UNIVERSITY OF GDANSK

FACULTY OF LAW AND ADMINISTRATION

KRZYSZTOF MADEJ

ABSTRACT

ACCESS TO SOURCES OF GENERALLY APPLICABLE LAW IN THE AGE OF DIGITIZATION (ELECTRONIC LEGAL ACT)

DOCTORAL DISSERTATION

PROMOTER

DR. HAB. GRZEGORZ WIERCZYŃSKI, PROF. UG

GDANSK 2024

The aim of the study is to find the optimal model of access to the sources of generally applicable law, in particular to identify solutions that use the potential of IT tools, which take into account the applicable regulations relating to the legislative procedure and legislative technique to the greatest extent possible. This assumption was based on the conviction that hasty introduction of solutions that are not adapted to these realities is inappropriate and ineffective. In order to find a solution to this task, the legal and IT aspects of access to information on law were analysed and the following questions were answered:

1. Why is information about the law important?
2. What makes it different from other pieces of information?
3. Does the state have an obligation to optimize access to information about the law?
4. What is the amount of information that needs to be processed to enable access optimization?
5. How are the rules for processing documents that make up this resource defined and how effective are these rules?
6. Where should we look for a source of metadata information that will allow us to develop machine information processing algorithms?
7. What additional conditions must be met by the legal system in order to automate access to legal information?
8. Do the rules for drafting documents containing legal acts give hope for machine processing of information?
9. How to ensure optimal compliance with the developed regulations so that the developed solution can be used?

The answers to the first three questions were the starting point for further analysis. When optimising access to information, it is important to be aware of the importance of the data being processed, to designate the group of persons for whom this information is relevant, as well as to determine who is responsible for providing access to this information, if any. The answers to these questions are provided in the introduction (Chapter I). It has been shown that the law sets the framework for the conduct of every citizen and office. For a citizen, these are rules that set boundaries, the crossing of which may result in state sanctions or ineffectiveness of the actions taken. For state authorities, it is the basis for action, without which activities are ineffective or may be associated with negative consequences, including liability for damages. Therefore, the legal system contains information, the knowledge of

which is or may be of great importance – both in the situation of defending one's own interests, conducting business activity, and in employment matters. These considerations are based, in particular, on an analysis of the body of doctrine and case-law in this area. The analysis showed a large body of jurisprudence of the Constitutional Tribunal relating to the issue of access to information on the law. However, as has been emphasised several times, the issue of the legibility of information was the basis for declaring unconstitutionality only in extreme cases, when it was possible to speak of a violation of the principle of a democratic state governed by the rule of law or the principle of equality.

It was pointed out that so far access to information on the law in the jurisprudence of the Constitutional Tribunal has been referred to the principle of the right to good legislation. The reason for this was that the law was analysed only through the prism of the text, especially the readability and unambiguity of the text, and the correctness of the legislative process. This was because, until recently, the law was published only in paper form. Therefore, the jurisprudence has focused precisely on this form of regulatory fixation. However, the analysis of the rulings allowed us to assume that the manner in which legal acts are drafted and the form of legal acts, if they are found to result in a reduction in the availability of information on the law, may also be considered as an action that violates constitutional principles that have so far been assessed only from the perspective of the right to good legislation. An example of a ruling that seems to confirm such a conclusion is the judgment of the Constitutional Tribunal of 11 May 2007, K 2/07 OTK-A 2007, No. 5, item 48, in which the Tribunal criticised the setting of a 60-day deadline for the publication of the consolidated text of the amended Act, stressing that due to the scope and nature of the amendments to the Act, this results in the fact that "the lack of a consolidated text creates a trap for the addressees of legal norms, especially since these norms impose obligations, the failure to comply with which within the deadline (before the date of publication of the consolidated text) has far-reaching consequences for a large number of persons obliged to submit declarations in the sphere of freedoms and rights." Therefore, the Constitutional Tribunal pointed out that from the point of view of ensuring access to information on the law, it is not only the formal and legal aspect of the publication of a normative act that is important, but also the form in which it is made available.

An analysis of the case law relating to the principle of correct legislation allowed us to put forward the thesis that it is the state that has the obligation to optimize access to information

about the law. Of course, the right of the citizen to demand that the state implement it is correlated with this obligation. It is the duty of the state not only to consistently apply the developed solutions, but also to take advantage of the new opportunities associated with the development of new tools, in particular computerization.

For years, the doctrine has emphasized that the amount of law enacted means that the possibility of getting acquainted with the law on an ongoing basis is an illusion. Moreover, the number of legal acts makes it difficult to determine the current legal status, which in turn increases the likelihood of amendments that are not coordinated with the current legal status. It has become necessary to look for new ways to increase the possibility of finding information about the law. The computerization of other aspects of life meant that IT tools began to be seen as a source of new opportunities. On this occasion, the risks arising from the fact that people using legal information systems are somewhat dependent on the quality of these systems were discussed. Their decisions will be made not on the basis of the source text, but on the information found in these systems[1]. At the same time, it was pointed out that in an extreme situation, this may even have an impact on the interpretation of the provisions[2]. Therefore, it is essential to create a system that will not only provide an effective way of searching for information, but also in which the information will be complete.

Thus, it was necessary to answer the question of how the current way of conducting the legislative process, in which the circulation is largely based on paper documentation, can be adapted to the requirements of computerization. To what extent can the work carried out in the legislative process be used to power the system that provides information about the law and at the same time relieve legislators of a significant part of editorial and technical activities? When introducing changes, it is necessary to take into account the existing principles of law-making. The new solutions must not adversely affect the legibility and unambiguity of the text of the regulations. This was the basic assumption made in the introduction to the work.

The doctrine recognises that the way in which legal acts are drafted has changed over the years. Importantly, however, the changes referred not so much to substantive issues, the manner of defining the rights and obligations of their addressees, but to the manner of drafting

---

1 See. M. Safjan, *Gaining knowledge about the applicable law is already beginning to become an art*, "Rzeczpospolita" 2003, 17 February, p. C2.

2 W.R. Wiewiórowski, *Objectivity of information and its subjective interpretation* [in:] G. Wierczyński and W.R. Wiewiórowski, *Legal Informatics*, Warsaw 2012, p. 38.

the so-called meta-provisions, i.e. provisions defining the rules for incorporating other provisions into the legal system or repealing them. The changes also concerned the way in which drafting units were marked and the way in which references to other provisions were drafted. Thanks to them, the interpretation of the provisions could be more and more based on the text itself, and did not have to refer to a systematic or purposive interpretation. A literal interpretation has come to answer most of the questions. These changes consisted primarily in the development of uniform terms used in the regulations[3]. In other words, the text of legal acts has become more and more communicative and unambiguous in this regard. These observations were a stimulus to consider to what extent a properly prepared text can significantly affect the ability to process information about the law in order to increase access to it. On this basis, an attempt was made to defend two theses:

1) information on the sources of the law, including the meta-information underlying the processing of information to optimize the level of access, must be derived from the text of the legal act itself – optimization of access to information about the law having the value of authenticity should be based on the published text of the normative act;
2) properly prepared text of a normative act can provide the possibility of machine processing of information about the law without degrading the readability of the content of the act itself – the use of the potential of computerization in access to sources of information about the law, in particular automatic text processing, requires the introduction of changes in legislative technique, which in their basic assumption are consistent with the principle of proper legislation, and a significant part of which has been postulated in the doctrine for a long time.

The correctness of the theses was proved by answering the above questions one by one, with the hope that this would allow for the development of new tools that would enable access to reliable information in a way that was not possible until recently. In particular, the rapid availability of reliable consolidated texts, including consolidated texts witch legal value, the efficient search of the text and other studies, and the enhancement of the digital accessibility of the results obtained.

Considerations in this regard began with the identification of the information resource that needs to be processed to enable optimization of access to legal information. For this purpose,

[3] G. Wierczyński, *Provision of information on the law as a condition for effective law-making activity*, Gdańsk 2015, p. 281.

it was necessary to analyze the sources of generally applicable law in Poland. In order to search for effective solutions enabling machine processing of information, it is of fundamental importance to determine the scope of documents that must be analyzed. As repeatedly emphasized in the doctrine, one of the fundamental changes introduced by the 1997 Constitution was the closing of the catalog of sources of universally binding law[4]. The Constitution sets out a catalogue of types of legal acts, as well as introduces regulations allowing for the designation of the group of entities authorized to create law. The Constitution states that the sources of generally applicable law of the Republic of Poland are: the Constitution, statutes, ratified international agreements and regulations[5]. Moreover, pursuant to Article 88(1) and (2) of the Constitution, the entry into force of laws and regulations is subject to their publication in the Journal of Laws[6]. As a result, the analysis of the data could be limited to the documents published in this journal.

With the above in mind, Chapter II "THE INSTITUTION OF PUBLISHING THE LAW AS THE FIRST STEP IN ITS DIGITAL ACCESS" introduces the institution of publishing the law in Poland, as well as discusses the regulations defining the procedure and deadlines for the publication of consolidated texts.

In addition, in order to better illustrate the amount of information that needs to be processed in order to optimize access to information about the law, statistics defining the resource of the Journal of Laws are presented. From the point of view of the amount of information, it is not only the number of legal acts themselves that is important, but also their volume, which is why statistics refer to both the number of acts and the number of pages of acts published in the Journal of Laws. Such an approach allows us to get a better idea of the breadth of this resource.

The statistics confirmed what has been emphasized for years. The number of legal acts and the frequency of amendments have exceeded the possibilities of the existing methods of organizing legal acts[7]. The results of the analysis showed that the search for a way to increase

---

4 M. Wiącek, *Commentary on Article 87 of the Constitution of the Republic of Poland Volume II*, ed. M. Safjan, L. Bosek, Warsaw 2016

5 Of course, it should be emphasized that the sources of generally applicable law of the Republic of Poland are also acts of local law, but only in the area of operation of the authorities that established them.

6 Pursuant to Article 88(1) of the Constitution, the rules and procedures for the publication of normative acts are laid down by law. Currently, it is the Act of 20 July 2000 on the Publication of Normative Acts and Certain Other Legal Acts (Journal of Laws of 2019, item 1461).

7 S. Wronkowska, *Legislative technique*, RPEiS 1990, Issue 1, p. 14.

the possibility of accessing information should be included in the list of tasks of priority importance from the point of view of the state's responsibilities.

Chapter III "GENERAL REQUIREMENTS FOR ELECTRONIC DOCUMENTS CONTAINING THE TEXT OF A NORMATIVE ACT" analyses the regulations that govern the shape of documents containing legal acts. In the first place, attention was paid to the Principles of Legislative Technique, and in particular to the question of their sources and grounds of application. At the same time, bearing in mind the fact that the law is made available on the Internet, the regulations on digital accessibility have been discussed separately[8]. The paper also refers several times to the work on the template of a draft legal act[9], during which it was not possible to use certain algorithms not because of their complexity, but due to the fact that they were based on text formatting or white space, which are not always used correctly, especially at the stage of drafting a legal act. The analysis showed that the efficiency of the algorithms forces to rely on text elements that are immutable regardless of how they are formatted. This somewhat limited the range of available solutions, but increased the flawlessness of the developed algorithms.

Due to the aim of the work, in particular the search for a way to optimize access to data, the texts of legal acts were also analyzed in terms of regulations defining the scope of metadata for archival documentation, indicating a potential source of metadata specified in the regulations[10]. On this occasion, the concept of the European *Legislation Identifier* (ELI) was also presented.

In the search for solutions ensuring access to reliable information about the law, at the end of this chapter, the current regulations on the methods of correcting errors were analyzed.

The next chapter of the thesis, entitled "PERSPECTIVES FOR COMPUTERIZATION OF LEGAL ACTS", is an analysis of the legal system from the perspective of general requirements, the fulfilment of which is necessary for automatic analysis of information to be possible. A database search system is only as good and effective as its metadata and

8 In particular, the provisions of the Act of 4 April 2019 on digital accessibility of websites and mobile applications of public entities (Journal of Laws of 2023, item 1440).

9 A tool developed in 2012 to standardize the formatting of legal acts, in particular laws and regulations, available on the website of the Government Legislation Centre at: https://rcl.gov.pl/legislacja/szablon-projektu-aktu-normatywnego/.

10 On this occasion, the results of the analysis of the titles of legal acts in the years 2012–2022 were also presented, citing numerous cases of duplication of titles.

structure. A compromise must be found to identify as much meta-information as possible that is reliable (error-free and unambiguous).

Therefore, the structure of the legal system was analyzed. The regulations defining the division of matter between acts are discussed, as well as the systematics of the legal acts themselves and the types and hierarchy of editorial units. It also discusses the issue of references in the text of the act and the general conditions for ensuring its transparency.

Then, in Chapter V "IDENTIFICATION OF META-INFORMATION IN A LEGAL ACT", an attempt is made to identify meta-information that is necessary for the correct processing of information about the law. Particular attention was paid to issues related to the formulation of the title of the act, the designation of its editorial units, the provisions on entry into force, statutory authorizations and amending provisions. An analysis of the principles of legislative technique has shown that the possibilities of automatic text processing are already very high today. Unfortunately, it has also shown that there are elements that significantly limit the possibilities of word processing automation. These elements included, first and foremost, imprecise rules regarding the repeal of executive acts in the event of a change in the content of the provisions of the law on which the executive act is based, instances of imprecise repeal of certain provisions, and the above-mentioned cases of relying solely on text formatting when drafting units.

At the end, in Chapter VI SUMMARY, the focus is not only on the issue of indicating the effective implementation of the described solutions, but also on defining legal regulations that will ensure that the developed rules are respected in such a way that their full potential can be used. When developing a comprehensive solution, it should be taken into account that even in the case of a detailed description of the assumptions, it is impossible to exclude situations in which human error may occur. Therefore, it is necessary to develop a way to verify the data at the earliest possible stage, but also to determine how to correct possible, even only theoretically, errors. Otherwise, it is difficult to permanently ensure a high level of metadata in the system. Any uncorrected error can negatively affect the operation of the entire system. At the same time, the assumption that non-compliance with the rules of legislative technique could adversely affect the validity of the provisions in question was rejected. Allowing such a possibility could adversely affect the principle of legal certainty[11]. On the

[11] S. Wronkowska, *Legislative technique...*, op. cit., p. 18.

other hand, solutions were sought in a properly adapted procedure for correcting errors in the text.

The paper proves that a properly prepared text can be a source of information allowing for the automation of the processing of information about the law. The basis for the effective use of text is the uniformity of the terms used in the act. At the same time, it has been shown that any other solution is associated with data redundancy, and thus with the possibility of non-compliance of metadata with the content of the act. Unifying the way regulations are formulated will also allow the introduction of tools that can present the content of norms in a more accessible way, particularly in accordance with the rules of plain language, and translate legal acts into foreign languages without the risk of changing the content of the regulations. Attention was also drawn to the possibility of using artificial intelligence to optimize access to information on law. The analysis showed that, at this stage, there is a high risk of directly using its capabilities to produce the final text. The reasons for this state of affairs are both the technical side, in particular the so-called hallucinations of artificial intelligence, and insufficient skills in using it, e.g. related to asking precise questions. Nevertheless, it seems reasonable to use the capabilities of artificial intelligence to analyze the text of a draft legal act in order to indicate errors or inconsistencies that can be analyzed by legislators. On this occasion, it is important to emphasize the particular importance of a clear way of marking the results and indicating all the data taken into account in the performance of each task by artificial intelligence. At the same time, it should be noted that the experience gained during the operation of these tools, resulting in particular from the mechanisms of learning artificial intelligence, but also from the acquisition of skills in its use by legislators, will allow its potential to be used in the performance of further activities in a very short time.

The analysis also showed that the introduction of changes in legislative technique aimed at adapting the text to the requirements of machine processing of text is in line with the direction in which legislative technology has been evolving for years. On the other hand, it is essential to introduce mechanisms and tools to facilitate the verification of compliance with these rules and, if necessary, the correction of errors.

On the basis of the analyses described above, it was concluded that optimizing access to sources of generally applicable law requires a number of coordinated actions included in ten points:

1) elimination of cases in which the entry into force or loss of force of provisions does not result directly from an unambiguously worded provision, in particular cases of indirect repeal of regulations,
2) defining a catalogue of formal-functional formulations used only in a defined context, identifying metadata, while prohibiting the use of these terms in other situations,
3) eliminating cases in a legal act where differences between editorial units or their designations are based on text formatting – the text of a legal act should not lose its unambiguity as a result of a change in formatting,
4) creation of a structured database of legal acts, the relations of which will be defined on the basis of formal-functional formulations,
5) creation of a text editor with implemented dictionaries, based on the above-mentioned catalogue of formulations, which will ensure verification and validation of the correctness of the text, including formal-functional formulations, as well as allow to generate consolidated texts immediately after the drafting of the amendment on the basis of a structured database of legal acts,
6) including in the legislative procedure a mandatory stage of checking the text of a legal act in terms of both compliance with the rules of language and the structural correctness of the text,
7) indication of the obligation to add in annexes to draft legal acts, in particular in the explanatory memorandum, information used in the systems providing access to the drafts, such as subject headings and descriptions of the essence of the proposed act,
8) defining a closed catalogue of cases in which it is permissible to develop a project without applying the above-mentioned requirements,
9) introduction of regulations allowing for the quick rectification of errors in the event that an error in the formal-functional formulations of an act issued or promulgated does not affect the content of the act, without the need to start the full legislative process anew,
10) building a system of universal information on the law on the basis of a structured database of legal acts, which in a manner tailored to the user's needs (on the basis of the preferences described by the user) will provide information about the law, direct to

additional sources of knowledge and interpretation, and allow to submit an inquiry regarding the interpretation of regulations, as well as send a comment on given solutions. The result of the above-described activities should be the publication of legal acts in the form of an electronic legal act, which will not only provide the possibility of familiarizing with the text of the act, but will also be able to be used directly after import into the reference legal information system maintained by the state. A system that will ensure the possibility of obtaining the content of the regulations and will refer to other sources of information, in particular to information prepared by public administration bodies responsible for specific substantive departments.

At the same time, it should be emphasized that the presented solutions should have a positive impact on the development of tools developed by entrepreneurs. The data made available by state authorities will be able to be used directly, including via APIs[12], without the need for additional processing of the text of the legal act.

[12] Application Programming Interface.