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## **THE DIVISION OF COMPETENCE IN THE AREAS OF STATE SECURITY AND FOREIGN AFFAIRS WITHIN THE EXECUTIVE BRANCH IN LIGHT OF THE 1997 CONSTITUTION OF THE REPUBLIC OF POLAND**

Pursuant to Article 10 of the Constitution of the Republic of Poland,<sup>1</sup> executive power is vested in the President of the Republic of Poland and the Council of Ministers. In Poland, similarly to many other European countries and in accordance with the century long political tradition, the organs of the executive branch have always played the fundamental role in ensuring the country's both internal and external security and have been responsible for foreign policy (Banaszak, 2009: 441; Sarnecki, 2002: 184).

Implemented in Poland, the model of the dualism of the executive branch creates a problem with the division of duties and competence between the cabinet and the head of state (Patyra, 2015: 619–627). On the one hand, the model of the system of government adopted in the Constitution is distant from political solutions based on a strong or even dominant position of the President in the areas of state security and foreign affairs (USA, France); on the other hand, however, its particular solutions diverge from those characteristic for parliamentary-cabinet systems (UK, Italy, Germany) (Gdulewicz, 1997: *passim*; Gebethner, 1994: *passim*; Gebethner, 1997 I: *passim*; Gebethner, 1997 II: *passim*; Sokolewicz, 1993: 36–37) in which responsibility for the implementation of policies in these areas rests with the government (cabinet) and its head. In this respect, the Polish Constitution introduced a unique mixed system in which there occur strong functional and competence relationships between the cabinet and the President (Grzybowski, 2004: 240; Grzybowski, 2010: 130–131). They concern primarily the legally defined powers in the areas of state security and foreign policy. The particular scopes of competence sometimes supplement each other, and sometimes they overlap. Such a situation, on the one hand, causes an obligation for both organs to cooperate and, on the other hand, it may lead to bitter disputes over a precise delimitation between their duties and powers as set forth in the Constitution (Trzeciakowski, 2016: 215; Surmański, 2013: 138; Dudek, 2013: 88). This problem is further compounded by the fact that, in light of the provisions of the Constitution, the President, being an organ of the executive branch, is also perceived as an arbiter who may settle disputes between state organs and who safeguards the fundamental constitutional values (Ciapała, 1999: 56–57; Czupryk et al., 2016: 29; Grzybowski, 2006: 125–129; Szymanek, 2009: *passim*; Świtłała, 2009: 91–92). Pursuant to Article 126 paragraphs 1 and 2 of the Con-

<sup>1</sup> The Constitution of the Republic of Poland of 2 April 1997, Dz. U. (Journal of Laws), 1997.78.483, as amended.

stitution, the President “shall be the supreme representative of the Republic of Poland and the guarantor of the continuity of state authority” and also “shall ensure observance of the Constitution, safeguard the sovereignty and security of the state as well as the inviolability and integrity of its territory.” Although this Article does not provide for any intrinsic powers, the duties to be fulfilled by the President give them a special position among the other state organs with respect to the aforementioned areas (Balicki, 2014 I: 15–16, Chruściak, 2010: 241; Czupryk et al., 2016: 30–31; Jamróz, 2013: 77 et seq.; Jaskiernia, 2010 I: 294 et seq.; Juchniewicz, Dąbrowski, 2015: 65 et seq.; Głajcar, 2006: 104). The issues referred to above cause a situation in which, with regard to the application of the 1997 Constitution, the delimitation among the respective competence of the President, the Council of Ministers, and the Prime Minister in the areas of state security and foreign policy becomes a serious political problem (Balicki, 1998: 21 et seq.; Jaskiernia, 2010 II: 3; Jaskiernia, 2008: 31).

This article constitutes an analysis of the constitutional regulation of the respective scopes of competence of the President and the Council of Ministers in the areas of state security and foreign policy as well as an attempt to assess the effective regulations.

### **COMMAND OVER THE ARMED FORCES**

With respect to the executive power exercised by the President in the area of “safeguarding the sovereignty and security of the state as well as the inviolability and integrity of its territory,” a very important role is played by the regulations concerning command over the armed forces. Pursuant to Article 134 paragraph 2 of the Constitution, the President is the supreme commander of the armed forces. However, according to paragraph 2 of the Article, in times of peace, the President exercises command over the armed forces through the Minister of National Defence. In the literature on the subject, the notion of “command” is understood as political authority, and the entity exercising such authority has a real possibility of making and enforcing binding decisions (Balicki, 2014 I: 16). However, the traditional formula used in the Polish constitutional law to describe the relationship between the head of state and the army and referring to the President as “the supreme commander of the armed forces” is to a considerable degree of a symbolic character and does not constitute a basis for deriving any binding powers (Balicki, 2014 I: 17; Działocha, 1996: 335; Sarnecki, 2000: 66; Surmański, 2013: 126). The literature emphasizes that this function has a strictly civil character, which means that command over the army has to correspond to this character (Witkowski, 2006: 441–442). Consequently, it is understood that command is not related to any particular authority in military matters (Balicki, 2014 I: 17; Banaszak, 2012: 751; Słomka, 2005: 158; Mojak, 1997: 65). This solution is an inherent part of the model adopted in democratic states as the exercise of civil control over armed forces (Wołpiuk, 1998: 89, Socha, 2004: 8).

As it has been mentioned above, in times of peace, the President may not exercise command over the armed forces other than through the Minister of National Defence. The Constitution does not define what this agency is to consist in (Szewczyk, 2015:

98)<sup>2</sup>. In light of the provisions of the Constitution, the President's command includes also such concrete powers as the appointment of the Chief of the General Staff and commanders of branches of the armed forces for statutory terms of office (Article 134 paragraph 3 of the Constitution). In both such cases, cooperation between the President and the cabinet is indispensable because the aforementioned appointments need to be countersigned by the Prime Minister. It appears that, with regard to such appointments, consultations with the Minister of National Defence will be necessary in view of their agency in the exercise of command over the army. On request of the Minister of National Defence, the President also confers statutorily specified military ranks (Article 134 paragraph 5 of the Constitution), as well as orders and decorations (Banaszak, 2002: 27–39).

Pursuant to Article 136 of the Constitution, in the event of an external threat to the state, the President orders a general or partial mobilization and deployment of the armed forces in defence of the Republic of Poland. It is advisable to accept the opinion represented in the doctrine according to which, in this case there appear two scopes of competence (Sarniecki, 2000: 100; Opaliński, 2012: 182; Balicki, 2014 II: 334–345). In all the aforementioned cases, a request of the Prime Minister is required. The President may not issue relevant acts of their own initiative (Szczurowski, 2016 II: 663). Thus, also in this particular case, the legislator opted for cooperation among the organs of the executive branch.

The aforementioned powers of the President should be perceived from the perspective of the powers of the Council of Ministers in the area of state security. Pursuant to Article 146 paragraph 4 item 8 of the Constitution, the Council of Ministers ensures the external security of the state, and pursuant to Article 146 paragraph 4 item 7, the Council of Ministers ensures the internal security of the state and public order. However, the most important provision of the Constitution which emphasizes the position of the Council of Ministers with regard to the matter of security is Article 146 paragraph 4 item 11. According to it, the Council of Ministers “exercises general control in the field of national defence” (Opaliński, 2013: 7–9; Banaszak, 2012: 795). All the aforementioned regulations position the Council of Ministers as an organ responsible for the enforcement of Poland's security policy. Pursuant to Article 146 paragraph 1, the Council of Ministers conducts the internal affairs and foreign policy of the Republic of Poland. It is responsible for the affairs of state not reserved to other state organs (Article 146 paragraph 2). In the event of any dispute concerning the scopes of competence, this regulation should be interpreted as indicating the supposed competence of the cabinet (Ciapała, 1999: 49; Wojciszko, 2012: 8). It implies a narrow, as opposed to a broadening, perception of the competence of the President (Grzybowski, 2012: 135). The fulfilment of these duties should not be contrary to the basic principles of the state policy as adopted by the cabinet (Frankiewicz, 2009: 19).

The Constitution also separately describes the manner in which the President exercises command over the Armed forces for a period of war. In such circumstances, the head of state does it through the Commander-in-Chief of the armed forces,<sup>3</sup> who is

<sup>2</sup> The judgement of the Constitutional Tribunal of 27 June 2008, reference file symbol K 52/07.

<sup>3</sup> In the Polish doctrine of the constitutional law, it remains disputable whether, in light of the provisions of the Constitution, in a period of war the President exercises command through the

appointed and dismissed by the President on request of the Prime Minister. Thus, with regard to the appointment of the Commander-in-Chief, cooperation between these two organs of the executive branch is indispensable. As far as constitutional subordination is concerned, it should be assumed that the Commander-in-Chief of the armed forces reports to the President (Balicki, 2014 I: 19; Wojciszko, 2011: 337). It should be also assumed, concluding *a contrario* from the content of Article 134 paragraph 2 of the Constitution, that the Minister of National Defence does not act in the capacity of an intermediary in the exercise of the President's command over the Army in a period of war (Szewczyk, 2015: 98).

An analysis of the provisions of the Constitution related to command over the armed forces leads to the conclusion that the respective powers and scopes of competence of the President and the Council of Ministers overlap each other, in many points are mutually dependent, and require cooperation between these two organs (Bożek, 2011: 102; Rydlewski, 2009 I: 142). This frequently results in conflicts within the executive branch, both in periods of cohabitation when the President and the cabinet represent different political camps and pursue clearly different political programmes and in circumstances when they represent the same political camp (Chojan, 2013: 129).

### EXTRAORDINARY MEASURES

An interesting example of the division of competence within the executive branch in the areas of the state's internal and external security is the delimitation of powers and the requirement that the President and the cabinet cooperate in periods of extraordinary measures (Chorażewska, 2008: 105; Trzeciakowski, 2016: 217). Such measures are introduced in situations of particular danger to the state when ordinary constitutional measures are inadequate. The introduction of an extraordinary measure entails the necessity of changes in the principles of activity by the organs of public authority and restricts the freedoms and rights of citizens (Prokop, 2005, Eckhardt, 2012, Gebethner, 1982).

Pursuant to Article 229 of the Constitution, in the case of external threats to the state, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, on request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the state. Furthermore, pursuant to Article 130 paragraph 1 of the Constitution, in the case of threats to the constitutional order of the state, to security of the citizenry or public order, the President of the Republic may, on request of the Council of Ministers, introduce

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Commander-in-Chief of the armed forces or directly. The former option appears to be consistent with the logic of the model of commanding the armed forces in conditions of war (Balicki, 2014 I: 18–19; Chorażewska, 2008: 174; Skrzydło, 2000: 177; Szewczyk, 2015: 99–100). The latter option, on the other hand, may result from the legislator's silence (*a contrario* from Article 134 paragraph 2 of the Constitution) in this respect (Prokop 2005: 146). Yet another approach is represented by P. Winczorek, who takes the view that this matter should be settled by an act of parliament (Winczorek, 2008: 292).

a state of emergency in a part of or upon the whole territory of the state. In either of the aforementioned cases, cooperation between the two organs of the executive branch is required. The Council of Ministers requests that an extraordinary measure be introduced, while it is the President's prerogative to assess the validity of such a request (Steinborn, 2016: 1617; Prokop, 2005: 62). This leads to the conclusion that the lack of agreement between the President and the Council of Ministers causes the impossibility of introducing martial law or a state of emergency. It is of particular importance in the case of a state of emergency. In a situation of a political conflict between the head of state and the cabinet, it seems that there may appear differences in the assessment of reasons for the introduction of such a state, i.e. threats to the constitutional order of the state, to security of the citizenry or public order. A completely different character of martial law and circumstances for its introduction (external threats to the state, acts of armed aggression) raise the question whether the President could introduce such a measure on their own if the cabinet were unable to submit a relevant request.<sup>4</sup> In this case, it is possible to propose the thesis that if the lack of the request of the Council of Ministers resulted from the extraordinary war situation preventing the gathering of this collegial organ, the President could introduce martial law, invoking the state of higher necessity justified by the need to protect the values which the President is obliged to safeguard under Article 126 paragraphs 1 and 2 as well as Article 130 (the presidential oath)<sup>5</sup> (Wiśniewski, 1997: 154; Szewczyk, 2015: 101; Banaszak, 2012: 1096).

Summing up the entirety of the regulations concerning the introduction of extraordinary measures as well as the roles of the President and the Council of Ministers in this process, it should be noted that the legislator assumed far-reaching cooperation between these two organs of power (Surmański, 2013: 136). This assumption may give rise to serious doubts, particularly with regard to the introduction of a state of emergency which may frequently entail internal unrest of a political nature. Especially during a period of cohabitation, the President and the cabinet may represent completely different opinions on the internal situation of the state and, consequently, the need for the introduction of a state of emergency. Doubts also arise over granting the power to request the introduction of martial law or a state of emergency to a collegial organ, i.e. the Council of Ministers.

## THE AREA OF FOREIGN POLICY

Pursuant to the provisions of Article 126 paragraph 1 of the Constitution, the President of the Republic of Poland is first of all head of state and the supreme representative of the Republic of Poland. This role involves numerous powers of a representative nature (Czupryk, 2016: 30; Chojan, 2013: 118–119). Pursuant to Article 133 paragraph 1 of

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<sup>4</sup> It should be emphasized that the legislator showed less caution with respect to the introduction of extraordinary measures than in the case of a state of war (Article 116 of the Constitution) and did not foresee a situation in which the collegial organ of the Council of Ministers is not able to hold a meeting (Banaszak, 2012: 1096).

<sup>5</sup> It should be assumed that, *per analogiam*, the above thesis may be also applied to the appointment and dismissal of the Commander-in-Chief of the armed forces (Szewczyk, 2015: 102).

the Constitution, the President, as representative of the state in foreign affairs, ratifies and renounces international agreements, appoints and recalls the plenipotentiary representatives of the Republic of Poland to other states and to international organization, as well as receives letters of credence and recall of diplomatic representatives of other states and international organizations accredited to them. However, positioning the President as the supreme representative of the Polish state in foreign affairs, the Constitution allocates responsibility for the conduct of foreign policy also to the other organs of the executive branch. Already in Section V of the Constitution concerning the President, Article 133 paragraph 3 obliges the President to cooperate with the Prime Minister and the appropriate minister in respect of foreign policy. Furthermore, from the construction of the constitutional provisions concerning the state's foreign affairs, it should be concluded that the President is not guaranteed influence on the determination of the directions of foreign policy. Pursuant to Article 146 paragraph 1 of the Constitution, it is the Council of Ministers that conducts the internal affairs and foreign policy of the Republic of Poland. This provision should be regarded as the fundamental regulation concerning the position of the cabinet within the executive branch and the fulfilment of the cabinet's function of the exercise of power (Czupryk, 2016: 30; Mażewski, 2009: 9; Stemplowski, 2007: 234).<sup>6</sup> Further, paragraph 2 of this Article specifies this power by including the principle of the cabinet's presumed competence in the affairs of state not reserved to other state organs or local government. Based on the principle of the coherence of a legal system, it should be stated that all other state organs, including the President, should possess precisely specified powers with respect to the conduct of the state's policy and all ambiguities related to scopes of competence should be resolved for the benefit of the cabinet (Mażewski, 2009: 10; Garlicki, 2007: 196; Masternak-Kubiak, Preisner, 2006: 112–114).

Article 146 paragraph 4 of the Constitution contains an open (“in particular”) catalogue of powers in the area of conducting the state's policy. According to item 9 of this provision, the cabinet “exercises general control in the field of relations with other states and international organizations.” It means that the Council of Ministers not only is competent to make decision of a binding character but also possesses an organizational structure through which such decisions will be specified and subsequently implemented (Mażewski, 2009: 10).<sup>7</sup> However, the President has influence on this structure; it is the President who appoints ambassadors on request of the Minister of Foreign Affairs and with a countersignature of the Prime Minister. Such a situation frequently leads to conflicts within the executive branch and results in vacancies in some diplomatic posts, particularly in periods of cohabitation. The principle of coop-

<sup>6</sup> In the Constitution of the Republic of Poland of 1997, it is only Article 146 paragraph 1 that contains the phrase “to conduct policy” (Stemplowski, 2007: 234). Conducting policy is understood as foreseeing and considering social problems, developing ideas for appropriate solutions at various time scales, developing adequate legal forms for selected solutions, supervising the implementation of such solutions, controlling and, if necessary, correcting the implementation process (Rydlewski, 2009 II: 149; Sarnecki, 2001: 8 et seq.).

<sup>7</sup> In Poland, this structure consists of the following executive organs: the Prime Minister, the Minister of Foreign Affairs, plenipotentiary representatives of the state to other states and to international organizations, as well as offices fulfilling supportive duties: the Chancellery of the Prime Minister, the Ministry of Foreign Affairs and diplomatic posts.

eration between the President and the Prime Minister and the appropriate minister also disturbs the unambiguously cabinet-based character of the state's foreign policy.

The powers of the President in the area of foreign policy should be regarded as exceptions to the principle that it is the cabinet that conducts the state's foreign policy and should always have clear constitutional grounds (Mażewski, 2009: 11–12; Masternak-Kubiak, Preisner, 2006: 110). In practice, however, depending on behavioural factors, Presidents sometimes initiate actions which go beyond the theoretical model established in the Constitution. They seek support for their active role in foreign policy in the general duties specified in Article 126 of the Constitution and also in their strong social mandate based on general and direct presidential elections. The duties specified in Article 126 of the Constitution position the President in the role of an active co-participant in the conduct of foreign policy and an organ authorized to review foreign policy from the point of view of the values which the President is obliged to safeguard under this Article.

Article 133 paragraph 3 of the Constitution establishes the principle of cooperation among the organs of the executive branch in the area of foreign policy. It should be assumed that the legislator introduced this principle in order to reconcile the overlapping scopes of competence of the President and the cabinet, to prevent the dichotomy and competition in the conduct of the state's foreign policy (Banaszak, 2009: 447; Mażewski, 2009: 12; Winczorek, 2008: 290; Chojan, 2013: 118). It appears, however, that this rather "idealistic" provision failed to be effective in the constitutional practice. The case in point is conflicts between the President and the Council of Ministers in both periods of cohabitation (President Lech Kaczyński – the Coalition Cabinet of the Civic Platform and the Polish People's Party; President Aleksander Kwaśniewski – the coalition cabinet of the Solidarity Electoral Action and the Freedom Union) and situations when the President and the cabinet came from the same side of the political scene (President A. Kwaśniewski – the coalition cabinet of the Democratic Left Alliance and the Polish People's Party). Nevertheless, it should be remembered that in the last of the aforementioned cases conflicts were less frequent and intensive. On the other hand, sometimes activities in the area of foreign policy were subject to informal delimitation. For example, during the premiership of Ewa Kopacz (2014–2015), President Bronisław Komorowski did not interfere with the cabinet's European policy, but was very active in foreign affairs related to state security and relationships with NATO.

The dispute about the delimitation of powers in the area of foreign policy, in particular the external representation of the Republic of Poland and the presentation of the state's position in particular matters, became the subject of a judgement of the Constitutional Tribunal, which recognized the issue as a dispute over the scopes of competence between the central constitutional organs of the state.<sup>8</sup> The Constitutional Tribunal found that, under Article 146 paragraphs 1 and 2 as well as paragraph 4 item 9 of the Constitution of the Republic of Poland, it was the Council of Ministers that established the state's position for the meetings of the European Council and, as a matter of principle, it was the Prime Minister, as the head of the cabinet, that represented Poland at the meetings of the European Council and presented the state's position

<sup>8</sup> The judgement of the Constitutional Tribunal of 20 May 2009, reference file symbol Kpt 2/08.

agreed upon by the Council of Ministers. However, the Constitutional Tribunal simultaneously took the position that the President, as the supreme representative of the Republic of Poland, might, under Article 126 paragraph 1 of the Constitution, decide to participate in a particular meeting of the European Council if the President found it advisable for the fulfilment of the duties specified in Article 126 paragraph 2 of the Constitution (ensuring observance of the Constitution, safeguarding the sovereignty and security of the state).<sup>9</sup> At the same time the Constitutional Tribunal stated that the President's participation in a particular meeting of the European Council required their cooperation with the Prime Minister and the appropriate minister, pursuant to Article 133 paragraph 3 of the Constitution. The objective of this cooperation is to ensure the uniformity of actions taken on behalf of Poland in relationships with the European Union and its institution. The Tribunal ruled also that cooperation between the President and the Prime Minister or the appropriate minister is to allow the President, in matters related to the fulfilment of the duties specified in Article 126 paragraph 2 of the Constitution, to refer to the position established by the Council of Ministers and to specify the scope and form of the President's intended participation in a particular meeting of the European Council (Szczurowski, 2016 I: 642–643; Jaskiernia, 2010 II: 5 et seq.).

The judgement of the Constitutional Tribunal undoubtedly constitutes an important element in the analysis of the delimitation of the scopes of competence in the area of foreign policy in the conditions of the dualism of the executive branch. The Tribunal indicated the Council of Ministers as the organ responsible for conducting the state's foreign policy and indicated that the President might not conduct policy competitive to that established by the cabinet (Jaskiernia, 2010 II: 8; Szczurowski, 2016 I: 643). To some extent, the judgement dispelled the doubts related to the division of powers between the President and the cabinet, but it did not resolve all of them. First of all, the President's "reference" to the position adopted by the cabinet for a meeting of the European Council remains rather enigmatic. The question appears whether this formula allows the President to exert influence and modify the cabinet's position and if so, to what extent. The formula of "cooperation" between the two organs of the executive branch remains the main interpretative problem. The Constitution does not determine any principles or methods of cooperation. This area is usually regulated by the rules of legal and political culture, tradition, and responsibility for the state (Jaskiernia, 2010 II: 9; Witkowski, 2009: 141). But in Poland, all these factors of a behavioural character leave a lot to be desired, which in the future may cause the further intensification of conflicts about the division of powers.

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In the Constitution of 1997, the shaping of the provisions concerning state security and foreign policy was based on the assumption of cooperation between the President and the Council of Ministers with the President's simultaneous fulfilment of the role of "the supreme representative of the Republic of Poland" and the guardian of its

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<sup>9</sup> From the conclusion of the judgement, it is possible to deduce that if the President decides to participate in a particular meeting of the European Council, then such a decision is binding for the other organs of the state, including the Council of Ministers and the Prime Minister.



sovereignty. The analysis of the constitutional regulations and, first of all, the practice of their application shows the occurrence of endogenous difficulties with the practical functioning of the mechanisms of cooperation within the executive branch. Undertaken by the Constitutional Tribunal, the partially successful attempt to delimitate the respective scopes of competence of the cabinet and the President in the area of foreign policy (which may be used as a guideline in solving problems with the division of powers in the area of state security) leaves many questions unanswered.

The analysis presented above leads to the conclusion that, introduced in the Constitution of 1997, the model of the mutual checks and balances among the organs of the executive branch, factually imposing the obligation to cooperate on the President and the cabinet, is dysfunctional. The Constitution does not determine with sufficient precision the respective executive powers of the President and the Council of Ministers. The overlapping of the two organs' scopes of competence does not result in their cooperation, but rather in conflicts and disputes. In light of the level of Poland's legal and political culture, it appears that the Constitution needs to be supplemented with amendments delimitating with sufficient precision the respective powers of the President and the Council of Ministers in the area of state security and foreign policy (Chruściak, 2011). In the Polish political conditions, at the low level of political culture and the lack of the tradition of consensual politics *de lege fundamentalis ferenda*, it is necessary to demand that the legislator unambiguously opt for either a presidential or parliamentary-cabinet model of the executive branch and precisely divide powers among the organs of the executive branch.<sup>10</sup>

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<sup>10</sup> The scholarly discourse on this particular issue is dominated by the opinion that the powers of the cabinet should be broadened at the expense of those exercised by the President (Podgórski 2012: 38–39; Żebrowski 2010: 101 et seq.).

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## ABSTRACT

Pursuant to Article 10 of the Constitution of the Republic of Poland, executive power is vested in the President of the Republic of Poland and the Council of Ministers. Implemented in Poland, the dualism of the executive branch creates a problem with the division of duties and competence between the cabinet and the head of state. This paper analyses the division of powers within the

executive branch in the areas of state security and foreign policy. The analysis of the constitutional provisions and the political practice indicates that the model of cooperation between the President and the cabinet as adopted in the Constitution of 1997 is ineffective and leads to political conflicts. In view of the Polish political conditions, it is advisable to amend the Constitution in order to move away from the mixed model towards either the presidential model or the parliamentary-cabinet model of the executive branch of government.

**Keywords:** Council of Ministers, President, Constitution, security, foreign policy

## **PODZIAŁ KOMPETENCJI WEWNĄTRZ WŁADZY WYKONAWCZEJ W SFERZE BEZPIECZEŃSTWA PAŃSTWA ORAZ SPRAW ZAGRANICZNYCH W ŚWIETLE KONSTYTUCJI RP Z 1997 ROKU**

### **STRESZCZENIE**

Prezydent Rzeczypospolitej Polskiej oraz Rada Ministrów zgodnie z art. 10 Konstytucji RP stanowią władze wykonawczą w Rzeczypospolitej Polskiej. Występujący w Polsce dualizm egzekutywy stwarza problem podziału zadań i kompetencji między rządem a głową państwa. Publikacja poddaje analizie podział kompetencji wewnątrz władzy wykonawczej w sferze bezpieczeństwa państwa oraz w sferze prowadzenia polityki zagranicznej. Analiza przepisów konstytucyjnych oraz praktyka ustrojowa skłaniają do konkluzji, że przyjęty w Konstytucji z 1997 roku model kooperacji Prezydenta i rządu w sferze wykonawczej jest nieefektywny i prowadzi do konfliktów politycznych. Biorąc pod uwagę polskie warunki polityczne wskazany jest przeprowadzenie nowelizacji konstytucji, w wyniku którego odejdziemy od mieszanego modelu i opowiemy się za prezydenckim lub parlamentarno-gabinetowym modelem egzekutywy.

**Słowa kluczowe:** Rada Ministrów, Prezydent, Konstytucja, bezpieczeństwo, polityka zagraniczna

