

THE LEGAL FRAMEWORK FOR INTERNAL SECURITY OF CONTEMPORARY STATES

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The maintaining of internal security is currently the most crucial issue for the contemporary states and their authorities; therefore, the governments have adopted various solutions, namely legal, political as well as operational. The final shape of those solutions is determined not only by the uniqueness of the state, but also its legal, political system and participation (or lack of it) in the international organizations such as the European Union, the United Nations and others. In particular, the legal solutions i.e. internal security acts are interesting due to the fact that they contain definitions of internal security which are necessary if a state would like to build an internal security system.

This article concerns the internal security acts of France and Portugal as well as – in contrast – India¹. These states have adopted such kind of laws due to various reasons and motives. In the paper a set of factors is identified which have influenced internal security rules in the above-mentioned states. The key assumption is that the crucial issue is the definition of internal security which is necessary if a state would like to establish an internal security system. The definition might be included in an Internal Security Act. The basic question is how internal security is understood in India, Portugal and France. This article concludes with final conclusions.

Dynamic of internal security legislation in France and Portugal

In the case of legal solutions applied in France, it is necessary to underline that authorities of France have decided to react to internal security threats such as terrorism using mainly legal means. France has been affected by threat of terrorism for a long time, although initially it was called as an internal terrorism (for instance activities of the Action Direct) i.e. terrorism associated with aspirations to secede from the France part of the Basque Country and Brittany and Corsica; today, it is

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¹ The author used her previously published papers to write this article.

about an international terrorism². In this context, noteworthy are the laws on internal security, adopted in France, often supplemented by other legal acts in the field of internal security³.

First, in the mid-90s the authorities of France adopted key legislation that led to the further regulations in the area of internal security, that is act on directions and programming in the field of safety of 21 January 1995, called Pasqua Act (*loi Pasqua*), under the presidency of François Mitterrand and the premiership of Edouard Balladur. Charles Pasqua was head of the Ministry of Internal Affairs in the years 1986–1988 and 1993–1995. The significance of Pasqua Act is determined by the inclusion in it about the definition of safety (presumably internal), which clarifies it as follows: “Safety is a fundamental right and one of the conditions for the exercise of freedom of the individual and the community. The state has a duty to ensure safety keeping watch over the territory of the Republic, to defend its institutions and national interests, in compliance with the law, keeping peace [*la paix*] and public order [*l’ordre public*], protecting persons and property”⁴. It has been emphasized that the narrow dimensions of internal security (mentioning peace and public order); as well as the applied term “peace” therefore refers to the conceptual scope of public safety and public order. This way of understanding security (internal) was confirmed by a subsequent legislation, namely the Act on Safety of Everyday Life (*Loi relative à la sécurité quotidienne* – LSQ) of November 2001. The Act was focused on tightening sanctions in the areas of public life, which are exposed to threats to public security, eg. trafficking in weapons and ammunition, the law on the road, air and maritime transport⁵.

Pasqua Act had determined the direction of thinking about issues of internal security for the coming years. The breakthrough of security thinking in France was the coming to power of Nicolas Sarkozy, who attached great importance to ensuring internal security in France. In particular the two next Acts on the Directions and Programming in the Field of Internal Security of the years 2002 and 2011, i.e. LOPPSI I and LOPPSI II (an abbreviation of the words set in French, *Loid’orientation et de programmation pour la sécurité intérieure*).

LOPPSI I (2002) defined the policies of France in the field of internal security for the years 2003–2007. The title of this act shows that it concerns internal security. The first annex to this law in detail outlined policy guidelines in matters of the internal security of France, supporting the definition of safety of Pasqua Act of 1995⁶. Adoption LOPPSI I was caused by a significant increase in

² J. Shapiro, B. Suzan, *The French experience of counter-terrorism*, in „Survival”, vol. 45, no 1, 2003, p. 69.

³ As France has established numerous acts related to internal security in the article the main of them are addressed. See further: K. P. Marczuk, *Bezpieczeństwo wewnętrzne państw członkowskich Unii Europejskiej: od bezpieczeństwa państwa do bezpieczeństwa ludzi*, Warszawa, 2012, pp. 124-134.

⁴ *Loi d’orientation et de programmation relative à la sécurité*, in „Journal Officiel de la République Française”, 24.01.1995, Article 1.

⁵ *Loi relative à la sécurité quotidienne*, in „Journal Officiel de la République Française”, 16.11.2001.

⁶ *Loid’orientation et de programmation pour la sécurité intérieure*, in „Journal Officiel de la République Française”, 30.08.2002.

crime (the number of crimes committed has increased six times between 1950 to 2000) mainly in 1991–2002. LOPPSI I stressed in particular the need to combat crime and the need to ensure public order and public safety (*l'ordre public et la sécuritépublique*) in the country⁷.

Legal action in strengthening internal security continued in France with the adoption of the 2003 Internal Security Act (*Loi pour la sécuritéintérieure* – LSI), also known as the Act Sarkozy II. This act was a legislative response to increasing risks and threats of an internal nature. It penalized new types of crimes (prostitution, begging, illegal dwelling of buildings, hooliganism, homophobia, trafficking in weapons, etc.), expanding law enforcement powers in this area⁸. The act aroused a great deal of controversy, in subsequent years it was amended.

The second Act on the directions and programming in the field of internal security, LOPPSI II was adopted in 2011. This law was taken into account for contemporary threats, for instance cybercrime. It penalized identity theft on the Internet and distributing pornography of minors (later it has been criticized as a form of censorship). Other issues which regulate LOPPSI II are: identification of persons on the basis of DNA testing, monitoring and control of police databases, the introduction of the term video-protection (*vidéoprotection*), which were introduced by the Act of 1995 term video-surveillance (*videosurveillance*), strengthening of the legal protection of the special agents and sources of information, and co-workers, strengthening measures in the fight against crime as well as measures of prevention⁹.

On the other hand, another state which also applied the legal regulations in the area of internal security is Portugal, a member state of both the European Union and the North Atlantic Treaty Organization. In the Portugal case, the turning point has been the 1970's when the previous regime collapsed (1974) and when its constitution was introduced provisions relating to the issue of ensuring internal security. Namely, in the Article 272 are indicated as services responsible for maintaining internal security in the country, i.e. police forces and the National Republican Guard¹⁰; Furthermore, the crucial moment was the adoption of the Act on Internal Security of Portugal in 1987, which is in the current version in force since 2008.

During preparation for the adoption of the new law on internal security, the government of the former Prime Minister of Portugal, José Sócrates, has conducted a number of significant and wide-ranging reforms in the field of internal security in 2007 that are aimed at creating a national, modern integrated internal security system (*Sistema Integrado de Segurança Interna* – SISI). António Costa, the Minister of Internal Administration in the government of Sócrates, then the mayor of Lisbon, summed up the need for reform in six points: 1. the conception of

⁷ *Ibidem*, Article 5.

⁸ *Loi pour la sécurité intérieure*, in „Journal Officiel de la République Française”, 19.03.2003.

⁹ *Loid'orientation et de programmation pour la performance de la sécurité intérieure*, in „Journal Officiel de la République Française”, 15.03.2011, Article 18.

¹⁰ *Constitution of the Portuguese Republic*, Lisboa, 1976.

internal security of Portugal, as defined in the Act of 1987, is no longer valid in modern times when the nature of threats for security have been changed and we have to deal with such phenomena as terrorism; then Minister announced the adoption of the new law; 2. undisputed lack of coordination, binding with the fact that Portugal has different services designed for a variety of tasks in the field of internal security; in order to raise the effectiveness of the services it is necessary to create a system to coordinate their activities, thus establishing an integrated system of internal security. This is a key point of the reform; 3. the need to strengthen relations and cooperation between the National Republican Guard and police in order to eliminate situations in which the tasks of these services overlap each other; 4. the need to rationalize resources (material and human) and the structure the procedures of the police and guards; 5. the introduction of solutions and measures to increase the efficiency of service of police officers and guards; 6. ensuring the growth of investment in the security forces, but without increasing the budget deficit¹¹.

The Act on Internal Security of Portugal of 2008 mainly defines the scope of understanding of internal security in the state. Governmental reforms were ended with adoption of the Act on the Organization of Criminal Investigations in 2008¹².

The key article of the Act on Internal Security of Portugal – in contrast to the provisions of the law adopted in India – is the definition of internal security. Internal security is understood as an „[...] activity undertaken by the State to provide order, security and peace, the protection of people and property, containment and suppression of crime, as well as contributing to support the normal functioning of democratic institutions, continued compliance with the laws, freedoms and citizens’ fundamental rights and respect for democratic legality. [...] The measures provided by this Act are intended in particular to protect human life and safety, public peace and democratic order, [these measures are taken] especially against terrorism, violent crime, or highly organized sabotage, espionage, in order to prevent and to respond to major failures or disasters, to protect environment and public health”¹³. Such a definition of the concept of internal security means that the authorities of Portugal have decided to adopt a broad approach to internal security, including with it an emphasis on preventing and responding to natural hazards and those provoked by human activities, threatening not only the lives and health of people, but also the security of the state. The Act also explains the conception of the internal security policy, taking it as a set of principles, objectives, priorities and guidelines and the measures to be taken in order to achieve internal security¹⁴. In addition, on citizens (society) was

¹¹ Costa A., *Uma reforma para seis problemas*, in „Diário de Notícias”, 11.03.2007, see http://www.dn.pt/Inicio/interior.aspx?content_id=654111 (accessed: 26.08.2011); K. P. Marczuk, *op. cit.*, p. 197.

¹² *Lei de Organização da Investigação Criminal*, in „Diário da República”, 27.08.2008, no. 165.

¹³ *Lei de Segurança Interna*, in „Diário da República”, 29.08.2008, no 167, Article 1, points 1, 3.

¹⁴ *Ibidem*, Article 3.

imposed a duty to cooperate in achieving internal security, and the special task was assigned to those who work, and militaries¹⁵.

Analysing the Act on the Internal Security of Portugal, one should point out that the legislator took into account the activity of the state in the international forum, namely the membership of Portugal in the European Union and its cooperation in internal security affairs with the EU, as well as with other international organizations. Security forces of Portugal can perform their tasks beyond the borders of the state. These provisions were taken into account for the current trend towards the internationalization of internal security, i.e. the process of penetration of borders by the threat of an internal nature¹⁶.

The aforementioned announcement of Minister António Costa of the construction of an integrated system of internal security was followed by the adoption of legal measures. The Act on Internal Security contains provisions of detailed competences in internal security matters of the main bodies – namely the Assembly of the Republic, the government and the Prime Minister, who bears the political responsibility for the conducting of internal security policy¹⁷. Special attention was paid to the organization of the system of internal security – the authorities at the central level are: an organ of an advisory and consultative nature, the High Council of Internal Security, Secretary General of the System of Internal Security up to the Prime Minister, coordinating, supervising and managing the system, as well as – up to the Prime Minister – Coordination Security Office, a consultative organ of a technical nature. Thus, the law has provided a precise shape for institutional solutions in the field of internal security of Portugal.

Internal security rules in India

Adopted in 1971 during the premiership of Indira Gandhi in India the Maintenance of Internal Security Act (MISA) was undoubtedly controversial because of the violation of basic human rights and freedoms by limiting personal freedom. That is why the act was repealed a few years later. MISA was replaced, adopted by the President of India a few months earlier, an ordinance on maintaining internal security. What's important; however, in the title of the Act the conception of internal security was introduced.

The controversial regulation envisaged in the above-mentioned legal acts, namely the possibility of preventive detention which means detention without trial of those who are supposed to be exposed or compromised to India, was indeed present in the legal system of India earlier, before the adoption of the 1950 Constitution¹⁸. The above-mentioned provision may be applied in matters relating to: defence, foreign relations, security of India, maintenance of public order or disrupting the supply of basic goods and services necessary for the existence of the

¹⁵ *Ibidem*, Article 5, points 1, 2.

¹⁶ *Ibidem*, Article 4; K. P. Marczuk, *op. cit.*, p. 199.

¹⁷ *Lei de Segurança Interna*, *op. cit.*, Article 7-9.

¹⁸ C. M. Abraham, *India – an overview*, in A. Harding, J. Hatchard (eds.), *Preventive detention and security law: A comparative survey*, Dordrecht, Boston, p. 59.

residents. Factors which unquestionably influenced the development of legislation in such a direction are associated with the turbulent history of India, Pakistan and the relating matters connecting with political, social, economic perturbations etc.¹⁹ It should be noted; nevertheless, that in modern times the amended Constitution of India in Article 22 the legislator has decided to keep a provision of preventive arrest under certain conditions²⁰.

The 1971 Maintenance of Internal Security Act is interesting in the context of examining ways of understanding internal security by contemporary states. The act allows for the restriction of freedom (i.e. imprisonment) in connection with the authorities' desire to ensure the internal security of the state; therefore, the title of the act had been controversial. Taking into account the problem addressed in the article, it is necessary to underline the conceptual „grid” introduced by the legislator. First of all, in the act such terms such as the defence of India, the security of India, national security, maintaining public order, maintaining the supply [of goods] and services vital to society are enumerated²¹. At this point it should be stressed that in the act these terms have not been explained; in the further provisions of the act the legislator focused on issues related to limiting personal freedom, including freedom of foreigners residing in India. The emphasis on the regulations of this kind implies a narrow interpretation of internal security, so identifying it with the conceptions of public order and public safety.

Finally, the Maintenance of Internal Security Act, after several revisions made in subsequent years ceased to exist in 1978 when Indira Gandhi stopped being the Prime Minister. This did not mean; however, that the issue of internal security has lost its significance – still other legal acts (subsequently amended) and documents in this field continued to be in power. In the spirit of the MISA it focused both on special powers of the army in tasks of internal security and other services. First of all, The Armed Forces (Special Powers) Act of 1958 it should be noticed where the legislator provided for the authorities a following opportunity: „[when the authority] is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil powers is necessary [...]”²² is acceptable. The provisions of this act were criticized and some voices called for its repealing²³. Another essential law was 1968 Essential Services Maintenance Act aimed at providing vital services to the functioning of society, that is – as stated by the legislator – mainly communications services²⁴. Prior to the Maintenance of Internal Security Act was The 1974 Conservation of Foreign Exchange and Prevention of Smuggling Activities Act aimed at the protection of foreign trade and preventing

¹⁹ *Ibidem*, p. 60.

²⁰ *The Constitution of India*, New Delhi 2015.

²¹ *Maintenance of Internal Security Act*, in „The Gazette of India”, no. 26, Article 3, 1971.

²² *The Armed Forces (Special Powers) Act*, in „The Gazette of India”, no. 28, Article 3, 1958.

²³ Ramachandran S., *India's Controversial Armed Forces (Special Powers) Act*, „The Diplomat”, 2.07.2015, see <http://thediplomat.com/2015/07/indias-controversial-armed-forces-special-powers-act/> (accessed: 23.04.2015).

²⁴ *The Essential Services Maintenance Act*, in „The Gazette of India”, no. 59, 1968, Article 1.

smuggling²⁵, which provided the possibility of preventive imprisonment of those who by their activities compromise „[...] the national economy and [...] the security of the State”²⁶. On the other hand, the later laws attention draws The National Security Act of 1980 which – despite its title – does not address matters related strictly to national security, i.e. security both in its internal and external dimensions, but especially those issues initially regulated by MISA, that is, among others, the issue of preventive imprisonment²⁷. What is more, one should add to all above-mentioned laws The 1987 Terrorist and Disruptive Activities (Prevention) Act and The 2002 Prevention of Terrorism Act.

One should point out that in all the above-mentioned legal acts the legislator has not explicitly defined the concept of internal security, although all of them have been concerned by this issue. However, it is possible to find out that the conception of internal security in the case of India is understood in a narrow way. It relates to the maintenance of public safety and public order, which is determined by history and political situation of the state.

Conclusions

The problem of the Internal Security Acts, adopted by such states as France, Portugal and – in contrast – India is currently one of the most recent issues due to the high risk of terrorism attacks in Europe and in other parts of the world. Increasing number of terrorist attacks provokes modern states to tighten regulatory measures aimed at improving the safety of their citizens. Taking this into account, one can draw the following conclusions, as a result of research conducted in the article:

Firstly, Internal Security Acts and their provisions, adopted by the various states, are followed by a number of factors arising in these countries, for instance: their policies and charisma of their leaders (government of Indira Gandhi in India and the issue of Pakistan, a breakthrough in Portugal or the coming to power of Nicolas Sarkozy in France), the power of the legal system and confidence in it (for instance in the case of France), the membership (or lack of it) in the international organizations, such as the European Union (in the case of Portugal and France).

Secondly, Internal Security Acts may contain the internal security definition. Such kind of definition is provided by laws adopted by Portugal and France. The statutory definition outlines current understanding of internal security in the country.

Thirdly, in the case of analysed states internal security is understood rather narrowly, i.e. it covers the conceptual scope of public safety and public order, as is the case in India and France. This narrow approach may provoke criticism of the adopted solutions or be controversial (eg. the question of preventive imprisonment in India). A broad approach to internal security was adopted by Portugal, including

²⁵ *The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act*, in „The Gazette of India”, no. 35, 1974.

²⁶ *Ibidem*.

²⁷ *The National Security Act*, in „The Gazette of India”, no. 65, 1980.

the statutory definition (the protection of people during disasters and natural disasters).

The above-mentioned conclusions have proved that the research hypothesis was confirmed. Building an effective system of internal security by a state should be based on a prior definition of internal security, and such a definition can be found in an Internal Security Act.

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(Abstract)

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Keywords: France, India, internal security, Portugal, rules.