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## CRIMINAL OFFENCES OF PIRACY IN POLISH CRIMINAL LEGISLATION

### 1. Preamble

The notion ‘pirates’ has never stopped being in use. However, at the beginning it seemed that ‘the end of the piracy will come together with The Paris Declaration Respecting Maritime Law of 16 April 1856 (so called: Paris Declaration of seawarfare) which entirely outlawed the term ‘piracy’ and allowed each government to stop pirate ships and imprison and judge people who are pirates, however it did not happen<sup>1</sup>.

Piracy appeared again in XXth century after the Second World War. Firstly, it underwent a metamorphosis because of the Cold War, and later, in 90s, after its ending. The division of the bipolar world lead to the revival of marine robberies, the main effect of which was the increase in the number of areas threatened by piracy. It should be pointed out that the number of water areas threatened by the piracy increased from 3 at the end of 80s to 8 in 2006<sup>2</sup>. That is the main reason why, since the beginning of XXI century, because of the intensification of the phenomenon, the interest in the marine violence has increased.

Nowadays, the characteristic features of piracy are: its development on the areas with not stable social situation and international conflicts, economic crises, and the connection with the organized crime<sup>3</sup>. Modern technology, which is available for order and law guards, is also successfully used in the world by pirates. The victims of the violence acts are both small fishing vessels and coasters, huge oceanic cargos, passenger ships, and tankers. The actions taken

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<sup>1</sup> H. Mąka, *Piraci naszych dni*, Szczecin 1987, p. 7.

<sup>2</sup> K. Kubiak, *Piractwo i terroryzm morski. Nowe wyzwania dla bezpieczeństwa międzynarodowego*, [in:] *Wybrane problemy bezpieczeństwa międzynarodowego*, Wrocław 2006, p. 35.

<sup>3</sup> J. Machowski, *Piractwo w świetle historii i prawa*, Warszawa 2000, p. 280.

against troopships and other public service vessels were noticed. All of those unlawful actions can be divided into two groups:

- Pirate actions and
- The acts of the maritime terrorism<sup>4</sup>.

Current threat of maritime terrorism concerns, as mentioned above, eight water areas. According to this fact, it should be concluded that the sea robbery is a regional act. According to the area of the pirate actions we can enumerate:

1. Caribbean piracy, mostly connected with the drug – smuggling, attacks against yachts and smaller ships,
2. Piracy at the coast of Columbia, connected with the civil war taking place in this country and the activity of the drug cartels,
3. Harbor piracy in South America, Brazilian harbors where the robberies are the most common, are those which are extremely endangered,
4. Adriatic piracy, where attacks on yachts and smaller units take place – connected with Balkan Wars and smuggling (mainly cigarettes) from the Balkan area on the Italian market,
5. Boat piracy in the Gulf of Guinea,
6. Somali piracy,
7. Piracy on the coasts of India and Bangladesh,
8. Piracy in the Strait of Malacca, on the Indonesian water areas and on the South China Sea<sup>5</sup>.

The main aim of the actions taken by pirates is the lust for profit, gaining the loot (e.g. the cabin equipment, clothes, the crew's money, kidnapping the ship with the loading). That is why, they try, as long as it is possible, to omit the publicity and not to leave their trails.

On the other hand, the actions of the maritime terrorists, are aimed at gaining the interest of the media in order to make statements, manifestos, appeals and the maximum usage of the so called theatre effect. Maritime terrorism is planned and organized, violence act which results from political, religious and ideological, aimed against people, ships, harbor objectives, sea installations. What is more, it aims at forcing governments, societies or people, certain behaviors, concessions or financial benefits<sup>6</sup>. The main element differentiating these two forms of activity is the motivation of perpetrators of maritime robbery<sup>7</sup>.

It has to be noted that Republic of Poland is not a maritime power. It has not encountered piracy or maritime terrorism on a large scale. Nonetheless, Poland is an active member of NATO and EU and has to have stance, policy and has to transpose certain regulations into its legal order. Theoretically, it

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<sup>4</sup> K. Rokiciński, *Zagrożenia asymetryczne w regionie bałtyckim*, Warszawa 2006, p. 32.

<sup>5</sup> K. Kubiak, *Piractwo...*, op. cit., p. 12.

<sup>6</sup> K. Wardin, *Ocena zagrożeń bałtyckich strumieni transportowych działaniami terrorystycznymi*, Warszawa 2007, p. 21.

<sup>7</sup> K. Kubiak, *Piractwo...*, op. cit., p. 12.

should have problems with this phenomena as in the past Polish government never really cared about the issue. The question is whether it succeeded in developing a legal framework to combat acts of maritime piracy and terrorism.

## **2. Classical pirate crimes in Polish penal law**

International legal norms which codify the phenomenon of the maritime piracy have a direct influence on the penal legislation of the signatory countries of the proper contracts by standardizing the order of proper regulations, and then done juridical interpretation, in which the Republic of Poland is also included.

Because of the complexity of the phenomenon in terms of Polish penal law a wide range of crimes connected with the maritime piracy should be highlighted.

Perpetrators of crimes connected with the violence acts on the open sea and territorial waters – in case, when they will undergo the jurisdiction of Poland – they can commit crimes described in the XIX, XX, XXII and XXV chapters of Polish Penal Code of 1997<sup>8</sup> which are aimed against health and life, public safety, public order, and property, taking into account the fact that it is not the end of the list as it is not possible to predict all of the behaviors of the perpetrators of the sea robberies, however especially pirates, can fulfill such characteristics of a crime as:

- taking the possession of a ship (art. 166 of the Penal Code),
- placing a dangerous device or substances on the ship (art. 167 of the Penal Code),
- maritime piracy (art. 170 of the Penal Code),
- the participation in the organized group or association (art. 258 of the Penal Code).

It should be pointed out that the prohibited acts enumerated above can appear in both conjuncture of crimes and regulations.

Because of the aim of the description of piracy crimes in Polish criminal law, imposed by the author, the problems connected with the sea aspects of the prohibited acts will be considered.

### **2.1. The offence of taking control over the ship**

Committing a crime described in the art. 166 of the Penal Code can take place not only on the sea (understood as territorial sea, open sea and internal waters) but also on the land. The perpetrator takes control over the ship as a result of three behaviors. Ruse is the first one, which is based on deluding or using somebody's wrong conviction. Rape is the second one, it can be defined as the usage of the force which is so intensive that it may lead to overpowering

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<sup>8</sup> Dz. U. z 1997 r., Nr 88, poz. 553.

and eliminating a person from the resistance. The threat of direct rape is the third one, however it is not only an oral threat, but it can be expressed in any other form<sup>9</sup>.

The party of the crime can be everyone without regard for characteristic features or additional properties.

The crime is a deliberate crime. It can be committed only with direct intention, because the usage of the ruse, rape or the threat of the direct rape aims at taking control over a ship.

Moreover, the offence appears in the elementary type (§ 1) and two categorized types; the direct endanger of life or health of many people (§ 2) is the result of the first one, death of a person or occupational disorders of many people are the results of the second one (§ 3). The consequence of the act described in § 2 is the danger which is a threat for many people. It should be stated that the term ‘many’ expresses at least ten. However, it is not accepted by all representatives of the doctrine<sup>10</sup>.

The offence described in § 3 is an aggravated felony in terms of the type of the aggravated felony described in the § 2 and not of the elementary type described in the § 1. In terms of taking into consideration aggravation of the art. 166 § 3 of the Penal Code it has to be stated that taking control over a ship caused a direct danger for life and health of many people, and which resulted in death or an occupational disorder of many people.

The consequences of the crime described in the § 2 and 3 can be included in – according to the art. 9 § 3 of the Penal Code - the unintentional type only. According to this regulation, the party of the aggravated felonies through the consequences of the act can be based on intentionality – unintentionality or unintentionality – unintentionality<sup>11</sup>.

The offence included in the art. 166 § 1 is punishable on conviction from 2 to 12 years, so it can be considered as a misdemeanor. However, the first aggravated type, included in 166 § 2, is punishable on conviction from 3 years, which is considered to be a felony. § 3 is also considered to be a felony, which is punishable on conviction from 5 years or 25 years of imprisonment.

A ship can be understood as all the ships registered in Poland, according to the art. 115 § 15 of the Penal Code, drilling rigs on the Continental shelf. The term ‘ship’ was defined in the art. 2 § 1 of the bill of 18th September 2001 r. – Marine Code<sup>12</sup> according to which it is each floating device used for maritime navigation. On the other hand, a ship of the inland navigation is each floating device with or without power drive, including ferry, hydrofoil, hovercraft,

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<sup>9</sup> J. Piórkowska-Flieger [in:] T. Bojarski (red.), *Kodeks karny. Komentarz*, Warszawa 2012, p. 393.

<sup>10</sup> A. Marek, *Kodeks karny. Komentarz*, Dom Wydawniczy ABC 2006, p. 332.

<sup>11</sup> K. Frąckowiak, P. Jankowski, *Piractwo somalijskie a polskie prawo karne na przykładzie przestępstwa przejęcia kontroli nad statkiem wodnym*, „Studia Elckie”, 14(2012), p. 493.

<sup>12</sup> Dz. U. z 2009 r. Nr 217, poz. 1689 ze zm.

which is intended to use or used on inland waters to transport people or goods, pushing or towing, inspections, the supervision of save navigation traffic, trainings, sailing one's possession and life, fishing, doing the technical works, keeping the navigation routes or the exploitation of deposits of aggregates, doing sports and recreation, housing, offices, gastronomy, hotel or service station, and also as floating harbor, docks, or swimming pool – the art. 5 of the bill 1 point 1 of the bill of 21st December 2000 on inland navigation<sup>13</sup>.

## **2.2. The offence of placing the devices or substances endangering safety of the ship**

The typology of the offence of placing the devices or substances endangering safety of the ship is described in the art. 6 according to the art. 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation in Rome on 10th March 1988<sup>14</sup>.

According to the art. 3 of the bill 1 letters d and e of the Convention the offence is unlawful and intentional placing or causing the placement on the ship, using any means, a device or substances which may destroy the ship or cause a serious damage to it or to the loading on the ship, causing at the same time the threat for its safe navigation or decay or serious damage of the navigational marine device, and what is more, serious disturbance for its service, whether such an action can endanger safe navigation of the ship.

The party of the protection is life and health of a person or valuable property.

The regulation included in the art. 167 of the Penal Code, differently as in the art. 163 or art. 165 of the Penal Code, defines the criterion of the commonness of danger of property, replacing the category of huge property by the category of valuable property<sup>15</sup>.

Moreover, the size of endangered property was defined by its value: it has to be a valuable property, so one the size of which is defined in the art. 115 § 5 of the Penal Code. It is 200.000 PLN at the moment of committing a crime.

Furthermore, in the paragraph 2 danger of safety of people threatened by a prohibited act is described. An offence appears when in the result of the destruction or damage of the navigation device or making it impossible to use, it is possible to cause endanger of safety of people – at least two. A legislator, differently as in the previous paragraph, did not include property, independently of its value, together with the potential threat.

The article 167 of the Penal Code defines two forms of the prohibited behavior, these are:

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<sup>13</sup> Dz. U. z 2006 r. Nr 123, poz. 857 ze zm.

<sup>14</sup> Dz. U. z 1994 r., Nr 129, poz. 635.

<sup>15</sup> R. Hałas [in:] A. Grześkowiak, K. Wiak, *Kodeks karny. Komentarz*, C.H. Beck 2012, wyd. 1, Legalis z dn. 15.01.2014.

- placement on the ship or aircraft devices or substances endangering people or valuable property (§ 1),
- destruction, damage or causing the navigation device unusable or making it impossible to service (§ 2).

A causative act is based on placing, which should be understood as every transportation on board of the ships described in the article, devices or substances, despite the situation in which such a placement is the result of the specificity of the ship which is adapter to the transportation of the objects mentioned above. Placement of any device of substance means bringing them, in any possible way, on the ship which is not meant for their transportation or storage, and leasing on it<sup>16</sup>.

The destruction is based on annihilation of the device or on such a serious damage of its substance that it stops to exist. The destruction is so serious damage of goods that it is not possible to use the device according to its properties and purpose. Both its usage and repair are not possible.

What is more, damage means change of the properties or shape or structure of the device to such an extent that it cannot be no longer used according to its purpose, however it should be noticed that uselessness is not permanent and it can be removed by repair. The durability of loss of usage properties is the feature of damage of goods.

Making a device unusable is based on such a change in the structure of the device that not being damage or destruction, makes it impossible to use according to its purpose and features<sup>17</sup>. The device does not have the external features of damage and despite it, it is not usable. The durability of changes is not important, they can be both the ones that can be removed and the device will work again, and the ones which are permanent<sup>18</sup>.

Uselessness can be based, e.g. on removing the part which causes not proper functioning of the device<sup>19</sup>.

Obstructing service of the device consists of taking up such actions the result of which is that a person responsible cannot do it. It can be based on using violence directly against such a person or by such things as: tying somebody, or locking in s separate room which results in not having the Access to the device. Making impossible to use the navigation device means obstruction of using a device by a person or people having skills and knowledge necessary to service the device. Despite a ship also a navigation device is an actuator,

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<sup>16</sup> R.A. Stefański [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks karny. Część szczególna. Komentarz do artykułów 117-221*, t. I, publ. Legalis, 2010.

<sup>17</sup> D. Pleńska, O. Górniok [in:] *System prawa karnego*, t. IV: *O przestępstwach w szczególności*, cz. II, Wrocław-Warszawa-Kraków-Gdańsk-Łódź 1989, p. 441.

<sup>18</sup> B. Michalski, *Przestępstwa przeciwko mieniu. Rozdział XXXV Kodeksu karnego*, Komentarz, Warszawa 1999, p. 230.

<sup>19</sup> R. Góral, *Kodeks karny. Komentarz praktyczny*, Warszawa 2005, p. 236.

which is every mechanical system used for navigation, which is an element of the ship's equipment or which is located outside the board.

A crime can be committed only from intentional guilt, with both forms of intention. A navigation device is each device which enables and simplifies the navigation of ship or an aircraft. The device can be installed on or outside of the ship or aircraft, e.g., satellite navigation or a lighthouse.

In case of marine navigation devices used to measure time are the most important (chronometer, stopwatch), direction (compass, gyrocompass, direction finder, radio direction finder), speed or the distance covered (logs of different type), depth (depth sounding and echo sounder), the angles of height of celestial bodies and the angles of horizontal and vertical (sextant), meteorological values (barometer, air and water thermometer, hygrometer, anemometer) and radars, navigation radio sets (deca, Loran, Omega) and satellites (GPS) and ship's transmitting and receiving radio stations and the radio set of weather maps. Navigation signs are also in this group of devices, these are characteristic, easy to identify constructions placed in precisely defined places which warn against navigation obstacles, demarcating water routes and making the navigation easier. These are both permanent signs, e.g. located on land or built in the bottom with the part which protrudes above water (poles, lighthouses, ponds) and floating signs, anchored in certain places (floating poles, buoys, lightships)<sup>20</sup>.

Furthermore, it is an offence with criminal consequences. There are different results of the crime defined in § 1 and in § 2. The result in § 1 is the real endanger of safety of people or property, however the result from the § 2 is the potential endanger of safety of people and in case of destruction or damage or making the device unusable, also a change made in it. Verbal traits of the crime described in § 2 are defined by result. Placing the device or substance, described in § 1 must seriously endanger safety of people or property. It does not have to be direct danger. It is enough when at least two people are endangered; the regulation does not require bigger amount of people.

A party of this crime can be everybody, it is a common offence. The bill does not include additional features which perpetrator should have. This crime can be committed intentionally only, both as a direct intention and eventual.

### **2.3. The offence of 'piracy'**

According to the art. 170 of the Penal Code: 'Who armaments or adapts a ship which is intended to rob on the sea or takes service is subject to imprisonment from 1 to 10 years'.

The safety in maritime navigation and property is the subject of the protection according to the art. 170 of the Penal Code.

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<sup>20</sup> R.A. Stefański [in:] A. Wąsek, R. Zawłocki (red.), *Kodeks karny. Część szczególna. Komentarz do artykułów 117-221*, t. I, publ. Legalis, 2010.

The offence of piracy should be considered as *delictum sui Genesis* which includes preparatory acts to robbery (plunder) on the sea, defined in the art. 280 of the Penal Code<sup>21</sup>. To be more precise it is a preparation for piracy<sup>22</sup>.

Preparatory activities can be similar to those which appear while preparing to take the control over a ship. Provision with gun and ammunition should be emphasized here (e.g. cannons, machine – guns, launching – pads, so the means of combat and also protection devices and the equipment of the ship with appliances and equipment necessary for boarding of the chips attacked (e.g. ladders, platforms, hooks used for getting on the attacked ship). Moreover, as preparatory activities should be also considered those which are based on doing the construction changes in the ship which simplify piracy (e.g. those connected with the increase of the ship's speed, its maneuverability and load capacity<sup>23</sup>.

The differences between preparatory activities of the offence described in the art. 166 § 1 of the Penal Code and the one defined by the article 170 is based on the armament of the crew of the ship. In the first case, including the armament of the crew of the ship does not raise any doubts, however in the second one it is rather omitted<sup>24</sup>.

Additionally, the offence of the preparatory activities for piracy punishes the behavior of perpetrators which is based on taking up service on the ship which is supposed to be robbed. The main condition of punishment is every permanent or temporal enlisting which is connected with the perpetrators intention and making the robbery easier<sup>25</sup>. What is more, the subject party of the offence realizes not only the direct intention, but also eventual intention of a person who is taking over the service which is based on agreeing on being on duty on the ship (e.g. as a cook or orderly), whose crew is occupied with piracy.

What is more, it should be emphasized that a consequent robbery on the sea is not the condition under which a person will be punished for misdemeanor according to the art. 170 of the Penal Code. Which is why in case of piracy (e.g. open, territorial) it can appear a real conjuncture of the offence of piracy with the robbery defined by the art. 280 of the Penal Code.

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<sup>21</sup> See J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1935, p. 453; J. Pieracki, *Polskie prawo karne (Kodeks karny. Prawo o wykroczeniach. Przepisy wprowadzające)*, Lwów 1932, p. 260.

<sup>22</sup> M. Siewierski, *Kodeks karny i prawo o wykroczeniach. Komentarz*, wyd. VIII, Warszawa 1958, p. 392.

<sup>23</sup> See J. Piórkowska-Flieger [in:] T. Bojarski (red.), *Kodeks karny. Komentarz*, Warszawa 2012, p. 397.

<sup>24</sup> See R. Stefański [in:] M. Filar (red.), *Kodeks karny. Komentarz*, Warszawa 2010, p. 757. See also M. Kulik [in:] M. Mozgawa (red.), M. Budyn-Kulik, *Kodeks karny. Komentarz*, publ. LEX 2012.

<sup>25</sup> G. Bogdan [in:] A. Zoll (red.), A. Barczak-Oplustil, *Kodeks karny. Część szczególna*, t. II, Warszawa 2006, p. 432.

#### 2.4. The participation in an organized crime or criminal gang

In Polish Penal Code of 1997 the offence of participation in an organized crime or gang which was formed in order to commit a crime or a tax offence, was defined in the art. 258.

The parties of protection in the art. 258 of the Penal Code are safety of a country and its citizens and a public order as those goods are seriously endangered by the action taken by organized crimes and gangs<sup>26</sup>.

The subject party of the crime defined in the art. 258 § 1 of the Penal Code is based on the participation in an organized crime or gang aimed at committing a crime. Taking part means being a member of the group or gang (accepting their rules, fulfilling the orders of its members who are on higher places in the hierarchy and on the identification of a member with specific group or gang)<sup>27</sup>. Taking part includes planning crimes (meetings, agreeing on the structure of the group or gang), participation in crimes (also by gaining necessary means to reach the goal), the division of goods gained during the offence and taking action disabling the detection of perpetrators by proper executive powers<sup>28</sup>.

Moreover, it should be noticed that if we want to talk about an organized crime or gang, it has to consist of at least three people. The minimum number of members aims at differentiating the offence defined in the art. 258 of the Penal Code from the form of liability for the crime as complicity and the phase form of the offence – a preparation (by coming to an agreement with other person in order to commit a crime)<sup>29</sup>.

It is obvious that a felonious union has to have a certain structure (a supervision) and rules (of discipline and behavior)<sup>30</sup>. It is also worth noticing that the felonious union has a higher level of organization than a gang in which the main goal of its members is committing crimes without putting down constant roles, however with bigger putting down roles than in complicity. It is also worth noticing that when we want to categorize a certain group as a union, crucial thing is that whether the discipline of organization was planned (however, it is not important whether the discipline in the group was needed)<sup>31</sup>. What is more, equalizing a situation in which members voluntarily subordinate to a person with authority with a commitment which is a sense of being subordinate to

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<sup>26</sup> M. Kulik [in:] M. Mozgawa (red.), M. Budyń-Kulik, *Kodeks karny. Komentarz*, Warszawa 2012, p. 599.

<sup>27</sup> See also B. Gadecki, *Glosa do wyroku sądu Najwyższego z dnia 22 maja 2007 r.*, sygn. WA 15/07, „Prokuratura i Prawo”, 12(2008), p. 169.

<sup>28</sup> Z. Cwiąkański, *Przestępstwa przeciwko porządkowi publicznemu* [in:] A. Zoll (red.), *Kodeks karny. Część szczególna. Komentarz*, Zakamycze 2006, p. 1174-1175.

<sup>29</sup> J. Piórkowska-Flieger [in:] T. Bojarski (red.), *Kodeks karny. Komentarz*, Warszawa 2012, p. 672.

<sup>30</sup> *Ibidem*.

<sup>31</sup> More on this subject see K. Laskowska, *Teoretyczne i praktyczne podstawy odpowiedzialności z art. 258 k.k.*, „Prokurator”, 1(2004), s. 20-25.

someone and the consequences of denial of doing the commands, is not possible<sup>32</sup>.

A felony type of an offence was regulated in the art. 258 § 2 of the Penal Code and is based on taking part in a group or gang with military features or is aimed at committing a terrorist offence. It should be emphasized that appearance of two circumstances decides whether the gang is a military group or not. The first one is based on aiming at gang or group, and the second one committing crimes using or having guns by the members of the group or gang. Furthermore, it is not necessary for a person to owe or even have a contact with a gun to consider such a person a member of organized crime or gang. It is enough that other members of a group or gang use guns and a perpetrator accepts it and is aware of it<sup>33</sup>.

The next type of categorized crime was regulated by the art. 258 § 3 of the Penal Code. A party is a criterion of the crime. According to the art. 258 § 3 a person who creates or supervises a group or a gang the aim of which is committing a crime or a tax offence, bears responsibility. In case when perpetrator establishes an organization or gang with terrorist features, he or she uses all of the crime criteria described in the art. 258 § 4 of the Penal Code. Establishment of the organization or gang includes creating its structure, and looking for and recruiting the members. Leading an organized crime or gang is based on being a leader which is expressed mainly by having control over their functioning, e.g. creating aims of the organized crime or gang and giving certain orders their members. According to the art. 258 § 3 of the Penal Code, liable for prosecution is a person not only responsible for leading the whole group but also a person who supervises an important part of its work. However, a situation in which a person only passes on the orders of the leader is not considered to be leading the organized crime or gang aimed at committing a crime<sup>34</sup> (in such a case it is an accessory in the commission of a crime)<sup>35</sup>. All felonies described in the art. 258 of the Penal Code are included in the crime which can be perpetrated by any offender. They can be only intentionally committed (in case of § 1 and 2 of the Penal Code both the direct intent and recklessness are possible, however in case of § 3 and 4 of the Penal Code the direct intent only – creating and leading a group or gang is not possible in recklessness)<sup>36</sup>.

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<sup>32</sup> See M. Kulik [in:] M. Mozgawa (red.), M. Budyn-Kulik, *Kodeks karny. Komentarz*, Warszawa 2012, p. 599.

<sup>33</sup> *Ibidem*, p. 500.

<sup>34</sup> See M. Czyżak, *Sprawstwo polecające w zorganizowanej strukturze przestępczej*, „Prokuratura i Prawo”, 6(2004), p. 37.

<sup>35</sup> See J. Piórkowska-Flieger [in:] T. Bojarski (red.), *Kodeks karny...*, op. cit., p. 674.

<sup>36</sup> See M. Mozgawa (red.), M. Budyn-Kulik, *Kodeks karny. Komentarz*, Warszawa 2012, p. 600.

### 2.4.1. The voluntary disclosure

In the art. 259 of the Penal Code in which the possibility of voluntary giving up the membership in organized crime was described. ‘The voluntary disclosure’ included in this article appears under the set of conditions.

Firstly, a perpetrator has to voluntarily give up the membership in the organized crime or gang which are aimed at committing a crime or tax offence (the motivation of the perpetrator to make up a decision is not important here).

Secondly, revealing of all important circumstances of committed deed ahead of a proper organ is an indispensable element here (facts cannot be previously known for the investigative authorities and they have to be actual – which means that they have to allow to commit a crime whether they are useful in discontinuing criminal activity of the organized crime or gang). The perpetrator has to reveal all of the circumstances which he or she knows. It cannot be only a part of know for the perpetrator circumstances. At the same time, aware suppression of important circumstances excludes the possibility of using the voluntary disclosure included in the art. 259 of the Penal Code. Thirdly, a perpetrator is not subject to imprisonment, who voluntarily prevents the commission of the crime planned by the structure of the organized crime or gang – in such a case, when a perpetrator tried to prevent from committing a crime and he did not manage to do it, it is not possible to use the voluntary disclosure<sup>37</sup>.

### 2.5. A terrorist offence

The 11th September attacks in the United States made the authorities of many countries aware of the fact how dangerous terrorism can be. Heads of the member countries of the European Union decided that it is necessary to create regulations for legislators of the member countries in case of legal forms of fighting against terrorism. The effect of their work on the European level was the Council Framework decision on 13th June 2002 on combating terrorism (2002/475/WSiSW)<sup>38</sup>. One of the commitments which the decision imposed on the member countries was acknowledging in the national legislation certain deeds as terrorist offences. At that time Poland was a candidate to join the European Union and had to adopt its legal regulations to the European law. The realization of the Framework Decision mentioned above was the regulation of 16th April 2004 on changing the acts – the Penal Code and some of the other acts<sup>39</sup>.

The act entered into force on 1st May 2004 so at the same they when Poland became a proper member of the European Union. The subjective act for

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<sup>37</sup> Ibidem, p. 601.

<sup>38</sup> B. Woo, *A Growing Role for Regional Organizations in Fighting Global Terror*, „Helsinki Monitor”, 16(2005), nr 1, p. 88.

<sup>39</sup> Ustawa z dnia 16 kwietnia 2004 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (Dz. U. Nr 93, poz. 889).

the first time introduced to the Polish law the notion of the terrorist offence. The term – as a legal definition – was placed in the general part of the Code, in the art. 115 which includes the explanations of the acts in paragraph 20.

The content of the art. 115 § 20 of the Penal Code is as follows:

‘A terrorist offence is a prohibited act punishable on conviction with a maximum of 5 years, committed in order to:

- 1) A serious intimidation of many people,
- 2) Forcing public administration authorities of the Republic of Poland or other country or an institution of an international organization to abandon certain works,
- 3) The elicitation of serious disturbance in political system or economy of the Republic of Poland, other country or an international organization – together with the threat of committing such an act.’

The regulation above is a legal definition of the terrorist offence<sup>40</sup>. Considerations on this regulation should be started from the subjective part of the act, so from the type of guilt from which it can be committed. The expression of the art. 115 § 20 shows that this offence can be committed intentionally only, with a specific, directional intent, and the act itself is aimed at reaching certain goal<sup>41</sup>.

What is more, in order to commit a terrorist offence the appearance of two elements is necessary:

- commission or threat of commission of an act punishable on conviction with a maximum of 5 years imprisonment and
- taking actions with respect to at least one of the goals enumerated in the art. 115 § 20 of the Penal Code.

The theoretical effect of such a formulation of a subjective act is the possibility of qualification each deed as a terrorist offence, punishable on conviction with a maximum of 5 years imprisonment, committed with at least one of three aims described in the art. 115 § 20.

Furthermore, commenting on an objective act each of three aims alternatively included in the art. 115 § 20 should be analyzed. Indicated in the art. 115 § 20 ‘serious intimidation of many people’ is an inexact notion. Intimidation means eliciting fear, terror, and panic.

A serious intimidation appears when it is intensive, deep experience and has an essential influence on a victim. However, it is difficult to define an expression ‘many people’. It can be assumed that in this case it should be at least 10 people<sup>42</sup>.

With reference to the second point of the art. 115 § 20 of the Penal Code, it should be pointed out that the public administration body in the Republic of Poland includes both administration institutions and the institutions of Loar

<sup>40</sup> J. Giezek, *Kodeks karny. Część ogólna. Komentarz*, LEX 2007.

<sup>41</sup> A. Marek, *Kodeks karny. Komentarz*, LEX 2010.

<sup>42</sup> See J. Piórkowska-Flieger [in:] T. Bojarski (red.), *Kodeks karny*, op. cit., p. 24.

governments. These organs are: prime ministers, a voivode, a province marshal, police, court, and mayor, etc. According to the art. 115 § 20 a person or an institution administrating in the country are considered as public administrative body of the other countries. In terms of international organizations, we can easily include all of the intergovernmental organizations (e.g., UE, NATO, European Union, etc.). Some doubts appear when it comes to international non – governmental organizations, e.g., Greenpeace or Amnesty International. Some authors claim that these organizations are included in the art. 115 § 20, however such a point of view can raise doubts<sup>43</sup>. The decision on including non – governmental organizations in the art. 115 § 20 should be made each time by the organ which applies the law in each case.

Moreover, in terms of the third goal included in the art. 115 § 20 it should be accepted that the ‘disturbance’ mentioned in the article will be serious when it will cause serious disturbance or make impossible the proper functioning of the political system or economy.

It should be stated that a terrorist offence can be committed as an action and abandonment. What is more, such offences can be crimes and misdemeanors as the legislator did not included in the article the minimum threat punishable on a conviction. Moreover, the terrorist acts can be both crimes committed by any offender and individual.

Furthermore, the next conclusion which comes from the analysis of the art. 115 § 20 is the possibility of the classification of terrorist offences as formal and material ones. The example from the first group of the prohibited acts is the art. 120 of the Penal Code. According to this article, a perpetrator who uses weapons of mass destruction forbidden by the international law, is subject to at least 10 years of imprisonment, 25 years of imprisonment or life imprisonment.

There are many examples of terrorist offences with criminal consequences. Such an offence will be a behavior described in the art. 166 of the Penal Code, for example capturing a ship or an aircraft.

In conclusion, the set of inferences appears. The thesis that the content of the subjective regulation is too wide and provides many ways of its interpretation, seems to be justified. Theoretically, each act meeting the requirements included in the regulation should be treated as a terrorist offence. A wide range of acts exists, which theoretically could be considered as terrorist, despite the fact that it would not be logical. The aim ‘serious threat of many people’ is not specified criterion which makes the range even broader.

Introduction to the Polish Penal Code the notion of terrorist offence was the realization of the Council Framework Decision on 13th June 2002 on combating terrorism. It should be emphasized that the decision pointed out only a

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<sup>43</sup> See O. Górniok, *Przestępstwo o charakterze terrorystycznym w art. 115 § 20 KK*, PS 2004, nr 10, p. 3.

general aim, which countries should reach introducing changes in the counter-terrorist legislation. The way of introducing changes was left to the countries.

The definition introduced in the Polish criminal law is not as detailed as *acquis communautaire*. They are not the same as well. Doubts appear whether the range of designations of Polish definition is the same as in the definition created by the European law. It seems that the legislation technique which was used by the national legislator, is correct. According to the facts described above, the description of the terrorist offence from the art. 115 § 20 of the Penal Code, marking characteristics which can, but do not have to lead to broaden this definition in terms of the norms of the decision<sup>44</sup>.

Moreover, it should be stated that despite using the legislation technique mentioned above, the art. 115 § 20 of the Polish Penal Code in linguistic sense, is too exact reflection of the Council Framework Decision on 13th June 2002 on combating terrorism. It concerns, especially, goals of the terrorist offence. The act accepted by the Council has mainly administrative features, and its record are not adapter to the language used in the criminal law.

*De lege ferenda* should resign from hedging the terrorist offence around any levels of legislation threat. It seems that for the assessment whether a certain prohibited act of the perpetrator meets the conditions included in the art. 115 § 20 of the Penal Code, the complex analysis of the level of nuisance made by the merit court in terms of the elements included in the art. 115 § 2 of the Penal Code and material circumstances<sup>45</sup>.

### 3. Conclusions

To sum up, each perpetrators' behavior aimed against the security of navigation should be severely analyzed by law as a sign of penal – legal reaction of the government.

As it appears from the practice, the attempt to get on the ship or successful getting on the ship is the most common type of a terrorist offence. After getting on board, perpetrators try to rob the ship from any valuable objects, such as ropes, reserves, precious loading and ship's equipment. The attack is connected with taking the control over the ship. Pirates are often armed with knives, machetes and guns. Guns are used in order to intimidate victims, and in many cases it is used to make the psychological pressure even more intensive.

According to the claims included in this paper, perpetrators of the maritime offences in a situation in which they would be under the jurisdiction of the Polish law, can commit prohibited acts described in the Polish Penal Code of

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<sup>44</sup> C. Sońta, *Przestępstwo charakterze terrorystycznym w prawie polskim*, WPP 2005, nr 4, p. 21; J. Jurewicz, *Definicja przestępstwa o charakterze terrorystycznym – art. 115 § 20 kk*, [in:] *Przestępczość terrorystyczna. Ujęcie praktyczno-dogmatyczne*, red. K. Indeck, Poznań 2006, p. 121.

<sup>45</sup> *Ibidem*, p. 125.

1997, which are directly aimed against health and life, common security, public order, and property, however it is not closed set of this type of acts.

Concluding, we can assume that the phenomenon of piracy, which is a wide notion, has its reflection in Polish penal regulations described in the paper.

Detailed analysis of the characteristics which creates the offence of taking a ship into possession, putting in the ship dangerous devices and substances and piracy (respectively art. 166, 167 and 170 of the Polish Penal Code leads to a conclusion that they can be included in the standardized frames in terms of the definition of maritime offence, giving to the investigative authorities an effective penalization of this dynamic criminological phenomenon.

Moreover, the perpetrators of maritime offences, committed on both open and inland sea can also bare responsibility for a prohibited act included in the art. 258 of the Penal Code, so the offence of membership in the organized crime or gang. Pirates can take part in criminal events on open and inland seas as they are members of the organized crime or gang, they accept the rules of the govern structure, they carry out orders of the members of the group being on higher positions in the hierarchy and they identify with the specific group or association. The author claims that the fact that pirates use guns, the liability for prosecution on the basis of the classified act included in the art. 258 § 2 of the Penal Code, i.e., in view of participation in a criminal group or an armed association.

Furthermore, participation in a pirate organized crime does not exclude the possibility of using the voluntary disclosure, considered as encouragement for perpetrators. The article 259 of the Penal Code, in which the possibility of voluntary departure from the organized group or gang was included, provides – under certain conditions – avoiding liability for prosecution.

On the other hand, the action of maritime terrorists despite similar to pirates ways of activity would have more severe – penal – legal consequences. The penalization of the actions of perpetrators on the bases of Polish criminal law, would be based on offences classified by the author as piracy with the supplementation of the legal classification with an article 115 § 20 of the Penal Code.

### **Summary**

The author of the article made an attempt to thoroughly analyze prohibited acts aimed at penalization of the criminal actions closely connected with piracy.

Perpetrators of maritime offences committed on both open and inland sea – in case when they will be under the jurisdiction of the Polish law – can commit prohibited acts included in chapters XIX, XX, XXXII and XXXV of the Polish Penal Code of 1997, which are respectively aimed against health and life, common security, public order and property, of course this set of acts is

not completed. It is not possible to predict all of the pirates' actions. However, especially perpetrators (pirates), can – by their actions – fulfill such characteristic features of offences as: taking a ship into possession (art. 166 of the Penal Code), placement on the ship dangerous device or substance (art. 167 of the Penal Code), piracy (art. 170 of the Penal Code), participation in an organized crime or gang (art. 258 of the Penal Code).

Summing up, taking into account the author's aim of the description of offences in terms of piracy in Polish criminal law, only the problems connected with maritime aspects of prohibited acts were described.

**Key words:** piracy, taking control over a ship, preparatory activities, maritime robbery.