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Table of contents

ANALYSES AND COMMENTARIES

DIEGO BOLCHINI	
Terrorismo: quale modellazione del rischio? Alcune riflessioni preliminari	7
MARCO MAIOLINO	
An emerging and crucial change in the international security and defense community. Bringing the Socio-Cultural Perspective Back into the Intelligence Analytical Approach	21
MAURO PASTORELLO, MARIANNA TESTA	
Intelligence failures: between theories and case studies	49
URSZULA SOLER, MAREK GÓRKA	
Populism as an element of security policy. The 2016 Polish Anti-terrorism Law – a case study	69
MAREK GÓRKA, URSZULA SOLER	
Public sentiment after the terrorist attacks and their impact on the attitudes on Polish people	89

FOCUS: FOREIGN FIGHTERS

CLAUDIO BERTOLOTTI	
<i>Intelligence</i> e definizione della minaccia. Dal terrorismo convenzionale al “Nuovo Terrorismo Insurrezionale” di matrice islamica: <i>Foreign Fighter</i> e “lupi solitari come fattore di destabilizzazione interna agli Stati	111
DEBORAH BASILEO	
From ‘foreign fighters’ to ‘foreign <i>terrorist</i> fighters’: the evolution of terrorism	131
SERGIO SALAZAR VILLAMARÍN	
The Islamic State and terrorism: inner working of ISIL related to the role of <i>foreign fighters</i>	163

Populism as an element of security policy. The 2016 Polish Anti-terrorism Law – a case study

URSZULA SOLER, MAREK GÓRKA

Abstract

The European Union is facing the trouble which the US, after 9/11, had to deal with. How much safety are we ready to sacrifice for freedom and how many privileges and civil liberties can we give away for common safety, and finally: when is enough, enough? Europe is not as lavish with freedom slogans as the US, but we can assume that Europe is going to put an end to limiting civil liberties faster than Americans are. Reaction to terrorist attacks might be „a way towards populism”. Populism is especially visible during turning points or times of political crisis. Often the reaction of the state is inadequate to a terrorist attack. Almost every act of terrorism results in a strong reaction from the state. Usually, the first decision made is a halt in current law and order. Special rules and regulations become more significant.

The article suggests that both authoritarianism and populism are part and parcel of political culture and they appear in the face of national danger. What is more, it is not clear which actions and repression used by the authorities could be considered anti-terrorism tactics, and which mere populist and authoritarian actions. This article analyzes whether there is a relation between democracy and terrorism. In other words, greater fear of the unknown results in an increase of authoritarian feeling and leads to looking for controversial and sometimes radical, solutions. Apparently, the more democratic a country, the more dissatisfied a society is, which contributes to lesser understanding of the complexity of the process and to making judgments as well.

This paper analyze the Anti-terrorism Law, passed by the Polish Parliament in June, 2016. The said regulation is a way of a showing the authorities' will to manifest their consistent and uncompromising attitude towards threats. The Law intends to introduce: purchase of pre-paid cell phones only on presentation of an ID; holding in custody for 14 days those suspected of terrorism and also carrying out house searches at all times. However, some parts of this regulation seem to be colliding with the idea of a democratic state in which freedom is the superior value. The conflict, which has been caused while passing this Law, addresses two issues. The first one is a traditional conflict of values between security and liberty. The second one is a manifestation of a populist, and perhaps naive, belief that strict law will be an effective weapon against terrorism.

It is very difficult to eradicate populism. It is going to be present one way or the other in the public sphere. What is more, populism is so flexible that it can adjust to any doctrine and political conditions. It is worth to verify if do modern, democratic citizens of Europe need populist governments? The answer to this question lies in social behaviors, especially during election campaigns in which politicians present their fresh and pragmatic look. The remedy for populist slogans is knowledge; it is also an effective tool in understanding the complex socio-political events.

Keywords

Counterterrorism, security, surveillance, Patriot Act, Freedom Act, freedom, privacy

1. Introduction

The article suggests that both authoritarianism and populism are part and parcel of political culture and they appear in the face of national danger. What is more, it is not clear which actions and repression used by the authorities could be considered anti-terrorism tactics, and which mere populist and authoritarian actions. This article analyzes whether there is a relation between democracy and terrorism. In other words, greater fear of the unknown results in an increase of authoritarian feeling and leads to looking for controversial and sometimes radical, solutions. Apparently, the more democratic a country, the more dissatisfied a society is, which contributes to lesser understanding of the complexity of the process and to making judgments as well.

This paper shall analyze the Anti-terrorism Law, passed by the Polish Parliament in June, 2016. The said regulation is a way of a showing the authorities' will to manifest their consistent and uncompromising attitude towards threats. According to the government, passing of this Law was crucial before the NATO summit and World Youth Days held in Poland. The Law intends to introduce: purchase of pre-paid cell phones only on presentation of an ID; holding in custody for 14 days those suspected of terrorism and also carrying out house searches at all times. As a result, a few foreigners have already been expelled from Poland on grounds of being suspected of terrorist activity. However, some parts of this regulation seem to be colliding with the idea of a democratic state in which freedom is the superior value. The conflict, which has been caused while passing this Law, addresses two issues. The first one is a traditional conflict of values between security and liberty. The second one is a manifestation of a populist, and perhaps naive, belief that strict law will be an effective weapon against terrorism.

2. Security vs. liberty as a political challenge

The EU does not have much influence on security policy of its member countries as this policy is their own prerogative. The UK, after 2005 tragedy, is definitely going for a more strict level of society surveillance. As a proof, one can point at the British Prime Minister, Theresa May, who revealed a bill which allows Internet providers to keep a record of websites accessed by

British citizens¹. Such actions are socially acceptable in UK and this is unquestionably a proof of confidence in the state, which is clearly visible both in Great Britain and in France. The citizens show their trust in the state by giving away prerogatives and hoping these will not be abused politically to, for instance, eliminate the opposition.

By giving away a part of our freedom (to ensure personal safety) we assume that the state will protect us against terrorist attacks. Meanwhile, one aspect should be noticed in this heated debate. Despite heavy financing, law changes, giving the services more powers, if we take into consideration the lifestyles of western societies, means of communication and all the other ways of crossing the borders between countries, we cannot assume that it is impossible for another tragedy to happen².

Worth noticing is the fact that among Polish respondents there is no differentiation between Islamists (orthodox Muslims) and Muslims when giving answer to question on who carried out attacks in Paris or Brussels³. The terms „Islamists” and „Muslims” are being treated interchangeably. The French, however, use a more specific term when saying who the perpetrators were – they use the word „Jihadists”⁴. One of the Jihadist’s attributes is being Muslim, but it is the political aspect of being involved in ISIS which is important here. These were French and Belgian citizens, most of whom traveled through Syria and were trained there. The instigator, though, was ISIS itself which admitted to have organized those terrorist attacks.

The European Union is facing the trouble which the US, after 9/11, had to deal with. How much safety are we ready to sacrifice for freedom and how many privileges and civil liberties can we give away for common safety, and finally: when is enough, enough? Europe is not as lavish with freedom slogans as the US, but we can assume that Europe is going to put an end to limiting civil liberties faster than Americans are.

„Passenger name record” case should be mentioned here; in short the issue concerned keeping and giving away personal data of people travelling

¹ A. Griffin, *Theresa May could launch huge attack on privacy and internet surveillance protections as prime minister, campaigners warn*, „The Independent”, July 12, 2016 [in:] <http://www.independent.co.uk/life-style/gadgets-and-tech/news/theresa-may-prime-minister-privacy-mass-surveillance-snoopers-charter-attack-warning-a7133431.html> (reading date: December 12, 2016).

² A. Tsoukala, *Democracy in the Light of Security: British and French Political Discourses on Domestic Counter-Terrorism Policies*, „Political Studies”, 2006, vol. 54/3, p. 607-627.

³ *The threat of terrorism*, (2016) The Communication Research Center for Public Opinion, [in:] http://cbos.pl/SPISKOM.POL/2016/K_127_16.PDF, (reading date: December 12, 2016).

⁴ J. Lichfield, *How much longer before France spirals into hatred?*, „The Independent”, July 17, 2016, [in:] <http://www.independent.co.uk/voices/how-much-more-can-france-take-before-it-spirals-into-hatred-a7140686.html>, (reading date: December 12, 2016).

to or from EU by air or sea⁵. The Americans have a similar system but in Europe it raises many questions. The EU Parliament is having a hard time passing this law. There is also a problem with access to the system comprising of many different agencies. Until recently, the agencies which needed access to the system had to have many more permissions. The new regulation aimed at making it easier to access the system, making it almost automatic. The civil liberties defenders argue that such unlimited access for many agencies is unnecessary because their actions would resemble trying to „find a needle in a haystack”⁶.

Also, there appears a question of what other data can be found in such a system – for instance – who travels a lot and with whom. It might be a serious threat to people’s privacy. An example of this might be the fact that the system gathers information and notifies the appropriate agencies even when a person buying a plane ticket wants to have a halal or kosher meal during his/her flight. A lot of, seemingly harmless, data can be used as additional information on a given citizen.

So, once again, the question of what should be done to increase the effectiveness of special services arises. How much privacy are we willing to sacrifice and how to improve the flow of information between particular countries (which is quite troublesome for EU countries). Up until today, it has not been working well, as far as some countries are concerned. Before the terrorist attack on 13th November, 2015, Paris, there was a huge problem with information exchange between France and Belgium. It is worth mentioning that the attack was planned in Brussels and the terrorists used the poor condition of Belgium’s special services to their advantage.

Therefore, one could ask about the proportion and selecting adequate means to what had happened. American experience is very important here. The introducing of „Patriot Act”, and many other solutions, led to many questions which remain unanswered until today in the US. American citizens are divided in opinions on the actions of George W. Bush and his administration. They seem to believe that the former US president did as much harmful things as he did good, and the legacy of his presidency still is a matter of many discussions and questions⁷.

⁵D. Lowe, *The European Union’s Passenger Name Record Data Directive 2016/681: Is It Fit for Purpose?*, „International Criminal Law Review”, 2016, vol. 16/5, p. 856.

⁶S.K. McCluskey, *The Crime of Being Suspicious: British Counter-Terrorism Legislation and the History of Discriminatory Preventative Laws in the United Kingdom*, „Rutgers Race and the Law Review”, 2016, vol. 17.1, p. 131-165.

⁷B. E. Whitaker, *Exporting the Patriot Act? democracy and the ‘war on terror’ in the Third World*, „Third World Quarterly”, 2007, vol.28/5, p. 1017-1032.

American experience is important, although we need to remember that there was a continuation of previous administration's policy, power and safety measures in the US. President Obama inherited all the regulations and safety policy. Snowden revealed the scope of surveillance which had already been conducted during Obama's presidency. The president had to know about that. American law does not allow phone tapping its citizens without a warrant, but still permits foreigners (including other countries' leaders) to be tapped⁸.

In 2015, as a result of a dispute over the scope of legal surveillance, US Congress did not extend the USA „Patriot Act” which was eventually terminated. Instead, on 2nd June, 2015, another law was passed – the USA „Freedom Act” returned many privileges to Secret Service. This new regulation prohibits, however, gathering information on citizens' phone calls and only allows checking whom a given subscriber has been calling⁹. NSA cannot get access to telephone billing anymore – this can only be kept by telecommunications companies and the authorities can only access it with the permission of a federal court. The difference between those two Acts also concerns tracing back information. Under the „Patriot Act”, if the suspected person had been engaged in actions against the state, it was possible to trace their activity a few years back, while under the „Freedom Act” it is only possible to check their future activity¹⁰.

In the face of danger, democratic governments have or introduce extraordinary privileges. The aim of this is minimizing terrorist threats. However, in order not to transform democracy into authoritarianism, the authorities should obey the law so the safety enacting institutions would not abuse their powers.

⁸ T. Ebenger, *The USA Patriot Act: Implications for Private E-Mail*, „Journal of Information Technology & Politics”, 2008, vol. 4/4, p. 47-64; Ch. P. Banks, S. Tauber, *U.S. District Court Decision-Making in USA Patriot Act Cases after September 11*, „Justice System Journal”, 2014, vol. 35/2, p. 139-161.

⁹ A. Napolitano, *Freedom Act Is Just Patriot Act Light*, „The Ledger”, June 13, 2015; B. Forsyth, *Banning Bulk: Passage of the USA Freedom Act and Ending Bulk Collection*, „Washington and Lee Law Review”, 2015, vol. 72/3, p. 1307-1341.

¹⁰ M. DeBonis, E. Nakashima, *Vote on NSA bill down to the wire*, „The Washington Post”, May 24, 2015, p. A.1.

3. Increased populism level as one of the consequences of terrorist attacks

Terrorist attacks aim at causing panic and fear among people and their result is a natural need for quick, effective and also radical solutions. There are many comments on the failure of multiculturalism. What is happening is the consequence of a clash of two different worlds. Terrorist attacks might contribute to an increased popularity of populist organizations¹¹. Terrorist attacks are accompanied with frequent questions about the time, place and reason why such terrible acts took place. These are reactions to dramatic events. However, the usual answers are emotional, because it is hard to understand the complexity of modern threats.

The starting point of further analysis of populist mechanisms in public sphere (especially in the context of fear) are terrorist attacks. A very interesting, yet tragic, comparison which shows different styles of understanding safety policy are March, 2016, Brussels and November, 2015, Paris events. It is here where one may see some faults of the institution and law systems in terms of safety.

After the attacks in Paris, the trail was supposed to lead to Molenbeek, a district in Brussels. It is a district that has been nicknamed hotbed of Jihadists, a district of poverty and Muslims from Morocco; a district of low repute¹². The critical remarks, however, were aimed at local governments that have been rather unwilling towards actions of radical Islamists, who continued to recruit their Jihadists for wars in Syria and Iraq on the street of Brussels. Local governments ignored that fact and were counting on gaining support in local elections from the immigrants. Moreover, there were places where Belgian police forces did not even bother to go. It is worth mentioning that the mastermind of the November, 2015, attacks in Paris was raised in Molenbeek¹³.

Another important fact is that Belgium, unlike France, went for civil liberties rather than against them. The law and regulations in France have been toughened several times, whereas in Belgium (until recently) between 11 p.m. and 5 a.m. special squads could not enter a house in which a potential

¹¹ D. Wright-Neville, D. Smith, *Political rage: terrorism and the politics of emotion*, „Global Change, Peace & Security”, 2009, vol. 21/1, P. 85-98.

¹² A. Higgins, *Belgium Confronts the Jihadist Danger Within*, „New York Times”, January 25, 2015, p. A.6.

¹³ T. Hume, *Brussels raids: Police hit Molenbeek, area at heart of Belgium's jihadist threat*, „CNN Wire Service”, November 15, 2015; S. Lefebvre, „The Belgians Just Aren't up to It”: *Belgian Intelligence and Contemporary Terrorism*, „International Journal of Intelligence and CounterIntelligence”, 2017, vol. 30/1, p.1-19.

terrorist resided. After the Paris attacks in November it all began to change. Now Belgian police squads may be fully operational 24h¹⁴.

Another reason for attacks in Belgium was the poor institutional condition of the state. Brussels is divided into 19 administrative districts so it is difficult to maintain uniform policy towards radicals. What is more, there are 6 police departments in Brussels, and each department works separately. It is hard then to coordinate actions and exchange information effectively in the face of terrorist threats¹⁵. This gives a rather grim and full image which constitutes the answer to the question why that had to happen eventually.

The above-mentioned mistakes, negligence and weaknesses in safety policy can quite easily become an argument for populists. Populists look at the social reality dichotomously: they divide it into friends and foes. In other words, they divide it into „us” and „them”. Of course, they emphasize they are “our” leaders and that they have a monopoly on the solutions to the biggest problems. What can be observed as well is the authoritarian and dominating leadership which goes hand in hand with opportunism¹⁶.

The analysis of populism requires great caution as this phenomenon is amazingly popular in democracy; one might even say it is a kind of a side effect of democracy and a manifestation of weakness of political system. Some authors of the definition of populism describe it as „using political, economic or social slogans, of emotional and irrational character, addressing the needs for simple solutions to difficult problems, which are easily accepted by majority. (...) A populist eagerly uses signs of social discontent in order to become a spokesperson of the masses”¹⁷. In reality, it is difficult to tell exactly which politician is a populist because there are not many politicians who do not flatter their voters, especially during electoral campaigns. This thought may prompt further remarks on populism as a vital part of democracy.

Researchers attempt to deal with this phenomenon. They enumerate characteristic features of this political attitude which aims at defining populism. Therefore, it deals with „anti-elitism” – it means that populist politicians call upon fight against the elites. What is more, populist programs are collections of generalities, utopian and contradictory slogans with means insufficient for

¹⁴ N. De Visser, *How Belgium Became a Terrorism Hotbed: For the past year, terrorist plot after terrorist plot has been tied back to Belgium. How did this tiny nation become ground zero?*, „The Daily Beast”, November 15, 2015.

¹⁵ J. Dettmer, *Belgium Promises to Revamp Security While Bridling at Criticism*, „Voice of America News”, November 20, 2015.

¹⁶ A.A. Kallis, *Fascism, ‘Charisma’ and ‘Charismatisation’: Weber’s Model of ‘Charismatic Domination’ and Interwar European Fascism*, „Totalitarian Movements and Political Religions”, 2006, vol.7/1, p. 25-43.

¹⁷ *Populism*, Lexicon of Political Science, eds. A. Antoszewski, R. Herbut, Wrocław 2002, p.332.

goals. So, populists usually do not have a coherent ideology but only a simple image of a target social order. On the one hand, they say they believe in the people and their creative part but, on the other hand, they worship their charismatic leader and do not use democratic procedures in their own party ranks¹⁸.

Populism is especially visible during turning points or times of political crisis. Often the reaction of the state is inadequate to a terrorist attack. Almost every act of terrorism results in a strong reaction from the state. Usually, the first decision made is a halt in current law and order. Special rules and regulations become more significant. Very often the conflict is being escalated. Subconsciously, the guilty are being sought; negative features are being ascribed to whole social groups – just as it is happening with Muslim society, which is being accused of terrorism. It leads to more demand for security and protection. The state addresses these needs with even more serious and special means (including illegal ones)¹⁹.

Executive order on immigration issued on 27th January, 2017, by Donald Trump, illustrates the emotions which constitute security policy. This executive order prohibits citizens of seven countries (mostly Muslim countries: Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen) from entering the US and suspends accepting Syrian refugees²⁰. However, nobody can be deprived of their rights only because he/she was born in a certain place, is of different faith or has simply trouble in life. It is written so in the constitutions of European countries and in the US Constitution. Therefore, a constitutional regulation occurs to be a tool which stirs up a conflict rather than ensures safety.

Taking into consideration fear of the society, which is a natural and inevitable reaction to terrorist attacks, one can assume that many governments will use populist slogans more willingly because the atmosphere of fear facilitates their use and acceptance. With no objection from the public opinion it will be easier to pass controversial anti-terrorist laws. Most European countries set terrorist threats as their priorities as far as safety policy is concerned. And these are the views of politicians that constitute the main issue of the political dispute along with the polarization of economical and social situation. Each

¹⁸Y. Stavrakakis, I. Andreadis, G. Katsambekis, *A new populism index at work: identifying populist candidates and parties in the contemporary Greek context*, „European Politics and Society”, November 29, 2016, p. 1-19.

¹⁹G. Andréani, *The 'War on terror': Good cause, wrong concept*, „Global Politics and Strategy”, 2004, vol.46/4, p.31-50.

²⁰S. Raghavan, L.Loveluck, K. Sieff, *Trump's order to ban refugees and immigrants triggers fears across the globe*, „The Washington Post”, January 26, 2017, https://www.washingtonpost.com/world/trumps-impending-bans-on-refugees-and-immigrants-triggers-fears-globally/2017/01/26/c698e67e-e33d-11e6-a419-eefe8eff0835_story.html (reading date: February 01, 2017).

tragic event determines the socio-political feeling making the authorities act in a specific way. Summing up, fears determine the actions of politicians and societies creating thus populist attitudes.

Reaction to terrorist attacks might be „a way towards populism”. A fine example of this is Marine Le Pen’s National Front, which succeeded in municipal elections in France, 2015. Its success was based on fears of terrorism, immigrants and bad economic condition of the country. The National Front became a threat which current political elites cannot ignore anymore. The right-winged populism can threaten democracy. It uses national and extreme slogans and criticizes capitalism thus gathering masses of voters. It uses growing uncertainty among the people who believe that life has become too complicated and they cannot overcome the crisis. The right-winged populism and radicalism is often considered a fad. But the examples of Le Pen and Geert Wilders – the leader of anti-immigrant and Eurosceptic Party for Freedom (PVV) – show that populists are becoming stronger and they will be present in politics for a longer period of time. The right-winged populism and radicalism may become a threat to the western political system and thus to western democracies²¹.

The ideological profile is getting muddled more often. This strategy makes the politics acceptable ideologically for both left and right-winged citizens. We can come to a conclusion, then, that it is very difficult to eradicate populism. It is going to be present one way or the other in the public sphere. What is more, populism is so flexible that it can adjust to any doctrine and political conditions. Its slogans are far from the truth and often they are just lies. Communication with the citizens becomes merely a use of stereotypes because those appeal to the imagination of the masses. Each politician tries to present himself/herself as the representative of the nation. Politicians put emphasis on problems and issues which whip up enthusiasm. They try to prove they are on the ordinary people’s side. They blur the line and do not glorify the elites not to lose popularity. Populism is a domain of media-democracy which facilitates using simple and effective, though emotion-based, solutions.

4. Polish Anti-terrorism Law, 10th June, 2016

This Law is the first of its kind in Poland. It was enacted before NATO Summit and World Youth Day held in Poland in 2016. The main aim of the

²¹ N. Gutteridge, *Europe’s right-wing populists to hold EU counter-summit on Trump’s first day as President*, „Express”, January 20, 2017; D. Aaronovitch, *Right-wing populists have no chance of power: From Ukip to Le Pen and Wilders, the supposed surge of the anti-establishment parties is being vastly overstated*, „The Times”, February 09, 2017, p. 31.

Law is increasing the effectiveness of Polish anti-terrorist system and, most of all, increasing the safety level of Polish citizens. It aims at improving coordination between security services and also facilitating their operation in case of terrorist attacks.

5. ABW (Internal Security Agency – ISA/ABW) and its new rights

The new Law gives ABW new possibilities. It enhances security service and turns ABW into a „Super Service”. According to the new Law, Head of ABW is the coordinator of anti-terrorist policy and is responsible for preventing terrorist attacks. Minister of the Interior and Administration is responsible for preparing for such events, reacting against them and ensuring there is enough resources for normal operation of the Agency. The innovation is the fact that Head of ABW is in charge of all the security services and he/she can coordinate their work. It might prove to be harmful and ineffective because those services compete with each other and that might cause chaos.

ABW plays a major role in fighting against terrorism; it coordinates the investigations.

Article 5.1. In order to perform the tasks referred to in Article 3 Paragraph 1 hereof, the Head of ABW coordinates the analytical and information Activities undertaken by the special services referred to in Article 11 of the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency, as well as the exchange of information transferred by the Police, Border Guard, Government Protection Bureau, State Fire Department, Customs Service, General Inspector of Financial Information, General Inspector of Revenue Control, Military Gendarmerie and the Government Security Centre, regarding threats of a terrorist nature, as well as data about the persons referred to in Art 6 Paragraph 1, by collecting, processing and analyzing these data²².

CAT ABW (ISA's AntiTerrorist Center) gained a better position by getting access to all databases of ABW. ABW will keep a record of people suspected of terrorism and will have access to data and information gathered in public institutions such as NFZ (National Health Service) or National Bank of Poland. This will allow the security services to access confidential information and keep a record of people suspected of terrorism.

²² *The Law of June 10, 2016 on anti-terrorist operations in Poland*, Article 5§1, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000904>, (reading date: October 10, 2016).

Article 38.8. “Article 34a. 1. Within the remit of its competence, the ABW may, if it is necessary for the effective prevention of offences specified in Article 5 Paragraph 1 point 2, or for the detection or identification of perpetrators and obtaining of evidence, use the information processed by banks and which are a banking secret, as well as information on the agreements on securities accounts, agreements on money accounts, agreements on insurance policies, and other agreements referring to the trading in financial instruments, provision of payment services or agreements concluded with investment fund contributors, and in particular the data processed by entitled entities pertaining to persons who have concluded such agreements²³.”

ABW will be able to keep foreigners under surveillance, including refugees. Head of ABW can keep foreigners under surveillance with no warrant up to 3 months.

Article 9.1. In order to recognise, prevent and combat offences of a terrorist nature, the Head of ABW may order the following covert activities to be undertaken, for a period no longer than three months, with regard to a person who is not a citizen of the Republic of Poland, and with regard to whom there is a fear of possible involvement in terrorist activities:

- 1) obtaining and recording the content of conversations by technical means, including with the use of telecommunication networks;
- 2) obtaining and recording the content of the image and sound of persons from premises, means of public transportation and other venues other than public spaces;
- 3) obtaining and recording the content of correspondence, including correspondence kept by means of electronic communication
- 4) obtaining and recording the data contained in IT data carriers, telecommunication end devices, as well as information and tele-information systems;
- 5) obtaining access and controlling the content of consignments²⁴.

Polish security services can monitor foreigners' phone calls up to 3 months with no warrant. They may also check their e-mails. They will also be able to block websites, ban public gatherings and mass events. The new Law also suspends the right to property in times of terrorist threats – security services will have the right to use private property (apartments, houses and cars). The

²³ *Ibidem*, Article 38§8, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000904>, (reading date: October 10, 2016).

²⁴ *Ibidem*, Article 9§1, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000904>, (reading date: October 10, 2016).

new Law also speaks of hotels, malls, churches and sports halls as of strategic objects which can be used by ABW.

The new Law allows to keep a person suspected of terrorism in custody up to 14 days (with the court's consent). Until recently it was only possible to keep a person in custody up to 48 hours, and the court had additional 24 hours to examine the case. If there were no charges for the person in custody, he/she had to be released – the new Law gives additional 14 days.

Article 26.2. In the case referred to in Paragraph 1, the court may, upon a motion of the prosecutor, apply the measure of remand custody for a period no longer than 14 days. The independent condition for remand custody is the justifiable demonstration of the commitment, attempt or preparation of an offence of a terrorist nature²⁵.

The authors of the new Law wanted to remove all obstacles while acting against terrorism and therefore introduced a regulation allowing house searches and detainment 24h a day, even between 10 p.m. and 6 a.m.; before the new Law was passed this was impossible.

The new Law also allows Head of Ministry of the Interior and Administration to expel foreigners immediately if they pose a threat to the state. The expelled foreigner can lodge an appeal while remaining abroad.

Article 48.2. The Minister competent for internal affairs shall, upon a motion of the Commander in Chief of the Police, Head of the Internal Security Agency or the Head of the Army Counter-Intelligence Service, issue a decision on the expulsion from the territory of the Republic of Poland of an EU citizen, or family member who is not an EU citizen, with regard to whom it is feared that s/he may be involved in terrorist or espionage activities, or who is suspected of committing one of these offences. The decision referred to in Paragraph 1 is subject to immediate execution²⁶.

Additionally, mass events and public gatherings can be banned temporarily. This has to be done according to certain security levels and procedures in case of terrorist attacks.

Article 21.1. Upon the introduction of the third or fourth level of alert, the minister competent for internal affairs may, on his/her own initiative or

²⁵ *Ibidem*, Article 26§2, available at: <http://isap.sejm.gov.pl/DetailsServlet?id= WDU20160000904>, (reading date: October 10, 2016).

²⁶ *Ibidem*, Article 23§1, available at: <http://isap.sejm.gov.pl/DetailsServlet?id= WDU20160000904>, (reading date: October 10, 2016).

the initiative of the Head of ABW or the Commander in Chief of the Police, introduce a ban on public gatherings or mass events in the area or the facility subject to the level of alert, if such a measure is necessary for the protection of the lives and health of people or public safety²⁷.

The new Law allows drones to be shot down; also terrorists can be neutralized with the so-called „sniper shot”, which was not allowed by Polish law until recently. The police were supposed to warn the suspect by saying “Freeze!” before taking a shot; now, in a critical situation, they are not.

Article 48.2. As part of the counter-terrorist activities, should it be necessary to counteract the direct, unlawful, and sudden attack against the life or health of a person, and when the use of a firearm in a manner inflicting the least possible damage is insufficient, and counteracting such an attack in any other manner is impossible, it is admissible, taking into account all the circumstances of the event of a terrorist nature and all possibilities of counter-terrorist activities, to use a firearm against the person committing the attack, which may result in the death or the immediate threat to this person’s life or health. Such use shall be referred to henceforth as „special use of a weapon”²⁸.

Of course, even if a police officer saves somebody’s life, there is the perspective of a long process of explaining whether the use of weapon was justified or not. Another problem is identifying the perpetrator, because very often it is not until that „sniper shot” when the person is correctly identified as a terrorist, and the shot is supposed to prevent a tragedy. Who can tell that there was a terrorist attack in the first place? Most often it is the job of a court, after the fact.

The new Law also introduces amnesty for the people who will inform the security services about a planned attack and decide to cooperate with ABW. Pre-paid telephone SIM cards, which were considered „anonymous” until recently, will have to be registered. To buy them you need to show an ID or, if you are underage, ask your parents to buy them for you.

Article 43. The following changes are introduced to the Act of 16 July 2004 – Telecommunication Act (Journal of Laws of 2014, item 243, with later amendments²¹):

²⁷ *Ibidem*, Article 21§1, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000904>, (reading date: October 10, 2016).

²⁸ *Ibidem*, Article 48§2, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000904>, (reading date: October 10, 2016).

- 1) after Article 60a, Article 60b is added in the following wording:
 “Article 60b. 1. The subscriber, with the exclusion of the subscriber using the publically available telephone services provided by means of a public phone or by dialing the access number to the network of the services provider, provides the service provider with at least the following data:
- 1) in case the subscriber is a natural person:
 - a) name and surname,
 - b) PESEL number, should the subscriber have one, or the name, series number and the number of the document confirming the person’s identity and, in the case of a foreigner who is not a citizen of a member state or of the Swiss Confederation – the passport number or number of the residence card²⁹

Associating each telephone number in Poland with a certain subscriber’s name was a necessity, according to the current authorities. However, in a very short time, the Internet was full of ads offering already registered SIM cards for sale. The Anti-terrorist Law does not prohibit selling or buying registered SIM cards, so it is legal. Legislators did not foresee that the Law can be omitted. The opponents of the new Law argued it is a threat to citizens’ privacy and might be a tool for illegal surveillance. They also said that real terrorists will have no trouble finding people who could register SIM cards for them.

Shortly after enacting the new Law, on the Ministry of the Interior and Administration website appeared an announcement saying that the pre-paid SIM card regulation was a success. The statistics were supposed to be a proof that the number of calls from supposed bombers was significantly reduced and thanks to that the security services could deal with serious problems.

Therefore, it is debatable whether the Anti-terrorist Law is effective or not. The regulation on registering pre-paid SIM cards is not a Polish invention, though. It is present in some European countries as well, e.g. Germany in order to avoid the risk of anonymity.

6. The faults of Anti-terrorist Law

The aim of the Law is making the state strong against modern threats. Therefore, regulations should be effective and allowing quick operation. But in the very initial phase of the bill some of the regulations were ambiguous. Many NGOs that deal with citizens’ rights protested against the bill. Amnesty International said that the bill was harmful to privacy of ordinary people. Po-

²⁹ *Ibidem*, Article 43§1, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000904>, (reading date: October 10, 2016).

land tops the list of countries in which security services have most privileges. Draginja Nadaždin, head of Amnesty International Poland, says that safety measures in Poland limit people's freedom of speech and act against the rules of law; often security services are not subject to control³⁰. Other organizations, which also analyzed the laws on security services, confirm this information, for instance: Panoptikon Foundation – they believe that the new Law is not an answer to the question of terrorism. They also think that current regulations harm mainly ethnic and religious minorities³¹.

Piotr Niemczyk, former UOP (Office for State Protection) agent, says that current regulations might limit civil liberties so much that it can turn against anti-terrorism actions. They were officially questioned by The United Nations Human Rights Committee which said they were against The International Covenant on Civil and Political Rights adopted by the United Nations General Assembly and ratified by Poland in the communist era³².

The Law was also strongly criticized by a Board of Ministry of Digital Affairs. The experts say that ABW agents have too much access to foreigners' e-mails and phone calls. They emphasize the lack of effective way to make the citizens register pre-paid SIM cards. AIS's access to NHS database is also debatable³³.

Public debates resulted in many questions about deleting the databases. Such personal information as fingerprints, face images, DNA profiles, political views, ethnic background, religious beliefs, labor unions membership, health condition, addictions or sexual preferences of foreigners are supposed to be kept undeleted³⁴.

³⁰ *Poland: Law Anti-Terror threat to human rights*, [in:] <https://amnesty.org/pl/polska-ustawa-antyterrorystyczna-zagrozeniem-dla-praw-czlowieka> (reading date: December 20, 2016).

³¹ *A Surveillance Act and counterterrorism – check how they work*, [in:] <https://panoptikon.org/wiadomosc/ustawa-inwigilacyjna-i-antyterrorystyczna-sprawdzamy-jak-dzialaja> (reading date: October 14, 2016).

³² *The law, which does not improve security* [in:] <http://www.institutobywatelski.pl/25597/komentarze/polityka-komentarze/ustawa-ktora-nie-poprawi-bezpieczenstwa> (reading date: November 22, 2016).

³³ *What is the law „anti-terrorist”?* [in:] <https://panoptikon.org/wiadomosc/czego-dotyczy-ustawa-antyterrorystyczna>, (reading date: November 22, 2016).

³⁴ *Commissioner for Human Rights complains anti-terrorism law to Constitutional Tribunal*, [in:] <https://www.rpo.gov.pl/pl/content/rzecznik-praw-obywatelskich-skar%C5%BCy-ustaw%C4%99-antyterrorystyczn%C4%85-do-trybuna%C5%82u-konstytucyjnego>, (reading date October 10, 2016).

7. Is the Anti-terrorist Law a threat to democracy?

What is the problem with the Law, then? Does it really limit civil liberties and rights? It appears to be a clearly constitutional issue. While reading the Law, we can learn about the fact that the state of emergency can be declared by head of an intelligence agency without any scrutiny on behalf of democratic mechanisms.

Article 21. 1. Upon the introduction of the third or fourth level of alert, the minister competent for internal affairs may, on his/her own initiative or the initiative of the Head of ABW or the Commander in Chief of the Police, introduce a ban on public gatherings or mass events in the area or the facility subject to the level of alert, if such a measure is necessary for the protection of the lives and health of people or public safety³⁵.

In other words, decisions of head of ABW are completely unauthorized. It can be stated, then, that the Law holds an article which stands against the Constitution and it allows declaring the state of emergency through back door. Whether this happens or not is an open question. Is the above mentioned enough not to trust the government or maybe there is no reason to do so? Of course, the state of emergency is a last resort tool. It was declared in France, due to terrorist attacks, in November, 2015. It gives the authorities additional rights to search people, introduce no-go zones and search houses also during the night³⁶.

French authorities say that the state of emergency helped in fighting against Jihad terrorists. In this context, the Polish Anti-terrorist Law might become useful. The problem is that nobody can be sure as to what extent this Law is going to be used because there are no regulations which describe the limits of power exercised by the ruling party.

Since 1989 there has been a heated debate in Poland as to what democracy really is. The ruling party claims that democracy is when majority choose the ruling party and then the ruling party introduces changes not caring about the society's will. The problem is that Polish democracy, which is often juxtaposed with political systems present in Russia, Belarus or Turkey, is often only present at the ballot box or during the election campaign. The period of time between elections is ignored. However, democracy is not only about ruling

³⁵ *Ibidem*, Article 21§1, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000904>, (reading date: October 10, 2016).

³⁶ J.J. Gandini, 'A spider's web across the nation'; Towards a permanent state of emergency, „Le Monde Diplomatique”, January 01, 2016.

in the name of majority; it is, above all, about limiting any acts of lawlessness and protecting minorities.

8. Conclusion

A certain kind of paradigm evolution of political elites can be observed in Europe. It is connected with governmental crisis and the relation between the authorities and the citizens. The uncertainty of middle-class citizens and their fear that the current political, economic and social order will break because of a terrorist attack or a wave of immigrants is also important. The enormity of doubt caused by economic changes results in the need of simple, populist recipes.

The ruling party, in order to gain and maintain power, must rebuild the relationship with the citizens. There is no return to *status quo* because certain patterns (both in economy and in politics) have expired. Do modern, democratic citizens of Europe need populist governments? The answer to this question lies in social behaviors, especially during election campaigns in which politicians present their fresh and pragmatic look. When the elections are over, though, it appears that their faces were covered with masks. This phenomenon calls for the need of introducing or intensifying citizenship education and safety education. The remedy for populist slogans is knowledge; it is also an effective tool in understanding the complex socio-political events.

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