

# HR HELSINKI FOUNDATION for HUMAN RIGHTS

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The Helsinki Foundation for Human Rights (HFHR) is one of the oldest non-governmental organisations in Poland dealing with the protection of human rights and fundamental freedoms. As part of its activity, HFHR monitors the implementation of human rights. This analysis of the draft Anti-terrorist Act presents the HFHR's key concerns and was prepared by in house experts.

## **1. Background information**

On 16<sup>th</sup> May, 2016, the draft Anti-terrorist Act was submitted to Sejm. The main points of this regulation were presented during a press conference in March 2016 in response to the terroristic attacks in Brussels. Despite the declarations made by the representatives of the government, the project was never a subject of the public consultations. What is even more worrying, the project itself remained confidential for a few months.

The main aim of the draft Act is to integrate the provisions enabling combating terrorism that are disaggregated in numerous different legal acts. The authors of the draft also underline that the adoption of the Act is necessary in the process of the preparation to the World Youth Day in Cracow and NATO summit in July this year.

In HFHR's opinion such a mode of proceeding is inappropriate considering the significance of the new law's purpose, which is an attempt to ensure public safety. Realising such a fundamental value should be coupled with holding a broad debate on the direction of the reform of the existing law.

## **2. Main points of the draft Anti-terrorist Act**

The draft Act introduced the definition of "an event of a terrorist nature". On the basis of the Act the Ministry of the Interior will issue a regulation with catalogue of the events of a terrorist nature. For example, in the light of the draft regulation the fundamentalist statements made by the representatives of the Muslim groups or establishing Muslim academia will be classified as "an event of a terrorist nature".

Furthermore, the draft Act includes regulations concerning the operational control towards foreigners. In the light of the Act the authorities will have wide competences to conduct investigation against the foreigners. According to the draft, these methods may be used for a period of three months based exclusively on an approval given by the Prosecutor General, without the need to obtain a court order to this effect. The court order is needed after 3 months of conducting the operational control.

The draft Act also includes regulations concerning blocking of access to Internet websites/online content. In the light of the Draft the court will be able to impose such measure for up to 30 days upon the motion of the Chief of the International Security Agency issued

with the consent of the Prosecutor General, in order to combat or prevent the terrorist crimes. In “emergency situations” the Chief of the Internal Security Agency (with the consent of the Prosecutor General) will be able to order the blocking measure without prior judicial control (the order will be only subject to subsequent judicial control). In the opinion of the HFHR the proposed website-blocking measures is incompatible with freedom of expression standards developed in the jurisprudence of the European Court of Human Rights as well as guidelines set by the UN Special Rapporteur on Freedom of Expression. In particular, the blocking of websites is to be based on vague prerequisites and therefore does not provide adequate protection against arbitrary and excessive actions of the authorities. HFHR argues that the key problem is the absence of guarantees that would ensure the effective judicial review of activities of secret services and the asymmetry between the position of state agencies and private actors. For example the Director of Internal Security Agency and the Prosecutor General are the only entities entitled to appeal against the court’s decision to block a website/online content whereas the other party (Internet user or website owner) will not be able to question such a warrant.

Furthermore, the proposed law enables authorities to place far-reaching restrictions on the right of privacy, which is a consequence of providing the Internal Security Agency with access to all public registers and lists kept by other law enforcement agencies, the Social Security Institution, Agricultural Social Insurance Fund, Polish Financial Supervision Authority or local government bodies. The new law gives the ISA access to CCTV records from public facilities, public highways and other public locations.

The draft gives the services authority to conduct mass night searches, say in residential premises located in a single neighbourhood. Under the proposed law, such searches can be executed if there is a probable cause that a suspect stays in a given area. A critical assessment should also be expressed in respect of the provisions empowering law enforcement authorities to detain a person on remand for 14 days based on a suspicion that this person might have committed a terrorist offence. Importantly, in this case the regular grounds of applying preventive measures will be excluded.

Last but not least, the draft disregards a significant body of law developed by the European Court of Human Rights and Polish Constitutional Tribunal. In HFHR’s opinion, the absence of public consultations, extremely fast-tracked legislative process and the huge scope of interference in civic rights and freedoms – all these elements clearly show that the draft should be materially modified.

### **3. The public hearing**

In the light of the lack of the public consultations regarding the draft, four non-governmental organisations monitoring the works on the Anti-terrorist Act organised a public hearing.

During the hearing, the majority of the speakers focused on the situation of the foreigners in the light of the Act. The representatives of the civil sector argued that the provisions of the Act may be found as discriminatory (even, to some extent, racist) against the foreigners. The representatives of the non-governmental organisations underlined that the draft Act is not targeting all extremists but only one group.

The representatives of the non-governmental organisations also raised concern regarding the provisions of the Act regulating the prohibition of the foreign financing the extremist activity.

In the opinion of some of the representatives, such regulations may serve as a starting point to further limitation of foreign financing of e.g. non-governmental organisations.

#### **4. The further steps**

Since 16<sup>th</sup> May, the project has underwent two out of three reading in the Parliament. The parliamentary commission will continue its works next week. The draft was adopted during the Parliamentary session on 10<sup>th</sup> June 2016 and directed to the second chamber of the Parliament – Senat.