



POLISH SPECIAL FORCES IN THE NATIONAL SECURITY SYSTEM OF THE REPUBLIC OF POLAND: THE LEGAL ASPECTS

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The changing nature of global and national security threats have made Special Forces the fundament of many states' armed forces. This article focuses on the Polish Special Forces, their roles and functions, both independently and in cooperation with other armed services of the Republic of Poland. After outlining the Polish national security system, the analysis proceeds with a discussion of the modalities of the Special Forces functioning in the times of peace, crisis and war. The article concludes with suggestions regarding legislative changes which would contribute to further development of the Polish Special Forces.

Keywords: special forces; national and international security; asymmetric and hybrid threats; military alliances; command and control;

“There is another type of warfare – new in its intensity, ancient in its origin – war by guerrillas, subversives, insurgents, assassins; war by ambush instead of by combat, by infiltration instead of aggression, seeking victory by eroding and exhausting the enemy instead of engaging him. It preys on unrest”.

U.S. President John F. Kennedy, 1962

INTRODUCTION

Polish *raison d'état* is the idea of the state's functioning based on the existing international and national political conditions, financial possibilities of the Republic of Poland, historical experiences, as well as economic, social and military potential (*Polish National Security Strategy*, 2014, p. 8). Fundamental interests of the state, ensuring the existence of the state as an international law subject, are the rules defined in the Polish Constitution: safeguarding “*the independence and integrity of its territory*”¹ (*Constitution of the Republic of Poland*, 1997), as well as ensuring national security.

The subject of the national security of the Republic of Poland is the nation – the sovereign body – organised as a state (*White Book on National Security of the Republic of Poland*, 2013, p. 248). People unite and create a state, conceived as the highest form of organisation, precisely for the reason of safeguarding their security. Security is, in turn, the fundamental condition of state functioning, allowing for not only its future existence, but also for the realisation of the national interests in the given circumstances through taking the changes, using the opportunities, reducing risks and preventing all sorts of threats (Kitler, 2013, p. 23).

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¹ Article “*The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development*”.



National security entails more than lack of an imminent threat of war or an armed conflict. The analysis of the wide range of contemporary threats and the prognosis of the existing and envisioned global conflict situations clearly suggest that Poland needs modern, well-equipped and excellently trained armed forces capable of executing their missions in the state territory and abroad.

Polish security and *raison d'état* are safeguarded by the existence of the Armed Forces of the Republic of Poland, subjected to civil and democratic control², functioning as part of the Polish national security system in the times of peace, crisis and war. The core function of the Polish Armed Forces is maintaining the capacity to protect the territory and population of the state, and comprehensively counter potential external aggression against Poland or its allies, as set forth in the State's international obligations. Polish Armed Forces are also tasked with contributing to the international stabilisation processes, as provided for in international treaties and conventions ratified by Poland, as well as supporting other state organs in maintaining national order through providing the military assistance, a function particularly important in light of the current global political situation.

Nowadays, national security entails more than the lack of an imminent threat of war or an armed conflict. The analysis of the wide range of contemporary threats and the prognosis of the existing and envisioned global conflict situations clearly suggest that Poland needs modern, well-equipped and excellently trained armed forces capable of executing their missions in the state territory and abroad. Armed forces, even more than before, have to perform the external state policy and the tasks they are entrusted within the NATO and EU framework in a manner interoperable with the armed forces of the other member states thereof. Ever since the creation of the Special Troops Command as a separate branch of the Polish Armed Forces in 2007³, this role has been exercised by the Special Troops, often conceptualised as the main "export product" among the Polish Armed Forces. Special Forces (SF) are an important element of political alliances' strategies, as well as a one of a kind 'tool' of the Polish Armed Forces in planning and executing expeditionary missions. Their main tasks include conducting – individually or in concert with other nations SFs – national, allied and coalition special operations in the times of peace, crises and war, both domestically and abroad.

² Polish Constitution, *supra* note 3, Article 26 para 1 provides: "The Armed Forces of the Republic of Poland shall safeguard the independence and territorial integrity of the State and shall ensure the security and inviolability of its borders".

³ Created by the Act of 24 May 2007 amending the Act on Universal Duty to Defend the Republic of Poland and other Acts (Dz. U z 2007 r., Nr 107, poz. 73).

As indicated by one of the former Polish SF Commanders “(...) over the ten years since their creation, Polish Armed Forces have undergone a significant transformation, building their national and allied capabilities, the result of which was to entrust a Pole with command of the special forces component of NATO Response Force 2015, the core of which were the Polish “specjals” (as the SF are referred to in the Polish military parlance). In the meantime, separate troops and units of the SF effectively realised combat and advisory missions in Iraq, Afghanistan and other countries, as need the Polish national interests required, helping to build prestige and trust of allies and coalition partners” (Bieniek, Mazur, 2016, p. 7).

SF are the first to employ modern technologies and set forth the standards for the rest of the Polish Armed Forces. They also take part in international exercises, manoeuvres and trainings more frequently than the services of armed forces. Over the last few years, due to their specific operational capacities, pursuant to the orders of the Polish President and the decisions of the Minister of Defence, SF have been designated to fulfil international tasks and missions pursuant to the orders in accordance with national laws and regulations in this matters. To list just a few, Polish SF have been involved in international training missions in Ukraine and operated, as part of the Polish Military Contingent, in the territory of the Republic of Iraq.

NATIONAL SECURITY SYSTEM OF THE REPUBLIC OF POLAND

Security is one of the fundamental human needs without which the activity and development of individuals remain impossible. Conceptually, the subject of security can be individuals, communities, as well as entire nations or international community as a whole. Lack of security leads to their anxiety and give rise to the sense of threat (Pieczywok, 2010, p. 225).

National security can be achieved thanks to a complex, adaptable system incorporating a plethora of military, political, social, economic elements. It is important to note that the contemporary understanding of security is not limited to military aspects but extends to, *inter alia*, economic and social dimensions of human life (Koziej, 2010).

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The Polish national security system mirrors that complexity; it is composed of a variety of institutions and organs which powers and competencies are regulated in national laws, up to and including the Polish Constitution. The system encompasses all organs of the Polish government, that is: both Houses of the Parliament – Sejm and Senate, the President, the Council of Ministers, as well as State administration.

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In May 2013, the very first edition of the *White Book on National Security of the Republic of Poland* was published. The *White Book* is a document including “*the diagnosis of Poland as a strategic security entity*” (*White Book on National Security of the Republic of Poland*, 2013, p. 9), prognosis of the expected changes, and potential answers to questions and challenges arising under the evolving geopolitical conditions. Despite the passage of time, and ongoing geopolitical conditions, the *White Book* remains in force (*Ibid*, p. 35).

As indicated in the *White Book*: “*the national security system (that of security of the state) is understood as the entirety of resources, means and forces (entities) earmarked by the state for the performance of tasks in the field of security, organised (into subsystems and components), maintained and prepared in a manner adequate to the purpose of performing such tasks*” (*Ibid*). The national security system needs to be prepared to function effectively in all possible variants from the perspective of the functioning of the state, that is in: a normal operation state (normal functioning including potential *ad hoc* reactions), state of crisis, state of emergency, as well as state of war or occupation.

In 2014, based on the analysis of the *White Book*, the National Security Strategy of the Republic of Poland was published. In the current year, the National Security Bureau presented the new 2020 National Security Strategy of the Republic of Poland, characterising the national security system in a similar way.

The Strategy is a document comprehensively addressing issues related to the national security, identifying national interests and strategic objectives in the security domain, in accordance with rules and values included in the Polish Constitution. It evaluates Poland’s security environment and its global, regional and national dimensions.

The Strategy also shows how to understand and build the national security system, in a way that allows for preparing the State for ensuring security in the military, civil, educational, political, legal and social dimensions (*Polish National Security Strategy*, 2014, p. 7).

Furthermore, the document has a direct effect on defining the objectives of the military strategy, understood as “that component of national or multinational strategy, presenting the manner in which military power should be developed and applied to achieve national objectives or those of a group of nations” (NATO Glossary of Terms and Definitions, 2017).

The goals of a military strategy – encompassing also the functioning of the SF – result from the determinations and directions made by the highest state organs, and are a base for building, developing and deploying the Polish Armed Forces as a whole. Main objectives of the military strategy of the Republic of Poland in the national security domain are as follows:

- national security interests are a supreme value,
- Polish military strategy cannot contradict the NATO’s strategy,
- Polish Armed Forces develop their operational capabilities through the use of modern technologies and employ modern organisational and training solutions,
- Polish Armed Forces take part in the NATO planning cycle and collective defence of the Alliance,
- Security threats are to be counter at their origin, even if it is abroad,
- Polish Armed Forces master gaining information advantage by developing command and control, reconnaissance, communication and IT systems,
- Polish Armed Forces use and further improve their capabilities in actions abroad,
- Polish Armed Forces remain ready to support non-military actions domestically and abroad (*Doktryna Działań Połączonych D-01(E)*, 2019, p. 65).

ACTIVITIES OF THE POLISH ARMED FORCES – CONSTITUTIONAL ASPECTS –

Polish Armed Forces are a fundamental element of the national defence system. As provided for in the Constitution, Polish Armed Forces safeguard the independence and territorial integrity of the State; they also protect the security and inviolability of state’s borders (*Constitution of the Republic of Poland*, 1997, Art. 26). According to the Constitution, national security is paramount for the overall functioning



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Chapter I of the Constitution defines the fundamental norms concerning the national security and connect them with the constitutional sovereignty rule of the state⁴, as set forth in Article 5 which provides that: “[t]he Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development”⁵ (Wołpiuk, 1998, p. 40). This provision “delineates state’s functions understood as core objectives and priorities of its activity. Safeguarding the independence and territorial integrity of the Republic of Poland is undoubtedly a key function because only its effective fulfilment allows for the execution of other functions, such as: ensuring individual freedom and security as well as human and civil rights” (Skrzydło, 2013).

Article 26 para 1 of the Constitution further delineates the rules regarding the functioning of the Polish Armed Forces and provides that “The Armed Forces of the Republic of Poland shall safeguard the independence and territorial integrity of the State and shall ensure the security and inviolability of its borders”. This provision is thus closely connected to Article 5, defining state functions with regard to safeguarding independence, territorial integrity and national security.

While para 1 of Article 26 of the Constitution entrusts the execution of those tasks to the Polish Armed Forces, the next paragraph of said article entrusts the executive branch with the command and control functions⁶ (*Constitution of the Republic of Poland*, 1997, Art. 10, para 2). Pursuant to Article 26 para. 2: “The Armed Forces shall display neutrality regarding political matters and shall be subject to civil

⁴ Under Article 126 para. 2 of the Polish Constitution, President is the guardian of the Polish sovereignty and independence: “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”.

⁵ “From a legal perspective, ‘sovereignty’ defined as ‘the ability of the state to decide for itself on matters concerning it’ is a legal state, while ‘independence’ defined as ‘the individuality of state existence’ is a factual state.” (Author’s own translation).

⁶ “Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals”.



and democratic control”⁷ (Skrzydło, 2013). That means that command and control is to be performed by civil bodies – executive organs assigned with competencies regarding state security and defence, under the binding national laws, mainly the Constitution (Surmański, 2013, p. 125).

In the Polish national security command and control system, the core roles are played by the President (the Supreme Commander of the Armed Forces) and the Council of Ministers including the Minister of Defence, through whom the President exercises his command in times of peace (Pacek, 2013, p. 5). The two houses of the Parliament – Sejm and Senate – also have some functions in the command and control of the Polish Armed Forces under the Constitution provisions.

Concomitant with Article 5 of the Constitution are articles 82⁸ (*Constitution of the Republic of Poland*, 1997) and 85 paras 1-3 thereof, setting forth the duty of all Polish citizens to defend the Homeland⁹ (*Ibid*).

Article 117 of the Constitution, in turn, provides that “[t]he principles for deployment of the Armed Forces beyond the borders of the Republic of Poland shall be specified by a ratified international agreement or by statute. The principles for the presence of foreign troops on the territory of the Republic of Poland and the principles for their movement within that territory shall be specified by ratified agreements or statutes”. This article is of fundamental importance for SF operations abroad, construed in the Polish legal system as the “use” of the Polish Armed Forces.

Article 134 of the Constitution – delineating the President’s prerogatives – also plays a crucial role in the command and control system of the Polish Armed Forces:

“1. The President of the Republic shall be the Supreme Commander of the Armed Forces of the Republic of Poland.

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⁷ Commentary to article 26: “Paragraph 2 of Article 26 underlines the characteristics of the armed forces, which correspond to contemporary standards (...). These characteristics are a neutral attitude of the armed forces in political matters, which means that they are prohibited from engaging with any party or organisation or person seeking to seize state power. The armed forces are also subject to civilian control and democratic supervision, which is characteristic of the armed forces of NATO Member States”. (Author’s own translation)

⁸ Article 82 provides “Loyalty to the Republic of Poland, as well as concern for the common good, shall be the duty of every Polish citizen”.

⁹ Article 85 provides: “It shall be the duty of every Polish citizen to defend the Homeland. The nature of military service shall be specified by statute. Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute”.



2. *The President of the Republic, in times of peace, shall exercise command over the Armed Forces through the Minister of National Defence.*

3. *The President of the Republic shall appoint, for a specified period of time, the Chief of the General Staff and commanders of branches of the Armed Forces. The duration of their term of office, the procedure for and terms of their dismissal before the end thereof, shall be specified by statute.*

4. *The President of the Republic, for a period of war, shall appoint the Commander-in-Chief of the Armed Forces on request of the Prime Minister. He may dismiss the Commander-in-Chief of the Armed Forces in accordance with the same procedure. The authority of the Commander-in-Chief of the Armed Forces, as well as the principle of his subordination to the constitutional organs of the Republic of Poland, shall be specified by statute. (...)*

LEGAL GROUNDS FOR ACTIVITIES OF THE SPECIAL FORCES IN THE REPUBLIC OF POLAND

SF, alongside the others branches of the Polish Armed Forces – Land Forces, Air Forces, Navy and Territorial Defence Forces (soon, also, Cyberspace Defence Forces) – are authorised to operate in the territory of Poland and abroad in the times of peace, crisis and war.

Over the last few years, SF were expected to do more than execute *strict* military tasks in the times of war, the way other branches of the armed forces do. The likelihood of a global international armed conflict (IAC)¹⁰ has been gradually decreasing. Today it is self-evident that SF must be ready not only to support other forces but also to be used independently or in concert with the other state organs in its own territory when faced with a range of the new threats, in particular of asymmetric and hybrid nature¹¹ (Pacek (ed.), 2013).

¹⁰ The currently accepted picture of war without a formal declaration of war, with blurred borders of states or parties to the conflict, where the political opposition, a national minority or even a terrorist organization, financially supported by the aggressor's state, may be a party, is widely described in the implemented 'War Doctrine' of the Russian Federation, which presents 'hybrid actions' as one of the possibilities of warfare.

¹¹ ("Nowadays, terrorism is understood as the activity of individuals or groups aimed at disorganizing social and political life, it is a cruel form of rebellion and an attempt to intimidate the stronger (the state and its officers and society as a whole) by the weaker (a group of terrorists)". (Author's own translation).

While Poland has not yet experienced a terror attack in its territory, as a member of the EU and NATO, it definitely needs to be prepared for such a possibility, especially in view of the developments beyond its western and eastern borders. Hence, on the one hand, the Schengen Zone Poland is part of and has open borders with, regularly suffers from a variety of incidents and attacks of terrorist nature. On the other, Ukraine is also experiencing similar challenges since 2014. Consequently, Poland has to be ready to use various tools at its disposal to counter these kinds of threats, should they materialise (Gryga, 2017, p. 19).

NATO shares this assessment. According to the Allied Doctrine, SF can be used against the adversary in a manner and mode differing from general regulations and manuals, both on one's own and in the foreign territory, to augment the political and diplomatic state efforts in the time of crisis before the conventional armed forces are deployed.

SF are one the most important elements of the armed forces, and as such they constitute the core of every state's defence potential. The Republic of Poland thus needs not only modern conventional armed forces capable of performing a number of tasks in the state territory and abroad, but it also has to have high readiness SF which can cooperate with other forces in the course of unconventional missions, using special munitions and equipment.

Contemporary Polish SF are devoted to conducting special operations in Poland and abroad in the times of peace, crisis and war. They function as part of the national armed forces command and control system, based on:

- control system – provisions of the Constitution and the statutes,
- command system – military doctrinal documents.

Command and control over the Polish SF has three levels:

- political – military, relating exclusively to the control over the Polish Armed Forces by civilian constitutional organs of the state;
- strategic – operational, from which the command over armed forces including SF begins;
- tactical – at the execution level.

The principles of command and control over the SF in the time of crisis, peace and war stem from general rules regulating the functioning of the Polish Armed Forces in the complex state security system.



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As the Supreme Commander of the Polish Armed Forces, the President issues decisions declaring (and recalling) the time of war, and pursuant to Article 134 para 4 of the Constitution, he appoints the Commander-in-Chief of the Armed Forces (Constitution of the Republic of Poland, 1997). Once the Commander-in-Chief is appointed and takes over the command, the President directs the defence of the State in concert with the Council of Ministers.

In the times of peace, crisis and war, at the political-military level, the following constitutional bodies and institutions have control competencies: Sejm and Senate (legislative branch), the President in concern with supporting organs, such as the National Security Council, National Security Bureau and the Council of Ministers, in particular the Minister of Defence and the General Staff of the Polish Armed Forces immediately subordinate thereto. In the times of crisis, at the political – military level, the Council of Ministers plays a crucial role with regard to the use of the Polish Armed Forces abroad¹².

At war, the main task of these bodies is to set forth national and international security objectives by using the country's recourses, mainly the military one. For example, as the Supreme Commander of the Polish Armed Forces, the President issues decisions declaring (and recalling) the time of war, and pursuant to Article 134 para 4 of the Constitution, he appoints the Commander-in-Chief of the Armed Forces¹³ (*Constitution of the Republic of Poland, 1997*). Once the Commander-in-Chief is appointed and takes over the command, the President directs the defence of the State in concert with the Council of Ministers¹⁴ (Dz. U. z, 2019).

In the times of war, the Chief of the General Staff of the Polish Armed Forces becomes an assisting authority of the Presidents in the defence of the Republic of Poland¹⁵, with the collaboration of the Council of Ministers¹⁶.

Various prerogatives and competencies of the executive branch indicated above, operating at the political – military level of control

¹² See, among others, Act of 26 April 2007 on crisis management (Dz. U. z 2019 r. poz. 1398.)

¹³ Article 134, para 4 provides: "The President of the Republic, for a period of war, shall appoint the Commander-in-Chief of the Armed Forces on request of the Prime Minister. He may dismiss the Commander-in-Chief of the Armed Forces in accordance with the same procedure. The authority of the Commander-in-Chief of the Armed Forces, as well as the principle of his subordination to the constitutional organs of the Republic of Poland, shall be specified by statute".

¹⁴ Law of 21 November 1967 on the Universal Duty to Defend the Republic of Poland Article 4a para 1 (4b) providing that "The President of the Republic of Poland (...) directs the defence of the state, in cooperation with the Council of Ministers, as soon as the Commander-in-Chief of the Armed Forces is appointed and takes command".

¹⁵ Act on Universal Duty, *supra* note 34, Article 4a para 1b providing that: "The Chief of the General Staff of the Polish Army is an auxiliary body of the President of the Republic of Poland in the process of managing the state defence".

¹⁶ See also Article 146 para 4(8) in concert with 228 para 3 of Polish Constitution, which provide that the general control of national defence is a constitutional task of the Council of Ministers.



over the Polish Armed Forces, relate also to the SF, as one of the branches of the Armed Forces. At this highest level, control over the Armed Forces implies the exercise of powers by the state organs, in particular the President, as the Supreme Commander, in a manner leading to the most effective, successful preparation and use of the Polish Armed Forces in the time of emergency, as well as to efficient training and modernisation in a time of peace.

The constitutional rules regulating the functioning of the armed forces and the general objectives set forth by the highest organs of the State, including the SF, are implemented at the strategic-operational level.

In a time of peace, SF perform tasks related to creating conditions conducive for training of the headquarters, commands and units; ensuring substantive supervision of the training, preparing doctrines and related documents, as well as determining the direction of the professional training of SF personnel.

The rules regulating the functioning of the Polish SF are most important and interesting in times of crisis. In Poland, the crisis management system is premised on the two modes operation: i) the normal one, meaning the time of minimal threat level not requiring any extraordinary actions, and ii) the states of emergency (Constitution, Article 228 and following).

In times of crisis, as a general rule, units of the Polish Armed Forces are designated to support the civilian organs and institutions' response to the crisis situation, whether military or not or involving a potential activity of terrorist groups. Usually, such designated units enjoy the same powers, in particular executive powers towards Polish citizens, as the Police. The list of the main tasks performed by the military units, including SF, in a time of crisis, includes: provision of the assistance in the time of crisis (performance of tasks related to crisis management) in the times of emergencies as set forth in the Polish Constitution, martial law¹⁷ (*Constitution of the Republic of Poland, 1997*), state

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¹⁷ Article 229 provides: "In the case of external threats to the State, acts 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 of or upon the whole territory of the State."



Possibility of using units of the Armed Forces, including the SF, in times of crisis, is also established by the Regulation of the Council of Ministers of 21 July 2016 on detailed conditions and manner of use of the Police and Armed Forces branches and units of the Republic of Poland in the event of a threat to public security or disturbance of public order, issued on the basis of Article 18 para. 8 of the Police Act.

of emergency¹⁸ (*Ibid*), state of natural disaster¹⁹ (*Ibid*), supporting the Police units in accordance with the Police Act, in the case of threats to security of the citizens or public order; supporting the Border Guard in the case of threats to the security of the citizenry or public order in the proximity of State's external borders or within the border regions; supporting the Border Guard to prevent, reduce or remove serious and imminent danger to ships, port facilities and ports and related infrastructure arising from the use of a ship or floating facility as a means of a terrorist attack; the maritime RENEGADE, as well as the conduct of activities aimed at destroying or immobilising unmanned aircraft or taking control of their flight; providing assistance to police units in accordance with the act on Counter-Terrorist Activities.

There are three main acts regulating the use of SF internally, in case extraordinary measures are necessary, specifying the general provisions of the Constitution: *The Emergency State Act of 21 June* (Dz. U. z, 2017), *the State of Natural Disaster Act of 18 April 2002* (Dz. U. z, 2017) and the *Act of 29 August 2002 on martial law and the powers of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland* (Dz. U. z, 2017).

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¹⁸ Article 230 para 1 provides: “*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.*”

¹⁹ Article 232 provides: “*In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster, the Council of Ministers may introduce, for a definite period no longer than 30 days, a state of natural disaster in a part of or upon the whole territory of the State. An extension of a state of natural disaster may be provided with the consent of the Sejm.*”

actions within the framework of the threat of a terrorist crime that may result in a threat to the life or health of participants in cultural, sporting or religious events, including gatherings or mass events”).

In such a case, soldiers of SF may also: request a proof of individual identification, detain persons, carry out personal inspection, and in particular use direct coercive means and firearms, for example, in a situation of an direct and immediate threat to health or liberty of the authorised person or another person, or the need to counteract actions aimed directly at such an attack, or against a person who does not comply with a call for immediate abandonment of a weapon, explosive or other dangerous object, the use of which may endanger the life, health or liberty of the authorised person or another person.

Another implementing act is the Regulation of the Council of Ministers of 6 October 2015 on the use of Border Guard forces and units of the Armed Forces in the event of a threat to public security or public order disturbances in the territorial range of a border crossing point and in the border zone (Dz. U. z, 2015), issued on the basis of Article 11b section 11 of the Act of 12 October 1990 on the Border Guard, specifying, *inter alia*, methods of coordinating actions undertaken by the Border Guard and the Armed Forces and modalities of the information exchange and logistical support for the Border Guard activities carried out with the help of the Armed Forces.

The aforementioned Act of 12 October 1990 on the Border Guard indicates that support by SF may take place in the event of a threat to public security or disruption of public order in the territorial range of the border crossing point and in the border area and will be implemented in particular in case of: a direct threat of an attack on the integrity of the state border or its execution, an immediate and widespread danger to the life, health or freedom of citizens, direct threat of attack on objects or devices used by the Border Guard, threat of a terrorist offence or its execution in relation to objects or devices used by the Border Guard or which may result in danger to human life.

With regard to the use of SF in the time of crisis, the Act of 4 September 2008 on the protection of shipping and seaports (Dz. U. z, 2019) is also noteworthy. Article 27 para 1 of this Act provides that “[t]o prevent, reduce or remove a serious and imminent danger to ships, port facilities and ports and related infrastructure resulting from using a ship or a floating object as a means of a terrorist attack,



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after the Border Guard has exhausted all the means provided for in the Act of 12 October 1990 on the Border Guard, the Minister of National Defense may issue a decision to apply the necessary measures in Polish maritime areas, which may also entail sinking the ship or floating object”.

This means that under the Polish domestic law, all available forces, means and ways can be used to eliminate the threat. The provisions of the Act of 3 July 2002 on Aviation Law should also be recalled here. The Act defines the possibility of using SF to carry out actions aimed at destroying or immobilizing unmanned aircraft or taking control of their flight (Dz. U. z, 2019).

Last but not least, with regard to the possibility of using Special Forces in a crisis situation, an analysis of the relatively ‘new’ in the Polish legal system Act of 10 June 2016 on counter-terrorist activities should be made (Dz. U. z 2019). The Act introduces into the Polish legal system clear definitions of a bunch of important concepts and terms, such as: “*anti-terrorist activities*” – understood as activities of public administration bodies consisting of preventing terrorist events, preparing to take control over them by means of planned undertakings, reacting in the event such events occur and removing their effects, including recreating resources intended to respond to them; “*counter-terrorist actions*” – understood as actions against perpetrators, persons preparing or assisting in committing an offence of a terrorist nature referred to in Article 115 § 20 of the Act of 6 June 1997. Penal Code, conducted to eliminate an imminent threat to the life, health or liberty of persons or property using specialised forces and means and specialised tactics; “*events of a terrorist nature*” – shall mean a situation which is suspected to have arisen as a result of an offence of a terrorist nature referred to in Article 115 § 20 of the Act of 6 June 1997, Penal Code, or a threat of such an offence.

The legislator has decided that if the use of Police troops and subunits proves to be insufficient or may prove to be insufficient, the troops and subunits of the Polish Armed Forces may be used to assist the Police, according to their specialist preparation, equipment and armament and the needs that have arisen.

Article 22 para 7 of the Act of 10 June 2016 on counter-terrorist activities refers to SF *expressis verbis* and states: “[t]roops and subunits of Special Forces used to assist troops or subunits of Police may use

and employ in counter-terrorist activities means of direct coercion and firearms in the manner provided for in Article 3, paragraph 2a of the Act of 21 November 1967 on the universal obligation to defend the Republic of Poland, subject to the admissibility of the use of firearms in cases specified in Article 23, paragraph 1". The provision refers to the so-called 'special use of firearms' that is, *de facto*, the use of a firearm without a warning shot and in a way that, by definition, does not have to lead to cause as little damage as possible (lawful elimination of personal hazard).

Due to the classified nature of Polish legal acts regulating the wartime, the rules of operation of SF will be analysed in general terms. During the war, SF are responsible for, among others:

- conducting protective activities (protection and defence of objects particularly important for the security and defence of the state, as well as support for the protection of critical infrastructure objects and important military installations) and defence activities in the part of the country where no direct hostilities are taking place,
- cooperation with the Police, Military Police, Border Guard and other services.

In recent years, there has been an attempt to codify all SF's powers in one legal act – the Special Forces Act. However, the legislative plans were abandoned. The statutory changes would grant broad powers to the SF. Some of them were controversial, because the planned field of regulation went far beyond the current norms of the SF, indicated e.g. in the Act of 10 June 2016 on counter-terrorist activities. This is because SF soldiers, as part of their tasks related to combating threats of a hybrid or terrorist nature, were supposed to have, among others, the following powers:

- to require proof identification and collect personal suspected of participating in terrorist or hybrid activities,
- to wear civilian clothing and carry concealed service weapons while performing the tasks in accordance with the rules provided for officers of the Internal Security Agency/Military Counterintelligence Service,
- to use civilian vehicles and operational documents that guarantee their anonymity (so-called legalisation documents - e.g.: plates and registration cards, identity papers and others),



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Development of SF in line with the vision and mission of this kind of armed forces must have certain statutory implications. These include not only proposals of entirely new solutions, but also amendments to existing regulations. The proposed statutory changes could provide SF with appropriate powers to actively participate in anti-hybrid, anti-terrorist and counter-terrorist activities by making full use of the Special Forces' potential and capabilities.

- to carry out on the territory of the Republic of Poland operational and reconnaissance activities in cooperation with other services or under their supervision, including the use of imaging and electromagnetic reconnaissance means, and in particular unmanned aerial vehicles,
- to conduct reconnaissance activities to identify and mitigate threats in cyberspace by scanning of and eavesdropping on telecommunications and ICT networks,
- to employ technical disposal measures against unmanned aerial vehicles – UAV – both by disrupting communications with such aircraft operators and by physically damaging or destroying unmanned aircraft.

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Undoubtedly, the issue of hand is undoubtedly complex and requires a thorough and professional development of concepts and procedures.

CONCLUSIONS

As pointed out by the Chief of General Staff of the Polish Armed Forces General Rajmund Andrzejczak: "(...) *the whole society constitutes the state's defence potential*" (*O potencjale obronnym państwa stanowi całe społeczeństwo. Gen. Andrzejczak: musimy odrobić lekcje*, 2019). The defence potential of the state is also a system based on the proper functioning of the Polish Armed Forces, on the use of the full range of operational capabilities offered by different types of armed forces, including SF. On the basis of amendments to various legal Acts discussed above introducing, *inter alia*, the notions of anti-terrorist activities or counter-terrorist actions into the Polish system, the SF have been and will continue playing an increasingly important role in the future.

The evolution of the security environment, both nationally and internationally, discussed in this article, makes it necessary for states

and their armed forces to audit their operational capabilities, legal frameworks, and the possibility of cooperation in the international environment. Recent and contemporary theatres of military conflicts show very clearly the need for fully interoperable, rapid readiness troops.

This description fits Polish contemporary SF perfectly. The Republic of Poland made an identical assessment as early as in 2002, during the Prague NATO Summit²⁰, and this assessment remains valid, taking into account, among other things, the fact that the Polish SF were again entrusted with the command of NATO special operations under NATO Response Force again in 2020.

As indicated in the 2020 National Security Strategy of Poland: “[i]t is necessary to develop the operational capabilities of the Armed Forces of the Republic of Poland, in particular Special Forces, to combat threats, including hybrids and counterterrorist actions, during all three types of states of emergency and state defence preparedness” (National Security Strategy of the Republic of Poland, 2014, p. 19).

In the present article, analysing the time of crisis, the legal acts currently in force clearly indicate the supporting role of SF towards the Police or Border Guard in counteracting terrorist threats in the country. This means that even the direct use of SF should be treated as a supplement to activities undertaken by the Police or Border Guard (including special reconnaissance, patrolling, image reconnaissance, radio electronic or personal reconnaissance, as well as organisation of direct actions carried out for the benefit of Border Guard facilities and branches), not their substitute or competition.

Therefore, it seems that the current legal framework for the operation of the Polish Armed Forces, and in particular the SF, in times of peace, crisis and war in Polish legislation is precise, providing the possibility of operation of such forces without the necessity of excessive, often disputed, interpretation of legal regulations.

The potential legislative changes described in this article, extending the powers of the Polish SF, require not only parliamentary works, but also a specific evolution in the way of thinking of military specialists, the theory of the art of war and the ways of taking multifaceted actions, including the structural location of the Special Forces leading to the possibility of using them in an emergency situation as soon as possible.



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²⁰ The Republic of Poland proposed to recognise Special Forces as a “Polish specialty” in NATO.



It is worth remembering that any potential new solutions should not duplicate specific abilities and powers but should rather contribute to a more rational use of SF's potential. The ongoing changes in the security environment, however, show that gradually more and more intensive presence of the armed forces in the civilian environment will be taking place in Poland and other states. SF's powers need to reflect this tendency.

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