

DILEMMAS OF MANAGING STATE DEFENCE. POLITICAL, STRATEGIC AND LEGISLATIVE PERSPECTIVE

Col. (ret.) Mariusz WOJCISZKO, PhD

The Marshal Józef Piłsudski
Higher School of Safety and Security, Warsaw

email: m.wojciszko@wsbio.waw.pl

ID ORCID: 0000-0002-6887-2513

Abstract

The study is focused on state defence management, in particular its political, strategic and legal-comparative aspects. The issue of managing the defence of the State has been presented from a systemic perspective as a separate system, being a part of a higher system and at the same time containing subordinate elements. Appropriate government documents of a conceptual nature and provisions in the common law on defence management were chosen as the subject for political-strategic and legislative-legal analysis. The result of the analysis is a presentation of the key gaps and flaws in the legal solutions that may affect the functioning of the State defence management system in wartime¹, in particular those related to the decision-making process of system components. In addition, an attempt was made to assess the implementation of security concepts adopted in Poland over the years, mainly in the field of managing national security and defence.

Key words: management, security, defensive capability and defence, system, state security system, state defence management system.

Introduction

National security issues, including preparing the State for emergencies and responding to them, are among the most important for the State, addressing such imperatives as the preservation of its existence and potential for its development. It is also obvious and relatively easy to explain, based on the example of individual countries, that a long-term absence of threats causes a tendency to weaken the will

¹ The study is a continuation of the author's unpublished material on the *management of the defence of the State as the State's capability to function in case of political and military threats*.

and determination to develop security systems, whereas a state of constant threat results in a continuous improvement and development of capacity to respond to threats. However, it is reasonable to conclude that the absence, even for a long period of time, of risks (potentially occurring) does not justify the State's unpreparedness in the event of their emergence. The obvious role of the State and its competent institutions is not only to ensure security but also to continuously initiate actions that go far beyond the minimum. This is the duty of the state authorities and institutions, a duty of due diligence, which goes beyond the scope of "the normal administration of state security". Since the problems of the functioning of state institutions cannot be considered in the absence of the human factor, it should be noted that particular responsibility for the fulfilment of the duties assigned by law to the aforementioned institutions and bodies lies with the persons in charge of them.

In the key area of assuring security, important elements can be identified which include the *management of national security*, including the *management of defence* - the subject of this study².

The aim is to carry out an analysis of the legal-political and constitutional system and the organizational system of managing state defence and the way it is perceived (conceptual issues) and to identify possible deficiencies and weaknesses in this area. It is presumed that the imprecise Polish terminology related to *state defence management* and other areas of security, with the lack of a comprehensive legal basis defining (in accordance with the previously adopted concept of national security) the purpose, objective and organisation of the defence management system, makes it considerably more difficult, and in certain situations may even prevent, the planned, coordinated and staged creation and development of the system's capabilities and its proper operation in peacetime, in situations of external threat to state security, and in wartime.

At the same time, for the purposes of the study, it is assumed that the model of defence management adopted in Poland, being a part of national security management, takes into account the required spectrum of factors³, and it implements

² This terminology arises from the *Ordinance of the Council of Ministers of 27 April 2004 on the preparation of the National Security Management System* (Dz. U. [Journal of Laws] of 2004 No. 98, item 978). It is worth noting that the legislator uses the wording: "national security" and "defence of the State". The key words here are "nation" and "state", which have a specific meaning in Political Science. Accordingly, Security Sciences - which also make use of other disciplines - distinguish between such terms as: "national security/state security", "national defence/state defence" or "national security management/state security management". Therefore, it is worth asking ourselves whether the legislator, by introducing such and not other concepts into practice, implements the previously adopted deeper idea, or whether it is only a simple, interchangeable use of the concepts, not being an element of a coherent, thoughtful approach. Since the aim of this study is not to attempt to systematize concepts in the area of *national security* (given the perceived need for systematization), the author uses the terminology of legal acts.

³ Including: external and internal conditions; properly assessed, exploitable potential; the State's political and constitutional system.

the vision of its creation, maintenance and improvement contained in the national security policy and strategy.

Research methods used:

– a method of system analysis, characterized by an approach to the subject of research as a whole (system), a connected set of elements dependent on each other; considering internal and external conditions of system operation; searching for sources of transformations (changes) in the system, self-steering (including examination of relations between elements) and the impact on the environment.

– a decision analysis method, supporting the examination of the decision-making process by selected elements of the system, with the identification of: reasons for making a decision (influencing factors); the significance and effects of a decision (what is the significance of making a decision, and its issuance in the legally provided form by the competent authority).

Political, strategic and systemic issues

When considering *state defence management*, either in a holistic manner or in relation to selected aspects and parts of the State's defence, the purpose, objectives and tasks of the management of the defence, and the solutions already in place in the country must be taken into account.

Within the framework (but also for the purposes of) ensuring national security, structures implementing state security policy are created, maintained and developed. Developed structures, comprising bodies and institutions from different sectors of the State with their assigned tasks and competences and a network of links - are referred to as systems⁴. The characteristics that define and, at the same time, identify the systems in the area of security are their objectives, purpose and the established relationships between the elements, which in part are relevant only to these systems. To illustrate their purpose in the assurance of security, the following approach will be used. National security interests and objectives are defined by *security policy*, the manner (concept) of achieving them is outlined in the *security strategy*, whereas it is up to the *National Security System* to undertake activities and tasks ensuring the achievement of the intended objectives.

In the light of the current paradigm of a *comprehensive perception of national security* (a comprehensive perception of security, encompassing all actors and areas of state functioning), within the framework of the National Security System, tasks from various areas of security (political, military, economic, social, etc.) are carried out (as required) by the relevant institutions of the State and, according to specific

⁴ Systems are separate sets of elements, with set competences, duties and powers and relations between each of them - aimed at achieving objectives and carrying out activities in a specific area(s) of state functioning.

rules, by non-State entities. These can be tasks, within the so-called hard security (e.g. related to military threats) or within the so-called soft security (e.g. related to juvenile delinquency). Thus, these tasks will be different in nature and importance, and the role and position of the elements of the system will change according to the tasks performed.

“The behaviour of systems both shapes the environment and is shaped by it. Enhancing the environment and increasing the impact on the systems it contains requires each of these systems to take into account everything that can improve the environment and at the same time themselves”⁵. The National Security System’s functional characteristics cover the whole range of issues falling within the concept of state security. It is an element of the environment, dependent on it and forced to constantly adapt to changes⁶. At the same time, it is a superior system⁷ for systems (subsystems) dedicated to particular areas (categories) of security. Its components include (more often in practice) the *system (subsystem) of national security management*, and executive systems including: *defence, security*. The National Security Management System, as part of the National Security System⁸, consists of the *State Defence Management System* and *Crisis Management System*⁹. The State Defence Management System together with the executive subsystems (military and non-military) form the State Defence System. In this sense, the State Defence System comprises two executive elements and one managing element. The elements of the State Defence Management System are the state authorities and public administration bodies (civilian) and the command authorities of the Armed Forces - during war, the so-called War Command System (military)¹⁰. The above shows the multiplicity of possible relations within the National Security Management System.

In peacetime, the primary task of the State Defence Management System is to manage the entire defensive preparations of the State and to assist in the performance of tasks for the remaining areas of security as required. At the same time, the management of the defence of the State, as one of the areas of the State’s defensive preparations, is subject to change and improvement - developing the ability to function in situations of external security threats and in wartime. A systems approach to defensive preparations or to state defence management causes them to be treated

5 R.L. Ackoff, *Redesigning the Future. A system Approach to Societal Problems*, New York 1974, p. 68.

6 See: M. Romanowska, Z. Dworzecki, *Teoria i praktyka zarządzania*, [in] M. Romanowska (ed.), *Podstawy organizacji i zarządzania*, Warszawa 2001, p. 18.

7 See: W. Kitler, *Bezpieczeństwo narodowe RP. Podstawowe kategorie. Uwarunkowania. System*, Warszawa 2011.

8 Security systems belong within security research.

9 This includes *crisis response systems*. In legal and doctrinal terms, crisis management is embedded in the management of national security.

10 See: M. Wojciszko, *Kierowanie obroną państwa – jako zdolność państwa do funkcjonowania w sytuacji zagrożeń polityczno-militarnych*. Unpublished material.

“as an open system, i.e. an ordered set of cooperating elements which are in dynamic interaction and organised to achieve their goals, capable of adapting to permanent changes taking place in their surroundings (environment)”¹¹.

Conceptual issues

The terms *national defence management* and *crisis management* are part of the theory of the Security Sciences, and have been explained by other disciplines, in particular the Sciences of Organisation and Management. On the other hand, apart from “being an object” of scientific research (leading, amongst other things, to the construction of a conceptual framework), *defence management*, *managing the State’s defensive capability*, and *crisis management* are the real spheres of activity of state bodies and institutions, carried out in times of peace and war as part of ensuring state security. Legally, the process of *managing the defence of the State* and *crisis management* are situated in the same overarching system - the management of national security¹². The activities of public administration bodies in these areas are carried out on the basis of law and within the limits of their legally defined powers, tasks and obligations¹³.

Analysing the Polish terminology, “*zarządzanie kryzysowe*” (*crisis management*), in theory¹⁴ and in practice¹⁵, is related (but not identical) to the term “*kierowanie*” (*steering/directing/managing*). The etymology, scope, and current understanding of these terms indicate that they are not synonymous, although interchangeable use of these terms is noticeable in the Polish language. The lack of linguistic precision is undoubtedly one of the factors negatively affecting effective practice.

11 J. Penc, *Decyzje w zarządzaniu*, Kraków 1997, s. 18. The environment (of the system - as defined by the author) is the entirety of phenomena, processes and institutions shaping their interchangeability, scopes of operation, possibilities of their own development (see: J. Penc, *Zarządzanie w zmieniającym się środowisku*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1993, no. 1, pp. 121-134. Unfavourable environment have the following characteristics: changeable, turbulent, tumultuous, including unexpected variables.

12 Cf.: Art. 2 of the *Act of 26 April 2007 on Crisis Management* and § 1 item 1 of the *Ordinance of the Council of Ministers of 27 April 2004 on the preparation of the National Security Management System*.

13 See: M. Wojciszko, *Kierowanie obroną państwa – jako zdolność państwa do funkcjonowania w sytuacji zagrożeń polityczno-militarnych*. Unpublished material.

14 A theory is a general concept based on cognition (and therefore on research) and the understanding of the relevant factors shaping this sphere of reality. Cf.: *Słownik języka polskiego*, 1981, p. 494.

15 The field (sphere) of the functioning of the State. *The Act of 4 September 1997 on Government Administration Departments* (Dz. U. [Journal of Laws] of 2017 r., item. 888, consolidated text) includes, in the classification of *Government Administration Departments*, *internal matters*, which embrace the following: the protection of public safety and order; border protection; *crisis management*; civil defence and fire protection.

The merits of the *Act of 26 April 2007 on Crisis Management*¹⁶ include the very fact of making an attempt to explain the meaning of the Polish term “zarządzanie kryzysowe” (i.e. crisis management) understood as “the activity of public administration bodies being an element of managing national security, which consists in preventing crisis situations, preparing to take control of them by means of planned actions, reacting in the event of crisis situations, dealing with their effects and restoring critical resources and infrastructure”. At the same time, in the Sciences related to Organization and Management, the word “kierowanie” (i.e. steering/directing/managing) is most often related to individuals¹⁷, while the term “zarządzanie” (i.e. management) outside the human factor is related to the use of material resources. This may conflict with the legal meaning of *crisis management* (in Polish: zarządzanie kryzysowe) as mentioned above. The legislator has positioned “zarządzanie (kryzysowe)” (i.e. (crisis) management) as part of the significantly narrower “kierowanie (bezpieczeństwem narodowym)” (i.e. steering/directing/managing (of national security)). In addition to the conceptual dilemmas, the lack of a regulation in the national legal system to establish the structure and organisation of the management of national security in a comprehensive manner is a factor which exacerbates the difficulties.

Furthermore, when analysing the legal provisions on managing the defence of the State¹⁸, it is impossible not to notice that the Polish term “kierowanie obroną (i.e. management of defence) is accompanied by the term “kierowanie obronnością” (i.e. management of the State’s defensive capability). In order to find the reasons behind the legislator’s introduction of these two expressions, it is necessary to refer to a few entries contained in universally binding acts. Article 146 of the Constitution of the Republic of Poland of 1997 stipulates that the Council of Ministers shall exercise general management in the field of defence; in Art. 20 of the *Act on General Defence Obligation of the Republic of Poland of 21 November 1967*, the management of defence matters in a province is entrusted to the province governor; moreover, in the light of Art. 4a of this Act, the President of the Republic of Poland manages the defence of the State in cooperation with the Council of Ministers; then Art. 11 of 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 or her subordination to the constitutional bodies of the Republic of Poland*¹⁹ states that the Council of Ministers orders the launch of a system for managing the defence of the State.

¹⁶ (Dz. U. [Journal of Laws] of 2017, item 209, consolidated text).

¹⁷ The person exercising a directing function acts on other persons by means of their competences and powers, causing their specific behaviour to achieve the intended purpose.

¹⁸ In the *Act of 4 September 1997 on Government Administration Departments* (Dz. U. [Journal of Laws] of 2017, item 888, 1086, 1566, 1909, 2180), *national defence* is one of the peacetime functions of government administration.

¹⁹ Dz. U. [Journal of Laws] of 2017, item 1932, consolidated text.

The context of the use of these terms in the Polish language essentially explains the whole issue. The term *management of the State's defensive capability* refers to peacetime, to activities carried out within the framework of the State's defensive preparations, including economic and defence activities, diplomatic activities and includes the State's military and non-military resources (e.g. Armed Forces, public administration bodies, entrepreneurs). In turn, the term *management of defence* is related to directing actions when responding to external threats requiring the defence of the country (e.g. during military aggression on the territory of the country or in wartime). As a result of the above, in theory as well as in practice, the system of directing the realisation of defence tasks is defined in two ways, as a system of *managing the State's defensive capability* and a system of *managing the defence of the State*. This also reflects the dictionary meaning:

- defensive capability: defensive nature, adaptation to defence, provision of means of defence against aggression; valour, armour²⁰,
- defence: defending against aggression, usually armed; defending someone (or something) or defending oneself²¹ or acting to stop someone from assaulting somebody [on some person or some place], or against an armed attack or pressure from some elements²².

Returning to the link between *security policy*, the *security strategy*, and the *National Security System*, it can be said that the first two initiate all efforts to ensure national security, including the direction of national defence. *National security policy* should define the interests and goals of national security, and in the *national security strategy* there should be an understanding of how to achieve them. Trying to explain the meaning of the *national security strategy* in the simplest way - one can say that this is the official concept (way) of ensuring security in the long term in a defined, diagnosed security environment (taking into account its variations) using available forces and assets. Thus, a security strategy in practical terms is a document describing the official system of the State's thinking on ensuring its security²³. The national security strategy developed by the Council of Ministers (an executive body constitutionally obliged to ensure internal and external security) and approved by the President should become the basis (starting point)²⁴ for measures focused on the implementation of state security interests and objectives. However, perhaps the most common criticism of these documents is that they have no real impact on activities

20 W. Doroszewski (ed.), *Słownik języka polskiego*, Warszawa 1958-1969.

21 Ibidem.

22 M. Bańko (ed.), *Inny słownik języka polskiego PWN*, Warszawa 2000.

23 See: B. Balcerowicz, *Polityka i strategie bezpieczeństwa narodowego. Charakterystyka podejścia*, [in] J. Pawłowski (scientific ed.), *Współczesny wymiar bezpieczeństwa. Między teorią a praktyką*, Warszawa 2011, pp. 31-32.

24 On the relationship between national interests, *raison d'être* and security policy objectives, see, among others R. Zięba, *Bezpieczeństwo jako cel polityki państwa: aspekty teoretyczne*, [in] J. Pawłowski (scientific ed.), *Współczesny wymiar bezpieczeństwa. Między teorią a praktyką*, Warszawa 2011, pp. 26-28.

in the sphere of national security, that is to say, on what essentially constitutes their essence and purpose. There are several reasons for this, the first of which already appear in the source legislation and at the strategy design stage. The national security strategy was introduced by the Act on General Defence Obligation of the Republic of Poland of 1967, i.e. a legal act whose scope of regulation is narrower than the content of the discussed document. In addition, Art. 6, section 1, item 1 states that the Council of Ministers shall develop a strategy within the framework of tasks resulting from ensuring the external security of the state and general management in the field of national defence, omitting in its entirety the task from the second constitutional area of responsibility to ensure internal security of the state and public order²⁵. Another disadvantage of the legal definition of the national security strategy is the inadequate scope of regulation. The Act on General Defence Obligation of the Republic of Poland of 1967 in relation to the security strategy only stipulates the body responsible for project drafting and the approving authority leaving undetermined, inter alia, the purpose, positioning, layout of the document, which are in place in the laws governing the documents below in the hierarchy.

In turn, observing how the national security strategy is developed indicates something that could be described as “reversed concept” syndrome²⁶. It consists in constructing strategy on the basis of “ongoing activities” in the scope of security, which are not necessarily connected to each other in a conscious way, in spite of their substantive connection. Individual “actions are treated instrumentally” for the purpose of the task of developing a document entitled “National Security Strategy of the Republic of Poland”. In language terms, this document will be correct; however, even if it seems coherent, it will not be perceived (even by its authors) as a real plan (vision) to provide a real conceptual basis for implementation activities, i.e. coherent, interconnected actions carried out in a coordinated manner with a view to achieving the strategic objectives of national security. The procedure should be exactly the opposite. There ought to be a concept that is methodologically correct²⁷, preceded by a thorough analysis of the security environment and its development options. The concept should be prepared with the participation of scientific and political²⁸ centres,

25 Cf.: Art. 6, section 1, item 1 of the Act on General Defence Obligation of the Republic of Poland of 1967, Art. 146, section 4, items 7, 8, 11 of the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. [Journal of Laws] No. 78, item 483). With reference to the terminological problems discussed above, it should be noted that the Constitution of 1997 uses the terms *external security of the state*, *internal security of the state*, whereas the Act on General Defence Obligation of the Republic of Poland of 1967 and other acts of a lower order, such as the Ordinance of 2004 on the preparation of the management system, use the term *national security*.

26 According to the Dictionary of the Polish Language published by PWN, a *syndrome* is a set of features characteristic of a phenomenon, which is usually a negative one....

27 Correct development methodology, which takes into account all the necessary factors, determines the validity of the strategy.

28 The product should be the result of a social consensus, in particular of the main political forces, not only accepted by the ruling party.

experts and agreed upon by the relevant authorities and public administrations (implementing entities). It ought to form the basis for planned and coordinated actions in the security area. Obviously, it is quite natural to refer to and take account of ongoing work, which may be revised as appropriate. One of the principles of ensuring state security is to base it on a credible concept (prepared with diligence and responsibility for its implementation) and translated in a long-term perspective into guidance and programme documents. It should be the realization of a precisely defined and coherent concept. It is essential to ensure the sustainability and stability of this process, so that its main thrust does not change fundamentally after a short period (several years). In order to ensure the above, it is important that the concepts of action in key areas of the functioning of the State with a long implementation period are the result of the broadest possible consensus, even though agreement on the objectives and main actions to achieve them will be difficult to achieve. This is probably the only proper approach in a democratic state, the opposite of which would be to present a vision for ensuring security which is difficult to reconcile and whose implementation would require more than a single term of power based on the procedures of a democratic state.

An example of bad practice is the way in which the reform of the System of Leadership and Command was introduced in Poland in 2013-2018²⁹. This may come as a surprise, since the Polish National Security Strategy of 2014 (Strategy 2014) assumed that there is “social consent and political agreement on the primacy of national security issues”³⁰. However, this would not be the case now if there had been political agreement on the solutions to be introduced in 2014.

Apart from reaching a consensus on the shape of the security concept and how to implement it, the crux of the matter remains - the implementation of the concept, which does not seem to have been Poland’s strong point so far. This can be demonstrated by a short comparative analysis of the last fifteen years of security strategy. In the Polish National Security Strategy of 2007 (Strategy 2007)³¹, it was assumed as an extremely urgent task to make the National Security System a fully integrated, coherent and orderly system, emphasizing that the development of an efficient, effective, properly organized system remains the primary task of Polish security policy³². The Polish

²⁹ Activities carried out in this scope were described in the public space as *reform and counter-reform*.

³⁰ Strategia 2014 (Strategy 2014), p. 28.

³¹ The draft *National Security Strategy of the Republic of Poland* is prepared by the Council of Ministers on the basis of Art. 6 of the Act on General Defence Obligation of the Republic of Poland of 1967, and approved by the President of the Republic of Poland in accordance with Art. 4a of the same act.

³² See: National Security Strategy 2007, p. 21. In support of the above, a part of Prof. Kuźniar’s interview entitled “The Government is trapped now” for the *Polska Zbrojna Magazine* (June 2011) can be quoted: *I believe that it was a sin to adopt the National Security Strategy of 2007 after the fall of the old government and before the new government took over responsibility for the country (...). The new government, in whose hands the instruments of state security policy are, was*

Defence Strategy of 2009³³ (Defence Strategy 2009) maintained the directions set out in 2007. This is evidenced by the following provisions: “An effective response to modern threats requires the integration of defence response and crisis management”; “Within the framework of the State Defence System improvement, the tasks of maintaining and improving the integrated system of managing national security, including the defence of the State, are carried out”; “The aim of the measures taken is to build a uniform steering system ensuring consistent operation regardless of the type and nature of the risks”³⁴.

In the next document, the 2014 Strategy issued by the Council of Ministers (the constitutional authority responsible for ensuring state security) seven years after the 2007 Strategy, the first and second strategic objectives in the field of security were to “maintain (...) the readiness of the integrated National Security System” and to “improve the integrated National Security System, especially its governance elements (...)”. Subsequently, in the concept of strategic preparations, the key tasks were considered to be “the establishment of a legal and organisational basis for an integrated security system and the implementation of principles and procedures for the political and strategic direction of national security, consistent in all the states of national security”³⁵. It was assumed that measures to integrate the management of national security will include, inter alia, institutional, procedural and legislative changes. In addition, the earlier Strategy for the Development of the National Security System of the Republic of Poland 2022 (the Development Strategy 2013), adopted by a resolution of the Council of Ministers dated 9 April 2013 as part of the State’s development policy, indicated that Polish law does not comprehensively regulate the functioning of the National Security System. In the part describing the assessment of the National Security System, it was noted that “the lack of standardization of the organization and functioning of the system in one piece of legislation makes the activities undertaken in this area (...) often have a sectoral and fragmented character. The actions taken so far to integrate measures (...) have not introduced systemic and comprehensive solutions on a national scale”³⁶. Further on, in the part dealing with the *vision of the National Security System development* it was even noted that “the development of an integrated National Security System will be one of the key factors shaping Poland’s national security”³⁷.

thus trapped: it had to implement the strategy adopted by the previous government, whose policy, including foreign policy, was rejected by the public in parliamentary elections. This is against democracy.

33 The idea of developing sectoral strategies within the 2007 Strategy has not been finally made reality. The only sectoral strategy - *the 2009 Defence Strategy* - was repealed by the 2013 *Strategy for the Development of the Polish National Security System of the Republic of Poland*.

34 *Strategia obronności* 2009, pp. 9, 25.

35 *Strategia 2014* (Strategy 2014), p. 43.

36 See: *Strategia 2013* (Strategy 2013), p. 28.

37 See: *Ibidem*, p. 63.

It is difficult to disagree with the presented records. However, since the President of the Republic of Poland signed the 2007 strategy (the first one introducing an integrated National Security System vision, which has been in force to date), no comprehensive legal solutions have been adopted in the country to implement conceptual assumptions in a systemic manner, including the integration of national security management, of which the management of state defence is a part. The lack of action in this area is difficult to explain.

In the relationships between stakeholders recognising the existence of certain principles and standards of responsible action, knowledge of the declarations made and the longstanding failure to implement them can only lead to a state of limited confidence.

Legal, constitutional and organizational perspective

Legal and Constitutional Perspective

The character as well as the political and constitutional system of the State, which are determined by the Constitution of the Republic of Poland of 1997, constitute the basis for:

- indicating the supreme competent authorities responsible for security, including the management of the defence of the State;
- establishing, in lower-level acts of law, detailed competences and relations between the above-mentioned authorities and entities that report to them.

The constitution itself enables one to outline the general framework for *managing state defence* in relation to its main elements. The basis for this is the binding legal and constitutional principles³⁸ as well as solutions shaping the principal state institutions.

*The principle of the separation and balance of legislative, executive, and judicial powers,*³⁹ introduced by the Constitution of the Republic of Poland of 1997, determines the sphere of security in an institutional and functional manner. *The principle of the rationalized parliamentary system of government* with the following structure, relations and competences of the authorities indicates that the issues of state security are within jurisdiction of executive power, which is the President of the Republic of Poland and the Council of Ministers. Moreover, as a result of the

³⁸ This includes the principles of: national sovereignty, democratic State under the rule of law, republican form of government, separation and balance of powers, parliamentary system of government, as well as civil rights and liberties (Constitution of the Republic of Poland of 2 April 1997).

³⁹ Legislative power is exercised by the lower house of the Polish parliament (i.e. the Sejm) and the Senate; executive power is exercised by the President of the Republic of Poland and the Council of Ministers; finally, judicial power is exercised by courts of law and tribunals.

principle of general jurisdiction by the government over state policies, the Council of Ministers is assigned the above-mentioned competence of ensuring both internal and external state security⁴⁰. This enables one to conclude that, according to the lower-level acts of law, it is the government that will be responsible for making defensive preparations in peacetime. In contrast, if there exists an extreme external threat or in wartime, the management of state defence should be entrusted to the President of the Republic of Poland (which is consistent with the President's constitutional competence of upholding sovereignty, state security, as well as the integrity and indivisibility of its territory). The above is confirmed by the 2009 defence strategy, stipulating that *in accordance with the provisions of the Constitution of the Republic of Poland, the President of the Republic of Poland and the Council of Ministers - as executive authorities - are the supreme authorities for managing issues related to defence*⁴¹. Thus, the management of security belongs to the State's constitutional authorities. If extreme threats appear, they act on the basis of their previous organizational structure and the competences that appertain to them with possible, legally determined, alterations.

As has been demonstrated above, more detailed solutions concerning the management of defence are a consequence of the constitutional and political principles which determine the position, relations and competences of the State's supreme authorities. However, the issues of state defence and its management are determined not only by the above-mentioned constitutional and political principles but also by the provisions of the Constitution specifying the highest values particularly protected and defended by the Republic of Poland. These values include: independence, integrity, state territory indivisibility (Art. 5), state border integrity (Art. 26), as well as sovereignty and state security (Art. 126)⁴². The values that are protected by the State also constitute the basis for formulating *the major aims concerning state security policy*. The set of the general and permanent aims discussed above which the State fulfils is called *national security interest*⁴³. The transformation of the above-mentioned values into interests, aims and principal tasks is conducted as part of national security policy and strategy. The directions for and components of the National Security System are determined.

The management of state defence is partly regulated in the Act on General Defence Obligation of the Republic of Poland of 1967 and in, issued on its basis, the Ordinance of the Council of Ministers of 27 April 2004 on preparation of the

40 See: M. Wojciszko, *Wpływ systemów rządów na model kierowania obronnością państwa*, Warszawa 2004, p. 106.

41 *Strategia obronności 2009* [Defence Strategy 2009], p. 13.

42 For more on the analysis of the provisions of the Constitution of the Republic of Poland of 1997 referred to above, see: M. Wojciszko, *Kierowanie obroną państwa...*, op. cit.

43 See also: *Major Problems for US Foreign Policy 1950-1951*, Prepared by the Staff of the International Studies of the Brookings Institution, Washington D. C. 1950, p. 384 after R. Zięba, *Bezpieczeństwo jako cel polityki...*, op. cit. [in] J. Pawłowski (scientific ed.), *Współczesny wymiar bezpieczeństwa...*, op. cit., p. 23.

National Security Management System. The above acts of law mainly concern the preparatory stage, i.e. actions taken as part of the system for the management of the State's defensive capability.

Art. 6, section 1, item 3 of the Act on General Defence Obligation of the Republic of Poland of 1967 imposes the following task on the Council of Ministers: *to develop a national security management system, including state defence, and prepare public authorities to work on their posts*. In effect, this task is one area of the State's defensive preparations, whose aim is to create for the state and to maintain a capability to efficiently function in wartime.

After the introduction of martial law and/or in wartime, when it is necessary to defend the country, the President of the Republic of Poland manages state defence in cooperation with the Council of Ministers. The task of the President stems from his or her constitutional competences, and it has been combined with a right to appoint the Commander-in-Chief of the Armed Forces⁴⁴. However, it is not clear what the intention is of the combination of the competences (Art. 4a, section 1, item 4b)⁴⁵ which consists in commencing defence management by the President at the moment when the Commander-in-Chief of the Armed Forces is appointed and takes over command. The previous arrangement based on Art. 134, section 4 of the Constitution of the Republic of Poland of 1997 and the repealed Art. 10, section 1 of the Act on Martial Law seemed more comprehensible, and above all, more effective in situations justifying its application⁴⁶.

Another issue, more debatable in the context of the efficiency of the State Defence Management System, is the amendment to the Act on General Defence Obligation of the Republic of Poland of 1967 consisting in assigning to the President of the Republic of Poland a task of *determining a day when wartime begins within*

⁴⁴ The task of managing state defence by the President of the Republic of Poland included in Art. 4a, section 1, item 4b of the Act on General Defence Obligation of the Republic of Poland of 1967 is combined with his or her right to appoint the Commander-in-Chief of the Armed Forces and the Commander-in-Chief's takeover of command. Thus, Art. 4a, section 1, item 4b of the Act on General Defence Obligation of the Republic of Poland of 1967 should be understood in the context of:

– Art. 10, section 2, item 4 of the Act of 29 August 2002 on martial law and the competences of the Commander-in-Chief of the Armed Forces as well as the principles of the Commander-in-Chief's subordination to the constitutional authorities of the Republic of Poland - *in reference to management when martial law is effective*,

– Art. 134, section 4 of the Constitution of the Republic of Poland of 1997 - *in reference to management in wartime*.

⁴⁵ Item 4b was added to Art. 4a by the Act of 5 March 2015 amending the Act on General Defence Obligation of the Republic of Poland of 1967 and certain other acts (Dz. U. [Journal of Laws] of 2015, item 529). The Act of 5 March 2015 also repealed Art 10, section 1 in the Act on Martial Law worded as follows: *If martial law is effective, it is necessary to defend the State, the defence shall be managed by the President of the Republic of Poland in cooperation with the Council of Ministers*.

⁴⁶ M. Wojciszko, *Kierowanie obroną państwa...*, op. cit.

the territory of Poland (Art. 4a, section 1, item 4a). *Wartime*, as well as *peacetime*, is a constitutional term⁴⁷ and it should be analysed together with the constitutional institutions of *martial law* and *state of war*. The latter are legal institutions regulating a specified area of social relations. In contrast, both *wartime* and *peacetime* signify a real period of time; as for *wartime*, it is the period of time during which war is effectively continued (waged). Consequently, *wartime* cannot be subject to the President's decisions; *wartime* simply exists and the state authorities might not have any influence on this fact. In other words, President's failure to take a decision regarding the choice of the day when *wartime* begins will not avert the war. To put it simply, it is possible to say that the constitutional legislator introduced the term *wartime* as, among others, a safeguard in case of a failure of a legal institution, for example a failure to impose martial law when there is war in the State's territory (i.e. in *wartime*). To put it another way, there are no grounds for taking a decision regarding the start of something that is already happening⁴⁸ and on which one might not have full influence. Surrounding *wartime* with legal procedures in a situation when war has begun is meaningless and can only bring chaos, reducing time and badly affecting confidence that is needed to take actions. The aim of the constitutional legislator was to introduce the very term "wartime" with the specific tasks that followed, without making the phenomenon dependent, with regard to its existence or non-existence, on the decisions taken by any authorities, which is the case with regard to martial law.

In accordance with Art. 11, section 1, item 1 of the Act on Martial Law, *the Council of Ministers, when martial law is effective, orders that the State Defence Management System should be activated*. This provision implies an already existing State Defence Management System prepared in advance. When martial law is effective, the Council of Ministers activates the system which has been prepared in peacetime. The President of the Republic of Poland decides that public authorities should assume specific management posts (Art. 10, section 2, item 1 of the Act on Martial Law). Management posts are part of defensive preparations in peacetime. In addition to the above-mentioned task, when martial law is effective, at the request of the Prime Minister, the President of the Republic of Poland can appoint the Commander-in-Chief of the Armed Forces. Thus, in peacetime, the Council of Ministers prepares a State Defence Management System and activates it when martial law becomes effective, while the President of the Republic of Poland takes decisions concerning the filling of the management posts of the State Defence Management System; moreover, he or she manages state defence. To sum up, it should be expected that when martial law is effective the Council of Ministers will first activate the State Defence Management System; then, the President of the Republic of Poland (at the

⁴⁷ See, among others, Art. 134 of the Constitution of the Republic of Poland of 1997.

⁴⁸ See: M. Wojciszko, *Minister obrony narodowej i naczelne organy administracji rządowej w przygotowaniach obronnych państwa*, [in] W. Kitler (scientific ed.) *Minister Obrony Narodowej i Naczelný Dowódca Sił Zbrojnych w systemie kierowania bezpieczeństwem narodowym RP*, Warszawa 2013, p. 168.

request of the Council of Ministers) will assign specific management posts to public authorities⁴⁹.

Although the last decade of the 20th century was the time of political, social and economic transformations in Poland, there were no significant changes in laws on state defence, which should have taken place as part of the transformations. It is only a few years after the Constitution of the Republic of Poland of 1997 was adopted that the passing of new laws on state defence can be observed. However, until now, one of the most important issues that should be addressed is the legal regulation of state defence management from the systemic perspective (independently or within the framework of an integrated national security management system) as a set of interconnected elements with their specific competences and relations. This would replace the presently existing dispersed regulations which determine rights and duties of individual authorities and organs.

State defence management in the organizational perspective

The Constitution of the Republic of Poland of 1997 entrusts the Council of Ministers with the task of *ensuring internal and external state security*. The principles and procedures of managing defence are assumed and developed by the State Defence System while ensuring external security and during general management of the state's defensive capability. The State Defence System has been created and is maintained for that purpose. It is oriented towards the completion of tasks aimed at ensuring external state security. In peacetime, the priorities of the State Defence System include creating, and then developing, a State Defence Management System so as to increase the State's capability to function in case of extreme threats. On the other hand, the State Defence Management System, understood as a structure existing in any state of the functioning of the State (in peacetime - the State's defensive capability management system), influences the surroundings by completing tasks related to the State's defensive preparations and participating in the shaping of the State's security.

In crisis management⁵⁰ and counterterror activities⁵¹ a fairly well-known four-stage (based on phases) manner of acting was adopted, which consists of *preventing, preparing, responding and rebuilding*. However, this was not used within national defence, including defence management. The difference in the adopted solutions can be justified by the characteristic features of national defence or, which is more probable, by poorly coordinated activities conducted by the Council of Ministers regarding national security. Lack of a unified approach, considering the differences

⁴⁹ Ibidem.

⁵⁰ See: *Act of 2007 on Crisis Management*.

⁵¹ See: *Act of 10 June 2016 on Counterterror Activities* (Dz. U. [Journal of Laws] of 2018, item 452, consolidated text).

in specific areas of security, makes the cooperation and coordination of actions considerably more difficult.

The levels of the State Defence Management System reflect the organizational levels existing in the public administration, while the elements of the system correspond to central and administration authorities and organs. On the central level, the State Defence Management System consists of supreme government administration authorities and central government administration authorities. Supreme authorities and administration authorities are mainly ministers who manage Government Administration Departments. The scope of involvement of individual ministers will depend on their competences and assigned tasks, as well as the State's defence needs in relation to a specific Government Administration Department. On the regional (province) and local level, the organs in the State Defence Management System are the province governor, district governor, commune administrator, and mayor.

The elements of the State Defence Management System (both in its military and civilian part) can be divided into: *decision-making*, *staff*, as well as *consultative and advisory*. In the military part, it is the command authorities of the Armed Forces that have the authority to make decisions, whereas in the civilian part, it is central authorities (e.g. a minister in charge of a Government Administration Department) and public administration authorities (e.g. province governor, district governor, commune administrator, and mayor). The *staff* elements are the offices that ensure the functioning of, and the completion of tasks by, decision-making authorities⁵². Their duties include, among others, developing decision drafts/orders for the management/command authority. Moreover, the management process might include elements that complete tasks of supportive character, *consultative and advisory*, e.g. in crisis management, the role of such elements is fulfilled by crisis management teams.

It is important to delimit specific ranges for competences of the elements of the State Defence Management System (how far specific competences extend and where exactly they end) and to determine a quick and safe mode of taking decisions. The above becomes significant when one realizes that the elements of the management system are functionally and multilaterally dependent on one another. The elements of the management system (authorities and administration authorities) exist on all organizational levels. In conditions different to unilateral functional dependence (when there are several authorities that influence the activities of one element), in order not to violate the management principle of unity of direction, it is necessary to precisely delimit the scope of activity of each specific superior organ so that a subordinate element will receive instructions and orders concerning one matter

⁵² The staff elements in the civilian part are, among others, ministries, provincial administration, commune administration (or other competent structures established on their basis). In the Armed Forces, the staff elements are as follows: HQs, staffs, and command elements.

only from one superior organ⁵³. The unity of direction refers to the question whether or not, at a given moment and in a given case, the subordinate element receives one instruction or order, or several possibly conflicting ones, and/or whether or not these instructions and orders are ambiguous. As for the management principle of unity of command, it amounts to how many persons give instructions or orders to a specific element at a given moment⁵⁴. The above is applied to the elements of the system on lower organizational levels, for example it refers to heads of provincial services, inspection units, guards reporting to province governors, whereas within the departmental and ministerial system, it is applied to the elements subordinated to central authorities. One of such authorities is the Provincial Police Commander, who is subordinated to the provincial governor, while within the departmental and ministerial system, he or she reports to the Chief Police Commander. In other words, during defence preparations, the Provincial Police Commander can be assigned tasks by both the province governor and the Chief Police Commander. Likewise, when martial law is effective, the Provincial Police Commander will also be assigned operational tasks by the province governor and the Chief Police Commander. Therefore, these tasks must not be contradictory and ultimately they should be aimed to achieve the same goal. Following Prof. Zieleniewski, it is possible to say that the province governor and the Chief Police Commander should have an “unambiguous influence” on the Provincial Police Commander. This does not mean issuing the same orders but it means that these orders must not be contradictory. The above is guaranteed by the precisely specified competences but also by a coordinated process of defence planning.

The structure of the system, as well as the competences and tasks, indicate that the main effort related to the execution of defensive tasks lies on the provincial level. The province governor’s competences embrace, to a greater or lesser extent, most issues related to the activities of Government Administration Departments. On this level, the province governor is responsible for managing issues related to the State’s defensive capability as well as coordinating and supervising the completion of defensive tasks. This process also involves the activities of the departmental and ministerial system, determined by its competences, which also creates conditions and solutions for the execution of tasks for specific Government Administration Departments⁵⁵. As can be observed, between a minister in charge of a Government Administration Department and a province governor there exists one of the connections of the structure of the management system (therefore, it is a sensitive area). Moreover, they are also boundary elements of the system (the entry to and the exit from the system). Consequently, the manner in which they are connected, by means of established principles of cooperation and scopes of responsibility,

⁵³ On the basis of: J. Zieleniewski, *Organizacja zespołów ludzkich. Wstęp do organizacji i kierowania*, PWN Warszawa 1972, p. 599.

⁵⁴ Ibidem, p. 453-454.

⁵⁵ See: M. Wojciszko, *Kierowanie obroną państwa...*, op. cit.

determines the stability of the entire system. The correct establishment of the relations and scopes of responsibilities of the authorities and organs that remain in multilateral functional dependency influences the efficiency of the system.

To sum up, state defence management understood as a process is a systematic, ordered and staged course of action during which the management elements (in agreement with their role and the tasks within the management system) conduct, by influencing the subordinate human resources, mutually interconnected activities whose aim is to achieve intended goals. It can be characterized by:

- taking decisions/assigning tasks;
- creating conditions for their execution;
- coordinating and supervising the execution of the tasks.

State defence management as a system. It is part of the State Defence System and also the national security management system - a real structure of isolated elements of the state having legally specified competences, mutual relations, which is oriented towards managing the executive elements of the State Defence System in situations of external threat to state security, and in wartime.

When discussing the management of the State's defensive capability, it is necessary to pay attention to state affairs related to the management, in peacetime, of its defensive preparations, including those of economic and defensive nature, diplomatic activities and other activities whose aim is to ensure the efficient work of the state in wartime. One of the areas of the above-mentioned defensive preparations will be the preparation and improvement of the *State Defence Management System*.

Taking account of the fact that management systems:

- are part of the security system and are used to execute tasks of preparatory and defensive character as well as tasks consisting in defensive response to existing threats - they are entities functioning in a permanent manner in all the states of the functioning of the State (peace, crisis and war),

- are based on the same constitutional organs and state institutions, which have legally specified positions and competences,

it is suggested that they should be treated as one single system, one constituent of the National Security System, which is referred to, in peacetime, in relation to preparatory and defensive activities, as a *system for the management of the State's defensive capability*, whereas in crisis and in wartime, in relation to responding to existing threats, it is treated as a *State Defence Management System*. The transition of the system from one stage to the other will be connected with the introduction of a state of emergency, which might be accompanied by changes to the positions and roles of the management elements. It should be observed that the position and role of the President of the Republic of Poland and the Council of Ministers in peacetime and wartime changes. In peacetime, it is the Council of Ministers that has the main role regarding the management of defence issues (this stems from the constitutional principle of the presumption of *executive power* and from entrusting the Council of Ministers with the task of *ensuring the internal and external state security* as well as *being responsible for the general management related to the State's defensive*

capability); in contrast, the management of defence in wartime is the domain of the President of the Republic of Poland (which is in agreement with the principles of unity of command and responsibility).

Conclusions

The analysis conducted by the author of the legal, constitutional and organizational solutions existing in the State Defence Management System and the manner this system is perceived allows identifying deficiencies and weaknesses which can considerably hinder the establishment and development of the capability of a management system as well as its operation in situations of external threat to state security, and in wartime.

The most important deficiencies and weaknesses include:

- insufficient and lacking Polish terminology related to the State Defence Management System and its environment;
- weakness of the process of preparation and implementation of the National Security Strategy of the Republic of Poland, including inappropriate legal basis and an insufficient scope of legal regulation as well as the lack of consensus and the will to implement the main assumptions of this concept;
- lack of legal regulations determining, in a comprehensive manner, the structure and organization of state defence management.

The advantages include:

- there are political and constitutional foundations for the development of systemic solutions concerning state defence management.

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