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„*CEDANT ARMA TOGAE*” – ON THE STANDARDS  
OF CONTROL OVER THE ARMED FORCES  
IN THE LIGHT OF THE CONSTITUTION  
OF THE REPUBLIC OF POLAND OF 2 APRIL 1997\*\*

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**Summary.** The subject of the article is the attempt to analyze the manner and level of normativization of the principle of civil control over the armed forces in the binding Polish Constitution of 2 April 1997. It is also attempt to analyze the worth identifying the notion of „civil control” used in literature and in the normative sphere. This is an important scientific significance because there is no legal or even approximate and relatively widely approved doctrinal definition of it.

**Keywords:** standards of control over the armed forces; Constitution of the Republic of Poland; armed forces; President; Council of Ministers.

„*Cedant arma togae*” – rzecz o standardach kontroli wobec sił zbrojnych w świetle Konstytucji RP z 2 kwietnia 1997 r. Słabość i nadmierna siła armii budziły zawsze niepokój społeczeństw i najwyższych kręgów władzy. Słabość armii wiązano

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z ryzykiem dla niepodległości państwa zaś nadmierną jej siłę i pozycję jej dowódców utożsamiono z obawą przed niezależnością i obawami przed przejęciem władzy z użyciem siły. Artykuł poświęcony jest cywilnej kontroli nad siłami zbrojnymi i problemowi ich neutralności politycznej jako przesłankom legitymizującym państwo demokratyczne w Rzeczypospolitej Polskiej oraz identyfikacji standardów tych pojęć w Konstytucji Rzeczypospolitej Polskiej.

**Słowa kluczowe:** standardy kontroli sił zbrojnych; Konstytucja RP; Siły Zbrojne; Prezydent RP; Rada Ministrów.

„*Cedant arma togae*” is an abridged form of thought expressed by Marcus Tullius Cicero in his work *De Officiis*, or *On Obligations* contained in Volume I:22 and published in 44 B.C. Cicero, who was a writer, speaker, politician, military commander, philosopher and lawyer, wanted to express in this saying his expectation that the civil power should be recognized as superior to the military, since the sentence is translated as „let the arms (armor) give way to the toga”, with the toga symbolizing the judge speaking through democratically established law. Already in the ancient times the risk that the army could interfere in the functioning of the state was recognized. The practice of public life showed that such fear was not at all unfounded. This was also known to Cicero, who was a consul and military commander, which is why he repeatedly publicly expressed his opinions that war should give way to diplomacy and peace, and the military authorities – to civilian authorities. It is, of course, true that the fundamental objective of any state must be to strive for the preservation of its independence and sovereignty, and such an objective can only be achieved if the state has the opportunity to conduct its own foreign policy. Support and security for its implementation was, is and remains for the future, the possession by the state of its own armed forces, in accordance with another Latin pemia „*Si vis pacem para bellum*” (You want peace, prepare for war). It is beyond the debate that efficient functioning and managing them „is a factor increasing the credibility of the state’s existence on the international arena”<sup>1</sup> and in modern times „the determinant of this credibility is civil control over the army”<sup>2</sup>.

The striving to guarantee civilian control over the armed forces in Polish historical realities is not a novelty. It is rightly noted that if the starting point for the recognition of its existence is the right to supervise political and financial

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<sup>1</sup> A. Jagnieża, *Wokół dyskusji o kontroli cywilnej nad armią*, [in:] *Konstytucja RP. Oczekiwania i nadzieje*, eds. T. Bodio, W. Jakubowski, Warszawa 1997, p. 177.

<sup>2</sup> *Ibidem*.

decisions concerning the army by representatives of the nation, then the beginnings of the presence of such control can be seen already at the end of the Middle Ages. At that time, at the beginning of the Thirteen Years' War, King Kazimierz Jagiellończyk had to issue an act in Cerekwica on 14 September 1454, in which he undertook not to convene a mass mobilization of armed forces without the consent of the nobility, and with the emergence of the sejm [parliament] of the nobility, its role in shaping the military policy of the state and the resulting control over the army increased significantly. This sometimes gave good results, as during the reign of King Stefan Batory, during his expeditions to Moscow in the years 1579–1582, but sometimes decisions were made with disastrous consequences, as in 1648, during the upcoming war with Cossacks<sup>3</sup>.

In this situation, in the past and nowadays, in the constitutions of various democratic countries, we can find clauses designed to ensure that there is no military interference with politics in times of peace<sup>4</sup>. Unfortunately, also in our modern state realities, in the period of political changes after 1989, there were situations in which the civil principle and democratic control over the military were undermined. It is worth mentioning the once famous „drawski dinner” in 1994, when Lech Wałęsa was the president. It is worth remembering that the President Wałęsa, who came to the training ground in Drawsko for the training of the central methodological and training course for the highest commanding staff of the Polish Armed Forces, spontaneously criticized the then civilian leadership of the Ministry of National Defense and the parliamentary committee of national defense, but additionally encouraged the generals present there to engage in such criticism. In response to the President, the then Minister of the National Defence, P. Kołodziejczyk, accused the President and the Chief of General Staff, General T. Wilecki, of an attempt to remove him from the position of Minister in a non-constitutional way<sup>5</sup>. In such a context, also known was the somewhat later (2002) case of a public address by Colonel Ryszard Chwastek, during the presidency of Aleksander Kwaśniewski. The said officer undertook a public criticism of the activity of Jerzy Szmajdziński, the Minister of National Defense, and the general managerial staff of the Ministry of National Defense at that time, publicly expressing a kind of motion of distrust towards these bodies<sup>6</sup>. Finally, it is

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<sup>3</sup> Ibidem, p. 177 and the literature mentioned therein.

<sup>4</sup> R.H. Kohn, *Jak demokracje sprawują kontrolę nad siłami zbrojnymi*, [in:] *Władza i społeczeństwo. Antologia teksów z zakresu socjologii polityki*, ed. J. Szczupaczyński, vol. 2, Warszawa 1998, p. 149.

<sup>5</sup> Cf. The drawski dinner in: [https://pl.wikipedia.org/wiki/Obiad\\_drawski](https://pl.wikipedia.org/wiki/Obiad_drawski), p.1 (access: 9.04.2018).

<sup>6</sup> A more detailed description of these situations is provided by M. Szewczyk, *Najwyższe*

impossible not to notice the so-called „Georgian incident” in a similar context. This concept refers to the situation which took place on 12 August 2008 at Symferopol airport in Ukraine during the stopover of the plane of President Lech Kaczyński on the flight from Warsaw via Symferopol to Ganja in Azerbaijan. During this incident, President L. Kaczyński, claiming his status of Supreme Commander of the Armed Forces, tried to persuade the captain of the aircraft to perform a special flight which was risky for the transported guests (including the heads of neighboring countries) in conditions of the already ongoing armed conflict between Russia and Georgia, without the required diplomatic approvals and knowledge of the crew about the condition of airspace in the state of war from Ganja to Tbilisi, which met with the refusal of the aircraft commander. He rightly believed that when „Georgia’s airspace is under military action and the aircraft does not have a „friend or foe” recognition system compatible with such systems in Russian aircraft, with which it is also impossible to establish radio communication because they operate at different frequencies, we may be shot down by one of the parties to the conflict. The flight to Georgia is dangerous for the life of the president and the safety of the plane”<sup>7</sup>. It is an almost textbook example of misunderstanding and mistaken implementation of the principle of civilian authority (and also control) over the armed forces in our Polish conditions<sup>8</sup>. While the problem is usually the communication from the military side to the civilian side, this time it was the communication from the civilian side to the military side that failed.

The literature on the subject rightly indicates that the legal „milestones” in shaping relations between civil and military authorities were: the English Bill of Rights of 1689, the Constitution of the United States of America of 1787 and the Constitution of France of 1791<sup>9</sup>. Among the aforementioned acts, however, the American acts have had the greatest significance for the issue at question. The experience of the wrongdoings in British colonies led to the colonists directly accusing King George III in the Declaration of Independence of 4 July 1776 that the army, with his consent, had become too independent of the civil power<sup>10</sup>. Two months earlier, in the Declaration of the Rights of Virginia of 12 June 1776, this thesis had even been formulated in a normative way assuming the form of a le-

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*zwierzchnictwo Prezydenta Rzeczypospolitej Polskiej nad siłami zbrojnymi w świetle konstytucji z 2 kwietnia 1997 roku*, Warszawa 2018, pp. 266–267 and subsequent.

<sup>7</sup> Cf. the entry „The Georgian incident” in: [https://pl.wikiquote.org/wiki/Incydent\\_gruzi%C5%84ski](https://pl.wikiquote.org/wiki/Incydent_gruzi%C5%84ski), p.1, (access:10.04.2018).

<sup>8</sup> Ibidem.

<sup>9</sup> Cf. M. Szewczyk, op. cit., p. 16.

<sup>10</sup> Ibidem.

gal directive according to which „...*in every situation the armed forces should be strictly subordinated to and governed by civil authority*”<sup>11</sup>. It is rightly noted in the literature that this provision – without the risk of error or misuse – can be treated as „the first modern approach to the problem of political sovereignty over the army in the achievements of democratic constitutionalism”<sup>12</sup>. This decision was rooted in the world’s first written constitution, i.e. the U.S. Constitution of 1787, and to this day it remains the permanent foundation for the division of powers over the army between the Congress and the President, i.e. two strictly civilian entities, which are entrusted with the task of controlling the armed forces of the state. Over the centuries, the idea of civilian authority and command over the army has taken root to such an extent that it must also be recognized in modern times as a permanent, irrevocable and irremovable standard for states that want to be regarded as a properly legitimized democracy<sup>13</sup>. This is a consequence of stating that „civil control allows a nation to base its values, institutions and practice on common will and not on the choices made by military leaders. Moreover, it is only through this legal mechanism that the political neutrality of the military as a whole and of individual soldiers can be achieved, the army can be de-ideologized and this specific structure integrated into society”<sup>14</sup>.

Before we attempt to analyze the manner and level of normativization of the principle of civil control over the armed forces in the binding Polish Constitution of 2 April 1997, it is worth identifying, even if only for the purposes of this paper, the notion of „civil control” used in literature and in the normative sphere, even though there is no legal or even approximate and relatively widely approved doctrinal definition of it.

It should be assumed that what best reflects the essence of the problem is that civilian control over the armed forces of the state means „subordination of all armed forces, their individual parts (troops), as well as all soldiers to democratically legitimized constitutional bodies of the state of a civil nature”<sup>15</sup>. Acceptance of such an understanding of the rule being analyzed is to prevent the

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<sup>11</sup> Declaration of the Rights of Virginia of 12 June 1776 [in:] P. Sarnecki (ed.), *Najstarsze konstytucje z końca XVIII i I połowy XIX wieku*, Warszawa 1997, p. 13.

<sup>12</sup> So aptly M. Szewczyk, op. cit., p. 17 and W. Sokolewicz, *O znaczeniu cywilnej kontroli nad sił zbrojnymi*, [in:] *Studia z prawa konstytucyjnego. Księga jubileuszowa dedykowana Profesorowi Wiesławowi Skrzydło*, eds. J. Posłuszny, J. Buczkowski, K. Eckhardt, Przemyśl–Rzeszów 2009, p. 291.

<sup>13</sup> Such is the manner of statements made by A. Croissant, D. Kuehn, P.W. Chambers, S.O. Wolf, *Conceptualising Civil-Military Relations in Emerging Democracies*, „European Political Science” 2011, vol. 10 (2), p. 143.

<sup>14</sup> Very aptly expressed by M. Szewczyk, op. cit., p. 18.

<sup>15</sup> *Ibidem*, p. 20.

political absorption of the armed forces of the state. This is done in such a way that they remain as distant and separate from state and political influence, while separating the party political class from the army<sup>16</sup> as far as possible at the same time. The fact that this is not always possible is shown by the practice of many states, but by proving a thesis that „subjecting armed forces to the leadership, first of all to parliamentary leadership is praxeologically questionable” and forcing an extreme understanding of the idea of neutrality of armed forces is a utopian approach in today’s conditions<sup>17</sup>.

The analyzed principle does not always, as it turns out, find its clear (explicit) manifestation in the basic laws. The doctrine points out that even in countries with an established democratic tradition, this principle is more often treated as a norm of political practice than as a political standard<sup>18</sup>. The direct or at least indirect (implicit) constitutional connotation of this principle, apart from its explicit inclusion in the Constitution of the Republic of Poland of 2 April 1997, can be found relatively rarely. Examples from the sphere of comparative law are Article 7 of the Constitution of the Republic of Croatia of 1990 and Article 275(3) of the Constitution of the Portuguese Republic of 1976, even if they are different from each other in terms of models. Without going into unnecessary and excessive details, on the basis of the indicated three examples of registration of the normative titular principle, it is possible to formulate a basic thesis underlying the idea of contemporary civil control over the armed forces. According to them, the legal legitimacy to exercise control by state authorities must be based on their absolute civil status and must be democratic (i.e. have democratic legitimacy – come from genuine democratic elections or at least have parliamentary trust) and not clerical in nature<sup>19</sup>.

Next, we may attempt to analyze the content of Article 26(2) and (2) of the Constitution of the Republic of Poland of 2 April 1997. This provision states that „*The Armed Forces shall maintain neutrality in political matters and shall be subject to civil and democratic control*”.

What should be deducted from this provision is, first of all, the obligation of the state to build its own Armed Forces, i.e. to construct defensive forces con-

<sup>16</sup> W. Sokolewicz, op. cit., p. 288 and subsequent.

<sup>17</sup> In this spirit, Professor K. Complik expresses surprisingly extreme opinions in the Polish literature in the commentary to Article 26 of the Constitution [in:] *Komentarz. Konstytucja Rzeczypospolitej Polskiej*, ed. M. Haczkowska, ed. I, Warszawa 2014, p. 41–42.

<sup>18</sup> M. Szewczyk, op. cit., p. 30.

<sup>19</sup> Cf. P. Sarnecki, *Komentarz do art. 26*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warszawa 2007, p. 7 and cf. a broad commentary – M. Szewczyk, op. cit., p. 30 and subsequent.

sisting of a certain group of „types” of these forces, as provided for in Article 134(3), which are commanded by their „commanders” (art. 134(3)) and directed by their „highest superior”, the President of the Republic of Poland, elected for each term of office (art. 134(4))<sup>20</sup>. However, they cannot nowadays be treated or recognized as a state body<sup>21</sup>. The exclusion of armed forces from the catalogue of state organs occurred deliberately under the influence of a legitimate conviction of the authors of the constitution that they cannot be an autonomous entity in the political structure of the state, which can exert influence on the political decisions of constitutional state organs, since they are and should be a factor fully serving the state<sup>22</sup>. It is even noted in comments that „particular elements of the organizational structure of the Armed Forces are not entities with the qualifications of „state organs”, or even „organs of the Armed Forces”. The Armed Forces alone do not have their organs”<sup>23</sup>.

Undoubtedly, a necessary measure, which may serve to shape effective and efficient civilian control over the Armed Forces, may be to define the tasks of the army and preferably at the level of the basic law of the state, although the authors of the constitution do not always act in this way. In this context, it may be very important to build a clear catalogue of objectives for the functioning of the Armed Forces, which thus have to be purely defensive in nature and can only fulfil defensive tasks<sup>24</sup>. Our Constitution of 1997 already does it in chapter I, in art. 5 pointing to the protection of independence and inviolability of its territory by the Republic of Poland. This goal is affirmed and continued in defining the role of the Armed Forces of the state (Article 26) and the President of the Republic of Poland as their superior (Article 126(2))<sup>25</sup>. As a result, by setting its objectives in this way, the state imposes obligations on its Armed Forces, making the primary objective of their action to protect the independence of the state, its territorial integrity, ensuring security and the integrity of its borders<sup>26</sup>. In this connection,

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<sup>20</sup> Cf. P. Sarnecki, *Komentarz do art. 26*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, ed. L. Garlicki, Warszawa 2016, p. 631.

<sup>21</sup> *Ibidem*, p. 633. The Armed Forces were an independent organ of the state in the provisions of the April Constitution of 1935 – art. 3 section 1.

<sup>22</sup> Cf. M. Safjan, L. Bosek (eds.), *Konstytucja RP. Komentarz do art. 1–86*, Warszawa 2016, p. 695, commentary no 35. See also the judgment of the Constitutional Tribunal of 10.04.2002, K.26/00, OTK-A 2002, no 2, item 18.

<sup>23</sup> P. Sarnecki, *Komentarz do art. 26* (2016)..., p. 633.

<sup>24</sup> P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2008, p. 70. The defensive character of the tasks of the Polish Armed Forces is also clearly indicated by Article 116(2) and Article 229 of the Constitution.

<sup>25</sup> *Ibidem*, p.231.

<sup>26</sup> A. Bień-Kacała, *Równowaga budżetowa a bezpieczeństwo państwa*, [in:] *Innowacja i sy-*

it is rightly noted in the comments to the Constitution that the objectives of the Armed Forces remain in a relation of secondary importance to the original objectives of the state<sup>27</sup>. As a result, in the literature of the subject, „*the principle of servitude of the Armed Forces*”<sup>28</sup> is even distinguished as a political principle<sup>29</sup>. This, in turn, means that the Armed Forces cannot independently shape or have autonomously determined goals, and they have to always remain in the relation of real readiness to the state, because they are to serve it, and not to rule it<sup>30</sup>. However, it is also worth noting that the state is also bound by its constitutionally set goals and cannot set tasks for the Armed Forces that are not included in the catalogue of such goals<sup>31</sup>.

There is quite a lot of reason in stating that the organisational specificity of the Armed Forces (including, among others, a sense of special bond, specific decision-making procedures, a sense of particular importance of the tasks performed, etc.) can make it contribute to the phenomenon of alienation of armed forces from society. Sometimes people even speak of the army as an „undemocratic structure”. It is for this reason that mechanisms have long been sought to control such an inherently undemocratic structure within a democratic community. Such a mechanism is to be civil control. It is worth adding that the creation of such a mechanism should not seek to confront civil and military circles, but that in this way we emphasize the desire to establish and maintain the primacy of politics over force, already seen in the ancient times through the well-known *paremia* associated with the rule of the Roman state – „*cedant armae toga*”, which as explained at the beginning of this study means „*let the weapons give way to the toga*” and determining the primacy of civilian political power over military power in time of peace<sup>32</sup>. At the same time, however, one cannot fail to notice that civil control over the State Armed Forces should not introduce any state of their „incapacitation” by civil politicians<sup>33</sup>. It is rightly noted that „*if*

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*nergia w Siłach Zbrojnych RP*, vol. 2 eds. J. Wolejszo, A. Lis, R. Reczkowski, Bydgoszcz 2013, p. 58–59.

<sup>27</sup> P. Sarnecki, *Komentarz do art. 26 (2016)*..., p. 631 and subsequent.

<sup>28</sup> W. Wołpiuk, *Siły Zbrojne w regulacjach Konstytucji RP*, Warszawa 1998, p. 62 and subsequent and W. Wołpiuk, *Konstytucyjna zasada podległości Sił Zbrojnych cywilnej i demokratycznej kontroli*, „Przegląd Sejmowy” 1998, n. 6.

<sup>29</sup> P. Sarnecki, *Komentarz do art. 26 (2016)*..., p. 632.

<sup>30</sup> M. Safjan, L. Bosek (eds.), op. cit., p. 699.

<sup>31</sup> P. Sarnecki, *Komentarz do art. 26 (2016)*..., p. 632.

<sup>32</sup> Cf. M. Szewczyk, op. cit., p. 15; See also Z. Witkowski, M. Szewczyk, M. Serowaniec, *Model cywilnej i demokratycznej kontroli egzekutywy nad siłami zbrojnymi Rzeczypospolitej Polskiej*, Toruń 2018, p. 20–25.

<sup>33</sup> M. Safjan, L. Bosek (eds.), op. cit., p. 695.

*civilian control is to prevent military alienation, then armed forces cannot be excluded from the consultation process for example on defense strategy, budget, decisions on armaments or military structure, although it is up to civilians to have a final say on these issues*”<sup>34</sup>.

Finally, it follows from Article 26 of the Polish Constitution that it requires that control over the Armed Forces be not only civilian in the sense referred to above, but that it should meet the standard of its democracy, and thus that it should be consistent with the principle of a democratic rule of law as expressed in Article 2 of our Constitution, which proclaims the primacy of law over force („primacy of toga”, as already explained in this publication) under the conditions of a democratic state. It must therefore be based on such premises as: protection and respect for human rights and, at the very least, approval of the idea of the rule of law<sup>35</sup>. Thus, civil and democratic „control by definition is to guarantee that the forces created by the state to protect society will not turn against it or be used against its will”<sup>36</sup>. What should be added to the components of civil control is the stipulation that the exercise of civil control over the Armed Forces requires respect for the directive of „cooperation of all authorities”, already expressed in the preamble of our Constitution. It is rightly noted in the literature that the rivalry between civil and military authorities would inevitably have to threaten the control in question and could place the army in the role of a political factor unforeseen in the Constitution<sup>37</sup>. Consequently, it is properly observed that civil control is not and cannot be treated as a target state, to be achieved and then only maintained at the same level, defined as the optimum one. Civil control should be treated and exercised as a permanent or continuous process of exercising power over the armed forces and managing them with varying degrees of intensity, depending on the situation and the state of specific needs in terms of the protection of society and the state<sup>38</sup>. The content and analysis of Article 26(2) of the Constitution of the Republic of Poland also clearly indicate the requirement to combine civil and democratic control, which means that such control is to be correlated, and even part of the principles of a democratic rule of law<sup>39</sup>.

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<sup>34</sup> Ibidem, p. 699 and the literature mentioned therein.

<sup>35</sup> Ibidem.

<sup>36</sup> Ibidem, p. 697 and the literature mentioned therein.

<sup>37</sup> B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. 2, Warszawa 2012, p. 194.

<sup>38</sup> M. Safjan, L. Bosek (eds.), op. cit., p. 697, commentary no 41 and 39–40 and the literature mentioned therein.

<sup>39</sup> Ibidem, p. 699, commentary no 46.

However, Article 26(2) of the Constitution, which is of interest to me on this subject, also states that „*the Armed Forces shall maintain neutrality in political matters...*”. Two concepts should be distinguished here for comments: „political matters” and „neutrality”.

The notion of „political matters” is legally vague, but commentators acknowledge that the use of this notion was intentional in constitutional works. The aim was for „the legislator to have full freedom, to the extent that constitutional freedoms and rights of members of the armed forces must be restricted in order to respect the principle of neutrality of the armed forces in political matters”<sup>40</sup>. It seems that the term covers „the entirety of the politics of the state, the political system, as well as the activities of its various bodies (in all fields) and political parties”<sup>41</sup>. This means, of course, that the armed forces of the state, but also their individual members<sup>42</sup>, should not refer to the current issues of the political life of the state, i.e. they should not speak on issues concerning the choice of methods of solving current and long-term public policy issues or engage with any participant in a political dispute in the state<sup>43</sup>.

The last statement makes us enter the sphere of the second of the previously mentioned concepts, i.e. the sphere of political neutrality of the armed forces. It is undoubtedly right to state that the requirement to maintain the neutrality of the Armed Forces in matters of politics must be regarded as an intrinsic, „important constitutional value”<sup>44</sup>. and even a standard in the conditions of a democratic rule of law. In this spirit, the Polish Constitutional Tribunal clearly stated its position in its judgment of 9 June 1997, i.e. before the Constitution of the Republic of Poland of 1997 entered into force<sup>45</sup>.

The consequence of this finding is that the Armed Forces, as a potentially useful but at the same time risky factor for democracy, „should remain perma-

<sup>40</sup> Ibidem, p. 695, commentary no 34 and the literature mentioned therein.

<sup>41</sup> M.Szewczyk, op. cit., p. 47.

<sup>42</sup> Cf. in this respect, e.g. judgment of the Constitutional Tribunal of 9 June 1997 in the case K 24/96, according to which a professional soldier cannot refuse to consent to participation in military operations outside the Republic of Poland, because if the decision on the participation of the Polish Army in a military operation outside the country is taken by legitimate and democratically legitimized civil factors, the refusal of a professional soldier must be regarded as the questioning of decisions from the state policy-making sphere. A refusal to participate in a military mission would have to be considered as a prohibited political attitude on the part of a particular member of the armed forces. See more: M. Szewczyk, op. cit., p. 48.

<sup>43</sup> P. Sarnecki, *Komentarz do art. 26 (2007)*..., p. 4.

<sup>44</sup> Ibidem.

<sup>45</sup> See judgment in the case K 24/96, OTK ZU 1997, n. 2, it. 20. See also P. Sarnecki, *Komentarz do art. 26 (2007)*..., p. 4.

nently excluded from state policy and should not risk its potential with political decisions<sup>46</sup>.

The order to maintain the political neutrality of the armed forces is permanent from the time perspective, which means that the army is and must be continuously and permanently excluded from being able to take a position on any political matters<sup>47</sup>, and thus on all dimensions of state policy, and not only on defense or security problems.

It should also be strongly emphasized once again that the order to maintain the neutrality of the Armed Forces applies to them in their entirety but also to all possible parts, types or divisions thereof. It shall also apply to individual soldiers in active service, including in particular commanders of all ranks and all levels of command<sup>48</sup>.

It is therefore clear that the Armed Forces cannot aspire in any way to participate in the conducting of state policy in general, including the conducting of defense policy and in the sphere of security, as this sphere, in accordance with Article 146(2) of the Constitution, has been submitted to the Council of Ministers. It is rightly noted that the civilian Minister of National Defense is and should be the voice of the government's policy in relations with the Armed Forces<sup>49</sup>. Naturally, neutrality is not an issue for the minister or his superior, i.e. the prime minister, but neither of them can be soldiers in active service, nor can they carry out any command functions in the Armed Forces. Thus, since the apolitical nature of the Armed Forces is one of the essential component factors of the democratic model of sovereignty over the armed forces of the state, then the element guaranteeing political neutrality of the army must be its absolute subordination to civil power, i.e. to the government, parliament and, to a slightly smaller extent, to the head of state. It is therefore appropriate to conclude that, in this state of affairs, „civil control over the army is a legal institution with a material scope, much broader than political neutrality, covering all military activities, including not belonging to a political party”<sup>50</sup>.

Apart from the material aspect discussed above, political neutrality also has a second dimension, i.e. a formal one, consisting in the fact that certain restrictions are allowed in the scope of selected political and personal rights and free-

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<sup>46</sup> Ibidem.

<sup>47</sup> B. Banaszak, op. cit., p. 152.

<sup>48</sup> Z. Trejnis, *Sily Zbrojne w państwie demokratycznym i autorytarnym*, Warszawa 1997, p. 277 and subsequent.

<sup>49</sup> P. Sarnecki, *Komentarz do art. 26 (2016)*..., p. 634 and M. Safjan, L. Bosek (eds.), op. cit., p. 695, commentary no 35 and the literature mentioned therein.

<sup>50</sup> M. Szewczyk, op. cit., pp. 45–46.

doms of soldiers in active service, including professional soldiers. This includes the possibility of creating political associations, organizing assemblies, taking legislative initiatives, nominating candidates in all types of general elections, conducting election and referendum campaigns in the army or submitting petitions to the authorities<sup>51</sup>. All this proves that the analyzed political neutrality of the Armed Forces in political matters has been recognized as such an important constitutional value that it is possible to derive on the basis of it and from it, in certain situations, limitations of political freedoms for soldiers, which relate to their everyday existence outside the structures of the Armed Forces. Such limitations as indicated above in relation to, among others, „members of the armed forces” were also allowed by the European Convention on Human Rights in its Article 11, creating the possibility (and not an obligation) of appropriate adoption of national law in this respect. Nor does such an obligation arise in our country from the Constitution itself<sup>52</sup>.

Let us add at the end of these remarks and reflections that making the civil control over the State Armed Forces effective requires a great deal of determination on the part of its authorities and, above all, requires the cooperation of all of them. This directive flows straight from the preamble to our Constitution and is absolute in its nature. There is much reason to believe that the mutual competition between state authorities instead of cooperation in this area „could jeopardize this control and lead the army to take over the role of a political factor not foreseen by the Constitution”<sup>53</sup>, which would contradict the process of adapting political institutions to the models and mechanisms established in recognized democratic systems.

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<sup>51</sup> P. Sarnecki, *Komentarz do art. 26 (2016)...*, p. 635.

<sup>52</sup> Ibidem, p. 636.

<sup>53</sup> B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komenatrz*, ed. 2, Warszawa 2012, p. 194.

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