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"Legislative omission in the exercise of obligatory statutory authorisations in Polish law. Legal and IT perspective". The abstract of the doctoral thesis

Field of science: **Social Sciences**. Scientific discipline**: Legal Sciences**

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1. Problem description and research objectives

Doctoral thesis "Legislative omission in the exercise of obligatory statutory authorisations in Polish law. Legal and IT perspective" is devoted to the analysis of a situation in which there is a delay in the fulfilment of the obligatory statutory authorisation to issue an implementing act – a regulation. Despite its significant impact on legal practice, this topic is often overlooked in public debate. Previous research conducted by representatives of legal science has focused primarily on a qualitative approach to the problem, and the impulse to perform it was essentially the subjective experience of the authors resulting from legislative practice. Many of the observations presented were accurate and made a positive contribution to understanding the essence of the authorising provision, the regulation as an executive act, and the importance of these for the efficient functioning of statutory regulations. The missing element was the more general approach to the subject, set within the context of the functioning of the legal system. It may also be doubted whether the proposed solutions have influenced the change in legislative practice, similarly to the introduction of a provisional solution in Article 417^1 § 4 of the Act of 23 April 1964. The Civil Code (consolidated version: Journal of Laws of 2025, item 1071), according to which compensation for damage may be claimed for failure to issue a normative act, the obligation to issue which is provided for by law.

The research, the results of which are presented in this thesis, had two related main goals. The first objective was to describe the phenomenon of legislative omission in the exercise of obligatory statutory authorisations in quantitative and empirical terms, unlike in legal science to date. The second main objective was to develop a computer program that would automatically detect and classify authorisation regulations, providing information on possible legislative omissions. Such an approach has not yet been presented in the subject of legislative omission. As mentioned above, attempts to date have focused on suggesting changes in the practice of law-making and reorganisation of the legislative process. Two secondary objectives have been linked to the main objectives, the achievement of which will enable a more effective

use of the research results in the future. The first secondary objective was to assess the phenomenon of legislative omission from the perspective of constitutional principles, including trust in the state and the law established by it, the principle of correct legislation, and the requirement for sufficient specificity and comprehensiveness of the law. In this way, a context has been created in which the results of the quantitative research should be embedded. The second secondary objective was to develop a form of authorisation provision that, on the one hand, would be suitable for free processing in IT systems and, on the other hand, would retain its normative properties. The implementation of the primary and secondary objectives outlined above was used to formulate *de lege lata* and *de lege ferenda* conclusions regarding the process of issuing regulations and the tools employed in this process.

To achieve the discussed goals and to give a framework to the planned work, the following research questions were formulated:

1. In the light of the constitutional principles: trust in the state and the law established by it, the principle of correct legislation, and the requirement for sufficient specificity and comprehensiveness of the law, how should the phenomenon of legislative omission in the exercise of obligatory statutory authorisations in the Polish legal system be interpreted?
2. With what intensity did the phenomenon of legislative omission in the exercise of obligatory statutory authorisations occur in the Polish legal system in the years 1998 – 2020? This question has been clarified by five detailed research questions formulated in the second chapter of the paper.
3. How is it possible to detect and classify authorising provisions in laws in the Polish legal system using information technology?
4. What form (manner of representation) can be taken by an authorising provision originally included in the Act in the Polish legal system, so that it can be processed in IT systems and at the same time have a normative character?

To obtain answers to the research questions, the paper employed both legal-dogmatic and statistical methods. An integral part of the thesis is a computer program that serves as an experiment at the intersection of law and computer science, proposing a working solution (proof of concept) for some of the identified problems. As a result, the work, despite its strong roots in the science of law, is empirical and interdisciplinary.

2. The structure of the thesis

The thesis is divided into four interrelated chapters, each corresponding to one of the research questions formulated above. In the first chapter, the phenomenon of legislative omission in the exercise of obligatory statutory authorisations is embedded in the context of the principles listed in research question 1. Based on data from databases containing legal information (both public and commercial), the second chapter describes the occurrence of legislative omissions in the exercise of obligatory statutory authorisations under Polish law. Two aspects of this phenomenon were examined: primary legislative omission, when the authority is obliged to fulfil a statutory authorisation for the first time, and secondary legislative omission, when the authority has to issue a new implementing act in place of the previous one, which has ceased to be in force. The third chapter provides a critical analysis of the jurisprudence and achievements of legal science in the field of the construction and functioning of the norm and the authorising provision. On this basis, the requirements that should be met by a computer program recognising and classifying the authorising provisions in the text of an act were formulated. The correlates of these requirements are the properties that must be presented by the authorising provision in the form of a source code to be suitable for further processing by IT systems. A discussion of the program's performance and the authorising provision, in the form of source code, is provided in the fourth chapter of the paper. The same chapter also includes an analysis of the possibility of introducing authorising provisions in the form of source code as a part of the legal system. The leitmotif of the study is to separate the legislative decision to create an authorising provision from the form in which it is communicated, i.e. the text in natural (legal) language. The admissibility of expressing a legislative decision in the form of source code is discussed from the perspective of two opposing views: strong legalism and computational legalism on the one hand, and legislation and digisprudence on the other. At the end of the thesis, the conclusions of the conducted research were collected and aggregated, and a list of *de lege lata* and *de lege ferenda* postulates was presented.

The dates of the legal status for individual data sets are indicated in the excerpts of the paper, where the results of the data analyses are presented. If not stated otherwise, the date of formulation of the conclusions included in the following paper is September 2025.

3. Conclusions

The presented research results enable us to conclude that both the primary and secondary objectives of the work have been successfully achieved. The analysis of jurisprudence and legal doctrine provided grounds for recognising the legislative omission as a violation of constitutional principles, including trust in the state and the law established by it, the principle of correct legislation, and the requirement for sufficient specificity and comprehensiveness of the law. If it is inadmissible to enact normative acts that are incomplete, do not regulate all relevant issues in accordance with the justified expectations of the addressee of the norm (which is referred to as a legislative gap), it is all the more unacceptable if obligatory implementing acts have not been issued (in the context of this work – regulations), which makes the legal norm incomplete and unenforceable (legislative omission). This violates the clarity, coherence and completeness of the legal system understood as a set of interrelated rules, impairs its operation, undermines the individual's trust in the state and the law established by it, and thus indirectly also strikes at the principle of the rule of law, called the principle of principles. It should be considered that a violation of the constitutional principles of law will occur if two conditions are met cumulatively: firstly, if the right to which the individual is entitled or the obligation burdening him has become apparent as a result of a legislative omission, and secondly, if (alternatively) the moment of removal of the undesirable condition cannot be predicted or this moment has been unjustifiably postponed. A legislative omission in the exercise of an obligatory statutory authorisation is all the more critical because the legislator, by including such authorisation, makes an exception to the principle of comprehensiveness of an act. Thus, it considers that to regulate a given matter efficiently, it is expedient to cede part of the legislative competence to the executive authorities. A legislative omission in the exercise of an obligatory statutory authorisation defeats the intention of the legislator. It thus impairs, to a certain extent, the legal norms introduced by a given act. It is necessary to reiterate the postulate in legal science regarding the need to expand the competence of the Constitutional Tribunal to encompass the possibility of ruling on both legislative gaps and legislative omissions. The existing institution of the signalling ruling is insufficient and has too little impact on the entities obliged to issue the normative act.

In the examined sample, approximately 75% of cases involved a delay in the first execution of the obligatory authorisation to issue a regulation, indicating a primary legislative omission. The size of the delay has changed over the years, which can be attributed to the influence of legal science views. However, a significant decrease has been visible since 2012, when normative

acts began to be published in electronic form and the Public Legal Information Portal became available. Thus, data on existing legislative omissions became widely available. The results obtained show that the undesirable state of delay in fulfilling obligatory statutory authorisations is a permanent feature of the Polish legal system, and the primary legislative omission in this regard is the rule. On the contrary, the desired situation where an executive act enters into force together with the act on which it is based should be considered an exception. However, the phenomenon of primary legislative omission occurs with varying intensity, and statistically significant differences can be indicated between individual years. Criticism should be made of the upholding of existing implementing acts in the event of the replacement of a previously applicable act by a new normative act. This is a harmful procedure that promotes the use of provisional solutions in the legal system and extends the deadlines for the expiry of validity or entry into force, thereby reducing the transparency of the law. At the same time, as research shows, it does not guarantee the avoidance of a loophole in the law. Instead, we should be inclined to amend the existing acts. In addition to the primary legislative omission, a secondary legislative omission can also be distinguished, which occurs when the existing regulation has ceased to be in force and the new one, issued based on the amended authorising provision, has not yet taken effect. There are far fewer cases of this type; they are exceptions to the rule. In most cases, new regulations take effect simultaneously with the repeal of the regulations they replace. Finally, based on the research carried out, it cannot be confirmed that there is a significant correlation between the length of the period of *vacatio legis* of the authorising provision and the occurrence of the original legislative omission, which undermines the view that has been established so far in legal science.

As part of the work, a computer program written in Python was prepared. It uses the texts of acts (or their consolidated versions) made publicly available by the Chancellery of the Parliament, in which it searches for specific sequences of characters based on previously set patterns – regular expressions. As a result, the individual parts of the authorising provision are recognised and classified in accordance with the requirements set out in chapter three of the thesis, and the provision itself is given a structured form. It can take the form of source code in Python or a more technologically neutral JSON notation. The program is also able to determine, based on data made available by the Chancellery of the Parliament, which regulations have been implemented. A separate function in the program also implements the validation rule, ensuring that all the requirements outlined in the third chapter of the thesis have been met.

As mentioned above, an authorising provision can take the form of source code in a specific programming language or be written in JSON format, making it available for processing on multiple systems regardless of the programming language in which it was written. Thus, technological neutrality and interoperability will be maintained, and this type of provision will be suitable for easy transfer using a programmable application programming interface (API). The analysed change in the form of the provision highlights the importance of the legislative decision itself, which is the result of an organisational game – a game of law – played between groups of entities seeking to expand their influence or gain access to certain goods, to ultimately reduce the state of uncertainty in which they take action. A legislative decision, to be adopted by entities, should be rational in the light of the principles of legislation: it should be consistent (on many levels), maintain its rationality over time, be a better alternative to the independent regulation of a given area by legal entities, and have a justification for such deep interference in relations between entities. In this view, a legislative omission constitutes a challenge to the legislature's rational decision. An authorising provision, on the other hand, is a form of communication about a legislative decision. This message can be expressed in both legal language and alternative formats, such as source code or JSON. To capture and preserve the normative character of a message, it should be viewed as an artefact in which the designer (sender of the message) places an inscription – a certain scenario of the action of the recipient of the message. The artefact is accompanied by affordances – possibilities of action available to the recipient, along with possible indications of their existence, which the designer includes. The normative nature of an artefact is shown by the strength with which the artefact influences the recipient: from a firm demand or an equally firm refusal, and ending with a mild encouragement or discouragement. Including the authorising provision in this way facilitates its translation into the form of the source code or the JSON record, while maintaining its normative character and the identity of the content between the forms. For its effectiveness, the law requires an interpretation that eliminates the incomplete knowledge (referred to as limited rationality) of the legislator at the time the law was created, as well as the changes that have actually occurred from the moment the law was formulated to the moment of its application. Appropriate flexibility is necessary, which the source code lacks. The necessity of precisely defined initial conditions for the source code to be executed and the immediacy of the code make it possible for the code to be reproduced only as a result of the interpretation of the law, and not as an independent carrier of a legislative decision (in the current state of knowledge and technology). There are also no grounds in Polish law for the content of a normative act to be officially announced in such a form. Nevertheless, the source code reflecting the law can be a

tool supporting the legislator in fulfilling its duties in establishing a rational law, including establishing essential facts, forecasting, retrospection, and correction. At the same time, one should be aware that the use of this form of communication regarding a legislative decision *de facto* introduces entities that decide on the manner of interpreting the source code by a computer into the process of applying the law (the phenomenon of the *programmer of the programmer*). Furthermore, it should be emphasised that it is not a problem to ensure the normative character of the provisions in the form of a source code; The problem is to avoid excessive normativity, which is represented by computational legalism – an extreme variety of strong legalism. In terms of computational legalism, the law operates similarly to source code: it is rule-based, unreflective, immediate in action, and deprived of the possibility of interpretation beyond linguistic interpretation. To counteract this, designers must ensure that the law, in the form of source code, incorporates a set of affordances: contestability, configurability, transparency, delay, and oversight. What is very important, depending on who the addressee of the legal norm is (whether a private or public entity), the meaning (and sometimes the performance) of individual affordances will change. This is related to the difference in protected values. The authorising provisions are addressed to the indicated authorities and, like other meta-provisions, protect the coherence and completeness of the legal system. They are more algorithmic in nature, and their use generally does not require complicated interpretative procedures. Therefore, authorising provisions, as well as other meta-provisions, can be successfully reproduced using source code. Meanwhile, substantive provisions are most often addressed to private entities or public entities performing activities provided for by law. They are usually focused on protecting the interests (mainly property) of the former. Their correct interpretation is a complicated process and full of nuances that are difficult to convey with the help of source code.

The research was also used to formulate a set of postulates concerning the interpretation of the law, as well as necessary changes in it and legislative practice.