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Legal status of the Commander-in-Chief of the Polish Armed Forces

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Słowa kluczowe: Naczelnny Dowódca Sił Zbrojnych, Siły Zbrojne Rzeczypospolitej Polskiej, zwierzchnictwo

Summary

This article concerns the legal status of the Commander-in-Chief of the Polish Armed Forces (*Naczelnny Dowódca Sił Zbrojnych*). This is one of the most significant state organs for security that is nominated for a time of war. The main elements of his legal status were defined in the Constitution of the Republic of Poland and elaborated in the statutory regulation. Pursuant to these documents this organ is subordinate to the Head of State and his functioning is defined during a war. His basic competences embrace commanding of the Polish Armed Forces together with ensuring the co-operation of the subordinated forces with their allied counterparts in planning and conducting the military operations. He bears the constitutional responsibility for the violation of the Constitution and the statute. Nevertheless, this regulation is neither comprehensive nor holistic. The reason of this is the fact that some of its components require various rules of interpretation (e.g. neutrality concerning the political issues), whereas the other have not been regulated at all (e.g. the demands in respect to the candidates). For these reasons it was demanded to specify the legal status of the Commander-in-Chief of the Polish Armed Forces.

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Streszczenie**Pozycja prawna Naczelnego Dowódcy Sił Zbrojnych RP**

Artykuł dotyczy pozycji prawnej Naczelnego Dowódcy Sił Zbrojnych. Jest to jeden z kluczowych dla bezpieczeństwa organ państwowy mianowany na czas wojny. Główne elementy pozycji prawnej tego organu zostały wskazane w Konstytucji RP oraz doprecyzowane w regulacji ustawowej. Jest to więc organ podległy głowie państwa, którego funkcjonowanie aktualizuje się w czasie wojny. Do jego podstawowych kompetencji należy dowodzenie Siłami Zbrojnymi RP oraz zapewnienie współdziałania podległych sił z siłami sojuszniczymi w planowaniu i prowadzeniu działań wojennych. Ponosi odpowiedzialność konstytucyjną za naruszenie konstytucji i ustawy. Niemniej jednak nie jest to regulacja kompleksowa i całościowa. Niektóre z cech wymagają bowiem zastosowania rozmaitych reguł wykładniczych (np. neutralność w sprawach politycznych), inne zaś nie zostały uregulowane w ogóle (np. wymagania w stosunku do kandydata). W tym stanie rzeczy wysunięty został postulat w zakresie wyraźnego określenia pozycji prawnej NDSZ.

I.

The position of the Commander-in-Chief of the Polish Armed Forces (hereinafter 'the NDSZ') is not often analyzed in the context of constitutional and legal research. It is usually classified as potential because pursuant to Art. 134 Para. 4 of the Constitution of the Republic of Poland of 1997, the NDSZ is nominated by the Polish President exclusively for the duration of the war. In order to make it happen the request of the Prime Minister is necessary. The Head of State can recall the NDSZ from his post in the same manner. In accordance with the further regulation, the competences of the NDSZ as well as the rules concerning his subordination to the constitutional authorities of the Republic of Poland are regulated by the statute. Moreover, this state authority bears the constitutional responsibility for violation of the Constitution and the statutes. Thus, the basic characteristics of the NDSZ come directly from the constitutional lawmaker and specify the legal position of this

state organ. Among them the following features can be selected: the NDSZ's subordination to the constitutional organs of the Republic of Poland and the necessity to ascribe the competences to him. This makes it possible to consider the NDSZ as an "authority" specified by the Constitution. He is a subject appointed to a post for a defined special time, he is not a body characterised by the stable term of office and bears the responsibility of a political nature before the authorities involved in his appointment as well as constitutional liability before the Tribunal of State. Additionally, further characteristics could be reconstructed from the Basic Law, such as the requirement of political neutrality of the NDSZ and his civil subordination and democratic control (Art. 26), necessity of co-operation in the process of nominating the NDSZ and during fulfilling his duties (Preamble, Art. 134), as well as necessity of taking into account the efficiency of the activities of public institutions (Preamble). Undoubtedly, the NDSZ is an essential element of the Polish political system. This article will analyse the abovementioned basic characteristics making the legal status of the NDSZ.

II.

First of all it should be established whether the NDSZ fulfils the criteria (could be classified as) of a state authority. Traditionally, the following features decide about such a status: 1. the organizational separation (including specification of the various competences, function, structure and the institutional structure of the organ in the legal regulations); 2. assigning a range of competences (which should be strictly connected with the legally established functions of the organ); 3. legal personality (legal existence separate from the state); 4. ability to undertake ruling actions (resulting in a one-sided change of the legal standing of the addressees, causing widespread effects as well as a capacity to take non-ruling measures) and 5. specific rules of functioning (according to which the specific activity of the authorities (organs) is undertaken, e.g. the rule of law)². Denotation of these features in the Constitution provides a basis for distinguishing categories of the constitutional state authori-

² J. Trzciński, *Pojęcie konstytucyjnego organu państwa socjalistycznego*, Warszawa 1974, pp. 58–119.

ties. However, indicating an authority only by its name is not enough for the purpose of legal analysis.

The conditions which shall be met by a subject to be classified as a state authority could be also reconstructed from the Constitutional Tribunal judgment of 26 March 1998³. These are the following: a direct reference to the subject; identification him by the name; specifying his term of serving the duties; description of the way of his nomination; the organizational separation; clearly pronounced conferral of power as well as determining the relationship among this organ and other state authorities. The abovementioned requirements, and at least one of them, shall come directly from the legal regulations.

According to the doctrinal terminology, state authorities shall be distinguished by executing of state power which has been given by the Nation⁴. The term "state authority" shall be identified with an "organ of the state power". The conjunction of Art. 1, Art. 4 and Art. 10 of the Polish Constitution explains that the separation of powers has its source of power in the sovereign. It is generally accepted in the doctrine that Art. 10 is not closed in character. According to this assumption, there may function other organs, which have been entrusted with fulfilling a sector of state activities (The Commissioner for Citizens' Rights, The National Council of Radio Broadcasting and Television, The National Council of the Judiciary). The Constitution names these organs by specifying at least the scope of their functions and formulating outlines of their legal positions. A state organ, on the other hand, shall be identified with the subjects subordinated to public authorities (e.g. administrative authority) and with the independent organs nominated (founded) under a statute (The Commissioner for Children's Rights).

Undoubtedly, in case of the NDSZ some of the elements pointed out in the doctrine and the jurisdiction were defined in the Constitution. However, the statutory regulation will be crucial when it comes to his competences exercised using ruling or non-ruling methods as well as the principle of subordination to the authorities of Poland. Taking into account the last con-

³ Sygn. akt K 17/98; R. Balicki, *Glosa do wyroku Trybunału Konstytucyjnego z dnia 26 maja 1998 r. (sygn. akt K 17/98)*, "Przegląd Sejmowy" 1998, No. 4, p. 159.

⁴ More about the definitions A. Bień-Kacała, Z. Witkowski, *O potrzebie redefinicji terminu „organ państwa”*, [In:] *W służbie dobru wspólnemu. Księga jubileuszowa dedykowana Profesorowi Januszowi Trzcíńskiemu*, eds. R. Balicki, M. Masternak-Kubiak, Warszawa 2012, pp. 404–410.

clusion it becomes clear that the subject of interest shall not be considered in terms of independence. Because his subordination is a constitutional requirement, only details of such dependency shall be anticipated by the legislator. Thus, the legal status of the NDSZ has been regulated by the Constitution. Taking into account the subordinate feature, it may be assumed that this subject is a state organ.

III.

In respect to the legal position details of the NDSZ it should be noted that there are no requirements referring to this institution either on constitutional or statutory level. It seems to be partially justified by the special relationship of trust between the NDSZ and the Supreme Commander of the Armed Forces (President) as well as by the subordination category. In this case an introduction of the objective requirements (such as Polish citizenship, education, military rank, experience or age) could lead to a significant limitation of the candidates for this position (subordinate to the Head of State) in extreme circumstances of wartime. On the other hand, failure to identify the requirements can lead to the politicization of the organ and to the threat of making significant defence decisions by a person having no adequate preparation and experience. Undoubtedly, situation of this kind could muscle in on the security of the state and the safety of the citizens.

Currently the necessity of appointing a member of the armed forces on the interested position could be only indirectly concluded⁵. Thus, if the commander of this formation is concerned, he should be included in its composition. According to the current legal status a spectrum of qualifications required for a candidate for the professional soldier is stipulated the Act of 11 September 2003 on Professional Military Service⁶. The document states *inter alia* that a soldier professional shall be a person with the Polish citizenship, of good repute, whose loyalty to the Polish Republic is not in doubt, having appropriate qualifications and physical and mental ability to perform pro-

⁵ W. Sokolewicz, *Wojsko i Konstytucja*, Warszawa 2015, p. 184.

⁶ Art. 2 and 5 of the Act of 11 September 2003 on Professional Military Service (Dz.U. 2016, poz. 1726).

fessional military service. With regards to the constitutional regulation, the Polish citizenship requirement could be interpreted from the duty of loyalty to the Republic of Poland and concern for the common good (Art. 82 of the Constitution) as well as the duty to defend the Homeland (Art. 85 of the Constitution), which solely concern the Polish citizens. Pursuant to Art. 26 it could be concluded that a candidate shall remain neutral in respect to political matters, which can be certainly understood as prohibition of belonging to a political party.

It seems that the lack of clearly specified requirements is a form of shortcoming of the current legal situation. However, there are some constitutional and statutory elements enabling to reconstruct the desired characteristics of a candidate for the NDSZ position. Therefore, a precise statutory solution introduced in this scope is recommended.

IV.

It must be noticed that the organ is not appointed for a specific term of office. Moreover, his tenure is not related to the one of the Head of State or the Prime Minister either. However, it does not mean that the NDSZ is always present among the state authorities. It should be recalled that he is appointed for the wartime. In the peacetime his post is not filled and he does not fulfil the functions and competences ascribed to him. While in the office, he can be also replaced. Therefore, his post is not permanent.

Appointment of the NDSZ is obligatory. The President does so on request of the Prime Minister. The recall of this subject should take place in the same manner⁷. It must be emphasized that the Head of State is essentially bound with the abovementioned request⁸. However, in the situation of lack of the recall motion, it is assumed that in case of exigency the President can act independently⁹. The issues of a possibility of appointing another person on the

⁷ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2013, p. 175.

⁸ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, pp. 668–669.

⁹ L. Wiśniewski, *Stany nadzwyczajne w projekcie nowej Konstytucji RP*, [In:] *Prawa człowieka w sytuacjach nadzwyczajnych ze szczególnym uwzględnieniem prawa i praktyki polskiej*,

post and no appointing him at all despite the motion of Prime Minister also remain open. Naturally, in these cases the possible constitutional responsibility of the President may be considered. Nevertheless, this reveals the lack of a mechanism eliminating the results of a possible war crisis. Every nominating capability conducted in co-operation with the other political subject, in a situation of a serious threat to the Republic of Poland, can jeopardise operational (e.g. defensive) effectiveness. Taking this into account, an introduction of an automatic appointment to the NDSZ position could be considered, with the assumption of the possibility of a personal change during his term of office.

With regards to the appointment of the NDSZ and the rules on his subordination to the constitutional organs of the Republic of Poland, the notion of “war” rises doubts¹⁰. In order to dispel them, at least partially, a specific arrangement was stipulated in Art. 4a (4a) of the Act of 21 November 1967 on Universal Obligation to Defend the Republic of Poland¹¹. Pursuant to this article, in case of necessity to defend the state the President decides, on the motion of the Council of Ministers, on a day in which the period of war starts on the Polish territory. In the same way he decides on a day in which this period ends. Although this solution has already been regulated by the notions of state of war and martial law, it makes the whole situation more transparent.

Moreover, Art. 17 of the Act of 29 August 2002 on the Polish Armed Forces Supreme Commander’s competence and his subordination to the state’s constitutional authorities¹² specifies accurately a moment, in which the NDSZ takes control over the forces subordinate to him. As a rule, this happens when he becomes appointed by the President of the Republic of Poland. However, the Head of State can specify other date of assuming command, which must seem to be beneficial. The solution conducted ahead of the crisis, where the NDSZ is appointed beforehand seems to be also well-founded because then the subject is able to prepare himself to the implementation of the tasks he has been entrusted with. This approach can be found in Arts 5 and 5a of the Act on Universal Obligation to Defend the Republic of Poland.

ed. T. Jasudowicz, Toruń 1997, p. 154.

¹⁰ More about this M. Sumański, *Pojęcie „czas wojny” oraz problemy wynikające z jego nieokreśloności w polskim systemie prawnym*, “Bezpieczeństwo Narodowe” 2014, No. II, pp. 95–109.

¹¹ Dz.U. 2016, poz. 1534.

¹² Dz.U. 2016, poz. 851.

According to these provisions, the President, being the Supreme Commander of the Armed Forces, appoints a person to the NDSZ post, on request of the Prime Minister. This person prepares himself to the implementation of duties resulting from the NDSZ competences. This preparation encompasses especially participation in strategic games and defence exercises, planning to use the Armed Forces to defend the country and preparing military command system of the Armed Forces.

However, in the abovementioned statutory regulations the reasons justifying the replacement of the NDSZ were not depicted, even such as a court's conviction for a criminal offence, certain age or serious health complications. Thus, the statutory regulations should be supplemented in this scope.

V.

The NDSZ's competences shall be connected first and foremost with the aims of the Armed Forces identified in Art. 26 of the Constitution, namely with safeguarding independence of the state and its territorial integrity as well as ensuring the security and inviolability of its borders¹³. Nevertheless, the Constitution does not specify the duties of the NDSZ. However, the basic NDSZ's competences are determined in Art. 16 of the Act on Martial Law. The most fundamental one is commanding the Armed Forces and other organisational entities that are subordinate to him in accordance with the national plans of using the Armed Forces to defend the state. It should be mainly focused on repelling an armed attack on the territory of the Republic of Poland and shall ensure the co-operation in planning and conducting war operations between the Armed Forces subordinate to him with the allied forces. The Supreme Commander also specifies the needs of the Armed Forces in scope of supporting them by a non-military part of the state's defence system. Moreover, he appoints the military organs entrusted with the implementation of the tasks provided by the state and local governments in scope of the direct warfare and specifies their duties and competences.

¹³ With respect to the Armed Forces' duties W.J. Wołpiuk, *Sily zbrojne w regulacjach Konstytucji RP*, Warszawa 1998, pp. 81–82 and A. Bień-Kacała, *Sily Zbrojne RP – próba identyfikacji współczesnego celu funkcjonowania*, [In:] *Uniwersalny i regionalny wymiar ochrony praw człowieka. Nowe wyzwania – nowe rozwiązania*, t. 2, ed. J. Jaskiernia, Warszawa 2014, pp. 394–404.

The Act on Martial Law also indicates the request-driven competences of the NDSZ. According to Art. 10 (2) (5) and Art. 10 (2) (6) the President, on request of the NDSZ confirms the plans of the operational use of the Armed Forces and accepts the specified territories of the Republic of Poland as the spheres of direct military activities. He also puts forward a motion to the government regarding determination of the rules of operation of public authorities in the area of direct warfare. Additionally, Art. 76 of the Act on Universal Obligation to Defend the Republic of Poland specifies the competences of the NDSZ concerning promotion to a higher rank during the mobilization and the wartime.

Undoubtedly, it may be said that at this point the authoritative competences of the organ at stake emerge. Nevertheless, the scope of independence and autonomy of their execution is strictly limited. On one hand, the NDSZ is a subject to civil and democratic control as a member of the Armed Forces (Art. 26 of the Constitution), and on the other hand he is subordinate to the constitutional organs (Art. 134 Para 4). Without any doubt, this has a significant influence on performing competences by this organ. Additionally, it should be borne in mind that the construction of subordination to the organs of the Republic of Poland requires the co-operation in appointing the NDSZ and during executing by him the duties he has been entrusted with (Preamble, Art. 134)¹⁴. This might lead, especially during the wartime, to a collision with the value of the efficiency in the work of public bodies (Preamble).

VI.

The constitutional category of subordination was evaluated in the Act of 29 August 2002 on the Martial law and the Competences of the Commander-in-Chief of the Armed Forces and the Rules of his Subordination to the Constitutional Authorities of the Republic of Poland. However, this statutory regulation is very limited. It was predicted in Art. 16 that the NDSZ is de-

¹⁴ More about this A. Bień-Kacała, M. Serowaniec, *Dyrektywa współdziałania egzekutywy w świetle Konstytucji RP z 1997 r. Kilka przypadków z dziedziny spraw zagranicznych i bezpieczeństwa państwa*, [In:] *Proměny dělby moci. Dělbá moci v ústavním systému České republiky a Polské republiky*, eds. J. Jirásek a Z. Witkowski, Olomouc 2015, pp. 129–149.

pendent on the President. Thus, the constitutional subordination to the authorities was solely limited to the Head of State. However, this solution should be assessed positively due to the operational efficiency of public institutions in a specific crisis situation. This narrowly comprehended relationship of subordination should be based on the special relationship of trust between the parties. It should not lead to the politicisation of the NDSZ, mainly due to the political neutrality within the Armed Forces themselves.

The problems might potentially arise in respect to the appointment competence, shared by the President and the Prime Minister. It follows from Art. 134 Para. 4 of the Constitution that the initiative in this field is at the discretion of the Prime Minister. This method is sometimes perceived as non-functional. The reason of this opinion lies in the fact that the co-operation may be very difficult during the wartime and might even lead to lack of possibility of appointing the NDSZ. All the more so, since the given creation mechanism may be also related to the NDSZ's political accountability to the Prime Minister or the Head of State. In practice this may lead to imposing the relation of subordination of the NDSZ to the Premier.

The concept of subordination of the NDSZ to the constitutional organs also encompasses the relationship of supremacy, leadership as well as civil and democratic control over the Armed Forces. It entails a large number of political organs involved. This situation may cause an impression of disorder or even a chaotic relation within the overall process. As an example, the Chief's of the General Staff supportive function to the President that is equal in the chain of command to the NDSZ's and the Operational Commander's duties does not simplify the process of managing and leading during the wartime. All the more so that in accordance with Art. 5 of the Act on 14 December 1995 on the Office of the Minister of National Defence, the Operational Commander and the General Commander of branches of the Armed Forces as well as the Chief of the General Staff remain accountable to the Minister of National Defence. Additionally, the situation becomes more complicated by the fact that, as the Supreme Commander, the President appoints the Chief of General Staff and the commanders of branches of the Armed Forces. These acts require the countersignature of the Prime Minister but the Minister of National Defence has no impact on filling the posts subordinate to him. Therefore, the reflection upon the re-

relationships among the key organs and subjects ensuring the security of the Republic of Poland is necessary, especially in the spirit of efficiency of the public institutions. It should be also noticed that the function of the President as the guarantor of the continuity of the state may justify the discounting of the Minister of National Defence regarding his supreme command of the Armed Forces, barring in mind the NDSZ's competences. In this respect the statutory role of the President during the war has been specified. Pursuant to Art. 4a (4b) of the Act of 21 November 1967 on Universal Obligation to Defend the Republic of Poland, the President, co-operating with the Council of Ministers, controls the state's defence in the moment of appointment of the NDSZ and after assuming command by him. From this moment the supremacy over the Armed Forces passes to a lower and at the same time more definite level of relationship between the organs. At the same time the civil structures become flattened, which might be rated rather positively. During the legislative process it was stressed that this measure is acceptable pursuant to Art. 228 Para 3 of the Constitution stating statutory regulations for the principles for activity by organs of public authority in a period requiring extraordinary measures. However, it may seem that changes in this scope cannot lead to abolition of the constitutional role of the organs. Therefore, exercising defence by the Head of State should not abolish the constitutional role in this field devoted to the government but it requires the co-operation of the organs. This line of reasoning is strengthened by the fact that the government is an organ responsible for the domestic and foreign policy of the Polish Republic and it is presumed to have competence in respect to the state policy.

Therefore, the statutory definition of the relationship between the NDSZ and the Head of State does not solve the problems, in terms of simplifying the system, which may arise in practice, especially in the period of cohabitation. Taking the abovementioned regulations into account, even defining subordination itself is hard. Thus, the main *de lege ferenda* postulate is a limitation of the number of subjects (of the relationship) in respect to the supremacy, commanding and leading the Armed Forces as well as the correlation with the subject of subordination. It should be emphasised that within the overall process the superior values are the efficiency of public bodies, the security of the state and its citizens and the defence of the Republic of Poland.

VII.

With regards to the NDSZ, two kinds of responsibilities can be established. The first one concerns the issues connected to the execution of his duties and the relations with the organs participating in appointing the NDSZ (therefore: the President and the Prime Minister). Because the reasons of the recall have not been predicted on either constitutional or statutory level, this type of responsibility may be compared to the political responsibility. Thus, if the NDSZ's activities are not compatible with the political approach of the President or the Prime Minister, the organ of interest may be dismissed. This form of responsibility also refers to the specific relationship of trust towards the NDSZ, especially from the Head of State.

The constitutional responsibility, on the other hand, is bound with committing a constitutional delict¹⁵. The definition of this notion is included in Art. 3 of the Act of 26 March 1982 on the Tribunal of State¹⁶. According to this provision the constitutional responsibility regards activities of the persons listed in the Act, including the NDSZ. Consequently, a constitutional delict means individual acts and omissions that take place in connection with the occupied positions (acts beyond the range of the competence committed on no legal grounds, but possible because of the occupied position) or within the frames of holding an office (acts within the competence, but violating the law)¹⁷. These acts are official, committed while performing a function or holding an office. Accountability includes culpable actions and omissions, both intentional and unintentional¹⁸. The resolution of the Tribunal of State (June 10, 1998 – TS ZP-1/98) is essential in connection with the interpretation of the term “culpability”. According to the res-

¹⁵ A. Bień-Kacała, *Trybunał Stanu*, [In:] *Prawo konstytucyjne*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2015, pp. 533–535 and A. Bień-Kacała, *The Tribunal of State and constitutional accountability in Poland*, “Annales Universitatis Apulensis, Series Jurisprudentia” 2014, No. 17, pp. 18–19.

¹⁶ Dz.U. Nr 101, poz. 925.

¹⁷ B. Naleziński, *Trybunał Stanu*, [In:] *Prawo konstytucyjne RP*, ed. P. Sarnecki, Warszawa 1999, p. 366.

¹⁸ M. Filar, *Niektóre węzłowe problemy orzecznictwa Trybunału Stanu III Rzeczypospolitej*, [In:] *Ze sztandarem prawa przez świat*, eds. R. Tokarczyk, K. Motyka, Zakamycze 2002, pp. 60–68.

olution, constitutional accountability applies to the persons listed in the Act on the Tribunal of State who violate the Constitution or other act (statute), both intentionally and unintentionally. Having no intention to violate the Constitution or an act/statute, they commit such a violation as a result of lack of caution required in given circumstances, even though they predicted or, exercising reasonable care, could have predicted the possibility of committing the violation.

The discussed category of acts has to consist in violation of the Constitution or an act/statute. It does not apply to a penal act due to the fact that violation of such an act results in criminal accountability and not in constitutional accountability. A constitutional delict may also take on a form of violation of lawmaking acts equal in normative rank to an act/statute or taking precedence over it. Such an accountability is also permissible in connection with violation of customary international law¹⁹. It is assumed that violation of the law of lower rank (e.g. regulation, resolution or order) does not result in constitutional accountability. Thus the constitutional delict is perceived formally²⁰. Negative consequences of the law violation are not required to enforce accountability. The violation itself is sufficient.

In respect to the NDSZ, the constitutional responsibility shall regard the activities or omissions related to the statutory competences of this organ. An example might be an omission to command the Armed Forces or commanding these forces for the purposes other than defending the state. A constitutional delict might also be a failure to ensure co-operation of the subordinate Armed Forces with the allied forces in planning and conducting military operations. Legal emplacement of this organ, could possibly cause a violation of the constitutional rules of subordination to the state authorities, political neutrality or the conducted actions that are incompatible with the duties of the Armed Forces in scope of protection of the state independence and the integrity of its territory as well as ensuring the security and inviolability of its borders. Of course, this listing is only exemplary.

¹⁹ Sokolewicz W., *Artykuł 156. Uwaga 14*, [In:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. 1, ed. L. Garlicki, Warszawa 2001, p. 8.

²⁰ K. Działocha, T. Zalasinski, *Artykuł 198*, [In:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. 5, ed. L. Garlicki, Warszawa 2007, p. 2.

VIII.

In the conclusion it should be emphasized that the NDSZ is a constitutional state organ. The main elements of the legal position of this body were determined in the Constitution of the Republic of Poland and further elaborated in the statutory regulation. Nevertheless, this is not a complex and comprehensive regulation. Some of the points require the application of various interpretational rules (such as political neutrality), whereas the other have not been regulated at all (e.g. requirements that must be met by a candidate and the reasons for the recall). Therefore, the clear determination of the legal position of the NDSZ is demanded.

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