THE PROMULGATION OF NORMATIVE ACTS – THE LEGAL BASIS AND PRACTICE

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Abstract

The law is a major regulator of social life, in the sense that it defines patterns (orders, prohibitions, "frame") of certain people behavior. However, it may become such a regulator only if it is known not only for those who are involved in the legislative process and establish legal norms, but also for their addressees, i.e. persons whose behavior should behave according to those standards. Unknown legal norm can not, of course, induces the desired effects, i.e. an intended by lawmaker behavior of the recipients of legal acts. This problem has also a broader social aspect, concerning knowledge of the law, legal consciousness of citizens, transparency of activities of the state apparatus etc. The case is also legal means which lead to realization of the idea of sovereignty, which can not be fulfilled under a secret rule-making, especially those relating to sphere of the rights and responsibilities of individuals. From this point of view, the matter of publication of legal acts has a close relationship with state actions based on rule of law. Public openness of the law is therefore a fundamental condition for the control of its correctness and compliance in practice. Openness (in the sense of the publication of legal acts) of the lawmaking process obviously can not completely prevent dangers of irregularities, but it may alleviate it to some extent.

Key words: normative acts, autosomy, privacy, *common law*

1. In the modern world, especially in continental Europe, where traditions of domination of positive law are strong, a kind of "juridification" of social life has emerged[2]. More and more often, and to an increasing extent,

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[2] This phenomenon is perceived rather critically, cf. e.g. N. Luhmann, *Teoria polityczna państwa bezpieczeństwa socjalnego,* Warsaw 1994, *passim.* An excessive "juridification of

our life is governed by norms created by the State[3], and legal norms become the most important standard evaluation of human behavior. However, they may become such a standard only if they are known not only for those who are involved in the legislative process and establish legal norms, but also and foremost for their addressees, i.e. persons whose behavior should be laid down according to those standards[4]. Slawomira Wronkowska shows at the same time that there are different ways of publication of legal acts[5]. The legislator can do so by an officially announce whole legal acts to public information or only in relation to specific norms, e.g. as an obligation to explain them in administrative proceedings. Legal acts can also be announced in any form (e.g. dissemination to media), or in the qualified form, i.e. through legally defined conventional action of an authority of the State (publication of a legal act).

The problem of the promulgation of legal acts has also a broader social aspect, concerning knowledge of the law, legal consciousness of citizens, transparency of activities of the state apparatus, etc.[6] The question of the promulgation of legal acts is closely related with state actions based on rule of law. Public openness of the law is therefore a fundamental condition for the control of its correctness and compliance in practice. And also – as it was noted in literature a long time ago – "the publication of normative acts is the implementation of the principle of public openness of the law, it is essential for the stabilization of citizens situation and for protection of their rights and freedoms.[7]" Therefore, it should be concluded that the pub-

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life" has been the subject of interest in Polish literature, among others, Commissioner for Human Rights (Ombudsman) Janusz Kochanowski, cf. among others: J. Kochanowski, *Jurydyzacja życia*, „Palestra" 2002, no. 7-8, p. 95-99 and J. Kochanowski, *Trzy powody kryzysu prawa*, „Rzeczpospolita", 4-5 January 2003 (http://www.kochanowski.pl/pub_trzypowody.html; 10.11.2012).

[3] On a kind of "overproduction" of law and proposals to change an undesirable state of affairs cf. e.g. J. Kochanowski, *Deregulacja jako pierwszy etap reformy systemu tworzenia prawa*, „Ius et Lex" 2005, no. 1, p. 218 ff.

[4] For very long time the principle of public openness the law has remained in the sphere of interest of both the Polish legal doctrine (cf. e.g. A. Gwiżdż, *Zagadnienie jawności prawa*, "Studia Prawnicze" 1981, no. 1/2, p. 83), as well as the Constitutional Tribunal, cf. the judgement of 17 November 1992 (U 14/92), OTK 1992, part II, no. 25, published also in K. Działocha, S. Pawela, *Orzecznictwo Trybunału Konstytucyjnego (1986-1993). Wybór. Opracowanie. Piśmiennictwo*, vol. 2, Warszawa 1996, p. 948-959 (cf. especially p. 958).

[5] Cf. A. Michalska, S. Wronkowska, *Zasady tworzenia prawa*, Poznan 1983, p. 113-116.

[6] Cf. also T. Stawecki, *Jawność jako wartość prawa,* "Studia Iuridica" 2004, no. XLIII, p. 215.

[7] A. Turska, *Możliwa a rzeczywista znajomość prawa*, "Państwo i Prawo" 1964, no. 1, p. 20.

lication of a legal act—regardless of whether such an obligation is clearly indicated in its content – is a condition for the binding force of the given act. The official publication of the legal act is therefore an integral part of the legislative process. Hence, the normative act can not be regarded as having legal effect or legal force if it is not announced to addressees in the defined mode, or if it has not been promulgated in the required form[8].

The obligation to promulgate normative acts is an elementary requirement of legal culture already formulated in the decree of Gratian (as a rule *legesinstituuntur cum promulgantur*[9]). Philosophers of law generally believe that the promulgation of the norm is a prerequisite to make it legally binding. Unpublished norms have not become a law.[10] Promulgation of legal acts had long been and remains important not only for the dissemination of legal provisions[11] and ensuring uniformity of their understanding. It is crucial mainly because of the presumption needed to provide the legal order that what has been duly announced, is known and binding to everybody.[12]

In Polish law, as in other legal systems, there is a presumption – more or less clearly defined in law or customary fixed – that all citizens have knowledge of the law, when those provisions were promulgated in an institutionally (statutory) standardized way in the dedicated official journal or otherwise specified by law or customarily practised way (e.g. posters, press releases). This principle, which is the domain of primarily judicial law, has negative worded as: *ignorantia juris nocet* (ignorance of the law is harm-

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[8] This view has been raised was in Polish literature for a long time, cf. in this regard e.g. H. Rot, *Akty prawotwórcze w PRL. Koncepcja i typy*, Wrocław 1980, p. 142 ff, especially a critical position of this author on views that generally applicable normative acts which were not officially announced have also the legal force, or that sufficient condition is "announcement of an act through the radio" (ibidem, p. 183).

[9] Cf. e.g. justification to the Constitutional Tribunal judgment of 20 December 1999 r. in the case no. K4/99; OTK 1999, part II, no. 51, p. 34.

[10] Cf. S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, "Przegląd Sejmowy" 2001, no. 5, p. 10 (and quoted there examples of Saint Thomas Aquinas and Lon L. Fuller). Cf. also G. Wierczyński, *Urzędowe ogłoszenie aktu normatywnego*, Warsaw 2008, p. 13 ff.

[11] It is often stressed that Hammurabi legislation was carved on the stele of black diorite not coincidentally; cf. C. Kunderewicz, *Kodyfikacje mezopotamskie z III i II tysiąclecia p.n.e.*, [in:] *Dzieje kodyfikacji prawa. Materiały na konferencję historyków prawa w Karpaczu*, Poznan 1974, p. 4.

[12] Legal necessity of the publication of legal norms in the Polish law has been known since the adoption of the Constitution of the Sejm of Radom; Cf. *Radomiensis conventionis decreta Alexandri regis. Konstytucje wieczyste sejmu radomskiego 1505 roku*, Ed. W. Uruszczak, W. T. Kacperski, E. Orzechowska, A. Karabowicz, G. M. Kowalska, Radom 2005, p. XXXI.

ful). It is used generally quite rigorously for the court proceedings, though in varying degrees in different sectors of law (where the legislation as an exception allow for the ignorance of the law and do not apply negative consequences with it).

"The promulgation of a normative act is a complex and yet particularly important conventional action of making this act (and not just information about it) public in the form provided by the legal system, contemporary usually by publication a given normative act in the official journal"[13]. Promulgation of an act (publication of the official journal) should be treated as substantive action belonging to the statutory responsibilities of the governmental authority specified in the act that causes legally significant effects which have generally the constitutive nature.[14] Social meaning of this kind of official action is to ensure all interested parties the possibility to acknowledge the norms that will be applied. Although most people do not read the official journals with great enthusiasm, but no better solution for inserting legal norms into legal circulation was found.[15] If we assumed otherwise that e.g. the responsibility for violation of the law bears the only those who actually know the law and violated it on purpose, it would be difficult, if not impossible to prove it. And generally, it could complicate the legal circulation. The obligatory nature of legal norms depends on their prior due publication, what is justified not only by ethical considerations, but mainly by the effectiveness of established norms.

2. A form of promulgation of legal acts as a realization of a formal condition for make them valid has been a serious ailment of legal system in Poland for a long time. Both the doctrine[16] and the Constitutional Tribunal

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[13] S. Wronkowska, *Ustawa o ogłaszaniu*..., p. 10-11. It should also be noted that the promulgation of a legal act in the official journal is not a technical function and is a part of the statutory responsibility of the state authority. Thus it can not be reduced to technical and organizational actions that, at the request of that authority, may provide any entity.

[14] Cf. e.g. verdict of the Supreme Administrative Court of 6 October 2003, II SA/Łd 1331/03 (OSS 2004, no. 4, item 101).

[15] It should be noted, however, that the Polish legislator has assumed realistically, that the promulgation of a legal act is indeed the official making it public, but does not provide for an effective (fast enough) way to reach all interested parties. The difference between promulgation of an act and making public the fact of its release and its contents is expressed in provisions of the Article 228 paragraph 2 of the Constitution – a regulation introducing extraordinary measures is to be announced, and moreover it shall additionally require to be publicized.

[16] Cf. e.g. H. Rot, *Glosa do orzeczenia Trybunału Konstytucyjnego z 22.IV.1987 r.*, K 1/87, „Państwo i Prawo" 1988, no. 2, p. 141; S. Wronkowska, *Kilka uwag o publikacji aktów normatywnych*, „Rzeczpospolita", 30.03.1992, no. 76; J. Zakrzewska, *Konstytucyjna zasada państwa prawnego w praktyce Trybunału Konstytucyjnego*, „Państwo i Prawo" 1992, no. 7, p. 9.

used to criticize a then practice. In 1987 the Constitutional Tribunal signalled the Council of Ministers the wide discrepancy between the date of the formal promulgation of a regulation, when it entered into force, and the actual date of publication of "Dziennik Ustaw" (the official journal), when the regulation was promulgated. The Tribunal found it reprehensible. This practice, which was not uncommon according to the Tribunal, negated the possibility of the entry into force of a legal act in due time.[17] The law must be properly promulgated, meanwhile we had to deal with the validity of acts which were not published. "The most flagrant ailment of the Polish law concerning the promulgation of normative acts is that it allows the validity of legal norms, which have not been officially promulgated at all". The Constitutional Tribunal confirmed that the lack of official publication of normative acts "affects the principle of loyalty of the state to the citizens, the principle of public openness of the law and the principle of trust in the law and legal certainty." Although a literal interpretation of the Constitution does not provide that the obligation of publication should be extended to normative acts other than an act, from the principle of democratic rule of law should be driven the conclusion that the publication of normative acts is an essential condition for the realization of this principle. The Constitutional Tribunal recalled the rules of promulgation of normative acts, stating that "the legal form of promulgation of normative acts is the publication in print in the "Dziennik Ustaw" or "Monitor Polski" (also in others official journals, provided by law, depending on the type of normative acts or in respect to local enactments – a customary way of publication). Promulgation in the manner required by the law is the official promulgation of an act and the only way that the published text is entitled to a presumption of authenticity. Only such a promulgation of an act legally decides on its entry into force. Thus, only with the official publication of a normative act it can be applied by state organs and observed by citizens and other recipients of the law."[18] In the same resolution, the Tribunal noted that the date of entry into force of acts published in the official journal is the same as the date of publication of the journal. This was stated in the Act on promulgation of "Dziennik Ustaw" and "Monitor Polski". The date of publication of the journal is the date of promulgation of legal acts listed in the issue. Publication day is indicated on the title page of each issue of the journal. It is the day when the journal printing has been finished, and at the same time distribution of an issue by the journal administration in

[17] K. 1/87 of 22.04.1987. Cf. also the decision of the Constitutional Tribunal of 13 February 1991, case W 3/1990; OTK 1991, p. 262-263

[18] W. 3/90.

Warsaw has started. It is assumed that the formula of entry into force of the act of a "day" means the beginning of the day, and not its end[19]. The Tribunal also confirmed the rule of promulgation of normative acts. It stated that "... the date of publication of the official journal is the day of promulgation of the legal acts listed in this issue of the journal". This means first of all that on the day of promulgation, a legal act gets an official attribute and an authenticity. In relation to normative acts for which one of the necessary conditions for a universal application is promulgation in the official journal, it is also a day to fulfil this condition. On the basis of then existing law it referred only to acts and regulations. That requirement may be applicable to some other normative acts only if special provisions provide so. For all normative acts published in the official journals, "day of promulgation" (in practice the date of publication of an issue of the journal) is a turning point when they have the legal consequences[20]. It is a rule, therefore, that a normative act enters into force in the moment, which it determines as the beginning of its application. This may be the date of issue of an act, the date of its promulgation, the date later than the date of its issue or promulgation, and in exceptional situations – the date earlier than the date when the measure was adopted. In the case when an act published in the journal defines the date of its entry into force, it shall enter into force on the day of its promulgation.[21]

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[19] Ibidem.

[20] Ibidem.

[21] Ibidem. It should be noted that the Constitutional Tribunal defined, by the way, types of a practice (judging it negatively) of the application of the Act on promulgation of "Dziennik Ustaw" and "Monitor Polski" in the part concerning the relationship between the promulgation of a legal act and its entry into force, stating that in fact there are three varieties: a) the normative act enters into force "on the date of adoption," or "on the day of promulgation," but "with legal effect since the day" set appropriately earlier than the day of its promulgation. In both cases there is a shift of the date of entry into force of a normative act at the time accordingly earlier than its promulgation, although it will start to apply from the date indicated by these clauses only after promulgation. In the second clause, there is no way to determine the difference between "entry into force" of the act on the date stated therein and obtaining a "binding force" by the act; b) the normative act enter into force on the day of its promulgation, ie. the date of publication of official journal which contains the given act, but as a result of delays in the distribution of the printed journal addrressees of legal norms could in fact – even with due diligence – notice them later than formal entry into force of the act; c) the normative act enters into force at a given time, later then the date of its promulgation, thus the entry into force of the act is separated from the date of its publication by a specified period – *vacatio legis* (ibidem). The clauses listed in points a) and b) have aroused objections also in the doctrine from the point of view of democratic rule of law, in particular from the legal position of individuals and other legal entities in a situation when the normative act enters formally into force on the day of its promulgation

3. Promulgation activity of normative acts is shaped by legal standards of the given system, usually complemented by the constitutional practice of the given country. Rules on activities of this nature are formulated in both constitutions, as well as ordinary legislation. Basically, in the constitution there are only a few basic provisions and the way of promulgation of normative acts is delegated to an act.[22] This is also the case in Polish constitutional system.

The Constitution contains a general principle according to which "the condition of the entry into force of statutes, regulations and enactments of local law shall be the promulgation thereof" (Article 88)[23]. This means that a necessary condition for a legislative act to acquire universal application is its promulgation.[24] This condition applies to all normative acts listed in the Article 87 of the Constitution. In relation to acts, regulations and enactments of local law, provision of the Article 88, paragraph 1 defines *expressis verbis* that promulgation is the condition of their entry into force.[25] It should

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in the official journal, but actually addressees of the law could have been aware of it later (Cf. M. Wyrzykowski, *Przepisy utrzymane w mocy. Rozdział I, artykuł 1*, p. 54-55, in: „Komentarz do Konstytucji Rzeczypospolitej Polskiej", ed. L. Garlicki, Warsaw 1995-97). The first two of the above mentioned clauses can also be considered as admission for retroactivity of the law. Although the jurisdiction of the Constitutional Tribunal of that period shows that they are not contrary to the principle that the law does not operate retroactively in the proper sense of the term, however the Tribunal remarked their negative consequences for legal relations. At the same time the Tribunal did not question that in certain situations (dictated by important social reasons) the law need to enter into force on the date of issue of an act or on the date earlier than its promulgation (U 5/86, K. 1/88, K 7/90).

[22] S. Wronkowska, *Ustawa o ogłaszaniu*…, p. 11.

[23] Cf. the verdict of the Constitutional Tribunal of 20 December 1999 (ref. No. K 4/99), in which the Tribunal accepted that the "promulgation"means not only a conventional act of placing a text of a normative act in the official journal, but also sharing copies of this journal "[...] so at least putting it to dissemination" (this thesis was repeated in the judgment of 20 June 2002, K 33/01).

[24] It appears that in the Article 88 paragraph. 1 of the Constitution the phrase "entry into force" should be understood as the point from which the act becomes a part of the legal system, and not as the point from which everyone who is concerned is obliged to implement the norms contained in the act, whenever these norms apply. But whatever which one of the meanings of the term "entry into force" was adopted, unannounced act, regulation or enactment of local law may not become part of the legal system, and therefore can not also be binding for enybody (what is the essence of the second of the meanings) .

[25] Cf. K. Działocha, *Komentarz do art. 88*, in: „Konstytucja Rzeczypospolitej Polskiej. Komentarz", ed. L. Garlicki, Warsaw 1999; S. Wronkowska, *Ustawa o ogłaszaniu*…, p. 13. Furthermore, according to the views of science and jurisdiction of the Constitutional Tribunal, annexes to a normative act are an integral part of this act. Therefore the publication requirement also applies to annexes to acts, regulations and enactments of local law. It should be

be also concluded that basing on the Article 88 paragraph 3, this condition also applies to international agreements ratified with prior consent granted by the act.[26] Under the provisions of the Article 91 paragraph 1, all ratified international agreements are a "part of the domestic legal system" and can be directly applied after they were announced in the "Dziennik Ustaw."[27]

4. Entry into force of a normative act means that from the moment (day or action) indicated in the act everyone, whose actions are defined by norms contained therein, are obliged to implement, in particular to apply norms of operation formulated in this act. While the promulgation of an act is a necessary condition of its validity and has the value of a constitutional principle, it is up to the act itself when it enters into force. The Constitution does not specify any universally binding standard of the deadline after which a normative act or an act of a certain kind enters into force. It therefore assumes that the legislative body adopting an act or accepting the inclusion of act of the international law into the national law determines the date of its entry into force because regulating a sphere of social relations it knows best, when to implement the standards contained in the act that.[28]

It should be stressed that Polish experiences in this field were bad. For many years the norm, which were in force, stated, that legal acts published in the official journals came into force on the date of their publication,

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noted that the Constitution nor regulations having the force of an act provided for in other constitutional provisions are not mentioned among those specified in the Article 88, paragraph 1 of the Constitution. It is difficult to assume that the obligation of publication does not refer to the Constitution, which is also an act. We must also accept that this obligation applies to regulations having the force of an act, referred to in the Article 234 of the Constitution and regulations implementing the state of emergency (Article 228, paragraph 2).

[26] Cf. the judgments of the Constitutional Tribunal of 20 December, 1999., Ref. No. K 4/99, and of 20 June 2002., Ref. No. K 33/01. Both K. Działocha (*Komentarz do art. 88*…) and S. Wronkowska (*Ustawa o ogłaszaniu*..., p. 13), point out that that conclusion is entitled by the systemic interpretation, in particular taking into account those provisions of the Constitution, which establish the relationship between an act and an international agreement ratified with the consent granted by an act and functional interpretation of the Article 88 paragraph. 3.

[27] It should be noted, however, that the Constitution does not extend the promulgation as a requirement prior to entry into force directly to internal acts, due to their nature, possible way of notification only to subordinate organizational units and the lack of adequate provision in this regard in the Article 93. The existence of normative acts which has not been promulgated is expressly allowed in the Article 190 paragraph 2 sentence 2 of the Constitution. However, considering the content of the Article 88 paragraph 2, it is not a breach of the Constitution to extend the principle of the promulgation also on internal acts under a separate act.

[28] K. Działocha, *Komentarz do art. 88*...; S. Wronkowska, M. Zieliński, *Komentarz do zasad techniki prawodawczej*, Warsaw 2004, p. 110.

unless it was stated otherwise. It was a consequence of the content of the Article 4 of the Act of 30 December 1950 on Promulgation of *Dziennik Ustaw Rzeczypospolitej Polskiej* and of *Dziennik Urzedowy Rzeczypospolitej Polskiej "Monitor Polski"* .[29] Those standards was as low as possible.[30] The change in this regard took place in 1991, when the content of this article was amended by requiring a 14-day *vacatio legis*.

This standard was also succeeded by the Act of 20 July 2000 on Promulgation of Normative Acts and Some Other Legal Acts,[31] which came into force on 1 January 2001 and replaced the previous act.[32] The act regulated the question of promulgation of all normative acts, including enactments of local law, except for international agreements[33] and collective

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[29] "Dziennik Ustaw" of 1950, No 58, item 524.

[30] Cf. S. Wronkowska, *O stanowieniu i ogłaszaniu prawa oraz o kulturze prawnej*, p. 14; http://www.trybunal.gov.pl/wiadom/komunikaty/250107a/Slawomira%20Wronkowska.pdf; 11.11.2012.

[31] "Dziennik Ustaw" of 2000, No. 62, item 718 as further amended.

[32] The need to pass a new bill was deemed necessary in the doctrine, not only because of social reasons (cf. e.g. S. Wronkowska, P*ublikacja aktów normatywnych – przyczynek do dyskusji o państwie prawnym*, in: „Prawo w zmieniającym się społeczeństwie", Krakow 1992, p. 335 ff.), but also of legal considerations since the entry into force of the new Constitution (cf. *Dostosowanie polskiego systemu prawnego do wymogów Konstytucji RP (posiedzenie plenarne Rady Legislacyjnej)*, collection of papers, Popowo 10-12 September 1997, p. 104 ff.).

[33] Promulgation of international agreements are normalized in a specific act (Act of 14 April 2000 on international agreements, "Dziennik Ustaw" of 2000, No. 39, item 443) what have to be considered as a wrong solution. The provisions are very synthetic and laconic what may raise practical difficulties. Evidence of the these difficulties can be the verdict of the Supreme Administrative Court of 16 September 2004 (OSK 247/04; ONSAiWSA 2004, No. 2, item 30). The Court explained that the matter of promulgation of an international agreement in "Dziennik Ustaw", does not belong to the issues referred to in the Article 3 paragraph 2 point 4 of the Act on Law on proceedings before administrative courts. Thus, it is not an issue of the public administration. A completely different way of understanding of these action was adopted by an administrative court of the first instance. This court ruled that promulgation of an international agreement was just a matter of the public administration because it is maked by a public authority, and this action is not in the realm of the civil law. This applies both when the publication of the agreement is ultimately the responsibility of the Prime Minister, as well as the Polish President. This court does not share the view that the publication of a normative act, including international agreement, is the activity of a range of the legislative process, which is not covered by the Supreme Administrative Court. It argued that the creation of a law by the authorized entities is something else than administrative and technical steps regarding promulgation of acts. For more information cf. M. Masternak-Kubiak, *Publikacja umów międzynarodowych*, in: *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, ed. L. Garlicki, A. Szmyt, Warsaw 2003, p. 189 ff.

labour agreements (Article 1 paragraph 2). The Act specifies the principles and the procedures of promulgation of normative acts and some other legal acts, types of official journals and rules and manner of their issuance as well as the rules for normative acts to enter into force, the preparing of a consolidated texts, correcting errors in legislation and the principles and the procedures of publishing official journals.

This act explicitly confirmed the existence of the obligation to promulgate a legal act which is merely a consequence of the Article 88 paragraph 1 of the Constitution. However, this obligation was extended to all normative provisions[34], not just acts, regulations and enactments of local law.[35] The act also adopted the principle of promulgating them in official journals, with modification only concerning the promulgation of local regulations concerning public order (Article 14). The text of the act provides thus two forms of promulgation of normative acts, i.e. in the official journals (Article 4, paragraph 1), and in relation to local regulations concerning public order by means of a pronouncement, as well as by means traditionally used in the given area, or by means of mass media (article 14 paragraph 1). Only such a promulgation fulfil the requirements of the Act, as well as conditions of the Article 88 paragraph 1 of the Constitution. Normative acts published in the manner specified in the Article 14 paragraph 1 are also obliged to be promulgated in the voivodeship official journal (article 14 paragraph 3 of the Act). The promulgation in the official journal is not necessary for their entry into force. It is a form of "registration" and "consolidation" of the text of an act published in any other, prescribed by the law, manner. A particular way of promulgation of local regulations concerning public order should be explained by the nature of these regulations which are to prevent irreversible damage or threats. In addition, the doctrine emphasizes, however, how important are the ways of communication by easily accessible media for knowledge of the law and respect of local law.[36]

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[34] We need to pay attention to the fact that this extension of the duty, ie. to formulate in the act rules to promulgate all normative acts in official journals (and not in any other form), results in a diversity of consequences if that requirement is failed. If a normative act, other than that indicated in the Article 88 paragraph 1 and 3 of the Constitution is not promulgated in the official journal, it does not mean that this act does not enter into force. Such a result is formulated in the Article 88 paragraph 1 of the Constitution only to the normative acts listed therein; cf. S. Wronkowska, *Ustawa o ogłaszaniu..*, p. 16.

[35] Cf. the Regional Audit Chamber resolutions of 28 September 2004 (ref. no. 259/2004; OSS 2005, No. 1, item 24), of 30 April 2003 (ref. no. XVI/164/2003; OSS 2004, No. 2, item 50) and of 6 February 2002 (ref. no. 353/02; OSS 2003, No. 2, item 59).

[36] S. Wronkowska, *Ustawa o ogłaszaniu*…, p. 17

5. The Act – as it has already been mentioned—has provided certain minimum periods of *vacatio legis*. The term *vacatio legis* should be understood as the period between the promulgation of a normative act and the time it takes legal effect.[37] In accordance with the Article 4 paragraph 1 of the Act, normative acts containing universally binding provisions, promulgated in official journals shall come into force after 14 days of the day of their promulgation,[38] unless the given normative act provides for a longer period.[39] So, the provision of the Article 4 paragraph 1 of the Act constitutes a symptomatic change. The new law clearly suggests to legislator the usefulness of application a longer period of *vacatio legis*,[40] while in the previous acts it was assumed that fourteen days is the standard solution, and thus, in typical cases correct, satisfactory.[41]

Legal standards, laid in the Act, specifying the minimum duration of *vacation legis* play somehow a dual role. They determine the content of the settlement of a legislator on this matter, as well as they establish an additional rule, in case the legislator would not set a date for the entry into force of this act. If so a normative act of general application which was promulgated in the official journal does not provide otherwise or does not define this question at all it should be assumed that it enters into force after 14 days from their promulgation.[42]

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[37] As can be seen from a fixed line of jurisprudence of the Constitutional Tribunal, the requirement to establish appropriate *vacatio legis* and the proper formulation of the transitional provisions derives from the general principle of protection of citizens' trust in the state and its laws and the principles of decent legislation; in its judgment of 12 June 2002. P 13/01; cf. also the previous judgements of the Tribunal: P 2/92, K 8/92, K 9/92, K 8/93, K 9/93, K 16/93, K 1/94, K 2/94, K 8/97, when the Tribunal has repeatedly emphasized that this requirement is inherent to the rule of law.

[38] Cf. the Regional Audit Chamber resolution of 15 March 2001 (ref. no. 60/2001, OSS 2001, No. 3, item 103), which notes that a municipal council is not allowed to adopt a resolution which „shall enter into force on the day of its adoption."

[39] With regard to the local regulations concerning public order, which way of promulgation are defined in the Article 14 of the Act, the minimum *vacatio legis* is 3 days. In justified cases, this period may be shorter, while exceptionally these regulations can enter into force on the day of their promulgation, if the following conditions are met: the delay in their entry into force would cause irreparable harm or serious threat to life, health or property.

[40] The Article 4 paragraph 1 provides: "unless the given normative act provides for a longer period."

[41] The Article 4 of the Act of 30 December 1950, as amended in 1991 stated: "The legal acts promulgated in the journal enter into force after fourteen days from the date of their promulgation, if they do not provide otherwise".

[42] In a similar situation, the local regulations concerning public order come into force after three days of their promulgation.

The Act provides for some exceptions from the default period of *vacatio legis*. The Article 4 paragraph 2 provides that, in justified cases normative acts may enter into force in less than fourteen days. And if an important state interest requires the immediate entry into force of the normative act and the democratic rule of law is not precluded, the date of entry into force can be also the date of the promulgation of this act in the official journal. In each such a situation, however, the arguments need to be sufficiently convincing to justify the derogation from this principle.[43] The date of entry into force of an act can be set on the day of its promulgation only in particularly justified cases, except where the act imposes duties on citizens or other entities which are not subject to state authorities.[44]

Vacatio legis is essentially an institution which aim is to exclude the possibility of surprise of addressees of legal norms and enable them to adjust their behavior to the new regulation. The author of a normative act should also choose the time of its entry into force, that would not violate one of the fundamental values of the rule of law, which is the citizens' confidence in law. Therefore addressees of norms expressed in the act should not be surprised by unexpected ruling. They also should be given the opportunity to acquaint with content of established norms and – on the basis of this knowledge – to adapt their behavior to this content.[45] The principle of protecting trust in the state and the law requires the legislature to establish a proper *vacatio legis* and transitional provisions for situations in which new arrangements are introduced, especially those more restrictive to whom they may concern.[46] On the other hand, it should be noted, however, that an appropriate *vacatio legis* is also a period in which the legislature has the opportunity to correct errors noticed after the adoption of a normative act or internal contradictions or arrangements that lead to contradictions in the legal system. It is also a chance to prevent the negative effects of entry into force of adopted but not yet applicable regulations. Therefore, it can

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[43] So in the judgment of the Constitutional Tribunal of 3 October 2001, K 27/01.

[44] Cf. the judgments of the Constitutional Tribunal of 16 June 1999 (P 4/98) and 15 December 1997 (K 13/97), and the verdict of 21 April 1996 (K 15/95). Cf. also the judgment of the Constitutional Tribunal of 4 January 2000 (K 18/99), in which the Tribunal stated that the obligation to apply the appropriate *vacatio legis* has a broader range of application than the principle of acquired rights, because it also refers to regulations that do not restrict, nor abolish subjective rights. Ranges of application of both principles overlap, because the requirement to keep the proper *vacatio legis* is one of the conditions of admissibility of interference by the legislature in the acquired rights.

[45] Cf. the verdict of the Constitutional Tribunal of 25 March 2003 (U 10/01) and of 16 June 1999 (P 4/98).

[46] Cf. the verdict of the Constitutional Tribunal of 19 May 2003 (K 39/01).

not be excluded that in certain situations the amendment of regulations just adopted is justified by special circumstances.[47]

Examination of the constitutionality of the implementation of the new legislation has to be based on the material determination if *vacatio legis* period is appropriate to content and character of a new law. The default assumption provides for the adequacy of the period of 14 days as generally provided for by the legislature. An assessment of "appropriateness" of *vacatio legis*, however, depends also on other constitutional principles and values relating to the given legal regulation. Exceptionally, the argument of an important public interest may be a justification to limit or even abandon the establishment of *vacatio legis*.[48] The legislator obligation to establish a "proper" *vacatio legis* and to formulate adequate transitional provisions are manifestations of the principle of protection of citizens' trust in the state and its laws.[49] So it must be considered in relation to each specific regulation. Therefore, it need to be related to the material determination what period is a "suitable" to the content and nature of the given rule of law. A period of two weeks may be appropriate, but in certain circumstances, *vacatio legis* of even three-month may be considered insufficient and is a breach of the Constitution.[50] For example, in relation to the right of tribute, the Constitutional Tribunal noted that in principle it is not allowed to make changes to the tax burden over the year. Such changes when it comes to shaping the income tax from individuals, should enter into force at least one month before the end of the previous fiscal year. This requirements are not unconditionally mandatory in their nature, but they can be derogated only when there are legitimate legal arguments.[51] However, in regard to the rules governing the electoral law, the Tribunal inferred the prohibition of changes in six months before the next elections, understood not as an act of voting, but as an overall activity covered by the election

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[47] As the Constitutional Tribunal ruled in its judgment of 18 February 2004, K 12/03. Cf. also the verdict of the Constitutional Tribunal of 18 October 1994, K 2/94.

[48] See the verdicts of the Constitutional Tribunal of 11 September 1995 (P 1/95) and of 2 March 1993 (K 9/92).

[49] Also, the Supreme Administrative Court in its verdicts on several occasions appealed to the principle of citizens' trust in the state and its laws. For example, the judgment of 8 June 1992 (ref. No. III SA 214/92; ONSA 1993, No. 1,i tem19) should be mentioned here, when the Supreme Administrative Court ruled that this principle was violated by the adoption of an implementing act without keeping the appropriate *vacatio legis*.

[50] Cf. the verdict of the Constitutional Tribunal of 1 June 1993, P 2/92.

[51] Cf. the verdicts of the Constitutional Tribunal of 29 March 1994 (K 13/93), 24 May 1994 (K 1/94), 18 October 1994 (K 2/94), 12 January 1995 (K 12/94), 11 September 1995 (P 1/95), as well as the judgement of 25 April 2001 (K 13/01). Cf.. also the verdicts of the Constitutional Tribunal of 2 March 1993 (K 9/92) and of 4 December 1993 (K 8/93).

calendar. Moreover, this six-month *vacatio legis*, the Tribunal treats, what was stressed in its decision, as a specific *minimum minimorum*.[52]

However the Constitutional Tribunal decides on the unconstitutionality of a normative act because of lack of proper *vacatio legis*, it can not specify an appropriate period. The establishment of appropriate terms is the exclusive competence of the legislature, due to the nature of the act, as well as the social and economic conditions in which the act functions.[53]

6. Significant changes in the promulgation of normative acts have occurred since 1 January 2012 when the amendment to the Act on Promulgation of Normative Acts came into force. From this day all acts subject to promulgation are published in the form of electronic documents in the meaning of the Act of 17 February 2005 on computerization of entities performing public tasks[54] (unless the Act itself provides otherwise). The amendment ended the specific transitional period during which the official journals were published in both the electronic and paper version.

Undoubtedly, introduction of electronic form of publication of legal acts was a very far-reaching change, perhaps even comparable with the introduction of the printing press[55]. Just like the invention of printing press, "by which it was possible to produce any number of copies of the document, enabled the realization of the process of law acknowledgment,"[56] so now only the electronic form of [a] legal act enables efficient use of it[57]. This modern form of promulgation of legal acts, despite arousing sometimes doubts

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[52] The verdict of the Constitutional Tribunal of 3 October 2006 K 31/06.

[53] The verdict of Constitutional Tribunal of 16 September 2003, K 55/02.

[54] "Dziennik Ustaw" of 2005, no. 64, item 565, as further amended.

[55] The consequences of the amendment would also require changes in habits of addressees of norms, e.g. in citation of normative acts. From 1 January 2012, the normative acts in official journals are published only under the next item, but excluding the previously occurring number of the journal. More information on the consequences of the amendment see. T. Zalasiński, *Dzienniki urzędowe już tylko w Internecie,* „Kadra kierownicza w administracji", December 2011; available also: http://www.dzp.pl/files/Art/Dzienniki_urzdowe.pdf, [13.11.2012]. Resignation of necessity to wait for a grouping of several normative acts to issue a subsequent number of journal, in practice, will also enable the implementation of the provision of Article. 3 of the Act on Promulgation of normative acts, stated that such acts shall be promulgated immediately.

[56] D. Pietruch-Reizes, *Rozwój środków przekazu informacji o prawie*, Katowice 1992, p. 155.

[57] It is worth to invoke the words of M. Safjan, who in his column referred to a joke that "in the Third Republic it is not the law passed by parliament and published in the official journal that applies, but this contained in the database of the 'Lex' system";M. Safjan, *Zdobywanie wiedzy o obowiązującym prawie zaczyna być już sztuką*, „Rzeczpospolita" 17.02.2003.

and fears,[58] become a necessity because of the increasing amount of legislation enacted today. Therefore the view expressed by J.P. Bolufer at one meetings of the European Forum of Official Gazettes seems to be accurate. He stated that "only the Internet is able to provide anyone, regardless of where he is located, an access to the law at the same time: paradoxically, now the Internet is more available than a paper"[59].

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[58] Cf. e.g. the comments made during the work on the bill in letters by the Supreme Court Research and Analyses Office no. BSA III – 021 – 88/10, dated 9 July 2010 and President of the Supreme Administrative Court no. BO-061-1-10 dated 29 June 2010. It was highlighted there, among others, the lack of detailed data on the availability of computer networks and the possibility of using the electronic publication of legal acts by all age groups; cf. the works available on: http://bip.rcl.gov.pl/portal/rcl/930/1855/Projekt_ustawy_o_oglaszaniu_aktow_normatywnych.html, [13.11.2012]. It should be noted that the legislator has provided access to legal acts also to people who do not have a computer and / or Internet access. The Article 26 of the Act on Promulgation of Normative Acts imposes on local bodies of government administration and bodies of selfgovernment a duty of free provision of official journals: "Dziennik Ustaw" and "Monitor Polski" or particular legal acts and case law for review and download in electronic form and allow to print it for a fee established by the head of the office.

[59] J. P. Bolufer, *Organisation and roles of official journals*, cited in: G. Wierczyński, *Urzędowe ogłoszenie aktu normatywnego,* Warsaw 2008, p. 190.

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