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Editorial address

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Interdisciplinary Research Center of the University of Warsaw
„Identity – Dialogue – Security”
Prosta 69, 00-838 Warsaw
email: centrum.tozsamosc@uw.edu.pl

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Polish Journal of Political Science is included in:



Table of Contents

Articles

- 4** **Rafał Leśniczak**
Politicization of Catholic Media
in Poland (2015-2023)
- 18** **Mikołaj Sokolski**
 Mikołaj Tomaszuk
Concept of Caring Cities in the Light of Assumptions of
Caring Ethics – Introductory Remarks
- 33** **Jan Duthel**
Macroprudential Supervision and Geopolitical Risk:
An Analysis of the Polish Financial Authorities’
Publications (2015–2022)
- 45** **Łukasz Kaczmarek**
Can we Treat Nationalism as Simply a Civic Religion?

Book review

- 57** **Cezary Smuniewski**
Funkcjonowanie Naczelnego Dowódcy Sił Zbrojnych
w Rzeczypospolitej Polskiej [Functioning of
the Commander-in-Chief of the Armed Forces in
the Republic of Poland]

Cezary Smuniewski*

**Funkcjonowanie Naczelnego
Dowódcy Sił Zbrojnych
w Rzeczypospolitej Polskiej
[Functioning of the Commander-
in-Chief of the Armed Forces
in the Republic of Poland]**

by Malwina Ewa Kołodziejczak,
Wydawnictwo Akademii Sztuki Wojennej,
Warszawa 2020, ISBN 978-83-7523-804-4, pp. 154.

DOI: [10.58183/pjps.05042024](https://doi.org/10.58183/pjps.05042024)

To start, the reviewed work notes: “The current regulations regarding both the appointment and continued service of the commander-in-chief are not without flaws. Not only do they lead to differing, sometimes mutually exclusive, interpretations, but they are also riddled with loopholes that should raise serious concerns. Uncertainty and the lack of clear legal regulations concerning the functioning of one of the most important constitutional bodies, whose role should be crucial, should not exist.”¹ Given this assertion, it is only natural for the reader to take an interest in the monograph.

* University of Warsaw, e-mail:
c.smuniewski@uw.edu.pl, [https://
orcid.org/0000-0002-8973-3539](https://orcid.org/0000-0002-8973-3539)

1. M.E. Kołodziejczak, *Funkcjonowanie Naczelnego Dowódcy Sił Zbrojnych w Rzeczypospolitej Polskiej*, Wydawnictwo Akademii Sztuki Wojennej 2020, p. 128.

The Publishing House of the War Studies University in Warsaw has released a book by Malwina Ewa Kołodziejczak, titled “Functioning of the Commander-in-Chief of the Armed Forces in the Republic of Poland.” As its title suggests, this monograph addresses the role of the Commander-in-Chief of the Armed Forces (CC). However, it is important to clarify at the outset that the book does not focus on the tasks, competencies, and powers of the Commander-in-Chief, as these are relatively uncontroversial. Instead, it examines the criteria for appointing the Commander-in-Chief. The author analyzes the legal acts governing this appointment and demonstrates that they are not entirely consistent with one another. This could create practical difficulties if it becomes necessary to designate a Commander-in-Chief of the Polish Armed Forces. Given the circumstances in which such an appointment would take place, there is a clear need to regulate this issue and eliminate any obstacles that could hinder the designation process or carrying out defense duties.

The author of the monograph aptly highlights inconsistencies in the terminology related to the subject of the study. Indeed, the legal acts concerning the Commander-in-Chief of the Armed Forces use terms such as war, time of war, and wartime without providing clear and precise definitions. This lack of conceptual clarity can lead to ambiguous interpretations of legal provisions. Malwina E. Kołodziejczak rightly emphasizes the need for a standardized terminology through legal definitions. Currently,² only the Law of 11 March 2022 on the Defense of the Fatherland³ provides a legal definition of time of war.⁴ However, the remaining terms have yet to be formally codified in legislation.

A significant strength of Malwina E. Kołodziejczak’s study lies in her analysis and the resulting conclusions and recommendations regarding three possible options for appointing the CC. She explores the feasibility of filling this position through: (1) the Chief of the General Staff of the Polish Armed Forces (SSG WP), (2) the Operational Commander of the Armed Forces (DORSZ), or (3) the President of the Republic of Poland.

Malwina E. Kołodziejczak identifies several factors supporting the appointment of the Chief of the General Staff as the Commander-in-Chief of the Armed Forces. These include historical experience and, more importantly, the scope of the Chief’s tasks and responsibilities. However, a key challenge associated with this option is the Chief’s limited involvement in national security matters, which may result in insufficient knowledge of the government’s current situation and a lack of influence over critical decisions at that moment. To address this issue, Kołodziejczak recommends integrating the SSG WP into the national security decision-making system and granting him a seat on the

2. The author specified the legal status in her study as of 1 September 2020.

3. Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny, Dz.U. 2022 poz. 655, art. 2(2), [Law of 11 March 2022 on the Defense of the Fatherland, Journal of Laws of 2022, item 655, Article 2, point 2].

4. Time of war should be understood as the period of military operations conducted on the territory of the Republic of Poland, with the start and end of this period determined by a decision of the President of the Republic of Poland, issued at the request of the Council of Ministers.

Security Council during peacetime. Such a measure would enable better preparation of the armed forces and ensure effective monitoring of state-level security tasks. Another unresolved concern is the question of how to fill the position of Chief of the General Staff once the incumbent is designated as CC. The current implementing regulations do not provide guidance on this matter.

The analysis of the next candidate for the position of CC, the Operational Commander of the Armed Forces, reveals that he generally lacks the necessary tools and resources to fulfill this role effectively. However, given the dynamic and evolving nature of modern armed conflicts, which may involve asymmetry, hybrid warfare, irregular operations, and cyber warfare, this candidacy could be considered for ad hoc situations. This concept also aligns with NATO's approach.

The final option considered, option 3, addresses the possibility of entrusting the CC function to the President of the Republic. In the current legal framework, two major issues are identified by Malwina E. Kołodziejczak. The first concerns the appointment process itself, as this would effectively result in the President appointing himself to the role of Commander-in-Chief. The second issue relates to the principle of incompatibilitas⁵ – the prohibition on the combination of public functions. Therefore, there is a need for amendments to Article 132 of the Constitution of the Republic of Poland⁶ to exclude this principle during periods of martial law, wartime, and a state of war.

Another questionable issue regarding the appointment of the Commander-in-Chief of the Armed Forces to the head of state concerns the substantive level of his preparation, specifically his knowledge of military strategy, the art of war, and command principles. According to the author, one potential solution is the introduction of a specialized course for the President. This concept is common in Western countries, where leaders are often graduates of military academies or have completed specialized courses that focus on security and national defense issues.

The argument for appointing the President as CC is based on an interpretation of Article 126 of the Polish Constitution. According to this article, the President is the guarantor of the continuity of state power, as well as the protector of the sovereignty and security of the state, and the inviolability and indivisibility of its territory. Another relevant provision is Article 134, which states that “the President of the Republic is the Supreme Commander of the Armed Forces of the Republic of Poland.” This aligns fully with the responsibilities of the Commander-in-Chief of the Armed Forces of the Republic of Poland. The author rightly highlights the interpretive challenges associated with

5. Latin for incompatibility.

6. The President of the Republic may not hold any other office or perform any public function, except those directly related to the office he occupies.

the President assuming the role of CC. If this solution were adopted, it should be understood that the President would not lead the troops in combat, directly directing their actions, but would instead oversee military bodies with the support of the Chief of the General Staff of the Polish Armed Forces. In practice, this would entail the President taking political responsibility for the functioning of the state during times other than peace, overseeing the entire war effort, and making final decisions, including on matters such as the act of surrender.

I consider the author's projection of nine scenarios, in which the functioning of the CC would be either hindered or warrant reconsideration, to be a significant contribution to the reviewed scientific monograph. According to the legal framework, the possibility of appointment is provided in two cases: martial law (under previous legislation, only in cases of necessity for defense) and martial law declared alongside a state of war. The need for appointment should arise during time of war, martial law declared alongside time of war, or martial law occurring in conjunction with time of war. Malwina E. Kołodziejczak identifies several situations in which the designation of a CC would be impossible, including the declaration of martial law, the occurrence of an internal conflict (such as the presence of "little green men"), or the deployment of the Armed Forces of the Republic of Poland outside the country's borders.

The useful conclusions drawn from the legal analysis, when contrasted with the real need to appoint a CC, are specific situations identified by the author. These include the use of armed forces outside the country, particularly in armed conflicts, as well as the reinforcement of the forces of one or more allied country, and actions aimed at preventing terrorism and its consequences. Other situations outlined by the author include the use of weapons of mass destruction, internal conflict, international terrorism, organized crime, and negative actions in cyberspace, such as cybercrime, cyberterrorism, cyber espionage, cyberconflicts (involving non-state actors), and cyberwarfare.

Given the current geopolitical situation, particularly Russia's war against Ukraine, Malwina E. Kołodziejczak's research proves to be especially relevant. It is clear that the recommendations and changes proposed by the author, along with the presented analysis of the choice of CC, should serve as a foundation for further clarification at both the legislative and functional levels.

The reviewed monograph is targeted at a specialized audience with an interest in the functioning of the armed forces. It is particularly recommended for participants in advanced military studies,

serving as a valuable tool for directing operations in scenarios where state security enters conditions other than peace. Note: To fully understand the content of the monograph, it is essential to have a solid foundation in national security, state defense, constitutional law, and defense law.

Two statements from the author are particularly noteworthy and should be strongly endorsed. First, "There is a need to improve the procedure for the appointment of the Commander-in-Chief of the Armed Forces, as well as the imposition of martial law and the declaration of time of war. (...) The most suitable body to perform this function is the President of the Republic of Poland. This is because he possesses the tools, resources, public support, and constitutional authority to carry out the duties currently assigned to the Commander-in-Chief. It is therefore necessary to amend the Constitution of the Republic of Poland (especially in relation to the exclusion of the principle of incompatibilitas during time of war or martial law), without altering the political system. This would repeal the complicated and unclear formal regulations on the appointment of the Commander-in-Chief, and avoid the complications that arise from such a title. Consequently, the President of the Republic of Poland, as Commander-in-Chief, would independently direct the defense of the state and occupy a key position in the national security system. Additionally, he would gain further powers due to the factual situation, and his role would not depend on the introduction of a specific legal state."⁷ Secondly, "It cannot be that, due to the limited occurrence of prerequisites enabling the appointment and functioning of the Commander-in-Chief, regulations in this regard will not be considered in detail. It is necessary to strive to streamline and improve the regulations and procedures related to the functioning of the Commander-in-Chief of the Armed Forces in the Republic of Poland, in order to guarantee success before there is a need to review them."⁸

7. M.E. Kołodziejczak, *Funkcjonowanie Naczelnego...*, op. cit., p. 130.

8. Ibidem, pp. 131-132.

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Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny, Dz.U. 2022 poz. 655, [Law of 11 March 2022 on the Defense of the Fatherland, Journal of Laws of 2022, item 655].