

disputants in this discussion to be informed not only about the newest German and Austrian (criminal) law, but also about the situation in Ukraine in this regard.

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Krzysztof Wala,
Maria Curie-Sklodowska University in Lublin, Poland

**OFFENCE OF DISSEMINATING OR PUBLICLY DISPLAYING
CONTENT THAT MAY FACILITATE THE COMMISSION
OF A TERRORIST OFFENCE
(ART. 255A § 1 OF THE POLISH CRIMINAL CODE)**

Pursuant to Article 255a § 1 of the Polish Criminal Code, whoever disseminates or publicly presents content that may facilitate the commission of a terrorist offence with the intent to commit such an offence, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. Introduction of this crime to the Polish legal system in 2011 resulted from international agreements binding Poland. Currently, this obligation results from Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (Official Journal of the EU L 2017 No. 88, p. 6 - hereinafter referred to as the 2017 Directive). In accordance with Article 7 of the 2017 Directive Member States shall take the necessary measures to ensure that providing instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally. A similar solution was also included in Article 7 of the Council of Europe Convention on the Prevention of Terrorism, drawn up on 16 May 2015 in Warsaw (Statute Book 2008 No. 161, pos. 998). Criminalization of this type of behavior is an expression of the adoption by the European Union and the Council of Europe of a comprehensive strategy for countering terrorism [1, p. 1235]. It cannot be denied that such acts may actually increase the risk of committing terrorist offences, hence their criminalisation seems justified.

The offence in question was placed by the legislator in Chapter XXXII entitled “Offences against public order”, and thus the main protected value is public order. Public order is a very broad concept, hence the above-mentioned chapter contains various offences, both in terms of the perpetrator’s conduct

and the degree of gravity (e.g. taking and holding a hostage - Art. 252 CC, illegal arms trade - Art. 263 § 1 CC, or insulting a corpse, human ashes or a resting place of the deceased - Art. 262 § 1 CC). However, it can be assumed that public order is a system of public-legal solutions and social relations, functioning and taking shape in public places and non-public places, the purpose and task of which is, in particular, to protect life, health, property of citizens and social property, to ensure normal activities of institutions, establishments, state and private enterprises, and to eliminate various kinds of nuisances dangerous or inconvenient for society and individuals [2, p. 27]. Public order is thus an important value in social life [3, p. 1179]. As indicated in the doctrine, an additional protected values in the case of this crime is public security, which results from the possible threat of terrorist attacks [4, p. 1374]. K. Wiak rightly claims that this type of behavior significantly increases the threat to the most important social values [1, p. 1236]. In the literature, one can also find a view according to which the individual protected values in the case of this crime are all goods that can be attacked as part of terrorist activity [5, p. 354].

The crime in question consists of dissemination or public presentation of content that may facilitate the commission of a terrorist offence. According to the verdict of the Supreme Court of 16 February, 1987, WR 28/87, dissemination is a behavior consisting in making the given content generally available by distributing, lending, copying and otherwise making it available to a wider and undefined circle of people [6]. As Z. Ćwiakalski rightly notes, dissemination can take place using various techniques, ranging from such simple behaviours as distributing leaflets or hanging up advertisements, to more complex ways (e.g. on the Internet or through TV programmes) [4, p. 1375]. In any case, the conduct must be such that the content covered by it may become generally known. The second variant of the perpetrator's behavior indicated in the disposition of the analyzed provision, i.e. "public presentation" has a similar scope. The essence of presenting, similarly as in the case of dissemination, is externalizing a given content to a wider circle of people. Presenting means exposing something to the public, showing it for viewing, making a presentation [7, p. 1168]. In the case of this variant of behavior, the legislator additionally points to the fact that it is to have a public character. Polish legislator does not define the term "public activity". In the resolution of 20 September 1973, the Supreme Court stated that a public action occurs when due to the place of action or circumstances and the way the perpetrator acts, his/her behaviour is or may be available (perceptible) to an indefinite number of people, and the perpetrator, being aware of this possibility, at least accepts it [8]. Such an approach is generally accepted both in doctrine and jurisprudence. It should be noted that for this option to be realized, it is not necessary that the content actually finds its recipient, it is enough that the perpetrator presents it in such conditions, in which it was objectively possible for it to reach an

undetermined number of people.

In view of the above, it should be noted that the essence of dissemination and public presentation comes down to the fact that the perpetrator intends the content to reach an undefined and non-individualized group of people. If the perpetrator presented the materials indicated in the disposition of this provision to a specific person or a specific group of persons with the intention that these persons commit a crime of a terrorist nature, criminal liability for aiding the commission of a crime of this nature (e.g. aiding to take a hostage or aiding to seize control over an aircraft) could come into play.

The phrase "content that may facilitate the commission of a terrorist offence" raises doubts. The very concept of a terrorist offence is defined in Polish legislation on the basis of Article 115 § 20 of the Polish Criminal Code. Pursuant to this provision, a terrorist offence is an offence punishable by imprisonment of at least 5 years, committed in order to 1) seriously intimidate a large number of people, 2) force a public authority of the Republic of Poland or another state or an authority of an international organization to take or to refrain from taking a specific action, 3) cause serious disturbances in the system or economy of the Republic of Poland, another state or an international organization - as well as a threat to commit such an act. An important problem, however, is what kind of content can be considered to facilitate the commission of such a crime. The doctrine rightly argues that due to the impreciseness of this phrase, the disposition of Article 255a § 1 of the Criminal Code is much broader than the requirements contained in the international obligations indicated in the introduction [9, p. 780]. Therefore, this term should be interpreted very carefully [4, p. 1375]. Typical examples of this type of content include instructions for making an explosive device, hijacking a plane or blowing up a building, but also studies pointing out security weaknesses in public buildings, or secret diagrams of alarm systems [7, p. 1168]. This content must be of such value that it can actually contribute to facilitating the commission of a terrorist crime. It can also be such content, the reading of which requires specialized knowledge, for example in the field of chemistry or mathematics [9, p. 780]. The form of transmission of such content can be any, including verbal transmission, film, drawing, or image [5, p. 354].

The offence in question may only be committed by acting; it is not possible for public presentation or dissemination to occur by omission. The offence is formal in nature; no effect is required for its commission. The content made available does not actually have to be helpful in the commission of a terrorist offence, and even less the actual commission of a terrorist offence within the scope of Article 255a § 1 of the Penal Code [5, p. 356].

Due to the use of the pronoun "who" to describe the subject of this crime, it is a universal crime, i.e. its perpetrator may be any person capable of criminal liability. The offence is intentional and may involve both direct intent (the perpetrator intends that the disseminated material will actually facilitate the

commission of a terrorist offence by another person) and possible intent (the perpetrator, given the circumstances and content of the disseminated material, anticipates and accepts that it may be used to commit a terrorist offence by another person).

The analyzed crime is punishable by imprisonment from 3 months to 5 years, which indicates a moderate level of social harm. A conditional discontinuance of criminal proceedings is possible against its perpetrator (Art. 66 of the Penal Code). It is also possible to apply a mixed penalty (Art. 37b of the Penal Code) or to impose a fine or a restriction of liberty instead of imprisonment (Art. 37a of the Penal Code). If the act was committed for financial gain (e.g. the perpetrator would run a website for a fee, commissioned by another person, on which content is made available that could facilitate the commission of a terrorist offence), then a fine could be imposed in addition to imprisonment. In addition, the perpetrator may also be subject to forfeiture of objects that were used or intended to be used to commit the crime (e.g. a computer with the help of which the perpetrator posted content on the Internet that could facilitate the commission of a terrorist offence).

Data presented in the Statistical Directory of Justice show that the provision of Article 255a § 1 of the Penal Code is of marginal importance in practice [10]. Between 2011 and 2018, there were only two final convictions under this provision; in 2014, the perpetrator was sentenced to 6 months of imprisonment, with the court applying a conditional suspension of the sentence (there is no data on the length of the probation period and the manner of its completion), while in 2018, the perpetrator was sentenced to 6 months of absolute imprisonment.

The offence of disseminating or publicly presenting content which may facilitate the commission of a terrorist offence, as defined in Art. 255a § 1 of the Penal Code, was introduced to the Polish Penal Code due to the need to adapt national solutions to the requirements arising from international agreements binding the Republic of Poland. The evaluative nature of the elements constituting the disposition (particularly the notion of "content that may facilitate the commission of a terrorist offence") means that this provision should be interpreted in a restrictive way. Furthermore, because of its close connection to international law, that aspect should also be taken into account in the context of its interpretation. According to the wording of paragraph 40 of the preamble of the 2017 Directive, none of its provisions should be interpreted as aiming to reduce or limit the ability to disseminate information for scientific, academic or reporting purposes. Despite the indicated doubts in terms of interpretation, the introduction of Article 255a § 1 of the Criminal Code to the Polish criminal law system should be positively assessed, as this type of behaviour could not previously be qualified on the basis of other legal solutions. At the same time the criminalisation of such acts, due to the fact that they may significantly increase the risk of terrorist attacks, seems justified.

Literature

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Marek Mozgawa, Prof. dr hab.,
Maria Curie-Sklodowska University in Lublin, Poland

THE OFFENCE OF INSULT IN THE POLISH PENAL CODE (ARTICLE 216)

Article 216 of the Polish Penal Code (PC) sets out criminal liability for a criminal insult of another natural person. However, all entities other than natural persons (e.g. institutions and legal persons) remain outside the scope of Article 216 PC. However, the phrase "another person" used by the legislature does not exclude considering a group of persons whose personal dignity the offender has abused by his/her conduct as the object of the causative action [1]. Article 216 § 1 PC defines the basic type of the crime the substance of which is expressed in insulting another person in his/her presence or even in his/her absence but publicly, or with the intention that the insult reaches that person (punishable by a restriction of liberty or a fine). On the other hand, Article 216 § 2 PC defines an aggravated type, consisting in insulting another person via means of mass communication (punishable by a fine, deprivation of liberty or imprisonment of up to one year). The insult was criminalised also under previous Polish criminal legislation (Article 256 PC of 1932, Article 181 PC of