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Article 5 of the North Atlantic Treaty (NAT) is the cornerstone of the world's largest military alliance. Its wording reflects a carefully balanced compromise: while it affirms that an armed attack against one ally shall be considered an attack against all, each member state has significant discretion in determining whether the requisite casus foederis has arisen, and in deciding what form its assistance should take. For Poland, since NATO accession in 1999, Article 5 has not only been the benefit of membership in the Alliance but also a shared responsibility. Against this background, the aim of the article is to analyze the guarantees under Article 5 of the NAT from the perspective of U.S.-Polish relations, taking into account the practice of both States. The paper argues that Poland's accession to NATO, as well as further bilateral agreements with the United States, enhances Poland's confidence in allied support and reaffirms the United States' strategic commitment to NATO's Eastern flank. To advance this thesis, the paper is divided into three parts: the first briefly examines Article 5 of the NAT, particularly the meaning of "assistance" for the Ally under an armed attack. The second part places those remarks in the context of how the security guarantees under Article 5 have been understood in U.S.-Polish relations so far. The third section focuses on five instruments adopted by Poland and the United States in order to examine how they have affected not only bilateral relations between the two States but also the approach to collective defense under Article 5.

The activity of the Armed Forces is a widespread phenomenon characteristic of the majority of United Nations (UN) member states. The specificity of their functions and associated tasks makes the Armed Forces a state institution possessing autonomous characteristics. This functional autonomy of the Armed Forces manifests itself particularly clearly within the sphere of institutionalized activities where processes generating legal effects are activated, and processes that require appropriate mechanisms of legal response. Identifying these mechanisms constitutes the foundation for understanding the axiology of military law and the military justice system, as well as the challenges they face in today's world. This article addresses the topic of the military legal system and the military justice system of the Republic of Poland, with particular emphasis on the analysis of extrajudicial forms of legal response. Employing the legal-dogmatic method, key concepts within this domain, impacting the administration of justice within the Polish Armed Forces are clarified. Specifically, the types of extrajudicial legal measures are discussed, along with the legal grounds for their application to Polish Armed Forces personnel. In the conclusion of the discussion, it is asserted that the administration of justice within the Armed Forces, based on a system of extrajudicial measures, constitutes an integral element of the disciplinary administrative system. This system directly reflects the functions and missions of the Armed Forces, and its primary objective is to ensure order, discipline, and combat readiness, while simultaneously relieving the judiciary of minor cases. The conclusions and recommendations presented in the final sections of the discussion address the impact of applying extrajudicial measures on the organization of military justice, as well as on its effectiveness in an era of rapidly evolving transformations within the field of collective security.

This article outlines the complex history of Polish law concerning constitutional guarantees of individual rights, restrictions on those rights during states of emergency and wartime, and the development of the Polish judicial system.

Poland regained its independence in 1918 after 123 years of partition. The first modern constitution of the reborn state was adopted in 1921. The article describes how threats to statehood and the rise of authoritarianism in the 1930s led to the curtailment of civil rights and freedoms almost immediately after the Constitution's adoption. It also explains how World War II and Poland's political dependence on the Union of Soviet Socialist Republics affected civil rights and freedoms, as well as the organization of courts and tribunals.

The article also provides an overview of the current legal system, which has undergone changes due to attempts to introduce authoritarian elements between 2015 and 2023, as well as the continuing threat posed by Russia's aggression against Ukraine.

Between 2022 and 2025, Poland has granted temporary protection to almost 1,000,000 refugees from Ukraine fleeing conflict. Of those refugees, 32% are school-age minors. Poland has the responsibility of integrating these refugee children into the public-school systems, including the children with disabilities (likely around 15% based on worldwide average) into what should be an inclusive education system. However, Poland's largely decentralized, city-by-city governance when it comes to refugee resource distribution risks segregation of refugee children with disabilities or de facto exclusion from learning.

The Article will argue that avoiding segregation and exclusion requires treating inclusive education as requirement for all children using international, EU, and Polish legal obligations as the basis. Because the Convention on the Rights of Persons with Disabilities and Convention on the Rights of the Child focus on a rights-based paradigm, this Article overlays that framework on Poland as a case study, where central coordination is lacking for resources for the influx of refugees.

The Article will portray education as a gateway-right, contending that education is not just one right among many but that which can act as the primary vehicle for other rights and integration into society for the children with disabilities displaced because of conflict. Then, the Article will evaluate how Poland's framework has performed under the temporary protection measures in place for Ukrainian refugees.

The aim is to bridge disability rights theory and refugee-governance reality by highlighting Poland's response, possible gaps, and providing a toolkit for other EU members receiving and supporting Ukrainian refugees to ensure the right to education is guaranteed for all incoming learners.

ARTICLE 5 OF THE NORTH ATLANTIC TREATY AND U.S.-POLISH RELATIONS

Dr. Agata Kleczkowska*

INTRODUCTION

Article 5 of the North Atlantic Treaty (NAT, Washington Treaty)[1] remains the cornerstone of the collective defense established within the North Atlantic Treaty Organization (NATO). Its wording reflects a carefully balanced compromise: while it affirms that an armed attack against one ally shall be considered an attack against all, each member state has significant discretion in determining whether the requisite *casus foederis*[2] has arisen, and in deciding what form its assistance should take. This flexible construction was shaped by political realities at the time of NATO's creation, including constitutional constraints and strategic considerations of key members such as the United States. As a result, Article 5 combines legal obligation with political judgment, and deterrent effect with operational ambiguity.

For Poland, NATO accession in 1999 marked the culmination of long-standing efforts to secure credible and effective security guarantees anchored in Article 5. From the outset, Poland treated collective defense clause not merely as a benefit of membership, but as a shared responsibility. Its participation in NATO operations following the terrorist attacks of September 11, 2001—when Article 5 was invoked for the first and only time in the Alliance's history—demonstrated its readiness to contribute actively to security of other NATO members. At the same time, evolving security challenges, particularly those stemming from Russia's hostile policy, have reinforced the centrality of Article 5 for Polish national security.

Against this background, the aim of the article is to analyze the guarantees under Article 5 of the NAT from the perspective of U.S.-Polish relations, taking into account the practice of both States. The paper argues that Poland's accession to NATO, as well as further bilateral agreements with the United States, enhances Poland's confidence in allied support and reaffirms the United States' strategic commitment to NATO's Eastern flank.

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1 North Atlantic Treaty, Apr. 4, 1949, 34 U.N.T.S. 243.

2 *Casus foederis* refers to 'a case or event covered by the provisions or stipulations of a treaty or compact' (*see Casus foederis*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/casus%20foederis). W. ERIC BECKETT, THE NORTH ATLANTIC TREATY, THE BRUSSELS TREATY AND THE CHARTER OF THE UNITED NATIONS 29 (1950).

To advance this thesis, the paper is divided into three parts: the first briefly examines Article 5 of the NAT, particularly the meaning of "assistance" for the Ally under an armed attack. The second part places those remarks in the context of how the security guarantees under Article 5 have been understood in U.S.-Polish relations so far. The third section focuses on five instruments adopted by Poland and the United States in order to examine how they have affected not only bilateral relations between the two States but also the approach to collective defense under Article 5.

I. ARTICLE 5 OF THE WASHINGTON TREATY- GENERAL REMARKS

Article 5 NAT states as follows:

> The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.
>
> Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.[3]

It is not the aim of this paper to discuss this provision in detail; further comments will be limited to those parts of Article 5 that are the most relevant for analysis.

Most importantly, Article 5 not only does not establish any kind of automatism in assisting the attacked Ally,[4] but also allows NATO members discretion on two levels. First of all, each NATO member is the judge of the *casus foederis*[5] and may individually assess whether the armed attack

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3 *Id.*

4 Thilo Marauhn, *North Atlantic Treaty Organization (NATO)*, MAX PLANCK ENCYCLOPEDIA OF PUB. INT'L L. ¶ 15 (July 2016), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e662.

5 BECKETT, *supra* note 2, at 29.

occurred against another NATO member or not.[6] The Washington Treaty does not define "armed attack," which supposedly was a deliberate step "so that any Soviet military action against NATO would constitute an attack,"[7] including indirect aggression.[8] Should the member state decide that there was an armed attack, it is obliged to assist the attacked Party.[9] However, Article 5 does not require that this assistance must take any specific form—each NATO member is free to take "such action as it deems necessary," which may include the use of armed force, but it is not obligatory.[10]

Taking it all into account, both the decision whether the *casus foederis* has arisen and what action is necessary were not entrusted under the Washington Treaty to any international body, including the North Atlantic Council, but rather to each individual NATO member, which should "reach its decision fairly and justly in the light of the facts of the situation and of the obligation to give assistance."[11] This framework is cognizant of the fact that, on one hand, "[s]ome situations in which allied territory is confronted with a direct armed attack may not be regarded by all allies as constituting the type of attack envisaged under Article 5,"[12] while on the other hand, Allies may not agree on the "preferred response because their interests would be affected in different ways if any of these situations occurs."[13] Additionally, such a form of Article 5 was also the consequence of the United States' interest in joining NATO, despite its longstanding "policy of avoiding military alliance with European nations"[14] and isolationist tendencies. If Article 5 "obligated the United States to go to war automatically and without a declaration of war from Congress,"[15] it might violate the U.S. Constitution.[16]

Due to the wording of Article 5 of the Washington Treaty, NATO member states may have an incentive to free ride on the others, hoping to benefit from being part of the collective self-defense mechanism without themselves contributing to armed assistance, as no member state can be

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6 Federica Fazio, *Collective Defence in NATO: A Legal and Strategic Analysis of Article 5 in Light of the War in Ukraine* 5, 7 (Dublin Eur. L. Inst. Working Paper Series No. 2, 2024), https://www.schumannetwork.eu/wp-content/uploads/2025/01/FAZIO-DELI-WP2-2024-1.pdf.

7 Broderick C. Grady, *Article 5 of the North Atlantic Treaty: Past, Present, and Uncertain Future*, 31 GA. J. INT'L & COMPAR. L. 167, 186 (2002); *see also* Fazio, *supra* note 6, at 9.

8 Walter Rech, *Indirect aggression and the North Atlantic Treaty*, 30 J. CONFLICT & SEC. L. 23, 24 (2025).

9 *Id.* at 37.

10 *Id.*; Marauhn, *supra* note 4, at ¶ 16.

11 BECKETT, *supra* note 2, at 29.

12 Ivo H. Daalder, *NATO, the UN, and the Use of Force*, BROOKINGS INST. (Mar. 1, 1999), https://www.brookings.edu/articles/nato-the-un-and-the-use-of-force/.

13 *Id.*; *see also* Fazio, *supra* note 6, at 9.

14 Grady, *supra* note 7, at 179; *see also* John R. Deni, *Collective Defence*, *in* RESEARCH HANDBOOK ON NATO 208, 211 (Sebastian Mayer ed., 2023); S. Res. 239, 80th Cong., 2d Sess. (June 11, 1948).

15 Grady, *supra* note 7, at 179.

16 Fazio, *supra* note 6, at 8.

prevented from enjoying this "non-excludable collective good."[17] However, at the same time, it is exactly the fact that "all Allies enjoy the same kind and degree of protection"[18] which "denies the attacker the possibility of choosing the weakest spot or member of the Alliance for a successful offense."[19] Moreover, NATO member states deploy different national force contingents next to one another—that is how NATO denies

> the attacking enemy the opportunity to single out any national force specifically for its attack and lure the others into free riding, that is, not engaging in military action. Instead, any enemy attack would immediately affect several, if not all, Allies and in so doing trigger a collective, rather than national defense response.[20]

In this context, it is also valuable to highlight the deterring power of Article 5. Even though this provision allows NATO members to undertake "such action as it deems necessary" when the Ally is under attack, smaller NATO members understand that even the potential use of armed force in their defense by much more powerful Allies such as the U.S. may turn out to be an effective and sufficient deterrent.[21]

Last but not least, Article 5 does not envisage any negative consequences for a NATO member state that refrains from assisting the attacked Ally or fails to recognize the occurrence of an evident armed attack.[22] Not only that—if a NATO member wishes to reduce its future contribution to assisting an attacked member state, it may undertake a number of steps before there will be even a need to invoke Article 5.[23] It can do so by limiting its participation in NATO joint exercises, reducing its troop presence in other Allies' territories, lowering its defense spending, or even halting its contributions to NATO infrastructure.[24]

Taking it all into account, one may conclude that Article 5 of the NAT is deliberately designed as a flexible collective defense mechanism: legally binding yet politically and operationally dependent on the decisions of individual member states.

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17 Christian Tuschhoff, *Collective Action Problems*, *in* RESEARCH HANDBOOK ON NATO 191, 191 (Sebastian Mayer ed., 2023).

18 *Id.* at 196.

19 *Id.*

20 *Id.*

21 *See also* Grady, *supra* note 7, at 180.

22 Fazio, *supra* note 6, at 9.

23 *Id.*

24 *Id.*

II. THE MEANING OF "ASSISTANCE" FROM ARTICLE 5

Putting this analysis in the context of U.S.-Polish relations, Poland's accession to NATO "crowned years of effort to obtain reliable security guarantees," including the most important one under Article 5 of the NAT.[25] That is also why, in January 1994, when NATO created the Partnership for Peace program, and invited Poland and other Visegrad States to participate in it, there were concerns that it "was being offered not as a step towards NATO membership, but as an alternative, keeping them forever in an ambiguous, NATO-adjacent limbo without the Alliance's Article 5 security guarantee."[26] Ultimately, the Partnership for Peace helped integrate Poland's military into NATO activities and led to greater bilateral military and political relations between Poland and the NATO member states at the time.[27]

Despite such a strong reliance by Poland on potential military assistance in case of an armed attack under Article 5 of the Washington Treaty, Poland proved from the beginning of its membership in NATO that it is not looking to free ride on more powerful Allies, hoping to benefit from their armed assistance, without contributing to the active defense of others if needed.[28] Already during its first address to the North Atlantic Council as a NATO member, Polish Prime Minister at the time, Jerzy Buzek, said that "[l]et me assure you that we take the responsibility for the security of each individual NATO member and for the interests of the entire Alliance. Under those flags, waving in the wind, allow me to say: You can count on us. You can count on Poland."[29]

This declaration was confirmed two years later when the United States was attacked by Al Qaeda terrorists on September 11, 2001.[30] In response, the NATO members, for the first time in NATO's history, invoked Article 5

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25 *See Poland has been a member of the North Atlantic Alliance for 25 years*, GOV.PL (Dec. 3, 2024), https://www.gov.pl/web/oecd-en/poland-has-been-a-member-of-the-north-atlantic-alliance-for-25-years (on file with SIU Law Journal).

26 *See Partnership for Peace Programme*, NATO (June 28, 2024), https://www.nato.int/en/what-we-do/partnerships-and-cooperation/partnership-for-peace-programme (on file with SIU Law Journal).

27 *See id.*

28 His Excellency Jerzy Buzek Prime Minister of the Republic of Poland, Address Before the North Atlantic Council Brussels (Mar. 16, 1999), https://web.archive.org/web/20241001153835/https://www.nato.int/docu/speech/1999/s990316e.htm.

29 *Id.*

30 Katherine Huiskes, *Timeline: The September 11 terrorist attacks*, MILLER CENTER, https://millercenter.org/remembering-september-11/september-11-terrorist-attacks (on file with SIU Law Journal) (last visited Mar. 15, 2026).

of the Washington Treaty.[31] The major operation justified under Article 5 as a case of collective self-defense was Operation Enduring Freedom, which, *inter alia*, involved a U.S.-led intervention in Afghanistan.[32] Poland was part of this operation.[33] In December 2001, Poland informed the United Nations Security Council that:

> Responding to the terrorist attacks of 11 September 2001 the North Atlantic Council considered them as armed attack not just on one ally, but on all States Parties to the Washington Treaty. Therefore, for the first time, Article 5 of the Treaty was invoked. Accordingly Poland decided to support the ongoing US-led military operations against the terrorists and joined the international efforts, undertaken by the Anti-Terrorist Coalition. In accordance with Article 51 of the Charter of the United Nations, the President of the Republic of Poland took, within his constitutional powers, decision to engage the Polish military assets in Afghanistan within these international efforts. . . . The said decision was taken in the exercise of the inherent right of the Republic of Poland of individual and collective self-defence enshrined in Article 51 of the Charter and confirmed in the Security Council resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, which call all States to work together urgently to bring to justice the perpetrators, organisers and sponsors of these acts of violence. . . . Additionally Poland has opened its airspace to the aircraft of the United States Armed Forces.'[34]

Despite the doubts whether "the assistance provided to the United States by the other NATO member states required the invocation of Article 5, or whether the same results could have been achieved without taking such drastic steps,"[35] invoking Article 5 was supposed to dispel any doubts as to the legality of the actions of the NATO member states against Al Qaeda,[36] as well as "may have given many Americans a sense of purpose and a feeling of unity with the Western world. . . ."[37]

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31 *See* NATO MILITARY SHAPE, *An Enduring Alliance: Invoking Article 5 Teaser*, at 00:10 (YouTube, Aug. 8, 2019), https://www.youtube.com/watch?v=N8KY0GpdvYs; *see also* Marauhn, *supra* note 4, at ¶ 17; Fazio, *supra* note 13, at 7.

32 Micheal Bothe, *Use of Force: Legal Foundations, in* RESEARCH HANDBOOK ON NATO 324, 330 (Sebastian Mayer ed. 2023).

33 Mikołaj Kugler, *Poland's Troop Contributions to US-Led Military Operations as a Security Policy Instrument*, 49 J. SCI. MIL. ACAD. LAND FORCES 71, 77 (2017).

34 Rep. of the S.C., at 7–8, U.N. Doc. A/57/2 (2002); *see also* Letter from the Permanent Representative of Pol. to the U.N. addressed to the Pres. of the S.C., U.N. Doc. S/2002/275 (Mar. 15, 2002).

35 Grady, *supra* note 7, at 191.

36 *Id.* at 193, 197.

37 *Id.* at 188.

Twenty-five years later, while international terrorism still remains a threat to international peace and security, the major challenge facing NATO member states is again Russia, the State whose potential aggression against Allies was the reason for creating NATO in the first place.[38] Poland, due to its location, history, and involvement in the defense of Ukraine, is one of the States most threatened by the Russian armed attack.[39] The highest Polish representatives, on multiple occasions, not only stated that Poland expects NATO Allies to contribute militarily to the defense of Poland in the event of an armed attack, but also highlighted the special role of the U.S. in these efforts.[40] To give just two examples, in June 2020, the President of the Republic of Poland, Andrzej Duda, said that:

> Today, the presence of NATO troops and, first and foremost, of U.S. troops in Poland demonstrates that Article 5 of the North Atlantic Treaty is treated seriously. And it shows that if anyone wanted to attack Poland, it won't be a soft landing for that entity; that it won't pay off for such an aggressor, because the strongest army of the world is present and they would help Polish soldiers to defend our borders if such a case arises.[41]

Five years later, Polish Prime Minister Donald Tusk, after meeting with the NATO Secretary-General Mark Rutte, observed that "[r]eaffirming the commitment that NATO is obliged to defend Poland in any critical situation is very important for us."[42]

Importantly, Andrzej Duda and Donald Tusk hail from different political parties, but despite their political differences, both share a common understanding of what Article 5 assistance means for Poland and what the U.S. role should be in it. After a joint meeting between A. Duda, D. Tusk, and U.S. President Joe Biden in March 2024, D. Tusk said that:

> the main purpose of my visit is to confirm unequivocally that America will never hesitate to come to Poland's aid if Poland is ever attacked, that Article 5 of the Washington Treaty is indisputable. I wanted to know that

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38 Deni, *supra* note 14, at 208.

39 *Experts React: Poland Just Shot Down Russian Drones Over its Territory. Is Putin Ramping up His War on Europe?*, ATL. COUNCIL (Sep. 10, 2025), https://www.atlanticcouncil.org/blogs/new-atlanticist/poland-just-shot-down-russian-drones-over-its-territory-is-putin-ramping-up-his-war-on-europe/ (on file with SIU Law Journal).

40 *See also* NATIONAL SECURITY STRATEGY OF THE REPUBLIC OF POLAND: WARSAW 6–7, 10, 22–23, 25 (2020).

41 Donald Trump, President, White House, Remarks by President Trump and President Duda of the Republic of Poland in Joint Press Conference (June 24, 2020).

42 *Poland's Tusk: NATO Commitment to Defend Poland is Crucial*, REUTERS (Mar. 26, 2025), https://www.reuters.com/world/europe/polands-tusk-nato-commitment-defend-poland-is-crucial-2025-03-26/ (on file with SIU Law Journal).

> Americans feel obliged, and will always be obliged to act immediately if we need such help.[43]

It seems that the United States shares this common understanding of what U.S. assistance under Article 5 should mean. One can see consistency despite the changes in the Presidency: President J. Biden said that "if Putin attacks a NATO ally, we will defend every inch of NATO, which the treaty requires and calls for."[44] Likewise, President Donald Trump reaffirmed that "he would defend Poland and the Baltic states if Russia escalates further."[45]

In summary, in the context of U.S.-Poland relations, "assistance" under Article 5 of the NAT is understood not merely as a formal obligation but as a concrete and credible commitment—ideally involving the use of armed force if necessary. At the same time, Poland's conduct since joining NATO demonstrates that it perceives collective defense as reciprocal: it both expects assistance and is prepared to provide it.

III. SUBSEQUENT LEGAL FRAMEWORK

In addition to security guarantees under Article 5 of the NAT, Poland has concluded a series of bilateral agreements with the United States that deepen military cooperation and potentially reinforce deterrence. The aim of this section is to identify and analyze the principal instruments signed between Poland and the United States in the field of defense and security, briefly characterize them, and determine their relationship to Article 5 of the Washington Treaty. To this end, the section focuses on five instruments: Agreement Concerning the Deployment of Ground-Based Ballistic Missile

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43 *Prime Minister Donald Tusk in Washington: America will not hesitate to come to Poland's aid*, CHANCELLERY OF THE PRIME MINISTER OF THE REPUBLIC OF POL. (Mar. 12, 2024), https://www.gov.pl/web/primeminister/prime-minister-donald-tusk-in-washington-america-will-not-hesitate-to-come-to-polands-aid.

44 *See Biden's Address: If We Don't Stop Putin, He Could Threaten Poland and Baltics*, TVN24 (Oct. 20, 2023), https://tvn24.pl/tvn24-news-in-english/if-we-dont-stop-putin-he-could-threaten-poland-and-baltics-biden-says-st7401483; *see also U.S. Vice President Kamala Harris in Poland: USA's Commitment to Article 5 of NATO is Ironclad*, TVN24 (Mar. 10, 2022), https://tvn24.pl/tvn24-news-in-english/us-vice-president-kamala-harris-in-poland-usas-commitment-to-article-5-of-nato-is-ironclad-st5630487; *see also Joint Statement on U.S. – Poland Strategic Dialogue,* U.S. EMBASSY IN POL. (Apr. 23, 2024), https://pl.usembassy.gov/joint-statement-on-u-s-poland-strategic-dialogue/; *see also General Mark Milley: United States will Defend Every Inch of NATO Territory*, TVN24 (Sep. 19, 2022), https://tvn24.pl/tvn24-news-in-english/united-states-will-defend-every-inch-of-nato-territory-us-chairman-of-the-joint-chiefs-of-staff-gen-mark-milley-tells-tvn24-st6123778.

45 Katarzyna-Maria Skiba, *Trump Says he 'Would' Help Defend Poland and Baltic States if Russia Keeps Escalating*, EURONEWS (Sep. 21, 2025), https://www.euronews.com/my-europe/2025/09/21/trump-says-he-would-help-defend-poland-and-baltic-states-if-russia-keeps-escalating; *see also* U.N. S.C, 80th Sess., 9995 mtg. at 9, U.N. Doc. S/PV.9995.

Defense Interceptors in the Territory of the Republic of Poland (hereinafter: Missile Defense Agreement), Agreement on the Status of Armed Forces of the United States in the Territory of Poland (hereinafter: Agreement on the Status of Armed Forces), two presidential declarations of 2019 and Agreement Between the Government of the Republic of Poland and the Government of the United States of America Concerning Defense Cooperation (hereinafter: Enhanced Defense Cooperation Agreement).

A. Missile Defense Agreement

The Missile Defense Agreement was signed on August 20, 2008, by the U.S. Secretary of State, Condoleezza Rice, and Poland's Foreign Minister, Radosław Sikorski. The Agreement concerns the United States' presence "in the locality of Słupsk-Redzikowo for the purpose of deployment there and use of non-nuclear ground-based ballistic missile defense interceptors" (Article 1).[46] The Agreement regulates the status, operation, and use of the base (Articles 3 and 5),[47] its command and control (Article 4),[48] and the use of ballistic missile defense systems (Article 9).[49] When it comes to the latter provisions, the Agreement states that the United States will use the ballistic missiles to defend Poland against similar attack (Article 9 (1) (b)),[50] and both the base and the ballistic missiles will be used "for purposes consistent with international law, including the Charter of the United Nations, and the framework of the right of individual and collective self-defense" (Article 9 (4)).[51]

The Agreement is an important element, both politically and operationally, of the collective self-defense guarantees under Article 5 of the NAT. It makes several references to NATO cooperation, to mention just part of the preamble, which states that

> deployment of the United States ground-based ballistic missile defense interceptors in the territory of Poland will enhance and complement the existing security relationship between the United States and the Republic of

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46 Agreement Between the Government of the United States of America and the Government of the Republic of Poland Concerning the Deployment of Ground-Based Ballistic Missile Defense Interceptors in the Territory of the Republic of Poland, Pol.-U.S., art. I, Aug. 20, 2008, 2789 U.N.T.S. 317.

47 *Id.* at art. III, art. V.

48 *Id.* at art. IV.

49 *Id*. at art. IX.

50 *Id.* at art. IX ¶ 1(b).

51 *Id.* at art. IX ¶ 4.

> Poland and contribute to international peace and security and to the security of the United States, the Republic of Poland and NATO.[52]

The Agreement supplemented the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces of 1955 (hereinafter: SOFA), which establishes the legal framework governing the presence of one NATO member's armed forces on the territory of another.[53]

B. Agreement on the Status of Armed Forces

The Agreement on the Status of Armed Forces was signed on December 11, 2009, in Warsaw. Like the Missile Defense Agreement, it supplemented the SOFA framework.[54]

The Agreement defined not only the status, terms, and conditions governing the presence of U.S. forces and members of the U.S. armed forces in the territory of the Republic of Poland, but also the status of the civilian component, and of dependents, United States contractors, and U.S. contractor employees (Article 1).[55] To this end, the Agreement regulated, *inter alia*, the use of agreed facilities and areas (Article 3),[56] property ownership (Article 4),[57] military exercises (Article 5),[58] entry, stay, and departure of personnel (Article 8),[59] criminal jurisdiction over the U.S. personnel (Article 13),[60] and tax exemptions (Article 18).[61]

C. Presidential Declarations of 2019

On June 12, 2019, the presidents of the United States and Poland signed the Joint Declaration on Defense Cooperation Regarding U.S. Force Posture in the Republic of Poland.[62] The preamble of the Declaration mentioned both

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52 *Id.* at pmbl.

53 Agreement between the Government of the United States of America and the Government of the Republic of Poland on the Status of United States Armed Forces in the Territory of the Republic of Poland, Pol.-U.S., Dec. 11, 2009, T.I.A.S. No. 10-331 [hereinafter Armed Forces Treaty].

54 *Id.*

55 *Id.* at art. 1.

56 *Id.* at art. 3.

57 *Id.* at art. 4.

58 *Id.* at art. 5.

59 *Id.* at art. 8.

60 *Id.* at art. 13.

61 *Id.* at art. 18.

62 *Joint Declaration on Defense Cooperation Regarding U.S. Force Posture in Poland*, PRESIDENT.PL (June 12, 2019), https://www.president.pl/archives/andrzej-duda/news/joint-declaration-on-defense-cooperation-regarding-us-force-posture-in-the-republic-of-poland,37016 (on file with SIU Law Journal).

the Polish-U.S. friendship and commitments under Article 5 of the NAT.[63] In particular, the Declaration stated that "[t]he United States and Poland believe that the presence of U.S. military personnel in Poland strengthens NATO's deterrence efforts, and the defense of the United States, Poland, and the Alliance, and therefore the United States plans to enhance the U.S. military presence in Poland."[64]

The key point of the Declaration concerned the enhancement of the current military presence of U.S. military personnel in Poland from 4,500 to 5,500 personnel, with the "focus on providing additional defense and deterrence capabilities in Poland."[65] The Declaration further called for establishing or enhancing key military infrastructure to host those forces, such as, *inter alia*, the establishment of a U.S. Division Headquarters (Forward) and the establishment and joint use by the U.S. Armed Forces and the Polish Armed Forces of the Combat Training Center in Poland.[66]

In the same year, on June 23, 2019, both presidents also signed the Joint Declaration on Advancing Defense Cooperation.[67] The declaration reiterated the promise to increase the number of U.S. military personnel in Poland and specified locations for the planned enhanced U.S. military presence.[68]

D. Enhanced Defense Cooperation Agreement

On August 15, 2020, Poland and the United States signed the Enhanced Defense Cooperation Agreement (EDCA),[69] which superseded the Agreement on the Status of Armed Forces (Art. 37 (3) EDCA).[70] The initiative to conclude the EDCA was taken by the American side, which "highlighted the need to amend the legal framework governing the stationing of its troops on Polish territory, emphasizing the growing scale of the United States' military involvement in Poland. . . ."[71]

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63 *Id.*

64 *Id.*

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 Agreement Between the Government of the Republic of Poland and the Government of the United States of America on Enhanced Defense Cooperation, Pol.-U.S., Aug. 15, 2020, 3428 U.N.T.S. 1 [hereinafter Enhanced Defense Treaty].

70 *Id.* at art. 37 ¶ 3.

71 *Uzasadnienie projektu ustawy - o ratyfikacji Umowy między Rządem Rzeczypospolitej Polskiej a Rządem Stanów Zjednoczonych Ameryki o wzmocnionej współpracy obronnej, podpisanej w Warszawie dnia 15 sierpnia 2020 r.* [*Justification of the Draft Act - On the Ratification of the Agreement Between the Government of the Republic of Poland and the Government of the United States of America on Enhanced Defense Cooperation, Signed in Warsaw on August 15, 2020*], SEJM RZECZYPOSPOLITEJ POLSKIEJ 2 (Aug. 26, 2020), https://orka.sejm.gov.

The EDCA provisions essentially replicate the regulations of the Agreement on the Status of Armed Forces in terms of the status of U.S. forces and accompanying personnel.[72] The EDCA also includes an important innovation: it implements the presidential declarations signed in 2019 by providing, in Annex A, the list of agreed facilities and areas, and in Annex B, details of the Polish support for the U.S. forces' presence and the list of Polish-provided infrastructure projects.[73] Therefore, the EDCA regulates the planning, construction, and maintenance of this infrastructure, designates specific construction projects to be funded by Poland, and outlines a list of logistical support services to be provided to U.S. forces stationed in Poland. As stated in the justification for the draft Act on the Ratification of the EDCA, "[c]hanges in this area will create appropriate conditions for a sustained U.S. military presence in Poland, both on the currently planned scale and in a possible future expansion."[74]

Moreover, as further stated in the justification of the draft,

> This agreement will significantly strengthen the formal and legal framework for expanded defense cooperation between the Republic of Poland and the United States of America, establishing the legal basis for the permanent stationing of an increased number of U.S. troops in Poland. The American side also legally reaffirms in this Agreement that its military presence in Poland strengthens the United States' commitment to the defense and security of the Republic of Poland.[75]

Altogether, the 2019 Presidential Declarations and the EDCA reflect a transition from a primarily rotational presence to a more durable U.S. military footprint in Poland.

E. Conclusions

In the context of the NATO security guarantees, it is important to observe that none of the documents analyzed above created or modified the security guarantees included in Article 5 of the NAT. Rather, they serve a different structural function: they enable the United States to provide rapid and effective armed assistance under Article 5 in case of an armed attack against Poland. As stated in the first section of the paper, if a NATO member state wishes to reduce its future contribution to assisting an attacked Ally before there is even a need to invoke Article 5, it may undertake a number of

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pl/Druki9ka.nsf/0/04B20FEBA58B0D11C12585D00030C43A/%24 File/573.pdf (on file with SIU Law Journal) [hereinafter *Justification of the Draft Act*].

72 Enhanced Defense Treaty, *supra* note 69; *cf.* Armed Forces Treaty, *supra* note 53.

73 Enhanced Defense Treaty, *supra* note 69, at Annex A–B.

74 *Justification of the Draft Act*, *supra* note 71, at 6.

75 *Id.*

steps, including reducing the presence of its troops in the Ally's territories. From this perspective, the instruments discussed above, by enabling the presence of U.S. armed forces on Polish territory, constitute a precondition for operationalizing Article 5. In the same vein, deploying U.S. armed forces on Poland's territory reduces the possibility that, in the case of an armed attack against Poland, the United States would not engage in military action, as today, because of the presence of U.S. troops in Poland, an armed attack against Poland would also affect U.S. armed forces stationed in Poland. Consequently, these instruments also contribute to the credibility of deterrence against potential adversaries.

Last but not least, it should be noted that although all instruments explicitly refer to NATO and Article 5, they also reveal a strong bilateral dimension of U.S.-Polish defense cooperation. The legal and operational arrangements are negotiated directly between Warsaw and Washington, even when framed as contributing to NATO's collective security. This suggests that Article 5 functions not only as a multilateral mechanism but also as a catalyst for deeper bilateral alliances within NATO.

CONCLUSION

Article 5 of the Washington Treaty allows NATO members to operate with discretion on two levels. First of all, each NATO member is the judge of the *casus foederis* and may individually assess whether an armed attack occurred against another NATO member. Secondly, Article 5 does not require that the assistance provided to an Ally under attack must take any specific form—it may include the use of armed force, but it is not obligatory. Poland has proved from the beginning of its membership in NATO that it is not looking to free-ride on the new Allies, hoping to benefit from their armed assistance, but without contributing to the active defense of others if needed. It contributed to the Operation Enduring Freedom, which followed the 9/11 attacks against the United States and was conducted under the Article 5 framework.

Twenty-five years later, the major challenge facing NATO member states is again Russia. The highest Polish representatives, multiple times, not only stated that Poland expects NATO Allies to contribute militarily to the defense of Poland in case of an armed attack, but also highlighted the special role of the United States in these efforts. It seems that the United States shares this understanding of what U.S. assistance under Article 5 should mean.

Moreover, the examination of the Missile Defense Agreement, the Agreement on the Status of Armed Forces, the Presidential declarations of 2019, and the Enhanced Defense Cooperation Agreement depicted the shift from declaratory political solidarity under Article 5 to increasingly institutionalized and legally embedded defense cooperation.

For Poland, these developments strengthen the reliability of allied assistance; for the United States, they solidify its strategic commitment on NATO's eastern flank; and for NATO as a whole, they reinforce the deterrent power and practical viability of its collective defense clause.

NON-JUDICIAL MEASURES OF LEGAL REACTION IN THE MILITARY DOMAIN AS A CONTRIBUTION TO THE DISCUSSION ON THE VALUES OF MILITARY LAW

Dr. Szymon Kulmaczewski[*]

INTRODUCTION

Contemporary military law operates amidst dynamic security challenges and increasing pressure to protect individual rights, thereby renewing the discourse on its axiological foundations.[1] At the core of this reflection lies the system of non-judicial legal response measures.[2] This system serves as a mechanism for shaping the ethos of military service, and extends far beyond the traditional, repressive understanding of military legal norms.[3] It encompasses not only the necessity of securing military discipline and the chain of command but also a guarantee obligation concerning such pivotal issues as justice, proportionality, loyalty to the state, and respect for the dignity of the soldier as a legal subject.[4] The analysis undertaken within

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[1] *See* KAI AMBOS, EUROPEAN CRIMINAL LAW 6 (Cambridge Univ. Press, 1st ed. 2018); *see also* Toni Pfanner, *Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims*, 91 INT'L REV. RED CROSS 279, 293 (2009).

[2] *See* RADOSŁAW GIĘTKOWSKI, ODPOWIEDZIALNOŚĆ DYSCYPLINARNA W PRAWIE POLSKIM [DISCIPLINARY LIABILITY IN POLISH LAW] 34 (Wydawnictwo Uniwersytetu Gdańskiego 2013); *see generally* SEBASTIAN MAJ, POSTĘPOWANIE DYSCYPLINARNE W SŁUŻBACH MUNDUROWYCH [DISCIPLINARY PROCEEDINGS IN THE UNIFORMED SERVICES] (Warsaw: LexisNexis, 1st ed. 2008).

[3] Filip Radoniewicz, *Odpowiedzialność dyscyplinarna żołnierzy* [*Disciplinary Liability of Soldiers*], *in* PRAWO WOJSKOWE [MILITARY LAW] 301–332 (Waldemar Kitler, Dariusz Nowak & Marta Stepnowska eds., Wolters Kluwer Polska 2017); Łukasz Sołowiej, *Charakterystyka prawna przestępstw skierowanych przeciwko dyscyplinie wojskowej* [*Legal Characteristics of Crimes Directed Against Military Discipline*], 13 STUDIA ADMINISTRACJI I BEZPIECZEŃSTWA 133–44 (2022).

[4] KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND] (Dz.U. 1997 nr 78 poz. 483); Piotr Tuleja, *Komentarz do Art. 26* [*Commentary to Art. 26*], *in* KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ. KOMENTARZ [CONSTITUTION OF THE REPUBLIC OF POLAND: A COMMENTARY] (Piotr Tuleja ed., 2d ed. Wolters Kluwer Polska 2023); Kamil Mamak, *Konstytucyjne wyznaczniki postępowania represyjnego* [*Constitutional Detriments of Repressive Proceedings*], *in* POSTĘPOWANIE KARNE A INNE POSTĘPOWANIA REPRESYJNE [CRIMINAL PROCEEDINGS VS. OTHER REPRESSIVE PROCEEDINGS] (Paweł Czarnecki ed., Warsaw: C.H.Beck 2016).

this paper aims to present the system of non-judicial response not merely as a technical-legal instrument, but also as a vehicle for and a realizer of specific values.

The system of non-judicial legal response currently operating within the Armed Forces is not limited exclusively to negative reactions (disciplinary sanctions).[5] It encompasses a broad catalog of measures of both a repressive-educational and a motivational nature.[6] The first category includes disciplinary penalties (admonition, reprimand, financial penalty, warning of incomplete suitability for service, dismissal from position, or dismissal from voluntary forms of military service), order-maintenance measures (disciplinary counseling, waiver of punishment, conditional suspension of the penalty), and other forms of interference with the soldier's legal status.[7] The second category consists of positive measures such as rewards, distinctions, service commendations, decorations, promotion proceedings, as well as all forms of accelerated or special recognition of service achievements.[8] They constitute neither a superstructure of the disciplinary liability regime nor a component thereof.[9] As a functional element of the non-judicial legal response system, these measures represent a legal response to the soldier's activity that reinforces desired attitudes and motivates exemplary performance of duties, thereby building a culture of recognition for such merits.[10]

From an axiological perspective, the dualism of the non-judicial legal response system is a manifestation of the rationality of the legislator's actions.[11] The negative response realizes the values of specific and general prevention, protection of the commander's authority, and maintenance of service order.[12] The positive response realizes the ideas of distributive justice (*iustitia distributiva*), service motivation, and loyalty, as well as

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5 Radoniewicz, *supra* note 3, at 301–332; Wojciech Konaszczuk & Mirosław Tokarski, *Uzawodowienie służb mundurowych w Unii Europejskiej na przykładzie Sił Zbrojnych RP* [*Professionalization of Uniformed Services in the European Union on the Basis of the Armed Forces of the Republic of Poland*], 24 STUDIA IURIDICA LUBLINENSIA 89, 97 (2015).

6 *See* GIĘTKOWSKI, *supra* note 2, at 105; *see also* MAJ, *supra* note 2.

7 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline] (Dz.U. 2009 nr 190 poz. 1474)); Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense] (Dz.U. 2022 poz. 655); Eugeniusz Krempeć, *Komentarz – do Art. 352, 362, 373-374* [*Commentary to Art. 352, 362, 373-374*], *in* OBRONA OJCZYZNY. KOMENTARZ [HOMELAND DEFENSE. COMMENTARY] (Hubert Królikowski ed., Wolters Kluwer Polska 2023).

8 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense](Dz.U. 2022 poz. 655); Radoniewicz, *supra* note 3, at 301–332.

9 *See generally* GIĘTKOWSKI, *supra* note 2.

10 Konaszczuk & Tokarski, *supra* note 5, at 91.

11 *See generally* GIĘTKOWSKI, *supra* note 2.

12 Sołowiej, *supra* note 4, at 133–44.

identification with the goals and mission of the Armed Forces.[13] Both spheres create a relatively coherent system of influence wherein the soldier not only bears responsibility but also receives recognition for exemplary fulfillment of duties.[14] In this way, non-judicial legal response measures prove to be a tool for building the soldier's professional identity and strengthening their service ethos, within which discipline is not merely external coercion but an internalized value.[15]

The central axis of this article's considerations is focused on issues of disciplinary liability. In this sense, it contributes to the broader discussion on the axiology of military law, in which the non-judicial system appears as an arena of tension between operational efficiency and the standards of the rule of law. On the one hand, the norms of this system require a rapid, flexible, and hierarchically centralized response; on the other, they demand respect for the rules governing it.

Starting from theoretical foundations and characterization, through an analysis of the impact of non-judicial legal response on the justice system, this article serves as a contribution to the broader discussion on the condition and evolutionary directions of the axiology of military law. It posits the thesis that the manner in which the legal system responds to soldiers' behavior is a manifestation of the values affirmed by the state. The method of their construction and application reveals the actual attitude of the legislator, as well as legal practice, toward the ethos of service and the philosophy of justice implemented within the military environment.

I. MILITARY JUSTICE AND NON-JUDICIAL MEASURES OF LEGAL REACTION

A. The Theoretical Foundations of Non-Judicial Legal Reaction in the Armed Forces

The system of non-judicial legal response serves a complementary function to the military justice system.[16] It operates in parallel with the jurisdiction of military courts, constituting an integral component of the management of discipline and other aspects of the life of the military

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13 *See* Konaszczuk & Tokarski, *supra* note 5, at 89–91.

14 Radoniewicz, *supra* note 3, at 301–332.

15 *See generally* Grzegorz Jasiński, *Kształtowanie dyscypliny wojskowej w szeregach Związku Walki Zbrojnej i Armii Krajowej* [*Shaping Military Discipline in the Ranks of the Union of Armed Struggle and the Home Army*], 16 STUDIA HISTORICA GEDANENSIA 312 (2025).

16 BRETT J. KYLE & ANDREW G. REITER, MILITARY COURTS, CIVIL-MILITARY RELATIONS, AND THE LEGAL BATTLE FOR DEMOCRACY: THE POLITICS OF MILITARY JUSTICE 23 (Oxford: Routledge 2021); GWENAËL GUYON ET AL., INTRODUCTION IN MILITARY JUSTICE: CONTEMPORARY, HISTORICAL AND COMPARATIVE PERSPECTIVES 9 (Gwenaël Guyon et al. eds., Maklu Publishers 2025).

community.[17] Its existence and specific structure result from the unique nature of the conditions of military service.[18] Such circumstances constitute *ipso facto*, a premise for taking rapid and adequate actions, the primary objective of which is to maintain the combat readiness of the armed forces.[19]

Military discipline, the primary protection within the non-judicial response system, signifies not only compliance with legal regulations directly governing service but also with other norms and rules concerning the execution of orders and service decisions.[20] Adherence to these regulations is a *sine qua non* condition for maintaining the efficiency and operational capability of the armed forces.[21]

The axiological foundation of non-judicial response to disciplinary misconduct is the principle of hierarchical subordination (hierarchy of command).[22] Such subordination is characteristic of the military structures of most modern states.[23] Within this framework, a disciplinary superior possesses the authority to apply disciplinary measures to subordinates, which allows for a rapid and effective response to misconduct.[24] In military law doctrine, such powers are identified with the institution of the centralization of competence in a vertical arrangement.[25] This type of structure implies the soldier's full availability to the commander, manifesting itself in service and personal dependencies. This authority encompasses prerogatives not only in terms of promotion but also in holding individuals accountable for service and disciplinary matters, which makes non-judicial response measures an intrinsic element for the execution of service tasks.[26]

The essence of the non-judicial legal response system is based on the distinction between a disciplinary offense and a crime (military or common)

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17 Federico Andreu-Guzmán, *Military Jurisdiction and International Law: Military Courts and Gross Human Rights Violations*, 1 INT' L COMM'N JURISTS 9, 311 (2004).

18 *See generally* WALDEMAR J. WOŁPIUK, SIŁY ZBROJNE W REGULACJACH KONSTYTUCJI RP [THE ARMED FORCES IN THE REGULATIONS OF THE CONSTITUTION OF THE REPUBLIC OF POLAND] (Warsaw: Scholar 1998).

19 Konaszczuk & Tokarski, *supra* note 5, at 94.

20 SŁOWNIK JĘZYKA POLSKIEGO [DICTIONARY OF THE POLISH LANGUAGE] 487 (Mieczysław Szymczak ed., Warsaw: PWN 1995).

21 *See* Konaszczuk & Tokarski, *supra* note 5, at 91.

22 *Id.* at 100.

23 KYLE & REITER, *supra* note 16, at 24.

24 MAJ, *supra* note 2.

25 Piotr Gensikowski, *Problematyka podstaw prawnych zwrócenia się do właściwego dowódcy o wymierzenie kary dyscyplinarnej w sprawach o przestępstwa i przestępstwa skarbowe* [*The Issue of the Legal Basis for Requesting the Appropriate Commander to Impose a Disciplinary Penalty in Cases of Crimes and Fiscal Crimes*], 2 WOJSKOWY PRZEGLĄD PRAWNICZY 21, 29 (2007).

26 *See generally* Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense] (Dz.U. 2022 poz. 655).

subject to court jurisdiction.[27] This distinction defines the scope of the superior's disciplinary authority, constituting the primary mechanism separating non-judicial response from the jurisdiction of military courts.[28]

The central construct of the non-judicial response system is the principle of proportionality (commensurability) of the disciplinary measure.[29] It requires adapting the type and extent of the measure to the degree of fault and the degree of social harm of the act.[30]

The theory justifying this concept posits that certain categories of violations can and should be resolved within internal, more efficient military mechanisms, without engaging lengthy judicial procedures (the principle of procedural fairness).[31]It is emphasized in doctrine that non-judicial legal response serves not only a repressive function[32] but also preventive and educational ones.[33] Its goal is not only to punish the perpetrator but also to shape desirable attitudes among soldiers and military support personnel.[34] The speed of response, made possible by the application of non-judicial measures, strengthens the disciplinary and educational impact.[35] Therefore, it is justified to claim that liability within the mechanism of non-judicial legal response constitutes a generic form of legal liability.[36] Its substantive legal premise is a culpable action consisting of committing a disciplinary offense.[37]

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27 Sławomir Chomicki, *Odpowiedzialność karna i dyscyplinarna żołnierza i funkcjonariusza w świetle zasady ne bis in idem* [*Criminal and Disciplinary Liability of Soldiers and Officers in the Light of the Principle of ne bis in idem*], 7 DE SECURITATE ET DEFENSIONE. O BEZPIECZEŃSTWIE I OBRONNOŚCI 134, 136 (2021).

28 Andreu-Guzmán, *supra* note 17, at 311.

29 Ireneusz Adamczak, *Cautela in poenam w ogólnej dyrektywie wymiaru kary w postępowaniu dyscyplinarnym funkcjonariuszy Policji* [*Caution in Punishment in the General Directive on the Imposition of Penalties in Disciplinary Proceedings Against Police Officers*], *in* SANKCJE DYSCYPLINARNE W SŁUŻBACH MUNDUROWYCH [DISCIPLINARY SANCTIONS IN UNIFORMED SERVICES] 9–14 (Piotr Jóźwiak & Wiesław Kozielewicz eds., Wydawnictwo Szkoły Policyjnej w Pile 2019).

30 Katarzyna Ceglarska-Piłat, *Pojęcie i cechy charakterystyczne odpowiedzialności dyscyplinarnej w prawie polskim* [*The Concept and Characteristics of Disciplinary Liability in Polish Law*], 202 STUDIA PRAWNICZE 99, 99 (2015).

31 Robert S. Summers, *Evaluating and Improving Legal Processes–A Plea for "Process Values"*, 60 CORN. L. REV. 1, 20–29 (1974).

32 Mamak, *supra* note 4, at 3.

33 Ceglarska-Piłat, *supra* note 30, at 100.

34 *See generally* Konaszczuk & Tokarski, *supra* note 5.

35 *See generally* Gensikowski, *supra* note 25.

36 Marek Safjan, *Odpowiedzialność prawna* [*Legal Liability*], *in* WIELKA ENCYKLOPEDIA PRAWA [THE GREAT ENCYCLOPEDIA OF LAW] 563 (Eugeniusz Smoktunowicz & Cezary Kosikowski eds., Warsaw-Białystok: Wydawnictwo Prawo i Praktyka Gospodarcza 2000); MIROSŁAW TOKARSKI, ODPOWIEDZIALNOŚĆ DYSCYPLINARNA ŻOŁNIERZY W TEORII I PRZEPISACH PRAWA [DISCIPLINARY RESPONSIBILITY OF SOLDIERS IN THEORY AND LEGAL PROVISIONS] 31, 34–35 (Dęblin: WSOSP 2000); MAJ, *supra* note 2, at 12.

37 MAREK CZUŁNOWSKI ET AL., WOJSKOWE PRZEPISY DYSCYPLINARNE WRAZ Z KOMENTARZEM, CZ. I: PRZEPISY O WOJSKOWYM POSTĘPOWANIU DYSCYPLINARNYM [MILITARY DISCIPLINARY REGULATIONS

Guilt in the non-judicial system may take the form of intentional guilt (direct intent or eventual intent) or unintentional guilt (recklessness or negligence).[38] A condition for attributing disciplinary liability is, therefore, demonstrating not only the violation of disciplinary rules but also the subjective element of the committed act.[39] What is equally important is the fact that on the grounds of disciplinary liability, analogous rules of complicity apply, as in substantive criminal law.[40] A soldier is disciplinarily liable if he commits an offense individually, jointly and in agreement with another person, directs the commission of an offense by another soldier, or orders its commission.[41] In this context, every participant in an unlawful action is liable within the limits of their own culpability, independently of the liability of other accomplices.[42]

B. The Substantive and Formal Nature of Non-Judicial Measures of Legal Reaction

The non-judicial legal response measures are characterized by two interdependent dimensions: the material and the formal.[43] These two aspects are interrelated, forming a coherent normative structure that determines both the content and the manner of application of the legal instruments in question.[44] It is therefore justified to adopt the thesis of their functional interconnection, whereby the material element defines the scope of

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WITH COMMENTARY, PART I: REGULATIONS ON MILITARY DISCIPLINARY PROCEDURE] 55 (Warsaw: Wydawnictwo KONJAN, 1999).

38 Culpability as a prerequisite for disciplinary liability is generally treated by analogy to criminal law. *See id.*; JACEK GUDOWSKI, PRAWO O USTROJU SĄDÓW POWSZECHNYCH. USTAWA O KRAJOWEJ RADZIE SĄDOWNICTWA. KOMENTARZ [LAW ON THE SYSTEM OF COMMON COURTS. ACT ON THE NATIONAL COUNCIL OF THE JUDICIARY. COMMENTARY] 438 (Jacek Gudowski ed., Warsaw: LexisNexis); LECH GARDOCKI, PRAWNOKARNA PROBLEMATYKA SĘDZIOWSKIEJ ODPOWIEDZIALNOŚCI DYSCYPLINARNEJ IN PRZESTĘPSTWO–KARA–POLITYKA KRYMINALNA. PROBLEMY TWORZENIA I FUNKCJONOWANIA PRAWA. KSIĘGA JUBILEUSZOWA Z OKAZJI 70. ROCZNICY URODZIN PROFESORA TOMASZA KACZMARKA [CRIMINAL LAW ISSUES OF JUDICIAL DISCIPLINARY LIABILITY IN CRIME–PUNISHMENT–CRIMINAL POLICY. PROBLEMS OF LAW CREATION AND FUNCTIONING. ANNIVERSARY BOOK ON THE OCCASION OF THE 70TH ANNIVERSARY OF THE BIRTH OF PROFESSOR TOMASZ KACZMAREK] 191 (Jacek Giezek ed., Kraków: Zakamycze, 2006); GIĘTKOWSKI, *supra* note 2, at 225–227.

39 GIĘTKOWSKI, *supra* note 2, at 201.

40 RADOSŁAW KOPER ET AL., PROCES KARNY [CRIMINAL PROCESS] (Jarosław Zagrodnik ed., Wolters Kluwer Polska 2021).

41 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense] (Dz.U. 2022 poz. 655); Krempeć, *supra* note 7, at *Komentarz do Art. 355* [*Commentary to Art. 355*].

42 *See, e.g.*, Case II SA/Sz 1165/13, Judgment of 13 Mar., 2014 of the Provincial Administrative Court in Szczecin, CBOSA.

43 AMBOS, *supra* note 1, at 317–410; Ula Aleksandra Kos, *Signalling in European Rule of Law Cases: Hungary and Poland as Case Studies*, 23 HUM. RTS. L. REV. 1–37 (2023).

44 AMBOS, *supra* note 1, at 317–410; Kos, *supra* note 43, at 1–37.

interference in the legal situation of the addressee, while the formal element specifies the procedure and conditions for carrying it out.

In the material dimension, non-judicial legal response measures should be examined through the lens of their normative content, and the legal consequences they produce in the sphere of rights and obligations of the individual to whom they are applied.[45] They encompass both the objective aspect (the type and nature of the hardship or obligation) and the subjective aspect (the circle of addressees), each time defined by the applicable provisions of positive law.[46] The application of such a measure results in a change in the legal situation of the addressee, which may consist of the imposition of a penalty, the restriction of certain rights, the establishment of additional obligations, the issuance of an order for specific conduct, or the introduction of a prohibition on action.[47]

In the context of military law, non-judicial legal response measures perform a disciplinary function while remaining closely tied to the practical requirements of service.[48] Their establishment by the legislator has a utilitarian character, meaning that it serves to ensure the efficient functioning of military structures, the maintenance of service order, and the prevention of legal violations without the need to engage the organs of the military justice system, in particular military courts.[49]

Among the basic forms of the measures under consideration in the material dimension are disciplinary penalties, including so-called disciplinary (or summary) penalties, which doctrine regards as a distinct category.[50] They have an autonomous character, meaning that, as a rule, they are intended to fulfill the objectives of disciplinary liability, such as repression, individual and general prevention, and the protection of service authority.[51] Alongside them, other instruments also exist, including additional penalties, conditional suspension of penalty execution, waiver of punishment, or a disciplinary conversation.[52] These measures may be applied independently or in conjunction with the principal penalty, although they do not always serve the full spectrum of disciplinary liability objectives.[53]

The formal dimension of non-judicial legal response measures relates to the procedure for their application, their legal construction, and the

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45 Conall Mallory & Hélène Tyrrell, *The Extrajudicial Voice*, 44 LEGAL STUD. 1–20 (2024).
46 *Id.*
47 *Id.*
48 GIĘTKOWSKI, *supra* note 2.
49 Andreu-Guzmán, *supra* note 17.
50 MAJ, *supra* note 2.
51 Adamczak, *supra* note 29.
52 Krempeć, *supra* note 7, at *Komentarz do Art. 352* [*Commentary to Art. 352*].
53 GIĘTKOWSKI, *supra* note 2.

competence of the organs authorized to impose them.[54] These measures typically take the form of a decision, order, resolution, or service instruction and are subject to defined procedures.[55] Although these procedures are less formalized than judicial or prosecutorial proceedings, they must provide minimum procedural guarantees consistent with the rule of law.[56] The basic formal elements include: the right to information about the charges, the opportunity to submit explanations, the obligation to document the proceedings and the resulting decision, and the right to lodge an appeal.[57] The degree of procedural formalization may vary depending on the organizational level.[58] At the higher command level, procedures tend to be more elaborate and centralized, while in lower-level structures, they may rely on internal regulations and command pragmatics.[59]

Regardless of the degree of formalization, it must be emphasized that every non-judicial adjudication of a repressive nature, despite not being a court judgment, must remain in compliance with the principle of legalism.[60] Thus, in the mode of applying a designated measure, constitutional standards of proportionality, rules of procedural fairness, as well as conditions for the protection of fundamental rights and individual freedoms cannot be violated.[61] In this sense, the application of a non-judicial legal response measure as a specific legal instrument located at the intersection of organizational authority and the principles of military service necessitates the need to respect the standards of both material and formal rule of law.[62]

C. The Impact of Non-Judicial Measures of Legal Reaction on Military Justice

Non-judicial mechanisms do not constitute an alternative to the military justice system but function as its complement, taking over the response to

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54 Brian Mackenzie, *Extra Judicial Speech: Judicial Ethics in the New Media Age*, 2 REYNOLDS CT. & MEDIA L.J. 185–93 (2012).

55 Bernard W. Bell, *Administrative Adjudicators' Extrajudicial Statements*, 35 NOTRE DAME J.L., ETHICS & PUB. POL'Y 617 (2021).

56 ANDRZEJ WASILEWSKI, PRAWO DO SĄDU W SPRAWACH DYSCYPLINARNYCH – USTAWODAWSTWO POLSKIE NA TLE STANDARDÓW EUROPEJSKIEJ KONWENCJI O OCHRONIE PRAW CZŁOWIEKA I PODSTAWOWYCH WOLNOŚCI ORAZ KONSTYTUCJI RP [THE RIGHT TO A COURT IN DISCIPLINARY MATTERS – POLISH LEGISLATION IN THE CONTEXT OF THE STANDARDS OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND THE CONSTITUTION OF THE REPUBLIC OF POLAND] (Przegląd Sądowy, no. 9, 2001).

57 MAJ, *supra* note 2.

58 TOKARSKI, *supra* note 36.

59 WOŁPIUK, *supra* note 18.

60 Mamak, *supra* note 4.

61 Tuleja, *supra* note 4, at *Komentarz do Art. 26, 32, 45* [*Commentary to Art. 26, 32, 45*]; Summers, *supra* note 31.

62 Kos, *supra* note 43, at 1–37.

less significant legal violations and thereby relieving jurisdictional bodies.[63] Thanks to this, military justice authorities can concentrate their efforts on combating more serious offenses that threaten the defense and security of the state.[64] Delegating the competence to handle cases of lesser gravity to commanders allows for a much faster response, which would not be possible in a formalized judicial mode.[65] This influence is reflected in the systemic tendency towards the decriminalization of certain categories of prohibited acts and their transformation into disciplinary offenses.[66] Such pragmatism makes commanders, in realizing the preventive functions of military law, co-responsible entities for the stability of the legal order within a significant part of society.[67]

The application of non-judicial legal response measures prevents not only the escalation of pathologies in the armed forces but also, in a broader perspective, reduces the overall number of cases referred to military courts for adjudication. An important aspect of this relationship is also the possibility for a military prosecutor to transfer a case to a commander for disciplinary punishment.[68] However, this solution requires a precise delimitation of competencies in each instance to avoid violating the *ne bis in idem* principle, which protects against double jeopardy for the same act.[69]

The disciplinary liability of soldiers and their criminal liability are quite closely related.[70] Therefore, it should be noted that evidence collected during proceedings conducted by a disciplinary spokesperson often becomes key evidence in subsequent criminal proceedings.[71] Conversely, the military justice system, and particularly the military judiciary, serves a control function by verifying the legality of decisions made in the non-judicial mode.[72] Non-judicial response measures thus shape soldiers' legal awareness,

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63 Pfanner, *supra* note 1.

64 AMBOS, *supra* note 1.

65 Gensikowski, *supra* note 25.

66 GIĘTKOWSKI, *supra* note 2.

67 Mariusz Kamiński, *Prawnoustrojowy status Sił Zbrojnych w Konstytucji Rzeczypospolitej Polskiej* [*The Legal and Constitutional Status of the Armed Forces in the Constitution of the Republic of Poland*], 29 ROCZNIKI NAUK PRAWNYCH [ANNALS OF LEGAL SCI.] 41 (2019); WOŁPIUK, *supra* note 18.

68 Gensikowski, *supra* note 25, at 21.

69 The principle of *ne bis in idem* as respected in military law means the exclusivity of criminal liability for soldiers in relation to acts fulfilling the elements of a criminal offense (crime or misdemeanor). A military disciplinary offense is, as a rule, an act that does not constitute a crime or misdemeanor. In this sense, issues of jurisdiction between military courts and military disciplinary authorities including military commanders remain key matters of competence. Chomicki, *supra* note 27, at 135.

70 *Id.*

71 *Id.*

72 WASILEWSKI, *supra* note 56.

facilitating law enforcement agencies' work, especially in the context of building a culture of regulatory compliance.[73]

It must be acknowledged that the impact of non-judicial legal response measures on the military justice system is multidimensional.[74] Non-judicial mechanisms support the activities of military jurisdiction in maintaining discipline, combat readiness, and command authority.[75] This enables a rapid response to behaviors inconsistent with applicable norms.[76] Punishing a soldier for a violation of service rules without initiating criminal proceedings allows not only for saving time and resources, but also for avoiding the negative impact of the case on the morale of the entire service.[77] In this context, however, attention must be drawn to negative practices, including the tendency to initiate routine, often unjustified proceedings.[78] Consequently, unreflective reliance on non-judicial measures weakens the role of the military judiciary and thereby its guarantee functions.[79] This type of situation creates serious risks because minimizing the level of legal liability creates room for arbitrary actions caused by the lack of legal constraints among both superiors and subordinates.[80]

Non-judicial legal response measures undoubtedly influence the character and effectiveness of the military justice system.[81] A soldier, aware of the inevitable consequences of their actions, is guided by caution and responsibility in the course of service.[82] In this way, the non-judicial response mechanism supports the development of a legal culture in the armed forces.[83] However, if the application of non-judicial measures proceeds in an inconsistent or arbitrary manner, it undermines soldiers' trust in the military justice system, generating a sense of injustice on their part.[84] The key in such a situation becomes maintaining balance during the intervention.[85] The use of a non-judicial measure will be an adequate action provided it proceeds in an organized, controlled manner, respecting the basic principles of the rule of law.[86] In the context of the evolution of international law and human rights standards, the military justice system must adapt to the growing pressure to

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73 Jasiński, *supra* note 15.
74 GUYON ET AL., *supra* note 16.
75 WOŁPIUK, *supra* note 18.
76 MAJ, *supra* note 2.
77 TOKARSKI, *supra* note 36.
78 Bell, *supra* note 55.
79 Kos, *supra* note 43.
80 Safjan, *supra* note 36.
81 GUYON ET AL., *supra* note 16.
82 Jasiński, *supra* note 15.
83 Konaszczuk & Tokarski, *supra* note 5.
84 Andreu-Guzmán, *supra* note 17.
85 Summers, *supra* note 31.
86 MAMAK, *supra* note 4.

ensure full protection of a soldier's rights, including within non-judicial legal procedures.[87] The European Court of Human Rights has repeatedly indicated that disciplinary penalties in the military cannot violate basic procedural guarantees.[88] This obliges national legislatures to reform disciplinary systems towards greater transparency by ensuring judicial review of practices conducted in this regard.[89]

II. THE ADMINISTRATION OF MILITARY JUSTICE IN THE POLISH ARMED FORCES BASED ON THE SYSTEM OF NON-JUDICIAL MEASURES OF LEGAL REACTION

A. Origins and Development of the System

The system of non-judicial legal response began to take shape in Poland in the Middle Ages as a result of the ongoing socio-political transformation.[90] This process involved both the centralization of power following feudal fragmentation and the development of a parliamentary monarchy.[91] In historiographical terms, the beginning of both of these processes coincides with the reign of Casimir the Great (1333–1370).[92] During his rule, the concept of *Corona Regni Poloniae* gained systemic rank, manifesting the

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87 Andreu-Guzmán, *supra* note 17.

88 Engel and Others v. Netherlands, App. No. 5100/71 (June 8, 1976), https://hudoc.echr.coe.int/eng?i=001-57479; Axen v. Germany, App. No. 8273/78 (Dec. 8, 1983), https://hudoc.echr.coe.int/eng?i=001-57426; Demicoli v. Malta, App. No. 13057/87 (Aug. 27, 1991), https://hudoc.echr.coe.int/eng?i=001-57682; W.R. v. Austria, App. No. 26602/95 (Dec. 21, 1999), https://hudoc.echr.coe.int/eng?i=001-58570; Szal v. Poland, App. No. 41285/02 (May 18, 2010), https://hudoc.echr.coe.int/eng?i=001-214197; Mikolajova v. Slovakia, App. No. 4479/03 (Jan. 18, 2011), https://hudoc.echr.coe.int/eng?i=001-102842.

89 WASILEWSKI, *supra* note 72, at 15–46; *see also* Katarzyna Dudka & Magdalena Mościcka-Podstawka, *Sądowa Kontrola Orzeczeń Dyscyplinarnych Dotyczących Służb Mundurowych* [*Judicial Review of Disciplinary Decisions Concerning Uniformed Services*], *in* POSTĘPOWANIE ODWOŁAWCZE W SPRAWACH DYSCYPLINARNYCH W SŁUŻBACH MUNDUROWYCH [APPEAL PROCEEDINGS IN DISCIPLINARY MATTERS IN UNIFORMED SERVICES] 65–67 (Wiesław Kozielewicz, Piotr Jóźwiak & Krzysztof Opaliński eds., Wydawnictwo Szkoły Policji w Pile 2016).

90 JULIUSZ BARDACH, DZIEJE SEJMU POLSKIEGO [ANNALS OF THE POLISH SEJM] (Wydawnictwo Sejmowe 2011); Juliusz Bardach, *Historia Sejmu Polskiego* [*History of the Polish Sejm*], *in* 1 HISTORIA SEJMU POLSKIEGO. DO SCHYŁKU SZLACHECKIEJ RZECZYPOSPOLITEJ [HISTORY OF THE POLISH SEJM. UNTIL THE DECLINE OF THE NOBLES' REPUBLIC] (Jerzy Michalski ed., Państwowe Wydawnictwa Naukowe 1984).

91 BARDACH, *supra* note 90; JULIUSZ BARDACH, BOGUSŁAW LEŚNODORSKI & MICHAŁ PIETRZAK, HISTORIA USTROJU I PRAWA POLSKIEGO [HISTORY OF THE POLISH SYSTEM AND LAW] (Warsaw: LexisNexis, 5th ed. 2005).

92 ZDZISŁAW KACZMARCZYK, POLSKA CZASÓW KAZIMIERZA WIELKIEGO [POLAND IN THE TIMES OF CASIMIR THE GREAT] (Kraków: Państwowe Wydawnictwo Naukowe 1964); JAN BASZKIEWICZ, ODNOWIENIE KRÓLESTWA POLSKIEGO 1295-1320 [RESTORATION OF THE KINGDOM OF POLAND 1295-1320] (Wydawnictwo Poznańskie 2008).

idea of the state as an entity separate from the monarch.[93] The alienation of the king's person and the binding of his office by laws highlighted the axis of relations in the then estate-based society.[94] Thus, it became accepted to distinguish knightly law (of the nobility) as the law of persons capable of performing military service (*ius militare*).[95]

At the turn of the 14th and 15th centuries, Polish military law consisted of a collection of numerous acts regulated by both general sources of law and specific military legislation.[96] Acts of military legislation were issued by military commanders, including starostas general, rotmistrz (captains), and particularly hetmans such as Jan Tarnowski,[97] Florian Zebrzydowski,[98] and Jan Zamoyski.[99] The establishment of the office of the hetman as a person replacing the king in the sphere of supremacy over the army concentrated a significant scope of legislative competence in his hands.[100] However, this did not lead to the elimination of royal prerogatives, especially the king's law-making role based on issuing royal edicts.[101] In the period of the First Polish Republic, royal edicts constituted a distinct source of military law.[102] One of the first edicts regulating discipline in a military camp was the ordinance of King Sigismund I the Old of 1509, issued for the pospolite ruszenie (*levée en*

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93 Jan Dąbrowski, Korona Królestwa Polskiego w XIV wieku. Studium z dziejów rozwoju polskiej monarchii stanowej [The Crown of the Kingdom of Poland in the 14th Century. A Study of the Development of the Polish Estates Monarchy] (Wrocław–Kraków: Zakład im Ossolińskich, 1st ed. 1956).

94 Włodzimierz Kaczorowski, *Kanclerz Jan Sariusz Zamoyski w Świetle Relacji Nuncjusza Claudia Rangoniego z 1604* [*Chancellor Jan Sariusz Zamoyski in the Light of the Report of Nuncio Claudia Rangoni from 1604*], 12 OPOLSKIE STUDIA ADMINISTRACYJNO-PRAWNE 4 (2014); BARDACH, *supra* note 90.

95 KAROL ŁOPATECKI, "DISCIPLINA MILITARIS" W WOJSKACH RZECZYPOSPOLITEJ DO POŁOWY XVII WIEKU ["DISCIPLINA MILITARIS" IN THE COMMONWEALTH ARMIES UNTIL THE MID-17TH CENTURY] (Instytut Badań nad Dziedzictwem Kulturowym Europy 2012); Marek Plewczyński, *Naczelne Dowództwo Armii Koronnej w Latach* 1501–1572 [*The High Command of the Crown Army in the Years 1501–1572*], 34 STUDIA I MATERIAŁY DO HISTORII WOJSKOWOŚCI 43 (1992).

96 BARDACH, *supra* note 90.

97 He held the bulawa of the Grand Crown Hetman in the years 1527–1533, 1539–1546, 1547–1551, 1554–1555, and 1557–1559. *See* JAN TARNAWSKI, CONSILIUM RATIONIS BELLICAE 43 (Wydawnictwo Biblioteki Polskiej 1858).

98 Florian Zebrzydowski, Grand Crown Hetman in the years 1552–1562. *See* Plewczyński, *supra* note 95, at 55.

99 Jan Sariusz Zamoyski served as Grand Crown Hetman in the years 1581–1605. He was the first Grand Crown Hetman appointed for life, holding this office until his death on June 3, 1605. Simultaneously, from 1578, he was the Grand Crown Chancellor. *See* Kaczorowski, *supra* note 94, at 41–60.

100 PRZEMYSŁAW GAWRON, HETMAN KORONNY W SYSTEMIE USTROJOWYM RZECZYPOSPOLITEJ W LATACH 1581–1646 [THE CROWN HETMAN IN THE SYSTEM OF GOVERNMENT OF THE COMMONWEALTH IN THE YEARS 1581–1646] (Neriton 2010).

101 BARDACH, *supra* note 90.

102 STANISŁAW KUTRZEBA, POLSKIE USTAWY I ARTYKUŁY WOJSKOWE OD XV DO XVIII WIEKU [POLISH MILITARY LAWS AND ARTICLES FROM THE 15TH TO THE 18TH CENTURY] (Polska Akademia Umiejętności 1937).

masse).[103] In 1521, royal legislation defined the rules of conduct for mercenary and enlisted soldiers, while 13 years later, the first attempts at codifying soldierly law appeared in Lithuania.[104]

In the early modern Polish-Lithuanian Commonwealth, the vast majority of aspects of the army's functioning were subject to parliamentary regulations.[105] The Polish state became a parliamentary monarchy during the reign of the Jagiellonian dynasty (1386–1572).[106] In the Polish parliament, the king's systemic position was dominant, resembling in many respects the English construct of *the King in Parliament*.[107] The parliamentary system granted political rights to the knighthood-nobility, guaranteeing their real participation in the exercise of power.[108] In 1493, the Polish parliament was composed of three estates: the Chamber of Deputies (composed of deputies—representatives of the nobility as a whole), the Senate (the former Royal Council), and the King.[109] The *Nihil Novi* constitution of 1505 prohibited the King from issuing any new laws without the express consent of the Deputies and Senators.[110] In the first half of the 15th century, the nobility thus obtained, among other things, the right to consent to the levying of troops, the imposition of new taxes, and the holding of higher dignities and offices.[111] Equally significant was the increase in the nobility's influence on the army's actions, including through laws enacted with their participation.[112] By virtue of the Act of the Union of Lublin, concluded in 1569, these solutions were transposed into the system of the Polish-Lithuanian Commonwealth.[113]

The parliament of the Polish-Lithuanian Commonwealth addressed the issue of military law several times, beginning with the reign of Stefan Batory (1576–1586).[114] In 1609, the "Hetman's Articles of War" were adopted, constituting a form of para-codification of military law in the Crown.[115] In the Grand Duchy of Lithuania, a similar act titled "Military Articles" was

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103 *Id.*
104 *Id.*
105 BARDACH, *supra* note 90.
106 PAWEŁ JASIENICA, 1 POLSKA JAGIELLONÓW [POLAND OF THE JAGIELLONIAN DYNASTY] (Warsaw: Państwowy Instytut Wydawniczy, 3d ed. 1967).
107 BARDACH, *supra* note 90, at 43; Bardach, *supra* note 90, at 57.
108 BARDACH, *supra* note 90; HENRYK WISNER, WŁADYSŁAW IV WAZA (2d ed., Zakład Narodowy im. Ossolińskich 2009).
109 Bardach, *supra* note 90.
110 BARDACH, *supra* note 90.
111 BARDACH, LEŚNODORSKI & PIETRZAK, *supra* note 91.
112 Plewczyński, *supra* note 95.
113 PAWEŁ JASIENICA, RZECZPOSPOLITA OBOJGA NARODÓW. CZ. 1, SREBRNY WIEK, [THE POLISH-LITHUANIAN COMMONWEALTH. PART 1, THE SILVER AGE] (Warsaw: Czytelnik, 2d ed. 1999).
114 BARDACH, *supra* note 90.
115 ŁOPATECKI, *supra* note 95.

authored by Hetman Krzysztof II Radziwiłł.[116] As a result of military reforms carried out by King Władysław IV Vasa[117] (1632–1648) in the mid-1630s, codification of military law for artillery and foreign recruitment became necessary. In subsequent decades of the 17th century, the military law system of the Commonwealth remained largely unchanged.[118] Exceptions included the articles of Hetmans Stanisław Koniecpolski[119] and Michał Kazimierz Pac,[120] as well as edicts of King Augustus II the Strong.[121]

The collapse of Polish statehood at the end of the 18th century had a negative impact on the development of military law.[122] During this period, legal solutions from the partitioning powers, particularly Russia and Prussia, began to be applied in the ranks of the army.[123] This situation changed due to the alliance with the French Empire, which led to the creation of the *Duchy of Warsaw* in 1807.[124] The military law provisions applied to Polish formations at that time were published in Warsaw in 1809 as the so-called

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116 Stanislaw Kutrzeba, *Krzysztofa Radziwiłła Hetmana Wielkiego Litewskiego artykuły wojskowe z 1635 r.* [*Military Articles of 1635 by Krzysztof Radziwiłł, Grand Hetman of Lithuania*], 7 POLSKIE USTAWY I ARTYKUŁY WOJSKOWE OD XV DO XVIII WIEKU 234 (1937).

117 Władysław IV Vasa was the son of Sigismund III Vasa and Anne of Austria; King of Poland from 1632 to 1648, titular King of Sweden from 1632 to 1648, formally Tsar of Russia from 1610 to 1613, and titular Tsar until 1634. *See* WISNER, *supra* note 108, at 112.

118 *Id.*

119 ŁOPATECKI, *supra* note 95, at 281; GAWRON, *supra* note 100, at 318.

120 KONRAD BOBIATYŃSKI, MICHAŁ KAZIMIERZ PAC. WOJEWODA WILEŃSKI, HETMAN WIELKI LITEWSKI [MICHAŁ KAZIMIERZ PAC: VOIVODE OF VILNIUS, GRAND HETMAN OF LITHUANIA] 287–88 (Neriton 2008) (describing Pac's 1673 military articles supplementing Radziwiłł's 1635 regulations).

121 Króla Augusta II artykuły wojskowe [Military Articles of King Augustus II] (Feb. 22, 1698), *reprinted by* POLSKIE USTAWY I ARTYKUŁY WOJSKOWE OD XV DO XVIII WIEKU [POLISH MILITARY LAWS AND ARTICLES FROM THE FIFTEENTH TO THE EIGHTEENTH CENTURY] 292–97 (Stanisław Kutrzeba ed., Polska Akademia Umiejętności 1937) (detailing regulations governing the entirety of military service and life for the Commonwealth's foreign-contingent troops).

122 PAWEŁ JASIENICA, RZECZPOSPOLITA OBOJGA NARODÓW. CZ. 2, CALAMITATIS REGNUM [THE POLISH-LITHUANIAN COMMONWEALTH. PART 2, CALAMITATIS REGNUM] (Warsaw: Czytelnik, 2d ed. 1999); Artur Jagnieża, *Kamienie milowe reform polskiej obronności – od Konstytucji 3 maja do czasów współczesnych* [*Milestones of Polish Defense Reforms – From the Constitution of May 3 to the Present Day*], *in* OBRONA OJCZYZNY. KOMENTARZ [HOMELAND DEFENSE. COMMENTARY] (Hubert Królikowski ed., Wolters Kluwer Polska 2023).

123 TOMASZ SIEMIRADZKI, POROZBIOROWE DZIEJE POLSKI CZYLI JAK NARÓD POLSKI WALCZYŁ ZA OJCZYZNĘ [THE POST-PARTITION HISTORY OF POLAND, OR HOW THE POLISH NATION FOUGHT FOR ITS HOMELAND] (Cieszyn: Polskie Towarzystwo Wydawnicze 1910); MARIAN KUKIEL, DZIEJE POLSKI POROZBIOROWE 1795-1921 [POST-PARTITION HISTORY OF POLAND 1795-1921] (London: B. Świderski, 2d ed. 1968); PAUL W. SCHROEDER, THE TRANSFORMATION OF EUROPEAN POLITICS 1763 –1848 (Oxford, 1994).

124 The Duchy of Warsaw was established on July 7, 1807, by virtue of the Treaties of Tilsit, signed by Napoleon Bonaparte and Tsar Alexander I of Russia. Created from the lands of the second and third Prussian partitions (mainly Greater Poland and Mazovia), it became a Polish state dependent on the French Empire, ruled by Frederick Augustus I (1807–1815). For more details, see JULIUSZ WILLAUME, FRYDERYK AUGUST JAKO KSIĄŻĘ WARSZAWSKI (1807–1815) [FREDERICK AUGUSTUS AS DUKE OF WARSAW (1807–1815)] 281 (Oświęcim: Wydawnictwo Napoleon V ed., 2013).

Military Articles.[125] These provisions were modeled on the French military criminal code of 1796.[126] Their regulations excluded disciplinary matters from the jurisdiction of military courts.[127] Disciplinary cases were entrusted to military commanders as persons authorized both to enforce and to enact disciplinary law.[128] Napoleon's defeat altered the conditions of Polish military service.[129] In 1815, pursuant to the decisions of the Congress of Vienna, the Kingdom of Poland (commonly known as the Congress Kingdom) was established.[130]

Until Poland regained independence, the Kingdom was the scene of numerous national uprisings.[131] In each of them, insurgent authorities proclaimed regulations governing the principles of service and military discipline.[132] For example, during the November Uprising, it was *the Criminal Code of the National Guard*, and during the January Uprising, the *Military Criminal Code*.[133] These regulations featured a consistent systematization dividing acts violating the law into crimes and offenses against discipline (disciplinary offenses).[134]

During the Second Polish Republic (1918–1939), criminal-disciplinary liability in the Polish army was regulated by provisions of an episodic nature.[135] The first attempt to develop a Polish codification was undertaken

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125 LEON ANTONI SUŁEK, WALKA Z DEZERCJĄ W WOJSKU KSIĘSTWA WARSZAWSKIEGO [COMBAT AGAINST DESERTITION IN THE ARMY OF THE DUCHY OF WARSAW] (LV Roczniki Humanistyczne, iss. 2, 2007); LESZEK KANIA, SĄDY WOJSKOWE W ARMII KSIĘSTWA WARSZAWSKIEGO (PRAWO, STRUKTURY, PRAKTYKA) [MILITARY COURTS IN THE ARMY OF THE DUCHY OF WARSAW (LAW, STRUCTURES, PRACTICE)] 15–47 (VII Studia Lubuskie 2011).

126 MARIAN KUKIEL, 1 DZIEJE WOJSKA POLSKIEGO W DOBIE NAPOLEOŃSKIEJ 1795-1815 [1 HISTORY OF THE POLISH ARMY IN THE NAPOLEONIC ERA 1795-1815] (Warsaw: W. Łazarski 1918).

127 WŁADYSŁAW SOBOCIŃSKI, HISTORIA USTROJU I PRAWA KSIĘSTWA WARSZAWSKIEGO [HISTORY OF THE SYSTEM AND LAW OF THE DUCHY OF WARSAW] (Toruń: Roczniki Towarzystwa Naukowego w Toruniu 1964).

128 KUKIEL, *supra* note 126.

129 WILLAUME, *supra* note 124.

130 *Id.*

131 JAN FRIEDBERG, II ZARYS HISTORII POLSKI (1795-1914) [II OUTLINE OF THE HISTORY OF POLAND (1795-1914)] (F. Mildner & Sons, Herbal Hill, London 1944); MARIUSZ KULIK, ARMIA ROSYJSKA W KRÓLESTWIE POLSKIM W LATACH 1815-1856 [RUSSIAN ARMY IN THE KINGDOM OF POLAND IN THE YEARS 1815-1856] (Warsaw: Instytut Historii Pan 2019).

132 KUKIEL, *supra* note 123.

133 *Cf.* MARIUSZ CZYŻAK, PRAWO KARNE WOJSKOWE OKRESU KRÓLESTWA POLSKIEGO (1815-1831) [MILITARY CRIMINAL LAW OF THE KINGDOM OF POLAND PERIOD (1815-1831)] (Wojskowy Przegląd Prawniczy, no. 3, 2012).

134 MARIUSZ CZYŻAK, POLSKIE KODYFIKACJE WOJSKOWE OKRESU ROZBIORÓW. WYBÓR ŹRÓDEŁ [POLISH MILITARY CODIFICATIONS OF THE PARTITION PERIOD. SELECTED SOURCES] (Warsaw: Wydawnictwo Prym 2016).

135 *See generally* TOMASZ SZCZYGIEŁ, WOJSKOWE POSTĘPOWANIE KARNE W II RZECZYPOSPOLITEJ (1918–1939) [MILITARY CRIMINAL PROCEEDINGS IN THE SECOND POLISH REPUBLIC (1918–1939)] (Wydawnictwo Uniwersytetu Śląskiego 2017).

in 1919, resulting in the so-called *Articles of War of the Polish Army*.[136] These provisions were modeled on German solutions replicating the content of the German military criminal law of 1917.[137] Pursuant to the Act of July 29, 1919, on Provisional Military Judiciary,[138] it was decided to repeal them, recognizing Austrian military criminal procedural provisions and German substantive military criminal provisions as applicable in the Polish Army.[139] The decision to adapt foreign solutions in military criminal law did not automatically entail the adoption of disciplinary regulations.[140] Provisions on military discipline were issued on February 17, 1920.[141] These provisions defined the scope of liability, stating that disciplinary liability was a consequence of committing an offense not subject to criminal liability. By the regulation of August 22, 1925,[142] these provisions were amended. The new provisions authorized military commanders to apply disciplinary penalties to subordinates.[143] Punishment was possible when the perpetrator committed an offense against discipline, military order, and service regulations.[144] In the late 1930s, the authorities planned a reform of the disciplinary provisions in force in the Polish Army.[145] To this end, a decree of August 7, 1939, was issued specifying disciplinary provisions for the armed forces.[146] The decree's provisions expanded the concept of disciplinary offense, distinguishing between acts harming military discipline:

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136 GENERAL STAFF, SECTION VII (SCIENTIFIC), DYSCYPLINARNE PRZEPISY KARNE DLA ARMII POLSKIEJ. ZATWIERDZONE TYMCZASOWO ROZKAZEM SZTABU GENERALNEGO L. 48 Z DNIA 9 GRUDNIA 1918 ROKU [DISCIPLINARY PENAL REGULATIONS FOR THE POLISH ARMY, APPROVED TEMPORARILY BY GENERAL STAFF ORDER NO. 48 OF DEC. 9, 1918] 47 (Księgarnia Wojskowa 1919).

137 WOJCIECH SKRZYPEK, PRAWO KARNE WOJSKOWE OD ODZYSKANIA NIEPODLEGŁOŚCI DO WYBUCHU II WOJNY ŚWIATOWEJ – W KONTEKŚCIE ROZWIĄZAŃ LEGISLACYJNYCH WYBRANYCH PAŃSTW EUROPEJSKICH I ICH WPŁYWU NA KSZTAŁTOWANIE SIĘ PRAWA RODZIMEGO [MILITARY CRIMINAL LAW FROM THE REGAINING OF INDEPENDENCE TO THE OUTBREAK OF WORLD WAR II – IN THE CONTEXT OF LEGISLATIVE SOLUTIONS OF SELECTED EUROPEAN STATES AND THEIR INFLUENCE ON THE FORMATION OF NATIONAL LAW] 1 (3 Studia Bezpieczeństwa Narodowego 2012).

138 Ustawa z dnia 29 lipca 1919 r. o tymczasowym sądownictwie wojskowym [Act of July 29, 1919, on Temporary Military Judiciary] (Dz.Pr.P.P. 1919 nr. 65 poz. 389).

139 *Id.*

140 SZCZYGIEŁ, *supra* note 135.

141 Ministry of Military Affairs, Military Orders Journal No. 4, Przepisy dyscyplinarne dla wojska [Disciplinary Regulations for the Army] 36 (1920) (on file with Centralna Biblioteka Wojskowa), https://zbrojownia.cbw.wp.mil.pl/Content/1944/SZ_93054_INW_64325_H.pdf.

142 Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 sierpnia 1925 r. [Regulation of the President of the Republic of Aug. 22, 1925] (Dz.U. 1925 nr 91 poz. 638) (regarding military disciplinary regulations).

143 *Id.*

144 *Id.*

145 SZCZYGIEŁ, *supra* note 135.

146 Dekret Prezydenta Rzeczypospolitej z dnia 7 sierpnia 1939 r. o przepisach dyscyplinarnych dla Sił Zbrojnych [Decree of the President of the Republic of August 7, 1939, Disciplinary Regulations for the Armed Forces] (Dz.U. 1939 nr 75 poz. 504).

"disciplinary offenses" (if they violated military discipline and order or military orders and regulations) and "disciplinary crimes".[147]

The outbreak of World War II, due to aggression against Poland in 1939 by Germany and the USSR, radically changed the situation of soldiers performing military service.[148] In Polish military units, the following applied in the area of military discipline:

- pre-war Polish regulations (from 1925 and 1939);
- provisions issued by commanders of the Polish Armed Forces in the West;
- regulations of the underground army, including those of the Home Army High Command,[149] the Peasants' Battalions, and the National Armed Forces;[150]
- Soviet regulations (including Red Army Regulation No. 356 of October 12, 1940, and Soviet disciplinary provisions from 1941 and 1942).

The end of the war, preceded by the conferences in Tehran (November 28–December 1, 1943), Yalta (February 4–11, 1945), and Potsdam (July 17–August 2, 1945), shaped a new geopolitical situation.[151] In Central and Eastern Europe, the Warsaw Pact bloc was formed in 1955,[152] opposing the Allied coalition states. The Polish Army during the so-called "People's Poland period" (1944–1989) was obliged to fulfill alliance declarations toward the USSR armed forces.[153] This fact necessitated the redefinition of service regulations by departing from solutions typical of Western models.[154] The disciplinary provisions of the people's Polish army thus became regime provisions.[155] Their primary task focused on maintaining discipline,

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147 JERZY MUSZYŃSKI, PRZESTĘPSTWO WOJSKOWE A PRZEWINIENIE DYSCYPLINARNE W POLSKIM PRAWIE WOJSKOWYM [MILITARY OFFENCE AND DISCIPLINARY OFFENCE IN POLISH MILITARY LAW] (Warsaw: Wydawnictwo Ministerstwa Obrony Narodowej 1960).

148 *See* Wilk Leszek, *Ustawowa rehabilitacja osób represjonowanych za działalność na rzecz niepodległości Polski* [*Statutory Rehabilitation of Persons Repressed for Activities for Poland's Independence*], 19 PROBLEMY PRAWA KARNEGO [PROBLEMS OF CRIMINAL LAW] 63 (1993).

149 Jasiński, *supra* note 15, at 313.

150 Wilk, *supra* note 148, at 63–75.

151 LAURIEN CRUMP, THE WARSAW PACT RECONSIDERED: INTERNATIONAL RELATIONS IN EASTERN EUROPE, 1955–1969, (Routledge 2015).

152 Warsaw Pact, May 14, 1955, 219 U.N.T.S. 3; *see also* CRUMP, *supra* note 151; JOAN BIRD & JOHN BIRD, CIA ANALYSIS OF THE WARSAW PACT FORCES: THE IMPORTANCE OF CLANDESTINE REPORTING 4–6 (2013).

153 Konaszczuk & Tokarski, *supra* note 5.

154 CRUMP, *supra* note 151.

155 TOKARSKI, *supra* note 36.

guaranteeing strategic-level operational cooperation.[156] To this end, the decree of June 26, 1945, on military discipline[157] already adopted the priority of criminal prosecution over disciplinary prosecution as a principle.[158] The Act of January 18, 1951, on the liability of soldiers for disciplinary offenses and violations of soldierly honor and dignity[159] took a somewhat different form. Unlike the 1945 decree, it was a framework act containing only basic assumptions related to soldiers' disciplinary liability.[160] Detailed issues were specified in the service regulations[161] (i.e., the Disciplinary Regulations of the Armed Forces of the Polish People's Republic of 1959), whose status was characterized by a significant drawback: it was de facto duplicated law whose legitimacy rested on the authority of power. For these reasons, the 1951 Act proved unacceptable to decision-making bodies in the armed forces of the Polish People's Republic.[162] Due to the need to regulate the matters covered by the regulations in question, the Sejm of the PRL adopted a new Act on Military Discipline in 1963.[163] The constructions contained therein faithfully replicated the preceding regulations from the early period of People's Poland.[164] The Act on Military Discipline of 1963, together with the Act of 1967 on the Universal Defense Duty of the Polish People's Republic,[165] remained in force with modifications until the end of the systemic transformations initiated in Poland in 1989.

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156 Konaszczuk & Tokarski, *supra* note 5.

157 Dekret Krajowej Rady Narodowej z dnia 26 czerwca 1945 r. o odpowiedzialności za przewinienia dyscyplinarne, karach oraz postępowaniu przed przełożonymi [Decree of the State National Council of June 26, 1945, Regulating Liability for Disciplinary Misconduct and Penalties] (Dz.U. 1945 nr 37 poz. 219) (entered into force on October 26, 1945.).

158 This resulted from the wording of Article 52 § 1 of the decree, which indicated that if circumstances justifying the referral of the case to criminal proceedings came to light, the imposed disciplinary penalty had to be revoked.

159 Ustawa z dnia 18 stycznia 1951 r. o odpowiedzialności żołnierzy za przewinienia dyscyplinarne i za naruszenia honoru i godności żołnierza [Act of Jan. 18, 1951, on the Liability of Soldiers for Disciplinary Misconduct and for Violations of Soldierly Honor and Dignity] (Dz.U. 1951 nr 6 poz. 55).

160 *Id.*

161 WYDAWNICTWO MINISTRY OF NAT'L DEFENSE, REGULAMIN DYSCYPLINARNY SIŁ ZBROJNYCH POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ [DISCIPLINARY REGULATIONS OF THE ARMED FORCES OF THE POLISH PEOPLE'S REPUBLIC] (1959) (issued by the Ministry of National Defense, constituted a set of regulations defining rules of conduct, internal military life, and disciplinary penalties. This document was in force during the early Cold War period, emphasizing strict subordination and discipline).

162 TOKARSKI, *supra* note 36.

163 Ustawa z dnia 21 maja 1963 r. o dyscyplinie wojskowej oraz odpowiedzialności żołnierzy za przewinienia dyscyplinarne i za naruszenia honoru i godności żołnierza [Act of May 21, 1963, on Military Discipline and the Liability of Soldiers for Disciplinary Misconduct and for Violations of Soldierly Honor and Dignity] (Dz.U. 1963 nr 22 poz. 114).

164 TOKARSKI, *supra* note 36.

165 Ustawa z dnia 21 listopada 1967 r. o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej [Act of Nov. 21, 1967, on the Universal Duty to Defend the Polish People's Republic] (Dz.U. 1967 nr 44 poz. 220) (constituted a legal act regulating issues of defense, military service, and preparations for war).

B. Legal Model

1. General remarks

The system of non-judicial legal response measures in the Polish Armed Forces is currently governed by the Act of March 11, 2022, on the Defense of the Homeland[166] (hereinafter: the Homeland Defense Act, or HDA), which replaced the Act of October 9, 2009, on Military Discipline[167] (hereinafter: the Military Discipline Act, or MDA). The regulations concerning discipline in the Armed Forces of the Republic of Poland are, editorially, a fragment of the HDA (Chapter XIII entitled "Military Discipline").[168] This adopted solution represents a departure from the principle of regulating matters of military discipline in a separate statute of legislative rank.[169] Attention should also be drawn to the fact that previous disciplinary acts addressed both disciplinary punishment and the recognition of soldiers' exemplary conduct in a combined manner.[170] The 2022 Act, however, addresses the issue of distinctions for military personnel in a strikingly disproportionate way.[171]

Another shortcoming is the delegation in Article 422 of the HDA to the Minister of National Defense to issue regulations in the form of ordinances, without any specific scope defined therein.[172] Given the placement of this provision, it may be presumed that the content of such regulations could be arbitrary and thus extend beyond disciplinary matters to other areas as well.[173] This suggests the potential for legal conflict with provisions of

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166 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense] (Dz.U. 2022 nr 190 poz. 655) (The Act was passed by the Sejm of the Republic of Poland, 9th term.).

167 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline] (Dz.U. 2009 nr 190 poz. 1474).

168 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense].

169 *Cf.* the content of earlier considerations.

170 *Cf.* Ustawa z dnia 4 września 1997 r. o dyscyplinie wojskowej [Act of Sep. 4, 1997, on Military Discipline] (Dz.U. 1997 nr 141 poz. 944); Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline]. It should be added that the justification of both bills justified the reasons for such a solution; see, respectively: Sejm of the 2nd term, Sejm Paper No. 1742 (2009), https://orka.sejm.gov.pl/Druki6ka.nsf/0/699F0E05D6DA503DC125756F00580074/$file/1742.pdf and Sejm of the 6th term, Sejm Paper No. 1666 (2009), https://orka.sejm.gov.pl/Druki6ka.nsf/0/5600E44D16CCA5EFC125755A005559C0/$file/1666.pdf.

171 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense] devotes 75 editorial units to the issues of disciplinary responsibility (section XIII "Military discipline"), while only 6 to the issues of soldiers' distinctions (section XIII "Military discipline" Chapter 5 "Distinction of soldiers and military subunits, units and institutions").

172 *Id*. at art. 422 states: The Minister of National Defence issues military regulations by order. Due to its very limited content, this solution contrasts significantly, for example, with the provisions of Article 429 of the Act.

173 Jerzy Paśnik, *Kilka refleksji w sprawie przebiegu postępowania legislacyjnego ustawy o obronie ojczyzny* [*Some Reflections on the Legislative Proceedings of the Act on the Defense of the Homeland*], 2 PRZEGLĄD PRAWA PUBLICZNEGO [PUB. L. REV.] 7 (2023).

statutory rank.[174] The explanatory memorandum to the HDA bill does not provide reasons for adopting such a solution.[175] The drafters' reference to the realization of the idea of codifying military law as an end in itself cannot be accepted as justification for this particular approach.[176] Given its scope and structure, the Homeland Defense Act meets the minimum conditions for consolidating the subject matter of military law.[177]

At the same time, considering that the armed forces are an extremely hierarchical structure based on the principle of obedience,[178] the adopted approach, viewed in light of the explanatory memorandum's statements about seeking to align the principles of disciplinary liability for soldiers with solutions applicable to officers of other uniformed services, demonstrates that the change was an ill-considered action.[179] It was a measure effectively aimed at devaluing the previous manner of regulating the rank of military discipline in the armed forces.[180] Confirmation of the validity of this thesis is the fact that the Homeland Defense Act, unlike the previously enumerated acts, is the first statute that does not contain a definition of the term "military discipline."[181] The Act merely sets out, in a general and descriptive manner, the criteria for breaching discipline, suggesting the adoption in the HDA of a solution referring to the construction of a descriptive definition.[182]

2. The essence of disciplinary liability under the 2009 Act and the 2022 Act

Article 3 of the MDA defined military discipline (para. 1) as a soldier's compliance with legal provisions concerning military service, as well as other legal provisions providing for disciplinary liability under the principles

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174 Monika Florczak-Wątor, *Komentarz do Art.* 7 [*Commentary to Article 7*], *in* KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ. KOMENTARZ [THE CONSTITUTION OF THE REPUBLIC OF POLAND. COMMENTARY] (Piotr Tuleja ed., 2d ed. 2023).

175 *Cf.* Draft Act on the Defense of the Homeland, Sejm Print No. 2052, at 1 (2022), https://orka.sejm.gov.pl/Druki9ka.nsf/0/A410A2DB9443F201C12587F70034F71A/%24File/2052.pdf.

176 KITLER WALDEMAR, WPROWADZENIE IN PRAWO WOJSKOWE [INTRODUCTION IN MILITARY LAW] 25–71 (Waldemar Kitler, Dariusz Nowak & Marta Stepnowska eds., Wolters Kluwer Polska 2017).

177 S*ee* Paśnik, *supra* note 173, at 7–18.

178 Tuleja, *supra* note 4, at 109.

179 Paśnik, *supra* note 173.

180 Radoniewicz, *supra* note 3, at 301–332.

181 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense] (Dz.U. 2022 nr. 190 poz. 655); KONRAD WNOROWSKI, POSTĘPOWANIE W SPRAWACH O PRZESTĘPSTWA ŚCIGANE NA WNIOSEK DOWÓDCY JEDNOSTKI WOJSKOWEJ W KONTEKŚCIE ODPOWIEDZIALNOŚCI DYSCYPLINARNEJ ŻOŁNIERZY [PROCEEDINGS IN CASES OF CRIMES PROSECUTED AT THE REQUEST OF THE COMMANDER OF A MILITARY UNIT IN THE CONTEXT OF DISCIPLINARY RESPONSIBILITY OF SOLDIERS] 33 (Wojskowy Przegląd Prawniczy, no. 1, 2025).

182 *See* Andrzej Malinowski, *Definicje legalne w prawie polskim* [*Legal definitions in Polish law*], 44 STUDIA IURIDICA 355 (2005); SŁAWOMIRA WRONKOWSKA & MACIEJ ZIELIŃSKI, KOMENTARZ DO ZASAD TECHNIKI PRAWODAWCZEJ Z DNIA 20 CZERWCA 2002 R. [COMMENTARY ON THE PRINCIPLES OF LEGISLATIVE TECHNIQUE OF 20 JUNE 2002] (Warsaw: Wydawnictwo Sejmowe 2021).

and procedures specified in the Act; and the execution of orders and decisions issued in service matters.[183] A disciplinary offense, under Article 3 of the MDA, was considered a breach of this discipline resulting from an act or omission that did not constitute a crime or misdemeanor, or a fiscal crime or misdemeanor.[184]

The 2022 Act departed from this interpretive approach, as it contains no so-called legal definition of the terms "military discipline" or "disciplinary offense."[185] The Act defines the criteria for breaching discipline in the Polish military only in a descriptive and general manner, which must be regarded as a consequence of the concept indicated in the explanatory memorandum of standardizing disciplinary matters in the armed forces, with solutions applied in other uniformed services.[186] This solution is reflected in Article 353 of the Act on Active Duty, which defines how the rules of military discipline may be violated.[187] Pursuant to the cited provision, it is culpable conduct by a soldier that harms the good name or interests of the armed forces, as well as exceeding authority or failing to fulfill duties contained in legal provisions, including orders and instructions of authorized superiors,[188] with an exemplary scope listed in paragraph 2 of Article 353 of the HDA.[189] In this sense, it must be accepted that the norm of Article 353 of the HDA creates a complex scope of disciplinary liability, comprising violations of law (*liability stricto sensu)* as well as acts harming the good name or interests of the armed forces (*liability sensu largo*).[190]

With regard to disciplinary *liability stricto sensu*, it should be noted that the wording of Article 353 does not clarify whether it refers to all provisions of applicable law or only those related to the performance of military service.[191] The semantic understanding of the phrase "including," used at the beginning of the last sentence, supports the first alternative.[192] However, the nature of the acts enumerated in paragraph 2, which are directly related to the performance of military service, argues against it.[193]

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183 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline] (Dz.U. 2009 nr 190 poz. 1474).

184 *Id.*; Radoniewicz, *supra* note 3, at 301–302.

185 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense].

186 Draft Act on the Defense of the Homeland, Sejm Print No. 2052, at 1 (2022), https://orka.sejm.gov.pl/Druki9ka.nsf/0/A410A2DB9443F201C12587F70034F71A/%24File/2052.pdf.

187 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense].

188 *Id.*

189 *Id.*

190 *Cf.* Krempeć, *supra* note 7, at *Komentarz do Art. 353* [*Commentary to Art. 353*]; Radoniewicz, *supra* note 3, at 301–332.

191 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense].

192 *Including*, 1 SŁOWNIK JĘZYKA POLSKIEGO [DICTIONARY OF THE POLISH LANGUAGE], A–K (Mieczysław Szymczak ed., Warsaw: PWN 1978).

193 Radoniewicz, *supra* note 3, at 301–332.

Comparison of the content of Article 353 of the HDA with corresponding regulations in earlier military discipline acts does not facilitate resolution of the resulting doubts. Previous provisions limited the objective scope of disciplinary liability to legal provisions relating to military service.[194] The cited arguments, therefore, support the view that Article 353 (1) of the HDA refers to all provisions of generally applicable law.

A separate interpretation of Article 353 of the HDA is required with respect to a soldier's disciplinary liability for conduct harming the good name or interests of the armed forces, as well as its relation to principles of ethics, honor, and dignity of professional soldiers. Pursuant to Article 345 of the HDA, these are to be contained in the future Code of Honor of the Professional Soldier of the Polish Army, to be adopted by representative bodies of professional soldiers.[195] From a semantic point of view, a good reputation is synonymous with dignity and applies to both individuals and legal entities.[196] In civil law doctrine, the two concepts are interpreted differently.[197] With respect to legal entities (legal persons and organizational units), dignity is regarded as a synonym for "reputation", constituting an external manifestation of the concept of honor, i.e., opinion about an institution.[198]

In a specific case, this means that socially disapproved conduct by a soldier may give rise to an adverse opinion about the armed forces, providing grounds for an assessment that violates soldierly honor and dignity values protected by the provisions of the Code of Honor of the Professional Soldier of the Polish Army.[199] This raises a legitimate question whether the concept

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194 Dekret Krajowej Rady Narodowej z dnia 26 czerwca 1945 r. [Decree of the State National Council of June 26, 1945] (Dz.U. 1945 nr 37 poz. 1474) (asserting that it did not establish such limitations).

195 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense]; Krempeć, *supra* note 7, at *Komentarz do Art. 345* [*Commentary to Art. 345*].

196 SŁOWNIK JĘZYKA POLSKIEGO [DICTIONARY OF THE POLISH LANGUAGE], *supra* note 20.

197 Józef Frąckowiak, *Dobra osobiste osoby prawnej* [*Personal rights of a legal person*], *in* 1 SYSTEM PRAWA PRYWATNEGO PRAWO CYWILNE – CZĘŚĆ OGÓLNA [PRIVATE LAW SYSTEM: CIVIL LAW – GENERAL PART] (Marek Safjan et al. eds., 2012).

198 Janusz Koczanowski, *Ochrona dóbr osobistych osób prawnych* [*Protection of Personal Rights of Legal Persons*], 139 KRAKÓW: AKADEMIA EKONOMICZNA W KRAKOWIE [KRAKÓW: UNIV. ECON.] 171 (1999); Frąckowiak, *supra* note 197, at 1193; Krzysztof Zygrzak, *Ochrona dobrego imienia (renomy) jednostek samorządu terytorialnego na gruncie dóbr osobistych – uwagi na kanwie orzecznictwa* [*Protection of the Good Name (Reputation) of Local Government Units on the Basis of Personal Rights – Remarks Based on Case Law*], 10 SAMORZĄD TERYTORIALNY [LOC. GOV'T] 72 (2019) (citing the literature and case law cited therein).

199 Kodeks Honorowy Żołnierza Zawodowego Wojska Polskiego, wprowadzony przed wejściem w życie ustawy z dnia 11 marca 2022 r. o obronie Ojczyzny – załącznik do obwieszczenia Ministra Obrony Narodowej z dnia 3 marca 2008 r. w sprawie ogłoszenia Kodeksu Honorowego Żołnierza Zawodowego Wojska Polskiego [Code of Honor of the Professional Soldier of the Polish Army introduced before the enactment of the 2022 Act on the Defense of the Homeland – annex to the announcement of the Minister of National Defense of March 3, 2008, on the publication of the Code of

of soldierly honor has changed over the last two decades to such an extent that repealing the existing Code and creating a new regulation in its place has become necessary.[200] A further question concerns the scope of the new regulation, including its completeness and the degree to which it binds the holder of disciplinary authority.[201]

With regard to the issue of the interests of the armed forces, it should first be noted that this concept has not been defined in current legislation, despite frequent references to it. Military court jurisprudence has almost exclusively identified components of this interest, including the soldier's disposability,[202] the performance of military service by soldiers demonstrating commitment to assigned tasks,[203] or the cessation of evasion of military service and reporting to the unit as a circumstance influencing the severity of punishment.[204]

Attempting to concretize the essence of the concept of "interests of the armed forces" based on linguistic interpretation rules, it is impossible not to notice its composite character. The term "interest" is a synonym for benefit,[205] while "armed forces" refers to the entire military of a given state.[206] However, the conclusion drawn on this basis, that the concept means the benefit obtained by the military as a specific state structure, can be regarded as correct only in part. While the military is indeed a component of the state apparatus, such an institution has a purely auxiliary character. The military serves to ensure the external security of the state,[207] thus realizing one aspect of an important state interest. In this sense, the interests of the armed forces should be understood as the entirety of factual circumstances, both material and immaterial, serving the realization of constitutional-rank tasks as specified by the legislator in the prescribed form.[208]

Honor of the Professional Soldier of the Polish Army] (Dziennik Urzędowy Ministerstwa Obrony Narodowej [Official Journal of the Ministry of National Defense] 2008 nr 5 poz. 55).

200 *Cf.* Radoniewicz, *supra* note 3, at 301–332.

201 Monika Nowikowska, *Komentarz do Art. 345* [*Commentary To Art. 345*], *in* USTAWA O OBRONIE OJCZYZNY. KOMENTARZ [THE HOMELAND DEFENSE ACT. COMMENTARY] (Mirosław Karpiuk & Justyna Kurek-Sobieraj eds., C.H.Beck, 1st ed. 2025).

202 Case II SA/Wa 2109/20, Judgment of 24 Mar., 2021 of the Provincial Administrative Court in Warsaw, CBOSA.

203 Case II SA/Wa 1647/16, Judgment of 26 Jan., 2017 of the Provincial Administrative Court in Warsaw, CBOSA; Case I OSK 1583/18, Judgment of 13 Feb. 2019 of the Supreme Administrative Court (Naczelny Sąd Administracyjny) [NSA], CBOSA (Pol.).

204 Case Rw 92/78, Judgment of 16 Mar., 1978 of the Polish Supreme Court, OSNKW 1978 Nr. 4-5, poz. 45.

205 SŁOWNIK JĘZYKA POLSKIEGO [DICTIONARY OF THE POLISH LANGUAGE], *supra* note 20.

206 *Id.*

207 WOŁPIUK, *supra* note 18, at 12; Kamiński, *supra* note 67, at.41-71.

208 This conclusion follows from the content of KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 26 ¶ 1 (Dz.U. 1997 nr 78 poz. 483) (imposing on

3. Sanctions and protective measures

A comparison of the sanctions provided for in the 2009 Act and the 2022 Act indicates full identity of regulation with respect to disciplinary measures.[209] As regards disciplinary penalties, both acts consistently list only reprimand, pecuniary penalty, and warning of unsuitability for the occupied position.[210] With respect to the remaining penalties, the 2022 Act adopted:

> - the penalty of removal of a soldier from the occupied position, but at the same time requires assignment to another position, meaning a solution not previously provided for by the regulations;[211]
> - application of penalties of warning of incomplete suitability for service and removal from service only to soldiers performing voluntary military service, and not in all forms.[212]

Moreover, Article 374 (1) of the Act on Homeland Defense eliminated from the catalog of disciplinary measures contained in Article 36 (1) of the Act on Military Discipline the preventive measure in the form of suspending a soldier from official duties.[213]

4. Parties to Disciplinary Proceedings

a. The Accused

A comparison of the provisions of the Homeland Defense Act (HDA) and the Military Discipline Act (MDA) regarding the definition of parties to

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the armed forces the duty to protect, among other things, the security of the state); *see also* Judgment of the Supreme Administrative Court of Apr. 23, 2020, file ref. II OSK 1795/19, CBOSA.

209 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], art. 33 (1) (Dz.U. 2009 nr 190 poz. 1474); Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], art. 373 (1) (Dz.U. 2022 poz. 655).

210 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], at art. 24 (1) points 1–4; Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], at art. 362 (1) points 1–4.

211 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], at art. 362 (1) point 5; Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], at art. 24 (1) point 5.

212 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], at art. 362 (1) points 6–7; Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], at art. 24 (1) points 6–7.

213 *Cf.* Filip Radoniewicz, *Komentarz do Art. 374* [*Commentary To Art. 374*], *in* USTAWA O OBRONIE OJCZYZNY. KOMENTARZ [THE HOMELAND DEFENSE ACT. COMMENTARY] (Mirosław Karpiuk & Justyna Kurek-Sobieraj eds., C.H.Beck, 1st ed. 2025).

disciplinary proceedings suggests their uniformity only in a superficial way.[214] This convergence is purely terminological; although in both acts the "accused" is indeed a soldier — that is, a person accused of committing a disciplinary offense — in reality, this term encompasses a different scope of subjects depending on the legal basis adopted.[215]

Under the Military Discipline Act, the accused could be a soldier serving in, or performing, active military service within the meaning of the provisions of the Act on the Universal Duty to Defend the Republic of Poland[216] and the Act on the Military Service of Professional Soldiers.[217]

In the case of the Homeland Defense Act, the term "soldier" refers to a person performing active military service within the meaning of that specific act. This means that a person accused of a military discipline violation may be a soldier serving in various forms, including, in particular: basic military service, territorial military service, service in the active reserve on days of duty, service during passive reserve exercises, professional military service, as well as service in the event of mobilization and during wartime.[218]

Beyond the aforementioned scope, the Homeland Defense Act has maintained the rules of disciplinary liability for soldiers holding specific positions or practicing specialized professions that were in force under the Military Discipline Act.[219] This applies specifically to military judges, prosecutors, and military assessors of the organizational units of the prosecution service.[220] The rules governing their liability are determined by

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214 PRZEMYSŁAW SZUSTAKIEWICZ, STOSUNKI SŁUŻBOWE FUNKCJONARIUSZY SŁUŻB MUNDUROWYCH I ŻOŁNIERZY ZAWODOWYCH JAKO SPRAWA ADMINISTRACYJNA [THE PROFESSIONAL RELATIONS OF UNIFORMED SERVICES OFFICERS AND PROFESSIONAL SOLDIERS AS AN ADMINISTRATIVE MATTER] (Warsaw: Difin 2012); SŁAWOMIR CHOMONCIK & JAKUB KOSOWSKI, WYBRANE ZAGADNIENIA ODPOWIEDZIALNOŚCI DYSCYPLINARNEJ ŻOŁNIERZY [SELECTED ISSUES OF DISCIPLINARY RESPONSIBILITY OF SOLDIERS] 24–40 (Wojskowy Przegląd Prawniczy, no. 4, 2019); JAKUB KOSOWSKI, ODPOWIEDZIALNOŚĆ DYSCYPLINARNA ŻOŁNIERZY W ŚWIETLE USTAWY O OBRONIE OJCZYZNY – ZAGADNIENIA WYBRANE [DISCIPLINARY RESPONSIBILITY OF SOLDIERS IN THE LIGHT OF THE ACT ABOUT DEFENDING THE HOMELAND - SELECTED ISSUES] (281 Wiedza Obronna, no. 4, 2022).

215 MIECZYSŁAW BIENIEK, OPINIA DO PROJEKTU USTAWY O OBRONIE OJCZYZNY (DRUK SEJMOWY NR 2052) [OPINION ON THE DRAFT ACT ON THE DEFENSE OF THE HOMELAND (PARLIAMENTARY DOCUMENT NO. 2052)] 35 (Warsaw: Kancelaria Senatu, 2022); Radoniewicz, *supra* note 213, at *Komentarz do Art. 348* [*Commentary To Art. 348*].

216 Ustawa z dnia 21 listopada 1967 r. o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej [Act of Nov. 21, 1967, on the Universal Duty to Defend the Polish People's Republic] (Dz.U. 1967 nr 44 poz. 220).

217 Ustawa z dnia 11 września 2003 r. o służbie wojskowej żołnierzy zawodowych [Act of Sep. 11, 2003, on The Military Service of Professional Soldiers] (Dz.U. 2003 nr 179 poz. 1750).

218 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], art. 2 point 39, art. 130 (1) (Dz.U. 2022 nr 190 poz. 655).

219 Krempeć, *supra* note 7, at *Komentarz do Art. 349-350* [*Commentary To Art. 349-350*].

220 *Cf.* Mirosław Karpiuk & Małgorzata Czuryk, *Instytucja asystenta sędziego w sądach wojskowych po nowelizacji z dnia 28 marca 2012 r. ustawy Prawo o ustroju sądów wojskowych* [*The Institution*

separate acts through statutory reference.[221] A matching solution has also been adopted for soldiers who commit a disciplinary offense involving a violation of regulations on practicing a professional specialty that requires mandatory membership in a professional association (self-governing body).[222] The Homeland Defense Act also refers to the provisions of separate acts regarding the disciplinary liability of soldiers for violations of regulations in force at military universities, including acts impairing the dignity of a student or doctoral candidate, as well as violations of academic teacher duties or the dignity of the teaching profession.

The presented list of participants in disciplinary proceedings demonstrates that the HDA operates with the same terminology, albeit with varying degrees of concretization.[223] The broadest in scope is the notion of "soldier," which in the glossary of the HDA is further specified by indicating that it refers exclusively to a soldier in active service.[224] Within this category, however, additional subcategories of subjects are distinguished, characterized by references to separate regulations.[225] These have a categorizing dimension in relation to soldiers performing service in units, as they pertain to persons exercising professions of public trust, such as judges and prosecutors or academic teachers.[226] Particular attention should be drawn to the fact that regulations concerning soldiers performing professions of public trust are formulated in vague terms.[227] The provisions governing their performance define issues of liability both as disciplinary and professional in nature.[228]

In attempting to identify which professions of public trust are involved, the starting point should be the list of military specialties set forth in the

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of a Judge's Assistant in Military Courts after the Amendment of 28 March 2012 to the Act on the System of Military Courts], *in* WYMIAR SPRAWIEDLIWOŚCI W SIŁACH ZBROJNYCH [JUSTICE IN THE ARMED FORCES] (Katarzyna Dunaj & Marta Stepnowska eds., Warsaw: Dom Wydawniczy Elipsa 2014); ANNA KORZENIEWSKA-LASOTA, ZRÓŻNICOWANIE POSTĘPOWAŃ DYSCYPLINARNYCH [VARIETY OF DISCIPLINARY PROCEEDINGS] 218–23 (Przegląd Prawa Publicznego, no. 7/8, 2014); Mirosław Karpiuk, *Przesłanki odpowiedzialności dyscyplinarnej sędziów sądów wojskowych* [*Prerequisites for Disciplinary Liability of Military Court Judges*], XXVI STUDIA IURIDICA LUBLINENSIA 25 (2017).

221 WIESŁAW KOZIELEWICZ, ODPOWIEDZIALNOŚĆ DYSCYPLINARNA SĘDZIÓW, PROKURATORÓW, ADWOKATÓW, RADCÓW PRAWNYCH I NOTARIUSZY [DISCIPLINARY LIABILITY OF JUDGES, PROSECUTORS, ATTORNEYS, LEGAL ADVISERS AND NOTARIES] (Wolters Kluwer Polska 2023).

222 Radoniewicz, *supra* note 213, at *Komentarz do Art. 350* [*Commentary to Art. 350*].

223 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense].

224 *Id.* at art. 2 point 39.

225 *Id.* at arts. 349–350.

226 *See, e.g.*, Kamiński, *supra* note 67; Radoniewicz, *supra* note 213, at *Komentarz do Art. 350* [*Commentary to Art. 350*].

227 Radoniewicz, *supra* note 3, at 301–332.

228 *Cf.* KOZIELEWICZ, *supra* note 221.

executive regulation to the HDA.[229] The content of this act indicates that within the military engineering personnel corps, there exists the specialty of road and bridge construction, performed by civil engineers who bear separate disciplinary liability, inter alia, for breaching applicable regulations in the performance of professional duties and for violating principles of professional ethics.[230] The medical corps includes soldiers who are physicians and dentists,[231] veterinarians,[232] pharmacists,[233] nurses,[234] psychologists,[235] laboratory diagnosticians,[236] and physiotherapists.[237] The justice and legal service corps, apart from military judges and military prosecutors, includes legal counsels.[238] In addition, the justice corps encompasses judicial assistants as well as prosecutorial trainees and assessors, who are not subject to separate disciplinary liability.[239]

Analyzing the issue of dedicated liability for specific personnel corps of the armed forces, it should be noted that neither the provisions of the HDA nor the cited regulation resolve whether the referenced recourse to separate disciplinary regulations is exhaustive or merely subsidiary in character.[240] The linguistic interpretation of Article 349 of the HDA concerning the basis

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229 Rozporządzenie Ministra Obrony Narodowej z dnia 7 października 2025 r. w sprawie korpusów osobowych, grup osobowych i specjalności wojskowych [Regulation of the Minister of National Defence of 7 Oct. 2025 on Personnel Corps, Personnel Groups and Military Specialties] (Dz.U. 2025 poz. 1401). This act repeats the solutions contained in the Regulation of the Minister of National Defense of Aug. 4, 2021, regarding Personnel Corps, Personnel Groups, and Military Specialties (Dz.U. 2021 poz. 1609), which was in force until the enactment of the Act on Homeland Defense.

230 Act of Dec. 15, 2000, on Professional Self-Governments of Architects and Construction Engineers, at arts. 41, 45 (Dz.U. 2001 nr 5 poz. 42).

231 Act of Dec. 2, 2009, on Medical Chambers, art. 53 (Dz.U. 2009 nr 219 poz. 1708).

232 Act of Dec. 21, 1990, on the Profession of Veterinary Surgeon and Veterinary Chambers, art. 45 (Dz.U. 1991 nr 8 poz. 27).

233 Act of Apr. 19, 1991, on Pharmaceutical Chambers, art. 45 (Dz.U. 1991 nr 41 poz. 179).

234 Act of July 1, 2011, on the Self-Government of Nurses and Midwives, art. 36 ¶ 1 (Dz.U. 2011 nr 174 poz. 1038).

235 Act of June 8, 2001, on the Profession of Psychologist and the Professional Self-Government of Psychologists, art. 20 (Dz.U. 2001 nr 73 poz. 763).

236 Act of Sep. 15, 2022, on Laboratory Medicine, art. 100 ¶ 1 (Dz. U. 2022 poz. 2280).

237 Act of Sep. 25, 2015, on the Profession of Physiotherapist, art. 85 ¶ 1 (Dz.U. 2015 poz. 1994).

238 Act of July 6, 1982, on Attorneys-at-Law, art. 64 (Dz.U. 1985 nr 19 poz. 145).

239 Załącznik do rozporządzenia Ministra Obrony Narodowej z dnia 7 października 2025 r. w sprawie korpusów osobowych, grup osobowych i specjalności wojskowych [Annex to the Regulation of the Minister of National Defence of 7 Oct. 2025 on Personnel Corps, Personnel Groups and Military Specialties] 40 (Dz.U. 2025 poz. 1401), https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20250001401/O/D20251401.pdf; Ustawa z dnia 21 siespnia 1997 – Prawo o ustroju sadow wojskowych [Act of Aug. 21, 1997 – Law on the Organization of Military Courts] (Dz.U. 1997 nr 117 poz. 753).

240 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense] (Dz. U. 2022 poz. 655); Rozporządzenie Ministra Obrony Narodowej z dnia 7 października 2025 r. w sprawie korpusów osobowych, grup osobowych i specjalności wojskowych [Regulation of the Minister of National Defence of 7 Oct. 2025, on Personnel Corps, Personnel Groups and Military Specialties].

of disciplinary liability of military judges and military prosecutors supports the first interpretive version.[241] However, deriving a general conclusion from the cited provision raises significant doubts because first, Article 137 § 2 point 6 of the Law on the Organization of Military Courts[242] lists breach of military discipline and principles of soldierly honor and dignity as one of the grounds for disciplinary liability of a military judge. The fact that the previously enumerated grounds for such liability concern breaches of strictly professional duties appears to indicate that the disciplinary provisions of the HDA are subsidiary in relation to the regulations of the Law on the Organization of Military Courts and should therefore be applied accordingly.[243] Second, the regulations contained in the Law on the Prosecution Service[244] do not differentiate the status of military prosecutors who are professional soldiers from other prosecutors; nor do they contain references to disciplinary liability issues for this group of prosecutors. Given the statutorily permitted possibility of their handling cases unrelated to the activities of the armed forces, the conclusion arises that the Law on the Prosecution Service constitutes the exclusive basis for their disciplinary liability.[245] Finally, disciplinary provisions for soldiers performing professions of public trust provide for liability also for conduct having no connection whatsoever with the performance of military service, e.g., failure to pay membership dues to the self-governing body of legal counsels.[246]

In a manner analogous to soldiers performing professions of public trust, including military judges and military prosecutors, the MDA and the HDA regulated the concurrence of disciplinary liability for breach of military discipline by soldiers who are students, doctoral candidates at military universities, and academic teachers.[247] In the matter discussed, two general issues cannot be overlooked. Number one, disciplinary liability of students and doctoral candidates concerns exclusively studies at a military university supervised by the Minister of National Defense, i.e., the War Studies University, Military University of Technology, Naval Academy, Land

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241 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], at art. 349(1)–(2).

242 Ustawa z dnia 21 siespnia 1997 – Prawo o ustroju sadow wojskowych [Act of Aug. 21, 1997 – Law on the Organization of Military Courts].

243 *Id.*

244 Ustawa z dnia 28 stycznia 2016 – Prawo o prokuraturze [Act of Jan. 28, 2016 – Law on the Prosecutor's Office] (Dz.U. 2016 poz. 177).

245 Aleksander Herzog, *Odpowiedzialność dyscyplinarna prokuratorów – co trzeba zmienić?* [*Disciplinary liability of prosecutors – what needs to be changed?],* 12 PROKURATURA I PRAWO 8 (2013).

246 Ustawa z dnia 6 lipca 1982 r. o radcach prawnych [Act of July 6, 1982, on Attorneys-at-Law] (Dz.U. 1985 nr 19 poz. 145).

247 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], art. 19 points 2–3 (Dz.U. 2009 nr 190 poz. 1474); Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], art. 350 (Dz.U. 2022 poz. 655).

Forces Military Academy, and Air Force University. This means the exclusion of disciplinary liability for breach of military discipline by a soldier who is a student or doctoral candidate at any non-military higher education institution for acts consisting in breach of regulations in force at such institution or infringement upon the dignity of the status of student or doctoral candidate.[248]

Number two, the defined circle of academic teachers does not include certified librarians or certified scientific documentation and information staff. Furthermore, it should be noted that higher education laws additionally introduced disciplinary liability of an academic teacher for acts constituting offenses under other provisions, thus additional liability of such a teacher as a soldier.[249]

This regulation raises doubts as to whether it violates the principle of *ne bis in idem* and, moreover, whether it is justified to bear disciplinary liability under the HDA in a situation where the given offense has no connection whatsoever with military service.[250]

5. Holders of Disciplinary Authority

Article 3 point 11 of the MDA defined the term "superior" as a person authorized to distinguish, initiate disciplinary proceedings, issue decisions in the first instance, and perform other actions in disciplinary matters.[251] Article 4 of the MDA listed the following categories of such superiors:[252]

> a) the Minister of National Defense and the Supreme Commander of the Armed Forces, in relation to all soldiers;
> b) the Secretary of State, Undersecretary of State, and Director General in the Ministry of National Defense, in relation to soldiers subordinated to them;
> c) the Chief of the General Staff of the Polish Army, in relation to soldiers subordinated to him;

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248 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline, at art. 19 points 2–3; Ustawa z dnia 20 lipca 2018 r. – Prawo o szkolnictwie wyższym i nauce [Act of July 20, 2018 – Law on Higher Education and Science] (Dz.U. 2018 poz. 1668); Radoniewicz, *supra* note 213, at *Komentarz do Art. 350* [*Commentary to Art. 350*].

249 Ustawa z dnia 27 lipca 2005 r. – Prawo o szkolnictwie wyższym [Act of July 27, 2005 – Law on Higher Education], art. 139 (Dz.U. 2005 nr 164 poz. 1365); Ustawa z dnia 20 lipca 2018 r. – Prawo o szkolnictwie wyższym i nauce [Act of July 20, 2018 – Law on Higher Education and Science], at art. 275 (3).

250 Chomicki, *supra* note 27.

251 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], at art. 3 point 11.

252 *Id.* at art. 4.

> d) a superior holding a service position classified at the rank of corporal (seaman) or higher, in relation to soldiers subordinated to him;
> e) the head of a civilian institution, in relation to soldiers subordinated to him;[253]
> f) other authorized superiors holding service positions specified in the regulation referred to in Art. 56 MDA, in relation to soldiers subordinated to them;[254]
> g) a person entrusted temporarily or in substitution with the performance of duties in a given service position.

Article 358 of the HDA limited disciplinary authority to initiating and deciding disciplinary cases, and included among its holders:[255]

> a) The Minister of National Defense, competent in relation to the Chief of the General Staff of the Polish Army, commanders of the branches and types of the Armed Forces, the Commander-in-Chief of the Military Police, Heads of the Military Counterintelligence and Military Intelligence Services, the Commander of the Warsaw Garrison, the Head of the Armed Forces Support Inspectorate, and the head of a national institution to which a soldier has been seconded;
> b) The Supreme Commander of the Armed Forces, the Chief of the General Staff of the Polish Army, commanders of the branches and types of the Armed Forces, commanders of the types of forces, the Commander-in-Chief of the Military Police, the Commander of the Warsaw Garrison, the Head of the Armed Forces Support Inspectorate, Heads of the Military

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253 According to Article 4 point 5 and Art. 22 para. 1 of the now-repealed Act of September 11, 2003, on the Military Service of Professional Soldiers, these institutions were the Military Counterintelligence Service and Military Intelligence Service, the Chancellery of the President of the Republic of Poland, the Chancellery of the Prime Minister, the National Security Bureau, the Internal Security Agency, the Foreign Intelligence Agency, and military prosecutor's office units. *Id.* at art. 4 point 5; Ustawa z dnia 11 września 2003 r. o służbie wojskowej żołnierzy zawodowych [Act of Sep. 11, 2003, on The Military Service of Professional Soldiers], art. 22 ¶ 1 (Dz.U. 2003 nr 179 poz. 1750).

254 The interpretation of the cited provision of the Act on Military Discipline, concerning the principles and procedure for professional soldiers undertaking additional employment or business activity, indicates that this superior was the commander of the military unit subordinate to the superior of such a soldier. *Cf.* Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], at art. 56 (3b).

255 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], art. 358 (Dz.U. 2022 poz. 655).

> Counterintelligence and Military Intelligence Services, the head of a national institution to which a soldier has been seconded, the commander of a Polish military contingent or an ad hoc task force formed to perform tasks in the country and abroad, and the commander of a military unit, in relation to soldiers permanently or temporarily subordinated to them.

In a manner analogous to the MDA, the provisions of the HDA granted disciplinary powers to persons temporarily or in substitution performing the duties of the above-specified entities.[256] The comparison clearly shows that, despite the formal expansion, compared to the MDA, of the circle of disciplinary superiors (e.g., the Commander of the Warsaw Garrison or the commander of a military contingent), there has in fact been a restriction from the level of military unit commander upward.[257] Such a solution undermines the credibility of the statements contained in the explanatory memorandum to the HDA bill concerning the legislator's intention to accelerate responses to identified manifestations of breaches of discipline in the Armed Forces of the Republic of Poland.[258]

III. ISSUES REGARDING THE APPLICATION OF MEASURES

A. General remarks

Analysis of the issues surrounding the application of non-judicial legal response measures in the Polish Armed Forces requires situating them within a broader theoretical-legal context.[259] Using the organizational-subjective criterion, particularly the character of the adjudicating bodies, disciplinary systems can be classified into two homologous models: the judicial model and the non-judicial model.[260] In the judicial model, jurisdiction over

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256 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], at art. 4(2); Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at art. 358 (5), (8).

257 Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], at art. 4; Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at art. 358.

258 Draft Act on the Defense of the Homeland, Sejm Print No. 2052, at 1 (2022), https://orka.sejm.gov.pl/Druki9ka.nsf/0/A410A2DB9443F201C12587F70034F71A/%24File/2052.pdf.

259 *See* generally GIĘTKOWSKI, *supra* note 2; AGATA ZIÓŁKOWSKA, 1. ODPOWIEDZIALNOŚĆ KARNA A ODPOWIEDZIALNOŚĆ DYSCYPLINARNA W WOJSKU ZAGADNIENIA MATERIALNOPRAWNE [1. CRIMINAL LIABILITY AND DISCIPLINARY LIABILITY IN THE ARMY - SUBSTANTIVE LAW ISSUES] (Warsaw: EuroPrawo, 2020).

260 PAWEŁ SKUCZYŃSKI, NIEREPRESYJNE FUNKCJE ODPOWIEDZIALNOŚCI DYSCYPLINARNEJ A MODEL POSTĘPOWANIA W SPRAWACH DYSCYPLINARNYCH [NON-REPRESSIVE FUNCTIONS OF

disciplinary cases is reserved for courts in the constitutional sense, whereas the non-judicial model adopts a solution in which disciplinary authority rests with bodies other than courts, most often with entities hierarchically positioned within the service structure.[261]

Contemporary non-judicial legal response systems rarely rely on solutions that fully replicate theoretical assumptions. Instead, they involve heterogeneous (hybrid) models in which administrative and judicial competences intersect at various stages of the proceedings.[262] Under the Homeland Defense Act (HDA), a model of disciplinary liability has been introduced in the Polish Armed Forces that exhibits the dominance of the non-judicial element, referred to in doctrine as the service-based or cabinet model.[263] The foundation of this system is the institution of the disciplinary superior.[264] In normative terms, the competence to apply legal response measures is vested in an authority operating within the hierarchically structured framework of the Armed Forces of the Republic of Poland.[265] This applies to both first and second instance superiors and encompasses all levels of command, from the basic level to the central level.[266] Exceptions to this rule, providing for adjudication by bodies situated outside the direct chain of command, yet still operating within the Ministry of National Defense, merely confirm the dominance of the adopted solution.[267]

De lege lata, both phases of military disciplinary proceedings have an interiorizing character.[268] This demonstrates the concentration of procedural competences in the hands of the disciplinary superior, who both conducts the preliminary inquiry and issues the decision within the framework of service subordination.[269] It means that the case of the accused soldier is considered exclusively within the formation in which he performs service.[270] From the

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DISCIPLINARY RESPONSIBILITY AND THE MODEL OF CONDUCT IN DISCIPLINARY CASES] 35–53 (Przegląd Legislacyjny, nr 3, 2007); KORZENIEWSKA-LASOTA, *supra* note 220, at 218–223.

261 CEZARY KULESZA, EWOLUCJA WYBRANYCH PROCEDUR DYSCYPLINARNYCH W ŚWIETLE KONWENCYJNEGO I KONSTYTUCYJNEGO STANDARDU PRAWA DO SĄDU [THE EVOLUTION OF SELECTED DISCIPLINARY PROCEDURES IN THE LIGHT OF THE CONVENTIONAL AND CONSTITUTIONAL STANDARD OF THE RIGHT TO A COURT] (22 Białostockie Studia Prawnicze, no. 1, 2017); AMBOS, *supra* note 1.

262 AMBOS, *supra* note 1.

263 GIĘTKOWSKI, *supra* note 2; Ceglarska-Piłat, *supra* note 30.

264 MAJ, *supra* note 2; KOSOWSKI, *supra* note 214.

265 Krempeć, *supra* note 7, at *Komentarz do Art. 358* [*Commentary to Art. 358*].

266 *Cf*. Beata Baran-Wesołowska, *Problemy postępowania odwoławczego w sprawach dyscyplinarnych onierzy w perspektywie ustawy o obronie Ojczyzny* [*The Appeal Proceedings in Disciplinary Proceedings against Soldiers in the Perspective of the Act on the Defense of the Homeland*], XXIII ANNALS ADMIN. & L. 199 (2023).

267 GIĘTKOWSKI, *supra* note 2; Karpiuk, *supra* note 220.

268 Radoniewicz, *supra* note 3, at 301–332; Sołowiej, *supra* note 3, at 133–144.

269 KOSOWSKI, *supra* note 214.

270 Baran-Wesołowska, *supra* note 266.

perspective of the axiology of military law, this solution carries dual consequences. On one hand, it ensures the speed of proceedings; on the other, it generates risks, particularly with regard to the objectivity and impartiality of the decisions taken.[271]

Focusing attention on the interiorizing phase of disciplinary proceedings is justified not only by its character but also by the accompanying legal arguments.[272] It cannot be denied that it is precisely at this stage that the legal qualification of the act occurs, as well as the determination of the most adequate form of response to its commission.[273] It is here that both the strengths of the non-judicial response system (efficiency, flexibility, and the educational dimension of discipline) and its most serious shortcomings (risk of arbitrariness, lack of impartiality, and weakening of procedural guarantees) are most clearly revealed.[274] Each of these aspects are reflected in the powers of the disciplinary prosecutor, the body competent to conduct preliminary investigative actions, and whose legal position will be the subject of further discussion.[275]

B. The Disciplinary Prosecutor as a Body in Disciplinary Proceedings

The disciplinary prosecutor in disciplinary proceedings conducted against soldiers is a participant in those proceedings.[276] The prosecutor participates in the proceedings in the role assigned to him by the Homeland Defense Act.[277] The disciplinary prosecutor should be classified as a procedural body because he is an authority to whom the provisions entrust participation in disciplinary proceedings.[278] The prosecutor should be regarded as a cooperating body, as he coexists with the body conducting the disciplinary proceedings.[279] The 2022 Act deprived the disciplinary prosecutor of the status of a party to the disciplinary proceedings[280]. He has no right to appeal against a disciplinary decision issued by the disciplinary superior in the first instance.[281]

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271 Pfanner, *supra* note 1, at 293.

272 GIĘTKOWSKI, *supra* note 2.

273 BEATA BARAN, POSTĘPOWANIA DYSCYPLINARNE W SPRAWACH FUNKCJONARIUSZY FORMACJI POLICYJNYCH. MODELE I ZASADY [DISCIPLINARY PROCEEDINGS INVOLVING POLICE OFFICERS. MODELS AND PRINCIPLES] 21–35 (Wolters Kluwer Polska 2021).

274 Summers, *supra* note 31.

275 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence] (Dz.U. 2022 poz. 655).

276 MAJ, *supra* note 2.

277 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence].

278 GIĘTKOWSKI, *supra* note 2.

279 KOPER ET AL., *supra* note 40, at 174.

280 *Cf.* SZUSTAKIEWICZ, *supra* note 214.

281 Krempeć, *supra* note 7, at *Komentarz do Art. 386* [*Commentary to Art. 386*].

The disciplinary prosecutor is appointed by the disciplinary superior[282] from among professional soldiers subordinated to that superior. The same superior is authorized to remove the prosecutor from the function performed.[283] The legislator has not specified any requirements that the disciplinary prosecutor must meet beyond being a professional soldier holding the military rank of corporal (boatswain's mate) or higher.[284] The legislator has not introduced term limits for the function of disciplinary prosecutor. The 2022 Act does not specify the term for which the disciplinary superior appoints the disciplinary prosecutor. Consequently, it must be accepted that the prosecutor performs the function until removed. This regulation is fundamentally correct because the person performing the function of prosecutor, although no such statutory requirement exists, must meet certain conditions, as the tasks entrusted to him may entail far-reaching consequences for the soldier against whom proceedings are conducted.[285] It is therefore important that the disciplinary prosecutor possesses appropriate legal knowledge and represents the utmost moral values and sense of justice.[286]

Additional assets include life and professional experience.[287] The disciplinary prosecutor cannot therefore be a random person.[288] Thus, if the disciplinary prosecutor proves himself in the assigned role, performing it properly and conscientiously, it is justified to allow him to perform this function indefinitely.[289] It should nevertheless be noted that the function of a disciplinary prosecutor is not lifelong.[290] This does not mean, however, that the disciplinary prosecutor cannot be removed in the event of circumstances specified by law.[291] Mandatory grounds for removal of the disciplinary prosecutor include the following circumstances:

- occurrence of events constituting grounds for discharge from professional military service;
- imposition of a final disciplinary penalty on him;

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282 Radoniewicz, *supra* note 3, at 308.

283 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], art. 386 (2) (Dz.U. 2022 poz. 655).

284 *Id.* at art. 386 (3).

285 MAJ, *supra* note 2.

286 Summers, *supra* note 31.

287 MAJ, *supra* note 2.

288 *Id.*

289 Radoniewicz, *supra* note 3, at 308.

290 GIĘTKOWSKI, *supra* note 2.

291 *Id.*

- transfer to another unit where there is a different disciplinary superior.[292]

Furthermore, the disciplinary superior may remove the disciplinary prosecutor in other justified cases or upon the prosecutor's justified request.[293] Under current regulations, the disciplinary prosecutor therefore cannot renounce the function.[294] His removal requires positive consideration of his request by the disciplinary superior.[295] It should nevertheless be accepted that if the disciplinary prosecutor submits a request for removal from the function of disciplinary prosecutor, the disciplinary superior should grant consent.[296] The tasks performed by the prosecutor constitute an essential element of the entire disciplinary proceedings; thus, if they are performed by a person who does not wish to perform this function, there is a risk that they will be conducted improperly, unreliably, or only partially.[297] Removal of the disciplinary prosecutor upon his individual request will therefore prevent undesirable situations.[298]

The legislator, in Article 388 of the HDA, provided for mandatory exclusion of the disciplinary prosecutor from conducting a disciplinary case in situations where: the case concerns him; he is the spouse of the accused, his defender, or the injured party, or lives in cohabitation with one of these persons; he is a relative or in-law of the accused or the injured party in the direct line, or in the collateral line up to the degree of kinship between the children of siblings of the persons mentioned above, or is bound to one of these persons by adoption, guardianship, or curatorship; he was a witness to the event or was questioned as a witness in the case; a personal relationship exists between him and the accused or the injured party that may raise doubts as to the impartiality of the person conducting the proceedings; or he is a subordinate of the accused, his defender, or the injured party.[299]

The disciplinary prosecutor may be excluded from conducting a disciplinary case on discretionary grounds if there are justified reasons for doing so or if the accused submits a justified written request for his exclusion from participation in the case.[300] The decision on exclusion is made by the

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292 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], art. 387 (1) (Dz.U. 2022 poz. 655).

293 *Id.* at art. 387 (2).

294 *Id.*

295 *Id.*

296 *Cf.* MAJ, *supra* note 2; SZUSTAKIEWICZ, *supra* note 214.

297 MAJ, *supra* note 2.

298 *Id.*

299 Radoniewicz, *supra* note 213, at *Komentarz do Art. 388* [*Commentary to Art. 388*].

300 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at art. 388 (4).

disciplinary superior by way of resolution.[301] The disciplinary prosecutor is obliged in each case to examine ex officio whether circumstances exist that warrant his exclusion.[302] In the event of exclusion of a given disciplinary prosecutor from participation in the proceedings, the actions in the case are taken by another appointed prosecutor.[303] The solutions adopted in the 2022 Act allow both for the removal of the disciplinary prosecutor and for his exclusion from conducting a specific case, thereby constituting a guarantee of the rights of the accused.[304] They protect him against unreliable or biased proceedings in the case.[305] They prevent a situation in which the case of the accused would be handled by a disciplinary prosecutor connected to it in any way. It must therefore be recognized that the institution of exclusion of the disciplinary prosecutor serves to ensure impartial and objective performance of actions in disciplinary proceedings.[306] The provisions concerning exclusion of the prosecutor also apply to the disciplinary superior, since *de facto* and *de jure*, it is the latter who issues the decision in the case in question.

C. Powers of the Disciplinary Prosecutor in the Preliminary Inquiry Phase

The legislator, in Article 386 (1) of the HDA, indicated that disciplinary proceedings are conducted by the disciplinary prosecutor.[307] The manner of formulation adopted in the currently applicable 2022 Act, however, raises certain doubts.[308] Conducting disciplinary proceedings is reserved for the competence of the disciplinary superior.[309] It must therefore be agreed with the view that the legislator's statement constitutes a specific mental shortcut.[310] The disciplinary superior makes all necessary decisions regarding the disciplinary proceedings. In connection with these proceedings, he issues resolutions initiating or suspending them and also issues decisions resolving the case.[311] The position of the disciplinary prosecutor can, in a broad simplification, be compared to that of a prosecutor in criminal proceedings.[312]

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301 *Id.* at art. 388 (5).
302 *Id.* at art. 388 (3).
303 *Id.* at art. 389 (2).
304 Radoniewicz, *supra* note 213, at *Komentarz do Art. 388* [*Commentary to Art. 388*].
305 ZIÓŁKOWSKA, *supra* note 259.
306 Naczelny Sąd Administracyjny (NSA) [Supreme Administrative Court], Feb. 14, 2020, I OSK 1583/18, CBOSA (Pol.).
307 Krempeć, *supra* note 7, at *Komentarz do Art. 386* [*Commentary to Art. 386*].
308 KULESZA, *supra* note 261; BIENIEK, *supra* note 215, at 12; KOSOWSKI, *supra* note 214.
309 *Cf.* Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], arts. 386, 390 (2) point 9 (Dz.U. poz. 655).
310 Krempeć, *supra* note 7, at *Komentarz do Art. 386* [*Commentary to Art. 386*].
311 *Cf.* Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at arts. 380 (4)–(5), 384, 395, 400, 406.
312 GIĘTKOWSKI, *supra* note 2, at 34.

Analyzing the Homeland Defense Act, it should be noted that the tasks of the disciplinary prosecutor include:

> 1) Conducting preliminary investigative actions before initiating disciplinary proceedings;
> 2) Within disciplinary proceedings:
> a) conducting evidentiary proceedings, gathering evidence, questioning the accused, witnesses, and the injured party, conducting inspections, confrontations, presentations, and reconstructions of events or their fragments that are the subject of the case; considering or rejecting evidentiary motions submitted by the accused or his defender (if appointed); submitting to the disciplinary superior a motion to amend or supplement the charges; familiarizing the accused and his defender with the case file after clarification of all circumstances of the case;
> b) issuing a resolution closing the evidentiary proceedings and preparing a report on the conducted proceedings, containing a proposed decision;
> c) participating in the disciplinary report.[313]

The actions that the disciplinary prosecutor is authorized to perform are indicated in the 2022 Act by way of example and therefore do not constitute a closed catalog.[314] The task of the disciplinary prosecutor during the evidentiary proceedings is to clarify the essential circumstances of the case and to strive to collect complete evidentiary material.[315] In undertaking these tasks, the disciplinary prosecutor should be guided by principles of ethics and procedural economy.[316]

Actions taken by the prosecutor must be recorded in minutes, and their particular documentation must form part of the disciplinary case file.[317] The actions of the disciplinary prosecutor and his role in disciplinary proceedings against soldiers can be compared to the position of a prosecutor in criminal proceedings, while the actions of the disciplinary superior correspond to the

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313 *Cf.* Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at arts. 386 (1), 391.

314 *Cf. id.* at art. 370, 391.

315 MAJ, *supra* note 2; Radoniewicz, *supra* note 213, at *Komentarz do Art. 380* [*Commentary to Art. 380*].

316 Krempeć, *supra* note 7, at *Komentarz do Art. 391* [*Commentary to Art. 391*].

317 *Cf.* Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at art. 391 (4).

competencies of a court in criminal proceedings.[318] Within the limits defined by law, the disciplinary prosecutor is independent in his actions.[319] The prosecutor conducts evidentiary proceedings to the extent he deems appropriate and necessary for the proper determination of the factual state. He forms his conviction based on all evidence evaluated freely, taking into account the principles of correct reasoning and the indications of knowledge and life experience.[320] It is for the prosecutor to resolve factual and legal issues; in this respect he is subject only to the provisions of law.[321] He is also bound by final court judgments.[322]

After conducting the evidentiary proceedings, the disciplinary prosecutor familiarizes the accused or his defender (if appointed) with the case file.[323] He then issues a resolution closing the evidentiary proceedings and, within 7 days, prepares a report on the conducted proceedings, then transmits it together with the case file to the disciplinary superior.[324] The report should, among other things, indicate the act charged against the accused together with its legal qualification, a description of the established factual state, and conclusions regarding the disciplinary decision or discontinuation of proceedings, together with justification and indication of mitigating or aggravating circumstances.[325]

The report submitted by the disciplinary prosecutor to the superior can be regarded as the equivalent of the principal indictment.[326] The prosecutor's report has a status similar to that of an indictment submitted to the court by a prosecutor in criminal proceedings.[327] In a certain simplification, the formula of the report is close to the requirements that an indictment must meet.[328] It enables the body authorized to issue a decision on disciplinary liability to systematize and reconstruct the course of the event that is the subject of the charge.[329] The conclusions contained in the report, like those formulated in the principal indictment (i.e., the indictment), do not bind the

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318 *See generally* MAJ, *supra* note 2; GIĘTKOWSKI, *supra* note 2, at 34.

319 MAJ, *supra* note 2, at 98.

320 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at arts. 370 (2), 391.

321 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKEIJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 7 (Dz.U. 1997 nr 78 poz. 483).

322 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at arts. 370 (3), 391.

323 *See id.* at arts. 392, 398 (1).

324 *Id.* at art. 398 (6).

325 *Id.* at art. 398 (7).

326 *Id.* at arts. 398 (6), 400.

327 GIĘTKOWSKI, *supra* note 2, at 34.

328 MAJ, *supra* note 2.

329 GIĘTKOWSKI, *supra* note 2, at 34.

body issuing the decision.[330] They have a postulational character, although, unlike the prosecutor in an indictment the disciplinary prosecutor does not propose a specific penalty, which de facto differentiates the two types of submissions.[331]

Considering the potential possibility of eliminating the disciplinary prosecutor as a participant in disciplinary proceedings and transferring his competencies to the disciplinary superior, such a proposal should be regarded as ill-advised. Arguments against such a solution arise from the scope of competences assigned to each participant in the disciplinary proceedings.[332] Under the current legal state, two independent entities are obliged to familiarize themselves with the case of the accused, with the consequence that there is a fuller opportunity to examine and evaluate the accused's conduct.[333] This eliminates the likelihood of error in adjudicating disciplinary liability.[334] Furthermore, each participant in the proceedings, the disciplinary prosecutor and the disciplinary superior, disposes of different procedural possibilities.[335] The disciplinary prosecutor, whose primary task is to conduct evidentiary proceedings, is tasked with collecting evidentiary material, which means that he comes into direct contact with the evidence and has the opportunity to form his own view of the case and the person of the accused.[336] The disciplinary superior, as an entity of higher service rank, naturally occupies a different position in the disciplinary proceedings.[337] He is, above all, the body authorized by military law to issue a decision.[338]

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330 Radoniewicz, *supra* note 213, at *Komentarz do Art. 370* [*Commentary to Art. 370*].

331 ANNA KORZENIEWSKA-LASOTA, ZASADY POSTĘPOWANIA DYSCYPLINARNEGO [RULES OF DISCIPLINARY PROCEDURE] 37–48 (15 Studia Ełckie, no. 1, 2013); AGNIESZKA KANIA, Z PROBLEMATYKI USTAWOWYCH WSKAZAŃ WYMIARU KARY DYSCYPLINARNEJ WOBEC POLICJANTÓW: ROZWAŻANIA NA TLE POGLĄDÓW PREZENTOWANYCH W ORZECZNICTWIE SĄDÓW ADMINISTRACYJNYCH [ON THE ISSUE OF STATUTORY INDICATIONS OF THE AMOUNT OF DISCIPLINARY PUNISHMENT FOR POLICE OFFICERS: CONSIDERATIONS AGAINST THE BACKGROUND OF VIEWS PRESENTED IN THE CASE LAW OF ADMINISTRATIVE COURTS] (26 Przegląd Policyjny, no. 4, 2016); Magdalena Zamroczyńska, *Skarga* [*Complaint*], *in* DYNAMIKA PROCESU KARNEGO. PODRĘCZNIK DO KONWERSATORIÓW [THE DYNAMICS OF THE CRIMINAL PROCESS. A HANDBOOK FOR SEMINARS] 109 (Anna Gerecka-Żołyńska & Piotr Karlik eds., Wolters Kluwer Polska 2017).

332 MAJ, *supra* note 2; BARAN, *supra* note 273, at 21–35; KOSOWSKI, *supra* note 214.

333 KULESZA, *supra* note 261; KOSOWSKI, *supra* note 214.

334 Summers, *supra* note 31.

335 *See generally* RADONIEWICZ, *supra* note 3, at 301–332; DOROTA SYLWESTRZAK, OCHRONA PRAW JEDNOSTKI PRZED SĄDEM ADMINISTRACYJNYM W SPRAWACH DYSCYPLINARNYCH [PROTECTION OF INDIVIDUAL RIGHTS BEFORE AN ADMINISTRATIVE COURT IN DISCIPLINARY CASES] (Warsaw: C.H.Beck 2022); KOZIELEWICZ, *supra* note 221.

336 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], arts. 370, 393 (Dz.U. 2022 poz. 655); Radoniewicz, *supra* note 213, at *Komentarz do Art. 399* [*Commentary to Art. 399*].

337 For example, attention to Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], at arts. 390 (2) point 9, 392 (9), 395, 398 (6), 399 (6).

338 *Id.* at art. 400 (1).

For this reason, the catalog of tasks remaining within his competence is different.[339] This is indicated by the obligation of a comprehensive evaluation of the evidentiary material.[340] This is evidenced by the rule that when the superior perceives certain deficiencies in the evidentiary proceedings conducted by the prosecutor, he may issue a resolution revoking the resolution closing the evidentiary actions and returning the case to the disciplinary prosecutor (within 14 days from the date of transmission of the file).[341] Significantly, in this resolution, the disciplinary superior must indicate the scope of actions that the disciplinary prosecutor is obliged to perform.[342] Such regulation not only promotes the achievement of the objectives of the proceedings but also confirms its constructive assumptions, including the strengthening of the role of detecting and prosecuting disciplinary offenses.[343]

Disciplinary proceedings should, as a rule, be characterized by speed and efficiency. Accordingly, the disciplinary superior is obliged to issue a decision no later than 14 days from the date of closing the evidentiary proceedings.[344] After issuing this resolution, the prosecutor has an additional 7 days to prepare the report, which he transmits together with the case file to the disciplinary superior.[345]

Under the Military Discipline Act, after completion of the evidentiary proceedings, the disciplinary prosecutor prepares a motion containing a proposed decision with justification, which, together with all materials collected in the disciplinary proceedings, is transmitted to the authorized body.[346] Currently, the disciplinary prosecutor prepares a report together with a proposal concerning the decision.[347] Despite the difference in linguistic formulation, it must be recognized that the same action is involved, since in both cases the prosecutor's proposal regarding the final decision does not have to be approved by the disciplinary superior.[348] In view of the above, it

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339 *See id.*

340 Baran-Wesołowska, *Orzeczenia pierwszoinstancyjne w sprawach dyscyplinarnych onierzy w perspektywie norm ustawy o obronie Ojczyzny* [*On Issues of the First-Instance Jurisprudence in Disciplinary Cases of Soldiers in the Perspective of the Provisions of the Act on Defense of the Homeland*], 1 J. MOD. SCI. 317, 318–321 (2023).

341 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defense], at art. 399.

342 Krempeć, *supra* note 7, at *Komentarz do Art. 399* [*Commentary to Art. 399*].

343 Radoniewicz, *supra* note 213, at *Komentarz do Art. 399* [*Commentary to Art. 399*].

344 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022, on Homeland Defence], at art. 400 (5).

345 *Id.*; Krempeć, *supra* note 7, at *Komentarz do Art. 400* [*Commentary to Art. 400*].

346 *Cf.* Ustawa z dnia 9 października 2009 r. o dyscyplinie wojskowej [Act of Oct. 9, 2009, on Military Discipline], art. 55 (1) (Dz.U. 2009 nr 190 poz. 1474).

347 Krempeć, *supra* note 7, at *Komentarz do Art. 398* [*Commentary to Art. 398*].

348 *Cf. see generally* MAJ, *supra* note 2; CHOMONCIK & KOSOWSKI, *supra* note 214, at 24–40.

must be concluded that under both the MDA and the new regulations of the HDA, the disciplinary prosecutor transmits the collected evidentiary material together with conclusions and justification that he considers correct.[349] It must therefore be stated that in this respect there has been no limitation of the competences of the disciplinary prosecutor; the normative change adopted in the HDA is purely formal and editorial in character.[350]

CONCLUSION

The foregoing considerations indicate that the system of non-judicial legal response in the Polish Armed Forces constitutes a significant contribution to the discussion on the axiology of contemporary military law. This system ensures an efficient and rapid response to breaches of discipline while at the same time revealing a line of tension between values of a military character (discipline, hierarchy, combat readiness, and the authority of command) and constitutional and international values (procedural justice, proportionality of interference, protection of the soldier's dignity, and the right to a fair trial). The analysis of the legal solutions introduced by the Homeland Defense Act (HDA) has led to the formulation of the following conclusions:

> 1. In the Polish legal system, for the first time in nearly one hundred years, the matter of military discipline has been regulated as one of the chapters of a comprehensive statute which, in the legislator's view, is the HDA. Although this solution was motivated by the desire to systematize military law, it has weakened both the rank and the significance of disciplinary regulation.
> 2. The substantive construction of disciplinary liability under the HDA has undergone significant expansion through the abandonment of a legal definition of military discipline in favor of an open, exemplary catalog of offenses, including the inclusion therein of undefined conduct "harming the good name or interests of the Armed Forces" Article 353 (1) and (2). In the matter regulated by the HDA, the separate liability for violation of a soldier's dignity and honor (previously governed by the 2008 Code of Honor of the Professional Soldier of the Polish Army) has been abandoned, with only an

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349 Radoniewicz, *supra* note 213, at *Komentarz do Art. 398* [*Commentary to Art. 398*].

350 BIENIEK, *supra* note 215, at 12; Krzysztof Chochowski, *Ustawa o obronie ojczyzny – nowa jako bezpieczeństwa państwa?* [*The Law On Defense Of The Homeland – A New Quality Of State Security?*], 51 ROCZNIKI NAUK SPOŁECZNYCH 187, 190 (2023).

enigmatic obligation to enact a new ethical code—without specifying its legal character or rank.

3. The Homeland Defense Act has introduced the possibility of dual disciplinary liability for soldiers performing professions subject to separate professional liability and has also limited the circle of entities authorized to adjudicate in disciplinary cases.

4. The catalog of disciplinary penalties contained in the HAD, Article 362 (1), does not encompass the full range of measures provided for under the previous Military Discipline Act (warning of incomplete suitability for professional military service and removal from service). The institution of suspension from the performance of service duties as a protective measure during proceedings has also been eliminated.

5. The provisions of the HDA governing both phases of disciplinary proceedings place the accused in a relatively disadvantageous procedural position. Many guarantees characteristic of criminal procedure are not applied, and a broader scope for hearings in the absence of the accused is permitted. An additional element of imbalance is the lack of the possibility of remote participation in hearings for the accused, whereas such a possibility is granted to the disciplinary prosecutor.

6. Despite these structural shortcomings, the most important procedural rights of the accused, particularly the right to defense, participation in procedural acts, submission of evidentiary motions, and the assistance of a defender of choice or appointed ex officio are, in practice, implemented to a degree that ensures the minimum standard of a fair proceeding.

7. The disciplinary prosecutor plays a key role in ensuring the reliability of the proceedings. His position as a participant in the proceedings in the broad sense cannot be omitted when constructing a model of disciplinary liability in uniformed services. The conduct of the entire proceedings solely by the disciplinary superior would violate fundamental principles of procedural justice and would de facto limit the guarantees afforded to the accused.

Considering the foregoing findings as well as recommendations issued by national, European, and international bodies (in particular the standards arising from the provisions of the Constitution of the Republic of Poland and from domestic and European case law), the author formulates the following recommendations *de lege ferenda*:

1. At the level of the HDA, it should be guaranteed that disciplinary cases of greater gravity are adjudicated by an independent and impartial disciplinary court established in accordance with statutory principles, with assurance of a proper procedure for the appointment of judges adjudicating in the first and second instances.
2. The legislator should strive to introduce transparent, objective, and non-discretionary criteria for initiating disciplinary proceedings as well as a precise determination of the territorial jurisdiction of disciplinary prosecutors and disciplinary courts, which would serve as protection against potential extralegal pressure.
3. At the level of executive acts issued under the HDA, the catalog of conduct constituting disciplinary offenses should be defined precisely and exhaustively, with a clear distinction between such offenses and ethical or honor-related violations, which should be regulated in a separate legal act of appropriate rank (a new Code of Honor of the Soldier of the Republic of Poland).
4. In the practice of disciplinary proceedings, organs of the military justice system should aim to shorten and standardize the duration of such proceedings while at the same time ensuring the genuine possibility of exercising the right to defense, so that rapid response does not become a source of additional repression.
5. It is necessary to expand the openness of disciplinary proceedings (open hearings and sessions, publication of hearing schedules, and selected anonymized decisions), thereby enabling social oversight and strengthening the legal legitimacy of the non-judicial response system in the Armed Forces of the Republic of Poland.
6. Consideration should be given to strengthening the procedural rights of the accused, in particular by fully aligning procedural guarantees with the standard of a fair trial (Art. 6 of the European Convention on Human Rights),

> including ensuring equality of the parties with regard to means of remote communication.

The realization of the foregoing postulates would significantly influence the system of non-judicial legal response in the Polish Armed Forces, rendering it more rational not only in the sphere of military service performance but also in terms of the idea of the rule of law. In such a case, non-judicial legal response measures would cease to be merely a technical instrument of command. By embodying the declared values of Polish military law, they would consolidate the postulated balance for that law between the requirements of state security, including the standards of military service, and the need to respect the dignity and rights of soldiers as well as members of auxiliary military personnel.

GENERAL OVERVIEW OF THE ADMINISTRATION OF JUSTICE IN THE REPUBLIC OF POLAND

Marek Tecza*

INTRODUCTION

On May 25, 1997, a referendum was held in the Republic of Poland to adopt the Constitution of the Republic of Poland, which had been passed by the National Assembly on April 2, 1997.[1] In the referendum, 53.45% of voters supported the Constitution's adoption.[2]

After Poles regained the ability to make sovereign and democratic decisions about their country in 1989, the Constitution of April 2, 1997, defined the most important principles of the state system as well as the powers of the authorities and the rights and freedoms of citizens.[3] It is the most important source of law, and other regulations must be consistent with

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1 *See* KONSTYTUCJA RZECZYPOSPOLITEJ POLSKEIJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 79(1) (Dz.U. 1997 nr 78 poz. 483).

2 KRZYSZTOF PROKOP, STANY NADZWYCZAJNE W KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 02 KWIETNIA 1997 ROKU [STATES OF EMERGENCY IN THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2 APRIL 1997] (Temida 2, 2005).

3 Monika Jaworska, *Sądy jako organy wymiaru sprawiedliwości w polskim porządku prawnym* [*Courts as Organs of the Administration of Justice in the Polish Legal Order*], PRAWNICZA I EKONOMICZNA BIBLIOTEKA CYFROWA, WYDZIAŁ PRAWA, ADMINISTRACJI I EKONOMII UNIWERSYTETU WROCŁAWSKIEGO [DIG. L. & ECON. LIBR., FAC. OF L., ADMIN., & ECON., UNIV. OF WROCŁAW] (2016), https://repozytorium.uni.wroc.pl/Content/79127/PDF/03_M_Jaworska_Sady_jako_organy_wymiaru_sprawiedliwosci.pdf.

it.[4] The main principles of the Constitution of April 2, 1997, were shaped, as stated in the preamble, with regard to the historical conditions of the country, which over the last 200 years had been ruled by neighboring absolute monarchies and then totalitarian states.[5]

The first Polish constitution was adopted on May 3, 1791, and was the second in the world after the U.S. Constitution of 1787 and the first in Europe to define the political system of the state.[6] This constitution established a hereditary monarchy of the Polish-Lithuanian Commonwealth in Poland.[7]

Unfortunately, aggression from neighbors and partitions of Poland caused the country to lose its independence in 1795, and the 1791 constitution had no chance of being implemented.[8] After regaining independence in 1918, five different legal systems were in force in Poland, a result of the complex structures of the partitioning powers.[9] In 1918, Russian, Prussian, Austrian, Polish Kingdom (created after the Congress of Vienna), and Hungarian laws were in force in Poland, which is why the March Constitution was adopted in 1921 to unify the law, establishing parliamentary democracy in Poland.[10] This constitution was replaced by the April Constitution in 1935, which introduced authoritarianism in Poland.[11] In 1939, as a result of the aggression of the Third Reich and the Union of Soviet Socialist Republics, Poland lost its independence again.[12] After the end of World War II, Poland did not regain its independence, and in 1947, a constitution was adopted to regulate the general principles of the political system, while in 1952, the Constitution of the Polish People's Republic was adopted, which introduced a socialist system modeled on the Union of Soviet Socialist Republics.[13]

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4 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKEIJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 8 (Dz.U. 1997 nr 78 poz. 483) (establishing the supremacy of the Constitution within the Polish legal hierarchy).

5 *See* Marek Safjan, *Konstytucja marcowa – konstytucja paradoksów* [*The March Constitution – A Constitution of Paradoxes*], 2022 PRZEGLĄD KONSTYTUCYJNY [CONST. REV.] 7.

6 *See e.g.*, *id.*

7 *See e.g.*, *id.*

8 Tadeusz Kęsoń, *Stan wyjątkowy, stan wojenny i stan wojny w konstytucjach i aktach prawnych Rzeczypospolitej Polskiej* [*State of Emergency, State of War and State of War in the Constitutions and Legal Acts of the Republic of Poland*], 8 ROCZNIK BEZPIECZEŃSTWA MIĘDZYNARODOWEGO [Y.B. INT'L SEC.] 158 (2014).

9 *See e.g.*, Agnieszka Brzostek & Monika Giżyńska, *Sądownictwo wojskowe w II Rzeczypospolitej Polskiej* [*Military Justice in the Second Polish Republic*], 1 PRZEGLĄD POLICYJNY [POLICE REV.] 81 (2016).

10 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 17 MARCA 1921 [CONSTITUTION OF THE REPUBLIC OF POLAND OF MAR. 7, 1921] (Dz.U. 1921 nr 44 poz. 267).

11 Ustawa Konstytucyjna z dnia 23 kwietnia 1935 [Constitutional Act of Apr. 23, 1935] (Dz.U. 1935 nr 30 poz. 227).

12 Kęsoń, *supra* note 8.

13 Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej [Constitutional Act of Feb. 19, 1947 on the System and Scope of Activities of the Highest Organs of the Republic of Poland] (Dz.U. 1947 nr 18 poz. 71);

Article 10 of the current Constitution stipulates that the system of government of the Republic of Poland is based on the separation and balance of legislative, executive, and judicial powers.[14] Legislative power is exercised by the Sejm and Senate, executive power by the President of the Republic of Poland and the Council of Ministers, and judicial power by courts and tribunals.[15] A very important issue in the Constitution is the rights and freedoms of man and citizen, which are already included in Chapter II.[16] Article 45 of the Constitution guarantees everyone the right to a fair and public hearing without undue delay by a competent, independent, and impartial court.[17] Article 77 of the Constitution stipulates that no law may deny anyone the right to judicial review of violations of their freedoms or rights.[18] The provisions of the Constitution place great emphasis on the control by independent courts of any decisions of non-judicial bodies that affect the rights of individuals.[19]

I. THE JUDICIAL SYSTEM IN THE REPUBLIC OF POLAND – A HISTORICAL OVERVIEW

A. The Interwar Period

The first Polish Constitution of 1791 had no chance of remaining in force for long, as the Kingdom of Prussia, the Russian Empire, and the Habsburg Monarchy (later the Austrian Empire) partitioned Poland and introduced their own laws in the territories they seized.[20]

After World War I, Poland faced enormous economic problems, a variety of laws imposed by the partitioning powers, and, above all, threats related to the struggle over its borders.[21] In addition, from the beginning of 1919, Poland had to wage war against the Russian Soviet Federative Socialist

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KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952] (Dz.U. 1952 nr 33 poz. 232).

14 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKEIJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 10 (Dz.U. 1997 nr 78 poz. 483).

15 *Id.* at arts. 10, 95(1), 173.

16 *Id.* at ch. II.

17 *Id.* at art. 45(1).

18 *Id.* at art. 77(2).

19 Jaworska, *supra* note 3.

20 Kęsoń, *supra* note 8 (describing the constitutional consequences of the partitions of Poland and the loss of sovereignty).

21 Brzostek & Giżyńska, *supra* note 9, at 81 (explaining the legal fragmentation and institutional challenges facing the reborn Polish state after 1918).

Republic, which sought to conquer Europe and transform European countries into Soviet republics.[22]

In light of these threats, the Head of State issued a decree on February 8, 1919, introducing a state of emergency.[23] The provisions of this act gave the Council of Ministers the power to introduce a state of emergency for a period not exceeding three months in any locality where it was necessary for reasons of public safety.[24] Upon the declaration of a state of emergency, the Minister of Internal Affairs or an extraordinary commissioner appointed by him had the right to issue extraordinary regulations, impose fines or imprisonment for violations thereof, prohibit public meetings and gatherings, and order the inspection and confiscation of magazines or their suspension.[25]

Another extraordinary act of law issued during wartime was the Act of June 30, 1919, on summary courts.[26] These courts could be established for a period of up to six months to combat crimes threatening public order and safety.[27] Special courts could be established by a resolution of the Council of Ministers for a period of up to six months when crimes covered by the Act "spread in a manner particularly dangerous to public order and safety."[28] The judges of the special court were appointed by the president of the competent district court.[29] The special court consisted of three judges, at least two of whom had to be district judges (i.e., judges of a higher court).[30] For the duration of the ad hoc court's sessions, the military authorities were obliged, at the request of the presiding judge, to send a military unit to protect the court, maintain order, and enforce all court orders.[31]

Proceedings before the special court were conducted without an investigation and lasted up to 14 days from the notification of the prosecutor about a crime covered by the Act.[32] The prosecutor was required to submit a motion to the court within 48 hours of notice, and within 24 hours of receiving the motion, the presiding judge would set a date for the hearing.[33]

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22 Patrycja Kozłowska-Kalisz, *Polskie prawo karne wobec czasu wojny – wybrane zagadnienia* [*Polish Criminal Law in Times of War – Selected Issues*], LXX ANNALES UNIVERSITATIS MARIAE CURIE-SKŁODOWSKA LUBLIN – POLONIA 195 (2023).

23 Dekret z dnia 2 stycznia 1919 r. o wprowadzeniu stanu wyjątkowego [Decree of 2 Jan. 1919 on the Introduction of a State of Emergency] (Dz.Pr.P.P. 1919 nr 1 poz. 79).

24 *Id.* at art. 1.

25 *Id.* at art. 2.

26 Ustawa z dnia 30 czerwca 1919 r. w przedmiocie sądów doraźnych [Act of June 30, 1919 regarding Summary Courts] (Dz.U. 1919 nr 55 poz. 341).

27 *Id.* at art. 1.

28 *Id.*

29 *Id.* at art. 3.

30 *Id.* at art. 2.

31 *Id.* at art. 8.

32 *Id.* at art. 4.

33 *Id.* at art. 5.

The only guarantee of the defendant's rights was the necessary participation of his defense attorney in the hearing, and if he did not have one, a defense attorney was appointed for him ex officio.[34] Once the hearing was scheduled, the defendant had to be arrested (unless he was imprisoned) and could not be released until the proceedings were completed.[35]

After the hearing, the summary court would issue a verdict that had to be justified within 24 hours of its announcement.[36] Offenses subject to summary court were punishable by death by firing squad if, in ordinary proceedings, the offense was punishable by severe imprisonment, and in other cases, the summary court imposed a sentence of indefinite severe imprisonment or a fixed term of not less than 8 years.[37] The judgments of such a court were final upon announcement, and death sentences did not require approval and were to be carried out within 24 hours of the announcement.[38] The nearest military command was requested to carry out the death sentence, and after its execution, it was made public that such a sentence had been carried out, mentioning the court that had passed the sentence, the person convicted, and the place and time of the crime.[39]

In view of the difficult internal situation and external threats (on March 18, 1921, a treaty ending the Polish-Bolshevik war was signed in Riga), the Constitution adopted on March 17, 1921, was a solution reached through compromise and introduced a republican form of government and Montesquieu's tripartite division of power.[40] According to Article 2 of the Constitution, Supreme power in the Republic of Poland belongs to the Nation.[41] The organs of the Nation in the field of legislation are the Sejm and the Senate, in the field of executive power—the President of the Republic together with the responsible ministers, and in the field of justice—independent courts.[42] Detailed rules concerning the judicial system are contained in Chapter IV, Judiciary.[43]

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34 *Id.* at art. 6.

35 *Id.* at art. 7.

36 *Id.* at art. 9.

37 *Id.* at art. 10.

38 *Id.* at art. 11.

39 *Id.* at art. 12.

40 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 17 MARCA 1921 [CONSTITUTION OF THE REPUBLIC OF POLAND OF MAR. 7, 1921] (Dz.U. 1921 nr 44 poz. 267); Dorota Malec, *Sądy w Konstytucji marcowej. Uwagi z okazji 100 rocznicy uchwalenia Konstytucji z 17 marca 1921 roku* [*Courts in the March Constitution: Remarks on the Occasion of the 100th Anniversary of the Adoption of the Constitution of 17 March 1921*], 2021 PRZEGLĄD KONSTYTUCYJNY [CONST. REV.] 5, 6.

41 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 17 MARCA 1921 [CONSTITUTION OF THE REPUBLIC OF POLAND OF MAR. 7, 1921], art. 2 (Dz.U. 1921 nr 44 poz. 267).

42 *Id.*

43 *Id.* at § IV "Władza sądowa" [Judicial Power].

In accordance with the provisions of the Constitution, courts administer justice on behalf of the Republic of Poland, and their organization, scope, and manner of operation were to be determined by legislation.[44] The Constitution also established the Supreme Court and stipulated that judges are independent in the exercise of their office and are subject only to the law.[45] The Constitution also provided for the establishment of military courts.[46]

A uniform judicial system in Poland was only introduced by the provisions of the Law on the System of Common Courts of 1928.[47] Until then (i.e. for 10 years!) it functioned on the basis of temporary provisions dating back to 1917 and the legal systems that were in force in the partitioning powers (the Austrian and Prussian partitions).[48] Examples of this were the military courts, whose operations were regulated by the Act of July 29, 1919, on temporary military jurisdiction, passed during the Polish-Bolshevik War, which explicitly stated that until the introduction of uniform military legislation, the military provisions of the German Code of 1872 and the Austrian Military Criminal Procedure Act of 1912 would apply to military justice.[49]

It was only the Regulation of the President of the Republic of Poland of February 6, 1928, entitled Law on the System of Common Courts, which stipulated that justice in civil and criminal matters was administered by common courts which include municipal courts and justices of the peace, district courts, courts of appeal, and the Supreme Court.[50]

Article 123 of the 1921 Constitution introduced an exception to the possibility of using armed forces exclusively at the request of the civil authorities under a state of emergency or martial law.[51] Article 124, on the other hand, introduced the possibility of temporarily suspending civil rights for reasons of public safety during war or when there is a threat of war, as

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44 *Id.* at art. 73.

45 *Id.* at arts. 77, 80.

46 *Id.* at art. 84.

47 *See generally* Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 lutego 1928 r. Prawo o ustroju sądów powszechnych [Decree of the President of the Republic of Poland of Feb. 6, 1928 – Law on the Organization of Common Courts] (Dz.U. 1928 nr 12 poz. 93).

48 Brzostek & Giżyńska, *supra* note 9, at 81–82.

49 Ustawa z dnia 29 lipca 1919 r. o tymczasowem sądownictwie wojskowem [Act of July 29, 1919 on the Temporary Military Courts] (Dz.Pr.P.P. 1919 nr 65 poz. 389); Brzostek & Giżyńska, *supra* note 9, at 81–82 (analyzing the transitional reliance on German and Austrian military legal frameworks).

50 Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 lutego 1928 r. [Decree of the President of the Republic of Poland of Feb. 1928], at arts. 1–3 (establishing the unified structure of common courts, including lower courts, courts of appeal, and the Supreme Court).

51 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 17 MARCA 1921 [CONSTITUTION OF THE REPUBLIC OF POLAND OF MAR. 7, 1921], art. 123 (Dz.U. 1921 nr 44 poz. 267).

well as in the event of a threat to internal security, treason, or circumstances threatening the Constitution or the safety of citizens.[52]

However, exceptions to the general principles of the rule of law and the right to a fair trial guaranteed in the Constitution were gradually introduced due to tensions in the country, particularly in the years 1931-1934, when authoritarianism was introduced in Poland.[53]

As early as May 7, 1921, a law regarding summary courts was passed, introducing the possibility of establishing summary courts for specific types of crimes and operating in specific areas of the country.[54] The provisions of this law were essentially a repetition of the provisions of the law of June 30, 1919, on summary courts, as discussed above.[55]

Detailed regulations concerning states of emergency and martial law, as specified in the Constitution of March 17, 1921, were not enacted until 1928.[56] That year, the President issued decrees on martial law on January 16, 1928, and on states of emergency on March 16, 1928.[57]

The regulation on the state of emergency indicated that it could be introduced during war or the threat of war, but also for internal reasons.[58] After its introduction, civil rights were significantly restricted in the form of personal freedom, inviolability of the home, freedom of the press, secrecy of correspondence, the right of coalition, assembly, and association.[59] The general administration authorities could, without the order of the judicial

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52 *Id.* at art. 124.

53 *See* Safjan, *supra* note 5, at 14–15 (analyzing the erosion of constitutional guarantees and the gradual shift toward authoritarianism in the interwar period); *see also* Malec, *supra* note 40, at 7 (discussing limitations imposed on judicial independence and fair trial guarantees during the interwar political transformation).

54 Ustawa z dnia 7 maja 1921 r. o sądach doraźnych [Act of May 1, 1921 on Summary Courts] (Dz.U. 1921 nr 43 poz. 261).

55 *Id.*; Ustawa z dnia 30 czerwca 1919 r. w przedmiocie sądów doraźnych [Act of June 30, 1919 regarding Summary Courts], art. 2 (Dz.U. 1919 nr 55 poz. 341).

56 *See, e.g.*, KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 17 MARCA 1921 [CONSTITUTION OF THE REPUBLIC OF POLAND OF MAR. 7, 1921], arts. 123–24 (Dz.U. 1921 nr 44 poz. 267) (providing constitutional basis for emergency measures later implemented by statute and decree); Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 stycznia 1928 o stanie wojennym [Decree of the President of the Republic of Poland of Jan. 16, 1928 on Martial Law] (Dz.U. 1928 nr 8 poz. 54) (implementing detailed regulation of martial law); Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 marca 1928 o stanie wyjątkowym [Decree of the President of the Republic of Poland of Mar. 16, 1928 on Martial Law] (Dz.U. 1928 nr 32 poz. 307) (implementing detailed regulation of the state of emergency).

57 Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 stycznia 1928 o stanie wojennym [Decree of the President of the Republic of Poland of Jan. 16, 1928 on Martial Law]; Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 marca 1928 o stanie wyjątkowym [Decree of the President of the Republic of Poland of Mar. 16, 1928 on Martial Law].

58 Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 marca 1928 o stanie wyjątkowym [Decree of the President of the Republic of Poland of Mar. 16, 1928 on Martial Law], at § 1.

59 *Id.* at §§ 2–7 (enumerating permissible suspensions and restrictions of civil liberties during a state of emergency).

authorities, carry out searches or internments.[60] In addition, it was made possible to establish summary courts (to be formed from district administrative authorities) in areas covered by the state of emergency, which would adjudicate in an expedited summary procedure for violations of orders and prohibitions introduced during the state of emergency.[61]

However, the regulation on martial law stated that it could only be imposed during wartime, and that its imposition was the sole prerogative of the Commander-in-Chief.[62] It was imposed in areas affected by military operations and resulted in the temporary suspension of certain civil rights, including personal freedom, inviolability of the home, freedom of the press, privacy of correspondence, and the right to form coalitions, assemble, and establish associations.[63] The suspension of these rights allowed the administrative authorities, without the order of the judicial authorities, to subject persons (threatening the defense of the state, its security, or public order) to search, arrest, and detention for up to 14 days, and in special cases for up to 3 months.[64]

In addition, without the consent of the court, the administrative authorities could intern persons for up to three months, conduct house searches, seize documents or objects, introduce censorship, confiscate and suspend publications, make the creation of new magazines subject to official approval, or prohibit the posting of posters or other dissemination of content without special permission from the authorities.[65] The administrative authorities also had the right to open, inspect, detain, and confiscate postal items, as well as to monitor the content of telegrams and telephone conversations.[66] According to the regulation, the mere imposition of martial law was sufficient grounds for establishing summary courts in the area covered by it.[67] The administrative authorities were empowered to adjudicate on acts related to violations of martial law regulations and could impose fines or imprisonment for up to six months, and could use pre-trial detention to ensure the defendant's appearance in court.[68] Their decisions could be appealed to the courts.[69]

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60 *Id.* at §§ 8–10 (authorizing administrative searches, detention, and internment without prior judicial order).
61 *Id.* at §§ 18–22.
62 *Id.* at §§ 1–2.
63 *Id.* at §§ 3–7.
64 *Id.* at §§ 8–12.
65 *Id.* at §§ 8–15.
66 *Id.* at §§ 12–14.
67 *Id.* at § 20.
68 *Id.* at §§ 21–24.
69 *Id.* at § 25.

As a result of the crisis of parliamentary democracy in May 1926, a coup d'état took place, followed by changes aimed at transforming the political system into an authoritarian one, culminating in the adoption of a new Constitution on April 23, 1935, which introduced a presidential system in Poland.[70] According to its provisions, the Polish State is the common good of all citizens, and it is headed by the President of the Republic, who is responsible to God and history for the fate of the State.[71] Among the organs of the State, the Constitution (apart from the President) mentioned the government, the Sejm, the Senate, the armed forces, the courts, and state control.[72] In Article 64, the Constitution of April 23, 1935, granted the courts exclusive jurisdiction to administer justice, whereby the courts, in administering justice, were to uphold the legal order and shape the legal consciousness of society.[73] Like the Constitution of 1921, the Constitution of 1935 also provided for two types of states of emergency, namely martial law and a state of emergency, regulated by the regulations of 1928.[74]

The organization and functioning of the courts was regulated by the aforementioned decree of the President of the Republic of Poland on February 6, 1928, entitled Law on the System of Common Courts.[75] However, during the consolidation of authoritarian power, regulations were passed which, in violation of the constitution, allowed political opponents to be deprived of their rights.[76] An example of this was the regulation of the President of the Republic of Poland of June 17, 1934, on persons threatening security, peace, and public order, which gave the executive branch the power to forcibly place persons whose activities or conduct gave reason to believe that they posed a threat to security, peace, or public order in places of isolation without a court ruling.[77] Detention could be ordered for three

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70 Ustawa Konstytucyjna z dnia 23 kwietnia 1935 [Constitutional Act of Apr. 23, 1935] (Dz.U. 1935 nr 30 poz. 227); *see also* Safjan, *supra* note 5 (analyzing the crisis of parliamentary democracy and the shift toward authoritarian governance).

71 Ustawa Konstytucyjna z dnia 23 kwietnia 1935 [Constitutional Act of Apr. 23, 1935], at arts. 1–2.

72 *Id.* at chs. II–VI.

73 *Id.* at art. 64.

74 *Id.*; Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 stycznia 1928 o stanie wojennym [Decree of the President of the Republic of Poland of Jan. 16, 1928 on Martial Law] (Dz.U. 1928 nr 8 poz. 54) (regulating martial law); Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 marca 1928 o stanie wyjątkowym [Decree of the President of the Republic of Poland of Mar. 16, 1928 on Martial Law] (regulating the state of emergency).

75 Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 lutego 1928 r. Prawo o ustroju sądów powszechnych [Decree of the President of the Republic of Poland of Feb. 6, 1928 – Law on the Organization of Common Courts] (Dz.U. 1928 nr 12 poz. 93).

76 *See* Safjan, *supra* note 5 (analyzing the erosion of constitutional guarantees during the consolidation of authoritarian power).

77 Rozporządzenie Prezydenta Rzeczypospolitej z dnia 17 czerwca 1934 w sprawie osób zagrażających bezpieczeństwu, spokojowi i porządkowi publicznemu [Decree of the President of

months and extended for a further three months depending on the behavior of the detainee.[78] This was a discretionary measure, subject to no control, and there are known cases of detention lasting up to a year.[79] The authoritarian authorities exploited the provisions of this regulation by creating a special place of detention in Bereza Kartuska.[80] It was a forced labor camp and a place of detention for political opponents.[81] The restriction of individual rights and civil liberties continued until the outbreak of World War II.[82]

B. World War II

In view of the obvious threat of aggression from the Third Reich and the Union of Soviet Socialist Republics, the Act of June 23, 1939, introduced amendments to the Regulation of the President of the Republic of Poland of 1928 on martial law.[83] The President was authorized to introduce martial law, and the possibility of conducting ad hoc proceedings before common courts throughout the area covered by martial law was retained.[84] The principle that the introduction of martial law suspended civil liberties by operation of law, to the extent that they were suspended when a state of emergency was introduced, was also upheld.[85]

In view of the Polish army's failures in clashes with the Third Reich's forces on September 9, 1939, the Commander-in-Chief issued general directives ordering military courts to intensify their activities, in particular to prosecute perpetrators of crimes hindering defensive operations on an *ad hoc* basis.[86]

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the Republic of Poland of June 17, 1934 on Persons Threatening Security, Peace and Public Order] (Dz.U. 1934 nr 50 poz. 473).

78 *Id.* at §§ 2–4.

79 *See* Safjan, *supra* note 5 (discussing authoritarian practices undermining constitutional guarantees in the late interwar period).

80 Rozporządzenie Prezydenta Rzeczypospolitej z dnia 17 czerwca 1934 w sprawie osób zagrażających bezpieczeństwu, spokojowi i porządkowi publicznemu [Decree of the President of the Republic of Poland of June 17, 1934 on Persons Threatening Security, Peace and Public Order].

81 *See* Safjan, *supra* note 5.

82 Kęsoń, *supra* note 8.

83 Ustawa z dnia 23 czerwca 1939 r. o stanie wojennym [Act of June 23, 1939 on Martial Law] (Dz. U. 1939 nr 57 poz. 366); Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 stycznia 1928 r. o stanie wojennym [Regulation of the President of the Republic of Poland of Jan. 16, 1928 on Martial Law] (Dz.U. 1928 nr 8 poz. 54).

84 Ustawa z dnia 23 czerwca 1939 r. o stanie wojennym [Act of June 23, 1939 on Martial Law], at arts. 1, 5.

85 *Id.* at arts. 3–4; Rozporządzenie Prezydenta Rzeczypospolitej z dnia 16 marca 1928 r. o stanie wyjątkowym [Decree of the President of the Republic of Poland of Mar. 16, 1928 on the State of Emergency] (Dz.U. 1928 nr 32 poz. 307).

86 Kozłowska-Kalisz, *supra* note 22, at 201 (analyzing wartime criminal law mechanisms and intensified military jurisdiction during armed conflict); Brzostek & Giżyńska, *supra* note 9, at 87 (discussing the functioning and expansion of military courts during wartime conditions).

Following the September 1, 1939 aggression by the Third Reich, aggression by the Union of Soviet Socialist Republics took place on September 17, 1939.[87] Following the invasions by both nations, on September 28, 1939, the aggressors divided the occupied territories, where they introduced different judicial systems.[88]

On October 22, 1939, sham elections to the People's Assemblies of Western Belarus and Western Ukraine were held in the territories occupied by the Union of Soviet Socialist Republics.[89] This event took place under pressure from officials of the People's Commissariat for Internal Affairs (NKVD), who used violence and terror to force the elections to take place.[90] The assemblies elected in this manner requested the Supreme Soviet of the USSR to incorporate these territories into the Union of Soviet Socialist Republics.[91] On November 1 and 2, 1939, Western Ukraine and Western Belarus were incorporated into the USSR as Soviet republics, and their inhabitants were granted Soviet citizenship, although the USSR constitution did not allow dual citizenship.[92] As a result, they were subject to the laws of the occupying power and obliged to serve in the Soviet army, and any actions aimed at regaining independence by the Poles were considered treason and a betrayal of the country.[93]

The methods used by the Union of Soviet Socialist Republics during World War II are being used in an unchanged form today by the Russian Federation in relation to Ukraine and the occupied territories of Crimea, as well as the entities known as the Luhansk and Donetsk People's Republics.[94]

As for the territories occupied by Germany, the developed and industrialized areas of western and northern Poland were directly incorporated into the Third Reich.[95] Since they were part of Germany, German courts operated in these areas.[96] In the remaining territories occupied by the Third Reich, the General Government was established (serving as a

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87 Kęsoń, *supra* note 8, at 164.

88 *See* Andrzej Wrzyszcz, *Sądy na ziemiach polskich w czasie okupacji niemieckiej (1939–1945). Najnowsze opracowania tematu* [Courts in Polish Territories During the German Occupation (1939–1945): Recent Studies], 23 STUDIA Z DZIEJÓW PAŃSTWA I PRAWA POLSKIEGO 35 (2020) (analyzing the judicial systems introduced in occupied Polish territories under German rule).

89 Kęsoń, *supra* note 8, at 163 (discussing the constitutional consequences of Soviet occupation and territorial annexation in 1939).

90 *See* Wrzyszcz, *supra* note 88 (examining occupation practices, repression mechanisms, and transformation of judicial systems under totalitarian regimes).

91 Kęsoń, *supra* note 8, at 163.

92 *Id.*

93 *Id.* at 162.

94 Kozłowska-Kalisz, *supra* note 22, at 205; *see also* Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022 on the Defense of the Homeland] (Dz.U. 2022 poz. 655) (enacted in response to contemporary security threats related to Russian aggression against Ukraine).

95 Wrzyszcz, *supra* note 88, at 36.

96 *Id.*

place of extermination for the Jewish and Slavic populations), where German courts and the official Polish judiciary subordinate to the occupation authorities operated, as well as the judicial authorities of the Polish Underground State.[97]

The latter were established by a resolution of the Committee of Ministers for Domestic Affairs, created after the German and Soviet invasion on April 16, 1940, concerning secret courts in the country.[98] On this basis, special courts were established, which mainly tried cases of treason, espionage, and informing.[99] The resolution established military summary courts adjudicating in areas occupied by the Third Reich and the Union of Soviet Socialist Republics, as well as summary courts attached to the Chief Delegate of the Polish Government in Exile.[100] The judiciary of the Polish Underground State had an extensive structure and was the most developed among the countries occupied by the Third Reich.[101]

From 1939 to 1990, the Government of the Republic of Poland in exile functioned as the legal (according to the constitution) continuation of the authorities of the Second Republic, which, in the face of German aggression and occupation and Soviet aggression and occupation, was forced to leave the country and, after moving its headquarters from Paris to Angers, finally operated in London.[102] Until July 5, 1945, it was recognized internationally as the only legal government of Poland, with the exception of the Union of Soviet Socialist Republics, the Third Reich, and their allies.[103] After Lech Wałęsa was sworn in as President of the Republic of Poland on December 22, 1990, the last Polish president in exile, Ryszard Kaczorowski, handed over the insignia of power to him.[104]

C. Period of Dependence on the USSR

As I pointed out previously, the Union of Soviet Socialist Republics did not recognize the Polish government-in-exile and created structures

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97 *Id.* at 37; *see generally* Kozłowska-Kalisz, *supra* note 22.

98 Wrzyszcz, *supra* note 88, at 38 (analyzing the establishment of underground judicial structures following the 1939 invasions).

99 *Id.* at 39.

100 *Id.* at 38.

101 *Id.* at 39 (concluding that the Polish Underground judiciary was the most developed clandestine judicial system in occupied Europe).

102 Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r. [Constitutional Act of Apr. 23, 1935] (Dz.U. 1935 nr 30 poz. 227; Kęsoń, *supra* note 8, at 165 (discussing the constitutional continuity of the Polish state during wartime and occupation).

103 Kęsoń, *supra* note 8, at 165.

104 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND] (Dz.U. 1997 nr 78 poz. 483); *see also* PROKOP, *supra* note 2.

dependent on itself.[105] After the Germans revealed mass graves of Polish officers murdered in 1939 by the Red Army, the Union of Soviet Socialist Republics broke off diplomatic relations with the Polish Government in-exile and began to create Polish authorities from members of the Polish Workers' Party subordinate to it.[106] While creating a Polish army from Polish citizens imprisoned and exiled to the USSR in 1939, field courts were also established in 1943, which were comprehensively regulated in 1944, becoming part of the state apparatus responsible for introducing a dictatorship in Poland subordinate to Joseph Stalin and the Polish Workers' Party.[107] The authorities introduced alongside the Red Army maintained the appearance of legality, beginning the reconstruction of the common courts based on pre-war regulations from 1928 and pre-war judges.[108]

As a result of these decisions, most judicial offices were filled by lawyers who were unfamiliar with the ideology promoted by the Polish Workers' Party.[109] The introduction of Soviet-style totalitarianism required a fight against the independence underground and resistance to Soviet domination, which is why political cases were transferred to military courts, while a social factor, i.e., lay judges (people associated with the workers' party), began to be introduced into the common courts.[110] Since training their staff took too much time and academic teachers taught law according to pre-

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105 Kęsoń, *supra* note 8, at 166.

106 *Id.*

107 Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 23 września 1944 r. – Prawo o ustroju Sądów Wojskowych i Prokuratury Wojskowej [Decree of the Polish Committeee of National Liberation of Sep. 23, 1944 – Law on the Organization of Military Courts and Military Prosecutor's Offices] (Dz.U. 1944 nr 6 poz. 29); Tadeusz Kmiecik, *Sądownictwo wojskowe w Polsce Ludowej w latach 1943–1955* [*Military Justice in the Polish People's Republic, 1943-1955*], 686 KWARTALNIK BELLONA 99, 107 (2016) (analyzing the role of military courts in consolidating communist authority after 1944).

108 Karol Siemaszko, *Początki sądownictwa powszechnego na tak zwanych ziemiach odzyskanych w świetle wybranych relacji pamiętnikarskich pracowników wymiaru sprawiedliwości* [*The Beginnings of the Common Judiciary in the So-Called Recovered Territories in Light of Selected Memoirs of Justice System Employees*], 24 MISCELLANEA HISTORICO-IURIDICA 769, 773 (2025) (describing the post-war reconstruction of common courts using pre-war legal frameworks and personnel); Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 lutego 1928 r. – Prawo o ustroju sądów powszechnych [Regulation of the President of the Republic of Poland of Feb. 6, 1928–Law on the Organization of Common Courts] (Dz.U. 1928 nr 12 poz. 93).

109 Siemaszko, *supra* note 108, at 773.

110 Kmiecik, *supra* note 107, at 103 (analyzing transfer of political cases to military courts and their role in consolidating communist power); Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 23 września 1944 r. – Prawo o ustroju Sądów Wojskowych i Prokuratury Wojskowej [Decree of the Polish Committee of National Liberation of Sep. 23, 1944 – Law on the Organization of Military Courts and Miliatry Prosecutor's Offices].

war principles, the communist authorities decided to appoint people without legal education and substantive qualifications as judges.[111]

By a decree of the Polish Committee of National Liberation of December 27, 1944, on the temporary normalization of employment relationships and the classification of civil servants, the Minister of Justice was granted the right to retire judges or dismiss them from service without observing the conditions and terms specified in the Law on the 1928 Law on the System of Common Courts.[112] In 1945, the provision prohibiting judges from membership in political parties was amended and the obligation of judges to remain loyal to the new system and authorities was emphasized.[113] Party membership was linked to salary increases and promotions to higher courts, which was intended to influence judges to follow the guidelines and position of the party in their rulings.[114]

The need for the communist authorities to fight their political opponents meant that some of the jurisdiction over civilians was additionally transferred to military courts, where almost half of the staff were former Red Army officers.[115] In this regard, two decrees were issued on November 16, 1945, and June 13, 1946, concerning particularly dangerous crimes during the period of the reconstruction of the Polish state.[116] They provided for penalties ranging from five years in prison to the death penalty.[117] These proceedings covered political opponents and soldiers of the independence underground.[118]

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111 Kmiecik, *supra* note 107, at 105 (discussing policy of appointing politically reliable but insufficiently qualified personnel to judicial posts); Siemaszko, *supra* note 108, at 773 (describing ideological reshaping and personnel transformation of the judiciary in the early People's Republic).

112 Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 27 grudnia 1944 r. o tymczasowym unormowaniu stosunku służbowego i zaszeregowania funkcjonariuszów państwowych [Decree of the Polish Committee of National Liberation of Dec. 27, 1944, on the Temporary Regulation of Employment Relationships and the Classification of State Officials] (Dz.U. 1944 nr 16 poz. 89); Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 lutego 1928 r. – Prawo o ustroju sądów powszechnych [Decree of the President of the Republic of Poland of Feb. 6, 1928 – Law on the Organization of Common Courts].

113 Kmiecik, *supra* note 107, at 113; Siemaszko, *supra* note 108, at 773 (analyzing political reshaping of judicial personnel after 1944).

114 Kmiecik, *supra* note 107, at 114; Siemaszko, *supra* note 108, at 777.

115 Kmiecik, *supra* note 107, at 112; Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 23 września 1944 r. – Prawo o ustroju Sądów Wojskowych i Prokuratury Wojskowej [Decree of the Polish Committee of National Liberation of September 23, 1944 – Law on the Organization of Military Courts and Military Prosecutor's Office].

116 Kozłowska-Kalisz, *supra* note 22, at 199; Kmiecik, *supra* note 107, at 114.

117 Kozłowska-Kalisz, *supra* note 22, at 199 (analyzing severity of post-war criminal sanctions, including capital punishment).

118 Kmiecik, *supra* note 107, at 115.

The next step towards building totalitarianism was the constitutional act of February 19, 1947.[119]Although it referred to the principles of the 1921 Constitution and entrusted the administration of justice to independent courts, it introduced a new body, the Council of State, which could issue universally binding decrees and adopt resolutions on the introduction of a state of emergency or martial law.[120] This was confirmed and the final break with the principle of the separation of powers was made with the adoption in 1952 of the Constitution of the Polish People's Republic, which introduced the Soviet model of the unity of state power.[121] It provided for the possibility of declaring a state of war or martial law in the event of an armed attack on Poland, or when international agreements required joint defense against aggression (state of war), or when the defense or security of the state so required (martial law).[122]

At the same time, the constitution did not contain any provisions regarding the suspension of civil liberties or the restriction of citizens' rights during a state of war or martial law.[123] From a legal point of view, this could indicate that civil rights and freedoms would not be subject to restrictions in the event of a state of war or martial law being declared, but in practice, it could suggest that the authorities would not be concerned with these rights and freedoms at all.[124] The conditions and legal effects, as well as the procedure for declaring a state of war or martial law, were to be specified in statutes, but ultimately they were not passed.[125]

Only the Act of October 21, 1967, on the universal duty to defend the Polish People's Republic introduced the concept of a state of immediate threat to national security, which was not defined in the constitution or any other legal act, and introduced the obligation to perform military service in

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119 Ustawa Konstytucyjna z dnia 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej [Constitutional Act of Feb. 19, 1947 on the System and Scope of Activities of the Highest Organs of the Republic of Poland] (Dz.U. 1947 nr 18 poz. 71).

120 *Id.* at arts. 13–24; KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 17 MARCA 1921 [CONSTITUTION OF THE REPUBLIC OF POLAND OF MAR. 7, 1921] (Dz.U. 1921 nr 44 poz. 267).

121 KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952] (Dz.U. 1952 nr 33 poz. 232); PROKOP, *supra* note 2.

122 KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952], arts. 33–35 (Dz.U. 1952 nr 33 poz. 232).

123 *See id.* (did not expressly regulate suspension of civil rights in connection with declaration of a state of war or martial law).

124 PROKOP, *supra* note 2; Kęsoń, *supra* note 8 (discussing gaps in emergency regulation under the 1952 Constitution and their practical implications).

125 KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952], arts. 33–35 (Dz.U. 1952 nr 33 poz. 232); Kęsoń, *supra* note 8 (noting absence of comprehensive statutory implementation of constitutional emergency provisions).

the event of such a state being declared.[126] However, there was no definition of this state, nor even a specification of which authority could declare it, under what conditions, and on what terms.[127]

Pursuant to Article 46 of the 1952 Constitution, justice was administered by the Supreme Court, provincial courts, district courts, and special courts (administrative and military).[128] However, it was stipulated that the Supreme Court was the highest judicial authority and supervised the activities of all other courts in the area of adjudication.[129] The Supreme Court, like the Prosecutor General, was elected by the Council of State, a new state authority that could also issue decrees with the force of law.[130] Furthermore, it was specified that judges were independent and subject only to the law, but that the examination and adjudication of cases was to take place with the participation of lay judges.[131]

The 1952 Constitution did not provide for the introduction of states of emergency (except for a state of war and martial law) or emergency procedures, but in fact, the transfer of cases involving civilians accused of crimes particularly dangerous to the new authorities to military courts was a tool for combating the democratic and independence-minded opposition.[132] On the other hand, the training of new judicial personnel according to its own principles, the party affiliation of judges, and the obligation to uphold the rule of law and social ownership meant that the administration of justice in matters important to the communist authorities was subordinate to the party authorities.[133] Subsequent amendments to the 1952 Constitution introduced,

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126 Ustawa z dnia 21 października 1967 r. o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej [Act of Oct. 21, 1967 on the Universal Duty of Defense of the Polish People's Republic] (Dz.U. 1967 nr 44 poz. 220) (introducing the concept of a state of immediate threat to national security and linked it to defense obligations); KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952] (Dz.U. 1952 nr 33 poz. 232) (did not define the concept of a state of immediate threat to national security).

127 Ustawa z dnia 21 października 1967 r. o powszechnym obowiązku obrony Polskiej Rzeczypospolitej Ludowej [Act of Oct. 21, 1967 on the Universal Duty of Defense of the Polish People's Republic]; Kęsoń, *supra* note 8 (analyzing deficiencies and ambiguities in emergency regulation under the socialist constitutional order).

128 KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952], art. 46 (Dz.U. 1952 nr 33 poz. 232).

129 *Id.* at art. 47.

130 *Id.* at arts. 29–54.

131 *Id.* at art. 48; PROKOP, *supra* note 2 (discussing the socialist constitutional model and its formal guarantees versus institutional realities).

132 KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952] (Dz.U. 1952 nr 33 poz. 232); Kmiecik, *supra* note 107, at 115 (analyzing transfer of civilian political cases to military courts as a mechanism of repression).

133 Kmiecik, *supra* note 107, at 115; Siemaszko, *supra* note 108, at 773 (analyzing institutional subordination of courts to political authorities).

among other things, the principle of the leading role of the Polish United Workers' Party and the principle of friendship with the Union of Soviet Socialist Republics, which further politicized the judiciary.[134]

After 1945, the only instance of martial law being imposed in Poland was the resolution of the Council of State of December 12, 1981, on the introduction of martial law for reasons of national security.[135] On the basis of this resolution, martial law was imposed throughout the territory of the Polish People's Republic on December 13, 1981.[136] In addition to the decree on martial law, the Council of State issued two more decrees on the same day: on special proceedings in cases of crimes and misdemeanors during martial law, on the transfer of cases involving certain crimes to military courts, and on changes to the structure of military courts and military organizational units of the Prosecutor's Office of the Polish People's Republic during martial law.[137]

Pursuant to the provisions of the decree of December 12, 1981, on martial law, it could be imposed on part or all of the territory of the country for reasons of national defense in the event of a threat to the sovereignty and independence of the Polish People's Republic, or for reasons of state security

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134 KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952] (Dz.U. 1952 nr 33 poz. 232) w brzmieniu nadanym ustawą z dnia 10 lutego 1976 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej [as amended by the Act of Feb. 10, 1976 on the Amendment of the Constitution of the Polish People's Republic] (Dz.U. 1976 nr 5 poz. 29); PROKOP, *supra* note 2.

135 Uchwała Rady Państwa z dnia 12 grudnia 1981 r. w sprawie wprowadzenia stanu wojennego ze względu na bezpieczeństwo państwa [Resolution of the Council of State of Dec. 12, 1981 on the Introduction of Martial Law Due to State Security] (Dz.U. 1981 nr 29 poz. 155); KONSTYTUCJA POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ Z DNIA 22 LIPCA 1952 [CONSTITUTION OF THE REPUBLIC OF POLAND OF JULY 22, 1952] (Dz.U. 1952 nr 33 poz. 232) W BRZMIENIU OBOWIĄZUJĄCYM W 1981 [as in force in 1981] (providing constitutional basis for declaration of martial law by the Council of State).

136 Uchwała Rady Państwa z dnia 12 grudnia 1981 r. w sprawie wprowadzenia stanu wojennego ze względu na bezpieczeństwo państwa [Resolution of the Council of State of Dec. 12, 1981 on the Introduction of Martial Law Due to State Security].

137 Dekret Rady Państwa z dnia 12 grudnia 1981 r. o stanie wojennym [Decree of the Council of State of Dec. 12, 1981 on the State of Martial Law] (Dz.U. 1981 nr 29 poz. 154) (regulating the legal consequences of martial law); Dekret Rady Państwa z dnia 12 grudnia 1981 r. o postępowaniach szczególnych w sprawach o przestępstwa i wykroczenia w okresie obowiązywania stanu wojennego [Decree of the Council of State of Dec. 12, 1981 on Special Proceedings in Cases of Crimes and Offenses During the Period of Martial Law] (Dz.U. 1981 nr 29 poz. 155) (introducing special criminal procedures during martial law); Dekret Rady Państwa z dnia 12 grudnia 1981 r. o przekazaniu do właściwości sądów wojskowych spraw o niektóre przestępstwa oraz o zmianach w ustroju sądów wojskowych i wojskowych jednostek organizacyjnych Prokuratury Polskiej Rzeczypospolitej Ludowej w okresie obowiązywania stanu wojennego [Decree of the Council of State of Dec. 12, 1981 on Transferring Certain Offenses to the Jurisdiction of Military Courts and on Changes in the Organization of Military Courts and Military Organizational Units of the Prosecutor's Office of the Polish People's Republic During the Period of Martial Law] (Dz.U. 1981 nr 29 poz. 156) (transferring specified criminal cases to military courts and reorganized military judicial structures).

in the event of a serious threat to or violation of peace, order, and public safety in the country.[138] Pursuant to Article 4 of the decree, the introduction of martial law resulted in the temporary suspension or restriction of fundamental rights of citizens, in particular, personal inviolability, inviolability of homes and confidentiality of correspondence, the right of association, freedom of speech, press, assembly, rallies, marches, and demonstrations.[139] At the same time, a decree of the same date on special proceedings in cases of crimes and offenses during martial law introduced summary proceedings by common and military courts in cases of acts listed therein committed during martial law and within the territory covered by it.[140] In these proceedings, the court could impose, regardless of the type and limits of the statutory penalty for a given crime, the death penalty or a sentence of 25 years' imprisonment, or a sentence of imprisonment for a term of not less than 3 years.[141]

Martial law was suspended on December 31, 1982, and formally abolished on July 22, 1983.[142] Although the most severe penalties were not imposed during this period, martial law claimed around 100 lives as a result of the brutal suppression of social protests.[143] After martial law was lifted, the legal situation did not change significantly, and the economic crisis and social resistance ultimately led to an agreement between the government and the Solidarity opposition, which resulted in partially free parliamentary elections in June 1989.[144] As a result of the elections (despite the government guaranteeing itself a certain number of seats), solidarity took power, and the process of democratization of the state began.[145]

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138 Dekret Rady Państwa z dnia 12 grudnia 1981 r. o stanie wojennym [Decree of the Council of State of Dec. 12, 1981 on the State of Martial Law], at art. 2.

139 *Id.* at art. 4.

140 Dekret Rady Państwa z dnia 12 grudnia 1981 r. o postępowaniach szczególnych w sprawach o przestępstwa i wykroczenia w okresie obowiązywania stanu wojennego [Decree of the Council of State of Dec. 12, 1981 on Special Proceedings in Cases of Crimes and Offenses During the Period of Martial Law].

141 *Id.* at arts. 13–15.

142 Uchwała Rady Państwa z dnia 31 grudnia 1982 r. w sprawie zawieszenia stanu wojennego [Resolution of the Council of State of Dec. 31, 1982 regarding the Suspension of Marital Law] (Dz.U. 1982 nr 45 poz. 304) (suspending martial law); Ustawa z dnia 21 lipca 1983 r. o zniesieniu stanu wojennego [Act of July 21, 1983 on the Lifting of Marital Law] (Dz.U. 1983 nr 39 poz. 178) (formally abolishing martial law).

143 Kęsoń, *supra* note 8 (analyzing the consequences of martial law, including repression and loss of life).

144 PROKOP, *supra* note 2 (discussing the transition from authoritarian emergency governance to democratic transformation).

145 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND] (Dz.U. 1997 nr 78 poz. 483); PROKOP, *supra* note 2 (analyzing the constitutional consequences of the 1989 political transformation).

II. CURRENT LEGAL STATUS

A. Common Courts

The current Constitution of Poland, adopted in 1997, introduced, in Article 10, the division and balance of powers as the basis of the political system: legislative, executive, and judicial.[146] Legislative power is exercised by the Sejm and Senate, executive power by the President of the Republic of Poland and the Council of Ministers, and judicial power by the courts and tribunals (the Constitutional Tribunal and the State Tribunal).[147] This principle is confirmed, among other things, by the content of Article 173, which states that courts and tribunals are a separate authority, independent of other authorities.[148]

Pursuant to Article 175, justice in the Republic of Poland is administered by the Supreme Court, common courts, administrative courts, and military courts.[149] However, in accordance with the principle expressed in Article 45, everyone has the right to a fair and public hearing without undue delay by a competent, independent, impartial, and independent court.[150] Court proceedings in Poland are at least two-instance proceedings.[151]

The Supreme Court is not a common court, but a judicial authority whose main task is to administer justice by ensuring the legality and uniformity of the jurisprudence of common courts and military courts by hearing appeals and adopting resolutions on legal issues.[152] In addition, it exercises extraordinary control over final court judgments to ensure their compliance with the principle of a democratic state ruled by law that implements the principles of justice, and hears extraordinary appeals.[153] The Supreme Court is also responsible for examining election protests, confirming the validity of elections, and conducting educational, scientific,

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146 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 10 (Dz.U. 1997 nr 78 poz. 483).

147 *Id.* at arts. 10(2), 175–98.

148 *Id.* at art. 173.

149 *Id.* at art. 175(1).

150 *Id.* at art. 45(1).

151 *Id.*

152 *Id.* at art. 183(1); Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym [Act of Dec. 8, 2017 on the Supreme Court], arts. 1, 83 (Dz.U. 2018 poz. 5).

153 Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym [Act of Dec. 8, 2017 on the Supreme Court], at arts. 89–95; KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 2 (Dz.U. 1997 nr 78 poz. 483).

publishing, and museum activities related to the history of the Polish judiciary.[154]

According to the Law on the System of Common Courts, common courts in Poland include district courts, regional courts, and courts of appeal.[155] As of June 2025, there are 319 district courts, 47 regional courts, and 11 courts of appeal in Poland.[156] Common courts administer justice in matters not falling within the jurisdiction of administrative courts, military courts, and the Supreme Court, which means that the jurisdiction of common courts is the rule, as it has been defined in the broadest possible terms—i.e., universal.[157]

District courts are courts of first instance, and the law establishes a presumption of their jurisdiction, as district courts hear all cases except those reserved for regional courts.[158] Regional courts, on the other hand, hear cases concerning non-property rights, violations of personal rights, property cases with a value of over PLN 100,000, and the most serious crimes as courts of first instance.[159] In addition, they are the courts that hear appeals against district court rulings.[160] Appellate courts, on the other hand, hear appeals against regional court rulings.[161]

Judges perform judicial tasks, and citizens participate in the adjudication of certain types of cases through the participation of lay judges in courts of first instance (in certain family, criminal, and labor law cases).[162] When adjudicating cases, lay judges have the same authority as judges.[163]

A person may be appointed to the position of district court judge if they hold Polish citizenship exclusively and enjoy full civil and public rights and,

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154 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 101(1), 129(1) (Dz.U. 1997 nr 78 poz. 483); Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym [Act of Dec. 8, 2017 on the Supreme Court], at arts. 1, 8.

155 Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych [Act of July 27, 2001 – Law on the System of Common Courts], arts. 1–2 (Dz.U. 2001 nr 98 poz. 1070).

156 *Id*.; *The Judicial System in Poland*, BIULETYN INFORMACJI PUBLICZNEJ SĄD OKRĘGOWY W WARSZAWIE, https://bip.warszawa.so.gov.pl/artykul/436/274/the-judicial-system-in-poland (on file with SIU Law Journal) (last visited Mar. 10, 2026) (current structure of common courts, including counts of appeal, regional, and district courts).

157 Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych [Act of July 27, 2001 – Law on the System of Common Courts], at art. 1 § 1; KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 177 (Dz.U. 1997 nr 78 poz. 483).

158 Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych [Act of July 27, 2001 – Law on the System of Common Courts], at arts. 16–17.

159 *Id.* at art. 18, 25.

160 *Id.*

161 *Id.* at art. 19.

162 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 182 (Dz.U. 1997 nr 78 poz. 483); Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych [Act of July 27, 2001 – Law on the System of Common Courts], at arts. 4, 154–58.

163 Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych [Act of July 27, 2001 – Law on the System of Common Courts], at art. 4 § 2.

have not been convicted of an intentional crime prosecuted by public indictment or an intentional fiscal crime, is of impeccable character, has completed higher legal studies in the Republic of Poland and obtained a master's degree or foreign legal studies recognized in the Republic of Poland, is capable, due to their state of health, of performing the duties of a judge, is at least 29 years of age, has passed the judicial or prosecutorial examination, and, while holding the position of assistant judge, has performed the duties of a judge for at least three years.[164]

Judges are the only professional group regulated to such a significant extent in the Constitution.[165] According to its provisions, judges are independent in the exercise of their office and are subject only to the Constitution and statutes. Judges are also provided with working conditions and remuneration commensurate with the dignity of their office and the scope of their duties.[166] Furthermore, judges may not belong to a political party or trade union, nor may they engage in public activities that are incompatible with the principles of judicial independence and the independence of judges.[167] In addition, Article 173 of the Constitution guarantees the separateness and independence of the courts from other authorities.[168]

Judges are appointed by the President of the Republic of Poland for an indefinite term.[169] The appointment is made at the request of the National Council of the Judiciary, a body consisting of 15 judges (from the Supreme Court, common courts, administrative courts, and military courts), four members of parliament, two senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Minister of Justice, and a person appointed by the President, who evaluates candidates for judge positions.[170]

As a rule, judges are irremovable, and the removal of a judge from office, suspension from office, transfer to another seat or to another position against his will may only take place by virtue of a court ruling and only in cases specified by law.[171] A judge may be retired due to illness or loss of strength preventing him from performing his duties, or in the event of a change in the court system or a change in the boundaries of court districts.[172]

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164 *Id.* at art. 61 § 1(1–7).

165 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 173–201 (Dz.U. 1997 nr 78 poz. 483) (detailing constitutional regulation of the judiciary and judicial status).

166 *Id.* at art. 178(1–2).

167 *Id.* at art. 178(3).

168 *Id.* at art. 173.

169 *Id.* at art. 179.

170 *Id.* at arts. 179, 186(1), 187(1).

171 *Id.* at art. 180(1–2).

172 *Id.* at art. 180(3–5).

A judge may not be held criminally liable or deprived of liberty without the prior consent of a court specified in the law.[173] A judge may not be detained or arrested, except when caught in the act of committing a crime, if his detention is necessary to ensure the proper course of proceedings.[174] The president of the locally competent court shall be immediately notified of the detention and may order the immediate release of the detained person.[175]

The aforementioned provisions of the Constitution and statutes indicate the concern of the authors of the Constitution that justice should be administered by persons with special qualities, whose independence from any pressure is guaranteed by law and who are able to adjudicate on the basis of the law and in accordance with their own conscience.[176] Like many Polish legal institutions, the definition of the office of judge is also the result of the experiences of previous years and the need to guarantee the independence of the judiciary from the executive and legislative branches.[177]

B. Special Courts

Pursuant to the aforementioned Article 175 of the Constitution, apart from the Supreme Court and common courts, justice is also administered by special courts, i.e. administrative courts and military courts.[178]

Administrative courts exercise control over public administration, thereby protecting citizens against the actions and inaction of government and local authorities.[179] This control also includes ruling on the compliance of local government resolutions and normative acts of local government bodies with the law.[180] The administrative judiciary comprises provincial administrative courts as courts of first instance (of which there are 16) and

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173 *Id.* at art. 181.

174 *Id.*

175 *Id.*

176 *Id.* at arts. 173, 178(1–3); PROKOP, *supra* note 2 (analyzing the constitutional safeguards designed to prevent political pressure on the judiciary).

177 Safjan, *supra* note 5 (discussing historical experiences shaping Polish constitutional safeguards, including protection of judicial independence); Kęsoń, *supra* note 8 (examining the historical development of emergency powers and their impact on constitutional design).

178 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 175(1) (Dz.U. 1997 nr 78 poz. 483).

179 *Id.* at art. 184; Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi [Act of Aug. 30, 2002 – Law on Proceedings before Administrative Courts], art. 3 § 1–2 (Dz.U. 2002 nr 153 poz. 1270) (defining the scope of judicial control exercised by administrative courts over acts and omissions of public administration).

180 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 184 (Dz.U. 1997 nr 78 poz. 483); Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi [Act of Aug. 30, 2002 – Law on Proceedings before Administrative Courts], at art. 3 § 2(5–6).

the Supreme Administrative Court as an appellate court, exercising judicial and organizational supervision over the courts of first instance.[181]

The establishment of administrative courts is of significant importance for the protection of human rights and freedoms and compliance with the standards of a democratic state governed by the rule of law.[182] Their function is to ensure the rule of law in the activities of the administration and to protect the rights of individuals against abuse by public authorities.[183] Cases referred to administrative courts may concern a wide variety of issues, including, for example, access to public information, building permit decisions, tax matters, or decisions concerning the status of foreigners.[184]

It can be concluded that administrative courts effectively control the state and exert significant influence on its functioning.[185]

The last type of courts mentioned in the Constitution are military courts.[186] They administer justice in the Armed Forces of the Republic of Poland in criminal cases within the scope provided for by law and adjudicate in other cases if they have been referred to their jurisdiction by separate laws.[187] The jurisdiction of military courts covers primarily criminal cases involving soldiers in active military service, as well as crimes committed in connection with military service and against military duty and discipline.[188]

The Polish military judiciary consists of Military Garrison Courts, which hear cases in the first instance (there are currently seven of them),

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181 Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi [Act of Aug. 30, 2002 – Law on Proceedings before Administrative Courts], at art. 3 § 1–2; KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 184 (Dz.U. 1997 nr 78 poz. 483).

182 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 2, 184 (Dz.U. 1997 nr 78 poz. 483).

183 *Id.* at art. 184; Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi [Act of Aug. 30, 2002 – Law on Proceedings before Administrative Courts], at arts. 1, 3 § 1.

184 *See, e.g.*, Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi [Act of Aug. 30, 2002 – Law on Proceedings before Administrative Courts], at art. 3 § 2 (1–9) (enumerating categories of acts and decisions subject to review by administrative courts).

185 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 184 (Dz.U. 1997 nr 78 poz. 483); Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi [Act of Aug. 30, 2002 – Law on Proceedings before Administrative Courts], at art. 3 § 1–2.

186 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 175(1) (Dz.U. 1997 nr 78 poz. 483).

187 *Id.*; Ustawa z dnia 21 sierpnia 1997 r. – Prawo o ustroju sądów wojskowych [Act of Aug. 21, 1997 – Law on the System of Military Courts], arts. 1–2 (Dz.U. 1997 nr 117 poz. 753).

188 Ustawa z dnia 21 sierpnia 1997 r. – Prawo o ustroju sądów wojskowych [Act of Aug. 21, 1997 – Law on the System of Military Courts], at arts. 5–6; Sławomir Steinborn, *W sprawie optymalnego zakresu jurysdykcji sądów wojskowych* [*On the Optimal Scope of the Jurisdiction of Military Courts*], 2006 PROKURATURA I PRAWO 58 (analyzing optimal scope and constitutional limits of military court jurisdiction).

Military District Courts, which are the appellate instance for garrison courts and the court of first instance in more serious crimes (there are two such courts), and the Military Chamber of the Supreme Court.[189] Proceedings before military courts are conducted on the basis of the general principles of criminal procedural law, and military substantive criminal law is largely regulated in the military section of the Criminal Code.[190]

After a period of using military courts to combat political and ideological opponents in the immediate aftermath of World War II and during the period of dependence on the Union of Soviet Socialist Republics, military courts are now called upon to adjudicate criminal cases involving active-duty soldiers and civilian military personnel who commit "military" crimes (described in the criminal part of the penal code), as well as to maintain discipline and order in the Polish Armed Forces.[191]

C. Tribunals

The 1997 Constitution mentions two courts: the Constitutional Court and the State Court.[192] Pursuant to Article 188 of the Constitution, the Constitutional Tribunal adjudicates on the conformity of statutes and international agreements with the Constitution, the conformity of statutes with ratified international agreements whose ratification required prior consent expressed in a statute, the conformity of legal provisions issued by central state authorities with the Constitution, ratified international agreements and statutes, the constitutionality of the objectives or activities of political parties, and constitutional complaints (i.e., legal remedies for

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189 Ustawa z dnia 21 sierpnia 1997 r. – Prawo o ustroju sądów wojskowych [Act of Aug. 21, 1997 – Law on the System of Military Courts], at arts. 3–5 (providing that military judiciary consists of military garrison courts and military district courts and defines their jurisdiction); Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym [Act of Dec. 8, 2017 on the Supreme Court] (Dz.U. 2018 poz. 5) (regulating the internal chambers of the Supreme Court, including the chamber exercising jurisdiction over military matters).

190 Ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego [Act of June 6, 1997 – Code of Criminal Procedure] (Dz.U. 1997 nr 89 poz. 555); Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny [Act of June 6, 1997 –Penal Code], część wojskowa [Military Section], arts. 317–63 (Dz.U. 1997 nr 88 poz. 553); Ustawa z dnia 21 sierpnia 1997 r. – Prawo o ustroju sądów wojskowych [Act of Aug. 21, 1997 – Law on the System of Military Courts], at art. 1; Katarzyna Dunaj, *Sądy wojskowe jako organy wymiaru sprawiedliwości*, XXIV STUDIA IURIDICA LUBLINENSIANR 9 (2015).

191 Kmiecik, *supra* note 107; Ustawa z dnia 21 sierpnia 1997 r. – Prawo o ustroju sądów wojskowych [Act of Aug. 21, 1997 – Law on the System of Military Courts], at arts. 1, 5–6; Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny [Act of June 6, 1997 –Penal Code], część wojskowa [Military Section], at arts. 317–363.

192 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 10(2), 173, 198–201 (Dz.U. 1997 nr 78 poz. 483).

individuals).[193] In addition, the Constitutional Tribunal settles disputes over competence between central constitutional state authorities.[194] The rulings of the Constitutional Tribunal are universally binding and final.[195]

It is a judicial body that safeguards the constitutionality of laws and acts as an arbitrator between the central constitutional bodies of the state.[196] The Constitutional Tribunal consists of 15 judges, individually elected by the Sejm for a term of nine years from among persons distinguished by their legal expertise.[197] Re-election to the Tribunal is not permitted.[198] The judges of the Constitutional Tribunal are independent in the exercise of their office and are subject only to the Constitution.[199] During their term of office, the judges of the Constitutional Tribunal may not belong to a political party or trade union, nor may they engage in public activities that are incompatible with the principles of judicial independence and the independence of judges.[200]

The role of the Constitutional Tribunal is to guarantee the supremacy of the constitution in the legal order of the state.[201] This maintains the balance between the legislative and executive powers.[202] In addition, the Constitutional Tribunal protects the freedoms and rights of individuals against excessive interference by the authorities.[203] It should be emphasized that the Constitutional Tribunal is not a court of fact, but a court of law.[204]

Another court established by the Constitution is the State Tribunal, before which the following persons bear constitutional responsibility for violating the Constitution or a statute in connection with their position or within the scope of their office: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Audit Office, members of the National Broadcasting Council, persons entrusted by the Prime Minister with the management of a ministry, and the Commander-in-Chief of the Armed Forces.[205]

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193 *Id.* at art. 188 (defining the jurisdiction of the Constitutional Tribunal, including constitutional review, review of political parties, and constitutional complaints); *id.* at art. 79(1).

194 *Id.* at art. 189.

195 *Id.* at art. 190(1).

196 *Id.* at art. 188–89.

197 *Id.* at art. 194(1).

198 *Id.*

199 *Id.* at art. 195(1).

200 *Id.* at art. 195(3) (prohibits party membership, trade union membership, and incompatible public activity).

201 *Id.* at arts. 8(1), 188.

202 *Id.* at arts. 10(1–2), 188.

203 *Id.* at arts. 79(1), 188(1–3); *id.* at art. 2.

204 *Id.* at art. 188.

205 *Id.* at art. 198(1–3) (establishing the State Tribunal and defines constitutional responsibility of high state officials*)*; *id.* at art. 145(1) (providing for constitutional responsibility of the President of the Republic before the State Tribunal).

The State Tribunal consists of a president, two vice-presidents, and 16 members elected by the Sejm from outside the ranks of deputies and senators for the duration of the Sejm's term of office.[206] The vice-presidents of the Tribunal and at least half of its members should have the qualifications required to hold the position of judge, while the President of the Tribunal is the First President of the Supreme Court.[207] The members of the State Tribunal, in exercising their functions as judges of the State Tribunal, are independent and subject only to the Constitution and the laws.[208]

The State Tribunal is a judicial authority that enforces the accountability of the highest state authorities and officials for violations of the Constitution or statutes in connection with their position or within the scope of their office.[209] The Sejm, Senate, or National Assembly (i.e., the combined chambers of parliament) decide on bringing a case before the State Tribunal.[210] In proceedings before the State Tribunal, the following penalties may be imposed: loss of active and passive voting rights, loss of all or some orders, decorations and honorary titles, prohibition from holding managerial positions or performing functions involving special responsibility in state bodies and social organizations, deprivation of parliamentary mandate (from 2 to 10 years), loss of the position held, the performance of which is subject to responsibility before the State Tribunal, and penalties provided for in the statutes (for crimes and fiscal offenses).[211]

The role of the State Tribunal is to provide additional protection against abuses by politicians, and its existence is necessary, if only to hold the President accountable for breaking the law, as he should not be answerable to the ordinary courts because he appoints judges to office.[212]

III. EXCEPTIONS TO THE GENERAL PRINCIPLES OF JUSTICE – SPECIAL COURTS AND SUMMARY PROCEEDINGS

As stipulated in Article 175 of the Constitution, justice in the Republic of Poland is administered by the Supreme Court, common courts, administrative courts, and military courts, and a special court or *ad hoc* court may be established only in times of war.[213] The list of courts specified in this

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206 *Id.* at art. 199(1–2).

207 *Id.* at art. 199(1).

208 *Id.* at art. 199(3).

209 *Id.* at 198(1).

210 *Id.* at arts. 145(2), 198(2–3) (regulating the procedure and parliamentary bodies competent to bring officials before the State Tribunal).

211 *Id.* at arts. 199(3), 201.

212 *Id.* at arts. 145(1–2), 179.

213 *Id.* at art. 175(1–2).

provision is exhaustive, and in peacetime no court other than those listed in Article 175 of the Constitution may be established.[214]

A distinction must be made between the state of war referred to in this provision and the state of martial law defined in Article 229 of the Constitution or the state of emergency described in Article 230.[215] Article 116 of the Constitution stipulates that the Sejm decides on the state of war and the conclusion of peace on behalf of the Republic of Poland.[216] The Sejm may adopt a resolution on a state of war only in the event of an armed attack on the territory of the Republic of Poland or when international agreements impose an obligation to defend jointly against aggression.[217] If the Sejm is unable to convene, the President of the Republic of Poland shall decide on a state of war.[218]

The Polish Constitution, like many other countries, grants the Sejm (or the President) the power to declare war, which is in fact contrary to international agreements to which the Republic of Poland is a party.[219] The Hague Conventions (of 1899, 1904, and 1907) regulated the rules of warfare and its declaration.[220] However, the Briand-Kellogg Pact, which came into force on July 24, 1929, established the renunciation of war as an instrument of national policy, which in the short term proved to be highly ineffective.[221] The Charter of the United Nations, signed on June 26, 1945, also introduced a universal prohibition on the use or threat of force in international relations.[222] The only exception to the prohibition on the use of force provided for in the Charter of the United Nations is the right to collective or individual self-defense.[223]

According to the provisions of the Constitution, a state of war may be declared in the event of an armed attack on the territory of the Republic of Poland or when international agreements impose an obligation to defend

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214 *Id.*

215 *Id.* at arts. 175(2), 229–30.

216 *Id.* at art. 116(1).

217 *Id.* at art. 116(2).

218 *Id.* at art. 116(3).

219 *Id.* at art. 116(1–3); *id.* at art. 9 (providing that the Republic of Poland respects binding international law).

220 Konwencja dotycząca praw i zwyczajów wojny lądowej (IV Konwencja haska) wraz z Regulaminem, Haga [Hague Convention (IV) Respecting the Laws and Customs of War on Land and Annexed Regulations], 18 października 1907 [Oct. 18, 1907], 36 Stat. 2277 (regulating laws and customs of war on land, including formal requirements related to commencement of hostilities).

221 Pakt o wyrzeczeniu się wojny jako narzędzia polityki narodowej (Pakt Brianda-Kellogga) [Pact for the Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact)], podpisany w Paryżu dnia 27 sierpnia 1928 [signed in Paris Aug. 27, 1928], 46 Stat. 2343, 94 L.N.T.S. 57 (Dz.U. 1929 nr 63 poz. 489).

222 Karta Narodów Zjednoczonych [U.N. Charter], art. 2(4) (Dz.U. 1947 nr 23 poz. 90).

223 *Id.* at art. 51.

against aggression.[224] This is a clear reference to the provisions of Article 51 of the United Nations Charter on the right to individual and collective self-defense.[225] The terms "armed attack" and "aggression" are not defined in any national legal act, so one can use, for example, the meaning of armed attack as defined in Article 6 of the North Atlantic Treaty, of which the Republic of Poland is a member.[226] According to the North Atlantic Treaty, an armed attack against one of the parties to the agreement will be treated as an attack against all signatories (Article 5).[227] This is a definition of the necessary and sufficient conditions for legal collective self-defense.[228] According to this principle, an armed attack on any NATO member also constitutes an armed attack on the Republic of Poland.[229] However, this does not mean entering into a state of war with the aggressor, but requires, in accordance with the Constitution, the adoption of a resolution by the Sejm.[230]

However, even if such a resolution were adopted, there is no law regulating a state of war in the Polish legal system.[231] One of the few provisions directly concerning a state of war is Article 134(4) of the Constitution, according to which, in time of war, the President of the Republic, at the request of the Prime Minister, appoints the Commander-in-Chief of the Armed Forces.[232] He may dismiss the Commander-in-Chief of the Armed Forces in the same manner.[233] The powers of the Commander-in-Chief of the Armed Forces and the rules of his subordination to the constitutional authorities of the Republic of Poland are laid down by statute.[234] These acts include, among others, the Act of August 29, 2002, on

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224 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 116(2) (Dz.U. 1997 nr 78 poz. 483).

225 Karta Narodów Zjednoczonych [U.N. Charter], *supra* note 222, at art. 51.

226 *See, e.g.*, Traktat Północnoatlantycki [North Atlantic Treaty], art. 6, sporządzony w Waszyngtonie dnia 4 kwietnia 1949 [signed in Washington Apr. 4, 1949], 63 Stat. 2241, 34 U.N.T.S. 243 (Dz.U. 2000 nr 87 poz. 970) (defining scope of an armed attack within the meaning of the Treaty).

227 *Id.* at art. 5.

228 *Id.* at arts. 5–6 (defining conditions triggering collective self-defense); Karta Narodów Zjednoczonych [U.N. Charter], *supra* note 222, at art. 51 (recognizing collective self-defense under international law).

229 Traktat Północnoatlantycki [North Atlantic Treaty], *supra* per 226, at art. 5 (providing that an armed attack against one Party shall be considered an attack against them all).

230 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 116(1–2) (Dz.U. 1997 nr 78 poz. 483).

231 Janusz Roszkiewicz, *Wybrane problemy związane z przystosowaniem Konstytucji RP do wojny i innych sytuacji kryzysowych* [*Selected Problems Related to Adapting the Constitution of the Republic of Poland to War and Other Crisis Situations*], 6 PRZEGLĄD PRAWA PUBLICZNEGO [PUB. L. REV.] 19, 19–34 (2021) (arguing that the Constitution lacks fully operational wartime procedures due to legislative inaction).

232 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 134(4) (Dz.U. 1997 nr 78 poz. 483).

233 *Id.*

234 *Id.*

martial law and the powers of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional authorities of the Republic of Poland, and the Act of March 11, 2022, on the defense of the homeland.[235] Another provision of the Constitution that refers to a state of war is Article 175(1), cited in the introduction, which deals with the administration of justice and stipulates that a special court or ad hoc court may be established only during wartime.[236]

The term "wartime" (which is not a constitutional state of war) as a normative concept appears in the provisions of the Act of March 11, 2022, on the defense of the homeland and should be understood as the time of military operations conducted on the territory of the Republic of Poland, the beginning and end of which is determined by a decision of the President of the Republic of Poland issued at the request of the Council of Ministers.[237] The time of war thus defined is not synonymous with the conduct of military operations, but is delimited by the formal beginning and end set by the decisions of the President of the Republic of Poland.[238]

An analysis of the provisions of the Constitution and laws regulating the justice system indicates that there are no rules or procedures for establishing special courts and introducing ad hoc procedures in the Republic of Poland.[239] This is a result of the historical circumstances described in the previous chapters of this study.[240] The experiences of the period of partition,

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235 Ustawa z dnia 29 sierpnia 2002 r. o stanie wojennym oraz o kompetencjach Naczelnego Dowódcy Sił Zbrojnych i zasadach jego podległości konstytucyjnym organom Rzeczypospolitej Polskiej [Act of Aug. 29, 2002 on Martial Law and the Competences of the Commander-in-Chief of the Armed Forces and the Principles of His Subordination to the Constitutional Authorities of the Republic of Poland] (Dz.U. 2002 nr 156 poz. 1301) (regulating powers and subordination of the Commander-in-Chief during martial law); Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022 on the Defense of the Homeland] (Dz.U. 2022 poz. 655) (regulating defense organization and functioning of the Armed Forces).

236 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 175(2) (Dz.U. 1997 nr 78 poz. 483).

237 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022 on the Defense of the Homeland], at arts. 2(1), 603–04 (defining the concept of "czas wojny" and regulates determination of its beginning and end by decision of the President at the request of the Council of Ministers); KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 116 (Dz.U. 1997 nr 78 poz. 483) (regulating declaration of a state of war as a distinct constitutional institution).

238 Ustawa z dnia 11 marca 2022 r. o obronie Ojczyzny [Act of Mar. 11, 2022 on the Defense of the Homeland], at arts. 603–04.

239 *But see* KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 175(1–2) (Dz.U. 1997 nr 78 poz. 483) (providing an exhaustive catalogue of courts and prohibits establishment of extraordinary courts except during wartime); *id.* at art. 45(1) (guaranteeing the right to a fair and public hearing before a competent, independent and impartial court).

240 Kęsoń, *supra* note 8 (analyzing historical development of extraordinary powers and their constitutional consequences); Kmiecik, *supra* note 107 (examining political instrumentalization of courts in the Stalinist period).

political struggles, and authoritarianism of the interwar period, as well as dependence on the Union of Soviet Socialist Republics and the unlimited power of the communist security apparatus after World War II, meant that provisions allowing for the establishment of courts or tribunals operating outside the control of democratic bodies were deliberately not adopted.[241] Fear of restricting human rights and civil liberties led to the decision not to create ready-made instruments for limiting the principles of a democratic state governed by the rule of law, which would be easily accessible.[242]

Only by interpreting the provisions of the Constitution can it be concluded that the characteristics of a special court are its organizational separateness, autonomy in relation to other courts, the specific manner of appointing judges to such a court, the specific scope of cases heard—in terms of time, subject matter, and subject—and specific procedures.[243] In the broadest sense of the term, a special court is any court that is not an "ordinary" court, i.e. one provided for in Article 175(1) of the Constitution.[244] One can only consider that the distinguishing feature of an exceptional court could be the specific manner of proceedings before it (which cannot be an ad hoc procedure, as separately mentioned in Article 175 of the Constitution), or a specific category of cases referred to it for adjudication, or the manner of appointing judges to it.[245] It is considered that these could be courts in a specific category of cases that other courts would not be able to deal with in normal proceedings or within the appropriate short time required due to the circumstances of war.[246] In other words, a special court is one that has been established to adjudicate a specific case, i.e., an ad hoc or ad personam court.[247]

However, it is important to emphasize the particular danger posed by special courts established by the government or other executive authorities, due to the possibility of political influence and the appointment of judges to

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241 Safjan, *supra* note 5 (discussing interwar constitutional experiences and tensions affecting institutional design); Kmiecik, *supra* note 107 (analyzing use of courts as instruments of political repression in the communist period).

242 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 2, 45(1) (Dz.U. 1997 nr 78 poz. 483); PROKOP, *supra* note 2.

243 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 175(1–2) (Dz.U. 1997 nr 78 poz. 483); PROKOP, *supra* note 2.

244 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 175(1) (Dz.U. 1997 nr 78 poz. 483).

245 *Id.* at art. 175(2); *id.* at art. 45(1).

246 *Id.* at art. 175(2).

247 *Id.* at arts. 2, 175(2) (prohibiting extraordinary courts in peacetime and establishes the democratic state ruled by law as a constitutional principle); Włodzimierz Wróbel, *Izba Dyscyplinarna jako sąd wyjątkowy w rozumieniu art. 175 ust. 2 Konstytucji RP* [*The Disciplinary Chamber as an Extraordinary Court Within the Meaning of Article 175(2) of the Constitution of the Republic of Poland*], 64 PALESTRA [J. POLISH BAR] 17 (2019) (analyzing defining characteristics of an extraordinary court).

such courts in a manner that deviates from the normal procedure guaranteeing impartiality and independence.[248] Consequently, the establishment of such courts is unacceptable even in the event of martial law or a state of emergency, and is only permissible in a state of war.[249]

The same applies to the summary procedure referred to in Article 175(1) of the Constitution, which is a special procedure in relation to ordinary proceedings.[250] While ordinary proceedings are the rule, summary proceedings are an exception to this rule, and since they do not usually guarantee all the rights and freedoms of the individual, as in ordinary proceedings, they may only be introduced in special circumstances, i.e., in a state of war.[251] Emergency procedures, bearing in mind historical experience, are usually characterized by accelerated proceedings, stricter penalties, and restrictions on appealing against judgments handed down under these procedures.[252]

During normal functioning of the state, there is an absolute prohibition on violating the essence of constitutional rights and freedoms, which results from the content of Article 31(3) of the Constitution:

> Restrictions on the exercise of constitutional freedoms and rights may be established only by statute and only when necessary in a democratic state for its security or public order, or for the protection of the environment, public health and morals, or the freedoms and rights of others. These restrictions may not violate the essence of freedoms and rights.[253]

Furthermore, Article 45 of the Constitution stipulates that everyone has the right to a fair and public hearing without undue delay by a competent, impartial, and independent court.[254]

It seems that even in the current situation of security threats caused by the Russian Federation's aggression against Ukraine, guarantees of respect

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248 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 10(1), 173 (Dz.U. 1997 nr 78 poz. 483) (establishing separation and balance of powers and guarantees the separateness and independence of courts); *id.* at art. 178(1) (guaranteeing that judges are independent and subject only to the Constitution and statutes); *id.* at art. 179 (providing constitutional procedure for judicial appointment).

249 *Id.* at art. 175(2) (permitting establishment of extraordinary courts exclusively during wartime); *id.* at arts. 229–30 (regulating martial law and state of emergency without authorizing establishment of extraordinary courts).

250 *Id.* at art. 175(1).

251 *Id.* at arts. 45(1), 176(1–2); *id.* at art. 2.

252 Kęsoń, *supra* note 8 (analyzing characteristics of emergency procedures in Polish constitutional history); Kmiecik, *supra* note 107 (examining historical use of accelerated procedures and restrictive appeal mechanisms).

253 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 31(3) (Dz.U. 1997 nr 78 poz. 483); *id.* at art. 2.

254 *Id.* at art. 45(1).

for individual rights prevent the introduction of emergency measures known from previous years, and state authorities are using existing regulations.[255]

An example of such extraordinary measures, taken in response to threats to the country's eastern border, was the introduction of a 30-day state of emergency by a decree of the President of the Republic of Poland on September 2, 2021, in connection with the so-called migration crisis, i.e. the threat to the safety of citizens and public order at the state border with the Republic of Belarus.[256] By a resolution of October 1, 2021, the Sejm agreed to extend this state for another 60 days.[257] During the state of emergency, restrictions on individual freedoms and rights were introduced in the border area covered by the state of emergency, including: the right to organize and hold mass gatherings and events was suspended, it was prohibited to stay in designated places, facilities, and areas at specified times, the recording of the appearance or other features of specific places, facilities, or areas using technical means was prohibited, facilities or areas, the right to possess firearms, ammunition, explosives, and other types of weapons was restricted by introducing a ban on carrying them, and access to public information on activities carried out in the area covered by the state of emergency in connection with the protection of the state border and the prevention and

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255 *See, e.g.*, *id.* at art. 228(1–3) (providing that extraordinary measures may be introduced only in situations of particular threat and must be regulated by statute); *id.* at art. 31(3) (prohibiting violation of the essence of constitutional rights and establishes proportionality requirement); *id.* at art. 233(1–3) (defining permissible scope of limitations of rights during states of emergency).

256 Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 2 września 2021 r. w sprawie wprowadzenia stanu wyjątkowego na części terytorium Rzeczypospolitej Polskiej [Decree of the President of the Republic of Poland of Sep. 2, 2021 on the Introduction of a State of Emergency in Part of the Territory of the Republic of Poland] (Dz.U. 2021 poz. 1612) (introduced a 30-day state of emergency in designated border areas); Ustawa z dnia 21 czerwca 2002 r. o stanie wyjątkowym [Act of June 21, 2002 on the State of Emergency] (Dz.U. 2002 nr 113 poz. 985) (regulating detailed rules for introduction and functioning of a state of emergency).

257 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 230(2) (Dz.U. 1997 nr 78 poz. 483) (providing that extension of a state of emergency requires consent of the Sejm); Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 1 października 2021 r. w sprawie wyrażenia zgody na przedłużenie stanu wyjątkowego [Resolution of the Sejm of the Republic of Poland of Oct. 1, 2021 on Granting Consent to the Extension of the State of Emergency] (M.P. 2021 poz. 898) (approving extension of the state of emergency for 60 days).

counteraction of illegal migration was restricted.[258] After the period specified in the Constitution, the state of emergency ended.[259]

On the other hand, responses to the Russian Federation's aggression against Ukraine take the form of generally applicable regulations that must comply with the Constitution.[260] An example of such a specific regulation is the Act of April 13, 2022, on special measures to counteract support for aggression against Ukraine and to protect national security, which introduced, for example, new crimes punishable by imprisonment for a term of not less than three years, consisting in violating or circumventing the prohibitions specified in EU sanctions regulations introducing restrictive measures in connection with the Russian Federation's invasion of Ukraine.[261] The above-mentioned act also defines a new offense, which is acting contrary to the prohibition on the use, application, or promotion of symbols or names supporting Russia's aggression against Ukraine (e.g., the "Z" symbol).[262] This offense is punishable by a fine, restriction of liberty, or imprisonment for up to two years.[263]

The provisions of these legal acts are subject to constitutional review, and their enforcement and individual cases of violation are subject to judicial review by common or administrative courts.[264]

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258 *See* KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 233(1–2) (Dz.U. 1997 nr 78 poz. 483) (defining permissible scope of restrictions during a state of emergency); Ustawa z dnia 21 czerwca 2002 r. o stanie wyjątkowym [Act of June 21, 2002 on the State of Emergency], at arts. 20–22 (specifying types of restrictions that may be introduced during a state of emergency); Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 2 września 2021 r. w sprawie wprowadzenia stanu wyjątkowego na części terytorium Rzeczypospolitej Polskiej [Decree of the President of the Republic of Poland of Sep. 2, 2021 on the Introduction of a State of Emergency in Part of the Territory of the Republic of Poland] (establishing specific restrictions applicable in the designated area).

259 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 230(1–2) (Dz.U. 1997 nr 78 poz. 483).

260 *Id.* at arts. 8(1), 31(3) (establishing supremacy of the Constitution and proportionality requirement for limitations of rights).

261 Ustawa z dnia 13 kwietnia 2022 r. o szczególnych rozwiązaniach w zakresie przeciwdziałania wspieraniu agresji na Ukrainę oraz służących ochronie bezpieczeństwa narodowego [Act of Apr. 13, 2022 on Special Measures to Counteract Support for Aggression Against Ukraine and to Protect National Security], arts. 15–16 (Dz.U. 2022 poz. 835) (introducing criminal liability for violation or circumvention of EU sanctions related to aggression against Ukraine).

262 *Id.* at art. 16(1–3) (establishing criminal liability for promoting symbols supporting aggression against Ukraine).

263 *Id.*

264 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 188(1–3) (Dz.U. 1997 nr 78 poz. 483) (providing for constitutional review of statutes by the Constitutional Tribunal); *id.* at arts. 45(1), 175(1) (guaranteeing right to court and defines structure of courts administering justice).

CONCLUSION

A broad presentation of the topic from a historical perspective was necessary due to Poland's historical experiences, which are often referred to by Polish legislators.[265] Many Polish lawyers look with envy at the stability of the main legal institutions in the United Kingdom and the United States of America, and the regulations that have been in force for several hundred years.[266] Poland's geopolitical situation has prevented us from developing stable case law and legal institutions that remain unchanged for decades.[267] In fact, since the 17th century, Poland has faced threats from the Russian Empire, later the Union of Soviet Socialist Republics, and now the Russian Federation, which, in addition to military actions, have manifested themselves in attempts to influence Poland's internal situation.[268] Added to this are the experiences of the partition of Poland by the Kingdom of Prussia and the crimes committed by the Third Reich during World War II.[269] All this means that over the last 100 years, Poland's main state institutions have been rebuilt from scratch.[270]

However, external threats and the crisis of democracy in the interwar period (and experiences of authoritarianism) have meant that these institutions are created with a view to ensuring the greatest possible balance between the legislative, executive, and judicial powers.[271] At the same time, no ready-made tools have been created that would allow any authorities to act in disregard of individual rights and freedoms, as it was recognized that their existence would encourage their use.[272] An additional safeguard is provided by European Union regulations and the Court of Justice of the

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265 *See* Kęsoń, *supra* note 8 (analyzing the historical evolution of extraordinary powers in Polish constitutional practice).

266 Safjan, *supra* note 5 (discussing instability and transformations of Polish constitutional institutions in comparative perspective).

267 *Id.* (addressing structural instability of Polish constitutional development).

268 Kmiecik, *supra* note 107 (examining the period of dependence on the Soviet Union and political instrumentalization of institutions); Kęsoń, *supra* note 8 (placing Polish constitutional evolution in the context of geopolitical threats).

269 Safjan, *supra* note 5 (discussing constitutional development in light of partition and interwar experiences).

270 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], Preambuła [Preamble] (Dz.U. 1997 nr 78 poz. 483) (refering to historical experiences and rebuilding of state institutions); PROKOP, *supra* note 2 (analyzing constitutional reconstruction after 1989).

271 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 10(1) (Dz.U. 1997 nr 78 poz. 483); Safjan, *supra* note 5 (analyzing interwar constitutional instability and its influence on later institutional design).

272 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 2, 175(2) (Dz.U. 1997 nr 78 poz. 483); PROKOP, *supra* note 2 (analyzing constitutional safeguards against abuse of emergency powers).

European Union in Luxembourg, which, in recent years, has limited the executive branch's desire to subjugate Polish judges through its rulings.[273]

The above analysis allows us to conclude that an independent judiciary with independent judges is a guarantee of the existence of a democratic state governed by the rule of law, which respects the freedoms and rights of the individual.[274]

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273 KONSTYTUCJI RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION OF THE REPUBLIC OF POLAND], art. 91(1–3) (Dz.U. 1997 nr 78 poz. 483); Traktat o funkcjonowaniu Unii Europejskiej [Treaty on the Functioning of the European Union], art. 267, Oct. 26, 2012, 2012 O.J. (C326) 47 (Dz.U. 2004 nr 90 poz. 864/2) (establishing preliminary reference procedure before the Court of Justice of the European Union).

274 ROLA SĄDÓW W DEMOKRATYCZNYM PAŃSTWIE PRAWA [THE ROLE OF COURTS IN A DEMOCRATIC STATE GOVERNED BY THE RULE OF LAW] (Marek Zubik, Konrad Rydel eds., Kancelaria Senatu, Warszawa 2025).

A GATEWAY RIGHT UNDER STRAIN: INCLUSIVE EDUCATION FOR UKRAINIAN REFUGEE CHILDREN WITH DISABILITIES IN POLAND

Carly M. Toepke*

In national crises, conflicts, and other devastating tragedies that force people out of their homes and their countries, it often falls on the receiving country to establish and continue support efforts for the incoming refugees or displaced persons.[1] With 15% of the world's population having a disability,[2] with likely a higher percentage when discussing refugees coming from conflict zones,[3] and half of the forcibly displaced population being children,[4] the legal systems and supports of countries receiving refugees have to be prepared and competent at receiving this population of refugees. In fact, a report from Handicap International found that 36% of Syrian refugees fleeing conflict had a disability.[5] People in conflict with pre-existing disabilities or those that become disabled because of the conflict flee conflict with physical impairments, sensory impairments, and psychosocial impairments.[6] In 2020 alone, an estimated twelve million people with disabilities have been forcibly displaced worldwide but without uniform and unified data collection methods, the disability status of refugees often goes

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1 This paper uses the term refugee and displaced person interchangeably. Specifically, it relies on the definition of "displaced person" within the EU Council Directive 2001/55/EC with the meaning "third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights."

2 WORLD HEALTH ORGANIZATION, *World Report on Disability* (2011).

3 Jonathan Herring, *Disability and Care*, 12 J. INDIAN L. & SOC'Y 35, 38 (2021).

4 UNICEF, *Uprooted: The Growing Crisis for Refugee and Migrant Children* (2016).

5 Handicap International, *Syria, a mutilated future: A focus on the persons injured by explosive weapons* 2 (2016).

6 Robert Mardini, *Persons with Disabilities in Armed Conflicts: From Invisibility to Visibility*, 105 INT'L REV. RED CROSS 1, 1–2 (2012); Handicap International, *Syria, a mutilated future: A focus on the persons injured by explosive weapons* 2 (2016) (finding that of the 25,000 Syrian refugees assessed 67% sustained injuries directly related to the crisis).

unreported.[7] After escaping conflict, receiving the basic necessities create additional challenges for refugees with disabilities when attempting to access services and resources to integrate into the local society.[8] Refugee children with disabilities often face multiple, compounded barriers to their rights, including the right to education.[9]

With all of that for context, Poland will act as a case study for those Ukrainian refugee children with disabilities, and the supports they receive after arriving in Poland. There are varying reports, but numbers of about one million Ukrainian refugees are in Poland who have received temporary protective status and more than two million who have applied;[10] while there is no specific data on people with disabilities, anywhere from ten to fifteen percent are expected.[11] The goal of this work is to analyze the framework built surrounding the rights for refugees with disabilities in the education sphere, to find opportunities for improvement, and to discuss takeaways from the reported experience. This essay is meant as an accessible entrance point to the issues and legal framework to those not familiar with the topic.

The international and national legal frameworks will be briefly discussed with certain instruments highlighted focusing on refugee policies, disability rights, and the right to education. The right to education will be the focal point herein as it is argued that education is the right that opens all other opportunities for children. In Poland, while there is an absence of developed centralized integration policies for incoming refugees, the overall takeaway from the research is that Poland is meeting the basic international obligations in protecting Ukrainian war refugees since 2022 overall; however, there are still ways to more fully realize the gateway right to inclusive education for those refugee children with disabilities.

To get to that conclusion, Section I. starts first with the regional and international and humanitarian obligations to support incoming migrants generally and those with disabilities specifically. As international human rights instruments have to be read in context with each other and not in isolation, instruments focusing on refugees and disability will be discussed alongside those instruments that include mentions of both. Next, Section II

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7 Trinh Q. Truong, Emily Di'Matteo & Mia Ives-Rublee, *Crossing the Border: How Disability Civil Rights Protections Can Include Disabled Asylum-Seekers*, at 3, https://www.americanprogress.org/article/crossing-the-border-how-disability-civil-rights-protections-can-include-disabled-asylum-seekers/ (last visited Mar. 1, 2026).

8 Mardini, *supra* note 6, at 1–2.

9 Edvina Bešić, Lisa Paleczek & Barbara Gasteiger-Klicpera, *Don't Forget About Us: Attitudes Towards the Inclusion of Refugee Children with(out) Disabilities*, 24 INT'L J. INCLUSIVE EDUC. 202, 203 (2020).

10 UNHCR, *Operational Data Portal: Ukraine Refugee Situation – Poland*, https://data.unhcr.org/en/situations/ukraine/location/10781 (last visited Mar. 1, 2026).

11 Inclusion Europe, *War in Ukraine: Refugees with Disabilities in Poland*, https://www.inclusion-europe.eu/war-ukraine-refugees-disabilities-poland/ (last visited Mar. 1, 2026).

looks specifically at the right to education as a gateway right for other human rights to highlight its value of realization when states are creating their own policies for incoming refugees. Section III examines the Polish state to identify the legal framework and policy parameters established to support people with disabilities generally and those refugees with disabilities specifically as they access education. Then, Section IV evaluates how the influx of Ukrainian children refugees with disabilities has affected the Polish education system and how successful the established framework fared over the last three years of the Russo-Ukrainian War after the Russian invasion in 2022. Finally, Section V considers lessons based on what is being observed in Poland for other states to inform their decision-making as they welcome refugees with disabilities from Ukraine or other conflict areas before concluding with final thoughts and takeaways.

I. THE LEGAL ARCHITECTURE: INTERNATIONAL AND EU OBLIGATIONS

As part of the European Union and as a party to international human rights treaties, Poland must remain cognizant of a range of international obligations in its acceptance, treatment, and protection of Ukrainian children displaced by the Russo-Ukrainian War, including refugee children and children with disabilities.[12] International Humanitarian Law has defined rules governing armed conflict as it applies to persons with disabilities and how to protect their rights.[13] Because international human rights law applies at all times in all countries, treaties and other human rights instruments must be respected in times of conflict and peace.[14] When migrants from conflict zones

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[12] *E.g.*, Council Directive 2001/55, arts. 1, 8, 13–16, 2001 O.J. (L 212) 12, 14–17 (EC) (requiring Member States to provide education access, consider the child's best interests, and ensure representation and proper placement for unaccompanied minors under temporary protection); Council Implementing Decision (EU) 2022/382, arts. 1–3, 2022 O.J. (L 71) 1, 5–6 (establishing the existence of mass influx of displaced persons from Ukraine, extending temporary protection to covered persons and family members including minor unmarried children, and requiring Member State cooperation and monitoring about reception capacity); Convention of the Rights of the Child arts. 22–23, Nov. 20, 1989, 1577 U.N.T.S. 3, 13–14 (requiring States Parties to provide proper protection and humanitarian assistance to refugee children and to ensure disabled children enjoy a full and decent life with access to special care and assistance); Convention on the Rights of Persons with Disabilities art. 11, Dec. 13, 2006, 2515 U.N.T.S. 3, 11 [hereinafter CRPD] (requiring States Parties to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including armed conflict and humanitarian emergencies).

[13] Robert Mardini, *Persons with Disabilities in Armed Conflicts: From Invisibility to Visibility*, 105 INT'L REV. RED CROSS 1, 2 (2012).

[14] Hum. Rts. Watch, *Submission to the Committee on the Rights of Persons with Disabilities Regarding Article 11 of the CRPD*, at 1 (2023), https://www.hrw.org/sites/default/files/media_2023/02/HRW%20Submission%20to%20the%20CRPD%20for%20DGD%20Article%2011.pdf (on file with SIU Law Journal); *see* Legal Consequences arising from the Policies and Practices of

enter a country, certain countries have specific legal obligations they have agreed to uphold based on their membership, treaty commitments, or other binding legal obligations.[15] While some of these commitments are more aspirational, others have specific consequences for non-compliance.[16] Each of these obligations, grounded in either human rights protections or humanitarian law, has to be read together, building a web of protections for refugees with disabilities.

The following instruments are those that apply specifically to Poland and its Ukrainian migrant influx since the Russian invasion of Ukraine in 2022. While these instruments are connected and must not be realized or implemented in isolation, they are grouped below to highlight foundational regional instruments, refugee-specific instruments, and disability-specific instruments to more clearly articulate those separate obligations before bringing them all together. While more instruments for protection exist, those highlighted below illustrate the far-reaching framework that has been built as a foundation for protecting rights as they apply to refugee children with disabilities seeking education in their state of refuge.

A. Foundational Regional Human Rights Instruments

Although each country has its own self-imposed obligations at the national level, looking first to the expansive international obligations that overlay those national instruments and creating a framework will set the foundation for the discussion. Specifically, the European Convention on Human Rights (ECHR) and the European Union Charter of Fundamental Rights set the stage.

Isreal in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 2024 I.C.J. (July 2019).

15 *E.g.*, Council Directive 2001/55, *supra note 1*, at arts. 1, 8, 13–16 (establishing binding obligations of EU Member States toward persons enjoying temporary protection, including obligations concerning residence, reception, and assistance); Maria-Teresa Gil-Bazo, *The Practice of Mediterranean States in the Context of the European Union's Justice and Home Affairs External Dimension: The Safe Third Country Concept Revisited*, 18 INT'L J. REFUGEE L. 571, 574, 582–83 (2006) (explaining that states' obligations toward refugees are shaped by interacting universal and regional legal orders and formal legal frameworks).

16 *E.g.*, Convention on the Rights of the Child *supra note 1*, at art. 23(1) (providing that a disabled child should enjoy a "full and decent life" in conditions ensuring dignity, self-reliance, and active community participation); *cf.* Council Directive 2001/55, *supra note 1*, at art. 25 (requiring Member State to provide for penalties applicable to infringements of national provisions adopted pursuant to the Directive).

1. European Convention on Human Rights

Poland ratified the ECHR in 1993, which allowed its citizens jurisdiction under the European Court of Human Rights.[17] Introduced in 1950, the ECHR is a treaty that is meant to protect human rights and fundamental freedoms of the people within the member states on an equal basis.[18] The ECHR is an early treaty which helped to establish the European standard on how states should treat those within their nations, and what rights should be protected by the state. Relevant to this essay is Article 2 of the ECHR Protocol, the Right to Education, which requires that "[n]o person shall be denied the right to education."[19]

Building on the protections of life and family, Article 2 of the ECHR itself protects the "right to life,"[20] Article 3 prohibits torture, inhuman or degrading treatment, and Article 8 protects the right to private and family life.[21] States have a duty to protect those within their jurisdiction, and when displaced people enter another state, this responsibility shifts to that state.[22] This bundle of rights brought together may build a case for refugee protection for states to guarantee those fundamental protections, including non-refoulement, and shifting their protections to what is offered within the states' borders. The ECHR did not directly address refugees and their rights, but the framework to build on for these rights was established within this treaty and has been further defined and integrated over the last century.[23]

2. EU Charter of Fundamental Rights

The EU Charter of Fundamental Rights has been binding in Poland since 2009.[24] This document is a binding legal instrument that covers the EU and all of its individual member states.[25] Not only does the EU Charter

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17 *Ratification of International Human Rights Treaties – Poland*, UNIV. OF MINN. HUM. RTS. LIBR. (Feb. 1, 2023), https://hrlibrary.umn.edu/research/ratification-poland.html (on file with SIU Law Journal).

18 European Convention on Human Rights: Convention for the Protection of Human Rights and Fundamental Freedoms, No. 4, 1950, E.T.S. No. 005, https://www.echr.coe.int/documents/d/echr/convention_ENG (on file with SIU Law Journal) [hereinafter ECHR].

19 *Id.* at Protocol No. 1, art. 2.

20 *Id.*

21 *Id.* at Protocol No. 1, art. 8.

22 Robert Weekes, *Focus on ECHR, Article 2*, 10 JUD. REV. 19, 20 (2005).

23 The ECHR interacts with other United Nations treaties (including the CRPD, CRC, et al.) and these instruments are harmonized as they are interpreted.

24 *Ratification of International Human Rights Treaties – Poland*, *supra note 6*.

25 *See generally* Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1 (EU), https://www.europarl.europa.eu/charter/pdf/text_en.pdf (on file with SIU Law Journal) [hereinafter EU Charter].

protect and promote fundamental rights for all individuals in the EU, but it also gives a clear mechanism for accountability.[26] The EU Charter allows individuals and NGOs to challenge any breaches through national courts and bodies, the Court of Justice of the EU, and other EU institutions acting as oversight bodies.[27]

The EU Charter protects individual rights ranging from the right to liberty and security,[28] private and family life,[29] religion,[30] education,[31] health protection,[32] equality before the law,[33] the right to an effective remedy,[34] and access to justice.[35] Particularly regarding people with disabilities, the EU Charter prohibits discrimination based on disability and recognizes the right to benefit from measures that promote independence, social integration, and participation.[36] While there are other rights enumerated in the EU Charter, all of them are grounded first in non-discrimination.[37]

Regarding migrations, Article 21 also guarantees the right to free movement for EU citizens and applies other rights such as non-discrimination, dignity, and asylum to all persons.[38] Additionally, the right against torture has been interpreted to prohibit the return of those seeking asylum or refuge based on the possibility of harm if returned.[39] Member States must recognize that protections are also applied for people with disabilities under Article 26, which provides that the "Union recognizes and respects the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration

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26 National courts are obliged to apply the Charter when implementing EU laws and individuals and organizations can challenge EU acts or inaction in the Court of Justice of the EU. *See* Allan Rosas, *The Court of Justice of the European Union: A Human Rights Institution?*, 14 J. HUM. RTS. PRAC. 204, 211 (2022).

27 *See id.* at 204.

28 EU Charter, *supra note 14*, at 6.

29 *Id.* at 7.

30 *Id.* at 21.

31 *Id.* at 14.

32 *Id.* at 35.

33 *Id.* at 20.

34 *Id.* at 47.

35 *Id.*

36 *Id.* at 21 ("Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.").

37 *Id.* ("1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.").

38 *Id.*

39 Sejal Parmar, *International Human Rights and the EU Charter*, 8 MAASTRICHT J. EUR. & COMP. L. 351, 360 (2001).

and participation in the life of the community."[40] That article recognizes that disability can cause a barrier that States must be aware of and design measures and supports to access.

The rights and obligations protected by the EU Charter are the foundation, and all other EU instrumentality has to effectively protect those same rights and obligations.[41] Together, the rights protected by the EU Charter and the ECHR set the foundation for what all European Union Member States must establish as the baseline when protecting the rights of those within their borders.

B. Refugee-Specific Instruments

Turning now to more specific instruments that create a groundwork for refugee-specific rights' protections, the following instruments are those that have legal effect in Poland. Comparing the protections and policies within the UNHCR Convention and Protocol Relating to the Status of Refugees,[42] the United Nations Convention on the Rights of the Child (CRC),[43] and Council Directive 2001/55/EC: Temporary Protection, and the 2024 Pact on Migration and Asylum[44] gives a clear example of the protections for displaced people. The international instruments lay a groundwork for states to implement and expand upon while realizing and protecting the rights of those refugees coming into their borders.

1. United Nations High Commission for Refugees Convention and Protocol Relating to the Status of Refugees ("Refugee Convention")

With its roots in the Universal Declaration of Human Rights,[45] the Refugee Convention remains the core of international refugee protection.[46] The Refugee Convention was written with "a truly humanitarian spirit."[47] Between the 1951 Refugee Convention and its 1967 Protocol, which removed the geographic and temporal limitations, refugee rights and party

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40 EU Charter, *supra note 14*, at 26; Alexander Hoefmans, *The EU Disability Framework Under Construction: New Perspectives Through Fundamental Rights Policy and EU Accession to the CRPD*, 3 EUR. Y.B. DISABILITY L. 35, 39 (2012).

41 Hoefmans, *supra note 29*, at 38.

42 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

43 *See generally* Convention on the Rights of the Child, *supra note 1*, at art. 23(1).

44 *See generally* Council Directive 2001/55/EC, *supra note 1*, at 12.

45 G.A. Res. 217 (III) A.

46 *See generally* Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Refugee Convention].

47 Ivor C. Jackson, *The 1951 Convention Relating to the Status of Refugees: A Universal Basis for Protection*, 3 INT'L J. REFUGEE L. 403, 403 (1991).

obligations are laid out. Specifically, no party to the Refugee Convention may expel or return a refugee against their will to a territory where they fear a threat to life or freedom.[48]

Regarding the right to education, parties have to accord to "refugees the same treatment as is accorded to nationals with respect to elementary education"[49] and without discrimination as to disability.[50] Poland ratified the Refugee Convention on September 27, 1991.[51]

2. United Nations Convention on the Rights of the Child ("CRC")

The most widely ratified human rights treaty in the world is the CRC.[52] This treaty looks at all aspects of a child's life and requires Member States to protect, respect, and fulfill obligations surrounding each of those. Regarding the right of refugee children, the CRC specifically requires State Parties to "take appropriate measures to ensure that a child who is seeking refugee status . . . receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments. . . ."[53]

3. United Nations Convention on the Rights of Persons with Disabilities ("CRPD")

The CRPD ensures that refugees and asylum-seekers with disabilities enjoy human rights on an equal basis with others and requires states to provide protections and supports throughout the process.[54] Specifically, Article 18 requires that State Parties recognize the right to liberty of movement, freedom to choose their residence, and a nationality, alongside Article 11 that addresses people with disabilities in armed conflict and humanitarian emergencies.[55]

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48 1951 Refugee Convention, *supra* note 35, at art. 32.

49 *Id.* at art. 22.

50 *Id.* at introductory note.

51 *Ratification of International Human Rights Treaties – Poland*, *supra note 6*; 1951 Refugee Convention, *supra* note 35.

52 *Ratification Status for the CRC – Convention on the Rights of the Child*, UNHCR (2026) https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en (on file with SIU Law Journal). Note that the CRC has the same number of parties as the Geneva Convention on the Laws of War https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a.

53 Convention on the Rights of the Child, *supra note 1*, at art. 22(1).

54 CRPD, *supra note 1*, at arts. 11, 18.

55 *Id.*

4. Council Directive 2001/55/EC: Temporary Protection

The EU published this Council Directive in the wake of the conflict in former Yugoslavia.[56] It was established as a means to have a standardized procedure and create minimum standards of protection if another conflict were to break out and there was a large number of displaced people or a mass influx of refugees.[57] This directive had not been used from the time it was enacted in 2001 until 2022, when there was a refugee crisis at the outbreak of the Russia-Ukraine Conflict.[58] This Directive requires that Member States provide housing, medical assistance, and education for displaced persons.[59] The Directive required all Member States to collectively respond to the influx of those seeking refuge at their borders.[60] These temporary protections include, among many rights, the right to access the education system on the same terms as nationals of the Member State,[61] and Member States must provide all the core rights consistently with human rights, fundamental freedoms, and non-refoulement.[62]

This framework of responsibilities and obligations was established in Poland as the Ukrainian refugees began entering the Polish borders in 2022.

5. Pact on Migration and Asylum and Underlying Legislation

Although there has been pushback from Poland and some exemptions secured,[63] the European Parliament and Council entered the Pact on Migration and Asylum reforms in 2024, with the implementation to start in June 2026.[64] Therefore, this rights-protection tool remains to be assessed, and it is the right time to watch how it affects the policies surrounding incoming refugees. This Pact aims to establish a fair management system at the EU

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56 Council Directive 2001/55/EC, *supra note 1*, at art. 1.

57 *Id.*

58 Council Implementing Decision (EU) 2022/382, pmbl. ¶¶ 1–7, art. 1, 2022 O.J. (L 71) 1, 1–4 (finding that Russia's invasion of Ukraine caused a mass influx of displaced persons into the European Union).

59 *Id.* at arts. 13–14.

60 Rainer Bauböck, *Refugee Protection and Burden-Sharing in the European Union*, 56 J. COMMON MKTS. STUD. 141, 150 (2018).

61 1951 Refugee Convention, *supra note 35*, at art. 14.

62 *Id.* at art. 3(2).

63 Daniel Tilles, *EU Includes Poland Among Countries to Be Exempted from Migrant Relocation*, NOTES FROM POLAND (Nov. 12, 2025), https://notesfrompoland.com/2025/11/12/eu-includes-poland-among-countries-to-be-exempted-from-migrant-relocation/ (on file with SIU Law Journal).

64 *Pact on Migration and Asylum*, EUR. COMM'N (May 21, 2024), https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en (on file with SIU Law Journal).

borders to ensure a more efficient and streamlined process.[65] The Pact aims to further establish a mandatory but flexible system of solidarity for Member States facing migratory pressure.[66] Specifically highlighted within the drafted Pact are the protections of particularly vulnerable groups, including children.[67]

The underlying legislation that helps support the Pact and bring it into reality is steeped in process, checks, and rules to better unify the experience and expectations at all borders. The Crisis and Force Majeure Regulation addresses situations of crisis to focus on exceptional circumstances of certain vulnerable groups of incoming asylum seekers.[68] The Eurodac Regulation creates an asylum and migration database,[69] while the Screening Regulation creates uniform rules on checks and registration.[70] The Qualification Regulation incorporates the 1951 Geneva Convention Relating to the Status of Refugees into EU law in order to protect persons as beneficiaries of international protections and to clarify the rights and obligations of those beneficiaries,[71] and the Receptive Conditions Directive requires minimum standards of assistance for asylum seekers, so these asylum seekers will have international protection in any Member State.[72] Finally, the Union Resettlement and Humanitarian Admission Framework Regulation enhances safe and legal pathways for people in the EU in need of protection and strengthens the protection of non-EU countries hosting large refugee populations.[73]

All of this legislation and regulation is in place to protect incoming refugees and regulate the experiences they have when crossing a new border. Together with the Pact, these regulations and directives provide specific direction and processes to states. Looking at all of the regional and international instruments charted here, one criticism is the ability of states to exclude themselves from instruments.[74] This removes standardization for

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65 Regulation 2024/1348/EC, 2024 O.J. (L 1348) 1 (EC); Regulation 2024/1349/EC, 2024 O.J. (L 1349) 1 (EC).

66 Regulation 2024/1351/EC, 2024 O.J. (L 1351) 1 (EC).

67 *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*, at 7, COM (2020) 609 final (Sep. 23, 2020).

68 Regulation 2024/1359/EU, 2024 O.J. (L 1359) 1 (EU).

69 Regulation 2024/1358/EU, 2024 O.J. (L 1358) 1 (EU).

70 Regulation 2024/1356/EU, 2024 O.J. (L 1356) 1 (EU).

71 Regulation 2024/1347/EU, 2024 O.J. (L 1347) 1 (EU).

72 Directive 2024/1346/EU, 2024 O.J. (L 1346) 1 (EU).

73 Regulation 2024/1350/EU, 2024 O.J. (L 1350) 1 (EU).

74 Justine N. Stefanelli, *Whose Rule of Law? An Analysis of the UK's Decision Not to Opt-In to the EU Asylum Procedures and Reception Conditions Directives*, 60 INT'L & COMP. L.Q. 1055, 1060–61 (2011) (explaining that a Member State's decision not to opt in to EU asylum instruments can leave its asylum framework inferior to that of other Member States and prevent asylum seekers from receiving the same protection across Europe).

protections for refugees and could exclude some groups from access to resources. A second criticism is the difficulty in an enforcement mechanism for breach of these policies.[75] With a group with intersectional vulnerabilities, such as refugees with disabilities, accessing and understanding policies, or when those have been breached, may not be probable.

C. Disability-Specific Instruments

While disability rights are human rights, there have been continued barriers for people with disabilities to fully access rights on an equal basis with others.[76] Therefore, human rights treaties have carved out more specific guidance for states to ensure that all of the rights guaranteed generally in other instruments will also be ensured for people with disabilities.[77] The CRC was the first such binding instrument to acknowledge the difficulties children with disabilities may have when accessing their rights; the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was the first binding instrument solely focused on the rights of this group of people; and further initiatives such as the European Disability Strategy (2021-2023) and European Accessibility Act have further articulated standards of accessibility and goals.

1. United Nations Convention on the Rights of the Child

Revisiting the CRC through a disability-specific lens, as the first binding international human rights instrument to mention disability, the CRC created a foundation for disability rights protections. Article 2 of the CRC specifically requires that State Parties respect and ensure the rights of each child irrespective of their disability and birth, amongst other statuses.[78] Further, Article 23 explored the protections of children with disabilities even

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75 Evangelia (Lilian) Tsourdi, *Asylum in the EU: One of the Many Faces of Rule of Law Backsliding?,* 17 EUR. CONST. L. REV. 471, 473–74, 493–94 (2021) (identifying an "implementation gap" between asylum obligations "on paper" and their realization in practice and explaining that asylum-related rule-of-law failings require "adequate means of enforcement" and other responses).

76 *See generally* Brandy Johnson, *The Underserved Meet the Unprepared: Teaching Medical Students About Disability*, 29 QUINNIPIAC HEALTH L.J. (forthcoming 2026).

77 *See, e.g.*, CRPD, *supra note 1*, at art. 7 (requiring States Parties to take all necessary measures to ensure the full enjoyment of all human rights and fundamental freedoms by children with disabilities on an equal basis with other children); see also Convention on the Rights of the Child, *supra note 1*, at art. 23 (requiring States Parties to provide special care and assistance to ensure that disabled children can effectively access education, training, health care, rehabilitation, and recreation in a manner conducive to their fullest possible social integration and individual development).

78 G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 2(1) (Dec. 10, 1948).

further when it discusses that children with disabilities should "enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community."[79] State Parties shall provide free of charge resources, including education, in a "manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."[80]

Further, although not in its original text, the CRC Committee clarified and aligned the right to education to be *inclusive* education for all learners.[81] Inclusive education ties directly into disability rights, and for children with disabilities to access their right to education on an equal basis with others, the educational system must be inclusive.[82]

2. United Nations Convention on the Rights of Persons with Disabilities

The CRPD represents a paradigm shift from viewing persons with disabilities as objects of charity or medical treatment to rights-holders who are active members of society..[83] Ratifying states are expected not only to protect rights (and not interfere with them) in theory but to actively remove barriers, create inclusive systems, and empower people with disabilities to live fully and equally.[84]

The CRPD was the first international human rights instrument signed and ratified by the EU itself.[85] The agreement became binding on EU institutions, and all Member States have also signed and ratified it.[86] Member States quickly jumped aboard the CRPD train with goals to protect, respect,

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79 CRPD, *supra note 1*, at art. 23(1).

80 *Id.* at 23(3).

81 Comm. on the Rts. of the Child, General Comment No. 1, art. 29(1): The Aims of Education, U.N. Doc. CRC/GC/2001/1, ¶ 2 (Apr. 17, 2001).

82 CARLY M. TOEPKE, TEACH THE WAY THEY LEARN 57 (2017); Gauthier de Beco, *The Right to Inclusive Education: Why Is There So Much Option to Its Implementation?*, 14 INT'L J. L. CONTEXT 396, 409 (2017).

83 TOEPKE, *supra note 6*2, at 8–10; Heiner Bielefeldt, *New Inspiration for the Human Rights Debate: The Convention on the Rights of Persons with Disabilities*, 25 NETH. Q. HUM. RTS. 397, 397–98 (2007).

84 TOEPKE, *supra note 6*2, at 114–16; *see also* MAGDALENA SEPÚLVEDA, THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (Intersentia 2003); U.N. OFF. OF THE HIGH COMM'N FOR HUM. RTS., PROFESSIONAL TRAINING SERIES NO.17: MONITORING THE CONVENTION OF THE RIGHTS OF PERSONS WITH DISABILITIES, GUIDANCE FOR HUMAN RIGHTS MONITORS 28 (2010), www.ohchr.org/sites /default/files/Documents/Publications/Disabilities_training_17EN.pdf.

85 TOEPKE, *supra note 6*2, at 114–16.

86 Hoefmans, *supra note 29*, at 35–36.

and fulfill all the rights of those within their borders.[87] However, while the legal frameworks were set up, implementation has progressed, and an attitudinal shift has started; there are still issues in accessibility, employment, and social inclusion.[88] The CRPD and Optional Protocol require monitoring mechanisms to be enabled as a way to gauge the realization of the rights within.[89] Signatories to the CRPD, including the EU, can have difficulty monitoring and enforcing diverse implementation schemes across the continent due to varying levels of resources and enforcement within the national borders.[90]

Poland ratified the CRPD in 2012.[91] The generalized challenges that Poland faces with implementation are resource limitations, societal attitudes, and regional disparities.[92] There are many opportunities, similar to other countries, to make the moves towards CRPD compliance, including aligning with EU directives, enhancing public awareness, and improving infrastructure accessibility across the country.[93]

Acting as a bridging instrument between the refugee protections, education, and the disability-rights protections, the CRPD requires State Parties to ensure the "protection and safety of persons with disabilities in situations of risk, including situations of armed conflict [and] humanitarian emergencies . . ."[94] These protections extend to the right to an inclusive education under Article 24.[95] The right to education in the CRPD is more than a general right to free education but an inclusive education, which acknowledges differences in learners and requires states to support those individualities.[96] As the longest article in the CRPD, Article 24 lays out a specific framework for State Parties to implement when realizing this right. Specifically, State Parties must ensure this right to an inclusive education is

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87 Lucy Series, *Disability and Human Rights, in* ROUTLEDGE HANDBOOK OF DISABILITY STUDIES (Nick Watson & Simo Vehmas eds., 2d ed. 2019), https://www.ncbi.nlm.nih.gov/books/NBK558160/; *see generally* Michael A. Stein & Janet E. Lord, *Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential*, 32 HUM. RTS. Q. 689 (2009).

88 TOEPKE, *supra note 6*2, at 14–16; Bielefeldt, *supra note 6*3, at 398.

89 CRPD, *supra note 1*, at art. 33.

90 TOEPKE, *supra note 6*2, at 148, 155–59; TODD LANDMAN & EDZIA CARVALHO, MEASURING HUMAN RIGHTS 9 (Routledge, 2010); Katarina Tomaševski, *Indicators*, *in*, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 531, 542 (Asbjørn Eide et al. eds., 2d ed. 2001).

91 *Ratification of International Human Rights Treaties – Poland, supra note 6*.

92 Katarzyna Roszewska, *The Implementation of the Rights of Persons with Disabilities to Employment on the Basis of the Convention on the Rights of Persons with Disabilities (CRPD)*, 24 BIAŁSTOCKIE STUDIA PRAWNICZE 91, 98–99 (2019).

93 Comm. on the Rts. of Persons with Disabilities, Concluding Observations on the Initial Report of Poland, U.N. Doc. CRPD/C/POL/CO/1 (Oct. 29, 2018) [hereinafter Concluding Observations].

94 CRPD, *supra note 1*, at art. 11.

95 *Id.* at art. 24(1).

96 *Id.* at 24.

directed to "[e]nabling persons with disabilities to participate effectively in free society."[97] Further, the right to an inclusive education is grounded in State Parties ensuring inclusion in the general education system with reasonable accommodations to provide for individualized support and facilitate an effective education.[98]

The CRPD is the only human rights instrument straddling all three areas of interest to this essay. The instrument paints a clear picture of protections for refugees with disabilities seeking education in a member state, like Poland, with each right and protection clearly delineated.

3. European Disability Strategy 2021-2030

The European Disability Strategy 2010-2020 (now 2021-2030) builds upon the previous one (2010-2020), aims to improve the lives of people with disabilities in Europe and beyond, focusing on areas like accessibility, equal rights, decent quality of life, and global promotion of disability rights.[99] The previous European Disability Strategy 2010-2020 paved the way to a barrier-free Europe and to empower persons with disabilities so they can enjoy their rights and participate fully in society and the economy.[100] Despite the progress made in the past decade, persons with disabilities still face considerable barriers and have a higher risk of poverty and social exclusion.[101] The European Commission's adoption of the new strategy signifies its aims toward the progression of human rights and equal opportunities for citizens with disabilities to support their needs and free movement in the EU.[102]

Refugees with disabilities face multiple and intersectional forms of discrimination, so this strategy helps to align Member States' goals with the Sustainable Development Goals and the United Nations 2030 Agenda for Sustainable Development (SDG).[103] The SDG have a focus on empowering those most vulnerable, including people with disabilities and refugees and call for inclusive, quality education at all levels.[104] The European Commission called on its Member States to implement this framework and

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97 *Id.* at 24(1)(c).

98 *Id.* at art. 24(2)(a)–(e).

99 *Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030*, COM (2021) 101 final (Mar. 3, 2021) [hereinafter *EU Disability Strategy 2021–2030*].

100 *European Disability Strategy 2010–2020: A Renewed Commitment to a Barrier-Free Europe*, COM (2010) 636 final (Nov. 15, 2010).

101 *EU Disability Strategy 2021–2030*, *supra note 88*, at 4.

102 *Id.*

103 G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Sep. 25, 2015).

104 *Id.*

the CRPD, and demonstrated the interconnectivity of these instruments by mentioning and supporting the others.[105]

4. European Accessibility Act (EU 2019/882)

While not specifically tied to the right to education, the EAA does require certain services that are critical to education to be made accessible by the service providers.[106] For example, digital interfaces compatible with screen readers, accessible keyboard navigation, and documentation available in accessible formats.[107]

This legally binding document requires Member States to ensure that certain products and services are accessible to people with disabilities by removing barriers.[108] The EAA reaffirms that the European Union itself is a Party to the CRPD, which then binds institutions of the Union and its Member States and requires Member States to take actionable steps to ensure accessibility.[109] The EAA highlights opportunities to make services accessible for persons with disabilities – including all aspects to the physical environment, transportation, and information and communication.[110] While the EAA does not focus on education per se, the listed required services could all be part of the right to education and how learners with disabilities access the services surrounding education.

II. EDUCATION AS A "GATEWAY RIGHT"

The right to an inclusive education has been consistently reinforced and clarified through international and national instruments. The right to education is fundamental and is a "means of realizing other human rights."[111] It is not just one right among many; education is the right that unlocks a vast range of rights for children with disabilities. Access to education affects academic performance, future labor-market prospects, and also the social and emotional well-being of learners.[112] Therefore, the right can be described as

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105 Directive 2019/882, 2019 O.J. (L 151) 25 (EU) [hereinafter European Accessibility Act].

106 *Id.* at art. 1.

107 *Id.* at art. 4.

108 *Id.* at pmbl. ¶¶ 1–2.

109 *Id.* at pmbl. ¶¶ 12–14.

110 *Id.* at pmbl. ¶ 13.

111 Comm. on the Rts. of Persons with Disabilities, General Comment No. 4 on the Right to Inclusive Education, U.N. Doc. CRPD/C/GC/4, ¶ 10(a), (c) (2016) [hereinafter CRPD GC4]; *see also* Marselha Gonçalves Margerin, *The Right to Education: A Multi-Faceted Strategy for Litigating Before the Inter-American Commission on Human Rights*, 17 HUM. RTS. BRIEF 19, 19 (2010).

112 OECD, EDUCATION AT A GLANCE 2023: OECD INDICATORS (2023), https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/09/education-at-a-glance-2023_581c9602/e13bef63-en.pdf; *see generally* Lucie Cerna, *Refugee Education: Integration Models and Practices in*

a "Gateway Right," opening the gates to other human rights when available and restricting other rights if closed. The ability of people to positively achieve is directly influenced by education.[113]

Access to education is more than allowing a learner a seat at a desk. The right to education should be viewed as a means of development, and development is "the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency."[114] Instead, the foundational view of the right to education is based on the Tomaševski "4-A" framework in that education must be available, accessible, acceptable, and adaptable.[115] That framework can be overlaid onto the right to inclusive education directly. Support of a normative definition of inclusive education continues to spur some controversy, however.[116] The CRPD Committee relayed that inclusive education must be understood as accommodating individualized learning through supports that allow participation without discrimination as part of a systemic shift requiring barrier removal.[117] These individualized supports must be specific to each learner's education needs and will take a variety of forms from architectural accessibility, to teaching training, to curricular adaption or appropriate facilities; states are required to "be particularly careful in making their choices in this sphere, having regard to the impact of the latter on

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OECD Countries (OECD Educ. Working Paper No. 203, 2019), https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/05/refugee-education_6e254990/a3251a00-en.pdf.

113 AMARTYA SEN, DEVELOPMENT AS FREEDOM 5 (1999).

114 *Id.* at xii.

115 *See generally* KATARINA TOMAŠEVSKI, HUMAN RIGHTS OBLIGATIONS IN EDUCATION: THE 4-A SCHEME (Nijmegen 2006).

116 Ni Zhen, *Rethinking Inclusion: Is There a Right to Inclusive Education*, 11 FRONTIERS L. CHINA 486, 490 (2016). The challenge to define inclusive education stems from the theory versus practice. In theory, inclusive education is a philosophical vision of an individualized educational framework that allows each child to learn in the way that best suits their individual needs. Practically, inclusive education as an implementable framework that changes for each individual student faces resource, personnel, and other barriers.

117 CRPD GC4, *supra note 100*, at ¶ 12(a)–(c); *EU Disability Strategy 2021–2030, supra note 88*, at ¶ 9.

> The right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility. It involves strengthening the capacity of the education system to reach out to all learners. It focuses on the full and effective participation, accessibility, attendance, and achievement of all students, especially those who, for different reasons, are excluded or at risk of being marginalized. Inclusion involves access to and progress in high-quality formal and informal education without discrimination. It seeks to enable communities, systems and structures to combat discrimination, including harmful stereotypes, recognize diversity, promote participation and overcome barriers to learning and participation for all by focusing on well-being and success of students with disabilities. It requires an in-depth transformation of education systems in legislation, policy, and the mechanisms for financing, administration, design, delivery, and monitoring of education. *Id.*

children with disabilities, whose particular vulnerability cannot be overlooked."[118]

Out of the approximately 150 million children with disabilities in the world, many have been restricted from participating in an inclusive education.[119] And while the right to education has been championed since the original Universal Declaration of Human Rights,[120] inclusive education, the type of education required to ensure all learners receive equal access to learning, no matter their learning style, disability, or ability, was only codified in a binding legal instrument in the CRPD in 2006.[121] It acts as a gateway to other rights and participation in society and requires a continuing and proactive commitment by states as they dismantle barriers to access.[122] The concept of participation is ingrained in the right to education and is the "continual, meaningful involvement and engagement in an educational program."[123] Education is "one of the tools for the social integration of both foreign students and their families."[124] Education is a social opportunity that can "facilitate economic participation," "generate personal abundance," and cyclically strengthen other social opportunities.[125] It follows that better education helps to earn higher incomes, which then allows for devoting time and resources back into the economy.[126]

Inclusive education allows for education to become a functioning gateway for learners with disabilities, similar to a ramp into a building.[127] Students with disabilities can only receive the same education as others through inclusive education policies. When an educational system is not

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118 Çam v. Turkey, App. No. 51500/08, ¶ 66 (Jan. 23, 2016), https://hudoc.echr.coe.int/eng?i=001-161149 (holding that the student's right to education was violated because accommodations for their blindness were refused).

119 TOEPKE, *supra note 62*; Regulation 2024/1347, 2024 O.J. (L 1347) 11–13 (EU).

120 G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 2(1) (Dec. 10, 1948); EU Charter, *supra note 14*, at 21.

121 TOEPKE, *supra note 62*; Regulation 2024/1347/EU, 2024 O.J. (L 1347) 20–29 (EU) (While the 1994 Salamanca Statement was the first international soft law instrument to call for inclusive education and the CRC Committee did clarify that the right to education encompassed in that instrument should be interpreted as an inclusive education, the CRPD was the first binding instrument to specifically include in text that there is a right to inclusive education.).

122 CRPD GC4, *supra note 100*, at ¶ 12(a)–(c); *EU Disability Strategy 2021–2030,* supra note 88, at ¶ 10(d).

123 TOEPKE, *supra note 62*; Regulation 2024/1347/EU, at 48.

124 Joanna Lubimow, *Inclusion of Ukrainian Children and Youth in the Polish Education System as an Element of Social Security for Students with Refugee Experience*, 57 MIL. LOGISTICS SYS. 127, 129 (2022).

125 SEN, *supra note 101*, at 11.

126 *Id.* at 19.

127 TOEPKE, *supra note 62*; Regulation 2024/1347/EU, at 57; Canadian Ass'n for Comty. Living, Factum of the Intervener at ¶ 7, Moore v. British Columbia (Education), [2012] 3 S.C.R. 360 (Can.) (discussing that accommodations are part of the human rights obligations to avoid discrimination and give learners a "ramp" to access education).

inclusive, it excludes learners and creates barriers to unequal access to the right to education.[128] This exclusion in education can then lead to continued exclusion from society, local culture, employment, and beyond.[129]

For children with disabilities, as they flee from Ukraine into Poland, this meaningful engagement can act as their access or lifeline to normalcy, integration, and continued participation in the Polish society and community.[130] Three pillars of education were identified when discussing refugee educational policy.[131] These pillars are what states must allocate resources to when welcoming displaced children into their borders and into their education system.

First, education in an inclusive setting has certain learning needs, including language learning, catch-up on schooling, and adjustment to a new education system.[132] Second, there are also social needs, including communication, a sense of belonging and bonding, and a strong personal identity.[133] Third, there are emotional needs of safety, coping with separation, loss and/or trauma.[134] Research shows that when a welcoming education system focuses on a holistic approach, implementing policies and practices that meet all three pillars, the education systems are better able to respond to the needs of the learners.[135] Participation in education leads to participation in employment for both the parents of learners and future graduates.[136] If students have a steady, safe environment to learn, parents can leave the home and join the labor market; once students graduate from their schooling, doors to employment will open for them as well. Because it has been reported that statistically, refugees are less likely to engage in employment and professional activity than voluntary migrants, using education as an access point into Polish society could assist in access to the labor market as well.[137]

Inclusion in society, stemming from *societas* "companion," highlights how society is based on a community and companionship.[138] In welcoming

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128 TOEPKE, *supra note 62*; Regulation 2024/1347/EU, at 57.

129 TOEPKE, *supra note 62*; Canadian Ass'n for Comty. Living, Factum of the Intervener, *supra* note 116, at ¶ 7 (discussing that accommodations are part of the human rights obligations to avoid discrimination and give learners a "ramp" to access education).

130 1951 Refugee Convention, *supra note 35*, at introductory note.

131 Cerna, *supra note 101*, at 34.

132 *Id.*

133 *Id.*

134 *Id.*

135 *Id.* at 34–36.

136 OECD, *supra note 101*.

137 IZA CHMIELEWSKA-KALIŃSKA ET AL., THE LIVING AND ECONOMIC SITUATION OF UKRAINIAN REFUGEES IN POLAND: REPORT OF THE QUESTIONNAIRE SURVEY CONDUCTED BY NBP REGIONAL BRANCHES 16 (Nat'l Bank Pol. 2022), https://nbp.pl/wp-content/uploads/2022/11/ukrainian-refugees-2022.pdf (on file with SIU Law Journal).

138 TOEPKE, *supra note 62*, at 52–53.

refugees, Poland is offering a place in its established society to this group. It therefore has a duty to respect this group and offer equal footing in accessing the resources and opportunities of the rest of society. For that reason, in Poland, the educational processes of refugee children with disabilities must be directly intertwined with any integration policy or resources the government provides.[139]

Because inclusive education requires a "whole systems" approach using both top-down and bottom-up policies, a "whole educational environment" commitment to change, and a "whole person" approach to provide individualized supports to each learner,[140] states have an active and continuing role to play for all the learners within their boundaries.[141]

III. POLAND'S NATIONAL FRAMEWORK

The general consensus is that migrants and refugees with disabilities are more vulnerable when integrating into the receiving country, both structurally and adaptively.[142] With all the added systemic, physical, and stigma barriers people with disabilities can face in accessing resources in their own country, the possibility for access barriers could multiply when refugees with disabilities attempt to utilize those same resources.[143] The paradigm shift across the world, from medical to social to human rights models of disability, played out in Polish policy.[144] The move to the social model as a tool to remove society's barriers and produce a shift in legal and attitudinal structures has further evolved into people with disabilities being viewed as rights holders who require further government intervention to access those rights.[145] Because human rights are more than anti-discrimination, looking at disability policy for refugees with disabilities through a human rights lens focuses on the inherent dignity of the rights-bearers and adds the positive and negative obligations for states.[146]

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139 Lubimow, *supra note 113*, at 129.

140 CRPD GC4, *supra note 100*, at ¶ 12(a)–(c).

141 *See* TOEPKE, *supra note 6*2, at 113–61 (providing an in-depth discussion of the obligations of State Parties to the CRC and CRPD surrounding the right to inclusive education, including a full chapter on the obligation to monitor the progressive realization of the right to inclusive education).

142 Marco Tofani et al., *Exploring Global Needs of Migrants with Disability Within a Community-Based Inclusive Development Perspective*, 58 ANN. IST. SUPER. SANITÀ 124, 124 (2022).

143 Melanie Gréaux et al., *Health Equity for Persons with Disabilities: A Global Scoping Review on Barriers and Interventions in Healthcare Services*, 22 INT'L J. EQUITY HEALTH 1, 10 (2023).

144 Pawel Kubicki, Rafal Bakalarczyk & Marek Mackiewicz-Ziccardi, *Protests of People with Disabilities as Examples of Fledgling Disability Activism in Poland*, 8 CANADIAN J. DISABILITY STUD. 141, 143 (2019).

145 De Beco, *supra note 6*2, at 406; Theresia Degener, *Disability in a Human Rights Context*, 5 LAWS 1, 2 (2016).

146 Degener, *supra* note 134, at 5, 8.

Although Poland has obligations as part of the EU since 2004 through EU-wide policies, the Schengen Zone since 2007, and the requirements surrounding full involvement in EU migration governance as of 2022, there is no comprehensive, formalized policy for refugees at the central level. The UN Refugee Agency identified that 5.9 million refugees from Ukraine have sought safety abroad.[147] This influx of people, albeit spread out amongst many countries, has the potential to destabilize systems under stress. However, Poland has stepped up to the challenge of granting almost a million refugees status from Ukraine since 2022 by using its legal institutions in a piecemeal protection plan for refugees, coordinating efforts through NGOs and DPOs to provide services and resources for people with disabilities.[148]

A. Immigration and Refugee Policy

Poland has not had a centralized immigration policy since the 2012 Migration Policy of Poland, but that was annulled in 2016.[149] Lacking a centralized policy, each city is left to take different approaches, with oftentimes no central body in the city to take on the charge.[150] However, on March 12, 2022, the Poland Act of 2022: Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of the Country updated the legal landscape, addressing the state's obligations for protecting incoming Ukrainian refugees.[151] Included in the 2022 Law are requirements for the protection and provision of resources to refugees with disabilities and for access to education, along with a right to medical care, assistance with housing, and other obligations.[152]

While the internal coordination often becomes a hindrance to the creation, understanding, and distribution of resources and supports when it comes to refugees with disabilities, Poland has excelled under the current circumstances and has prepared well for the crisis and refugee

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147 *Ukraine Emergency*, U.N. HIGH COMM'R FOR REFUGEES, https://www.unrefugees.org/emergencies/ukraine/ (last visited Mar. 20, 2026).

148 Dominik Wach & Marta Pachocka, *Polish Cities and Their Experience in Integration Activities – The Case of Warsaw*, 2 STUDIA EUROPEJSKIE – STUDS. EUR. AFFS. 89, 90–91 (2022).

149 *Id.* at 90.

150 *Id.* at 90–91.

151 Urząd do Spraw Cudzoziemców [Office for Foreigners], Act of 12 March 2022 on Assistance to Citizens of Ukraine in Connection with Armed Conflict on the Territory of that Country (Pol.), https://www.gov.pl/attachment/fd791ffb-c02b-4e99-b710-e8ed3a9a821b (on file with SIU Law Journal) (last visited Mar. 20, 2026).

152 Marta Kindler & Maciej Tygielski, *How 'Special' Is the Special Law? Temporary Protection and Migration Infrastructure in Poland Following the Outbreak of the Full-Scale War in Ukraine*, 14 CENT. & E. EUR. MIGRATION REV. 203, 208 (2025).

intervention.[153] Poland often uses DPOs to fill the gaps in societal support.[154] The Polish State supports NGOs and other organizations to give direct assistance to those who qualify.[155] Because there was much that needed to be done quickly, "the urgency of the immediate intervention accelerated a harmonization process"[156] in the practice, even if the policies in 2022 had not advanced as quickly.

Services, including housing, counseling, education, vocational training, and Polish language courses, are offered to assist the integration of refugees.[157] Since societal attitudes towards refugee policies and programs directly impact their success,[158] offering resources for integration during the transition process could be seen as positive and push measures forward more successfully. Further, other resources and outlets have been provided by the Polish Government to help Ukrainian refugees, including a website that offers a location for posts and questions regarding medical questions and needs.[159] These types of forums provide a space for gathering information and sharing resources to help the refugee community.

When looking at protections for Ukrainian refugees with disabilities and their ability to access the Polish education system, the protections for refugees cannot be looked at in a silo and instead must be read in line with those protections for people with disabilities. Together, policies and laws surrounding the protection of both refugees and people with disabilities frame the issue. And while the special protections put in place in 2022 to grant temporary protection status for Ukrainian refugees are coming to an end in 2026, efforts to continue supporting the refugees within Poland will continue.

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153 Monika Nowicka et al., *Challenges of Accessibility: Experience of Receiving Ukrainian War Refugees with Disabilities in Poland and Romania*, 13 SOC. INCLUSION 1, 8 (2025) [hereinafter Nowicka, *Challenges*].

154 Monika Nowicka et al., *An Unfortunate Natural Experiment in Learning How to Provide Services to Those in Need: The Case of Ukrainian War Refugees with Disabilities in Warsaw and Bucharest*, 20 PLOS ONE 1, 4 (2025) [hereinafter Nowicka, *An Unfortunate*]; Wach & Pachocka, *supra* note 137, at 92.

155 Nowicka, *An Unfortunate*, *supra* note 143, at 10.

156 *Id.* at 15.

157 Wach & Pachocka, *supra* note 138, at 95; Lubimow, *supra note 113*, at 129.

158 PATRYCJA HRYCIUK-ZIÓŁKOWSKA ET AL., COMMUNITY SPONSORSHIP FOR REFUGEES IN POLAND: SOCIAL ATTITUDES AND COMPARISONS WITH OTHER ASYLUM AND REFUGEE POLICIES 7 (Ctr. Migration Rsch. 2024) [hereinafter HRYCIUK-ZIÓŁKOWSKA].

159 POMAGAM UKRAINIE, https://pomagamukrainie.gov.pl/ (on file with SIU Law Journal) (last visited Mar. 16, 2026).

B. Disability Policy

The heart of the Polish legal system, the Constitution, guarantees equality and non-discrimination for persons with disabilities.[160] Although all the enumerated rights within the Polish Constitution apply to people with disabilities, there are specific provisions laid out for further protection. First, Article 32(2) prohibits discrimination on any grounds, including disability.[161] Additionally, Article 68(3) mandates the state to provide special healthcare to children, pregnant women, disabled people, and the elderly.[162] Finally, Article 69 further specifies the state's obligation to provide assistance to disabled persons for subsistence, work adaptation, and social communication.[163]

Poland has enacted other instruments to further protect people with disabilities and ensure their rights. Specifically, in the 1997 Charter of Persons with Disabilities, the entire two-chamber parliament of the Sejm recognized that people with disabilities have the right to lead an independent life.[164] Further, the Sejm highlighted the right not to be discriminated against and focused on multiple rights, including learning at schools together with able-bodied peers and making use of special education or individual education where needed, and access to good and services to enable full participation in social life.[165] These, amongst other rights enumerated in § 1 of the Charter, focus on integration and participation of people with disabilities, requiring the State to remove any barriers that would act as preventatives.[166] Then § 2 further clarifies the connection between the State and international instruments by highlighting that the rights to protect come from the Polish Constitution,[167] Universal Declaration of Human Rights,[168] Convention on the Rights of the Child,[169] Standard Rules for the Equalization of Opportunities of Persons with Disabilities,[170] and other instruments of

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160 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 2 KWIETNIA 1997 R. [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 32, 68, 69 (Dz.U. 1997 nr 89 poz. 483).

161 *Id.* at 32(2).

162 *Id.* at 32, 68(3).

163 *Id.* at 32, 69.

164 Resolution of the Sejm of the Republic of Poland of 1 August 1997, Charter of Persons with Disabilities, Monitor Polski [M.P.] No. 50, item 475 (Aug. 13, 1997) (Pol.) [hereinafter Charter PWD], https://bip.brpo.gov.pl/en/content/charter-persons-disabilities (on file with SIU Law Journal).

165 *Charter of Persons with Disabilities*, COMM'R HUM. RTS. (Aug. 13, 1997), https://bip.brpo.gov.pl/en/content/charter-persons-disabilities (on file with SIU Law Journal).

166 *Id.*

167 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 2 KWIETNIA 1997 R. [CONSTITUTION OF THE REPUBLIC OF POLAND], arts. 32, 68(3) (Dz.U. 1997 nr 89 poz. 483).

168 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

169 G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989).

170 Convention on the Rights of the Child, *supra note 1*.

international and national law. The Sejm of the Republic of Poland then called upon the Government of the Republic of Poland and local government authorities to take actions aimed at implementing these rights and required an annual report showing the steps taken to progressively realize these rights.

Further policy called The Friendly Poland – Accessibility Plus Program for 2008-2018 is another positive trend toward improving overall accessibility for people with disabilities in Poland.[171] The Accessibility Plus Program focused on improving accessibility within all aspects of law and policy at the state level.[172] The Accessibility Plus Program presented a report card-type assessment of the current state of law and policy and how those affect people with disabilities, including accessing the right education.[173] Further, recommendations for realignment with international legal obligations were laid out to ensure Poland is meeting its international legal obligations, such as those within the CRPD.[174]

Connected to the services and supports people with disabilities receive, Poland enacted the Act on Providing Benefits to Persons with Disabilities in 2024, which added state-funded direct financial assistance for people with disabilities.[175] The new support allowance extends to parents supporting children with disabilities as well, and those parents/supporters will have more benefits provided to ensure that their child has what they need at home to be ready for the school system.[176] This Act transposed the European Accessibility Act into Polish law, solidifying its realization into the Polish legal framework.[177]

Compared to the estimated worldwide spending on disability of 1.2% of GDP,[178] Poland's spending as of 2010 was estimated at almost five times higher at up to 5.3%.[179] Further, Polish disability rights activists have

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171 CRPD, *supra note 1*, at art. 11, pt. II(4)(a) (praising Poland for the positive initiative); *Program Dostępność Plus 2018–2025*, MINISTRY INV. (2018), https://ageing-policies.unece.org/browse-policy/2823 (on file with SIU Law Journal) [hereinafter Accessibility Plus Programme].

172 *See Accessibility Plus*, MINISTRY INV. & ECON. DEV. (2018), https://ageing-policies.unece.org/api/public/attachments/view/19af788a-7f7c-4cb3-b08d-d91f8cf511e7 (on file with SIU Law Journal).

173 *Id.* at 19.

174 *Id.* at 19–20.

175 Ustawa z dnia 7 lipca 2023 r. o świadczeniu wspierającym [Act on the Supported Benefit] (Dz.U. 2023 poz. 1429).

176 Ustawa z dnia 26 kwietnia 2024 r. o zapewnianiu spełniania wymagań dostępności niektórych produktów i usług przez podmioty gospodarcze [Act on Ensuring Compliance with Accessibility Requirements for Certain Products and Services] (Dz.U. 2024 poz. 731).

177 *Poland Takes Another Step Towards Accessibility*, ACCESSIBLEEU (May 22, 2024), https://accessible-eu-centre.ec.europa.eu/content-corner/news/poland-takes-another-step-towards-accessibility-2024-05-22_en (on file with SIU Law Journal).

178 Kubicki, Bakalarczyk & Mackiewicz-Ziccardi, *supra* note 133, at 142; WORLD HEALTH ORG. & WORLD BANK, WORLD REPORT ON DISABILITY 42–44 (2011).

179 Kubicki, Bakalarczyk & Mackiewicz-Ziccardi, *supra* note 133, at 142.

emerged, showing a distinct advocacy movement for people with disabilities and their families.[180] In contrast to this, it has been noted that although disability rights activism has been growing over the last decade, there is still a strong contingent of non-disabled experts, professionals, and politicians who argue that segregated institutionalization is the "most appropriate way of containing the issue of disability."[181] This viewpoint is not one that is sustainable or allowable under the international disability rights system enshrined in the CRPD. Even with the CRPD's ratification in Poland, there has been criticism about the lack of involvement of those in the disabled community in policymaking to ensure full access and equal recognition of all rights.[182]

The view of disability in Poland still does not meet the requirements of the human rights model from the CRPD.[183] While over a decade has passed since implementation began, the coordination of efforts remains largely the responsibility of the DPOs, who often lack the resources to carry out those tasks.[184] States have clear obligations under the CRPD,[185] and while regulations and policies are in place, more resources and targeted efforts at the enactment of protections and the realization of rights are needed for full implementation.

C. Education Policy

The right to education in Poland was first codified in the Constitution. The Polish Constitution, Article 70 states that every citizen shall have the right to education.[186] This framework of protecting and explaining the right to education continues through a variety of instruments aimed at providing education for all learners in the Polish system.[187] Preschool, primary school, and post-primary school education is granted to all foreign nationals,

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180 *Id.* at 144.

181 *Id.* at 146.

182 *Id.* at 148.

183 Nowicka, *An Unfortunate*, *supra* note 143, at 7.

184 *Id.*

185 TOEPKE, *supra note 6*2, at 113–36 (discussing the top-down and bottom-up requirements for state parties in meeting the international obligations under the CRC and CRPD regarding inclusive education realization for all learners).

186 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ Z DNIA 2 KWIETNIA 1997 R. [CONSTITUTION OF THE REPUBLIC OF POLAND], ch. VI, art. 170 (Dz.U. 1997 nr 89 poz. 483).

187 *See Przepisy prawa* [*Legal Provisions*], MINISTERSTWO EDUKACJI NARODOWEJ [MINISTRY OF NAT'L EDUC.], https://www.gov.pl/web/edukacja/przepisy-prawa (on file with SIU Law Journal) (last visited Mar. 12, 2026).

including refugees, under the same conditions as for Polish nationals.[188] The Polish education system provides for a variety of options for compulsory education for children from birth, ranging from public to private to homeschool, and special education needs are provided at each level.[189] Parents are able to choose the setting that is right for their child, and the majority of parents elect to have their children in mainstream schools with special needs education provided.[190]

As a starting point, the School Education Act of 7 September 1991 gives children with disabilities the right to education in mainstream schools as well as integrated and special education schools.[191] Article 1 reaffirms the Polish Constitution in that every citizen has the right to education, but elaborates that this education should be appropriate for their age and development and be adjusted or adapted to the psychological and physical abilities of the children.[192] Teachers are to guide their teaching and behavior by the welfare and health of the pupil, along with respect for the pupil's personal dignity.[193] The Act was a turning point for learners with disabilities, who until that point were taught in segregated learning environments.[194] After this Act, all children were given the opportunity to be taught in a mainstream classroom.[195] However, the Act did not specify the requirement for an inclusive education. This Act was a focal point of national policies on education law, and since then, more than a dozen regulations clarifying schooling for children with disabilities have been enacted, offering support and curriculum guidance to teachers, clarifying obligations of

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188 EWA KOLANOWSKA, THE SYSTEM OF EDUCATION IN POLAND: 2020, at 123 (Magdalena Górowska-Fells et al. eds., 2020), https://eurydice.org.pl/brepo/panel_repo_files/2021/02/01/5sqrxv/system-education-poland-2020.pdf (on file with SIU Law Journal).

189 EUR. AGENCY FOR SPECIAL NEEDS & INCLUSIVE EDUC., COUNTRY SYSTEM MAPPING COUNTRY REPORT: POLAND 20–21 (2019), https://www.european-agency.org/sites/default/files/CSM%20Country%20Report%20Poland.pdf (on file with SIU Law Journal); *see also Country Information for Poland – Systems of Support and Specialist Provision*, EUR. AGENCY FOR SPECIAL NEEDS & INCLUSIVE EDUC., https://www.european-agency.org/country-information/poland/systems-of-support-and-specialist-provision (last updated Feb. 3, 2021) (on file with SIU Law Journal) (reporting that special education is offered in 13,353 mainstream schools, 1,431 other pre-primary education settings; 326 special pre-schools for disabled children, 14,123 mainstream schools at all levels, and 1,961 special schools).

190 KOLANOWSKA, *supra* note 177, at 95 (reporting from the 2018/2019 academic year that 67% of children with special education needs were taught in mainstream schools).

191 Eugeniusz Świtała, *Inclusive Education in Poland*, *in* MOVING TOWARDS INCLUSIVE EDUCATION 38, 39 (Lise Claiborne & Vishalache Balakrishnan eds., 2020); Ustawa z dnia 7 września 1991 r. o systemie oświaty [Act on the System of Education] (Dz.U. 1991 nr 95 poz. 425).

192 Ustawa z dnia 7 września 1991 r. o systemie oświaty [Act on the System of Education], at art. 1.

193 *Id.* at art. 4.

194 EUR. AGENCY FOR SPECIAL NEEDS & INCLUSIVE EDUC., *supra* note 178, at 10.

195 *Id.*

mainstreaming, and moving into inclusive education.[196] At the higher education level, Poland made amendments to the Law on Higher Education of 2018 that provided support for persons with disabilities in the higher education system, highlighting a positive movement toward education equality at the higher level.[197] These additions to the legal framework continue to ensure and protect the right to education, showing closer alignment with international obligations.

While there has been much legislative progress in Poland toward inclusive education for all learners, barriers still exist. As reported in 2018, the CRPD Committee noted concern about Poland's lack of "specific provisions to support the implementation of inclusive education, and the confusion between the terms 'integration' and 'inclusion.'"[198] A further concern was highlighted in that the majority of students with disabilities were educated in segregated education.[199] While parents are allowed to choose the educational path for their children, which includes input on the level of accommodations, the move to transition to fully inclusive education has not been fully realized.[200]

Further, attitudinal barriers still exist, which then cause human resource barriers. Teachers' attitudes and beliefs about the resources and training required for a truly inclusive education create many challenges based on perceived or real competency deficiencies.[201] Although the CRPD requires Member States to provide resources and adequate training to create an inclusive education,[202] teachers, parents, peer students, and the community show "intolerance of learners with disabilities."[203] To combat this stigma, the CRPD Committee made suggestions for added support measures for students, parents, and teachers, along with awareness-raising for the non-disabled community to better comprehend the value of an inclusive education for all.[204]

In a positive move, the Ministry of Education and Science has reportedly been drafting a new act to support all learners, including a nationwide, inter-ministerial and intersectoral system of support that will act as a cooperative between local organizations, uniting their efforts under the

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196 *See, e.g.*, Ustawa z dnia 14 grudnia 2016 r. – Prawo oświatowe [Act of Dec. 14, 2016–Education Law] (Dz.U. 2017 poz. 59).

197 Concluding Observations, *supra note 82*.

198 *Id.* at ¶ 41(a).

199 *Id.* at ¶ 41(d).

200 KOLANOWSKA, *supra* note 177, at 92–97 (reporting the different options of education, including segregated special education throughout the educational process).

201 EUR. AGENCY FOR SPECIAL NEEDS & INCLUSIVE EDUC., *supra* note 178, at 15.

202 CRPD, *supra note 1*, at art. 24.

203 EUR. AGENCY FOR SPECIAL NEEDS & INCLUSIVE EDUC., *supra* note 178, at 20–21.

204 Concluding Observations, *supra note 82*, at ¶ 42(a)–(c).

nationwide system.[205] An advanced coordination led by the national government will provide organized resources, guidance, and training efforts to all areas of Poland, giving a more unified movement toward inclusive education policy implementation.[206] This draft also aims to discuss the range of educational options for students with disabilities, including special education, mainstream, and inclusive education opportunities.[207] The draft act has the opportunity to better align with the CRPD and other international commitments.

IV. POLAND'S RESPONSE TO EDUCATION ACCESS UNDER TEMPORARY PROTECTION (2022-2025)

While some countries may be more adept at refugees integration into the existing systems; however, difficulties often arise when it comes to supporting refugees with disabilities. Even in the most well-established, well-resourced countries, due to the lack of coordination vertically and horizontally between public sector administrative systems, refugees with disabilities often have difficulties accessing resources on an equal basis with other refugees.[208] This coordination disconnect can often be the reality and signs of this reality have shown in Poland since 2022.

A. Initial Emergency Response (2022)

When there is an influx of refugees from conflict zones, disability often affects a significant number of the incoming refugees.[209] Healthcare and education implementation are often difficult areas of aid for almost all refugees due to challenges with understanding legal status, language, and understanding the resources that are available to that particular group.[210] Especially for post-socialist regions, the capacity to respond to the needs of refugees with disabilities relies on cooperation across public and civil society organizations, including NGOs and DPOs, instead of a centralized mechanism from the state.[211] From the interviews conducted by Nowicka et al., it was reported that Ukrainian refugees with disabilities, who were beneficiaries of services and many of the benefits, were eligible without being citizens for many of the benefits, however state social security support

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205 EUR. AGENCY FOR SPECIAL NEEDS & INCLUSIVE EDUC., *supra* note 178, at 16.
206 *Id.* at 16–17.
207 *Id.* at 17.
208 Nowicka, *An Unfortunate, supra* note 143, at 2.
209 *Id.* at 4.
210 *Id.*
211 *Id.* at 5.

for people with disabilities required a Polish disability certificate, or in some cases a self-declaration of disability.[212] Additionally, due to a shortage of Ukrainian-speaking physicians in Poland, the wait for the certificate can take several months.[213]

As of February 2024, the Russian-Ukrainian conflict has forced 6.5 million people to be internationally displaced.[214] Related to the 15% statistic of people with disabilities, this creates a likely low estimate of 975,000 people with disabilities who were forcibly displaced from Ukraine. Since there is no clear data collection on disability status for incoming refugees, and the refugee population skews more female and children,[215] it is noted that using the 15% statistic may not be accurate and a limitation on the estimate. As of mid-2024, the UNHCR confirmed 963,859 of the 980,034 refugees in Poland were from Ukraine,[216] meaning almost 150,000 people with disabilities. "Nearly half of those currently fleeing the war from Ukraine to Poland are minors, most of whom are school-age children (156,866 students joined primary and secondary schools [in 2022 alone])."[217] Similar to local children with disabilities, the refugee children with disabilities may require accommodations to receive the needed inclusive education to help them reach their educational outcomes guaranteed in human rights instruments. By 2023, 190,000 Ukrainian students were attending Polish schools.[218]

In Poland, since 2022, the cooperation and integration efforts began with the social welfare centers.[219] Particularly important to the coordination and resource efforts are "NGOs [which] play a crucial role in this process, offering a range of integration activities for migrants, including legal assistance, cultural integration, psychological support, professional qualifications, language courses, and social support for those facing financial challenges."[220] The *Konsorcjum Migracyjne* (Migration Consortium),[221] a

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212 *Id.* at 10.

213 *Id.*; *see, e.g.*, AMNESTY INT'L ASS'N, SUMMARY OF THE ANNUAL RESEARCH PROJECT "REFUGEES FROM UKRAINE IN POLAND" 3 (2023), https://www.amnesty.org.pl/wp-content/uploads/2023/06/Podsumowanie-rocznego-projektu-badawczego-Uchodzcy-z-Ukrainy-w-Polsce_EN.pdf (on file with SIU Law Journal).

214 Kindler & Tygielski, *supra* note 141, at 205 (citing UNHCR 2024).

215 *See Operational Data Portal: Ukraine Refugee Situation – Poland*, UNHCR, https://data.unhcr.org/en/situations/ukraine/location/10781 (on file with SIU Law Journal) (last visited Mar. 27, 2026) (highlighting that overall 59% of incoming refugees are female; 21% overall are under 18 years old; 6% overall are above 60 years old).

216 HRYCIUK-ZIÓŁKOWSKA ET AL., *supra* note 147, at 2.

217 Lubimow, *supra note 113*, at 128.

218 AMNESTY INT'L ASS'N, *supra note 101*, at 3.

219 Wach & Pachocka, *supra* note 137, at 90.

220 Nowicka, *An Unfortunate*, *supra* note 143, at 6.

221 *See e.g.*, *Exploitation of Migrants in Poland After 2022: An Analysis by IOM and the Migration Consortium*, MIGRATION CONSORTIUM: BLOG (Jan. 13, 2026), https://konsorcjum.org.pl/wyzysk-migrantow-w-polsce-po-2022-roku-analiza-iom-i-konsorcjum-migracyjnego/ (on file with SIU

democratic platform for NGO cooperation, has also taken a large role since 2022 as well.[222] NGOs and DPOs have played a crucial part in an often city-by-city approach to getting resources to incoming refugees.[223] These efforts are not without challenges and setbacks, however. The Migration Consortium has noted that refugees from with disabilities face more difficulties in migration into Poland, and issues such as language barriers and existing discrimination make accessing supports and resources more difficult for these groups.[224] In fact, only 5% of Ukrainian refugees reported a good knowledge of Polish.[225] Accessing resources and education without working knowledge of a language adds to the barriers already being faced.

B. Systematic Challenges in Implementation

Because of the substantial influx of refugees from Ukraine since the start of the war, it became necessary for the Polish school system to quickly adapt, modifying its educational processes and policies to accommodate many students who did not speak the same language, may have had trauma from fleeing, may be separated from support, or any number of other issues.[226] In some schools, this influx resulted in the integration of refugee children into the existing systems, while in others, Ukrainian-only departments were created.[227] Curricular, infrastructural, and personnel shortfalls created cultivated the risk of non-inclusion for incoming refugee children.[228] Without support or training in working with multicultural, multilingual classrooms, educators would not be able to increase their competencies to provide the inclusive education required by the international standards.[229] This is exponentially so when adding disabilities to the equation.

Reports of Polish schools lacking textbooks in Ukrainian or Polish-Ukrainian, lacking intercultural assistants to support the students, and lacking adequate infrastructure to accommodate students have been made.[230]

Law Journal) (showing that the Migration Consortium is a group of nine social organizations working together in migrant advocacy policy in Europe and Poland aimed at helping migrants enjoy their rights and freedoms).

222 Nowicka, *An Unfortunate, supra* note 143, at 6.

223 Wach & Pachocka, *supra* note 137, at 90.

224 *See, e.g.*, *Exploitation of Migrants in Poland After 2022: An Analysis by IOM and the Migration Consortium*, *supra note* 111.

225 BEATA DUDEK, ADAM PANUCIAK & PAWEL STRZELECKI, THE LIVING AND ECONOMIC SITUATION OF UKRAINIAN MIGRANTS IN POLAND IN 2023, at 3, 12 (Narodowy Bank Polski 2023).

226 Lubimow, *supra note 113*, at 130.

227 *Id.*

228 *Id.* at 133.

229 *Id.*

230 AMNESTY INT'L ASS'N, *supra note 101*, at 3, 4.

Although students have a right under the Polish law to attend school, there are real barriers to accessing that education.[231] While these barriers were likely exacerbated due to the sudden influx of refugees, these are noted opportunities for improvement of the systems in place to provide needed access to education services.

C. Outcomes and Assessments

While countries, like Poland, are doing what they can for refugees with disabilities, separating students out of the mainstream classroom into Ukrainian-only programs is a recipe for stigmatization and misunderstanding.[232] Cultural understanding comes from the inclusion and involvement of groups; however, separation can lead to segregation and a lack of understanding that could bloom into something worse as time continues.[233] Mere integration of children with disabilities into a mainstream class would not meet muster. Integration without a systemic change does not equate to inclusion.[234] Despite the international legal framework requiring inclusion, Poland, like many other states, has not been able to give children with disabilities the support they need in a regular, mainstream school to meet the requirement of inclusive education.[235]

This failure to realize inclusive education is more evident in a country, like Poland, which has a range of educational systems, including segregated special schools, for parents to choose the right option for their child. It has been noted that "besides leading to exclusion from mainstream settings, these special schools generally provide a lower standard of education and decrease their pupils' chances as future adults."[236] Segregated education directly contradicts the concept of education as a gateway into other rights, limiting the potential for learners to develop and engage in society post-schooling.

Education for Ukrainian refugee children with disabilities adds an additional challenge to resource division in Poland. These challenges required that the legal framework surrounding the right to education, along with the actual infrastructure and staffing in the schools, be adjusted to meet the needs of all learners.[237] Inclusive education, as the right is defined in

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231 *Id.*
232 Nowicka, *Challenges, supra* note 142, at 12–14.
233 Lubimow, *supra note 113*, at 136.
234 UNESCO, POLICY GUIDELINES ON INCLUSION IN EDUCATION 14–16 (2009).
235 De Beco, *supra note 6*2, at 396.
236 *Id.* at 397.
237 Lubimow, *supra note 113*, at 128.

international law,[238] requires *inclusion*, non-discrimination, accessibility, and accommodations for the realization of the right.[239] And even though the definition offers some grey areas for states, it does require that human differences are embraced and that all individual needs of learners are addressed.[240] With the influx of Ukrainian children since 2022, the Polish education system has needed to adjust in critical ways to ensure support of students, including finding competent educators, psychologists, cultural assistants, and supporting teachers/teacher's aids.[241] Without a centralized body creating a comprehensive plan, however, the ad hoc approach to resources, staffing, and inclusive practices often is unequal.[242] Teachers have reported feeling "left alone" with the challenge of including refugee children in the classroom.[243] This criticism again hinges on the need for a centralized mechanism and uniform goals that lead to unified support for educational professionals and learners.

Since a large number of Ukrainian refugee children have special education needs,[244] the education system and structure require an even more comprehensive overhaul to accommodate those learners. Not having adequate resources and training leaves educational professionals underprepared and leads to a lack of realization of the right to an inclusive education. States Parties have an obligation to provide educational professionals with the resources they need to successfully implement inclusive education at the ground level, including training and support.[245]

Studies in other countries specifically about the attitudinal barriers of refugee students with disabilities have concluded that language is often the main barrier that refugee students face, and the language gap determines whether refugees can be integrated into the regular state school system.[246] In the Bešic study that took place in Austria, minority students of any kind—refugee or with disability or both—were seen as more difficult and as a

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238 TOEPKE, *supra note 6*2, at 110–11 (connecting the international obligations stemming from the CRC and CRPD to illustrate how the right to education has not been defined as a right to inclusive education in the human rights paradigm).

239 *Id.* at 43–47.

240 De Beco, *supra note 6*2, at 403.

241 Lubimow, *supra note 113*, at 133.

242 *Id.* at 134.

243 AMNESTY INT'L ASS'N, *supra note 101*, at 3.

244 Lubimow, *supra note 113*, at 135.

245 INGRID LEWIS & SUNIT BAGREE, TEACHERS FOR ALL: INCLUSIVE TEACHING FOR CHILDREN WITH DISABILITIES 15 (2013), https://www.iddcconsortium.net/wp-content/uploads/2019/11/2013-IETG-Teachers-for-All_Inclusive-Teaching-for-Children-with-Disabilities.pdf (on file with SIU Law Journal).

246 Edvina Bešić, Lisa Paleczek & Barbara Gasteiger-Klicpera, *Don't Forget About Us: Attitudes Towards the Inclusion of Refugee Children With(out) Disabilities*, 24 INT'L J. INCLUSIVE EDUC. 202, 203 (2020).

disruption to the mainstream classroom, holding other students' learning back.[247] However, the crux of the negative attitudinal perception was the language barrier that had the likelihood of causing social and academic separation.[248] In that study, participants all found that special education—not mainstream education—was the best method to education refugee children with disabilities.[249]

The results of that study from Austria do not match the international and national legal requirements to provide an inclusive education for all learners.[250] While the standard has been segregated, special education, the transition to inclusive education is required under international law.[251] Although this transition requires more than a flick of a switch to move from segregation to inclusion, the progressive realization of the right to an inclusive education will positively affect more than just the refugee population and have widespread effects across the education system.[252] Awareness raising, training, and an influx of resources allocated to meet the maximum potential of inclusive education needs are needed at a coordinated level by the state.

The protections and supports that Poland offers refugees require legal status, and Ukrainian war refugees have had temporary protection status since 2022.[253] However, in early 2026, the Polish government signed a bill that would remove the "extraordinary legal regime" that had applied to Ukrainian refugees, effective March 5, 2026.[254] These removed special protections include measures to place Ukrainian children into Polish schools and include "Polish language classes, preparatory courses, and simplified rules for hiring intercultural assistants."[255] However, these special

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247 *Id.* at 202.

248 *Id.* at 212.

249 *Id.* at 211.

250 *See generally* Katharina-Theresa Lidner et al., *Breaking Barriers or Building Walls? The Impact of Inclusive and Segregated Learning Settings on Learning Development of Students with Special Educational Needs in Austria*, 72 INT'L J. DEV. DISABILITIES 1 (2026).

251 *See generally* CRPD, *supra note 1*, at art. 24.

252 *See Inclusion of Refugees and Forcibly Displaced Populations in Education*, INT'L INST. FOR EDUC. PLAN., https://www.iiep.unesco.org/en/projects/inclusion-refugees (on file with SIU Law Journal) (last visited Mar. 18, 2026).

253 *The Act on Assistance for Ukrainian Citizens*, STOWARZYSZENIE INTERWENCJI PRAWNEJ (Oct. 30, 2024), https://ukraina.interwencjaprawna.pl/the-act-on-assistance-for-ukrainian-citizens/ (on file with SIU Law Journal).

254 Pole Visas & Immigr. Team at VisaHQ, *Poland Moves to Phase-Out Special Legal Status for Ukrainian Refugees*, VISAHQ (Jan. 24, 2026), https://www.visahq.com/news/2026-01-24/pl/poland-moves-to-phase-out-special-legal-status-for-ukrainian-refugees/ (on file with SIU Law Journal).

255 Alicja Ptak, *Poland Ends Special Status of Ukrainian Refugees*, NOTES FROM POL. (Feb. 20, 2026), https://notesfrompoland.com/2026/02/20/poland-ends-special-status-of-ukrainian-refugees/ (on file with SIU Law Journal).

accommodations will not be phased out until the end of 2026, and the right to education will still be upheld, but not in a separate system.[256] While the Gateway Right of education will still be respected, Ukrainian refugee students will be transitioned into the Polish system, while removing the separate, Polish language classes and intercultural assistants for refugees, and requiring all students to be in the Polish education system.[257]

While there is an acknowledged research gap in the lack of empirical data regarding the outcomes of Ukrainian refugees with disabilities in the Polish education system, this gap warrants future study and comparison with similarly situated countries welcoming refugees from Ukraine. This concrete data will allow the state to make more directed allocation of resources after determining what the successes are compared to the opportunities for stronger realization of the right to inclusive education.

V. LESSONS FOR RECEIVING STATES

As refugees continue to stream into European countries from Ukraine, with the likely 15% having a disability, States must continue to create and maintain support systems for this population. A struggle noted throughout Poland was the city-by-city differences in policies that meant divergent resources for refugees depending on the city. Therefore, a model state should create and maintain a centralized body with unified messaging as the initial step. Having a centralized governmental mechanism for support instead of relying more piecemeal on NGOs and DPOs will create a smoother process into the system. However, NGOs and DPOs cannot be discounted as they have a part to play. To prepare for the influx of refugees with disabilities and continue allocating resources to bodies, NGOs, and DPOs are working together for support on the ground.

Reports from OECD countries surrounding the supports provided range from providing information, language catch-up courses, recruiting Ukrainian-speaking personnel, cooperation with Ukrainian authorities, recruitment of teachers and teaching assistants, awareness and information campaigns, temporary reception classes to facilitate integration, creation of bilingual teaching materials, and creation of Ukrainian-only schools.[258] In aligning supports, States should keep in mind all of their international and national obligations to protect the rights of incoming refugees. The human rights, refugee-specific, and disability-specific instruments create a framework within which all efforts to protect the right to education for refugees with disabilities must be couched.

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256 *Id.*

257 *Id.*

258 Cerna, *supra note 101*, at 44–45.

Knowing the difficulties and barriers that refugee children with disabilities face when attempting to access education, along with the other instability issues surrounding their migration, a model state needs to be ready to take proactive measures to ensure refugee children with disabilities have full support as they transition into an inclusive education alongside their peers. As part of this transition, a model state must ensure that education is inclusive, not just integrated. All Member States have an obligation to ensure an inclusive education for all learners, and this right requires resource allocation, both human and capital, to meet this requirement. Learners will need support, including (likely) language acquisition. Recruiting Ukrainian-speaking education staff will improve the transition of refugee learners and their families.[259] Looking at the examples in Poland, where language was one of the major barriers to education, and a lack of language caused discrimination and stigma, learning the local language is a crucial step to education. A model state should also prepare a policy supporting accommodations for these new learners, and resources will need to be allocated to support those policies in schools. Long-term planning will be required to ensure that inclusive education for all refugees with disabilities is provided.[260]

Education is the gateway into participation, societal connection, and cultural competencies.[261] To integrate refugee children into society, a model state should begin by including them in the education system. While Poland offered specialized opportunities for Ukrainian refugee children from 2022 to 2026, offering cultural integration and Polish language classes, these opportunities unfortunately are not continuing. As has been discussed, language learning allows better integration into education and society, and most incoming Ukrainian refugees are not fluent in Polish. Continuing individualized support for language learning across educational levels would grant better access for learners. This access during schooling would lead to greater access post-schooling and would build into a more integrated society.

Looking to Poland's successes and challenges in welcoming refugees from Ukraine, without a centralized body to support these changes and often a city-by-city approach, other states can take lessons learned. Although there is no one-size-fits-all approach as long as the rights of people are respected, protected, and fulfilled as they enter the state, a centralized mechanism with unified goals will be able to fully realize these rights. A model state should promote a unified policy goal for education access at all levels for its

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259 *Id.* at 18.

260 EUR. UNION AGENCY FOR ASYLUM, DISPLACED UKRAINIANS WITH DISABILITIES AND TEMPORARY PROTECTION 10 (Situational Update, Issue No. 20, Jan. 18, 2024), https://www.euaa.europa.eu/sites/default/files/publications/202401/2023_displaced_ukrainians_disabilities_temporary_protection_EN.pdf (on file with SIU Law Journal).

261 TOEPKE, *supra note 6*2, at 52–53.

incoming refugees. This unified policy would need to tie directly to educational professionals and the community to promote a strong welcoming front for the systemic change of inclusive education. However, there is a potential danger that placing too heavy a burden on the receiving state may discourage the receiving of refugees due to the financial and resource constraints. Therefore, a proposal to balance these potential burdens is for the EU to intervene and provide funding to any state that agrees to accept refugees and meet these education obligations.

Humanitarian obligations do not fall into clear boxes or follow straight lines. Going forward, whenever there is a humanitarian issue, a conflict, a natural disaster, or otherwise, the above considerations surrounding the right to an inclusive education for refugee children with disabilities should be prioritized for the welcoming state. Since education is the gateway to other human rights, the support and resource allocation for this right should be a guiding point for states.

With the ongoing Russo-Ukrainian War, states will continue receiving refugee children with disabilities into their borders, and the state will thenceforth become responsible for undertaking their access to education. Therefore, an in-depth analysis applying the CRPD Committee's indicators for measuring inclusive education and compliance with international obligations should be performed. To understand how Poland or any state is meeting its international obligations under the refugee, education, and disability rights instruments, data is needed. As noted, the statistics on refugees with disabilities are lacking, so a hopeful goal of this essay is to encourage the data collection needed regarding refugees with disabilities to better understand the required resource allocation when protecting the right to education for refugees with disabilities.