

## **Anti-terrorist tasks of the Polish Armed Forces in situations of threats in the air and sea – a legal approach**

### **Abstract**

The article discusses the tasks carried out by the Polish Armed Forces to counter terrorist threats occurring in the airspace and maritime areas. The author analyzed legal acts that may contain regulations concerning the mentioned tasks. Listing counterterrorism tasks allows them to be systematized and can contribute to better preparation to counter threats.

### **Keywords**

armed forces, terrorism, counterterrorism operations, border security

Terrorism inspires widespread fear in society because it poses a direct threat to fundamental values in human life. In order to minimize the risks of actions of a terrorist nature and to ensure the security of citizens, the state authorities of the Republic of Poland have created a system within which services that can counteract possible attacks operate, among others. One element of this system is the Polish Armed Forces (PAR), which, because of their capabilities, are able to counter terrorists. Countering terrorist threats involves specific tasks that will be discussed in this article.

Singling out these tasks required an analysis of past terrorist incidents. The occurrence of attacks in the airspace and maritime areas would justify

the advisability of preparing for the implementation of appropriate actions by the PAR. In sources containing data on assassinations carried out in air and sea space, no information was found regarding such assassinations in Poland<sup>1</sup>. Accordingly, reference was made to examples involving other countries.

The most spectacular airspace attack occurred in September 2001 in the United States of America. Three of the four hijacked passenger airliners were used as the means of a terrorist attack and used to destroy two World Trade Center (WTC) buildings in New York City and damage the Department of Defense headquarters in Arlington. The fourth plane did not hit any objects - with passengers on board, it crashed in Pennsylvania. It is estimated that a total of about 3,000 people were killed in the attacks<sup>2</sup>. Further consequences of the attack were the overthrow of Taliban rule in Afghanistan and years of military action against terrorist groups, in which the international community, including Poland, was involved. Another spectacular airspace attack occurred in July 2014 over Ukraine, where a Malaysian airliner was shot down. None of the nearly 300 people on board survived<sup>3</sup>.

One attack at sea that needs to be mentioned was the attack on the U.S. ship USS Cole in the Yemeni port of Aden in October 2000, which killed 17 crew members and wounded 39. Two years later, in October 2002, the tanker Limburg became the target of a terrorist attack. One crew member was then killed and 12 injured<sup>4</sup>. There has also been environmental pollution, as some 90,000 barrels of oil have gone into the sea, resulting in less income from fishing, among other things. In addition, there was a reduction in port fee revenue as aircrafts bypassed Yemeni ports. These losses were estimated at approximately \$3.8 million per month. An increase in the price (by 1.3 percent) of crude oil on world markets and an increase in insurance fees for aircrafts transiting in the area were also observed, which translated into an overall increase in the cost

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<sup>1</sup> Sources of such data include the Global Terrorism Database, <https://www.start.umd.edu/gtd/> [accessed: 6 XII 2021].

<sup>2</sup> Entry: *the attacks*, *Encyclopedia Britannica*, <https://www.britannica.com/event/September-11-attacks/The-attacks> [accessed: 20 IX 2021]; *Atak na World Trade Center w Nowym Jorku: zapis wydarzeń z 11 września 2001 roku*, Forsal, 11 IX 2021, <https://forsal.pl/swiat/usa/artykuly/8242200,atak-na-wtc-w-nowym-jorku-zapis-wydarzen-z-11-wrzesnia-2001-roku.html> [accessed: 27 IX 2021].

<sup>3</sup> M. Buszujew, *Zestrzelenie MH17 nad Ukrainą. Co warto wiedzieć o procesie*, Deutsche Welle, 7 VI 2021, <https://www.dw.com/pl/zestrzelenie-mh17-nad-ukrain%C4%85-co-warto-wiedzie%C4%87-o-procesie/a-57801364> [accessed: 10 VII 2021].

<sup>4</sup> M. Kośka, *Działania antyterrorystyczne Sił Zbrojnych Rzeczypospolitej Polskiej na polskich obszarach morskich i w portach*, Warszawa 2021, p. 122, 156, 161.

of shipping<sup>5</sup>. All of the assassinations described have reverberated around the world.

As already mentioned, no terrorist attacks have been reported in Polish maritime areas or in the national airspace, but Polish citizens were among the victims of such events. One example to quote was the hijacking in October 1985 of the Italian passenger ship MS *Achille Lauro*, sailing from Genoa to Ashdod<sup>6</sup>. On board was a Polish ballet group and a Polish singer<sup>7</sup>. The artists managed to avoid death. Six Poles were killed in the attack on the WTC<sup>8</sup>.

The non-existence in Poland of terrorist attacks carried out in the air and sea space does not prove that they will not happen in the future. One of the primary reasons is that the world is not free of terrorist acts. They have happened in other countries, so they can also happen in the country on the Vistula river. Another reason is Poland's involvement in international military missions, such as in the Middle East and Africa. In these areas, soldiers have faced or are facing members of terrorist organizations such as the Islamic State in Iraq and the Levant and al-Qaeda of the Islamic Maghreb. Poland should therefore prepare for terrorist attacks. Accordingly, the legislature passed legislation by which it sanctioned countering terrorist threats in the maritime and aerial domains.

Countering terrorist threats in the airspace has been entrusted to the PAR. This was due to the capabilities available to the military and the lack of justification for creating similar capabilities in other formations due to high costs, among other reasons<sup>9</sup>. The element of the Polish security system designed to counteract terrorist threats in maritime areas is the Border Guard (BG). However, considering the equipment of this formation and the resulting counter-terrorism capabilities, it is fair to say that the military has far greater potential in this regard. Among other things, it has ships equipped with various types of artillery systems<sup>10</sup>. Therefore, the involvement of PAR in anti-terrorist operations in maritime areas is justified.

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<sup>5</sup> K. Kubiak, *Przemoc na oceanach. Współczesne piractwo i terroryzm morski*, Warszawa 2009, p. 91–92; B.W. Fieducik, *Terroryzm morski w świetle międzynarodowego prawa karnego*, Białystok 2013, rozprawa doktorska, p. 63–64.

<sup>6</sup> K. Kubiak, *Przemoc na oceanach...*, p. 84.

<sup>7</sup> W. Sobeci, „*Achille Lauro*” – statek, który nie miał szczęścia, *Infomare*, 17 XII 2015, <https://www.infomare.pl/achille-lauro-statek-ktory-nie-mial-szczescia/> [accessed: 6 XII 2021 r.].

<sup>8</sup> *20. rocznica zamachu na World Trade Center*, 11 IX 2021, <https://www.gov.pl/web/kgpsp/20-rocznica-zamachu-na-world-trade-center> [accessed: 6 XII 2021 r.].

<sup>9</sup> Especially when you consider the cost of buying and maintaining fighters and training pilots.

<sup>10</sup> T. Grotnik, *Polskie okręty na szwedzkim poligonie raketowym*, *Zespół Badań i Analiz Militarnych*, 30 VIII 2021, <https://zbiarn.pl/polskie-okrety-na-szwedzkim-poligonie-raketowym/> [accessed: 6 XII 2021 r.].

According to Article 26(1) of the Constitution of the Republic of Poland, PAR are intended, among other things, to ensure the security and inviolability of the borders<sup>11</sup>. The Constitutional Court, in the justification to the judgment prohibiting soldiers from joining trade unions, stated that PAR play an important role in ensuring internal security, but it is nevertheless an auxiliary role<sup>12</sup>. Taking into account the provisions of the Constitution of the Republic of Poland, it should be assumed that the actions of PAR to protect the border in the airspace and possible assistance to the Border Guard in its actions in the maritime areas are legally justified.

This article presents the results of research on solutions adopted in Polish law. They were aimed at determining what tasks are carried out by PAR to counter terrorist threats occurring in the airspace and maritime areas. The conducted research had its limitations, namely: it analyzed legal acts concerning tasks performed during peace time<sup>13</sup>, in the Polish airspace or in Polish maritime areas. The case where a state of emergency was declared was not considered, nor were the tasks performed at emergency airports.

### **Acts and executive acts defining anti-terrorist tasks for the Polish Armed Forces**

An analysis of Polish legal acts, including laws and their implementing acts, indicates that they contain provisions obliging or authorizing PAR to take counterterrorist actions. The main legal act in this area after the Constitution of the Republic of Poland is the *Act of November 21, 1967 on Universal Duty to Defend the Republic of Poland* (i.e.: Journal of Laws of 2021, item 372). According to Article 3(2) of this Act, PAR may participate, among other things, in anti-terrorist activities. The aforementioned provision authorizes soldiers to counter

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20 IX 2021]; *Dywizjon Okrętów Bojowych*, <https://www.wojsko-polskie.pl/3fo/dob/> [accessed: 20 IX 2021]; *Fregaty rakietowe typu Oliver Hazard Perry (OHP)*, <http://archiwum.mw.wp.mil.pl/mw.mil.pl/index481f.html?akcja=oliver> [accessed: 20 IX 2021].

<sup>11</sup> *The Constitution of the Republic of Poland of 2 April 1997 passed by the National Assembly on 2 April 1997, approved by the Nation in a constitutional referendum on 25 May 1997, signed by the President of the Republic of Poland on 16 July 1997* (Journal of Laws of 1997, No. 78, item 483, as amended).

<sup>12</sup> Judgment of the Constitutional Tribunal of 7 March 2000 concerning the provision prohibiting trade union membership for professional soldiers, ref. K 26/98, OTK ZU 2/2000, item 57, justification p. 24.

<sup>13</sup> It cannot be ruled out that terrorist events will occur and intensify before a possible war.



terrorist threats, but does not outline the principles on which this action would be based, nor does it refer to the relevant implementing legislation. The tasks of PAR for anti-terrorist activities in the airspace<sup>14</sup> and in the maritime areas are also included in the following acts:

1. *Act of October 12, 1990, on the Protection of the State Border* (i.e.: Journal of Laws of 2019, item 1776, as amended).
2. *The Border Patrol Act of October 12, 1990* (i.e. Journal of Laws of 2021, item 1486, as amended).
3. *The Aviation Law of July 3, 2002* (i.e.: Journal of Laws of 2020, item 1970).
4. *The Act on the Protection of Shipping and Seaports of September 4, 2008* (i.e.: Journal of Laws of 2019, item 692).
5. *Regulation of the Council of Ministers of 9 August 2010 on the procedure and manner of cooperation between authorities to prevent a threat to ships, port facilities and ports and related infrastructure arising from the use of a ship or floating object as a means of a terrorist attack* (i.e.: Journal of Laws of 2015, item 1139).
6. *Regulation of the Council of Ministers of November 2, 2011 on the determination of the air defense command authority and the procedure for the application of air defense measures in relation to foreign aircraft that do not comply with the summons of the state air traffic management authority* (i.e.: Journal of Laws of 2015, item 83).

In the Polish legal order there is also an act directly related to anti-terrorist activities, i.e. *Act on Anti-terrorist Activities of June 10, 2016* (i.e.: Journal of Laws of 2019, item 796). Article 2(1) and (2) of this law sets out, among other things, the legal definition of anti-terrorist and counter-terrorist activities. In this article, counter-terrorist tasks are treated as undertakings that, within the meaning of the above regulations, are carried out both as part of anti-terrorist and counter-terrorist activities. It should also be emphasized that the provisions of the aforementioned Act provide for the use of PAR to assist the Police, which essentially performs operations in the land domain. Therefore, in this study, the actions of the military will not be considered in relation to this legislation.

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<sup>14</sup> In which PAR play a central role.

## Anti-terrorist tasks in the airspace

Anti-terrorist tasks in the airspace will be considered in the context of the previously mentioned laws: on the Protection of the State Border, on Aviation Law, on the Border Guard, as well as the Regulation of the Council of Ministers of November 2, 2011 on the Procedure for Dealing with Foreign Aircraft.

According to the Law on the Protection of the State Border, the Minister of National Defense is responsible for border protection in the Polish airspace (including protection against terrorist threats). The minister's tasks in this area are carried out, in accordance with Art. 7(2) and (4) of the aforementioned act, by the Operational Commander of the Armed Forces Group (AFG) with the help of an air defense command body in the form of the Air Operations Center - Air Component Command (AOC-ACC). The AOC-ACC's activities concerning the integrity of the protected border are directed by the Duty Commander of Air Defense (DCAD)<sup>15</sup>. Other elements of the armed forces<sup>16</sup> also participate in the protection of the state border, which - as part of the Republic of Poland Air Defense System (RP ADS), being part of the NATO Integrated Air and Missile Defense System, NATINAMDS)<sup>17</sup> carry out tasks including anti-terrorist measures<sup>18</sup>.

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<sup>15</sup> According to § 2.4 of Regulation of the Council of Ministers of 2 November 2011 concerning the procedure in case of foreign aircraft, a DCAD is an officer of PAR serving in the Polish air defense system and acting as a national representative of state authorities in the NATO Integrated Air Defense System.

<sup>16</sup> These include forces and means of radiotechnical forces separated from the air force with the task of detecting aircraft violating the airspace, forces and means of air forces separated from the air force which carry out offensive and defensive actions in the airspace and air defence forces separated from the air force, land forces and navy which ensure security of ground elements against air strikes. See M. Topczewski, *Organizacja Systemu Obrony Powietrznej RP i jego rola w Systemie Bezpieczeństwa Narodowego*, „Wiedza Obronna” 2016, No. 1–2, p. 64. Within NATINAMDS, a pair of aircraft (from Air Forces) are on duty 24 hours a day, seven days a week with a 15-minute time to takeoff (RS 15). In accordance with the minimum requirements of the Supreme Headquarters Allied Powers Europe, SHAPE), the duty pair should be able to engage with objects in their area of responsibility within 45 minutes of the take-off order. Within this time frame, 15 minutes are reserved for detecting an object in the airspace, identifying and deciding whether to use the interceptor aircraft (the duty pair), 15 minutes for executing takeoff, and 15 minutes for reaching the intercepted object. See B. Grenda, *Bazy lotnicze w systemie bezpieczeństwa państwa*, in: *Potęga powietrzna w systemie bezpieczeństwa państwa*, T. Zieliński (ed.), Warszawa 2013, p. 82.

<sup>17</sup> T. Zieliński, *Ochrona granicy państwowej w przestrzeni powietrznej Rzeczypospolitej Polskiej w odniesieniu do przeciwdziałania statkom powietrznym zaklasyfikowanym do kategorii Renegade*, „Przegląd Policyjny” 2018, No. 1, p. 49.

<sup>18</sup> *Ibid.*, p. 48; Regulation of the Council of Ministers of 2 November 2011 concerning the procedure for foreign aircraft, § 4(1).

Separate forces and means of PAR undertake anti-terrorist actions against foreign, both civilian and military, aircraft. These activities include their interception<sup>19</sup> by military aircraft. Intercepting<sup>20</sup> means first identifying the aircraft that may pose a threat, then establishing radio communication and visual contact with it, guiding it to the correct direction or altitude or forcing it to land at a designated airport. If the aircraft disobeys the interceptor's orders, it may be warned by warning shots<sup>21</sup>. If, after warning shots, he still does not comply with the summons, he may be destroyed. Calls and commands issued by the interceptor aircraft may be waived when a foreign military aircraft is used as a means of terrorist attack. In contrast, in the case of a foreign civilian aircraft, it is possible to shoot it down<sup>22</sup> when there is no one on board or there are only people on board who intend to use the aircraft as a means of a terrorist attack. If there are non-terrorist bystanders on board the intercepted foreign civilian aircraft, PAR do not have the authority to destroy the aircraft. Such an aircraft is escorted until it leaves Polish airspace or lands at an airport<sup>23</sup>.

It is worth noting that the implementation of statutory anti-terrorist tasks by PAR requires, among other things, round-the-clock duty of forces and means, as well as monitoring of the Polish airspace and approaches to borders,

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<sup>19</sup> The prerequisites for intercepting a foreign military aircraft include crossing a state border or flying in Polish airspace without a permit issued by an authorized authority or not complying with the terms of the permit. A prerequisite for the interception of a foreign civilian aircraft is the crossing of the Polish border in airspace contrary to Polish law or international agreements by which Poland is bound. Another prerequisite concerning foreign aircraft, both civilian and military, is failure to comply with requests of state air traffic management authorities to: leave Polish airspace, change altitude or flight direction, land at a specific airport or carry out other instructions aimed at stopping violation of Polish airspace. Legal basis: Act on the State Border Protection, Article 18b(1).

<sup>20</sup> AFG Operational Commander's decision to intercept a foreign civilian aircraft is made after the aircraft has been classified by the DCAD as „suspected renegade” - in accordance with the Regulation of the Council of Ministers of 2 November 2011 on the procedure for dealing with foreign aircraft, § 7(1).

<sup>21</sup> The decision of the AFG operational commander to fire warning shots in the direction of a foreign civilian aircraft is made after the DCAD qualifies it to the category of „probable renegade” - in accordance with the Regulation of the Council of Ministers of 2 November 2011 on the procedure for dealing with foreign aircraft, § 7(2).

<sup>22</sup> AFG Operational Commander's decision to destroy a foreign civilian aircraft is made after the Regulation of the Council of Ministers of 2 November 2011 on the procedure for dealing with foreign aircraft, § 7(4).

<sup>23</sup> Act of 12 October 1990 on the Protection of the State Border, Article 18b(2), (2a), (2c); Regulation of the Council of Ministers of 2 November 2011 on the Procedure for Foreign Aircraft, § 7(3).

preparation and distribution of images of the situation in this space, alerting and notifying of threats appearing in it or identification of objects<sup>24</sup>.

The use of measures by a military interceptor aircraft against a foreign civilian or military aircraft is decided by the AFG Operational Commander<sup>25</sup>. If one of these measures is to force a military or civilian aircraft to land, the decision as to which airport to bring the aircraft to is made by the DCAD. In the case of a foreign civilian aircraft, the use of appropriate measures by the dedicated forces and means of PAR requires that it be classified by the DCAD into one of three categories: “suspected renegade”, “probable renegade”, “confirmed renegade”. Once qualified, the DCAD applies to the Combined Air Operations Centre Uedem, CAOC Uedem to delegate authority to command forces assigned to NATINAMDS, while notifying the AFG Operational Commander<sup>26</sup>.

Classification of a civil aircraft as a “suspected renegade” requires that at least two of the following criteria be met. These include: flight plan violations; refusal or failure to follow instructions from a state air traffic management unit or from air traffic services units, military, civil or air defense command; making an unexpected change in flight conditions; interrupting radio communications, particularly if they involve a change in flight conditions; changing secondary radar transponder codes or making excessive use of the identification signal without the prior consent of the state air traffic management unit; crew use of non-standard terminology or observing other changes to radio communications that are not in accordance with procedure; selection of codes that indicate hijacking, communication loss or emergency; radio communications that are not related to flight procedures; ceasing or interrupting secondary radar transponder signals; being advised on the intentions of the aircraft from sources such as public authority, authorities of neighboring countries, international organizations or NGOs; receiving an unspecific threat of using violence; receiving information on the placement on board the aircraft of an item, device, substance or other hazardous material that may be used for an attack of a terrorist nature<sup>27</sup>.

To be categorized as a “probable renegade” requires meeting one of the following criteria: the detection of other aircraft also failing to comply with orders from the state air traffic management authority; continued failure of an aircraft assigned “suspected renegade” status to comply with orders from

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<sup>24</sup> T. Zieliński, *Ochrona granicy państwowej...*, p. 49.

<sup>25</sup> Act of 12 October 1990 on the Protection of the State Border, Article 18b(3); *ibid.*, p. 50.

<sup>26</sup> Regulation of the Council of Ministers of 2 November 2011 on the procedure for dealing with foreign aircraft, § 5(1), § 6(5).

<sup>27</sup> *Ibid.* § 6(1)(1).

the state air traffic management authority or air defense command authorities; refusal to comply with orders or failure to respond to orders and signs provided by the commander of the military intercepting aircraft<sup>28</sup>.

DCAD's designation of a foreign civilian aircraft as "confirmed renegade" requires that the following criteria be met simultaneously: the intercepted and identified foreign civilian aircraft continues to disobey orders from the intercepting aircraft commander, state air traffic management authority, and air defense command authorities; the information obtained confirms beyond any doubt that the aircraft will be used as a means of terrorist attack<sup>29</sup>.

In the case of a foreign military aircraft that has violated Polish airspace, forces and means assigned to NATINAMDS may intercept the aircraft when directed by an allied air defense command authority issued in consultation with DCAD. It is worth repeating that the decision to fire warning shots or destroy a foreign military aircraft is made by the operational commander of the AFG and informs subordinate services and NATO OP command authorities about it. The decision to destroy may also be made by the commander of the interceptor aircraft. This is possible in two situations. The first is an attack by a foreign military aircraft on an interceptor ship. The second - when the commander of the interceptor aircraft loses communication with the AOC-ACC, and a foreign military aircraft carries out an armed attack or aggression against objects located on Polish territory, or clearly and persistently maneuvers to take the best possible position to attack the interceptor aircraft<sup>30</sup>.

The Regulation of the Council of Ministers of 2 November 2011 on the procedure for dealing with foreign aircraft quite generally defines the structures with which PAR cooperate in countering terrorist threats in the airspace. It contains provisions, among others, for cooperation with the state air traffic management authority, state authorities of the Republic of Poland ensuring state security, relevant NATO bodies, including the NATINAMDS steering body, and other international bodies<sup>31</sup>.

The state air traffic management authority is the Polish Air Navigation Services Agency supervised by the Civil Aviation Authority. State agencies that provide state security include: Internal Security Agency, Military Counterintelligence Service, Police, Border Guard, State Protection Service<sup>32</sup>.

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<sup>28</sup> Ibid., § 6.1.2.

<sup>29</sup> Ibid., § 6(1)(3).

<sup>30</sup> Ibid., § 8.

<sup>31</sup> Ibid., § 5(2), § 6(3), 4 and 5.

<sup>32</sup> T. Zieliński, *Ochrona granicy państwowej...*, p. 49–50.

The CAOC Uedem should be considered as the competent authority to direct NATINAMDS. The CAOC Uedem area of responsibility includes Polish airspace<sup>33</sup>. Other international bodies include: NATO Control and Reporting Centre<sup>34</sup>. In addition, PAR cooperate with the Border Guard, from which they receive information on low-altitude overflights of aircraft and other flying objects<sup>35</sup>.

In the context of the Aviation Law Act, the anti-terrorism tasks of PAR relate to unmanned aerial vehicles (UAVs) because they can be used by terrorists. The aforementioned act provides a task for PAR to be able to destroy or immobilize a UAV, including a flying model, or take control of its flight. The above powers are available to soldiers, among others, when the UAV raises a reasonable suspicion of its use as a means of terrorist attack. Soldiers may also destroy or immobilize a UAV when it is in an area where flight restrictions are in place or it is prohibited from flying from ground level to a certain altitude<sup>36</sup>.

### **Anti-terrorist tasks in maritime areas**

The basic documents in relation to the anti-terrorist tasks of PAR in maritime areas are: Act of 4 September 2008 on the protection of shipping and sea ports, Act of 12 October 1990 on the Border Guard and the Regulation of the Council of Ministers of 9 August 2010 concerning the prevention of threats to ships, port facilities and ports.

The Polish Armed Forces may carry out anti-terrorist tasks in the maritime area, for which the Border Guard is responsible in peacetime, in order to prevent, minimize or remove serious and imminent threats to ships, ports and port facilities and related infrastructure. The threat is posed by terrorists who use a ship or other floating object as a means of terrorist attack. A condition justifying the involvement of PAR is the occurrence of a situation in which the forces and means of the Border Guard are or may prove to be insufficient to counter a threat. In connection with the above, the Minister of National Defense may issue a decision (but does not have to do so) to apply in Polish

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<sup>33</sup> M. Topczewski, *Organizacja Systemu Obrony Powietrznej RP...*, p. 67.

<sup>34</sup> J. Rajchel, K. Załęski, *Dowodzenie siłami powietrznymi, aspekt narodowy i sojuszniczy, uwarunkowania, tendencje i kierunki zmian*, „Zeszyty Naukowe Akademii Marynarki Wojennej” 2011, No. 3, p. 238, 245.

<sup>35</sup> Act of October 12, 1990 on the Border Guard, Art. 1(2)(11).

<sup>36</sup> Aviation Law Act of July 3, 2002, Article 126a(1)(1)(d), (1)(2), (2).

maritime areas the measures necessary to stop the means of attack, including its sinking<sup>37</sup>. Whatever decision he makes, he must report it to the Prime Minister immediately. The issuance of the decision by the Minister of National Defense shall be preceded by a motion to that effect by the Minister in charge of internal affairs. On the other hand, the minister in charge of internal affairs submits an application to the Minister of National Defense after receiving a notification from the Commander-in-Chief of the Border Guard that the service subordinate to him has exhausted the statutory measures envisaged to counteract the threat<sup>38</sup>.

If the Minister of National Defense issues a decision, then by its power he should subordinate to the operational commander of the AFG forces and means that are necessary for its implementation. This commander is tasked with ordering the necessary measures to prevent, reduce, or remove the terrorist threat. In addition, he should notify the minister in charge of internal affairs, the minister in charge of foreign affairs, the head of the Internal Security Agency, the directors of the relevant maritime offices, and the relevant territorial government administration bodies of the type, manner, and time of application of the measures subordinated to him by the Minister of National Defense. The notification shall include information to the extent necessary to organize cooperation between authorities responsible for the protection of Polish maritime areas. Operational commander of AFG may conduct operations with the participation of aircrafts of the Border Guard<sup>39</sup>.

The task, which falls within the area of anti-terrorist tasks, is the cooperation of PAR with the Border Guard in the field of maritime border protection also before the decision of the Minister of National Defense. This cooperation consists of maintaining constant communication and transferring information between cooperating units. The information concerns, among others: detection of aircrafts that may threaten the peace, public order and security of the Republic of Poland; detection of crimes against the inviolability of the Polish border; detection of foreign aircrafts<sup>40</sup>.

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<sup>37</sup> The Polish Armed Forces should document the use and application of direct coercive measures and firearms. In this case, the legal basis is the Act of 12 October 1990 on Border Guard, Art. 23(3).

<sup>38</sup> Act of 4 September 2008 on the Protection of Shipping and Sea Ports, Article 27(1); Regulation of the Council of Ministers of 9 August 2010 concerning the prevention of threats to ships, port facilities and ports, § 2.

<sup>39</sup> Regulation of the Council of Ministers of 9 August 2010 concerning the prevention of hazards to ships, port facilities and ports, § 3-5.

<sup>40</sup> Border Guard Act of October 12, 1990, Article 19(2c) and 2d(1-3).

After issuing a decision by the Minister of National Defense, PAR during anti-terrorist actions in maritime areas should take into account the principles arising from the Border Guard Act. According to the Act, soldiers, applying the necessary measures to aircrafts posing a threat, should minimize the threat to the life and health of bystanders. There is no exception to the above condition. However, there is an exception to the next two conditions regarding the use of necessary resources. One of these conditions is to cause the least possible harm to the terrorists or other persons against whom the means are used, the other is to limit the destruction of the ship or other floating object used as a means of terrorist attack, other ships and port infrastructure. The aforementioned exception is the occurrence of information about the presence on a ship or other floating object of an explosive device and the intention of terrorists to carry out an immediate attack<sup>41</sup>.

Prior to the destruction or sinking of a vessel or other floating object that is the means of a terrorist attack, a Navy ship commander may be tasked with stopping a terrorist-controlled vessel. Accordingly, he may call it to a halt. The call consists of transmitting an audible and visual signal at a distance allowing it to be received. Commanders use international signal code signals to stop the vessel. Two green signal cartridges should be fired from the ship to draw attention to the signal being transmitted. In addition, mariners should light two green recognition lights on the mast. If the terrorist-controlled aircraft does not stop despite calls, the commanding officer of the Navy vessel may take other steps to bring it to halt or proceed with a pursuit. To stop a terrorist-led vessel, the ship's commander may decide to fire a warning shot into the air. If this is unsuccessful, he may give the order to fire ahead of that craft's bow or astern. If this also proves ineffective, the commander of the Navy ship may give the order to fire on that unit. The order to open fire may be given without warning when a Navy ship is under fire. It should be noted that pursuit may be conducted separately or simultaneously by Navy ships and Air Force aircraft. Pursuit commenced in Polish maritime areas may be carried out until the pursued vessel reaches the territorial sea of a foreign state. There should be continuity of pursuit, meaning that, for example, an aircraft calling a vessel to stop (with two green signal cartridges fired forward of the bow) shall conduct pursuit operations until a vessel arrives<sup>42</sup>.

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<sup>41</sup> Regulation of the Council of Ministers of 9 August 2010 concerning the prevention of hazards to ships, port facilities and ports, § 6.

<sup>42</sup> Act of October 12, 1990 on the Border Guard, Art. 17 (1), (2), (3), (4), (7), Art. 18 (1), Art. 25.



In addition to the authority (which can also be tasks) to stop the vessel controlled by terrorists or chase it, commanders of Navy ships have the right to perform other activities. These include, but are not limited to: forcing such a vessel to call at a specific port<sup>43</sup>, requesting it to take a designated course, or reducing its speed. After stopping the vessel, soldiers may, among other things, apprehend the terrorist, identify the ship's crew and passengers, inspect the cargo, search the rooms, and check the ship's and cargo's documents<sup>44</sup>.

## Summary

The Minister of National Defense is responsible for the protection of the state border in the airspace, thus he is responsible for the organization of the Polish Air Defense system. The Polish Armed Forces conduct counterterrorism activities, which are a subset of the tasks performed within the Polish Air Defense system. The situation is different for marine areas. The minister in charge of internal affairs is responsible for border protection at sea, and the Border Guard performs these tasks on his behalf. The Polish Armed Forces conduct operations only when the Border Guard forces are or may prove insufficient to counter the threat.

Countering airborne terrorist threats necessitates a multitude of tasks that can include: detecting and intercepting aircraft, forcing them to land at an intervention airport, or possibly shooting them down. The shoot down is possible when certain conditions are met. Moreover, it should be noted that countering threats in the airspace requires the performance of tasks not only in this space, but also at sea or on land, for example by soldiers serving in radiolocation stations or command centers.

In maritime areas, as opposed to air space, PAR can perform anti-terrorist tasks only when a motion in this matter is submitted by the minister responsible for internal affairs. As with airspace, an object posing a terrorist threat can be detected, located, and destroyed. Tasks may be performed by soldiers serving at sea, in the air (e.g., over maritime areas), or on land (e.g., on the coast). It is worth noting that in the maritime area PAR have much more time to respond to a possible terrorist threat. This is because sea vessels move much slower than

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<sup>43</sup> The risks associated with forcing a terrorist-controlled ship into port should be considered. It cannot be ruled out that terrorists might attempt to sink the ship in the approach track or destroy port infrastructure.

<sup>44</sup> Act of October 12, 1990 on the Border Guard, Article 14(1).

aircraft. In addition, damage to a floating object does not necessarily involve sinking it; soldiers can only cause it to stop.

In summary, PAR are an important component of the Polish counterterrorism system. They perform tasks to counter terrorist threats in the air and at sea.

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## **Legal Acts**

*The Constitution of the Republic of Poland of 2 April 1997 passed by the National Assembly on 2 April 1997, approved by the Nation in a constitutional referendum on 25 May 1997, signed by the President of the Republic of Poland on 16 July 1997* (Journal of Laws of 1997, No. 78, item 483, as amended).

*Act on Anti-terrorist Activities of June 10, 2016* (i.e.: Journal of Laws of 2019, item 796).

*The Act on the Protection of Shipping and Seaports of September 4, 2008* (i.e.: Journal of Laws of 2019, item 692).

*The Aviation Law of July 3, 2002* (i.e. Journal of Laws of 2020, item 1970).

*Act of October 12, 1990, on the Protection of the State Border* (i.e.: Journal of Laws of 2019, item 1776, as amended).

*The Border Patrol Act of October 12, 1990* (i.e. Journal of Laws of 2021, item 1486, as amended).

*The Act of November 21, 1967 on Universal Duty to Defend the Republic of Poland* (consolidated text: Journal of Laws of 2021, item 372).

*Regulation of the Council of Ministers of November 2, 2011 on the determination of the air defense command authority and the procedure for the application of air defense measures in relation to foreign aircraft that do not comply with the summons of the state air traffic management authority* (Journal of Laws of 2015, item 83).

*Regulation of the Council of Ministers of 9 August 2010 on the procedure and manner of cooperation between authorities to prevent a threat to ships, port facilities and ports and related infrastructure arising from the use of a ship or floating object as a means of a terrorist attack* (i.e.: Journal of Laws of 2015, item 1139).

### **Case law**

Judgment of the Constitutional Tribunal of 7 March 2000, ref. K 26/98, OTK ZU 2000/2, item 57.