brokerage houses, the National Deposit of Securities, insurance companies, investment funds and their associations, credit unions, post offices, exchange offices, leasing and factoring companies, and pawn shops,
- independent lawyers and advisers such as notaries, advocates, solicitors, accountants, and tax advisers,
- other institutions such as: casinos and other institutions dealing with gambling, auction houses, antique shops, jewelry shops, real estate agents, foundations, associations and other enterprises.

Firstly, They must have informed GIFI without delay about accounts and transactions connected to persons who are under suspicion of having something to

18 See: W. Filipkowski, Polish Regulations Concerning the Prevention of Terrorist Financing..., op. cit., pp. 189-202

do with terrorist acts (Art. 16a sec. 2 Anti-ML&TF ACT). It was almost impossible and completely useless to inform all of those institutions about suspicious persons or legal entities. And probably this was being done only with the 'big' financial institutions such as banks. That article was deleted in 2009.

Secondly, among non-government organizations only foundations and associations are subject to the anti-money laundering regime. There are no political parties, churches or other recognized religions. The obliged institution has to prepare and implement special internal regulations concerning preventing and fighting money laundering and terrorist financing (Art. 10a Anti-ML&TF ACT). The main goal of this is to make the whole effort within one institution more efficient and coordinated.

But that is not all. There is a second group of institutions involved in fighting both phenomena. They are called cooperating entities. According to Art. 2 point 8 Anti-ML&TF ACT, they include all central and local authorities, government agencies, public administration and the National Bank of Poland. The last one is both an obliged institution as well as a cooperating entity. It provides certain financial services to individual clients and it is an institution of public administration, too. The direct involvement of government or central administration entities into the fight against money laundering and terrorist financing is a unique Polish idea. Over the years it has proven to be a good enhancement to the whole anti-ML&TF regime.

The Anti-ML&TF ACT imposes on them an obligation to provide GIFI (on his direct notion) with any documents or information necessary to fulfill his aforementioned tasks (Art. 15 Anti-ML&TF ACT). These institutions are required to prepare and implement internal regulations for preventing and fighting terrorist financing. On the other hand, those institutions an obligation under the Polish Code of Criminal Procedure to inform law enforcement about any crime they have come across during their actions (which includes terrorist financing).

Preventing the financing of terrorism – the Polish regulations

Sources of information

Under Art. 4 point 3 Anti-ML&TF ACT, GIFI is to inform obliged institutions of persons (natural and legal) about whom there is a well founded suspicion that they had been involved in committing a terrorist act. At that time, the question was from what sources this information may derive?

There were no regulations which allowed police, public prosecutor, nor intelligence to share their knowledge with GIFI. But it was possible to verify some

suspicious or hints (e.g. intelligence) even before starting the investigation into terrorist financing – Art. 32 section 1 and 2 Anti-ML&TF ACT. In such situation, only the public prosecutor was allowed to demand financial information from GIFI or directly from obliged institutions. As a result of this situation, no other law enforcement agency could do it. The use of international “black lists” of terrorists, terrorist groups and organizations was also at that time a big question from a legal point of view.

Thus the only source left for GIFI was international cooperation. Under Art. 33 section 5 Anti-ML&TF ACT, GIFI can provide foreign financial intelligence units with information relevant to money laundering and terrorist financing on the basis of reciprocity according to previously signed mutual agreements. That regulation is still in force today as it was then.

The past regulations required obliged institutions only to react if a person about whom GIFI has informed them has opened an account or is involved in a transaction. They were not required to report transactions which they thought might have something in common with terrorist financing. The obligation concerned only money laundering activities (Art. 8 section 3 Anti-ML&TF ACT).

That past regulation might have constrained the efficiency of the anti-terrorist financing regime. For example, if an obliged institution reported a transaction as suspicious because it thought that money was being laundered but in fact it transpired to be a terrorist financing operation, the question of legality of the report might well have arisen.

All of those regulation changed in 2009. The law no longer differentiates between the regulations when considering the prevention of money laundering and terrorist financing. There are at least two reasons for that. Both terrorists and launderers apply very similar methods to move funds (if not the same). Secondly, terrorists also finance their activities from illegal sources¹⁹.

At the outset of an investigation with little information to hand, what initially appeared to be a terrorist financing operation might well turn out to be a money laundering exercise or vice versa. Since time is of essence in financial investigations the investigators should, in both cases, have the support of the financial intelligence unit from the very beginning. This would improve the efficiency of the whole system. The sooner the investigators can verify information from their sources, the sooner they can apply direct and precise actions and legal instruments.

19 See: W. Filipkowski, R. Lonca, *Criminological and Legal Aspects of Terrorist Financing*, *Wojskowy Przegląd Prawniczy* 2005, No. 4, pp. 26-46

It has taken a long time for the Polish legislator to understand that simple fact. And there was a great role of international standards to pressure national governments to change their legal systems.

Blocking an account and holding back transaction procedures

In 2004, along with the new set of regulations concerning terrorist financing, the legislator introduced into the Polish legal system the procedure of blocking an account. According to Art. 2 point 6 Anti-ML&TF ACT, blocking an account means that no person (natural or legal and including the obliged institution where the account is held) can, for a fixed period of time, make use in any way of any funds or other assets deposited there.

An account means an account at a bank, credit union, brokerage house, as well as the participants' register of investment funds (Art. 2 point 4 Anti-ML&TF ACT). In other words, only money, securities and participation units in investment funds can be the subject of blocking.

The blocking procedure was added to the existing procedure of holding back transactions (Art. 18 Anti-ML&TF ACT). Holding back a transaction means to temporarily restrict the use of funds and/or other assets connected with a specific transaction. The obliged institution cannot finalize the transaction (Art. 2 point 5 Anti-ML&TF ACT). The term transaction is also defined and means: cash and cashless deposits and withdrawals, including transfers between different accounts belonging to the same person (save transfers to a deposit or savings account), transfers from abroad, currency exchange, transfer of ownership or possession of assets, selling on behalf of others or pawning assets, transfer of assets between different accounts belonging to the same person (e.g. securities), exchanging debt for securities or shares, regardless of whether this is done by a person on his own behalf or on behalf of another person, on a person's own account or another person's account (Art. 2 point 2 Anti-ML&TF ACT). Both procedures are applicable to fighting terrorist financing.

The procedures can be initiated in one of three ways, by an obliged institution, by GIFI or by a public prosecutor. In the first case, the obliged institution informs GIFI about the person, his accounts and transactions. It concerns persons (natural or legal) where there is well founded suspicion of involvement in committing a terrorist act (Art. 16 sec. 1 Anti-ML&TF ACT). According to Art. 34 Anti-ML&TF ACT, the obliged institution cannot inform the person or persons concerned that the account(s) or transaction(s) have been reported to GIFI. Violation of this restriction is punishable by up to 3 years imprisonment (Art. 35 sec. 2 Anti-ML&TF ACT). In the second case, GIFI can initiate the procedures on receipt of information from other sources concerning a suspected person (Art. 18a section 1 Anti-ML&TF ACT).

A decision is then required whether to hold back a transaction or block the whole account. In the third case, a public prosecutor can directly initiate the procedures while conducting a criminal investigation based on information derived from other sources e.g. police, intelligence (Art. 20b Anti-ML&TF ACT).

The next steps are common regardless of whether the procedure relates to blocking an account or holding back a transaction. GIFI sends a written demand to the obliged institution to execute either of the procedures (Art. 18 Anti-ML&TF ACT). If GIFI received the information from an obliged institution, such notion can be issued within 24 hours commensurate from the time GIFI first acknowledged its receipt. The Financial Intelligence Unit can then order these procedures to be applied for a period of time not exceeding 72 hours, commensurate from the moment GIFI first accepted the information from the obliged institution. Concurrent with the order the Financial intelligence Unit informs the public prosecutor of the facts of the case and hands over all relevant documentation.

This should be sufficient for the public prosecutor to decide what to do next. If it is thought that a case of terrorist financing exists, the prosecutor can order the account to be blocked or the transaction to be held back for a period not exceeding 3 months (Art. 19 section 1 Anti-ML&TF ACT). If the information concerning a person or transaction suspected of being linked to terrorist activity originated from a source other than GIFI, the prosecutor may issue the order direct to the obliged institution. The prosecutor should also inform GIFI of such action.

If deemed necessary the public prosecutor may, in accordance with the Polish Code of Criminal Procedure, issue an order to freeze assets that were otherwise blocked or held back. If the statutory time periods mentioned above are exceeded and no decision has been made by GIFI or by the public prosecutor, the obliged institution unblocks the account or executes the transaction (Art. 19 section 4 Anti-ML&TF ACT)

If the obliged institution executes an order from GIFI or from the public prosecutor in accordance with the procedure described above, it is not liable for damages (Art. 18 section 4 Anti-ML&TF ACT). If a violation of law occurred while conducting procedures to block an account or hold back a transaction, responsibility for damages rests with the Polish authorities (specifically the State Treasury) in accordance with the Polish Civil Code (Art. 20 Anti-ML&TF ACT). The purpose of these two regulations is to encourage obliged institutions to cooperate closely with GIFI and public prosecutors in reporting suspicious activity and in acting expediently on their instructions.

Conclusions

Creating a sound Anti-ML&TF regime is not an easy task and this short history of the legislative work undertaken by the Polish authorities serves to demonstrate this to good effect. It represents the degree of effort being expended to organize the fight against terrorism.

After airing the mistakes and loopholes presented above a question arises: does Polish criminal law still have an ability to fight terrorism and its financing? The answer is: 'Yes, it does'.

Terrorists' acts are still crimes, although not all of them may fulfill the definitions set forth in the Criminal Code. In most cases they are committed by a group of people using guns and explosives. so their behavior falls under Art. 258 para. 2 PCC. This is the regulation which is used to fight organized crime. and, under its provisions, terrorists as well as members of organized criminal groups are treated equally by Polish criminal law (Art. 65 para. 1 PCC). In order to fight terrorist financing we can use the new Art. 165a PCC.

Some may ask another question: is the existing system efficient? The answer is: 'Well, it is getting better'. It has been inconsistent from the very beginning, starting with basic definitions. If we were considering them separately, they seemed to represent average standards of legislative work. But the two components of the whole system – prevention and combating – did not fit to each other. The situation is not that bad since the system has not collapsed or has not been tested yet. However, the introduction of a common definition of terrorist financing into the Polish Criminal Code and Anti-ML&TF ACT, is a good start.

Another point, is that for some reason the obligations placed on obliged institutions relating to money laundering and terrorist financing were disparate and understandably this led to confusion in their interpretation. The answer to that problem was simple and given by EU standards. The legislator unified the two sets of regulations in 2009.

There is one more thing we have to remember. Something more than just satisfying international standards and regulators²⁰ has to be done. It should be all about creating an effective system for combating terrorist financing which means combining criminal and administrative regulations at national level. In the Author's opinion, this takes priority over implementing international standards since the legal systems of each and every one of the countries involved is different.

20 MONEYVAL (2007, November 22). European Committee on Crime Problems, Committee of Experts on the Evaluation of Anti-Money Laundering Measures. Third Round Detailed Assessments Report on Poland, Anti-Money Laundering and Combating the Financing of Terrorism, Memorandum prepared by the Secretariat Directorate General of Human Rights and Legal Affairs. MONEYVAL (2006) 24. Retrieved February 6, 2007, from http://www.coe.int/t/e/legal_affairs/legal_co%2Doperation/combating_economic_crime/5_money_laundering/Evaluations/3rd%20Round/MONEYVAL_2006_24E_%20Poland_MEReport.pdf

POLSKIE REGULACJE ZWALCZAJĄCE FINANSOWANIE TERRORYZMU – PRZESZŁOŚĆ I TERAŹNIEJSZOŚĆ

Jednym z najważniejszych filarów strategii walki z terroryzmem jest odcinanie jego korzeni finansowych. Polski ustawodawca stara się być w zgodzie z wieloma istniejącymi standardami oraz regulacjami w zakresie przeciwdziałania finansowania terroryzmu. Ostatnie poważne zmiany zostały wprowadzone przed paroma laty. Odnosiły się one zarówno do prawa karnego, jak i Ustawy o przeciwdziałaniu prania pieniędzy oraz finansowania terroryzmu z 2000 r. Jednakże są one niespójne ze sobą. Taka sytuacja czyni niezwykle trudnym efektywne zwalczanie tego zjawiska. Opracowanie stara się przedstawić szereg uwag w tym zakresie.

Key words:

Terrorist financing, Poland, legal system, financial intelligence unit, terrorist act