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**Act of March 11, 2022 on Defense of the Homeland –
Basic Principles and Institutions**

Keywords: The Constitution of the Republic of Poland, act, basic rules, security, national security, legal institutions, defence, homeland, the Armed Forces of the Republic of Poland, the President of the Republic of Poland, the Council of Ministers, duty, citizen, military law.

Słowa kluczowe: Konstytucja Rzeczypospolitej Polskiej, ustawa, podstawowe zasady, bezpieczeństwo, bezpieczeństwo narodowe, instytucje prawne, obrona, ojczyzna, Siły Zbrojne Rzeczypospolitej Polskiej, Prezydent RP, Rada Ministrów, obowiązek, obywatel, prawo wojskowe.

Abstract

Act of March 11, 2022. on defense of the Homeland is a classic example of an “executive act” for the constitutional regulation of issues related to state security, including military security. The Homeland Defence Act contains the so far missing specification of the normative solutions contained in the Constitution of the Republic of Poland of April 2, 1997. They concern in particular the development of regulations concerning the following constitutional issues: the Armed Forces of the Republic of Poland, the duty of a Polish citizen to defend the Homeland, the President of the Republic as the supreme commander of the Armed Forces of the Republic of Poland and the Council of Ministers as the body that ensures the external security of the state and exercises general management in the field of national defense. The main goal of the legislator is to replace the archa-

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ic and incompatible with the current needs and tasks of the Polish state and the Armed Forces of the Republic of Poland regulations contained in the Act of November 21, 1967. on the general duty to defend the Republic of Poland.

Streszczenie

Ustawa z 11 marca 2022r. o obronie Ojczyzny – podstawowe zasady oraz instytucje

Ustawa z 11 marca 2022r. o obronie Ojczyzny jest klasycznym przykładem „ustawy wykonawczej” do konstytucyjnej regulacji zagadnień związanych z problematyką bezpieczeństwa państwa, w tym bezpieczeństwa militarnego. W ustawie o obronie Ojczyzny dokonano brakującego do tej pory uszczegółowienia rozwiązań normatywnych znajdujących się w Konstytucji RP z 2 kwietnia 1997r. Dotyczą one w szczególności rozwinięcia regulacji dotyczącej następujących zagadnień konstytucyjnych: Sił Zbrojnych Rzeczypospolitej Polskiej, obowiązku obywatela polskiego obrony Ojczyzny, Prezydenta Rzeczypospolitej jako najwyższego zwierzchnika Sił Zbrojnych Rzeczypospolitej Polskiej oraz Rady Ministrów jako organu, który zapewnia bezpieczeństwo zewnętrzne państwa i sprawuje ogólne kierownictwo w dziedzinie obronności kraju. Zasadniczym celem ustawodawcy jest zastąpienie archaicznych i nieprzystające do obecnych potrzeb i zadań państwa polskiego oraz Sił Zbrojnych Rzeczypospolitej Polskiej regulacji zawartych w ustawie z 21 listopada 1967r. o powszechnym obowiązku obrony Rzeczypospolitej Polskiej.

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I. Admission

Russia's invasion² of Ukraine on February 24, 2022. and the resulting rapid deterioration of the international situation and military security in the world resulted in the end of the legislative work carried out in the Council of Ministers on February 28, 2022 on the draft statutory regulation of issues related to state security, and therefore, just a few days after the entry of the armed forces of the Russian Federation into the territory of Ukraine, a government

² Art. 1 par. 2 of the Constitution of the Russian Federation of December 25, 1993 states that “The names Russian Federation and Russia are equivalent”.

bill on defense of the homeland to the Sejm³. The act was passed by the Sejm on March 11, 2022. overwhelming majority in an atmosphere of cross-party political consensus⁴. On March 14, 2022. the law on defense of the homeland was submitted to the Marshal of the Senate and the President of the Republic of Poland⁵ for further rapid processing. The Senate did not introduce any amendments⁶. The President RP signed the act on March 18, 2022. and ordered its publication in the Journal of Laws⁷. The main purpose of the Act of March 11, 2022. on defending the Homeland⁸ is to specify the regulation of the state security issues contained in the Constitution of the Republic of Poland of April 2, 1997⁹. regulation of issues related to defense in accordance with the needs of the Armed Forces of the Republic of Poland and the codification of provisions previously included in several dozen acts¹⁰. The key among them was the Act of November 21, 1967 on the general obligation to defend the Republic of Poland¹¹. This act dates back to the period of the Polish People's Republic and the Warsaw Pact and was an archaic act that did not take into account contemporary threats to Poland's security. Moreover, the purpose of the act is to increase defense spending to 3% of GDP (from 2023), to double the size of the Polish Armed Forces (up to 300,000 soldiers) and to create institutions enabling financing of the Polish Armed Forces with funds outside the budget of the Ministry of National Defence¹².

The purpose of the publication is to present the basic principles and normative institutions contained in the Homeland Defence Act, which contains

³ Sejm of the Republic of Poland. IX term, Print no. 2052, www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2052 (1.12.2022).

⁴ The bill was supported by 450 deputies. No one was against and only 5 deputies abstained from voting.

⁵ Further: President RP.

⁶ The bill was supported by 97 senators. No one was against and no one abstained.

⁷ Dz.U. item 655.

⁸ The consolidated text Dz.U. 2022, item 2305 (further: Homeland Defence Act).

⁹ Constitution of the Republic of Poland of April 2, 1997 (Dz.U. No. 78, item 483, as amended) (further: Polish Constitution).

¹⁰ Further: Armed Forces RP.

¹¹ Dz.U. 2021, item 372, as amended.

¹² M. Oleksiejuk, *Najważniejsze założenia Ustawy o obronie Ojczyzny*, <https://pulaski.pl/komentarz-pulaskiego-najwazniejsze-zalozenia-ustawy-o-obronie-ojczyzny-michal-oleksiejuk> (7.12.2022).

a more detailed constitutional regulation on state security and is a kind of executive act to the constitution in this area of normative regulation¹³. Polish Constitution is the most important legal act that regulates the issues of state security¹⁴. However, the legislator did not define this concept, neither in the current constitution nor in the earlier ones¹⁵.

II. Duty to defend the homeland

Polish Constitution states that it is the duty of a Polish citizen to defend the Homeland¹⁶. The Constitution does not specify what should be understood by the concept of defending the homeland¹⁷. However, the duty to defend the homeland cannot be equated with the duty of military service¹⁸. Homeland Defence Act precisely defines the objective and subjective scope of this constitutional obligation of a citizen of the Republic of Poland. The obligation to defend the Homeland applies to Polish citizens who, due to their age and health, are able to perform this obligation. Polish citizens who are also citizens of another country and if they permanently reside outside the borders of the Republic of Poland are not subject to the obligation to defend themselves. As part of the duty to defend the homeland, Polish citizens are obliged to: perform military service, perform duties resulting from the assigned mobilization assignments, perform duties resulting from the as-

¹³ J. Matwiejuk, *Ustawa z 11 marca 2022r. o obronie ojczyzny jako ustawa wykonawcza do konstytucyjnej regulacji problematyki bezpieczeństwa państwa*, [in:] *Z prawem ustrojowym porównawczym przez ponad półwiecze. Księga Jubileuszowa dedykowana Profesorowi Marianowi Grzybowskiemu z okazji 55-lecia pracy naukowej*, eds. B. Przywora, A. Rogucka-Łukasik, K. Skotnicki, Częstochowa 2022, pp. 937–946.

¹⁴ An in-depth analysis of the term security used in the Constitution of the Republic of Poland of 1997. makes S. Grabowska, *Security as a Concept of Constitutional Law*, "Przegląd Prawa Konstytucyjnego" 2019, no. 6, pp. 433–444.

¹⁵ H. Zięba-Załucka, *Konstytucyjne aspekty bezpieczeństwa*, "Studia Iuridica Lublinensia" 2014, no. 22, p. 412.

¹⁶ Art. 85 of the Constitution of the Republic of Poland.

¹⁷ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, p. 419.

¹⁸ R. Balicki, *Obowiązek obrony Ojczyzny*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, eds. W. Skrzydło, S. Grabowska, R. Grabowski, Warszawa 2009, p. 269.

signed employee mobilization assignments, serve in militarized units and perform defense services on the terms and to the extent specified in this the act. The legislator decided that the basic way of fulfilling the obligation to defend the Homeland by a citizen of the Republic of Poland is to perform military service. Homeland Defence Act provides for the division of military service into active military service and reserve service. Active military service consists in performing basic military service, territorial military service, active reserve service on the days of this service and performing military exercises as part of the passive reserve, professional military service and service in the event of mobilization and during war. Basic military service consists in performing compulsory basic military service or voluntary basic military service¹⁹.

The performance of the obligation of military service may also take place by performing substitute military service. The statutory principle is that the fulfillment of the duty of military service takes precedence over other types of duty to defend the homeland. Polish citizens are obliged to perform military service from the day they turn 18 until the end of the calendar year in which they turn 60. Polish citizens with the rank of non-commissioned officer or officer are subject to the obligation to perform military service until the end of the calendar year in which they turn 63 years of age. The legislator exempted from the obligation of military service persons who were considered permanently unfit for military service due to their health condition, pregnant women and within 6 months after childbirth, persons taking care of: children, bedridden persons, persons against whom permanent incapacity for work on a farm by persons, persons who have been declared completely incapable of work and independent existence, persons classified as severely disabled, if these persons live together with them and this care cannot be entrusted to other persons. Persons subject to the duty of defense are obliged

¹⁹ The legislator decided that the introduction of compulsory universal basic military service (or, in fact, its restoration) is difficult to implement in the current circumstances. Therefore, in the Homeland Defence Act a system of solutions, institutions, incentives, employment guarantees and financial incentives for Polish citizens to undertake voluntary forms of non-professional military service was created. Taking into account the rapid exacerbation of the international situation in connection with the Russian-Ukrainian war, the legislator left the possibility of introducing compulsory basic military service.

to appear in person when summoned by the competent military authorities in matters related to the implementation of this constitutional obligation.

Homeland Defence Act also provides for imposing on Polish citizens the obligation to provide personal and material benefits for the defense of the homeland. What is surprising is the obvious shortcoming of the Act, which is the lack of a normative regulation concerning the guarantee contained in Art. 85 sec. 3. The Polish Constitution on the basis of which a citizen of the Republic of Poland whose religious beliefs or moral principles do not allow him to perform military service may be obliged to perform alternative service. It should be noted, however, that the legislator specified that the alternative service consists in particular in: performing work for the benefit of the environment, fire protection, health care, social assistance, care for people with disabilities or the homeless, and for public administration and the judiciary by persons subject to mandatory military service of Polish citizens whose religious beliefs or moral principles do not allow them to perform this service. Alternative service may also consist in serving in armed formations that are not part of the Polish Armed Forces. The legislator recognized that performing alternative service is tantamount to fulfilling the obligation of basic military service. The scope of the statutory regulation of the constitutional obligation of a Polish citizen to defend the Homeland justifies the claim that the Homeland Defence Act significantly modified the existing regulations in this regard.

III. Polish Armed Forces

Polish Constitution defines the legal position and basic tasks of the Armed Forces RP²⁰. The Basic Law stipulates that they serve to protect the independence of the state and the indivisibility of its territory, and to ensure the security and inviolability of its borders, while remaining neutral in political matters and subject to civil and democratic control. There is a strong emphasis on the political neutrality of the army and civil-democratic supervision of the Polish Armed Forces. The Act on Defense of the Homeland details the constitutional regulation in this regard in Section III entitled Armed Forces. Therefore, the legislator replaced the constitutional term of

²⁰ Art. 26 of the Polish Constitution.

the Armed Forces RP with a new term, which is not used and unknown in the constitution, with the term Armed Forces. Therefore, it becomes natural to ask whether the legislator is entitled to change the name of the state body used in the constitution? I believe that the legislator has no such right. In my opinion, the legislator is unconditionally bound by the nomenclature used in the Polish Constitution. Due to the common use of the names: *Wojsko Polskie* and Polish Army as synonyms of the name of the Armed Forces RP, it is advisable to introduce a provision in the general provisions of the Act containing basic concepts and definitions on the possibility of using them as equivalent concepts.

Unfortunately, the legislator did not take advantage of such a possibility, which naturally provokes critical comments and should be assessed negatively. The Armed Forces were defined by the legislator as an armed, hierarchical and uniformed formation, which constitutes an organizationally separate part of the defense system of the state. In the Polish legal system, therefore, it is a legal definition that bindingly determines the meaning of the term Armed Forces for the purposes of not only this normative act. The Homeland Defence Act indicates that the Armed Forces uphold the sovereignty and independence of the state as well as its security and peace. Therefore, the statutory formulation of the tasks of the Armed Forces differs significantly from the constitutional formulation of the tasks of the Armed Forces, which additionally emphasizes the protection of the indivisibility of its territory and ensuring the security and inviolability of Poland's borders. In addition, the Armed Forces may take part in combating natural disasters and liquidating their effects, anti-terrorist activities, activities in the field of property protection, search operations, rescue operations or the protection of human health and life, protection and defense of cyberspace, cleaning of areas from explosives and hazardous materials and their disposal, as well as in the implementation of tasks in the field of crisis management. The Armed Forces, performing constitutional tasks in the field of protecting the independence of the state, the indivisibility of its territory and ensuring the security and inviolability of its borders, have the right to use direct coercion measures, use weapons and other weapons, of course, taking into account the necessity and purpose of performing these tasks, in an adequate manner to the threat and within the limits of the principles set out in international agreements ratified by the

President RP and international customary law. In the Homeland Defence Act, it is surprising that there is no detail in the regulation contained in the Basic Law relating to the constitutional obligation of the Polish Armed Forces to maintain neutrality in political matters and the constitutional principle of civil and democratic control.

Unfortunately, the legislator did not take advantage of the possibility of detailed and precise regulation of these very important issues in a democratic state ruled by law, for example by normative regulation of the practice applied in this respect after the entry into force of the Polish Constitution. In the context of the constitutional regulation, which stipulates that the President RP, as the supreme commander of the Polish Armed Forces, appoints the commanders of the types of the Armed Forces²¹, the legislator determines the composition and organization of the Armed Forces. In accordance with the Homeland Defence Act the Armed Forces are composed of the following types: Land Forces, Air Forces, Navy, Special Forces, Territorial Defense Forces as well as Military Police²² and Cyberspace Defense Forces²³. In the event of general or partial mobilization and in times of war, military special services also become part of the Armed Forces: the Military Counterintelligence Service and the Military Intelligence Service²⁴. Pursuant to the Act, the commanders of the branches of the Armed Forces are: the General Commander of the Branches of the Armed Forces, the Operational Commander of the Branches of the Armed Forces and the Commander of the Territorial Defense Forces. The Act also includes provisions on the detailed organizational structure of the Armed Forces and their tasks. At the same time, the current command structure was retained.

²¹ Art. 134 of the Polish Constitution.

²² As a separate and specialized service of the Armed Forces constituting de facto military police. For more see: T. Połuch, *Żandarmeria wojskowa*, [in:] *Prawo wojskowe*, eds. W. Kitler, D. Nowak, M. Stepnowska, Warszawa 2017, pp. 455–474.

²³ It is the latest specialized component of the Armed Forces, suitable for the implementation of the full spectrum of activities in the broadly understood cyberspace, in particular in the field of proactive protection and active defense of elements and resources of cyberspace that are crucial from the point of view of the Armed Forces. It was created in 2022.

²⁴ In peacetime, the Military Counterintelligence Service and the Military Intelligence Service report to the Minister of National Defence. More on this topic: M.A. Kamiński, *Kontrwywiad i wywiad wojskowy*, [in:] *Prawo wojskowe...*, pp. 511–544.

IV. National Defense Authorities

In the Homeland Defence Act, the concept of national defense authorities, previously unknown in the Polish legal system, was introduced and the constitutional competences of the President RP and the Council of Ministers were specified in more detail, not only in the strictly military security of the state. The legislator recognized only the President RP, the Council of Ministers, the Minister of National Defense and voivodes as organs of National Defense²⁵.

The Polish Constitution defines the political position and powers of the President RP as the supreme commander of the Armed Forces RP²⁶. It provides that in peacetime, the President of the Republic exercises authority over the Armed Forces through the Minister of National Defense and appoints the Chief of the General Staff and commanders of the types of the Armed Forces for a definite period of time. For the time of war, the President RP, at the request of the Prime Minister, appoints and dismisses the Commander-in-Chief of the Armed Forces. In this situation, the appointment of the Supreme Commander of the Armed Forces by the President RP is obligatory²⁷.

The powers of the President RP related to the authority over the Armed Forces in accordance with the Constitution are specified in detail in the Homeland Defence Act the normative regulation in this regard. Pursuant to this Act, the President RP, upholding the sovereignty and security of the state, the inviolability and indivisibility of its territory, submits to the Council of Ministers recommendations for the national security strategy before the Council of Ministers begins work on its draft, and recommendations for the defense preparations of the Republic of Poland. The President RP approves, at the request of the Prime Minister, the national security strategy²⁸ and plans for national exercises of the defense system and manages their course²⁹. The

²⁵ It is worth noting that the existing powers of the Minister of National Defense and voivodes have been retained in full and have not been substantially modified.

²⁶ Art. 134 of the Polish Constitution.

²⁷ M. Kołodziejczak, *Pozycja prawno-ustrojowa Naczelnego Dowódcy Sił Zbrojnych*, [in:] *Prawo wojskowe...*, p. 86.

²⁸ By a decision which is immediately announced in the Journal of Laws of the Republic of Poland.

²⁹ National exercises are organized with the participation of the highest state authorities at least every 4 years.

President RP issues, at the request of the Prime Minister, the Political and Strategic Defense Directive of the Republic of Poland and other executive documents to the national security strategy³⁰. The President RP, at the request of the Council of Ministers, decides to introduce or change a specific state of defense readiness of the state. In the event of the need to defend the state, the President RP, at the request of the Council of Ministers, decides on the day on which the time of war begins or ends on the territory of the Republic of Poland. The President RP directs the defense of the state, in cooperation with the Council of Ministers, upon the appointment of the Commander-in-Chief of the Armed Forces and taking over command by him. Based on the Homeland Defence Act, the President RP, as the guardian of the sovereignty and security of the state, the inviolability and indivisibility of its territory, may request all public authorities, government and local government administration, entrepreneurs, heads of other organizational units and social organizations for information relevant to the security and defense of the state and initiates and patronizes projects aimed at shaping patriotic and defensive attitudes in society.

The legislator granted the President RP, as part of his general authority over the Armed Forces, the right to determine, at the request of the Minister of National Defence, the main directions of development of the Armed Forces and their preparations to defend the state. The President RP also approves, at the request of the Minister of National Defence, national plans for the use of the Armed Forces to defend the state, as well as the organization and principles of operation of the military command system of the Armed Forces³¹. Moreover, at the request of the Prime Minister, the President RP indicates the person to be appointed to the position of the Supreme Commander of the Armed Forces. The President RP has the right to participate in briefings of the management staff of the Ministry of National Defense and the Armed Forces. The auxiliary body of the President RP in the process of managing the defense of the state is the Chief of the General Staff of the Polish Army. The President RP performs tasks in the field of security

³⁰ In the form of a decision immediately announced in the Journal of Laws of the Republic of Poland.

³¹ On the basis of a decision which is immediately announced in the Journal of Laws of the Republic of Poland.

and defense with the help of the National Security Bureau, which is managed by the secretary of state appointed by him. The President RP determines the organization and scope of activities of the National Security Bureau. The activities of the National Security Bureau are financed from the budget of the Chancellery of the President RP.

Polish Constitution defines the political position and competences of the Council of Ministers, which conducts the internal and foreign policy of the Republic of Poland in order to ensure the external security of the state, internal security of the state and public order, and exercises general management in the field of defence³². It should be noted that in these cases the protected value is the state and not the citizens³³. Ensuring the external security of the state and exercising general control in the field of national defense by the Council of Ministers, in the light of the Act, consists primarily in: developing draft national security strategies, planning and implementing state defense preparations³⁴, preparing a system for managing national security (including state defence), maintaining a constant defense readiness of the state, applying to the President RP to increase it in the event of an external security threat and during war, and to lower it according to the reduction of the degree of threat, identifying facilities of particular importance for state security or defence, preparing for the state's defense needs and maintaining uniform uniforms in constant readiness systems of permanent duty, observation, measurement, analysis, forecasting and notification, ensuring the functioning of the defense training system and controlling the state of defense preparations in the state.

The tasks of the Council of Ministers performed as part of ensuring the external security of the state and exercising general control in the field of national defense also include ensuring support by the host state, consisting in providing civil and military assistance to allied forces and international organizations that are staying, performing tasks on the territory of the Repub-

³² Art. 146 of the Polish Constitution.

³³ A. Bień-Kacała, *Bezpieczeństwo w Konstytucji RP z 1997 r. – wstępna diagnoza*, "Przegląd Prawa Konstytucyjnego" 2015, no. 2, p. 21.

³⁴ In order to ensure the functioning of the state in the event of an external threat to security and during war, including planning economic and defense projects and tasks performed for the Polish Armed Forces and allied forces.

lic of Poland or they move through that territory in fulfillment of their international obligations.

In accordance with the Homeland Defence Act the Minister of National Defense manages the national defense department of the government administration and is the body through which the President RP exercises authority over the Armed Forces in times of peace. The Minister of National Defense manages the country's defense by implementing the policy of the Council of Ministers in the field of general management in the field of national defense and ensuring the state's external security. Pursuant to the Act, the field executive bodies of the Minister of National Defense in matters of recruitment, operational and defense and non-combined administration are the Head of the Central Military Recruitment Center and the heads of military recruitment centres. The adopted solution is one of the institutional novelties introduced by the legislator.

The legislator entrusted the management of defense matters in the voivodeship to the voivode, specifying in detail his tasks and competences in this respect.

V. Summary

Homeland Defence Act contains a number of new normative solutions, rules and institutions, the main purpose of which is to strengthen the broadly understood defense of the state. This is an act of fundamental importance to the national security system. The Act is an innovative development of the normative regulation concerning not only the military security of the state contained in the Polish Constitution. It should be noted that, in principle, most of the most important constitutional norms in this area have been clarified and specified in statutory mode. This is a great advantage of the new law. An exception in this regard is the issue of: the state of war, states of emergency, the issue of the use of the Armed Forces outside the borders of the Republic of Poland and the determination of the rules for the stay of foreign troops on the territory of the Republic of Poland and their movement through this territory. The above-mentioned constitutional matters are not subject to the normative regulation contained in the Homeland Defence Act. What is most

surprising, however, is the lack of development of the constitutional regulation concerning the constitutional obligation of the Polish Armed Forces to maintain neutrality in political matters and the constitutional principle of civil and democratic control, and the replacement of the constitutional term Armed Forces RP with a new and unknown term in the constitution.

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