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***Summary:*** *The publication of a normative act is related to significant axiological and formal aspects related to legal and social consequences. The issue of publishing enactments of local law should be perceived not only in formal and legal categories, as a certain element of the law-making procedure, but should also be depicted in a broader social context, with reference to such values as openness of actions performed by public administration authorities, legal certainty or non-retroactivity of regulations. Openness of law cannot be realized under conditions of closed norm-forming procedures, particularly with regard to those acts that refer to the sphere of obligations and rights of citizens. In this light, the issue of publishing enactments of local law is related to the principle of lawfulness. The coming into force of an enactment of local law means that from the date indicated in the enactment, everyone whose behaviour is specified by norms included therein is obliged to execute them. Therefore, in so far as the promulgation of the enactment is a necessary condition of its application and has a value of a constitutional principle, the entry of the enactment into force within a specified period of time depends on the regulation itself.*

***Key words:*** *local by-laws, regulations, the publication of a normative act.*

**The coming into force of local enactments in Poland**

The publication of a normative act is related to significant axiological and formal aspects related to legal and social consequences[1]. The issue of publishing enactments of local law should be perceived not only in formal and legal categories, as a certain element of the law-making procedure, but should also be depicted in a broader social context, with reference to such values as openness of actions performed by public administration authorities, legal certainty or non-retroactivity of regulations. Openness of law cannot be realized under conditions of closed norm-forming procedures, particularly with regard to those acts that refer to the sphere of obligations and rights of citizens. In this light, the issue of publishing enactments of local law is related to the principle of lawfulness[2].

The action of promulgating a normative act, although socially very significant, does not create any actual possibility of getting acquainted with it by the interested parties, who ought to have not only access to published legal texts, but also an appropriate time for becoming acquainted with the content of a legal act.

In order to avoid arbitrary decisions of the legislator in establishing the period after which acts issued by the legislator enter into force and to protect the addressees of these established legal norms, the freedom of the author of the normative act in the subject matter contemplated here is to a certain extent restricted in Art. 2 of the Constitution of the

[1] See M. Borucka-Arctowa, *O społecznym działaniu prawa*, Warszawa 1967, chapter IV.
[2] H. Rot, K. Siarkiewicz, *Zasady tworzenia prawa miejscowego*, Warszawa 1994, p. 186.

Republic of Poland[3] and in Art. 4 of the Act on Promulgation of Normative Acts and Some Other Legal Acts[4]. Therefore, an important question appears whether rules and the manner of promulgating a local enactment provide its addressees with the possibility of getting acquainted with it, since the promulgation of the local enactment is the condition under which the local enactment comes into force, and it is the condition under which the enactment becomes effective, i.e. can be covered by an implication of the common knowledge of law.

Art. 88 of the Constitution of the Republic of Poland sets forth a general principle for promulgating law-making acts, pursuant to which the condition precedent for the entry into force of some normative acts is their promulgation. This condition applies to all acts specified in Art. 87 of the Constitution of the Republic of Poland, including local enactments.

The term of "coming into force" is used in Polish law and legal language with two meanings, to designate:

1) the moment from which anyone concerned is obliged to execute norms included in a given act whenever these norms apply, or
2) the moment when any given act becomes an element of the legal system, which can be related to the obligation of executing norms included therein (if the day of the coming into force falls on the day of promulgation), or can anticipate the obligation of executing norms included in the given act if this act provides for *vacatio legis*[5].

It seems that Art. 88.1 of the Constitution of the Republic of Poland gives the term under consideration the second of the above listed meanings, i.e. an unpublished local enactment cannot become an element of the system, therefore it cannot "come into force" in the second of the mentioned meanings[6]. However, regardless of which of the above meanings is assumed, the provision of Art. 88 of the Constitution of the Republic of Poland sets forth a principle stating that no one is obliged to execute norms included in the local enactment if this act has not been promulgated in the manner specified in the Act on Promulgation of Normative Acts. Therefore, the principle under discussion provides legal entities with the greatest protection – a norm that has not been promulgated is not a binding norm, thus its breach does not involve any legal consequences[7].

The coming into force of an enactment of local law means that from the date indicated in the enactment, everyone whose behaviour is specified by norms included therein is obliged to execute them. Therefore, in so far as the promulgation of the enactment is a necessary condition of its application and has a value of a constitutional principle, the entry of the enactment into force within a specified period of time depends on the regulation itself.

As a matter of principle, an enactment does not enter into force at once, at that moment, but after a lapse of a specified period after this date. To specify the period after

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[3] *Constitution of the Republic of Poland* of 2 April 1997 (Dz.U. No. 78, item 483 as amended) – hereinafter the Constitution of the Republic of Poland.

[4] Act on 20 July 2000 *on Promulgation of Normative Acts and Some Other Legal Acts* (consolidated text Dz.U. of 2007, No.68, item 926). 449) – hereinafter the Act on Promulgation of Normative Acts.

[5] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, "Przegląd Sejmowy" 2001, No. 5, p. 11.

[6] See judgement of the Supreme Administrative Court of 14 October 1999, II SA/Wr 1113/98, OwSS 2001, No. 1, item 16.

[7] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 11.

which an enactment of local law enters into force, the principle clearly provided in the act, specifying that secondary legislations to the act cannot enter in force earlier than the act itself, is of binding importance[8]. This solution is consistent with the tradition originating from the interwar period that the secondary legislation to the statute can be issued and promulgated in the *vacatio legis* period of the empowering provision, i.e. when the statutory empowering norm has not entered into force yet. This rule is based on the assumption that executive acts do not have an individual character, since they are related to the empowering statute, thus they cannot enter into force earlier than the statute which grants powers for issuing them, since they could not fulfil their executory function[9]. This rule is expressed in Art. 7 of the Act on Promulgation of Normative Acts. A question emerges on how to understand the expression "(…) such an act may not come into force earlier then the statute". It would be justified to make an assumption that this principle solves a certain practical problem. Namely, if the executive act contained the provision specifying its entry into force before the empowering statute, such a regulation should be considered invalid[10].

The moment of entry into force of local enactments is regulated by the legislator uniformly for all three levels of local self-government and local agencies of state administration, although this regulation is different for executive acts and regulations concerning public orders[11].

To establish the moment in which everybody whose behaviour is specified by norms included in the legal act is obliged to apply the norms of conducts formulated in the act, i.e. to establish whether the normative act comes into force, the following issues are of primary importance:

1) explicit specification of the date of promulgating the normative act, and
2) method of calculating the period after which a normative act enters into force.

The date of promulgating a normative act is the starting point for assessment of when a specific act enters into force, i.e. when the legal obligations indicated therein are updated or the rights covered by it can be pursued[12]. Pursuant to Art. 20.3 of the Act on Promulgation of Normative Acts, the date of promulgating acts published in a given number of the official journal is the date of its issue indicated by each number. This is a solution ensuring the highest legal certainty, but carrying a certain danger related to the situation that the day of issue is not always in practice the day when the journal is made available for sale. There is also concern for unreliable determination of the day when a given number of the journal is issued by its issuing authority. To reduce those dangers, the legislator obliges the authority issuing the journal to specify the day of issuing the official journal as a day that is not earlier than the date when the copies of the journal are made available for sale in the seat of the authority issuing the journal. Even when following this

[8] Art. 7 of the Act on Promulgation of Normative Acts.

[9] The Supreme Administrative Court, while referring to the principle of the democratic state under the rule of law ascertained that "In a democratic state under the rule of law, a situation in which the council of the municipality can decide about issuance of the enactment of local fiscal law on the basis on the statutory empowerment on the date on which such empowerment has not officially enter into force is unacceptable. A legislative process that has been commenced before the proper time (…) is an infringement of law (…)". Judgement of the Supreme Administrative Court of 18 November 2004, file ref. No. FSK 1188/04, "Finanse Komunalne" 2005, No. 11, item. 66.

[10] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 21.

[11] D. Dąbek, *Prawo miejscowe samorządu terytorialnego*, Bydgoszcz-Kraków 2003, p. 314.

[12] J. Ciapała, *Powszechnie obowiązujące akty prawa miejscowego*, "Przegląd Sejmowy" 2000, No. 3, p. 46.

obligation, copies of the journal would not have to be (and in practice they are not) made available in other places, although the day of the entry of a normative act into force can be just the day of its promulgation. However, the solution adopted by the Polish legislator assumes, in the opinion of S. Wronkowska, implication of the conformity of the day indicated on a given number of the official journal with the day when copies of this journal are made available for sale in the seat of the authority that issues the journal. This implication can be invalidated – it can be proven that the journal was made available on another day than that indicated on its copies. It would provide a basis to justify ignorance of those normative acts published in the journal that enter into force with the day of their promulgation and assuming that the day of the entry of an act into force is the day when copies of the journal in which this act is promulgated are made available[13].

A different regulation is included in the Act on Promulgation of Normative Act with reference to provisions concerning public order. The legislator has assumed that the day of their promulgation is the day indicated in the announcement, and not the day of issuing an official journal of the province. It has thus confirmed that the basis and the necessary form of promulgating regulations of this kind is an "announcement"[14]. Therefore, it is from the day indicated in the announcement that the period before the provision concerning public order comes into force should be calculated, with the application of principles specified in Art. 6 of the Act on Promulgation of Normative Acts[15].

The Polish legal system contains a commonly assumed principle specifying that the entity empowered to establish a given normative act is at the same time competent to determine the period after which this act enters into force[16]. While specifying this period, the authority should take into consideration the need for the addressee of the norm and the entities that will apply enactments of local law to prepare themselves [17]. The subject matter justification of the principle referred to does not raise any doubts. After all, the author of the act, who establishes given norms with the intention to achieve a specified state of things through their execution, should be the most able to choose the moment from which those norms are to be followed[18]. It should be added at this point that only two decisions of the legislator are positive in this regard: the act enters into force with the day of its promulgation (if, as in Art. 88 of the Constitution of the Republic of Poland, promulgation is a necessary condition for this act to become an element of the system), or with the day of establishment it (if the promulgation is not a necessary condition of "introducing" the act into the system) enters into force on any later date after the day of its promulgation or establishment, therefore with *vacatio legis*[19].

The Constitution of the Republic of Poland does not specify any universally binding standard as to the period after which the normative act enters into force at all.

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[13] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 20.

[14] *Ibidem*, p. 20.

[15] M. Paczocha, *Ogłaszanie samorządowych aktów prawnych (część 1)*, "Finanse Komunalne" 2001, No. 5, p. 42.

[16] A. Michalska, S. Wronkowska, *Zasady tworzenia prawa*, Poznań 1983, p. 125.

[17] G. L. Seidler, H. Groszyk, A. Pieniążek, *Wprowadzenie do nauki o państwie i prawie*, Lublin 2003, p. 196.

[18] Cf. S. Wronkowska, M. Zieliński, *Komentarz do zasad techniki prawodawczej*, Warszawa 2004, p. 110; S. Wronkowska, M. Zieliński, *Problemy i zasady redagowania tekstów prawnych*, Warszawa 1993, p. 74 and subsequent.

[19] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 18.

Therefore, an assumption is made that the authority establishing the act determines the period after which this act enters into force, guided by the conviction that by regulating a certain sphere of social relations, the authority will provide the best assessment of when these norms included in this act should be executed[20]. This standard can be derived from Art. 2 of the Constitution of the Republic of Poland, which is expressed *expressis verbis* in Art. 4.1 of the Act on Promulgation of Normative Acts, indicating a certain principle governing entry into force, namely, 14 days of *vacatio legis* since its promulgation. The decision of the legislator as regards determination of entry into force of acts issued by the legislator must take into consideration this standard in order to protect the addressees of the established legal norms. Therefore, the freedom of the author of the normative act in the case considered here is limited to a certain extent.

The principle of separating the moment of promulgation from the moment of the coming into force of the legal enactment is justified by the need to allow the addressees to become acquainted with a new normative act, and also the need for the official journal to be commonly available on the day of issue[21]. The requirement of establishing appropriate *vacatio legis* also results from the general principle of the citizens' trust towards the state and to the law it establishes, as well as from the principle of due legislation[22].

The length of *vacatio legis* should be, obviously, adjusted to the needs of the given legal regulation, since it is the period which should be sufficient for the interested parties to "become acquainted with the content of new regulations and adjust their further behaviours to those regulations"[23]. As a rule, this is a 14-day period for enactments of local law containing universally binding regulations and promulgated in official journals. Similar solutions in Poland were ensured, among others, by the Act of 31 July 1919 on Issuing the Journal of Laws of the Republic of Poland. The difference lies in the fact that the currently applicable Act on Promulgation of Normative Acts determines – as it has been already mentioned – the period of 14 days as a minimum *vacatio legis*[24], suggesting longer periods to the author of the act[25], while other acts assumed 14 days as a standard solution, thus correct and satisfactory in typical cases. Therefore, this provision is an execution of a constitutional principle of establishing a normative act with preservation of proper *vacatio legis*, establishing the order to separate the day of entering into force from the day of promulgating a normative act[26].

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[20] A. Preisner, *Podstawy prawne i praktyka ogłaszania aktów normatywnych* [In:] *Konstytucyjny system źródeł prawa w praktyce*, ed. A. Szmyta, Warszawa 2005, p. 162.

[21] J. Ciapała, *Zagadnienia określenia prawnych form aktów prawa miejscowego i ich publikacji*, "Przegląd Legislacyjny" 2004, No. 2, p. 89; S. Wronkowska, M. Zieliński, *Zasady techniki prawodawczej. Komentarz*, *op. cit.*, p. 73.

[22] The judgment of the Constitutional Tribunal of 12 June 2002, file ref. No. P.13/01, OTK 2002, No. 4, item 42.

[23] The judgment of the Constitutional Tribunal of 20 December 1999, file ref. No. K.4/99, OTK 1999, No. 7, item 165.

[24] Cf. Justification of the draft act on promulgation of normative acts and some other legal acts in official journals and on issuing those journals, Warszawa, 17 April 1998, Form No. 300, p. 3.

[25] E.g. Art. 29.1 of the Act of 27 March 2003 on Planning and Spatial Management (Dz. U. No. 80, item 717 as amended), provides that "the local plan is effective as of the day of its coming into force specified therein, but not earlier than after 30 days as of its promulgation in the official journal of the province".

[26] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 18; A. Preisner, *Podstawy prawne i praktyka ogłaszania aktów normatywnych, op. cit.*, p. 166.

The imperative to preserve appropriate *vacatio legis* is not of an absolute character[27]. Regulations of the Act on Promulgation of Normative Acts provide for some exceptions from this rule. Departure from the minimum *vacatio legis* is acceptable in "justified cases", but later than on the day of promulgation (Art. 4.2 *in principio*). The provision quoted here should be interpreted with the application of system interpretation, in conjunction with Art. 4.1 of the Act on Promulgation of Normative Acts, and it should be recognized that this provision applies to enactments of local law which contain universally binding regulations promulgated in the official journal of the province. However, the provisions do not specify what "justified reasons" the legislator had in mind. This imprecise and evaluative criterion can lead to abuse of the possibility of establishing a period of *vacatio legis* that would be shorter than 14 days. Because of such imprecise condition for shortening the period of entry into force of local enactments, which should be understood as requiring in each case presentation of arguments justifying a departure from the principle[28], as well as in view of the principles of due legalization, it should be applied with great caution[29].

Another condition making it possible for local enactment to enter into force earlier than 14 days after the promulgation date, is provided in a further part of the regulation set forth in Art. 4.2 of the said Act, which specifies that the day of entry into force of local enactment is the day of its promulgation in the official journal of the province after jointly fulfilling two conditions: "(…) if an important interest of the state requires that the normative act be enacted immediately and the principles of the democratic state ruled by law are not thus contradicted". In such a case, the day of entry into force can be the day of promulgating this act in the official journal of the province.

It should be emphasized that the condition of the "important interest of the state" is an unspecified criterion, and such drawing up of the norm prevents it from being applied to local enactments that are established by local self-governments, other than local agencies of state government. Although when considering the local self-government it would be difficult to talk about the "important interest of the state", it would be justified to apply the condition of important interest of the local community[30]. Such a condition should, in my opinion, be interpreted as an exception, which should not be applied to local enactments of an executive nature or administrative enactments, since due to their nature they are local and are issued in the "interest of the local community" – therefore, the condition of the "important interest of the state" is not such that would justify their coming into force on the day of their promulgation in the official journal[31].

The second condition determining the entry into force of a local enactment on the day of its promulgation in the official journal of the province requires that this circumstance should not infringe the principles of the democratic state under the rule of law. An assessment of whether a given local enactment infringes the principles of a democratic state should take into consideration the principles introduced by the Constitutional Tribunal. From the principle of the democratic state under the rule of law,

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[27] D. Salitra, *Zasady przyzwoitej legislacji w orzecznictwie Trybunału Konstytucyjnego*, "Przegląd Sejmowy" 2003, No. 4, p. 38.

[28] The judgment of the Constitutional Tribunal of 3 October 2001, file ref. No. K. 27/01, OTK 2001, No. 7, item 209.

[29] M. Paczocha, *Ogłaszanie samorządowych aktów prawnych (część 1)*, "Finanse Komunalne" 2001, No. 5, p. 40.

[30] Differently, P. Dobosz, *Komentarz do art. 42*, *op. cit*., p. 413.

[31] Cf. R. Prażmo-Nowomiejska, *Prawo miejscowe w III Rzeczypospolitej Polskiej*, "Radca Prawny" 2001, No. 6, p. 6.

the Constitutional Tribunal derives, e.g. the principle of the citizens' trust towards the state and towards the law it establishes, non-retroactivity, a requirement to preserve appropriate *vacatio legis* and openness of law.

On the other hand, the principle for regulations concerning public order is that they enter into force after three days following their promulgation. Such shortening of the period before coming into force of a regulation concerning public order is justified by its specific character - it is issued in order to prevent suddenly-emerging threats to life, health, order, peace and public safety.

It is worth noting that unlike the provision of Art. 4.1 of the Act on Promulgation of Normative Acts, the provision of Art. 4.3 does not clearly provide for the possibility of a regulation concerning public order coming into force after the period longer than three days as of the day of their promulgation (after the expression "local regulations concerning public order shall come into force after three days", there is no provision specifying "unless given regulations specify a longer period"). The legislative technique applied by the legislator could indicate the lack of possibility for a local regulation concerning public order to come into force after a longer period than three days as of its promulgation. This would be an incomprehensible solution, since it is not possible to exclude a need to determine a later date of an entry into force[32].

However, it could also be the case that even a 3-day period for a local regulation concerning public order to come into force may be too long from the point of view of ensuring the execution of the aims for which it has been issued. The legislator therefore introduces an exception, setting forth that "in justified cases, regulations may come into force after less than three days, and, if a delay in the commencement of the local regulations concerning public order could cause irreversible damage or serious threat to life, health or property, their commencement may be ordered to be on the day of their promulgation". However, the legislation does not specify which justified cases are meant here[33]. Those conditions are formulated with the use of imprecise definitions ("irreversible damage", "serious threat"), although they sound rigorous, they are satisfied after proving that under the given circumstances there are no such factors which would make it possible for an irreversible damage or a serious threat to appear, which is extremely difficult[34].

Norms determining the principles of coming into force of normative acts fulfil a double role in the system:

1) they formulate requirements concerning the length of *vacatio legis* and the cases which they can be departed from, and
2) they establish a subsidiary rule in case the author of the act does not establish the period after which a given act enters into force, which is an indication of legislative prudence. Therefore, if a universally binding normative act, promulgated in the official journal, does not provide otherwise or does not contain any determination in this matter, it should be assumed that it comes into force after 14 days as of its promulgation, and in case of regulations concerning public order, in the same situation – after three days as of the day of their promulgation[35].

[32] M. Paczocha, *Ogłaszanie samorządowych aktów prawnych (część 1)*, *op. cit.*, p. 42.
[33] *Ibidem*, p. 41.
[34] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 19.
[35] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 19; A. Preisner, *Podstawy prawne i praktyka ogłaszania aktów normatywnych, op. cit.*, p. 166.

The Act also regulates issues of a technical nature, namely, the manner of calculating the period before the entry into force of a normative act. The act assumes that in case the normative act provides for *vacatio legis* and indicates the period before its entry into force in days, then while calculating this period, the day of promulgation should be not counted. This principle does not apply to legal acts which enter into force on the day of their promulgation. In such a case, a normative act that is to come into force as of the day of its promulgation and is promulgated on 3 January, enters into force on 3 January[36].

If the date of entry into force of a normative act is defined in weeks, then the period of *vacatio legis* ends with the end of the day the name of which corresponds to the day of its promulgation. On the other hand, if the term of entry into life of a normative act is defined in months or years, then the period of *vacatio legis* ends with the end of the day the date of which corresponds to the day of promulgation, and if such a day in the last month of *vacatio legis* does not exist – in the last day of that month[37].

Another issue that should be raised is the principle of no retroactive effect of law, which is an important element of the legal systems of contemporary democratic states, having its roots in ancient times[38]. In the Roman law, it functioned under the Code of Justinian, and in the Polish legal order, the principle of *lex retro non agit* was applied already in the 14th century[39], as well as it was the principle of the legal system of the Second Republic of Poland[40]. Retroactivity in the study of law can be understood in different ways[41]. Generally, it consists of a certain reference of a legal norm to the past[42]. Before establishing the Constitution of the Republic of Poland, the doctrine postulated "not to apply legal norms that would require the application of newly established legal norms to the events that took place before the coming into force of those norms and with which the law did not associate any legal effects provided by those norms. In case of doubts, it should be assumed that each provision regulates the future, and not the past. The principle of non-retroactivity is a basic principle of the legal order"[43].

Provisions of the Constitution of the Republic of Poland, of the Act on Promulgation of Normative Acts, laws of the system of local self-government authorities and local agencies of state government do not articulate *expressis verbis* the prohibition of the use of the clause enabling retroactivity of local enactments, i.e. when a legislator prescribes to assess specific legally relevant facts existing before new regulations came into force, in the light of those new regulations, thus introducing a fiction as if those regulations were binding already on the date of the occurrence of the facts under

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[36] M. Paczocha, *Ogłaszanie samorządowych aktów prawnych (część 1)*, *op. cit.*, p. 42.

[37] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 20-21.

[38] Cf. W. Wołodkiewicz, *Czy prawo rzymskie przestało istnieć*, Zakamycze 2003, pp. 337-341.

[39] Cf. H. Grajewski, *Zasada lex retro non agit w praktyce sądów polskich do połowy XVI wieku*, Łódź 1971, p. 15.

[40] *Proces prawotwórczy w świetle orzecznictwa Trybunału Konstytucyjnego*, Warszawa 2005, p. 12.

[41] Cf. W. Wróbel, *O definiowaniu retroaktywności w orzeczeniach Trybunału Konstytucyjnego* [In:] *Konstytucja i gwarancje jej przestrzegania*, Warszawa 1996, p. 223-240.

[42] "The retroactive effect of the norm means in fact only that the authority applying the norm should assess on the basis of the norm also those facts that occurred before the norm entered into force. On the other hand, the principle that the law does not act retroactively means that the authority applying the norm should on its basis assess only those events that take place in the period between entry into force and expiry of a given norm". W. Lang, *Obowiązywanie prawa*, Warszawa 1962, p. 234.

[43] A. Szmyt, *Kwestie interporalne. Wejście w życie i utrata mocy aktu* [In:] *System źródeł prawa. Stan obecny i wnioski*, ed. J. Mazur, Warszawa 1988, p. 23.

assessment[44]. While considering the possibility of establishing retroactive acts, an analysis of judicial decisions should be relied on. The decisions of the Constitutional Tribunal result in the commonly accepted principle that the legal norm should not act retroactively[45], i.e. "when the commencement of its application as regards the time is established for the earlier moment"[46] than the local enactment became binding. As the Constitutional Tribunal established in its judgment of 17 December 1997, "the principle of no retroactive effect is the foundation of legal order. It shapes the principle of the citizens' trust towards the state and toward the law it establishes. Its underlying principle is expressed in Art. 2 of the Constitution of the Republic of Poland, the principle of democratic state under the rule of law"[47]. It should be assumed that such norm has no legal validity towards the events which emerged before its promulgation[48]. Also, judicial decisions of the Supreme Administrative Court includes opinions which absolutely exclude granting a retroactive effect to regulation[49]. The judicial practice of the Constitutional Tribunal and the Supreme Administrative Court leads to the conclusion that in a democratic state under the rule of law, retroaction of local enactments is inadmissible, in particular, when imposing obligations on citizens and depriving them of previously acquired rights[50].

The Constitutional Tribunal allows departures from the *lex retro non agit* principle, particularly when the change in the existing legal status is intended to provide more accurate solutions "from the point of view of the assumptions of the Constitution of the Republic of Poland". However, it is considered unacceptable to give retrospective effect to provisions, particularly those regulating "rights and obligations if this leads to deterioration of their situation in comparison with the previous status[51]. This fact should be related to local self-government authorities and local agencies of the state government establishing local enactments and a prescriptive layer provided in the Act on Promulgation of Normative Acts, which makes it possible to depart from the prohibition of retroactivity "if the principles of a democratic state ruled by law are not thus contradicted"[52]. This prohibition applies only to normative acts which reduce rights or increase obligations.

Certain doubts can be also raised by the question whether it is possible to give retrospective effect to universally binding regulations, acting *in favorem* (granting rights). In the view of the Constitutional Commission of the National Assembly, the Constitution

[44] The judgment of the Constitutional Tribunal of 7 May 2001, file ref. No. K. 19/00, OTK 2001, No. 4, item 82.
[45] Cf. e.g. the judgment of the Constitutional Tribunal of 25 November 1997, file ref. No. K 26/97; OTK, No. 5-6, item 64.
[46] The judgment of the Constitutional Tribunal of 3 October 2001, file ref. No. K. 27/01, OTK 2001, No. 7, item 209.
[47] The judgment of the Constitutional Tribunal of 17 December 1997, file ref. No. K.22/96; OTK, No. 5-6, item 71.
[48] The judgment of the Constitutional Tribunal of 3 October 2001, file ref. No. K. 27/01, OTK 2001, No. 7, item 209.
[49] See e.g. the judgment of the Supreme Administrative Court of 6 July 1994, file ref. No. SA/Łd 1024/1994, OSP 1995, No. 10, item 218.
[50]Cf. M. Paczocha, *Ogłaszanie samorządowych aktów prawnych (część 1)*, *op. cit.*, p. 41.
[51] The judgment of the Constitutional Tribunal of 17 December 1997, file ref. No. K.22/96; OTK, No. 5-6, item 71. Cf. also J. Zakrzewska, *Konstytucyjna zasada państwa prawnego w praktyce Trybunału Konstytucyjnego*, "Państwo i Prawo" 1992, vol. 7, p. 12.
[52] Art. 5 of the Act on Promulgation of Normative Acts.

of the Republic of Poland has not clearly settled the issue of the prohibition of giving retrospective effect to properly promulgated provisions[53].

Pursuant to the accepted rules of constructing a legal system, the author of a normative act determines not only the period after the act comes into force, but also to what states of things, events and relations (when created and when completed) the norms included in the normative act issued should be applied. It can therefore determine, e.g. the issue of giving a retrospective effect to norms of a given act. However, the freedom of the author of the act is limited to such extent that one can rather talk about situations in which it is exceptionally acceptable to give a retrospective effect to legal norms[54], "if it is necessary to pursue a constitutional value, assessed as more important than the value protected by the prohibition of retroactivity"[55].

The decisions referred to above – concerning the entry into force of a normative act and giving the act a retroactive effect – are fundamentally different as regards their nature, although in practice, it is most often the case that norms that were given a retroactive effect enter into force on the day of their promulgation and then those two solutions, perhaps very severe for the interested parties, converge. Nevertheless, it is possible for retroactive acts to enter into force with *vacatio legis*.[56]

It is not necessary for the Act on Promulgation of Normative Act to formulate a prohibition addressed to the legislator concerning giving normative acts a retroactive effect if such a prohibition is one of the components of the constitutional principle of the state ruled by law[57]. Art. 5 of the said Act in which such a prohibition was formulated has, in fact, a didactic nature and does not introduce any new normative content into the Polish legal system[58]. However, this provision questions and challenges the sense of the Act on Promulgation of Normative Acts "since it contradicts the issue of the democratic state under the rule of law, and additionally is inconsistent with the Constitution of the Republic of Poland (Art. 88), which does not provide for the retroactive force of law in any situation"[59].

I entirely support the words of criticism referring to the regulation providing for the possibility of establishing law with retroactive effect in a situation when "the principles of a democratic state ruled by law are not thus contradicted". It is a very risky regulation, due to the capacity and at the same time vagueness of the term "democratic state ruled by law" and the fact that the assessment whether "the principles of a democratic state ruled by law are not thus contradicted" has been put in the hands of the very entities empowered with legal-making competences. As regards local law, this assessment is made first of all by local self-government authorities and local agencies of state administration and only after that by the supervising authorities (the province governor, the regional accounting

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[53] J. Świątkiewicz, *Prawo miejscowe pod rządem Konstytucji z 1997 r.*, "Przegląd Legislacyjny" 2000, No. 1, pp. 95-96.

[54] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 21.

[55] The judgment of the Constitutional Tribunal of 3 October 2001, file ref. No. K.28/01, OTK 2001, No. 7, item 212, pp. 1045-1046.

[56] S. Wronkowska, *Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 21.

[57] Such an opinion was confirmed, several times, by the Constitutional Tribunal in its judgments, e.g. judgment of the Constitutional Tribunal of 30 November 1988, file ref. No. K.1/88, OTK 1988, No. 1, item 6; judgment of the Constitutional Tribunal of 8 November 1989, file ref. No. K.7/89, OTK 1989, No. 1, item 8;

[58] *S. Wronkowska, Ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*, *op. cit.*, p. 21.

[59] R. Prażmo-Nowomiejska, *Prawo miejscowe w III Rzeczypospolitej Polskiej*, *op. cit.*, p. 6.

chamber, the prime minister) or administrative courts. At the same time, one should be aware that before the supervisory authority or administrative courts can express their opinion on the aptness of the assessment made by the legislator of a given act as regards the condition of non-infringement of the principle of the democratic state under the rule of law, such an act is valid. This period can be very long, and the onerousness of validity of a given act for the citizens can be significant, particularly in the case of regulations concerning public order[60].

The currently binding regulation is a step backwards, particularly if we compare it to the original regulation applicable to local enactments of the province. It provided that "local enactments enter into force on the day of their promulgation, unless separate provisions or local enactments clearly provide a later date"[61]. That regulation introduced a complete prohibition of retroactivity. Other laws on the system of local governments did not contain such a prohibition explicitly formulated by the legislator, but the doctrine unanimously assumed its existence. Therefore, in this situation, it is incomprehensible why the legislator departed from this prohibition. I am of the opinion that a regulation of this type presents a threat that is too serious to the protection of public subjective rights of the addressees of normative acts. Those threats, in my opinion, are not justified by any circumstances[62].

Since the provision set forth in Art. 5 of the Act on Promulgation of Normative Acts applies to a normative act, it should be regarded as legally acceptable to give a retroactive effect to regulations concerning public order, which is conditioned by the non-infringement of this provision with the principles of the democratic state under the rule of law. In light of this condition, it should be assumed that the applicable retroactive effect cannot be certainly applied to regulations concerning the public order which may impose obligations on citizens, deprive them of their rights and, particularly, provide a fine for their infringement[63].

[60] D. Dąbek, *Prawo miejscowe samorządu terytorialnego*, *op. cit.*, p. 316.
[61] Art. 89.4 of the Act of the Provincial Local Government before the amendment by the Act of 21 January 2000 *on Amending Some Acts related to Functioning of Public Administration* (Dz.U. No. 12, item 136).
[62] D. Dąbek, *Prawo miejscowe samorządu terytorialnego*, *op. cit.*, p. 316.
[63] M. Paczocha, *Ogłaszanie samorządowych aktów prawnych (część 1)*, *op. p.cit.*, pp. 41-42.