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Content

Regulatory and Legal Suport of the Process of Involving Public-Private Partnership in the Field of Socio-Transport Infrastructure at The Local Level in Ukraine

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Abstract

The current state and problems of transport infrastructure development in Ukraine are considered. The expediency of solving the problems of transport infrastructure through the implementation of public-private partnership projects is substantiated. The most important areas of application of public-private partnership in Ukraine at the regional level are highlighted. The experience of attracting private investors to the development of transport infrastructure and its adaptation in the territorial communities of Ukraine is analyzed.

Keywords: public-private partnership (hereinafter - PPP); territorial community (hereinafter - TG); social infrastructure; transport infrastructure; private partner.

1. Introduction

In the conditions of modern state formation, the transport infrastructure plays an important role in the development of the national economy. Its condition has a significant impact on production activities, socio-economic development, social relations in general in the country and at the regional level in particular. The current state of social infrastructure in Ukraine is characterized by the presence of certain problems that have not been solved for many years, in particular, the lack of order in the ownership of social infrastructure; Insufficient budget funds for the efficient operation and development of relevant facilities, lack of effective incentives to raise funds from other sources, low quality of services provided to the population by these facilities, etc.

The introduction of public-private partnership has become an effective and promising tool for economic and social development and an effective means of raising funds for projects through which state and municipal authorities maintain control and establish cooperation with investors for most countries.

In Ukraine, the development of transport infrastructure is given considerable attention, and the priority areas of public-private partnership are: production infrastructure and high-tech production (transport and communications, transport infrastructure); however, according to unanimous assessments of scientists, politicians, experts and practitioners, it remains

underdeveloped, especially at the regional level. There are a number of ways, approaches, mechanisms for accelerated development of infrastructure industries, but the most effective is the mechanism of public-private partnership.

2. Data and purpose of the study

Analysis of scientific sources on the theoretical and methodological justification for the implementation of public-private partnership in the field of transport infrastructure and their application in the real economy at the regional level, shows that against the background of many research results at the present stage remains unclaimed direction of PPP in each specific area of human life. In view of this, there is a need for scientific substantiation of ways and practical measures for the development of the PPP mechanism in territorial communities and in specific areas of infrastructure, in particular in transport.

The purpose of the publication is to study the legal framework and generalize the experience of the process of involving private partners in solving problems of transport infrastructure at the local level and substantiate approaches to applying best practices in the field of transport infrastructure of Ukraine.

3. Results

Given the world experience, public-private partnership can be considered in two senses. On the one hand, as a system of relations between the state and business, it is used as a tool for economic and social development at the international, national, regional and local levels. On the other hand, as specific projects implemented jointly by state bodies and private companies on the basis of state and municipal property.

Public-private partnership determines the essence of the relationship between public authorities, local governments and private partners. This approach determines the interaction of the state and the private sector, excluding the cooperation of public institutions in the social, political and economic spheres of public activity.

It is also worth noting that not only public authorities and local governments, but also public organizations and charitable foundations are involved as a public partner in other foreign countries.

In Ukraine, public-private partnerships are forms of cooperation between public authorities and business, which are designed to provide funding, construction, reconstruction and modernization, as well as management and support of infrastructure and services in this area. Public-private partnership in the current realities of the Ukrainian economic crisis is designed to become a tool in the development of social infrastructure, including transport, to take on some tasks to provide municipal authorities to provide social services to the population, ensure welfare and appropriate level of their implementation and constructive cooperation with public authorities.

The World Bank notes that PPP laws or concession legislation should establish a clear institutional framework for the development, procurement and implementation of such partnership projects. Such laws can be used to close gaps in the laws of the host party. And

this is necessary to ensure successful infrastructure projects in terms of lending and openness and fairness of procurement processes[1].

The issue of public-private partnership in terms of involving public associations in socio-economic development is included in the law on public-private partnership. In contrast to domestic scientific approaches, foreign scholars and practitioners call all relations with the non-governmental sector a public-private partnership. Therefore, legally public-civil partnership is recognized in the legislation on public-private partnership.

The process of decentralization in Ukraine has significantly increased the need to involve public-private partnerships in the development of territorial communities.

Article 1 of the Law of Ukraine "On Public-Private Partnership" defines public-private partnership as cooperation between the state of Ukraine, the Autonomous Republic of Crimea, territorial communities. In the person of the relevant state bodies and local governments and legal entities other than state and municipal enterprises, or individuals - private partners entrepreneurs, carried out on the basis of the contract and meet the characteristics of public-private partnership[2].

Adherence to these basic principles in the law should ensure the efficiency and effectiveness of public-private partnerships, particularly in the regions, and contribute to a significant improvement in the development of infrastructure facilities in local communities. However, this legal act does not specify the tender procedures, does not regulate the structure of the agreement between the public and private parties and does not take into account the specifics of public-private partnerships in various economic activities.

In particular, the Law contains inconsistencies and gaps on the part of government bodies, financing of public-private partnership projects, determination of tariffs for services, determination of efficiency indicators, determination of penalties for non-reimbursement in case of revision of agreements and change of tariffs for services. There is a significant need to detail the mechanism of state guarantees and compensation for losses incurred by a private party during the implementation of public-private partnership agreements, during the actions or inaction of the government or local government. There are also no tax or other benefits for the implementation of large-scale infrastructure with a long payback period.

A major shortcoming is the lack of clearly defined issues of formation and functioning of the authorized body of executive power on public-private partnership, not regulated regulation of investment in the implementation of public-private partnership projects. There are also a number of contradictions in the institutional support of PPP. In addition, other central executive bodies are involved in the implementation of PPP policy in relevant areas. Local authorities formulate and ensure the implementation of PPP development policy at the appropriate level of government. This situation creates duplication of functions and conflicts between authorities. A significant obstacle to the practical launch of investment projects on the basis of PPP, especially at the regional and local levels, is the lack of staffing with the appropriate level of methodological and methodological training. The activities of employees of structural units

[1] Pablic-Private Partnerships Laws \ Concession Laws. Source https: https://ppp.worldbank.org/public-private-partnership/legislation-regulation/laws/ppp-and-concession-laws

[2] Zakon Ukrainy «Pro derzhavno-pryvatne partnerstvo». Source https: https://zakon.rada.gov.ua/laws/show/2404-17

responsible for investment activities are aimed primarily at the redistribution of budget funds allocated for investment activities, rather than creating favorable conditions for attracting private capital to the real sector of the economy[3].

Investments in infrastructure facilities of Ukraine with the participation of public-private partnerships using various organizational forms - leasing, concessions, joint ventures or product sharing agreements - are regulated by various laws, which in turn may contradict the law.

For example, the Law of Ukraine "On Concession" of October 3, 2019 defines the legal, financial and organizational framework for the implementation of projects carried out under concession, in order to modernize infrastructure and improve the quality of socially significant services. The main criterion for the implementation of projects implemented under the concession should be an electronic trading system (hereinafter - ETS) - a two-tier information and telecommunications system that includes a central database and electronic platforms that interact with the central database through the application programming interface of such a central database. ETS provides the ability to create, place, publish, and exchange information and documents in electronic form, conduct a concession tender and competitive dialogue, as well as publish documents in the procedure of direct negotiations with the lessee of state property transferred to the concession[4].

However, analyzing the Law, its shortcomings become clear, in particular paragraph 1 of Art. 6 of the Law stipulates that the concessionaire selects the concessionaire by conducting a concession agreement based on the results of a competitive dialogue or the results of direct negotiations with the lessee of state property transferred to the concession, and paragraph 2 of Art. 6 of the Law indicates that when choosing a concessionaire, the concessionaire must ensure compliance with the principles of openness, equality and non-discrimination. Thus, the new Law does not exclude corruption risks and corruption component, and the standard conditions of the tender, for example in the transport sector have been implemented before, standard contracts are concluded by state and local authorities with road carriers on the basis of CMU Resolution №1081 of 2008 "On approval The procedure for holding a tender for the carriage of passengers on a public bus route ", which has proven to be not entirely transparent, bureaucratic and with high corruption risks.

With the help of ETS, a significant breakthrough is envisaged in the field of private sector involvement in public projects, but such a mechanism should introduce an electronic selection system among bidders then it will make the market of services transparent and attractive for investment.

With the right approach to implementing the concept of public-private partnership, its subjects can gain significant benefits. For the public sector, i.e. government and local self-government, there are opportunities to address various socio-economic, infrastructural and

[3] Shchodo rozvytku derzhavno-pryvatnoho partnerstva yak mekhanizmu aktyvizatsii investytsiinoi diialnosti v Ukraini. Analitychna zapyska. Natsionalnyi instytut stratehichnykh doslidzhen. Source https: "Щодо розвитку державно-приватного партнерства як механізму активізації інвестиційної діяльності в Україні". Аналітична записка :: Національний інститут стратегічних досліджень (niss.gov.ua) [in Ukrainian].

[4] Zakon Ukrainy «Pro derzhavno-pryvatne partnerstvo». Source https: https://zakon.rada.gov.ua/laws/show/2404-17

environmental problems by attracting additional investment, sharing risks and responsibilities with the private sector and increasing revenues to local budgets. The private sector has access to the resources and organizational and legal opportunities of the public sector, which will contribute to additional profits, given that part of the risks are borne by the public sector. There are opportunities for the development of social infrastructure open up for local communities, including obtaining better social services, increasing jobs and increasing incomes, developing businesses at the local level and in turn improving demographic, social and economic initiatives.

Positive dynamics in accordance with the Resolution of the Cabinet of Ministers of Ukraine of April 8, 2015 № 214 "On approval of the Methodology for forming capable territorial communities" (hereinafter - the Resolution) receives project capable territorial community (hereinafter - capable territorial community) - territorial communities of villages, settlements, cities, which as a result of voluntary association (voluntary accession to the united territorial community) are able to independently or through relevant local governments to ensure the appropriate level of public services, in particular in the field of education, culture, health, social protection, housing, utilities, taking into account human resources, financial support and infrastructure development, including transport, the relevant administrative-territorial unit.

In particular, paragraph 11 of the Resolution stipulates that a territorial community located at the same distance from potential administrative centers of able-bodied territorial communities may be included in the able-bodied territorial community whose potential administrative center has the most developed social and transport infrastructure and is located within one district[5].

Territorial communities at the local level and united territorial communities through the implementation of public-private partnership projects can get a mechanism that can promote the development of regions and can increase their competitiveness. Each territorial community must independently determine the priority areas of development within which it is advisable to implement projects in a public-private partnership, taking into account the needs and interests of the population.

The Law of Ukraine “On Cooperation of Territorial Communities” of June 17, 2014 № 1508-VII created the preconditions for cooperation of territorial communities, defined its principles, forms, mechanisms of its stimulation, financing and control. In accordance with the conditions set out in this Law, territorial communities that are interested in the implementation of joint projects have the opportunity to coordinate the activities of cooperative entities and accumulate resources for the joint implementation of relevant activities.

Pursuant to Part 1 of Article 1 of the Law of Ukraine “On Public-Private Partnership”, several territorial communities that have united to achieve certain goals may act on the side of a public partner in an agreement concluded within the framework of a public-private partnership. This will help the local community to implement projects aimed at its development, which could not be implemented by such communities without the participation of a private partner. Effective joint use of the mechanism of public-private partnership by territorial communities can be a tool that will ensure their development and provision of quality

[5] Zakon Ukrainy «Pro kontsesiiu». Source https: https://zakon.rada.gov.ua/laws/show/155-20

services, especially in conditions of impossibility to provide quality services when a separate territorial community is unable to meet the conditions for public-private partnership projects.

Given some imperfections and the limited ability of local communities to co-finance public-private partnership projects, a number of requirements must be met for their successful implementation.

In order for potential projects to be successful, they must meet the following criteria:

1. The project should have a positive socio-economic effect for the community, reduce the fiscal impact on the local budget and provide little co-financing from the local government;
2. The project must have a commercial component and be attractive to potential investors - acceptable financial indicators of economic and financial efficiency; the private investor must develop a feasibility study for the project; the project must be characterized by a steady demand for goods, works, services provided by a private partner; to cause the absence of significant barriers to entry of a private partner into the market (lack of a large number of licenses, permits, etc.); the term of realization should not exceed 2-3 years;
3. The source of return on investment made by a private partner should be a fee from consumers / users of services (an example is a bus depot, which is maintained by a private partner who receives income from passenger traffic that uses transport on public bus routes);
4. A private partner may receive a fee from local governments, but in this case the local government must be a consumer of services (payment for heating of schools, hospitals, kindergartens, etc.);
5. The project should not provide for large-scale construction work, which will require significant investment in related infrastructure (power lines, roads, other communications);
6. The local self-government body must be the owner of the land plot on which the project is planned to be implemented, or the respective land plot must belong to the utility company on the right of permanent use[6].

Due to the observance of these features, there will be a great potential for the development of public-private partnership, especially at the regional level and mostly in the areas of social infrastructure. However, the practice of public-private partnership agreements at the regional level in Ukraine indicates a slight involvement of partners in this form of cooperation. However, taking into account that as a positive factor in involving a state partner in the person of a state body and a local government body to participate in public-private partnership infrastructure projects, such a practice is in great demand in Ukraine today. In the future, this will contribute to ensuring primarily the public interests and the interests of local communities, which will be able to solve state problems and tasks of local governments at the regional level quite effectively, dynamically and efficiently.

In the case of compliance with these features and the involvement of public-private partnership in the sphere of the state executive branch, a number of tasks are solved:

Opportunity for authorities to focus on important functional issues. The main role of public authorities is to promote the interests of the public through the implementation of

[6] Derzhavno-pryvatne partnerstvo yak mekhanizm realizatsii novoi rehionalnoi polityky: mozhlyvosti zastosuvannia ta praktychni aspekty pidhotovky i vprovadzhennia investytsiinykh proektiv. Source https: http://rdpa.regionet.org.ua/images/129/PPP_report_ULEAD_30_10_2017.pdf

effective policies. When the private sector assumes secondary non-core functions, it allows the executive to reallocate its resources and focus on fulfilling its primary role;

Helps to improve the management of state assets. Traditional procurement planning cycles are often based on the short term, as a result of which asset retention and recovery are often not optimal. On the other hand, the private sector often applies a life-cycle approach to planning and budgeting, using long-term contracts. These contracts include maintenance funds that ensure that the assets are in good condition and properly cared for;

Improves the quality-of-service delivery due to the authorization of innovations. Involvement of the private sector on a specific competitive basis contributes to the development of creative solutions in the field of infrastructure, planning, construction and asset management;

Ability to transfer risk and taxpayers to the private sector. Due to this approach, the risks associated with unexpected costs and overspending, delays and execution and deviations from the calendar schedule and the need to respond to fluctuations in demand for services are effectively transferred from the public sector to the private sector[7].

It is this effective public-private partnership policy that ensures cooperation between the public and private sectors. This cooperation proves that both parties benefit from financial resources, technology and management knowledge to improve the provision of services to citizens. In addition, public-private partnership is an alternative to the privatization of state and communal property, as it combines the benefits of public and private sectors, which is a key factor in conserving public resources and government regulation, and these issues are extremely acute in today's Ukraine.

It should be noted that the current legislation of Ukraine in the field of regional development is formed taking into account the best European practices and is substantially adapted to similar documents of the European Union. In particular, the Law of Ukraine "On Principles of State Regional Policy", the Law of Ukraine "On Voluntary Association of Territorial Communities", the Law of Ukraine on Cooperation of Territorial Communities, the State Strategy for Regional Development, and the possibility of directing funds of the State Fund for Regional Development , and infrastructure subventions - for the development of the territorial community, are sufficient prerequisites for reducing the imbalance of development of individual regions and territories.

4. Conclusions

Summarizing the above, we can draw the following conclusions. Social, and especially transport infrastructure significantly affects the development of all sectors of the national economy, in particular the regional level of Ukraine. The current situation is currently underdeveloped and requires considerable attention. It was found that the best among the known ways to improve the efficiency of social and in particular transport infrastructure is a public-private partnership, the essence of which is the joint action of the state and business on the optimal distribution of powers to control the cooperation of the parties. The main task for improving cooperation and attracting public-private partners, including foreign investors, is to improve the regulatory framework and create an authorized executive body for public-private partnership to regulate and involve private partners both at the state level and at local level in

[7] Vynnytsky,Lendiel, Onyschuk, Sergvari. Experience and prospects of implementation of public-private partnerships in Ukraine and abroad. K. I. C., Kiev, 2008, s 14.

particular. Such a body will compensate for the coordination of roles, risks, rewards, incentives and the use of flexible approaches to obtain predetermined results in concluding service contracts.

Public-private partnership is an effective and promising tool for economic and social development at the regional and local levels, a means of raising funds for projects where state and local authorities try to maintain control and establish cooperation with investors. During such cooperation between the state and business entities, better technical and economic indicators and business results are achieved, state resources and communal property are used more efficiently. However, it is established that in the conditions of modern domestic state formation the level of use of PPP potential for development of economic and social infrastructure of national economy is insufficient. In particular, this is preceded by insufficient legal and regulatory support to attract public-private partnerships in the field of transport infrastructure in Ukraine. The regulatory framework is quite outdated, and the adopted new Law of Ukraine "On Concession" of October 3, 2019 №155-IX, did not ensure transparency of the law and did not exclude possible corruption risks to provide a private partner willing to invest in infrastructure development of Ukraine.

Further study of the problem of PPP in the field of transport infrastructure should be carried out taking into account the improvement of the regulatory framework. To solve this problem, it is necessary to review the entire legal framework of transport infrastructure and improve it in accordance with the new economic conditions. Ukraine's new regional policy is aimed at mitigating disparities in the socio-economic development of different territories of the state. Given that Ukraine is a large enough country and given the significant differences in access to and access to public services, creating the conditions to reduce such disparities between regions and local communities should be one of the key tasks for the near future.

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Public service ethics in Zimbabwe: A reflective perspective

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Abstract

In Zimbabwe, unethical practices have been on the increase recently. They take many forms including corruption, bribery, nepotism and theft, conflict of interests, and the use and abuse of confidential information for personal purposes. Allegations of wrongdoing by both the policymaking authorities and the administrative authorities are prevalent in the multilevel government system comprising national government, provincial and metropolitan councils and local government (divided into rural councils and urban councils). Unethical practices are eroding public trust in the three-tier system of government and adversely affecting implementation of policies, including those meant to address local development as well as facilitate basic service delivery. In addressing unethical conduct, more effort appears to have been placed on proposals such as the courts of law, free press and government reform. While the emphasis is a step in the right direction, it appears to have facilitated the exclusion of other options to tackle the problem. Consequently, this article places the promotion of an ethical organisational culture at the center of a successful strategy to enhance ethics and integrity in Zimbabwe's seemingly ailing public service institutions.

Keywords: Ethics; Public Service; Corruption, Good Governance; Misconduct

1. Introduction

Much evidence appears to suggest that unethical practices are surging in Zimbabwe's public service institutions. A day barely goes by without the media exposing so-called unethical practices by high ranking government officials in the country's public sector. The practices receiving daily exposure in the media include corruption, bribery, nepotism and theft, conflict of interests, and the use and abuse of confidential information for personal purposes. As they are regarded as extremely newsworthy, it is now not uncommon for these issues to court headlines in the mass media. For example, almost every single day in Zimbabwe, the media is exposing opaque public procurement contracts entered into between government agencies and private players characterised by limited checks and balances.

One of the cases that continues to make media headlines since 2020 is the arrest and subsequent dismissal of Health and Child Care Minister Obadiah Moyo after he was accused of illegally awarding a US$42m tender to Drax International for the supply of COVID-19 drugs and personal protective equipment fully aware that it is not a pharmaceutical company but rather a consultancy (Muchetu 2021). Another case that was extensively covered since 2020 involves the arrest and dismissal of three NatPharm directors on charges of criminal abuse of office for

sourcing drugs from Drax, International LLC without following laid down procurement procedures.

Yet another case of unethical behaviour allegedly involves the country's Director of Epidemiology and Disease Control in the Ministry of Health and Child Care. Doctor Portia Munangatire was reportedly arrested in 2021 on charges of criminal abuse of duty for allegedly paying co-workers improper "facilitation fees," using health worker petrol coupons for private cars, and hiring relatives to train health workers amid the rollout of Covid vaccines. (Smith 2021; Mahlahla 2021; Transparency International Zimbabwe 2020).

Corruption in the public sector in Zimbabwe is seemingly on the ascendancy. This view is facilitated in a survey done by Afrobarometer and Mass Public Opinion Institute in 2015. The review not only points to public disillusionment in government's effort in tackling corruption but also to a lack of progress across the country's 10 administrative provinces (see Table 1). In the same vein, Transparency International ranked Zimbabwe 157 out of 180 countries in the 2020 Corruption Perceptions Index (CPI). On a scale of 0 (highly corrupt) to 100 (very clean), the CPI marked Zimbabwe 24.

Table 1: Perceptions of level of corruption by province

	Increased somewhat/ increased a lot	Stayed the same	Decreased somewhat/ decreased a lot	Don't know	Total
Harare	81%	9%	8%	1%	100%
Bulawayo	76%	12%	11%	1%	100%
Manicaland	75%	7%	10%	8%	100%
Midlands	72%	11%	12%	5%	100%
Mashonaland central	72%	8%	12%	7%	100%
Mashonaland East	65%	25%	3%	6%	100%
Matabeleland South	59%	23%	7%	11%	100%
Masvingo	60%	16%	20%	4%	100%
Mashonaland West	55%	21%	18%	6%	100%
Matabeleland North	33%	44%	9%	14%	100%
Total	68%	16%	11%	6%	100%

Question: In your opinion, over the past year has the level of corruption in this country increased, decreased or stayed the same?

Source: Afrobarometer & Mass Public Opinion Institute 2015: 12.

Zimbabwe has an array of strategies, programmes, organisations and initiatives in the service of strengthening the capacity of the public sector to address systemic corruption. They include prosecuting high profile corruption cases, implementing of national anti-corruption strategy and forfeiture of ill-gotten wealth. But it appears that the production of political rhetoric around corruption is fast replacing the actual tackling of the scourge. A survey undertaken by Afrobarometer and Mass Public Opinion Institute in 2015 seemingly underscores public frustration at the lack of progress in tackling the issue (see Table 2).

Table 2: Ratings on government's fight against corruption by province

	Fairly/ Fairly bad	Fairly/ Very well	Don't know/ haven't heard enough	Total
Harare	90%	10%	0%	100%
Bulawayo	90%	10%	-	100%
Midlands	83%	14%	3%	100%
Masvingo	85%	14%	1%	100%
Mashonaland East	80%	18%	1%	100%
Manicaland	78%	18%	4%	100%
Matabeleland South	75%	20%	5%	100%
Mashonaland Central	70%	27%	3%	100%
Mashonaland West	69%	27%	4%	100%
Matabeleland North	62%	21%	17%	100%

Question: How well or badly would you say the current government is handling the following matters, or haven't you heard enough to say: fighting corruption in government?

Source: Afrobarometer & Mass Public Opinion Institute 2015: 15

With focus mostly skewed towards punitive measures such as prosecuting criminal abuse of authority, minimal attention is seemingly being placed on the role of promoting moral values in the governmental system. This has given rise to questions such as: What behaviours and value systems are required for promoting accountability and an ethical culture in Zimbabwe's bureaucracy? How can the values and standards be translated into administrative policies, practices and procedures? The article engages on these questions by proffering recommendations on how ethical practices may be improved in the bureaucracy in Zimbabwe.

The article is organised as follows: After the introduction, it defines some of the terms used in the article. Thereafter it presents the theories of ethics, the aim being to set the parameters around which ethical behaviour in the public sector is explored. Following this is synopsis of the importance of ethics in the public service. This is followed by a section on the means to promote public service integrity. In this regard, the article places premium on the promotion of an ethical organisational culture at the heart of successful efforts of preventing unethical practices. In doing so, the article explores an issue that is often not given much prominence in the discourse on ethics in the public sector. The article then presents its concluding remarks.

2. Understanding the terminologies

In the ensuing paragraphs, the article defines some of the terms used in the paper. In doing so the article attempts to facilitate definitional certainty as well as assist delineate the parameters for the discussion in the paper. The following terms are briefly discussed: ethics, public service, corruption, good governance and misconduct. Their significance is that they seemingly enjoy considerable reference in the contemporary literature on public service ethics.

2.1 Ethics

Ethics refers to principles by which to assess behaviour as right or wrong, good or bad (Edwards 2008). Elucidated as well based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues, ethics facilitate human conduct and assist individuals by applying moral standards. In the public service ethics are generally broad norms that delineate how public servants should exercise judgment and discretion in carrying out their official duties (Edwards 2008). In the same vein, ethical theories represent the viewpoints from which government workers seek guidance as they make important decisions and implement policies on service delivery. Each theory underscores a different decision-making style and form the basis for what individuals consider ethically correct decisions.

2.2 Public service

These are services that are considered so essential they are made available to all citizens, regardless of income. In the majority of the cases, they are provided by the government and paid for by general taxation. They include water, healthcare, waste management and road provision (Marumahoko 2020a). In a multi-level governmental system, public services are provided by national government, provincial/state governments and local government. Other models for service delivery include shared services, outsourcing aspects of service delivery to private or voluntary providers, and its opposite, insourcing and commercialisation. The last few years have seen an increase in organisations from private, public and voluntary sectors vying for the right to facilitate and deliver many public services. In the same vein, public service consumers are frequently being asked for their opinion about whose services they receive and the quality of the service.

2.3 Corruption

Corruption is fraudulent or dishonest conduct by a person or organization entrusted with a position of authority (Chayes 2015). Examples of corrupt behaviour include: (a) cronyism, (b) nepotism, (c) embezzlement, (d) fraud, (e) extortion, (f) bribery, (g) influence peddling, and (h) appropriation of public assets and property for private use. Corruption weakens democracy, erodes trust, exacerbates inequality, poverty, social division and hampers economic development (Naidoo 2012). Corruption is seemingly emerging as the most common form of improper practice in the public service in Zimbabwe. It exists at all three levels of government, local government, provincial government and national government.

2.4 Good governance

The Office of the United Nations High Commissioner for Human Rights (OHCHR 2021) defines good governance as the process whereby governmental institutions conduct public affairs, manage public resources and facilitate for the realisation of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. Using a significant share of resources raised through taxation, the public sector provides services to citizens. In doing so, the public sector is accountable not only for how much it spends but also for the ways it uses the resources it has been entrusted. The characteristics of good governance include transparency, accountability, responsiveness, rule of law, efficiency and effectiveness.

2.5 Misconduct

Misconduct is defined as an act of wrong doing or an improper behavior which is inimical to the image of the service. Among other things, it is characterised by public servants behaving in a way that is inconsistent with the public service values, acts that undermine the integrity of the service, taking improper advantage of information gained through the public servant's job, engaging in theft, fraud or assault and being intoxicated at work. Generally, allegations of

misconduct arise through observation or allegations made by other employees, managers or members of the public.

3. Theories of ethics

There are four broad categories of ethical theories. They are deontology, utilitarianism, rights, and virtues. These theories offer overarching principle to which one could appeal in resolving difficult decisions. The ethical theory adopted by government officials underscore elements of an ethical dilemma important to them. Not only do they refer to the theories, public servants also make decisions according to the guidelines within the chosen ethical theories themselves.

3.1 Deontology

The deontological class of ethical theories is sometimes called obligation or duty ethics (Chonko 2012). At its center is the belief that people should adhere to their duties and obligations when engaged in decision making when ethics are involved. It places premium on the belief that ethical rules bind one to duty and that a person will follow his or her obligations to another individual or society because upholding one's duty is what is considered ethically correct. In the same vein, the theory underscores the rightness or wrongness of actions made in the course of fulfilling one's duty and not the rightness or wrongness arising out of the duty. Of significance is the public official's willingness to observe and apply the principle and not the consequences for the individual or their usefulness to others. A government official who subscribes to deontological theory will cultivate reliable decisions based on their prescribed duties.

3.2 Utilitarianism

Under utilitarianism, the moral worth of an action is primarily determined by its contribution to overall utility (Lopez 2012). There are two types of utilitarianism, rule utilitarianism and act utilitarianism. Based on these utilitarian ethical theories the choice that yields the greatest benefit to the most people and offers the best opportunities for predicting the consequences of an action are the ones that are ethically correct. As a basis for facilitating decision-making, a rule utilitarian adopts decisions that seek to benefit the most people but through the most just and fairest means available (Chonko 2012). As a result, one can argue that the added benefits of rule utilitarianism are that it takes into account the law and is concerned with fairness at the same time. Act utilitarianism, an individual performs the acts that benefit the most people, and in doing so, disregards personal feelings or the societal limitations such as laws.

3.3 Rights

These are theories based on human rights (Chonko 2012). Essentially, they focus on people's freedom of speech, association, religion, civil rights, political rights and social/economic rights. Not only are these the rights established by a society, protected and given the highest priority, they are also considered to be ethically correct and valid since a large population endorses them. In addition, the rights-based ethics which are also known as claims-based rights imply that people have claims against somebody for instance the state, and that this individual as a result, has some responsibilities. In the public administration, the utility of this ethical theory is that it facilitates for actions and decisions made by public sector employees on a daily basis as they go about providing the general services of government. In this regard, ethics are moral justifications and considerations for the behavior of government employees.

3.4 Virtue

The utility of the virtue ethical theory is that it assesses a person by focusing on individuals' characters rather than by an action that may diverge from their normal behavior (Lopez 2012). Importantly, the theory takes into consideration peoples morals, reputations, and motivations when evaluating behaviors that are considered unethical. In governmental affairs, the theory is used as a basis for decision-making (Chonko 2012). In this regard, the focus is on the character of public officials and not on the formal rules of the bureaucracy or consequences of actions.

4. Importance of ethics in the public service

There is a need for greater awareness for ethics, accountability and transparency in the public service today, given the public sector's indispensable role in the development and governance of a nation. Ethical concerns undermine the possibilities of the state to generate credibility and authority. They are alleged to be a major cause of disinvestment and even reduced investment. Systemic corruption undermines the credibility of democratic institutions, counteracts good governance, increases income inequalities and undermines effectiveness of governmental programmes. When there is inadequate transparency, accountability, and probity in the use of public resources, the broader goal of achieving effective, fair, and efficient government is not facilitated.

5. Suggestions for promoting public service integrity

The strategies for advancing public service integrity include, promoting professionalism in the public service, adopting a more scientific approach to misconduct, whistle blowing policy, institutionalisation of codes of conduct and codes of ethics, assets and income disclosure, promoting an appropriate public service culture, rewarding exemplary behaviour, promoting an organisational culture where employees can openly discuss unethical conduct without the fear of retribution and ensuring the promotion and appointment of public servants committed to the cause of integrity. In the ensuing paragraphs, the article engages on the promotion of professionalism in the public service, a more scientific approach to misconduct, the stimulation of good governance, rewarding exemplary behaviour and the appointment of public servants committed to integrity to government agencies as some of the strategies for promoting good ethical practices in Zimbabwe's public administration.

5.1 Supporting professionalism in the public service

Defined as the overall value that includes all other values that facilitate the public service, public service professionalism is a key component of good governance. It encompasses values such as loyalty, neutrality, transparency, diligence, punctuality, effectiveness and impartiality. It underscores that people joining governmental service need to espouse shared values and training in elementary abilities to professionally undertake their official responsibilities. Yet the scandals highlighted earlier suggests not only the absence of public service professionalism and ethics but also the absence of a system of rules, activities, and agents that provide incentives and penalties for public officials to professionally carry their official duties.

Cultivating a culture of professionalism could commence simply by facilitating the existence of sound public management systems and practices. This could be achieved by adopting a career system based on the merit principle. At its center is that recruitment, selection, and promotion of public servants needs to be based on the merit system and not political patronage which can dissolve systems based on qualification and merit, thus leading to a deprofessionalisation of the public service (Bertucci 2001). In other words, it is in the public

interest that the best suitably qualified candidate and experienced person is appointed to the public service (Webb 2009). According to media reports however, it is not always the case that people with appropriate skills and experience are appointed to the public service (Marumahoko & Chigwata 2020). This is undermining the principles of neutrality, fairness and impartiality in public human resources management.

Having a code of conduct for governing policymakers and the bureaucracy may also contribute to the facilitation of a public service based on integrity and ethical conduct (Marumahoko 2020b). Developing, reviewing, and communicating a code of conduct assists to make visible (a) how a government agency operates; (b) how it embeds its core values, and (c) how it relates to its key stakeholders. In this regard, it may facilitate good governance if the public sector in Zimbabwe made reference to the International Code of Conduct for Public Officials adopted by the United Nations General Assembly in 1996 and the Model Codes of Conduct for Public Officials developed by the Council of Europe and adopted by the Member States in 2000 as it updates and reviews its code of conduct. The significance of a code of conduct would be to provide a shared understanding of what constitutes good governance (Chigudu 2015).

5.2 A more scientific approach to misconduct

Misconduct in the public service has long been identified as an issue of concern that is tarnishing the image of the public administration. Although the public sector often responds to these through remedies such as verbal warnings, written warnings, suspensions and dismissals, there appear to be inconsistency in how these cases are handled and resolved. It is not always the case that misconduct cases are properly investigated and proved. In some cases, government workers are relieved of their duties seemingly without due process. For example, on 21 March 2021, Zimbabwe's minister of Lands, Agriculture, Fisheries, Water and Rural Resettlement reportedly dismissed the head of an Agricultural Rural Development Authority (ARDA)-run agriculture scheme in Lupane on the spot amid spurious accusations of poor agronomic work (Ncube & Tshili 2021). The decision to dismiss was seemingly not informed by due process.

It is recommended that the disciplinary process is based on procedural fairness (Bertucci 2001). This means acting fairly in administrative decision making. The significance of procedural justice is that it underscores the idea of fairness in the processes that resolve disputes and allocate resources. Among other things, it requires a decision-maker in a misconduct case to: inform people against whose interests a decision may be made of the allegations against them or grounds for adverse comment in respect of them; provide those people with a reasonable opportunity to put their case forward; hear all parties to a matter and consider submissions; make reasonable inquiries or investigations before making a decision; ensure that no person decides a case in which they have a direct interest; act fairly and without bias, and conduct the investigation without undue delay.

Applying a more scientific approach to misconduct facilitates for good governance, transparency and accountability. It also upholds ethical decision making in the public administration. Therefore, once in a while, it may be necessary that surveys are conducted to ascertain the extent to which those in positions of authority are familiar with the misconduct process. In doing so, it may be informative as well as educative to underscore that the purpose of a misconduct process is to uphold the values of good public service and to prevent further misconduct. Additionally, it may be important to ensure that the misconduct process is viewed as being transparent, thorough, purposeful and not conducted in a manner that undermines the rights of all public servants involved.

5.3 Stimulating good governance

The public service in Zimbabwe has been associated with deviations from the norm. The deviations are experienced at all levels of the governmental system; local government, provincial government and national government. In the case of public procurement for example, allegations of misuse of government funds, fragile procurement processes and inadequate systems of checks and balances within the public administration are seemingly undermining the basis of transparency, accountability and integrity in the management of public funds.

Since 2020 for example, the media, the Auditor-General and various parliamentary portfolio committees have widely reported about allegations of abuse of public resources in Zimbabwe under the cover of Covid-19 related procurement. Those engaged in skewed procurement procedures are seeking to recover their money by inflating prices, billing for work not performed, failing to meet contract standards, reducing quality of work or using inferior materials; resulting in exaggerated costs and a decrease in quality. Not only are the deviations exposing poor public finance management by public institutions, they are also underscoring that public contracting continues to be shrouded in secrecy

Having several mutually supportive principles may, directly or indirectly, prevent corruption and stimulate good governance and accountability in public procurement in Zimbabwe. The principles may include, integrity, transparency, stakeholder participation, accessibility, e-procurement, oversight and control. Through safeguarding the integrity of actors in the procurement process, the authorities may also tackle the challenge of unethical practice (OECD 2016). This strategy may be a basis for achieving fairness, non-discrimination and compliance in the public procurement process. Another strategy is facilitating public disclosure of beneficial ownership of companies awarded public contracts. This could be realised by creating an online beneficial ownership register to inculcate a culture of transparency when awarding public procurement contracts.

It also helps if the authorities can conduct due diligence of a company before awarding a public contract (Magamba 2020). This strategy may also include assessing the management and ownership of the company, its capitalisation, physical location, revenue and margin trends, stock price history, tax compliance and competition among other critical factors. It also helps to discipline those not complying with Zimbabwe's public procurement procedures. This may ensure that public sector procurement is conducted in a manner that is transparent, fair, honest, cost- effective and competitive (Magamba 2020).

5.4. Rewarding exemplary behaviour

It is not always the case that exemplary behaviour is rewarded in Zimbabwe's public sector. Rather, the government agencies do not appear to have developed deliberate ethics and management processes that reward ethical employees and admonish unethical behaviour. This may accidentally be sending the message that it is not unprecedented to embrace unethical tendencies. Yet if the public sector wishes to cultivate a favourable work environment in which public servants practise accountability and transparency and uphold the values and beliefs of good governance, it may need to embrace formal ethics management processes and reward ethical employees. In this regard, it may be a good thing if the public sector does not encourage practices that promote and reward unethical employees while leaving ethical employees feeling unrecognised and frustrated.

Positive reinforcement is one way that ethical behaviour may be rewarded (Wei & Yazdanifard 2014: 9). It is regularly applied in motivational contexts with great success. It works like this: through repeated experiences, a public servant learns to associate a given action with a given outcome. It could be as easy as learning to associate ethical performance with employee recognition at the workplace. At the heart of the rule is that public servants are fond

of giving more to what is rewarded in the workplace. Examples of positive reinforcement include may include a pat on the back and annotations of ethical behaviour in the public servant's performance evaluation record for future reference.

Ethical behaviour may also be recognised through intrinsic and extrinsic rewards (Wei & Yazdanifard 2014). Examples of intrinsic rewards include: pride in one's work; feelings of respect from supervisors and/or other employees; personal growth; gaining more trust from managers; feelings of accomplishment and learning something new or expanding competence in a particular area. Extrinsic rewards can be financial or non-financial (Sonawane 2008: 256). Examples of financial rewards may include a bonus, incentive, or commission. Non-financial rewards include praise, a training badge, a development opportunity, or a coveted project assignment (Ndungu 2017).

Seemingly, to get the most out of these methods, it may be a good idea to embed ethics in the performance management system. This could mean creating ethics performance indicators, developing ethics performance measurements, incentivising ethical practices, and sanctioning unethical behaviour. It may also be good practice if public administration developed an ethics award system based on peer and supervisor nominations. Among its duties is identifying employees who exemplify ethical behaviour. These may be nominated for the ethical public servant of the month and/or year awards (Mhonderwa 2013).

5.5 Integrity in the appointment of public servants

It has been observed that there is increase in the number of disreputable people joining the public service (Marumahoko 2020). This is seemingly facilitated by laxity in recruitment and selection policies. Adherence to procedure is often suspect, leading to undeserving individuals being appointed to government positions. In the absence of rigorous pre-employment background checks, people without the right professional qualifications and experience are often appointed to the public service. In the same vein checks prior to promotion are reportedly not as thorough as they need to be. This facilitates for increased cases of misrepresentation to the employer. A characteristic of this is that a public servant may not fully disclose their criminal background before they are hired.

For instance, in 2015, Chinhoyi Municipality discovered that one of its signatories who was the finance director had a previous fraud conviction and served a 24-month custodial sentence with labour. The issue came to light when a financial institution (CABS) requested curriculum vitaes (CVs) of Chinhoyi Municipality senior managers as it wanted to do a background check on whether they were not blacklisted. Once the anomaly was discovered the blame game set in. The town's councillors blamed the municipality's Town Clerk (Chief Executive Officer) and the town's Mayor for disregarding due process in the employment of the under fire finance director. With the situation seemingly becoming untenable, the Town Clerk tendered his resignation (Nyamukondiwa 2015).

Another case of misrepresentation involves forgery of academic and professional qualifications. In 2020 for instance the Chief Operating Officer at the Zimbabwe Council for Higher Education (ZIMCHE) was exposed for forging educational and professional certificates for the purposes of getting a job (Nemukuyu 2021). On the strength of the questionable qualifications, the senior manager was employed as Chief Operating Officer, the second highest position from the Chief Executive Officer at the country's quality regulator of degree and diploma programmes. The misrepresentation came to light when ZIMCHE ascertained that the senior manager only passed a single O-Level subject, but produced a forged certificate showing she had five passes for the purposes of landing the managerial position. The Higher Examinations Council (HEXCO) also dismissed the senior manager's two diplomas in

Accounts and Secretarial Studies as well as a Higher National Diploma in Office Management as fraudulent. With the issue courting intense public discussion, the Great Zimbabwe University (GZU) withdrew the degree it had conferred to the senior manager claiming that she grossly misrepresented information to the university, behaviour that allegedly amounts to a gross academic offence (Nemukuyu 2021).

It is suggested that government agencies conduct rigorous pre-employment checks. The background checks may be conducted prior to hiring and promoting someone, and sometimes also on a periodic basis thereafter. The background checks may focus on criminal history search, education and credentials verification, employment history verification, nationwide background search and motor vehicle records examination. In addition, they may include drug test checks, sexual offenders list search, wants and warrants, worker's compensation, and international employment and criminal record searches (Anderson 2021). In the same vein, checks prior to promotion may consider reviewing available internal personnel documentation on the employee's conduct to date and repeating the pre-employment background check process. It may also be useful if government agencies conduct written performance reviews annually, and include compliance and ethics leadership as part of its job performance measures. Interviews and reference checks with former managers and employees may also be considered as a final fact-gathering additional approach.

6. Impact of unethical practices on public service delivery

Zimbabwe is a country in a precarious situation. It faces many socio-economic difficulties and political challenges. Over the past few years, it has sought to extract itself from the deep end through unveiling and implementing policies such as National Development Strategy 1 (NDS1) which was unveiled in 2020 and Vision 2030 which was adopted in 2018. The NDS1 is a short-term five-year national development programme that forms the basis for the accomplishment of Vision 2030. It runs from 2020 to 2025 and is scheduled to be succeeded by NDS2 which runs until 2030, facilitating for Zimbabwe to become a higher upper-income country. Yet it is difficult to envision success unless ethical practices in the spheres of government responsible for public service delivery are addressed.

The ethical issues undermining the efficiency and effectiveness of the public sector include corruption, bribery, nepotism and theft, conflict of interests, and the use and abuse of confidential information for personal purposes, public responsibility and accountability and so on. Corruption ominously stands out. It is considered to be the biggest threat to Zimbabwe's socio-economic recovery and development (Reuters 2016). In 2016 Transparency International reported that Zimbabwe was losing at least $1 billion annually to corruption. The report, just like the one prepared by Afrobarometer and Mass Public Opinion Institute in 2015 mentioned law enforcement officers and the local bureaucracy among the worst offenders (see Table 3).

The upsurge in corruption appears to suggest that resources meant for public services are unethically diverted from various arms of government towards individuals thereby undermining the capacity of the government to facilitate much needed socio-economic development. In 2019, the government named individuals who failed to return nearly US$1 billion they had externalised in the past years (Madzimure 2019). Progress is slow even as the government has intensified its efforts to recover ill-gotten wealth from the country being stashed abroad by engaging with SADC member states in the fight against corruption (Madzimure 2019).

Table 3: Perceptions about individuals involved in corruption

	None	Some of them	Most of them	all of them	Don't know/ Haven't heard enough
The president and officials in his office	16	41	21	9	12
Members of parliament	8	44	29	9	9
Government officials	7	44	31	10	8
Local government councillors	9	43	31	10	7
Police	6	31	38	20	4
Tax officials like Zimbabwe Revenue Authority (ZIMRA) or local government tax collectors	6	34	31	15	14
Judges and magistrates	11	49	23	6	11
Traditional leaders	18	48	18	4	12
Religious leaders	24	51	16	3	6
Business executives	8	42	29	10	12

Question: How many of the following people do you think are involved in corruption or haven't you heard enough about them to say?

Source: Afrobarometer & Mass Public Opinion Institute 2015: 13.

Zimbabwe is not the only country reeling from the effects of corruption. The scourge's impact is experienced wide and afar and affects many countries around the globe. Every year it is said that US$1 trillion is paid in bribes around the world (OHCHR 2021). In the same vein, an estimated $2.6 trillion are reportedly stolen every year through corruption (OHCHR 2021). The amount of money that is diverted from public services is equivalent to more than 5 per cent of the global GDP. In developing countries, the sum of money lost to corruption is estimated at 10 times the amount of official development support. The United Nations (UN) agencies fighting corruption as a global scourge include the UN Development Programme (UNDP) and the UN Office on Drugs and Crime (UNODC)). World-wide, these efforts are facilitated through the UN Convention against Corruption which was adopted in 2003.

7. Conclusions

The article focused on the promotion of moral values in Zimbabwe's public administration. The subject is important given the role of ethics and moral values in facilitating good governance, transparency and accountability in public affairs. The article focused on the promotion of ethical organisational culture. In doing so, it did not discount the contribution of other strategies including prosecuting criminal misconduct. Rather, it focuses on an issue that is seemingly pushed to the periphery of the analysis of ethical practices in the public service in Zimbabwe. It is the promotion of an ethical organisational culture.

In its introduction, the article began by presenting a gloomy picture of the state of ethical practices in Zimbabwe's public administration. The objective was to give insight into the nature of the ethical practices besetting the bureaucracy as well as present justification for the research. Thereafter, the article attended to definitional issues. Among other issues, this was meant to achieve a certain degree of definitional certainty and facilitate a common understanding of some of the terms used in the article. After this, the article briefly explored four ethical theories: deontology, utilitarianism, rights, and virtues. The significance of this was to set the parameters for the discussion in the paper and generally introduce the ethical theories commonly referred

to by government officials in ethical decision making. The article then engaged on the significance of ethics in public institutions assigned service delivery functions. Among the contribution of ethics is promotion of accountability, transparency and facilitation of efficiency and effectiveness in public administration.

Thereafter, the article addressed a few selected strategies for promoting ethics in the public service. In this regard, it focused on promoting professionalism in the public sector, a more scientific approach to misconduct processes, fostering good governance, compensation of exemplary behaviour and assigning increased significance to integrity checks before and after appointing individuals to the public service. The article then engaged the impact of unethical practices on Zimbabwe's socio-economic development. In this regard, the article briefly discussed faltering ethics in the public service in the context of Zimbabwe's National Development Strategy 1 (NDS1) and Vision 2030; two development policies unveiled by the current government since it came to power in 2018. Seemingly, the bottom line is that the country's 2030 aspiration of attaining upper middle-income status may experience setbacks associated with proliferation of unethical practices in the public service. This may require authorities to rationalise ethical behaviour in the public service by among other things, strengthening governance, ensuring greater transparency and facilitating improved accountability.

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Protection of the right to life in European constitutional law - a comparative study against the background of the Polish constitutional order

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Abstract

The standards for the protection of human rights, including the guarantee of the right to life, can be found in international human rights law and the domestic legal orders of individual countries. The article concentrates on presenting the methods of regulating the protection of life in European constitutional law and the jurisprudence of the constitutional courts. It puts emphasis on the Polish constitutional order compared to other European countries and considers the abortion issue in constitutional law in the light of the recent legal changes in Poland.

Keywords: the right to life, constitutional law, human rights, abortion

The standards for the protection of human rights, including the guarantee of the right to life, can be found in international human rights law and the domestic legal orders of individual countries. General formulas concerning the protection of the right to life are contained in the contemporary state constitutions and separate branches of law, primarily criminal law, which implement constitutional norms in domestic law. However, it is worth noting at this point that the norm prohibiting the deprivation of human life appeared in criminal law long before the era of constitutions.

From the chronological point of view, the norm protecting life appeared earlier in constitutions than in acts of international law. The norm was first formulated in a constitutional act in the Virginia Declaration of Rights of 1776 and then in the Constitution of the United States of 1787 (Fifth and Fourteenth Amendments to the US Constitution of 1787), which for a long time remained one of the few constitutions to contain a norm protecting the right to life.

The catalogues of civil rights in the European constitutions of the 19th century were mainly based on the French Declaration of the Rights of Man and of the Citizen of 1789, which did not include human life among the protected values. It was international law that had a significant impact on the constitutionalization of the right to life in Europe and subsequently worldwide.

R. Grabowski advocates the thesis that the first provisions on the right to life in European fundamental laws appeared under the influence of the League of Nations. (Grabowski, 2006). The oldest European constitutions encompassing protection of the right to life included the Constitution of Finland of 17 July 1919, the Constitution of the Czechoslovak Republic of 29 February 1920, and the Polish Constitution of 1921.

After the Second World War, thanks to the United Nations and the Universal Declaration of Human Rights of 1948, the idea of human rights spread throughout the world. All of the constitutions of UN member states adopted in the second half of the 20th century contain a

human rights catalogue, including the right to life. Thus after 10 December 1948, the right to life became an integral part of constitutional catalogues of freedoms and human rights. Following the Universal Declaration of Human Rights, as many as 124 out of the 191 UN member states provided for the constitutional protection of life Earlier, such protection was provided for in the USA, Japan, Ireland, and the constitutions of the above-mentioned European countries. (Grabowski 2006).

Fifty-two basic laws of UN member states do not provide the legal protection of life. Although they mention other. fundamental rights such as personal freedom, they do not directly stipulate the guarantee of the right to life. However, this does not mean that human life is not protected within the legal orders of these states.

These include European countries (e.g., Belgium, Denmark, Iceland, Italy, the Netherlands, Liechtenstein, Luxembourg, and Monaco), which are also members of the Council of Europe and parties to the European Convention on Human Rights obliging them to protect life legally. Some constitutions, such as those of the Czech Republic and France, do not contain a catalogue of civil rights and refer to separate constitutional acts and documents, such as declarations and charters of fundamental rights. (Charter of Fundamental Rights and Freedoms of the Czech Republic of 16 December 1992). Others, such as the Austrian Constitution, refer directly to the European Convention on Human Rights and other international human rights treaties.

As mentioned above, the French Constitution of 1958 does not have a separate section guaranteeing civil rights. It refers to the Constitution of 1946 Preamble and the Declaration of the Rights of Man and the Citizen of 1789 on this matter. However, we do not find a provision *explicitly* formulating the right to life there. The Constitutional Council of France, which has developed a corpus of individual rights of constitutional nature derived from the Constitution of 1946 and the Declaration of the Rights of Man and the Citizen in its jurisprudence, has considered the right to life a necessary element of constitutionally guaranteed personal freedom (Guldewicz 2000).

In many constitutional acts, we can find the guarantees of the right to life alongside the provisions concerning personal inviolability and freedom (e.g., German Basic Law of 23 May 1949, Article 2.2).

In fact, in its purely negative dimension, the right to life seems to be a consequence and extension of the right to personal inviolability. If the state is obliged to refrain from attacks on personal security, this also implies prohibiting the most severe violation of inviolability - an attack on life.

Life is also a necessary condition for the exercise of freedom, the act of deprivation of life being the most severe violation of human autonomy (excluding cases of voluntary euthanasia). Thus, there is a strong link between the broadly conceived right to liberty as an inherent right of a human being to form his existence and his right to life. Can the right to freedom be derived from the right to life, or is it a right contained within it? The answer to this question is crucial, mainly in the ongoing global debate on the legal acceptability of euthanasia.

In this context, the distinction between the protection of the right to life the protection of life itself is also vital. This distinction appears pointless only on the surface. By accepting life itself as the object of protection, the state undertakes to protect life unconditionally, even against a person himself. In this case, the natural consequence would be to penalize suicide. On the other hand, the formulation that the right to life is protected seems to suggest that the entitled person can dispose of his or her life, which would make it difficult, among other things, to

penalize euthanasia. This obviously depends on the way the right to life is understood, combined with the attribute of "inalienability" and other human rights. (Giezek, Kokot 2002).

Moreover, it seems, that the constitutional guarantee of protection of the *right* to life has a more negative dimension (in the sense of the *right not to be killed* and its manifold implications) than the constitutional obligation to protect life itself. The latter seems to entail a commitment for the state to safeguard life in all instances actively. If, on the other hand, the constitutional norm embraces the *right to life,* then the scope of protection that we can expect depends on the interpretation of the concept of the *right to life.* If, on the other hand, the state commits itself to the protection of *human life,* then the positive obligations to protect life are *implicit* in this formulation.

The majority of constitutions establish the right to life as an object of protection, either declaratively stating the existence of the natural right of every human being to live (e.g., the German, Hungarian, Spanish, Croatian, Estonian, Slovak, Russian, Belarusian, Finnish, Ukrainian and Swiss constitutions, or the Charter of Fundamental Rights and Freedoms of the Czech Republic, by 'recognizing' (Constitution of Andorra), or guaranteeing it (Constitution of Romania).

There is, however, a set of fundamental laws speaking explicitly of the inviolability of human life (e.g., the Constitution of Portugal of 2 April 1976) or even of the sanctity of human life, such as the Israeli *Basic Law on Human Dignity and Liberty of* 17 March 1992.

The Bulgarian Constitution of 12 July 1991 "guarantees life, dignity, and personal rights." According to article 21 of the Constitution of Albania of 21 October 1998, "human life is protected by law."

Alongside the provisions guaranteeing the right to life, some constitutions contain clauses on the state's attitude towards the death penalty.

The Constitution of the Russian Federation of 12 December 1993 guarantees the right to life of every person in Article 20. Paragraph 2 of this article refers to the death penalty as a punishment that may be imposed exceptionally for particularly grave crimes against life, still not abolished but awaiting abolition.

The Spanish Constitution of 1992 also contains a death penalty clause close to the provision guaranteeing the right to life. It provides for the abolition of the death penalty, except for that provided for by military penal law in times of war. Constitutional acts of Croatia, Romania, Slovakia, Finland, Switzerland, Portugal, Macedonia, Slovenia, Serbia, and Montenegro contain similar clauses.

In these countries, where the constitution does not specify the state's attitude towards the death penalty, the constitutional courts and tribunals have ruled on the issue in the process of interpreting the constitutional right to life guarantee. Thus, the Lithuanian Constitutional Court declared the death penalty unconstitutional in 1998. The constitutional courts of Albania and Ukraine have done likewise (Ludwikowska 2002).

In the European countries belonging to the Council of Europe and are parties to the Sixth and Thirteenth Protocol to the European Convention on Human Rights, it regulates the death penalty issue by abolishing it. Thus, even in the absence of a constitutional provision prohibiting the death penalty, European states are bound by their international obligations in this regard. Therefore, Europe remains a death penalty-free zone.

In most contemporary constitutions, the right to life belongs to the group of non-derogable rights, i.e., it is not subject to derogation in states of emergency. It indicates the unique position

of the right to life in contemporary constitutional law, among other human rights. It is in line with the UN International Covenant on Political and Civil Rights of 1966 and the European Convention on Human Rights of 1950. , except that the ECHR, unlike the ICCPR, includes the possibility to derogate from the right to life in situations of lawful acts of war. Some constitutions make a direct reference to these norms of international law, e.g., the Greek Constitution of 1975. It guarantees the right to life in Article 52, with the reservation that this right may be limited by law only in accordance with these international norms (Constitution of 9 June 1975, as amended in 2001).

Poland belongs to those European countries where the constitutional protection of life has the longest tradition. As I mentioned above, the March Constitution of 1921 included the constitutional guarantee of protecting life. Article 95 proclaimed:

"*The Republic of Poland shall ensure within its territory the complete protection of life, liberty, and property of everyone without distinction of origin, nationality, language, race or religion.*

Foreigners shall enjoy, on condition of reciprocity, equal rights with citizens of the Polish State and shall have equal obligations unless the law requires Polish citizenship explicitly ".

At that time, this norm represented a relatively high standard of protection, imposing on the state not only an obligation to refrain from any attacks on the lives of those within its territory but also to protect the individual from the danger posed by others by providing criminal repression.

The provision had the nature of universally binding law, even though the majority of rights and obligations included in the Constitution were labeled as civil, which was in line with constructing constitutional catalogues of the rights and freedoms at that time. Despite that, as R. Grabowski points out, the practical significance of this norm was minor, as the standard wasn't adequately implemented at the statutory level. (Grabowski 2006, p.71-79) Also, its validity period was short, as the March Constitution ceased to be in force upon the promulgation of the Constitutional Act of 23 April 1935. (The April Constitution), which did not contain any catalogue of rights and freedoms at all.

The civil rights catalogue of the March Constitution was proclaimed once again by the PKWN Manifesto of 1944. The Polish National Liberation Committee (PKWN) was a body established by communists and supported by Stalin. However, the Manifesto itself was not an act of legal character. It also limited the application of the Constitution of 1921 to "fundamental principles." Therefore, the validity of the constitutional norm protecting the right to life in this period seems to be doubtful.

A catalogue of rights similar to the one in the Constitution of 1921 was formulated in the Declaration of the Legislative Assembly of 1947. It also contained a provision on the protection of human life. However, it cannot be recognized as a norm of constitutional rank, as the Declaration was a non-binding act. (Adamczyk, Pastuszka 1985).

The Constitution of the communist People's Republic of Poland of 1952 also lacked constitutional norms guaranteeing human rights and freedoms, including the right to the protection of human life. The Constitution of the People's s Republic of Poland contained only a catalogue of civil rights and obligations.

However it is worth noting. that since 1977, the right to life has been protected in Poland by the ratification and publication of the International Covenant on Civil and Political Rights in the Journal of Laws. Article 6 of the Covenant guarantees the right to life. However, the Constitution of the People's Republic of Poland lacked regulations that would specify the

position of international agreements ratified by Poland in the Polish legal system. The possibility of claiming the protection of rights under the provisions of an international agreement was purely hypothetical. (Grabowski 2006, p.116-117) Changes in this sphere were brought about by the activity of the Constitutional Tribunal, which since the beginning of its existence in 1986 referred to the provisions of ratified international agreements. In the judgment of 1987, the Court invoked the provisions of the ICCPR ratified by Poland, indicating that the ratification of that international document means accepting the principles expressed therein (decision of the Constitutional Tribunal of 3 March 1987). In this way, the Court noted that there are norms in the Polish legal system with their source in international agreements, including international human rights law norms.

Despite the revival of human and civil rights in Poland after the political transformation in 1989, the fundamental law still did not contain a standard protecting life. The Convention on the Rights of the Child ratified on 30 April 1991 had a positive impact on raising the standards of life protection in Poland. 15 December 1992, the European Convention on Human Rights and Fundamental Freedoms of 1950 was ratified, introducing the universal legal protection of life in article 2.

The legal position of the individual in Poland was influenced by the changes in the constitutional provisions in the years 1989-1992 although they did not introduce a catalogue of human rights. The introduction of the democratic state of law principle into the 1952 Constitution was of particular importance in that aspect (the Act of 29 December 1989 on amending the Constitution of the People's Republic of Poland). In the later years, this constitutional principle served as the basis for the Constitutional Tribunal to recognize the constitutional protection of several rights and freedoms, including the right to life.

In the judgment of 1997 concerning the examination of the constitutionality of the provisions of the Act of 30 August 1996 amending the Act on *Family Planning, Protection of the Human Foetus and Conditions for the Permissibility of Interruption of Pregnancy,* the Tribunal stated that the failure to include a norm protecting life in the constitutional provisions does not mean that human life has no constitutional value. The Tribunal referred to the aforementioned principle of a democratic state of law as directly implying the right to the protection of life. The Tribunal argued that a democratic state of law could exist only as a community of people, subjects of rights and obligations in the state. The essential attribute of a human being is his or her life, and deprivation of life simultaneously annihilates a human being as a subject of rights and obligations, i.e., it eliminates the basis for the existence the state of law. The first directive of the rule of law must be therefore to respect the value of human life, without which all legal subjectivity, and thus the existence of the state of law itself, is excluded. Therefore, the formal restoration of the constitutional protection of the right to life in Poland was preceded (albeit slightly) by its recognition by the Constitutional Court as a constitutional value.(Judgment of the Constitutional Tribunal of 28 May 1997).

Finally, the Polish Constitution of 2 April 1997 introduced the protection of life into Polish constitutional law explicitly in Article 38: "The Republic of Poland shall guarantee the legal protection of life to every human being."

Poland belongs to the group of states that formulated the constitutional guarantee of protection as the legal protection of *life,* rather than protecting or guaranteeing *the right to life*. The subjective right resulting from the provisions of Article 38 is referred to as the 'right to the legal protection of life.' In the legal doctrine, there is a view that article 38 imposes an obligation to take active measures to reduce or eliminate the threat to human life on the state, and

constitutes a directive for the legislature that the regulations created on the basis of this norm should protect human life (Sarnecki 2003, Winczorek 2000, Gronowska 1998).

In the judgment of 2002, the Constitutional Tribunal held that Article 38 must be interpreted as prohibiting the deprivation of human life, which should be read in the light of Article 2 of the ECHR. In addition, , Article 38 constitutes an obligation on public authorities to take measures to protect life according to the Tribunal.(Justification to the decision of the Constitutional Tribunal of 8 October 2002).

Like most European constitutions, Article 38 of the Polish Constitution leaves the issues of admissibility of euthanasia and termination of pregnancy open and does not refer in any way to the problem of capital punishment. However, according to some scholars, the provisions of the article imply the prohibition of capital punishment (Sarnecki, Granat 2000). Given the terse formulation of Article 38, this position does not seem justified. However, on the grounds of the provisions of ratified international agreements (inter alia, the Additional Protocols to the ECHR), in the context of which Article 38 should be interpreted, as well as the constitutional provisions obliging Poland to comply with the international law and establishing the supremacy of the international agreements over the statutory law, the death penalty issue seems to have been resolved definitively.

Regarding derogation of human rights and freedoms in states of emergency, the Constitution of the Republic of Poland adopts a commonly used solution in current fundamental laws. It is also compliant with the norms of international human rights law. The right to life is included in the group of rights not subject to suspension under any circumstances (article 233). However, it does not mean that it is an absolute right, unconditionally binding, and may not be subject to limitations. According to the Constitutional Tribunal judgment of 10 April 2002, the scope of legislator's limitation of this right is settled by the ratified international law acts.(Judgment of the Constitutional Court of 10 April 2002).

There is an opinion in the legal doctrine that Article 38 of the Polish Constitution determines a principle of law. (Grabowski 2006, p.201-211). This thesis seems justified considering the importance of the constitutional norm protecting life for the whole national legal system. According to the theory of law, a constitutional principle of law is a norm hierarchically superior in the legal system, overriding other norms in a given group, playing a unique role in constructing particular legal institutions, or having special social significance (Wróblewski 1959, p.255-260).

As it has been said before, the life protection formulas in most European constitutions do not directly refer to such controversial issues as the admissibility of euthanasia or termination of pregnancy. Let us now turn to the very current problem in the Polish constitutional law – the abortion issue.

In most European constitutions, which mention the protection of human life, we do not find the formula specifically guaranteeing the protection of the life of the unborn child or safeguarding life “from the moment of conception,” the exceptions being the constitutions of Ireland until 2018, Slovakia and Hungary.

Until the recent amendment in 2018, the Irish Constitution of 1 July 1937 has been unique concerning the protection of life. In addition to the general wording of the right to life in Article 40, the 8th Amendment to the Constitution of 1983 introduced the right to life of the unborn equal to the mother’s right. Paragraph 3 of this article read: "The State recognizes the right to life of the unborn, guarantees the defense and assertion of this right through its legislation while respecting the equal right to life of the mother,,. This practically meant a total abortion ban,

except for the cases where the mother's life was at risk. In 2018, as a result of a referendum, the 36th Amendment to the Constitution was introduced, abolishing this provision.

The Constitution of Slovakia of 1992 stipulates for the protection of life in article 15, "Everyone has the right to life. Human life is worth protection even before birth". So does the Hungarian Constitution of 2011: "Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to protection from the moment of conception."

Other European basic laws do not contain a clause on protecting life in the prenatal phase.

Article 38 of the 1997 Constitution of the Republic of Poland does not include this formula either. Nevertheless, it has been repeatedly suggested that the term "human being" also embraces the foetus, and therefore the unborn life is protected on an equal level by the constitutional law. Let us dwell on this issue for a while.

The contemporary doctrine of the rule of law assumes the priority of literal interpretation over its other types (systemic and functional interpretation). Constitutional provisions formulating the principle of the protection of life or the right to life of human beings without adding the bequest "from conception "or "before birth" in the literal meaning do not refer to the prenatal phase of human life. The literal interpretation of this type of legislation means understanding the term "human being" according to its meaning in everyday language and legal language, particularly in the texts of the binding law. In the provisions of all branches of law, the term "human being" means a human being from birth to death (by way of distinction, in situations where a human being before birth is to be protected, the terms "conceived child" "foetus", "nasciturus" are being used).

However, in the face of moral controversies concerning the status of the human foetus and the need to refer to the protection of the foetus, the bodies appointed to interpret constitutional provisions (constitutional courts and tribunals) have adopted interpretations extending the term "human being" and "human life" to the unborn child in their judgments. These interpretations have direct implications for the legal protection of the human foetus in criminal law and abortion law. Below I will give some examples of the jurisprudence of European constitutional courts and tribunals on this matter and related legal regulations on protecting the *nasciturus* in domestic law.

In a judgment of 25 February 1975, the German Constitutional Court adopted an expansive interpretation of a constitutional provision on the right to life that did not include the clause "from conception". The Federal Constitutional Court of the former Federal Republic of Germany declared the criminal law reform decriminalizing abortion on demand in the first 12 weeks of pregnancy unconstitutional (*Entscheidung des Bundesvefassungsgerichts*, Tübingen 1975, Garlicki 1992). The Court held that the constitutional guarantee of the protection of life also applies to human life in the prenatal phase from the moment of nidation (implantation in the womb, i.e., 14 days after fertilization). This judgment, however, did not prevent the German legislature from defining the termination of pregnancy permissibility boundaries quite broadly. In light of the Penal Code (the Act of 21 June 1976), which was in force in the former Federal Republic of Germany until 1992, the regulation abortion law was based on the "indication" model. Abortion was permitted for medical and legal reasons and the woman's challenging life circumstances. (Lang 2000).

The abortion issue was reviewed by the Federal Constitutional Court once more in 1993 when the Court decided on the constitutionality of the new abortion law of 1992. The Court upheld its previous position that the German constitution protects human life at every stage of

development. The beginning of this protection is at the moment of nidation when an individual human comes into being. The Court also stated that the protection of life is not absolute, and its scope is determined by the need to protect the conflicting interests of the pregnant woman. Throughout the entire pregnancy, abortion is treated as an unlawful act (Unrecht), and statutory law should define the exceptions to the prohibition on termination of pregnancy. (Weigend, Zielińska 1993).

Consequently, German law permits abortion on medical and legal grounds (*Act on the Protection of Unborn Life.)*. According to the 1992 Act, as amended in 1995, following the Court's judgment of 1993, an abortion performed on the request of a pregnant woman in the first trimester of pregnancy without medical or legal indication, provided that the legally prescribed consultation is carried out, does not constitute a criminal offense. Failure to comply with this condition constitutes a violation of the law by the doctor performing an abortion. The woman undergoing the procedure shall not bear the legal consequences. Termination of pregnancy without medical or legal justification carried out after the legally required consultation is not a criminal offense. However, it is an illegal act (*Unrecht*). In the judgment of 1993, the Court concluded that although *prima facie* termination of pregnancy should be penalized and the principle of protection of unborn life is a constitutional norm, the criterion for the admissibility of pregnancy termination is the impossibility to require that the woman follows the abortion prohibition.

The Constitutional Court of Portugal also adopted an expansive interpretation of the constitutional provision guaranteeing the right to life as applying also to the *nasciturus*. The Court considered the unborn life as a constitutionally protected good, but not subject to the same subjective protection as born people's lives. Therefore, the protection of this good must be weighed against other constitutional values, such as the woman's dignity, life, and health (Subsequent judgements from 19.03.1984 and 29.05.1985)..Portugal had quite restrictive abortion laws until 2007 when they were changed, and abortion is permitted in Portugal for non-medical and non-legal reasons up to the 10th week of pregnancy (Portugal, Law No. 16/2007 on Exceptions to the Criminality of Voluntary Interruption of Pregnancy)

A similar line of interpretation was adopted by the Constitutional Court of Spain in the judgment of 11 April 1985. In the Court's subsequent decisions of 1996 and 1999, it excluded pre-emerged *ex utero* embryo from the constitutional protection of the right to life. It confirmed that life unborn (*in utero*) is a constitutionally protected good but does not constitute a subjective right to life of the child in the mother's womb.(Judgment of the Constitutional Court of Spain of 19 December.1996 and of 17June 1999). As a result, abortion is permitted in this country on medical and legal grounds, but medical grounds also include the woman's mental health, which is interpreted very broadly.

The Polish Constitutional Tribunal decided on the temporal scope of the protection of human life in 1997 when formally there was still no provision in the Polish constitutional order for a right to life (the Jugdment of 28 May 1997 referred to earlier in the article).

In light of the absence of the right to life protection in the so-called Little Constitution of 1992, the Constitutional Tribunal derived the right to life guarantee from the democratic state of law principle in Article 1 of that act (Judgment of 28 May 1997). At the same time, it stated that the guarantee also concerns life in the prenatal stage. The Court recognized that human life has a constitutional value at the prenatal stage, but this does not mean that the intensity of legal protection of life in each of its phases should be the same. (Judgment of the Constitutional Tribunal of 28 May 1997). The ruling aroused controversy among the Constitutional Tribunal judges and in the world of science. It was alleged that the Tribunal exceeded its powers of constitutionality control and encroached upon the competence of the legislator by attempting to

resolve philosophical issues in a legally binding manner (separate opinions of judges Z. Czeszejko-Sochacki, L. Garlicki and W. Sokolewicz , see also: Lang 1997, Woleński 1998).

As a result, the provision of the *Act on Family Planning, Protection of the Human Foetus and Conditions for Permissibility of Termination of Pregnancy of* 1993, amended in 1996, which allowed termination of pregnancy on the so-called social grounds at woman's request until the 12th week of pregnancy, was deemed unconstitutional. Abortion became permissible for medical and legal reasons only.

In cases when the pregnancy posed a threat to the life or health of the pregnant woman or prenatal tests or other medical indications pointed to a high probability of severe, irreversible disability of the fetus or a disease threatening its life, the termination of pregnancy could be performed until the fetus was capable of independent life outside the woman's organism. Legal reasons for abortion were justified if the pregnancy resulted from a prohibited act. In this case, the termination of pregnancy could occur until the 12th week.(*Act on Family Planning, Protection of Human Foet*us…)

Such a legal state lasted in Poland until 2020 when the Constitutional Tribunal once again decided on the protection of the life of the human fetus. On 22 October 2020 the Tribunal ruled that Article 4a, paragraph 1, point 2 of the Act of 7 January 1993 *on family planning, protection of the human foetus, and conditions for permissibility of termination of pregnancy* allowing legal abortion due to the probability of severe and irreversible fetal disability is incompatible with Article 38 (the guarantee of the right to life) in connection with Article 30 (the protection of dignity) Additionally, the Tribunal stated that the provisions in question are in contradiction with Article 31, paragraph 3 of the Constitution of the Republic of Poland. It stipulates that statutory law may limit constitutional rights and freedoms when necessary for security, public order, environment protection, public health and morals, or safeguarding other persons' rights. Consequently, abortion is at present legal in Poland only in the case of a threat to the woman's health or life and if the pregnancy results from a crime (rape, incest). This makes Polish abortion law one of the most restrictive in the world. Within the EU, similar legislation exists only in Malta, and outside the EU , in Vatican, San Marino, Monaco, Andorra, and Liechtenstein. In the vast majority of European countries it is permitted to terminate a pregnancy in the first trimester at the woman's request. A term of 12 weeks of gestation is generally provided for by the legislation of Germany, the Czech Republic, Denmark, Austria, Italy, Norway and Belgium, a shorter term of 10 weeks is provided for by the legislation of Slovenia, France and Portugal, a longer term of 18 weeks is provided for by Sweden and of 21 weeks by the Netherlands.

This change in the Polish law following the ruling of the Constitutional Tribunal has provoked massive public protests as well as strong reactions on the side of human rights organizations, including Amnesty International. It is in apparent contravention of the developing international standard for the protection of women's reproductive rights and leads in practice to violations of women's rights: the prohibition of inhuman and degrading treatment, the right to privacy, and the right to physical integrity. It is also contrary to the line of the jurisprudence of the European Court of Human Rights concerning the provisions of the European Convention on Human Rights applicable to Poland. The Court concluded that denying women the right to legal abortion in cases of probability of severe and irreversible fetal disability is incompatible with human rights standards set in the ECHR *(inter alia*, the Judgment of ECHR *R. R. v. Poland* of 26 May 2011).

It should be noted that despite acknowledging the extension of the protection of life to the foetus in certain respects, none of the above-mentioned European constitutional orders have introduced such far-reaching restrictions on the possibility of performing legal abortions. Even

where there is an explicitly expressed formula for the protection of the unborn child within the constitution, as in Hungary or Slovakia, legal solutions of this kind have not been introduced.

In conclusion, the indisputable stance that the protection of life at the constitutional level is an essential element of a modern democratic state governed by law must be reaffirmed. It indicates the axiological importance of the right to life as one of the foundations of the entire legal system. Nevertheless, constitutional protection of human life cannot serve as a tool for implementing solutions drastically infringing other fundamental human rights.

In this respect the Polish law has drifted far apart from the other European countries.

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Czech Education System and experience with COVID-19

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Abstract

Education is one of the most affected field of COVID-19 situation. The main aim of this research paper is to briefly describe and illustrate effects of COVID-19 pandemic situation in the Czech Education System. Methodology of description and analysis is used to evaluate effects of COVID-19. The research paper focuses on elementary schools, high school and universities and highlight outstanding issues caused by COVID-19 pandemic situation in respective education system levels. The research paper also suggests related conclusions based on the presented research.

Keywords: COVID-19, Education system

Introduction

COVID-19 has its impact on many aspects of one's life. The pandemic situation in the World has been affecting the way people live, the way they go shopping as well as it affects education. On one side the, the pandemic situation, may help to accelerate services digitalization, people and students are getting used to have delivered their services on-line via variety of application. However, on the other side, it may be considered that accelerated on-line education may not be accessible to every single learner (e.g., for learners from poor countries or for learners with hearing/sight impairment).

During pandemic situation in 2020 at least four times more respondents reported that they use online platforms for teaching, training or assignment in a comparison with pre-COVID-19 times. Scientists (e.g. Chen) also highlight that synchronous learning platforms are being used in COVID-19 era (e.g. 2020) which is absolute opposite of pre-recorded learning videos from 2018 and 2019. Many respondents stress out that on-line education is the future for teaching, learning and assignments, especially in higher education and adults professional training (Chen, 2020). We can see the shift from in-class teaching to online platforms. However, is this the most significant way the COVID-19 has been affecting the education system in the Czech Republic?

The COVID-19 pandemic situation has affected Czech education system as well, especially with the government-enforced restrictions which include for instance using on-line means of education only and mandatory COVID-19 tests for elementary school students. Many parts of education system remain closed for in-class education (e.g., High Schools and

Universities). The effects of COVID-19 to education sector are visible and they may affect not only education providers (e.g., schools), but also students and parents (Ministry of Education, Youth and Sports, 2021). The research aims at providing a short overview introduction of COVOD-19 effects on Czech Education System ranging from Elementary Schools to Universities.

Methodology of the research

For making this article, the methodology of analysis, compilation and description has been used. The research aims at providing an overview information regarding:

COVID-19 effects on Elementary Schools from the point of view of restrictions and its effects (illustrated on one specific chosen measurement) in the Czech Republic,

COVID-19 effects on High Schools from the point of view of restrictions and its effects (illustrated on one specific chosen measurement) in the Czech Republic,

COVID-19 effects on universities from the point of view of restrictions and its effects (illustrated on one specific chosen measurement) in the Czech Republic,

The main source of data is previous research of published scientific articles and data provided by government and government-related agencies (e.g., The Ministry of Education, Youth and Sports of the Czech Republic and Czech Statistical Office and Czech School Inspectorate).

In accordance with the presented methodology, the following hypotheses are set:

Hypothesis H1: In elementary school, students and teacher use mainly School platforms which are designed to facilitate communication between students and teachers to communicate with each other (e.g., Google Classroom or personalized Education School System),

Hypothesis H2: The most significant changes in the lesson plans and content delivered to students may be seen in Vocational School (which are not finished by Maturita High School Leaving Exam), no more than 40 % of vocational schools teaches their students according to the in-class lesson plan online,

Hypothesis H3: University students have significantly more on-line classes in comparison with pre-COVID-19 pandemic situation; the growth of weekly time distribution of on-line lessons for university students is highest in their weekly time distribution.

COVID-19 in Elementary Schools

COVID-19 has impacted especially elementary schools' students and their mental well-being. The isolation and not being able to be in contact with other students and in their normal school environment affect the way how elementary schools' students socialize. The use of on-line means of education may result in cyber-bullying and its effect on pupil's development and mental well-being, as well as in certain cases, the safe environment for education and socialization in school, is now missing due to isolation and schools closure. The isolation has its effect on education and learning process as well (Čermáková, Kment, Gargulák, 2020).

The following figure investigates the communication during COVID-19 pandemic situation between Elementary School Students and their teachers (chosen specific measurement).

The COVID-19 affects means of communication between students and their teacher. The in-class communication is not possible, therefore it is necessary to provide on-line communication and education to the students. The figure 1 shows the means of communication between students and teachers in Czech Elementary Schools during 2020. It is visible that the most used mean of communication is personalized e-mail (e-mail sent to each single student separately) followed by bulk e-mails (one non-personalized e-mail sent to all students at once). In both group, Grade 1-5 Group and Grade 6-9 Group it may be surprising that e-mails (both personal and bulk) and school Websites are common means of communication, however specialized school platforms and public platforms for communication (e.g., Google Classroom and School System "Bakaláři") are not used as primary means of communication as often as it could be (Czech Statistical Office, 2020).

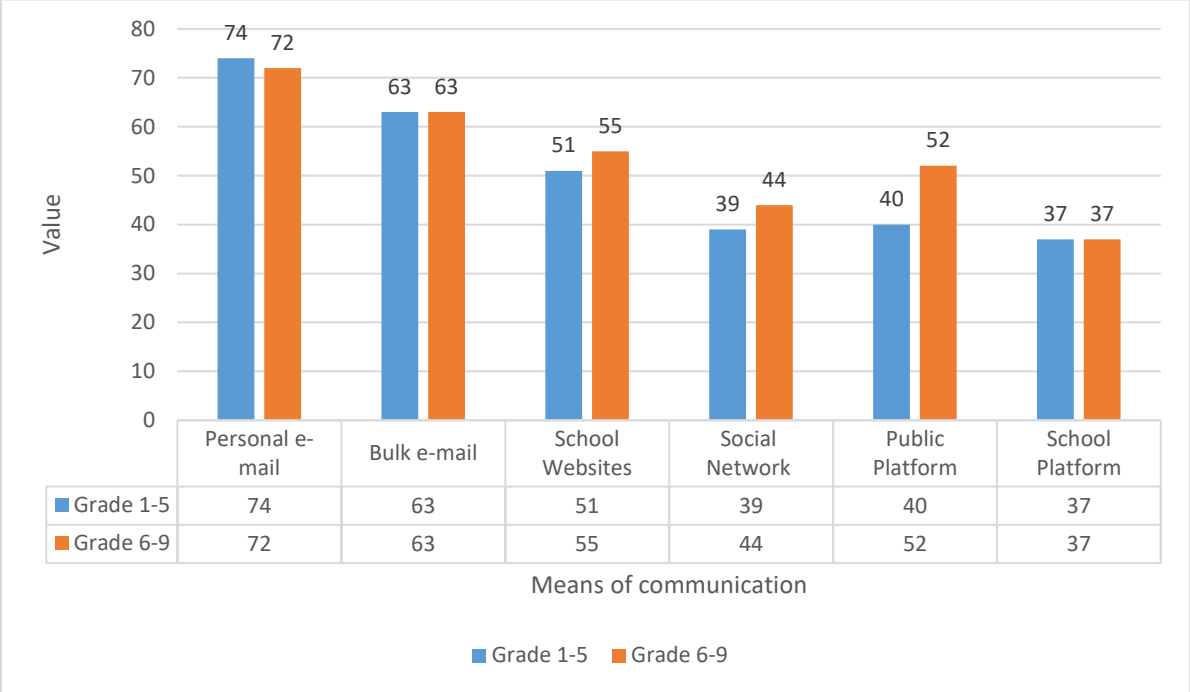


Figure 1: Means of communication in Elementary Schools during COVID (Czech Statistical Office, 2020).

According to the research, Grade 1-5 Group use slightly less Social Network as means of communication (39 % vs 44 %) as well as significantly less Public Platforms as a communication mean (40 % vs 52 %) than Grade 6-9 Group. According to the effect of COVID-19 on communication between Elementary Schools Students and their teachers, it is possible to conclude that:

E-mails and School Websites are used for communication in Elementary Schools during COVID-19 more often than Social Networks and Public/School Platforms,

Grade 1-5 Group teachers use less Social Network Communication and Public Platform to communicate with their students than Grade 6-9 Group,

Hypothesis H1: In elementary school, students and teacher use mainly School platforms which are designed to facilitate communication between students and teachers to communicate with each other (e.g., Google Classroom or personalized Education School System). Hypothesis H1 has not been confirmed.

COVID-19 in High Schools

Pandemic situation has effects on class organizational management. There is visible a reduction of study plans and content delivered to the High Schools students. For further examination, the following division of the Czech Education System at High Schools ("middle") level is used:

Type 1 (HS Type 1): Vocational Schools without Maturita High School Leaving Exam (not finished by Maturita High School Leaving Exam),

Type 2 (HS Type 2): Vocational Schools with Maturita High School Leaving Exam (finished by Maturita High school leaving Exam),

Type 3 (HS Type 3): High School ("classic" High Schools, always finished by Maturita High School Leaving Exam).

The main difference between HS Type 1, HS Type 2 and HS Type 3 is that if students finish High School or Vocational School and pass the Maturita High School Leaving Exam, it is possible for them to continue to study further in Bachelor's Degree Studies at Universities directly. On the other hand, students who finish only Vocational Schools without Maturita High School Leaving Exam (HS Type 1) are not allowed to directly enrol at Bachelor Degree Studies at Universities and have to study further to obtain and pass the Maturita High School Leaving Exam.

The following figure investigates the changes in lessons delivery from the point of view of content and/or subjects selection during on-line classes in COVID-19 pandemic situation.

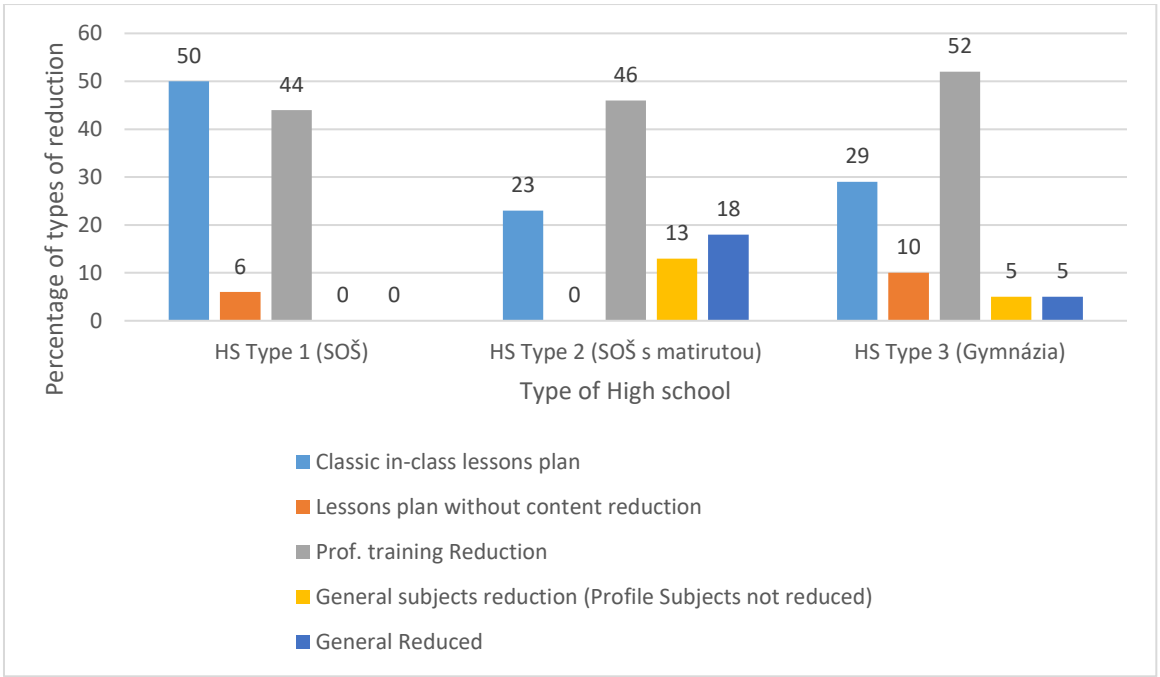


Figure 2: Changes in lesson plans/contents delivered to the students during COVID-19 in High Schools (Czech School Inspectorate, 2021).

It is seen that in HS Type 1 (Vocational Schools which are not finished by Maturita High School Leaving Exam) teaches students in on-line lessons mostly according to the classic in-class plan (50 %) or with reduction of professional training subjects (44 %).

HS Type 2 (Vocational Schools which are finished by Maturita High School Leaving Exam) teaches the students mostly with reduction of professional training subjects (46 %). Only

less than one fifth of HS Type 2 schools teach their students according to classic pre-COVID lesson plan (23 %). HS Type 3 schools (classic High Schools) teach according to the reduced professional training plan (52 %) (Czech School Inspectorate, 2021).

From the chart, it is possible to read following statements:

HS Type 1 (which is not finished by Maturita High School Leaving Exam) teaches mostly according to the classic pre-COVID in-class lessons plan in their on-line lesson (50 %),

The highest percentage of overall general reduction of lesson plans and content delivered to students is in HS Type 2 (Vocational School finished by Maturita High School Leaving Exam), which is 18 %,

Content reduction or reduction of professional training or general reduction of delivered content to students (e.g., less subjects or teaching only the "core" subjects) is a problem especially for High Schools and Vocational Schools which are compulsory finished by Maturita High School Leaving Exam. Vocational Schools which are not finished by Maturita High School Leaving Exam may not face as many changes in delivered contents/lessons to students as other types of Czech High Schools.

Hypothesis H2: The most significant changes in the lesson plans and content delivered to students may be seen in Vocational School (which are not finished by Maturita High School Leaving Exam), no more than 40 % of vocational schools teaches their students according to the in-class lesson plan online. Hypothesis H2 has not been confirmed.

On the other side, it was discovered that HS Type 1 seems to be the less affected type of High School in the Czech Republic by an on-line lesson delivery. Total 50 % of HS Type 1 Schools have been teaching without any changes in lesson plans or content delivered to students in their on-line lessons.

COVID-19 in Universities

Universities may be affected by COVID-19 from the point of view of providing the lessons delivery time to their students. Unfortunately, there is a big difference among Czech Universities in point of view on in-class lessons supplement.

The following figure investigates the weekly time distribution of university students before and during COVID-19 pandemic situation from the point of view of lessons delivery and self-study.

The data show that students tend to spend more time with self-studying during COVID-19 pandemic situation in comparison with online studies (Institute of Sociology of the Czech Academy of Sciences, 2020).

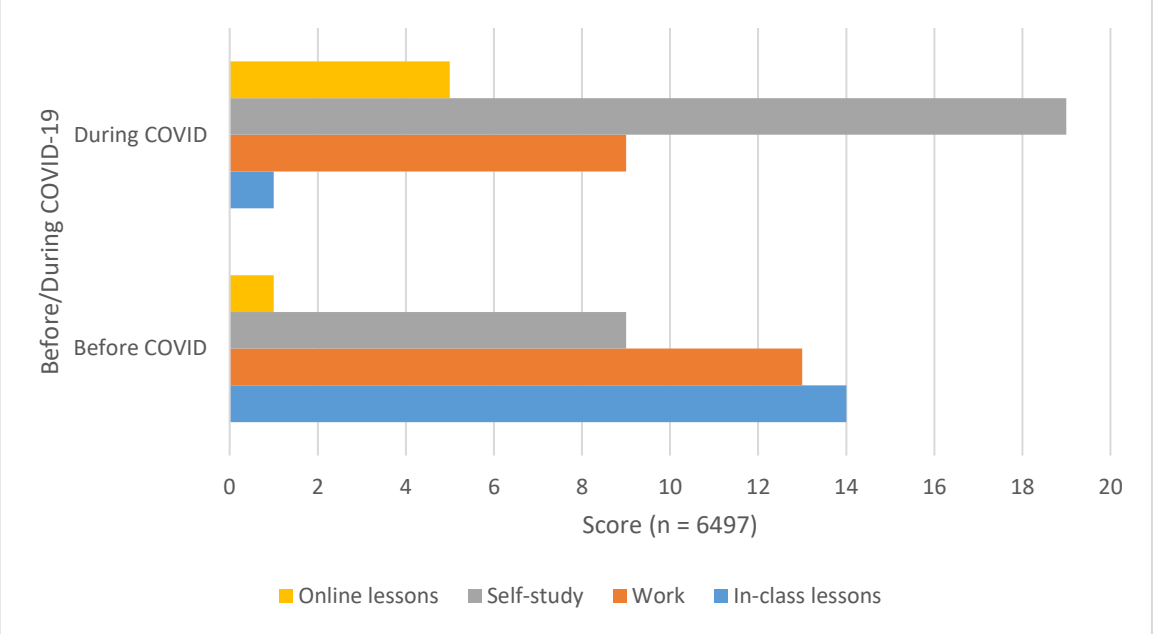


Figure 3: Weekly time distribution for students of Czech Universities (Institute of Sociology of the Czech Academy of Sciences, 2020).

The time distribution of university students (weekly) shows a significant shift in point of view of lessons delivery. It can be seen that in-class lessons for university students has become very restricted for students during COVID-19 pandemic situation. However, in contrary, we cannot see a significant increase of on-line lessons (pre-COVID vs COVID pandemic situation). What, however can be seen, is that:

During COVID-19 there is not sign of significant increase in on-line lessons delivery for university students (weekly time distribution),

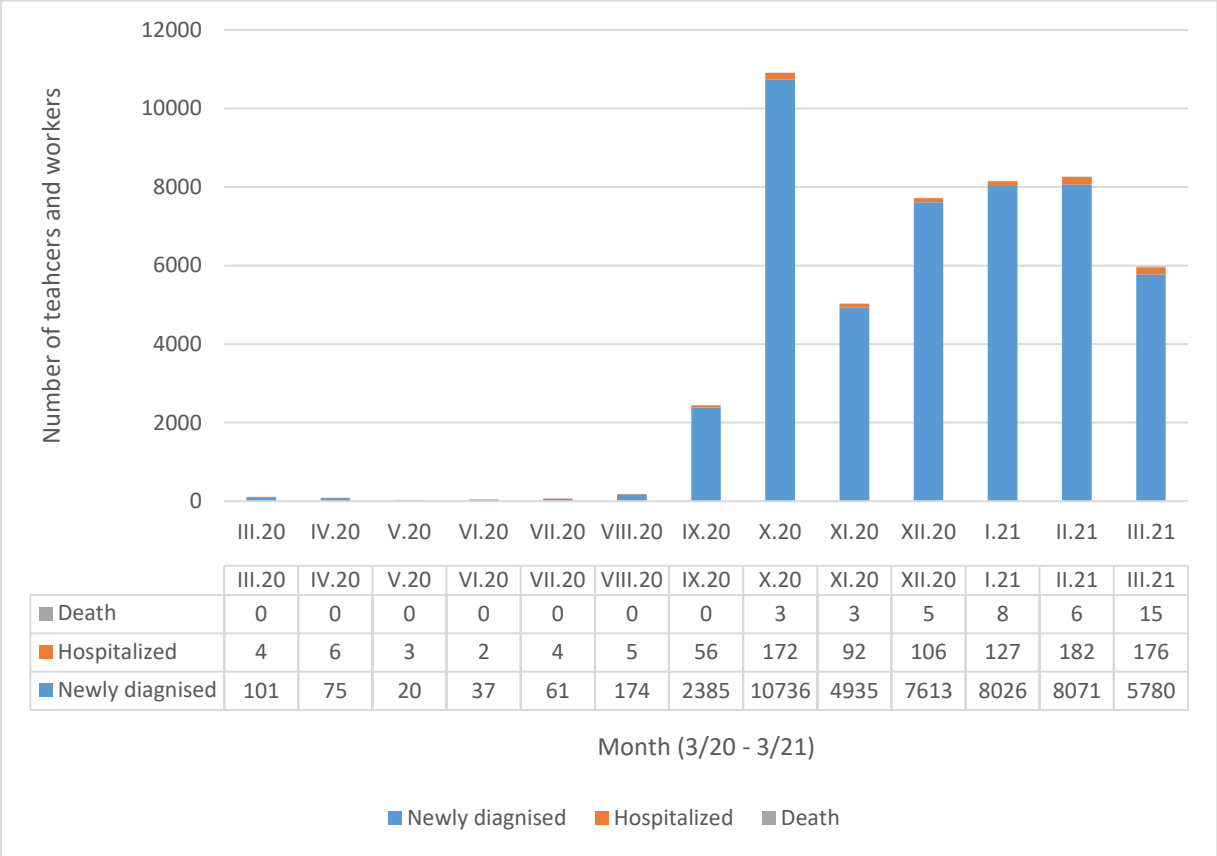
During COVID-19 university students seem to prefer self-study, in which can be seen a significant increase in weekly time distribution,

Hypothesis H3: University students have significantly more on-line classes in comparison with pre-COVID-19 pandemic situation; the growth of weekly time distribution of on-line lessons for university students is highest in their weekly time distribution. Hypothesis H3 has not been confirmed.

On the contrary, we can see that there is a significant increase in self-study, which is higher than increase of on-line lessons (weekly time distribution for students). It is possible to make a conclusion that university students during COVID-19 pandemic situation focus more on self-study than on other means of studying (e.g., on-line lessons).

COVID-19 and teachers in the Czech Republic

Vaccination if a vital part of the fight against COVID-19 and it is important to vaccinate people working in high-risk professions such as teachers and other workers in education. In the Czech Republic, there is now vaccination of pedagogical and support profession through schools. The first figure shows development of diagnosed, hospitalized and dead workers and teachers in the Czech Education System from March 2020 till March 2021.



	III.20	IV.20	V.20	VI.20	VII.20	VIII.20	IX.20	X.20	XI.20	XII.20	I.21	II.21	III.21
Death	0	0	0	0	0	0	0	3	3	5	8	6	15
Hospitalized	4	6	3	2	4	5	56	172	92	106	127	182	176
Newly diagnised	101	75	20	37	61	174	2385	10736	4935	7613	8026	8071	5780

Figure 4: Newly diagnosed with COVID-19, hospitalized and death pedagogical professional in the Czech Republic from March 2020 till March 2021 (The Pedagogical Chamber of the Czech Republic, 2021).

Figure shows the ratio between newly diagnosed, hospitalised and deceased patients among pedagogical and non-pedagogical professionals working in the Czech Education System from 3/2020 till 3/2021. It may be seen that from October 2020 the ratio is decreasing. However, the number of deaths is slowly increasing from 3 deaths in October 2020 to 15 deaths in March 2021 (The Pedagogical Chamber of the Czech Republic, 2021).

The following figure shows vaccinations of teachers and non-pedagogical workers in the Czech Education System in 2021 (one of the priority group). Vaccination started in February 2021 and till the April, 12th, 2021 there is approximately 56 839 fully vaccinated workers and teachers in the Czech School System (Ministry of Health, 2021).

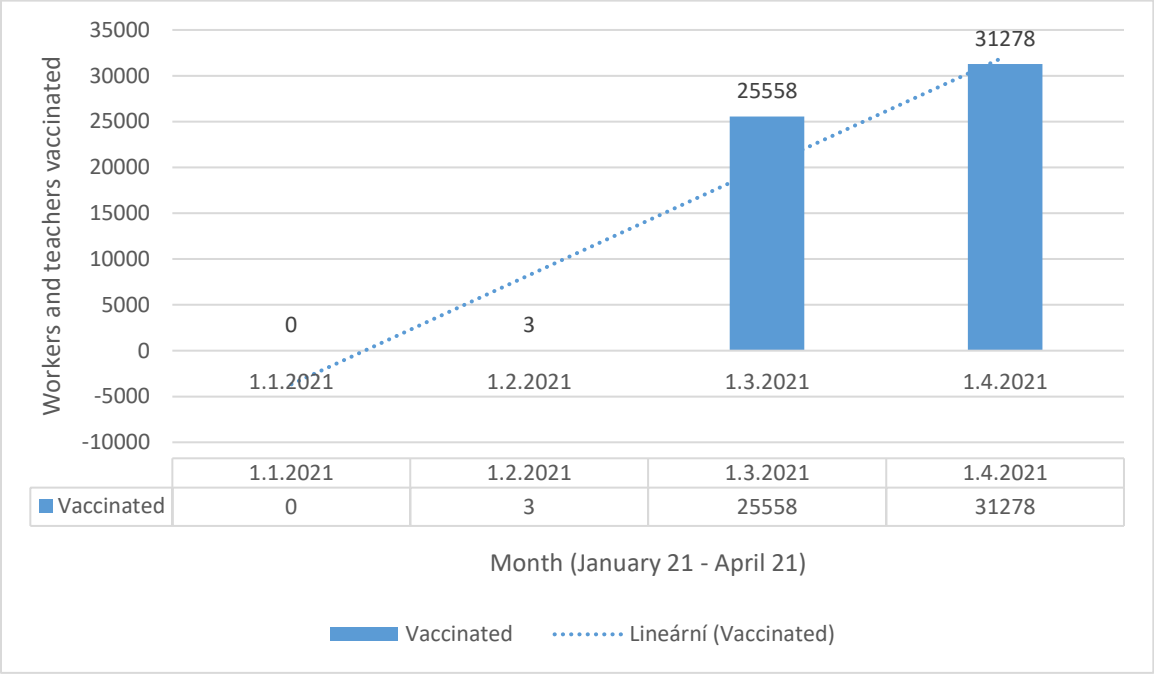


Figure 5: Progress of vaccination of teachers and workers in the Czech Education System as of April 12th, 2021 (Ministry of Health, 2021).

Conclusion

The research investigates public data issued by e.g., Czech Statistical Office, Czech School Inspectorate and Institute of Sociology of the Czech Academy of Sciences and other government and government-related organizations in the Czech Republic. For further investigation, the following hypotheses are set:

Hypothesis H1: In elementary school, students and teacher use mainly School platforms which are designed to facilitate communication between students and teachers to communicate with each other (e.g., Google Classroom or personalized Education School System),

Hypothesis H2: The most significant changes in the lesson plans and content delivered to students may be seen in Vocational School (which are not finished by Maturita High School Leaving Exam), no more than 40 % of vocational schools teaches their students according to the in-class lesson plan online,

Hypothesis H3: University students have significantly more on-line classes in comparison with pre-COVID-19 pandemic situation; the growth of weekly time distribution of on-line lessons for university students is highest in their weekly time distribution.

Hypothesis H1: In elementary school, students and teacher use mainly School platforms which are designed to facilitate communication between students and teachers to communicate with each other (e.g., Google Classroom or personalized Education School System). Hypothesis H1 has not been confirmed.

Hypothesis H2: The most significant changes in the lesson plans and content delivered to students may be seen in Vocational School (which are not finished by Maturita High School Leaving Exam), no more than 40 % of vocational schools teaches their students according to the in-class lesson plan online. Hypothesis H2 has not been confirmed.

Hypothesis H3: University students have significantly more on-line classes in comparison with pre-COVID-19 pandemic situation; the growth of weekly time distribution of on-line lessons for university students is highest in their weekly time distribution. Hypothesis H3 has not been confirmed.

The effect of COVID-19 pandemic situation is visible in all level of Czech Education System. Most immediate effect is government restriction of in-class lessons a de facto closure of School Education as we used to know before COVID-19 pandemic situation.

From the point of view of Elementary Schools in the Czech Republic, it is possible to state (according to the data) that E-mails and School websites are used for communication between teachers and students during COVID-19 more often than Social Networks and Public/School Platforms in general. It is also possible to state that Grade 1-5 Group teachers use less Social Network Communication and Public Platform to communicate with their students than Grade 6-9 Group teachers.

In general, it is possible to make a conclusion that school platforms which are designed to deliver on-line lessons to students may not be the main means of communication between elementary schools' students and their teachers. On the other hands, personal e-mails, bulk e-mails and School Websites are used more often.

In High School Level Education, it is possible to see the change of lessons plans and content delivered to the students during COVID-19 pandemic situation. It is surprising that Vocational Schools (which are not finished by Maturita High School Leaving Exam) seem not to change the lesson plans/content delivered to students and teach their students according to the original in-class lesson plans from before COVID-19 pandemic situation.

On the other hand, it is possible to conclude that the highest percentage of overall general reduction of lesson plans and content delivered to students is in HS Type 2 (Vocational Schools finished by Maturita High School Leaving Exam). Classic High Schools (HS Type 3) are affected as well, mostly by Professional Training reduction in their lessons plans.

University students do not show significant increase in on-line lessons delivered to them (in comparison to weekly time distribution), on the other hand it is possible to see a significantly higher increase in self-study hours in comparison to weekly time distribution. Therefore, it is possible to assume that during COVID-19 university students seem to prefer self-study to on-line classes and other means of lessons delivery.

Summary of conclusion of the research paper:

Elementary schools' teachers use mainly personal e-mails, bulk e-mails and websites as means of communication with their students during COVID-19,

High Schools which are finished by Maturita High Schools Leaving Exam (HS Type 2 and HS Type 3) are more affected by COVID-19 from point of view of lessons plans, lessons and subjects reduction than Vocational Schools which are not finished by Maturita High Schools Leaving Exam (HS Type 1). The most affected part of lessons plan/content seems to be Professional Training which is reduced in all types of High Schools.

University students seem to prefer self-study to on-line classes during COVID-19 pandemic situation.

It may be recommended to investigate the effect of COVID-19 from the perspective of changes which prevail after the pandemic situation in the future.

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Evangelical Church of the Augsburg and Helvetic Confessions after the fall of Austria-Hungary in Czechoslovakia and Poland

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Abstract

One of the religious unions operating in the Habsburg monarchy was the Evangelical Church of the Augsburg and Helvetic Confessions (hereinafter: EKAiHW). Established by the will of Emperor Franz Joseph, it collapsed with the fall of the Habsburg monarchy. The article presents the fate of this Church in two of the many successor countries that arose on the ruins of the empire: Czechoslovakia and Poland, and the short-lived West Ukrainian People's Republic in the years 1918-1939. on legal matters: the formation of new religious associations, selected from EKAiHW, the process of incorporating old church structures into new organizations, problems related to the interference of state offices in this process. National disputes, armed conflicts: Czechoslovakia - Polish, Polish - Ukrainian, brought with them specific consequences also in the religious sphere: for Poles in Cieszyn Silesia, for Germans in Małopolska. The article also allows you to compare the legal solutions adopted by Czechoslovakia and Poland, often dictated by political considerations and the policy towards national minorities, which is different in both countries.

Key words: Poland 1918 - 1939, Czechoslovakia 1918 - 1939; Austrian Empire; religious law in Austria, religious law in Poland; religious law in Czechoslovakia

1. Purpose of the work

One of the religious unions operating in the Habsburg monarchy was the Evangelical Church of the Augsburg and Helvetic Confessions (hereinafter: ECAHC)8. The patent united the Lutheran and Reformed religious groups into one, and it collapsed with the fall of Austria-Hungary. The aim of this article is to present the location of the parishes of this Church in selected succession countries, established on the ruins of the empire: Czechoslovakia and Poland. In our considerations, we will focus on legal matters.

[8] The full name of the religious organization we are describing was from 1891 Evangelische Kirche Augsburgischen und Helvetischen Bekenntnisses in den im Reichsrathe vertretenen Königreichen und Ländern. In Polish: Ewangelicki Kościół Wyznania Augsburskiego i Helweckiego w królestwach i krajach w Radzie Państwa reprezentowanych, and in Czech: Evangelická církev augšburského a helvétského vyznání v královstvích a zemích na říšské radě zastoupených. This religious association functioned only in the so-called Cisleithania (Austrian Empire not Kingdom of Hungary). On the Austro-Hungarian system, see G. Górski, S. Salmonowicz, Historia ustrojów państwa, Warszawa 2001, s. 507 - 515.

1. 1 Legal basis of the functioning of the Church in the Habsburg monarchy

The legal ground for the existence of ECAHC was given by *Kaiserliches Patent von 8 April 1861, womit die Angelegenheiten der evangelischen Kirche augsburgischen und helvetischen Bekenntnisses, insbesondere die staatsrechtlichen Beziehungen (...) geregelt werden*[9]. This act consisted of only 25 paragraphs and regulated the basic matters related to its functioning. This act consisted of only 25 paragraphs and regulated the basic matters related to its functioning. First of all, he established the structure of the Church and its representative and administrative organs (§3). The basic organizational unit was the parish - *Pfarrgemeinde (Ortsgemeinde)*, then the Seniorat (*Seniorat, Bezirkgemeinde)*, then Superintendencja (*Superintedenz, Landesgemeinde)* and the so-called Gesammtgemeinde, which we will translate as Unity, bringing together Christians of one or the other denomination. The organs of the latter were the Imperial-Royal Evangelical Supreme Church Council (k.k. *evangelische Oberkitchenrath*) and the General Synod (*Generalsynode*) (§ 3). The provision of §9 was very important, as it stipulated that all church regulations adopted by resolutions of the General Synod require the Imperial approval. On the basis of this patent, an ordinance introducing the internal law of the Church was published with a date a day later[10].

This provision was in force until 1866, when it was announced by the announcement of the minister of state *Verfassung der evangelischen Kirche Augsburgischen und Helvetischen Bekenntnisses*[11]. After twenty-five years, its new version was announced, adopted by imperial order on December 9, 1891[12]. It was joined by *Besonderen Bestimmungen für die evangelischen Superintendenzen Augsburgischen Bekenntnisses* - special regulations concerning the Superintendency, i.e. the diocese of the Augsburg denomination.

1. 2 Organization of the Church, its juridical persons and their organs

The Verfassung der evangelischen Kirche of 1891 maintained a four-level organizational division, in principle for each denomination separately: Parish, Seniorate, Superintendency (diocese) and Unity of "all members of the faith (National Church) of the respective denomination" i.e. *Evangelische Kirche Augsburgischen und Helvetischen Bekenntnisse*[13]. Occasionally there were union parishes linking the followers of both confessions, but Seniors, Superintendencies were appropriate for a given Augsburg or Helvetic denomination.

The legal organs for the parish were: the Parish Office - exercised individually by the Pastor, the Presbytery, and the Parish Substitute or the Parish Assembly. The authorities of the Seniorate were: the Senior Office - held individually by the Senior, the Senior Department and the Senior Assembly. The authorities of the Superintendency were: Superintendentura - an office held individually by the Superintendent, the Superintendency Department and the Superintendency Assembly. The highest organs of authority for the National Church

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[9] RGBl. 1861 Jahr, XVIII Stück, No. 41.The official publisher of the legal acts of the Austrian Empire and then of the Austro-Hungarian Empire was called until 1869 Reichgesetzblatt für Kaisertum Österreich, from 1870 Reichsgesetzblatt für die im Reichsrathe vertretenen Königreiche und Länder. There were also versions in the languages of the Crown Countries, incl. in Polish and Czech. Later in the article we will use the generally accepted abbreviation to denote the source: RGBl. They are all available on the portal of the Austrian National Library http://alex.onb.ac.at/, access: 2019-08-1

[10] Verordnung des Staatsministers vom 9. April 1861, womit die innere Verfassung der evangelischen Kirche beider Bekenntnisse (...) provisorisch geregelt wird, RGBl. 1861, XVIII Stück, Nr. 42.

11 RGBl. 1866, V Stück, Nr. 15.

12 RGBl. 1892, II Stück, Nr. 4.

13 „Gesammtgemeinde aller Glaubensgenossen (Landeskirche) des betreffenden Bekenntnisses", § 2, RGBl. 1892, II, 4. The equivalent of the diocese in ECAHC was the superintendency, not the seniority.

(Gesamtgemeinde, Landeskirche) were: the Supreme Church Council, the Synodal Department and the General Synod (§ 3). The direct service dependence of the organs of church authority on their counterparts at the higher level of church organization was clearly emphasized (§ 5 and 7).

Decisions made by voting, unless the provision decided otherwise, were final when they were taken by an absolute majority of votes. In addition, for the validity of the deliberations and resolutions, it was required to notify all those entitled to vote in a given collective body and to the presence of at least half of its members (§ 8 and 9).

In accordance with the provisions of § 13, all existing parishes were recognized within their boundaries, but also in their denominational composition. Any changes to the parish boundaries were finally approved by the Superintendency Department, and the relevant national administration body had to be notified. The Office was not empowered to object to the decision (§14). It was also possible to create a new parish. The condition was to secure material resources so that God's service and religious instruction for young people could be performed. At the same time, supervision and passage of the entire official path from the proper Parish Presbytery, through the Senior Department, to the Superintendent Department, which only handed the matter over to the Supreme Church Council, was required. It was she who made the final decision in consultation with the relevant authority of the national administration. It could also, after giving reasons, refuse to approve such an undertaking (§ 15). There were denominational mixed parishes. At that time, they were subject to the church authority (Augsburg or Helvetic) to which most of the parishioners belonged. Details were regulated by the Statute, which was approved by the Supreme Church Council. It decided to which denomination the parish priest and vicars should belong. Members of the parish belonging to the religious minority had the full right to participate in all parish authorities. They could also be elected to Senior and Superintendent Assemblies. However, they could not be members of the executive authorities of this level, i.e. of the Senior and Superintendent Departments (§ 20). Membership in a given parish was determined by the person's place of residence and religion (§ 21).

1. 3 General Synod of the Church and the possibility of changing Church law

The *Verfassung der evangelischen Kirche* of 1891 was a very extensive document regulating the affairs of the administration of the Church and the powers of the state down to the smallest detail. It is not necessary to discuss it further in detail for our purposes. However, we must make an exception to the provisions relating to the General Synod of the Church and the applicable rules for amending the law itself.

Let us recall: the legal organs of the ECAHC were: the Imperial-Royal Supreme Church Council, the Synodal Department and the General Synod, having two statutory formulas: a common synod of the entire Church, and two separate general synods for each denomination (§ 115 and 127).

A lay person with legal education stood at the head of the Supreme Church Council. In the *Verfassung der evengelische Kirche* of 1891 there is no specific requirement that this person, unlike the other counselors, should be of Evangelical faith. She chaired the Council consisting of two colleges, which were composed of ordinary councilors of both denominations. They were lay and clergy in equal numbers (§ 116). Matters of individual denominations were dealt with separately in colleges. However, if the case under consideration pertained to the whole Church or was a mediation between the two confessions, the Supreme Church Council was fully deliberated (§117).

All of its members were appointed by the emperor for life, received a salary from the state treasury and enjoyed the privileges associated with their function in the state and the Church - all this determined that the Supreme Church Council was an organ of the central state power. Its members are defined by law as *die Staatsbeamten*, who, in addition to the duties of civil servants, have special tasks consisting in safeguarding the privileges of the Church and guarding, observing and maintaining the ecclesiastical regulations of the state (§ 122).

Decisions in the Supreme Church Council were made collectively by voting. Since none of the members of the Council could abstain from doing so or leave the vote, only an absolute majority was at stake (§ 123)[14].

The General Synod consisted of: 1) Superintendents and Curators of the Superintendencies of all Superintendencies, 2) Seniors and lay delegates, one for each Seniorate included in the Superintendency, 3) a delegate of the Viennese theological faculty of a given denomination, 4) directors of teachers' seminaries and two representatives of teachers certain denominations elected by them from among themselves, 5) the Augsburg parish of Vienna also sent its delegates to the General Synod of the Augsburg Confession. The selection - one clergyman and one lay delegate - was made by members of the Presbyterate from among themselves. The delegate to the General Synod had to be at least 30 years old (§ 125).

An ordinary general synod was to be called every six years. Its extraordinary meeting (like the postponement of the regular deadline) could take place with the consent of the Synodal Division following the request of 2/3 of the Superintedent Departments or, at the request of the former, with the consent of the latter. It was convened by the Supreme Church Council with the prior consent of the appropriate ministry (§ 124).

The first competence of the general synod was to adopt a possible resolution on church legislation, in particular church law. The motions in this matter could be submitted to the synod by the Supreme Church Council, and through it, by all other church bodies, and even by individual members of the synod (§ 133.1 in conjunction with § 119.8).

The General Synod conducted its deliberations separately for each council. However, in order to discuss and settle common matters, especially regarding the legislation on the Church, relations between the Church and the State, church and religious associations, schools, common funds, both Synods could establish mixed commissions or meet at joint meetings. Regardless of this, the voting took place in the curial system and the resolution of the General Synod was valid if the curias of each denomination separately supported it (§ 126). For a single resolution to be valid, two-thirds of the members of the religious curia and a simple majority of votes were needed. An equal number of votes for and against meant that the draft resolution was rejected (§ 134).

The Supreme Church Council had the right to send its members to the meetings of the General Synod. They did not have the right to vote, although they could take part in the debate. However, they were not allowed to participate in the deliberations concerning complaints against the decisions of the Supreme Church Council. The presence of a member of the Council at its meetings could have been requested by the Synod itself (§ 127). Other imperial or national officials were not allowed to participate in the Synod's deliberations even as observers (§ 129).

14 „Der Oberkirchenrat verhandelt kollegialisch und beschließt durch Stimmenmehrheit. Kein Mitglied darf sich der Abstimmung enthalten oder derselben entziehen“.

Any decision of the General Synod concerning ecclesiastical legislation (§ 133, p. 1) to give it legal force had to first be given an opinion by the Imperial-Royal Supreme Council, addressed to the relevant ministry and in accordance with § 9 of the *Kaiserliches Patent of* 1861, and §§ 136 and 165 *Verfassung der evengelische Kirche* unconditionally gain the approval of the emperor - der *Allerhöchsten Sanction.* Also, resolutions concerning the legal position of Evangelicals, as well as their relations with other Churches or religious associations were subject to state control. The resolutions of the Synod on these matters were, after the opinion of the Supreme Church Council, submitted to the Ministry for further negotiations - *Verhandlungen* (§ 136, p. 3). In order to adopt resolutions in both these scopes, the support of 2/3 of votes was needed in the presence of at least 2/3 of those entitled to vote (§ 134).

The General Synod chose two clergy and two lay delegates from among its members, who formed the so-called Synodal Department (§ 138). The Synod Department was primarily an advisory body to the Supreme Church Council, with which the latter had to consult obligatorily, e.g. in disciplinary matters concerning Superintendents and Superintendent Departments (§ 139, p. 2).

The seventh chapter of *the Verfassung der evengelische Kirche* 1891 was entitled *Vom kirchlichen Vermögen*. It contained provisions on property matters not included in the chapters on the Parish, Seniors, Superintendencies or the entire Church. The most important entry was that concerning the fate of the property after the liquidation of a church legal entity, church foundation or association.

In such a case, the property was placed under the management of the superior organizational unit of the Church, according to the denominational criterion - usually it was the Seniorate. This body should take into account, when making decisions regarding this property, possible obstacles resulting from statutory or foundation provisions, as well as the possibility of the parish revival. An additional consent of the Supreme Church Council was required (§157).

2. After the fall of Austria-Hungary

The actual position of the ECAHC changed with the dissolution of the Habsburg Monarchy. Several new states were established on its ruins and others, at the expense of Austria-Hungary, enlarged their territories. Austria and Hungary itself were relegated from their role as one of the European powers to two small Danube countries. We are interested in two countries: Czechoslovakia and Poland. The former includes superintendencies: West Bohemia, East Bohemia, Aš and almost the entire superintendency of Moravia and Silesia, and in Poland a small fragment of the latter and most of the Galicia and Bukovina[15].

2. 1 Of the Czech Brethren Evangelic Church

Probably the fastest disintegration of the old church structures took place in the newly created state - Czechoslovakia.

On the wave of nationalist revival, at first the Czech Brethren Evangelic Church emerged from the structures of the ECAHC. Its establishment was decided by delegates from Czech-

15 Under the treaty in Saint Germain, the territory of Bukovina fell to Romania. We will ignore them in our considerations. Basic information about the local Protestants is provided by: O. Wagner, Der Protestantismus Galiziens und der Bukowina in der Zeit des politischen Umbruchs 1918/19, "Die Zeitschrift für Ostforschung" 1993, Bd 32, No. 2, p. 271 - 272.

dominated Evangelical parishes at the congress held on 17-18 December 1918 in Prague. Reformed Evangelicals, referring to the historical traditions of the Reformation in the Czech Republic, constituted the vast majority of the new denominational. But on what basis did this new (?) religious organization obtain legal recognition?

It would seem that the legal basis should be *the Act Gesetz vom* 20. May 1874, *betreffend die gesetzliche Anerkennung von Religionsgesellschaften,* i.e. the Act on the legal recognition of religious associations[16]. Without going into details, it required a decision of the Minister of Religious Affairs and Enlightenment confirming the fulfillment of the conditions required by law by a single religious community (§§ 1 - 2 of the Act of 1874) and a decision approving the statute of an already expanded, consisting of many municipalities, districts , a religious association (section 6 of the 1874 Act)[17]. One of the most important conditions imposed by the legislator for obtaining a governmental permit was to prove that such a commune has or can raise funds for its seat, pastoral care and catechesis (§ 5 of the Act of 1874). This, it seems, could be a problem. It would be impossible to transfer the property rights from church legal persons of the ECAHC to the newly established Czech Brethren parishes, because these, in accordance with the above-mentioned act, could not be constituted before obtaining the permission of the state authorities (§5). To put it differently - on the basis of the regulations of 1874, new religious communities could not obtain legal personality without showing adequate funds and property, they could not acquire this property by transferring ownership rights earlier, because they did not have legal personality. So the wheel of impossibility was closing.

Therefore, applying the mutatis mutandis principle, the existing law was based, modifying it due to the existing extraordinary situation. The appropriately selected provisions of *the Verfassung der evangelischen Kirche* from 1891 were applied. Of course, this was only possible with the full support of the state authorities.

In the introduction to the announcement of the Minister of Education and National Education of November 25, 1919, we read that the Prague Congress was simply recognized as a general synod of Czech Evangelicals of both denominations (Helvetic and Augsburg Confessions) from Bohemia, Moravia and Silesia, which adopted the draft of a new church law within the meaning of § 9 Kaiserliches Patent from 1861 and § 136 of *the Verfassung der evangelischen Kirche* from 1891[18]. In accordance with these regulations from the time of the Habsburg monarchy, the draft amendments to the church law submitted to the state authorities, prepared first by the synod - the Prague congress, was first approved by the government on November 5, 1919 and then approved, in place of the emperor, by the president of the Czechoslovak Republic on 22 November.

16 RGBl. 1874, Stück XXI, No 68.

17 Section 2 of the 1784 Act was applied to the Czechoslovak Church established by dissidents from the Catholic Church. The announcement of the Minister of Education and National Education of September 15, 1920 had an extremely laconic, one-sentence content, 542/1920 Sb, "Vláda republiky československé prhlásila dne 15. září 1920 ve smyslu § 2 zákona ze dne 20. května 1874, č. 68 ř. z., cirkev československu za církev státem uznanou. Minister školství a národní osvěty", signature of the minister. The Czechoslovak Church was founded on the wave of doctrinal modernism and Czech nationalism, which saw in the Catholic Church the support of the Habsburg monarchy and one of the opponents of the independent Czechoslovak state, E. Pałka, Śląski Kościół Ewangelicki, p. 89.

18 RGBl. 1861 Jahr, XVIII Stück, Nr. 41, RGBl. 1892, II Stück, No 4. It is easy to notice that the Prague congress was not convened in the proper manner (§ 124), its composition was inconsistent, because it was based on the nationality criterion, and therefore it was significantly reduced in relation to the requirements of § 125.

According to the announcement of the minister of education on national education published on November 25[19], by transitional provisions, the fellow believers of the Church of the Augsburg and Helvetic Confessions in Bohemia, Moravia and Silesia of Czech nationality formed a separate Czech Church (§ 1). It included all Czech parishes, formerly of the Augsburg and Helvetic denominations, as well as those churches of another language that would recognize the principles and structure of the Czech Brethren Evangelical Church (§3). One of them was the abandonment of the division into two (Augsburg and Helvetic) denominations and the adoption of one confession based on the so-called the Czech confession of 1575 and the confession of the Czech brothers of 1662 (§2). From a practical point of view, however, §4 was the most important. It stipulated that the property that once belonged to the church legal persons of the Augsburg and Helvetic denominations becomes the property of these church persons, now the Czech Brethren Church. In order to avoid chaos, the existing boundaries of the parish, seniors and superintendencies were basically maintained (§5). The goals, composition and tasks of the future general synod were defined - the preparation of a new ecclesiastical constitution (§6). It was stipulated that the Church is no longer administratively subordinate to the Supreme Church Council in Vienna, and all its powers are transferred to *synodni výbor*, a nine-person body approved by the President of the Czechoslovak Republic (§§ 7 and 9). The *syndni výbo*r could delegate some of these powers to the authorities of the superintendencies and senior citizens by reporting it to the appropriate authorities. Until the new law was adopted, the Church was to operate on the basis of the provisions of the *Verfassung der evangelischen Kirche* of 1891. According to J. Szymeczek, at the time of the proclamation, the Czech Brethren Church was to have 116 parishes and 25 parish branches and 107 preachers, numbering over 150,000[20].

In our opinion, it can be assumed that in order to bypass the above-described reefs resulting from the Austrian Act on the legal recognition of religious associations of 1874, the following trick was used: apart from the previously existing within the ECAHC, having their parishes, seniors, superintendencies of Augsburg structures and Helvetic, the third - the Czech Brethren.

This was, of course, a temporary solution. In 1922, a new church constitution was proclaimed on the structure of the Czech Brethren Evangelical Church in Bohemia, Moravia and Silesia[21].

2.2 The German Evangelical Church in Bohemia, Moravia and Silesia

Being forced by circumstances, members of the ECAHC of German Nationality also convened their "*Kirchetag*". It took place on 25-26 October 1919 in Trnovany. In this case, legal recognition by the state did not come so quickly. The relevant announcement of the Ministry of Education and National Education was published only on December 20, 1922. Since, as in the case of the Czech Brethren Church, the legal basis for the promulgation of the new Church law was the Austrian regulations of 1861 and 1891, applicable only in Austrian Empire (not in Kingdom of Hungary), the Church had to change its name to the German

19 625/1919 Sb., Vyhláška , kterou se vyhlašují "Základní a přechodná ustanovení pro českobratrskou církev evenglickou v čechách, na Moravě a we Slezsku". Ministry announcement http://ftp.aspi.cz/aspi/opispdf/1919/132-1919.pdf, dostęp 2019-08-20. The official publisher of the legal acts of Czechoslovaka was called: Sbírka zákonů a nařízení státu československého. Later in the article we will use the generally accepted abbreviation to denote the source: Sb.

20 E. Pałka, Śląski Kościół Ewangelicki, p. 91, J. Szymeczek, Zápas polských evangelíků v Těšínském Slezsku o zachování konfesní a národní odlišnosti v poválečném Československu, "Securitas imperii" 2011, vol. 19 (02/2011), p. 219, footnote. 3.

21 Vyhláška o novém církevním zřizeni Českobratrskě církve evangelickě v Čechách na Moravě a ve Slezsku z 8.II.1922, 64/1922 Sb.

Evangelical Church in Bohemia, Moravia and Silesia, and did not include German parishes in Slovakia and Subcarpathian Ruthenia.

According to §3 of the Act, the language used in the life of the Church is German: "*Církevním a vyučovacím language is v mezích všeobených zákonůa předpisů řeč německá*". In accordance with §21, the legal succession of the new community after the ECAHC (in relation to its parish), the powers of the Supreme Church Council in Vienna were transferred to the highest authorities of the German Evangelical Church. His parishes, seniorates and superintendencies were transferred to the property belonging to them in Austrian times. This also applied to schools run by the Church, and charitable endowments and foundations (§ 22). Clerical offices are reserved for persons with Czechoslovak citizenship. Temporary entrustment of duties to clergy without citizenship was allowed, but with the consent of state authorities (§14). The German Evangelical Church, with about 130,000 believers, had the proper law already in 1924[22].

2. 3 Augsburg Evangelical Church in Eastern Silesia, Czechoslovakia

Things were similar in the area of the former Duchy of Cieszyn, but apart from the national conflict in the Church, which had its roots at least until the mid-nineteenth century, there was an interstate territorial dispute between Czechoslovakia and the Republic of Poland, which turned into a short-lived armed conflict and many years of political dispute between both countries.[23]. Another difference was that not two, but three nationalities competed here: German, Polish and Czech, and a group of Silesia, for which each side fought for German, Polish or Czech. The most numerous seemed to be the Polish orientation (69,000 souls), the most influential German orientation (20,000 souls), and the least numerous Czech (7,000 souls). The language of the scales, often very important, were the so-called Silesians led by Józef Kożdoń[24]. The fall of the Habsburg monarchy meant that national interests suppressed and kept in check by administrative methods became more important than religious matters, and each party to the dispute decided to use the historical moment for its own purposes[25].

Even before the future of the lands of the former Duchy of Cieszyn was finally determined, a delegation of Polish pastors headed by Franciszek Michejda (a member of the Polish League - the National League and the Democratic National Party)[26] asked for their parishes to be joined to the Evangelical Church of Augsburg Confession in the Kingdom of Poland - hereinafter: ECACP [27]. This was done on the basis of the decision of the Consistory in Warsaw on December 16, 1918. This concerned congregations from the areas that, under the agreement of November 5 this year, were under Polish administration.[28]. A new Silesian

22 Vyhláška o novém církevním zřízení Německé evangelické církve v Čechách, na Moravě a ve Slezsku z 7.VIII.1924 r., 209/1924 Sb. Zob. E. Pałka, Śląski Kościół Ewangelicki, s. 91, J. Szymeczek, Zápas polských evangelíků, s. 219, przyp. 4.

23 On national matters in the Duchy of Cieszyn from the Polish perspective D. Miszewski, Walka o tożsamość narodową Polaków w Księstwie Cieszyńskim od połowy XIX wieku do 1918 roku, "Przegląd narodowościowy - Review of Nationalities" 2013, vol. 2, p. 141 -178. On the activity of Silesian Evangelicals in their efforts to join the Duchy of Cieszyn to Poland, J. Kłaczkow, Kościół Ewangelicko - Augsburski w Polsce w latach 1918 - 1939, Toruń 2017, p. 54 - 68.

24 E. Pałka, Śląski Kościół Ewangelicki, p. 129 - 141, J. Szymeczek, Zápas polských evangelíků p. 219, footnote 4.

25 J. Szymeczek, Zápas polských evangelíků, p. 219 however, he believes that in the period between 1918 and 1920, Cieszyn Silesia was an exception, where the community of religion meant more than nationality and there was an attempt to establish a separate Silesian seniorate without national divisions.

26 E. Pałka, Śląski Kościół Ewangelicki, p. 138.

27 From 1922 Evangelical Church of Augsburg Confession in Poland.

28 The contract was concluded by the National Council of the Duchy of Cieszyn and Zemský národní výbor pro Slezsko. Both parties stipulated that "the final demarcation (...) will be the subject of an agreement between the governments of

seniorate was created (including German congregations, among others from Bielsko and Cieszyn), headed by the aforementioned F. Michejda, and on December 20, 1920 in Cieszyn, the superintendent of the ECACP, Juliusz Bursche, solemnly took over the jurisdiction. [29].

The armed Czech attack carried out on January 23, 1919 and the final decision on the division of Cieszyn Silesia, taken by the Conference of Ambassadors on July 28, 1920, shattered these plans[30]. There were eleven on the Polish side and six parishes on the Czech side. Initially, at the convention in Třinec on August 16, 1920, they wanted to maintain the administrative and church unity of the seniorate regardless of state borders, or to create a separate seniorate belonging to the ECACP, but lying outside the borders of the Republic of Poland.[31]. This solution was obviously unacceptable to the Czech authorities. Finally, in April 1922, at the convention in Orłowa, was established the Augsburg Evangelical Church in Eastern Silesia, Czechoslovakia. The new religious association obtained legal recognition after a year, by the resolution of the Council of Ministers on May 23, 1923. The legal basis was the same as in the case of the Czech Brethren Evangelic Church and the German Evangelical Church.

Transitional regulations announced by the Minister of Education and National Education determined the organization of the Church (§1), symbolic books of faith (§2), guaranteed equal linguistic rights to all members of the Church (§3). The independence of the Church was reserved from all other clerical powers - at home and abroad (§8)[32]. The decision that the property from the times of the former Silesian seniorate would remain with those church legal entities that previously owned it turned out to be very important for everyday functioning. The Church was also to receive an appropriate part of the funds (subsidies) for the former Silesian seniorate, the former Moravian-Silesian superintendency and the Supreme Church Council in Vienna, as well as part of their property (§4). Until a new synod of the Church was called, composed of all pastors and lay representatives (two for one pastor from each presbytery) (§6), the new religious association was to operate on the basis of the provisions of *the Verfassung der evangelischen Kirche* of 1891 (§9)[33].

Despite the promising start, the Czechoslovak authorities were very distrustful of the new - old church. The difficulties were manifested, among others, by in the absence of due state subsidies for several years, difficulties in teaching religion in schools, as well as the consistent rejection of all bills of the new church law throughout the interwar period[34].

The first senior was pastor Józef Folwartschny, who "being a German, managed the Church in such a way that, having Poles on his side, he would not expose himself to the Germans or the Czechs. He earned general respect"[35]. He was succeeded in 1927 by pastor Oskar Michejda. The number of the faithful of this territorially small Church was not large

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Warsaw and Prague." The Czechoslovak government rejected the text of the agreement later that month, J. Wiechowski, Spór o Zaolzie, Warszawa 1990, p. 15.

29 E. Pałka, Śląski Kościół Ewangelicki, p. 141 - 142, J. Kłaczkow, Kościół Ewangelicko - Augsburski, p. 21 - 22.

30 J. Wiechowski, Spór o Zaolzie, p. 18 i 30.

31 E. Pałka, Śląski Kościół Ewangelicki, p. 142 - 143.

32 Vyhláška ministerstva školstvi a národní osvěty ze dne 13. července 1923 o Základnich a přechodných ustanoveních Augšburkě církve evangelickě ve východnim Slezsku v československu. The announcement is available, inter alia, at the address http://ftp.aspi.cz/opispdf/1923/072-1923.pdf, access 2021-02-18.

33 Por. E. Pałka, Śląski Kościół Ewangelicki, p. 143 - 144.

34 E. Pałka, Śląski Kościół Ewangelicki, p. 144 - 145.

35 J. Szturc, Ewangelicy w Polsce. Słownik biograficzny XVI - XX w., Bielsko - Biała 1998, p. 77.

compared to other Protestant Churches. It had 45,000 to 50,000 followers. In 1930, Polish nationality was declared by 64.5% of the followers, Czech or Czechoslovakian by 34.5%, and German by 1% of Church members. Until 1938, these proportions did not change significantly: the church structure increased by one parish. As a result of the national conflict between the Germans, Silesians led by Pastor Paweł Zahradnik and the curator Józef Kożdoń (at the same time the mayor of Cieszyn Czeski), and Poles, in 1925 there was a split in the Cieszyn congregation. The Germans and the Silesians wanted him to join the German Evangelical Church in Bohemia, Moravia and Silesia, and the Poles wanted to join the Augsburg Evangelical Church in Eastern Silesia. Three thousand Polish congregations formed after separating, they formed a new Polish parish, which was formally recognized by the administrative authorities in 1928[36].

The location of the Augsburg Evangelical Church in Eastern Silesia, Czechoslovakia, changed completely in 1938, when *Záolží* was incorporated into Poland[37]. Despite some voices doubting the purposefulness of such an undertaking, returning to the concept from 1919, a decision was made to merge with the ECACP. The decree of the President of the Republic of Poland of November 25, 1936 on the attitude of the State to the Evangelical Church of the Augsburg Confession in Poland (*Kościół Ewangelicko - Augsburski w Rzeczypospolitej Polskiej)* was used for this purpose.[38]; those that talked about creating new and changing the boundaries of old dioceses. Pursuant to Art. 22 sec. 1 of the above-mentioned decree, if the change of diocese borders did not entail new expenses from the State Treasury, it was only required to make sure that the Minister of Religious Denominations and Public Education did not raise any objections in this regard.

Therefore, on November 7, 1938, the Synodal Assemblies of the Augsburg Evangelical Church in Eastern Silesia decided to include the churches of their Church in the Silesian diocese of the ECACP. Soon after, on November 23 this year, the decree of the President of the Republic of Poland came into force on the extension of the binding force of certain legislative acts to the recovered lands of Cieszyn Silesia, including the decree of the President of the Republic of Poland of November 25, 1936 on the relationship of the state to the ECACP. On December 1, 1938, the consistory of the latter religious association adopted a resolution to include the above-mentioned parish into the Silesian diocese of this Church, to conduct new elections to its senior authorities. After another 4 days, i.e. on December 5, 1938 (instead of the statutory two months allowed for the decision to be made by the Ministry - no objections were expressed within this period, the state authorities confirmed the resolution of the Consistory with an appropriate document. In order for the formalities to be fulfilled, a resolution of the Synod of the ECACP was also needed. However, it was not convened in the independent Republic of Poland due to the outbreak of the war[39]. Thus, the *de iure* extension of the borders of the Silesian diocese did not take place.

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36 E. Pałka, Śląski Kościół Ewangelicki, p. 145 - 147.

37 Thus, about 50,000 fellow believers, mostly of Polish nationality, came to the Polish Evangelicals, J. Kłaczkow, Kościół Ewangelicko - Augsburski, s. 49, 130 - 134.

38 Dziennik Ustaw RP (further: Dz. U.) 1936.88.613. Basic information about the event can be found in A. Uljasz, Kościół Ewangelicko – Augsburski w Rzeczypospolitej wobec zajęcia przez Polskę Zaolzia w październiku 1938 r. (in the light of the weekly „Ewangelicki Poseł Cieszyński"), „Śląski Kwartalnik Historyczny Sobótka" 2011, No 3, p. 89 – 101.

39 This was mentioned in §2, p. 3 of the Fundamental Internal Law of the ECACP, Dz. U. RP 1936.94.659. Por. E. Pałka, Śląski Kościół Ewangelicki, p. 186 – 187. The author is wrong, however, when she writes that "The liquidation of the Zaolzie seniors was to take place - in accordance with the president's decree and the decision of the Consistory - only after the elections to the Silesian diocese, and these were not carried out." The decree of the President of the Republic of Poland of November 19, 1938, did not deal directly with the matters of KE-A, and the legislative act of November 25, 1936 of this

These legal flaws allowed, inter alia, in the post-war period, when *Záolží* was once again within the borders of Czechoslovakia, to defend the independence of the Augsburg Evangelical Church in Eastern Silesia. *Slezská národni rada* (*Silesian National Council*) on May 18, 1945 issued an ordinance which: deprived the former clergy of the Augsburg Evangelical Church in Eastern Silesia their offices, its administrator was appointed by Fr. Alexander Winkler from the Czech Brethren Evangelical Church and it was the religious association that she donated to all churches, presbyteries and land. Legal, historical and political polemics as well as negotiations with new church leaders and state authorities continued until 1948. During these polemics, Poles emphasized that de jure the Augsburg Evangelical Church in Eastern Silesia had never ceased to exist. All this allowed, after the communist coup in Czechoslovakia, to issue a decision to the Ministry of Education and Education, which stated that the legal status of the Augsburg Evangelical Church in Eastern Silesia continued unchanged in the form in which it was established in 1923 by the state authorities[40].

3. The Evangelical Church of the Augsburg and Helvetic Confessions in Małopolska

3.1 Former Lviv Superintendency in the new state

In Austro-Hungarian times, the Lviv Superintendency of the Augsburg Confession of Evangelical Church consisted of three seniors, and the Lviv Superintendency of the Evangelical Church of Helvetic Confession only from one seniors of three parishes[41]. In Poland, there were finally: part of the areas of the former Moravian-Silesian Superintendency, i.e. the Silesian Seniorate, and almost the entire Lviv superintendency with the Western, Central and a smaller eastern part, which was divided between Poland and Romania, and the Superintendency - the Lviv-Helvetic Seniorate[42].

3.2 West Ukrainian People's Republic

It cannot be denied, however, that the actual position of the ECAHC as well as the actions of its authorities differed from the provisions of the law, even taking an amendment to the changed political conditions. At the same time, the attitude of the Polish authorities towards the German Evangelicals from Eastern Galicia was probably influenced by their attitude during the Polish-Ukrainian war of 1918/19. On January 13-14, 1919 in Stanisławów, the German Evangelicals organized the *Kirchliche Versamlung* with the participation of 8 pastors, 22 teachers and 50 parish representatives in the area of the West Ukrainian People's Republic proclaimed by the Ukrainians. The attendees were chaired by the local parish priest, Teodor Zöckler, who returned to Galicia at the end of 1918. Two documents relating to the external and internal situation of the Church were adopted there. Relations with the new Ukrainian state were to be based on the principle of "*a free Church in a free state*", an internal organization based on *the Verfassung der evangelischen Kirche* of 1891, excluding the provisions on the

religious association directly concerning this religious association was one of 143 acts, decrees and regulations, the binding force of which extended to the lands of Zaolzie .

40 E Pałka, Śląski Kościół Ewangelicki, p. 190 – 208, chapter IV. 2 Okres walki o przetrwanie Kościoła augsburskiego (The period of struggle for the survival of the Augsburg Church) (1939 – 1948) and J. Szymeczek, Zápas polských evangelíků, p. 222 - 230.

41 RGBl. 1866 Jahr, V Stück, Nr. 15.

42 E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich II Rzeczypospolitej, Toruń 1999, p. 122 – 123.

power of the state administration in church matters[43]. All churches located in the territory of the Western Ukrainian state were to form one superintendency (without the seniority level). The powers of the former Departments: Super-Indigenous and Senior were to be entrusted to a substitute body, the so-called "*Kirchlichen Verwaltungsausschuß*" based in Stanisławów. It would be composed of the temporarily elected acting superintendent, curator and teacher representative. This temporary superintendent would be the only representative of the German Evangelical community in the West Ukrainian People's Republic to the Supreme Church Council in Vienna[44]. Synod resolutions and other documentation were sent to the West Ukrainian government and Vienna. According to O. Wagner, the Supreme Church Council in Vienna accepted these plans with great caution, not wanting them to become a pretext for justifying illegal, according to Vienna, attempts to subordinate the Silesian seniorate to the consistory in Warsaw (as mentioned above)[45]. Returning to the Polish authorities' assessment of the attitudes of German Evangelicals, political declarations of loyalty to the newly established West Ukrainian republic made at the meetings of the so-called *Vollzugsausschuß des Deutschen Volksrates in der Westukrainischen Republik,* by T. Zöckler could not go unnoticed[46].

3. 3 Małopolska

Another attempt at self-organization of their religious life was made by the Evangelicals less than a year later, under Polish rule. On December 12-13, 1919, a congress of delegates from Małopolska congregations of the ECAHC was held in Lviv. It was attended by clergymen, teachers of evangelical schools and lay delegates of all churches of the former Lviv Superintendency, both of one and the other denomination. The meeting was again chaired by pastor Teodor Zöckler, who replaced the sick superintendent, Pastor H. Fritsche from Biała.

As it is easy to see, this congress took place in a form that had no support in *the Verfassung der evengelische Kirche from* 1891 - the gathered themselves were aware of it, describing their meeting as *Vesammlung der evangelischen Gemeinden Galiziens and the people who came there as die Vertreter der evangelischen Gemeinden Galiziens*[47]. Considering all the circumstances, we must recognize, not without reason, that the congress in the capital of Eastern Lesser Poland was simply a constitutional synod of the congregations of the former ECAHC from the former Kingdom of Galicia and Lodomeria - the crown country of the defunct Austrian

43 O. Wagner, Der Protestantismus Galiziens und der Bukowina in der Zeit des politischen Umbruchs 1918/19, "Die Zeitschrift für Ostforschung" 1993, Bd 32, No 2, p. 261-263.

44 O. Wagner, Der Protestantismus Galiziens, p. 263.

45 O. Wagner, Der Protestantismus Galiziens, p. 268.

46 "Die politische Auffassung, welche die Polen haben, kann aber für die Deutschen nicht verpflichtend sein...", O. Wagner, Protestantismus,p. 257. The article by O. Wagner is a description of the events from the German point of view, obviously with great sympathy for the Ukrainian cause. The author emphasizes the loyalty and cooperation of the German (and Jewish) minority with the authorities of the West Ukrainian People's Republic - in contrast to the Polish minority, which, according to him, did not use the opportunities created by Ukrainians offering "personale Autonomie und Organisationsfreiheit". Also the assessment of the position of German Evangelicals in the West Ukrainian state is much higher than what happened under Polish rule: "Mit Schärfe wandte sich die polnische Nationalitätenpolitik gegen die ukrainische Mehrheit, aber auch gegen die jüdische und deutsche Minderheit in Ostgerraten, und nationale Unzuverlässigkeit vorwarf und als Schuld anrechnete ", ibidem, p. 271.

47 E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, p. 124, footnotes 5 and 6. These terms come from the resolution adopted by the congress.

Empire, which was to determine whether the churches want to continue to function as one religious union, and if agreed, on what principles this functioning is to be based.[48]

At this congress, the project of a temporary church organization for Małopolska was unanimously accepted, also with the participation of Poles, delegates of the Krakow parish (the two existing Lviv Superintendencies, Augsburg and Helvetic, were merged into one), the Superintendency Department of the Supreme Church Council and the Department of Synodal and election to a new organ of church authority - the Church Department[49]. All these decisions, in order to become law, required the approval of the relevant state authorities, including the appropriate ministry and the Head of State.

The memorial on the further legal existence and willingness to act independently as a Church, on behalf of the Evangelicals of Galicia, was submitted to the Marshal of the Sejm and the Polish government by Pastor T. Zöckler only on December 9, 1920. It declared the intention to "*consistently carry out ecclesiastical autonomy in this direction, that not only the lower but also the higher church authorities would come from the elections of church congregations*"[50]. As it is easy to see, it was a declaration of a change in the law in force and protection against possible, in accordance with t*he Verfassung der evangelischen Kirche of* 1891, influence of secular authorities on the appointment of church positions. According to numerous authors who follow the account of T. Zöckler himself, "*On January 20, 1921, the superintendent of the Church (...) was informed of the decision of W. Witos' cabinet to recognize the independence of the Augsburg-Helwetic Church"*[51]. It was to be done by the secretary of state, prof. Józef Buzek, a Protestant himself from Cieszyn Silesia, an excellent lawyer, thoroughly familiar with the provisions of Austrian legislation[52]. However, there is no substantive documentary evidence to support this claim. It is difficult to imagine an oral form of legal recognition of any religious association.

The lack of legal regulations resulted in the outbreak of a fading national conflict between Polish and German believers. In practice, it was reduced to a dispute between supporters of maintaining ecclesiastical independence and those who wanted to join the ECACP. For this reason, on April 10, 1921, a general convention of Poles - Evangelicals from Małopolska was organized in Krakow, who were to represent Polish members of the parish of the ECAHC from

48 E. Kneifel, who was kind to all actions of German Evangelicals in Poland, describes this congress as a synod, E. Kneifel, Bischof Dr. Julius Bursche, Sein Leben und seine Tätigkeit 1862 - 1942, Vierkirchen, p. 67

49 See:. K. Kubisz, Szkic dziejów trzeciego zboru krakowskiego, p. 76, E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, p. 124, E. Kneifel, Bischof Dr. Julius Bursche, p. 67. Therefore, solutions similar to those from January 1919 from Stanisławów were adopted.

50 Fragment of the declaration: E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, s. 124.

51 See K. Krasowski, Związki wyznaniowe w II Rzeczypospolitej. Studium historycznoprawne, Warszawa - Poznań 1988, p. 265. E. Alabrudzińska, Protestantyzm w Polsce w latach 1918 - 1939, Toruń 2004, p. 125, formulates it as follows: "In January 1921 the government of W. Witos decided to accept the memorial and to recognize the Evangelical Church and the Helvetic religion as independent". E. Kneifel, Bischof Dr. Julius Bursche, op.cit., p. 67 writes: „An die sich dann anschließenden Warschauer Verhandlungen erklärte am 20. Januar 1921 die Regierung durch Staatssekretär Dr. Buzek dem Leiter der galizischen Delegation, Dr. Zöckler, sie habe die Denkschrift zur Kenntnis genommen und werde die Selbständigkeit der Galizischen Evang. Kirsche A.U.B.H. anerkennen“, Everyone is following the text itself T. Zöklera, Die Evangelische Kirche Augsburgischen und Helvetischen Bekenntnisses in Polen, "Ekklesia" Bd. 5, Leipzig, p. 156.

52 J. Buzek was a professor of administrative law, dean of the Faculty of Law in Lviv, before the First World War. Deputy to the State Council in Vienna, in the Republic of Poland, a member of the Legislative Sejm, a member of the Constitutional Committee, co-author of one of the draft of the Constitution, PSB, t. 3, s. 155 – 156; J. Szturc, Ewangelicy w Polsce, s. 44.

Krakow, Lviv, Nowy Sącz, Przemyśl[53]. The presence of J. Bursche, the general superintendent of the ECACP, indicated the actual purpose of this congress. The participants selected the Church Department of the Evangelical Poles of Lesser Poland, dominated by members of the Presbytery of the Krakow parish, the only one in which Poles constituted the majority of the congregation[54].

Legal grounds, somewhat defective, enabling the transition of the Krakow parish to the jurisdiction of the ECACP appeared only when the Sejm adopted the Act of April 27, 1922 amending the provisions of the Act for the Evangelical Church of the Augsburg Confession in the Kingdom of Poland of February 20, 1849. with the amended § 155, "*All Evangelical-Augsburg parishes in the Republic of Poland will be called to participate in the Constitutional Synod*"[55]. The law entered into force on May 5, 1922 and on May 21, at the Parish Assembly of the Krakow parish, by 66 votes to 23 with 3 abstentions, it adopted a resolution to surrender to the supremacy of the ECACP and take part in the Constitutional Synod. It was completely against the regulations in force. Pursuant to § 64 of *the Verfassung der evengelische Kirche* of 1891, parishes with more than 500 people, including the Kraków parish, had the so-called Congregation substitution should make the decision instead of the parish assembly. At first glance, this seems to be an undemocratic procedure, but let us remember that for the vote to be valid, all eligible voters had to be notified, more than half of the members entitled to vote had gathered, possibly 1/3 of the members eligible to vote on the second date (§ 9 and 62, p. 2). On May 21, 1921, a total of 92 people voted out of over 1,300 entitled[56].

The German minority remained in the former church structures, i.e. in the ECAHC, wanting to continue the activity of the old parish, although in rented buildings. However, the administrative authorities treated it as a new organizational unit, and for the creation of the parish in accordance with the law, the final consent had to be given by the Supreme Church Council in agreement with the state administrative authorities.[57].

On September 4, 1923, the Supreme Church Council in Vienna decided to suspend official activities towards the parish in the Republic of Poland and "*transferred its powers to the Małopolska Superintendency Department and to the Superintendent Office as the executive authority.*"[58]. Again, contrary to the claims of many historians and lawyers, to be denied, and this decision was endorsed by the Ministry of Religious Denominations and Public Education[59]. As J. Sawicki already noted, this would mean that "*the legal order in the sovereign territory of*

53 K. Kubisz, Szkic dziejów trzeciego zboru krakowskiego, [in:] 450 lat reformacji pod Wawelem, ed. B. Tondera, Kraków 2008, p. 78 – 79; E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, p. 167 – 168.

54 J. Kłaczkow, Kościół Ewangelicko - Augsburski, p. 23.

55 Dz. U. RP 1922.32.257

56 K. Kubisz, Szkic dziejów trzeciego zboru krakowskiego, p. 79. Por. E. Kneifel, Bischof Dr. Julius Bursche, p. 69 – 70. The reasons for questioning the legality of this decision became redundant in 1936, when the decree of the President of the Republic of Poland of November 25 on the attitude of the State to the KE-A finally confirmed the facts.

57 E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, p. 125 and 167 – 168 i 171 and E. Kneifel, Bischof Dr. Julius Bursche. p. 66 -71; K. Kubisz, Szkic dziejów trzeciego zboru krakowskiego, p. 79 – 82; W. Gastpary, Położenie prawne protestantyzmu, Part III, "Rocznik teologiczny ChAT" 1964, Vol. 6, p. 164 – 165.

58 E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, p. 125.

59 W. Gastpary, Położenie prawne protestantyzmu, Part III, p. 165; K. Krasowski, Związki wyznaniowe w II Rzeczypospolitej, p. 265; E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, p. 125.

the Polish State, expressed in laws and other legal norms, could be changed as a result of acts or orders of foreign religious or secular authorities"[60].

Thanks to the research of E. Alabrudzińska, we know that the legal opinions issued by the Ministry of Religious Denominations and Public Education, voivodes of: Krakow, Lviv, Stanisławów, or branches of the General Prosecutor's Office of the Republic of Poland, although divergent in many cases, agreed that the powers of the Supreme The Church Councils did not pass to the Małopolska Superintendentura. The Legal Department of MWRiOP at the same time stated that granting them "*would not be in line with the government's religious policy*"[61].

Therefore, the subsequent decisions of the Superintendent Assembly of September 10 in Czermin Kolonia (Hohenbach), taken precisely in this regard, were binding only in intra-church relations. Also the function of superintendent by T. Zöckler after the death in 1924 of the former diocese head of Hermann Fritsche[62], could be easily questioned by the state authorities. T. Zöckler took office after H. Fritsch as his deputy in accordance with § 106 of *the Verfassung der evengelische Kirche* of 1891, but his main task after the death of the current superior was to convene a new Superintendent Assembly, which would make a new election. Several difficulties emerged, each of them would allow the Polish authorities to intervene in accordance with the law in the affairs of the Church. First of all, because for the election to take office, "*die Allerhöchste Bestätigung*" was required, that is, in Poland, the approval of the President of the Republic of Poland (§ 105, p. 1).

T. Zöckler was elected Deputy Superintendent in 1912. The consent of the minister was required for this function, and he received this from the Austrian Minister of Religious Affairs and Enlightenment. The term of office of the Deputy, as we remember, lasted 6 years, the Superintendent Assembly should therefore take place in 1918. Taking into account the extraordinary circumstances caused by the war, it should finally take place in 1923. However, then each newly elected Deputy Superintendent of H. Fritsche would need the approval of the Minister of Religious Denominations and Public Enlightenment, and that was probably what they wanted to avoid[63].

Neither the approval of the President of the Republic of Poland in the office of the Superintendent, nor the approval of his Deputy T. Zöckler. In 1932, the Ministry of Religious Denominations and Public Education considered the possibility of drawing legal consequences and leading to the holding of elections, but eventually this concept was abandoned. Instead, it was decided to take the opportunity to incorporate the Augsburg parishes of the ECAHC into the ECACP while regulating the legal position of the latter. The disclosure of these plans by the German press triggered a storm and the plans were abandoned. The reason - fear of tightening

60 J. Sawicki, Studia nad położeniem prawnym mniejszości religijnych w Państwie Polskim, Warszawa 1937, p. 323.

61 All quotes from E. Alabrudzińska, Kościoły ewangelickie na kresach wschodnich, p. 178 – 179..

62 W. Gastpary, Położenie prawne protestantyzmu, Part III, p. 165.

63 Also, the inclusion of the Lviv seniorate of the Helvetic denomination and the actual liquidation of the Lviv superintendency of the Helvetic denomination was, from the point of view of the provisions of the Verfassung der evengelische Kirche of 1819 quoted by us earlier, carried out without the required participation and approval of the state authorities.

relations with Protestant churches, or rather German Protestants, because the idea itself was consulted with the general superintendent of the ECACP, J. Bursche[64].

Summary

The legal position of the ECAHC in the Republic of Poland was not fully settled. The church headed by T. Zöckler was treated and considered a legally recognized religious association, because it was founded and operated on the basis of the *Verfassung der evengelische Kirche* from 1891. ecclesiastical juridical persons, albeit with goals and tasks other than parishes. The senior citizens also retained their legal personality. As for the Superintendency, taking into account the fact of the actual merger of two separate Lviv Superintendencies - the Augsburg faith and the Helvetic faith into one without the required participation and consent of the state administration, failure to conduct elections to its legal organs in the manner prescribed by the provisions of the Act should be formulated in the formulation of an opinion, exercise some caution as to whether it has legal personality[65].

The Polish state did not decide to unilaterally regulate the legal position of this religious association. An attempt to introduce appropriate regulations through a "kitchen door" when defining the status of the ECACP failed. The Superintendency Department with T. Zöckler was treated as a temporary administrative authority of the Church, and the convening of Superitentency Assemblies, such as the aforementioned Congregation in Czermin Kolonia (Hohenbach) in 1925, was simply tolerated.

It was all the easier because the ECAHC was not a large religious association. Before the outbreak of World War II, the Republic of Poland de facto had 24 parishes with a total of 70 branches and 24 preaching stations. Since it was a missionary Church, it experienced some increase in numbers. The number of believers increased by several thousand people of Ukrainian nationality. With this mission, the Church even went beyond the borders of the former Austrian partition, because it also led it in Volhynia. According to church data, about 34-35 thousand believers counted from 1 - 1.5 thousand. Poles, 3 thousand Ukrainians and the rest of the Germans[66].

This church benefited from considerable financial aid, especially from Germany, including the state funds of the Third Reich[67]. A positive opinion on the entirety of the activities of this German Church, rooted in the literature on the subject, is based on the fact that the scale of problems faced by the authorities of the Republic of Poland assessed as detrimental to Polish national or state interests was incomparably low with the problems caused by the United

64 K. Krasowski, Związki wyznaniowe w II Rzeczypospolitej, p. 271 claims that the idea was born precisely between 1931 and 1933.

65 S. Grelewski, Wyznania protestanckie i sekty religijne w Polsce współczesnej. Zarys stanu prawnego wyznań religijnych w Polsce, Sandomierz 1935, p. 87, thinks otherwise, and he is basically followed by all the authors I mention, except maybe J. Sawicki, Studia nad położeniem prawnym, p. 322 - 323, who did not articulate his doubts emphatically.

66 K. Krasowski, Związki wyznaniowe w II Rzeczypospolitej, s. 266 – 270; E. Alabrudzińska, Kościoły ewangelickie na kresach, s. 149 – 155.

67 E. Alabrudzińska, Protestantyzm w Polsce, p. 138.

Evangelical Church in Poland tensions caused by the United Evangelical Church in Polish Upper Silesia[68].

This church basically ceased to exist at the turn of 1939/40. The end of his existence was brought by the agreement of A. Hitler and J. Stalin, the joint attack on Poland and the subsequent fourth partition of the Republic. T. Zöckler moved from Stanisławów to "*Reichsgau Wartheland*", where he organized and advocated for the incorporation of the followers of the ECAHC into the parish of the Evangelical Church of the old-Prussian Union[69].

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Legislation

Kaiserliches Patent von 8 April 1861, womit die Angelegenheiten der evangelischen Kirche augsburgischen und helvetischen Bekenntnisses, insbesondere die staatsrechtlichen Beziehungen (…) geregelt werden, RGBl. 1861 Jahr, XVIII (41).
Verordnung des Staatsministers vom 9. April 1861, womit die innere Verfassung der evangelischen Kirche beider Bekenntnisse (...) provisorisch geregelt wird, RGBl. 1861, XVIII(42).
Verfassung der evangelischen Kirche Augsburgischen und Helvetischen Bekenntnisses, RGBl. 1866, V(15).
9. Gesetz vom 20. Mai 1874, betreffend die gesetzliche Anerkennung von Religionsgesellschaften, RGBl. 1874, XXI(68).
5. Verfassung der evangelischen Kirche Augsburgischen und Helvetischen Bekenntnisses in den im Reichsrathe vertretenen Königreichen und Ländern, RGBl. 1892, II(4).
Vyhláška, kterou se vyhlašují "Základní a přechodná ustanovení pro českobratrskou církev evenglickou v čechách, na Moravě a we Slezsku, 625/1919 Sb.
Vyhláška ministra školství a národni osvěty ze dne 15. září 1920 o uznání církve československé, 542/1920 Sb.
Vyhláška o novém církevním zřízení českobratrské církve evangelické v Ćechách na Moravě a ve Slezsku z 8.II.1922, 64/1922 Sb.
Vyhláška ministerstva školství a národní osvěty ze dne 13. července 1923 o Základních a přechodných ustanoveních Augšburkě církve evangelické ve východním Slezsku v Československu, 165/1923 Sb.

68 The only exception we know is publication S. Turowskiego, Kościół Ewangelicko – Unijny w Polsce 1920 - 1939, Bydgoszcz 1990. There is an extremely sharp assessment by T. Zöckler, p. 20 – 21 i 200. Although praised for a very large source base and valuable factual information, this work was met with critical comments from reviewers who accused of its one-sided interpretation and too extreme assessments, see Z. Zieliński, „Przegląd Zachodni" 1992, Vol. 48, No 2, p. 243-246; T. Stegner, „Przegląd Historyczny" 1992, Vol. 83, No. 1 p. 191-194; E. Alabrudzińska, „Zapiski Historyczne" 1995, Vol. 60, No. 4, p. 163-165. See also E. Alabrudzińska, Loyalitätsprobleme von Protestanten in den Ostgebieten Polens, "Nowa Polityka Wschodnia" 2013, No 2 (5), p. 189 - 209. t should be noted, however, that the opinions expressed by Polish Evangelicals against German co-religionists from the same Church at the convention in Krakow in April 1921 were equally strong, although for obvious reasons devoid of threads from the period of the Nazi occupation. He indignantly quotes them in his German translation, describing them as "Eine unerhörte Verleumdung! - that is, an unheard of slander", E. Kneifel, Bischof Dr. Julius Bursche, p. 67 – 68, We, in turn, do not agree with E. Kenifel's assessment.

69 B. Krebs, Państwo, Naród, Kościół, p. 297.

Vyhláška o novém církevním zřízení Německé evangelické církve v Čechách, na Moravě a ve Slezsku z 7.VIII. 1924 r., 209/1924 Sb.
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Constitutional sources of law in the Russian Federation - on the example of environmental protection acts

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Abstract

The constitutional catalog of sources of law, a clear and unquestionable division of acts into universally binding and internal ones, is, from the perspective of European democracies, of fundamental importance for the implementation of the principles of the rule of law, legalism and the rule of law. The essence of any democratic legislation is to base its functioning on the law established by the bodies appointed for this purpose, binding its addressees and enforced by public authorities, also with the use of coercive measures.

The purpose of this article is to outline the constitutional system of the sources of law of the Russian Federation and to illustrate it, as far as possible, with environmental protection acts. In particular, the subject of this work is to define the name of a given source, the authority competent to publish it, its function and place in the hierarchy, as well as promulgation rules. The key research problem is the distinction between the sources of universally binding law and the sources of internal law, as the provisions of the Constitution of the Russian Federation do not directly determine this. However, this issue is of fundamental importance from the point of view of the status of legal entities. Internal acts may be directed only to organizational units subordinate to the authority issuing these acts and may not directly regulate the sphere of rights and obligations, and constitute the basis for decisions towards citizens, legal persons or other entities.

Key words: Russian Federation, Constitution of the Russian Federation, federal law, decree, resolution, regulation, ordinance, rule of law, Constitution of the Republic of Poland, rule of law, environmental protection

1. Introduction. Basic concepts and principles

In Russian literature, the term source of law means "*the will of the state expressed in the form of legal norms*"[70]. In other words, it is the form by which the will of the state becomes the

[70] М.Ю. Спирин, *Соотношение истока права, источника права и формы права с позиции волевой* концепции правообразования, „Юридический Вестник Самарского Университета" 2018, nr 1, https://cyberleninka.ru/article/n/sootnoshenie-istoka-prava-istochnika-prava-i-formy-prava-s-pozitsii-volevoy-kontseptsii-pravoobrazovaniya, [24.08.2019].

binding legal norm[71]. However, unlike the Constitution of the Republic of Poland (KRP)[72], Constitution of the Russian Federation(KFR)[73] it does not contain a separate chapter on sources, and it does not use the concept in question at all (*istocznik prawa*). The catalog of sources and their hierarchy should therefore be reconstructed on the basis of the analysis of the provisions of the KFR and the views of the doctrine.

The purpose of this article is to outline the system of constitutional sources of law in the Russian Federation, illustrated by normative acts in the field of environmental protection. In particular, its subject is to determine the name of a given source, the body competent to publish it, its function and place in the hierarchy, and promulgation rules. The key research problem will be an attempt to distinguish between the sources of universally binding law and the sources of domestic law, as the provisions of the KFR do not directly determine this. However, this issue is of fundamental importance from the point of view of the rightful status of legal entities, as internal regulations cannot directly regulate the sphere of rights and obligations, and may not constitute the basis for decisions towards citizens, legal persons or other entities.

In the study presented below I analyze: the text of the KFR published by the Sejm Publishing House in 2000, also available on the website of the former Bureau of Studies and Expertise of the Chancellery of the Sejm RP[74], the original KRF text available on the Kremlin website (http://constitution.kremlin.ru/), federal laws, secondary and executive acts, including acts specifying the procedure for establishing and publishing sources of law, views of Russian and Polish doctrine. As a comparative model, however, I adopt the structure of the sources of law specified in the Constitution of the Republic of Poland.

The first article of the KFR proclaims the rule of law, stating that "*The Russian Federation - Russia is a democratic federal state of law with a republican form of government*". In the Polish literature on the subject, the rule of law means: "*the concept of a state in which the applicable law has a superior position in the political system, binds the rulers and determines the scope of their competences, and guarantees citizens a number of rights and freedoms. In a state governed by the rule of law, state bodies and institutions may act only to the extent specified by law, while citizens may do whatever is not prohibited by law".*[75] The system of the rule of law is built on the basis of the principles of: the sovereignty of the nation, the division and balance of powers, binding the activities of all organs of public authority to the legal order subordinated to the constitution, judicial control of the activities of public administration and subsidiarity.[76]

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[71] В.Анишина, В. Лютый, М. Марюшкин, *Обществознание*, Том 2, Москва 2009, https://books.google.pl/books?id=M_OFDwAAQBAJ&printsec=frontcover&hl=pl#v=onepage&q&f=false, [24.08.2019].

[72] The Constitution of the Republic of Poland of April 2, 1997, adopted by the National Assembly on April 2, 1997, adopted by the Nation in a constitutional referendum on May 25, 1997, signed by the President of the Republic of Poland on July 16, 1997 (Dziennik Ustaw [Dz.U.] z 1997, nr 78 poz. 483).

[73] Конституция Российской Федерации Принята всенародным голосованием 12 декабря 1993 г. http://constitution.kremlin.ru/ [24.08.2019].

[74] Konstytucja Federacji Rosyjskiej przyjęta w ogólnonarodowym referendum w dniu 12 grudnia 1993r., http://biurose.sejm.gov.pl/uzup/mid-112.pdf, *Konstytucja Rosji*, tłum. A. Kubik, Warszawa 2000.

[75] J. Zakrzewska, *Państwo prawa a nowa konstytucja,* [in:] Prawo w zmieniającym się społeczeństwie pod red Grażyny Skąpskiej, Toruń 1992, p. 325–334.

[76] A. Pakuła, *Od państwa policyjnego do państwa neopolicyjnego. Objawy polityzacji demokratycznego państwa prawnego*, [in:] Cywilizacja administracji publicznej Księga jubileuszowa z okazji 80-lecia urodzin prof. nadzw. UWr dra hab. Jana Jeżewskiego pod red. Jerzego Korczaka Wrocław 2018, p.381.

In Marxist doctrine, this principle was a priori rejected as an element of the capitalist system.[77] Contemporary Russian literature, on the other hand, derives from this principle the ideas of protecting dignity, freedom and human rights.[78], the supremacy of the act in the legal order, counteracting the dictatorship of the majority, despotism and the police state[79]. However, according to W. D. Zorkin, this principle is "*still waiting for its conceptual - doctrinal elaboration*"[80] by the Russian jurisprudence of the 21st century. In Russian science "*there is no consensus of views, even as to the basic features of the rule of law*"[81].

These difficulties, I believe, result from the tsarist and Soviet system traditions that determined significant inconsistencies with the Western model of the rule of law. I assume that the fundamental difference may result from the significant advantage of the executive in the political system of the Russian Federation, which leads to an imbalance in the principle of balancing the powers. An illustration of this fact is, inter alia, the lack of the expressis verbis obligation of the authorities to act not only on the basis of, but also within and within the limits of the law, and the lack of control of the activities of executive authorities in the course of administrative judiciary.

2. The authority of the Russian Constitution and federal law over regional law

The Russian constitution provides for the division of sources into federal and regional based on the federal structure of the state.[82] Federal law is valid for the entire territory of the country, and regional law only for a specific entity.[83] Federal law has supremacy over regional law. This is due to Art. 4 (2) of the KFR: "*The Constitution of the Russian Federation and federal laws have the highest binding force in the entire territory of the Russian Federation*". Federal law is directly applicable throughout the country, it is stipulated in Art. 76 (1): "*With respect to matters falling within the competence of the Russian Federation, federal constitutional laws and federal laws having direct effect throughout the territory of the Russian Federation shall apply*". Therefore, listed in Art. 76 sec. 1 types of normative acts are in force automatically upon publication, producing direct legal effects without any implementation of them into the system of federation entities.

Art. 15 of the KFR states that

„*1. The Constitution of the Russian Federation shall have the highest independent legal force and shall apply throughout the territory of the Russian Federation. Laws and other legal acts*

[77] В. Н., Кудрявцев Е. А Лукашева, *Социалистическое правовое государство: проблемы и суждения*, Москва 1989. p. 5-6. http://lawlibrary.ru/article1074651.html, [24.08.2019].

[78] М. Н.Марченко, *Правовое государство,* Энциклопедия юриста. 2005, https://dic.academic.ru/dic.nsf/enc_law/1732, [24.08.2019].

[79] В. Н. Хропанюк. *Правовое государство и его основные характеристики*, Теория государства и права под ред. В. Г. Стрекозова, Москва 2008, https://www.gumer.info/bibliotek_Buks/Pravo/Hrop/04.php, [24.08.2019].

[80] В. Д. Зорькин, *Конституционно-правовое развитие России*, М.: Норма, 2011. p. 52-53, https://www.twirpx.com/file/1560679/, [24.08.2019].

[81] *Ibidem.*

[82] Por. A. Bosiacki, H. Izdebski, *Konstytucjonizm rosyjski. Historia i współczesność*, Kraków 2013, p.298.

[83] Por. R. Tokarczyk, *Prawo amerykańskie*, Warszawa 2009, p. 26.

enacted in the Russian Federation should not contradict the Constitution of the Russian Federation.
2. Bodies of state authority, organs of local self-government, persons holding state functions, citizens and their organizations shall be bound by the Constitution of the Russian Federation and the laws.
3. Laws are officially published. Laws not published do not apply. Any normative legal acts concerning the rights, freedoms and obligations of a person and a citizen do not apply if they have not been officially announced to the public.
4. The generally recognized principles and norms of international law and international agreements concluded by the Russian Federation constitute an integral part of its legal system. If an international agreement concluded by the Russian Federation provides otherwise than provided for by law, the rules of the international agreement shall apply".
It follows from the above article, first, that in the hierarchy of sources, the highest position is occupied by the Constitution of the Russian Federation, to which all other legal acts should comply. Secondly, the constitution and statute (law) are directly binding, ie all mentioned in para. 2 Art. 15, the addressees are obliged to comply with them, provided that they have been officially announced and made public (Article 15 (3)).

3. Federal constitutional law

Pursuant to Art. 15 (1) of the KFR, the Act is the second, after the constitution, source of universally binding law. The Russian constitution mentions two types of laws, namely the federal constitutional law and the federal law. A federal constitutional law is passed by a qualified majority by the Federal Assembly and deals with issues of the highest national importance. Article 108 of the KFR states that:

"1. Federal constitutional laws are adopted on matters provided for by the Constitution of the Russian Federation.

2. A federal constitutional law is considered adopted if it has been approved by a majority of at least three-fourths of the total number of members of the Federation Council and at least two-thirds of the total number of deputies of the State Duma. The President of the Russian Federation shall sign the adopted federal constitutional law and order its promulgation within fourteen days".

The content of the Constitution of the Russian Federation determines the matter that should be regulated by a federal constitutional law. These matters include, in particular, the admission to the Russian Federation and the creation of a new entity (Article 65 (2), change of the status of the entity of the Russian Federation (Article 66 (5), the state flag, coat of arms and anthem of the Russian Federation (Article 70) , referendum (Article 84 (c), conditions for introducing martial law (Article 87 (3), conditions for introducing a state of emergency (Article 88) and others. The constitutional rank of the adopted regulations, the adopting entity - the bicameral Federal Assembly, and the requirement of a qualified majority of votes indicate the primacy of the federal constitutional law over the federal law. It is stated in Art. 76 sec. 3: "Federal laws may not conflict with a federal constitutional law." An example of a federal constitutional law on environmental protection is the Act of May 30, 2001. - state of emergency, also applicable in the event of natural disasters, natural disasters and technical failures.

4. Federal law

A federal law is an act enacted in matters falling within the competence of the Russian Federation and in matters falling within the joint competence of the Russian Federation and its constituent entities (Article 76 (1) and (2) of the KRF). The division of competences is specified in Articles 71 and 72 of the KFR, as well as federal agreements and other agreements on delimiting the scope of competences and powers (Article 11 (3) of the KRF). Using natural resources, protecting the natural environment and ensuring ecological safety; natural areas under special protection; protection of historical and cultural monuments is an example of common competences of the Russian Federation and its entities (Article 72 (e).

As already established, a federal law must comply with the constitution and federal constitutional laws. A federal law is passed by the State Duma, and its entry into force requires the approval of the Federation Council, the signature of the President of the Russian Federation and an announcement in an official promulgation body. The right of legislative initiative is vested in the President of the Russian Federation, the Federation Council, members of the Federation Council, Deputies of the State Duma, the Government of the Russian Federation, legislative (representative) bodies of constituent entities of the Russian Federation. The right of legislative initiative is also vested in the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation - in matters falling within their competence (Article 104 (1) of the KFR). It is worth noting here that, unlike the KRP (Article 118 (2)), the KRF lacks the institution of civic legislative initiative.

The Russian constitution does not express the principle of an exclusive statutory form for the regulation of the most important public matters, including human and civil rights and freedoms. With art. 15 sec. 3, second sentence of the KFR states that the rights, freedoms and obligations of a person and a citizen may be regulated not only by statute, but also by "*any normative legal acts*", as long as they are officially announced to the public. Art. 55 (3) KFR: "*Human and citizen rights and freedoms may be limited by federal law only to the extent necessary to protect the foundations of the constitutional system, decency, health, rights and legal interests of other persons, and to ensure the country's defense and security countries*". Thus, premises limiting human and civil rights and freedoms may be included in broadly understood federal law, which, apart from statutes, also includes numerous types of lower rank acts. These issues are regulated differently by Art. 31 sec. 3 of the Code of Civil Procedure, which states that "*restrictions on the exercise of constitutional freedoms and rights may be established only by statute and only if they are necessary in a democratic state for its safety or public order, or for the protection of the environment, health and public morality, or the freedoms and rights of others. These limitations shall not violate the essence of freedoms and rights*".

Pursuant to the federal law of June 14, 1994. - on the procedure for the publication and entry into force of federal constitutional laws, federal laws, acts of the Houses of the Federal Assembly, the role of promulgators in which federal constitutional laws and federal laws are published are the paper and electronic editions of Parliamentskaya Gazeta (https://www.pnp.ru) /), Collection of the legislation of the Russian Federation (www.szrf.ru), daily Rossiyskaya Gazeta (https://rg.ru/) and the official online legal information portal www.pravo.gov.ru[84]

[84] Федеральный закон – О порядке опубликования и вступления в силу федеральных конституционных законов, федеральных законов, актов палат Федерального Собрания от 14.06.1994 N 5-ФЗ, pravo.gov.ru/proxy/ips/?docbody=&nd=102030627, [24.08.2019].

Examples of the most important federal laws in environmental protection are: the Act of January 10, 2002 - on environmental protection[85], an act of a horizontal nature, containing general provisions relating to all components of the environment, introducing basic concepts, principles, rights and obligations of citizens, ecological requirements for economic activity and legal framework instruments. Then, the acts regulating individual matters, including, inter alia: the Act of March 14, 1995. - about particularly protected natural areas[86], Act of April 24, 1995 - on the animal world[87], Act of 24 July 2009 –About hunting and the conservation of hunting resources[88], Act of December 20, 2004 - on fisheries and the conservation of biological water resources[89], Act of 5 July 1996 - about state regulation of activities in the field of genetic engineering[90], Act of February 23, 1995 - about natural healing resources, healing and spa towns and resorts[91], Act of May 1, 1991 - on the protection of Lake Baikal[92], Act of November 30, 1995 - on the continental shelf of the Russian Federation[93], Act of November 23, 1995 – about ecological expertise[94], Act of May 4, 1999 - on the protection of atmospheric air[95], Act of February 21, 1992 - about the subsoil[96], Act of March 26, 1998 - about precious metals and precious stones[97] and a novelty in federal legislation, the Act of December 27, 2018. –About

[85] Федеральный закон от 10.01.2002 N 7-ФЗ – Об охране окружающей среды,

https://rg.ru/2002/01/12/oxranasredy-dok.html, [24.08.2019].

[86] Федеральный закон от 14.03. 1995 N 33-ФЗ – Об особо охраняемых природных территориях, pravo.gov.ru/proxy/ips/?docbody=&nd=102034651 , [24.08.2019].

[87]Федеральный закон от 24.04.1995 N 52-ФЗ – О животном мире, http://www.consultant.ru/document/cons_doc_LAW_6542/, [24.08.2019].

[88]Федеральный закон от 24.07. 2009 N 209-ФЗ – Об охоте и о сохранении охотничьих ресурсов и о внесении изменений в отдельные законодательные акты Российской Федерации, pravo.gov.ru/proxy/ips/?docbody=&nd=102131705, [24.08.2019].

[89]Федеральный закон от 20.12. 2004 N 166-ФЗ – О рыболовстве и сохранении водных биологических ресурсов, https://rg.ru/2004/12/23/rybolovstvo-dok.html, [24.08.2019].

[90] Федеральный закон от 5. 07. 1996 N 86-ФЗ – О государственном регулировании в области генно-инженерной деятельности, http://pravo.gov.ru/proxy/ips/?docbody=&nd=102042295, [24.08.2019].

[91] Федеральный закон от 23.02. 1995 N 26-ФЗ – О природных лечебных ресурсах, лечебно-оздоровительных местностях и курортах,

pravo.gov.ru/proxy/ips/?docbody=&nd=102034405, [24.08.2019].

[92]Федеральный закон от 1.11. 1999 N 94-ФЗ – Об охране озера Байкал,

www.kremlin.ru/acts/bank/13787, [24.08.2019].

[93] Федеральный закон от 30.11. 1995 N 187-ФЗ – О континентальном шельфе Российской Федерации http://base.garant.ru/10108686/#ixzz5UeEhrwGl, [24.08.2019].

[94] Федеральный закон от 23.11. 1995 N 174-ФЗ – Об экологической экспертизе,

pravo.gov.ru/proxy/ips/?docbody=&nd=102038321, [24.08.2019].

[95] Федеральный закон от 4.05. 1999 N 96-ФЗ – Об охране атмосферного воздуха,

www.kremlin.ru/acts/bank/13789, [24.08.2019].

[96]Федеральный закон от 21.02.1992 N 2395-1 – О недрах, pravo.gov.ru/proxy/ips/?docbody=&nd=102014778, [24.08.2019].

[97] Федеральный закон от 26.03.1998 N 41-ФЗ – О драгоценныхметаллах и драгоценных камнях. pravo.gov.ru/proxy/ips/?docbody=&nd=102052228&rdk, [24.08.2019].

the responsible treatment of animals[98]. Federal laws also include the codes of the Russian Federation: of Water of June 3, 2006.[99], of Land October 25, 2001.[100] and forestry of December 4, 2006[101].

5. International Agreement

The last source referred to in Art. 15 KFR is an international agreement. The Constitution recognizes the primacy of international treaties over a federal law: "If an international agreement concluded by the Russian Federation provides otherwise than provided for by law, the rules of the international agreement shall apply (Article 15.4, second sentence)." However, unlike the NPC, the Russian constitution does not distinguish between ratified and non-ratified agreements, which raises interpretation problems that require detailed analysis. Due to the complicated status of an international agreement in the legal order of the Russian Federation, I have devoted a separate article to this issue.[102] International agreements ratified by law are published in the Assembly of Legislation of the Russian Federation and on the portal www.pravo.gov.ru[103].

6. The decree and *rasporażenije* of the President of the Russian Federation

The next position in the hierarchy of sources is occupied by sub-statutory and executive acts enacted by the federal executive and legislative bodies listed in the constitution. Due to the presidential model of the political system, the highest position in this category is occupied by the decree of the President of the Russian Federation. Pursuant to Art. 90 KFR:

"*1. The President of the Russian Federation issues decrees and regulations.*
2. The decrees and orders of the President of the Russian Federation shall be binding on the entire territory of the Russian Federation.
3. The decrees and orders of the President of the Russian Federation shall not be in conflict with the Constitution of the Russian Federation and federal laws".

A decree is an act with the force of law issued not by parliament but by an executive branch.[104] The decree of the President of the Russian Federation (decrees) should be consistent with the Constitution of the Russian Federation and federal laws. In principle, this act does not require the countersignature of representative organs, with two exceptions stipulated in the constitution. Pursuant to Art. 102 (1) a and b of the KFR, The Federation Council approves the

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[98] Федеральный закон от 27.12.2018 N 498-ФЗ –Об ответственном обращении с животными и о внесении изменений в отдельные законодательные акты Российской Федерации,https://rg.ru/2018/12/29/fz-498-dok.html, [24.08.2019].

[99] Водный кодекс Российской Федерации от 03.06.2006 N 74-ФЗ, http://docs.cntd.ru/document/901982862

[100] Земельный кодекс Российской Федерации от 25.10.2001 N 136-ФЗ, http://pravo.gov.ru/proxy/ips/?docbody=&nd=102073184, [24.08.2019].

[101] Лесной кодекс Российской Федерации от 04.12.2006 N 200-ФЗ, https://rg.ru/2006/12/08/lesnoy-kodeks-dok.html, [24.08.2019].

[102] M. Micińska – Bojarek, Umowy *międzynarodowe Federacji Rosyjskiej w dziedzinie ochrony środowiska*, Przegląd, „Studia Iuridica Toruniensia" 2016, T X.

[103] *Справочная информация: "Условия и порядок вступления в силу международных договоров Российской Федерации. Порядок их опубликования"* http://www.consultant.ru/document/cons_doc_LAW_128984/d08ff38dfcb4fb400212529ddd35a510474e73f4/

[104] *Słownik języka polskiego,* https://sjp.pwn.pl/sjp/dekret;2554532.html, [24.08.2019].

decrees of the President of the Russian Federation - on the introduction of martial law and - on the introduction of a state of emergency. The decree of the President of the Russian Federation may contain abstract-general or concrete-individual norms. In the first case, we are dealing with the so-called a normative decree, undoubtedly constituting the source of universally binding law. For example, it will be the decree of August 2, 2010. - on the introduction of a state of emergency in seven entities of the Russian Federation due to fire safety[105]. An example of a decree containing specific and individual norms is the decree of June 21, 1996. – about granting state awards[106]. In the practice of holding his office, President V. Putin often uses this competence, spending on average from a few to a dozen or so decrees a month[107].

The second type of act issued by the president of Russia in the original wording of the KRF is called the *rasporażenije* while the above-mentioned parliamentary translation - the ordinance. In the Great Russian Legal Dictionary, the term *rasporażenije* is defined as one of the sub-statutory acts issued by an authority (the President of the RF, the Government of the Russian Federation) or a governing body within its competence, which is binding on the natural and legal persons to whom it was addressed.[108] It is a self-contained act issued for the quick and effective resolution of operative tasks.[109]

The KFR does not prejudge the nature of this act and does not state that it is an executive act to the act, but requires its compliance with the constitution and federal laws. It is therefore a form of exercising executive power. Presidential *rasporażenije*, just like the decree, may contain abstract and general norms (e.g. on the organization of a ceremonial reception on the 25th anniversary of the[110]) or specifically - individual (e.g. - awarding prizes[111]). A certain lack of consistency can be seen here, the awards of the President of the RF may be awarded both by a non-normative decree and by means of a rape. This proves, in my opinion, the lack of a principled approach to the issue of the sources of law, characteristic of European countries, including Poland. Matter of the *rasporażenije* relates to current, internal and organizational issues. On the basis of the above findings, I believe that the nature of the shock of the President of the Russian Federation corresponds more closely to the source of the internal law, i.e. to the ordinance. In the practice of the presidency of V. Putin, this act is issued less frequently than the decree, on average several times a month.

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[105]Указ Президента Российской Федерации от 2.08.2010 N 966 – Об объявлении чрезвычайной ситуации, связанной с обеспечением пожарной безопасности, в семи субъектах Российской Федерации, http://kremlin.ru/news/8558, [24.08.2019].

[106] Указ Президента Российской Федерации от 21.06.1996 N 971 –О награждении государственными наградами Российской Федерации, http://www.kremlin.ru/acts/bank/9643/print, [24.08.2019].

[107] http://kremlin.ru/acts/bank, [24.08.2019].

[108] *Большой юридический словарь*, М. А. Я. Сухарев, В. Е. Крутских, А.Я. Сухарева, Инфра, 2003.

[109]Чем отличается приказ от распоряжения?
https://nsovetnik.ru/drugoe/chem_otlichaetsya_prikaz_ot_rasporyazheniya/ , [24.08.2019],
http://www.grandars.ru/college/pravovedenie/rasporyazhenie.html, [24.08.2019].

[110]Распоряжение Президента Российской Федерации от 28.11.2018 N 356-рп – О проведении торжественного приема, посвященного празднованию 25-летия принятия Конституции Российской Федерации, http://publication.pravo.gov.ru/Document/View/0001201811280056, [24.08.2019].

[111]Распоряжение Президента Российской Федерации от 12.11.2018 N 335-рп – О поощрении, http://kremlin.ru/acts/bank/43723, [24.08.2019].

7. Resolution and rasporażenije of the Government of the Russian Federation

Another entity authorized by the constitution to publish sources is the Government of the Russian Federation. It consists of the prime minister, deputy prime ministers and federal ministers appointed pursuant to Art. 111 - 112 KFR. The organizational structure of the Government of the Russian Federation has specific characteristics. The decree on the structure of federal bodies of executive power, issued each time after winning presidential elections, places individual ministries and other bodies of executive power under the leadership of the president or prime minister.

The issues of the government's legislative powers are the subject of Art. 115 KFR:

"*1. On the basis of and implementing the Constitution of the Russian Federation, federal laws and normative decrees of the President of the Russian Federation - the Government of the Russian Federation issues resolutions and regulations and ensures their implementation.*

2. The resolutions and orders of the Government of the Russian Federation shall be binding in the Russian Federation.

3. Resolutions and orders of the Government of the Russian Federation, if they are inconsistent with the Constitution of the Russian Federation, federal laws and decrees of the President of the Russian Federation - may be canceled by the President of the Russian Federation."

The first paragraph of the commented article clearly states that the resolution and ordinance of the Government of the Russian Federation are executive acts in relation to the above-mentioned sources of universally binding law of a higher level. As in the case of regulating the president's legislative powers, the regulation is listed as the second most important legal act, which suggests its lower rank.

The resolution in the original wording of the constitution is called a *postanovlenije*. According to doctrinal definitions, it means: a legal act passed by a collective body for the purpose of solving the most important and principled problems facing given bodies and establishing permanent norms and rules of conduct regulating the rights and interests of natural and legal persons[112]; a government act, taken within the scope of powers vested in it for the purpose of implementing laws[113]. It follows from the above that a government resolution is an act issued for the purpose of implementing an act, constituting a source of universally binding law. An example of such an act in environmental protection is the resolution of the Government of the Russian Federation of June 29, 2011. - about the federal target program "Overcoming the effects of radiation accidents in the period up to 2015[114].

The resolution of the Council of Ministers is the equivalent of a resolution of the Russian government in the Polish system. However, let us pay attention at this point to Art. 92 paragraph 1. Of the Polish Constitution, which states that: "*Regulations are issued by the organs specified*

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[112] Словари и энциклопедии на Академике, https://official.academic.ru/18535/Постановление, [24.08.2019].

[113] Т. Н. Радько, *Теория государства и права в схемах и определениях*, Проспект, 2011.

https://normative_reference_dictionary.academic.ru/, [24.08.2019].

[114] Постановление Правительства РФ от 29.06.2011 N 523 – О федеральной целевой программе "Преодоление последствий радиационных аварий на период до 2015 года",

https://rg.ru/2011/07/19/radiac-avarii-site-dok.html, [24.08.2019].

in the Constitution, on the basis of a detailed authorization contained in an act and for the purpose of its implementation. The authorization should define the authority competent to issue the regulation and the scope of matters to be regulated as well as guidelines concerning the content of the act".

The main difference is that the resolutions adopted by the Government of the Russian Federation do not require "specific authorization contained in the act". The above-mentioned resolution of the Government of the Russian Federation of June 29, 2011. - about the federal target program "Overcoming the effects of radiation accidents in the period until 2015" does not refer to any specific provision of the act that would constitute an authorization to issue the act in question. In the first articles of the resolution, however, we can find a reference to the titles of several acts and other statutory acts, the subject of which is overcoming the effects of radiation emergencies, which apparently constitutes a general statutory authorization to issue an act. The analysis of the texts of federal laws shows that these acts do not contain detailed authorizations defining the authority competent to issue the implementing act and the framework content of the act. Thus, the resolutions of the Russian Government are adopted on the basis of general delegation within the framework of the legislative powers of the body. In principle, in order to implement a given act, the government may pass any number of resolutions, with the content it deems appropriate, subject to the requirement of compliance with higher-level acts and with the scope of its competence.

Rasparażienije of the Government of the Russian Federation, translated in the parliamentary edition of the KFR as a regulation, in my opinion is also rather an act of internal law, especially since there should be some normative difference between the function of a directly binding resolution and a racial paralysis. An example of such an act in the field of environmental protection is the electric shock of the Russian Government of November 17, 2008. - about the concept of long-term social and economic development in the period until 2020[115]. This act corresponds to the content of Polish resolutions of the Council of Ministers constituting planning and strategic documents, being sources of internal law[116].

It should be noted that the Constitution of the Republic of Poland, apart from the Council of Ministers, also authorizes other entities to issue ordinances, orders and resolutions, namely: the Prime Minister (148 item 3 of the KRP) ministers managing the government administration department (149 section 2 of the KRP) the chairman of the committee, referred to in Art. 147 paragraph. 4 (149 (3) of the KRP, the National Broadcasting Council (Article 213 (2)). At the same time, the KRP determines the internal nature of resolutions and orders: they must be issued on the basis of the law and may not constitute the basis for decisions against citizens, legal persons and other entities (93 (2) of the KRP). There are no equivalents of the above-mentioned provisions in the Russian constitution. As already mentioned, the KRF is silent about which of the sources mentioned in its text have internal charter and which are generally applicable. Moreover, apart from the President of the Russian Federation and the Government of the Russian Federation, the KFR does not authorize other organs of the executive power to issue normative acts. In particular, it is silent about acts issued by federal ministers.

[115] Распоряжение Правительства РФ от 17.11.2008 N 1662-р – О Концепции долгосрочного социально-экономического развития Российской Федерации на период до 2020 года, https://rg.ru/pril/62/64/23/2074_strategiia.pdf, [24.08.2019].

[116] Resolution No. 239 of the Council of Ministers of 13 December 2011 on the adoption of the National Spatial Development Concept 2030, (Monitor Polski [MP] 2012, poz.252).

Sources of law established by the President of the Russian Federation and the Government of the Russian Federation, 10 days after their signing, are published in *Rossijskoj Gazietie*, the Assembly of Legislation of the Russian Federation and the portal (www.pravo.gov.ru), the functioning of which is ensured by the Federal Security Service of the Russian Federation (!). The normative acts of the President of the Russian Federation shall enter into force throughout the territory of the Russian Federation seven days after their official publication. Other acts of the President of the Russian Federation, including those containing information constituting a state secret or confidential information, shall enter into force upon signing. This is provided for in the decree of May 23, 1996 - on the procedure for the publication and entry into force of the acts of the President of the Russian Federation, the Government of the Russian Federation and the normative legal acts of the federal bodies of executive power[117].

8. Resolutions of the Federal Assembly

The last source of federal law mentioned in the KFR are resolutions adopted by the chambers of the Russian parliament (Federal Assembly). The upper house is the Federation Council. It is composed of two representatives of each of the constituent entities of the Russian Federation, one from the representative and executive arm of the state authority of the entity (Article 95 (2) of the KFR).

The Federation Council adopts resolutions on exhaustively defined issues falling within its competence. These are: a) approving border changes between subjects of the Russian Federation; b) approval of the decree of the President of the Russian Federation on the introduction of martial law; c) approval of the decree of the President of the Russian Federation on the introduction of a state of emergency; d) resolving the issue of possible use of the Armed Forces of the Russian Federation outside the borders of the Russian Federation; e) ordering the election of the President of the Russian Federation; f) removal from office of the President of the Russian Federation; g) appointment of judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation; h) appointment and dismissal of the Public Prosecutor General of the Russian Federation; i) appointing and dismissing the deputy chairman of the Audit Chamber and half of its members (Article 102 (1).

The lower house of parliament is the State Duma. This body adopts resolutions on the following exhaustively specified issues: a) granting consent to the President of the Russian Federation for the appointment of the Prime Minister of the Government of the Russian Federation; b) giving a vote of confidence to the Government of the Russian Federation; c) appointment and dismissal of the President of the Central Bank of the Russian Federation; d) appointing and dismissing the Chairman of the Accounts Chamber and half of its members; e) appointing and dismissing the Plenipotentiary for Human Rights, f) announcing amnesty; g) making accusations against the President of the Russian Federation for removal from office (Article 103 (1).

9. Regional law

[117] Указ Президента РФ от 23.05.1996 N 763 – О порядке опубликования и вступления в силу актов Президента Российской Федерации, Правительства Российской Федерации и нормативных правовых актов федеральных органов исполнительной власти, http://pravo.gov.ru/proxy/ips//?docbody=&nd=102041458&rdk=1, [24.08.2019].

Regional law is the law enacted by subjects of the Russian Federation. Compared to all countries of the world with a federal system, Russia is distinguished by the "asymmetric" status of its constituent parts, as it includes as many as six types of entities: republic, autonomous oblast, autonomous district, country, oblast, city of federal importance. In total, the state consists of 85 entities, called regions, including: 22 republics, 9 countries, 46 oblasts, 3 cities of federal importance, 4 autonomous districts and one autonomous oblast.

The diverse status of the constituent parts of the Russian Federation results from national-territorial and territorial premises. Historical and geopolitical aspects are also important. The types of units distinguished according to national and territorial conditions are republic, autonomous region and autonomous district. From the ethnic point of view, in these units a significant percentage of the population declares a nationality other than Russian (Russkaya). The names of entities usually come from the names of nationalities, eg Buryat Republic, Jewish Autonomous Oblast, Evenki Autonomous Okrug.

In turn, ethnic Russians (Russkiye) dominate in territorial units (oblasts, countries and cities of federal importance). At the same time, oblasts and countries have basically the same systemic status. The difference in the names of these units comes from historical reasons. In tsarist Russia, the administrative units located along the borders of the empire were called countries. The names of oblasts and countries are usually derived from geographical names, eg Primorsky Krai, Arkhangelsk Oblast.

The Constitution of the Russian Federation guarantees the equality of rights of all constituent entities of the Russian Federation in mutual relations with federal state authorities (Article 5 (4) of the KFR). However, the legal status of the various entities varies considerably, de jure and de facto. Among the subjects of a federation, the republics have the most independent position. The constitution of the Russian Federation defines them as states. The republic has its own constitution and legislation. The constitution of the republic may define other official languages, treated on an equal footing with the Russian language. Only the republic has the right to its constitution. The country, province, city of federal significance, autonomous province and autonomous district have their own statute and legislation (Article 5 (2) of the KFR). In fact, the Republic of Chechnya is the most independent of all federation entities. Due to the geopolitical realities of the Caucasus, it has the most extensive force structures directly subordinated to the president of the republic[118].

More about the competences of the law-making entities of the federation is provided in Art. 76 section 4. KFR: "Outside the scope of activities of the Russian Federation and the joint scope of activities of the Russian Federation and the constituent entities of the Russian Federation, the republics, countries, oblasts, cities of federal importance, the autonomous oblast and autonomous districts constitute their own legal regulations, including the issuance of laws and other normative legal acts". This article therefore grants the federal regions the power to enact laws and other legal acts. On the other hand, their place in the hierarchy of sources is determined by par. 5 Art. 76 of the KFR, which states that the laws and other normative legal acts of the constituent entities of the Russian Federation may not contradict federal laws issued on matters “falling within the scope of the Russian Federation's activity” and on “joint actions of the Russian Federation and constituent entities of the Russian Federation”. In the event of a conflict, federal law prevails. It follows that according to the division of competences between

[118] *Armia Kadyrowa. Powołanie Gwardii Narodowej osłabi „czeczeńską niezależność”,*

https://www.defence24.pl/armia-kadyrowa-powolanie-gwardii-narodowej-oslabi-czeczenska-niezaleznosc, [24.08.2019].

the federation and its entities, as defined in Art. 71 and 72 of the KFR, federal laws relating to the exclusive competence of the federation and the joint competence of the federation and regions, take precedence over regional laws. However, in the event of a contradiction between a federal law and a normative legal act of a subject of the Russian Federation issued in matters falling "outside the scope of the activities of the Russian Federation and the joint scope of activities of the Russian Federation and subjects of the Russian Federation", the normative legal act of the subject of the Russian Federation shall apply (Article 76 (6) KFR).

Regional law is promulgated in accordance with the principles set out in the legislation of the entity in question. The standard is publication on the official websites of regional public authorities, for example in the Republic of Tatarstan it will be the website of the State Council of the Republic of Tatarstan (http://gossov.tatarstan.ru/zakon/). The regional law on environmental protection is, for example, the Law of the Republic of Ingushetia of December 5, 2017. – About the subsoil.[119]

10. Examination of the compliance of legal sources with the Constitution of the Russian Federation

The sources of law listed in the KFR are subject to constitutional examination. A ruling in this matter is issued by the Constitutional Court of the Russian Federation on the basis of requests from the President of the Russian Federation, the Federation Council, the State Duma, one fifth of the Federation Council members or deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation and the authorities legislative and executive branch of subjects of the Russian Federation. The application may concern the compliance testing of the following sources:

a) federal laws and normative acts of the President of the Russian Federation, the Federation Council, the State Duma and the Government of the Russian Federation;

b) the constitutions of the republics, statutes, as well as laws and other normative acts of the constituent entities of the Russian Federation, issued on matters falling within the scope of activities of the organs of state power of the Russian Federation and the joint scope of activity of organs of state power of the Russian Federation and state organs of the constituent entities of the Russian Federation;

c) agreements between public authorities of the Russian Federation and public authorities of constituent entities of the Russian Federation and agreements between public authorities of constituent entities of the Russian Federation;

d) international agreements of the Russian Federation prior to their entry into force (Article 125 (2) of the KFR).

Moreover, Art. 125 paragraph 4 KFR provides for the possibility of submitting a constitutional complaint in an individual case. "*The Constitutional Court of the Russian Federation, on the basis of complaints about violations of the constitutional rights and freedoms of citizens and requests of courts, examines, in accordance with the procedure provided for by federal law, the constitutionality of the law applied or applicable in a specific case*".

[119] Закон Республики Ингушетия от 05.12.2017 N 50-РЗ – О недрах, docs.cntd.ru/document/450231566, [24.08.2019].

Acts or their individual provisions considered as inconsistent with the constitution "lose their legal force" and international agreements inconsistent with the constitution "are not subject to implementation and shall not apply" (Article 125 (6) of the KFR).

On the other hand, the examination of compliance with the Act of acts of lower government is provided for in Art. 120 sec. 2 KFR. It shows that a common court which, in the course of examining a case, finds that an act issued by a state authority or another body is inconsistent with the Act, rules in accordance with the Act.

Summary and final conclusions

Summing up the findings, it should be stated that the system of legal sources in the Russian Federation differs significantly from the Polish model. The Constitution of the Russian Federation does not contain a separate chapter on sources, and does not use the term "source of law" at all. The constitutional, federal sources of universally binding law, apart from the constitution itself, include a federal constitutional law, a federal law, a presidential decree and a resolution of the Russian Government. The Russian constitution does not divide sources into universally binding and internal sources. However, the analysis of legal acts and doctrine views presented in this article shows that federal sources of internal law are reports (orders) of the President and reports (orders) of the Russian Government as well as resolutions of the Federal Assembly.

The rights and obligations of citizens may be regulated by acts of various rank. The Russian Constitution does not introduce the principle of exclusive statutory regulation for the most important public matters, including human and civil rights and obligations, and does not provide for a civic legislative initiative.

Contrary to the Polish model, executive acts to federal laws, i.e. resolutions of the Russian Government, are issued without the detailed authorization contained in the act. While observing the rigor of its competences and complying with the higher-level acts, the body itself decides on the number of required executive acts and their content. This allows the Russian executive to shape the desired legal status almost unlimitedly, which in turn strengthens the advantage of the executive in the state's political system.

In addition to the sources of federal law, the KFR grants law-making powers to the federal regions, which may adopt their own constitutions or statutes and regional laws.

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