

## THE COMMANDER-IN-CHIEF IN COMMAND AND CONTROL SYSTEM OF THE REPUBLIC OF POLAND

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**ABSTRACT.** The Commander-in-Chief of the Armed Forces in the Republic of Poland is one of the main authorities in wartime. But, in Polish legal acts it is not completely clear when the Commander-in-Chief should be appointed. According to Polish law, the Commander-in-Chief shall be appointed in certain situations - for the duration of the war and (sometimes) in the martial law period. In this paper the author will describe these situations and analyse the provisions of his functioning in peace time and in war.

Also, it should be noted, that today in Poland decision-makers adopted some very important changes in *the Act of 21 November 1967 - Universal duty to defend the Republic of Poland*. These changes are to be basis for new rules for the functioning of the Commander-in-Chief and it is a result of the reform of the command and control system. But, the problem is that some parts of legislation were challenged in the Constitutional Court and the case is pending... Every single act of the packet might be not in accordance with *the Act of Constitution*.

## **Introduction (methodology, aim, hypothesis, method of research literature overview)**

For several months in Poland, politicians, decision-makers and scientists have discussed the role of the Commander-in-Chief of the Armed Forces, as well as more widely - about the national security system and subsystem of command and control.

It should be noted, that in this context there are attempts ongoing to create a comprehensive legal basis for the system and to improve the existing regulations by amending laws. Already Changes have been already implemented in: *the Act of 14 December 1995 – The Office of the Minister of National Defence, the Act of 21 November 1967 – Universal duty to defend the Republic of Poland and the Act of 29 August 2002 - Martial law and the competence of the Commander-in-Chief and his subordination to the constitutional authorities of the Republic of Poland.* The most important provisions are outlined in this article. Some of the changes seemed necessary to introduce, part resulted from our presence in NATO and experience with ILL, but it should be noted that some changes are incompatible, and others may prove difficult to implement in the Polish legal system. This is due to the lack of regulation of basic definitions which leads to a multiplicity of interpretations, and even a lack of confidence, which is very dangerous in law.

Therefore, the aim of this paper is characterization of the position of Commander-in-Chief in the system of command and control. In addition, it will also contain a brief presentation of the most important definitions which relate to the subject matter. Therefore, the main issue is: what is the role of Commander-in-Chief in the system of command and control? This article attempts to resolve the following problems:

- How does Commander-in-Chief operate in peacetime?
- How does Commander-in-Chief operate in war?

- How does the system of command and control work?

The main hypothesis is the assumption that the Commander-in-Chief plays a key role in the system of command and control. For several years, work is underway on the command and control system as well as on legislation defining the functioning of the Commander-in-Chief. It seems that these changes are appropriate, but can it still be deliberated that it is moving in the right direction? Working hypotheses which might help solve problems specifically focus on a few of assumptions:

1. Presumably, now it is possible to determine the share of the competence of Commander-in-Chief in time of peace. The last amendment introduced regulations, which are set out his task. However, there are still doubts about the interpretation of certain issues related to the very moment of his appointment. This aspect has facilitated an "act of appointment of the candidate".
2. Functions of the Commander-in-Chief in wartime or martial law period are specified. The problem arises in other areas - inter alia - terminology. For the functioning of the Commander-in-Chief it is important to clarify the key phrases, such as for period of war and martial law, which determine the possibility of his appointment.
3. The present organizational form of the system of command and control of the armed forces has been operating since 1 January 2014. This was the time when the provisions of the amendment of *the Act - the office of Minister of National Defence* came into the force, which introduced significant changes and reorganization. It is worth mentioning that some of the provisions went to the Constitutional Court to examine their compliance with the Constitution of the Republic of Poland.

The main method of research from the theoretical methods is the analysis of sources, especially of legal acts and amendments. Then, the comparison method has been used, particularly in determining the changes during last few years in the command and control system and functioning of Commander-in-Chief. In connection with the collection of a number of scientific facts from the border of many disciplines (science of security, law, sociology and political science, etc.), also the methods of synthesis, deduction and reduction have been used, allowing the extraction and merging of the results. At the same time, the synthesis of the research method has been used to develop applications and proposals for solutions. Issues related to the functioning of the Commander-in-Chief seem to be extremely important, but it is relatively new, so there are few studies on this topic. Two publications should be distinguished by which it is possible to debate in this regard: Kitler, Waldemar. 2013. *Minister Obrony Narodowej w systemie bezpieczeństwa państwa*. Warszawa: AON and Kośmider, Tomasz. 2014. *Naczelny Dowódca Sił Zbrojnych w systemie obronnym państwa polskiego*. Warszawa: AON.

### **The problems with terminology<sup>1</sup>**

In legal acts and the most important documents in force in the Republic of Poland there is a multitude of formulations, with the multiplicity of different concepts causing inconsistency in their use. Absence of some legal definitions increase the problems associated with their understanding. This creates a situation in which through lack of regulations many opposite interpretations may emerge. In Polish legal acts most of the issues relate to the concept of "war", which has to be distinguished from the "state of war", "time of war" and, above all, the "martial law". These

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<sup>1</sup> The author does not discuss in detail the definitions, but focuses on presenting their most important elements, as this is vital for the overall presentation of topics of the Commander-in-Chief.

definitions are especially important in the context of the Commander-in-Chief.

First of all, it should be noted that war is the concept of public international law. War is still one of the ways of policy, but according to the Charter of the United Nations now is banned. However, war or state of war is characterized that it occurs only between countries – the primary entities of public international law. “State of war” is a hostility or rupture between the relations of peace and a transition to the relations of war. It can be characterized by armed struggle and hostile acts directed against another state. It is worth noting that the state of war is not always synonymous with military activities. Armed struggle ends, but a state of war lasts until peace treaty is signed. For example in Poland, the state of war can occur when Parliament (Sejm) declares it through the resolution in a situation of armed attack or when it is obligated by common defence of virtue of an international agreement - which will rely on the severance of diplomatic relations and an end, and not on actual hostilities [*the Act of Constitution of the Republic of Poland*, art. 116].

An even greater problem is the distinction of “time of war” or “period of war”. This has a decisive influence on the need for the appointment of Commander-in-Chief of the Armed Forces. In colloquial understanding it means actual warfare. But the problem is, can we appoint Commander-in-Chief before it – during normal functioning of the state or exactly “for time of war”...? Recently, the problem has been noticed by the legislature, with an amendment being introduced - currently the president decides, when the “time of war” starts: “In case of national defence [the President] decides, at the request of the Prime Minister, on the date at which time the war begins on Polish territory. The same procedure shall decide on the date at which time the war ends [*the Act on the universal duty...*, art. 4a introduced by *the Act on amendment of the act on the universal duty...*, art. 1]. Maybe such a solution could

be considered as valid if a decision declaring war time is connected with the act of appointment of the Commander-in-Chief... Currently, we have a situation where president has to wait for a proposal from the Council of Ministers to issue a decision on the start of the "time of war", and subsequently at the request of the Prime Minister on the appointment of the Commander-in-Chief. Only then he will be able to appoint the Commander-in-Chief. In a situation where every hour might count, this schedule may hinder rather than to facilitate the operation.

In turn, armed conflict is a broader concept of war – it also applies to organizations and that are not considered legally based entities! Therefore, it is important to distinguish what the subject is according to public international law and what it is not. The concept of armed conflict therefore includes armed struggle between countries without a declaration of war, but also, what is important, among non-participant entities of public international law, such as rebels and armed bands.

Difficulties of interpretation may also trigger the definition of "armed attack" used in article 5 of the North Atlantic Treaty, or the interpretation of "aggression". Simply, each armed attack should be considered as aggression, but not all aggression is an armed attack. What creates even greater problems is that there are not regulations regarding the definition of an armed attack. Therefore, we must rely on the interpretation of practitioners and theorists of international law or, worse, the interpretation of politicians. On the other hand, distinguishing between an armed attack and aggression is extremely important according to NATO article 5. The definition of aggression was contained in a resolution of the General Assembly, but **it is not legally binding** [*Resolution of General Assembly* no. 3314, art. 1, art. 3].

## Functioning of Commander-in-Chief in peace time (normal functioning of state)

Until a few months ago, most of the lawyers and experts on the subject believed that the Commander-in-Chief does not function in time of peace, because he is appointed "for period of war" or during martial law, when it is necessary to defend the state. According the Constitution "(...) The President of the Republic of Poland, for a period of war, shall appoint the Commander-in-Chief of the Armed Forces on request of the Prime Minister (...)" [*the Act of Constitution...*, art. 134, par. 4]. The current rules, after amendment, introduced big changes. The most important concerns the possibility to indicate a "candidate" before the time of war, during normal functioning of the state. Indication of such a person is aimed at better preparing the candidate to fulfil the tasks as Commander-in-Chief during the war. Interestingly, the designated person is preparing for the role of Commander-in-Chief, by the time of the effective appointment of the Commander-in-Chief or designation by the President **another person** provided for appointment to this position [*the Act on the universal duty to defend...*, art. 5a par. 1 introduced by *the Act on amendment of the act on the universal duty...*, art. 1].

Unfortunately, the interpretation of that article leaves no doubt that the Commander-in-Chief may be a different person than earlier indicated in the "act of appointment of the candidate". Importantly, the interpretation of this article indicates that it is possible to identify another candidate from time to time (e.g. the occasion of the new election). Perhaps an old provision that the Operational Commander prepares place of command for the Commander-in-Chief was sufficient [*The act on universal duty...*, art. 11b, par. 2 point 5]? Besides, the tasks of the Operational Commander include planning, organizing and conducting operations in the framework of using the Armed Forces in peacetime, crisis or war; planning, organizing and conducting

training of the Armed Forces command authorities, in accordance with martial law command system and determining operational requirements for the Armed Forces in the operational planning and program development of the Armed Forces, etc. On 29 June the President pointed at the request of the Prime Minister in "act of appointment of candidate" that the Operational Commander will be a candidate for Commander-in-Chief. The candidate must participate in strategic games and defence exercises, planning to use the Armed Forces to defend the state and in the preparation of military command system of the Armed Forces.

### **Functioning of Commander-in-Chief in war (Polish and NATO context)**

As has already been mentioned, the Commander-in-Chief is appointed "for period of war" or in case of martial law. The author believes that one of the key elements of the "moment" of the appointment is a suitable interpretation of basic definitions. Before changing *the act on martial law...* the President could appoint the Commander-in-Chief during martial law, when it was necessary to defend state: "1. If at the time of martial law, there is the need to defend the state, the Polish President directs the defence in cooperation with the Council of Ministers; 2. President during martial law, in Particular: (...) 4) shall appoint, at the request of the Prime Minister, Commander-in-Chief of the Armed Forces (...)" [*the act of martial law...*, art. 10]. Currently after the first paragraph has been deleted, it may create real concerns, when in martial law, the President may appoint Commander-in-Chief? Does he appoint him in any time? It seems so.

In war (and during martial law if it is necessary) Commander-in-Chief will have a huge responsibility. The Commander-in-Chief commands the Armed Forces and other subordinated organizational units; he provides interaction between the Polish Armed Forces and the Allied forces in planning and conducting



military operations; he specifies the needs of the Armed Forces to support them through non-military part of the defence system of the state; he appoints military authorities to carry out tasks central and local government in the area of direct warfare. Importantly, he submits a request to the President for approval of operating plans using the Armed Forces and to recognize specific areas of the Republic of Poland for direct zones of hostilities, and he also requests the Council of Ministers to determine the rules of operation of public authorities in the area of direct warfare [*the Act on martial law...*, art. 10, art. 11, art. 16].

But, still in the end, his role in the system remains uncertain. Should he be considered to be a main commander in action or more like a “brain surgeon? And, if something goes wrong, who can sign or decide on an act of capitulation? [Kołodziejczak, p. 256-257, in Kitler 2013].

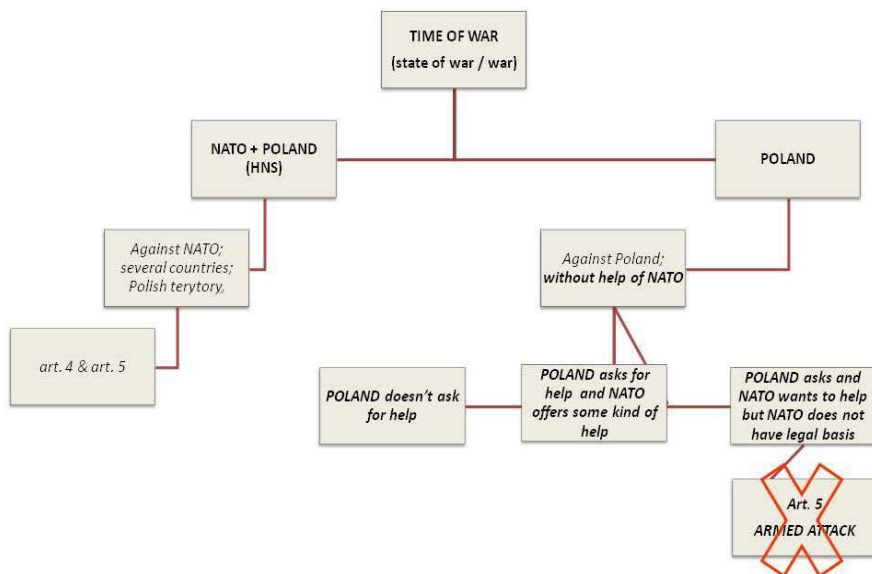


Fig. 1. Model of reaction of NATO in case of war in Poland

Source: prepared by the Author.

Therefore, suppose that at the right time at the request of the Council of Ministers, the President introduces martial law, then because of warfare on Polish territory (again) at the request of the Council of Ministers he decides on the "time of war", and only then - at the request of the Prime Minister - he appoints the Commander-in-Chief. Therefore, we try to consider the situation, what NATO could do in the case of military action on the territory of the Republic of Poland? So, besides our internal problems at the moment of appointment Commander-in-Chief we can wonder if NATO could be able to help in any case.

According to article 5, NATO could help just in the case of "armed attack". So, it is another situation where proper interpretation of definitions is extremely important: "The Parties agree that an **armed attack** against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area" [*North Atlantic Treaty...*, art. 5]. Because of this interpretation, presentation of differences between aggression and armed attack was so important. By adopting such a course of reasoning we can identify some situation. The article can distinguish only help in case of an **armed attack**. There is no mention of aggression. Thus, it appears that there is no chance to apply a broad interpretation - the legislator wrote clearly that there is only one case where NATO can respond and help an ally.

On the other hand, the relation between Polish Commander-in-Chief and Supreme Allied Commander is also complicated and it would depend on certain factors: where the warfare would take its

place. On territory of Poland, or elsewhere? Would it be a war against the whole NATO or more about Poland, just with help of NATO?

### **The Command and Control System – legal ground**

It should be noted that recently in Poland, the decision-makers adopted some very important changes in the command and control system. These changes are to be the basis for new rules of a functioning Commander-in-Chief and it is a continuation of the reform of the command and control. But, the problem is that the rules of some elements of this reform were challenged in the Constitutional Court and the case is pending... Every single statute of the packet might be not in accordance with the *Constitution*.

The key change occurred on 1 January 2014, when the organizational structure was revised at the highest level. One of the most important modifications related to the reorganization - now we have just 2 commands: the Operational Command and the General Command. So we have only 2 major commanders, and at the time of that reform we had a commander for **every branch of the Armed Forces**. This change may be considered incompatible with the *Constitution* (the *Constitution* provides that the President shall appoint "commanders of branches of the Armed Forces"). Also, Chief of the General Staff previously was supposed to be the Commander-in-Chief and now he has become an advisor.

### **Conclusions and references**

Today, because of rapidly changing and new challenges, the command and control system in NATO countries has to be a responsive to these developments, also in terms of the applicable law. Also, for international lessons learned, using proper definitions or even creating legal definitions should be one of

those challenges. Only clear and precise definitions can protect from problems of interpretation. Properly defining, interpreting and – what is important - using appropriate concepts is a crucial condition to avoid unexpected legal consequences.

It should be emphasized that because of the current exchange of the experience of ILL many changes have taken place in the Polish system of command and control. Some of the changes and reorganization of the command posts so far is controversial. The amendments were probably necessary. Perhaps, the direction of change was appropriate, however, it appears there is a discrepancy between the ideas introduced and legislation. Therefore, in the Constitutional Court a request is waiting to check recent reforms. It would be a great problem if the reform issue proves to be not in accordance with the *Constitution*.

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