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2019-02-24, 05:44

President of the Republic of Poland, the Supreme Commander of the Armed Forces

COMPETENCES OF THE PRESIDENT OF THE REPUBLIC OF POLAND IN RELATION TO THE STATE'S SECURITY AND DEFENCE

The powers of the President of the Republic of Poland within the matters relating to security and defence of the state result directly from the regulations of the Constitution of the Republic of Poland of 2nd April 1997. Article 126, section 2 of the Constitution says that "The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory." Moreover, on the basis of article 133 of the Constitution, the President is representing the State in "foreign affairs". The general constitutional norm relating to the issue of safeguarding the sovereignty and security of the state as well as the inviolability and integrity of its territory, has been provided in the act of 21st November 1967 on the universal duty to defend the Republic of Poland (Journal of Laws of 2004, no.: 241, position 2416, as amended). In accordance with the regulation of article 4a, section 1 of the act, the President shall:

1. approve, on the request of the Prime Minister, national security strategy;
2. issue, on the request of the Prime Minister, by decision, Political and Strategic Defence Directive of the Republic of Poland as well as other executory documents for the national security strategy;
3. approve, on the request of the Council of Ministers, plans for the national trainings related to defence system and be in charge of their course;
4. make decision, on the request of the Prime Minister, concerning introduction or change of particular defence readiness of the state;
5. may address all public, governmental and self-governmental administration entities, heads of other organisational units and social organisations to obtain information important to state's security and defences;
6. initiate and provide patronage for the ventures directed at developing patriotic and defence attitudes in the society.

Documents approved and issued by the President shall be the basis for completing the ventures as well as planning the aims within the scope of national security policy and for undertaking actions aiming at improving state's defence system.

General competences relating to safeguarding the sovereignty and security of the state as well as the inviolability and integrity of its territory oblige the President to analyse and evaluate any possible threats and to start legally permitted actions aiming at preventing such threats. Depending on the character and degree of the external threat posed to the state, the President may:

- order, on the request of the Prime Minister, general or partial mobilisation and use of Armed Forces for the purpose of defending the Republic of Poland (article 136).

Another, important prerogative of the head of the country has been included in article 234 of the Constitution, that reads:

"Whenever, during a period of martial law, the Sejm is unable to assemble for a sitting, the President of the Republic shall, on application of the Council of Ministers, and within the scope and limits specified in Article 228, paras. 3-5,

issue regulations having the force of statute. Such regulations must be approved by the Sejm at its next sitting".

The above described constitutional norm offers the President particular powers at his disposal, in a particular situation occurring in the country and at precise timing, and those powers relate to both legislative as well as executive power. It is worth emphasising that only the President has been equipped with such competences, which confirms his key role in the national security system.

Furthermore, on the basis of the Constitution's regulations concerning the state's security, the President:

1. on request of the Minister of National Defence, shall confer military ranks as specified by statute (art. 134, section 5);
2. in the case of external threats to the State, act of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, on request of the Council of Ministers, declare a state of martial law in a part or upon the whole territory of the State. (art. 229);
3. in the case of threats to the constitutional order of the State, to security of the citizenry or public order, the President of the Republic may, on request of the Council of Ministers, introduce for a definite period no longer than 90 days, a state of emergency in a part of or upon the whole territory of the State. (art. 230, section 1).

It should be emphasised that on the basis of article 11, section 1 of the act of 21st June 2002 on the state of emergency, during the period it is in force, the President may, on request of the Prime Minister, decide to use units and sub-units of the Armed Forces of the Republic of Poland in order to restore normal functioning of the state, if the forces and resources applied so far have been exhausted.

President's competences within state's security and defences have been described in the act on universal duty to defend the Republic of Poland. They relate mainly to exercising command over the Armed Forces:

The President of the Republic of Poland acting as a supreme commander of the Armed Forces describes, on the request of the Minister of National Defence, main directions of Armed Forces' development and their readiness to defend the state (article 5, item 1) and may also take part in the briefings of Ministry of National Defence and Armed Forces of the Republic of Poland briefings (article 5, item 2).

Moreover, President decides, on the request of the Council of Ministers or Prime Minister, to send the Armed Forces abroad. It takes place in case of using the Armed Forces of the Republic of Poland abroad in order to take part in:

- a) armed conflict or in order to strengthen the state's forces or allied states,
- b) peace mission,
- c) action aimed at preventing the terrorist acts or their effects.

The war period results in an unique way of leading and defending the state which requires adopting the rule of one-man commanding and holding responsibility. Constitutional provisions relating to the President's powers within this scope, which were mentioned above, i.e. – the supreme commander of Armed Forces, ordering the general mobilisation and using the Armed Forces for the purpose of defending the Republic of Poland, appointing for the period of war the Commander in Chief of the Armed Forces, issuing during the state of war regulations with legal validity of an act – predispose the President to lead the country's defence when the security of the state is at threat and during the war period. However, in this case the element of cooperation between two centres of executive power is preserved. It is regulated by the provisions of article 10 of the act on martial law, mentioned above, i.e.:

"If during the period of martial law a necessity to defend the state occurs, the President of the Republic of Poland is in charge of the defence in cooperation with the Council of Ministers. In particular, the President of the Republic of Poland during the martial law:

1. decides, on the request of the Council of Ministers to move public power entities to the particular controlling positions;
2. makes decisions, on the request of the Council of Ministers, concerning the combat readiness of the Armed Forces of the Republic of Poland, hereinafter referred to as „Armed Forces“;
3. describes, on the request of the Council of Ministers, the tasks for the Armed Forces during the martial law period;
4. may nominate, on the request of the Prime Minister, the Commander-in-Chief of the Armed Forces;
5. approves, on the request of the Commander-in-Chief of the Armed Forces, plans of operational use of the Armed Forces;
6. recognises, on the request of the Commander-in-Chief of the Armed Forces, specific areas of the Republic of Poland as the zones of direct war activities".

When analysing legal instruments held by the President, we have to mention the powers related to ensuring the internal security of the state. Therefore article 18 of the act on the police should be quoted, which reads that „in case of any threat to the public security or public order offence, especially by causing:

1. general hazard to life, health or freedom of the citizens;
2. direct and significant threat to the property;
3. direct threat to the facilities or devices, as described in article 17, section 4 of the act;
4. hazard of an offence of terrorist type or actually carrying it out on the facilities particularly important to the security or defence of the state, or which may result in danger posed to human life

if using the armed units and sub-units of the Police turns out to be insufficient, the President may decide, on the request of the Prime Minister, to use the units and sub-units of the Armed Forces of the Republic of Poland to support the Police.

Having in mind the broad competences awarded to the President, in particular the ones that relate to performing the function of an upholder of sovereignty and security of the state as well as inviolability and internality of its territory, the Constitution appoints the National Security Council to act as an advisory body to the President within the scope of matters relating to internal and external security of the state.

In order to ensure the forum of cooperation within the area of executive power, the Constitution appoints another body, i.e. Cabinet Council, though it does not hold any power competences.

In accordance with the act on universal duty to defend the Republic of Poland, National Security Bureau supports the President in performing the tasks related to the security and defence. In view of the lack of appropriate, strategic centre at state level, the Bureau is also responsible for monitoring the enterprises that influence state's security and defences level. In practice, it gives the National Security Bureau completely new role.

President, equipped with the competences described above, is a fundamental link in the system of our state's security that forms an integrated structure, composed of the entirety of state's forces and resources expected to carry out the tasks related to the security area.

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