

# ІНФОРМАЦІЙНА БЕЗПЕКА

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## ARMED FORSES AS SECURITY AND PEACE GUARANTEE IN THE COUNTRY AND ABROUD – LEGAL CONDITIONS

The article examines the legal conditions relating to the Armed Forces possible involvement of the Republic of Poland and their role as a key element of the national defence; rules that define the involvement or not involvement the Armed Forces of the Republic of Poland outside the country. Conditions governing the activities of the Armed Forces in Poland as on the permanent basing places and during troop shift are also described. Relevant legislative acts were given, foundations and regulations, and also operations and tasks that perform the Armed Forces of Poland have been analysed. In the article the following research methods were used: synthesis, analysis, and conclusion.

**Key words:** the Armed Forces, national defence, security, war zone.

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## ЗБРОЙНІ СИЛИ ЯК ГАРАНТІЯ БЕЗПЕКИ І МИРУ НА ТЕРИТОРІЇ КРАЇНИ ТА ЗА ЇЇ МЕЖАМИ – ПРАВОВІ ПОЛОЖЕННЯ

У статті розглянуто правові положення, що стосуються можливого залучення збройних сил Республіки Польщі і їхня роль як основного елемента системи національної оборони; правила, що визначають залучення чи не залучення Збройних Сил Республіки Польщі за межами території країни, а також описано положення, що регулюють діяльність Збройних Сил на території Польщі як на місцях постійної дислокації так і під час перекидання військ. Відповідні законодавчі акти було наведено, основні положення і правила, а також операції і завдання, які виконують Збройні Сили Польщі було проаналізовано. Наступні методи наукового дослідження було застосовано під час роботи над статтею: синтез, аналіз, висновок.

**Ключові слова:** збройні сили, національна оборона, безпека, зона війни.

The Armed Forces of the Republic of Poland provide **the most fundamental component of the national defense system**, the main aim of which is to safeguard the sovereignty and security of the State, and the inviolability and integrity of its territory. In the time of peace an adequate level of the system of mobilization is maintained, which includes, *inter alia*, the management of human, material and transport resources, as well as the training. Such training covers the areas of the army reserves and individual units coaching, as well as the training on the field of the cooperation with civil service, local government and other units of a non-military character in the defense system. **The armed forces** are prepared to serve certain roles in the national defense system and the system of alliances, among which are **three main strategic tasks**:

- **defensive tasks in the time of war** (resisting the direct aggression on the country's territory or taking part in resisting the aggression on the territory of an ally),
- **tasks related to crisis management**,
- **stabilization tasks in the time of peace.**

Moreover, the armed forces remain in the full operating capability in case of the non-military risks. The fundamental components of the Armed Forces of the Republic of Poland are: Ground Forces, Air Force, Air Defense and Navy. All of the abovementioned units of the Armed Force include **Operating Forces** (prepared to be assigned within NATO) used to operate in the multinational structures, and the **Territorial Defense Forces** under the national supervision, meant to be active on the territory of the country. The composition and structure of the **Operating Forces** are prepared and adjusted to serve their role in the multinational structures of NATO (adequate to the requirements resulting from the need for cooperation).

It is worth to note that *The participation of the armed forces in the collaborative endeavors, conducted by international organizations, is one of the components of the activity performed in order to reinforce the national security. In the case of the Armed Forces of the Republic of Poland it refers to the co-operation in military actions, under the supervision of the United Nations, OSCE, NATO and the European Union* [Kulczycki, 2011, p.214]. [4]

The **Territorial Defense Forces**, however, are allocated to ensure the assistance and the freedom to act to the Operating Forces, and to perform local defense tasks in the strict cooperation with the non-military units of the civil service.

The first act in the Article 26 of The Constitution of the Republic of Poland of April 2, 1997, states, as follows: *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* [1]. The abovementioned record was expanded on the Act of November 21, 1967, *on universal obligation to defend the Republic of Poland*, in the first act of the Article 3: *The Armed Forces of the Republic of Poland shall safeguard the sovereignty and independence of the Polish Nation and shall ensure the security and peace (...)*. As a rule, the armed forces are the guarantee of the security and inviolability of the borders of the country. However, considering the current perception of both the security environment and the scale and types of the risks (asymmetric, hybrid et cetera), it is accepted that the Armed Forces of the Republic of Poland maintain the ability to accomplish three types of missions. The first type concerns the matter of fundamental importance- the defense of the country and withstanding the aggression within the existing alliance commitment. That indicates, *inter alia*, maintaining the capability of using the force in the field of the security and inviolability of the borders of the Republic of Poland, and, specifically, in terms of counter-terrorism, solving the local or regional military conflicts, as well as defense activities on both the territory of the country and beyond its borders (such as expeditionary operations). The second type is defined *in extenso* in second act of the Article 3 of the abovementioned Act, which is as follows: the Armed Forces might participate in acting against natural disasters, environmental emergencies and in liquidation of their consequences; active participate in rescuing and humanitarian operations in order to protect life, health and property, as well as fulfilling the tasks within the crisis management. This relates to, *inter alia*, stabilization processes (on the international field), crisis response and humanitarian assistance. It specifically means the maintenance of the capability and the sufficient resources in order to participate in the peace operations, and the emergency and crisis management conducted by the United Nations, NATO or EU. It also relates to the other operations resulting from bilateral agreements or international treaties, as well as humanitarian operations under the supervision of, for instance, international organizations.

It is important to note that *The important role in the cooperation between NATO and the European Union has the area connected to the regional security, and the participation of the military units in said area. In comparison to the North Atlantic Treaty which is of a political-military structure, the European Union is not such an alliance and does not have such aspirations. Moreover, NATO has the integrated forces and the procedures of the use of said forces to its disposal. Under the Treaty on European Union (valid from November 1, 1993) the Western European Union performs the military tasks on the behalf of the European Union* [Kulczycki, 2010, p.403]. [5]

The third type of the mission is:

- direct support of the internal security,
- help and contributing to society,
- help provided in case of occurring risks (to state institutions, public administration, the society) which exceed the capabilities of the public services.

An example of such could be:

- supporting the protection of the land borders and the territorial waters,
- air defense,
- management of the operational and reconnaissance activities,
- monitoring of the contamination (chemical, biological and radioactive) on the territory of the country,
- liquidation of the items potentially dangerous and explosives of the military origin,
- search and rescue operations.

Aside from responding to the threats – which exceed the capabilities of the public services – the Armed Forces support civil units at risk of the crisis, when the use of other resources is either impossible or not sufficient. It should be emphasized that, as mentioned above, the Armed Forces additionally perform a duty related to the crisis management beyond the borders- in accordance with the interest of the Polish nation and alliance commitments.

Another different aspect could be stated within the statutory regulations, that is *the right to use the direct coercion, firearms and other armament provided that the necessity occurs and in order to accomplish (...) the task* (constitutional, in the area of ensuring the sovereignty and security of the State, and the inviolability and integrity of its territory, in accordance with the Article 2a on the civil defense obligation.) The use of abovementioned means is possible provided the adequacy of the scale and degree of the risk, and *within the limits of the principles agreed on in the ratified international agreements and by the customary international law*. The exact same principles and conditions of admissibility and limitations concern the use of firearm and other armament- considering the purpose of the use of the Armed Forces beyond the borders of the country (article 2b of the Act.) Said reference is governed by the Act of December 17, 1998, concerning *the principles of the use or stay of Polish armed forces outside the country*, which specifies the objectives in the both cases, among which are:

a) the participation, that is the use of the military units in, as follows:

- armed conflict, or to support the force of the nation or the allies
- peacekeeping operations – actions aimed at preventing terrorist acts and the consequences of those,

b) the participation of the military units in:

- practicing and military trainings,
- representation,
- participation in the humanitarian aid and rescue actions.

In terms of the previous actions, the rescue action regulated by the law on the salvage at sea is an exception, therefore the abovementioned Act is not applicable in this case. It should be emphasized that in the relation to the Polish zone it is the Maritime Search and Rescue Service that supervises the rescue operations; the Navy, however, being one of the components of the Armed Forces of the Republic of Poland, serves to protect the national interests on the country's maritime territory, to safeguard the coast from the sea and from the land, the latest being conducted in the cooperation with the other units of the Armed Forces. It is expressed in, *inter alia*, defending and maintaining maritime communication lines and in preventing naval blockade in times of crisis and during the war. The international obligations require from the Navy to maintain the capacity to perform the tasks related to the safety of both the Baltic Sea and outside this area. One of the tasks of the abovementioned unit of the Armed Forces in the time of peace is to support and cooperate with the Border Guard of the country, to effectively protect the maritime borders as well as the Polish economic zone.

On the use, and the extent to which the military units are used, decides the President of the Republic of Poland, on the request of:

- the Council of Ministers, in situations involving the peacekeeping operations and armed conflicts, or to support the forces of the nation or the allies.
- the Prime Minister, in preventing the terrorist acts and their consequences.

In both cases, the president informs marshals of the Sejm and Senate of the taken decision.

In other cases, the decision is made respectively (Article 4.1) by: The Council of Ministers, the Minister of National Defence or the Minister of Interior Affairs. The Council of Ministers- in the context of the participation in the military trainings, **provided that the means needed for the training were not included in the budget of the Ministers.** The Minister of National Defence and the Minister of Interior Affairs- in relation to the subordinated units in the cases described in the Article 2 point 2, i.e. representative actions, military trainings, and humanitarian and rescue actions (taking into account the abovementioned exception.) The Prime Minister shall inform the President of the Republic of Poland of the taken decision.

As an example of the possibility of the use of country's own units within the allied commitments can be quoted, *inter alia*, the decree of the President of the Republic of Poland of December 19, 2014, on *the use of the Polish Military Contingent on the RESOLUTE SUPPORT mission of the NATO in the Islamic Republic of Afghanistan* (M.P. 2014 item. 1219.) In accordance with the abovementioned decree, it was decided that the mission would last from January 1, 2015 to June 30, 2015, in which the Polish Military Contingent consisting of no more than 150 soldiers and military workers was used. The operational aspect of the Contingent was subordinated to the Supreme Allied Commander of NATO in Europe, and, respectively, the national guidance aspect to the Minister of National Defence through the Operational Commander of the armed forces. The Minister of National Defence was also responsible for supplying the Contingent and the cooperation with the NATO command units. Furthermore, in the scope of responsibilities of the Chief of the General Staff of the Polish Armed Forces (approved by the General Staff within the appropriate time work) remained the issues connected to the armaments and military equipments in the Contingent. The fact that the extended use of the State Electoral Commission underlies the exact same procedure each time should be emphasized, which in the discussed case is defined by the decree of the President of the Republic of Poland, July 30, 2015, *the extension of the period of the Polish Military Contingent use in the North Atlantic Treaty Organization mission RESOLUTE SUPPORT in the Islamic Republic of Afghanistan* (MP 2015 number Null item. 570).

Another example is the decree of the President of the Republic of Poland, July 25, 2015, *the extension of the period of the Polish Military Contingent use in the International Forces in the Republic of Kosovo, the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina.* However, it is necessary to take into the consideration the key aspect, which is the recognition of the given area as a war zone. In this respect a competent body is the Minister of Foreign Affairs in accordance with the Regulation of the Prime Minister from September 22, 2014 on *the detailed extent of the responsibilities of the Minister of Foreign Affairs.* (Dz.U, 2014, item. 1266).

One more significant difference should be mentioned at this point, as it entails certain regulations and competences. The given decision of the Minister of National Defence in regard to the recognition of an area as a war zone must be differentiated from direct military operations within the state. In this case, certain areas of the state are declared an area of the direct warfare by the President of the Republic of Poland at the request of the Supreme Commander of the Armed Forces in the time of imposing martial law [4].

Lastly, it is necessary to also point at the possibility and the conditions under which the foreign troops may stay on the territory of the Republic of Poland, as a rule regulated by The Act of September 23, 1999, *on the rules of stay of foreign troops on Polish territory, and the rules for their movement within that territory* (OJ 1999 No. 93, item. 1063, as amended. D.); *with the exception of foreign troops, whose status is defined in international agreements ratified in accordance with art. 89 paragraph. 1 of the Polish Constitution of April 2, 1997.* [Article 1 paragraph. 2 of the Act]. An example of which is provided by *The agreement on the status of the Armed Forces of the United States of America on Polish territory (ie. SOFA SUPPLEMENTAL)*, signed on December 11, 2009 by the under secretary of State in Ministry of National Defence Republic of Poland for civil defense policy and the under secretary of State in the United States of America for international secu-

urity and arms control. The agreement entered into force on March 31, 2010 and was another – besides the Agreement on the deployment of the US missile defense system on the territory of Poland (signed on August 20, 2008) – *relevant and meaningful agreement in terms of the Polish-American cooperation related to the security and defense*. SOFA Supplemental agreement was an addendum and a clarification of the result of the Agreement between the Parties to the NATO regarding the status of their forces, from 1951 (NATO SOFA) to which Poland- after its accession to NATO in 1999- became the party, providing new opportunities to extend military cooperation with the United States, creating a legal basis not only for the participation of the US forces in the development of the future base for a missile defense system concerning the operating of Patriot Missiles, but also to take more complex forms of military cooperation (joint training centers, exercise, or the use of air-space, etc.). To sum up the synthetic analysis of the regulations concerning the subject, it should be stated that, in an acceptably precise and a comprehensive manner, the possibility of the use of the armed forces as a guarantor of peace and security (especially outside the country) was defined, including the assignment of a specific decision path and the competence scope, which is of a key significance in such a crucial area. Those possibilities in terms of the potentiality, and procedures and conditions under which the foreign troops would quarter on the territory of the Republic of Poland, for objective reasons, were not analyzed in-depth but only mentioned to maintain the coherent view into the regulation area.

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Author's translation. Original: *Udział sił zbrojnych we wspólnych przedsięwzięciach, prowadzonych przez organizacje międzynarodowe są jednym z elementów ich aktywności w umacnianiu bezpieczeństwa międzynarodowego. W przypadku Sił Zbrojnych RP, dotyczy to wspólnych działań wojskowych, prowadzonych zarówno w ramach Organizacji Narodów Zjednoczonych, OBWE, NATO jak i również Unii Europejskiej*. From: M. Kulczycki, 2011, p.214
5. Kulczycki M., (2010), *NATO gwarantem bezpieczeństwa międzynarodowego*, [w:] *Współczesne problemy bezpieczeństwa*, A. Gałeczki, (red.), Oficyna Wydawnicza Uniwersytetu Zielonogorskiego, Zielona Góra, ISBN 978-83-7481-355-6.  
Author's translation. Original: *Ważną rolę przy współpracy pomiędzy NATO a Unią Europejską odgrywa obszar związany z bezpieczeństwem regionalnym, i udział w nim struktur wojskowych. W odróżnieniu od Sojuszu Północnoatlantyckiego, który ma charakter polityczno-wojskowy, Unia Europejska takim sojuszem nie jest i nie ma takich aspiracji. Ponadto NATO ma w swojej dyspozycji siły zintegrowane oraz procedury ich użycia. Na mocy Traktatu o Unii Europejskiej (obowiązuje od 1 listopada 1993 r.) zadania wojskowe w imieniu Unii Europejskiej pełniła Unia Zachodnioeuropejska*. From: M. Kulczycki, 2010, p.403.
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2. Act of August 29, 2002 *on martial law and the competence of the Supreme Commander of the Armed Forces and principles of his subordination to Constitutional Organs of the Polish Republic.* (Journal of Laws of 2002 No. 156, item. 1301).

In original: Ustawa z dnia 29 sierpnia 2002 r. *o stanie wojennym oraz o kompetencjach Naczelnego Dowódcy Sił Zbrojnych i zasadach jego podległości konstytucyjnym organom Rzeczypospolitej Polskiej* (Dz.U. 2002 nr 156 poz. 1301 z późn.zm.).

3. Act of December 17, 1998, concerning *the principles of the use or stay of Polish armed forces outside the country.*

In original: Ustawa z dnia 17 grudnia 1998 r. *o zasadach użycia lub pobytu Sił Zbrojnych Rzeczypospolitej Polskiej poza granicami państwa* (Dz.U. 1998 Nr 162 poz. 1117).

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