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THE STATUTE (ACT) IN THE SYSTEM OF SOURCES OF DOMESTIC LAW

ABSTRACT

Purpose: *The aim of this article is to analyze the statute (Act of Parliament) as the primary normative act within the system of universally binding sources of law in the Republic of Poland, with particular emphasis on its constitutional position, functions, and relationship to other sources of law.*

Methods: *The study employs legal-dogmatic, historical, and descriptive methods. The analysis covers constitutional provisions, doctrinal views, the jurisprudence of the Constitutional Tribunal, and the evolution of delegated legislation within the Polish constitutional order.*

Results: *The statute is a fundamental primary normative act of a general and abstract nature, enacted by Parliament in accordance with the procedure specified in the Constitution. Polish constitutional law does not provide for organic statutes; ordinary statutes therefore have equal legal force and are subordinate to the Constitution and, in the event of an irreconcilable conflict, to international agreements ratified with prior consent granted by statute.*

Discussion: *The statute remains a foundation of the democratic state governed by the rule of law and performs a crucial guarantee function in the regulation of individual rights, freedoms, and duties. Its systemic position is reinforced by the absence of laws of intermediate legal force and by the marginal practical significance of delegated legislation.*

KEYWORDS: *statute, Constitution of the Republic of Poland, system of sources of law, legislative procedure, hierarchy of legal acts, delegated legislation.*

INTRODUCTION

The issue of the position of the statute in the Polish constitutional order is crucial for understanding the mechanisms of a democratic state governed by the rule of law, in which the statute constitutes the foundation for the protection of the rights and freedoms of the individual. The existing achievements of constitutional law scholarship, inter alia, by L. Garlicki, M. Chmaj, and M. Zubik, characterize in detail the features of the statute and its hierarchical position in the system of sources of law.

The aim of this article is to analyze the statute as a fundamental and primary normative act and to examine its relationship to other sources of law. The research hypothesis amounts to the assertion that the statute – despite the existence of delegated legislation and the priority, in the circumstances specified by Article 91(2) of the Constitution, of international agreements ratified with prior consent granted by statute – maintains its superior and unique

position in the system of sources of domestic law, constituting a guarantee of the legal security of citizens.

RESEARCH METHODS

The study employed the legal-dogmatic method, based on a detailed analysis of the provisions of the Constitution of the Republic of Poland of 1997, the achievements of constitutional law doctrine, and the case law of the Constitutional Tribunal. The historical method was also used, analyzing the evolution of the constitutional position of parliament and the institution of delegated legislation in Polish constitutional acts, starting from the period of the Second Republic of Poland (the March Constitution and the April Constitution), through the period of the Polish People's Republic, up to the regulations of the Small Constitution of 1992. Furthermore, the descriptive method made it possible to characterize the features of the statute as an act of a general and abstract nature and to present the stages of the contemporary legislative procedure.

THE STATUTE AS A NORMATIVE ACT

In legal doctrine, it is assumed that a statute is a normative act establishing general norms (which do not concern individually specified subjects) and abstract norms (which cannot contain decisions in individual cases), enacted by the Parliament under a special procedure (Chmaj, 2026, p. 52). The scope of matters that can be regulated exclusively by statutes is referred to as the so-called statutory matters. The Constitution does not define any boundaries in this regard; consequently, all areas may and should be regulated in the form of a statute, provided that a given scope of matters has not been excluded from statutory matters by the basic law itself. Such an exclusion concerns primarily matters relating to the Rules of Procedure of the Sejm and the Senate (Art. 112, Art. 124, Art. 61(4), and Art. 123(2) of the Constitution), as well as the Rules of Procedure of the National Assembly (Art. 114(2) of the Constitution). Furthermore, the constitutional legislator stipulated (Art. 25(4)) that relations between the Republic of Poland and the Catholic Church are determined by

an international agreement concluded with the Holy See and by statutes. In addition, there is the possibility of delegating the competence of organs of State authority in certain matters to an international organization or an international institution (Art. 90(1) of the Constitution; furthermore, any reference to article numbers without further specification relates to the Constitution.).

Polish constitutional law does not recognize any types of statutes other than the Constitution and ordinary statutes. It does not provide for organic laws, known, among others, in France, Spain, and Romania, whose legal force is situated between the Constitution and an ordinary statute. The legal force of all ordinary statutes is equal, and no specific authorization is required for their enactment, as they are the so-called primary source of law. The Constitution of 1997 itself contains several dozen references requiring particular matters to be regulated by statute. However, statutes enacted pursuant to such provisions do not possess any special legal force. A statute should contain statements of a strictly normative nature; consequently, any non-normative content may be included in its preamble.

Statutes are adopted by the Sejm. Only exceptionally, in two cases, are these acts enacted jointly by the Sejm and the Senate. These are the statute consenting to the ratification of an international treaty specified in Article 90(1), as indicated in Article 90(2), and the statute amending the Constitution, as specified in Article 235(4).

Statutes are enacted under a special procedure. This procedure has been generally outlined in the Constitution (Art. 118-123) and further specified in the Rules of Procedure of the Sejm and the Senate. In addition to this *ordinary* procedure, two separate procedures have been provided for, which constitute exceptions to the general rules. These are: the urgent procedure specified in Article 123, and the procedure governing work on the Budget Act outlined in Articles 221-225. Constitution provides for one more specific exception connected with the Budget Act. Namely, if this statute or an Interim Budget Act has not entered into force by the beginning of the budget year, the Council of Ministers conducts financial management on the basis of the submitted draft bill (Art. 219(4)).

The Constitution of 1952 specified that only the Sejm was the organ authorized to enact statutes (Art. 20(2)). A significant change in this regard was introduced by the Small Constitution of 1992. Although Article 13 stated that

the Sejm enacts statutes, Article 26 provided that Article 13, among others, applies accordingly to the Senate and senators (Garlicki, 1996, p. 1). These provisions were awkwardly constructed by the constitutional legislator, as they led to a simple conclusion that both chambers were vested with the right to enact statutes. On the other hand, Article 17(1) referred to a statute enacted by the Sejm, while Article 18(1) referred to a statute adopted by the Sejm and the Senate. Despite these ambiguities, legal doctrine did not deny the exclusivity of the Sejm in enacting statutes.

Article 120(1) of the Constitution of 1997 states that the Sejm *shall pass bills*, whereas pursuant to Article 121(1) *a bill passed by the Sejm shall be submitted to the Senate by the Marshal of the Sejm* (cf. Dobrowolski, 2014, pp. 185-188). However, these regulations do not mean that the exercise of legislative power by the Senate has been restricted to the narrow framework indicated in Article 121(2) (adoption without amendment, enactment of amendments, or enactment of a resolution to reject it in its entirety). The Senate also enacts statutes, but only certain ones explicitly specified in the Constitution. This stems from Article 90(1) and (2), which provide that a statute consenting to the ratification of an international treaty is enacted by the Sejm by a two-thirds majority of votes and by the Senate by a two-thirds majority of votes. The situation is similar with an amendment to the Constitution which, pursuant to Article 235(2), is effected by means of a statute enacted in identical wording by the Sejm and subsequently, within a period not exceeding 60 days, by the Senate (Jaskiernia, 1999, pp. 132-133; Grabowski, 2013, p. 33). Such a statute is no longer an ordinary statute, however, due to its difference in the hierarchy of normative acts (the supreme law of the Republic of Poland), its different subject matter, the different entities authorized to submit a draft, and its different enactment procedure.

It follows from the above that a statute is an act originating from the Parliament, and no other state organ may establish or enact statutes. This stems not only from the principle of the separation of powers, but also from the unitary, rather than federal, form of the state, as well as from the principle of a democratic state ruled by law. In the strict sense of the term, a statute is also a fundamental, universally binding normative act, enacted by a body vested with legislative power and containing exclusively legal norms expressed

in the form of provisions, which are, as a rule, general and abstract in nature, although there are quite numerous exceptions to this rule. (Malinowska, 2017, pp. 282-294; Zubik, 2014, pp. 12-22). The requirement that a statute be normative applies to its entire text, with the exception of its preamble.

L. Garlicki aptly identified five fundamental characteristics of a statute (Garlicki, 2001, p. 4; Garlicki, 2020, pp. 261-262). It is an act:

- a. of the parliament – other state organs may not, under normal state conditions, establish norms of such rank;
- b. normative (general);
- c. occupying the highest position in the system of sources of domestic law (no other normative act combines the characteristics of a special legal force and, in principle, unlimited subject-matter scope), yet it must be consistent with the Constitution;
- d. having, in principle, an unlimited subject-matter scope and, at the same time, constituting the primary means of regulating all matters subject to legal regulation, while all domestic universally binding legislation must be based on statutory provision;
- e. adopted in accordance with a special procedure, the essential framework of which is regulated by the Constitution.

THE PLACE OF A STATUTE IN THE SYSTEM OF SOURCES OF UNIVERSALLY BINDING LAW OF THE REPUBLIC OF POLAND

The very genesis of parliament, as a representation of the estates co-governing the state together with the monarch, is integrally connected with the exercise of the legislative function. In modern democracies, the enactment of norms in the form of a statute is reserved for the parliament. This means that other state organs may enact legal norms exclusively on the basis of an express authorization contained in the Constitution or resulting from express provisions contained in specific legislative acts (Chmaj, 2022).

The legislative function of the Sejm consists in regulating specific spheres of social life in the form of a statute. The statute itself may be characterized

as an act of the Sejm, enacted, however, with the participation of other state organs (the Senate and the President), coming into being under a special procedure (the legislative process), establishing norms of a general nature, and occupying, after the Constitution, the highest position in the system of sources of domestic law. Compared to the period of the Polish People's Republic, the legislative function of the Sejm has been restricted, as a second legislative organ, the Senate, was added to the Polish political system.

The sources of universally binding law are listed in Article 87 (1) and (2), but this catalogue is supplemented by Article 234, which establishes regulations with the force of a statute. Normative acts are listed in Article 87 in a non-accidental order. This provision, in conjunction with Article 8(1), determines the hierarchy of universally binding sources of law, outlining both the aspect of their subordination and their substantive relationship. In this hierarchy, a statute is subordinate to the Constitution. In addition, pursuant to Article 91(2), an international agreement ratified with prior consent granted by statute takes precedence over a statute if the two cannot be reconciled.

A statute, much like the Constitution, is a so-called primary source of law (Bałaban, 2021, p. 36). It does not require an explicit constitutional basis for its validity, and it can also function as an autonomous source of law regulating a given subject matter. However, it must be consistent with the Constitution.

A statute should contain statements of a strictly normative nature; hence, any matters not having such a character may be included in the preamble. It should also contain general norms (not concerning individually specified entities) and abstract ones (they cannot contain determinations in individual cases).

In principle, the constitutional legislator did not distinguish between individual statutes and their subject matter. The Constitution nevertheless contains several dozen references requiring the legislature to enact particular statutes. Such statutes do not have a legal character different from those enacted without implementing such a reference, that is, autonomous statutes. Three exceptions are, however, created by the Constitution itself, as has already been mentioned. The first is contained in Article 90(2) (a statute granting consent to the ratification of an international agreement), the second in Articles 222-224 (the Budget Act), while the third, indicated in Article 235(1)-(7), concerns an amendment to the Constitution. To this should be added Article 25(5), which provides

that relations between the Republic of Poland and churches and religious organizations other than the Catholic Church shall be determined by statutes, but statutes enacted on the basis of agreements concluded by the Council of Ministers with their appropriate representatives.

The Constitution provides for one more specific exception connected with the Budget Act. Namely, if this Act or the Interim Budget Act has not entered into force on the day on which the budget year begins, the Council of Ministers conducts financial management on the basis of the submitted bill (Art. 219(4)).

A certain distinction between statutes, but related to temporal aspects concerning their enactment or entry into force, also stems from the jurisprudence of the Constitutional Tribunal. For instance, in its judgment of 20 July 2011, delivered in plenary session, (case no. K 9/11; Skotnicki, 2012, pp. 117-128; Laskowska, 2012, pp. 128-143) the Tribunal indicated that the six-month period during which significant changes to electoral law should not be made before elections is a minimum period and that the legislature should, in each case, seek to extend it as much as possible. Furthermore, following two earlier judgments (case no. K 31/06; case no. Kp 3/09; Rulka, 2010, pp. 154-162) it emphasized that *the specific minimum minimorum should be the enactment of substantial amendments to electoral law at least six months before the next elections, understood not only as the act of voting itself, but also as the entirety of the activities covered by the so-called election calendar* (Banaszak, 2012, pp. 115-117). A similar rule of a directive nature applies to public levies assessed on an annual basis and indicates the necessity of a one-month adjustment period. This period stems from the requirement to publish normative acts amending tax regulations no later than one month before the commencement of the tax year to which they apply (case no. K 47/01; case no. K 48/04; case no. K 23/12).

The supremacy of a statute is to be associated with the subordination of all executive sources of law issued by government administration organs and other authorized organs. To this is added the principle of statutory exclusivity, that is, a formal general clause that sanctions the principle common in democratic states that the determination of the boundaries of constitutional freedoms and rights may only take place by statute (case no. P 11/98). The requirement of statutory regulation should be regarded as functionally connected with the principles of legal certainty and legal security, as well as with the protection

of trust in the State and the law created by it. Hence, the scope of restriction on constitutional freedoms and rights must not only be contained in a statute, but this is also bound by two additional provisos (Chmaj, 2019):

- a. the inadmissibility of referring a given subject matter to executive acts, acts of local law, or acts of public administration organs;
- b. a requirement of specificity, clarity, and precision addressed to the legislator, which will deprive authorities applying the law of excessive discretion when determining, in practice, the personal and substantive scope of restrictions on the constitutional rights and freedoms of the individual (case no. K 45/02; case no. K 33/00).

The implementing nature of regulations entails that they may be issued only by the authorities specified in the Constitution, only on the basis of a specific authorization contained in a statute, and only for the purpose of implementing that statute. The Constitution requires a statutory authorization to specify the authority competent to issue the regulation, the scope of matters entrusted for regulation, and the guidelines concerning the content of the regulation (Art. 92(1)). This is supplemented by the prohibition of subdelegation (Art. 92(2)).

STATUTE AND DELEGATED LEGISLATION

The most significant means of limiting the legislative function of parliament is the institution of delegated legislation. It consists in transferring a fairly broad scope of legislation, through the issuance of normative acts having the subject-matter scope of a statute, into the competence of bodies other than Parliament, which, in such a situation, retains only a limited possibility of control over such legislation (Eckhardt, 2009, p. 510; Skłodowski, 2015, p. 81).

In Poland, the institution of delegated legislation has so far consisted in the fact that, by virtue of a specific provision of the Constitution, a state body designated in the basic law acquires the right to issue legal acts (decrees with the force of a statute or regulations with the force of a statute) equal in legal force to a statute. The March Constitution in its original wording did not provide for delegated legislation. It was introduced by the so-called August Amendment of 2 August 1926, which provided for the possibility of the President issuing two

types of regulations with the force of a statute. The Constitution of 1935 placed acts with the force of a statute on an equal footing with statutes, encompassing them under the common name of *legislative acts*. The President could issue them in case of *state necessity* (Patyra, 2014, p. 256). Under the Constitution of the Polish People's Republic of 1952, these were decrees with the force of a statute; however, the constitutional amendment of 7 April 1989, while abolishing the Council of State, did not transfer all of its previous powers to the newly created institution of the President. Among these exceptions was also the right to issue decrees with the force of a statute (Mojak, 1994, pp. 73-74).

Delegated legislation was only restored by the Small Constitution, which introduced the possibility for the Council of Ministers to issue regulations with the force of a statute (Art. 23). In essence, these regulations were normative acts of the government, possessing the force of a statute, issued within the scope of statutory matters and on the basis of a parliamentary authorization. The Sejm granted such authorization upon a reasoned motion of the Council of Ministers in the form of a statute passed by an absolute majority of votes, which specified the subject matter of the regulation and the period of validity of the authorization. The Small Constitution established certain limitations on the subject-matter scope of the regulations (Art. 23(4)) and outlined the basic elements of the procedure for the adoption of the regulation (Art. 23(5)-(7)). Finally, it was provided that during the period of validity of the authorizing statute, only the Council of Ministers had the right to exercise legislative initiative within the scope of the authorization (Art. 23(3)). Regulations with the force of a statute could repeal, amend, or supplement the provisions of any statutes in force (naturally, within the permissible subject matters), and, once adopted, did not require any subsequent confirmation or approval and were to retain their binding force also after the expiry of the period for which the authorization had been granted (Sarnecki, 1993, pp. 3-10; Piotrowski, 2011, p. 266; Nowakowski, 2005, pp. 49-57).

Article 234 of the Constitution of 1997 provides for the possibility of the President issuing regulations with the force of a statute. They may be issued provided that a number of conditions are fulfilled. First and foremost, they may be issued only during martial law, when the Sejm is unable to convene for a session. The President's autonomy has also been restricted

by the requirement that the Council of Ministers submit a relevant motion. This is accompanied by a subject-matter limitation, because regulations having the force of statute may be issued only within the scope and limits specified in Article 228(3)-(5). It is also an important stipulation that these regulations are subject to approval by the Sejm at its next session.

Delegated legislation was not used in practice under either the Small Constitution of 1992 or the Constitution of 1997. Consequently, the legislative function of the Sejm has not been limited in this manner.

CONCLUSIONS

The statute remains the fundamental and primary normative act in the Polish legal system and occupies a key place in the structure of universally binding sources of law. Its special position results primarily from the fact that it may regulate all aspects that have not been expressly excluded by the Constitution, and no separate authorization is required for its enactment. As an act originating from Parliament, the statute is general and abstract in nature. Its enactment in a formalized constitutional procedure is one of the elements of a democratic state governed by the rule of law. The statute is subordinate to the Constitution and, under Article 91(2), gives way to an international agreement ratified with prior consent granted by statute when the two cannot be reconciled. This confirms its high rank in the hierarchy of domestic legal acts while accurately reflecting the constitutional rule governing conflicts with such agreements.

The position of the statute understood in this manner is consistent with the established body of constitutional law scholarship, which emphasizes its parliamentary origin, normative character, and fundamental role in regulating public matters. The guarantee function acquires particular significance in this context, especially in the area of the rights and freedoms of the individual, where the requirement of statutory regulation limits the risk of excessive discretion on the part of executive authorities. From this perspective, delegated legislation remains merely an exception to the principle of parliamentary lawmaking and not a solution undermining the fundamental position of the statute.

The issue of the position of the statute should be further analyzed primarily from the perspective of the quality of legislation and the degree of detail of statutory regulations. These elements determine not only the transparency of the legal system, but also the effectiveness of the guarantee function of the statute in relation to the rights and freedoms of the individual. Unclear or excessively general statutory provisions weaken the guarantee function of the statute because they make it more difficult for citizens to foresee the legal consequences of their own actions and increase the scope of discretion available to state authorities when interfering with their rights and freedoms.

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