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## **The relations among the Polish Armed Forces' Management Entities depicted in the 1997 Constitution<sup>3</sup>**

**Keywords:** headship, control, command, Polish Armed Forces (PAF), President, Minister of National Defence (MoND)

**Słowa kluczowe:** zwierzchnictwo, kierowanie, dowodzenie, SZ RP, prezydent, minister obrony narodowej

### **Summary**

The current political-military situation enforces verification of existing structural and procedural arrangements relating to the functioning of Polish defense system. According to a number of conceptual documents (including National Security Strategy of 2014) the system consists of two kinds of subsystems: the controlling and the executive. The latter kind of subsystems includes operational and supporting sorts. The Polish Armed Forces (PAF) are the key element of the national defence system and are subject to civilian supervision of the democratic authorities. With regard to this kind of supervision there are two primary (fundamental) notions that deserve particular attention: *headship* and *control*. Both forms of supervision are reserved for civilian authorities during peacetime, respectively for the President of Poland and the Minister of National De-

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fence. During the war time, the Council of Ministers gains greater importance in controlling the state defence. In this context, the category that invariably remains in the PAF domain is *command* understood as a specific form of control. Noteworthy, however, is the fact that the war-time PAF command structure, considering existing legal regulations, does not seem fully optimized. Therefore the reform of PAF control and command system, initiated in 2014, requires continuation and completion.

## Streszczenie

### **Relacje między organami władzy w odniesieniu do funkcjonowania Sił Zbrojnych RP w świetle Konstytucji z 2 kwietnia 1997 roku**

Bieżąca sytuacja polityczno-militarna wymusza weryfikację obowiązujących rozwiązań strukturalnych i proceduralnych odnoszących się do funkcjonowania systemu obronnego Rzeczypospolitej Polskiej. Zgodnie z zawartymi w wielu dokumentach koncepcyjnych (w tym w Strategii Bezpieczeństwa Narodowego z 2014 r.) ustaleniami wspomniany system obejmuje podsystemy kierowania i wykonawcze, w tym podsystemy operacyjne i podsystemy wsparcia. Kluczowym elementem systemu obronnego państwa polskiego są Siły Zbrojne Rzeczypospolitej Polskiej, które podlegają cywilnej kontroli demokratycznych władz. W odniesieniu do tego rodzaju kontroli na uwagę zasługują podstawowe (fundamentalne) pojęcia: „zwierzchnictwo” i „kierowanie”. Obie formy nadzoru są w czasie pokoju zarezerwowane dla organów władzy cywilnej, odpowiednio dla prezydenta RP i ministra obrony narodowej. W czasie wojny istotnego znaczenia w kierowaniu obroną państwa nabiera Rada Ministrów. W tym kontekście kategorią pozostającą niezmiennie w gestii sił zbrojnych jest „dowodzenie” rozumiane jako szczególna forma kierowania. Na uwagę zasługuje jednakże fakt, że struktura dowodzenia siłami zbrojnymi w czasie wojny, z punktu widzenia obowiązujących regulacji prawnych, nie wydaje się w pełni zoptymalizowana, co wymaga kontynuowania zainicjowanej w 2014 roku reformy systemu kierowania i dowodzenia SZ RP.

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## I.

Dynamic changes currently taking place in the eastern neighbourhood of our country result in revision of assumptions concerning security of the Republic of Poland. One of its important components includes the proper functioning of the key elements forming the basis for the system of national secu-

rity. It includes the assets and resources allocated by the state to fulfillment of tasks in the area of security. The above mentioned means should be properly organized, maintained and prepared.

According to the National Security Strategy of 2014, the system consists of two kinds of subsystems: control and executive. The latter type includes operational systems such as defensive (e.g. the Polish Armed Forces), protective and supporting ones (incl. social and economic)<sup>4</sup>. The control subsystem is hereby defined as the key element of national security system consisting of public authorities and managers of organizational units performing the tasks relating to national security, including advisory bodies, administrative apparatus and operational procedures as well as adequate infrastructure. The Strategy also points out that the durable constitutional principles are the foundation of the control subsystem. The special roles played in controlling national security are assigned to the Parliament, the President and the Council of Ministers.

Although the Strategy refers to the political principles of the 1997 Polish Constitution, it does not exactly correspond with the functions of authority resulting from the constitution (the act of law). The utmost importance in the field of relevant interest is reserved for the function of the head of the Polish Armed Forces (PAF) and the guard of national security as well as the function of managing the state defence. Constitutional distinction of military commanders is also significant in the context of headship exercised over the PAF. The relations among authorities maintained within performance of their tasks and competencies should also be laid out considering the constitutional principles of sovereignty of the Nation, common good, uniformity of the Republic of Poland, division and balance of power, cooperation, efficiency and reliability of public institutions. The Strategy emphasizes the need to complete the reform of the control and command of the armed forces, thus consolidating the joint effect of their authorities around the basic functions of planning as well as command in their general and operational dimensions. Therefore it becomes significant to shorten command chains, especially during the war time.

It is also crucial to mention the theoretical form of cooperation related to the involvement of a large number of public bodies and institutions in the system of security. The directive is considered to be one of the most import-

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<sup>4</sup> Strategia Bezpieczeństwa Narodowego z 2014 r., <http://mon.gov.pl/dokumenty/dzial/dokumenty/strategia-bezpieczenstwa-narodowego-rp-102549> (29.05.2015), p. 13.

ant principles underlying the constitution<sup>5</sup>. Cooperation is an essential component of the system mechanism determining possibility of operation for the entire system. The directive is a determinant of shaping the political institutions and prohibits authorities to compete among themselves. Cooperation is primarily associated with the pursuance of two or more entities to achieve the designated objectives<sup>6</sup>.

Discrepancy or inconsistency of objectives is connected with the phenomenon of *negative cooperation*. Whereas *positive cooperation* occurs in the situation when the objective of operations is common<sup>7</sup>. Considering the issue of security, it is determined, *alter alia*, by the rules of common good and uniformity of the Republic of Poland. There are two rules of *positive cooperation* that, in this case, are the most important. The first one deals with shortening links of the objective-oriented structures and the second one is based on striving to maximize internal preparation with externalization of actions. They should be taken into account when determining the principles of cooperation among public organs and institutions in the field of security.

Undoubtedly, the proper understanding of the way the subject matter system functions and the realization of its subsystems' structural relations require a precise interpretation of such notions as headship, control and command. This is the basis for considering the essence of the system and the changes taking place therein. As a consequence, it will enable avoidance of its functions' misperception and provide the right interpretation of the tasks and responsibilities of the various authorities in terms of ensuring the security of Poland. This is particularly important in the context of completely new threats including measures of an unprecedented multi-dimensional nature applied in the frames of so-called *hybrid warfare*.

The concept of national defence is not immutable. It is continuously reviewed and updated as the situation characterizing the state environment

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<sup>5</sup> Z. Witkowski, *Dyrektywa "współdziałania władz" jako element organizujący życie wspólnoty państwowej w świetle Konstytucji RP z 2 kwietnia 1997 r.*, [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej*, eds. J. Wawrzyniak, M. Laskowska, Warszawa 2009, pp. 139–143. See also W. Brzozowski, *Współdziałanie władz publicznych*, "Państwo i Prawo" 2010, no. 2, pp. 6–10.

<sup>6</sup> T. Kotarbiński, *Prakseologia*, cz. 1, Wrocław–Warszawa–Kraków 1999, pp. 402–407.

<sup>7</sup> T. Kotarbiński, *Traktat o dobrej robocie*, Wrocław–Warszawa–Kraków–Gdańsk 1975, pp. 186–220.

evolves. The environment, following the development of science and technology, gains new dimensions. Classic armed conflict, such as those known from the history, though still possible, seems less and less likely nowadays. Actions taken by states (e.g. Russian Federation), non-state entities (e.g. Islamic extremists in Syria and Afghanistan) and quasi-states (e.g. People's Republic of Donetsk and Lugansk) are increasingly turning to ways, means (propaganda) and dimensions (cyberspace) of activities (combat) that have not been so far directly associated with armed conflict or used within its framework in such a specific way and to such an extent. Therefore, it is advisable to prepare an appropriate response to new methods of conducting operations, not only in the military dimension but also in a broader organizational sense as well, which is the main objective of this development. We will point out here the most important political system categories – headship, control and command of the PAF in the light of the solutions adopted in the Constitution of 1997. Detailed considerations should begin with the category of headship over the armed forces and the guard of sovereignty and security of the state, as well as the inviolability and integrity of its territory. These functions, pursuant to art. 126 and art. 134 of the Constitution, have been entrusted to the President. They overlap with the functions of providing internal security of the state and public order, ensuring external security of the state and exercising general control in the field of national defense. The functions result from art. 146 of the Constitution and have been entrusted to the Council of Ministers. Our considerations contain the most important functions reserved for the head of state and the general management of the government.

## II.

The President, being the supreme civilian organ of the PAF (najwyższy zwierzchnik Sił Zbrojnych), plays an essentially ideological role<sup>8</sup>. He is a kind of symbol, the personification of the State<sup>9</sup>. This position does not create a rela-

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<sup>8</sup> Z. Witkowski, *Prezydent Rzeczypospolitej Polskiej*, [in:] *Prawo konstytucyjne*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2015, p. 392.

<sup>9</sup> A. Chorążewska, *Model prezydentury w praktyce politycznej po wejściu w życie Konstytucji RP z 1997 r.*, Warszawa 2008, p. 170.

tion of administrative subordination. The head of state has no right to make binding decisions<sup>10</sup>. The President has the authority of a purely political nature which does not involve the possibility of giving orders<sup>11</sup>. It excludes such a possibility. The President has the position of the head, not a commander. We are therefore faced with a clear division between these activities<sup>12</sup>. At the same time, constitutional (system) arrangements may be different in this matter<sup>13</sup>. Based on the wording of the Constitution, it may be concluded that these two spheres are separated from each other, just as management (control) that is an indirect link between the headship and command in regard to the PAF. The President is the head in symbolic and ceremonial terms, and is supposed to ensure neutrality of the armed forces in case of political affairs. The headship corresponds with the civilian nature of the President, even in the situation when he is a retired soldier (e.g. non-commissioned officer, commissioned officer or general)<sup>14</sup>.

In addition to the system justification for the limited competency of the head of the armed forces, we need to elaborate on the category of leadership. The concept is closely related to the position and role performed by the in-

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<sup>10</sup> J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warszawa 1999, pp. 183–194.

<sup>11</sup> B. Opaliński, *Rozdzielenie kompetencji władzy wykonawczej między prezydenta RP oraz Radę Ministrów*, Warszawa 2012, pp. 172–173.

<sup>12</sup> The postulate has been consistently implemented since the beginning of the system transformation in Poland, see R. Mojak, *Instytucja Prezydenta RP w okresie przekształceń ustrojowych*, Lublin 1995, p. 254.

<sup>13</sup> For example: the US President, alongside with having the power of political headship, is at the same time the commander in chief, see K. Wójtowicz, *Uprawnienia nadzwyczajne Prezydenta Stanów Zjednoczonych*, Wrocław 1995, pp. 66–76. The competencies are becoming increasingly factual with the use of modern information technologies (e.g. case of Osama Bin Laden in 2011), see J.C. Dehn, *The Commandef-In-Chief and the necessities of war: a conceptual framework*, "Temple Law Review", vol. 83 no. 3, Spring 2011, pp. 602–603. On the other hand, the President of Germany does not even have power to ideological headship of the armed forces, mainly for historical reasons, see M. Bożek, *Instytucja Prezydenta Republiki Federalnej Niemiec*, Warszawa 2007, pp. 154–155.

<sup>14</sup> In the period of political transformation we had to deal with the situation in which General Wojciech Jaruzelski combined active military service and the function of President, as well as previously the function of Minister of National Defence and the Prime Minister. Currently, it does not seem possible due to the strict rule of *incompatibilitas* included in the art. 132 of the Constitution.

dividuals leading teams of people. The individuals are called leaders<sup>15</sup>. There are many definitions of the category that are formed depending on the point of reference, (e.g. related to sociology or theory of management). The common denominator is the understanding of leadership as a combination of specific skills that should be attributed to the leaders in all organizations<sup>16</sup>. Leadership is then “a certain ability, skill or feature of winning followers, influence and create a vision of development and encouraging people to take actions. However, its most important element, defining the essence of actual and natural leadership, is ability of a voluntary organization, gathering and mobilization of people around a leader in order to achieve specific goals”<sup>17</sup>. The source of leadership is power<sup>18</sup>. The power itself is seen as “the ability to bring own objectives, goals or values above those presenting and applied by other people”<sup>19</sup>.

Given the nature of leadership, it can be concluded that having a formal power is legitimization of leadership and allows creating conditions for its further shaping. Translating leadership, perceived in this way, into political system conditions, one can say that the headship consists in shaping the vision of the state security system that is based on the applicable law, including its highest ranking acts (e.g. so-called *Komorowski Doctrine* promoted by Polish National Security Bureau). The genuine ability to gather and mobilize people around a leader is reflected in the results achieved by candidates during presidential elections. As a result, it turns into a formal function of the head in the frames of division and balance of power.

In accordance with the constitutional mechanism, during peacetime, the head of state exercises headship of the PAF through the Minister of National Defence. This is a consequence of entrusting the government with general control of defense. Moreover, the government as a whole, including the Minister of National Defence, is responsible for ensuring internal and external security. The Constitution, however, does not lift or revalue the determined

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<sup>15</sup> W. Łydka, *Przywództwo wojskowe*, Warszawa 2014, p. 23.

<sup>16</sup> W. Łydka, p. 29.

<sup>17</sup> L. Kanarski, R. Pęksa, A. Żak, *Przywództwo wojskowe: tradycje, teoria, praktyka*, Warszawa 1998, p. 47.

<sup>18</sup> W. Łydka, p. 38.

<sup>19</sup> M. Armstrong, *Zarządzanie zasobami ludzkimi*, Kraków 2001, p. 147.

set of tasks during war<sup>20</sup>. The role of the Council of Ministers is permanent in nature. Therefore the President should not, as a consequence, take direct actions in relation to the armed forces or lead his own defense and security policy<sup>21</sup>. First of all, he should inspire the government to take actions<sup>22</sup>.

One should see, in this case, a sort of similarity to the relation existing among the executive authorities in the field of foreign affairs. The Constitutional Tribunal has rightly identified political system's independence limitations imposed on the head of state in carrying out certain tasks<sup>23</sup>. It includes significant limitation of presidential powers in relation to the solutions of the 1992 interim constitution. The art. 34 entrusted the head of state with general control in the field of internal and external security of the state, and the headship was to be exercised without involvement of the Minister of National Defence<sup>24</sup>. As a result, the headship, anchored in the Constitution of 1997 and following the application of historical interpretation, cannot consist in control of state security and defense.

In the light of the current Polish Constitution of 1997, the President does not have specific competencies in filling the office of the Minister of National Defence. Under the interim constitution of 1992, an obligation to consult the President in relation to the candidate for this office, in practice, turned into a need to obtain presidential approval (the same rule applied to the Minister of Foreign Affairs and the Minister of Interior Affairs)<sup>25</sup>. However, the current constitutional obligation to exercise headship "through the Minister of National Defence" creates a special relation between the two constitutional authorities. It is noted that the head of state should particularly often involve this member of the Council of Ministers, even in a situation where overall control in the field of national defense

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<sup>20</sup> M. Bożek, *Współdziałanie Prezydenta RP i Rady Ministrów jako konstytucyjny warunek zapewnienia bezpieczeństwa państwa w czasie stanu szczególnego zagrożenia*, "Przeгляд Sejmovy" 2011, no. 2, pp. 86–89.

<sup>21</sup> B. Banaszak, *Konstytucja Rzeczypospolitej polskiej. Komentarz*, Warszawa 2009, pp. 666–667.

<sup>22</sup> B. Opaliński, pp. 169.

<sup>23</sup> See the judgment of Constitutional Court dated 20<sup>th</sup> May 2009 (Kpt 2/08).

<sup>24</sup> G. Kuca, *Zasada podziału władzy w Konstytucji RP z 1997 roku*, Warszawa 2014, p. 190.

<sup>25</sup> M. Kruk, *Praktyka konstytucyjna pod rządami małej konstytucji z 1992 r.*, [in:] *Małe konstytucje. Ustawy zasadnicze okresów przejściowych 1919–1947–1992*, eds. R. Jastrzębski, M. Zubik, Warszawa 2014, pp. 140–141.



has been assigned to the entire government<sup>26</sup>. The Minister of National Defence should be a kind of liaison between the head of state and the government, especially in matters within the scope of tasks assigned to the segment of government administration that is headed by the minister. It results from the fact that he is obliged to carry out the policy determined by the whole government.

As a part of headship of the armed forces, there is an important competency transferred onto the level of command which is connected with the appointment of the PAF Supreme Commander for the time of war. The head of state does so on request of the Prime Minister. In the same manner, the Supreme Commander may be removed from office. It is clearly stated that the President is essentially bound by the request of the Prime Minister<sup>27</sup>. However, if no such request, it is assumed that the head of state can act alone in a state of necessity<sup>28</sup>. There is also an open question concerning possibility of appointing another person to that particular post and the failure to appoint anyone to the post despite the Prime Minister's request. Of course, in this case, there is a possibility of constitutional accountability. However, it also highlights the lack of a mechanism that would level effects of a possible crisis in the structures of headship, control and command of the PAF. Every nomination entitlement, taken in cooperation with another entity in case of a specific threat to the Republic of Poland, carries the risk of lack of efficiency in taking required measures, for example in the field of defense. Therefore, one should consider the introduction of automatic appointment to the post of the Supreme Commander, assuming that there is a possibility of making personal changes later on.

### III.

Moving on to the next conceptual category that is *control*, it should be noted that in the frames of political system positions and the responsibilities of the Council of Ministers, the control and coordination function has been recog-

<sup>26</sup> P. Sarnecki, *Artykuł 134*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, ed. L. Garlicki, Warszawa 1999, p. 2.

<sup>27</sup> B. Banaszak, *Konstytucja...*, pp. 668–669.

<sup>28</sup> L. Wiśniewski, *Stany nadzwyczajne w projekcie nowej Konstytucji RP*, [in:] *Prawa człowieka w sytuacjach nadzwyczajnych ze szczególnym uwzględnieniem prawa i praktyki polskiej*, ed. T. Jasudowicz, Toruń 1997, p. 154.

nized<sup>29</sup>. It involves the power to direct government administration, coordinating the activities of bodies distinguished in its framework and the ability to control the activities to ensure efficiency, consistency and effectiveness of government administration. The control is also associated with the function of government in the form of state policy and consists in determining the state policy<sup>30</sup>. General control in the field of national defence marks the boundary between the power of government to lead and coordinate and the competencies of the Minister of National Defence in this regard<sup>31</sup>. The control is, in this context, positioned on a high level of constitutional abstraction. Turning to a more substantial level, one should refer to the findings derived from the science of administrative law. The approach of control is defined as a type of governance entitling to direct the behavior of the subsidiaries regardless of their will<sup>32</sup>. The controlling body may determine the contents of the activities conducted by the controlled entities, the moment of making decisions, the ways to decision points or general methods of operation<sup>33</sup>. It may use a variety of measures, including supervision-related ones, as well as determine tasks and prepare guidelines for organizationally subordinated entities. This sort of relation is usually related to centralized administration.

The term “control” also has a long history in the literature devoted to broadly understood concept of management, including command. In this context, the control requires the existence of two related dynamic modules (controlling and executive) forming a control system<sup>34</sup>. Relations between modules are unidirectional or bidirectional. Their actions are subordinated to the specific objective of control. The controlling module affects the components of executive module causing changes to its state in accordance with the objective of control. The control is also understood as an appropriate influence on people by contacting them, providing information, motivating to

<sup>29</sup> Z. Witkowski, *Rada Ministrów Rzeczypospolitej Polskiej i administracja rządowa*, [in:] *Prawo konstytucyjne...*, p. 415.

<sup>30</sup> M. Bożek, pp. 87–88.

<sup>31</sup> W.J. Wołpiuk, *Sily zbrojne w regulacjach Konstytucji RP*, Warszawa 1998, p. 92.

<sup>32</sup> E. Ura, *Prawo administracyjne*, Warszawa 2010, p. 73.

<sup>33</sup> P. Sarnecki, *Zakres działania i funkcje Rady Ministrów*, [in:] *Rada Ministrów. Organizacja i funkcjonowanie*, ed. A. Bałaban, Zakamycze 2002, pp. 231–234.

<sup>34</sup> J. Michniak, *Dowodzenie i łączność*, Warszawa 2005, p. 15.

work and assessing the achieved results<sup>35</sup>. The subject matter category concerns the impact on human resources and aims to make members of an organization work together for its benefits<sup>36</sup>.

#### IV.

The category of command has a number of definitions emphasizing its different dimensions and reflecting the development of subject matter issues over the last several years. The '60s of the last century may be recognized as the beginning of the defining process related to the contemporary understanding of command. According to the basic definition that was relevant at that time, command included "activities of a military unit commander consisting in a comprehensive preparation of subordinates for combat and directing them in battle"<sup>37</sup>. The category was also recognized as "a special kind of control exercised by commanders and staffs in relation to subordinate troops, units, and sub-units in preparation, support and conduct of combat activities"<sup>38</sup>, and also as a "basic form of directing troops, based on the right to comprehensive development of all elements of combat readiness in relation to directly and indirectly subordinate soldiers, thus preparing them for activities/operations and directing them while performing combat tasks"<sup>39</sup>. Among the command definitions, there is one identifying it as a "guiding human beings and through them also steering equipment (tanks, aircraft, warships, etc.) and processes (training, armed warfare/ combat, etc.)"<sup>40</sup>. Command is also a "kind of organization control" including formal competencies of the controlling agent/entity (or otherwise formal authority) as the dominant criterion<sup>41</sup>. In the last decade, we have noticed a significant evolution of the command concept. It is now treated as

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<sup>35</sup> *Podstawy dowodzenia*, eds. J. Kręcikij, J. Wolejszo, N. Prusiński, Warszawa 2007, p. 12.

<sup>36</sup> R.W. Griffin, *Podstawy zarządzania organizacjami*, Warszawa 1999, p. 43.

<sup>37</sup> A. Apanowicz, *Dowodzenie*, Warszawa 1961, p. 72.

<sup>38</sup> J. Cendrowski, S. Swebocki, *Psychologia walki i dowodzenia*, Warszawa 1973, p. 142.

<sup>39</sup> W. Mróz, *Zarys kierowania i organizacji pracy dowódczej i sztabowej*, Warszawa 1978, p. 13.

<sup>40</sup> M. Cenin, S. Chępa, *Psychologia wojskowa. Teoria i praktyka*, Warszawa 1998, p. 34.

<sup>41</sup> L. Krzyżanowski, *O podstawach kierowania organizacjami inaczej: paradygmaty, filozofia, dylematy*, Warszawa 1999.

a “complex and multi-functional activity of HQs/commands representing different organizational levels of the armed forces as a whole, as well as different military services, branches and forces”<sup>42</sup>. Command is associated with decision-making process involving a sequence of operations such as collection of information on friendly forces, enemy and operating conditions (operational environment), and its essence is connected with making decisions on how to complete the task. It is therefore a “process by which a commander, within his power, makes decisions with a specific rigour of feasibility, having likely to achieve the intended objective using resources and measures”<sup>43</sup>. Command is, therefore, clearly presented as a very specific process: information based and decision-making in nature<sup>44</sup>.

It is worth mentioning that in the fundamental security-related document announced in 2013 – *Strategy for Development of National Security of the Republic of Poland 2022*<sup>45</sup> – PAF command organs were classified as elements of national security control subsystem. The Strategy also comprehends the postulate to improve PAF control and command structures. It is associated with the need for full implementation of modern ideas (e.g. jointness of military operations and activities) to the PAF control and command system.

The definitions listed above clearly show the lack of proper delimitation of the subject matter conceptual categories and the overlapping of control and command concepts. Taking into account the specific character of the PAF and conclusions drawn from analyzed literature, it can be stated that command is nothing but a special (specific) form of control. Command elements undoubtedly fall into the category of hierarchical structures, though command requires a very high degree of dependence of the linking cells and is based on enforceable order being a basic form of control.

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<sup>42</sup> *Podstawy dowodzenia*, op.cit., pp. 9–10.

<sup>43</sup> *Współczesne dowodzenie wojskami – istota i charakter dowodzenia*, eds. J. Posobiec, N. Prusiński, Warszawa 2012, p. 49.

<sup>44</sup> *System dowodzenia*, ed. J. Wołejczo Warszawa 2013, p. 9; *Obronność. Teoria i praktyka*, eds. J. Wołejczo, R. Jakubczak, Warszawa 2013, p. 186; W. Łydka, *Przywództwo wojskowe*, Warszawa 2014, p. 18.

<sup>45</sup> *Strategia Rozwoju Systemu Bezpieczeństwa Narodowego Rzeczypospolitej Polskiej 2022*, [http://www.bbn.gov.pl/ftp/dok/01/strategia\\_rozwoju\\_systemu\\_bezpieczenstwa\\_narodowego\\_rp\\_2022.pdf](http://www.bbn.gov.pl/ftp/dok/01/strategia_rozwoju_systemu_bezpieczenstwa_narodowego_rp_2022.pdf), (20.04.2015), p. 14.

As a consequence, it seems advisable to propose a terminological distinction between the subject matter categories and to link the control with civilian and democratic state structures. First of all, it will include the executive bodies – the government and the Minister of National Defense – with the exception of the President defined by the Constitution as the Head of Armed Forces. The command concept, in our opinion, should refer to the PAF and their command structures (commanders).

## V.

On the basis of normative regulation, it should be noted that the Constitution of 1997, with regard to the considered categories of headship and control, maintains a very high level of generality. Command can be identified in the Constitution only indirectly, through the institution of the PAF Supreme Commander and commanders of the PAF services. The Constitution does not, however, refer directly to control and command in the Polish security system, leaving details in the competency of the legislative bodies which should take into account the functions of various organs representing divided power.

Certain conclusions may be drawn from the regulations of the Constitution. One of them comprises the existence of levels characterizing functions, tasks and responsibilities assigned to the various organs of executive power. The most abstract and highly general category is the one providing the guard of sovereignty and security of the state and inviolability and integrity of its territory, as well as the Supreme Head of the PAF. It is linked with the office of the President and includes the competencies constitutionally and statutorily related to the scope of his functions. In addition, on the statutory level, we should indicate the need to involve the President in determining the specific competencies of state bodies. The need is shaped on the previously mentioned normative basis.

On the lower level of generality that requires taking more concrete and realistic steps in conducting domestic and foreign policy, there are some categories related to providing internal security and public order, ensuring external security of the state, as well as providing overall control in the field of

national defence. They belong within the competency of the government. At the same time, the tasks, particularly the control, are still characterized by a high level of generality, which should provide adequate space of competency for the minister managing a given area of government administration<sup>46</sup>.

The most concrete form is the category of liaison reserved for the Minister of National Defence in carrying out the supreme headship of the armed forces. It should also relate to control of the armed forces, according to the systemic status of the government and the Minister of National Defence as its member. In this unique system of levels referring to the instantiation of functions, tasks and competencies, one should also consider the cooperation of the organs exercising areas of divided authority. The whole creates a very complicated system of relations in the field of security and defence of Poland. It is, unfortunately, inadvisable in the sphere that is very sensitive and demands transparency in terms of competency and state security.

The real difficulties which may arise in the context of the above mentioned relations can be reconstructed on the example of the so-called “Georgian incident”<sup>47</sup>. It took place on 12<sup>th</sup> August 2008 and was related to the fact that the President of Poland, Lech Kaczyński, tried to persuade his airplane pilots to land in Tbilisi. The pilots assessed that the situation of the conflict between Georgia and Russia would pose a threat to the safe landing of the plane with the Presidents of Poland, Ukraine, Lithuania, Estonia and the Prime Minister of Latvia on board. President Lech Kaczyński, declaring himself as the head of the armed forces, gave the pilots a “command to land”. The pilots refused to comply with the demand of the head of state and flew to a safe airport. It resulted in the problem of a constitutional nature concerning the relation between the mentioned entities. Statutory regulations provided no basis for such an interpretation of the President’s competency in terms of giving orders because his headship is in peacetime exercised through the Minister of National Defence. The minister is also located within the civilian control of the military, which clearly implies limited capability of giving orders.

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<sup>46</sup> P. Sarnecki, *Artykuł 146*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. II, ed. L. Garlicki, Warszawa 2001, pp. 19–22.

<sup>47</sup> M. Szewczyk, *Najwyższe zwierzchnictwo Prezydenta Rzeczypospolitej Polskiej nad siłami zbrojnymi w świetle Konstytucji z 2 kwietnia 1997 r.*, Toruń 2015, *doctoral dissertation*, p. 288.

Nevertheless, one should refer to art. 9, par. 2 of the statute of 14 December 1995 on the office of the Minister of National Defence<sup>48</sup>. The article states that "in regard to the persons being active duty military, including the Chief of General Staff of the Polish Armed Forces, decisions made by the Minister of National Defence have the power of military order". Additionally, at the time of the analysed situation, art. 7, par. 2 of the statute was still in force. The Article stated that "the Chief of General Staff of the Polish Armed Forces is the highest (in terms of fulfilled function) soldier on active duty"<sup>49</sup>. Therefore, the head of state should take actions through the Minister of National Defence who will then give tasks to the Chief of General Staff. In its current wording of the statutory regulation the last link of this relation has been eliminated. However, it is still not quite clear whether the minister should act, in such a situation, by means of one of the directly subordinate commanders – General Commander or Operational Commander – in relation to subordinate military units and organizational cells of the PAF.

The war time (the state of war, the martial law and other situations including actions of a war nature) may result in the reversal of the values underlying the exercise of competencies by the relevant authorities. The separation of powers and the division of competencies (deconcentration) among the executive organs should be replaced by the guiding value of consolidation of activities and concentrating them in the possibly smallest and secure number of organs (limitation of sharing their competencies). Cooperation requires higher standards of compliance in terms of making decisions and thus efficiency of public institutions becomes the central value. The function of president as a guarantor of the state authority continuity can justify the omission of the Minister of National Defence under the headship of the armed forces in regard to the competency of the PAF Supreme Commander<sup>50</sup>.

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<sup>48</sup> See the current version (Dz.U. 2013, pos. 189 incl. changes). The article had the same form and content in 2008.

<sup>49</sup> This provision was in force until the end of 2013 when the reform of the PAF command structure introduced the posts of the General Commander and the Operational Commander of the PAF Services and made the Chief of General Staff an auxiliary organ supporting the Minister of National Defence; see the statute of 21<sup>st</sup> June 2013 on statutory amendment of statute on the office of the Minister of National Defence and other statutes (Dz.U., 2013, pos. 852).

<sup>50</sup> R. Balicki, *Zwierzchnictwo prezydenta RP nad siłami zbrojnymi (wybrane problemy)*, "Przegląd Prawa Konstytucyjnego" 2014, no. 2, pp. 18–19.

The concept found its reflection in further clarification of the statutory role of the President in the time of war. According to the art. 4a, point 4b of the statute of 21<sup>st</sup> November 1967 on the common obligation to defend the Republic of Poland<sup>51</sup>, the President directs the defence of the country, in cooperation with the Council of Ministers, upon the appointment of Supreme Commander and his acquisition of command. From the moment on, the headship is transferred to the lower and thus more concrete, task-oriented level of relations among the state organs in the field of national defence. It leads to the flattening of civilian structures, which should be assessed rather positively. During the legislative work, the attention was drawn to the fact that such an action is permissible in the context of art. 228, par. 3 of the Constitution. The Article provides for the statutory regulation of the principles determining the activity of the public authorities in the states of emergency<sup>52</sup>. It seems, however, that changes in this regard cannot lead to the abolition of the constitutional role of these bodies. Controlling defence by the head of state should therefore not abolish the constitutional function fulfilled in this area by the government. It requires consistent cooperation between the authorities<sup>53</sup>. This line of reasoning is reinforced by the obvious fact that the government is the prescribed authority to conduct domestic and foreign policy of Poland, and therefore the government should be granted, in its favor, the presumption of competency in the area of the state policy.

The Chief of General Staff has been assigned the function of a subsidiary body supporting the President of Poland in the state defence control process. Moreover, despite the appointment of the PAF Supreme Commander,

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<sup>51</sup> See Dz.U. 2015, pos. 144, incl. changes.

<sup>52</sup> B. Banaszak, *Opinia prawna na temat zgodności zapisów normatywnych z Konstytucją RP projektu ustawy o zmianie ustawy o powszechnym obowiązku obrony Rzeczypospolitej Polskiej oraz niektórych innych ustaw (issue No 2609)*, p. 10, which found the solution to be in accordance with the Constitution. Whereas non-compliance with the constitutional role of the government was justified by A. Szmyt in *Opinia prawna w sprawie zgodności z Konstytucją RP przepisów projektu ustawy o zmianie ustawy o powszechnym obowiązku obrony Rzeczypospolitej Polskiej oraz niektórych innych ustaw (issue No 2609)*, pp. 3–4 and P. Czarny, *Opinia prawna dotycząca przedłożonego przez Prezydenta RP projektu ustawy o zmianie ustawy o powszechnym obowiązku obrony Rzeczypospolitej Polskiej oraz niektórych innych ustaw (issue No 2609)*, pp. 8–9.

<sup>53</sup> This argument has been present in the doctrine for some time. See M. Bożek, pp. 95–98.



the Operational Commander still participates in the process in the war time. Therefore one cannot perceive such a situation as simplifying the command process, especially taking into account the fact that the Operational Commander, the General Commander and the Chief of General Staff continue to be subordinated to the Minister of National Defence, which results from art. 5 of the statute of 14<sup>th</sup> December 1995 on the office of the Minister of National Defence<sup>54</sup>. In addition, the situation is even more complicated by the fact that within its function, as the head of the PAF, the President of Poland appoints the Chief of General Staff and commanders of the PAF services. These acts require the countersignature of the Prime Minister only and the Minister of National Defence has no influence on the above mentioned appointments, though the posts are subordinate to his office.

It should be pointed out that the constitutional competencies of the head of state are limited, in principle, to the power of nomination. At the request of the defence minister, the President has the right to promote soldiers (officer cadets and senior officers) respectively to the first rank of the commissioned officers (Second Lieutenant/Ensign) and the ranks of Generals/Admirals. His function in this respect should not be confused with a “notary” of the Constitution<sup>55</sup>. In practice, the President has a considerable influence on the appointments of generals and does not have to act according to the proposal of the minister<sup>56</sup>. The President does not issue an act of a negative result and, consequently, does not have to justify it. This is even a mechanism of competition between the Minister of National Defence and the President, especially during the state of political cohabitation. An extreme example of the increasing ambitions presented by the head of state in confrontation with the Minister of National Defence was the so-called *Drawski Dinner* taking place in 1994. During the dinner (meeting), the PAF commanding staff declared itself clearly against the Minister of National Defence, Piotr Kołodziejczyk, and consequently President Lech Wałęsa led to submission of the request for change of the minister<sup>57</sup>. The current Constitution does not give

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<sup>54</sup> See Dz.U., 2013, pos. 189 incl. changes.

<sup>55</sup> B. Opaliński, pp. 177–178.

<sup>56</sup> Cases of nomination refusals were observed during all the Polish presidencies – see <http://wyborcza.pl/1,76842,5164556.html> (17.05.2015).

<sup>57</sup> M. Szewczyk, pp. 138–139.

rise to such far-reaching interference of the head of state in the Council of Ministers, but the general nominations are still, in practice, a kind of “bargaining chip”. In such a situation, unfortunately, the posts of PAF generals become very politicized and precariously vulnerable to political influence.

## VI.

In the final reflection of the development, we want to note that the essence of every organized human activity is a proper use of available resources consisting in their appropriate control. With regard to the functioning of the state, proper control of the various departments of public administration becomes crucial because it enables the achievement of political, economic or social objectives. Security of the state is a highly meaningful element determining its functioning in terms of the above mentioned objectives. It does not only mean physical (biological) survival of the state and society but also includes provision of the conditions required for its development. An important factor ensuring security of Poland is a properly organized and adequately prepared defence system performing a wide range of tasks. The system, also called the state defence system, is composed of two basic components: controlling and executive. Correct functioning of the controlling subsystem depends on properly structured relations among the state authorities and the PAF command organs. The above presented examples clearly show the lack of the clear concept of headship, control and command. The concept needs to be properly formulated and transferred to the field of legal regulation, especially in the areas where the decisive role is played by political factors.

A barrier to successful control of relations among entities in the field of national security is the lack of proper distinction and definition of headship, control and command. Therefore we want to propose an understanding of the headship as a category consisting mainly in ideological and civilian leadership, which is connected, among other things, with shaping the vision of the state security system. The headship is connected with a narrow range of tasks and competencies of the head of state. Its position becomes stronger in the war time. The categories of control and command should be clearly delimited by the mostly subjective criterion and should not be treated syn-

onymously. Despite the fact that command is defined as a unique form of control, it is associated with a particular rigour of feasibility concerning the tasks given. It is reflected, *alter alia*, in the functioning of such institutions as *command* or *order* and should be reserved for the armed forces only.

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