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COMPETENCES OF THE PRESIDENT OF THE REPUBLIC OF POLAND IN THE AREA OF NATIONAL SECURITY

Summary

In this article the authors analyze the constitutional provisions and regulations contained in specific laws related to the competences of the President in the field of national security. The aim of the article is to show what real influence the President of the Republic of Poland has on the Polish army and national security. The President performs his duties in the field of authority over the armed forces through the Chief of National Defence.

Key words: Constitution of the Republic of Poland, President of the Republic of Poland, competences, armed forces, National security

Introduction

Constitution of the Republic of Poland¹ of 2nd April 1997 (Constitution of the Republic of Poland) states that “the President of the Republic of Poland is the supreme representative of the Republic of Poland and the guarantor of the continuity of state authority”. In the Constitution of the Republic of Poland, the functions of the President have not been explicitly articulated, however, taking into account the constitutional practice, we may indicate, inter alia, executive functions, representative and symbolic functions, and functions of an arbitrator².

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¹ Constitution of the Republic of Poland of 2 April 1997., art. 126, (Dz.U. 1997, No 78, item. 483), further: [Constitution of the Republic of Poland].

² P. Czarny, A. Kulig, *Prawo Konstytucyjne Rzeczypospolitej Polskiej*, ed. P. Sarnecki, Warszawa 2014, pp. 350-351.

The executive function of the President is set out in Article 10 (2) of the Polish Constitution: “Legislative power is exercised by the Sejm and the Senate, executive power by the President of the Republic of Poland and the Council of Ministers, and judicial power by the Courts and Tribunals”³. The representative and symbolic function, in turn, stems from the content of the aforementioned article 126 (1) of the Constitution of the Republic of Poland, which states: “The President of the Republic of Poland is the highest representative of the Republic of Poland and the guarantor of the continuity of state power”. The aforementioned function refers, therefore, to the President as a representative of the state, who in the exercise of his mandate should make every effort to represent the state with dignity and care for its image beyond its borders. This function also equates the person of the President with the unity and permanence of the state, portrays him as a symbol of statehood and a person who should unite the whole society, becoming its moral authority⁴.

The last function, i.e. the function of arbitration, refers primarily to the President, who should ensure the proper functioning of state organs, and in the event of political conflicts, assume the role of “moderator” and join in the resolution of a political dispute. In this case, the President’s competences include resolving the so-called “cabinet crisis”, i.e. designating such a person as Prime Minister who would receive a vote of confidence from the Sejm and be able to form a government. In addition, in the absence of the required parliamentary majority to pass a budget, the President of the Republic may assume the role of the “arbiter of voters” and, pursuant to Article 98 (4) of the Constitution, order the shortening of the terms of the Sejm and Senate⁵. It should also be emphasised that the function of arbitration is not tantamount to governing the state and conducting its policy, since under Article 146 (1) of the Constitution of the Republic of Poland it is the Council of Ministers that conducts the internal and foreign policy of the Republic of Poland⁶.

In the article, the authors set a research hypothesis, according to which the President of the Republic of Poland has important powers affecting the security of the state. The following research question was also posed: How can the President of the Republic of Poland realize the scope of competencies related to state security? In order to verify the

³ Art. 10 (2) Constitution of the Republic of Poland.

⁴ Art. 125 (1) Constitution of the Republic of Poland; P. Czarny, A. Kulig, *op. cit.*, pp. 348-351.

⁵ Art. 98 (4) Constitution of the Republic of Poland; P. Czarny, A. Kulig, *op. cit.*, pp. 348-350.

⁶ Art. 146 (1) Constitution of the Republic of Poland.

hypothesis and answer the research question, the article uses a content analysis, which was used to examine the provisions of the Constitution and the laws, as well as a comparative method through which the competencies of the President stemming from various legal acts were compared.

The President of the Republic of Poland as Head of the Armed Forces

The Constitution of the Republic of Poland, defining the President as the head of the armed forces, at the same time points out that in peacetime he exercises his duties in this respect through the Minister of National Defence, which should be understood as a passive headship⁷. In accordance with the provisions of the Polish Constitution, the President appoints the Chief of General Staff and commanders of the types of the Armed Forces for a fixed period of time. However, for the duration of war, upon the Prime Minister's motion, the President appoints the Commander-in-Chief of the Armed Forces. One has to agree with Artur Trubalski, who points out that "...if the Prime Minister could not, for objective reasons, submit an appropriate motion, the President could, for a time of war, appoint the Commander-in-Chief of the Armed Forces without such a motion. Such an action would have to be regarded as a permissible purposeful interpretation by the President of the Constitution⁸". Furthermore, on the motion of the Minister of National Defence, the President shall confer the military ranks specified in the Acts, and in the event of a direct external threat to the state, on the motion of the Prime Minister, he shall order general or partial mobilization and the use of the Armed Forces for the defence of the Republic of Poland⁹.

Article 116 of the Polish Constitution states that the Sejm decides on behalf of the Republic of Poland on the state of war and the convening of peace. The content of the above article is connected with the office of the President of the Republic of Poland, because if the Sejm could not meet for a session, then in such a situation the state of war is decided by the President. As Artur Olechno states, this is a power of the President,

⁷ W. Skrzydło, *Komentarz do art. 134 Konstytucji RP*, [in:] *Konstytucja Rzeczypospolitej Polskiej – komentarz*, Warszawa 2013, p. 175.

⁸ A. Trubalski, *Uprawnienia organów władzy wykonawczej w zakresie zapewnienia bezpieczeństwa państwa*, „Przegląd Sejmowy”, 2017, no 3, p. 117.

⁹ *Ibidem*, p. 175; art. 136 Constitution of the Republic of Poland.

which has a substitute character, which results from the fact that decisions on the state of war are generally made by the Sejm¹⁰.

Referring to specific laws concerning the President's authority over the armed forces, we may refer to the regulations contained in the Act on Universal Obligation to Defend the Republic of Poland of November 21st, 1967¹¹. It included the President's competences, which in particular included: approving, at the request of the Prime Minister, the national security strategy, issuing, at the request of the Prime Minister, by way of a decision, the Political and Strategic Defence Directive of the Republic of Poland and other executive documents to the national security strategy, approving, at the request of the Council of Ministers the plans of national defence system exercises and directing their course, deciding, at the request of the Prime Minister, on the introduction or change of a specific state of national defence readiness, in the event of a state defence emergency deciding, at the request of the Council of Ministers, on the day on which the time of war begins on the territory of the Republic of Poland. Under the same procedure, it shall decide on the day on which the time of war ends, directing the defence of the state, in cooperation with the Council of Ministers, upon the appointment of the Commander-in-Chief of the Armed Forces and his assumption of command, may request from all public authorities, central and local government administration, entrepreneurs, managers of other organizational units and social organizations information that is relevant to national security and defence, initiates and patronizes undertakings aimed at shaping patriotic and defensive attitudes in the society¹².

The above-mentioned act also contains the competences under which the President, as the superior of the Armed Forces determines, on the motion of the Minister of National Defence, the main directions for the development of the Armed Forces and their preparations for state defence, indicates, on the motion of the Prime Minister, the person intended for appointment to the post of Commander-in-Chief of the Armed Forces, may participate in briefings of the managerial staff of the Ministry of National Defence and the Armed Forces, approves, on the motion of the Minister of National Defence, by way of a decision (national plans for the use of the Armed Forces for state defence and the organisation

¹⁰ A. Olechno, *Prezydent Rzeczypospolitej Polskiej*, [in:] *Prawo Konstytucyjne*, ed. M. Grzybowski, Białystok 2009, p. 258.

¹¹ Act of November 21, 1967 on Universal Obligation to Defend the Republic of Poland, (Dz.U. 1967, No 44, item. 220), further: [Universal Defence Obligation Act].

¹² Art. 4a the Act on Universal Obligation to Defend.

and principles of operation of the wartime command system of the Armed Forces)¹³.

Another legal act is the Act of 17th December 1998 on the principles of use or residence of the Armed Forces of the Republic of Poland outside the country's borders. Based on its provisions, the President of the Republic of Poland decides on the use of military units outside the borders of our country. He may do so at the request of the government (if it concerns peacekeeping missions or armed conflicts or strengthening the forces of a state or an allied country) and at the request of the prime minister (if it is related to preventing acts of terrorism and related consequences)¹⁴. The President must immediately inform the Speaker of the Sejm and the Speaker of the Senate of his decision¹⁵.

When discussing the scope of the President's competences related to his authority over the armed forces or security of the country in its broadest sense, one should not forget about the President's advisory body in this respect. Article 135 of the Polish Constitution states that the National Security Council is an advisory body to the President of the Republic of Poland in the field of internal and external security of the state¹⁶. It is worth noting that the so-called Small Constitution also allowed for the creation of the National Security Council, but its first composition was established in 1998¹⁷.

Meetings of the National Security Council shall be convened by the President, who shall also chair its meetings, and in his absence a member of the National Security Council shall deputise for him. The topic of the National Security Council meeting shall be determined by the President and its tasks shall include expressing opinions and determining threats in the subject of internal and external security of the state, taking up considerations concerning the development of the Armed Forces or the problem of counteracting threats to the state. The National Security Council consists of the Speaker of the Sejm, the Speaker of the Senate,

¹³ Art. 5 the Act on Universal Obligation to Defend.

¹⁴ Art. 2 (1), art. 3 (1) Act of 17th December 1998 on the principles of use or residence of the Armed Forces of the Republic of Poland outside the state borders, (Dz.U. 1998 no 162, item. 1117 ze zm.), further: [the Act on the Principles of Use or Stay of the Armed Forces Abroad].

¹⁵ Art. 3 (2) the Act on the Principles of Use or Stay of the Armed Forces Abroad.

¹⁶ Art. 135 Constitution of the Republic of Poland; W. Fehler, *Rada Bezpieczeństwa Narodowego jako konstytucyjny organ państwa*, [in:] *Konstytucja Rzeczypospolitej Polskiej z 1997 r. Ciągłość i zmiana*, ed. T. Słomka, A. Materska-Sosnowska, Warszawa 2012, pp. 234–244.

¹⁷ J. Juchniewicz, *Rada Bezpieczeństwa Narodowego*, „Przegląd Prawa Konstytucyjnego”, 2015, no 2 (24), p. 120.

the President of the Council of Ministers, the Minister of National Defence, the Minister of the Interior and Administration, the Minister of Foreign Affairs, the Coordinator of Special Services, the Heads of political groupings which have a club or parliamentary circle in the Sejm of the Republic of Poland or their heads, the Head of the Chancellery of the President of the Republic of Poland and the Head of the National Security Bureau, who is the Secretary of the National Security Council¹⁸. Meetings of the National Security Council, at the invitation of the President, may be attended by former Presidents of the Republic of Poland and Prime Ministers, as well as by other persons whose participation is advisable in view of the matters discussed¹⁹.

The President of the Republic of Poland in states of emergency

The catalogue of presidential competencies related to state security also includes the introduction of states of emergency. The Polish Constitution lists martial law, a state of emergency and a state of natural disaster²⁰. The President participates in the introduction of the first two states of emergency. This follows directly from the Act of 18th April 2002 on the state of natural disaster, which states that it is the Council of Ministers, by way of a regulation, which may introduce a state of natural disaster on its own initiative or at the request of a competent voivode²¹.

In turn, in the situation of an external threat to the state, including that caused by actions of a terrorist nature or actions in cyberspace, an armed attack on the territory of the Republic of Poland or when an international agreement results in the obligation to jointly defend against aggression, the President of the Republic of Poland may, at the request of the Council of Ministers, impose martial law in part or in the entire territory of the state²². Martial law is imposed by decree, which must be made public²³.

¹⁸ Homepage of the National Security Council - National Security Bureau, <https://www.bbn.gov.pl> (20.12.2021).

¹⁹ *Ibidem*.

²⁰ Art. 228 (1) Constitution of the Republic of Poland.

²¹ Art. 5 (1) Act of 18th April 2002 on the state of natural disasters, (Dz.U. 2002 no 62 item. 558).

²² Art. 2 (1) Act of 29th August 2002 on martial law and the competences of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland, (Dz.U. 2002 nr 156, poz. 1301), further: [martial law act]; M. Karpiuk, *Prezydent Rzeczypospolitej Polskiej jako organ stojący na*

During martial law, the President of the Republic of Poland decides, at the request of the Council of Ministers, on the transfer of public authorities to specific positions of command, decides, at the request of the Council of Ministers, on states of combat readiness of the Armed Forces of the Republic of Poland, hereinafter referred to as the “Armed Forces”, determines, at the request of the Council of Ministers, the tasks of the Armed Forces during martial law may appoint, on the motion of the Prime Minister, the Supreme Commander of the Armed Forces, approves, on the motion of the Supreme Commander of the Armed Forces, plans for the operational use of the Armed Forces, recognises, on the motion of the Supreme Commander of the Armed Forces, specified areas of the Republic of Poland as zones of direct hostilities²⁴.

On the other hand, "in the event of a threat to the constitutional system of the state, security of citizens or public order, the President of the Republic of Poland, at the request of the Council of Ministers may introduce, for a definite period of time, not longer than 90 days, a state of emergency in part or in the entire territory of the state."²⁵ By virtue of a presidential decree, a state of emergency with the consent of the Sejm may be extended only once and for no longer than 60 days. During its duration the President of the Republic of Poland, at the request of the Prime Minister, may decide to use troops and subdivisions of the Armed Forces of the Republic of Poland to restore the normal functioning of the state if the forces and measures used so far have been exhausted²⁶.

The President of the Republic of Poland exercised this power under the provisions of the Constitution of the Republic of Poland in 2021. This was related to the escalation of the conflict on the Polish-Belarusian border and attempts to illegally cross it by migrants with the support of the regime of President Alexander Lukashenko of Belarus. On 2nd September 2021, President of the Republic of Poland Andrzej Duda issued a decree on the introduction of a state of emergency, in which he stated “I order the introduction of a state of emergency on the territory of a part of the Podlaskie Voivodeship and a part of the Lubelskie Voivodeship

straży bezpieczeństwa państwa, „Zeszyty Naukowe – Akademia Obrony Narodowej”, 2009, no 3, p. 396.

²³ B. Szczurowski, *Prezydent Rzeczypospolitej Polskiej jako organ czuwający nad przestrzeganiem konstytucji*, Warszawa 2016, p. 187.

²⁴ Art. 10 (2) the martial law act.

²⁵ Art. 230 Constitution of the Republic of Poland; M. Karpiuk, *Prezydent Rzeczypospolitej Polskiej*, *op. cit.*, p. 395.

²⁶ Art. 11 Act of 21st June 2002 on the state of emergency, (Dz.U. 2002 No 117, item. 985); K. Prokop, *Stany nadzwyczajne w Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997*, Białystok 2005, p. 98.

for a period of 30 days from the date of the announcement of the decree²⁷. On the same date, i.e. 2nd September 2021, the President referred the regulation to the Sejm for consideration, which took place on 6th September 2021²⁸.

The vote in Parliament was 435 with an absolute majority of 218. The following spoke in favour of the proposal to repeal the regulation 168 MEPs voted in favour of the proposal, 247 voted against, 20 abstained and 25 parliamentarians did not vote. The proposal to repeal the regulation was not adopted²⁹. So how did the Members from the largest parliamentary clubs vote. The Polish Coalition MPs taking part in the vote abstained. All Law and Justice MPs taking part in the vote voted in favour of imposing the state of emergency. During the parliamentary debate, Law and Justice MP Zdzisław Szipiera said: “The decision that has been made is dictated by the need to secure two issues: order and security. These are two basic, fundamental matters that we must secure³⁰”.

The opposite position was presented by the MPs of the Civic Coalition and the Left (Left Wing), who were unanimously in favour of repealing the Presidential decree. According to Tomasz Siemoniak, MP for Civic Coalition, “In the opinion of the Civic Coalition, the government lacks justification for the state of emergency on the basis of the above constitutional grounds (...) The ordinance does not refer to real measures for securing the border, such as increasing the number of Border Guard officers, Police and Polish Army soldiers and the construction of border infrastructure. This happens on the basis of other regulations and decisions and does not require a state of emergency³¹”.

²⁷ Ordinance of the President of the Republic of Poland of 2nd September 2021 on the introduction of a state of emergency on the territory of a part of Podlaskie Province and a part of Lubelskie Province (Dz.U.2021, item. 1612).

²⁸ Sejm of the Republic of Poland of the 9th parliamentary term, The course of the legislative process. Regulation of the President of the Republic of Poland on the introduction of a state of emergency on the territory of a part of Podlaskie Voivodeship and a part of Lubelskie Voivodeship, <https://www.sejm.gov.pl> (19.12.2021).

²⁹ Sejm of the Republic of Poland, 9th parliamentary term, Voting no. 160, 36th sejm session, Consideration of the Decree of the President of the Republic of Poland of 2nd September 2021 on the introduction of a state of emergency in the area of a part of Podlaskie voivodship and a part of Lubelskie voivodship, <https://www.sejm.gov.pl> (19.12.2021).

³⁰ Sejm of the Republic of Poland of the 9th parliamentary term, Stenographic report from the 36th sitting of the Sejm of 6th September 2021. <http://orka2.sejm.gov.pl> (19.12.2021).

³¹ *Ibidem.*

In turn, Krzysztof Gawkowski said from the rostrum of the Sejm: “You have introduced a state of emergency and therefore I ask: What ordinary constitutional measures have proved insufficient? For the first time in the history of free and democratic Poland you have decided to restrict part of the civil rights, introduce censorship and limit the right of Poles to access to information. This is a key question, because it concerns the real reasons why a state of emergency was introduced. The answer is simple and clear: there were no such reasons, and Minister Kamiński knows this very well.”³² By decree of President A. Duda, the state of emergency as of 2nd October 2021 was extended for a period of 60 days³³.

Conclusions

In the article, the authors tried to characterise the scope of presidential competences on the basis of the Constitution of the Republic of Poland and individual detailed laws on issues related to state security. As a result of the analysis of the collected materials, the research hypothesis put forward in the article, according to which the President of the Republic of Poland has important competences affecting state security, was verified positively.

It should be emphasised that although the president's authority over the armed forces is passive, under the conditions of our political system without the active participation of the president there is no possibility to introduce e.g. martial law or a state of emergency in the situation of a threat to the state security. Answering the research question: How can the President of the Republic of Poland realise the scope of competences connected with the state security? it is worth mentioning the content of article 134 of the Constitution of the Republic of Poland, which contains a number of competences of the President connected with the armed forces, which is also provided for in individual detailed laws.

Therefore, in matters of national security, it is important for the President of the Republic of Poland to cooperate well with the Minister of National Defence and the entire Council of Ministers. This is important because in the conditions of the Polish political system we have the so-called cohabitation, i.e. a period when the President and the government come from different political groupings and this should not have any impact on the security of our state.

³² *Ibidem*.

³³ Regulation of the President of the Republic of Poland of 1st October 2021 on the extension of the state of emergency introduced on the territory of a part of Podlaskie Voivodship and a part of Lubelskie Voivodship (Dz.U. 2021, item. 1788).

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Kompetencje Prezydenta RP w zakresie bezpieczeństwa Państwa

Streszczenie

W artykule autorzy dokonują analizy przepisów konstytucyjnych oraz regulacji zawartych w ustawach szczegółowych związanych z kompetencjami prezydenta w zakresie bezpieczeństwa państwa. Celem artykułu jest wskazanie jaki realny wpływ na polskie wojsko oraz bezpieczeństwo państwa ma Prezydent RP, który w czasie pokoju pełni swoje obowiązki w zakresie zwierzchnictwa nad siłami zbrojnymi za pośrednictwem szefa resortu obrony narodowej.

Słowa kluczowe: Konstytucja RP, Prezydent RP, kompetencje, siły zbrojne, bezpieczeństwo państwa