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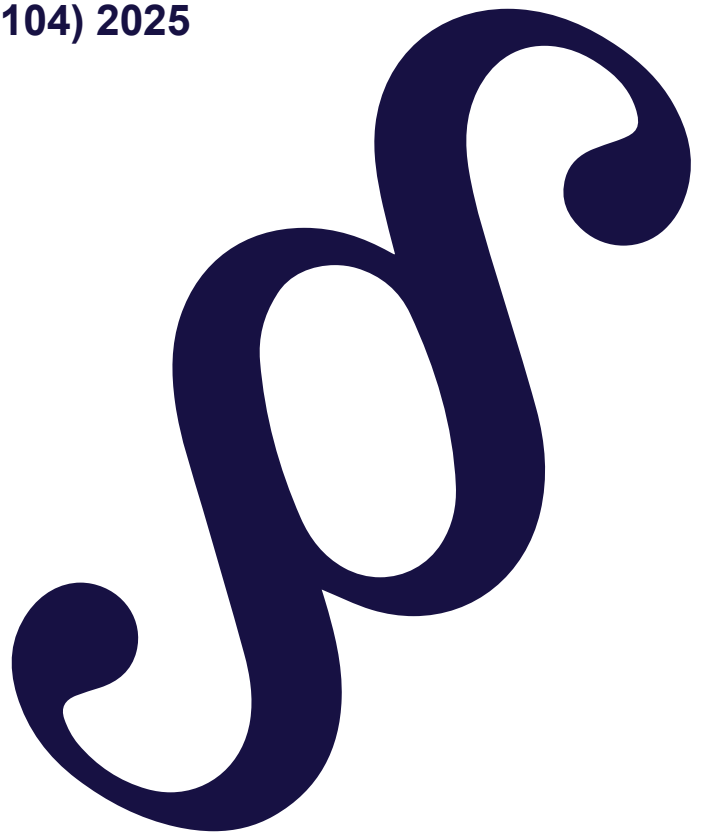

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STUDIA PRAWNICZE KUL
4 (104) 2025

On the accused's right to a defence counsel in the Roman criminal procedure

O prawie oskarżonego do obrońcy w rzymskim procesie karnym

О праве обвиняемого на защитника в римском уголовном процессе

Про право обвинуваченого на захисника в римському кримінальному процесі

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Abstract: This article is dedicated to the issue of the defendant's right to appoint a defense counsel in a Roman criminal trial. The was aim of the study is to show how the ancient Romans understood the most important procedural right of the accused – namely, the right to appoint a defense counsel – and especially to answer such detailed questions as when such a right was granted to him, i.e. at what stage of the criminal process he could use it. Furthermore, the paper examines whether Roman criminal procedure recognised the institution of mandatory defence. Finally, the purpose of this study will also be to show what changes have occurred in the discussed issue over the historical development of the Roman criminal process (between the ordinary and extraordinary procedures), and what were the reasons for these changes. The studies presented in this paper were conducted using the historical-legal method, but the dogmatic-legal method was used in parallel. In the proceedings before the *quaestiones perpetuae*, the praetor was obliged to appoint a defender for the accused if the latter could not find one himself and requested it, but only when the *reus* became a party to the process – that is, when the so-called *inscriptio inter reos* had taken place. The defendant's right to appoint a defense attorney, became a universal procedural guarantee in the *cognito* procedure, and during the period of the Dominate, it was transformed into universal compulsory defence. Furthermore, the reasons for these changes were dictated by the fact that in the criminal cognition procedure, the jurisdictional body deciding the case was finally equipped with the right of evidentiary initiative, and the fact that the defendant's right to appoint a defense attorney was transformed into a universal "legal" obligation during the post-classical period, should be treated as a manifestation of the phenomenon of unifying the rules and principles of the criminal cognition procedure during the post-classical period, but also as a manifestation of strengthening of the procedural guarantees of the defendant.

Keywords: accused, right of defence, right to a defence counsel, Roman criminal procedure, compulsory legal representation, *patronus*

Streszczenie: Niniejszy artykuł został poświęcony zagadnieniu prawa oskarżonego do ustanowienia obrońcy w rzymskim procesie karnym. Celem publikacji jest ukazanie, jak starożytni Rzymianie rozumieli najważniejsze obecnie uprawnienie procesowe oskarżonego, czyli prawo do ustanowienia obrońcy, a zwłaszcza udzielenie odpowiedzi na tak szczegółowe kwestie, jak m.in. kiedy takie prawo mu przysługiwało, mianowicie na jakim etapie procesu karnego oskarżony mógł z niego skorzystać, a także czy rzymski proces karny znał instytucję obrony obligatoryjnej. Celem niniejszego opracowania jest również ukazanie, jakie zmiany zaszły w zakresie omawianego zagadnienia w historycznym rozwoju rzymskiego procesu karnego (pomiędzy procesem zwyczajnym a nadzwyczajnym) i jakie były przyczyny owych przemian. Przedstawione w niniejszym opracowaniu badania zostały przeprowadzone przy wykorzystaniu metody historyczno-prawnej, niemniej drugą, zastosowaną równolegle, była metoda dogmatyczno-prawna. W postępowaniu przed *quaestiones perpetuae* pretor miał obowiązek ustanowienia obrońcy na rzecz oskarżonego, jeżeli ten ostatni nie mógł sam go sobie znaleźć i zażądałby tego, ale dopiero wówczas, kiedy *reus* stał się stroną procesu, czyli kiedy miało miejsce tzw.

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inscriptio inter reos. Prawo oskarżonego do ustanowienia obrońcy stało się zaś jego powszechną gwarancją procesową w kognicyjnym procesie karnym, a w okresie dominatu zostało przekształcone w powszechny przymus obrończy. Ponadto przyczyny tych zmian były podyktowane faktem, iż w kognicyjnym procesie karnym organ jurysdykcyjny rozstrzygający sprawę został w końcu wyposażony w prawo inicjatywy dowodowej. Z kolei fakt przekształcenia prawa oskarżonego do ustanowienia obrońcy w powszechny przymus „adwokacki" w okresie poklasycznym należy potraktować jako przejaw postępującego w okresie poklasycznym zjawiska ujednolicania reguł i zasad kognicyjnego procesu karnego, ale również jako przejaw wzmacniania gwarancji procesowych oskarżonego.
Słowa kluczowe: oskarżony, prawo do obrony, prawo do obrońcy, rzymski proces karny, przymus adwokacki, *patronus*

Резюме: Настоящая статья посвящена вопросу права обвиняемого на назначение защитника в римском уголовном процессе. Цель публикации – показать, как древние римляне понимали наиболее важное в настоящее время процессуальное право обвиняемого, а именно право на назначение защитника, и, в частности, дать ответы на такие подробные вопросы, как, например, когда он имел право на это, на каком этапе уголовного процесса обвиняемый мог воспользоваться этим правом, а также известен ли был римскому уголовному процессу институт обязательной защиты. Целью настоящего исследования является также показать, какие изменения произошли в области обсуждаемого вопроса в историческом развитии римского уголовного процесса (между обычным и чрезвычайным процессом) и каковы были причины этих изменений. Исследования, представленные в данной статье, были проведены с использованием историко-правового метода, однако параллельно был применен и догматико-правовой метод. В разбирательстве перед *quaestiones perpetuae* претор был обязан назначить защитника для обвиняемого, если последний не мог найти его самостоятельно и требовал этого, но только в том случае, если *reus* становился стороной процесса, то есть, когда имела место так называемая *inscriptio inter reos*. Право обвиняемого на назначение защитника стало его общей процессуальной гарантией в когниционном уголовном процессе, а в период Империи было преобразовано в общее обязательство защиты. Кроме того, причины этих изменений были обусловлены тем фактом, что в когниционном уголовном процессе судебный орган, рассматривающий дело, был наделен правом инициативы в отношении доказательств. В свою очередь, факт преобразования права обвиняемого на назначение защитника в общее обязательное участие защитника в постклассический период следует рассматривать как проявление прогрессирующего в постклассический период явления унификации правил и принципов уголовного процесса, но также и как проявление усиления процессуальных гарантий обвиняемого.
Ключевые слова: обвиняемый, право на защиту, право на защитника, римский уголовный процесс, обязательное участие защитника, *patronus*

Анотація: Стаття присвячена дослідженню права обвинуваченого на призначення захисника в римському кримінальному процесі. Метою публікації є розкриття розуміння цього права у стародавніх римлян, зокрема аналіз процесуальної природи права на призначення захисника, а також надання відповідей на питання щодо моменту виникнення цього права, тобто етапу кримінального процесу, на якому обвинувачений міг ним скористатися, і щодо наявності чи відсутності інституції обов'язкового захисту в римському кримінальному процесі. Метою роботи є також висвітлення еволюції зазначеного інституту в історичному розвитку римського кримінального процесу (у межах звичайного та надзвичайного процесу) і встановлення причин відповідних трансформацій. Дослідження, викладені у роботі, проведено із застосуванням історико-правового методу, а також паралельно використано догматично-правовий метод. У провадженні перед *quaestiones perpetuae* претор був зобов'язаний призначити обвинуваченому захисника, якщо той не міг самостійно його знайти та заявляв відповідне клопотання, але лише з моменту, коли *reus* набував статусу сторони процесу, тобто після здійснення так званої *inscriptio inter reos.* Право обвинуваченого на призначення захисника набуло характеру загальної процесуальної гарантії в когнітивному кримінальному процесі, а в період домінату було трансформовано у загальний примус до забезпечення захисту. Крім того, зазначені зміни були зумовлені тим, що в когнітивному кримінальному процесі юрисдикційний орган, який вирішував справу, був нарешті наділений правом доказової ініціативи. У свою чергу, трансформацію права обвинуваченого на призначення захисника в загальний "адвокатський" примус у посткласичний період слід розглядати

як прояв уніфікації правил і принципів когнітивного кримінального процесу, що посилювалася у цей період, а також як посилення процесуальних гарантій обвинуваченого.

Ключові слова: обвинувачений, право на захист, право на захисника, римський кримінальний процес, примус до забезпечення захисту, *patronus*

Introductory remarks

The right of defence of the accused is one of the guiding principles of modern criminal procedure. It is guaranteed both by the provisions of the Polish Code of Criminal Procedure and by the Polish Constitution itself in Article 42 (2), which reads: "Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself – inaccordance with principles specified by statute – of counsel appointed by the court."[1] The Code of Criminal Procedure, in Article 6, also states: "The accused shall have the right of defence, including the right to assistance by a defence counsel; and the accused should be advised of this right."

The concept of the right of defence currently includes both substantive and formal rights of defence. The substantive right of defence, according to Article 74 (1) of the Code of Criminal Procedure, is understood today as the lack of obligation for the accused to prove their innocence or to provide evidence against themselves. As part of the substantive right of defence, the accused has the right to provide clarifications or refuse to do so, to refuse to answer specific questions, and to be present during evidentiary proceedings.[2] The formal right of defence, on the other hand, has the right to legal assistance, either at the accused's request or ex officio where statutory provisions impose such an obligation (mandatory defence).[3] Currently, the accused's right of defence has become one of the fundamental principles of criminal proceedings, not only in Europe (continental system), including our Polish system, but also in international criminal proceedings.[4]

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1 S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2018, p. 309.

2 See Article 175 § 1–2 of the Polish Code of Criminal Procedure; cf. S. Waltoś, P. Hofmański, *Proces karny*…, p. 310; see in more detail: P. Sowiński, *Uprawnienia składające się na prawo oskarżonego do obrony. Uwagi na tle czynności oskarżonego oraz organów procesowych*, Rzeszów 2012, passim.

3 See Article 79 of the Code of Criminal Procedure; S. Waltoś, P. Hofmański, *Proces karny*…, p. 312; P. Wiliński, *Zasada prawa do obrony*, Warszawa 2006, p. 291 ff.

4 Cf. P. Hofmański, H. Kuczyńska, *Międzynarodowe prawo karne*, Warszawa 2020, p. 181.

The aim of this study is to present how the ancient Romans understood the most important procedural right of the accused today, namely the right to a defence counsel, to determine when such a right was granted, at what stage of the criminal process it could be exercised, and whether a form of mandatory defence existed in Roman criminal procedure. Finally, this publication will seek to demonstrate what changes occurred in the accused's right to a defence counsel between the ordinary Roman criminal procedure of the period of the Republic and the extraordinary cognition proceedings of the imperial period, and what were the causes of these changes.

1. The accused's right to a defence counsel in republican criminal law

The right of defence of an accused who was a Roman citizen (*civis Romanus*) was reognised in Roman law from the earliest times[5]. That defence could, in today's sense, be both substantive and formal although the Romans did not develop distinct theoretical concepts in this regard. Every citizen was therefore entitled to defend himself in person and by a defence counsel appointed for that purpose. The custom whereby every *civis Romanus* appearing before the court had his "adviser" was undoubtedly rooted in the institution of patronage. The ancient relationship that arose between *patroni* and their *clientes* became both an inspiration and a model for the legal defence relationship that was then shaped through judicial practice. The main duties of a wealthy patron towards his poorer client, who enstrusted himself to the patron's protection, included, in particular, representing him in court. Over time, this necessity became a generally accepted custom, according to which rich people with legal knowledge began to represent those poorer in the courts, who in turn agreed to such representation. The former, wishing to gain more and more influence and social recognition (and thus, often accompanying wealth), while at the same time wishing to exercise their skill in legal and procedural matters – and in time in the art of rhetoric – began to represent in court, more and more often, those poorer who did not know the law, thus becoming the guarantors of the public successes of

5 See A.W. Zumpt, *Der Criminalprocess der römischen Republik*, Leipzig 1871, p. 83 ff; G. Pugliese, *Le garanzie dell'imputato nella storia del processo penale romano*, Temi Romana 1969, vol. 18, p. 605 ff.; cf. A. Chmiel, *Reus vel suspectus? On the Status of the Accused and the Suspect in the Roman Criminal Procedure*, Studia Iuridica Lublinensia 2021, vol. 30, no. 2, pp. 63, 73 ff.; idem, *Defence Right of the Accused and the Evidence from Slave's Testimony in the Roman Criminal Procedure*, Studia Iuridica Lublinensia 2021, vol. 30, no. 5, p. 107 ff.

the latter.[6] As a result, the term *patronus* gained a new meaning – that of the legal representative of a party (the defence counsel of the accused) – as evidenced by the following account of Cicero:

> Cic. *pro Cluentio*, 40, 110: *Nam Quinctius quidem quam causam umquam antea dixerat, cum annos ad quinquaginta natus esset? quis eum umquam non modo in patroni, sed in laudatoris aut advocati loco viderat?*

According to the cited passage contained in the speech *Pro Cluentio*, during the period of the Republic, parties to a criminal trial could use three categories of defence counsels, namely: *patroni, advocati* and *laudatores*.[7] Apart from the listed categories of defence counsel, there were also *oratores*, – that is, court speakers – who sometimes assumed such a role.[8] Naturally, the last category mentioned by Cicero, namely *laudatores*, constituted a special kind, as they primarily served as witnesses in the trial, but were summoned not with regard to the specific event subject to accusation, but primarily to testify about the morality of the accused.[9]

Originally, the most important of all these categories of defence counsel were the *patroni*, referred to first by Cicero. They constituted a distinct type of defence representatives. They differed from *advocati* and *oratores*, in that as a rule they acted in the trial as "supporters (attorneys) of the litigant (the accused or the accuser)," whereas *advocati* and *oratores* initially acted as judicial assistants of the party, whose main task was to provide legal assistance and make speeches during the trial.[10] It should not come as a surprise that it was the *patroni* who were the most notable group of defence counsel, especially in the period of the Republic, due to the fact that they came from the richest and most influential aristocratic families. More importantly, in addition to taking part in trials, they sometimes also engaged in what was the main domain of *iuris prudentes*, namely legal consultancy, which made them exceptionally well equipped to perform their role in criminal proceedings as well.[11] As early as 123 BC, the *lex Acilia repetundarum* imposed on the president of

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6 Cf. A.W. Zumpt, *Der Criminalprocess*…, p. 82 ff.

7 Cf. Ibidem, p. 84.

8 Cf. W. Neuhauser, *Patronus und Orator*, Innsbruck 1958, p. 171 ff.

9 See W. Mossakowski, *„Laudatores" w procesie rzymskim*, Zeszyty Prawnicze UKSW 2001, no. 1, p. 167 ff.; A. Chmiel, *Zeznania świadków i ich wartość dowodowa w rzymskim procesie karnym*, Lublin 2013 [non-published], p. 92 ff.

10 A. Chmiel, *Zeznania świadków*…, p. 110; cf. in more detail: J.A. Crook, *The Legal Advocacy in the Roman World*, London 1995, p. 146 ff.

11 See P. Kubiak, *Kilka uwag na temat znajomości prawa u mówców sądowych republikańskiego Rzymu*, Krakowskie Studia z Historii Państwa i Prawa 2015, vol. 8, no. 1, p. 21. According to L. Bablitz, in the period of the Republic, the original term *patronus* was supplemented by *advocatus* and both were

the *quaestio* the obligation to appoint a *patronus* – interestingly however, only for the benefit of the accuser, if the latter requested it:

> *Lex Acil.* L. 11: *[---] quaestione<ue> ioudicio<q>ue puplico condemnatu[s siet, quod circa eum in senatum legei non liceat, neiue eum det que]i ex h(ace) l(ege) ioudex in eam rem erit, neiue eum que[i e]x h(ace) l(ege) patronus datus erit. vvv de patrono repudiando. vvvv quei ex h(ace) l(ege) patronus datus erit, sei is mora[m fecerit ei, quei petet, quo minus ioudicium ex h(ace) l(ege) fiat, ei eum repudiare liceto --- in]*[12]

It was typical of this legislation that it did not impose such an obligation on the presiding magistrate in the case of the accused. This comes as no surprise, because the role of the accused in the trials *de repetundis* was played by former Roman officials – governors who usually came from the class of senators. Thus, entrusting the praetor with such a duty would *de facto* favour a party that had already better position from a social point of view, as was the case with the accused in such trials.[13] Moreover, finding a defence counsel to represent the accused was not a problem for him. In practice, the accuser was in a much more difficult situation, facing a major challenge, which was undoubtedly to pursue the prosecution against the accused who came from prominent political circles. In order to help the *accusator* to properly prosecute, the *lex Acilia* imposed a number of requirements on the person who was to be his *patronus*. Thus, according to its provisions, that role could not be assumed by a person related by kinship or affinity to the accused or belonging to the same association as the latter[14] or who could in some way be involved the case or having an interest in a particular judicial decision.[15] In addition to the above-mentioned reasons, one could not be a patron when convicted by a court sentence.[16] It is not known precisely when the accuser could request the appointment of a patron by the praetor. The *lex Acilia* merely provides that this could occur only after the *nominis delatio*[17] –that is, – after the filing of the indictment. It seems that the praetor appointed a *patronus* for the accuser when the latter became a full-fledged party to

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used interchangeably, although the former (*patronus*) was used especially in reference to defence counsels – L. Bablitz, *Actors and Audience in the Roman Courtroom*, London–New York 2007, p. 148.

12 As cited in: A. Lintott, M.H. Crawford, H.B. Mattingly, *Lex repetundarum*, in: *Roman Statutes*, ed. M.H. Crawford, vol. 1, London 1996, p. 66; see P. Kołodko, *Ustawodawstwo rzymskie w sprawach karnych. Od Ustawy XII Tablic do dyktatury Sulli*, Białystok 2012, p. 149.

13 See A. Chmiel, *Zasada kontradyktoryjności w rzymskim procesie karnym*, Zeszyty Naukowe Uniwersytetu Rzeszowskiego. Seria Prawnicza. Prawo 2018, vol. 22, p. 49.

14 See P. Kołodko, *Ustawodawstwo rzymskie*…, p. 150.

15 See A. Chmiel, *Zeznania świadków*…, p. 111.

16 P. Kołodko, *Ustawodawstwo rzymskie*…, p. 151.

17 *Lex Acil.* L.9; zob. P. Kołodko, *Ustawodawstwo rzymskie*…, p. 149.

the trial, i.e. only when he filed an indictment and took an oath, thus assuming responsibility for the effectiveness of the *accusatio*.

It was characteristic of the aforementioned law that it did not, however, contain such requirements for the defence counsel of the accused. It is difficult to imagine, due to the lack of such regulation, that the accused had no right to appoint such a representative. If the accused could not find a defence counsel himself, the praetor would probably have been obliged to appoint such counsel if the accused so requested.[18] A provision referring to such a custom on the part of the official can be found in Ulpian's account of the praetor's edict:

> D. 3.1.1.4 (*Ulpianus libro sexto ad edictum*): *Ait praetor: "si non habebunt advocatum, ego dabo." Nec solum his personis hanc humanitatem praetor solet exhibere, verum et si quis alius sit, qui certis ex causis vel ambitione adversarii vel metu patronum non invenit.*[19]

According to the jurist's account, if a party did not have a lawyer, the praetor would appoint one.[20] This raises the question: at what stage of the trial did the praetor appoint the lawyer? According to some opinions in the literature, in trials before the *quaestiones*, the accused could fully exercise their procedural rights only when the jury was convened, meaning when the accused was entered *inter reos*, meaning placed on the list of the accused by the president of the *quaestio*.[21] Therefore, the accused could request the appointment of a defence counsel by the magistrate only when he became a party to the trial, i.e. when the *inscriptio inter reos*[22] had already been made.

Provisions of the law, at least initially, did not regulate how many defence counsel an accused could have.[23] As mentioned in Cicero's account in his speech *Pro Cluentio*, he himself led the defence of Cluentius, according to the old custom.[24] Over time, the custom of having more defence counsel became established. Thus, in the trial of

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18 A.W. Zumpt, *Der Criminalprocess*…, p. 88.

19 Translation: *The Praetor states: 'If the parties have no advocate I will give them one'. Not only is the Praetor accustomed to show this favor to such persons, but also he will do so where anyone is not able to obtain an advocate for certain reasons; as for instance, because of the intrigues of his adversaries, or through fear* – English translation by S.P. Scott, The Civil Law, III, Cincinnati 1932, https://droitromain.univ-grenoble-alpes.fr, /Anglica/D3_Scott.htm#1 [access: 28.06.2025].

20 Cf. A. Chmiel, *Zasada kontradyktoryjności*…, p. 48.

21 See W. Mossakowski, *Accusator w rzymskich procesach de repetundis w okresie republiki*, Toruń 1994, p. 39; cf. A. Chmiel, *Reus vel suspectus*…, p. 71.

22 Ibidem, p. 74.

23 Cf. L. Bablitz, *The Selection of Advocates for Repetundae Trials. The Cases of Pliny the Younger*, Athenaeum 2009, vol. 97, pp. 197–198.

24 Cic. *pro Cluent*. 70, 199; zob. A.W. Zumpt, *Der Criminalprocess*…, p. 89.

C. Rabirius,[25] L. Flaccus and P. Sestius,[26] the legal representatives were Q. Hortensius and Cicero.[27] In the trial of M. Caelius, the defence was pursued by M. Crassus and Cicero.[28] Three defence counsels spoke in defence of L. Murena, who was accused of electoral bribery (*ambitus*).[29] Towards the end of the Republic, the number of defence counsel standing in trials increased. In the case of M. Scaurus, the accused was defended by as many as six counsels, an unprecedented number for the time. After the civil war before Octavian Augustus took power, and before the issuance of the *lex Iulia iudiciorum publicorum* by the latter, there were times when as many as twelve lawyers appeared in a trial.[30] An exception was the legislation introduced in 52 BC on the initiative of Pompey, which greatly simplified proceedings in the cases they regulated.[31] The number of advocates appearing in a particular case was only limited in the legislation of Augustus, who accepted the maximum number as twelve.[32]

Like today, acting as a defence counsel in the trial, at least in the initial period of the Republic, did not take place without remuneration. Over time, this situation changed. Probably the widespread "greed of speakers and lawyers," as Tacitus notes, became so excessive that they began to charge such large sums for prosecution or defence that public dissatisfaction eventually compelled the state to intervene.[33] This resulted in the adoption in 204 BC of the *lex Cincia* (*de donis et muneribus*).[34] The aforementioned law – or rather plebiscite – led to the solution that everything that a citizen concerned gave, promised to give or accepted in exchange for the provision of, among others, assistance in court cases, should be considered a gift. The law most likely set the maximum amount of such a donation.[35] As a result of this law, the counsel's efforts in court related to handling someone's case were not considered paid work. The citizen could reciprocate for such a service, but the fee was only a certain

25 Cic. *p. Rab*. 6, 18.

26 Cic. *p. Sest*. 1, 3.

27 Cic. *p. Flacc*. 17, 41.

28 Cic. *p. Cael*. 10, 23.

29 A.W. Zumpt, *Der Criminalprocess*…, p. 90.

30 W. Kunkel, *Quaestio*, in: *Kleine Schriften. Zum römischen Strafverfahren und zur römischen Verfassungsgeschichte*, Weimar 1974, p. 83.

31 A.W. Zumpt, *Der Criminalprocess*…, p. 90.

32 W. Kunkel, *Quaestio*, p. 83, W. Litewski, *Rzymski proces karny*, Kraków 2003, p. 86; cf. A.W. Zumpt, *Der Criminalprocess*…, p. 90.

33 Tac. Ann XV, 20: *usu probatum est, patres conscripti, leges egregias, exempla honesta apud bonos ex delictis aliorum gigni. sic oratorum licentia Cinciam rogationem, candidatorum ambitus Iulias leges, magistratuum avaritia Calpurnia scita pepererunt*.

34 See W. Litewski, *Słownik encyklopedyczny prawa rzymskiego*, Kraków 1998, p. 153.

35 A.W. Zumpt, *Der Criminalprocess*…, p. 93.

gift for such courtesy. In addition, *Lex Cincia* introduced quite interesting provision, according to which the recipient, i.e. the defence counsel, could not demand the gift of the promised gifts, while the giver, i.e. his client, could demand the return of the gift and was under no obligation to fulfil what had been promised.[36] This situation had gradually changed and the ban on donations to lawyers was mitigated.[37] In the post-classical period, a specific bar service tariff was already in force.[38]

2. Accused's right to a defence counsel in *cognitio extra ordinem*

The right to the assistance of a defence counsel was also safeguarded for the accused in the *cognito criminalis* procedure. A particularly interesting piece of information on this matter is contained in an account by Paulus:

> D. 48.18.18.9 (*Paulus libro quinto sententiarum*): *Cogniturum de criminibus praesidem oportet ante diem palam facere custodias se auditurum, ne hi, qui defendendi sunt, subitis accusatorum criminibus obprimantur: quamvis defensionem quocumque tempore postulante reo negari non oportet, adeo ut propterea et differantur et proferantur custodiae*.[39]

In the first part of his account, the jurist described the people to be questioned not as *rei*, but as *custodias* – that is, "those who are prisoners," or, modern terminology, "the detained." In the further part of the jurist's account, a kind of principle of the right of the accused to appoint a defence counsel was formulated. The jurist states: *quamvis defensionem quocumque tempore postulante reo negari non oportet* – "although, if at any time the defendant requests it, he should not be refused permission to defend himself." Further in his account, however, Paulus, returns to the situation of the detainee and outlines his procedural position. Namely, the jurist stated in his account that the governor has the right to refuse to appoint a defence counsel at this preliminary stage of proceedings, when the trial has not yet begun.[40]

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36 Ibidem.

37 Cf. W. Litewski, *Słownik*…, p. 15 3.

38 W. Litewski, *Rzymski proces karny*, p. 86.

39 Translation: *A Governor who is to take cognizance of a criminal accusation must publicly appoint a day when he will hear the prisoners, for those who are to be defended should not be oppressed by the sudden accusation of crime; although, if at any time the defendant requests it, he should not be refused permission to defend himself, and on this account, the day of the hearing, whether it has been designated or not, may be postponed*, S.P. Scott, *The Civil Law*, XI, Cincinnati 1932, https://droitromain.univ-grenoble-alpes.fr/Anglica/D48_Scott.htm#18 [access: 28.06.2024].

40 Cf. A. Chmiel, *Reus vel suspectus*…, pp. 73–74.

As a reason for limiting the right to defence, the jurist cites the attempt to protract the interrogation of the accused, the so-called *interrogatio* (*adeo ut propterea et differantur et proferantur custodiae*). During this act, the person suspected *de facto* was questioned in connection with the charges brought against him, and then the indictment was filed against him and the date of the hearing was set. This account confirms that it was only after the detainee had been questioned, and thus probably after the indictment had potentially been brought against him and the registration *inter reos*, when he had already become a party to the proceedings, that he had the full right to demand the appointment of a defence counsel.[41]

The fact that the accused had the right to appoint a defence counsel once an indictment had already been filed against him and he appeared at trial is confirmed in one of the imperial constitutions:

> C. 9.3.2 (*Imperatores Gratianus, Valentinianus, Theodosius*)[42]: *Nullus in carcerem prius quam convincatur omnino vinciatur. 1. Ex longinquo si quis est acciendus, non prius insimulanti accommodetur adsensus, quam sollemni lege se vinxerit. 2. Eique qui deducendus erit ad disponendas res suas componendosque maestos penates spatium coram loci iudice aut etiam magistratibus sufficientium dierum, non minus tamen triginta tribuatur, nulla remanente apud eum qui ad exhibendum missus est copia nundinandi. 3. Qui posteaquam ad iudicem venerit, adhibita advocatione ius debebit explorare quaesitum ac tamdiu pari cum accusatore fortuna retineri, donec reppererit cognitio celebrata discrimen*.[43]

The constitution further provides that if a person was summoned as an accused to court from a distant place, the person, once standing before the judge, had to be assisted by a lawyer to examine the case that was brought against him. According to the wording of the ordinance, the accused had to be provided with a defence

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41 It is worth mentioning at this point e.g. the trial of Jesus of Nazareth or the case of Apollonius of Tyana – for more detail on this topic, see ibidem, pp. 72–75.

42 C. 9.3.2 (= C.Th. 9.2.3).

43 Translation: *No accused person shall, under any circumstances, be confined in prison before he has been convicted. If he should happen to be a long distance away, the accusation shall not be received before the accuser formally agrees that, if he should fail to legally prove the charge, he will submit to the penalty which the other party would have suffered if he had been found guilty. A sufficient time, consisting of not less than thirty days, shall be granted by the judge of the district to the accused, for the purpose of arranging his business; and no more shall be granted to him who has been ordered to produce the defendant. After he has appeared in court, and an advocate has been appointed to defend him, the case shall be heard, and, whether the guilt or the innocence of the accused is established, he and his prosecutor must be treated in the same manner, without any distinction. Given at Constantinople, on the third of the Kalends of January, during the Consulate of Gratian, Consul for the fifth time, and Theodosius*, S.P. Scott, The Civil Law, XIV–XV, Cincinnati 1932, https://droitromain.univ-grenoble-alpes.fr// Anglica/ CJ9_Scott.htm#3 [access: 28.06.2024].

counsel[44] to help him examine the legal basis upon which he was charged. Further in this constitution, the emperors stipulated that the accused had to be held in the same conditions as the accuser until an investigation was carried out and a proper judgment rendered. The cited imperial constitution confirms the thesis that, in the post-classical period, the use of lawyers in criminal cases, who played the role of defence counsels of the accused, was a "*sine qua non*" condition of Roman public proceedings.[45]

The discussed regulation was formulated in relation to a case where the accused was a person who came from afar (*ex longinquo si quis est acciendus*), thus having limited opportunities in choosing an appropriate defence counsel. However, it should be assumed that even if the accused came from a nearby area, in a situation where he failed to secure a lawyer himself, the judge was obliged to appoint one ex officio. The cited imperial constitution allows us to propose a thesis that in the post-classical period, in *cognitio extra ordinem*, there was already a universal requirement for legal representation in criminal cases. However, it should be emphasised that the law did not impose such a requirement on the judge in private-law cases.[46]

At this point, it is worth mentioning that an important manifestation of the accused's right to appoint a defence counsel was the restriction on the admissibility of witness evidence. Thus, the accuser could not summon as witnesses those who acted as defence counsel for the accused.[47] Such provisions were already set out in the *lex Acilia repetundarum*.[48] Such an evidentiary prohibition was, however, relative in nature – that is, the defence counsel had the right to refuse to testify. Interestingly, according to this law, only one of the accused's defence counsel had such a right.[49] From Cicero's account in his speech *In Verrem* (II, 8, 24), it appears that such a prohibition was already of an absolute nature in the late Republican

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44 See A. Banfi, *Acerrima indagio. Considerazioni sul procedimento criminale Romano nel IV sec. D.C.*, 2nd ed., Torino 2016, p. 149.

45 C. Humfress, *Orthodoxy and the Courts in the Late Antiquity*, Oxford 2007, p. 96.

46 As in ibidem, p. 96. In private law cases in the period of the Dominate advocates, appointed legal representatives were also used and acted in trials in the capacity of *procuratores* – see W. Litewski, *Rzymski proces cywilny*, Warszawa–Kraków 1988, p. 83. Interestingly, *procuratores* i.e. legal representatives, could also stand as defence counsels in criminal cases involving capital punishment, where the accused was not present – see C. 9.2.3 (*Imperator Alexander Severus*): *Reos capitalium criminum absentes etiam per procuratorem defendi leges publicorum iudiciorum permittunt.*

47 See A.W. Zumpt, *Der Criminalprocess*…, p. 271; A.H.J. Greenidge, *The Legal Procedure of Cicero's Time*, New York 1901, p. 484, P. Kołodko, *Ustawodawstwo rzymskie*…, p. 161; A. Chmiel, *Zeznania świadków*…, p. 110.

48 *Lex Acil*. L. 33; see A. Chmiel, *Zeznania świadków*…, p. 110.

49 See A. Chmiel, *Zeznania świadków*…, p. 111.

period.[50] It is also clear from the imperial constitutions – for example, from the late imperial period – as mentioned by Arcadius Charisius – that there was an absolute prohibition in the Roman procedure at that time to examine defence counsels as witnesses in cases in which they are involved.[51]

The fact that the right of the accused to defend himself, which included the right to appoint a defence counsel, was one of the guiding principles of the Roman criminal procedure is best demonstrated by how the Romans treated the procedural situation of the perpetrator who was a slave. Slaves, despite being deprived of legal capacity in terms of Roman private law, were nonetheless, one might say, empowered under criminal law and could appear at trial as the accused. In this role, they had the right of defence, which they could exercise either through their master, personally, or through third parties. Ulpian, in his commentary on the Praetorian edict, provides information about this right:

> D. 48.19.19 (*Ulpianus libro quinquagensimo septimo ad edictum*): *Si non defendantur servi a dominis, non utique statim ad supplicium deducuntur, sed permittetur eis defendi vel ab alio, et qui cognoscit, debebit de innocentia eorum quaerere*.[52]

The slave's right to be defended by his master was also confirmed in the Code of Justinian[53]:

> C. 9.2.2 (*Imperator Alexander Severus*): *Si cuiusdam criminis obnoxius servus postulatur, dominus eum defendere potest et in iudicio sistere accusatoris intentionibus responsurum. 1. Post probationes autem criminis non ipse dominus, sed servus pro suo delicto condemnationem sustineat. Ideo enim servum suum domino defendere permissum est, ut pro eo possit competentes adlegationes offerre*.[54]

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50 See Cic. *In. Verrem*, II, 8, 24: *Nonne multa mei testes quae tu scis nesciunt? Nonne te mihi testem in hoc crimine eripuit on istius innocentia, sed legis exceptio?*, see A. Chmiel, *Zeznania świadków*…, p. 112.

51 See D. 22.5.25 (*Aurelius Arcadius Charisius magister libellorum libro singulari de testibus*): *Mandatis cavetur, ut praesides attendant, ne patroni in causa cui patrocinium praestiterunt testimonium dicant. Quod et in exsecutoribus negotiorum observandum est.*; cf. U. Vincenti, *Duo genera sunt testium. Contributo allo studio della prova testimoniale nel processo romano*, Padova 1989, p. 115; A. Chmiel, *Zeznania świadków*…, p. 113.

52 Translation: *If slaves are not defended by their masters, they should not, for this reason, immediately be conducted to punishment, but should be permitted to defend themselves, or be defended by another; and the judge who hears the case shall inquire as to their innocence*, S.P. Scott, The Civil Law, XI, Cincinnati 1932, https://droitromain.univ-grenoble-alpes.fr/ Anglica/ D48_Scott.htm#19 [access: 28.06.2024].

53 The fact that a slave had the capacity to stand in trial under criminal procedure, which was manifested in the procedural guarantees granted to him, one of which was the right of defence and consequently the right to appoint a defence counsel, can be evidenced by the fact that before filing a written indictment, the slave could not be tortured. This is mentioned in one of imperial constitutions – see C. 9.2.13.

54 Translation: *Where a slave is accused of any crime whatsoever, his master can defend him, appear in court, and answer the charge of his accuser. But after the proof of the crime has been established, not*

The fact that the right to appoint a defender became a common procedural guarantee for the accused in the *cognito criminalis* procedure can be evidenced by the development that in the 4th century, it became a common practice among *advocates*, to strive for official registration on the list of lawyers appearing before a specific court. This is referred to in the content of the following legal act, mentioned in the *Codex Theodosianus*:

> C. Th. 2.10.1 (*Imp. Constantinus a. Antiocho praefecto vigilum*): *1) Iussione subversa, qua certus advocatorum numerus singulis tribunalibus praefinitus est, omnes licentiam habeant, ut quisque ad huius industriae laudem in quo voluerit auditorio pro ingenii sui virtute nitatur. Dat. k. nov. Serdicae Constantino a. v et Licinio c. conss. (319 nov. 1).*

The content of the above imperial constitution issued on 1 November 319 AD, addressed to Antiochus, the Prefect of the *Vigiles*, confirms such a practice of "official" registration of lawyers who were to appear before specific courts. The first part of the mentioned regulation states that this constitution has abolished the previous decree had prescribed a fixed number of advocates to be assigned to eash court, and at the same time, granted each lawyer a permission to appear before any tribunal of their choice.[55]

It is noteworthy that later imperial constitutions reintroduced various restrictions on the number of advocates assigned to a particular court, especially to those more prestigious ones such as the courts of the Praetorian Prefect and the Urban Prefect.[56]

To sum up, the accused's right to appoint a defence counsel had been from the beginning one of his fundamental procedural guarantees. During the Republican period, a universal requirement to have a defence counsel in criminal cases had not yet developed. It is likely that even then, Roman criminal procedure recognised instances of mandatory use of a defence counsel. In situations where the defendant was hearing- or speech-impaired, the praetor would certainly have appointed a defence

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the master himself but the slave shall be condemned, for a master is only permitted to defend his slave in order to be able to make suitable allegations in his behalf. Published on the eleventh of the Kalends of December, during the Consulate of Alexander, 222, S.P. Scott, The Civil Law, XIV–XV, Cincinnati 1932, https://droitromain.univ-grenoble-alpes.fr// Anglica/ CJ9_Scott.htm#2 [access: 28.06.2024].

55 As in C. Humfress, *Orthodoxy and the Courts*…, p. 99.

56 Ibidem. Such a wide opening of the list of advocates by courts likely led to negative consequences quite quickly, due to the fact that many of them began to register with various courts, which resulted in their failure to fulfil their obligations towards their clients (including failures to comply with time limits), which led to a renewed reduction by the imperial authorities of the number of lawyers assigned to a given court – see C.Th. 2.10.2 (*Idem a. ad Antiochum praefectum vigilum*): *Destituuntur negotia et temporibus suis excidunt, dum advocati per multa officia et diversa secretaria rapiuntur; ideoque censuimus, ne hi, qui semel protestati fuerint, quod apud te causas acturi sunt, apud alium iudicem agendi habeant potestatem.*

counsel *ex officio*.[57] The establishment of *quaestiones perpetuae* likely introduced the obligation to appoint a defence counsel for the accused if the latter requested it. On the other hand, the development of *cognitio extra ordinem* eventually led to the situation where provision of legal assistance to the accused by the court became a common practice over time. In the legislation of the emperors of the Dominate, the defender's right to a defence counsel was transformed into a universal obligation to have one.

The reasons for the introduction of the aforementioned changes in the *cognitio* are probably to be found in the emergence of a completely new model of criminal procedure in which the imperial official, acting as a judge was empowered to propose the taking of evidence. The ability of the public authorities to intervene with the entire evidentiary process had to be balanced in the trial by the imposition of a general obligation on these authorities to appoint a defence counsel for the accused, if the latter failed or was unable to do so. The strengthening of inquisitorialism in the new model of Roman criminal procedure, on the one hand, and the associated principle of officiality (through the emergence of the court's evidentiary initiative), on the other hand, compelled the state authorities also to extend the procedural guarantees inherent in the implementation of the adversarial principle to the *cognitio extra ordinem*. The transformation of the accused's right to appoint a defence counsel into a universal obligation of compulsory legal representation in the post-classical period should therefore be regarded as both an example of the progressive unification of the rules and principles of the criminal *cognito* procedure and a manifestation of the strengthening of the procedural guarantees afforded to the accused.

Bibliography

Bablitz L., *Actors and Audience in the Roman Courtroom*, London–New York 2007.

Bablitz L., *The Selection of Advocates for Repetundae Trials. The Cases of Pliny the Younger*, Athenaeum 2009, vol. 97.

Banfi A., *Acerrima indagio. Considerazioni sul procedimento criminale Romano nel IV sec. D.C.*, 2nd ed. Torino 2016.

Chmiel A., *Defence Right of the Accused and the Evidence from Slave's Testimony in the Roman Criminal Procedure*, Studia Iuridica Lublinensia 2021, vol. 30, no. 5.

Chmiel A., *Reus vel suspectus? On the Status of the Accused and the Suspect in the Roman Criminal Procedure*, Studia Iuridica Lublinensia 2021, vol. 30, no. 2.

[57] A.W. Zumpt, *Der Criminalprocess*…, p. 85.

Chmiel A., *Zasada kontradyktoryjności w rzymskim procesie karnym*, Zeszyty Naukowe Uniwersytetu Rzeszowskiego. Seria Prawnicza. Prawo 2018, vol. 22.
Chmiel A., *Zeznania świadków i ich wartość dowodowa w rzymskim procesie karnym*, Lublin 2013 [non-published].
Crook J.A., *The Legal Advocacy in the Roman World*, London 1995.
Greenidge A.H.J., *The Legal Procedure of Cicero's Time*, New York 1901.
Hofmański P., Kuczyńska H., *Międzynarodowe prawo karne*, Warszawa 2020.
Humfress C., *Orthodoxy and the Courts in the Late Antiquity*, Oxford 2007.
Kołodko P., *Ustawodawstwo rzymskie w sprawach karnych. Od Ustawy XII Tablic do dyktatury Sulli*, Białystok 2012.
Kubiak P., *Kilka uwag na temat znajomości prawa u mówców sądowych republikańskiego Rzymu*, Krakowskie Studia z Historii Państwa i Prawa 2015, vol. 8, no. 1.
Kunkel W., *Quaestio*, in: *Kleine Schriften. Zum römischen Strafverfahren und zur römischen Verfassungsgeschichte*, Weimar 1974.
Lintott A., Crawford M.H., Mattingly H.B., *Lex repetundarum*, in: *Roman Statutes*, ed. M.H. Crawford, vol. 1, London 1996.
Litewski W., *Rzymski proces cywilny*, Warszawa–Kraków 1988.
Litewski W., *Rzymski proces karny*, Kraków 2003.
Litewski W., *Słownik encyklopedyczny prawa rzymskiego*, Kraków 1998.
Mossakowski W., *Accusator w rzymskich procesach de repetundis w okresie republiki*, Toruń 1994.
Mossakowski W., *„Laudatores" w procesie rzymskim*, Zeszyty Prawnicze UKSW 2001, no. 1.
Neuhauser W., *Patronus und Orator*, Innsbruck 1958.
Pugliese G., *Le garanzie dell'imputato nella storia del processo penale romano*, Temi
Romana 1969, vol. 18.
Sowiński P., *Uprawnienia składające się na prawo oskarżonego do obrony. Uwagi na tle czynności oskarżonego oraz organów procesowych*, Rzeszów 2012.
Vincenti U., *Duo genera sunt testium. Contributo allo studio della prova testimoniale nel processo romano*, Padova 1989.
Waltoś S., Hofmański P., *Proces karny. Zarys systemu*, Warszawa 2018.
Wiliński P., *Zasada prawa do obrony*, Warszawa 2006.
Zumpt A.W., *Der Criminalprocess der römischen Republik*, Leipzig 1871.

STUDIA PRAWNICZE KUL
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Stamp duty for further (substitutive) power of attorney and court costs (Article 98 § 1 and 3 of the Code of Civil Procedure)

Opłata skarbowa od pełnomocnictwa dalszego (substytucyjnego) a koszty procesu (art. 98 § 1 i 3 Kodeksu postępowania cywilnego)

Государственная пошлина за замещающее представительство и судебные издержки (ст. 98 § 1 и 3 ГПК)

Гербовий збір за довіреність у порядку передоручення (субституційну) та судові витрати (ст. 98 § 1 та 3 Цивільного процесуального кодексу Польщі)

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Abstract: The article concerns the costs associated with the stamp duty on a further procedural power of attorney. The publication aims to demonstrate that this expense should be – when additional conditions are met – be recognised as a necessary cost for the effective pursuit or defence of rights, regardless of whether it is paid by the main attorney, the substitutive attorney, or the principal. In this regard, the regulation of Article 98 § 1 and 3 of the Code of Civil Procedure is inappropriate, as on the one hand, it allows, for the awarding of costs related to the payment of stamp duty on power of attorney to the prevailing party when paid by a lawyer, and, at least, ambiguously regulates the situation when this duty is paid by the principal or a substitutive attorney. For this reason, Article 98 of the Code of Civil Procedure should be amended in the discussed part to clearly and without interpretative doubts to enable the awarding of costs related to the stamp duty on power of attorney (whether primary or further) to the winning party, regardless of whether the duty was paid by the principal, the main attorney, or the substitute, provided that this expense was incurred under circumstances indicating that it was a necessary cost for the effective pursuit or defence of rights. The research methods used in this study are the dogmatic-legal and analytical methods. They were used to conduct a thorough analysis of the currently applicable and relevant legal regulations from the perspective of the subject matter discussed.

Keywords: costs of the proceedings, stamp duty, further (substitutive) power of attorney, further representative, substitute, principal

Streszczenie: Artykuł dotyczy kosztów związanych z opłatą skarbową od dalszego pełnomocnictwa procesowego. W publikacji dąży się do wykazania, że wydatek ten powinien być – przy spełnieniu dodatkowych przesłanek – uznawany za koszt niezbędny do celowego dochodzenia praw lub obrony, niezależnie od tego, czy pokrywa go pełnomocnik główny, substytucyjny, czy mandant. W przedmiotowym zakresie regulacja przepisu art. 98 § 1 i 3 K.p.c. nie jest właściwa, skoro z jednej strony umożliwia zasądzenie na rzecz wygrywającego kosztu uiszczenia opłaty skarbowej od pełnomocnictwa, gdy płaci ją adwokat, a co najmniej w sposób niejasny reguluje sytuację, gdy opłatę tę uiszcza mandant albo pełnomocnik substytucyjny. Z tej przyczyny art. 98 K.p.c. powinien zostać znowelizowany w omawianej części tak, by bez żadnych wątpliwości interpretacyjnych umożliwić zasądzanie co do zasady na rzecz strony wygrywającej postępowanie poniesionych kosztów opłaty skarbowej od pełnomocnictwa (czy to głównego, czy dalszego) nawet bez względu na to, czy płaci ją mocodawca, pełnomocnik główny czy substytut, jeżeli tylko opłata ta została poniesiona w okolicznościach skutkujących przyjęcie, że był to koszt niezbędny do celowego dochodzenia praw lub celowej obrony. Metodami

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badawczymi wykorzystanymi w opracowaniu są metoda dogmatyczno-prawna i analityczna. Posłużyły one do tego, by dokonać wnikliwej analizy aktualnie obowiązujących i relewantnych z punktu widzenia omawianej tematyki regulacji prawnych.
Słowa kluczowe: koszty procesu, opłata skarbowa, dalsze pełnomocnictwo, pełnomocnik dalszy, substytut, mocodawca

Резюме: Статья касается издержек, связанных с государственной пошлиной за замещающее процессуальное представительство. В публикации автор стремится показать, что этот расход должен – при выполнении дополнительных условий – рассматриваться как необходимый для целесообразного осуществления и защиты прав, независимо от того, оплачивается ли он основным представителем, замещающим представителем или доверителем. В данном аспекте регулирование ст. 98 § 1 и 3 ГПК не является надлежащим, поскольку, с одной стороны, позволяет взыскать в пользу выигравшей стороны расходы по уплате государственной пошлины за представительство, когда ее оплачивает адвокат, а с другой – по меньшей мере неясно регулирует ситуацию, когда эту пошлину уплачивает доверитель или замещающий представитель. По этой причине статья 98 Гражданского процессуального кодекса должна быть пересмотрена в обсуждаемой части, чтобы без каких-либо сомнений в толковании обеспечить возможность присуждения, как правило, в пользу выигравшей стороны судебного разбирательства понесенных расходов по уплате пошлины за представительство (будь то основное или замещающее), даже независимо от того, кто ее уплачивает – доверитель, основной представитель или замещающий представитель, если только эта пошлина была уплачена в обстоятельствах, позволяющих считать, что это были расходы, необходимые для целенаправленного отстаивания прав или целенаправленной защиты. В работе использованы догматико-правовой и аналитический методы. Они послужили для проведения углубленного анализа действующих и актуальных с точки зрения обсуждаемой темы правовых норм.
Ключевые слова: судебные издержки, государственная пошлина, замещающее представительство, замещающий представитель, доверитель

Анотація: Стаття присвячена аналізу витрат, пов'язаних зі сплатою гербового збору за судову довіреність у порядку передоручення. У публікації здійснено спробу довести, що такі витрати – за умови дотримання додаткових передумов – мають визнаватися необхідними для цілеспрямованого відстоювання прав або здійснення захисту, незалежно від того, чи покриває їх головний представник, субституційний представник або довіритель. У цьому контексті положення ст. 98 § 1 і 3 ЦПК не є достатньо узгодженими, оскільки, з одного боку, вони дозволяють присудити на користь переможця судові витрати, пов'язані зі сплатою гербового збору за довіреність, коли цей збір сплачує адвокат, а з іншого – нечітко регламентують ситуацію, коли збір сплачує довіритель або субституційний представник. З огляду на це ст. 98 ЦПК слід переглянути у відповідній частині, щоб усунути сумніви щодо тлумачення і забезпечити можливість – як загальне правило – присудження на користь сторони, яка виграла справу, витрат, пов'язаних зі сплатою гербового збору за довіреність (як основну, так і у порядку передоручення), незалежно від того, чи сплатив цей збір довіритель, головний представник чи субституційний представник, за умови, що сплата відбулася за обставин, які дають підстави вважати її необхідною для цілеспрямованого відстоювання прав або здійснення захисту. У роботі застосовано догматично-правовий та аналітичний методи, які дали змогу здійснити ґрунтовний аналіз чинних і релевантних для теми дослідження правових норм.
Ключові слова: судові витрати, гербовий збір, довіреність у порядку передоручення, субституційний представник, заступник, довіритель

Introduction

This article addresses a pragmatic legal issue arising from the obligation to pay the stamp duty on a further (substitutive) procedural power of attorney. The discussed analysis aims to determine whether, in light of the applicable regulations, this expenditure is regarded as a cost necessary for the effective assertion of rights or for defense (Article 98 § 1 and 3 of the Code of Civil Procedure), and if the answer to the posed question is wholly or partially negative, under what circumstances the expense in the form of a fee for a substitute power of attorney should be deemed a cost necessary for the effective assertion of rights or for defense (Article 98 § 1 and 3 of the Code of Civil Procedure). Answers to these questions can be provided, in particular, after verifying who, under the applicable regulations, is obliged to incur this expenditure, and whether, in practice, there are other entities that pay the stamp duty on a further power of attorney. Such a scope of research would be incomplete without reference to the position of trainees (e.g., in the legal professions, such as advocates or legal advisers). The research method employed in the study is the doctrinal-legal and analytical approach. They have been used to conduct a thorough analysis of the currently applicable and relevant regulations from the perspective of the topics discussed. The efforts involving logical-linguistic analysis of legal and normative statements, combined with an analysis of how the legal provisions are formulated, what their *ratio legis* is, and whether it has been realistically achieved within the defined research area, ultimately enabled the provision of an answer to the questions posed in the text.

Stamp duty, which is neither a tax[1] nor even a levy subject to "taxation" nevertheless constitutes a form of public levy,[2] often significant for civil litigants. Stamp duty is payable upon receipt of notification of the issuance of a power of attorney, including a power of attorney for legal proceedings, or its copy, issuance, or reissue in court proceedings (Article 1 section 1 item 2 of the Act of 16 November 2006 on

1 The Provincial Administrative Court in Gliwice, in its judgment of 10 February 2010, stated that until the chargeable nature of stamp duty is questioned, it does not acquire the characteristics of a tax. See more broadly the judgment of the Provincial Administrative Court in Gliwice of 10 February 2010, I SA/Gl 661/09, LEX no. 591463.

2 Z. Ofiarski, *Ustawa o opłacie skarbowej. Ustawa o podatku od czynności cywilnoprawnych. Komentarz*, 4th ed., Warszawa 2018, p. 26. See also the judgment of the Provincial Administrative Court in Poznań of 27 January 2010, III SA/Po 608/09, LEX no. 554214.

Stamp Duty).[3] It is the content of the document that matters, not its title alone.[4] The same applies to a substitutive power of attorney. Appointing a substitutive attorney creates a new power of attorney relationship, which also requires filing the substitutive power of attorney document with the court and, furthermore, requires the payment of a stamp duty.[5] This results primarily from the linguistic and purposive interpretation of Article 1 section 1 item 2 of the Stamp Duty Act, in conjunction with Item 3 of Part IV of the Annex to the aforementioned Act.[6] Regardless of the type of power of attorney, the person submitting the document is required to submit proof of payment of the stamp duty of PLN 17[7] within three days of the obligation to pay arising.[8]

As a side note, it is worth adding that while stamp duty is required for a further power of attorney granted by an attorney to another attorney or legal counsel, or by a legal counsel to another attorney or legal counsel, no such duty arises in the case of submitting an authorisation document for a trainee attorney or legal counsel. A person preparing for the professional examination as part of their apprenticeship (as an attorney or legal counsel) may act in court proceedings primarily based on the provisions of Article 77 (1) and (2) of the Act of 26 May 1982 – The Law on the Bar,[9] or Article 35,[1] (1) and (2) of the Act of 6 July 1982 on Legal Counsel, or Article

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3 Act of 16 November 2006 on Stamp Duty, consolidated text: Journal of Laws 2023 item 2111 as amended. In certain cases, the obligation to pay stamp duty has been excluded, see, for example, Articles 2–3b of the Tax Code.

4 D. Michta, *Indos pełnomocniczy – wybrane aspekty problemowe*, Palestra 2018, no. 7–8, p. 43.

5 Podobnie B. Cieślak, *Wybrane zagadnienia uiszczania opłaty skarbowej od udzielonego pełnomocnictwa lub prokury*, Finanse Komunalne 2012, no. 6, p. 35.

6 Judgment of the Provincial Administrative Court in Białystok of 7 December 2011, I SA/Bk 377/11, ONSAiWSA 2015, no. 3, item 41.

7 See Article 1 (1) (2) of the Code of Criminal Procedure in connection with Article 4 of the Code of Criminal Procedure in conjunction with Part IV of the Annex to this Act.

8 See § 3 (1) of the Regulation of the Minister of Finance of 28 September 2007 on the Payment of Stamp Duty, Journal of Laws [Dziennik Ustaw] no. 187, item 1330.

9 Act of 26 May 1982 – Law on the Bar, consolidated text: Journal of Laws 2024 item 1564. See G. Borkowski, *Aplikant adwokacki w postępowaniu cywilnym – substytut czy zastępca adwokata?*, Palestra 2009, no. 11–12, pp. 101–112; idem, *Glosa do uchwały SN z 28.06.2006 r. III CZP 27/06*, Przegląd Sądowy 2008, no. 6, p. 140–151; K. Lipiński, *Czy aplikant adwokacki, upoważniony przez adwokata do zastąpienia go, może być przez sąd dopuszczony tymczasowo do udziału w rozprawie, gdy nie może na razie przedstawić pełnomocnictwa dla adwokata, który udzielił aplikantowi upoważnienia (art. 89 § 1 k.p.c.)?*, Palestra 1959, no. 7–8, pp. 110–111. See also A. Marciniak, *Upoważnienie aplikanta komorniczego do samodzielnego wykonywania określonych czynności egzekucyjnych*, Przegląd Sądowy 2015, no. 9, pp. 92–99; J. Studzińska, *Uprawnienia aplikanta komorniczego – problemy praktyczne*, Przegląd Prawa Egzekucyjnego 2016, no. 1, pp. 87–109.

351 (5) of the same Act,[10] or Article 77 (3) of The Law on the Bar.[11] However, neither they nor the person granting the authorisation (usually their patron) is required to pay stamp duty. This is because the document on the basis of which the applicant acts, i.e. the authorisation – is not a power of attorney within the meaning of the provisions of the Code of Civil Procedure or the Stamp Duty Act.[12]

1. Determinant of the obligation to pay stamp duty

The argument that, in the case of submitting a primary power of attorney and a secondary power of attorney, only the submission of the latter document should be subject to a fee is unconvincing, since, according to the information contained in the General Interpretation on Stamp Duty for Submitting a Document Confirming the Grant of a Power of Attorney or Commercial Procuration[13] in the case of multiple powers of attorney, for example, those resulting from a vertical company structure or the granting of substitution, only the submission of the final document confirming the grant of a power of attorney, on the basis of which the attorney will perform

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10 Act of 6 July 1982 on legal advisers, consolidated text: Journal of Laws 2024 item 499. See also G. Matusik, M. Śladkowski, *Pozycja prawna aplikanta radcowskiego w postępowaniu cywilnym*, Przegląd Sądowy 2008, no. 11–12, pp. 91–105; I. Misiejuk, *Czy aplikant na etacie zastąpi obrońcę?*, Radca Prawny 2016, no. 1, pp. 28–29; idem, *Czy aplikant pomoże przy bezpłatnych poradach?*, Radca Prawny 2015, no. 4, pp. 44–45; M. Smyk, *Status prawny aplikanta radcowskiego w postępowaniu cywilnym (głos w dyskusji)*, Przegląd Sądowy 2010, no. 2, pp. 124–139; P. Olszewski, *Wolność słowa aplikanta*, Radca Prawny 2016, no. 6, pp. 2–3; T. Sobel, *Opinia o możliwości zastępstwa radcy prawnego przed sądami i innymi organami przez aplikantów, którzy otrzymali zaświadczenia o ukończeniu aplikacji*, Radca Prawny 2013, no. 2, pp. 19–21. See K. Dróżdż-Chmiel, *The Legal Status of an Advocate's Articled Clerk in the Polish Civil Court Proceedings – Remarks on a Comparative Background*, Studia Prawnicze KUL 2021, no. 4, pp. 7–26.

11 See also Article 9 (2) and Article 36 (1) of the Act of 11 April 2001 on Patent Attorneys, consolidated text: Journal of Laws 2024 item 749.

12 Judgment of the Provincial Administrative Court in Gliwice of 2 April 2008, I SA/Gl 37/08, LEX no. 422225.

13 Letter dated 13.10.2014, issued by the Ministry of Finance, PL/LM/835/77/EOB/2014/RD-91893, Interpretacja ogólna w sprawie opłaty skarbowej od złożenia dokumentu stwierdzającego udzielenie pełnomocnictwa lub prokury, Dz. Urz. MF 2014 no. 40, https://sip.lex.pl/#/guideline/184791836/pl-lm-835-77-eob-2014-rd-91893-interpretacja-ogolna-w-sprawie-oplaty-skarbowej-od-zlozenia...?keyword=Ministerstwo%20Finans%C3%B3w,%20PL%2FLM%2F835%2F77%2FEOB%2F2014%2FRD-91893,%20Interpretacja%20og%C3%B3lna%20w%20sprawie%20op%C5%82aty%20skarbowej%20od%20z%C5%82o%C5%BCenia%20dokumentu%20stwierdzaj%C4%85cego%20udzielenie%20pe%C5%82nomocnictwa%20lub%20prokury&cm=SFIRST [access: 7.07.2025].

actions in the matter on behalf of, and with direct legal effect on, the principal is subject to stamp duty.[14] The number of power-of-attorney relationships resulting from the submitted document or documents – regardless of whether it concerns the primary or secondary power of attorney – determines the amount of stamp duty. It should be noted that this article concerns a secondary power of attorney, which should typically be submitted at the earliest together with the submission of the primary power of attorney.

2. Parties to the relationship of substitutive power of attorney and the obligation to pay stamp duty

What is particularly significant for further analysis is the fact that granting a substitute power of attorney to another person is a unilateral legal act, performed on behalf of the principal and with direct effect for them. Therefore, the principal, on the one hand, and the substitute attorney, on the other, are parties to the newly created legal relationship. Actions undertaken by the substitute attorney produce direct effects for the principal, as the subordinate attorney acts on behalf of and for the principal, not the principal attorney. Therefore, the principal attorney should not be defined as the principal of the substitute attorney.[15] Having the status of principal of the substitute attorney is one thing; however the relationship between the principal attorney and the substitute attorney, which gives rise to the requirement to continue the principal attorney's legal tactics, is quite another.[16]

The Provincial Administrative Court in Białystok, in its judgment of 7 December 2011,[17] draws further conclusions. According to this court, since Article 5 (1) and (2) of the Administrative Procedure Code, impose a joint and several obligation on the principal and the attorney-in-fact to pay the fee in question, and the subordinate power of attorney relationship itself binds only the principal and the substitute, then,

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14 See H. Żołnierkiewicz, *Opłata skarbowa od pełnomocnictwa substytucyjnego – wątpliwości w praktyce*, Russel Bedford, 13.02.2020, https://www.russellbedford.pl/aktualnosci/instrukcje-czynnosci-poradniki/item/1692-oplata-skarbowa-od-pelnomocnictwa-substytucyjnego-watpliwosci-w-praktyce.html [access: 7.07.2025].

15 See the judgment of the Supreme Court of 21 January 2009, III CSK 195/08, LEX no. 527252.

16 This issue goes far beyond the scope of this study and is related to the ethics of lawyers and legal advisers, as well as intra-corporate regulations, and for this reason it will only be mentioned here.

17 Judgment of the Provincial Administrative Court in Białystok of 7 December 2011, I SA/Bk 377/11, ONSAiWSA 2015, no. 3, item 41. See E. Lemańska, *Opłata skarbowa od pełnomocnictwa (prokury)*, Zeszyty Naukowe Sądownictwa Administracyjnego 2008, no. 1, p. 53.

in such a case, only the principal and the subordinate attorney-in-fact are obliged to pay the stamp duty. Even the fact that the declaration granting the subordinate power of attorney is submitted by the principle attorney-in-fact is irrelevant in this case. It should also be noted at this point that, in practice, the stamp duty on the subordinate power of attorney is paid by the primary attorney-in-fact. Furthermore, in some circles, it is commonly accepted that the primary attorney-in-fact should pay the stamp duty on the substitutive power of attorney, since they are the one seeking representation for a specific date in the case. This position may cause problems in deciding on the reimbursement of costs necessary for the purposeful pursuit of rights and purposeful defence within the meaning of Article 98 of the Code of Civil Procedure, which is also closely related to the exercise of the right to a court.

3. Costs borne by the party to the proceedings and stamp duty for a substitutive power of attorney

Before discussing the legal regulations regarding cost reimbursement, attention should be drawn to the position expressed by the Supreme Court in its resolution of 12 March 2003.[18] According to the view presented in the cited resolution, the costs necessary for the purposeful pursuit of rights and purposeful defence (Article 98 § 1 of the Code of Civil Procedure) of a party represented, for example, by an attorney, include the expense incurred by that party in connection with the need to pay stamp duty on the document confirming the appointment of an attorney. According to the Court, an analysis of the content of Article 98 § 3 of the Code of Civil Procedure leads to the conclusion that the cost of stamp duty on the power-of-attorney document cannot be included in any of the cost categories listed in that provision, because it is the party's expense, not the attorney's expense. This raises the question of whether the costs included in Article 98 § 3 of the Code of Civil Procedure constitute an exhaustive list of costs necessary for the effective pursuit or defence of rights within the meaning of Article 98 § 3 of the same Act. the indication of the types of costs covered by the statutory presumption that they are necessary for the purposeful pursuit of rights and purposeful defense is an exhaustive list. In the court's opinion, this question must be answered in the negative, because Article 98 § 3 of the Code of Civil Procedure specifies the general principle expressed in Article 98 § 1 of the Code of Civil Procedure, but does not enumerate the costs that should be included

18 Resolution of the Supreme Court of 12 March 2003, III CZP 2/03, OSNC 2003, no. 12, item 161.

among the necessary costs when a party is represented by an attorney. An exhaustive list of all necessary costs subject to reimbursement in the event of a party's success in litigation would be impossible for the legislator to formulate. According to the court, Article 98 § 3 of the Code of Civil Procedure should therefore be interpreted as meaning that, when deciding on the costs of the proceedings of the winning party, the court may award to the winning party not only the reimbursement of the costs indicated in this provision, but also the reimbursement of other costs incurred by that party, if they prove necessary for the proper pursuit of rights or proper defence within the meaning of Article 98 § 1 of the Code of Civil Procedure. The prevalence of the above view is evidenced by the fact that similar positions are included in the following judgments, including: resolutions of the Supreme Court of 6 February 2013, 17 June 2011, 24 January 2011, and 6 November 2009; the resolution of the Supreme Court of 12 March 2003, the judgment of the Court of Appeal in Białystok of 7 November 2014, the judgment of the Court of Appeal in Lublin of 30 October 2014, the judgment of the Court of Appeal in Katowice of 17 February 2017, the judgment of the District Court in Kraków of 25 February 2015, the judgment of the District Court in Kraków of 30 October 2013, and the judgment of the District Court in Gdańsk of 10 October 2013.[19]

In an approving commentary on the above-mentioned Supreme Court resolution of 12 March 2003,[20] it was pointed out that it is inadmissible to interpret Article 98 § 3 of the Code of Civil Procedure narrowly and, consequently, to consider it a provision that exhaustively defines all reimbursable costs. According to this author, a party has the right to reimbursement of costs insofar as they are necessary for the purposeful pursuit of rights or for the purposeful defence within the meaning of Article 98 § 1 of the Code of Civil Procedure.[21] Therefore, since the legislature

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19 See resolution of the Supreme Court of 6 February 2013, V CZ 87/12, LEX no. 1294194; resolution of the Supreme Court of 17 June 2011, II UZ 15/11, LEX no. 1212875; resolution of the Supreme Court of 24 January 2011, IV CSK 486/10, LEX no. 1275007; resolution of the Supreme Court of 6 November 2009, I CZ 61/09, LEX no. 599745; resolution of the Supreme Court of 12 March 2003, III CZP 2/03, LEX no. 76144; judgment of the Court of Appeal in Białystok of 7 November 2014, I ACa 416/14, LEX no. 1554624; judgment of the Court of Appeal in Lublin of 30 October 2014, I ACa 427/14, LEX no. 1552042; judgment of the Court of Appeal in Katowice of 17 February 2017, V ACa 430/16, LEX no. 2249942; judgment of the District Court in Kraków of 25 February 2015, IX GC 697/14, LEX no. 2155293; judgment of the District Court in Kraków of 30 October 2013, IX GC 464/13, LEX no. 1715376; judgment of the District Court in Gdańsk of 10 October 2013, XV C 125/13, LEX no. 1719130.

20 Resolution of the Supreme Court of 12 March 2003, III CZP 2/03, OSNC 2003, no. 12, item 161.

21 A. Nowak, *Opłata skarbowa. Glosa do uchwały SN z dnia 12 marca 2003 r., III CZP 2/2003*, Glosa 2004, no. 10, pp. 38–39.

imposes the obligation to pay a stamp duty on a power of attorney, this cost should, in principle, be awarded by the court from the party that has lost the proceedings.

It is commonly accepted in the legal literature that the costs necessary to properly pursue and properly defend a party represented by an attorney include the expenses incurred by the party in connection with the need to pay stamp duty on the document confirming the appointment of an attorney. Commentaries on the Code of Civil Procedure frequently refer to the Supreme Court resolution of 12 March 2003 (III CZP 2/03), already cited in this article.[22]

4. Conditioning the deduction of stamp duty from a further power of attorney as a cost necessary for the purposeful exercise of rights and purposeful defence from the entity that incurs this type of expenses – false or true?

It is impossible to disagree with these positions, in that the expense of paying the stamp duty on a power of substitutive attorney should certainly be included among the costs necessary for the purposeful pursuit of rights and purposeful defense within the meaning of Article 98 of the Code of Civil Procedure, regardless of whether it is borne by the attorney or the client. *A maiore ad minus*, since the costs of an attorney's remuneration, not higher than the rates set out in separate regulations, or out-of-pocket expenses of one advocate are included among the necessary costs of proceedings, regardless of the complexity of the case, the cost of paying stamp duty on a power of substitutive attorney should be even more so. When this fee is paid by an attorney, it should certainly be defined as the expense of one attorney within the meaning of Article 98 § 3 of the Code of Civil Procedure. It should be noted at this point that the incurrence of this expense should be proven, most often by presenting a transfer confirmation printed from an electronic banking system.

The analysis becomes somewhat more complicated when the principal pays the stamp duty. It should be recalled that the principal, alongside the attorney-in-fact, is jointly and severally liable for the stamp duty on the power of attorney, pursuant to

22 See judgment of the Supreme Court of 27 July 1957, 3 CZ 215/57, OSPiKA 1958, no. 5, item 137. See also judgment of the Supreme Court of 5 March 2015, III PK 109/14, LEX no. 1666025; resolution of the Supreme Court of 4 February 2013, I PK 255/12, LEX no. 1554962; resolution of the Supreme Court of 12 September 2012, II UZ 32/12, LEX no. 1619854; resolution of the Supreme Court of 11 September 2012, III PK 16/12, LEX no. 1619863, or resolution of the Court of Appeal in Poznań of 26 August 2015, III AUz 291/15, LEX no. 1798639.

Article 5 (1) of the Stamp Duty Act. The Supreme Court's position that stamp duty is a reimbursable expense to the party, constituting the cost incurred by the party in pursuing its rights or defending itself, is unconvincing. Therefore, the requirements of Article 98 § 1 of the Code of Civil Procedure are met. The view that since the stamp duty on the power of attorney is not included in any of the cost categories contained in Article 98 § 3 of the Code of Civil Procedure, the list of legal costs is not exhaustive, but merely indicative, a guideline to be followed when deciding on the reimbursement of necessary and appropriate costs, seems inappropriate.

Pursuant to Article 98 § 3 of the Code of Civil Procedure, the necessary legal costs of a party represented by an attorney include the elements listed therein, including the fee, which, however, cannot exceed the rates specified in separate provisions, and the expenses of one attorney, court costs and the costs of the party's personal appearance ordered by the court. Furthermore, this provision applies not only to legal costs incurred by the attorney (e.g. attorney's expenses) but also to the party's costs themselves (e.g. the costs of the party's personal appearance ordered by the court), and therefore this regulation is exhaustive. Therefore, a decision to award reimbursement of a cost incurred by the party in the form of a stamp duty on a power of attorney cannot be based on Article 98 § 1 of the Code of Civil Procedure. The regulation of Article 98 of the Code of Civil Procedure is inappropriate, since, on the one hand, it allows the winning party to be awarded the cost of paying the stamp duty on a power of attorney when it is paid by the attorney, and at least unclearly governs the situation when the fee is paid by the client (if it does not exclude such an option at all). One may wonder whether the principal's payment of stamp duty on a principal power of attorney could be considered an "attorney's expense" within the meaning of Article 98 § 3 of the Code of Civil Procedure, in the sense that the attorney, alongside the principal, is also jointly and severally liable to pay the stamp duty on the power of attorney, in accordance with Article 5 (1) of the Stamp Duty Act, although this view nevertheless seems far-fetched. Therefore, under the current legal framework, it seems safer for the attorney to pay the stamp duty and, if reimbursement from the client is desired, to issue an appropriate accounting note to that effect.

As mentioned above, in practice, it may happen that the stamp duty for a subordinate power of attorney is paid by the principal attorney, even though the obligation to pay it rests with the principal and the substitute attorney. It is generally accepted that the principal attorney should bear the cost of the substitutive power of attorney fee. This position can create problems when deciding on the reimbursement of costs necessary for the purposeful pursuit of rights and the purposeful defence within the meaning of Article 98 of the Code of Civil Procedure. Is this not a case of "doubling

expenses" when the stamp duty for the principal power of attorney is paid by the principal attorney, while the stamp duty for the subordinate power of attorney is paid by the substitute attorney, who, not the principal attorney, is obliged to pay it?

Summary

In this situation, we are not dealing with the expenses of a single attorney within the meaning of Article 98 § 3 of the Code of Civil Procedure, since these are the expenses of two attorneys, respectively: the main attorney and the substitute. In such a situation, to constitute an expense of a single attorney (i.e. the main attorney) the substitute attorney could issue an accounting note and charge them PLN 17. However, in this situation, if we assume – following the position of the Provincial Administrative Court in Białystok, expressed in its judgment of 7 December 2011 – that only the principal and the subordinate attorney are obliged to pay the stamp duty, then the expense of the main attorney, who pays for the accounting note from the substitute, is unnecessary, since they are not obliged to pay the stamp duty, and therefore should not be awarded to the prevailing party in the dispute. Therefore, it seems that under the current legal framework there is no basis for awarding the winning party a reimbursement of the stamp duty on the substitute power of attorney. However, such a basis should be introduced because a power of attorney for legal proceedings includes, by law, the authority to grant further power of attorney to an attorney or legal counsel (Article 91 (3) of the Code of Civil Procedure), and this rule should be reflected in the possibility of awarding the prevailing party a stamp duty for a substitute power of attorney. The court cannot, after all, adjourn a hearing due to a potential conflict of court hearings in cases conducted by one attorney. It is the attorney's responsibility to ensure the personal presence or that of their substitute so as to provide proper legal services, including ensuring that conflicting dates do not result in negative consequences for the client, i.e. consequences in the form of the need to set a new date in the case solely due to the conflict of the attorney's duties, as the latter also has no legal basis (in this case, it is justified). There is no rational justification for distinguishing between situations where stamp duty is paid by the principal or by the substitute attorney from the situation in which that duty is covered by the principal attorney. These entities should be treated uniformly regarding the possibility of including the expense in the form of the stamp duty on a substitute power of attorney within the costs necessary to effectively pursue rights and to effectively defend, within the meaning of Article 98 of the Code of Civil Procedure.

Moreover, the principal attorney, in principle, has the greatest interest in ensuring suitable representation for himself, so omitting the expense paid by him in the form of the stamp duty on a substitute power of attorney within the settlements under Article 98 of the Code of Civil Procedure is even more entirely incomprehensible.

Finally, it should be added that although *de lege lata* there should be a proposal to amend Article 98 of the Code of Civil Procedure, allowing the award of stamp duty costs incurred on a power of attorney – whether principal or secondary, regardless of whether it is paid by the principal, principal attorney, or substitute – to the prevailing party in the proceedings, such costs should still be awarded only in circumstances in which incurring these costs was necessary. Therefore, an entity that unnecessarily paid stamp duty on a power of attorney, despite being entitled to an exemption from this fee (e.g. in connection with an exemption from court costs), cannot demand reimbursement of that fee from the losing party.[23] It is necessary, in this context, to determine whether every expenditure in the form of paying the stamp duty on a substitute power of attorney should be regarded as necessary. The answer to this question should, in principle, be positive, since – firstly – Article 91 (3) of the Code of Civil Procedure by its very force grants authority to appoint further procedural power of attorney to a solicitor or advocate. Secondly, as emphasised above, the court is not obliged to adjourn a hearing under Article 214 of the Code of Civil Procedure due to a clash of the representative's deadlines, which is entirely understandable. From this perspective, there is a strong and rational link between Article 91, point 3 of the Code of Civil Procedure and Article 214 of the Code of Civil Procedure. Thirdly, it is worth recalling the practice whereby the principal, as a rule, pays the stamp duty on a substitute power of attorney, since they are the one seeking substitution for a specific date in the case. It seems that a rational consequence of these provisions should be to ensure a legal possibility to include within the costs awarded the expenditure incurred on the stamp duty for each expenditure in the form of stamp duty on the power of attorney, which indeed is not high, amounting to PLN 17. The necessity to ensure the coherence discussed above between the procedural provisions (Article 91 (3) and 214 of the Code of Civil Procedure) and the cost settlement possibilities under Article 98 of the Code of Civil Procedure appears to be obvious. Thus, the expenditure in the form of stamp duty for a further power

[23] See judgment of the Supreme Court of 27 July 1957, 3 CZ 215/57, OSPiKA 1958, no. 5, item 137. See also judgment of the Supreme Court of 5 March 2015, III PK 109/14, LEX no. 1666025; resolution of the Supreme Court of 4 February 2013, I PK 255/12, LEX no. 1554962; resolution of the Supreme Court of 12 September 2012, II UZ 32/12, LEX no. 1619854; resolution of the Supreme Court of 11 September 2012, III PK 16/12, LEX no. 1619863, or resolution of the Court of Appeal in Poznań of 26 August 2015, III AUz 291/15, LEX no. 1798639.

of attorney should be recognised, in principle and in each case, as a necessary cost within the meaning of Article 98 of the Code of Civil Procedure. An exception may arise if, for example, the entity unjustifiably paid the stamp duty on a substitute power of attorney despite being entitled to an exemption from this obligation (for instance, in connection with exemption from court costs). In such a situation, the entity could not reasonably expect reimbursement of this expenditure from the opposing party. It is worth adding that the foregoing issue does not concern authorisation for a trainee advocate or trainee legal advisor, since, given that they do not operate on the basis of a power of attorney document, there is no legal obligation to pay the stamp duty on the authorisation granted to a trainee solicitor or trainee legal adviser.

Bibliography

Borkowski G., *Aplikant adwokacki w postępowaniu cywilnym – substytut czy zastępca adwokata?*, Palestra 2009, no. 11–12.

Borkowski G., *Glosa do uchwały SN z 28.06.2006 r. III CZP 27/06*, Przegląd Sądowy 2008, no. 6.

Cieślak B., *Wybrane zagadnienia uiszczania opłaty skarbowej od udzielonego pełnomocnictwa lub prokury*, Finanse Komunalne 2012, no. 6.

Dróżdż-Chmiel K., *The Legal Status of an Advocate's Articled Clerk in the Polish Civil Court Proceedings – Remarks on Comparative Background*, Studia Prawnicze KUL 2021, no. 4.

Kodeks postępowania cywilnego. Komentarz, ed. A Marciniak, vol. 1, Warszawa 2019.

Kodeks postępowania cywilnego. Komentarz, ed. A. Góra-Błaszczykowska, vol. 1A, 3rd ed., Warszawa 2020.

Kodeks postępowania cywilnego. Komentarz, ed. M. Manowska, vol. 1, 3rd ed., Warszawa 2015.

Kodeks postępowania cywilnego. Komentarz, ed. O. Piaskowska, Warszawa 2020.

Kodeks postępowania cywilnego. Komentarz, ed. T. Ereciński, vol. 4, 5th ed., Warszawa 2016.

Kodeks postępowania cywilnego. Komentarz, ed. T. Szanciło, vol. 1, Warszawa 2019.

Lemańska E., *Opłata skarbowa od pełnomocnictwa (prokury)*, Zeszyty Naukowe Sądownictwa Administracyjnego 2008, no. 1.

Lipiński K., *Czy aplikant adwokacki, upoważniony przez adwokata do zastąpienia go, może być przez sąd dopuszczony tymczasowo do udziału w rozprawie, gdy nie może na razie przedstawić pełnomocnictwa dla adwokata, który udzielił aplikantowi upoważnienia (art. 89 § 1 k.p.c.)?*, Palestra 1959, no. 7–8.

Marciniak A., *Upoważnienie aplikanta komorniczego do samodzielnego wykonywania określonych czynności egzekucyjnych*, Przegląd Sądowy 2015, no. 9.

Matusik G., Śladkowski M., *Pozycja prawna aplikanta radcowskiego w postępowaniu cywilnym*, Przegląd Sądowy 2008, no. 11–12.

Michta D., *Indos pełnomocniczy – wybrane aspekty problemowe*, Palestra 2018, no. 7–8.

Misiejuk I., *Czy aplikant na etacie zastąpi obrońcę?*, Radca Prawny 2016, no. 1.

Misiejuk I., *Czy aplikant pomoże przy bezpłatnych poradach?*, Radca Prawny 2015, no. 4.

Nowak A., *Opłata skarbowa. Glosa do uchwały SN z dnia 12 marca 2003 r., III CZP 2/2003*, Glosa 2004, no. 10.

Ofiarski Z., *Ustawa o opłacie skarbowej. Ustawa o podatku od czynności cywilnoprawnych. Komentarz*, 4th ed., Warszawa 2018.

Olszewski P., *Wolność słowa aplikanta*, Radca Prawny 2016, no. 6.

Smyk M., *Status prawny aplikanta radcowskiego w postępowaniu cywilnym (głos w dyskusji)*, Przegląd Sądowy 2010, no. 2.

Sobel T., *Opinia o możliwości zastępstwa radcy prawnego przed sądami i innymi organami przez aplikantów, którzy otrzymali zaświadczenia o ukończeniu aplikacji*, Radca Prawny 2013, no. 2.

Studzińska J., *Uprawnienia aplikanta komorniczego – problemy praktyczne*, Przegląd Prawa Egzekucyjnego 2016, no. 1.

Weitz K., *Dwie kwestie związane z opłatą skarbową od pełnomocnictwa w postępowaniu cywilnym*, Palestra 2005, no. 3–4.

Zieliński A., Flaga-Gieruszyńska K., *Kodeks postępowania cywilnego. Komentarz*, 10th ed., Warszawa 2019.

Żołnierkiewicz H., *Opłata skarbowa od pełnomocnictwa substytucyjnego – wątpliwości w praktyce*, Russel Bedford, 13.02.2020, https://www.russellbedford.pl/aktualnosci/instrukcje-czynnosci-poradniki/item/1692-oplata-skarbowa-od-pelnomocnictwa-substytucyjnego-watpliwosci-w-praktyce.html [access: 7.07.2025].

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Legal and procedural framework for wildlife damage compensation in the Republic of Moldova – challenges and mechanisms

Ramy prawne i proceduralne dotyczące odszkodowań za szkody wyrządzone dzikiej przyrodzie w Republice Mołdawii – wyzwania i mechanizmy

Правовые и процедурные рамки касающиеся возмещения вреда, нанесенного дикой природе в Республике Молдова – вызовы и механизмы

Правові та процедурні рамки щодо відшкодування шкоди, завданої дикій природі в Республіці Молдова – виклики та механізми

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Abstract: The animal kingdom represents an essential component of ecosystems, and its destruction greatly affects the global natural balance. In the Republic of Moldova, there are animal species protected by law, and the damages caused to them could also have serious consequences on the existing biodiversity balance. The central objective of this thesis is to ascertain the legal and practical ramifications of the process for rectifying harm inflicted upon the animal kingdom within the borders of the Republic of Moldova. This subject matter is distinguished by its unique particularities when juxtaposed with the realm of civil damages. The legal framework governing this domain is characterised by its specificity, precluding the possibility of exoneration for the perpetrator, embracing objective liability principles, and establishing compensation as the sole means of redress. This legislative framework is designed to safeguard biodiversity and ecological equilibrium. The research methodology is applied to compare the legal and procedural framework for repairing damage to animals in Moldova, identify gaps and propose ways to improve legal mechanisms for protecting and compensating ecological damage. This research topic will contribute significantly to effective identification of effective mechanisms in order to prevent acts damaging the animal kingdom.

At the same time in the proposed study the authors will analyse the national regulations on the protection of the animal kingdom, and will also as well as examining the applicability of legislation in the context of procedural reparation of damage caused to the animal kingdom and wildlife components. In this context, we will

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provide a comprehensive set of proposals of *de lege ferenda* in order to optimise and improve the regulatory framework for the reparation of damages caused to the animal kingdom.

Keywords: environmental law, civil law, wildlife damage, procedural law, liability, compensation, biodiversity, ecosystem protection, public interest litigation

Streszczenie: Królestwo zwierząt stanowi istotny element ekosystemów, dlatego jego niszczenie ma ogromny wpływ na globalną równowagę przyrodniczą. W Republice Mołdawii występują gatunki zwierząt objęte ochroną prawną, a wyrządzone im szkody mogą mieć poważne konsekwencje dla istniejącej równowagi bioróżnorodności. Głównym celem niniejszej pracy jest określenie prawnych i praktycznych konsekwencji procesu naprawiania szkód wyrządzonych zwierzętom żyjącym dziko na terenie Republiki Mołdawii. Temat ten różni się specyfiką od obszaru odszkodowań cywilnych. Ramy prawne regulujące tę dziedzinę wykluczają bowiem możliwość uwolnienia sprawcy od odpowiedzialności, opierają się na obiektywnych zasadach odpowiedzialności i ustanawiają odszkodowanie jako jedyny środek zadośćuczynienia. Ich celem jest ochrona różnorodności biologicznej i równowagi ekologicznej. Zastosowana metodologia badawcza ma na celu porównanie prawnych i proceduralnych ram naprawy szkód wyrządzonych zwierzętom w Mołdawii, zidentyfikowanie luk prawnych oraz zaproponowanie sposobów udoskonalenia mechanizmów prawnych służących ochronie przyrody i rekompensacie szkód wyrządzonych środowisku. Niniejsza analiza w znacznym stopniu przyczyni się do identyfikacji skutecznych mechanizmów zapobiegania aktom niszczenia przedtawicieli królestwa zwierząt.

Jednocześnie w proponowanym studium autorzy przeanalizują krajowe regulacje dotyczące ochrony królestwa zwierząt, a także zbadają zastosowanie przepisów w kontekście proceduralnego naprawiania szkód wyrządzonych królestwu zwierząt i elementom dzikiej przyrody. W tym kontekście przedstawią oni kompleksowy zestaw propozycji *de lege ferenda*, mający na celu optymalizację i udoskonalenie ram prawnych obejmujących naprawianie szkód wyrządzonych zwierzętom.

Słowa kluczowe: prawo ochrony środowiska, prawo cywilne, szkody wyrządzone dzikiej przyrodzie, prawo procesowe, odpowiedzialność, odszkodowanie, bioróżnorodność, ochrona ekosystemów, spór prawny dotyczący interesu publicznego

Резюме: Животный мир является важным элементом экосистем, поэтому его уничтожение оказывает огромное влияние на глобальное природное равновесие. В Республике Молдова обитают виды животных, охраняемые законом, и нанесенный им вред может иметь серьезные последствия для существующего равновесия биологического разнообразия. Основной целью данной работы является определение правовых и практических последствий процесса возмещения вреда, нанесенного диким животным на территории Республики Молдова. Данный вопрос отличается своей спецификой от сферы гражданско-правовой ответственности. Правовые рамки, регулирующие эту область, исключают возможность освобождения виновного от ответственности, основаны на объективных принципах ответственности и устанавливают возмещение вреда в качестве единственного средства компенсации. Их целью является защита биологического разнообразия и экологического равновесия. Примененная исследовательская методология направлена на сравнение правовых и процедурных рамок возмещения вреда, нанесенного животным в Молдове, выявление пробелов в законодательстве и предложение способов совершенствования правовых механизмов, служащих для защиты природы и компенсации вреда, нанесенного окружающей среде. Данная исследовательская тема в значительной степени будет способствовать выявлению эффективных механизмов предотвращения случаев уничтожения представителей животного мира.

В то же время в предлагаемом исследовании авторы проанализируют национальные нормативные акты, касающиеся защиты животного мира, а также изучат применение этих норм в контексте процедурного возмещения вреда, нанесенного животному миру и элементам дикой природы. В этом контексте они представят комплексный набор предложений *de lege ferenda*, направленных на оптимизацию и совершенствование правовой базы, регулирующей возмещение вреда, нанесенного животным.

Ключевые слова: экологическое право, гражданское право, вред, нанесенный дикой природе, процессуальное право, ответственность, возмещение вреда, биологическое разнообразие, защита экосистем, правовой спор, касающийся общественных интересов

Анотація: Тваринний світ є важливим елементом екосистем, тому його руйнування має значний вплив на глобальну екологічну рівновагу. У Республіці Молдова існують види тварин, які перебувають під правовим захистом, і шкода, заподіяна їм, може мати серйозні наслідки для збереження біорізноманіття. Головною метою цієї роботи є визначення правових та практичних аспектів процесу відшкодування шкоди, заподіяної диким тваринам на території Республіки Молдова. Ця тема суттєво відрізняється за своєю специфікою від сфери цивільно-правового відшкодування. Правові рамки, що регулюють цю сферу, виключають можливість звільнення винуватця від відповідальності, ґрунтуються на об'єктивних принципах відповідальності та встановлюють відшкодування як основний засіб компенсації. Їх метою є захист біорізноманіття та підтримання екологічної рівноваги. Застосована дослідницька методологія має на меті порівняти правові та процедурні рамки відшкодування шкоди, заподіяної тваринам у Молдові, виявити прогалини в законодавстві та запропонувати способи вдосконалення правових механізмів, що служать охороні природи та компенсації шкоди, заподіяної довкіллю. Це дослідження значною мірою сприятиме виявленню ефективних механізмів запобігання актам знищення представників тваринного світу.

Водночас у запропонованому дослідженні автори проаналізують національні нормативні акти щодо охорони тваринного світу, а також дослідять застосування положень у контексті процедурного відшкодування шкоди, заподіяної тваринам та елементам дикої природи. У цьому контексті вони представлять комплексний набір пропозицій *de lege ferenda*, спрямованих на оптимізацію та вдосконалення правової бази, що охоплює відшкодування шкоди, заподіяної тваринам.

Ключові слова: екологічне право, цивільне право, шкода, заподіяна дикій природі, процесуальне право, відповідальність, відшкодування, біорізноманіття, захист екосистем, правовий спір щодо публічного інтересу

The rapid loss of biodiversity that we are witnessing is about much more than nature. The collapse of ecosystems will threaten the wellbeing and livelihoods of everyone on the planet.
Linda Krueger

Introduction

This article addresses the increasingly urgent issue of damage to the animal kingdom within the broader context of environmental law. Scholarly literature acknowledges the fundamental difference between ecological damage and classical patrimonial harm (Pop, 2023; Lupan, 2003), especially in view of the principle of imprescriptibility, the exclusion of reparations in kind, and the public interest dimension.

The Republic of Moldova's legal framework, including the Constitution (Article 37), Civil Code, and procedural norms, offers some foundational elements, but lacks cohesion in addressing environmental liability mechanisms.

The main research objective is to examine the legal instruments governing damage reparation to wildlife and to test the hypothesis that these instruments fail to ensure full legal protection for biodiversity and ecological balance.

The question of animal causation of injury has long been a subject of concern in wildlife law, capturing the interest of both practitioners and theorists.[1] Until 1968, French farmers were granted the right to hunt on the land they cultivated, enabling them to hunt large game animals that entered their properties and thereby mitigate crop damage. However, this right was abolished by the Finance Act of 27 December 1968, which transferred responsibility for compensating damage caused by wild animals to the state, particularly in the context of managing specific game reserves.[2]

However, this model underwent a significant transformation in 1968, when the aforementioned Finance Act abolished the hunting right previously conferred upon land cultivators. The legislative shift marked a pivotal reallocation of responsibility from individual landowners to the French state, particularly in the context of damage originating from state-managed hunting reserves or protected areas. By centralising responsibility, the new legal regime aligned more closely with modern environmental governance principles, wherein the state assumes a stewardship role over biodiversity and ecological balance.

Under this revised framework, the state became accountable for assessing, managing, and compensating damages caused by wild animals, thereby recognising that the preservation of wildlife populations cannot rely solely on private initiative or decentralised hunting rights. This legislative development reflects a broader trend within European environmental law – toward increased institutional responsibility, the integration of conservation objectives, and the acknowledgment of ecological services provided by wildlife. It also highlights the legal distinction between res nullius (things belonging to no one) and state-held trusteeship, prompting doctrinal debates on whether wild animals should continue to be treated as ownerless entities or as protected public goods under the law.

The implications of this legal transition are manifold. On one hand, it imposed fiscal and administrative burdens on public authorities, which now had to develop mechanisms for damage assessment, compensation, and conflict resolution. On the other, it contributed to the stabilisation of wildlife populations by reducing incentives for unregulated hunting and encouraging non-lethal mitigation strategies. The French model has since informed similar legal developments across various jurisdictions, including in Eastern Europe, where wildlife law increasingly intersects with human rights, agricultural policy, and biodiversity protection mandates.

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1 E. Lupan, *Răspunderea civilă [Civil Liability]*, Cluj-Napoca 2003, pp. 218–221.

2 Chambres D´agriculture France, *Guide. L'indemnisation des dégâts de grands gibiers*, January 2014, https://lozere.chambre-agriculture.fr/fileadmin/user_upload/Occitanie/071_Inst-Lozere/gerer_l_exploitation/2_Chasse_Guide_indemnisations_APCA_CA48.pdf [access: 12.01.2025].

Thus, the issue of damage caused by wild animals remains a fertile ground for legal inquiry, situated at the crossroads of private interest and public ecological duty. It raises fundamental questions about liability, compensability, and the allocation of risk in societies that seek to harmonise rural livelihoods with environmental sustainability.

It should be noted that the procedure for compensating damage to animal life differs from the procedure for compensating damage to other categories.

In order to elucidate the subject of the research as successfully and complexly as possible, the authors employed a range of eminent methods of analytical research, including deductive analysis and synthesis of structural-systematic logic, legal-comparative, doctrinal legal analysis, and systematic interpretation techniques, and other methods of scientific knowledge.

1. Legal-comparative approaches environmental *versus* civil damages

In the context of specific procedures for the compensation of damages caused to the animal kingdom, the application of the analogy between the law and the legal norm will be utilised, with procedural aspects being stated from the general to the particular, specific and adaptable in the matter of reparation of damages caused to the environment and in particular to the animal kingdom.

The distinction between these two categories is not reflected in the conditions under which the procedure is carried out, but rather in the specific features that characterise it. To this end, we will refer to a number of points of reference from the outset, which will be followed below.[3]

1) Firstly, in the context of civil damages, the right to initiate a legal claim for compensation is exclusively reserved for individuals who have sustained financial losses. However, in cases involving damage to the animal kingdom, this right is extended to any individual, irrespective of whether they have personally experienced direct harm as a result of the damaging act. Consequently, the right of action is extended to all natural people, regardless of whether they claim to have a personal interest that has been adversely affected by the infringement of their right to property.[4]

[3] I. Trofimov, E. Gugulan, *Legal-Applicative Regulation of the Damages Caused to the Animal Kingdom*, FIAT IUSTITIA. Dimitrie Cantemir Faculty of Law Cluj Napoca, Romania 2023, vol. 17, no. 1, pp. 43–54.

[4] E. Lupan, *Răspunderea civilă*, p. 237.

2) In the event of civil damages, the legislator assumes the right of the tortfeasor to repair the damage in kind, and the injured party has the right to seek reparation in kind. However, in the case of damage caused to the animal kingdom, the tortfeasor is excluded from such an opportunity, as the way in which the perpetrator can repair the damage is only through compensation.
3) In the context of civil damages, the legislator presumes the right of the tortfeasor to negotiate the compensation amount for the inflicted harm, and the injured party's right to claim compensation in kind. However, in the event of damage to the animal kingdom, the tortfeasor is precluded from this option, as previously discussed, due to the fact that he is only able to compensate for the damage through the aforementioned process.
4) In the event of damages being sustained, the legislator assumes the right of the victim to exempt the perpetrator from the obligation to compensate. However, in the case of damages caused to the animal kingdom, the perpetrator is not entitled to such an exemption. Instead, he is under an obligation to make reparation without having the right of exemption from liability by any negotiation of such an effect.
5) Conversely, if the legislator presumes that the perpetrator is liable solely in the event of their guilt, then in the context of damage to the animal kingdom, the perpetrator is liable irrespective of their culpability. This necessitates that the court refrain from addressing the issue of guilt in the evidence presented by the parties.
6) In the event of the obligation to make reparation in the exercise of an ordinary civil right being time-barred, the right to bring an action for damages caused to the animal kingdom, having a patrimonial character, is characterised by its imprescriptibility.

We can identify other rules, that apply to the procedure in cases of damage to the animal kingdom, as well.

2. Procedure for repairing the damage caused to the animal kingdom

On the basis of the aforementioned, the fundamental issues that characterise the procedure of reparation of damages caused to the animal kingdom will be referred to.

As previously stated, in cases of damage to the animal kingdom, the right to compensation pertains exclusively to individuals who have sustained pecuniary losses. In the case of damage to domestic animals, the right to compensation extends to any

individual, irrespective of whether they have personally and directly experienced harm from the harmful act.

It is evident that the right to initiate legal proceedings is possessed by any individual, irrespective of whether or not they have a personal stake in the matter arising from the infringement of their property rights. This prerogative is founded on the fundamental right of all individuals to enjoy a healthy and balanced ecological environment, as stipulated in Article 37 of the Constitution of the Republic of Moldova.[5] In this manner, although in the vast majority of cases, by virtue of the regulations of Article 166 CPC RM,[6] which states that: "[…] one who claims a right against another person or has an interest in establishing the existence or non-existence of a right must file a petition for a writ of summons in the competent court," it is required that the person filing an action must also prove it is their personal interest that has been harmed, which is often reflected in the harm to an individual interest (right). However, in cases of causing damage to the animal kingdom, such an approach is no longer relevant.

The preservation of the integrity of the animal kingdom, as embodied by the concept of balance, constitutes a fundamental right that belongs to all citizens of the Republic of Moldova. Furthermore, this right is extended to any individual present within the country's territory, irrespective of their nationality or citizenship. Notably, Article 37 of the Constitution of the Republic of Moldova does not circumscribe this right exclusively to citizens. Instead, the term employed by the legislator is "every person."

Consequently, in instances where an individual initiates legal proceedings seeking redress for environmental damage, the court is not permitted to demand the specific enumeration of any particular legal rights that may have been violated by the defendant.

Indeed, any individual, irrespective of their place of residence, place of employment, place of leisure, or nationality, is entitled to initiate legal proceedings in court to seek redress for damage inflicted upon the animal kingdom.

If the procedural issue is to be approached in isolation, it would appear that there would be no particular peculiarity, other than the fact that the right of action for compensation for damage caused to the animal kingdom is a right of action in the public interest. However, in our opinion, the problem of the application of procedural

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5 Article 37 Constitution of the Republic of Moldova no. 1 din 29.07.1994, published 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

6 Article 166 Civil Procedure Code no. 225 of 30.05.2003, Official Gazette of the Republic of Moldova, 12.06.2003, no. 111–115 [access: 12.11.2024].

rules in the light of the public interest of environmental protection would dictate the need to review the position of the legislator with regard to the procedures for admission to the proceedings, review of decisions and supplementing the decision.

When discussing the individual's right to an ecologically balanced environment, it is imperative to acknowledge that this right is universal, and that every individual has the capacity to defend it.

Consequently, the fact that an individual, whether a natural or legal person, has initiated legal proceedings before a competent court or authority to claim compensation for damage inflicted upon the animal kingdom, and that, consequently, compensation has been awarded, does not negate the entitlement of other individuals to initiate analogous claims. Furthermore, in instances where the satisfaction of the aforementioned claim pertaining to the damage caused, has not been fully realised or compensatory in nature, any other interested party is entitled to supplement the claim or intervene in the proceedings.

It is imperative to note that such an intervention would be required at any stage of the proceedings, as well as in the order of review of a judgement that has already been adopted. In the same context, it is necessary to examine a particularly important aspect, such as the question of the involvement in the proceedings of all interested parties. According to Article 37 of the Constitution of the Republic of Moldova,[7] such an interest would be entitled to any person.

In this sense, it is justified to apply a procedure that, after its effects, excludes not only the non-announcement to the public of the public interest action filed by a specific person, but also to avoid the abuse of the procedure by any person who would be interested in the opposite result to the one related to the reparation of the damages caused to the animal kingdom. In this author's opinion, such a procedure would be to issue a public summons to all interested parties in the outcome of the case. This public summons is to be reflected in Article 108 Civil Procedure Code of Republic of Moldova, where in paragraph (1), after the phrase: "If the defendant's whereabouts are unknown and the plaintiff gives assurances that, despite having done his best efforts, he was unable to find out his domicile," the text: "as well as in the event that the plaintiff invokes a claim for compensation for damage caused to the environment" should be added to paragraph (1), and the word *'it'* should be excluded.[8]

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7 Constitution of the Republic of Moldova no. 1 din 29.07.1994, published 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

8 I. Trofimov, E. Gugulan, *Legal-Applicative Regulation*…, pp. 43–54.

Concurrently, it is considered that the text of paragraph (2) Article 108 of the Code of Civil Procedure,[9] following the aforementioned point, should be completed with the following content: "In the event that a public summons is issued on the basis that the plaintiff invokes a claim pertaining to the rectification of environmental damage, the summons shall be published in the Official Gazette of the Republic of Moldova."

This procedural-legal measure is designed to guarantee the right of every citizen to participate in the lawsuit within the stipulated timeframe, while ensuring the procedural integrity of the lawsuit. An action, and the failure of the interested people to intervene within the time-limit and under the conditions set by the court will deprive the interested parties of the right to request without justification a review of the procedure for examining the case and, in some cases, even to file another contested act.

In addressing the question of the right of the perpetrator to rectify the damage in kind, and for the injured party to claim compensation in kind, rights enshrined as the basis of civil liability, it is observed that such a rule is not applicable in the case of environmental damage. This is due to the fact that the tortfeasor is presumably not capable of knowing the biological and other processes that dictate a particular mode of reparation.

Therefore, the procedure for repairing the damage caused to the animal kingdom cannot be based on such a rule. In such a situation, the only possibility of reparation is based on the rule of compensation in the form of equivalent compensation.

In legal proceedings pertaining to the compensation for damage inflicted upon the animal kingdom, the aggrieved party shall be precluded from utilising their own efforts to rectify the harm suffered by the animal. The obligation to compensate shall be limited to the reimbursement of costs and expenses directly associated with the injury sustained. Consequently, within the context of legal redress for damage to animal welfare, the prospect of redress through personal efforts to repair the damage is not a viable option. The obligation to make reparation will only be fulfilled by the payment of a monetary equivalent. It can thus be concluded that the authority empowered to carry out the preliminary procedure for settling the question of compensation for pecuniary damage, as well as the court, will be entitled to consider only one option: the amount of the expenses necessary for disgorgement, or the amount of the sum determined by law as the amount of compensation for the damage caused.

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[9] Civil Procedure Code no. 225 of 30.05.2003, Official Gazette of the Republic of Moldova, 12.06.2003, no. 111–115 [access: 12.11.2024].

In the context of the civil liability relationship, the offender is not at liberty to opt out of liability for damages inflicted upon the animal kingdom. Consequently, the perpetrator is unable to enter into a transaction that would exempt them from liability for damages caused to the animal kingdom. Furthermore, the perpetrator cannot claim that the amount of the damage caused should be reduced by means of a settlement. It is imperative to acknowledge that the conclusion of the settlement in this case can relate only to the manner of performance of the pecuniary obligation in the nature of compensation, without touching the question of its amount, as well as other questions of this kind.

In order to establish liability for damage inflicted upon the animal kingdom, it is crucial to recognise that, from a procedural standpoint, the absence of such a foundation precludes the courts from addressing the matter during the process of determining reparation.

In the context of civil damages, the legislator operates under the presumption that the perpetrator is only liable if he is found guilty of the damage caused. Consequently, the court is obligated to establish such a finding. However, in the case of damage to the animal kingdom, since the perpetrator is liable regardless of his guilt, the court does not address this issue.

3. Preliminary procedure in the framework of compensation for damages caused to the animal kingdom

The right to judicial defence of subjective rights is enshrined in both national and international acts and, according to some doctrinal opinions,[10] is also a "constitutional principle." In the majority of democratic states, the restoration of subjective rights and contested interests is carried out with the assistance of the courts within the limits of the functional competence established by law.[11]

The importance of legal action and its particularities are enshrined in the civil legislation of both Romania and the Republic of Moldova (hereinafter referred to as 'Romania' and 'Moldova,' respectively). These laws provide for the possibility for the parties involved to resolve disputes over the damage caused, either amicably or through the courts. In this way, the legal process provides a platform for resolving

10 G. Boroi, M. Stancu, *Drept procesual civil [Procedural Civil Law]*, 4th ed., revised and added, Bucharest 2017, p. 29.

11 O. Pisarenco, *Drept procesual civil [Procedural Civil Law]*, Chisinau 2011, p. 16.

disagreements in accordance with established legal rules and procedures, thus ensuring that the rights and interests of the parties involved are protected.[12]

The possibility exists for the party deemed liable to circumvent the initiation of legal proceedings by offering voluntary compensation to the aggrieved party. This course of action not only precludes the accrual of expenses related to state duty, stamp duty, the costs of evidence collection, legal assistance, and other associated costs, but also ensures the expeditious compensation of damages.[13]

However, should the individual responsible for effecting the necessary repairs decline to fulfil their compensation obligation voluntarily, the entitled party may initiate legal proceedings by filing an action in court to claim compensation, as previously outlined, and thereby specify the equivalent value of the damage incurred.

This legal action constitutes the legal means of realising the right to compensation and forms "the legal means by which a person who has suffered damage to his person or property as a result of the commission of an unlawful act by another person may claim from the competent court an order that the person or persons called to account for the adverse consequences of that act should be ordered to make reparation."[14]

In the context of a civil claim, the preliminary procedure constitutes a requisite preliminary step, as out-of-court remedies have not been exhausted. With regard to compensation for damage inflicted upon the animal kingdom, this stage entails specific particularities, contingent upon the premise that not all forms of damage to the animal kingdom can be remedied by any individual. This assertion is particularly salient in the context of the perpetrator.

Consequently, the preliminary procedure does not present an opportunity for the perpetrator to address these issues. Instead, the perpetrator can only contribute to the compensation of disgorgement costs.

Simultaneously, it is imperative to acknowledge that the inception of the settlement process, even in the preliminary litigation procedure, engenders civil procedural relations, even if these relations are extrajudicial.

In matters of tort, the obligation to pay compensation for damage arises when all the conditions necessary to establish liability for the wrongful act and the damage caused are met.[15]

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12 I. Trofimov, E. Gugulan, *Legal-Applicative Regulation*…, pp. 43–54.

13 E. Lupan, *Răspunderea civilă*, p. 236.

14 M. Costin, M. Mureșan, V. Ursa, *Dicționar de drept civil [Dictionary of Civil Law]*, Bucharest 1980, pp. 21–22.

15 I. Adam, *Tratat de drept civil. Obligațiile. Responsabilitatea civilă extracontractuală. Faptul juridic civil [Civil Law Treatise. Obligations. Extracontractual Civil Liability. The Civil Legal Act]*, Bucharest 2021, p. 278.

This moment is important for the following reasons:

- The perpetrator who is required to compensate may repair the damage by paying monetary compensation on a voluntary basis, and as a result will not be able to claim restitution of these payments, as in the case of unduly payments.
- It should be noted that, in the case of damage caused to the animal kingdom, these compensation payments may not be less than the actual amount of the damage or, as the case may be, the equivalent amount established by law or other normative act.

In matters of succession, the right to compensation is not addressed, as the present case concerns an action in the public interest, and the injured party does not bequeath the right to claim compensation to his heir. The heir, too, possesses this right and is entitled to exercise it irrespective of his status as heir.

Consequently, in the context of inheritance, it is not imperative to address the matter of the succession of the right of action for compensation for damage inflicted upon the animal kingdom, although this is not precluded. Specifically, such a course of action is not excluded on the basis that the heir may assert both the infringement of his own right and that of the individual who has bequeathed the inheritance.

In such a case, the heir may raise against the wrongdoer all the defences which the person who left the inheritance (the deceased) could or did raise. The general condition for succession by operation of law is that the subjective right at issue must be capable of being transmitted by succession of operation of law under substantive law.[16] Consequently, the preliminary procedure carried out by a deceased person may be opposed by a person who did not carry out the preliminary procedure, solely on the basis that the latter is the heir of the person who carried out the preliminary procedure.

With regard to the right of the aggrieved person to have recourse to the Paulian action, it is considered that the same considerations apply to this situation as to the question of succession.

The underlying principle of the Pauline action is that the plaintiff is asserting a claim that he is unable to assert for himself. The prevailing opinion, with which we concur, asserts that the rationale of the Pauline action is to „constitute a means of protecting creditors against acts concluded by the debtor with third parties in fraud of their rights, acts which become unenforceable against them, in order to enable them to pursue certain assets alienated by the debtor, by which they are

16 O. Pisarenco, *Drept procesual civil*, p. 79.

prejudiced."[17] The formulation is conducted with the intention of benefitting the creditor, albeit in his own best interests. Following the establishment of the plaintiff's entitlement to compensation for damages inflicted upon the animal kingdom, the necessity for initiating a Pauline action becomes obsolete. Nevertheless, should the plaintiff also invoke the defences that his debtor ought to have advanced, such an action remains quite possible.

The resolution of these matters is potentially achievable within the framework of the preliminary procedure.

4. Judicial review procedure in the context of compensation for damage caused to the animal kingdom

Court proceedings are the means of ensuring the exercise of the right to claim compensation for damage caused to the animal kingdom as a result of the fact that the person who caused the damage refuses to compensate for it in the preliminary out-of-court procedure.

It should be borne in mind that an application for compensation for damage caused to the animal kingdom is an action in property. It seeks compensation for damage suffered not only by the owner of the natural element, such as the animal kingdom, but also by any person. Any person can claim compensation on the basis that he or she is entitled to benefit from an ecologically balanced environment.[18] In the Republic of Moldova, the right to an intact animal habitat is guaranteed to every citizen. An application for a writ of summons represents the primary procedural mechanism available to an individual to defend, in the court of law, a right, freedom or legitimate interest that has been infringed or challenged. In instances of damage inflicted upon the animal kingdom, an application for a writ of summons constitutes the primary procedural mechanism available to an individual to defend the public interest.

This document, being the procedural instrument that gives effect to the plaintiff's or petitioner's will in writing, is subject to the formal requirements stipulated by

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17 L. Pop, *Tratat de drept civil. Naşterea, statica, dinamica şi stingerea obligaţiilor. Fiinţa obligaţiilor civile [Civil Law Treatise. Nature, Statics, Dynamics and Extinction of Obligations. Nature of Civil Obligations]*, Bucharest 2023, p. 435.

18 Article 37 Constitution of the Republic of Moldova no. 1 din 29.07.1994, published: 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

law for initiating proceedings, unless explicit legal provisions provide otherwise.[19] The general conditions for validation of applications to the courts are, in principle, general and relate to: indication of the court to which the application is addressed, the name, domicile or residence of the parties or, where appropriate, their names and the names and domicile of their representative, the subject-matter of the application and the signature.[20] According to paragraphs 14) and 15) of the Decision of the Plenum of the SCJ of the Republic of Moldova no. 24 of 12.12.2005 on the application of the rules of the Code of Civil Procedure to the trial of cases in the first instance: "The formulation of requests and applications is included in the category of real rights that benefit the participants in the proceedings and contribute to the settlement of the dispute, the effectiveness of the realisation of the act of justice and the implementation of the principle of availability."[21]

In another vein, with regard to claims, Romanian civil procedure law stipulates that: "An individual who has a claim against another person or who seeks a judicial settlement of a legal situation is entitled to submit a claim to the relevant court."[22]

The right to initiate legal action for damages against the animal kingdom is an active element of the patrimony of the injured party, typically for the State of The Republic of Moldova, but also one of common interest to the entire society. The question of the succession of procedural law cannot be addressed in this context, at least on the grounds that every citizen has the right to bring an action.

The action for damages to the animal kingdom, as to the status of the wrongdoer, the respondent, the status of the heir, in substance, can be addressed. Moreover, such an approach is supported by the fact that the debtor may bequeath the succession liabilities.

The quantification of damages arising from the initiation of legal action on behalf of the animal kingdom is determined by the aggregate sum of both direct damage, which is defined as the removal of an animal from its natural habitat, and indirect damage, which is typically prospective in nature.

In this matter, the principle of full compensation for damage applies, with the aim of restoring the injured party to the situation prior to the wrongful act. In instances

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19 G. Boroi, M. Stancu, *Drept procesual civil*, p. 366.

20 A. Savva, V. Tihon, *Drept procesual civil. Partea generală [Procedural Civil Law]*, Chisinau 2012, p. 172.

21 Decision of the Supreme Court of Justice Plenum regarding the application of the rules of the Code of Civil Procedure to the judgement of cases at first instance, no. 24 of 12.12.2005, Bulletin of the Supreme Court of Justice of the Republic of Moldova 2006, no. 8, p. 9.

22 S. Florea, *Cererile în procesul civil. Dispoziții generale [Claims in Civil Proceedings. General Provisions]*, Bucharest 2014, p. 13.

where reparation is impossible, as in the case of the destruction of the animal, the claim for compensation will consist solely of compensation for the damage. In the case of an action for damages caused to the animal kingdom, the fault of the tortfeasor does not need to be proved by the injured party. It is important to note that in such cases, there is no presumption of fault or strict liability, independent of fault. This means that the perpetrator of the damage is liable even if he acted without discernment, and irrespective of his age and state of mind. It should also be noted that the court determines the type of compensation depending on the circumstances. In such cases, the treatment of the injured animal is regarded as a form of reparation, with the costs of treatment being borne by the perpetrator. The compensation for the value of the killed animal is not only intended to serve as a form of reparation, but also as a payment to compensate for the animal's removal from its natural environment.

In this case, as previously stated, although reparation in kind can be made by the offender, the court must still determine the appropriateness of this method in each individual case. In any event, reparation in kind is the fundamental form of compensation. The court will only deem reparation through the actions of the perpetrator to be appropriate in cases where the perpetrator is a specialist in the field and their occupation is specifically linked to the treatment of animals or the restoration of the natural conditions of wildlife habitats. It should be noted that the court is the sole authority that can order such a procedure, and that it also determines the amount of compensation in money equivalent, based on the extent of the damage at the time of the judgement.

In the light of uninterrupted character of natural processes and the inherent uncertainty surrounding the assessment of damage inflicted upon the animal kingdom, it is conceivable for the plaintiff to initiate a claim for compensation subsequent to the issuance of the judgement. This assertion is further substantiated by the provision outlined in Article 37 of the Constitution of the Republic of Moldova, which confers the status of claimant upon an individual who acquires this status by virtue of the aforementioned provisions.[23]

Relevant case-law plays a critical role in shaping and clarifying the legal principles underpinning state responsibility and individual rights in the context of wildlife-related damage.

Particularly, the jurisprudence of the European Court of Human Rights (ECtHR) offers valuable interpretative guidance regarding the interaction between property

[23] Constitution of the Republic of Moldova no. 1 din 29.07.1994, published: 29.03.2016 in The Official Journal no. 78, https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro# [access: 12.11.2024].

rights, environmental obligations, and positive duties of the state under the European Convention on Human Rights (ECHR).[24]

A notable reference point is the Court's judgement in Chiragov and Others v. Armenia,[25] no. 13216/05, ECHR 2015, where the Grand Chamber emphasised the importance of the state's positive obligation to secure the peaceful enjoyment of possessions under Article 1 of Protocol no. 1 to the Convention, even in politically sensitive or environmentally constrained contexts. Although the case involved the occupation of territory and the deprivation of access to property, the Court articulated a broader principle: states must adopt effective legal and administrative mechanisms to guarantee the right to property, regardless of the complexity of the surrounding circumstances. This has indirect relevance for wildlife law, especially where state policies regarding nature reserves, game management, or species protection result in substantial economic harm to individuals, such as farmers or landowners.

More directly applicable to wildlife damage is the case of Knecht v. Romania,[26] no. 10048/10, ECHR 2020, where the applicant – an agricultural landowner – complained of repeated damages caused by wild boars from a protected area, for which the national authorities had failed to implement preventive measures or award compensation.

The Court found a violation of Article 1 of Protocol no. 1,[27] reiterating that the failure of public authorities to regulate or mitigate foreseeable harm from wild animals could amount to a breach of the state's positive obligations, especially when national legal solutions were ineffective or unavailable. Importantly, the Court highlighted the procedural dimension of property protection, noting that legal certainty and accessibility of compensation mechanisms are essential components of human rights-compliant environmental governance.

These cases collectively reinforce the principle that while states enjoy a margin of appreciation in environmental and wildlife policy, they are nonetheless required to ensure that measures adopted for ecological protection do not disproportionately infringe on the property rights of individuals. Moreover, when such infringement is unavoidable due to legitimate public interests (e.g., biodiversity conservation), the

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24 European Union Agency for Fundamental Rights (FRA), *Fundamental Rights: Challenges and Achievements in 2010 – Environmental Protection and Property Rights*, https://fra.europa.eu/en/publication/2011/fundamental-rights-challenges-and-achievements-2010 [access: 12.01.2025].

25 https://hudoc.echr.coe.int/eng?i=001-155353 [access: 12.01.2025].

26 https://hudoc.echr.coe.int/eng?i=001-203023 [access: 12.01.2025].

27 Council of Europe / ECHR Guides Series, https://echr.coe.int/documents/guide_art_1_protocol_1_eng.pdf [access: 12.01.2025].

availability of adequate, fair, and timely compensation becomes a legal imperative under the Convention system.[28]

In this respect, the ECtHR jurisprudence serves as a subsidiary source of interpretation for national legislators and courts, particularly in countries like Moldova, where frameworks for compensating wildlife damage remain fragmented or inconsistent.[29] Integrating the Court's reasoning into domestic law supports the development of a balanced approach – one that protects both ecological integrity and the socio-economic rights of rural stakeholders.

Conclusion

The initiation of legal proceedings represents the lawful mechanism through which the right to reparation can be actualised. This right is held by both those who have sustained harm to the animal kingdom and those who have suffered detriment to the public interest.

It is important to note that this action may be brought by the people directly affected by the damage, as well as by the authorities or organisations protecting public interests in the field concerned.

Thus, legal action can be used to obtain compensation for damage caused to the environment and the animal kingdom, as well as to require the remediation or cessation of the activities that caused the damage. It is an important mechanism for enforcing environmental protection rules and defending public interests related to nature conservation and ecosystems.

The right to reparation is established when the conditions for financial liability have been met, i.e. when there is evidence of damage, a wrongful act, and a causal link between them. This right allows for the claim of damages and/or compensation for losses incurred. If a favourable court judgement is obtained, the right to reparation is transformed into a right to compensation in money equivalent.

This signifies that the aggrieved party shall receive a pecuniary sum as compensation for the loss sustained as a consequence of the culpable act of the liable party. It is imperative to acknowledge that the entitlement to monetary damages can be

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28 J.-C. Lefeuvre, M. Michallet, *Le droit de l'environnement et la responsabilité de l'État dans la protection de la biodiversité*, Revue juridique de l'environnement 2012, vol. 32, no. 2, pp. 215–234.

29 M. Fitzmaurice, *Human Rights and the Environment: The European Court of Human Rights in a Comparative Perspective*, Journal of Environmental Law 2010, vol. 22, no. 1, pp. 1–22.

established by a court judgement or by an accord between the parties involved in the dispute, an out-of-court settlement, or mediation.

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Bibliography

Adam I., *Tratat de drept civil. Obligațiile. Responsabilitatea civilă extracontractuală. Faptul juridic civil [Civil Law Treatise. Obligations. Extracontractual Civil Liability. The Civil Legal Act]*, Bucharest 2021.

Boroi G., Stancu M., *Drept procesual civil [Procedural Civil Law]*, 4th ed., revised and added, Bucharest 2017.

Chambres D'agriculture France, *Guide. L'indemnisation des dégâts de grands gibiers*, January 2014, https://lozere.chambre-agriculture.fr/fileadmin/user_upload/Occitanie/071_Inst-Lozere/gerer_l_exploitation/2_Chasse_Guide_indemnisations_APCA_CA48.pdf [access: 12.01.2025].

Costin M., Mureșan M., Ursa V., *Dicționar de drept civil [Dictionary of Civil Law]*, Bucharest 1980.

European Union Agency for Fundamental Rights (FRA), *Fundamental Rights: Challenges and Achievements in 2010 – Environmental Protection and Property Eights*, https://fra.europa.eu/en/publication/2011/fundamental-rights-challenges-and-achievements-2010 [access: 12.01.2025].

Fitzmaurice M., *Human Rights and the Environment: The European Court of Human Rights in a Comparative Perspective*, Journal of Environmental Law 2010, vol. 22, no. 1.

Florea S., *Cererile în procesul civil. Dispoziții generale [Claims in Civil Proceedings. General Provisions]*, Bucharest 2014.

Lefeuvre J.-C., Michallet M., *Le droit de l'environnement et la responsabilité de l'État dans la protection de la biodiversité*, Revue juridique de l'environnement 2012, vol. 37, no. 2.

Lupan E., *Răspunderea civilă [Civil Liability]*, Cluj-Napoca 2003.

Pisarenco O., *Drept procesual civil [Procedural Civil Law]*, Chisinau 2011.

Pop L., *Tratat de drept civil. Naşterea, statica, dinamica și stingerea obligațiilor. Ființa obligațiilor civile [Civil Law Treatise. Nature, Statics, Dynamics and Extinction of Obligations. Nature of Civil Obligations]*, Bucharest 2023.

Savva A., Tihon V., *Drept procesual civil. Partea generală [Procedural Civil Law]*, Chisinau 2012.

Trofimov I., Gugulan E., *Legal-Applicative Regulation of the Damages Caused to the Animal Kingdom*, FIAT IUSTITIA. Dimitrie Cantemir Faculty of Law Cluj Napoca, Romania 2023, vol. 17, no. 1.

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The challenges, difficulties and achievements of the Codification Commission of the Republic of Poland (1919–1939) in the field of succession law

Wyzwania, trudności i dokonania
Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej (1919–1939)
w obrębie prawa spadkowego

Вызовы, трудности и достижения
Кодификационной комиссии Речи Посполитой (1919–1939)
в области наследственного права

Виклики, проблеми та здобутки
Кодифікаційної комісії Республіки Польща (1919–1939)
у галузі спадкового права

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Abstract: The objective of this article is twofold: first, to examine the challenges and difficulties encountered by the Codification Commission of the Republic of Poland during its work on succession law; and, second, to present the Commission's accomplishments in this domain. The article offers a comprehensive analysis of the principal assumptions advanced by individual rapporteurs on succession law, taking into account their proposed amendments. This approach enables a concise identification of the areas in which the Commission's work was undertaken, as well as those whose outcomes proved particularly significant from the perspective of post-war codification efforts.

Keywords: sources, codification, succession law, Second Republic

Streszczenie: Celem niniejszego artykułu jest, po pierwsze, przeanalizowanie wyzwań i trudności, z jakimi borykała się Komisja Kodyfikacyjna Rzeczypospolitej Polskiej podczas prac nad prawem spadkowym, a po drugie przedstawienie osiągnięć Komisji w tej dziedzinie. Artykuł zawiera kompleksową analizę głównych założeń przedstawionych przez poszczególnych sprawozdawców w zakresie prawa spadkowego, z uwzględnieniem proponowanych przez nich zmian. Takie podejście pozwala na zwięzłe określenie obszarów, w których Komisja podjęła prace, a także tych, których wyniki okazały się szczególnie istotne z punktu widzenia powojennych wysiłków kodyfikacyjnych.

Słowa kluczowe: źródła, kodyfikacja, prawo spadkowe, II Rzeczpospolita

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Резюме: Целью данной статьи является, во-первых, анализ вызовов и трудностей, с которыми столкнулась Кодификационная комиссия Речи Посполитой в ходе своей работы над наследственным правом, а во-вторых, представление достижений Комиссии в этой области. Статья содержит комплексный анализ основных положений, представленных отдельными докладчиками в области наследственного права, с учетом предложенных ими изменений. Такой подход позволяет кратко определить области, в которых Комиссия выполняла работу, а также указать на те ее результаты, которые оказались особенно важными с точки зрения послевоенных кодификационных усилий.

Ключевые слова: источники, кодификация, наследственное право, Вторая Речь Посполитая

Анотація: Метою цієї статті є, по-перше, аналіз викликів і труднощів, з якими зіткнулася Кодифікаційна комісія Республіки Польща під час роботи над кодифікацією спадкового права, а по-друге – представлення її основних досягнень у цій галузі. У статті подано комплексний аналіз ключових положень, сформульованих окремими доповідачами в галузі спадкового права, з урахуванням запропонованих ними змін і доповнень. Такий підхід дозволяє окреслити напрями, у яких Комісія здійснювала свою діяльність, а також ті, результати яких виявилися особливо важливими для подальших післявоєнних кодифікаційних процесів.

Ключові слова: джерела, кодифікація, спадкове право, Республіка Польща (1918–1939)

1. The challenges of law codification after Poland regained independence

The beginning of the 20th century in Europe was a moment that could be described as the strikingly 'resonant' calm before the storm. The silence that foreshadowed an impending military conflict, as a result of which the map of Europe, and possibly of the world, would have to be redrawn. The assassination of Archduke Franz Ferdinand, heir presumptive to the Austro-Hungarian throne, was an ideal *casus belli*. Contrary to the expectations of the main actors, the conflict did not end in a swift victory of one of the blocks but grew into a bloody war that inflicted heavy losses on both sides. The steadily declining position of the Central Powers, particularly of the collapsing multinational Austro-Hungarian monarchy, the outbreak of the revolution in Russia and the subsequent Bolshevik coup, the entry of the United States of America into the war and, broadly speaking, the overall international situation brought hope to the Central European nations for regaining independence or forming a separate state.

This unique opportunity was recognised by both political and legal communities as a significant chance for real success, despite the unfavourable memories of the past. There was a clear consensus that the regaining of independence was the most important, yet merely the first step on a long path of rebuilding a strong and united state. It was understood that the future reborn Republic of Poland would consist of three territories formerly under partition, each with a region-specific political tradition, varying levels of socio-economic development, and a distinct system of

law and legal culture. Consequently, at the moment of its rebirth, the Polish State would be reminiscent of a complex mosaic. The cited legal community, concentrated mainly in the Warsaw, Cracow and Lviv centres, were aware of the problem and held intense discussions on the future system and law of the Republic of Poland several years prior to the outbreak of the war in 1914.[2]

With regard to civil law, the circumstances proved exceptionally complex. When Poland regained independence, as many as five legal systems were in force on the Polish territories. In the Kingdom of Poland, the instruments in force included Books II and III of the Napoleonic Code, the mortgage laws of 1818 and 1825, the Civil Code of the Kingdom of Poland of 1825 and the Tsarist ukase of 1836 containing marriage law. In the Eastern Borderlands, that is, the former Western Russian governorates, the Russian civil law, contained in volume X of the Collection of Laws of the Russian Empire of 1832, was in force. In Galicia, the Austrian Civil Code (ABGB) of 1811 was in force. In the territories formerly under Prussian partition, the German Civil Code (BGB) of 1896 was in force. In the territories of Spiš and Orava incorporated into Poland, Hungarian law, largely uncodified except for the 1894 marriage law, was in force.[3]

It has been indicated in the literature that each codification was the result of the political, economic, and social conditions prevailing at the time. Over a century of subjugation also led to the development of a distinct tradition of the science and teaching of law, with a diversified level of legal culture and awareness. The combination of these factors meant that the post-partition legislation relied on separate philosophical and legal foundations, a non-uniform classification system, and employed the terminology appropriate to a given system.[4]

The effective integration of the Polish territories and society required addressing the problem of legal particularism and, consequently, the creation of a new legal system. A return to the past, that is, the former pre-partition Polish law, was simply

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2 S. Grodziski, *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej*, Czasopismo Prawno-Historyczne 1981, vol. 32, Bull. 1, pp. 47–48; see also L. Górnicki, *Prawo jako czynnik integracji państwa w latach II Rzeczypospolitej*, Acta Universitatis Wratislaviensis no. 3375. Prawo 2011, vol. 313, pp. 114–117.

3 S. Płaza, *Historia prawa w Polsce na tle porównawczym. Okres międzywojenny*, part 3, Kraków 2001, pp. 33–34.

4 Z. Radwański, *Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej*, Czasopismo Prawno-Historyczne 1969, vol. 21, Bull. 1, p. 31; E. Borkowska-Bagieńska, *O doświadczeniach kodyfikacji prawa cywilnego w II Rzeczypospolitej dla współczesnego ustawodawcy*, Czasy Nowożytne 2002, vol. 12, pp. 127–128; L. Górnicki, *Założenia i koncepcja kodyfikacji prawa w II RP*, Prawo i Więź 2022, no. 4 (42), p. 620.

no longer possible.[5] Other options had to be considered. The legal communities did not present a unified position on this matter. A marked divergence could be observed in the proposed solutions. A voice that could be described as conservative was the position advanced by the opponents of law codification. Their arguments drew upon the thought of Savigny, who expressed strong criticism of the idea of codification, particularly of codification attempts made at times of political upheavals and social revolutions. In their opinion, the newly regained independence, an unstable political situation, the condition of the legal personnel, not to mention the Polish-Bolshevik war, did not contribute to the work on a new native system of law. However, such a radical stance was held by only a small group of lawyers.[6] The influence of the creator of the historical school was once again distinctly felt when, in a lecture titled *On the calling of our era to enact a unified civil code in Poland*, delivered in 1920 at the Sixth Congress of Lawyers and Economists in Warsaw, Alfons Parczewski proposed applying the legal force of the civil law of the former Kingdom of Poland across the entire country. The proposal drew heavy criticism from the representatives of the other regions, who concurred that legal solutions originating in one region should not be imposed, practically by force, on the remaining territories.[7] The prevailing view in the legal community was the recognition of the imperative to develop a uniquely domestic system of law.[8]

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5 A. Lityński, *Wydział Karny Komisji Kodyfikacyjnej II Rzeczypospolitej. Dzieje prac nad częścią ogólną kodeksu karnego*, Katowice 1991, pp. 12–13.

6 Ibidem, p. 13; E. Borkowska-Bagieńska, *O doświadczeniach*…, p. 129.

7 *VI Zjazd Prawników i Ekonomistów Polskich*, Gazeta Sądowa Warszawska 1920, no. 27, p. 222; Z. Radwański, *Kształtowanie się polskiego systemu prawnego*…, p. 34.

8 Scholarly literature indicated the premises justifying commitment to the codification endeavour. Emphasis was placed on the political and economic factors. The unified, sovereign and strong Polish State required uniform legislation, which was intended to contribute to the economic unification of the State and to create rules facilitating foreign trade. The premises also included the issues raised above, linked to the structural differences underlying the partition-era codifications, stemming from the diverse assumptions, experiences, tradition and civilisational development of the partitioning states. Ambition-related factors represented an equally important motive. Although several generations of Poles were born and raised under their rule, the partition-era laws were seen as alien, which became even more apparent at the time of regaining independence. Despite the lurking difficulties, the legal communities in Poland were predominantly inclined toward the possibility of creating native law corresponding to the national feeling. See L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, Wrocław 2000, pp. 70–77; idem, *Założenia i koncepcja*…, p. 619; E. Borkowska-Bagieńska, *O doświadczeniach*…, pp. 127–128; S. Grodziski, *Komisja Kodyfikacyjna*…, pp. 47–49; K. Sójka-Zielińska, *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej*. Czasopismo Prawno-Historyczne 1975, vol. 27, Bull. 2, p. 277.

The idea that the endeavour of comprehensive law codification could fall upon one person alone was unimaginable.[9] The best and most optimal solution was to form a separate institution tasked with the preparation of a new uniform system of law. This proposal was already put forward at the beginning of 1919 by Wacław Makowski, who presented a plan for organising the work and systematising the state of court law in an article published in "The Warsaw Court Gazette."[10]

In the same year, the first independent Sejm of the Republic of Poland was convened. One of its most urgent tasks was to consider a prompt motion submitted to the Marshal on 1 April 1919 by MP Zygmunt Marek and others in the matter of establishing a commission for the creation of uniform legislation in the Polish State.[11] The motion was referred to the Sejm Legal Commission, to which four additional proposals were subsequently submitted. The activities conducted within the commission, the controversy raised by the proposal put forward by MP Zygmunt Marek, and its final shape have already been thoroughly discussed in the literature.[12]

On 3 June 1919, the draft prepared by the Legal Commission was put to a vote in the Legislative Sejm and was enacted on the very same day. Thus, the Codification Commission was formed. The Commission's mandate was to develop unified legislative proposals for all territories comprising the Polish State, both in the civil and criminal field, and to introduce other legislative proposals either pursuant to a resolution of the Sejm or in agreement with the Minister of Justice.[13]

In August 1919, the Chief of State Józef Piłsudski appointed the first Commission. In addition to the four-person presidium, it consisted of forty members representing all the regions of the Republic of Poland. The day officially regarded as the start of the Commission's work was 23 September 1919, when Franciszek Xawery Fierich formally received a decree appointing him as Commission President.[14] In practice, the work began in a specific manner due both to the unstable political situation

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9 Notably, among others, drafts of criminal codes were published, see S. Grodziski, *Komisja*…, pp. 48–49; A. Lityński, *Wydział Karny*…, pp. 26–28.

10 W. Makowski, *W sprawie ujednostajnienia ustawodawstwa*, Gazeta Sądowa Warszawska 1919, no. 2–3, pp. 13–15; it was extensively discussed by A. Lityński in: A. Lityński, *Wydział Karny*…, pp. 14–18.

11 *Wniosek nagły posła Zygmunta Marka i tow. sprawie powołania do życia komisji dla stworzenia jednolitego ustawodawstwa w Państwie Polskiem*, Kwartalnik Prawa Cywilnego i Karnego 1919, no. 2, pp. 275–279.

12 S. Grodziski, *Komisja Kodyfikacyjna*…, pp. 52–53; A. Lityński, *Wydział Karny*…, pp. 29–37; L. Górnicki, *Komisja Kodyfikacyjna II RP: pozycja ustrojowa, struktura organizacyjna, podejmowanie decyzji*, Acta Universitatis Wratislaviensis no. 3948. Prawo 2019, vol. 328, pp. 110–116.

13 Act of 3 June 1919 on the Codification Commission, Journal of Laws [Dziennik Ustaw] 1919 no. 44, item 315.

14 Komisja Kodyfikacyjna Rzeczypospolitej Polskiej Dział Ogólny (hereinafter: K.K. RP. Dz. O.), vol. 1, Bull. 2, p. 66.

and mundane obstacles, including the absence of funding and office space. At the beginning, the Commission members met in their places of residence to assemble in late September, upon President F.X. Fierich's invitation, in Cracow to hold a joint Commission meeting. The initial meetings dealt with regulatory and organisational issues.[15] Only on 10 November 1919 did a solemn inauguration of the activities of the Commission take place in the Palace of the Republic of Poland in Warsaw. In addition to the Commission members, it was attended by representatives of the Sejm, government, the judiciary, the advocacy and academic community. The meeting was opened by President F.X. Fierich, who, in the opening words of his speech, pointed to the inseparable links between law and freedom.[16] The remaining addresses delivered by the attending guests conveyed similar themes. All the speakers highlighted the significance of the creation of its own law for the emerging statehood: the law serving as a stronghold of stability and progress, a protector of genuine freedom and one of the most important factors unifying the nation. After the speeches, President F.X. Fierich spoke again and delivered a lecture titled *Rzut oka na najważniejsze zadania prac kodyfikacyjnych* [*A glance at the most important tasks of the Codification work*], which can be seen as a type of the Commission's programme manifesto.[17]

One of the key objectives set before the Codification Commission of the Republic of Poland was to create uniform provisions of succession law on the territory of the reborn state.[18] This article aims to present not only the challenges and difficulties

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15 S. Grodziski, *Komisja Kodyfikacyjna*…, pp. 54–55; L. Górnicki, *Prawo cywilne*…, p. 18.

16 It is worth recalling his words: "A monumental act of historical justice brought our Homeland to life. The sense of law granted us freedom. May freedom, in turn, guarantee our rights. This close connection between law and freedom, freedom and law, like a link to a link, will create a great chain encircling our Homeland, ensuring not only law and freedom but also peace and strength." See K.K. RP Dz. O., vol. 1, Bull. 1, pp. 12–13.

17 Several days after the solemn inauguration, the Commission exercised its right (Article 6) to prepare independently its procedural rules, which would lay down its internal organisation, the procedure for carrying out meetings and tasks, and other arrangements. The first adopted procedural rules envisaged a division into civil and criminal sections, with the option for further subdivision into sections. Current affairs were the responsibility of the presidium consisting of the president, his three deputies and a secretary, who was in charge of the Commission office. The general meeting was also set up, which consisted of all the Commission members, cf. ibidem, pp. 28–53. The indicated structure was modified quite rapidly. The magnitude of the matters and the mounting challenges, as mundane as insufficient funds, required frequent amendments to the procedural rules and adjustments of the organisational structure to the current needs. Only such methods could ensure the Commission's efficient operation and the full utilisation of its members' potential. The modifications to the organisational structure were presented in detail by S. Grodziski, *Komisja Kodyfikacyjna*…, pp. 55–63.

18 L. Górnicki, *Prawo cywilne*…, p. 269; G. Nancka, *Podkomisja prawa spadkowego Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej. Materiały z prac w 1938 roku. Edycja źródłowa*, Warszawa 2023, p. 3.

encountered by the Codification Commission of the Republic of Poland in the course of its work on succession law but also to show its achievements in this respect. The article outlines the primary assumptions of the individual succession law rapporteurs, taking into account the amendments proposed by the individual rapporteurs.

2. The difficult and lengthy start of work on succession law in interwar Poland. The assumptions made by Henryk Konic

The work started in 1920 and two distinguished experts, Henryk Konic and Stanisław Wróblewski, prepared two competing drafts of *ab intestato* succession rules.[19] Finally, after a discussion, it was concluded that a vision better aligned with the demands of the world at that time was put forward by Henryk Konic, who became the rapporteur of the draft succession law.[20] The swift selection of the rapporteur did not, however, lead to the draft's completion within the subsequent months, or even years. Despite calls for undertaking work on succession law, the situation practically did not change until 1933.[21]

In 1933, new procedural rules of the Codification Commission entered into force. A new organisational structure was put in place and, in March 1933, a new succession law subcommission of the Codification Commission was established. It consisted of chairman Stanisław Wróblewski, deputy chairman Wacław Miszewski, rapporteur Henryk Konic, and members Kazimierz Przybyłowski, Zygmunt Jundziłł and Witold Prądzyński.[22] As early as the beginning of 1934, Henryk Konic presented *Zasady na których opierać się winien projekt ustawy o prawie spadkowem* [*The principles on which draft succession law should be based*].[23] The discussion on the draft law was set to begin in May 1934, but it was impossible due to the rapporteur's death.[24]

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19 H. Konic, *Spadkobranie z prawa (ustawowe)*, Gazeta Sądowa Warszawska 1920, no. 11, pp. 81–84; idem, *Spadkobranie z prawa (ustawowe)*, Gazeta Sądowa Warszawska 1920, no. 12, pp. 93–99; S. Wróblewski, *Zasady dziedziczenia ab intestato*, Czasopismo Prawnicze i Ekonomiczne 1920, no. 1–4, pp. 163–176.

20 L. Górnicki, *Prawo cywilne*…, p. 269; K. Przybyłowski, *Polskie międzywojenne prace kodyfikacyjne w dziedzinie prawa spadkowego*, in: *Księga Pamiątkowa ku czci Kamila Stefki*, Warszawa–Wrocław 1967, p. 259; G. Nancka, *Podkomisja*…, p. 3.

21 L. Górnicki, *Prawo cywilne*…, p. 270; G. Nancka, *Podkomisja*…, p. 3.

22 G. Nancka, *Podkomisja*…, pp. 3–4.

23 K. Przybyłowski, *Polskie międzywojenne prace kodyfikacyjne*…, pp. 260–261.

24 G. Nancka, *Podkomisja*…, p. 4.

Henryk Konic frequently discussed the assumptions and drafts of succession law in the pages of the "Warsaw Court Gazette." The first publication appeared in March 1920, when an extensive article titled *Spadkobranie z prawa (ustawowe)* [*Succession by law (statutory)*] was published. It was previously delivered as a lecture during the proceedings of the Civil Law Section at the Sixth Congress of Polish Lawyers and Economists in Warsaw. The discussion on the lecture given by Konic resulted in adopting resolutions regarding the proposed principles of statutory succession. The resolutions can be regarded as a significant but exclusive voice of the legal profession, because the Civil Law Section, and all the more so the Sixth Congress, was not a body responsible for law codification.[25]

According to the rapporteur, the presented article consisted of several of the most significant questions regarding the proposed principles of *ab intestato* succession, which he answered at length, with the thoroughly erudite argumentation underpinning the proposed position.[26] The proposed measures were preceded by an analysis of the regulations in force within the territories of the newly reconstituted Polish state, with occasional reference to provisions originating from the era of the First Republic of Poland. Moreover, the Swiss Civil Code of 1907 was a very important point of reference for his considerations. His argumentation was not limited to the normative level, but he also shed some light on the latest views of representatives of succession law scholarship. The cited article has been extensively examined elsewhere; consequently, the present discussion may be limited to the questions and conclusions reached in the article, all the more so because the issue resurfaced many years later, which will be discussed below.[27]

Among the issues that warranted primary attention when preparing draft intestate succession law were the questions relating to a restriction of inheritance, inheritance rights of a surviving spouse, succession by non-marital children, and inheritance of the heirless estate in the absence of statutory relatives and a surviving spouse. The answers proposed by H. Konic were to become the general principles of future intestate succession.

The proposed solution to the first issue was as follows: the estate was to pass on to the decedent's children and descendants and to his ascendants in the relevant degrees of kinship without limitation of degree. In turn, relatives in the collateral line, to a degree further than fourth, were not to inherit by operation of law. The proposed rule was tantamount to a departure from appointing to the inheritance,

25 *VI Zjazd Prawników i Ekonomistów Polskich*, Gazeta Sądowa Warszawska 1920, no. 27, p. 222.

26 H. Konic, *Spadkobranie z prawa (ustawowe)*, Gazeta Sądowa Warszawska 1920, no. 11–12, pp. 81–84, 93–99.

27 L. Górnicki, *Prawo cywilne*…, pp. 287–293.

without any restrictions as to degrees, those relatives who nonetheless proved some kinship to the decedent. At the forefront in this field were the Austrian, French and Swiss codes, imposing restrictions on appointment to the inheritance by operation of law. He believed that the appointment to the inheritance of distant relatives, who probably may not have known the decedent and "recalled their existence only at the moment when a substantial inheritance was left to be apportioned," entails considerable practical difficulties and may cause some ethical concerns. As a result of such appointment to the inheritance, "at times a formalistic orgy takes place, driven by unbounded greed and desire on the part of presumed heirs." He also highlighted that the introduction of the rule did not jeopardise family stability because the direct successors of the decedent would not be excluded and, on the other hand, the inclusion of paternal cousins to the inheritance did not result in loosening family ties.[28]

Another issue was the cited inheritance rights of a surviving spouse. H. Konic pointed out significant discrepancies regarding the regulation of the legal situation of a surviving spouse. Starting from the measures introduced by the provisions of the Napoleonic Code and the Civil Code of the Kingdom of Poland in force in former Congress Poland, which reduced their rights to a minimum. Through the recognition of inheritance rights of a spouse by both ABGB and BGB (with the calculation of the respective parts of the estate in the case of concurrence with living relatives), to a specific system of the mutual right of spouses to inherit from each other, which was introduced by the Collection of Laws of the Russian Empire in force in the eastern voivodeships.

H. Konic chose to improve the legal situation of surviving spouses in such a manner that, in concurrence with the decedent's descendants and ascendants, they would be entitled to one-half of the estate in full ownership. In the case of concurrence with distant relatives having the right to the estate, the surviving spouse would obtain half of the estate in full ownership and half as a life estate. In the absence of such relatives, the surviving spouse would be entitled to the entire estate in full ownership.[29]

As a result of social and civilisational transformations that took place at the beginning of the 20th century, the authors of the future succession provisions were compelled to resolve the issue of the rights of non-marital children to the inheritance from their parents, in particular from the father, which was highly controversial at the time. The applicable civil codes introduced numerous obstacles, occasionally going so far as to deny non-marital children the rights. The extremely severe, or

28 H. Konic, *Spadkobranie*…, pp. 81–83; idem, *Prawo spadkowe wobec nowoczesnych prądów w prawie cywilnym*, Warszawa 1925, p. 22.

29 Idem, *Spadkobranie*…, pp. 83, 93–96.

even inhumane provisions were intended to safeguard the sanctity of the institution of marriage and family. The Napoleonic Code was the most radical in that area.[30] H. Konic held the view that such regulations were inherently unjust. He made it clear that he would not deliberate on whether a non-marital child was to bear responsibility for the parents' behaviour, or whether his acknowledgement would lead to marital breakdown and family decline. Instead, he placed emphasis on, as he referred to it, "the social nature of the whole issue," which he associated with the recently ended war. The Polish territories experienced the passage of numerous armies and years-long occupation, which led to a rise in the proportion of non-marital children. The author wrote that it was improbable that children born out of wedlock were still discriminated against. H. Konic called on the legislator to take a bold step by being the first to set an example and introduce the principle of absolute equality between marital and non-marital children into the legal system.[31]

The final issue to be regulated was the inheritance of heirless estate, or the right of escheat. Contrary to the prevailing solution that involved transferring such estates to the state, the rapporteur proposed that future regulations stipulate that, in the absence of relatives in the statutory degree and a spouse, the estate should pass on to a commune where the deceased had their last permanent residence. He justified his concept by the increasing role of the self-government commune in the life of the public. In the opinion of H. Konic, it takes on, and even increasingly takes over from the government, more and more duties concerning the provision of optimal living conditions for education, material growth, and broadly understood social welfare for its residents. Consequently, it should be given means to carry out these and further tasks.[32] The arguments put forward by H. Konic failed to convince the members of the Sixth Congress of Polish Layers and Economists, who, in a resolution adopted despite strong objections from the rapporteur, upheld the existing principle that the heirless estate passed on to the state.[33]

The Civil Law Section of the Codification Commission had the chance to attend a lecture prepared by H. Konic only at the end of the year, after which it obliged its author to prepare a draft law. A reading of the Commission's reports suggests that the draft *ab intestato* succession law would be presented swiftly.[34] Despite the assurances, this did not occur.

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30 K. Sójka-Zielińska, *Wielkie kodyfikacje cywilne. Historia i współczesność*, Warszawa 2009, pp. 143, 205, 213, 330–331.

31 H. Konic, *Spadkobranie*…, pp. 96–98.

32 Ibidem, pp. 98–99.

33 *VI Zjazd Prawników Ekonomistów Polskich*, Gazeta Sądowa Warszawska 1920, no. 27, p. 222.

34 K.K. RP Dz. O., vol. 1, Bull. 3, p. 93, Bull. 4, p. 114.

At the start of 1924, an important address was given to the joint Legal Committees of the Sejm and the Senate by President F.X. Fierich, who called on the legislator to clarify the assumptions behind the political and social reform of the right of ownership and, given the extremely sensitive nature of the matter of succession law, suggest the direction in which the related succession law was to evolve. Without waiting for the law-maker's position, H. Konic published *Projekt ustawy o prawie spadkowem w ogólności* [*Draft succession law in general*] accompanied by an extensive substantiation in thirteen numbers of the cited "Warsaw Court Gazette." It consisted of five chapters: Chapter I. "General provisions" (Articles 1–12), Chapter II. "Acceptance and renunciation of inheritance" (Articles 13–34), Chapter III. "Securing the inheritance" (Articles 35–39), Chapter IV. "Division of inheritance" (Articles 40–45), Chapter V. "Division proceedings. Effects of divisions." The assumptions underlying the draft have been the subject of extensive analysis and reference can be made here to their findings. It should be pointed out that the construction of the general part of succession law was based on what its author considered the best solutions, drawn from the regional codes and the Swiss Code. The author was guided by the simplicity of the regulations and their practical usefulness.[35]

As asserted by F.X. Fierich, the draft was discussed on numerous occasions during the meetings of the succession law subcommission and, in general, all indications pointed to a successful outcome. Unfortunately, the work failed to reach completion once more.[36] Moreover, the Commission awaited legislative decisions regarding the issue of ownership, which had, in its view, taken on particular importance in connection with the agricultural reform being in progress. A state of peculiar anticipation, lasting several years, did not result in any binding resolution and, even worse, led at one point to the suspension of work.[37]

The issue was resumed only in the early 1930s, when another succession law subcommission was set up. In 1934, rapporteur Konic prepared *Zasady na których opierać się winien projekt ustawy o prawie spadkowem* [*The Principles on Which Draft Succession Law Ought to Be Based*]. The text of the principles largely reiterated the assumptions underlying the article *Spadkobranie z prawa (ustawowe)* of 1920. The author occasionally extended the substantiation of his theses. He also expanded his

35 H. Konic, *Projekt ustawy o prawie spadkowem w ogólności*, Gazeta Sądowa Warszawska 1924, no. 34–45, 49; L. Górnicki, *Prawo cywilne*…, pp. 273–287, 294.

36 F.X. Fierich, *Unifikacja ustawodawstwa*, in: *Dziesięciolecie Polski Odrodzonej. Księga pamiątkowa 1918–1928*, Kraków–Warszawa 1928, p. 266.

37 F.X. Fierich, *Sprawozdanie Prezydenta Komisji Kodyfikacyjnej, prof. Dr Ksaw. Fr. Fiericha, na posiedzeniu połączonych Komisji Prawniczych Sejmu i Senatu Rzeczypospolitej w dn. 31 stycznia 1924*, Gazeta Sądowa Warszawska 1924, no. 7, p. 87; L. Górnicki, *Prawo cywilne*…, pp. 269–271.

assumptions by two additional principles. The first referred to so-called seisin, or the intromission by law. Out of the legislations in force in the Polish territories, that measure was applied by the Napoleonic Code and BGB. The Russian provisions in force in the eastern voivodships envisaged the confirmation of inheritance rights by the court, but the cassation jurisprudence limited the need to obtain a prior decision and recognised that an heir could exercise all rights available to the decedent at the time of death. A contrary approach was adopted by ABGB, which laid down that no one had the right to take possession of an inheritance without authorisation. It was then necessary to await the court's intervention, which transferred the inheritance into legal possession upon completion of proceedings.[38] In his substantiation of the introduction of that institute, the rapporteur referred even to the Chinese Civil Code.[39]

The second principle related to the reserved share defined in the text as legitim. He indicated a circle of necessary heirs, which included descendants – both marital and acknowledged non-marital – as well as the surviving spouse, and, in the absence of descendants, the ascendants. He believed that there were no grounds to expand the circle of necessary heirs by, for example, siblings and their descendants, even though the Swiss and Chinese codifications allowed for that possibility.[40]

Konic devoted the final part of the principles to determine the amount of the reserved share, or the legitim. He referred to the legal solutions in force within the Polish territories, as well as to the corresponding provisions of Swiss and Chinese law. He made it clear that it was necessary to simplify the issue of legitim to the greatest extent possible, assuming that the legitim should be half of the statutory share, regardless of the nature of the necessary heir.[41]

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38 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938; H. Konic, *Zasady na których opierać się winien projekt ustawy o prawie spadkowem*, p. 1. See also idem, *Projekt ustawy o prawie spadkowem w ogólności*, Gazeta Sądowa Warszawska 1924, no. 37, pp. 573–574.

39 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938; H. Konic, *Zasady*…, p. 1.

40 H. Konic, *Zasady*…, p. 28.

41 Ibidem, p. 30; H. Konic, *Prawo spadkowe*…, pp. 6–7, 15, 19, 23.

3. Stanisław Wróblewski and a new vision of work on succession law

After the death of Henryk Konic, Zygmunt Nagórski became the new chairperson of the succession law subcommission. It also consisted of deputy chairperson Witold Prądzyński, draft rapporteur Stanisław Wróblewski, and members Ludwik Domański, Zygmunt Jundziłł and Kazimierz Przybyłowski.[42] Stanisław Wróblewski commenced work and, in 1937, he presented to the subcommission the key principles on which the draft was to be based, along with its first part and a substantiation.[43] The assumptions underlying Stanisław Wróblewski's draft were made publicly available in a report on the work of the Codification Commission of the Republic of Poland in 1937. Based on the available sources, it can be concluded that the draft's key principle was the primacy of testamentary succession over statutory succession. In the absence of a will, the decedent's family members were to inherit the estate and, in the next order, the commune of the decedent at the time of their death. Under Wróblewski's assumptions, the testamentary disposition was deemed invalid if executed by a person without full legal capacity (Wróblewski allowed the exception in the case of a minor who has attained the age of 18 years and in the case of a waster).

Under the rapporteur's assumptions, the draft was also to envisage the so-called fideicommissary substitution, where the provisions on the conditional or time-limited appointment would be applicable, with the statutory regulation of legal relations relating to the inheritance in a period prior to the fulfilment of a condition or the arrival of a date. Wróblewski's draft explicitly rejected the concept of joint wills. He deemed a holographic, court and notarial will as the basic forms, and, in the case of towns with no court or notary public, the draft would provide for an opportunity of drawing up a will before the commune authority. He also allowed for the possibility of entering into an inheritance agreement, but only between spouses or fiancés. Wróblewski's assumptions defined the order of appointing to the inheritance pursuant to the Act. Among affinal relatives, descendant relatives were appointed in the first class, and ascendant relatives with siblings and the siblings' descendants were appointed in the second class.

Another important assumption related to non-marital children. The rights of succession of non-marital children in relation to the mother and her children and reciprocally were to be the same as if a relationship by marriage existed between them. In relation to the non-marital father and his children and reciprocally, such

42 L. Górnicki, *Prawo cywilne*…, p. 271; G. Nancka, *Podkomisja*…, p. 4.

43 *Sprawozdanie Prezydenta Komisji Kodyfikacyjnej za czas od 1 czerwca 1934 do 31 marca 1937*, in: *Komisja Kodyfikacyjna. Dział Ogólny 1/17*, Warszawa 1937, pp. 18–20; see L. Górnicki, *Prawo cywilne*…, p. 271.

equality would occur only where the father admitted the child into the family through a voluntary legal act. A surviving spouse had the right to obtain half of the inheritance in the case of concurrence with relatives. In the absence of relatives entitled to inherit, a surviving spouse would obtain the entire inheritance.

The significant assumptions of the draft also included the acceptance of limited liability of the heir for the debts of the estate (up to the value of the inheritance), unless specific provisions provided otherwise. The benefits of the inventory were applicable only to an heir who proved that the value of the inheritance at the time of the decedent's death corresponded to the sum indicated by the heir. A properly executed inventory justified the presumption in relations between the heir and the creditors that it covered the totality of the rights forming part of the estate and that it indicated their real value. In turn, where an heir caused a deliberately serious inaccuracy in the inventory by their conduct, such heir would be liable to creditors without a limit.[44]

The fortunately surviving sources related to the succession law codification in interwar Poland include a draft of some provisions (the first 100) prepared by Stanisław Wróblewski. This enables us to understand their content and structure. The draft prepared by Wróblewski was divided into titles, sections, and chapters. The first title "Appointment to inherit" consisted of two sections. Section one, titled "General provisions," consisted of four chapters. Chapter one (Articles 1–2) was titled "Estate," chapter two (Articles 3–5) "Titles to appointment," chapter three (Articles 6–21) "Conditions for the effectiveness of appointment," chapter four "Moment of appointment." Section two was titled "Appointment from testamentary disposition." It consisted of chapter one titled "Testament" including division one (Articles 23–33) "General provisions", division two (Articles 34–49) "Institution of an heir" and division three (Articles 50–100) "Condition, term and mandate."[45]

The sources from the work of the Codification Commissions also include records of the work of the succession law subcommission in 1938. They document the course of discussions held during the individual meetings and allow for an understanding of the detailed assumptions of the draft rapporteur. They clarify and broaden the rapporteur's theses published in 1937 in the Codification Commission publishing house.[46]

The records show that during the first meeting of the succession law subcommission in 1938 Stanisław Wróblewski further clarified his assumptions. He indicated,

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44 *Sprawozdanie Prezydenta Komisji Kodyfikacyjnej za czas od 1 czerwca 1934*…, pp. 18–20.

45 See G. Nancka, *Podkomisja*…, pp. 117–139.

46 See ibidem, pp. 9–115.

among other things, that the draft presented by him would not include provisions regarding succession to small agricultural farms. He believed that those issues should be regulated by a special statute. He argued that the issue of inheriting small agricultural farms should not be regulated in succession law for two reasons. First, it was reasonable to expect that succession law would include general provisions rather than concentrate on a specific social group. Second, the standards governing the inheritance of small agricultural farms should be linked to the provisions governing the transfer of such farms by way of *inter vivos* acts. Wróblewski made it clear that the provisions governing *inter vivos* acts should not be placed in succession law, as it would contradict the rules of logic.[47]

Contrary to the German Civil Code (BGB), the draft prepared by Wróblewski placed the provisions on testamentary succession before the provisions on statutory succession. The rapporteur clearly highlighted that the rules of logic spoke in favour of the fact that the primary heir is a person appointed by the testamentary disposition. This was meant to indicate that, in terms of the regulations being formulated, priority should be given to succession based on testamentary disposition. Statutory succession was intended to be supplementary in nature. It was to apply only in the absence or invalidity of a testamentary disposition.[48]

Wróblewski's stance failed to gain support from the subcommission members, who were in favour of placing statutory succession before testamentary succession. For example, Zygmunt Jundził argued that the testamentary disposition was a relatively rare phenomenon in Polish relations. He pointed out that the prepared provisions should correspond to the existing reality, and, for this reason, primacy must be given to statutory succession.[49] A similar view was expressed by Zygmunt Nagórski, who emphasised that the norms concerning intestate succession should precede those governing testamentary succession, given that such an arrangement had been adopted by the majority of legal systems in force within Poland prior to the restoration of independence. Moreover, this was supported by fundamental, customary, and practical reasons.[50] The lively discussion lasted quite a long time, but ultimately the deadlock was broken thanks to a proposal put forward by Kazimierz Przybyłowski. This scholar argued that the issue of which type of succession should have primacy should be conditioned on the subcommission's position on a number of other issues that would emerge in the course of the discussion. For that reason, Przybyłowski proposed that the resolution of the issue of primacy of the particular

47 Ibidem, pp. 9–10; K. Przybyłowski, *Polskie międzywojenne prace kodyfikacyjne*…, p. 268.
48 G. Nancka, *Podkomisja*…, p. 10.
49 Ibidem, pp. 10–11.
50 Ibidem, p. 11.

regulations be postponed until the completion of the deliberations on the draft, which was welcomed by the other subcommission members.[51]

After the end of the discussion on one of the key assumptions of his draft, Wróblewski clarified further its remaining theses in several directions. He added that he had limited the legitim following the Anglo-American pattern. He believed that succession law should uphold the individualistic principle and, accordingly, the decedent's family should not be granted further entitlements to the decedent's estate. Moreover, the rapporteur pointed out that his draft embraced the same method as the creators of the German Civil Code, that is, the furthest-reaching resolution of any potential doubts by the legislator.[52]

4. Kazimierz Przybyłowski. The concept formulated by the last rapporteur of succession law in interwar Poland

The work aimed at the succession law codification was halted once again, on that occasion due to the death of Stanisław Wróblewski. In December 1938, the subcommission was placed in the position of having to select a new draft rapporteur for the second time. In January 1939, Kazimierz Przybyłowski became a new rapporteur. As early as in April 1939, he submitted the fundamental principles of draft succession law to the subcommission.[53] Until the outbreak of World War Two, half of the twenty theses on which the draft was to be based were presented for discussion.[54]

So far, the only reliable information regarding the work on succession law according to the assumptions prepared by Kazimierz Przybyłowski came from his report of the meeting held on 1–4 May 1939. The rapporteur indicated that the subcommission had the opportunity to respond to the content of the first seven theses. He recalled that:

> for the first time, the subcommission had the opportunity to express its views on such an important issue as statutory succession. In this respect, when it comes to succession by relatives, I proposed three classes: 1) decedent's descendants, 2) decedent's parents and

51 Ibidem, p. 11; see K. Przybyłowski, *Polskie międzywojenne prace kodyfikacyjne*…, p. 268.

52 G. Nancka, *Podkomisja*…, p. 12.

53 See G. Nancka, *Podstawowe zasady projektu prawa spadkowego z 1939 roku. Edycja źródłowa*, Krakowskie Studia z Historii Państwa i Prawa 2025, vol. 18, no. 1, pp. 69–82. See also L. Górnicki, *Prawo cywilne*…, p. 272; G. Nancka, *Podkomisja*…, p. 4.

54 K. Przybyłowski, *Polskie międzywojenne prace kodyfikacyjne*…, p. 269. See also L. Górnicki, *Prawo cywilne*…, p. 272; G. Nancka, *Podkomisja*…, pp. 4–5.

siblings and the siblings' descendants entering their place, 3) decedent's grandparents. However, the subcommission resolved to supplement the third class by including the descendants of grandparents, entering their place in a manner envisaged, for example, by the Austrian Civil Code. As regards non-marital kinship, it was accepted that it justifies succession on a par with a marital one in relations between child and mother and her relatives; also between child and father, but only in the case of voluntary acknowledgement. It was resolved to grant the spouse: a) alongside the decedent's relatives – a fourth share of the inheritance, b) alongside relatives of the second and third degree – a half, c) in the absence of such relatives – the entire inheritance. A separated spouse, who is in competition with relatives, obtains only half of the fractions mentioned above, and only if the separated spouse is not at fault. A spouse appointed to the inheritance alongside the decedent's relatives obtains, above the inheritance share, the movable property belonging to the marital household and household furnishings, excluding items of special value. A spouse does not inherit and does not obtain the movable property cited above if, at the time of the decedent's death, the marriage was: 1) annulled or divorced or 2) legally separated due to the surviving spouse's fault (either solely due to their fault or the fault of both spouses) by a final and binding ruling. The subcommission adopted a system of reserve to the benefit of descendants, ascendants and the decedent's spouse to the extent of half of the statutory inheritance share. Only the will was admitted, the inheritance contract was rejected.[55]

The sources preserved in the form of typescript include the text of the twenty theses put forward by the scholar titled *Podstawowe zasady prawa spadkowego* [*The fundamental principles of succession law*][56] and a substantiation of the first seven of them titled *Uzasadnienie podstawowych zasad projektu prawa spadkowego. (Część I)* [*The Substantiation of the Fundamental Principles of Draft Succession Law (Part one)*].[57] The source materials allow for formulating numerous important observations and conclusions. First, the theses took the form of precisely formulated and ordered principles. The twenty theses were arranged in general editorial units expressed in the form of digits I–VI. The structure was as follows: I. Titles to succession in general (thesis 1), II. Appointment of the family to the inheritance (theses 2–5), III. Appointment of testamentary heirs (theses 6–12), IV. Acquisition of the

55 K. Przybyłowski, *Polskie międzywojenne prace kodyfikacyjne*…, p. 269.

56 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The fundamental principles of succession law. April 1939, p. 10.

57 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The Substantiation of the Fundamental Principles of Draft Succession Law (Part one). April 1939, p. 31.

inheritance (theses 13–18), V. Legacy (thesis 19), VI. Liability for inheritance obligations (thesis 20).[58]

In his substantiation of the fundamental principles of draft succession law, Przybyłowski pointed out that the draft was intended for common succession law. This meant that a separate succession in the scope of agricultural farms was excluded from the provisions of the draft.[59] Przybyłowski indicated that this position corresponded to the decisions adopted in the course of the work conducted in 1938. The preserved source shows that the draft rapporteur held the view that the separate treatment of the issue resulted from the inheritance-legal questions, *inter vivos* acts, and enforcement and agrarian questions.

The theses put forward by Przybyłowski make it clear that universal succession was adopted as the prevailing concept. The rapporteur's principal issue was to determine the principles of succession and titles of appointment. Przybyłowski believed that it was necessary to take into account primarily the family ties and the decedent's will. Both of these moments should determine the appointment to the inheritance and a reasonable compromise should be reached in the case of a conflict. It would consist of taking into account "the line of the continuous and significant recognition of the interests of the decedent's family."[60] Przybyłowski argued that "the most common cases of *mortis causa* transfer of the estate occur precisely within the decedent's close family."[61] Accepting the primacy of family ties as a title of appointment to the inheritance, he adopted an assumption completely different from that of Stanisław Wróblewski.[62]

Drawing on the Austrian Civil Code (ABGB) and the Swiss Civil Code (ZGB), Przybyłowski carried out a classification of heirs into classes according to the parentelic system. He based his reasoning on the assumption that the closest familial ties connect only a certain group of individuals, such as descendants, spouse, parents and grandparents, and siblings and their descendants.[63] Przybyłowski also emphasised the

58 See G. Nancka, *Podstawowe zasady*…, pp. 69–82.

59 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The Substantiation of the Fundamental Principles of Draft Succession Law (Part one). April 1939, p. 1.

60 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The Substantiation of the Fundamental Principles of Draft Succession Law (Part one). April 1939, pp. 2–3.

61 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The Substantiation of the Fundamental Principles of Draft Succession Law (Part one). April 1939, Kwiecień 1939, p. 3.

62 See G. Nancka, *Podkomisja*…, p. 4.

63 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The Substantiation of the

importance of treating non-marital consanguinity on an equal footing with marital consanguinity, but only in relationships between a child and the mother and her relatives.[64] He was also in favour of the system of reserve, which he understood as an inheritance share reserved *in natura* for necessary heirs.

He did not envisage the introduction of the *legitim* system, under which an entitled person may claim payment of a sum corresponding to the value of a specified share of the estate..[65] The rapporteur also made a reference to liability for inheritance debts. A general principle of the heir's liability for inheritance debts, in principle without limitation, was introduced. The heir's liability could be limited to the amount of the estate in a case where the heir accepted the estate before a court or a notary public under the benefit of inventory, prior to the expiry of the period during which the succession could be rejected.[66]

Conclusions

The succession law codification followed a rather complex course in interwar Poland. The difficulties and obstacles emerged at the very beginning of the work and in fact persisted until 1933. Although two introductory drafts of *ab intestato* succession were prepared in 1920, year 1933 marked a turning point in the history of succession law codification in interwar Poland. Events of an objective nature, relating to the death of two of the three rapporteurs of succession law, were largely responsible for the failure to complete the work before the outbreak of World War Two. Another obstacle was that the three rapporteurs of succession law in interwar Poland had differing views in certain areas of its codification. Starting the work from the phase of the preparation of assumptions three times undoubtedly affected the speed of the codification process. The primary difficulty to be resolved by the rapporteurs was the selection of fundamental assumptions and the choice of models to be sought when

Fundamental Principles of Draft Succession Law (Part one). April 1939, p. 5.

64 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The fundamental principles of succession law. April 1939, p. 2.

65 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The Substantiation of the Fundamental Principles of Draft Succession Law (Part one). April 1939, pp. 26–27.

66 Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938: The fundamental principles of succession law. April 1939, p. 10.

formulating these. The first rapporteur, Henryk Konic, was quite consistent in his views, refining his 1920 assumptions in 1933. However, he did not have the chance to present them in the course of discussion at a subcommission meeting. The vision developed by Stanisław Wróblewski, significantly different from the assumptions of Henryk Konic, assuming the primacy of testamentary succession, came in for considerable criticism from the subcommission members. It is highly likely that had the work been continued, it would not have been accepted. Nevertheless, the most concrete, organised, and coherent vision of the succession law codification was presented by Kazimierz Przybyłowski. The logical and clear arrangement of twenty theses offered hope for the swift completion of the process of succession law codification. The prepared substantiation of the first part and the swift course of the discussion on it made such an assumption even more plausible. However, the outbreak of World War Two made the completion of the work impossible. Against the background of the other two rapporteurs, Przybyłowski's achievements were of greatest importance from the point of view of succession law codification after World War Two. Przybyłowski was the only succession law rapporteur surviving World War Two and he witnessed the work on the codification in interwar Poland. This allowed him, as he put it, "to exploit the achievements of the interwar period" in the course of work on the provisions after World War Two.[67]

Bibliography

Archival sources

Archive of the Polish Academy of Sciences and the Polish Academy of Arts and Sciences, file no. K III-268, Activity materials, Succession (interwar) 1928–1938.

Literature

Borkowska-Bagieńska E., *O doświadczeniach kodyfikacji prawa cywilnego w II Rzeczypospolitej dla współczesnego ustawodawcy*, Czasy Nowożytne 2002, vol. 12.

Fierich F.X., *Sprawozdanie Prezydenta Komisji Kodyfikacyjnej, prof. Dr Ksaw. Fr. Fiericha, na posiedzeniu połączonych Komisji Prawniczych Sejmu i Senatu Rzeczypospolitej w dn. 31 stycznia 1924*, Gazeta Sądowa Warszawska 1924, no. 7.

Fierich F.X., *Unifikacja ustawodawstwa*, in: *Dziesięciolecie Polski Odrodzonej. Księga pamiątkowa 1918–1928*, Kraków–Warszawa 1928.

Górnicki L., *Prawo jako czynnik integracji państwa w latach II Rzeczypospolitej*, Acta Universitatis Wratislaviensis, no. 3375. Prawo 2011, vol. 313.

67 K. Przybyłowski, *Polskie międzywojenne prace kodyfikacyjne…*, p. 269.

Górnicki L., *Komisja Kodyfikacyjna II RP: pozycja ustrojowa, struktura organizacyjna, podejmowanie decyzji*, Acta Universitatis Wratislaviensis no. 3948. Prawo 2019, vol. 328.
Górnicki L., *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, Wrocław 2000.
Górnicki L., *Założenia i koncepcja kodyfikacji prawa w II RP*, Prawo i Więź 2022, no. 4 (42).
Grodziski S., *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej*, Czasopismo Prawno-Historyczne 1981, vol. 32, no. 1.
Komisja Kodyfikacyjna Rzeczypospolitej Polskiej Dział Ogólny, vol. 1, no. 1, Warszawa 1920.
Komisja Kodyfikacyjna Rzeczypospolitej Polskiej Dział Ogólny, vol. 1, no. 2, Warszawa 1920.
Komisja Kodyfikacyjna Rzeczypospolitej Polskiej Dział Ogólny, vol. 1, no. 3, Warszawa 1921.
Komisja Kodyfikacyjna Rzeczypospolitej Polskiej Dział Ogólny, vol. 1, no. 4, Warszawa 1922.
Konic H., *Prawo spadkowe wobec nowoczesnych prądów w prawie cywilnym*, Warszawa 1925.
Konic H., *Projekt ustawy o prawie spadkowem w ogólności*, Gazeta Sądowa Warszawska 1924, no. 34–45.
Konic H., *Spadkobranie z prawa (ustawowe)*, Gazeta Sądowa Warszawska 1920, no. 11.
Konic H., *Spadkobranie z prawa (ustawowe)*, Gazeta Sądowa Warszawska 1920, no. 12.
Lityński A., *Wydział Karny Komisji Kodyfikacyjnej II Rzeczypospolitej. Dzieje prac nad częścią ogólną kodeksu karnego,* Katowice 1991.
Makowski W., *W sprawie ujednostajnienia ustawodawstwa*, Gazeta Sądowa Warszawska 1919, no. 2–3.
Nancka G., *Podkomisja prawa spadkowego Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej. Materiały z prac w 1938 roku. Edycja źródłowa*, Warszawa 2023.
Nancka G., *Podstawowe zasady projektu prawa spadkowego z 1939 roku. Edycja źródłowa*, Krakowskie Studia z Historii Państwa i Prawa 2025, vol. 18, no. 1.
Płaza S., *Historia prawa w Polsce na tle porównawczym. Okres międzywojenny*, part 3, Kraków 2001.
Przybyłowski K., *Polskie międzywojenne prace kodyfikacyjne w dziedzinie prawa spadkowego*, in: *Księga Pamiątkowa ku czci Kamila Stefki*, Warszawa–Wrocław 1967.
Radwański Z., *Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej*, Czasopismo Prawno-Historyczne 1969, vol. 21, no. 1.
Sójka-Zielińska K., *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej*, Czasopismo Prawno-Historyczne 1975, vol. 27, no. 2.
Sójka-Zielińska K., *Wielkie kodyfikacje cywilne. Historia i współczesność*, Warszawa 2009.
Sprawozdanie Prezydenta Komisji Kodyfikacyjnej za czas od 1 czerwca 1934 do 31 marca 1937, in: *Komisja Kodyfikacyjna. Dział Ogólny 1/17*, Warszawa 1937.
Wniosek nagły posła Zygmunta Marka i tow. sprawie powołania do życia komisji dla stworzenia jednolitego ustawodawstwa w Państwie Polskiem, Kwartalnik Prawa Cywilnego i Karnego 1919, no. 2.
Wróblewski S., *Zasady dziedziczenia ab intestato*, Czasopismo Prawnicze i Ekonomiczne 1920, no. 1–4.
VI Zjazd Prawników i Ekonomistów Polskich, Gazeta Sądowa Warszawska 1920, no. 27.

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The right to obtain an explanation of the decision-making procedure in an individual case under Article 86 (1) of the Artificial Intelligence Act – selected problems

Prawo do uzyskania wyjaśnienia na temat procedury podejmowania decyzji w indywidualnej sprawie na podstawie art. 86 ust. 1 Aktu o sztucznej inteligencji – wybrane problemy

Право на получение разъяснений, касающихся процедуры принятия решения по индивидуальному делу на основании статьи 86 (1) Закона об искусственном интеллекте – избранные вопросы

Право на отримання пояснень щодо процедури прийняття рішення в індивідуальній справі на підставі статті 86 (1) Акту про штучний інтелект – окремі питання

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Abstract: The purpose of this paper is to analyse and evaluate the regulation of the right to obtain an explanation of the decision-making procedure in an individual case contained in Article 86 (1) of the Artificial Intelligence Act (AIA). At the outset of the study, Article 22 (1) of the GDPR is also analysed in order to then establish what the interplay between the two provisions is. This will also make it possible to identify the potential risks associated with the exercise of the right established in Article 86 (1) of the AIA. The analysis carried out has allowed for the formulation of final conclusions, which show, inter alia, that the subjective and objective scope of Article 86 (1) of the AIA is broader than Article 22 (1) of the GDPR, the consequences of individual decisions justifying the use of Article 86 (1) of the AIA are so broad that in practice they can apply to almost every partial or complete ADM issued using a high-risk AI system. The paper uses a law-comparative method.
Keywords: AI systems, automated decision, AI Act

Streszczenie: Celem niniejszego opracowania jest analiza i ocena regulacji odnoszących się do prawa do uzyskania wyjaśnień dotyczących procedury podejmowania decyzji w indywidualnej sprawie, zawartych w art. 86 ust. 1 Aktu o sztucznej inteligencji (AIA). Na wstępie przeanalizowano również art. 22 ust. 1 Ogólnego rozporządzenia o ochronie danych osobowych (RODO), aby następnie ustalić, jaka jest wzajemna zależność między tymi dwoma przepisami. Umożliwiło to ponadto zidentyfikowanie potencjalnego ryzyka związanego z korzystaniem z prawa ustanowionego w art. 86 ust. 1 RODO. Przeprowadzona analiza pozwoliła na sformułowanie wniosków końcowych, z których wynika między innymi, że zakres podmiotowy i przedmiotowy art. 86 ust. 1 AIA jest szerszy niż art. 22 ust. 1 RODO, jak również, że konsekwencje poszczególnych decyzji uzasadniających zastosowanie art. 86 ust. 1 AIA są na tyle szerokie, iż w praktyce mogą mieć zastosowanie do decyzji całkowicie lub częściowo zautomatyzowanych, wydanych z wykorzystaniem systemu AI wysokiego ryzyka. W artykule zastosowano metodę prawno-porównawczą.
Słowa kluczowe: systemy AI, decyzje zautomatyzowane, Akt o sztucznej inteligencji

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Резюме: Целью настоящего исследования является анализ и оценка положений, касающихся права на получение разъяснений относительно процедуры принятия решений по индивидуальному делу, содержащихся в статье 86 (1) Закона об искусственном интеллекте (AIA). На первом этапе также анализируется статья 22 (1) Общего регламента по защите персональных данных (RODO), чтобы затем установить взаимосвязь между этими двумя положениями. Кроме того, это позволило выявить потенциальные риски, связанные с использованием права, установленного в статье 86 (1) RODO. Проведенный анализ позволил сформулировать окончательные выводы, из которых, в частности, следует, что субъектный и объектный охват статьи 86 (1) AIA шире, чем статьи 22 (1) RODO, а также что последствия отдельных решений, обосновывающих применение статьи 86 (1) AIA, настолько широки, что на практике могут применяться к полностью или частично автоматизированным решениям, принятым с использованием системы ИИ высокого риска. В статье использован правовой сравнительный метод.

Ключевые слова: системы ИИ, автоматизированные решения, Закон об искусственном интеллекте

Анотація: Метою цієї статті є аналіз та оцінка положень, що стосуються права на отримання пояснень щодо процедури прийняття рішення в індивідуальній справі, які містяться в статті 86 (1) Акту про штучний інтелект (AIA). На початку також проаналізовано статтю 22 (1) Загального регламенту про захист персональних даних (RODO), щоб згодом визначити взаємозв'язок між цими двома положеннями. Це також дозволило визначити потенційні ризики, пов'язані з використанням права, встановленого в статті 86 (1) RODO. Проведений аналіз дозволив сформулювати остаточні висновки, з яких, серед іншого, випливає, що суб'єктний та об'єктний обсяг статті 86 (1) AIA є ширшим, ніж обсяг, передбачений статтею 22 (1) RODO, а також що наслідки окремих рішень, які обґрунтовують застосування ст. 86 (1) AIA, є настільки широкими, що на практиці можуть поширюватися на повністю або частково автоматизовані рішення, прийняті з використанням системи ШІ високого ризику. У статті застосовано порівняльно-правовий метод.

Ключові слова: системи ШІ, автоматизовані рішення, Акт про штучний інтелект

Introduction

The purpose of this paper is to analyse and evaluate the regulations on the right to obtain clarification on the decision-making procedure in an individual case as set forth in Article 86 (1) of the Artificial Intelligence Act (AIA).

Artificial intelligence systems (AI systems) can be used in various ways. The result of their operation can be used to make a decision that triggers a "legal effects concerning him or her or similarly significantly affects him or her."

This can happen in two ways. First, the end result of the AI system's operation can be used to make a human decision (partially automated decision – partially ADM). Second, such a decision can also be made in an automated manner without human involvement, and therefore based solely on the operation of an algorithm (automated decision – ADM). In both cases, the person affected by the decision has the right to obtain an explanation of the procedure for making the decision, and thus also to what extent the AI system contributed to the decision, or what the rules of the AI system were. Article 86 (1) of the AIA includes the right to obtain an explanation of

the decision-making procedure in an individual case. In contrast, Article 22 (1)[1] the GDPR[2] included the right to obtain information from the controller about automated data processing (ADM), including profiling. As a result, one may wonder what the interplay is between these provisions. In addition, it needs to be determined whether Article 86 (1) of the AIA applies to ADM and partially ADM. The personal scope of Article 86 (1) of the AIA is also analysed, including its relation to Article 22 (1) of the GDPR, the consequences the decision has, and the scope and risks regarding the right to clarification from this provision.

Accordingly, the research intention undertaken in this paper is to discuss and analyse Article 86 (1) of the AIA, to compare its scope with Article 22 (1) of the GDPR, and to identify risks that may hinder the realisation of the right included therein. The paper uses a legal-comparative method.

1. Definitions of the terms AI system, high risk AI system and deployer included in Article 86 of the AIA

The analysis of Article 86 of the AIA should begin with a discussion of the definitions of the legal terms that are included therein, i.e. AI system, high-risk AI system and deployer. This is because it is necessary for further interpretation of the law included therein.

The first of these terms, the AIA system, is defined in Article 3 (1) of the AIA. According to this provision, 'AI system' means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. As J. Rzymowski points out, in this definition, A is a feature of an AI system. It is a feature of a system that is machine-based, so it is a feature of an installed computer program that aims to operate at different levels of autonomy. AI in this definition is characterised by post-implementation adaptation (system learning) and the ability to make inferences that occur for explicit or implicit purposes. Based on input data, the system

1 See also Article 15 (1) (h) of the GDPR.

2 Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending regulations: (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and directives: 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L 409, 4.12.2020.

is expected to generate results belonging to one of the groups listed in Article 4 (3) of the AIA.[3] In turn, deployer according to article 3 (4) of the AIA "means a natural or legal person, public authority, agency or other body using an AI system under its authority except where the AI system is used in the course of a personal non-professional activity."

For the purpose of determining the essence and scope of the right under Article 86 (1) of the AIA, it is necessary to focus on the concept of a high-risk AI system, since it is the result of the operation of these systems alone that allows the exercise of the right included therein.

A high-risk AI system, to which explicit reference is made in Article 86 (1) of the AIA, are listed in Annex III, with the exception of systems listed under point 2 thereof. Moreover, an AI system will always be considered to be high-risk where the AI system performs profiling of natural persons (Article 6 (2) (3) of the AIA). Significantly, an AI system referred to in Annex III shall not be considered to be high-risk where it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making (art. 6 (3) of the AIA).

If an AI system does not pose a significant risk of harm to health, safety or fundamental rights, including by not significantly affecting the outcome of the decision-making process, it is not classified as a high-risk AI system. In such a case, Article 86 of the AIA does not apply. The legal definition of risk is included in Article 3 (2) of the AIA as "the combination of the probability of an occurrence of harm and the severity of that harm." This is the sense in which risk is to be understood under Article 86 (1) of the AIA. However, it can be problematic to determine whether a particular AI system "does not pose a significant risk to the health, safety or fundamental rights of individuals. The provision uses the phrase "significant risk," so it should be a risk greater than the typical average risk in a given situation. In addition, it must concern health, safety or fundamental rights.

Another problem related to the application of Article 86 of the AIA may be the possibility of changing the list of AI systems classified in Annex III to the AIA as high-risk systems. Such changes may be made by the Commission pursuant to Article 7 (1) of the AIA by adding high-risk AI systems to Annex III or by modifying their use cases once the conditions set forth in that provision are met together. Changes to AI systems of high-risk systems through modifications to Annex III may result in the following difficulties in exercising the right under Article 86 of the AIA, due

[3] J. Rzymowski, *Definicja prawnicza sztucznej inteligencji na podstawie rozporządzenia PE i Rady (UE) 2024/1689 w sprawie sztucznej inteligencji*, Przegląd Prawa Publicznego 2024, no. 11, pp. 56–63.

to, for example, the classification of the AI system in question as a high-risk system and the lack of practice related to its application.

2. Personal scope of Article 86 (1) AIA

According to the 86 (1) of the AIA the right to explanation of individual decision-making has "any affected person subject to a decision which is taken by the deployer on the basis of the output from a high-risk AI system." With the addressee of this provision so defined, clarification is required as to how the phrases should be interpreted "any affected person subject to a decision" and decision "taken by the deployer on the basis of the output from a high-risk AI system." In the case of the subject of such a decision, the wording above indicates that the right under Article 86 (1) of the AIA is vested in any person (physical and legal) who is the addressee of such a decision. The essence of the decision, on the other hand, is that the basis for the decision is the result (output) of the high-risk AI system. Thus, it is a decision made by the deployer based on the output of the high-risk AI system. One should favour the interpretation of Article 86 (1) of the AIA, according to which it applies to both of the above-mentioned situations. The following arguments support this interpretation of this provision.

First, the provision of Article 86 (1) of the AIA refers to clarifying the role of a high-risk AI system in the decision-making process. The phrase used in this provision, "decision which is taken by the deployer on the basis of the output from a high-risk AI system" indicates that the output from a high-risk AI system is the basis for a partial ADM or ADM. In the case of ADM, reference can be made to Article 22 (1) of the GDPR,[4] according to which the data subject has the right not to be subject to a decision which is based solely on ADM of personal data, including profiling, and which produces legal effects with respect to the data subject or similarly significantly affects the data subject.[5] ADM in light of this provision should be distinguished from profiling. First of all, ADM is a decision-making process based solely on automated data processing without human involvement. Profiling, if it

4 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119/1, 4.05.2016.

5 See also Article 22 (2) (3) (4) of the GDPR.

precedes such a decision, also does not involve a human being.[6] Profiling is defined in Article 4 (4) of the GDPR as "any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements". Thus, profiling is a process of collecting personal data in the course of which their characteristics, behavioural patterns are assessed in order to place them in a certain category or group, in particular for the purpose of analysis, prediction concerning, for example, interests. Importantly, under Article 22 (1) of the GDPR, a person will not be subject to ADM if the person has a real influence on the content of the decision made in this process. Such a decision may be suggested by an automated mechanism, but the final choice as to its content should be made by the person.[7]

Second, Article 6 (3) of the AIA clearly indicates that high-risk AI systems listed in Annex III shall not be considered to be high-risk where it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making. Therefore, if an AI system does not materially affect the health, safety, or fundamental rights, it is not a high-risk AI system within the meaning of this provision. Meanwhile, it is clear from the wording of Article 86 (1) of the AIA that the right to clarify the decision-making procedure established therein applies only to high-risk AI systems. As indicated earlier, it may be problematic under Article 6 (3) of the AIA to determine whether a high-risk AI system listed in Annex III to the AIA is, in fact, not one, because "'it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making." This is important because if the system is not a high-risk AI system, a person will not be entitled to Article 86 (1) of the AIA.

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6 Grupa Robocza Art. 29 ds. Ochrony Danych, Wytyczne dotyczące zautomatyzowanego podejmowania decyzji w indywidualnych przypadkach i profilowania dla celów rozporządzenia 2016/679, 2018, p. 20.

7 Cf. M. Ciechomska, *Prawne aspekty profilowania oraz podejmowania zautomatyzowanych decyzji w ogólnym rozporządzeniu o ochronie danych osobowych*, Europejski Przegląd Sądowy 2017, no. 5, p. 40; F. Geburczyk, *Kryteria dopuszczalności decyzji zautomatyzowanych w świetle brzmienia art. 22 ust. 1 RODO*, Przegląd Ustawodawstwa Gospodarczego 2022, no. 5, p. 37.

3. Consequences of individual decisions justifying the use of Article 86 (1) of the AIA

Article 86 (1) of the AIA sets forth the consequences of a deployer's decision based on "the output from a high-risk AI system." Such a decision "produces legal effects or similarly significantly affects that person in a way that they consider to have "an adverse impact on their health, safety or fundamental rights." In analysing the above implications, clarification is needed on how to understand the phrases "legal effects or similarly significantly affects that person" and "to have an adverse impact on their health, safety or fundamental rights." The first phrase used in Article 86 (1) of the AIA is analogous to the definition of the effects of an automated decision in Article 22 (1) of the GDPR, i.e. "legal effects concerning him or her or similarly significantly affects him or her." When applying Article 22 (1) of the GDPR, it is necessary for ADM to have legal effects or other significant impact on a person,[8] i.e. a situation in which its effect is the creation, modification or termination of a legal relationship, triggering a change in legal or contractual rights or obligations. On the other hand, "other significant impact" on a person in the case of Article 22 (1) of the GDPR in the literature, as a rule, is described quite casuistically. On the other hand, in practice, it can raise difficulties of interpretation due to the fact that it is a vague criterion, and therefore dependent on the context-dependent.[9]

These considerations remain valid also in the case of Article 86 (1) of the AIA, since the consequences of the decision are described therein analogously to those of Article 22 (1) of the GDPR, which means that their definition may raise interpretative difficulties here as well. Some guidance may be provided by the scope of the consequences triggered, that is, their significant impact on health, safety and fundamental rights. Importantly, it will be the person affected by the decision who will decide whether the goods, rights have been violated, as indicated by the use of the phrase "in a way that they consider." Thus, it will be a subjective assessment made by an individual or legal entity (as Article 86 (1) of the AIA uses the phrase, "anyone").

The second phrase under review "an adverse impact on their health, safety or fundamental rights" requires interpretation of each of the terms used in it. Helpful in interpreting these terms may be found in the preamble of the AIA, where they are repeatedly used. Recital 8 of the AIA clearly emphasises the need to implement harmonised AI rules that will, on the one hand, promote the development of AI

8 Ibidem, p. 40.

9 See F. Geburczyk, *Kryteria…*, p. 38 ff.

in the EU market and, on the other hand, ensure a high level of protection of such public interests "such as health and safety and the protection of fundamental rights […]." In order to protect these values, as well as derive the greatest possible benefit from the use of AI systems, entities such as providers, deployers and affected persons with the necessary notions to make informed decisions regarding AI systems should be equipped (Recital 20). An important consideration for classifying an AI system as high risk is the extent to which it has an adverse impact on the fundamental rights protected by the Charter, e.g. protection of personal data, the right to non-discrimination, consumer protection (Recital 48).[10]

In the case of the terms health and safety, reference can be made to their lexical meanings. Health in this sense is "the state of a living organism in which all functions are running properly."[11] In Article 86 (1) of the AIA, this premise applies to physical and mental health.[12] While security is a "state of not being threatened."[13] For the term "fundamental rights," refer to the EU Charter of Fundamental Rights,[14] which includes rights relating to dignity, freedom, equality, among others. The Charter, despite its controversies and few drawbacks, has advantages such as, among others, the creation of a mechanism for the protection of fundamental rights within the EU and the guarantee of rights already present in national legal orders.[15] Due to the broad scope of the rights included in the Charter, the right under Article 86 (1) of the AIA will also be able to be exercised broadly, as it will be enjoyed by anyone whose fundamental rights meet the requirements of this provision, if the decision poses a significant risk to the aforementioned fundamental rights.

As indicated at the outset, one may wonder what is the relationship between the right to obtain an explanation under Article 86 (1) of the AIA and the right to information under Article 22 (1) in conjunction with Article 15 (1) (h) of the GDPR. The scopes of the two provisions differ, and consequently, Article 86 (1) of the AIA may supplement the regulation of Article 22 (1) of the GDPR, which in turn should be interpreted in conjunction with Article 15 (1) (h) of the GDPR. According to Article 15 (1) (h), the data subject shall have the right to obtain from

10 See also Recital 67 and 171 of the AIA.

11 Term "health", *Słownik języka polskiego PWN*, https://sjp.pwn.pl/szukaj/rowie%20.html [access: 10.03.2025].

12 See Recital 29 of the AIA.

13 Term "safety", *Słownik języka polskiego PWN*, https://sjp.pwn.pl/sjp/szukaj/bezpiecze%C5%84stwo [access: 10.03.2025].

14 Charter of Fundamental Rights of the European Union, OJ C 202/389, 7.06.2016, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12016P/TXT [access: 10.03.2025].

15 I. Malczyk, *Znaczenie Karty praw podstawowych Unii Europejskiej dla Polski*, Kortowski Przegląd Prawniczy 2012, no. 1, pp. 28–29.

the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information of the existence of automated decision-making, including profiling, referred to in Article 22 (1) and (4) of the GDPR and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject,[16] The information is to be provided "in a concise, transparent, intelligible and easily accessible form, using clear and plain language" (Article 12 (1) of the GDPR), so it cannot, for example, be worded in an abstruse manner or use specialised language. In the case of Article 86 (1) of the AIA, the explanation is to be "clear and meaningful." The clear explanation requirement can also refer to the use of clear language.

The material scope of the two provisions is also different. Article 22 (1) of the GDPR will not apply to ADM in two situations. First, when personal data are not processed, even if they lead to legal effects or have a similar effect (e.g. anonymous GPS data), or the decision is partially automated. Second, when "the decision does not lead to legal effects or does not have a similar significant effect, such as when an algorithm, based on an IP address, automatically decides on the language in which a particular user will be displayed on a web portal page."[17] In the former case, you will be able to exercise your right under Article 86 (1) of the AIA to receive clarification on the role of the high-risk AI system at various stages of decision-making.[18] These will be situations where the decision will be partially automated, or personal data will not be processed, but the decision will have a legal effect or other significant impact. This may therefore be the basis for obtaining a clarification to the deployer regarding the role of the high-risk AI system in the decision. Article 86 (1) of the AIA is therefore complementary to Article 22 (1) of the GDPR. In particular, Article 86 (1) of the AIA (as opposed to Article 22 (1) of the GDPR), explicitly establishes the right to obtain clarification, and this also applies to partial ADM.

A comparison of the scopes of Article 86 (1) of the AIA and Article 22 of the GDPR leads to the following conclusions.

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16 K. Kelder, *On the Relative Importance of the AI Act Right to Explanation*, 2024, https://digi-con.org/on-the-relative-importance-of-the-ai-act-right-to-explanation/ [access: 10.03.2025]; judgement of the Court of Justice of 7 December 2023, C-634/21, LEX no. 3634999, par. 56; see also M. Kupiec, *Nowe spojrzenie na zautomatyzowane podejmowanie decyzji w rozumieniu art. 22 RODO – glosa do wyroku Trybunału Sprawiedliwości z 7.12.2023 r., C-634/21*, Europejski Przegląd Sądowy 2024, no. 3, pp. 33–39.

17 M. Czerniawski, in: *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, eds. E. Bielak-Jomaa, D. Lubasz, 2018 [LEX database], Article 22.

18 K. Kelder, *On the Relative Importance*…, passim.

First, Article 86 (1) of the AIA has a broader scope of subject matter than Article 22 (1) of the GDPR, as it applies to both natural and legal persons.

Second, the entities that are required to implement the law are different. In Article 86 (1) of the AIA it is the deployer, while in Article 22 (1) (3) of the GDPR it is the controller.

Third, the subject matter scope of the two provisions is different. The scope is broader in the case of Article 86 (1) of the AIA, as it can be an automated decision and a partially automated decision, while in Article 22 (1) of the GDPR it is only an automated decision. Article 86 (1) of the AIA covers both situations when personal data are processed and when they are not processed (including when such decisions lead to legal consequences or have a similar effect). In addition, a decision under Article 86 (1) of the AIA has "an adverse impact on their health, safety or fundamental rights," and the provision applies only to high-risk AI systems.

Fourth, the scope of the right and its form in the two provisions are different. In Article 86 (1) of the AIA, the recipient is to receive "explanations of the role of the AI system in the decision-making procedure and the main elements of the decision taken" communicated in a clear and meaningful form. In contrast, in Article 22 (1) in conjunction with Article 15 (1) (h) in conjunction with Article 12 (1) of the GDPR, the clarification is supposed to be about "at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision" and is to be "in a concise, transparent, intelligible and easily accessible form, using clear and plain language."

4. Scope and risks of the right of explanation under Article 86 (1) of the AIA

Article 86 (1) of the AIA stipulates that any person affected by a decision and based on the result (output) of a high-risk AI system has the right to obtain from the deployer: clear and meaningful explanations of the role of the AI system in the decision-making procedure and the main elements of the decision taken. Guidance on the interpretation of this provision is provided by the content of Recital 171 of the AIA, which explicitly emphasises the right to affected persons to obtain the explanation which "should be clear and meaningful and should provide a basis on which the affected persons are able to exercise their rights." Explanations of the role of the AI system in the decision-making process provided by the deployer should therefore be clear and meaningful. Depending on the role of the high-risk AI system in the decision, i.e. an ADM or partial ADM, there may be different difficulties in

meeting this criterion, depending on the degree of the algorithm's involvement in the final decision. According to Article 86 (1) of the AIA, the requirement to provide an explanation of the role of the AI system that is clear and meaningful must be met in both of these cases. Reference should also be made to Article 14 of the AIA, which sets forth the principles of human oversight so that high-risk AI systems are designed and supervised during their use, that they will be effectively overseen by natural persons.[19] Among the risks for the addressees of decisions that may hinder the exercise of the right under Article 86 (1) of the AIA are examples formulated in the literature.

First, the black box problem, which makes it impossible to clearly indicate the rationale that the AI system took into account in issuing a particular decision.[20] This can lead to algorithmic discrimination, which can manifest itself in many ways. It can be based on *biased* agents (e.g. historical data),[21] feature selection, discrimination through proxy variables and masked attributes,[22] discrimination in targeted advertising and pricing, disparate impact discrimination.[23]

Second, the risk of automation *bias*, which is supposed to be countered by, among other things, the way in which a high-risk AI system is made available to an entity using in such a way that natural persons to whom human oversight is assigned are enabled, as appropriate and proportionate "to remain aware of the possible tendency of automatically relying or over-relying on the output produced by a high-risk AI system (automation *bias*), in particular for high-risk AI systems used to provide information or recommendations for decisions to be taken by natural persons" (Article 14 (4) (b) of the AIA).

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19 See e.g. Article 14 (5) of the AIA.

20 See F. Zuiderveen Borgesius, *Discrimination, Artificial Intelligence and Algorithmic Decision-Making, Council of Europe*, Strasbourg 2018, p. 15.

21 See also I. Ajunwa, *The Paradox of Automation as Anti-Bias Intervention*, Cardozo Law Review 2020, vol. 41, pp. 1671–1742; D.K. Citron, F. Pasquale, *The Scored Society: Due Process for Automated Predictions*, Washington Law Review 2014, vol. 89, pp. 1–33.

22 See also T.B. Gillis, J. L. Spiess, *Big Data and Discrimination*, University of Chicago Law Review 2019, vol. 86, pp. 459–488.

23 X. Wang, Y. Cheng Wu, X. Ji, H. Fu, *Algorithmic Discrimination: Examining Its Types and Regulatory Measures with Emphasis on US Legal Practices*, Frontiers of Artificial Intelligence 2024, vol. 7, pp. 3–5; see also S. Barocas, A.D. Selbst, *Big Data's Disparate Impact*, California Law Review 2016, vol. 104, pp. 671–732; F. Zuiderveen Borgesius, *Discrimination, Artificial Intelligence and Algorithmic Decision-Making*, Strasbourg 2018, passim; K. Crawford, J. Schultz, *Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms*, Boston College Law Review 2014, vol. 55, pp. 93–128; K. Ciosk, *Model systemowego przeciwdziałania dyskryminacji algorytmicznej – uwagi na tle projektu Aktu w sprawie sztucznej inteligencji*, Roczniki Administracji i Prawa 2022, no. 2, pp. 317–332.

Third, the risk of violating the right to privacy with, for example, by violating the principles of personal data processing at various stages of the algorithm (Article 5 (1) (a) of the GDPR), such as the principle of fairness and transparency, further processing and purpose limitation, minimisation, regularity, storage limitation (Article 5 (1) (a–e) of the GDPR).[24]

The explanation set forth in Article 86 (1) of the AIA is also intended to cover "the main elements of the decision." It may be helpful to determine which elements of the decision are relevant under Article 86 (1) of the AIA to determine the elements that an administrative decision should contain. Among the elements of the decision listed in Article 107 (1) of the Code of Administrative Procedure[25] in this context, mention the citation of the legal basis, the decision, the factual and legal reasons,[26] which can be considered main elements of Article 86 (1) of the AIA. The citation of the legal basis is important because it can indicate whether there is a legal basis for the decision at all, which is linked to the performance of the high-risk AI system in the sense of this provision. By way of example, one can point to the law of receiving appropriate explanations regarding the basis of the decision taken (concerning the assessment of creditworthiness) pursuant to Article 105a paragraph 1a of the Act of 29 August 1997 – Banking Law.[27] This is, therefore, a right similar in its essence to the right under Article 86 (1) AIA, as it aims to explain the basis of an automated decision. The decision is important due to the precise definition of the role of the high-risk AI system in its adoption. On the other hand, the elements of justification for such a decision may be similar to those specified in Article 107 § 3 of the Code of Administrative Procedure (legal and factual justification). Providing an explanation under Article 86 (1) of the AIA may be problematic if the entity issuing the decision uses the result of the operation of another entity's AI systems (e.g. when assessing creditworthiness). In this situation, the final decision-maker may have difficulty providing the most important elements of the decision, if, for example, he or she did not have access to the methodology of the algorithm used by another entity.

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24 Cf. Grupa Robocza Art. 29 ds. Ochrony Danych, Wytyczne dotyczące zautomatyzowanego podejmowania decyzji…, pp. 8–12.

25 Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego, consolidated text: Journal of Laws [Dziennik Ustaw] 2024 item 572 as amended.

26 The legal and factual justification should, in particular, include an indication of the facts which the authority considered proven, the evidence on which it relied, and the reasons why it rejected other evidence as unreliable and lacking in probative value, while the legal justification should explain the legal basis for the decision, citing the relevant legal provisions, Article 107 § 3 of the Code of Administrative Procedure. Specific provisions may also specify other elements that the decision should contain, Article 107 § 2 of the Code of Administrative Procedure.

27 Journal of Laws 2024 item 1646 as amended.

This is important because if such a result of the AI system's operation has a decisive influence on the final decision, it will be possible to exercise the right to Article 86 (1) of the AIA. Such a conclusion can be drawn in the context of the judgement of the Court of Justice (CJEU) of 7 December 2023 C-634/2,[28] which concerns Article 22 (1) of the GDPR, but concerns ADM, which has the same effects (i.e. "legal effects concerning him or her or similarly significantly affects him or her"). In such a case, in order to attribute a "decision" within the meaning of Article 22 (1) of the GDPR, but also Article 86 (1) of the AIA to a result resulting from an ADM that was made by an entity other than the final decision-maker, it is necessary to have a clear impact of such an operation on the final decision determining the legal or factual situation of a natural person.[29]

Final conclusions

The analysis of Article 86 (1) of the AIA leads to the following conclusions.

First, the subjective and objective scope of Article 86 (1) of the AIA is broader than Article 22 (1) of the GDPR. Article 86 (1) of the AIA applies to both natural and legal persons, to ADD and partial ADM, as well as to situations where personal data are processed and when they are not processed (also when such decisions lead to legal effects or have a similar effect). Additionally, a decision under Article 86 (1) of the AIA has "an adverse impact on their health, safety or fundamental rights" and this provision applies only to high-risk AI systems. The scope of the law and its form are also different in both provisions.

Second, meeting the requirement specified in Article 86 AIA that the explanation provided by the deployer be clear and meaningful and concern "the role of the AI system in the decision-making procedure and the main elements of the decision taken" may be difficult. Depending on the role of the high-risk AI system in making the decision, i.e. ADM or partial ADM, there may be various difficulties related to meeting this criterion. Among the risks for the addressees of the decision that may hinder the implementation of the right under Article 86 (1) of the AIA, this may include, among others, the black box problem, which prevents a clear indication of the premises that the AI system took into account when issuing a specific decision,

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28 LEX no. 3634999.

29 See the judgement of the Court of Justice (CJEU) of 7 December 2023, C-634/21; M. Kupiec, *Nowe spojrzenie*…, pp. 33–39.

which may lead to algorithmic discrimination. Another risk may be the risk of automation *bias*, which the AIA tries to eliminate (Article 14 (4) (b) of the AIA), or the risk of violating the right to privacy, e.g. by violating the principles of personal data processing at various stages of the application of the algorithm (Article 5 (1) (a) of the GDPR).

Thirdly, in practice, it may be difficult to include in the explanation "the main elements of the decision," especially if the entity issuing the decision will use the result of the operation of another entity's AI systems and may have difficulty providing the most important elements of the decision because it does not know the methodology of the algorithm. The explanation may also be difficult due to the ignorance of the premises that the AI system took into account when issuing it (the so-called black box problem).

Fourth, the consequences of individual decisions justifying the use of Article 86 (1) of the AIA are so broad that in practice they can apply to almost every partial or complete ADM issued using a high-risk AI system. It is enough that such a decision: 1) "produces legal effects or similarly significantly affects that person" – and, therefore, will have consequences for a natural or legal person in the form of, among others, establishing or terminating a legal relationship, 2) "in a way that they consider to have an adverse impact on their health, safety or fundamental rights" – this impact will be adverse on their physical or mental health, broadly understood security and fundamental rights (the catalogue of which is quite extensive). Such a broad definition of the right from Article 86 (1) of the AIA can, however, be considered its advantage, because it will guarantee a wide spectrum of protection against the effects of using AI systems to issue decisions.

Bibliography

Ajna I., *The Paradox of Automation as Anti-Bias Intervention*, Cardozo Law Review 2020, vol. 41.

Ayodele T.O., *Machine Learning Overview*, in: *New Advances in Machine Learning*, ed. Y. Zhang, 2010, https://www.intechopen.com/books/3752 [access: 10.03.2025].

Barocas S., Selbst A.D., *Big Data's Disparate Impact*, California Law Review 2016, vol. 104.

Ciechomska M., *Prawne aspekty profilowania oraz podejmowania zautomatyzowanych decyzji w ogólnym rozporządzeniu o ochronie danych osobowych*, Europejski Przegląd Sądowy 2017, no. 5.

Ciosk K., *Model systemowego przeciwdziałania dyskryminacji algorytmicznej – uwagi na tle projektu Aktu w sprawie sztucznej inteligencji*, Roczniki Administracji i Prawa 2022, no. 2.

Citron D.K., Pasquale F., *The Scored Society: Due Process for Automated Predictions*, Washington Law Review 2014, vol. 89.

Crawford K., Schultz J., *Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms*, Boston College Law Review 2014, vol. 55.

Czerniawski M., in: *RODO. Ogólne rozporządzenie o ochronie danych. Komentarz*, eds. E. Bielak-Jomaa, D. Lubasz, 2018 [LEX database].

Fajgielski P., in: *Komentarz do rozporządzenia nr 2016/679 w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych)*, in: *Ogólne rozporządzenie o ochronie danych. Ustawa o ochronie danych osobowych. Komentarz*, 2022 [LEX database].

Geburczyk F., *Kryteria dopuszczalności decyzji zautomatyzowanych w świetle brzmienia art. 22 ust. 1 RODO*, Przegląd Ustawodawstwa Gospodarczego 2022, no. 5.

Gillis T.B., Spiess J.L., *Big Data and Discrimination*, University of Chicago Law Review 2019, vol. 86, no. 2.

Kelder K., *On the Relative Importance of the AI Act Right to Explanation*, 2024, https://digi-con.org/on-the-relative-importance-of-the-ai-act-right-to-explanation/ [access: 10.03.2025].

Kupiec M., *Nowe spojrzenie na zautomatyzowane podejmowanie decyzji w rozumieniu art. 22 RODO – glosa do wyroku Trybunału Sprawiedliwości z 7.12.2023 r., C-634/21*, Europejski Przegląd Sądowy 2024, no. 3.

Malczyk I., *Znaczenie Karty praw podstawowych Unii Europejskiej dla Polski*, Kortowski Przegląd Prawniczy 2012, no. 1.

Mednis A., in: *Prawo bankowe. Komentarz*, eds. A. Mikos-Sitek, P. Zapadka, 2022 [LEX database].

Rojszczak M., *Sztuczna inteligencja w innowacjach finansowych – aspekty prawne i regulacyjne*, IKAR 2020, no. 2.

Rzymowski R., *Definicja prawnicza sztucznej inteligencji na podstawie rozporządzenia PE i Rady (UE) 2024/1689 w sprawie sztucznej inteligencji*, Przegląd Prawa Publicznego 2024, no. 11.

Szostek D., Ba G., Prabucki T., Nowakowski M., *Zastosowanie sztucznej inteligencji w bankowości – szanse oraz zagrożenia. Raport opracowany przez badaczy z Uniwersytetu Śląskiego w ramach Programu Analityczno-Badawczy przy Fundacji WIB*, 2022, https://us.edu.pl/wpcontent/uploads/pliki/ [access: 10.03.2025].

Wang X., Cheng Wu Y., Ji X., Fu H., *Algorithmic Discrimination: Examining Its Types and Regulatory Measures with Emphasis on US Legal Practices*, Frontiers of Artificial Intelligence 2024, no. 7. DOI: 10.3389/frai.2024.1320277.

Zuiderveen Borgesius F., *Discrimination, Artificial Intelligence and Algorithmic Decision-Making*, Council of Europe, Strasbourg 2018.

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Professor Leon Piniński on the marriage law project from 1929

Profesor Leon Piniński o projekcie prawa małżeńskiego z 1929 r.
Профессор Леон Пининьский о проекте брачно-семейного права 1929 г.
Професор Леон Пінінський про проєкт закону про шлюб 1929 року

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Abstract: The present paper will discuss issues related to the problem of the unification of Polish family law after 1918, with particular emphasis on the marriage law which aroused great emotions in Polish society at that time. It focuses on the ongoing discussion on the draft of the personal marriage law, developed by Prof. K. Lutostański and made public in 1929. Particular attention was paid to the position of Professor Leon hr. Piniński, who also took the floor to discuss the solutions adopted in this draft. In 1931, the Union of Polish Catholic Intelligentsia carried out a survey on the aforementioned project, in which 11 prominent representatives of social life and the academic community of the inter-war period took part, in particular Professor Leon Piniński.
Keywords: Leon Piniński, personal matrimonial law, inter-war period, unification, codification

Streszczenie: W niniejszym opracowaniu zostały omówione zagadnienia związane z problemem unifikacji polskiego prawa rodzinnego po 1918 r., ze szczególnym uwzględnieniem prawa małżeńskiego, które budziło wówczas wielkie emocje w polskim społeczeństwie. Skupiono się na dyskusji wokół projektu osobowego prawa małżeńskiego opracowanego przez prof. K. Lutostańskiego w 1929 r. W 1931 r. Związek Polskiej Inteligencji Katolickiej przeprowadził ankietę w sprawie wspomnianego projektu, w której udział wzięło 11 wybitnych przedstawicieli życia społecznego i środowiska naukowego okresu międzywojennego, w tym prof. Leon Piniński. W artykule szczególną uwagę zwrócono na stanowisko prof. Leona hr. Pinińskiego w sprawie osobowego prawa małżeńskiego, jako że on również zabrał głos w polemice toczącej się nad rozwiązaniami przyjętymi w projekcie.
Słowa kluczowe: Leon Piniński, osobowe prawo małżeńskie, okres międzywojenny, unifikacja, kodyfikacja

Резюме: В данной статье рассматриваются вопросы, связанные с проблемой унификации польского семейного права после 1918 г., с особым акцентом на брачно-семейное право, вызвавшее большие эмоции в польском обществе того времени. В центре внимания – дискуссия вокруг проекта личного брачно-семейного права, разработанного профессором К. Лютостанским в 1929 г. В 1931 г. Союз польской католической интеллигенции провел опрос по этому проекту, в котором приняли участие 11 выдающихся представителей общественной жизни и научных кругов межвоенного периода, в том числе профессор Леон Пининьский. Особое внимание в статье уделяется позиции профессора графа Леона Пининьского по вопросу личного брачно-семейного права, поскольку он также выступал в полемике, которая велась по поводу решений, принятых в проекте.
Ключевые слова: Леон Пининьский, личное брачно-семейное право, межвоенный период, унификация, кодификация

Анотація: У даній статті розглядаються питання, пов'язані з проблемою уніфікації польського сімейного права після 1918 року, з особливим акцентом на шлюбному праві, яке викликало бурхливі емоції в тогочасному польському суспільстві. У центрі уваги – дискусія навколо проєкту персонального шлюбного

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права, розробленого в 1929 р. професором Каролем Лютостанським. У 1931 р. Об'єднання польської католицької інтелігенції провело опитування щодо цього проєкту, в якому взяли участь 11 видатних представників суспільного життя та наукових кіл міжвоєнного періоду, у тому числі й професор Леон Пінінський. У статті особлива увага приділена позиції професора Леона Пінінського у питанні особистого права шлюбу, оскільки він також брав участь у полеміці щодо рішень, прийнятих у проєкті.
Ключові слова: Леон Пінінський, особисте шлюбне право, міжвоєнний період, уніфікація, кодифікація

Introduction

After Poland regained its independence in 1918, there were five legal orders left in place on its territory by the post-partition states. In the field of civil law, these were the Bürgerliches Gesetzbuch (BGB), i.e. the German Civil Code of 1896 in force during the Prussian partition, and the Allgemeines Bürgerliches Gesetzbuch (ABGB), i.e. the Austrian Civil Code of 1811, which was in force during the Austrian partition on the territory of former Galicia and Cieszyn Silesia. In addition, in the eastern borderlands incorporated into the Russian Empire, the Russian code of 1835, the so-called "Svod Zakonov or Collection of Laws" was applied. On the other hand, in the areas of the former Kingdom of Poland, which retained a certain degree of distinctiveness from the other lands of the Russian partition, the Napoleonic Code of 1804, with changes introduced by, among others, the Code of Laws of the Kingdom of Poland of 1825 and the Marriage Act of 1836, retained legal force. On the other hand, in the part of the Spiš and Orava areas annexed to Poland and before 1918 belonging to the Kingdom of Hungary, Hungarian law remained in force until 1922. Apart from this, many other local legal acts issued by the governing bodies of individual Polish territories in the period before the formation of the unitary state authority retained legal force, e.g. acts issued by the military commander of Central Lithuania, the war authorities in the Eastern Borderlands, the liquidation commissions of individual districts.[1]

[1] The Codification Commission was active until 1939, and its achievements constitute an important part of the Polish legislative art. Individual members of the Commission drafted legal acts, which were then discussed in the Commission's forum and, once approved, presented to the President. Legal acts of the Commission entered into force as ordinances of the President of the Republic, rather than laws, which made it possible to avoid political interference by the Sejm in the content of the normative acts. For more details, see. L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, Wrocław 2000, p. 251; S. Grodziski, *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej*, Czasopismo Prawno-Historyczne 1981, vol. 33, no. 1, p. 47; A.J.R, *Komisja tworzenia dobrego prawa*, Palestra 2009, no. 9–10; I. Mazurek, *Specyfika prac Komisji Kodyfikacyjnej w procesie unifikacji prawa w II Rzeczypospolitej*, Studia Iuridica Lublinensia 2014, no. 23, pp. 237–238; E. Borkowska-Bagieńska, *O doświadczeniach kodyfikacji prawa cywilnego w II Rzeczypospolitej*

However, numerous problems were created not only by the multiplicity of legal acts in force on the territory where Poland was established after 123 years of partitions. Further difficulties were caused by the fact that the legal orders of the partitioning states were different both in terms of general principles and the content of individual ones. All this caused many doubts of interpretation, e.g. with regard to bigamy in Spisz and Orawa.[2] Admittedly, a legal fiction was adopted that the laws of the partitioned states constituted Polish district laws and conflict-of-laws norms were introduced to determine the applicable law for a given legal state. However, in the long run, such a solution was unacceptable and, therefore, unification of law, i.e. its unification, became necessary.[3]

In this article I would like to present issues related to the problem of the unification of Polish family law after 1918, with particular emphasis on the marriage law which aroused great emotions in the Polish society of that time. I would also like to present the discussion following the publication in 1929 of a draft of the personal marriage law developed by Prof. K. Lutostański. Particularly noteworthy is the voice of Professor Leon Count Piniński, whose views on the marriage law project will be analysed in detail in the following article.

1. Unification of family law

With regard to family law, the draft personal marriage law, drawn up in 1929, was particularly controversial. It was viewed negatively especially by the Catholic Church for the introduction of optional civil marriages and the possibility of dissolving a marriage by divorce.

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dla współczesnego ustawodawcy, Czasy Nowożytne 2002, vol. 12, pp. 125–141; W.L. Jaworski, *Prawo cywilne na ziemiach polskich*, vol. 1. *Źródła. Prawo małżeńskie osobowe i majątkowe*, Kraków 1919, pp. 44–45; K. Sójka-Zielińska, *Historia prawa*, Warszawa 2022, p. 258; eadem, *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej*, Czasopismo Prawno-Historyczne 1975, vol. 27, no. 2, pp. 271–280.

2 A. Korobowicz, W. Witkowski, *Historia ustroju i prawa polskiego (1772–1918)*, Warszawa 2017, pp. 10–20; M. Allerhand, *Prawo małżeńskie obowiązujące na Spiszu i Orawie*, Lwów 1926, footnote 2.

3 R. Radwański, *Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej*, Czasopismo Prawno-Historyczne 1969, vol. 21, no. 1, p. 31; J. Markiewicz, *Kształtowanie się polskiego systemu prawa sądowego i jego twórcy w okresie międzywojennym 1919–1939 (wybrane zagadnienia)*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2010, vol. 3, pp. 113–122.

In the lands forming the newly established Polish state in the 19th century, there were three legal orders relating to the institution of marriage, different in content.[4] Firstly, there was the secular (lay) system, which was present in the Napoleonic Code. It legalised the civil character of marriage with regard to the form of marriage and jurisdiction. However, certain solutions, e.g. concerning the prerequisites for marriage, were based on canon law and old French law. The same system was also in force in the German Civil Code (BGB), according to which marriage had the nature of a civil contract and was concluded in the presence of a registrar.[5]

In contrast, denominational rules were in force in Russian law (Zwód Praw) and in the lands of the Kingdom of Poland from 1836. On the other hand, the Napoleonic Code, in force in the Duchy of Warsaw since 1808, and with it the dissolution of marriage law, met with great protest from the clergy. After the fall of the Duchy, the Tsarist authorities attempted to reach an agreement with the clergy and, as a result, in 1825 the Code of the Law of the Kingdom of Poland came into force, which defined the nature of marriage as religious, abolishing divorce, but left civil jurisdiction. Due to the Catholic Church's failure to respect the Code's provisions on secular jurisdiction in matrimonial matters, further discussions were initiated, which, however, due to the November events, led to the imposition of Russian marriage law on the Kingdom in 1836. According to the guidelines of the officials of the Department for the Affairs of the Kingdom of Poland, the marriage law was based on a purely denominational form with separation for four Christian denominations, i.e. Roman Catholic, Greek-Russian (Orthodox), Evangelical-Augsburg and Evangelical-Reformed. Judicial jurisdiction for the Christian denominations was to be exercised by the clergy.[6]

A third secular-religious (mixed) system was in force in the provisions of the Austrian Civil Code. It defined marriage as a contract between two persons of different sexes, who by this act declare their will to be with each other, while leaving the secular nature of the general rules, which dealt with the essence of marriage as a civil contract, the prerequisites for marriage and the obstacles to marriage. The forms of marriage were either confessional or secular (civil marriage). The Code

4 K. Lutostański, *Zasady projektu prawa małżeńskiego*, Gazeta Sądowa Warszawska 1931, no. 46, p. 1.

5 I. Leciak, *Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej*, Studia Iuridica Toruniensia 2013, vol. 13, pp. 81–107; P. Fiedorczyk, *Polish Matrimonial Law 1918–1939: Regulations, Attempts to Unify and Codify*, in: *Kulturkampf um die Ehe: Reform des europäischen Eherechts nach dem Grossen Krieg*, ed. M. Löhnig, Tübingen 2021, pp. 147–165; idem, *Development of Family Law on Polish Lands 1795–1945*, in: *Framing the Polish Family in the Past*, eds. P. Guzowski, C. Kuklo, New York 2022, pp. 165–180.

6 K. Sójka-Zielińska, *Historia prawa*, p. 258; K. Lutostański, *Prawo cywilne obowiązujące w b. Królestwie Polskiem*, vol. 1, Warszawa 1931, p. 58.

included secular jurisdiction in matrimonial matters, regarding the validity of marriage, separation and divorce. Except that separations were applied to all persons, and divorce could be pronounced against non-Catholics. The different nature of entering into and dissolving Jewish marriages was also defined, taking into account the institution of the so-called divorce letter.[7]

The above-mentioned discrepancies regarding the treatment of marriage as a secular, confessional or mixed institution posed many problems for the section of the Codification Commission that dealt with family law. Its main referent was first Professor Władysław Leopold Jaworski and from 1924 onwards Professor Karol Lutostański. With the commencement of the work on the codification of the marriage law, a heated discussion on the presented draft began, especially as the presented concept of marriage was primarily secular in nature.[8] Therefore, the main opponents of the new draft were the circles of Catholic intelligentsia as well as the Catholic Church itself, which according to Article 114 of the March Constitution had a privileged position among other equal confessions in Poland.[9] The objections to the prepared draft concerned the composition of the sub-committee drafting the draft, the secular form of marriage, the admissibility of divorce and the entrusting of matrimonial matters to state jurisdiction. The opponents of the draft mainly raised the issue of admissibility of divorce as an institution contradictory to the teaching of the Church, while the principle of permanence of marriage, on which the draft was based, was considered fictitious. Criticism was also levelled at the idea that all matters arising from marriage should be submitted to the state judiciary. The first public attack on the new marriage project can be seen as a pastoral letter drafted by Archbishop Józef Bilczewski of Lwów, in which the Polish bishops appealed to Catholic parliamentary activists to prevent the introduction of civil weddings and divorces. The firm stance of the episcopate had a negative impact on further work on the project, which was suspended for a period of two years.[10]

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7 K. Sójka-Zielińska, *Historia prawa*, pp. 274–275.

8 According to K. Krasowski, it was related to an enquiry, addressed unofficially by Prof. W.L. Jaworski to the Episcopate, concerning the reaction of the Church to the possible introduction of civil marriages and divorces in Poland. On the actions taken by the episcopate at that time to combat the proposed solutions, see K. Krasowski, *Próby unifikacji osobowego prawa małżeńskiego w II Rzeczypospolitej*, Kwartalnik Prawa Prywatnego 1994, no. 3, pp. 467–487.

9 Act of 17 March 1921 – Constitution of the Republic of Poland, Journal of Laws [Dziennik Ustaw] 1921 no. 44, item 267.

10 P. Zakrzewski, *Prawo małżeńskie w II Rzeczypospolitej – nieudane próby normalizacji*, Kortowski Przegląd Prawniczy 2015, no. 2, pp. 91–95; K. Krasowski, *Próby unifikacji…*, p. 4; A. Woźniczek, *Rozbiór krytyczny małżeństwa. Spory o kodyfikację prawa małżeńskiego w II RP*, Więź 2011, no. 5–6, pp. 32–141; J. Jaglarz, *Problem kodyfikacji prawa małżeńskiego w Polsce*, Poznań 1934, p. 22.

The work of the commission was resumed in 1924, and its new referent Professor Karol Lutostański presented his own draft to the Civil Law Section in December of that year.[11] The draft covering the principles of matrimonial law was passed by the Codification Commission on 28 May 1929[12] and consisted of nine chapters: I. Engagement, II. Legal capacity to enter into marriage, III. Obstacles to marriage, IV. Preliminary acts to marriage, V. Marriage, VI. Obligations arising from marriage, VII. Annulment, VIII. Separation, IX. Jurisdiction and proceedings. In addition, the draft contains final provisions, introductory and transitional provisions.[13]

In formulating the articles of the new marriage law, the Sub-Commission started from the premise that canon law remains the internal law of the Catholic Church and has no legal effect in state law. Furthermore, it considered that the new marriage law should be in line with the principles of the March Constitution. Therefore, the drafters of the project recognised marriage as a subject of state legislation, applying the principle of the exclusivity of the secular judicature and the uniformity of the marriage law with respect to the whole Polish society.[14]

Despite the acceptance of Prof. Lutostański's draft, by the Civil Law Subcommittee, the discussion on the shape of the new marriage law did not stop. The wave of

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11 In 1927, following a reorganisation, the Sub-Committee on Family and Inheritance Law and the Sub-Committee on Personal Marriage Law, composed of the same members as the Preparatory Sub-Committee, were created. This Sub-Committee consisted of Prof. K. Lutostański as the main referent, Prof. H. Konic, Prof. Z. Nagórski, Prof. I. Koschenbahr-Łyskowski, S. Bukowiecki, Dr. J. Wasilkowski and the delegate of the Minister of Justice with an advisory vote, K. Głębocki. On the other hand, this commission did not include representatives of various confessions, including the Catholic Church, which, according to S. Biskupski, condemned the effect of the work of this group to imperfection and failure. On the work on the project see S. Gołąb, *Polskie prawo małżeńskie w kodyfikacji*, Warszawa 1932, p. 107; L. Górnicki, *Prawo cywilne*…, pp. 194–206.

12 See the Draft Marriage Law adopted by the Codification Commission on 28 May 1929, Codification Commission. Subsection I of the Civil Law, vol. 1, item 1, Warsaw 1931. This publication contains the full Draft of the Marriage Law. The first reading of the Draft took place from 3 March 1925 to 21 December 1929. The second reading took place from 16 February 1926 to 4 October 1927. The subcommittee was composed of: Prof. I. Koschenbahr - Łyskowski (chairman), Prof. K. Lutostański (speaker), Prof. W. Abraham, S. Mańkowski, S. Bukowiecki, Prof. H. Konic, Prof. S. Gołąb, Prof. Z. Nagórski and the delegate of the Minister of Justice, K. Głębocki. The subcommittee dealing with matrimonial proceedings was attended by Prof. S. Gołąb (chairman), Prof. K. Lutostański, Prof. S. Mańkowski (speaker) and the delegate of the Minister of Justice.

13 *Zasady projektu prawa małżeńskiego w opracowaniu referenta głównego prof. K. Lutostańskiego, uchwalone w dniu 28 maja 1929*, Warszawa 1931, https://www.bibliotekacyfrowa.pl/dlibra/publication/29359/edition/35388/content [access: 13.11.2025]; S. Gołąb, *Polskie prawo*…, p. 92; J. Dworas-Kulik, K. Moriak-Protopopowa, *Projekt Lutostańskiego a bolszewickie regulacje prawne dotyczące prawa małżeńskiego okresu międzywojennego*, Kościół i Prawo 2020, vol. 9, no. 1, pp. 193–206.

14 D. Szczepaniak, *Wpływ włoskiej reformy prawa małżeńskiego z 1929 roku na projekty Zygmunta Lisowskiego i Jerzego Jaglarza*, in: *Pomniki prawa na przestrzeni wieków*, eds. K. Górski et al., Kraków 2016, pp. 203–219.

criticism increased with the public announcement of the draft marriage law in 1931. The biggest controversy among the hierarchy of the Church and Catholic opinion was the possibility of changing separation into divorce, and state jurisdiction in matrimonial matters.[15]

In response to the publication of the project, the Polish Episcopate issued a message to society in November 1931, in which it criticised the project of the Codification Commission and called on all Catholics to oppose.[16] As a result, manifestations of opponents of the new marriage law were organised, editors of Catholic periodicals published surveys on the project of Prof. Lutostański, and professors of the Catholic University of Lublin published a critical work entitled: *A critical discussion of the project of the marriage law passed by the Codification Commission* [*Rozbiór krytyczny projektu prawa małżeńskiego uchwalonego przez Komisję Kodyfikacyjną*].[17] Other denominations existing in the Second Republic (Jews, Orthodox and Evangelicals) also spoke against the project of the Codification Commission.

In 1934, in turn, a project based on the principles of canon law was presented by Fr Zygmunt Lisowski, a professor at the University of Poznan, which was to be the response of the bishops of the Roman Catholic Church to the proposal of the Codification Commission. Rev. Prof. Z. Lisowski's project consisted of 117 paragraphs. It divided citizens wishing to marry into three groups. The first group included persons belonging to the Catholic Church of all its rites existing in Poland, who were subjected to the provisions of the canon law regarding the prerequisites of entering into marriage, preliminary actions and the form of its conclusion. The second group consisted of persons belonging to other denominations, insofar as their marriage rights were recognised by the Polish state, who were subject to their own denominational marriage laws. The third group included persons not belonging to any denomination recognised in Poland and persons belonging to denominations not recognised by the state. This group was subject to the civil law provisions contained in the paragraphs of the draft (§ 6). On the other hand, irrespective of the nupturients' religion, the draft regulated identically for all persons the issues related to: capacity to marry, permission to marry, impediment to waiting time (§ 15–19). The obstacles to marriage, on the other hand, were to be determined by the denominational law of the church to which the fiancées belonged. Those contained in the provisions

15 K. Krasowski, *Próby unifikacji*…, pp. 467–502; J. Godlewski, *Problem laicyzacji osobowego prawa małżeńskiego w Polsce międzywojennej*, Państwo i Prawo 1967, no. 11, pp. 750–761.

16 *W sprawie projektu ustawy o małżeństwie. Orędzie Episkopatu Polski*, Miesięcznik Kościelny Archidiecezji Gnieźnieńskiej i Poznańskiej 1931, no. 11, pp. 206–208.

17 *Rozbiór krytyczny projektu prawa małżeńskiego uchwalonego przez Komisję Kodyfikacyjną*, ed. J. Wiślicki, Lublin 1932, pp. 74–85.

of the draft were to apply only in the case of the marriage of persons belonging to the third group (§ 22–30). The form of marriage, on the other hand, depended on the religion of the nuptialists, while the civil form was allowed for persons without religion or when only one of the fiancées belonged to a church.

Furthermore, Z. Lisowski's draft gave the issues related to preliminary actions, the form of marriage, annulment, divorce and jurisdiction to the religious law recognised by the state. On the other hand, for persons with no religion or belonging to a religion not recognised by the state, the draft by Z. Lisowski provided for the obligation to make a proclamation (§ 32) and a secular form of marriage (§ 39–42), as well as their nullity (§ 45–58) and contestability (§ 59–67). In contrast, the effects of marriage provided for in the draft of Z. Lisowski referred to all unions regardless of the form of their conclusion and the religion of the spouses (§ 68–71). Also the separation of spouses (separation) was uniformly regulated in the draft for all marriages, regardless of the religion of the spouses and the form in which the marriage was concluded (religious or secular). The effects of separation were identical to those contained in foreign legislation (§ 79–84). Separation was pronounced by the court as a result of a petition filed by one of the spouses; moreover, unlike the draft of the Codification Commission, the draft of Z. Lisowski did not make separation an obligatory stage on the way to obtaining a divorce. A divorce could be pronounced despite the absence of a prior separation of the spouses. For the dissolution of marriage (divorce), the law according to whose provisions the marriage was concluded remained applicable (§ 102–104). In the case of a secular form, the rules of the draft were applicable (§ 106). However, due to its discrepancies on the question of allowing divorce, it was not published. It was not until 1934, after the amendments recommended by the Congregation for Extraordinary Church Affairs, that it saw the light of day. However, plans to refer it to the Sejm were thwarted by the outbreak of the Second World War.[18]

[18] Z. Lisowski, *Prawo małżeńskie (projekt ustawy)*, Poznań 1934, pp. 19–59. A brief description of the project is contained in J. Gwiazdomorski, *Trudności kodyfikacji osobowego prawa małżeńskiego w Polsce*, Kraków 1935, pp. 204–213; more recently K. Mika, *Małżeńskie prawo osobowe w projekcie Zygmunta Lisowskiego z 1934 r.*, in: *Prawo blisko człowieka. Z dziejów prawa rodzinnego i spadkowego – materiały konferencji zorganizowanej przez Sekcję Historii Państwa i Prawa Towarzystwa Biblioteki Słuchaczów Prawa Uniwersytetu Jagiellońskiego, Kraków, 7–8 marca 2007 r.*, ed. M. Mikuła, Kraków 2008, pp. 79–85.

2. Leon Piniński on the draft marriage law

Professor Leon Piniński also spoke in the discussion on the solutions adopted in this draft of the marriage law. The Union of Polish Catholic Intelligentsia carried out a questionnaire on the aforementioned project in 1931.[19] Two main questions were asked: firstly, whether the principles on which the project was based were correct and in line with the beliefs and customs of Polish society, and secondly, what impact they would have on the moral, national and state life of Poland and its citizens. Eleven prominent representatives took part in the survey, including from the academic community.[20]

At the outset of his reply, Leon Piniński indicated that he had prepared it in such a way that it would be understandable not only to the academic and legal community, but above all to the ordinary citizen. Professor L. Piniński is very critical of the draft marriage law, considering it harmful to the prevailing social relations of the time. According to him, the introduction of civil marriages as a generally binding rule, or as the so-called optional (free) marriages combined with the general admissibility of divorce and far-reaching facilitations in this respect would lead to a loosening of the family and a dangerous decline in morality. Adoption of the proposed solutions could not only lead to a conflict with the Catholic Church, but also affect the loosening of the prevailing faith in Polish society (or at least respect for religious practices) and in the further future could turn Polish society towards communism (Bolshevism).[21]

According to L. Piniński, the very idea of unification of the marriage law is a desirable reform in Poland; however, it cannot contradict the principles of marriage recognised by the Catholic faith and Church law. Admittedly, the Professor was aware that it was difficult to base marriage law (even for Catholics) solely on religious law. A controversial issue would be, for example, the possibility of mixed marriages (between Christians and persons belonging to non-Christian religions). In such cases, the regulations introduced should respect the principles of religious

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19 *Ankieta w sprawie projektu prawa małżeńskiego uchwalonego przez K.K.*, Lublin 1932, pp. 1–55. Those who took part in this survey clearly criticised the proposed solutions. For different voices in the discussion on the regulations included in the Project, see K. Lutostański, *O metodach stosowanych w polemice z projektem prawa małżeńskiego Komisji Kodyfikacyjnej*, Warszawa 1932, pp. 3–14; S. Gołąb, *O zasadach prawa małżeńskiego*, Palestra 1925, no. 2, pp. 593–595; S. Gwiazdomorski, *Trudności kodyfikacji*…, pp. 176–178.

20 Among others Prof. O. Balcer, Prof. L. Piniński, P. Dunin, Borkowski, Prof. E. Dubanowicz, Prof. O. Halecki, Prof. M. Thulli, P.J.J. Bzowski, P.L. Bujaiski, Prof. St. Głąbiński, Prof. T. Brzeski, Prof. J. Makarewicz.

21 L. Piniński, *Ankieta w sprawie projektu prawa małżeńskiego uchwalonego przez K.K.*, Lublin 1932, pp. 14–25.

law, as the majority of the Polish population professes the Catholic faith. In his reply, he points out that the principles underlying the unification of the marriage law in Poland could be based on the proposals of Władysław Abraham, which he presented in his thesis entitled: *The issue of the codification of marriage law in Poland* [Zagadnienie kodyfikacji prawa małżeńskiego w Polsce]. According to prof. Władysław Abraham, the confessional form of marriage should be maintained for all persons belonging to legally recognised confessions; furthermore, the judicial power in matrimonial matters should remain with the confessional union, i.e., as regards marriages of Catholics, with the authorities of the Catholic Church; and an absolute ban on divorce should be maintained as regards marriages of those persons who are adherents of the Catholic religion at the time of the marriage; and civil weddings should be allowed only for those persons who do not belong to any religion recognised by the Polish legislation at the time of the marriage. Adoption of the above principles would not only guarantee good solutions, but also avoid disputes with the Catholic Church.[22]

At the same time, Leon Piniński points out that despite the strong ties of Polish society to the Catholic faith, jurisdiction in matrimonial matters should be exercised by state courts. This is important especially with regard to the issue of the validity or invalidity of a marriage (since legal problems are caused by so-called ritual Jewish marriages). If, on the other hand, jurisdiction for other denominations than the Catholic religion were to be accepted, and the ecclesiastical authorities were to be left exclusively for Catholic marriages, this would contradict the constitutionally recognised equality of religious denominations in the Republic of Poland. According to L. Piniński, the state jurisdiction should remain in ruling on the validity or invalidity of a marriage (whereby the prerequisites for the validity of a marriage, the form of its conclusion and marriage impediments should be indicated by law). The reform should clearly address first of all the issue of admissibility or inadmissibility of divorce, so that the state law in the case of marriages of Catholics does not significantly deviate from the principles of canon law.

In the further part of his argumentation, Prof. L. Piniński[23] considers the possibility proposed in the draft marriage law to conclude a civil wedding before a state authority. He points out that solutions in other legal orders (e.g. Germany, Belgium, Italy) provide for either compulsory civil weddings for all, or as optional weddings, according to the free will of the parties as to the form (civil or confessional), or civil weddings are provided for when there is no possibility of concluding the union in

22 W. Abraham, *Zagadnienie kodyfikacji prawa małżeńskiego*, Lwów 1929, pp. 8–14.

23 L. Piniński, *Ankieta*…, pp. 17–18.

a confessional form (e.g. different religions). He is against the introduction of compulsory civil weddings, mainly because of the fear of excessive divorces. In addition, the introduction of compulsory civil weddings would entail handing over the maintenance of all civil status books and registers to state or municipal offices. This would result in a significant increase in expenses, and an additional burden on the state treasury. Furthermore, inferior civil registrars (especially in smaller municipalities) would not provide a guarantee of conscientious and efficient performance of their duties. The keeping of metrological books and registers by parish offices under the supervision of state authorities saves the state treasury considerable expense and does not give rise to major abuses and complaints.

As for the optional civil weddings, he points out that their proponents in the proposed reform refer to the Italian marriage legislation, which, following an agreement between the Italian Government and the Roman Curia and the signing of the Concordat, adopted this form of marriage. At the same time, he points out that, according to the draft Subsection, the optional secular form of marriage has been combined with the permissibility of divorce (unlike Italian law) which is contrary to the teaching of the Holy See. The introduction of the absolute impermissibility of divorce, on the other hand, would meet with strong opposition from some other denominations. According to him, there is also no compelling reason to exclude divorce for those denominations that allow divorce (e.g. Evangelicals, Orthodox, Jews). On the other hand, the combination of optional civil weddings with easy permissibility of divorce, according to L. Piniński, without excluding Catholics, would be a reform as bad as the introduction of compulsory civil weddings. All this would not only show a hostile attitude towards the Catholic Church, but could lead to a reduction of the essence and solemnity of the very act of marriage. At the same time, L. Piniński emphasises the negative role that could be played by some political groups with a negative attitude to religion and the possible influence they could have on the decisions of nuptialists regarding the choice of the form of marriage. According to L. Piniński, it is unlikely that in addition to the civil form, nuptialists would marry in a religious form.

He states unequivocally that the unification of marriage law with the maintenance of the general jurisdiction of civil courts in matrimonial matters would be possible with the adoption of the principles of the so-called civil marriage of necessity (according to the principles in force in the former Austrian partition). The rule would be the confessional form of marriage, a civil wedding would only be allowed if there was an obstacle of ecclesiastical law (or another recognised religious association). Of course, there would have to be a rule that marriages of persons belonging to the Catholic faith, would not allow divorce. The time of the marriage would be decisive

for this 'obstacle' to divorce. Any conversion to another denomination would not allow for the dissolution of the marriage and the conclusion of a new one. Civil-status registers would be kept by denominational parish offices, except for those who have entered into a civil marriage out of necessity or do not belong to any legally recognised denomination.

He goes on to address the issue of divorce. According to him, the dissolution of a marriage by divorce should not be possible in the case of Catholic marriages, as this is contrary to religious principles. He goes on to point out that the prevalence of divorce had far-reaching moral consequences. For the majority of the public, especially those with traditional and Catholic views, condemn divorce. In support of his assertions, he cites the regulations in force in other European countries (Great Britain, Scandinavian countries, France, Belgium and Germany) regarding divorce and its consequences. According to him, the introduction of the possibility to dissolve a marriage through divorce would indeed lead to the cessation of so-called lame marriages, but so-called seasonal marriages – equally dangerous for the family and society – would emerge. In addition, the Draft Subsection provides for a further facilitation of divorce, through the possibility to convert separation into divorce and not only in the case of fault of one of the parties, but also on the basis of the consent of both spouses without stating reasons. Admittedly, the latter possibility requires the passage of a longer period of time, but due to the very general grounds of application (e.g. aggravated insult, insult) it could lead to abuse. As the Professor points out, this could lead to so-called trial marriages or marriages on notice and a category of ex-spouses would be created. It would be easier to get a divorce than a lover or mistress. Which, in his opinion, would bring us closer to Russian legislation.[24]

He goes on to point out that he will not go into detail on all the specific proposals contained in the draft. Indeed, the most important issues are the question of the form of marriage, the question of jurisdiction and precisely the admissibility of divorce. In addition, he has identified two other issues of concern. Thus, according to Article 50 of the draft: "Children of an annulled union have the right to marry on an equal footing with the children of separated parents." The professor's concern is the lack of any specificity, which means that these provisions will also apply to children of marriages that have been annulled due to bigamy, even when the nuptiurents were in bad faith. Moreover, if one takes into account that under Article 48a in conjunction with Article 51 of the draft there is a kind of 'convalescence' of bigamy, through the death of the other spouse, it is hard not to get the impression that bigamy is treated more leniently, yet it is a punishable offence.

[24] Ibidem, p. 21.

Further doubts of L. Piniński were raised by the content of Article 29 of the draft, that in the case of danger to life, a marriage may be recognised as valid, even without the participation of an official, only by mutual declarations, pronounced in the presence of two witnesses. The professor points out the dangers that may follow the conclusion of such a marriage, e.g. with regard to wills, hearsay.

In conclusion, Professor Leon Piniński states that he assesses the 1929 draft of the Personal Marriage Law Subsection of the Codification Commission negatively. Pointing out that, despite many assurances from the drafters of the draft about the importance of the matrimonial knot, its content indicates the opposite.

Summary

In conclusion, from our contemporary perspective, Professor Leon Piniński's voice may seem very conservative, favouring the Catholic religion and the Holy See. This, however, in a footnote to his response, a brief explanation has been added by the editors: "The reply of Prof. Piniński, an excellent scholar and seasoned expert in social relations, in the part where he discusses which principles of the future marriage law, does not agree in everything (e.g. as regards the jurisdiction of the state courts) with the views of the Board of the Z.P.I.K., but it must be noted that the illumination of these principles is given by the strongly emphasised necessity to conform to the religious principles of the Church and to the ecclesiastical marriage code and the indispensable need for agreement with the Holy See. Also, such a strong moral sense, piercing throughout the response, means that Hbirthcontrol ˙cannot contradict morality, as it is sometimes understood'" (Footnote Red).[25] The above explanation indicates that for part of the society of the time his position was quite liberal. The acceptance of the jurisdiction of state courts in matrimonial matters during the interwar period was highly contentious.

Precisely because of the above controversies, a comprehensive unification and codification of marriage law was not achieved during the Second Republic. Ideological disputes concerning the personal marriage law and the treatment of marriage as a secular, confessional or mixed institution brought many problems to the section of the Codification Commission dealing with family law. The draft property marriage law by Prof. K. Lutostański published in 1929 did not manage to enter into force due to the outbreak of war. Similarly, the work, which was seriously advanced, on

25 Ibidem, p. 14, note 1.

the preparation of the personal marriage law, authored by Prof. W.L. Jaworski and followed by Prof. K. Lutostański was interrupted by the outbreak of the Second World War. On the other hand, the codification commission prepared a draft of the matrimonial property law, the law on the relations between parents and children, on the guardianship office, while norms referring to guardianship were missing there[26].

Work on the unification and codification of the law was not resumed until after the Second World War, based to a large extent on the draft marriage law left by Professor Lutostański. In the end, the process of unification of family law ended in 1946, and in 1964 family and guardianship law was codified in a separate legal act.

Bibliography

Abraham W., *Zagadnienie kodyfikacji prawa małżeńskiego*, Lwów 1929.

A.J.R., *Komisja tworzenia dobrego prawa*, Palestra 2009, nr 9–10.

Allerhand M., *Prawo małżeńskie obowiązujące na Spiszu i Orawie*, Lwów 1926.

Ankieta w sprawie projektu prawa małżeńskiego uchwalonego przez K.K., Lublin 1932.

Borkowska-Bagieńska E., *O doświadczeniach kodyfikacji prawa cywilnego w II Rzeczypospolitej dla współczesnego ustawodawcy*, Czasy Nowożytne 2002, vol. 12.

Dworas-Kulik J., Moriak-Protopopowa K., *Projekt Lutostańskiego a bolszewickie regulacje prawne dotyczące prawa małżeńskiego okresu międzywojennego*, Kościół i Prawo 2020, vol. 9, no. 1.

Fiedorczyk P., *Development of Family Law on Polish Lands 1795–1945*, in: *Framing the Polish Family in the Past*, eds. P. Guzowski, C. Kuklo, New York 2022.

Fiedorczyk P., *Kościół katolicki i opozycja polityczna wobec unifikacji osobowego prawa małżeńskiego w 1945 r.*, Czasopismo Prawno-Historyczne 2004, vol. 56, no. 1.

Fiedorczyk P., *Polish Matrimonial Law 1918–1939: Regulations, Attempts to Unify and Codify*, in: *Kulturkampf um die Ehe: Reform des europäischen Eherechts nach dem Grossen Krieg*, ed. M. Löhnig, Tübingen 2021.

Godlewski J., *Problem laicyzacji osobowego prawa małżeńskiego w Polsce międzywojennej*, Państwo i Prawo 1967, no. 11.

Gołąb S., *O zasadach prawa małżeńskiego*, Palestra 1925, no. 2.

Gołąb S., *Polskie prawo małżeńskie w kodyfikacji*, Warszawa 1932.

Górnicki L., *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, Wrocław 2000.

Grodziski S., *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej*, Czasopismo Prawno-Historyczne 1981, vol. 33, no. 1.

[26] P. Fiedorczyk, *Kościół katolicki i opozycja polityczna wobec unifikacji osobowego prawa małżeńskiego w 1945 r.*, Czasopismo Prawno-Historyczne 2004, vol. 56, no. 1, pp. 97–100.

Gwiazdomorski J., *Trudności kodyfikacji osobowego prawa małżeńskiego w Polsce*, Kraków 1935.

Jaglarz J., *Problem kodyfikacji prawa małżeńskiego w Polsce*, Poznań 1934 .

Jaworski W.L., *Prawo cywilne na ziemiach polskich*, vol. 1. *Źródła. Prawo małżeńskie osobowe i majątkowe*, Kraków 1919.

Korobowicz A., Witkowski W., *Historia ustroju i prawa polskiego (1772–1918)*, Warszawa 2017.

Krasowski K., *Próby unifikacji osobowego prawa małżeńskiego w II Rzeczypospolitej,* Kwartalnik Prawa Prywatnego 1994, no. 3.

Leciak I., *Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej*, Studia Iuridica Toruniensia 2013, vol. 13.

Lisowski Z., *Prawo małżeńskie (projekt ustawy)*, Poznań 1934.

Lutostański K., *O metodach stosowanych w polemice z projektem prawa małżeńskiego Komisji Kodyfikacyjnej*, Warszawa 1932.

Lutostański K., *Prawo cywilne obowiązujące w b. Królestwie Polskiem*, vol. 1, Warszawa 1931.

Lutostański K., *Zasady projektu prawa małżeńskiego*, Gazeta Sądowa Warszawska 1931, no. 46.

Markiewicz J., *Kształtowanie się polskiego systemu prawa sądowego i jego twórcy w okresie międzywojennym 1919–1939 (wybrane zagadnienia)*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2010, vol. 3.

Mazurek I., *Specyfika prac Komisji Kodyfikacyjnej w procesie unifikacji prawa w II Rzeczypospolitej*, Studia Iuridica Lublinensia 2014, no. 23.

Mika K., *Małżeńskie prawo osobowe w projekcie Zygmunta Lisowskiego z 1934 r*., in: *Prawo blisko człowieka. Z dziejów prawa rodzinnego i spadkowego – materiały konferencji zorganizowanej przez Sekcję Historii Państwa i Prawa Towarzystwa Biblioteki Słuchaczów Prawa Uniwersytetu Jagiellońskiego, Kraków, 7–8 marca 2007 r.*, ed. M. Mikuła, Kraków 2008.

Piniński L., *Ankieta w sprawie projektu prawa małżeńskiego uchwalonego przez K.K.*, Lublin 1932.

Radwański R., *Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej*, Czasopismo Prawno-Historyczne 1969, vol. 21, no. 1.

Rozbiór krytyczny projektu prawa małżeńskiego uchwalonego przez Komisję Kodyfikacyjną, ed. J. Wiślicki, Lublin 1932.

Sójka-Zielińska K., *Historia prawa*, Warszawa 2022.

Sójka-Zielińska K., *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej*, Czasopismo Prawno-Historyczne 1975, vol. 27, no. 2.

Szczepaniak D., *Wpływ włoskiej reformy prawa małżeńskiego z 1929 roku na projekty Zygmunta Lisowskiego i Jerzego Jaglarza*, in: *Pomniki prawa na przestrzeni wieków*, eds. K. Górski et al., Kraków 2016.

Woźniczek A., *Rozbiór krytyczny małżeństwa. Spory o kodyfikację prawa małżeńskiego w II RP*, Więź 2011, no. 5–6.

W sprawie projektu ustawy o małżeństwie. Orędzie Episkopatu Polski, Miesięcznik Kościelny Archidiecezji Gnieźnieńskiej i Poznańskiej 1931, no. 11.

Zakrzewski P., *Prawo małżeńskie w II Rzeczypospolitej – nieudane próby normalizacji*, Kortowski Przegląd Prawniczy 2015, no. 2.

Zasady projektu prawa małżeńskiego w opracowaniu referenta głównego prof. K. Lutostańskiego, uchwalone w dniu 28 maja 1929, Warszawa 1931.

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Professional secrecy of legal and economic public trust professionals in selected jurisprudence of the Polish Constitutional Tribunal

Tajemnica zawodowa przedstawicieli prawniczych i ekonomicznych zawodów zaufania publicznego w wybranych orzeczeniach polskiego Trybunału Konstytucyjnego

Профессиональная тайна представителей юридических и экономических профессий, обладающих общественным доверием, в избранных решениях Конституционного трибунала Республики Польша

Професійна таємниця представників юридичних та економічних професій, які користуються публічною довірою, у вибраних рішеннях Конституційного Суду Польщі

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Abstract: The analysis of selected judgments of the Constitutional Tribunal has led the author to formulate the thesis that professional secrecy does not constitute an autonomous constitutional value. Its observance, however, contributes to the protection of constitutional values such as the right to privacy, the secrecy of communications, and informational autonomy. Its content and scope are shaped by the legislator, who enjoys broad regulatory discretion, albeit limited by the necessity to respect overarching constitutional norms. The article indicates that any limitations on professional secrecy must satisfy the requirements of clarity and proportionality (Article 31 (3) of the Constitution) and must be assessed in the context of safeguarding other constitutional goods, in particular the right to privacy (Article 47), the secrecy of communications (Article 49), and an individual's informational autonomy (Article 51 (2)). Professional secrecy thus plays a vital role in fostering citizens' trust in the state and the law, as well as in ensuring the proper performance of the duties of public trust professions in a democratic state governed by the rule of law.

Keywords: professional secrecy, public trust professions, constitutional values, right to privacy, confidentiality of communications, informational autonomy, proportionality test

Streszczenie: Analiza wybranych orzeczeń Trybunału Konstytucyjnego pozwoliła autorowi na postawienie tezy, że tajemnica zawodowa nie stanowi samodzielnej wartości konstytucyjnej. Jej przestrzeganie przyczynia się jednak do ochrony wartości konstytucyjnych, takich jak prawo do prywatności, tajemnica komunikowania się i autonomia informacyjna. Jej treść i zakres kształtuje ustawodawca, który dysponuje szeroką swobodą regulacyjną, ograniczoną koniecznością poszanowania nadrzędnych norm konstytucyjnych. W artykule wykazano, że ograniczenia tajemnicy zawodowej muszą spełniać wymogi jasności i proporcjonalności (art. 31 ust. 3 Konstytucji), a także podlegać ocenie pod kątem ochrony innych dóbr konstytucyjnych, zwłaszcza prawa do prywatności (art. 47), tajemnicy komunikowania się (art. 49) i autonomii informacyjnej jednostki (art. 51 ust. 2). Tajemnica zawodowa pełni zatem istotną rolę w budowaniu zaufania obywateli do państwa i prawa oraz w zapewnieniu prawidłowego wykonywania zadań przez zawody zaufania publicznego w demokratycznym państwie prawnym.

Słowa kluczowe: tajemnica zawodowa, zawody zaufania publicznego, wartości konstytucyjne, prawo do prywatności, tajemnica komunikowania się, autonomia informacyjna, test proporcjonalności

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Резюме: Анализ отдельных решений Конституционного трибунала Республики Польша позволил автору выдвинуть тезис о том, что профессиональная тайна не является самостоятельной конституционной ценностью. Однако ее соблюдение способствует защите конституционных ценностей, таких как право на частную жизнь, тайна переписки и информационная автономия. Ее содержание и объем определяются законодателем, который обладает широкой свободой регулирования, ограниченной необходимостью соблюдения высших конституционных норм. В статье показано, что ограничения профессиональной тайны должны соответствовать требованиям ясности и пропорциональности (ст. 31 п. 3 Конституции), а также подлежать оценке с точки зрения защиты других конституционных благ, в частности права на неприкосновенность частной жизни (ст. 47), тайны переписки (статья 49) и информационной автономии личности (статья 51, пункт 2). Таким образом, профессиональная тайна играет важную роль в укреплении доверия граждан к государству и праву, а также в обеспечении надлежащего выполнения задач профессиями, обладающими общественным доверием, в демократическом правовом государстве.

Ключевые слова: профессиональная тайна, профессии, обладающие общественным доверием, конституционные ценности, право на неприкосновенность частной жизни, тайна переписки, информационная автономия, тест пропорциональности

Анотація: Аналіз низки рішень Конституційного Суду дав підстави автору стверджувати, що професійна таємниця не становить самостійної конституційної цінності. Водночас її дотримання сприяє захисту таких конституційних благ, як право на приватність, таємниця спілкування та інформаційна автономія особи. Її зміст та обсяг визначає законодавець, який володіє широкою свободою регулювання, обмеженою необхідністю дотримання вищих конституційних норм. У статті показано, що обмеження професійної таємниці мають відповідати вимогам чіткості та пропорційності (ст. 31, п. 3 Конституції), а також підлягати оцінці з позицій захисту інших конституційних благ, зокрема права на приватність (ст. 47), таємниці спілкування (ст. 49) та інформаційної автономії особи (ст. 51, п. 2). Отже, професійна таємниця відіграє ключову роль у формуванні довіри громадян до держави та права, а також у забезпеченні належного виконання функцій професіями, пов'язаними з публічною довірою, у демократичній правовій державі.

Ключові слова: професійна таємниця, професії, пов'язані з публічною довірою, конституційні цінності, право на приватність, таємниця спілкування, інформаційна автономія, тест пропорційності

Introduction

Public trust professions were highly valued by the framers of the Polish Constitution of 1997 in a democratic state governed by the rule of law. The importance of professional self-governing bodies representing individuals practising these professions is emphasised in Article 17 (1) of the Constitution. This provision, located in Chapter I of the Fundamental Law, titled *The Republic*, holds fundamental constitutional significance. Professional secrecy, an element intrinsically linked to the essence of public trust professions, has been the subject of numerous doctrinal and judicial debate. However, its status as a constitutional value has never been explicitly determined. On one hand, the Constitution does not directly mention professional secrecy. On the other hand, one cannot overlook the role of this institution in protecting other constitutional values. For these reasons, this article analyses the institution of professional secrecy in the context of the issue at hand. The scope of legislative discretion

in regulating professional secrecy will be examined, along with the constitutional standards for reviewing legal acts that modify professional secrecy, which should be assessed in light of their compliance with the Constitution.

The principal aim of this article is to determine whether the professional secrecy of certain professions constitutes a distinct constitutional value. The other aims are: to establish the status of professional secrecy as a constitutional value, to define the scope of the legislature's discretion in regulating it, and to identify the standards of constitutional review applied to legal norms that modify its scope. The analysis is conducted exclusively on the basis of the jurisprudence of the Polish Constitutional Tribunal and focuses on professional secrecy in relation to legal and economic public trust professions in Poland, in particular through corporate statutes and the internal acts of professional self-governing bodies. Moreover, the article examines the protective functions of professional secrecy with respect to the right to privacy, the secrecy of communications and the informational autonomy of the individual, as well as establishes which constitutional requirements – including clarity, proportionality, and respect for superior constitutional norms – any limitation must meet. The analysis thus demonstrates how the Constitutional Tribunal interprets the limits of legislative interference and what constitutional standards it applies when assessing the conformity of such limitations with the Constitution.

In the present article the primary material of analysis is formed by the judgments of the Polish Constitutional Tribunal, regarded as acts of constitutional and legislative authority, which offer essential insight into the manner in which constitutional values are applied in practice to the institution of professional secrecy. It is the Tribunal's case law – via its reasoned decisions, the limits of legislative intervention, and the standards of review adopted – that constitutes the backbone of the study, enabling an assessment of the extent to which professional secrecy is respected, modified, or restricted under the Constitution.

1. Public trust professions in the Polish legal system

The institution of public trust professions constitutes one of the fundamental structural solutions introduced by the 1997 Constitution of the Republic of Poland.[1] This

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dziennik Ustaw] 1997 no. 78, item 483 as amended.

concept is a distinctive creation of the Polish constitutional legislator.[2] An essential characteristic of public trust professions is their quasi-missionary nature, as their representatives do not act solely for commercial purposes but also in the public interest.[3]

Article 17 (1) of the Constitution provides: "By way of law, professional self-regulatory bodies may be established to represent individuals practising public trust professions and to oversee the proper performance of these professions within the limits of the public interest and for its protection."

The constitutional provision defines two fundamental tasks of professional self-regulatory bodies: representing individuals practising a public trust profession and overseeing the proper performance of the profession. The fulfilment of these tasks must be done "within the limits of the public interest and for its protection," meaning that the activities of professional self-regulatory bodies cannot serve solely the particular interests of the members of the profession but must be directed towards protecting values of general societal importance.[4] However, not every free profession, even if its characteristics resemble those of a public trust profession, compels the legislator to establish a professional corporation.

The functioning of professional self-regulatory bodies is based on the constitutional principle of subsidiarity. According to this principle, state activity should be limited where citizens and social groups can act efficiently and effectively. This principle is of particular importance in the case of public trust professions, because their self-regulatory bodies assume supervisory and regulatory functions from the state.[5]

The Constitution does not provide a legal definition of a public trust profession, leaving this task to the legal doctrine and judicial interpretation. A key judgment for determining the content of this concept is the ruling of the Constitutional Tribunal of 7 May 2002, SK 20/00, in which the Tribunal defined a public trust profession as: "a profession involving the provision of services to meet personal human needs,

2 P. Antkowiak, *Polskie i europejskie standardy wykonywania wolnych zawodów*, Przegląd Politologiczny 2013, vol. 1, p. 135.

3 W. Wołpiuk, *Zawód zaufania publicznego z perspektywy prawa konstytucyjnego*, in: Senat Rzeczypospolitej Polskiej, *Zawody zaufania publicznego a interes publiczny – korporacyjna reglamentacja versus wolność wykonywania zawodu*, eds. S. Legat, M. Lipińska, Warszawa 2002, p. 22. For other issues concerning public trust professions in Poland, see also *Zawody zaufania publicznego a interes publiczny*…, passim.

4 J. Smarż, *Samorządy zawodowe jako wspólnota osób wykonujących ten sam zawód*, Studia Prawnoustrojowe 2024, no. 65, https://czasopisma.uwm.edu.pl/index.php/sp/article/view/10327 [access: 21.07.2025].

5 Biuro Rzecznika Praw Obywatelskich [Office of the Commissioner for Human Rights], *Kiedy prawo staje się obowiązkiem, a uprawnienie przymusem*, pp. 2–3, https://bip.brpo.gov.pl/pliki/12324458440.pdf [access: 15.06.2025].

connected with the reception of information concerning personal life, and organised in such a way as to justify public confidence in the proper use of this information for the interests of the individual by those providing the services."[6]

In its judgment of 7 May 2002, SK 20/00, the Constitutional Tribunal identified the fundamental characteristics that determine whether a given profession qualifies as a public trust profession. Firstly, these are professions involving the provision of services aimed at meeting personal human needs, which entails receiving information about an individual's personal life and structuring professional activity in a manner that justifies public confidence in the appropriate use of that information. Secondly, the practice of a public trust profession is governed by professional ethical standards, often codified in the form of ethical codes. Thirdly, these professions are subject to supervision by professional self-regulatory bodies, as stipulated in Article 17 of the Constitution of the Republic of Poland.[7]

In its judgment of 24 March 2015, K 19/14, the Constitutional Tribunal expanded this list and identified additional characteristics of a public trust profession, including:

a) the necessity to ensure the proper and public-interest-compliant practice of the profession, due to the significance that a given field of professional activity holds in society;
b) the provision of services and the engagement of representatives of the relevant professions in contact with individuals in the event of a potential or actual threat to goods of a special nature (e.g. life, health, liberty, dignity, reputation);
c) the diligence and care exercised by representatives of the discussed professions for the interests of individuals using their services, concern for their personal needs, as well as ensuring the protection of subjective rights guaranteed by the Constitution;
d) the requirement of special qualifications to practise such professions, including not only appropriate formal education but also acquired experience and the guarantee of proper and public-interest-compliant performance of the profession, considering the specific ethical norms of the profession;
e) the collection of personal and private life information about individuals using the services of representatives of public trust professions; such information constitutes professional secrecy, and its disclosure may occur only under the conditions

6 Judgment of the Constitutional Tribunal of 7 May 2002, SK 20/00, OTK 2002, no. 3A, item 29, thesis 24.

7 Ibidem, thesis 24–25.

specified in the provisions of the Act of June 6, 1997 – Code of Criminal Procedure (Journal of Laws no. 89, item 555 as amended);

f) the relative autonomy in practising the profession.[8]

The cited judgment is particularly significant because the Tribunal refused to recognise urban planning as a public trust profession. This ruling confirms that not every regulated profession can qualify as a public trust profession – it is necessary to meet all the criteria identified by the Constitutional Tribunal.

The list of public trust professions is closed and limited by the criteria specified in Article 17 (1) of the Constitution of the Republic of Poland.[9] The Polish legal system distinguishes several public trust professions, which, owing to the particular nature of the tasks performed and the social significance of the services provided, are subject to a special legal regime.[10] An analysis of the constitutional foundations, the jurisprudence of the Constitutional Tribunal, and the relevant statutory regulations reveals a complex normative structure, aimed at ensuring the high quality of services provided by representatives of these professions, while simultaneously protecting the interests of those who receive them.

2. Professional Secrecy as a Characteristic of a Public Trust Profession

In the context of the issue discussed in this article, the key element is the intrinsic obligation to maintain professional secrecy, as emphasised in the jurisprudence of the Constitutional Tribunal. It is a fundamental component in building trust between public trust professionals and their clients. As the Tribunal emphasised in its judgment of 2 July 2007, K 41/05: "The essence of the advocate's professional secrecy… is **the bond of trust** that must exist between the client and the advocate."[11]

In preparing this article, regulations concerning professional secrecy for representatives of legal and economic professions were taken into account, including: advocates (*adwokat*), legal advisers (*radca prawny*), notaries (*notariusz*), bailiffs

8 Judgment of the Constitutional Tribunal of 24 March 2015, SK 19/14, OTK 2015, no. 3A, item 32, thesis 91–97.

9 M. Pawłowska, *Zawody zaufania publicznego na rynku pracy*, in: *Rynek pracy wobec wyzwań przyszłości. Ewolucja i współczesne uwarunkowania*, eds. A. Siedlecka, D. Guzal-Dec, Biała Podlaska 2022, p. 201, https://bibliotekanauki.pl/chapters/12602283 [access: 21.07.2025].

10 A. Krasnowolski, *Zawody zaufania publicznego, zawody regulowane oraz wolne zawody*, in: Kancelaria Senatu, *Opracowania Tematyczne*, no. 6, Warszawa 2010, p. 14.

11 Judgment of the Constitutional Tribunal of 2 July 2007, SK 41/05, OTK 2007, no. 7A, item 72, thesis 129.

(*komornik sądowy*), patent attorneys (*rzecznik patentowy*), tax advisers (*doradca podatkowy*), and statutory auditors (*biegły rewident*). In the analysed cases, professional secrecy serves a dual function. Firstly, it guarantees the client the real possibility of maintaining the confidentiality of entrusted information, which, in the case of legal professions, directly supports the realisation of the right to defence and the right to a fair trial. Secondly, it serves as a normative barrier against state interference in the sphere of privacy and individual autonomy in legal and financial relationships. Thus, professional secrecy not only plays a protective role but is also constitutive of the very nature of the given profession. The sources governing the duty to maintain professional secrecy in the examined professions are two-tiered. The first level consists of statutory acts, the so-called "professional corporations' laws." The second level comprises corporate legal acts, such as codes of ethics and resolutions adopted by professional self-regulatory bodies.

The contemporary Polish legal framework contains numerous provisions establishing professional confidentiality obligations across various sectors. In most cases, the legislature explicitly characterises these duties as "professional" in nature, thereby distinguishing them from other forms of confidentiality, such as state secrets or trade secrets. This proliferation of confidentiality norms reflects the increasing specialisation of professional services and the growing recognition that effective professional-client relationships depend fundamentally on trust safeguarded by legally enforceable secrecy obligations.[12]

The dual structure of the normative sources reflects the constitutionally guaranteed autonomy of professional self-regulatory bodies and allows for the flexible adaptation of confidentiality standards to changing technical, legal, and social conditions. In all the professions examined, professional secrecy exhibits both permanent and fundamental characteristics.

Firstly, the obligation to maintain secrecy is indefinite, meaning it does not cease with the termination of the profession, the dissolution of the client relationship, or even upon the client's death. This *perpetuitas obligationis* is explicitly stated in, *inter alia*, Article 6 (2) of the Advocacy Act and Article 37 (1a) of the Tax Advisory Act.

Secondly, the scope of professional secrecy is extremely broad: it includes both data provided directly by the client and information obtained independently by the professional during the course of their activities, regardless of the form in which it is recorded or the medium on which it is stored. Noteworthy in this context are the provisions contained in Article 15 of the Code of Ethics for Legal Advisors and in the Ethical Principles for Tax Advisers.

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12 Ibidem, pp. 45–50.

Thirdly, the duty of confidentiality extends to collaborators and other employees of the professional – this is an important preventive measure to avoid the circumvention of secrecy through indirect actions or the outsourcing of auxiliary services.

Finally, most statutes provide a common list of exceptions under which the duty of secrecy is waived – these are situations arising from anti-money laundering and counter-terrorist-financing legislation, as well as from the Tax Ordinance concerning so-called "tax schemes" (Chapter 11a of Part III). Notaries and bailiffs, as public officials performing some state tasks, may, in exceptional cases, be released from the duty of confidentiality by competent authorities, if the state's interests require it. Statutory auditors, due to the audit oversight system, have an obligation to provide certain information to supervisory state authorities, which also constitutes an exception to professional secrecy.

Legal scholarship consistently acknowledges that professional codes of ethics constitute an independent and legitimate source of confidentiality obligations. In modern civil society, characterised by rapid social and organisational transformation, new categories of protected information continuously emerge in response to evolving professional practices and client expectations. Professional self-regulatory bodies, through their ethical codes and standards, play a crucial role in identifying and codifying these emerging confidentiality requirements, frequently anticipating formal legislative intervention. This dynamic interaction between statutory law and professional ethics ensures that confidentiality protections remain responsive to changing social needs while maintaining their fundamental protective function.[13]

The functional differentiation of professional secrecy depends on the nature of the activity. In some legal professions, secrecy is almost absolute. The privileged status of defence secrecy has deep historical foundations in Polish criminal procedure. As early as the Code of Criminal Procedure of 1928, Article 101 (b) established the absolute character of defence secrecy, categorically prohibiting the examination of defence counsel regarding facts learned in that capacity. This absolute protection distinguished defence secrecy from general advocate professional secrecy: whereas an attorney could refuse to testify based on professional secrecy, courts retained discretionary authority to release them from this obligation. In 1997, the current Code of Criminal Procedure was adopted, reaffirming the absolute character of defence secrecy while simultaneously imposing limitations on attorney professional secrecy other than defence secrecy, where justified by the interests of the administration of

[13] Ibidem, p. 51.

justice (Articles 178 (1), 180 § 2 of the Code of Criminal Procedure).[14] The absolute nature of defence secrecy (Article 178 of the Code of Criminal Procedure) guarantees that defence counsel cannot be compelled to disclose confidential information obtained during legal defence, underscoring the constitutional right to defence protected in criminal proceedings.[15] In the case of notaries and bailiffs, exceptions are allowed owing to the public-law character of their functions. In economic professions, such as tax advisers and statutory auditors, specific methods of disclosing data apply, including some information given to courts, tax authorities, and public oversight bodies. This should be understood as an emphasis on public interest and financial market transparency. Therefore, the professional secrecy of representatives of economic professions must be balanced against their informational obligations towards the state.

A significant innovation in self-regulatory frameworks is also the increasing importance of technology. Many self-regulatory acts contain provisions requiring professionals to use cryptographic measures and electronic data protection procedures, such as in § 19 (5) of Resolution no. 403/2023 of the National Bar Council (Naczelna Rada Adwokacka) and in Article 6 (4) of the Ethical Principles for Tax Advisers. In this way, professional secrecy no longer possess merely a formal-legal dimension and acquires a real operational character, encompassing obligations concerning the security of personal and electronic data.

Unlike the medical professions, where the legislator permits the breach of confidentiality in order to protect human life or health, in legal and economic professions, there is no analogous humanitarian clause. The doctrine holds that such situations could potentially justify recourse to the concept of necessity (Article 26 § 1 of the Polish Penal Code),[16] however, there is no statutory basis allowing for the disclosure of professional secrecy for the benefit of a third party. This distinguishes the professions under analysis from those of doctors or psychologists, where the legislature has provided a more flexible model for the relationship between confidentiality and the value of life.

In summary, professional secrecy in legal and economic professions remains a normatively coherent, but functionally diverse legal institution. The shared minimum

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14 M. Matusiak-Frącczak, *Ochrona poufności komunikacji klienta z adwokatem. Standardy międzynarodowe, standard Unii Europejskiej oraz standardy krajowe wybranych państw a prawo polskie*, Warszawa 2023, p. 217.

15 M. Kurowski, in: *Kodeks postępowania karnego*, vol. 1. *Komentarz aktualizowany*, red. D. Świecki, 2025 [LEX database], Article 178.

16 A. Bereza, *Ograniczenia tajemnicy zawodowej adwokata i radcy prawnego w świetle konstytucyjnego prawa do obrony i prawa do sądu*, Studia Iuridica Lublinensia 2022, vol. 31, no. 3, s. 31–50.

of protection includes the permanence of the obligation over time, a broad personal and material scope, and an identical core of statutory exceptions. At the same time, sectoral differences – related to the goals of the respective profession – determine the possibility of waiving secrecy and the degree of its instrumentalisation in the public interest. In the legal professions, the protection of clients and their right to defence, justify the nearly-absolute nature of professional secrecy. In the financial sector, the growing role of supervision and compliance justifies greater flexibility in informational obligations. Thus, the system governing professional secrecy in Poland represents a consciously structured framework balancing constitutionally protected values: individual privacy and public safety, professional loyalty, and market integrity. Professional secrecy is therefore not a homogeneous category; it remains a dynamic legal instrument, the content and limits of which depend on the values of a given profession and the scope and manner of its social function.

Tab. 1. Legal Foundations of Professional Secrecy for Legal and Economic Professions

Profession	Law	Corporate resolution
Advocate (*Adwokat*)	Act of 26 May 1982 – Law on the Bar (consolidated text: Journal of Laws 2024 no. 1564)	Resolution no. 403/2023 of the Presidium of the National Bar Council of 7 December 2023, on the publication of the consolidated text of the Code of Ethics for Lawyers
Legal Advisor (*Radca prawny*)	Act of 6 July 1982 on Legal Advisors (consolidated text: Journal of Laws 2024 no. 499)	Resolution no. 3/2014 of the Extraordinary National Assembly of Legal Advisors of 22 November 2014 – Code of Ethics for Legal Advisors
Notary (*Notariusz*)	Act of 14 February 1991 – Law on Notaries (consolidated text: Journal of Laws 2024 no. 1001 as amended)	Resolution of the National Notarial Council of 12 December 1997 – Code of Professional Ethics for Notaries
Court Bailiff (*Komornik sądowy*)	Act of 22 March 2018 on Court Bailiffs (consolidated text: Journal of Laws 2024 no. 1458)	Resolution no. 1/2015 of the National Council of Bailiffs of 28 January, 2015 – Code of Professional Ethics for Court Bailiffs
Patent Attorney (*Rzecznik patentowy*)	Act of 11 April 2001 on Patent Attorneys (consolidated text: Journal of Laws 2024 no. 749)	Resolution no. 7/2018 of the National Council of Patent Attorneys of 13 December 2018, on the Principles of Ethics for Patent Attorneys
Tax Adviser (*Doradca podatkowy*)	Act of 5 July 1996 on Tax Consultancy (consolidated text: Journal of Laws 2021 no. 2117)	Resolution no. 16/VIII/2023 of the National Council of Tax Advisors of 21 November 2023 – Principles of Ethics for Tax Advisers
Statutory Auditor (*Biegły rewident*)	Act of 11 May 2017 on Statutory Auditors, Auditing Firms, and Public Oversight (consolidated text: Journal of Laws 2024 no. 1035 as amended)	Resolution no. 1161/16a/2011 of the National Council of Statutory Auditors of 13 December 2011 – Principles of Professional Ethics for Statutory Auditors

Source: Author's own work.

3. Professional secrecy in the jurisprudence of the Constitutional Tribunal

The Constitutional Tribunal has addressed the issue of professional secrecy multiple times in its jurisprudence. In the judgment of 22 November 2004, SK 64/03, the Tribunal, when evaluating the issue of professional secrecy for legal professionals, concluded that the only constitutional provision upon which the absolute obligation to maintain confidentiality can be based is Article 42 (2) of the Constitution of the Republic of Poland, which guarantees the right to defence. Furthermore, the Tribunal confirmed that the obligation of legal advisers (*radca prawny*) to maintain professional secrecy "is inextricably linked […] with the role of the legal counsel as a public trust profession" and that the existence of this obligation, "backed by criminal sanctions, serves as a guarantee of confidentiality for those seeking legal assistance." In this judgment, the Tribunal clearly noted that **"the duty to maintain secrecy was established for the benefit of clients, not legal counsels. It is not a privilege granted to the professional group, but rather an obligation associated with the performance of the profession."** In this context, it was pointed out that Article 17 (1) of the Constitution, which is a provision of systemic nature, does not imply any right for representatives of public trust professions to professional secrecy.[17]

Before the Tribunal, various attempts were made to derive the constitutional foundations of professional secrecy from various provisions—namely Articles 2, 17 (1), 31 (3), 45 (1), 49, 51 (1)–(2), and 77 (2) of the Constitution. Although the Tribunal acknowledged that its previous case law allows constitutional right to be inferred from the combined content of multiple provisions when they contain coherent elements addressed to a specific addressee, it nonetheless held that these patterns do not suffice to reconstruct a autonomous constitutional right guaranteeing professional secrecy for persons performing public trust professions.[18]

The Constitutional Tribunal has recognised that a potential conflict arises when a legal professional who is also the accused must choose between maintaining client confidentiality and exercising the constitutional right to defence. Under Article 180 § 2 of the Code of Criminal Procedure – which operates as a *lex specialis* overriding the professional secrecy rules in the *Legal Advisers Act* – a court may, in the interests of justice and only when a fact cannot be established by other means, authorise the examination of a legal adviser on matters covered by professional secrecy. However, where the accused is the legal adviser, the right to defence prevails. The

17 Judgment of the Constitutional Tribunal of 22 November 2004, SK 64/03, OTK 2004, no. 10A, item 107, thesis 34, 42, 48.

18 Judgment of the Constitutional Tribunal of 4 October 2010, SK 12/08, OTK 2010, no. 8A, item 87.

Constitutional Tribunal has emphasised that it is solely the accused's prerogative to decide whether to waive confidentiality; any attempt by the court or prosecutor to compel or to release the adviser from secrecy would impermissibly restrict the accused's right to full defence.[19]

It is also worth noting that the Constitutional Tribunal has expressed its views on provisions governing professional and defence secrecy in cases initiated by the Commissioner for Human Rights and the Prosecutor General; see the judgments of the Tribunal of 10 December 2012, K 25/11; 11 December 2012, K 37/11 and 30 July 2014, K 23/11.[20]

In the previously discussed judgment (case no.) K 41/05, the Tribunal analysed the institution of professional secrecy in the case of the profession of a legal counsel. It was stated that professional secrecy "constitutes both an essential guarantee and a *conditio sine qua non* for the performance of the legal adviser's profession." It was emphasised that maintaining professional secrecy is an obligation for individuals practising public trust professions. In the context of the aforementioned **bond of trust** between an advocate and his or her client, the Tribunal also noted that "maintaining this relationship has a dual significance: it is necessary for the client, who, by disclosing secrets, can rely on the trusted person of her or his advocate, and it is also beneficial for society as a whole, as it facilitates knowledge of the law and the realisation of the right to defence, thereby contributing to the proper administration of justice and the discovery of truth."[21]

The Tribunal expanded its considerations on this matter in the judgment of 23 July 2024, K 13/20,[22] in which it examined the obligations of tax advisers relating to

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19 Order of the Constitutional Tribunal of 29 September 2014, Ts 174/14, OTK 2014, no. 5B, item 517.

20 Judgment of the Constitutional Tribunal of 10 December 2012, K 25/11, OTK 2012, no. 11A, item 132; judgment of the Constitutional Tribunal of 11 December 2012, K 37/11, OTK 2012, no. 11A, item 133; judgment of the Constitutional Tribunal of 30 July 2014, K 23/11, OTK 2014, no. 7A, item 80.

21 Judgment of the Constitutional Tribunal of 2 July 2007, SK 41/05, OTK 2007, no. 7A, item 72, thesis 59, 129.

22 The judgment in question was not published in the Journal of Laws of the Republic of Poland [Dziennik Ustaw], similarly to all decisions of the Constitutional Tribunal issued after the Resolution of the Sejm of the Republic of Poland of 6 March 2024 concerning the removal of the effects of the constitutional crisis of 2015–2023 in relation to the functioning of the Constitutional Tribunal. In that resolution, the Sejm, referring to the judgments of the European Court of Human Rights of 7 May 2021 in *Xero Flor v Poland* (application no. 4907/18) and of 14 December 2023 in *M.L. v Poland* (application no. 40119/21), stated that individuals unauthorised to adjudicate sit on the bench of the Constitutional Tribunal and that its rulings are therefore tainted by a legal defect.
It is, however, worth noting the controversies surrounding the cited case law of the European Court of Human Rights. The Constitutional Tribunal has consistently maintained that no domestic body or mechanism exists in the Polish legal system that could verify the legality of the election of judges to the Tribunal. The Tribunal itself, in its full-bench decision of 7 January 2016, U 8/15 (OTK 2016,

the reporting of tax schemes, which conflicted with the requirements of maintaining professional secrecy. In this ruling, the Tribunal reaffirmed its previously established position that Article 17 (1) of the *Constitution* does not imply a "constitutionally mandated obligation to maintain professional secrecy." However, the statutory provisions regulating this matter should be formulated in a sufficiently clear manner, "so as to enable tax advisors, as representatives of public trust professions, to act in the interest of the individual." In this context, the Tribunal referred to the standards of legal certainty derived from Article 2 of the Constitution. Furthermore, it was indicated that the provisions regulating professional secrecy may be subject to review in the context of the proportionality of interference with constitutional rights and freedoms – the right to privacy (Article 47), the protection of the secrecy of communication (Article 49), and the protection of informational autonomy (Article 51 (2)). As the Tribunal stated: "The determination that Article 17 (1) of the Constitution does not result in constitutionally protected rights and freedoms does not mean that regulations changing the scope of professional secrecy cannot be examined by the Tribunal for violations of other values protected by the Fundamental Law." [23]

4. The Importance of Professional Secrecy for Constitutional Values

As previously indicated, professional secrecy for representatives of public trust professions has its source in statutory acts and corporate acts adopted by professional self-governing bodies. These regulations do not have their foundation directly in

no. 1A, item 1), declared itself incompetent to review the constitutionality of the Sejm's resolutions of the 8th term concerning the appointment of Constitutional Tribunal judges and consequently discontinued the proceedings.

Moreover, with regard to the *Xero Flor* judgment, serious doubts as to its merits were raised even within the adjudicating chamber of the Strasbourg Court. In his dissenting opinion, Judge Krzysztof Wojtyczek stated that the reasoning of the *Xero Flor* judgment was "flawed due to a somewhat unclear and superficial presentation of domestic law, coupled with a distorted portrayal of the Tribunal's jurisprudence, carefully avoiding all unfavourable precedents. The approach chosen by the Court to maintain the rule of law in the respondent State is far from optimal." Furthermore, irrespective of whether the Constitutional Tribunal can be regarded as a "court" within the meaning of the Convention, Judge Wojtyczek also questioned, in his dissent, the inclusion of constitutional complaint proceedings within the scope of Article 6 of the Convention. In his view, the case law of the European Court of Human Rights indicates that "the Convention does not require guaranteeing a right of access to a court (or to any other non-judicial body) competent to annul or invalidate a normative act, even if such access is provided for in a specific form under domestic law."

[23] Judgment of the Constitutional Tribunal of 23 July 2024, K 13/20, OTK-A 2024, item 66, thesis 119, 123.

the Constitution, which in Article 17 (1) only provides for the possibility of creating professional self-governing bodies by law. The constitutional legislator does not expressly require the obligation to regulate professional secrecy in these acts, nor does it even refer to this institution. The obligation to maintain professional secrecy has been interpreted in the jurisprudence of the Constitutional Tribunal as one of the characteristic features of public trust professions, whose existence is foreseen by the *Constitution*. The only exception is the defence privilege, which has its source directly in the constitutional right to defence. Although Article 42 (2) of the Constitution also does not directly regulate the defence privilege, it has been interpreted in the case law of the Tribunal as stemming from the necessity to interpret the constitutional right to defence broadly.[24]

As a rule, it should therefore be stated that it is the legislator's responsibility to appropriately regulate this institution whenever it creates a professional self-governing body representing individuals performing a specific public trust profession. There is no direct constitutional obligation placed on the legislator, unlike Article 15 (2) of the Constitution, which requires the definition of the basic territorial division of the state by statute. In the case of professional secrecy, the legislator also does not have clear "guidelines" in this regard, as in the aforementioned Article 15 (2) of the Constitution, which obliges the legislator to take into account social, economic, or cultural ties and to ensure the ability of territorial units to perform public tasks.

It is appropriate to examine the compliance of regulations governing professional secrecy with Article 17 (1) of the Constitution in terms of protecting the public interest and ensuring the proper performance of the profession. It is necessary to agree with the opinion presented by the Tribunal in its judgment with case no. K 13/20, that representatives of professions of public trust play an essential role in a democratic state of law realizing the principles of social justice. Due to the connection between professions of public trust and state institutions (e.g., an advocate defending an accused before a court), guaranteeing the individual the possibility to reveal their problems without restraint strengthens the principle of trust in the state and the law it enacts, as derived from Article 2 of the Constitution. Clients are assured that their representatives will not be forced to disclose acquired information to public institutions, which could use it in ongoing proceedings. Professional secrecy is not a constitutional freedom or right but an obligation linked to the nature of the public trust profession. Therefore, restrictions imposed on it do not have to comply with the strict criteria laid down in Article 31 (3) of the *Constitution*. This

[24] P. Sarnecki, *Art. 42*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 2, eds. L. Garlicki, M. Zubik, 2nd ed., Warszawa 2016.

provision pertains only to freedoms and rights, and does not apply to other norms that do not express individual subjective rights.[25]

As emphasised in the jurisprudence of the Constitutional Tribunal, professional secrecy can protect separate constitutional rights and freedoms. In this context, one must undoubtedly refer to Articles 47, 49, and 51 (2) of the Constitution. The first of these stipulates that everyone has the right to legal protection of their private and family life, honour, and reputation, as well as the right to decide about their personal life. This provision guarantees the right to privacy. It is worth noting that Article 7 of the Charter of Fundamental Rights of the European Union contains a similar provision, according to which: "Everyone has the right to respect for his or her private and family life, home and communications."[26] The Court of Justice of the European Union, when examining provisions that obligate advisers bound by professional secrecy to report the use of tax schemes by their clients, held that such provisions infringed Article 7 of the Charter.[27]

In the Polish legal doctrine, a distinction is made between the "private" sphere of life, which is protected under Article 47 of the Constitution, and the "non-private" – public and social – sphere, which is not subject to this protection.[28] However, its judgment in case no. K 13/20, the Constitutional Court acknowledged that regulations concerning professional secrecy may also be examined in relation to this standard of review. This applies not only when a representative of a profession of public trust receives information regarding the strictly private sphere of life, but also in professional matters, such as the application of tax schemes in the course of business activity. Therefore, the Court opted for a uniform treatment of the regulations regarding professional secrecy in this context. This approach should be considered correct, as it is not always possible to clearly distinguish situations where an individual turns to a representative of public trust profession regarding an issue related entirely to their private life, from those concerning only her or his professional life. Both spheres of life can overlap, for example, in the context of conducting business activity.

The obligation to protect information transmitted by clients to representatives of public trust professions also has its source in Article 49 of the Constitution, which

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25 L. Garlicki, K. Wojtyczek, *Art. 31*, in: *Konstytucja*…, vol. 2.

26 Charter of Fundamental Rights of the European Union, OJ C 364/1, 18.12.2000, https://www.europarl.europa.eu/charter/pdf/text_en.pdf [access: 21.07.2025].

27 Judgment of the Court (Grand Chamber) of 8 December 2022, C-694/20 (request for a preliminary ruling from the Grondwettelijk Hof – Belgium) – Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU v. Vlaamse Regering.

28 P. Sarnecki, *Art. 47*, in: *Konstytucja*…, vol. 2.

ensures the freedom and protection of the secrecy of communications. Such secrecy may only be restricted in cases specified by statute and in the manner prescribed therein. However, it should be noted that this freedom has a broader scope than would be implied by the right to privacy – it also pertains to the "non-private" sphere of life and includes entities other than individuals, with the exception of public law institutions.[29] It is beyond doubt that in a democratic state governed by the rule of law, it is essential for the legislator to be mindful of the need to protect the secrecy of communication and the information transmitted by an individual to a representative of a public trust profession, so that they can effectively carry out their work while fulfilling the constitutional "mission" of public trust professions.

An essential aspect in this context is also Article 51 (2) of the Constitution, which provides that public authorities cannot collect, gather, or disclose information about citizens that is not necessary in a democratic state governed by the rule of law – it guarantees the informational autonomy of the individual. Regulations requiring the transmission of confidential information to representatives of public trust professions align with the provisions of this article. By imposing such statutory duties, the state may, in fact, "collect and gather" information about citizens. Based on a literal interpretation of Article 51 (2) of the Constitution, read in isolation, one might conclude that private bodies could gather personal data without such restrictions, as these only apply to public entities. However, such a statement cannot be accepted. Firstly, the freedom to gather information is limited by the right to privacy. Secondly, one cannot lose sight of the systemic role of professional secrecy, which is inseparably linked to the proper performance of a public trust profession.

Both the content of Article 49 and Article 51 (2) of the Constitution refer to the right to privacy and are logical extensions of it.[30] On the other hand, they have a broader scope in that they do not apply only to the strictly private sphere of the individual but can also be applied to the economic and professional spheres. Given the specific relationship between these provisions, it is appropriate that in its judgment in case no. K 13/20, the Constitutional Tribunal identified Articles 49 and 51 (2) of the Constitution as the primary standards of review, while Article 47 of the Constitution served as the connecting standard.

The regulations under review, which may potentially restrict the freedoms and rights mentioned above, must be subjected to control through the so-called "proportionality test" arising from Article 31 (3) of the Constitution. Therefore, any

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29 M. Bartoszewicz, *Art. 49*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. M. Haczkowska, Warszawa 2014.

30 P. Sarnecki, *Art. 51*, in: *Konstytucja*…, vol. 2.

norm that, through the regulation of the institution of professional secrecy, may affect the restriction of the right to privacy, the confidentiality of correspondence, or informational autonomy, must pass the proportionality test, which requires answers to the following questions:

1. Is it capable of achieving the intended effects desired by the legislator (usefulness of the norm)?
2. Is it necessary for the protection of the public interest with which it is associated (necessity of action by the legislator)?
3. Are the effects proportionate to the burdens or restrictions it imposes on the individual (proportionality in the strict sense)? [31]

One of the clearest examples of how the proportionality test is applied in practice can be found in the judgment of the Polish Constitutional Tribunal in case no. K 13/20. The Tribunal started with the criterion of *usefulness*. It noted that the regulation was meant to fight aggressive tax planning and to secure fiscal interests of the state. However, it stressed that the obligation was drafted too broadly. It applied not only to schemes designed to avoid taxation unlawfully, but also to arrangements that amounted to legal tax optimisation. Because of this, the Tribunal questioned whether the measure could really achieve its declared purpose. At the stage of necessity, the Tribunal recalled that the legislator had justified the provisions by invoking the need to implement European Union law and to protect budgetary balance. The Tribunal underlined, however, that the Polish Constitution requires restrictions of rights to be indispensable, and here the provisions were not. First, the obligation was not the only possible instrument to secure compliance with reporting duties. Second, there were already less restrictive measures that placed responsibility directly on taxpayers themselves.

In its assessment of *proportionality sensu stricto*, the Tribunal weighed the expected benefits of the regulation against the restriction of fundamental rights. The contested provisions interfered with professional secrecy and the confidentiality of communication, both of which belong to the sphere of privacy and informational autonomy. At the same time, the impact of the rules on public finances was at most indirect and uncertain. The Tribunal concluded that the interference with rights was disproportionate when compared with the potential fiscal benefits. In conclusion, the Tribunal demonstrated that the contested provisions failed each stage of the proportionality test. They were not clearly useful, not indispensable, and the

[31] See Judgment of the Constitutional Tribunal of 23 April 2008, K 16/07, OTK 2008, no. 3A, item 45 and there recalled jurisprudence.

balance of interests weighed in favour of protecting constitutional rights rather than maintaining the broad reporting duty.

In the legal doctrine, alternative proposals have also been formulated for examining the regulation of professional secrecy through the prism of constitutional values. Dariusz Dudek, in his polemic with the judgment of the Constitutional Tribunal in case no. SK 64/03, advanced the thesis that Article 180 § 2 of the Code of Criminal Procedure, insofar as it allows for the "legal compulsion" of an advocate to testify against his or her client, infringes several constitutional standards of review. Specifically, he identified the following constitutional provisions as violated:

- Article 30 (Human Dignity) – as it undermines the dignity of both the client and the lawyer, since breaching the confidentiality inherent in their relationship constitutes a form of moral incapacitation of both parties;
- Article 31 (1) (Individual Freedom) – as it restricts the freedom to perform a profession of public trust in accordance with its essential nature;
- Article 42 (2) (Right to Defence) – as it renders the right to silence illusory and weakens the material dimension of the right to defence;
- Article 45 (1) (Fair Trial) – as it violates the principle of fairness and the integrity of the trial by allowing the state to exploit the confidential channel of communication between lawyer and client;
- Article 53 (1) (Freedom of Conscience) – as it compels the lawyer to act contrary to professional ethos and deontological norms, given that the duty of confidentiality constitutes an imperative of professional conscience.

Dudek emphasised that professional secrecy should be regarded as a fundamental condition of public trust and as a prerequisite for maintaining the integrity and quality of the administration of justice. Importantly, as he observed, the Constitutional Tribunal has not yet examined the issue of professional secrecy in the context of Articles 30, 31 (1), and 53 (1) of the Constitution. His reflections therefore provide valuable guidance for potential future constitutional litigation concerning the relationship between professional secrecy, the autonomy of legal professions, and the protection of fundamental rights in a democratic state governed by the rule of law.[32]

[32] D. Dudek, *The Constitution and the Attorney – Client Privilege*, Palestra 2019, no. 7–8, pp. 35–49.

Final Conclusions

The study conducted in this article shows that professional secrecy, although an inherent feature of public trust professions, has not been explicitly recognised as one of the constitutional values in the Constitution. The constitutional legislator did not expressly designate professional secrecy as an independent constitutional good. However, analysis of the Constitutional Tribunal's case law, regulations contained in statutes and normative acts of professional self-governing bodies indicates that this institution holds a special axiological status within the Polish legal system.

The scope and nature of professional secrecy, as well as the list of professions recognised as public trust professions, remain the exclusive prerogative of the legislator. It is the legislator who decides on the shape, depth of protection and potential exceptions to the duty of confidentiality, taking into account the specifics of each profession and the current social and public needs. In this regard the legislator enjoys considerable regulatory discretion which, however, should not lead to the violation of fundamental constitutional standards.

The special value of professional secrecy is primarily revealed in its instrumental significance for the protection of other constitutional goods. It is not only a *sine qua non* condition for the exercise of public trust professions; it is also crucial for the fulfilment of the role assigned to representatives of public trust professions under Article 17 (1) of the Constitution, which in turn serves as one of the means for realising the principle of citizens' trust in the state and in the law it enacts, as outlined in Article 2 of the Constitution. Professional secrecy also serves as a key tool for protecting individual constitutional rights. In particular, it plays a fundamental role in the realisation of the right to privacy (Article 47 of the Constitution), the secrecy of communication (Article 49 of the Constitution), and the informational autonomy of the individual (Article 51 (2) of the Constitution).

In this context, the position of the Constitutional Tribunal is particularly clear, as it consistently regards professional secrecy as an obligation inseparably connected with the performance of a public trust function, rather than a right of the person performing that profession. This distinction not only emphasises its fundamental importance for building social trust, but also excludes an instrumental approach to professional secrecy by the representatives of the discussed professions.

Finally, any restrictions on professional secrecy must meet rigorous constitutional standards of clarity and proportionality, as outlined in Article 31 (3) of the Constitution. In this regard, professional secrecy is not protected as an autonomous value, but rather as a tool for safeguarding the fundamental rights and freedoms of individuals. Therefore, any legislative interference with the obligation to maintain

secrecy should undergo a detailed constitutional analysis within the framework of the proportionality test, including the criteria of suitability, necessity, and strict proportionality.

It is also worth noting that the legal doctrine has put forward an alternative approach to assessing the constitutionality of regulations concerning professional secrecy by examining such provisions through the broader framework of constitutional values enshrined in Articles 30, 31 (1), 42 (2), 45 (1), and 53 (1) of the Constitution. By linking professional secrecy to the protection of human dignity, personal freedom, the right to defence, the fairness of judicial proceedings, and the freedom of conscience, this perspective underscores its status as a constitutional value indispensable for preserving public trust in the legal professions and ensuring the integrity of the justice system.

The analysis of selected judgments of the Constitutional Tribunal has led the author to formulate the thesis that professional secrecy does not constitute an autonomous constitutional value. Its observance, however, contributes to the protection of constitutional values such as the right to privacy, the secrecy of communications, and informational autonomy. Its content and scope are shaped by the legislator, who enjoys broad regulatory discretion, albeit limited by the necessity to respect overarching constitutional norms.

Professional secrecy remains a complex normative construct of instrumental character, which, although not a constitutional value *per se*, is nevertheless a crucial element in the protection of essential constitutional values and in the effective functioning of public trust professions within a democratic state governed by the rule of law. In this way, this institution not only contributes to the realisation of constitutional objectives related to the protection of the public interest but, above all, enables the effective protection of fundamental rights and freedoms of individuals, serving as a necessary condition for citizens' trust in state institutions and law.

Bibliography

Antkowiak P., *Polskie i europejskie standardy wykonywania wolnych zawodów*, Przegląd Politologiczny 2013, vol. 1.

Bartoszewicz M., *Art. 49*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. M. Haczkowska, Warszawa 2014.

Bereza A., *Ograniczenia tajemnicy zawodowej adwokata i radcy prawnego w świetle konstytucyjnego prawa do obrony i prawa do sądu*, Studia Iuridica Lublinensia 2022, vol. 31, no. 1.

Biuro Rzecznika Praw Obywatelskich [Office of the Commissioner for Human Rights], *Kiedy prawo staje się obowiązkiem, a uprawnienie przymusem*, https://bip.brpo.gov.pl/pliki/12324458440.pdf [access: 15.06.2025].

Dudek D., *Konstytucja i tajemnica adwokacka*, Palestra 2019, no. 7–8.

Garlicki L., Wojtyczek K., *Art. 31*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 2, eds. L. Garlicki, M. Zubik, 2nd ed., Warszawa 2016.

Krasnowolski A., *Zawody zaufania publicznego, zawody regulowane oraz wolne zawody*, in: Kancelaria Senatu, *Opracowania Tematyczne*, no. 6, Warszawa 2010.

Kurowski M., in: *Kodeks postępowania karnego*, vol. 1. *Komentarz aktualizowany*, ed. D. Świecki, 2025 [LEX database], Article 178.

Matusiak-Frącczak M., *Ochrona poufności komunikacji klienta z adwokatem. Standardy międzynarodowe, standard Unii Europejskiej oraz standardy krajowe wybranych państw a prawo polskie*, Warszawa 2023.

Pawłowska M., *Zawody zaufania publicznego na rynku pracy*, in: *Rynek pracy wobec wyzwań przyszłości. Ewolucja i współczesne uwarunkowania*, eds. A. Siedlecka, D. Guzal-Dec, Biała Podlaska 2022, https://bibliotekanauki.pl/chapters/12602283 [access: 21.07.2025].

Rusinek M., *Tajemnica zawodowa i jej ochrona w polskim procesie karnym*, Warszawa 2007.

Sarnecki P., *Art. 42*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 2, eds. L. Garlicki, M. Zubik, 2nd ed., Warszawa 2016.

Sarnecki P., *Art. 47*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 2, eds. L. Garlicki, M. Zubik, 2nd ed., Warszawa 2016.

Sarnecki P., *Art. 51*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 2, eds. L. Garlicki, M. Zubik, 2nd ed., Warszawa 2016.

Smarż J., *Samorządy zawodowe jako wspólnota osób wykonujących ten sam zawód*, Studia Prawnoustrojowe 2024, no. 65, https://czasopisma.uwm.edu.pl/index.php/sp/article/view/10327 [access: 21.07.2025].

Szczygieł D., in: *Ustawa o doradztwie podatkowym. Komentarz*, ed. A. Mariański, 2nd ed., Warszawa 2015, Article 37.

Wołpiuk W., *Zawód zaufania publicznego z perspektywy prawa konstytucyjnego*, in: Senat Rzeczypospolitej Polskiej, *Zawody zaufania publicznego a interes publiczny – korporacyjna reglamentacja versus wolność wykonywania zawodu*, eds. S. Legat, M. Lipińska, Warszawa 2002.

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Admissibility of lodging a complaint with an administrative court against a decision taken by a first instance authority

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Abstract: This article presents issues related to the necessity of prior exhaustion of appeal measures, if they served the complainant in the proceedings before the authority competent in the case in order to effective filing of a complaint before an administrative court. The study focuses on providing an answer to the following question: whether and in what situations it is permissible to lodging a complaint to the administrative court against a decision issued by the first instance authority. Focus is also given to the issue of the legal consequences of the decision-issuing authority's and the appeal body's misclassification of the document filed as an appeal or complaint, as well as rulings of the administrative court that should be issued depending on the given case. The methods employed in this study involve an analysis of the law in force and a case study. After conducting research, it was found that provisions allowing for the possibility of challenging the decision of the first instance authority before an administrative court without the need to exhaust appeal measures available to the party are admissible, but constitute an exception to the constitutional principle of two-instance proceedings and should therefore be interpreted strictly.
Keywords: Code of Administrative Procedure, judicial review of administration, complaint with the administrative court, administrative procedure, final decision

Streszczenie: Niniejszy artykuł przedstawia zagadnienia dotyczące konieczności uprzedniego wyczerpania środków zaskarżenia, jeżeli służyły one skarżącemu w postępowaniu przed organem właściwym w sprawie w celu skutecznego wniesienia skargi do sądu administracyjnego. Opracowanie koncentruje się na udzieleniu odpowiedzi na następujące pytanie: czy i w jakich sytuacjach dopuszczalne jest wniesienie skargi do sądu administracyjnego na decyzję wydaną przez organ pierwszej instancji. Zwrócono również uwagę na kwestię konsekwencji prawnych błędnego zakwalifikowania pisma przez organ wydający decyzję oraz organ odwoławczy jako odwołanie lub skargę, a także rozstrzygnięcia sądu administracyjnego, jakie powinny zapaść w zależności od danego przypadku. W artykule posłużono się metodą dogmatyczno-prawną oraz studium przypadku. Po przeprowadzonej analizie stwierdzono, że przepisy zezwalające na możliwość zaskarżenia do sądu administracyjnego decyzji organu pierwszej instancji – bez konieczności wyczerpania przysługujących stronie środków zaskarżenia – są dopuszczalne, lecz stanowią wyjątek od konstytucyjnej zasady dwuinstancyjności, a zatem należy je interpretować w sposób ścisły.
Słowa kluczowe: Kodeks postępowania administracyjnego, postępowanie sądowoadministracyjne, skarga do sądu administracyjnego, postępowania administracyjne, decyzja ostateczna

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Резюме: В данной статье рассматриваются вопросы, касающиеся необходимости предварительного исчерпания средств обжалования, если они были использованы истцом в ходе разбирательства в компетентном органе для эффективной подачи жалобы в административный суд. В работе сосредоточено внимание на ответе на следующий вопрос: допустимо ли и в каких ситуациях допустимо подавать жалобу в административный суд на решение, вынесенное органом первой инстанции. Также обращено внимание на вопрос о правовых последствиях ошибочной квалификации письма органом, выносящим решение, и апелляционным органом как апелляции или жалобы, а также на решения административного суда, которые должны быть приняты в зависимости от конкретного случая. В статье использованы догматико-правовой метод и метод *case-study*. После проведенного анализа было установлено, что положения, допускающие возможность обжалования в административный суд решения органа первой инстанции – без необходимости исчерпания имеющихся у стороны средств обжалования – приемлемы, но представляют собой исключение из конституционного принципа двух инстанций, и, следовательно, должны толковаться строго.
Ключевые слова: Административный процессуальный кодекс, административное судопроизводство, жалоба в административный суд, административные процедуры, окончательное решение

Анотація: У цій статті розглядаються питання щодо необхідності попереднього вичерпання засобів оскарження, якщо вони були використані позивачем у провадженні перед органом, компетентним у справі, з метою ефективного подання скарги до адміністративного суду. Дослідження зосереджується на відповіді на таке питання: чи і в яких ситуаціях допустимо подавати скаргу до адміністративного суду на рішення, винесене органом першої інстанції. Також було звернено увагу на питання правових наслідків неправильної кваліфікації заяви органом, що видав рішення, та апеляційним органом як апеляції або скарги, а також на рішення адміністративного суду, яке повинно бути ухвалене залежно від конкретного випадку. У статті використано догматично-правовий метод та аналіз конкретного випадку. Після проведеного аналізу було встановлено, що положення, які дозволяють оскаржувати в адміністративному суді рішення органу першої інстанції – без необхідності вичерпання засобів оскарження, що належать стороні – є допустимими, але становлять виняток із конституційного принципу двоінстанційності, а отже, їх слід тлумачити у вузькому розумінні.
Ключові слова: Кодекс адміністративного судочинства, адміністративне судочинство, скарга до адміністративного суду, адміністративні провадження, остаточне рішення

Introduction

In the Republic of Poland, which is a democratic state ruled by law (Article 2 of the Constitution of the Republic of Poland[1]), administrative courts are the guardians of ensuring the individual's ability to protect his rights and freedoms against unlawful actions of public administration. This is due to Article 45 (1) of the Constitution of the Republic of Poland, which guarantees everyone the right to a fair and public hearing of a case by a competent, independent and impartial court and Article 184 of the Constitution of the Republic of Poland, pursuant to which the Supreme Administrative Court and other administrative courts exercise, to the extent specified

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dziennik Ustaw] 1997 no. 78 item 483 as amended (hereinafter: Constitution).

by law, review of the activities of public administration. This review also includes adjudication on compliance of resolutions of local government bodies and normative acts of local government administration bodies with statutes.[2]

As the Supreme Administrative Court rightly pointed out in its judgement of 6 August 2013, II FSK 2530/11.[3] the essence of judicial review of administration is to protect the freedoms and rights of individuals (entities bound by law) in relations with public administration and to build and consolidate the rule of law and standards derived from it. The basic function of the administrative judiciary is therefore to protect the subjective rights of the individual, and its adoption stems from the assumptions of the system of public administration review related to the implementation of the rule of law (Article 7 of the Constitution of the Republic of Poland).

1. Exhaustion of appeal as a requirement for effective bringing of a complaint with an administrative court

Pursuant to Article 1 (1) of the Act on the system pf administrative courts, administrative courts exercise the administration of justice by reviewing the activities of public administration, and this review, pursuant to Article 1 (2) of said act, is exercised in terms of legality. Review of public administration activities by administrative courts includes, among others, adjudication on complaints against administrative decisions. Therefore, only a claim that the contested decision was issued in breach of substantive law which affected the outcome of the case, in breach of the law giving rise to the resumption of administrative proceedings, or in other breach of the rules of procedure, if it could have had a material impact on the outcome of the case, may result in the administrative court repealing the contested act.

A substantive examination of the legality of administrative acts is possible only if a complaint against those acts is admissible, i.e. if the subject matter of the case falls within the substantive jurisdiction of a given court, the complaint is brought by an entitled entity (that is one that has the right to complain) and if the complaint meets the formal requirements and is filed in due time.

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2 Pursuant to Article 2 of the Act of 25 July 2002 on the System of Administrative Courts (Journal of Laws 2024 item 1267), administrative courts mean the Supreme Administrative Court and voivodship administrative courts.

3 The decision is available in the Central Database of Administrative Court Decisions, hereinafter referred to as "CBOSA database" at https://orzeczenia.nsa.gov.pl/cbo/query.

One of the requirements for an effective bringing of a complaint with an administrative court is, pursuant to Article 52 (1) of the Act of 30 August 2002 Law on proceedings before administrative courts,[4] prior exhaustion of appeal measures if they have served the complainant in proceedings before the authority competent in the case, unless the complaint is filed by the prosecutor, the Commissioner for Human Rights or the Ombudsman for Children. This is a formal condition for effective filing of a complaint, since admissibility of judicial review of administration depends on the prior exhaustion of appeal measures if they have served the complainant in proceedings before the authority competent in the case.[5]

Legal commentary argues that[6] appeals are procedural institutions through which qualified entities can request that administrative decisions be verified for their cassation or reformation.

Pursuant to Article 52 (2) PBAC, exhaustion of appeal measures should be understood as a situation in which a party is not entitled to any appeal, such as a complaint, appeal or reminder, provided for by law. This enumeration is illustrative, thus if a special provision provides for a different appeal measure than those listed *expressis verbis* in PBAC, it should also be used before the complaint is filed. Stating that this premise has been met may only happen after the appeal measure has been examined by the competent public administration body. This means that filing a complaint with an administrative court should be preceded not only by filing an appropriate appeal against the decision of the first instance authority, but also by closing the administrative proceedings before the second instance authority by issuing a decision that could be the subject of a complaint with the court within the meaning of Article 3 PBAC.[7] This is a direct reference to the principle of a two-instance procedure referred to in Article 78 of the Constitution of the Republic of Poland[8] and Article 15 of the Code of Civil Procedure.[9] This principle is not absolute, but exceptions to it must be provided for by law.

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4 Consolidated text: Journal of Laws 2024 item 935 as amended (hereinafter: PBAC).

5 Judgement of the Supreme Administrative Court of 13 October 2020, II OSK 71/20 [CBOSA database].

6 B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz, rozdział 10. Odwołania*, 19th ed., Warszawa 2024 [Legalis database].

7 Judgment of the Supreme Administrative Court of February 2024, I OSK 116/13 and judgement of the Voivodship Administrative Court in Krakow of 10 December 2021, III SA/Kr 1559/21 [CBOSA database].

8 Each party shall have the right to appeal against judgments and decisions made at first stage. Exceptions to this principle and the procedure for such appeals shall be specified by statute.

9 Administrative proceedings shall be two-instance proceedings, unless a special provision provides otherwise.

The essence of the two-instance principle in administrative proceedings, pursuant to Article 15 CAP, is that the case should be examined twice and decided twice by the authorities of both instances. The proper maintenance of the principle of two-instance proceedings does not only require that two consecutive decisions be issued by the competent authorities, but also that those decisions be taken as a result of substantive proceedings carried out by each of those authorities, so that the evidence is assessed twice and all the relevant circumstances of the case[10] are examined two times too. The substantive re-examination of the substantive matter by a higher-level authority also includes verification of the correctness, i.e. legality and rightness (or only legality or only rightness), of the act of the first-instance authority and of how this authority conducts proceedings in the case.[11]

In addition, it should be noted that the condition for exhaustion of appeal measures is also met in a situation where the appeal was lodged by either party to the administrative proceedings, not necessarily the same one that subsequently filed the complaint with the administrative court.[12]

As a consequence of failure of a party to avail itself of the available remedies, including an appeal against a decision, it is inadmissible to lodge a complaint against that act with an administrative court as it is premature. Such a situation results in the court issuing a decision rejecting the complaint under Article 58 (1) (6) PBAC.[13]

Therefore, it has long been accepted by legal scholars and commentators and the judiciary that in cases where two-instance proceedings apply, an appeal at an administrative court may only concern a ruling (decision, order) issued by the authority adjudicating in the case at second instance, and thus adjudicating as a result of an appeal. The provisions of Articles 52 (1) and (2) PBAC provide for the priority of the administrative procedure for the review of administrative proceedings over judicial review. An administrative court cannot replace an appeal body and its actions must not violate the principle of two-instance administrative proceedings. As a consequence, the adoption of this rule makes it unacceptable to lodge a complaint

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10 Judgement of the Supreme Administrative Court of 14 March 2024, III OSK 1840/22 [CBOSA database].

11 P. Kledzik, *Prawne uwarunkowania stwierdzenia nieważności decyzji w ogólnym postępowaniu administracyjnym*, Wrocław 2018, pp. 59–60 along with literature cited there.

12 M. Jagielska, A. Wiktorowska, P. Wajda, in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. R. Hauser, M. Wierzbowski, 8th ed., Warszawa 2023 [Legalis database], Commentary on Article 52; judgement of the Supreme Administrative Court of 23 July 2009, I OSK 798/08 [CBOSA database].

13 J. Tarno, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2004, p. 116 and order of the Supreme Administrative Court of 24 January 2017, I OSK 77/17 [CBOSA database].

against a decision taken by the first instance authority.[14] The provisions of PBAC and special laws allow a number of exceptions to this requirement, which will be presented later in the article.

2. Exceptions to the requirement of exhaustion of appeal measures for conducting judicial review of administration

The first derogation from having to exhaust appeal measures is the possibility for a party to opt out of the request to have the case re-examined.

Pursuant to Article 127 (3) of the Act of 14 June 1960, the Code of Administrative Procedure,[15] no appeal shall be served against a decision taken at first instance by a minister or a self-governing board of appeal, however, a party dissatisfied with the decision may request that the matter be re-examined by that authority; the provisions on appeals against decisions apply accordingly. Pursuant to Article 52 (3) PBAC, if a party has the right to apply to the authority that has issued the decision to have the case re-examined, the party may lodge a complaint against that decision without exercising that right. However, this is an exception that applies not to all cases.[16] The right to lodge a complaint without requesting at the authority that has issued the decision that the case be re-examined is not granted to a party when the authority that has issued the decision is the minister competent for foreign affairs in matters regulated by the Act of 12 December 2013 on foreigners[17] or the consul. In these two cases, which are an exception to the exception, the full two-instance procedure must be exhausted before lodging a complaint with the administrative court. Therefore, the party has the choice to either request that the case be re-examined or to file a complaint with the administrative court straight away, without the case being heard by the second instance authority. However, it is indisputable that these are alternatives and using both at the same time is inadmissible.[18]

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14 M. Bogusz, *Zaskarżenie decyzji administracyjnej do Naczelnego Sądu Administracyjnego*, Warszawa 1997, p. 94; order of the Voivodship Administrative Court in Poznań of 18 July 2022, II SA/Po 462/22 [CBOSA database].

15 Consolidated text: Journal of Laws 2024 item 572 as amended (hereinafter: CAP).

16 It should be noted that in order for this exception to be used, neither party can request that the case be re-examined. One party need only submit such a request, and complaints of the other parties will also be examined as requests to have the case re-examined, cf. Articles 54a (1) and (2) PBAC.

17 Consolidated text: Journal of Laws 2023 item 519 as amended.

18 Judgement of the Voivodship Administrative Court in Gliwice of 8 November 2021, III SA/Gl 807/21 [CBOSA database].

The second situation that allows an appeal to the court against a decision of a first instance authority is when the first instance authority issues a decision and opts out of providing reasoning for it because the party's demands were complied with in full (Article 127 (1a) CAP). This does not apply, however, to decisions settling disputed interests of the parties and decisions issued as a result of an appeal (Article 107 (4) CAP).

Since such a decision is final by virtue of the law, it means that it can be subject to judicial review of administrative proceedings, even to examine whether the authority has indeed complied with the demands of the party in full and not, for example, in part.[19] Otherwise, the parties would not be able to challenge decisions of administrative authorities. However, in order for such a review to take place, the administrative court must learn the authority's motives. Therefore, pursuant to Article 54 (2a) PBAC, within 30 days from the date of receipt of the complaint and before submitting the case files to the court, the authority must draw up its reasoning for the contested decision if it opted out of issuing the reasoning because the party's demands were complied with fully. The reasoning for the decision is essential for the court to be able to properly assess the decision given by the authority. Without knowing the position of the authority containing a reference to all relevant elements (premises) underlying the decision in the case, this is not possible. The absence of reasoning for a ruling regarding basic elements provided for in Article 107 (3) CAP makes it impossible for the court to assess the contested decision in terms of legality.[20] One of the basic principles developed in the practice of administrative courts is still in force. It lays down that an administrative court does not have the competence to take over an administrative case as such to settle it finally and decide on its substance. It does not act as a substitute to or replace a public administration authority in the performance of the tasks entrusted to it.[21]

Therefore, if the first instance authority has made an incorrect interpretation and has found that it has grounds for not drawing up the reasoning for its decision since it complies with the demands of the party in their entirety, then, after lodging such a complaint, the administrative court should, based on Article 145 (1) (1) (c)

19 Judgment of the Voivodship Administrative Court in Bydgoszcz of 16 January 2024, I SA/Bd 594/23 and judgement of the Voivodship Administrative Court in Lublin of 15 February 2024, III SA/Lu 601/23 [CBOSA database].

20 Judgement of the Voivodship Administrative Court in Gliwice of 14 February 2024, III SA/Gl 632/23 [CBOSA database].

21 Judgement of the Supreme Administrative Court of 20 February 2013, II GSK 77/11 [CBOSA database].

PBAC, allow the complaint and annul the contested decision;[22] this defect may even justify the court's annulment of the entire decision pursuant to Article 145 (1) (2) PBAC on the ground that the contested decision was issued in gross breach of law.[23]

However, there are still doubts where the first instance authority has legitimately resigned from providing reasoning for its decision due to the party's demands being complied with in their entirety (i.e. decision issued under Article 107 (4) CAP), and the party has nevertheless lodged an appeal. The question remains of whether the first instance authority or the appeal body has the legal possibility to classify such a document differently, in particular as a complaint. After all, administrative courts present a common view in the established line of their decisions that it is the content of the document, not its form or name, that determines its meaning.[24] This was the situation in which the Voivodship Administrative Court in Poznań found itself in. In one of the cases, the first instance authority held that a document a party called an appeal against its decision is a complaint with the Voivodship Administrative Court in Poznań against that decision and sent it to that court together with the case file. The court, finding that it was not a complaint but an appeal against this decision, returned the documents to the first-instance authority which then sent them to the appeal body. The court did so because the applicant clearly indicated that her document was an appeal against the decision. Consequently, the appeal body, pursuant to Article 134 CAP, declared, by way of an order, the appeal inadmissible. Since such a decision is final and closes the proceedings in the case, it may be complained against at an administrative court, and thus the correctness of the given decision may be subject to judicial review.[25] Legal scholars and commentators hold a similar view. One must agree that any document challenging the decision under Article 127 (1a) CAP submitted through the authority that issued it, should: "be qualified as a complaint in court unless the duly informed party declares that the sole purpose of the action taken is to initiate an instance review."[26] If the appeal body makes an incorrect interpretation and recognizes the complaint as an appeal,

22 Judgement of the Voivodship Administrative Court in Lublin of 22 February 2024, III SA/Lu 595/23 [CBOSA database].

23 J.G. Firlus, *Selektywna redukcja administracyjnego toku instancji*, Palestra 2024, no. 10, p. 88.

24 Judgement of the Voivodship Administrative Court in Szczecin of 9 October 2019, II SA/Sz 365/19 [CBOSA database].

25 Judgement of the Voivodship Administrative Court in Poznań of 11 February 2025, III SA/Po 601/24 [CBOSA database].

26 J.G. Firlus, *Selektywna redukcja*…, p. 81.

it commits a gross violation of law, since it makes a substantive examination of the appeal against the final decision in the administrative course of the instance.[27]

In order for the administrative decision of the first instance authority to be a final ruling, it is not sufficient that it should be a decision that complies with the party's demands in their entirety. If the first instance authority fully complies with such demands, but does not refrain from providing reasoning for the decision (although it was entitled to do so under Article 107 (4)), the party will be entitled to an appeal and not a complaint with the administrative court.[28]

At this point, it should be noted that challengeability at an administrative court of a decision issued by the first instance authority does not apply when all parties have renounced their right of appeal. In such a scenario, an appeal at a court is inadmissible,[29] because, in the light of Article 127a (2) CAP, on the date of service to the public administration of a statement on the waiver of the right to appeal by the last party to the proceedings, the decision becomes not only final, but also non-appealable. Naturally, since only the party who is entitled to lodge an appeal may waive this right, it is inadmissible that the effects of this declaration should affect the procedural rights of parties who have not made such a declaration.[30]

The third exception under the subjective criterion is a situation when the complaint against the decision of the first instance authority is filed by one of the entities with a special status, enumerated in Article 52 (1) PBAC. Under this provision, a complaint may be lodged after appeal measures have been exhausted if they served the complaintant in proceedings before the competent authority, unless the complaint is lodged by the prosecutor, the Commissioner for Human Rights or the Ombudsman for Children.[31] As legal scholars and commentators assume, compliance with the requirement that the prosecutor (and other entities stipulated in this act[32]) should lodge a complaint with the administrative court regarding having to exhaust the course of the administrative instance and that these entities must observe the time limit for

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27 Judgement of the Voivodship Administrative Court in Łódź of 8 July 2022, III SA/Łd 122/24 [CBOSA database].

28 A. Golęba, in: *Kodeks postępowania administracyjnego. Komentarz*, ed. H. Knysiak-Sudyka, Warszawa 2023, p. 933.

29 Z. Kmieciak, in: *Kodeks postępowania administracyjnego. Komentarz*, eds. J. Wegner, M. Wojtuń, Z. Kmieciak, Warszawa 2023, p. 770.

30 Judgement of the Supreme Administrative Court of 22 March 2022, III OSK 923/21 [CBOSA database].

31 These entities have a formal standing to lodge a complaint, as opposed to the complainants who base their legitimacy on the legal interest, that is, those who have a substantive legitimacy. M. Jagielska, A. Wiktorowska, P. Wajda, in: *Prawo o postępowaniu przed sądami…*, eds. R. Hauser, M. Wierzbowski, Commentary on Article 50.

32 A. Kabat, in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. B. Dauter, M. Niezgódka-Medek, A. Kabat, Warszawa 2024, p. 229.

lodging a complaint, depends on whether or not they have previously participated in administrative proceedings in the capacity of a party. In this respect, reference should be made to the Resolution of 7 judges of the Supreme Administrative Court of 10 April 2006, I OPS 6/05, according to which the obligation to exhaust appeal measures in administrative proceedings before bringing a complaint against the administrative decision referred to […] currently in Article 52 (1) PBAC applies to the prosecutor who took part in administrative proceedings. It should therefore be noted that excluding the public prosecutor from the condition of admissibility of the complaint through exhaustion of appeal measures and establishment of a longer time limit for filing the complaint only applies if the public prosecutor did not participate in the administrative proceedings as a party. Pursuant to Article 188 CAP, the prosecutor enjoys the rights of the party.

A fourth group of cases where an appeal against an administrative decision to an administrative court does not have to be preceded by exhaustion of appeal measures comprises exceptions stipulated in special rules. For instance, under Article 6 (4) of the Act of 14 October 1994 on self-governing boards of appeal,[33] a decision to dismiss the president of the self-governing body, together with reasoning, shall be served on the person concerned. This dismissal decision may be complained against at the administrative court within 14 days of its service. The lodging of the complaint suspends the dismissal. A similar solution concerns an appeal at the court against the decision to dismiss the president of a regional chamber of audit (Article 16a (3) of the Act of 7 October 1992 on regional chambers of audit).[34] It should be noted that in both of these cases the laws explicitly exclude the application of Article 52 PBAC (cf. Article 6 (5) of the Act on self-governing boards of appeal and Article 16a (4) of the Act on regional chambers of audit).

Appeals at the administrative court without the need to lodge an appeal or a request to have the case case re-examined are also allowed for certain decisions of the Polish Financial Supervision Authority (e.g. Article 6c (6); Article 141a (5); Article 144 (5) and Article 147 (3) of the Banking Law Act of 29 August 1997[35]) or for specific decisions on objections to entry on the Minister of Justice's list of attorneys-at-law or advocates or trainee attorneys-at-law or trainee advocates in matters regulated by the acts of professional self-governing bodies (e.g. Article 31^2 (2) of the Act of 6 July 1982 on attorneys-at-law[36] or Article 69a (2) of the Act on advocates[37]). The

33 Consolidated text: Journal of Laws 2018 item 570.
34 Consolidated text: Journal of Laws 2025 item 7.
35 Consolidated text: Journal of Laws 2024 item 1646.
36 Consolidated text: Journal of Laws 2024 item 499.
37 Consolidated text: Journal of Laws 2024 item 1564.

decision of the Minister of Justice may be appealed at the administrative court by the person concerned or by the self-governing body within 30 days from the date of service of the decision.

An even more modified situation is presented in provisions indicating that decisions of certain bodies given at first instance are not subject to an appeal at a higher level authority, nor even to a complaint with an administrative court, but that that they are subject to appeal, objection or litigation before a common court. For example, pursuant to Article 477[9] CAP and Article 83 (2) of the Act of 13 October 1998 on the social insurance system, decisions of the Social Insurance Institution may be appealed at the competent court within the time limit and under the terms set out in the Act of 17 November 1964 – Code of Civil Procedure.[38] Another example are hybrid proceedings, where at first instance administrative decisions are issued by specialised public administration bodies, such as the President of the Office of Competition and Consumer Protection, the President of the Energy Regulatory Office, the President of the Office of Electronic Communications, the President of the Rail Transport Office**,** or regulatory bodies in matters related to the regulation of the water and sewage market, while appeals are examined by the Regional Court in Warsaw – the Competition and Consumer Protection Court (cf. Article 479[28], Article 479[46], Article 479[57], Article 479[68], Article 479[79] CAP).

It should be noted that in the above cases, it was the legislator who decided *ex lege* that the administrative instance does not stipulate appeal measures, but immediately a complaint with the administrative court.

Conclusions

The analysis of the provisions that allow lodging of a complaint with an administrative court against a decision of a first instance body shows that the Polish legal order features a number of exceptions to the principle of two-instance administrative proceedings. In assessing the *ratio legis* of waiving the obligation to exhaust appeal measures in respect of a complaint against an administrative decision, the following observations should be raised.

The analysis clearly shows that the most questionable exception, according to legal commentary, is the amended Article 127 (1a) CAP, pursuant to which: "The decision issued at first instance, for which the authority has resigned from providing

38 Consolidated text: Journal of Laws 2024 item 1568.

reasoning because it complied with the demands of the party in their entirety shall be final."[39] As indicated in the explanatory memorandum to the draft act: "It should be borne in mind, however, that where the authority issuing the decision fully complies with the demands of the party the latter has no interest in bringing an appeal against such a decision. At the same time – importantly – the party will still have the opportunity to bring about the annulment of such a decision through judicial review of administration. Thanks to this amendment, in order for this decision to become final, the party receiving a decision complying with their demands will not have to wait until the deadline for appeal has expired or take additional steps to effectively declare the waiver of the right to appeal."[40]

The above-mentioned reasons for the introduced regulation seem to be rational, because it is difficult to argue with a situation in which one party obtains a decision fully consistent with their demands and expectations, and therefore would like to be able to immediately proceed with the exercise of the right obtained. At the same time, however, this solution means that in a number of situations the standards resulting from the principle of two-instance proceedings and of ensuring full procedural justice to all parties may be violated.

In the course of the works on the amendment to the CAP, the National Representation of Self-Governing Boards of Appeal (KRSKO) held rightly that the omission of a party to the proceedings, while complying with the demands of the parties involved in the proceedings in full and refraining from providing reasoning for the decision,[41] will deprive that party of the possibility of appeal. Therefore, the only measure left for them will be to submit a request for resumption of proceedings. However, it should be remembered that each extraordinary procedure is subject to formal restrictions, such as the need to keep the time limit for submitting such a request (one month after learning about the decision – Article 148 (2) CAP). It may mean that such a request is not examined in terms of its essence for formal reasons. Administrative authorities, for various reasons, often find it difficult to correctly determine the circle of persons who have the status of party to administrative proceedings. For this reason, there should be *de lege ferenda* suggestions that

39 Act of 26 January 2023 amending acts in order to eliminate unnecessary administrative and legal barriers, Journal of Laws item 803.

40 Explanatory memorandum to the draft act amending acts in order to eliminate unnecessary administrative and legal barriers, The Polish Sejm of the ninth term, Paper no. 2628, p. 18, https://orka.sejm.gov.pl/Druki9ka.nsf/0/684DD198D054FBB9C12588CA00371F60/%24File/2628.pdf [access: 25.03.2025].

41 Letter of the National Representation of Local Self-Governing Boards of Appeal of 7 November 2022, KRS/42/052/22, p. 3, https://orka.sejm.gov.pl/Druki9ka.nsf/0/4FDB5D77AB0FC999C1258904004BF4CE/%24File/2628-005.pdf [access: 25.03.2025].

this provision be repealed. KRSKO also pointed to the issue of the lack of equality between the scope of review of the decision by the appeal body and the limits of judicial review of administration.[42]

Legal scholars rightly point out that an argument to leave the option to bring actions to a court compensates for the deprivation of a party's right of appeal. It should be borne in mind that administrative courts exercise review over the activities of public administration solely on the basis of the criterion of legality, without addressing any other criteria. However, the appeal body cannot limit itself to examining the legality of a decision contested by a party, but it should also examine that decision from the point of view of the fairness and purpose of the decision. Therefore, we are dealing with no identical standards of legal protection[43] in this situation. In its judgement of 11 May 2004, K 4/03, the Constitutional Tribunal held that "an interpretation of the right referred to in Article 78 of the Constitution which would lead to recognition that a complaint with the administrative court is a "materially equivalent" correlative of an appeal against a decision of a first-instance authority" must also be firmly rejected.

This will be particularly evident in situations where the authority enjoys administrative discretion. Judicial review of discretionary decisions is restricted, since administrative courts can only inspect the compliance of such decisions with statutory criteria setting limits for this discretion. Administrative discretion means granting a certain discretionary power to a public authority by substantive law. Such a range of discretionary power does not prove, however, acceptance of unrestricted freedom and arbitrariness of action.[44] Administrative discretion means that the public administration authority has the power to issue a positive or negative decision for the party. However, this choice must be preceded by the correct finding of facts and inference based on the principles of logical reasoning and life experience.[45] The decision-making of the authority exercising its power to issue a decision under administrative discretion is limited by general principles of administrative procedure, in particular the criterion of taking into account the public interest and the legitimate interest of citizens, set out in Article 7 CAP. Therefore, a discretionary

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42 Ibidem, p. 4.

43 H. Knysiak-Sudyka, *Ograniczenia prawa do wniesienia odwołania – czy ustawodawca zmierza w kierunku względności zasady dwuinstancyjności postępowania administracyjnego?*, in: *Uczniowie jednego Mistrza. Klasyczne instytucje postępowania administracyjnego w dobie przemian. Księga jubileuszowa Profesorów Wojciecha Chróścielewskiego i Jana Pawła Tarno*, ed. A. Krawczyk, Łódź 2024, p. 295.

44 Judgement of the Supreme Administrative Court of 21 January 2014, II GSK 1632/12 [CBOSA database].

45 Judgement of the Supreme Administrative Court of 27 September 2013, III OSK 442/13 [CBOSA database].

decision should properly balance the interests of the opposing parties – the interest of the citizen with the public interest, while being guided by the proportionality of taking into account both types of interests.[46]

Therefore, some legal scholars and commentators believe that Article 127 (1a) is unconstitutional, because the right to appeal a non-final administrative decision is a constitutional right of man, and its general limitation does not pass the test of proportionality.[47]

Next, it should be noted that the provision of Article 54 (2a) PBAC does not stipulate whether the reasoning drawn up as a result of the submission of the complaint should be served on the party.[48] This means that the party may only read the reasoning for such a decision by looking at the case file in the seat of the authority or in the administrative court, which will not necessarily be located in the place of the seat of the authority issuing the decision, let alone the place of residence or seat of the party. Another option provides for accessing the case file kept in electronic form (Article 12a (5) PBAC) via the Administrative Courts Acts Portal, which may be difficult for persons not using electronic means of communication. Therefore, a *de lege ferenda* postulate should be raised that while maintaining the institution in question, Article 54 (2a) PBAC should be amended to include a provision requiring that the authority serve the party with reasoning for its decision.

Another detrimental aspect of adding Article 127 (1a) CAP is the introduction of additional confusion, which will most affect the parties of administrative proceedings themselves. In the event that, due to the incorrect classification by the first instance authority of its decision as final and inclusion in it an incorrect instruction that the party has the right to lodge a complaint at a court, filing this complaint will result in its rejection. The party will then be able to submit a request for reinstating the deadline for lodging an appeal (Article 58 and Article 59 CAP), while the time limit for submitting this request (Article 58 (2) CAP) will start to run for the party from the date of service of the order rejecting the complaint.[49] Therefore, instead

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46 Judgement of the Supreme Administrative Court of 22 June 2012, III OSK 182/12 [CBOSA database].

47 A. Wróbel, in: *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, eds. M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, 2025 [LEX database], Commentary to Article 127, thesis 3; M. Szałęga, *Odstąpienie od uzasadnienia decyzji przez organ administracyjny z powodu uwzględnienia w całości żądania strony jako przejaw ograniczenia prawa do odwołania*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5, p. 51.

48 I. Fisz, K. Rokicka-Murszewska, *Ostateczność decyzji, od której uzasadnienia organ odstąpił z powodu uwzględnienia w całości żądania strony – uwagi na tle nowego art. 127 § 1a Kodeksu postępowania administracyjnego*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5, p. 39.

49 Order of the Voivodship Administrative Court in Gorzów Wielkopolski of 24 November 2024, II SA/Go 431/24 [CBOSA database].

of speeding up the whole process of obtaining a final and non-appealable decision, the introduced amendment may not only fail to achieve the assumed effect in some cases, but also result in an extension of the administrative procedure due to the premature launch of the judicial review procedure.

The financial aspect cannot be overlooked in this analysis either. Submission of a complaint with the administrative court requires the payment of a fee and failing to do so causes the complaint with be rejected (Article 220 (3) PBAC). In turn, administrative proceedings are generally cost-free when it comes to the mere lodging of an appeal.

To sum up, it must be stated that any provision allowing an appeal against a decision of a first-instance authority at the administrative court without the need to exhaust the remedies available to the party must be interpreted strictly (*exceptiones non sunt extendendae*).

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Bibliography

Adamiak B., Borkowski J., *Kodeks postępowania administracyjnego. Komentarz, rozdział 10. Odwołania*, 19th ed., Warszawa 2024 [Legalis database].

Bogusz M., *Zaskarżenie decyzji administracyjnej do Naczelnego Sądu Administracyjnego*, Warszawa 1997.

Firlus J.G., *Selektywna redukcja administracyjnego toku instancji*, Palestra 2024, no. 10, DOI: 10.54383/0031-0344.2024.10.7.

Fisz I., Rokicka-Murszewska K., *Ostateczność decyzji, od której uzasadnienia organ odstąpił z powodu uwzględnienia w całości żądania strony – uwagi na tle nowego art. 127 § 1a Kodeksu postępowania administracyjnego*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5.

Golęba A., in: *Kodeks postępowania administracyjnego. Komentarz*, ed. H. Knysiak-Sudyka, Warszawa 2023.

Jagielska M., Wiktorowska A., Wajda P., in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. R. Hauser, M. Wierzbowski [Legalis database], Commentary on Article 50.

Jagielska M., Wiktorowska A., Wajda P., in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. R. Hauser, M. Wierzbowski, 8th ed., Warszawa 2023 [Legalis database], Commentary on Article 52.

Kabat A., in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, eds. B. Dauter, M. Niezgódka-Medek, A. Kabat, Warszawa 2024.

Kledzik P., *Prawne uwarunkowania stwierdzenia nieważności decyzji w ogólnym postępowaniu administracyjnym*, Wrocław 2018.

Kmieciak Z., in: *Kodeks postępowania administracyjnego. Komentarz*, eds. J. Wegner, M. Wojtuń, Z. Kmieciak, Warszawa 2023.

Knysiak-Sudyka H., *Ograniczenia prawa do wniesienia odwołania – czy ustawodawca zmierza w kierunku względności zasady dwuinstancyjności postępowania administracyjnego?*, in: *Uczniowie jednego Mistrza. Klasyczne instytucje postępowania administracyjnego w dobie przemian. Księga jubileuszowa Profesorów Wojciecha Chróścielewskiego i Jana Pawła Tarno*, ed. A. Krawczyk, Łódź 2024.

Szałęga M., *Odstąpienie od uzasadnienia decyzji przez organ administracyjny z powodu uwzględnienia w całości żądania strony jako przejaw ograniczenia prawa do odwołania*, Zeszyty Naukowe Sądownictwa Administracyjnego 2024, no. 5.

Tarno J., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2004.

Wróbel A., in: *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*, eds. M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel, 2025 [LEX database], Commentary on Article 127.

Materiały i glosy /
Materials and commentaries

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Political aspects of *vicesima hereditatum*

Polityczne aspekty *vicesima hereditatum*
Политические аспекты *vicesima hereditatum*
Політичні аспекти *vicessima hereditatum*

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Abstract: The aim of the article is to analyse the *vicesima hereditatum*, a five-percent inheritance tax introduced during the Principate, whose primary purpose was to increase fiscal revenues in the Roman state after a period of crises. The article presents the origins, scope of application, and significance of this levy within the tax system of the Roman Empire. The study applies a historical-dogmatic method, referring to legal and literary sources from the era. The results of the analysis indicate that this tax had a universal character, making it one of the first examples of centralised fiscal policy in Europe. Revenues from the *vicesima hereditatum* supported the functioning of the state, including the maintenance of the army, administration, and public investments. At the same time, the introduction of this levy revealed the political dimension of Augustus' reforms: it served to consolidate his power and weaken the traditional elites, which led to social tensions. In a long-term perspective, the *vicesima hereditatum* contributed to strengthening the institution of the emperorship as the main holder of public authority and financial resources. This reform marked a turning point in the history of Roman tax law and fiscal policy, setting the course for future actions of the imperial administration.

Keywords: heritage, heir, succession, roman law, tax, *vicesima hereditatum*

Streszczenie: Celem artykułu jest analiza *vicesima hereditatum*, pięcioprocentowego podatku spadkowego wprowadzonego w czasach pryncypatu, którego głównym założeniem było zwiększenie wpływów fiskalnych w państwie rzymskim po okresie kryzysów. W artykule przedstawiona została geneza, zakres obowiązywania daniny, a także jej znaczenie w systemie podatkowym Cesarstwa Rzymskiego. W badaniu zastosowano metodę historyczno-dogmatyczną, odwołując się do źródeł prawniczych i literackich z epoki. Wyniki analizy wskazują, że podatek ten miał charakter powszechny, co czyniło go jednym z pierwszych przykładów scentralizowanej polityki fiskalnej w Europie. Dochody z *vicesima hereditatum* wspierały funkcjonowanie państwa, w tym utrzymanie armii, administracji oraz inwestycji publicznych. Jednocześnie wprowadzenie daniny ujawniło aspekt polityczny reform Augusta: służyła ona konsolidacji jego władzy oraz osłabieniu tradycyjnych elit, co prowadziło do napięć społecznych. Perspektywicznie *vicesima hereditatum* przyczyniła się do wzmocnienia instytucji cesarstwa jako głównego dysponenta władzy publicznej i środków finansowych. Reforma ta stanowiła punkt zwrotny w dziejach prawa podatkowego i polityki fiskalnej Rzymu, wyznaczając kierunek dalszych działań administracji cesarskiej.

Słowa kluczowe: dziedziczenie, dziedzic, spadek, prawo rzymskie, podatek, *vicesima hereditatum*

Резюме: Целью статьи является анализ *vicesima hereditatum*, пятипроцентного налога на наследство, введенного в эпоху принципата, основной целью которого было увеличение налоговых поступлений в римском государстве после кризисного периода. В статье представлены история возникновения, сфера действия налога, а также его значение в налоговой системе Римской империи. В исследовании использовался историко-догматический метод с использованием юридических и литературных источников той эпохи. Результаты анализа показывают, что этот налог носил всеобщий характер, что делало его одним из первых примеров централизованной фискальной политики в Европе. Доходы от *vicesima*

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hereditatum поддерживали функционирование государства, в том числе содержание армии, администрации и государственные инвестиции. В то же время введение данного налога выявило политический аспект реформ Августа: он служил укреплению его власти и ослаблению традиционных элит, что приводило к социальным противоречиям. В перспективе *vicesima hereditatum* способствовал укреплению института империи как главного распорядителя государственной власти и финансовых средств. Эта реформа стала поворотным моментом в истории налогового права и фискальной политики Рима, определив направление дальнейших действий римской администрации.

Ключевые слова: наследование, наследник, наследство, римское право, налог, *vicesima hereditatum*

Анотація: Метою цієї статті є аналіз *vicesima hereditatum* – п'ятивідсоткового податку на спадщину, запровадженого в період принципату, основною метою якого було збільшення державних податкових надходжень після періоду економічних і політичних криз. У статті розглянуто генезу, правову природу та сферу застосування цього податку, а також визначено його місце в системі оподаткування Римської імперії. У дослідженні застосовано історико-правовий (історико-догматичний) метод із посиланням на нормативні й літературні джерела того часу. Результати аналізу свідчать, що *vicesima hereditatum* мала загальнообов'язковий характер, що робило її одним із перших прикладів централізованої фіскальної політики у Європі. Надходження від цього податку забезпечували функціонування державного апарату, зокрема утримання армії, адміністрації та реалізацію публічних інвестиційних програм. Водночас його запровадження мало виразний політичний вимір: воно спрямовувалося на консолідацію влади Августа та послаблення позицій традиційних сенаторських еліт, що, у свою чергу, зумовлювало соціальні напруження. У ширшій перспективі *vicesima hereditatum* сприяла зміцненню інституту імператорської влади як головного розпорядника державних фінансів. Отже, запровадження цього податку стало важливим етапом еволюції податкового права та фіскальної політики Римської держави, визначивши подальший напрям розвитку імператорської адміністрації.

Ключові слова: спадкування, спадкоємець, спадщина, римське право, податок, *vicesima hereditatum*

Introduction

Vicesima hereditatum was a 5% inheritance tax that was part of the larger fiscal policy of the Roman Empire. Although the term is commonly associated with the reign of Emperor Vespasian, the tax was actually introduced by Emperor Octavian Augustus in 6 AD in the *Lex Iulia de vicesima hereditatum*.[1] As part of a broad fiscal

[1] The original text of the law has not survived to the present day, but commentaries remain (D. 2.15.13; D. 11.7.37; D. 28.1.7; D. 35.2.68; D. 50.16.154); in addition, see S.J. De Laet, *Note sur l'organisation et la nature juridique de la « vigesima hereditatium »*, L'Antiquité Classique 1947, no. 1 (16), pp. 29–36; M. Kuryłowicz, *Vicesima hereditatum. Z historii podatku od spadków*, in: *W kręgu prawa podatkowego i finansów publicznych. Księga dedykowana Profesorowi Cezaremu Kosikowskiemu w 40-lecie pracy naukowej*, ed. H. Domański et al., Lublin 2005, pp. 217–223; R. Świrgoń-Skok, *Organizacja służb skarbowych w sprawach podatku od spadków w państwie rzymskim*, Studia Prawnoustrojowe 2010, no. 12, pp. 243–253; F. Longchamps de Bérier, *Law of Succession. Roman Legal Framework and Comparative Law Perspective*, Warszawa 2011, pp. 146–148; A. Pikulska-Radomska, *Fiscus non erubescit. O niektórych italskich podatkach rzymskiego pryncypatu*, Łódź 2013, pp. 60–80; G. Blicharz, *Udział państwa w spadku. Rzymska myśl prawna w perspektywie prawnoporównawczej*, Kraków 2016, pp. 29–117.

reform aimed at strengthening the state's finances after a period of uncertainty and crises, Vespasian, who took the reign in 69 AD after the fall of the Julian-Claudian dynasty, continued the fiscal reforms of his predecessors, giving the system a new organisation and efficiency. It was Vespasian who was responsible for restoring Rome's financial stability after the numerous crises of the preceding years, including the civil wars and the fall of Nero.

The *vicesima hereditatum* tax covered both land inheritances and other property transferred by inheritance and donation, including among Roman citizens and between the inhabitants of conquered territories. Its purpose was to meet the growing financial needs of the state, which were largely driven by the requirement to maintain the army, administration, and ambitious infrastructure plans.

Vespasian's reforms were also politically significant. The introduction of this tax was part of a broad centralisation of imperial power, which had the effect of further consolidating the emperor's position as the focal point of power. Thanks to the *vicesima hereditatum*, the emperor gained a stable income that allowed him to finance key state projects, such as the construction of new administrative and military structures. However, the tax was also a source of social tensions, especially among the aristocracy, who feared its impact on the traditional mechanisms of wealth transfer. As a result, the tax affected not only the fiscal system but also the power relations in Rome. The political ramifications of the introduction of the *vicesima hereditatum* show how this reform had long-term effects both on the stability of the state's finances and on the social and political structure of the Roman Empire. The reform made it possible not only to rebuild the imperial treasury, but also to strengthen its authority, which was crucial for the further development and maintenance of Rome's power. The analysis of historical sources and the political and economic context indicate that the introduction of the *vicesima hereditatum* tax was a direct result of the political and financial reforms of Emperor Octavian Augustus, continued and improved by Vespasian. Its primary objective was to permanently strengthen the state's revenues and ensure the stability of the imperial treasury, which, in the long term, contributed to consolidating central authority and maintaining the power of the Roman Empire.

1. Fiscal reforms and the development of the roman tax system

The reform of the financial sector introduced by Augustus, which was characterised by strong centralism, formed the foundation of early imperial fiscalism. A system emerged in which, formally, the Senate had control over the state's finances, however

in practice it was the ruler who controlled key elements of it through a central treasury, known as the *fiscus caesaris*. Initially, the emperor's private treasury became the central state treasury, fed mainly by revenues from Egypt and the imperial provinces.[2] The emperors took over an increasing proportion of public expenditure, including on the military and the upkeep of Rome, so that the fiscus gradually replaced the *aerarium populi Romani*,[3] coming from the provinces, where the senators retained control of the *aerarium*. However, more effective collection of taxes from the provinces was made possible by censuses, inventories and extensive surveying operations.[4]

The management of the fiscus was entrusted to an imperial liberator (*rationali*), independent of the social class system, which underlined the momentousness of the reform carried out. After the reign of Tiberius, however, the *fiscus* became the emperor's personal fund, comprising financial reserves, fiscal receipts, and the emperor's private and public lands.

Beginning with the reign of Septimius Severus, the central power in Rome was further strengthened, and the fiscus took over all state revenues, separating them from the private property of the emperor, while during the reign of Hadrian the rationalis was replaced by a member of the ecclesiastical state. Increased state

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2 F. Millar, *The Fiscus in the First Two Centuries*, The Journal of Roman Studies 1963, vol. 53, part 1–2, pp. 29–42.

3 In Rome, the aerarium populi Romani acted as a repository for official documents throughout the republic. It was a place where magistrates, senators and citizens could obtain public economic information, thus reducing the risk of information asymmetry. The management of the aerarium was the main task of the *quaestores urbani*, who acted as the chief accountants of the city of Rome. One of their key responsibilities was to oversee public income and expenditure, making them the controllers in the Republic. Municipal quaestors were also responsible for auditing the accounts of officials at the end of their term of office, both in Rome and in the provinces of the Empire. Just as the public revenue went into the aerarium, so the funds for any payments made by the state came from this treasury. It was therefore expected that all expenditure would be controlled and recorded by the municipal quaestors. All official documents created by the republican administration (senate, magistrates, assemblies, courts, etc.) were kept in the aerarium, and the municipal quaestors were responsible for ensuring their accuracy and keeping them as public notaries. In fact, it was the deposit of a document in the aerarium that gave it the status of a public document. Among these documents were senatorial decrees, lists of allies and friends of the Roman people, censuses of the population, minutes of magistrates, public contracts, lists of debtors and creditors of the state, certificates of ownership, lists of citizens with tax obligations, minutes of comitia, minutes of trials for fines or rewards for informers, etc.; see A. Díaz Fernández, F. Pina Polo, *Managing Economic Public Information in Rome: The Aerarium as Central Archive of the Roman Republic*, in: *Managing Economic Public Information in Rome*, eds. C. Rosillo-López, M. García Morcillo, Cham 2020, pp. 43–59.

4 A. Pikulska-Radomska, *Uwagi o rzymskim fiskalizmie epoki wczesnego cesarstwa*, Studia Iuridica Toruniensia 2012, vol. 10, p. 40; F.T. Hinrichs, *Die Geschichte der gromatischen Institutionen: Untersuchungen zu Landverteilung, Landvermessung, Bodenverwaltung und Bodenrecht im römischen Reich*, Wiesbaden 1974, pp. 136–146.

expenditure, mainly due to the creation of a permanent professional army,[5] required new sources of revenue. Although Rome's fiscal privileges were maintained for a period, the process of taxing citizens, already begun under Augustus, did not lose momentum. New developments included the introduction of a new *vectigalium* or the extension of the existing collection system, as in the case of the *portorium*.[6]

The Roman state also benefited from the experience of Egypt, where similar taxes already existed. Among the taxes brought to Rome under the influence of Egyptian designs[7] were the *vicesima hereditatum*, the *centesima rerum venalium* and the *quinta et vicesima venalium mancipiorum*. All these taxes were part of the system of *publica vectigalia*.[8] Soon after Augustus created in 6 AD[9] a new military treasury (*aerarium militare*) to provide funds for veterans' pensions, it became apparent that the available funds were insufficient. To solve this problem, the lex *Julia de vicesima hereditatum* was introduced, which imposed a 5% tax on the value of inheritances and legacies, charging only Roman citizens. This tax generated significant and stable

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5 In detail to the issues related to the *vicesima heredistatis*, which were supposed to provide funds for the conduct is discussed in R. Świrgoń-Skok, *Organizacja służb skarbowych*…, passim.

6 A portorium is a type of transport tax that was introduced to generate revenue; it included charges on goods crossing the state borders, introduced at ports, major commercial centres and on important roads; its rate was around 5% of the value of the goods and operating throughout the Republican era, becoming a key tax during the principate period, for more on this see R. Cagnat, *Etude historique sur les impôts indirects chez les Romains jusqu'aux invasions des barbares*, Paris 1882, repr. Roma 1966, pp. 1–152; S.J. De Laet, *Portorium. Etude sur l'organisation douanière chez les Romains, surtout à l'époque du Haut-Empire*, Bruggie 1949; A. Pikulska-Radomska, *Portorium w Italii epoki republikańskiej*, Acta Universitatis Wratislaviensis no. 3063. Prawo 2008, vol. 305, pp. 263–269.

7 App., Bel. civ., 2,154; R. Cagnat, *Etude historique*…, p. 227; J. Marquardt, *Organisation fi nancière de l'Empire romain*, vol. 2, Paris 1889, pp. 354.

8 D. 50.16.17.

9 The idea of taxing inheritance in ancient Rome appeared relatively earlier than the law of 6 AD introduced by Augustus, for its origins date back to the earlier period of the republic. It was probably introduced by means of an edict of 40 BC. The taxpayer was to pay a tax on what he received in his will, that is, on testamentary inheritances and legacies. It was a one-off tax to help end the Perusine War, although the exact date of its introduction is controversial in the literature. Nevertheless, the context of the introduction of this tax in relation to the war seems to be justified. Additionally, in the same year the Lex Falcidia was enacted, which encouraged testamentary heirs to accept inheritances, even if they were encumbered by large bequests. It can be assumed that the taxation of inheritances and bequests was intended to raise war funds. The reaction of Roman society to such a tax was negative, indicating public dissatisfaction with the state interfering with inheritance property. Until the end of the republic, therefore, the inheritance tax was an exceptional solution, used sporadically, mainly in connection with the financial needs of warfare. A few decades later, the idea of taxing inheritance returned when, under the consulship of Emilius Lepidus and Lucius Arruntius, Octavian Augustus effectively introduced a tax on inheritances and legacies (*vicesima hereditatum*). This tax was imposed on Roman citizens by Augustus as part of an effort to equalise fiscal obligations between Roman citizens and provincial residents.

revenue for the fisc, resulting in the realisation that Emperor Caracalla's decision to grant citizenship to all free inhabitants of the empire in 212 AD was also motivated by fiscal considerations.[10]

Augustus, as mentioned above, in introducing the inheritance tax, probably modelled himself on the already existing tax system in Egypt during the reign of the Ptolemies, where there was an inheritance tax, and on the Roman tax on liberties (*vicesima libertatis*) and duties (*portorium*). In addition, Augustus justified the introduction of this tax as an implementation of Julius Caesar's idea:

D. 1.2.2.44 (*Pomponius libro S. enchiridii*): […] *is fuit caesari familiarissimus et libros de iure civili plurimos et qui omnem partem operis fundarent reliquit. nam de legibus vicensimae primus conscribit* […].

The above passage by Pomponius describes the jurist Aulus Ofilius, a friend of Julius Caesar's who left numerous works. It was Ophelonius who was the first to write about laws mentioning a 5% tax. The passage presented here suggests that Julius Caesar may have been planning the introduction of such a tax, and that an inheritance tax existed in his time.[11] Given his position as princeps, Octavian Augustus pursued the idea of introducing a tax on inheritances and bequests, which consequently provided revenue sustainability for the treasury. Cassius Dio points out that senators preferred to pay any tax other than the 5% on inheritances, despite the fact that they had previously been keen to repeal the tax:

Cass. Dio 56.28(6): καταμαθὼν δὲ ἐξ αὐτῶν πάντα μᾶλλον ἢ ἐκεῖνο ἑτοίμους σφᾶς ὑπομεῖναι ὄντας, ἐπί τε τοὺς ἀγροὺς καὶ ἐπὶ τὰς οἰκίας τὴν συντέλειανἤγαγε, καὶ παραχρῆμα μηδὲν εἰπών, μήθ᾽ ὅσον μήθ᾽ ὅπως αὐτὸδώσουσιν, ἔπεμψεν ἄλλους ἄλλῃ τά τε τῶν ἰδιωτῶν καὶ 1 τὰ τῶν πόλεωνκτήματα ἀπογραψομένους, ἵν᾽ ὡς καὶ μειζόνως ζημιωθησόμενοι δείσωσικαὶ τὴν εἰκοστὴν τελεῖν ἀνθέλωνται. ὃ καὶ ἐγένετο.[12]

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10 Cass. Dio 77(78).9.5; J. Mélèze-Modrzejewski, *L'Édit de Laracalla de 212: la mesure de l'universalisme romain*, in: idem, *Droit et justice dans le monde grec et hellenistique*, Warszawa 2011, pp. 475–496.

11 See R. Świrgoń-Skok, *Wpływ wojen na rzymskie ustawodawstwo odnośnie do vicesima hereditatium i caducum*, Studia Iuridica Lublinensia 2019, vol. 28, no. 3, pp. 101–116.

12 L. Cassius Dio *Cocceianus, Ρωμαϊκή ιστορία (Historiae romanae)*, v. 56, Chapter 28.6, in: E. Cary, H.B. Foster, *Dio's Roman History. Cassius Dio Cocceianus*, vol. 7, London–New York 1955, p. 64.

The senators gave up further opposition when Augustus threatened to introduce a wealth tax for Roman citizens and sent officials to take an inventory of the estates and land owned by the senators. In spite of these actions, they agreed to maintain the inheritance tax.

Previous taxes in force during the republic were of a one-off nature and were treated rather as loans from citizens to the state, so the establishment of an inheritance tax required proper justification and led to political conflicts. This was because, in principle, Roman citizens were exempt from taxation, and its imposition was seen as a violation of their rights. Meanwhile, new permanent taxes, including the inheritance tax, emerged with the beginning of the Empire. Faced with the rising cost of maintaining the empire, the inheritance tax may have been seen as the fairest way of providing a steady income to the military treasury.[13]

A precise analysis of the inheritance tax is hampered by the fact that the tax was not in operation at the time of Justinian, and only a few sources on the issue were included in the Justinian codification.[14] Inheritance tax is mentioned, among others, by Pliny the Younger in his Panegyric:[15]

Plin. Paneg. 37: *His Vicesima reperta est, tributum tolerabile et facile heredibus dumtaxat extraneis, domesticis grave.*

According to the above passage, inheritance tax was one twentieth (i.e. 5%) of the value of the inherited property or what was received by way of bequest. Furthermore, the law did not provide for any tax-free amount, but excluded inheritances of small value from its scope. The tax in question covered only Roman citizens living in Rome, Italy, and the provinces. During the principal period, the scope of those liable to pay the *vicesima hereditatum* was expanded as new groups of inhabitants of the Empire acquired Roman citizenship. Moreover, kinship exemptions did not apply to new citizens, as the rules for calculating degrees of kinship were only applied to former Roman citizens:[16]

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13 R. Świrgoń-Skok, *Wpływ wojen*…, pp. 101–116.

14 The place of the *vicesima hereditatum* was probably taken by the property tax from the time of Diocletian onwards. See *Suetonius de Caesaribus* 39.31.

15 The *vicesima hereditatum* is also referred to in the following source extracts: D. 1.2.2.44 (Pomponius); Gaius' *Institutes* (Gai. 3.125); *Codex Iustinianus* (C. 6.3.33 from 531); Pauli *Sententiae* (PS. 4.6.1; 4.6.3). In addition, the *vicesima hereditatum* is mentioned by non-legal sources, e.g. Cassius Dio (55.25) and Livy (41.29.54).

16 R. Świrgoń-Skok, *Wpływ wojen*…, pp. 101–116.

Plin. Paneg. 37: *Haec mansuetudo legis veteribus civibus servabatur: novi, seu per Latium in civitatem, seu beneficio principis venissent, nisi simul cognationis iura impetrassent, alienissimi habebantur, quibus coniunctissimi fuerant.*

Those who obtained Roman citizenship through imperial privileges were only able to enjoy kinship benefits during the reigns of the emperors Nerva and Trajan. However, subsequent emperors abolished these privileges granted to new citizens:

Plin. Paneg. 38: *Statim ergo muneri eius liberalitas tua adstruxit, ut, quemadmodum in patris filius, sic in hereditate filii pater esset immunis, nec eodem momento, quo pater esse desisset, hoc quoque amitteret, quod fuisset.*

Plin. Paneg. 39: *Nec vero contentus primum cognationis gradum abstulisse Vicesimae, secundum quoque exemit, cavitque, ut in sororis bonis frater, et contra, in fratris soror, utque avus, avia, in neptis nepotisque, et invicem illi, servarentur immunes.*

In the first passage, Pliny referred in a very general way to inheritance between parents and children. In the next, however, he added that the inheritance tax was restricted to first-degree relatives, as well as to second-degree relatives such as brother, sister, grandfather, grandmother, granddaughter, and grandson. The above suggests that the closest cognate relatives (the so-called *decem personae*) were exempt from paying the *vicesima hereditatum*:[17]

Plin. Paneg. 39: *His quoque, quibus per Latium civitas Romana patuisset, idem indulsit, omnibusque inter se cognationum iura commisit, simul et pariter, et more naturae; quae priores principes a singulis rogari gestiebant, non tam praestandi animo, quam negandi.*

For the legitimacy of the tax imposed, it was irrelevant how a citizen obtained an inheritance or bequest. Regardless of whether the property was acquired under

[17] Cf. I. 3.9.3: […] *decem personis quas extraneo manumissori praeferebat (sunt autem decem personae hae: pater, mater, avus, avia, tam paterni quam materni, item filius, filia, nepos, neptis, tam ex filio quam ex filia, frater, soror, sive consanguinei sive uterini)*; Coll. 16.9.3; M. Kuryłowicz, *Vicesima hereditatum*…, p. 218; G. Wesener, *Vicesima hereditatium*, in: *Realencyclopädie der classischen Allerlumswissenschaft*, vol. 8A, Stuttgart 1958, p. 2472.

a will or as a result of a non-testamentary inheritance, the manner in which it was obtained did not affect the obligation to pay the tax. With regard to bequests encumbered by *vicesima hereditatum*, the testator sometimes indicated whether the bequest included a tax consideration or not. It is likely that each heir or coheir and each legatee paid the tax separately. It should be added that the heir could also deduct from the value of the inheritance the costs of the funeral and the average tombstone (*et si ita gratus heres volet, tota sepulcro, tota funeri serviet*), which may have indirectly influenced the amount of the bequest, also taking into account the *quarto falcidi*.[18]

During the reign of Emperor Hadrian, the rules governing the opening of wills were changed, and the procedure began to take place at the competent tax office (*statio vicesimae*), which in turn helped to speed up the deadline for payment of the *vicesima hereditatum*:

Paul. Sent. 3.5.14: *Sive falsum sive ruptum sive irritum dicatur esse testamentum, salva eorum disceptatione scriptus heres iure in possessionem mitti desiderat.*

Paul. Sent. 3.5.18: *In possessionem earum rerum, quas mortis tempore testator non possedit, heres scriptus, priusquam iure ordinario experiatur, improbe mitti desiderat.*

Hadrian regarded the inheritance tax as an effective tool to ensure steady and high revenue to the treasury. In order to expedite the payment of the inheritance tax, the heir could be brought into possession of the inherited property (*in possessionem mitti*) as long as the will was valid, even if it would later be challenged in an antitestamentary proceeding.[19]

In addition, the claim for payment of *vicesima hereditatum* was considered privileged:

Paul. Sent. 5.12.10: *Privilegium fisci est inter omnes creditores primum locum retinere.*

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18 Plin. Paneg. 40. Cf. D. 11.7.37 cf. 1 Macer.; M. Kuryłowicz, *Vicesima hereditatum*…, p. 219; R. Świrgoń-Skok, *Organizacja służb skarbowych*…, pp. 243–253; G. Wesener, *Vicesima hereditatum*, p. 2475.

19 This provision was abolished by Justinian in C. 6.33.3.

Paulus points out that the fiscus had a privilege (*privilegium fisci*) by virtue of which its claims had priority in enforcement proceedings over those of other entities.[20]

Emperor Caracalla, who was distinguished by efforts to raise new sources of revenue and introduce reforms in the monetary system, issued the Constitutio Antoniniana in 212, which significantly increased the number of people covered by the *vicesima hereditatum*.[21]

Cass. Dio 78.9(4): τῶν τε τελῶν τῶν τε ἄλλων ἃ καινὰ προσκατέδειξεν, καὶ τοῦ τῆς δεκάτης ἣν ἀντὶ τῆς εἰκοστῆς ὑπέρ τε τῶν ἀπελευθερουμένων καὶ ὑπὲρ τῶν καταλειπομένων τισὶ κλήρων καὶ δωρεᾶς ἐποίησε πάσης, τάς τε διαδοχὰς καὶ τὰ.[22]

Furthermore, Caracalla increased the amount of the tax in question to 10% of the value of the inherited estate. The crisis that hit the Empire in the third century led to interest in the inheritance tax, demonstrating its important budgetary significance. The tax reverted to the earlier rate (5%) and exclusions that had been in place during the reign of Macrinus.[23]

In Justinian law, the inheritance tax was repealed, but the provisions on the opening of wills, particularly in relation to private wills, were retained by Justinian:

C. 6.33.3: *Imperator Justinianus:* […] *quia et vicesima hereditatis a nostra recessit re publica* […].

In his constitution, the Emperor referred to the *vicesima hereditatum* as a tax that was no longer in force. It was most likely abolished by Diocletian and Constantine as part of the financial reforms carried out.[24]

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20 Cf. M. Kaser, *Das Römische Privatrecht*, vol. 1, München 1971, p. 734.

21 On Constitutio Antoniniana see M. Jaczynowska, *Historia starożytnego Rzymu*, Warszawa 1986, p. 313; eadem, *Dzieje Imperium Romanum*, Warszawa 1996, p. 337 ff.

22 L. Cassius Dio *Cocceianus, Ρωμαϊκή ιστορία (Historiae romanae)*, v. 78, Chapter 9.4–6, in: E. Cary, B.F. Herbert, W. Heinemann, *Dio's Roman History. Cassius Dio Cocceianus*, London–New York, 1914.

23 See Plin. Paneg. 38; Coll. 16.9.3; Cass. Dio. 77.9–78.12. Cf. M. Kuryłowicz, *Vicesima hereditatum*…, p. 218; G. Wesener, *Vicesima hereditatum*, p. 2472.

24 M. Cary, H. Scullard, *Dzieje Rzymu*, Warszawa 1992, p. 390 ff.

2. The political and financial significance of the *vicesima hereditatum*

The introduction of the *vicesima hereditatum* by Octavian Augustus was of significant political and fiscal importance to the Roman Empire. The tax, although initially met with resistance from the elite, became the cornerstone of the empire's financial system, enabling the emperor to fund his army and administration in a stable manner. Although later changes under Emperors Hadrian and Caracalla expanded the scope of the tax, its basic function as a fiscal tool remained unchanged for many years. The inheritance tax became one of the most essential elements of the fiscal policy of the Roman emperors, and its history shows how the imperial power used fiscal tools to strengthen its position and ensure the financial stability of the state.

The thesis adopted in this study assumed that the introduction of the *vicesima hereditatum* tax was a direct result of the political and financial reforms of Emperor Octavian Augustus, continued and improved by Vespasian, and that its primary aim was to permanently strengthen the state's revenues and ensure the stability of the imperial treasury, which, in the long term, was intended to contribute to the consolidation of central authority and the preservation of the power of the Roman Empire. The analysis of historical sources and the political and economic context confirms the validity of this thesis – the tax reform not only achieved its fiscal objective but also became an instrument for consolidating imperial power, providing the empire with lasting financial and political foundations for the following decades.

List of abbreviations – sources of law

C. – Justinian Code (*Codex Iustinianus*)
D. – Digesta of Justinian *(Digesta Iustiniani)*
Cass. Dio – Cassius Dio (*Cassius Dio*)
Paul. Sent. – Sentences of Paulus (*Sententiae Pauli*)
Plin. Paneg. – Panegyric of Pliny

Bibliography

Blicharz G., *Udział państwa w spadku. Rzymska myśl prawna w perspektywie prawnoporównawczej*, Kraków 2016.

Cagnat R., *Etude historique sur les impôts indirects chez les Romains jusqu'aux invasions des barbares*, Paris 1882, repr. Roma 1966.

Cary E., Foster H.B., Heinemann W., *Dio's Roman History. Cassius Dio Cocceianus*, London–New York 1914.

Cary E., Foster H.B., Heinemann W., *Dio's Roman History. Cassius Dio Cocceianus*, London–New York 1955.

Cary M., Scullard H., *Dzieje Rzymu*, Warszawa 1992.

De Laet S.J., *Note sur l'organisation et la nature juridique de la « vigesima hereditatium »*, L'Antiquité Classique 1947, no. 1 (16).

De Laet S.J., *Portorium. Etude sur l'organisation douanière chez les Romains, surtout à l'époque du Haut-Empire*, Bruggie 1949.

Díaz Fernández A., Pina Polo F., *Managing Economic Public Information in Rome: The Aerarium as Central Archive of the Roman Republic*, in: *Managing Economic Public Information in Rome*, eds. C. Rosillo-López, M. García Morcillo, Cham 2020.

Hinrichs F.T., *Die Geschichte der gromatischen Institutionen: Untersuchungen zu Landverteilung, Landvermessung, Bodenverwaltung und Bodenrecht im römischen Reich*, Wiesbaden 1974.

Jaczynowska M., *Dzieje Imperium Romanum*, Warszawa 1996.

Jaczynowska M., *Historia starożytnego Rzymu*, Warszawa 1986.

Kaser M., *Das Römische Privatrecht*, vol. 1, München 1971.

Kuryłowicz M., *Vicesima hereditatum. Z historii podatku od spadków*, w: *W kręgu prawa podatkowego i finansów publicznych. Księga dedykowana Profesorowi Cezaremu Kosikowskiemu w 40-lecie pracy naukowej*, ed. H. Domański et al., Lublin 2005.

Marquardt J., *Organisation fi nancière de l'Empire romain*, vol. 2, Paris 1889.

Mélèze-Modrzejewski J., *L'Édit de Laracalla de 212: la mesure de l'universalisme romain*, in: J. Mélèze-Modrzejewski, *Droit et justice dans le monde grec et héllenistique*, Warszawa 2011.

Millar F., *The Fiscus in the First Two Centuries*, The Journal of Roman Studies 1963, vol. 53, part 1–2.

Pikulska-Radomska A., *Fiscus non erubescit. O niektórych italskich podatkach rzymskiego pryncypatu*, Łódź 2013.

Pikulska-Radomska A., *Portorium w Italii epoki republikańskiej*, Acta Universitatis Wratislaviensis no. 3063. Prawo 2008, vol. 305.

Pikulska-Radomska A., *Uwagi o rzymskim fiskalizmie epoki wczesnego cesarstwa*, Studia Iuridica Toruniensia 2012, vol. 10.

Świrgoń-Skok R., *Organizacja służb skarbowych w sprawach podatku od spadków w państwie rzymskim*, Studia Prawnoustrojowe 2010, no. 12.

Świrgoń-Skok R., *Wpływ wojen na rzymskie ustawodawstwo odnośnie do vicesima hereditatium i caducum*, Studia Iuridica Lublinensia 2019, vol. 28, no. 3.

Wesener G., *Vicesima hereditatium*, in: *Realencyclopädie der classischen Allerlumswissenschaft*, vol. 8A, Stuttgart 1958.

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An approving commentary on the judgement of the Supreme Administrative Court of 16 January 2025, II FSK 501/22

Aprobująca glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 16 stycznia 2025 r., II FSK 501/22

Одобрительный комментарий к решению Высшего административного суда от 16 января 2025 г., II FSK 501/22

Апробаційний коментар до рішення Верховного адміністративного суду від 16 січня 2025 року, II FSK 501/22

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Abstract: The subject of this paper is an analysis of the relevance of tax law principles to the proper application of the income tax exemption of income of a church legal entity for religiously useful purposes. The Supreme Administrative Court upheld interpretation of the tax law that only entities directly involved in religious activities can benefit from this exemption. The article also addresses the problem of limiting aggressive tax optimisation involving church legal entities. The article points out the need to change the system of tax reliefs and preferences provided for religious associations. The ruling aims to reduce aggressive tax optimisation practices and ensure that tax exemptions are used for legitimate religious purposes, rather than for tax avoidance. This decision clarifies that only entities directly controlled by church legal entities are eligible for the exemption, reinforcing the importance of adhering to the true spirit of the law and preventing misuse. Finally, the ruling highlights the need for a deeper reflection on the systemic nature of tax exemptions for religious associations, suggesting that new tax solutions could be developed through bilateral agreements between the State and churches. This would align tax exemptions with modern tax principles.

Keywords: tax relief, donation, church charity and welfare activities, church legal entity, religious organisation

Streszczenie: Przedmiotem analizy niniejszej glosy jest zastosowanie zwolnienia z podatku dochodowego dla dochodów kościelnych osób prawnych przeznaczonych na cele religijnie użyteczne. Ponadto w opracowaniu poruszono problem ograniczenia agresywnej optymalizacji podatkowej związanej z podmiotami kościelnymi. NSA potwierdził, że zwolnienia podatkowe muszą być wykorzystywane wyłącznie do celów religijnych, a nie unikania opodatkowania. Dodatkowo NSA zaznaczył, że tylko podmioty religijne bezpośrednio zaangażowane mogą korzystać z tego zwolnienia, co podkreśla konieczność przestrzegania prawdziwego celu ustawy i zapobiegania jej nadużywaniu. W komentarzu wskazano na potrzebę głębszej refleksji nad systemem zwolnień podatkowych dla związków wyznaniowych, sugerując, że nowe rozwiązania podatkowe mogłyby zostać opracowane w ramach umów bilateralnych między państwem a związkami wyznaniowymi. Taki krok pozwoliłby lepiej dostosować zwolnienia podatkowe do współczesnych zasad prawa podatkowego.

Słowa kluczowe: ulga podatkowa, darowizna, kościelna działalność charytatywno-opiekuńcza, kościelna osoba prawna, optymalizacja podatkowa, związek wyznaniowy

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Резюме: Предметом анализа настоящего комментария является применение освобождения от подоходного налога для доходов церковных юридических лиц, предназначенных для религиозных целей, на основании решения Высшего административного суда от 16 января 2025 г., II FSK 501/22. Кроме того, в исследовании затронута проблема ограничения агрессивной налоговой оптимизации, связанной с церковными субъектами. Высший административный суд подтвердил, что налоговые льготы должны использоваться исключительно для религиозных целей, а не для уклонения от уплаты налогов. Кроме того, Высший административный суд отметил, что только непосредственно вовлеченные религиозные субъекты могут пользоваться этой льготой, что подчеркивает необходимость соблюдения истинной цели закона и предотвращения его злоупотребления. В комментарии указана необходимость более глубокого анализа системы налоговых льгот для религиозных объединений, при этом предлагается разработать новые налоговые решения в рамках двусторонних соглашений между государством и религиозными объединениями. Такой шаг позволил бы лучше адаптировать налоговые льготы к современным принципам налогового права.

Ключевые слова: налоговая льгота, дарение, благотворительная и опекунская деятельность церкви, церковное юридическое лицо, оптимизация налогообложения, религиозное объединение

Анотація: Предметом аналізу цього коментаря є застосування звільнення від податку на прибуток щодо доходів церковних юридичних осіб, призначених для релігійних цілей, на основі рішення Верховного адміністративного суду від 16 січня 2025 року, II FSK 501/22. Крім того, у дослідженні порушено проблему обмеження агресивної податкової оптимізації, пов'язаної з церковними організаціями. ВАС підтвердив, що податкові пільги повинні застосовуватися виключно для релігійних цілей, а не для уникнення оподаткування. Крім того, Верховний адміністративний суд зазначив, що тільки безпосередньо залучені релігійні організації можуть скористатися цим звільненням, що підкреслює необхідність дотримання справжньої мети закону та запобігання його зловживанню. У коментарі вказано на необхідність глибшого аналізу системи податкових пільг для релігійних об'єднань, зокрема припускається, що нові податкові рішення могли б бути розроблені в рамках двосторонніх угод між державою та релігійними об'єднаннями. Такий крок дозволив би краще адаптувати податкові пільги до сучасних принципів податкового права.

Ключові слова: податкова пільга, пожертва, благодійна та соціально-опікунська діяльність Церкви, церковна юридична особа, податкова оптимізація, релігійна організація

Introduction

It is generally accepted that the main source of financing for religious denominations in Poland is the generosity of the faithful.[1] The legal basis for receiving donations by church legal entities is established by the provisions of the Act of 17 May 1989,

[1] D. Walencik, *Nabywanie dóbr doczesnych przez osoby prawne Kościoła katolickiego w świetle prawa polskiego i prawa kanonicznego*, Studia z Prawa Wyznaniowego 2004, vol. 7, pp. 168–169; T. Stanisławski, *Darowizny na cele kultu religijnego i kościelną działalność charytatywno-opiekuńczą. Kontrowersje i nowe rozwiązania*, Studia z Prawa Wyznaniowego 2009, vol. 12, p. 329; B. Pieron, *Finansowanie celów kultu religijnego realizowanego przez kościoły i inne związki wyznaniowe*, Studia z Prawa Wyznaniowego 2011, vol. 14, pp. 148–152; J. Koredczuk, *Ulgi podatkowe z tytułu darowizn jako źródło finansowania kościołów i innych związków wyznaniowych oraz ich działalności*, w: *Finansowanie kościołów i innych związków wyznaniowych*, eds. P. Sobczyk, K. Warchałowski, Warszawa 2013, p. 265.

on the Guarantees of Freedom of Conscience and Religion.[2] It should also be noted that church legal entities can receive donations for religious worship purposes as well as for public benefit activities.[3] Many religious denominations also have the opportunity to receive donations for religious charitable and welfare activities.[4] The financial support for church welfare activities raises many controversies in administrative court rulings due to the lack of limits on permissible deductions.[5]

The resolution of the Financial Chamber of the Supreme Administrative Court dated 14 March 2005, FPS 5/04 is a crucial reference point for the system of tax exemptions and deductions provided for religious denominations in Poland.[6] According to the judgement interpretation, "tax provisions" contained in individual laws regulating the relationship between the state and specific religious associations should be applied in accordance with the principle *lex specialis derogat legi generali*.[7] As a result of adopting this principle, there is a need to prioritise the provisions of individual laws over those of the Personal Income Tax Act and the Corporate Income Tax Act. In the case of a conflict of norms, there is no need to fulfil the conditions specified in the public tax law.[8]

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2 Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Journal of Laws [Dziennik Ustaw] 2023 item 265.

3 P. Stanisz, *Zwolnienia i ulgi podatkowe jako forma finansowania związków wyznaniowych ze środków publicznych*, w: *Finansowanie związków wyznaniowych w krajach niemieckojęzycznych i w Polsce. Die Finanzierung der Religionsgemeinschaften in der Deutschsprachigen Ländern und in Polen*, eds. D. Walencik, M. Worbs, Opole 2012, p. 166; J. Koredczuk, *Ulgi podatkowe z tytułu darowizn…*, 268.

4 Specifically: Article 55 (7) of the Act on the Relations Between the State and the Catholic Church in the Republic of Poland; Article 40 (7) of the Act on the Relations Between the State and the Polish Autocephalous Orthodox Church in the Republic of Poland; Article 34 (2) of the Act on the Relations Between the State and the Evangelical-Augsburg Church in the Republic of Poland; Article 19 (2) of the Act on the Relations Between the State and the Evangelical-Reformed Church in the Republic of Poland; Article 27 (5) of the Act on the Relations Between the State and the Polish Catholic Church in the Republic of Poland; Article 28 (5) of the Act on the Relations Between the State and the Seventh-Day Adventist Church in the Republic of Poland; Article 33 (5) of the Act on the Relations Between the State and the Baptist Church in the Republic of Poland; Article 29 (5) of the Act on the Relations Between the State and the Evangelical-Methodist Church in the Republic of Poland; Article 26 (5) of the Act on the Relations Between the State and the Old Catholic Mariavite Church in the Republic of Poland; Article 29 (5) of the Act on the Relations Between the State and the Pentecostal Church in the Republic of Poland; Article 24 (5) of the Act on the Relations Between the State and the Catholic Mariavite Church in the Republic of Poland.

5 A. Abramowicz, *Ulgi podatkowe z tytułu darowizn na kościelną działalność charytatywno-opiekuńczą*, Studia z Prawa Wyznaniowego 2019, vol. 22, pp. 201–232.

6 R. Mastalski, *Glosa do uchwały NSA z 14 marca 2005 r., FPS 5/04*, Zeszyty Naukowe Sądownictwa Administracyjnego 2005, no. 2–23, item 142; P. Borecki, *Glosa do uchwały NSA z 14 marca 2005 r., FPS 5/04*, Zeszyty Naukowe Sądownictwa Administracyjnego 2005, no. 2, item 119.

7 T. Stanisławski, *Darowizny na cele kultu religijnego…*, pp. 216–217.

8 A. Abramowicz, *Ulgi podatkowe z tytułu darowizn na kościelną działalność charytatywno-opiekuńczą*, Studia z Prawa Wyznaniowego 2019, vol. 22, p. 206.

The recent ruling by the Supreme Administrative Court will serve as a foundation for drawing general conclusions about the entire system of tax exemptions and preferences granted to church legal entities. The ruling will outline the necessary conditions for church legal entities to properly benefit from income tax exemptions, with a particular focus on maintaining a clear distinction between religious and commercial activities.[9]

1. Facts of the case

It must be noted that the issue was resolved through a written interpretation of tax law provisions issued for an individual case. According to Article 17 (1) (4b) of the Corporate Income Tax Act of 15 February 1992,[10] income of companies whose sole shareholders (or members) are church legal entities is exempt from tax, provided it is allocated to the purposes listed in point 4a (b) of the same Act. The exemption mentioned above is conditional and does not apply to income derived from so-called "contaminated sources."[11]

The factual state underlying the request for an individual interpretation by G. Limited Liability Company, based in Ż. (Poland) (hereinafter: "Applicant"), was as follows: The Applicant is a limited liability company based in Poland. The Applicant's shareholders are five other limited liability companies based in Poland. The sole shareholders of these companies are church legal entities (each of the Applicant's shareholders is a separate church legal entity). The Applicant intends to allocate part of its income to purposes such as religious worship, educational, scientific, cultural, charitable, and caregiving activities, as well as to the preservation of monuments, operation of catechetical points, and investment in sacred activities such as building, expanding,

9 See more M. Zawiślak, *Granice dopuszczalnej optymalizacji podatkowej z udziałem kościelnych osób prawnych. Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 16 stycznia 2025 r.*, II FSK 501/22, Prawo i Więź 2025, no. 5 (58), pp. 759–787.

10 Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych, Journal of Laws 2025 item 278 (hereinafter: CIT).

11 The exemption does not apply to income derived from activities related to the production of electronic, fuel, tobacco, spirits, wine, brewing, and other alcoholic beverages with an alcohol content exceeding 1.5%, as well as products made from precious metals or containing these metals, or income derived from the trade of these products. The exemption also applies to income derived from activities related to the lease of tangible assets or intangible assets for a fee under the terms specified in law regulations (Articles 17a–17k).

or restoring churches and chapels, adapting other buildings for sacred purposes, and other investments aimed at catechetical points and charitable-caregiving institutions.

The Applicant justified its position by stating that its sole shareholders are church legal entities. Although church legal entities are not direct shareholders in the Applicant, they indirectly (through the shareholders) hold 100% of the shares in the Applicant's capital. The key issue, therefore, was whether a church legal entity, whose shareholders are five limited liability companies that are not church legal entities, satisfies the personal requirements for applying the exemption under Article 17 (1) (4b) of the CIT.

The tax authority (Director of the National Tax Chamber)[12] issued an individual interpretation, in which it considered the Company's position to be incorrect. The tax authority, in its legal interpretation, determined that the exemptions mentioned in Article 17 (1) (4b) of the CIT apply to those entities whose sole shareholders are church legal entities and who allocate their income to the purposes listed in Article 17(1) (4a) (b). Therefore, only entities directly involved in the "financial undertaking" can benefit from this exemption. The tax authority emphasised in the justification that the provisions establishing exemptions and tax reliefs in the Polish tax system are an important exception to the principle of tax justice – the universality and equality of taxation – and, therefore, must be applied strictly. Any interpretation extending the application of these provisions regarding the above-mentioned tax preferences is unacceptable.

The tax authority concluded that the Applicant did not meet the requirement of direct involvement under the provisions of Article 17 (1) (4b) of the CIT, as the Applicant's shareholders are limited liability companies. The crucial issue was that the church legal entities were shareholders of the Applicant's shareholders, not the Applicant itself. The Supreme Administrative Court interpreted the tax exemption from corporate income tax, stating that the right to benefit from the exemption only applies to the entity directly engaged in religious activity.

2. Counteracting aggressive tax optimisation

In light of ambiguities regarding the allocation of donations to church charitable and welfare activities, the Supreme Administrative Court has stated in its rulings that the purpose and justification of these donations should be the actual and effective

12 Dyrektor Krajowej Izby Skarbowej.

execution of these activities. This conclusion also applies to other tax exemptions and preferences provided by laws regulating the relationship between the state and religious denominations. The issue concerns the activities of a religious denomination, which should serve the fulfilment of spiritual rather than commercial missions. As W. Brzozowski rightly noted, "commercial activity should remain secondary in this case and should not determine the true nature of the religious group's functioning."[13]

It appears that the personal and financial structure of a church legal entity will significantly influence its eligibility to benefit from the exemption outlined in Article 17 (1) (4b) of the Corporate Income Tax (CIT) Act. This reflects a broader debate between two interpretative approaches: "exemption by function," where the key criterion is whether the activity itself serves religious or charitable purposes, and "exemption by personality," which focuses solely on whether the taxpayer is a church legal entity. The Supreme Administrative Court's ruling aligns more closely with the latter approach, emphasising that only church legal entities directly engaged in religious purposes can be beneficiaries. The "exemption by function" model determines eligibility based on the nature of the activity being carried out – if the activity serves a religious, charitable, or spiritually beneficial function, then the tax exemption applies regardless of the specific nature of the entity performing it. This approach promotes purpose-based tax fairness and aligns with broader principles of equitable treatment across different sectors pursuing public benefit missions.

Conversely, the "exemption by personality" model anchors eligibility in the identity of the taxpayer. Under this view, only entities formally recognised as church legal entities – due to their institutional character and legal status – can benefit from the exemption, regardless of the particular function being performed. This approach is favoured for its legal certainty and administrative clarity, making it easier to implement and audit. The Supreme Administrative Court's ruling aligns more closely with the latter approach, emphasising that only church legal entities directly engaged in religious purposes can be beneficiaries. Clearly identifying which model endorses Supreme Administrative Court is crucial, as it directly informs how tax exemption eligibility is interpreted and enforced, particularly in light of constraints imposed by Article 107 of the Treaty on the Functioning of the European Union (TFEU), which prohibits state aid that distorts competition.[14]

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13 W. Brzozowski, *Działalność kultowa czy działalność gospodarcza?*, in: *Finansowanie kościołów i innych związków wyznaniowych*, red. P. Sobczyk, K. Warchałowski, Warszawa 2013, p. 59.

14 The European Court of Justice (ECJ) set aside the judgement of the General Court from 15 September 2016 in the case Scuola Elementare Maria Montessori v Commission (T-220/13). That earlier judgement had rejected the school's challenge against a European Commission decision regarding state aid granted by Italy in the form of municipal real estate tax exemptions for non-commercial

The paper considers the organisational complexity within some church communities, particularly among Protestant denominations, where umbrella corporations or federations coordinate the activities of multiple churches or religious institutions. These umbrella structures, while facilitating cooperation and resource sharing, do not themselves qualify for tax exemptions unless they are formally constituted as church legal entities.[15] According to the analysed decisions, the constituent parts may be eligible individually, but the overarching corporation – unless independently recognised – cannot benefit from tax relief. This distinction underscores the principle that eligibility for tax exemptions depends on the direct legal status of the entity, not on its affiliations or coordination roles, and highlights the strict interpretation of the exemption provisions under Article 17 (1) (4b) of the CIT Act.

Another crucial point for clarification is whether tax exemptions for church legal entities are considered a right – stemming either from constitutional principles such as freedom of religion or from bilateral agreements between the state and churches – or rather a form of ex gratia legislative policy subject to modification or revocation. This distinction has far-reaching consequences for legal certainty, church-state relations, and administrative discretion.

Although many churches see tax exemptions as deriving from divine law, the constitutional right to freedom of religion does not automatically guarantee such exemptions. Tax exemptions are granted on the basis of statutory provisions and must comply with constitutional principles such as equality before the law and separation of church and state.[16] Therefore, although tax exemptions for religious organisations are universal, they are not unlimited and are subject to constitutional review.

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entities using property for specific purposes. Specifically, the ECJ disagreed with the General Court's acceptance of the Commission's failure to order the recovery of unlawful aid provided through these tax exemptions. The ECJ's decision implies that even tax exemptions granted to non-commercial entities – such as private religious schools – must be carefully scrutinised under EU state aid rules, and failure to reclaim incompatible aid may violate EU law.

15 In the pending case in the USA under the Catholic Charities Bureau's (CCB) umbrella are four service agencies – Barron County Developmental Services, Black River Industries, Diversified Services, and Headwaters – that provide government-funded support for people with disabilities. These programs are non-religious in nature, open to all, and not directly financed by the Diocese. In 2016, the CCB sought an exemption from state unemployment insurance contributions. After a series of reversals by various bodies, the Wisconsin Supreme Court ultimately ruled that the organisations did not qualify for the religious exemption, as they were not operated primarily for religious purposes. Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission. Oyez, https://www.oyez.org/cases/2024/24-154 [access: 29.05.2025].

16 In the United States, the Supreme Court addressed whether the government could compel an employer to pay social security taxes, even if the employer's religious beliefs opposed the system. The Court ultimately ruled that the government could enforce the tax, holding that the essential governmental

The paper should further explore this issue alongside the constitutional implications of granting preferential tax treatment to religious organisations over similarly purposed secular non-profits. Such analysis should address compliance with the principle of equality and non-discrimination, ensuring that religious and non-religious actors engaged in comparable public benefit activities are treated equitably and transparently under the tax system principles. Without such justification, privileging religious entities risks violating the constitutional commitment to equal treatment under the national law,[17] and may invite legal scrutiny both domestically and at the European level under Article 107 of the Treaty on the Functioning of the European Union[18] and even more under the ECHR.[19]

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interest in maintaining the Social Security program justified the limitation on the employer's religious liberty. See more United States v. Lee 455 U.S. 252 (1982).

17 The case of Assemblée Chrétienne Des Témoins de Jéhovah d'Anderlecht and Others v. Belgium concerned an application made by the Jehovah's Witnesses for being denied property tax exemptions. Under legislation created by the Brussels-Capital Region 2018, the tax exemption applied to "recognised religions." Belgium argued that this did not extend to applicant congregations, in which the Jehovah's Witness congregation disputed that failure to grant exemption was made on discrimination grounds. The courts assessed whether Belgium had violated Article 14 and Article 9 which prohibit discrimination and promote freedom of thought respectively. They found that the current regulations do not provide sufficient safeguard from discrimination for applicant congregations and that recognition is determined by the legislature, not the State. To review the claim on a minimum ground of fairness, the actions to not grant tax exemptions were not based on an "objective assessment of their claims." See Assemblée Chrétienne Des Témoins de Jéhovah d'Anderlecht and Others v. Belgium (application no. 20165/20).

18 Judgement of the Court (Grand Chamber) of 6 November 2018, joined cases C-622/16 P to C-624/16 P.

19 Case of The Church of Jesus Christ of Latter-Day Saints v. The United Kingdom. In conclusion, insofar as any difference of treatment between religious groups in comparable situations can be said to have been established in relation to tax exemption of places of worship, such difference of treatment had a reasonable and objective justification. In particular, the contested measure pursued a legitimate aim in the public interest and there was a reasonable relationship of proportionality between that aim and the means used to achieve it. The domestic authorities cannot be considered as having exceeded the margin of appreciation available to them in this context, even having due regard to the duties incumbent on the State by virtue of Article 9 of the Convention in relation to its exercise of its regulatory powers in the sphere of religious freedom. It follows that the Court does not find that the applicant Church has suffered discrimination in breach of Article 14 of the Convention, taken in conjunction with Article 9 (par. 35). See also Decision ECHR (inadmissible) 29.09.2020 Christian Religious Organization of Jehovah's Witnesses v. Armenia (dec.) – 73601/14 The Court was mindful of the cumulative financial effect of the measures in question over the years, since the applicant organisation imported religious literature regularly. However, it had not been submitted that the applicant organisation could not afford to pay the customs clearance tax imposed on its imports or that it had found itself in such financial hardship that it had been prevented from guaranteeing its adherents' freedom to exercise their religious beliefs. Rather, the organisation could have otherwise used its funds to develop its religious activities. Nor had the organisation been unable to import a sufficient quantity of periodicals, CDs and DVDs, having regard to the total number of its adherents.

Direct involvement, in this context, means that the church legal entity must be the "actual beneficiary" of such an exemption. This condition will have important tax implications moving forward. Most notably, it will prevent the misuse of this exemption for aggressive tax optimisation strategies that are not related to religious activities. Additionally, the requirement for direct involvement will help curb potential fiscal abuse. The ruling of the Supreme Administrative Court confirmed that only church legal entities that directly benefit from the tax exemption on income allocated to religious purposes, as specified in Article 17 (1) (4b) in conjunction with Article 17 (1) (4a) (b) of the CIT, are eligible to benefit from this exemption.

The concept of "aggressive tax optimisation" should be clarified here. It refers not only to legally permissible arrangements that reduce tax liabilities but to those that exploit the letter of the law while undermining its spirit, particularly when used systematically and without alignment with the intended purpose of tax preferences. In the case of church legal entities, such behaviour may involve complex corporate structures designed to channel income in ways that circumvent direct oversight or accountability. Beyond legal compliance, this behaviour raises concerns about fiscal equity and public trust, as it may lead to disproportionate benefits for certain actors under the guise of religious activity, thereby challenging the integrity of the tax system. Clarifying the threshold between legitimate tax planning and abuse is essential to preserving the balance between religious freedom and equitable taxation.

The phrase "actual beneficiary" in the context of church legal entities benefiting from tax preferences raises questions about the application of the Act on Counteracting Money Laundering and Financing of Terrorism (AML Act).[20] According to Article 2 (2) (1) of the AML Act, a "beneficial owner" is "any natural person who directly or indirectly controls a legal entity through the possession of rights resulting from legal or factual circumstances that enable exerting decisive influence on actions or decisions made by the legal entity." In the Special Register (Central Register of Beneficial Owners – CRBR), which is publicly accessible and maintained by the Ministry of Finance in the electronic system, information about the beneficial owners of entities listed in the National Court Register (KRS) is collected. The legislature's aim in establishing the CRBR is to counteract money laundering and terrorism financing, with the goal of preventing the concealment of identities within complex corporate structures. In the case of a capital company whose sole (100%) shareholder is a religious order or its organisational unit (e.g. a provincial order, abbey, independent monastery, convent), the beneficial owner is the relevant

[20] Ustawa z dnia 1 marca 2018 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu, Journal of Laws 2023 item 1124 as amended.

superior of the order, as well as members of its council. In the case of a parish or diocese, the relevant bishop and members of the diocesan economic council and consultative council are the beneficial owners.[21]

The interpretation by the Supreme Administrative Court in its ruling of 16 January 2025, in case file II FSK 501/22, does not allow entities indirectly involved in benefiting from this tax preference to use the tax exemption. This means that the nature of connections between entities benefitting from this exemption is of particular importance. It should not be overlooked that only those companies whose sole shareholders (or members) are church legal entities directly are eligible for the exemption under Article 17 (1) (4b) of the CIT. Administrative court rulings uniformly assume that provisions regulating tax exemptions, as exceptions to the general principle of taxation, must be interpreted strictly, primarily based on linguistic interpretation.

The interpretation provided by the Supreme Administrative Court in its ruling of 16 January 2025, in case file II FSK 501/22, clearly states that religious entities indirectly involved in benefitting from this tax preference are not eligible for the tax exemption. This means that the nature of connections between entities benefitting from this exemption is of particular importance. It should not be overlooked that only those companies whose sole shareholders (or members) are church legal entities directly are eligible for the exemption under Article 17 (1) (4b) of the CIT. Administrative court rulings consistently emphasise that provisions governing tax exemptions, being exceptions to the general principle of taxation, must be interpreted strictly, primarily relying on linguistic interpretation.[22]

3. Supporting religiously useful activities by the state

The purpose of the exemption in question was undoubtedly to ensure that church legal entities engaged in business activities could allocate part or all of their income to "religiously useful purposes." It is worth noting that this provision was enacted

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21 D. Walencik, *Opinia prawna na temat beneficjenta rzeczywistego w przypadku spółki kapitałowej, której jedynym (100%) udziałowcem czy akcjonariuszem jest zakon bądź jego jednostka organizacyjna (prowincja zakonna, opactwo, klasztor niezależny, dom zakonny)*, Studia z Prawa Wyznaniowego 2020, vol. 23, p. 481.

22 See judgement of Supreme Administrative Court of 2 December 2021, II FSK 774/19; judgement of Supreme Administrative Court of 25 November 2021, II FSK 919/21; judgement of Supreme Administrative Court of 14 January 2021, II FSK 2333/20; judgement of Supreme Administrative Court of 6 April 2018, II FSK 816/16; judgement of Voivodeship Administrative Court in Gliwice of 18 May 2021, I SA/Gl 273/21.

in 1989, in a socio-economic context different from the present one. Historical circumstances today call for a deeper reflection on the system of tax exemptions and preferences for religious associations. The main issue is to ensure that existing tax exemptions and concessions stimulate religious activities. Despite appearances, this is particularly significant in the current context, especially after the introduction of the so-called Polish Deal, which, contrary to the principle of social justice, deprived clergy of the right to deduct the health insurance contribution from their taxes.[23]

It is clear that the exemption mentioned in Article 17 (1) (4b) of the CIT is meant to serve as a guarantee of stable financing for church legal entities. It should be remembered that, with the change in the political system, a range of tax exemptions and preferences was introduced to support socially useful purposes. These are not privileges but rational methods of securing the financial situation of various entities, including church legal entities, in a free market economy.

When examining the content of Article 17 (1) (4b) of the CIT Act, it becomes clear that this legal provision is designed to allow for the allocation of part (or all) of the income of a church legal entity to the core activities of the church. As such, the purpose of this provision is to offer a tax exemption specifically for a church entity with legal personality, not for dependent or capital-linked entities. Changes in Polish society since 1989 have led to a shift in the perception of how religious activities are financed. This is the issue that the Supreme Administrative Court had to address in this case. Nowadays, knowledge of tax optimisation mechanisms is widespread, and religious entities also take advantage of these mechanisms.

The essence of the case boils down to determining the limits of income optimisation by church legal entities within the framework of applicable tax laws. Creating a religious entity consisting of five companies, with church legal entities as the sole shareholders, is a typical tax scheme based on the principle of pursuing aggressive tax optimisation. In this case, it is hard not to be swayed by the simplicity of the argument presented by the religious entity. After all, the church company consisted of shareholders, each of which was solely owned by church legal entities. Thus, it may seem that the mentioned companies, as shareholders of the church company, fulfil the criteria for applying the tax exemption. However, the Supreme Administrative Court definitively rejected the church company's argumentation on the grounds that the creation of church companies whose main purpose was to achieve a tax benefit was contrary to the object and purpose of the CIT Act. Beneath the surface of the

[23] P. Stanisz, D. Walencik, *Zryczałtowany podatek dochodowy od przychodów osób duchownych po wprowadzeniu „Polskiego Ładu": uwagi do ustawy z dnia 9 czerwca 2022 r. o zmianie ustawy o podatku dochodowym od osób fizycznych oraz niektórych innych ustaw*, Studia z Prawa Wyznaniowego 2022, vol. 25, pp. 300–306.

ruling in question lies the need to align the tax benefits and exemptions available to religious associations with the current principles of tax law. This alignment ensures that these benefits are applied in a way that is consistent with modern tax regulations and avoids potential misuse or abuse of the exemptions.[24]

Conclusions

It must be remembered that the tax exemptions and reliefs for religious associations were introduced into the tax system after the political transformation in a different socio-economic reality. Despite the passage of time, public authorities have not conducted a thorough reflection on the systemic nature of these tax preferences. It should be mentioned that working out new tax solutions for religious associations as a matter of mutual relations between the State and churches should be the subject of work within bilateral agreements, which would fulfil the requirements of Articles 25 (4)–(5) of the Constitution.[25] The call of J. Krukowski, to regulate the financial issues of the Catholic Church in Poland through a partial concordat, is still valid in this context.[26]

It is important to note that the discussed ruling will positively influence the reduction of aggressive tax optimisation using church legal entities. This is especially important as most churches and other religious associations in Poland conduct business activities using available tax exemptions and reliefs. Any activities aimed at creating artificial actions whose main goal is to achieve only tax benefits, contrary to the implementation of religiously useful purposes, should be eliminated from the tax

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24 Judgement of Supreme Administrative Court of 6 September 2007, FSK 993/06, LEX no. 377575; judgement of Supreme Administrative Court of 22 April 2008, II FSK 312/07, LEX no. 471241; judgement of Supreme Administrative Court of 9 August 2016, II FSK 2397/14, LEX no. 2116249; judgement of Supreme Administrative Court of 9 August 2016, II FSK 2049/14, LEX no. 2118972.

25 P. Borecki, *Opinia prawna w sprawie wykładni art. 25 ust. 5 Konstytucji Rzeczypospolitej Polskiej*, Przegląd Prawa Wyznaniowego 2014, no. 6, pp. 279–284; P. Stanisz, *O obowiązku układowego regulowania stosunków między Rzecząpospolitą Polską a Kościołem Katolickim*, in: *Układowe formy regulacji stosunków między państwem a związkami wyznaniowymi (art. 25 ust. 4–5 Konstytucji RP)*, red. P. Stanisz, M. Ordon, Lublin 2013, pp. 459–463.

26 J. Krukowski, *Systemy finansowania kościołów w świecie współczesnym. Zarys problematyki*, in: *Finansowanie kościołów i innych związków wyznaniowych*, eds. P. Sobczyk, K. Warchałowski, Warszawa 2013, pp. 356–357.

law system. These concerns are justified, as the Polish legal system has a limitation on enforcement for church legal entities.[27]

The judgement offers two arguments for religious autonomy and accountability. A positive outcome of this ruling will be the reduction of aggressive tax optimisation practices involving capital- or personally-dependent entities of church legal entities. By clarifying the conditions for tax exemptions, the ruling ensures that these entities can no longer exploit tax benefits through indirect means, fostering a more transparent and fair application of tax laws. This will likely encourage a more responsible and compliant approach to tax exemptions within the religious sector.

Bibliography

Abramowicz A., *Ulgi podatkowe z tytułu darowizn na kościelną działalność charytatywno-opiekuńczą*, Studia z Prawa Wyznaniowego 2019, vol. 22.

Adamus R., *Postępowanie egzekucyjne albo upadłościowe wobec osoby prawnej Kościoła Katolickiego w Polsce a mienie stanowiące przedmiot kultu religijnego*, Studia z Prawa Wyznaniowego 2024, vol. 27.

Borecki P., *Glosa do uchwały NSA z 14 marca 2005 r., FPS 5/04*, Zeszyty Naukowe Sądownictwa Administracyjnego 2005, no. 2, item 119.

Borecki P., *Opinia prawna w sprawie wykładni art. 25 ust. 5 Konstytucji Rzeczypospolitej Polskiej*, Przegląd Prawa Wyznaniowego 2014, no. 6.

Brzozowski W., *Działalność kultowa czy działalność gospodarcza?*, in: *Finansowanie kościołów i innych związków wyznaniowych*, eds. P. Sobczyk, K. Warchałowski, Warszawa 2013.

Koredczuk J., *Ulgi podatkowe z tytułu darowizn jako źródło finansowania kościołów i innych związków wyznaniowych oraz ich działalności*, in: *Finansowanie kościołów i innych związków wyznaniowych*, eds. P. Sobczyk, K. Warchałowski, Warszawa 2013.

Krukowski J., *Systemy finansowania kościołów w świecie współczesnym. Zarys problematyki*, in: *Finansowanie kościołów i innych związków wyznaniowych*, eds. P. Sobczyk, K. Warchałowski, Warszawa 2013.

Mastalski R., *Glosa do uchwały NSA z 14 marca 2005 r., FPS 5/04*, Zeszyty Naukowe Sądownictwa Administracyjnego 2005, no. 2–23, item 142.

Pieron B., *Finansowanie celów kultu religijnego realizowanego przez kościoły i inne związki wyznaniowe*, Studia z Prawa Wyznaniowego 2011, vol. 14.

Stanisławski T., *Darowizny na cele kultu religijnego i kościelną działalność charytatywno-opiekuńczą. Kontrowersje i nowe rozwiązania*, Studia z Prawa Wyznaniowego 2009, vol. 12.

[27] R. Adamus, *Postępowanie egzekucyjne albo upadłościowe wobec osoby prawnej Kościoła Katolickiego w Polsce a mienie stanowiące przedmiot kultu religijnego*, Studia z Prawa Wyznaniowego 2024, vol. 27, pp. 17–18.

Stanisz P., *O obowiązku układowego regulowania stosunków między Rzecząpospolitą Polską a Kościołem Katolickim*, in: *Układowe formy regulacji stosunków między państwem a związkami wyznaniowymi (art. 25 ust. 4–5 Konstytucji RP)*, eds. P. Stanisz, M. Ordon, Lublin 2013.

Stanisz P., *Zwolnienia i ulgi podatkowe jako forma finansowania związków wyznaniowych ze środków publicznych*, in: *Finansowanie związków wyznaniowych w krajach niemieckojęzycznych i w Polsce. Die Finanzierung der Religionsgemeinschaften in der Deutschsprachigen Ländern und in Polen*, eds. D. Walencik, M. Worbs, Opole 2012.

Stanisz P., Walencik D., *Zryczałtowany podatek dochodowy od przychodów osób duchownych po wprowadzeniu „Polskiego Ładu": uwagi do ustawy z dnia 9 czerwca 2022 r. o zmianie ustawy o podatku dochodowym od osób fizycznych oraz niektórych innych ustaw*, Studia z Prawa Wyznaniowego 2022, vol. 25. DOI: 10.31743/spw.13724.

Walencik D., *Dobrowolna ofiarność wiernych. Podstawy prawne i rozwiązania praktyczne*, in: *Finansowanie związków wyznaniowych w krajach niemieckojęzycznych i w Polsce. Die Finanzierung der Religionsgemeinschaften in der Deutschsprachigen Ländern und in Polen*, eds. D. Walencik, M. Worbs, Opole 2012.

Walencik D., *Opinia prawna na temat beneficjenta rzeczywistego w przypadku spółki kapitałowej, której jedynym (100%) udziałowcem czy akcjonariuszem jest zakon bądź jego jednostka organizacyjna (prowincja zakonna, opactwo, klasztor niezależny, dom zakonny)*, Studia z Prawa Wyznaniowego 2020, vol. 23. DOI: 10.31743/spw.5730.

Zawiślak M., *Granice dopuszczalnej optymalizacji podatkowej z udziałem kościelnych osób prawnych. Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 16 stycznia 2025 r.*, II FSK 501/22, Prawo i Więź 2025, no. 5 (58).

Materiały źródłowe / Source materials

STUDIA PRAWNICZE KUL
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Deklaracja praw człowieka dla państw członkowskich Rady Współpracy Państw Arabskich Zatoki (GCC) przyjęta przez wysoką radę podczas trzydziestej piątej sesji w Doha w dniu 9 grudnia 2014 r.

Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf (GCC) Which is Adopted by the High Council in Its Thirty-Fifth Session in Doha 9 December 2014

Декларация прав человека для государств–членов Совета сотрудничества арабских государств Персидского залива

Декларація прав людини для держав–членів Ради співробітництва арабських держав Перської затоки

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DEKLARACJA PRAW CZŁOWIEKA RADY WSPÓŁPRACY PAŃSTW ARABSKICH ZATOKI[1]

Państwa członkowskie Rady Współpracy Państw Arabskich Zatoki (GCC),

inspirowane swą głęboką wiarą w godność człowieka, poszanowaniem jego praw oraz swym zaangażowaniem w ochronę tych praw, które są gwarantowane przez islamskie prawo szariatu, ucieleśniające trwałe i szlachetne wartości i zasady wyznawane przez ich społeczności, oraz stanowiące podstawowe stałe elementy ich polityki na wszystkich szczeblach, a także

zgodnie z Kartą GCC, która przewiduje wspólną przyszłość i jedność celu łączącego ich narody oraz wzywa do koordynacji, integracji i wzajemnych powiązań między nimi we wszystkich dziedzinach, a także do pogłębiania i wzmacniania więzi, relacji i współpracy między ich narodami w różnych dziedzinach, oraz

[1] Deklaracja Praw Człowieka Rady Współpracy Krajów Arabskich Zatoki została przyjęta przez nie 9 grudnia 2014 r. na szycie w Dosze. Ze względu na swój niewiążący charakter stanowi instrument prawa miękkiego, https://gcc-sg.org/en/MediaCenter/DigitalLibrary/Documents/1453192982.pdf [dostęp: 29.10.2025 r.].

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https://doi.org/10.31743/sp19037

potwierdzając, że ich osiągnięcia w różnych dziedzinach wynikają z ogromnego znaczenia i troski, jakie państwa GCC przywiązują do kwestii praw człowieka, oraz

wyrażając swoje uznanie i wdzięczność za wspólne wysiłki podejmowane na różnych szczeblach wraz ze społecznością międzynarodową i regionalną, które skutecznie i efektywnie przyczyniły się do wzmocnienia kwestii praw człowieka, promując je do poziomu pożądanych celów w społeczności międzynarodowej, w której prawa te zajmują należne im miejsce, oraz

podkreślając swoje zaangażowanie w przestrzeganie Karty Narodów Zjednoczonych, Powszechnej Deklaracji Praw Człowieka, Arabskiej Karty Praw Człowieka, Kairskiej Deklaracji Praw Człowieka w Islamie oraz innych odpowiednich międzynarodowych i regionalnych konwencji i kart, a także

współdziałając w zakresie realizacji powyższych starań w celu osiągnięcia większych korzyści dla ludzkości,

ogłaszają, co następuje:

Artykuł 1

Każdy człowiek ma prawo do życia i musi być chroniony przed wszelkimi atakami na to prawo. Nikt nie może zostać bezprawnie zabity. Ciała zmarłych muszą być szanowane, pochowane i chronione.

Artykuł 2

Ludzie są równi pod względem godności, praw i wolności, a także są równi wobec prawa (ustawy). Nie ma między nimi żadnych różnic ze względu na pochodzenie, płeć, religię, język, kolor skóry lub jakąkolwiek inną cechę.

Artykuł 3

Niewolnictwo, poddaństwo i handel ludźmi są zabronione w każdej formie, w szczególności w odniesieniu do kobiet i dzieci.

Artykuł 4

Handel organami ludzkimi jest zakazany i jest uznawany za naruszenie praw człowieka oraz przestępstwo penalizowane przez prawo (ustawę).

Artykuł 5

Nie wolno przeprowadzać żadnych eksperymentów medycznych ani naukowych na ludziach, ani wykorzystywać ich organów bez ich zgody i pełnej świadomości możliwych konsekwencji.

Artykuł 6

Wolność przekonań i praktyk religijnych jest prawem każdego człowieka zgodnie z prawem (ustawą), bez naruszania porządku publicznego i moralności publicznej.

Artykuł 7

Poszanowanie religii obiecujących nagrodę w niebie, brak pogardy czy lekceważenia wobec nich lub znieważania ich proroków lub symboli, a także szacunek dla różnorodności kulturowej innych narodów są zagwarantowane zgodnie z prawem (ustawą).

Artykuł 8

Państwo i społeczeństwo powinny upowszechniać i promować zasady dobroci, miłości, braterstwa, tolerancji oraz inne szlachetne zasady i wartości. Powinny również odrzucać wszelkie uczucia nienawiści, urazy i ekstremizmu, a także wszelkie inne ich formy, które mogłyby podważyć podstawowe zasady społeczności lub stanowić dla nich zagrożenie

Artykuł 9

Każdy ma prawo do wolności opinii i ich wyrażania, a korzystanie z tej wolności jest gwarantowane w zakresie, w jakim jest to zgodne z islamskim prawem szariatu, porządkiem publicznym i prawem (ustawami) regulującym tę sferę.

Artykuł 10

Swoboda przemieszczania się, pobytu i wyjazdu jest prawem każdego człowieka zgodnie z przepisami (prawem).

Artykuł 11

Nikt nie może być deportowany ze swojego kraju ani nie może zostać pozbawiony możliwości wjazdu do niego.

Artykuł 12

Osobowość prawna jest prawem przysługującym każdemu człowiekowi.

Artykuł 13

Obywatelstwo jest prawem każdego człowieka, przysługującym mu na mocy prawa (ustawy) i nie może zostać mu odebrane, chyba że na mocy tego prawa.

Artykuł 14

Rodzina jest naturalną i podstawową komórką społeczną, u podstaw składającą się z mężczyzny i kobiety, kierowaną zasadami religii, moralności i patriotyzmu; jej istnienie i więzi są utrzymywane i wzmacniane przez religię. Macierzyństwo, dzieciństwo i członkowie rodziny są chronieni przez religię, a także przez państwo i społeczeństwo przed wszelkimi formami nadużyć i przemocy domowej.

Artykuł 15

Mężczyźni i kobiety mają prawo do zawarcia małżeństwa i założenia rodziny. Małżeństwo może być zawarte wyłącznie z wolnej woli i za zgodą przyszłych małżonków, zgodnie z przepisami islamskiego prawa szariatu i prawa (ustawy).

Artykuł 16

Życie prywatne jest zagwarantowane każdemu człowiekowi i nie może być naruszane. Nie można też ingerować w sprawy rodzinne, miejsce zamieszkania, korespondencję lub komunikację danej osoby, a osoba ta ma prawo domagać się ochrony swoich praw.

Artykuł 17

Każdy człowiek ma prawo do poziomu życia zapewniającego mu i jego rodzinie odpowiedni dobrobyt. Rząd zapewni taki standard życia w ramach dostępnych środków.

Artykuł 18

Każde dziecko ma prawo do życia, rozwoju, ochrony i dobrobytu w środowisku rodzinnym, w którym będzie wychowywane w duchu pokoju, godności, wolności, równości i braterstwa.

Artykuł 19

Każde dziecko ma prawo do ochrony przed wyzyskiem ekonomicznym i wykonywaniem pracy, która może być niebezpieczna, utrudniać jego edukację lub szkodzić jego zdrowiu fizycznemu, psychicznemu bądź rozwojowi duchowemu, moralnemu i społecznemu, zgodnie z postanowieniami islamskiego prawa szariatu oraz stosownymi konwencjami i porozumieniami międzynarodowymi.

Artykuł 20

Każdy ma prawo do życia w czystym środowisku wolnym od zanieczyszczeń, które państwo i społeczeństwo mają obowiązek chronić i zachować.

Artykuł 21

Każda osoba ma prawo do opieki zdrowotnej, którą zapewni państwo i instytucje społeczne.

Artykuł 22

Wszyscy ludzie ze szczególnymi potrzebami mają prawo do kompleksowej opieki i powinni być rehabilitowani i włączani do społeczności.

Artykuł 23

Każda osoba ma prawo do edukacji. Edukacja powinna być ukierunkowana na pełny rozwój osobowości człowieka, przy jednoczesnym poszanowaniu jego godności i kultury praw człowieka. Edukacja podstawowa powinna być bezpłatna i obowiązkowa. Edukacja techniczna i wyższa powinna być powszechnie dostępna, z poszanowaniem prawa opiekunów i osób sprawujących opiekę do wyboru rodzaju edukacji, którą uważają za najlepszą dla swoich dzieci.

Artykuł 24

Każda osoba, który ma ku temu zdolności, ma prawo do pracy oraz do swobodnego wyboru zatrudnienia, zgodnie z wymaganiami godności i interesu publicznego, przy zapewnieniu sprawiedliwych i korzystnych warunków zatrudnienia oraz praw pracowników i pracodawców.

Artykuł 25

Osoby starsze i niepełnosprawne mają prawo do ochrony i opieki społecznej.

Artykuł 26

Każdy obywatel ma prawo do zabezpieczenia i ubezpieczenia społecznego zgodnie z prawem (ustawą), przy jednoczesnym zapewnieniu ochrony i opieki osobom starszym i niepełnosprawnym.

Artykuł 27

Własność prywatna jest nienaruszalna i nikogo nie wolno pozbawiać prawa do dysponowania swoją własnością, chyba że na mocy prawa (ustawy), a wywłaszczenie jest możliwe wyłącznie w interesie publicznym i za godziwym odszkodowaniem.

Artykuł 28

Każdy obywatel ma prawo do korzystania z majątku i zasobów narodowych. Każdy ma prawo do korzystania z usług publicznych zgodnie z prawem (ustawą).

Artykuł 29

Każda osoba ma prawo do uczestnictwa w życiu kulturalnym, do korzystania z postępu naukowego i jego dobrodziejstw oraz do korzystania z praw moralnych i materialnych wynikających z jego twórczości naukowej, literackiej lub artystycznej, która przyczynia się do rozwoju ludzkiej cywilizacji.

Artykuł 30

Każdy obywatel ma prawo do udziału w życiu politycznym, a także prawo do udziału w rządzeniu swoim krajem i do równego dostępu do służby publicznej w swoim kraju zgodnie z postanowieniami prawa (ustawy). Państwo powinno zapewnić swoim obywatelom możliwości zatrudnienia.

Artykuł 31

Każda osoba ma swobodę tworzenia stowarzyszeń, zgromadzeń i związków, z zastrzeżeniem postanowień prawa (ustawy), i nikt nie może być zmuszany do przynależności do stowarzyszenia.

Artykuł 32

Wszyscy ludzie są równi przed sądami i każdy ma prawo dostępu do postępowania sądowego przed w pełni niezależnymi sądami.

Artykuł 33

Kara ma charakter osobisty, nie można stwierdzić przestępstwa ani orzec kary bez uprzedniego odniesienia do przepisów prawa, a oskarżony korzysta z przepisów, które są dla niego najkorzystniejsze.

Artykuł 34

Nikt nie może być bezprawnie aresztowany, zatrzymany, uwięziony ani pozbawiony wolności, a podczas zatrzymania ma prawo do humanitarnego traktowania. Osoby oskarżone powinny być oddzielone od skazanych i traktowane w sposób zgodny z ich statusem.

Artykuł 35

Oskarżony jest niewinny, dopóki nie zostanie udowodniona jego wina w uczciwym procesie, który zapewnia wszelkie prawne gwarancje niezbędne do obrony.

Artykuł 36

Tortury są zabronione, zarówno fizyczne, jak i psychiczne, podobnie jak okrutne, nieludzkie lub poniżające traktowanie.

Artykuł 37

Osoby skazane, które zostały pozbawione wolności, muszą być traktowane w sposób humanitarny, z poszanowaniem ich godności oraz z uwzględnieniem międzynarodowych standardów stosowanych w zakładach karnych i poprawczych.

Artykuł 38

Nikt nie może zostać pozbawiony wolności za dług, którego niemożność spłaty została stwierdzona prawomocnym orzeczeniem sądu.

Artykuł 39

Skutki (obciążenia lub konsekwencje) katastrof i sytuacji nadzwyczajnych stanowią wspólną odpowiedzialność rządu i społeczeństwa.

Artykuł 40

Terroryzm stanowi pogwałcenie praw człowieka. Jest zakazany i kryminalizowany we wszystkich swoich formach na mocy islamskiego prawa szariatu i konwencji międzynarodowych. Należy go zwalczać i eliminować, nie naruszając przy tym praw człowieka.

Artykuł 41

W przypadku konfliktów zbrojnych stosuje się zasady międzynarodowego prawa humanitarnego zgodnie ze wszystkimi obowiązującymi konwencjami i praktykami międzynarodowymi, ze szczególnym uwzględnieniem zapewnienia poszanowania praw osób starszych, niepełnosprawnych, pacjentów, kobiet, dzieci, jeńców i cywilów.

Artykuł 42

Każda osoba ma prawo ubiegać się o azyl w innym kraju zgodnie z prawem (ustawą) obowiązującym w tym kraju. Cudzoziemiec, który legalnie wjechał do kraju, nie może zostać deportowany bez uzasadnienia prawnego ani nie można wydawać osób ubiegających się o azyl.

Artykuł 43

Nieletni przestępca ma prawo do traktowania zgodnie z prawem sądowym dla nieletnich oraz do traktowania odpowiedniego do jego wieku, które chroni jego prawa i godność oraz przyczynia się do odzyskania przez niego dobrego imienia i przywrócenia do społeczeństwa.

Artykuł 44

Bez uszczerbku dla postanowień islamskiego prawa szariatu i prawa (ustawy), wykonywanie i korzystanie z praw i wolności określonych w niniejszej Deklaracji jest prawem każdego człowieka.

Artykuł 45

Każda osoba, której prawa i wolności określone w niniejszej Deklaracji zostały naruszone, ma prawo do odwołania się zgodnie z prawem (ustawą).

Artykuł 46

Każda osoba ma obowiązki wobec społeczeństwa. Jednakże w wykonywaniu praw i wolności określonych w niniejszej Deklaracji podlega ona jedynie ograniczeniom ustalonym przez prawo (ustawę) w celu zabezpieczenia i poszanowania praw i wolności innych osób oraz porządku publicznego.

Artykuł 47

Niniejsza Deklaracja nie może być interpretowana ani modyfikowana w sposób, który mógłby ograniczyć prawa i wolności zagwarantowane przez ustawodawstwo krajowe Państw GCC lub międzynarodowe i regionalne konwencje praw człowieka, które Państwa GCC ratyfikowały lub do których przystąpiły.

Recenzje i artykuły recenzyjne / Reviews and review articles

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Joanna Kulawiak-Cyrankowska, *Utilitas in Roman Jurists' Legal Interpretation*, Potsdamer altertumswissenschaftliche Beiträge 88, Franz Steiner Verlag GmbH, Stuttgart 2025, pp. 263

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Йоанна Кулявяк-Цыранковска, *Utilitas в правовом толковании римских юристов*, Potsdamer altertumswissenschaftliche Beiträge 88, Franz Steiner Verlag GmbH, Штутгарт 2025, стр. 263

Йоанна Кулав'як-Циранковська, *Utilitas у правовій інтерпретації римських юристів*, Potsdamer altertumswissenschaftliche Beiträge 88, Franz Steiner Verlag GmbH, Штутгарт 2025, с. 263

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The long-awaited monograph by Joanna Kulawiak-Cyrankowska, entitled *Utilitas in Roman Jurists' Legal Interpretation*, has just been published by the renowned Franz Steiner Verlag as volume 88 in the series *Potsdamer altertumswissenschaftliche Beiträge* (PawB), since 1999 has been devoted to broadly conceived studies of antiquity.

Anyone who is familiar with the author's scholarly work will easily recognise that the book under review is the English-language version of her doctoral dissertation, which she successfully defended under the title: *Iusti prope mater et aequi. Utilitas a interpretacja prawa rzymskich jurystów* (Łódź 2022).[1] The original title of the dissertation (in Polish, as edited) already conveyed a certain message and revealed one of the research goals the young Romanist set for herself: to determine whether Horace was indeed right in calling *utilitas* "the mother of what is *iustum et aequum*"? (p. 11). The author deserves immediate praise for the idea of publishing her doctoral dissertation in this form, i.e. in the language of international scholarship. For years, the desirability of publishing in languages that allow a wider audience, including

[1] The author's doctoral dissertation was prepared at the Department of Roman Law under the supervision of Prof. Dr. habil. Anna Pikulska-Radomska and assistant supervisor Dr. Przemysław Stanisław Kubiak.

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those abroad, to become acquainted with the many valuable works of Polish scholars of Roman law has been rightly emphasised. Such a practice, in turn, allows them to build a strong position in the international academic community.

In Joanna Kulawiak-Cyrankowska's book, Roman *utilitas* has acquired a new, perhaps even multidimensional, character written reliably and with undoubted expertise in the subject. This characteristic, it should be added, departs quite significantly from associations with Ulpian's well-known dichotomy of dividing law into *ius privatum* and *ius publicum* according to the criterion of interest (benefit). The work, of course, confirms the prevailing view in scholarship that *utilitas* appears as an evaluative and differentiating criterion in the argumentation of Roman jurisprudence. Its additional undeniable merit, however, is its comprehensive approach to the nuanced matter under examination, allowing for the discernment of the relationship between *utilitas* and other ethical values attributed to Roman law.

Moreover, the analysis presented in the book argues that a correct understanding of the meaning of *utilitas* in Roman law requires a combination of juridical perspectives (as expressed by Roman jurists' arguments), philosophical, and rhetorical perspectives. The author is aware that she has entered difficult terrain by undertaking research on a legal category that requires excellent erudition and competence, even to engage with the extensive literature on *utilitas*. The list of this literature, including works by eminent authorities such as H. Ankum, U. Leptien, M. Kaser, M. Navarra, T. Giaro, E. Seidl, W. Selb, T. Honoré, J. Gaudemet, A. Watson, and D. Nörr, underscores the importance of the subject itself, but also demonstrates the author's intellectual courage to revisit this important topic.

The monograph has a clear, uncomplicated structure. It consists of three distinct chapters, each concluding with a summary. The first chapter addresses essential terminological and axiological issues. From the outset, it states that although *utilitas* is an ambiguous concept, it should primarily engage associations with ethical values. After a brief reference to non-legal sources – Cicero and Horace – the narrative quickly moves on to Roman law, situating the concept of *utilitas* among the timeless, enduring values of Roman jurisprudence. The second chapter, dealing with *utilitas* as a "guideline for the interpretation of law," attempts to present the legal category in question against the background of "general principles of legal interpretation." This provides, firstly, an opportunity to explore the meaning that should be assigned to *utilitas* within Ulpian's textbook exposition, in which the jurist lists *utilitas* as a criterion for dividing law (D.1.1.1.2). The author rightly believes that the meaning of *utilitas* should be clearly derived from its connection with values such as *bonitas* and *aequitas* (*ius est ars boni et equi*). She appropriately (pp. 72 et seq.) asks about the context in which Ulpian's statements – the one on *utilitas* (D.1.1.1.2) and the

one citing Celsus' definition of law (D.1.1.1.pr.-1) – are placed. She rightly links this fragment with Quintilian, with moral philosophy (a synonym for ethics) derived from *bonos mores*, a counterpoint between the legal craft and the legal art (ars) practiced by the *sacerdotes iustitiae* ("priests of justice"). Finally, she is also right when she writes: "it is plausible to argue that Ulpian invoked the expression ius est ars boni et equi not to refer to the systematisation of the legal order but to the interpretation of the law" (p. 77). Also valuable is the discussion of the distinction between the terms *privatum* and *publicum*, closely related to *ius*, bringing the reader closer to the correct understanding of the term *positiones* in correspondence with rhetorical sources (Cicero). According to Ulpian, *publicum* (*utilitas publica*) and *privatum* (*utilitas privata*) were the two bases of jurists' arguments (*positiones*), on which all their attention should be focused (p. 88).The above considerations on the universal, purposive nature of jurists' interpretations based on *utilitas* also provided an opportunity to neatly separate this matter from the next subject of research in the monograph. This one is formed by the interpretive decisions contained in the rulings of Roman jurists of the classical period. These decisions – made *utilitatis causa* – are fully covered in the work's most extensive, third chapter. Drawing her arguments once again from the inspiring works of Roman rhetoricians, particularly Cicero's doctrine, the author discerns in most jurisprudential decisions on the *utilitatis causa* a pattern similar to that in rhetorical interpretation of law, where the jurist interpreted contrary to the literal meaning of a legal provision (*contra scriptum*), thus giving the category of *utilitas* a normative character. *Utilitas* then helped resolve the conflict between the letter and spirit of the law. Furthermore, as with the Roman rhetoricians, jurists also employed *supra scriptum* interpretation when legal provisions remained silent on the issue at hand. The author's main conclusion, which can be broadly shared, is the final statement that "considering both patterns of interpretation, it can be stated that the full nature of the decisions adopted *utilitatis causa* is expressed in the tension between the literal and teleological interpretation, and its purpose is to break the unambiguous results of the literal interpretation" (p. 191). The book thus provides further evidence, complementing many studies already undertaken in the literature, that Roman law was thoroughly "jurisprudential," and concepts such as *iustitia*, *bonitas*, *aequitas, voluntas*, *honestas*, *humanitas*, or *utilitas*, became a permanent part of the arsenal of Roman jurists, determining the ethical image of Roman law.

One must agree with the view, repeatedly suggested by the author, whether directly or "between the lines," that excessive importance is attached in contemporary Roman law studies to the division of law into private and public law, especially since the criterion for this division, namely the titular *utilitas*, is not well suited to either

delineating the boundary between private and public law or precisely defining what these areas of law actually concern. However, doubts may arise not so much about the failure to explore more deeply into the issues of Roman public law, but rather about the incomplete use of Ulpian's well-known division of law into *ius privatum* and *ius publicum* (D.1.1.1.2). This could enrich arguments even in those discussions clearly focused on private law (*utilitas privata*).[2] The deliberate limitation of research – without delving into the problematic aspects of *utilitas publica*, as well as limiting it to tracing the presence of *utilitas* in the writings of jurists of the classical law, was supposed to result from the studies already written on this subject (pp. 12–13 footnote 7–8 in the first case, p. 13 footnote 10 in the second).

Ulpian's criterion of division, *utilitas*, should, however, prompt us to ask many more significant questions about the nature and scope of this criterion and its true usefulness in separating private law from public law. It was not, after all, the case that jurists were always interested only in *utilitas privata* or only in *utilitas publica*. The latter, in particular, had various connotations. Nor can it always be assumed that *utilitas publica*, understood as the "common good" or "public interest," was consistent with the good of the individual. Just to spark an interesting discussion on one such area, it would be worthwhile to delve deeper into Cassius's arguments, speaking in the Senate in favour of the absolute application of the provisions of the Senatus Consultum Silanianum. He clearly opted for *utilitas publica* over *utilitas privata*.[3] Although the case of praetor Pedanius appears in the monograph (p. 91), it is without the proper elaboration, taking into account both the legal context (the SC Silanianum was a resolution of the Roman Senate from 10 AD) and the social context (riots in Rome broke out, which may seem surprising, upon the news of the intention to enforce such a severe law).

While searching for any imperfections in the work, one can slightly criticise the author for not ensuring the balanced proportions of the chapters of her work: the first one has 40 pages, the second one 34, but the third and last one as many as 90. Dividing the last chapter, the most important for the results of the conducted research, into at least two independent chapters devoted to "jurisprudential decisions *contra scriptum*" and "jurisprudential decisions *supra scriptum*" would be

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2 Inspiring reflections on this subject were conducted by A. Kania-Chramęga, *Ius publicum a ius privatum – między kontradykcją a koherencją?*, Czasopismo Prawno-Historyczne 2021, vol. 73, no. 1, pp. 117–127.

3 The literature on SC Silanianum, including Polish literature, is extensive. For example, recently on the identification of *utilitas* in the case of Pedanius A. Chmiel, *Przykład zastosowania s.c. Silanianum, czyli o tym, dlaczego rzymska 'iustitia' stawała się niekiedy okrutna*, in: *Przemoc w świecie starożytnym. Źródła, struktura, interpretacje*, Lublin 2017, pp. 299–310.

substantively justified, and the structure of the work would become more transparent and balanced.

In conclusion, however, the greatest praise should be given, as J. Kulawiak-Cyrankowska's book undoubtedly merits it. The achievements of Polish Roman law scholarship have been enriched by this very thoroughly and competently written monograph, which will undoubtedly interest not only Roman law historians but also many other enthusiasts of Roman antiquity.

STUDIA PRAWNICZE KUL
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The intersection of judicial and extrajudicial supervision of the activities of court enforcement officers. The review article of Monika Dziewulska's monograph, *Ex officio supervision of the activities of court enforcement officers pursuant to Article 759 § 2 of the Code of Civil Procedur*e, Wolters Kluwer Polska, Warsaw 2025, pp. 379

Krzyżowanie się środków nadzoru judykacyjnego i nadzoru pozajudykacyjnego nad działalnością komorników sądowych. Artykuł recenzyjny monografii Moniki Dziewulskiej *Nadzór z urzędu nad czynnościami komornika sądowego na podstawie art. 759 § 2 k.p.c.*, Wolters Kluwer Polska, Warszawa 2025, ss. 379

Пересечение средств судебного и внесудебного надзора за деятельностью судебных исполнителей. Рецензионная статья на монографию Моники Дзевульской *Надзор ex officio за деятельностью судебного исполнителя на основании ст. 759 § 2 ГПК*, Wolters Kluwer Polska, Варшава 2025, стр. 379

Перетин механізмів судового та позасудового нагляду за діяльністю судових виконавців. Рецензія на монографію Моніки Дзевульської *Нагляд ex officio за діяльністю судового виконавця на підставі ст. 759 § 2 Цивільного процесуального кодексу*, Wolters Kluwer Polska, Варшава 2025, с. 379

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Abstract: The article is devoted to the issues related to the supervision of court enforcement officers' activities, in particular judicial and administrative supervision, and the interrelationship between these types of supervision. The protection of the rights of participants in enforcement proceedings within the framework of substantive supervision is possible not only thanks to appropriate appeal measures, but also thanks to the introduction of permanent judicial supervision exercised ex officio, referred to in Article 759 § 2 of the Code of Civil Procedure. The powers of the president of the regional court at which the enforcement officer operates – within the framework of administrative supervision include, among others, notifying the court of the need to issue orders to the court enforcement officer under Article 759 § 2 of the Code of Civil Procedure, as well as examining the correctness of the implementation of court orders issued under Article 759 § 2 of the Code of Civil Procedure. Therefore, even a cursory analysis of the provisions regulating the institution of supervision over the activities of court enforcement officers leads to the conclusion that judicial and extrajudicial supervisory measures may overlap. The aim of the article is to answer the question about the possibility of marking a border that would prevent administrative supervision from encroaching on activities falling within the scope of judicial supervision. The considerations presented in this article are based on M. Dziewulska's monograph concerning this issue.

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Keywords: judicial supervision, enforcement proceedings, court enforcement officer's activities, appeal measures in enforcement proceedings, right to court

Streszczenie: Artykuł jest poświęcony problematyce związanej z nadzorem nad działalnością komorników sądowych, w szczególności z nadzorem judykacyjnym i nadzorem administracyjnym, oraz kwestią wzajemnych powiązań między wymienionymi rodzajami nadzoru. Ochrona praw uczestników postępowania egzekucyjnego w ramach nadzoru merytorycznego jest możliwa nie tylko dzięki stosownym środkom zaskarżenia, lecz także dzięki wprowadzeniu stałego nadzoru sądowego sprawowanego z urzędu, o którym mowa w art. 759 § 2 k.p.c. Uprawnienia prezesa sądu rejonowego, przy którym komornik działa – w ramach nadzoru administracyjnego – obejmują m.in. zawiadamianie sądu o potrzebie wydania komornikowi zarządzeń w trybie art. 759 § 2 k.p.c., jak i badanie prawidłowości realizacji zarządzeń sądu wydanych w trybie art. 759 § 2 k.p.c. Już zatem nawet pobieżna analiza przepisów regulujących instytucję nadzoru nad działalnością komorników sądowych prowadzi do wniosku, że środki nadzoru judykacyjnego i pozajudykacyjnego mogą się ze sobą krzyżować. Celem artykułu jest odpowiedź na pytanie o możliwość wyznaczenia granicy, która przeciwdziałałaby wkroczeniu nadzoru administracyjnego w działania wchodzące w zakres nadzoru judykacyjnego. Przedstawione w artykule rozważania prowadzone są na podstawie lektury monografii M. Dziewulskiej, dotyczącej tej właśnie tematyki.

Słowa kluczowe: nadzór judykacyjny, postępowanie egzekucyjne, czynności komornika sądowego, środki zaskarżenia w postępowaniu egzekucyjnym, prawo do sądu

Резюме: Статья посвящена проблемам, связанным с надзором за деятельностью судебных исполнителей, в частности с судебным и административным надзором, а также вопросу взаимосвязи между указанными видами надзора. Защита прав участников исполнительного производства в рамках предметного надзора возможна не только благодаря соответствующим средствам обжалования, но и благодаря введению постоянного судебного надзора, осуществляемого *ex officio*, о котором речь идет в статье 759 § 2 Гражданского процессуального кодекса. Полномочия председателя районного суда, при котором действует судебный исполнитель в рамках административного надзора, включают, в частности, уведомление суда о необходимости вынесения судебных приказов в порядке, предусмотренном ст. 759 § 2 ГПК, а также проверку правильности исполнения судебных приказов, вынесенных в порядке, предусмотренном ст. 759 § 2 ГПК. Таким образом, даже поверхностный анализ положений, регулирующих институт надзора за деятельностью судебных исполнителей, приводит к выводу, что меры судебного и внесудебного надзора могут пересекаться. Цель статьи – ответить на вопрос о возможности установления границы, которая предотвращала бы проникновение административного надзора в действия, входящие в сферу судебного надзора. Рассуждения, представленные в статье, основаны на анализе монографии М. Дзевульской, посвященной именно этой тематике.

Ключевые слова: судебный надзор, исполнительное производство, действия судебного исполнителя, средства обжалования в исполнительном производстве, право на суд

Анотація: Стаття присвячена проблематиці, пов'язаної з наглядом за діяльністю державних виконавців, зокрема судовому та адміністративному нагляду, а також питанням взаємозв'язків між зазначеними видами нагляду. Захист прав учасників виконавчого провадження в рамках судового нагляду можливий не тільки завдяки відповідним засобам оскарження, але й завдяки запровадженню постійного судового нагляду, що здійснюється ex officio, про який йдеться в ст. 759 § 2 Цивільного процесуального кодексу Республіки Польща. Повноваження голови районного суду, при якому діє державний виконавець, – у рамках адміністративного нагляду – включають, серед іншого, повідомлення суду про необхідність видачі державному виконавцю розпоряджень відповідно до ст. 759 § 2 ЦПК, а також перевірку правильності виконання розпоряджень суду, виданих відповідно до ст. 759 § 2 ЦПК. Отже, навіть побіжний аналіз положень, що регулюють інститут нагляду за діяльністю державних виконавців, дозволяє зробити висновок, що механізми судового та позасудового нагляду можуть перетинатися. Метою статті є відповідь на питання про можливість визначення межі, яка б запобігала втручанню адміністративного нагляду в дії, що входять до сфери судового нагляду. Роздуми, представлені в статті, ґрунтуються на монографії М. Дзєвульської, присвяченій саме цій темі.

Ключові слова: судовий нагляд, виконавче провадження, дії державного виконавця, засоби оскарження у виконавчому провадженні, право на судовий розгляд

Introduction

The right to court does not end with the pronouncement of the decision.[1] It should be considered not only in terms of the possibility of obtaining a specific decision in the case, but also in terms of the possible enforcement of the decision, including enforcement by means of state coercion.[2] The right to enforcement of a decision is not expressly stated in Article 45 (1) of the Polish Constitution.[3] In distinguishing the right to enforce a final court decision through enforcement proceedings as a separate component of the right to a court settlement, the Constitutional Tribunal refers to international human rights standards. The case law of the European Court of Human Rights emphasises that the right to a court settlement would be illusory if the national legal system of a state that is a signatory to the Convention for the Protection of Human Rights and Fundamental Freedoms allowed a final court ruling to remain ineffective to the detriment of one of the parties.[4] The Constitutional Tribunal has expressed a similar view, pointing out that the legal order of a state must provide for instruments that enable the enforcement of final and binding decisions.[5] This view emphasises the strong link between proceedings and enforcement proceedings in civil matters.

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1 M. Hazelhorst, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*, Hague 2017, p. 159. What is more, as H.F. Gaul emphasises, the literature even presents the view that legal protection (i.e. the right to a court settlement) is implemented precisely through enforcement, and that the proceedings themselves are only a "preliminary phase," H.F. Gaul, *Ochrona prawna w egzekucji w świetle podstaw konstytucyjnych i dogmatycznych*, transl. W. Graliński, J. Bodio, Przegląd Prawa Egzekucyjnego 2003, no. 1, p. 41.

2 Among theirs J. Derlatka, *Zasada sprawnej egzekucji sądowej jako element efektywnego wymiaru sprawiedliwości*, Zeszyty Naukowe KUL 2017, no. 3, pp. 119–138; M. Żak, *Prawo do sądu jako element zasady dobrego rządzenia w świetle orzecznictwa z zakresu praw człowieka*, Palestra 2020, no. 2, p. 76; A. Łazarska, *Rzetelny proces cywilny*, Warszawa 2012, pp. 307–309; P. Pogonowski, *Realizacja prawa do sądu w postępowaniu cywilnym*, Warszawa 2005, pp. 157–158; J. Skorupka, *O sprawiedliwości procesu karnego*, Warszawa 2013, p. 136; A. Sulich, *Specyfika i środki zwalczania przewlekłości postępowania egzekucyjnego*, Polski Proces Cywilny 2011, no. 1, p. 83; decisions of the Constitutional Tribunal of 19 February 2003, P 11/02, OTK-A 2003, no. 2, item 12, and of 24 February 2003, K 28/02, OTK-A 2003, no. 2, item 13.

3 A. Łazarska, *Rzetelny proces*…, p. 307.

4 Decisions of the European Court of Human Rights of 19 March 1997, Hornsby against Greece, application no. 18357/91, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58020%22]} [access: 9.12.2025].

5 Decisions of the Constitutional Tribunal of 27 May 2008, P 59/07, OTK-A 2008, no. 4, item 64, and of 4 November 2010, K 19/06, OTK-A 2010, no. 9, item 96.

1. *Ratio legis* of supervision over court enforcement officers and its types

Enforcement proceedings in civil cases may only be conducted by authorised bodies, i.e. regional courts and court enforcement officers operating at these courts. The specific nature of enforcement proceedings, which is related to the fact that enforcement actions or omissions often have irreversible legal consequences, as well as entrusting court enforcement officers with the use of coercive measures pertaining to state authority, argued for the creation of extensive supervision over the activities of court enforcement officers and over court enforcement officers as public officials.[6] As it is expressed in Article 165 (1) of the Act of 22 March 2018 on court enforcement officers,[7] this supervision may be of various kinds: judicial, administrative and internal (corporate) supervision by the enforcement officers' self-government. Importantly, it is possible for the activities of court enforcement officers to be covered by all these supervisions at the same time.

Each of the supervisory functions over the activities of court enforcement officers referred to in Article 165 (1) of the Court Bailiffs Act is exercised by different entities and by means of different instruments. Judicial supervision is exercised primarily by the district court where the court enforcement officer operates and is carried out by means of the measures provided for in the provisions on enforcement proceedings. Among these instruments, complaints against the court enforcement officers' actions and objections to the plan for the distribution of the sum obtained from enforcement (supervision upon request) play a key role, as do orders issued to the court enforcement officer *ex officio* to ensure the proper execution of enforcement and the removal of any observed irregularities.[8] Administrative supervision of the activities of court enforcement officers is exercised by the Minister of Justice and the presidents of common courts, in particular the president of the district court where the court enforcement officer operates. Internal supervision is exercised by the National Council of Court Enforcement Officers.

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6 A. Olaś, *Czy w postępowaniu egzekucyjnym sąd jest związany wydanym przez siebie uprzednio w trybie art. 759 § 2 Kodeksu postępowania cywilnego rozstrzygnięciem nadzorczym?*, Polski Proces Cywilny 2022, no. 2, p. 395.

7 Act of 22 March 2018 on court enforcement officers, consolidated text: Journal of Laws [Dziennik Ustaw] 2024 item 1458, as amended (hereinafter: the Court Bailiffs Act).

8 A. Cudak, *Skarga na czynność komornika a środki nadzoru judykacyjnego stosowane z urzędu*, in: *Środki zaskarżenia w sądowym postępowaniu egzekucyjnym*, ed. J. Misztal-Konecka, Sopot 2017, p. 14.

2. The essence of the monograph "Ex officio supervision of the activities of a court enforcement officer pursuant to Article 759 § 2 of the Code of Civil Procedure"

An interesting publication by Monika Dziewulska entitled "Ex officio supervision of the activities of a court enforcement officer pursuant to Article 759 § 2 of the Code of Civil Procedure" (pp. 379) is devoted to the issue of judicial supervision of the activities of the court enforcement officer. The importance and topicality of the issue addressed by the author cannot be overlooked, and to date no monographic paper has been written on judicial supervision of the activities of court enforcement officers referred to in Article 759 § 2 of the Act of 17 November 1964 – Code of Civil Procedure.[9] This assessment is not changed by the fact that in 2023 a monograph by J. Bodio entitled "Supervision of court enforcement officers and their activities,"[10] was published, and in 2019 a publication by M. Pelc entitled "Judicial Supervision of Court Enforcement Officers in Poland and Germany: A Comparative Analysis."[11]

Monika Dziewulska's publication consists of eight chapters, preceded by an *Introduction* and concluded with a *Conclusion*. Each chapter begins with an introduction to the topic and ends with conclusions. Unfortunately, in the *Introduction*, the author did not formulate any research problem or objective, which undoubtedly makes it difficult to assess the structure and content of individual chapters, as well as the conclusions contained in the *Conclusion*.

The key concept for the entire publication is the supervision of the activities of court enforcement officers. We must agree with the author that the institution of supervision is not universal in nature, and as a result, the purpose of supervision, the rights and obligations of the supervisory authority, as well as the supervisory measures applied, are different in each case (pp. 24–25). As such, it seems incomprehensible that the first chapter, entitled "General Issues," refers exclusively to the issue of judicial supervision and only in the context of the activities of the courts. This part of the book lacks an explanation of what is meant by supervision of the activities of court enforcement officers and even a mention of the types of supervision to which enforcement officers are subject. The author refers to all three types of supervision over court enforcement officers and their activities in the second chapter ("The institution of supervision over enforcement and the enforcement authority in

9 Act of 17 November 1964 – Code of Civil Procedure, consolidated text: Journal of Laws 2024 item 1568 as amended.

10 J. Bodio, *Nadzór nad komornikami sądowymi i ich czynnościami*, Sopot 2023.

11 M. Pelc, *Nadzór judykacyjny nad komornikiem sądowym w Polsce i w Niemczech. Analiza porównawcza*, Sopot 2019.

historical terms"), and she only presented the types of supervision in Polish judicial enforcement proceedings and their essence in the third chapter ("Judicial supervision and other types of supervision in enforcement proceedings").

Analysing the various types of supervision over the activities of court enforcement officers, the author presents the views of legal doctrine and rightly notes that primary importance should be attached to substantive supervision exercised by the court (p. 99). One must also agree with the author that supervision – especially judicial and administrative supervision – cannot fulfil its functions "interchangeably" (p. 153). Administrative supervision cannot interfere with activities falling within the scope of judicial supervision, as explicitly stipulated in Article 165 (2) of the Court Bailiffs Act. It is worth noting that local government and administrative supervision, which are subjective in nature, should complement the scope of supervision at the systemic, organisational and technical levels.[12]

3. Interaction between judicial supervision and administrative supervision measures

At the same time, the question arises as to whether it is possible to combine judicial supervision measures exercised upon request and *ex officio*, as well as to combine *ex officio* judicial supervision with administrative supervision measures. The search for answers to these problems is the greatest value of the monograph by M. Dziewulska (the above-mentioned Chapter Three and Chapter Six entitled "The relationship between ex officio judicial supervision under Article 759 § 2 of the Code of Civil Procedure and judicial supervision exercised upon request as a result of a complaint against the actions of a court enforcement officer). However, the author's statements about the need to introduce legislative changes in the area of administrative supervision without specifying what changes, in her opinion, could sufficiently delimit the scope of *ex officio* judicial supervision and administrative supervision leave something to be desired (p. 329).

The Author's view should be shared that complaints about the bailiff's activities and ex officio supervision are inextricably linked. Supervision exercised upon request and supervision exercised ex officio complement and complement each other.[13]

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12 J. Misztal-Konecka, *Nadzór prezesów sądów powszechnych nad komornikami sądowymi*, in: *Analiza i ocena ustawy o komornikach sądowych oraz ustawy o kosztach komorniczych*, ed. A. Marciniak, Sopot 2018, p. 103.

13 A. Cudak, *Skarga na czynności komornika*…, p. 14.

It seems that this was the intention of the legislator, who in Article 767[3] of the Code of Civil Procedure clearly indicated that *ex officio* supervision also applies in the event of rejection of a complaint against the bailiff's actions. There is no competitiveness between the indicated supervision measures.[14] Moreover, the principle of availability, also applicable in enforcement proceedings, cannot constitute a justification for exempting the court from the obligation to ensure proper execution and remove irregularities and shortcomings whenever the lack of court response would mean leaving in circulation the activities of bailiffs that are contrary to the basic rules of enforcement proceedings and legal knowledge.[15] However, this last argument did not sound clear in the monograph.

Analyzing the issue of the intersection of judicial and extrajudicial supervision, the author aptly believes that as part of administrative supervision, it is not possible to repeal or change the actions of a court bailiff that were performed in violation of the provisions of enforcement proceedings (p. 328). This is a feature unique to judicial supervision. There is no doubt that the interconnections between judicial and administrative supervision have not been precisely defined. It is also important that judicial supervision cannot be based on the measures referred to in Article 168 of the Court Bailiffs Act. None of the supervisors can be assigned a preliminary ruling meaning in relation to the others.

Conclusions

The significance of the issue addressed by M. Dziewulska in her monograph entitled "Ex officio supervision of the activities of a court enforcement officers pursuant to Article 759 § 2 of the Code of Civil Procedure" for the practice of judicial enforcement proceedings cannot be overlooked. This is because participants in enforcement proceedings are increasingly choosing not to lodge appeals in enforcement proceedings (most often complaints about the enforcement officer's actions) in favour of submitting a request to the authorities exercising administrative supervision over the activities of the court enforcement officers have the enforcement proceedings

14 D. Olczak-Dąbrowska, *Kilka uwag o skardze na czynność komornika*, in: *Sine ira et studio. Księga jubileuszowa dedykowana Sędziemu Jackowi Gudowskiemu*, eds. T. Ereciński, P. Grzegorczyk, K. Weitz, Warszawa 2016, p. 386.

15 R. Reiwer, *Zmierzch skargi na czynności komornika – jej konwersja w żądanie nadzoru judykacyjnego na podstawie art. 759 § 2 KPC – wybrane zagadnienia*, in: *Symbolae Andreae Marciniak dedicatae*, eds. J. Jagieła, R. Kulski, Warszawa 2022, p. 746.

supervised and to refer to the court a notification of the need to issue orders to the court enforcement officer pursuant to Article 759 § 2 of the Code of Civil Procedure. Although both types of supervision are equivalent,[16] only within the framework of judicial supervision can the district court change and revoke enforcement actions taken by the court enforcement officer in violation of the provisions of enforcement proceedings.[17] The separation of the sphere of judicial supervision and administrative supervision and the elimination of the abuses indicated above is a consequence not only of the introduction of precise legal provisions, but also of their proper application by judges (judges and court clerks) and presidents of common courts who are prepared for this in terms of their expertise.[18]

Translated by Joanna Pikuła

Bibliography

Bodio J., *Nadzór nad komornikami sądowymi i ich czynnościami*, Sopot 2023.

Cudak A., *Skarga na czynność komornika a środki nadzoru judykacyjnego stosowane z urzędu*, in: *Środki zaskarżenia w sądowym postępowaniu egzekucyjnym*, ed. J. Misztal-Konecka, Sopot 2017.

Derlatka J., *Zasada sprawnej egzekucji sądowej jako element efektywnego wymiaru sprawiedliwości*, Zeszyty Naukowe KUL 2017, no. 3.

Gaul H.F., *Ochrona prawna w egzekucji w świetle podstaw konstytucyjnych i dogmatycznych*, transl. W. Graliński, J. Bodio, Przegląd Prawa Egzekucyjnego 2003, no. 1.

Hazelhorst M., *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*, Hague 2017.

Łazarska A., *Rzetelny proces cywilny*, Warszawa 2012.

Marciniak A., *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, Warszawa 2023.

Misztal-Konecka J., *Nadzór prezesów sądów powszechnych nad komornikami sądowymi*, in: *Analiza i ocena ustawy o komornikach sądowych oraz ustawy o kosztach komorniczych*, ed. A. Marciniak, Sopot 2018.

Olaś A., *Czy w postępowaniu egzekucyjnym sąd jest związany wydanym przez siebie uprzednio w trybie art. 759 § 2 Kodeksu postępowania cywilnego rozstrzygnięciem nadzorczym?*, Polski Proces Cywilny 2022, no. 2.

Olczak-Dąbrowska D., *Kilka uwag o skardze na czynność komornika*, in: *Sine ira et studio. Księga jubileuszowa dedykowana Sędziemu Jackowi Gudowskiemu*, eds. T. Ereciński, P. Grzegorczyk, K. Weitz, Warszawa 2016.

16 M. Pelc, *Nadzór judykacyjny*…, p. 85.

17 A. Marciniak, *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, Warszawa 2023, p. 115.

18 J. Bodio, *Nadzór nad komornikami*…, p. 198.

Pelc M., *Nadzór judykacyjny nad komornikiem sądowym w Polsce i w Niemczech. Analiza porównawcza*, Sopot 2019.

Pogonowski P., *Realizacja prawa do sądu w postępowaniu cywilnym*, Warszawa 2005.

Reiwer R., *Zmierzch skargi na czynności komornika – jej konwersja w żądanie nadzoru judykacyjnego na podstawie art. 759 § 2 KPC – wybrane zagadnienia*, in: *Symbolae Andreae Marciniak dedicatae*, eds. J. Jagieła, R. Kulski, Warszawa 2022.

Skorupka J., *O sprawiedliwości procesu karnego*, Warszawa 2013.

Sulich A., *Specyfika i środki zwalczania przewlekłości postępowania egzekucyjnego*, Polski Proces Cywilny 2011, no. 1.

Żak M., *Prawo do sądu jako element zasady dobrego rządzenia w świetle orzecznictwa z zakresu praw człowieka*, Palestra 2020, no. 2.

Sprawozdania / Reports

STUDIA PRAWNICZE KUL
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13th Scientific Seminar of the Department of Civil Procedure of the John Paul II Catholic University of Lublin, Bucharest, 14 June 2025

13 Seminarium Naukowe Katedry Postępowania Cywilnego KUL, Bukareszt, 14 czerwca 2025 r.

13-й Научный семинар Кафедры гражданского процесса Люблинского католического университета, Бухарест, 14 июня 2025 г.

13-й науковий семінар Кафедри Цивільного процесу Люблінського Католицького університету Івана Павла II, Бухарест, 14 червня 2025 р.

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The scientific seminars of research and teaching employees and doctoral students of the Department of Civil Procedure of the John Paul II Catholic University of Lublin have established the tradition of the meeting for over a decade, the aim of which is discussion on current and crucial problems related to the scientific and practical application of broadly understood civil procedure law. The scientific value of these meetings results not only from the topics covered, but also from the participation of people who deal with the practical application of legal provisions. It was similar during the 13th Scientific Seminar, which took place on 14 June 2025 at the University of Bucharest, which is one of the oldest and largest universities in Romania. The scientific seminar was chaired by Prof. Dr. habil. Joanna Misztal-Konecka, the Head of the Department of Civil Procedure of the John Paul II Catholic University of Lublin, who officially inaugurated this year's meeting and welcomed its participants.

The seminar was divided into two panels that were ended by discussion of the issues covered in the speeches. During the first panel, the issues related to procedural protection of the family, organisation of the process, domestic jurisdiction, and bankruptcy law were discussed. The first paper entitled "Mediation in family and care matters examined in non-contentious proceedings" was delivered by Dr. Paulina Woś. The subject of the presentation was the analysis of the essence of mediation proceedings in family and care cases. The speaker set out that the practical significance of mediation increases so, in family and care cases, she is not only voluntary and admissible but also desirable.

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Next, the floor was taken by M.A. Patryk Kozak, who presented the paper entitled "The will of the child as an independent basis for refusing contact with a parent – considerations in the context of the judgement of the Constitutional Tribunal of 22 June 2022 (SK 3/20)."[1] In his speech, the speaker paid attention to the impact of the judgement of the Constitutional Tribunal on the essence of the proceeding in matters of the performance of contacts between child and parent. In these matters the court must ex officio determine whether the reason of non-performance of contacts between parent with child is the behaviour of the child for which the person who takes care of the child is not responsible. The speaker critically assessed this judgement because constituting contacts as the child's right, and not its obligation, causes the risk that the child will refuse contact with the parent, not being aware of the importance of a proper relationship with both parents.

The next paper entitled "The role and function of preparatory hearing" was presented by Dr. Paweł Wrzaszcz. The subject of the speech was the analysis of the essence of the preparatory hearing as an institution supporting the organisation of the civil process after its commencement. The element of the preparatory hearing is the preparation and approval by the court of the future trial plan. The speaker attempted to find the reasons for the lack of interest of the courts in conducting the preparatory hearing aimed at expediting the course of civil proceedings.

Next, the floor was taken by M.A. Daniel Majchrzak with the paper entitled "Scope of domestic jurisdiction of polish courts in corporate disputes." The speaker pointed out that the exclusive domestic jurisdiction of polish courts applies in cases involving the dissolution of a legal person or entity other than a legal person and cases to annul or declare invalid resolutions of their authorities, if a legal person or entity other than a legal person has its registered office in the Republic of Poland. The application of this rule is excluded in situations specified by union law in the Council Regulation (EC) No. 44/2001 (Brussels I)[2] and Regulation (EU) No. 1215/2012 (Brussels I bis)[3] and in the case law of the CJEU. In conclusion, the speaker set out that disputes between shareholders and the company are not always resolved by the court of the company's seat. Therefore, it is important to determine the actual seat of the company and the content of the possible jurisdiction agreement.

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1 The judgement of the Constitutional Tribunal of 22 June 2022, SK 3/20, Journal of Laws [Dziennik Ustaw] 2022 item 1337.

2 Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L 12, 16.01.2001, pp. 1–12.

3 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L 351, 20.12.2012, pp. 1–32.

The next and last paper in the first panel, entitled "Maintaining the enterprise of bankrupt," was delivered by M.A. Joanna Waga. The speaker considered whether, according to the current legal provisions of bankruptcy law, it is possible to maintain the enterprise of bankrupt in bankruptcy proceedings, while the disposal of the debtor's enterprise should become the model solution. She pointed out that from the interpretation of bankruptcy law, it results that there are a number of legal institutions the aim of which is to maintain of the enterprise of bankrupt.

The second panel was devoted to issues related to the institution of a blind claim, the electronification of registers within the National Court Register and evidence proceedings. This panel was begun by Dr. Dominika Wójcik who delivered the paper entitled "The bills of introduction of the institution of blind claim to the Code of Civil Procedure."[4] The speaker pointed out that anonymous personality rights infringements are increasingly on the Internet. An obstacle to filing a civil claim is the lack of knowledge of the defendant's identity. The implementation of the institution of a blind claim to the Code of Civil Procedure is to protect against the personality rights infringements on the Internet. In her paper, the speaker set out that the implementation of the institution of a blind claim in the form of another separate proceeding and the imposition on the court of the obligation to determine the identity of the defendant raise doubts.

The next paper entitled "The bill of introduction full electronification of registers kept by the National Court Register – closing the system?" was presented by Dr. Emil Kowalik. The subject of the speech was the analysis of the bill of legislative changes concerning full electronification of court registers. The crucial element is to enable access to registry data through web services, which is intended to increase the efficiency and availability of information. The speaker stated that the implementation of these legislative changes will allow for the automated functioning of the registration system and facilitate the use of data by public entities and entrepreneurs.

Next, the floor was taken by M.A. Anna Haciuk who delivered the paper entitled "Court expert and expert evidence in civil procedure in selected European legal systems." The subject of this paper was the analysis of the status of a court expert and expert evidence in civil procedure in selected European legal systems. The status and procedure for the appointment of an expert and the significance of expert evidence differ significantly depending on the legal tradition of a chosen country. However, the speaker pointed out that a common characteristic of analysed legal systems is to provide the impartiality and reliability of expert evidence, which is

[4] Act of 17 November 1964 on the Code of Civil Procedure, consolidated text: Journal of Laws 2024 item 1568 as amended (hereinafter: CCP).

an important element of civil procedure enabling the hearing of cases requiring specialist knowledge.

The next speaker was Dr. Kinga Dróżdż-Chmiel with a paper entitled "Witness's testimony in writing (Art. 271^1 CCP) – comments *de lege lata* and *de lege ferenda*." The subject of this speech was the analysis of the essence of witness's testimony in writing according to current regulations and the presentation of relevant *de lege ferenda* postulates. The speaker said that this legal institution will have significance in the future. However, it is essential to specify the basics of the admissibility of the witness's testimony in writing and the relevant procedure in which the witness would give this testimony.

The last paper in the second panel, entitled "The examination of a witness in remote hearing – chances and dangers," was delivered by Prof. Dr. habil. Joanna Misztal-Konecka. In her speech the speaker set out the advantages and disadvantages of the examination of a witness in a remote hearing. One of the disadvantages of this examination is to impose on the witness the obligation to provide himself with the appropriate equipment that allows him to participate in this hearing. In addition, there is a danger of technical problems and third persons influencing the content of the witness's testimony. The speaker also paid attention to the advantages of the examination of a witness in a remote hearing which are expediting the course of civil procedure and the lack of obligation of a personal presence in court of a witness.

After presenting all the papers by the participants and discussions, Prof. Dr. habil. Joanna Misztal-Konecka summarised and ended this year's meeting. The 13th Scientific Seminar of the Department of Civil Procedure of the John Paul II Catholic University of Lublin, as previously these meetings were, was an opportunity to share observations and remarks. In addition, organising this meeting for the third time at a university outside of Poland provided an opportunity to learn about the essence of university education and the culture of the country where this year's seminar took place.

Z życia Wydziału /
Faculty activities

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DIARIUSZ
Kalendarium ważniejszych wydarzeń naukowych z udziałem pracowników Wydziału Prawa, Prawa Kanonicznego i Administracji KUL styczeń–marzec 2025 r.

DIARY

Calendar of major scientific events with the participation of academic staff of the Faculty of Law, Canon Law and Administration of the John Paul II Catholic University of Lublin January–March 2025

КАЛЕНДАРЬ МЕРОПРИЯТИЙГ

лавные научные события с участием сотрудников Факультета права, канонического права и администрации Люблинского католического университета Иоанна Павла II январь–март 2025 года

ЖУРНАЛ ПОДІЙ

Календар головних наукових заходів за участю співробітників факультету Права, Канонічного Права та Адміністрації Люблінського католицького університету Івана Павла II січень–березень 2025 р.

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Styczeń

15 stycznia 2025 r. – podczas ogólnopolskiej konferencji naukowej pn. *Nowe technologie w komunikacji społecznej*, zorganizowanej przez Wydział Prawa, Prawa Kanonicznego i Administracji KUL, prof. dr hab. **Joanna Misztal-Konecka** wygłosiła referat pt. *Ramy prawne przesłuchania świadka na posiedzeniu zdalnym*, dr hab. **Paweł Fajgielski** wygłosił referat pt. *Zakaz publikacji w prasie danych osobowych osób, przeciwko którym toczy się postępowanie a korzystanie z technologii*

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informacyjnych, natomiast dr hab. **Sebastian Kwiecień** wystąpił z referatem pt. *Generatywna sztuczna inteligencja i przyszłość norm równościowych w prawie pracy*.

Luty

1 lutego 2025 r. – dr **Paweł Widerski**, podczas II Ogólnopolskiej Konferencji Naukowej pn. *Współczesne problemy prawno-administracyjne: wybrane zagadnienia prawa cywilnego i administracyjnego*, zorganizowanej przez Dialogiczne Towarzystwo Naukowe – Społeczeństwo i Polityka, wygłosił referat pt. *Kilka uwag o analogicznym stosowaniu przepisów prawa cywilnego do pełnomocnictwa w ogólnym postępowaniu administracyjnym*.

26 lutego 2025 r. – dr hab. **Paweł Bucoń**, podczas międzynarodowej konferencji naukowej pn. *Artifcial Intelligence in Legal Procedures – Contemporary Challenges and Threats*, zorganizowanej przez Wydział Prawa i Administracji UMCS, Asseco Data Systems S.A. oraz Polską Akademię Nauk w Rzymie, wygłosił referat pt. *Sztuczna inteligencja w procedurach sądowych*.

27 lutego 2025 r. – ks. prof. dr hab. **Piotr Stanisz**, podczas ogólnopolskiej konferencji naukowej pn. *Relacje Państwo – Kościół. Podstawowe zasady państwa prawa*, zorganizowanej przez Sekretariat Konferencji Episkopatu Polski, wygłosił referat pt. *Konstytucyjne zasady relacji między państwem a kościołami i innymi związkami wyznaniowymi: równouprawnienie, bezstronność, autonomia i niezależność, współdziałanie i konsensualność*.

Marzec

5 marca 2025 r. – dr hab. **Paweł Fajgielski**, podczas ogólnopolskiej konferencji naukowej pn. *Wpływ Aktu w sprawie sztucznej inteligencji na funkcjonowanie administracji publicznej*, zorganizowanej przez Instytut Nauk Prawnych PAN, przedstawił referat pt. *Relacje przedmiotowe i podmiotowe RODO i Aktu w sprawie sztucznej inteligencji z perspektywy administracji publicznej*.

8 marca 2025 r. – dr **Emil Kowalik**, podczas Ogólnopolskiego Sympozjum Naukowego pn. *Rejestracja stanu prawnego nieruchomości. Ludzie – Instytucje – Problemy*, wygłosił referat pt. *Rejestracja stanu prawnego nieruchomości w związku z przekształceniem jednoosobowej działalności gospodarczej w spółkę kapitałową.*

11–12 marca 2025 r. – ks. prof. dr hab. **Mirosław Sitarz** podczas V Samorządowego Kongresu Trójmorza brał czynny udział w panelu pt. *Dziedzictwo historyczno-kulturowe i tożsamość regionu Trójmorza*.

15 marca 2025 r. – dr **Paweł Widerski**, podczas V Ogólnopolskiej Konferencji Naukowej pn. *Prawo cywilne i prawo spółek. Problemy – wyzwania – interpretacje*, zorganizowanej przez Towarzystwo Naukowe Center for American Studies w ścisłej i bezpośredniej współpracy z pracownikami naukowymi Uniwersytetu Radomskiego im. Kazimierza Pułaskiego, Uniwersytetu Szczecińskiego, Uniwersytetu Marii Curie-Skłodowskiej w Lublinie oraz Wyższej Szkoły Gospodarki w Bydgoszczy, a także ekspertem kancelarii Gavrilov & Brooks (Sacramento/Los Angeles, USA), wygłosił referat pt. *Odpowiedzialność odszkodowawcza pełnomocnika wobec mocodawcy*.

19 marca 2025 r. – dr **Zuzanna Gądzik**, podczas konferencji pt. *Godność osoby ludzkiej a humanizacja zwierząt*, zorganizowanej przez Katolicki Uniwersytet Lubelski Jana Pawła II, zaprezentowała referat pt. *„Wszystkie zwierzęta są równe, ale niektóre są równiejszej od innych" – czyli jak współczesne prawo chroni zwierzęta*.

27 marca 2025 r. – podczas warsztatów zespołu w ramach wykonania projektu nr 100-2023-00062 pt. *Potrzeba nowego ujęcia strony słabszej w dobie postkonsumenckiej na przykładzie ochrony przedstawicieli handlowych w prawie polskim i niemieckim w kontekście europejskim*, zorganizowanych przez Uniwersytet Warszawski, dr **Dariusz Bucior** wygłosił referat pt. *Zakres podmiotowy przepisów chroniących agenta jako słabszą stronę umowy*. Ponadto dr **Marek Dąbrowski**, podczas międzynarodowej konferencji naukowej pn. *Mediacja w sporach cywilnych w Polsce – 20 lat minęło jak jeden dzień*, zorganizowanej przez Wydział Prawa i Administracji UW oraz Centrum Rozwiązywania Sporów i Konfliktów na Wydziale Prawa i Administracji UW, wystąpił z referatem pt. *Skarga na czynności mediatora*.

28 marca 2025 r. – podczas międzynarodowej konferencji naukowej pn. *Mediacja w sporach cywilnych w Polsce – 20 lat minęło jak jeden dzień*, zorganizowanej przez Wydział Prawa i Administracji UW oraz Centrum Rozwiązywania Sporów i Konfliktów na Wydziale Prawa i Administracji UW, ks. dr hab. **Włodzimierz Broński**, prof. KUL, oraz dr **Marcin Rokosz** zaprezentowali wystąpienie w języku angielskim pt. *Lawyer in Mediation: Should the Mediator be a Lawyer?* Ponadto dr **Piotr Sławicki** wygłosił referat pt. *Grounds for Refusing to Approve a Mediation Agreement under EU Law*. Natomiast dr hab. **Krzysztof Wiak**, prof. KUL, podczas ogólnopolskiej konferencji naukowej pn. *Powołania sędziów w Polsce po 1989 r.*, zorganizowanej przez Uniwersytet Łódzki, wygłosił referat pt. *Powołania sędziów w orzecznictwie Sądu Najwyższego*, a dr **Marek Smarzewski**, podczas II warsztatów

eksperckich w związku z realizacją międzynarodowego projektu naukowego pt. *Mutual Recognition 2.0: Effective, Coherent, Integrative and Proportionate Application of Judicial Cooperation Instruments in Criminal Matters (MR2.0)*, zorganizowanych przez Katedrę Postępowania Karnego KUL na Wydziale Prawa, Prawa Kanonicznego i Administracji KUL, wygłosił referat pt. *Przekazywanie postępowań karnych jako nowy alternatywny instrument współpracy w sprawach karnych w Unii Europejskiej*.

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Bibliografia pracowników naukowych Instytutu Prawa Kanonicznego z Wydziału Prawa, Prawa Kanonicznego i Administracji Katolickiego Uniwersytetu Lubelskiego Jana Pawła II za rok 2023

Bibliography of academic staff of the Institute of Canon Law of the Faculty of Law, Canon Law and Administration of the John Paul II Catholic University of Lublin for 2023

Библиография научных трудов сотрудников Института права канонического Факультета права,канонического права и администрации Люблинского католического университета Иоанна Павла II за 2023 год

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Przyjęto następującą klasyfikację: I. Opracowania książkowe; II. Artykuły i studia; III. Hasła encyklopedyczne; IV. Glosy; V. Recenzje i noty; VI. Sprawozdania; VII. Inne.

Adamowicz Leszek

II

Adamowicz L., Gęba A., *Manželstvo v časoch kultúry dočasnosti. Nové výzvy pre katolícke chápanie manželstva*, w: *Ius conubii – aktuálne výzvy*, red. J. Popovič, Prešov 2023, s. 9–40.

Burczak Krzysztof

II

Burczak K., *Bulla Klemensa XI Decet Romanum Pontificem ustanawiająca prepozyta kodeńskiego infułatem*, Teologiczne Studia Siedleckie 2023, t. 20, s. 161–181.

Burczak K., *Przestępstwa fałszerstwa w normach Corpus Iuris Canonici*, w: *Ecclesia Christi. Księga jubileuszowa dedykowana Księdzu Profesorowi Józefowi Wroceńskiemu SCJ z okazji 40. rocznicy rozpoczęcia pracy naukowej*, red. A. Saj, M. Stokłosa, Warszawa 2023, s. 135–145.

ISSN: 1897-7146; eISSN: 2719-4264;
https://doi.org/10.31743/sp19132

Bzdyrak Grzegorz

II

Bzdyrak G., *The Status and Duties of Ecclesiastical Judges in Cases Concerning the Nullity of Marriage*, Religions 2023, t. 14, nr 6, 691.

Bzdyrak G., *Zaburzenia osobowości typu „borderline" jako przyczyna natury psychicznej niezdolności do zawarcia małżeństwa w orzecznictwie Sądu Metropolitalnego w Lublinie*, Studia Prawnicze KUL 2023, nr 2, s. 7–25.

Greszta-Telusiewicz Marta

II

Greszata-Telusiewicz M., *Kryzys małżeński jako przyczyna wszczęcia kanonicznego procesu o nieważność małżeństwa w świetle kodeksowej zasady salus animarum*, Pedagogika Katolicka. Przegląd Społeczno-Humanistyczno-Teologiczny 2023, nr 32 (1), s. 49–57.

Greszata-Telusiewicz M., *Mediacja jako metoda pokonania kryzysu w sądowej próbie pogodzenia stron w procesie kanonicznym*, Pedagogika Katolicka. Przegląd Społeczno-Humanistyczno-Teologiczny 2023, nr 33 (2), s. 61–69.

Greszata-Telusiewicz M., *Rozpad małżeństwa w obliczu kanonicznej zasady procesowej salus animarum suprema lex*, Kościół i Prawo 2023, t. 12 (25), nr 1, s. 173–185.

Jaszcz Adam

II

Jaszcz A., *The Bishop's Special Solicitude for a Presbyter Who Has Served Expiatory Penalties for The Delict "Contra Sextum Cum Minore"*, Estudios Eclesiásticos 2023, nr 98 (387), s. 729–767.

Jaszcz A., *The Diocesan Synod and Its Greatest Crisis in the History of the Church*, w: *The Church in the Face of Crises and Challenges over the Centuries. Selected Issues from the History of the Church*, red. M. Nabożny, M. Wysocki, wyd. 1, Vandenhoeck & Ruprecht, 2023, s. 153–168.

Jaszcz A., *Prawnokanoniczne aspekty wychowania do celibatu w wyższych seminariach duchownych w Polsce*, Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego 2023, t. 18, nr 20 (2), s. 55–71.

Jaszcz A., *Prohibition against Wearing Ecclesiastical Dress by Secular Clerics as a Punishment for Crimes contra sextum cum minore*, Religions 2023, t. 14, nr 10, 1282.

Kaleta Paweł

I

Kaleta P., *Komentarz do Kodeksu Prawa Kanonicznego*, t. III/1, ks. III. *Nauczycielskie zadanie Kościoła*, Pallottinum, Poznań 2023, ss. 290.

II

Kaleta P., *Finansowanie potrzeb kościelnych w warunkach pandemii*, w: *Ecclesia Christi. Księga jubileuszowa dedykowana Księdzu Profesorowi Józefowi Wroceńskiemu SCJ z okazji 40. rocznicy rozpoczęcia pracy naukowej*, red. A. Saj, M. Stokłosa, Warszawa 2023, s. 235–248.

Kaleta P., *Wymogi prawne celebrowania wielointencyjnych Mszy świętych*, w: *Homini et Ecclesiae serviens. Księga pamiątkowa dedykowana Księdzu Profesorowi Henrykowi Stawniakowi SDB z okazji 70. rocznicy urodzin*, red. A. Domaszk, R. Kamiński, Wydawnictwo Naukowe UKSW, Warszawa 2022, s. 297–306.

Lewandowski Paweł

II

Lewandowski P., *Implementation of the Clergy's Right to Rest According to the Polish Post-Code Synodal Legislation*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2023, t. 16, nr 1, s. 191–205.

Lewandowski P., *Wizytacje kanoniczne przeprowadzone przez Biskupa Tarnowskiego Jerzego Ablewicza*, Kościół i Prawo 2023, t. 12 (25), nr 1, s. 155–171.

Lewandowski P., *Zrównoważony rozwój człowieka w nauczaniu Papieża Jana Pawła II*, w: *Różnorodność europejskiej kultury prawnej a proces kreowania zrównoważonego rozwoju regionalnego. Raport podsumowujący*, red. K. Kwiatosz, A. Mitrut, A. Romanko, M. Sitarz, I. Szewczak, M. Szewczak, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2023, s. 171–176.

Mikołajczuk Krzysztof

II

Mikołajczuk K., Zielińska-Król K., *The Role of Religion in the Family Life of People with Disabilities: A Legal and Social Study*, Religions 2023, t. 14, nr 11, 1371.

Mikołajczuk K., Le Goaziou Th., Zielińska-Król K., *Faith as a Factor in the Self-Acceptance Process in the Narratives of People with Disabilities. A Legal and Social Study*, Journal for Perspectives of Economic Political and Social Integration. Journal for Mental Change 2023, t. 29, nr 1, s. 131–170.

Romanko Agnieszka

II

Romanko A., *„Kamienie milowe" kultury Narodu w ujęciu Stefana Kardynała Wyszyńskiego*, w: *Raport podsumowujący. Różnorodność europejskiej kultury prawnej a proces kreowania zrównoważonego rozwoju regionalnego*, red. K. Kwiatosz, A. Mitrut, A. Romanko, M. Sitarz, I. Szewczak, M. Szewczak, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2023, s. 195–198.

Romanko A., *Obecność mediów cyfrowych w misji ewangelizacyjnej Kościoła według Praedicate Evangelium*, Journal of Modern Science 2023, t. 52, nr 3, s. 682–694.

Romanko A., *Reformy Římské kurie po vyhlášení Kodexu kanonického práva z roku 1983 do Apoštolské konstituce Praedicate Evangelium*, Revue Církevního Práva 2023, t. 29, nr 91 (2), s. 51–62.

Sitarz Mirosław

II

Sitarz M., *Jan Pavel II. největším zákonodárcem katolické církve*, Revue Církevního Práva 2023, t. 91, nr 2 (23), s. 41–50.

Sitarz M., *Tożsamość Europy Środkowo-Wschodniej*, w: *Raport podsumowujący. Różnorodność europejskiej kultury prawnej a proces kreowania zrównoważonego rozwoju regionalnego*, red. K. Kwiatosz, A. Mitrut, A. Romanko, M. Sitarz, I. Szewczak, M. Szewczak, Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, Lublin 2023, s. 167–169.

Sitarz M., *Zasady relacji Kościół–Państwo w nauczaniu Soboru Watykańskiego II*, Studia Leopoliensia. Rocznik Instytutu Teologicznego im. Św. Abp. Józefa Bilczewskiego Archidiecezji Lwowskiej Obrządku Łacińskiego 2023, t. 16, s. 23–31.

Skorupa Ambroży

II

Skorupa A., *Participation of Religious Brothers in the Exercise of Authority in Clerical Religious Institutes*, Kościół i Prawo 2023, t. 12 (26), nr 2, s. 201–214.

Słowikowska Anna

II

Słowikowska A., *Wpływ narcyzmu na symulację zgody małżeńskiej w orzecznictwie Trybunału Roty Rzymskiej. Zarys problematyki*, Studia Redemptorystowskie 2023, nr 21, s. 385–397.

Słowikowska A., Wojciechowski G., *« Pain azyme » – c'est-a-dire ? Comment comprendre la caracteristique essentielle du pain eucharistique*, Roczniki Humanistyczne 2023, t. 71, nr 8, s. 143–155.

Syczewski Tadeusz

II

Syczewski T., *Czasy święte według Kodeksu Prawa Kanonicznego z 1983 roku i obowiązującego prawodawstwa Kościoła łacińskiego*, w: *Bezpieczeństwo człowieka a prawda*, red. E. Jarmoch, A. Klim-Klimaszewska, S. Bylina, Instytut Kultury Regionalnej i Badań Literackich im. Franciszka Karpińskiego. Stowarzyszenie, Siedlce 2023, s. 25–34.

Syczewski T., *Obchód niedzieli palmowej na terenie Diecezji Drohiczyńskiej*, w: *Współczesne wyzwania pedagogiczne, socjologiczne i w naukach o bezpieczeństwie*, red. A. Klim-Klimaszewska, A. Filipek, S. Bylina, Instytut Kultury Regionalnej i Badań Literackich im. Franciszka Karpińskiego. Stowarzyszenie, Siedlce 2023, s. 45–55.

Szczot Elżbieta

II

Szczot E., *Between Entitlement and Limitation of the Right to Sacraments During the Sars-CoV-2 Pandemic: Internet as a Means of Transmission and Communication with the Faithful*, Philosophy and Canon Law 2023, t. 9, nr 2, s. 1–21.

V

Szczot E., *Ginter Dzierżon, Dyspensa w kanonicznym porządku prawnym Studium prawno-historyczne [Dispensation in the Canonical Legal Order A Legal and Historical Study]*.

Warszawa: Wydawnictwo Naukowe UKSW, 2020, pp. 186, Philosophy and Canon Law 2023, t. 9, nr 2, s. 1–4.

Wojciechowski Grzegorz

II

Wojciechowski G., *Desakralizacja miejsc kultu. Przypadek francuski*, Roczniki Nauk Prawnych 2023, t. 33, nr 3, s. 87–98.

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