



LAW AND ADMINISTRATION IN POST-SOVIET EUROPE

Vol. I(VI)/2019: 73–83

DOI: 10.2478/lape-2019-0007

Magdalena Micińska 

Kolegium Jagiellońskie – Toruńska Szkoła Wyższa, Toruń

CONSTITUTIONAL SOURCES OF LAW IN THE RUSSIAN FEDERATION ON THE BASIS OF ACTS REGARDING THE CONSERVATION

Key words: Russian Federation, source of law, Constitution of Russian Federation, federal act, decree, resolution, ordinance, bylaw, state of law, Constitution of the Polish Republic, rule of law, conservation

Abstract

The constitutional catalogue of the sources of law, clear and unambiguous division of acts into commonly binding and internal ones, is of fundamental meaning for the realization of the state of law rules, i.e. legalism and the rule of law, from the perspective of European democracies. Since it is the essence of every democratic legislation to base its functioning on the law established by organs that have been assigned for that aim, binding its addressees and executed by public authorities, also with the use of the means of coercion.

This article aims at presenting the outline of the constitutional system of the sources of law in the Russian Federation and illustrating it, as much as it is possible, with acts regarding the conservation of the environment. In particular, the objective of this work is to determine the name of a given source, an organ competent to issue it, its function and position in the hierarchy, as well as the rule of promulgation. The key research issue here is the distinguishing between the sources of commonly binding law and the ones of internal law, as the regulation of the Russian Federation Constitution does not preordain explicitly. Yet this issue is of crucial significance when it comes to the status of law subjects. Acts of internal character may be directed merely at organizational units submitted to an organ issuing the acts and may not directly regulate the sphere of rights and obligations, neither constitute the bases of decisions concerning citizens, legal entities or other subjects.

Introduction. Basic terms and rules

In Russian literature on law the term source of law means, “the will of a state expressed in the form of a legal norm”¹. In other words, it is a form enabling

the state will to become a valid legal norm². However,

правообразования, <https://cyberleninka.ru/article/n/sootnoshenie-istoka-prava-istochnika-prava-i-formy-prava-s-pozitsii-vo-levoy-kontseptsii-pravoobrazovaniya>, [24.08.2019].

² В.Анишина, В. Лютый, М. Марюшкин, *Обществознание*, Том 2, Москва 2009, https://books.google.pl/books?id=M_OFDwAAQBAJ&printsec=frontcover&hl=pl#v=onepage&q&f=false, [24.08.2019].

¹ М.Ю. Спирин, *Соотношение истока права, источника права и формы права с позиции волевой концепции*

unlike the Constitution of the Polish Republic (KRP)³, the Constitution of the Russian Federation (KFR)⁴ does not include a separate part devoted to the sources, and does not apply the subjective term (*istocznik prawa*). The catalogue of sources as well as their hierarchy ought to be reconstructed on the basis of the analysis of Constitution (KRF) regulations and the views of the doctrine.

The article aims at presenting the outline of the constitutional sources of law of the Russian Federation illustrated with normative acts regarding the conservation. In particular, it aims at determining the name of a certain source, an organ competent to issue it, its function and position in the hierarchy, as well as the rules of promulgation. An attempt to distinguish between the sources of commonly binding law and the internal one will be the key research issue since the regulations of KFR do not do that explicitly. It is, however, of essential importance from the perspective of the legal status of subjects of law, since internal regulations cannot directly regulate the sphere of rights and obligations, and neither can they be the basis of decisions addressed at citizens, legal entities, and other subjects.

In the below presented research I am analysing: the text of the Constitution published by Wydawnictwo Sejmowe in 2000, also available on the site of the former Biuro Studiów i Ekspertyz Kancelarii Sejmu⁵, original text of the Constitution available on the Kremlin's site (<http://constitution.kremlin.ru/>), federal acts, lower rank and executive acts, including the ones determining the procedure of constituting and publishing of sources of law, the opinions of both Russian and Polish doctrine. I am applying the structure of the sources of law determined in the Constitution of the Polish Republic as the model of comparison.

The first article of KFR proclaims the rule of the state of law stating that, "the Russian Federation – Russia is a democratic federal state with the republican form of governing". In the Polish literature on the topic the rule of the state of law means "the concept of a state" in which the law in power hold the supreme position in

political system, binding the ones who govern and determining the scope of their competences, at the same time granting citizens with a number of rights and freedoms. In a state of law state organs and institutions are allowed to act merely within the range determined by law, while citizens are allowed to do everything as long as it is not forbidden by the law"⁶. The system of the state of law is built upon the rules of: the sovereignty of nation, division and balance of authorities, associating actions of all the organs of public authorities with the legal order submitted to the constitution, judicial supervision over activities of public administration and subsidiarity"⁷.

This rule was rejected a priori in the Marxist doctrine as an element of the capitalist system⁸. Whereas, contemporary Russian literature derives the idea of protection of dignity, freedom and human rights out of this principle⁹, the superiority of an act in the legal order, counteracting against the dictate of the majority, despotism and the police state¹⁰. However, according to W.D. Zorkin, this rule, "is still awaiting for its conceptual and doctrinal study"¹¹, by the Russian jurisprudence of the 21st century. "Hence there is disagreement regarding even the basic features of the state of law"¹² in Russian science.

These difficulties stem from, in my view, Tzarist and Soviet system traditions determining significant incoherence with the western model of a state of law. I assume that the basic difference may result from a significant prevalence of the executive branch in the

⁶ J. Zakrzewska, *Państwo prawa a nowa konstytucja*, [w:] *Prawo w zmieniającym się społeczeństwie* pod red. Grażyny Skąpskiej, Toruń 1992, s. 325–334.

⁷ A. Pakuła, *Od państwa policyjnego do państwa neopolicyjnego. Objawy polityzacji demokratycznego państwa prawnego*, [w:] *Cywilizacja administracji publicznej Księga jubileuszowa z okazji 80-lecia urodzin prof. nadzw. UW dra hab. Jana Jeżewskiego* pod red. Jerzego Korczaka Wrocław 2018, s. 381.

⁸ В.Н. Кудрявцев, Е.А. Лукашева, *Социалистическое правовое государство: проблемы и суждения*, Москва 1989. с. 5–6, <http://lawlibrary.ru/article1074651.html>, [24.08.2019].

⁹ М.Н. Марченко, *Правовое государство*, Энциклопедия юриста. 2005, https://dic.academic.ru/dic.nsf/enc_law/1732, [24.08.2019].

¹⁰ В.Н. Хропанюк, *Правовое государство и его основные характеристики*, Теория государства и права под ред. В.Г. Стрекозова, Москва 2008, https://www.gumer.info/bibliotek_Buks/Pravo/Hrop/04.php, [24.08.2019].

¹¹ В.Д. Зорькин, *Конституционно-правовое развитие России*, М.: Норма, 2011. С. 52–53, <https://www.twirpx.com/file/1560679/>, [24.08.2019].

¹² *Ibidem*.

³ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. z 1997, nr 78 poz. 483).

⁴ Конституция Российской Федерации Принята всенародным голосованием 12 декабря 1993 г. <http://constitution.kremlin.ru/> [24.08.2019].

⁵ Konstytucja Federacji Rosyjskiej z dnia 12 grudnia 1993 r., <http://biurosejmu.sejm.gov.pl/uzup/mid-112.pdf>, *Konstytucja Rosji*, tłum. A. Kubik, Warszawa 2000.

political system of the Russian Federation, which leads to disturbing the rule of balance between authorities. This fact is illustrated e.g. by the lack in KFR of *expressis verbis* expression of obligation towards authority organs to act not only on the basis but also within the law, as well as the lack of supervision over the activities of the executive branch organs by administrative judiciary.

The supremacy of the Russian Federation Constitution and federal law over the regional law

The Constitution of Russia states the division of sources into federal and regional¹³, which results from the federal system of the state. Federal law is in power in the whole area of the state while regional only on the area of a particular subject.¹⁴ Federal law has the supremacy over the regional one. It is the consequence of art. 4 par. 2 of KFR, "The Constitution of the Russian Federation and federal acts have the supreme power on the whole area of the Russian Federation". Federal law is applied directly over the whole area of the state, which is stated in art. 76 par. 1, "Regarding issues in the competence of the Russian Federation federal constitutional acts are applied as well as federal acts of direct effect over the whole area of the Russian Federation". Hence, the types of normative acts listed in art. 76 par. 1 are automatically in power while announced, bearing direct legal consequences without being introduced to the system of the subjects of federation.

Art. 15 of KFR states that:

"1. The Constitution of Russian Federation is of the supreme independent legal power and is in force over the whole area of the Russian Federation. Acts and other acts of law issued in the Russian Federation ought not to be in any way contradictory to the Constitution of the Russian Federation.

2. The organs of state authorities, local self-government, individuals holding state functions, citizens and their organizations are obliged to respect the Constitution of the Russian Federation as well as acts.

3. Acts are to be published officially. Acts which have not been published have no power. Any normative legal acts concerning rights, freedoms and obligations of

a human cannot be applied unless they have been officially announced to the public.

4. Commonly accepted rules and norms of international law as well as international agreements made by the Russian Federation make a part of its legal system. If an international agreement made by the Russian Federation states otherwise than the law, the rules of an international agreement are to be applied".

Above article implies that firstly, the Constitution of the Russian Federation holds the supreme position in the hierarchy of sources and all other legal acts ought to be acquiescent with it. Secondly, the constitution and acts (*zakon*) are binding directly, i.e. all the addressees listed in par. 2 of art. 15 are obliged to obey them provided they were officially announced and presented to the public (art. 15 par. 3).

Federal constitutional act

According to art. 15 par. 1 of KFR an act is the second, after the constitution, most important source of commonly binding law. At the same time, the constitution mentions two types of acts, namely a federal constitutional and federal ones. A federal constitutional act is passed with a qualified majority of votes by the Federal Assembly and it concerns the issues of the highest significance for the state, since art. 108 of KFR states that:

"1. Federal constitutional acts are passed in matters stated in the Constitution of the Russian Federation.

2. A federal constitutional act is considered as passed when it has been approved with the majority of at least three quarters of the general number of the Federation Council members, and at least two thirds of the general number of State Duma deputies. Within fourteen days the President of the Russian Federation signs the passed federal constitutional act and orders its announcement".

The content of the Constitution of the Russian Federation determines the matter that ought to be regulated by the means of federal constitutional act. This matter includes in particular introducing into the Russian Federation and establishing a new subject within it (art. 65 par. 2), the change of status of a Russian Federation subject (art. 66 par. 5), the national flag, emblem and anthem of the Russian Federation (art. 70), a referendum (art. 84 letter c), the terms of introducing marshal law (art. 87), the terms of introducing state of emergency (art. 88) and others. The constitutional rank of established norms, the subject issuing them-the two-

¹³ Por. A. Bosiacki, H. Izdebski, *Konstytucjonizm rosyjski. Historia i współczesność*, Kraków 2013, s. 298.

¹⁴ Por. R. Tokarczyk, *Prawo amerykańskie*, Warszawa 2009, s. 26.

chamber Federal Assembly as well as the requirement of qualified majority of votes imply the supremacy of a federal constitutional act over a federal one. It is explicitly stated in art. 76 par. 3, "Federal acts must not be contradictory with a federal constitutional act". An example of a federal constitutional act regarding the conservation is the one from 30th May 2001 on the state of emergency¹⁵, which can also be applied in cases of natural disasters and technical fallouts.

Federal act

A federal act is an act that is passed in matters in the competence of the Russian Federation as well as the ones in the scope of common competence i.e. the Russian Federation and its component subjects (art. 76 par. 1 and KFR). The division of competences is determined in articles 71 and 72 of the Constitution, as well as in federal agreements and other agreements on the differentiating the scope of competences and entitlements (art. 11 par. 3 KFR). Taking advantage of the natural resources, conservation of the environment and providing ecological safety; areas of wildlife under special protection; protection of historic and cultural sites are the sample common competences of the Russian Federation and its subjects (art. 72 letter c).

As it has been stated, a federal act must be in accordance with the constitution and federal constitutional acts. A federal act is passed by State Duma, and its validity requires the approval of the Federation Council, the signature of the President of the Russian Federation and announcement in the official promulgation organ. The legislative initiative is the competence of the President of the Russian Federation, the Federation Council, members of the Federation Council, Members of Duma, the Government of the Russian Federation, legislative (representative) organs of the Russian Federation subjects, as well as the Constitutional Court of the Russian Federation, Supreme Court of the Russian Federation and the Supreme Court of Arbitration of the Russian Federation in matters they are competent at (art. 104 par. 1 KFR). It is worth mentioning at this place that unlike the Constitution of the Polish Republic (art. 118 par. 2) the Constitution of the Russian

Federation does not include the institution of the civil legislative initiative.

Neither does Russian Constitution include the expression of the rule of exclusive statutory form for the regulation of most significant public matters, like the rights and freedoms of human and citizen. One can conclude from art. 15 par. 3 second sentence of the Constitution that rights, freedoms and obligations of human and citizen may be regulated not only by the means of an act but also, "any normative legal acts" provided they are officially announced to the public. Art. 55 par. 3 KFR has a similar content, "Rights and freedoms of a human and citizen may be limited by federal law only to such extent that is necessary for the protection of the foundations of constitutional system, decency, health, rights and legal interests of other individuals, providing the defense of the country and safety of the state". Henceforth, the premises limiting rights and freedoms of a human and citizen may be incorporated in a broadly meant federal law, which includes apart from an act also numerous types of lower rank acts. These issues are regulated differently by the Constitution of the Polish Republic in art. 31 par. 3, which states that, "the limitations regarding the use of constitutional freedoms and rights may be determined but only in an act and merely provided they are necessary in a democratic state for the sake of its safety and public order, or for the protection of the environment, health and public morality, or freedoms and rights of other individuals. These limitations must not violate the essence of freedoms and rights".

In accordance with the federal act from 14th June 1994 on the procedure of publicizing and introducing federal constitutional act, federal act, acts of Federal Assembly chambers¹⁶ the role of promulgators in which federal constitutional acts and federal acts are published is held by paper and electronic forms of periodicals *Parliamentskaja Gazjeta* (<https://www.pnp.ru/>), *Zebrańie ustawodawstwa Federacji Rosyjskiej* (www.szrf.ru), daily paper *Rossijskaja Gazjeta* (<https://rg.ru/>) as well as the official Internet legal information portal www.pravo.gov.ru.

The examples of the most significant federal acts on the conservation are: the act from 10th January 2002 on

¹⁵ Федеральный конституционный закон от 30.05.2001 N 3-ФКЗ – О чрезвычайном положении, <https://rg.ru/2001/06/02/chp-dok.html>, [24.08.2019].

¹⁶ Федеральный закон – О порядке опубликования и вступления в силу федеральных конституционных законов, федеральных законов, актов палат Федерального Собрания от 14.06.1994 N 5-ФЗ, pravo.gov.ru/proxy/ips/?docbody=&nd=102030627, [24.08.2019].

the conservation of the environment¹⁷, the act of horizontal character, containing general regulations regarding all of the environment components, introducing basic terms, rules, rights and obligations of citizens, ecological requirements towards economic activities as well as the frame legal instruments. Next, the acts regulating particular matters, amongst them : the act from 14th March 1995 on particularly protected natural areas¹⁸, the act from 24th April 1995 on the animal world¹⁹, the one from 24th July on hunting and preservation of hunting resources²⁰, act from 20th December 2004 on fishing and preservation of biological water resources²¹, act from 5th July 1996 on the state regulation of activities regarding genetic engineering²², act from 23rd February 1995 on natural healing resources, health resorts and resorts²³, act from 1st May 1991 on the protection of Lake Baikal²⁴, act from 30th November 1995 on the Continental shelf of the Russian Federation²⁵, act from 23rd November 1995 on the geological evaluation²⁶, act from 4th May 1999 on the protection of the

atmospheric air²⁷, act from 21st February 1992 on subsoil²⁸, act from 26th March 1998 on noble metals and gem stones²⁹, and a novelty in federal legislation the act from 27th December 2018 on the responsible treatment of animals³⁰. Also the codes of the Russian Federation ought to be included as federal acts: the water one from 3rd June 2006³¹, land one from 25th October 2001³² and the forest code from 4th December 2006³³.

International agreement

The last source referred to in art. 15 of the Constitution is an international agreement. The Constitution recognizes the superiority of international agreements over federal acts, "If an international agreement made by the Russian Federation states otherwise than the law, then the rules of an international agreement are to be applied (art. 15 par. 4 sentence two). However, unlike the Polish Constitution the Russian one does not distinguish between ratified and unratified agreements, which results in interpretation issues that require detailed analysis. Due to the complicated status of an international agreement in the legal order of the Russian Federation I have devoted a separate article to this issue³⁴. International agreements ratified by the means of an act are published

¹⁷ Федеральный закон от 10.01.2002 N 7-ФЗ – Об охране окружающей среды, <https://rg.ru/2002/01/12/oxranasredy-dok.html>, [24.08.2019].

¹⁸ Федеральный закон от 14 марта 1995 N 33-ФЗ – Об особо охраняемых природных территориях, pravo.gov.ru/proxy/ips/?docbody=&nd=102034651, [24.08.2019].

¹⁹ Федеральный закон от 24.04.1995 N 52-ФЗ – О животном мире http://www.consultant.ru/document/cons_doc_LAW_6542/, [24.08.2019].

²⁰ Федеральный закон от 24 июля 2009 N 209-ФЗ – Об охоте и о сохранении охотничьих ресурсов и о внесении изменений в отдельные законодательные акты Российской Федерации, pravo.gov.ru/proxy/ips/?docbody=&nd=102131705, [24.08.2019].

²¹ Федеральный закон от 20 декабря 2004 N 166-ФЗ – О рыболовстве и сохранении водных биологических ресурсов, <https://rg.ru/2004/12/23/rybolovstvo-dok.html>, [24.08.2019].

²² Федеральный закон от 5 июля 1996 г. N 86-ФЗ – О государственном регулировании в области генно-инженерной деятельности, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102042295>, [24.08.2019].

²³ Федеральный закон от 23 февраля 1995 г. N 26-ФЗ – О природных лечебных ресурсах, лечебно-оздоровительных местностях и курортах, pravo.gov.ru/proxy/ips/?docbody=&nd=102034405, [24.08.2019].

²⁴ Федеральный закон от 1 мая 1999 г. N 94-ФЗ – Об охране озера Байкал, www.kremlin.ru/acts/bank/13787, [24.08.2019].

²⁵ Федеральный закон от 30 ноября 1995 N 187-ФЗ – О континентальном шельфе Российской Федерации <http://base.garant.ru/10108686/#ixzz5UeEhrwGl>, [24.08.2019].

²⁶ Федеральный закон от 23 ноября 1995 г. N 174-ФЗ – Об экологической экспертизе, pravo.gov.ru/proxy/ips/?docbody=&nd=102038321, [24.08.2019].

²⁷ Федеральный закон от 4 мая 1999 г. N 96-ФЗ – Об охране атмосферного воздуха, www.kremlin.ru/acts/bank/13789, [24.08.2019].

²⁸ Федеральный закон от 21.02.1992 N 2395-1 – О недрах, pravo.gov.ru/proxy/ips/?docbody=&nd=102014778, [24.08.2019].

²⁹ Федеральный закон от 26.03.1998 N 41-ФЗ – О драгоценных металлах и драгоценных камнях, pravo.gov.ru/proxy/ips/?docbody=&nd=102052228&rdk, [24.08.2019].

³⁰ Федеральный закон от 27.12.2018 N 498-ФЗ – Об ответственном обращении с животными и о внесении изменений в отдельные законодательные акты Российской Федерации, <https://rg.ru/2018/12/29/fz-498-dok.html>, [24.08.2019].

³¹ Водный кодекс Российской Федерации от 03.06.2006 N 74-ФЗ, <http://docs.cntd.ru/document/901982862>

³² Земельный кодекс Российской Федерации от 25.10.2001 N 136-ФЗ, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102073184>, [24.08.2019].

³³ Лесной кодекс Российской Федерации от 04.12.2006 N 200-ФЗ, <https://rg.ru/2006/12/08/lesnoy-kodeks-dok.html>, [24.08.2019].

³⁴ М. Micińska-Bojarek, *Umowy międzynarodowe Federacji Rosyjskiej w dziedzinie ochrony środowiska*, Przegląd „Studia Iuridica Toruniensia” 2016, T X.

in Zebrane Ustawodawstwo Federacji Rosyjskiej and in portal www.pravo.gov.ru³⁵.

Decree and *rasporazhenije* of the President of the Russian Federation

The subsequent position in the hierarchy of sources is taken by lower rank acts as well as executive ones passed by the federal organs of executive and legislative branches listed in the constitution. Due to the presidential model of the political system the highest position in this category is occupied by a decree of the President of the Russian Federation. According to art. 90 of KFR:

“1. The President of the Russian Federation issues decrees and ordinances.

2. Decrees and ordinances of the President of the Russian Federation are in power over the whole area of the Russian Federation.

3. Decrees and ordinances of the President of the Russian Federation must not be contradictory to the Constitution of the Russian Federation or federal acts”.

A decree is a regulation equal to an act issued not by the Parliament but by organs of the executive branch³⁶. A decree of the President of the Russian Federation (*ukaz*) ought to be in accordance with the Constitution and federal acts. Essentially this act does not require countersignature of representative organs except two cases determined in the constitution. According to art. 102 par. 1 letters a and b of the Constitution the Federation Council approves decrees of the Russian Federation President on the introduction of marshal law and state of emergency. A decree of the President may include general and abstract norms as well as specific and individual ones. In the first case it is so called normative decree, which undoubtedly is a source of commonly binding law. The example being here a decree from 2nd August 2010 on introducing the state of emergency in the seven subjects of the Russian Federation due to fire safety³⁷. The example of a decree including specific and

individual norms might be the one from 21st June 1996 on awarding state prizes³⁸. Performing his office President Putin frequently takes advantage of this competence issuing from several to a dozen decrees a month on average³⁹.

Another type of act issued by the President of Russia is called in KFR *rasporazhenije*, whereas in the above quoted parliamentary translation is referred to as an ordinance. In the Russian Great Dictionary of Law term *rasporazhenije* is defined as one of the lower rank acts issued by authority organs (the President of the Federation, the Government of the Federation) or a governing organ within its competences, binding natural persons and legal entities it is addressed at⁴⁰. It is an independent act issued in order to solve operative tasks promptly and efficiently⁴¹.

KFR does not determine the character of this act, and neither does it state that it is an executive regulation for an act. It does require, though, its accordance with the constitution and federal acts. Henceforth, it is a form of performing executive power. A President's *rasporazhenije*, like a decree, may include abstract and general norms (e.g. on organizing a celebration to commemorate the 25th anniversary of passing the Constitution of the Russian Federation⁴²) or specific and individual (e.g. granting awards⁴³). A certain lack of consequence is clearly visible, since awards of the President may be granted by both the means of a non-normative decree and *rasporazhenije*. In my view it implies the lack of principled approach towards the matter of the sources of law, which is characteristic for the European states, including Poland. The matter of *rasporazhenije* refers to

³⁵ Справочная информация: «Условия и порядок вступления в силу международных договоров Российской Федерации. Порядок их опубликования».

³⁶ Słownik języka polskiego, <https://sjp.pwn.pl/sjp/dekret;2554532.html>, [24.08.2019].

³⁷ Указ Президента Российской Федерации от 2 августа 2010 года – Об объявлении чрезвычайной ситуации, связанной с обеспечением пожарной безопасности, в семи субъектах Российской Федерации, <http://kremlin.ru/news/8558>, [24.08.2019].

³⁸ Указ Президента Российской Федерации от 21.06.1996 N 971 – О награждении государственными наградами Российской Федерации, <http://www.kremlin.ru/acts/bank/9643/print>, [24.08.2019].

³⁹ <http://kremlin.ru/acts/bank>, [24.08.2019].

⁴⁰ Большой юридический словарь, МА.Я. Сухарев, В.Е. Крутских, А.Я. Сухарева, Инфра, 2003.

⁴¹ Чем отличается приказ от распоряжения? https://nsovetnik.ru/drugoe/chem_otlichaetsya_prikaz_ot_rasporyazheniya/, [24.08.2019], <http://www.grandars.ru/college/pravovedenie/rasporyazhenie.html>, [24.08.2019].

⁴² Распоряжение Президента Российской Федерации от 28.11.2018 N 356-рп – О проведении торжественного приема, посвященного празднованию 25-летия принятия Конституции Российской Федерации, <http://publication.pravo.gov.ru/Document/View/0001201811280056>, [24.08.2019].

⁴³ Распоряжение Президента Российской Федерации от 12.11.2018 г. N 335-рп – О поощрении, <http://kremlin.ru/acts/bank/43723>, [24.08.2019].

current, internal and organizational matters. Concluding from the above statements I presume that the character of a President's *rasporazhenije* is closer to a source of internal law, i.e. a bylaw. During the presidency of Władimir Władimirowicz Putin such an act is issued less frequently than a decree, approximately a couple of times a month.

Resolution and *rasporazhenije* of the Russian Federation Government

The next subject that is authorized by the Constitution to issue sources is the Russian Federation Government. It consists of a prime minister, deputy PM and federal ministers appointed according to art. 111–112 of KFR. The organizational structure of the Russian Federation Government is of particular character. A decree on the structure of federal organs of executive power that is issued every time after presidential election⁴⁴ subordinates particular departments and other organs of executive power to the management of either the president or the prime minister.

The matters of legislative competences of the government are determined in art. 115 of KFR:

“1. Russian Federation Government issues resolutions and ordinances, and secures their execution basing on and executing the Constitution of the Russian Federation, federal acts and normative decrees of the President of the Russian Federation.

2. Resolutions and ordinances of the Government are in power in the Russian Federation.

3. Resolutions and ordinances of the Government may be annulled by the President of the Russian Federation if they are contradictory to the Constitution of the Russian Federation, federal acts or decrees of the Russian Federation President”.

The first paragraph of the above commented article states explicitly that resolutions and ordinances of the Russian Federation Government are executive acts towards the sources of commonly binding law of a higher rank that are listed in it. Like in the case of regulating the legislative powers of the president, the resolution is listed as the second of legal acts, which suggests its lower rank.

Resolution is called *postanowlenije* in the Russian constitution. In accordance with doctrinal definitions it means: a legal act passed by a collegial organ in order to dissolve most significant and principal issues that particular organs may face and to establish long-lasting norms and rules of conduct regulating the rights and interests of natural persons and legal entities⁴⁵; an act of the government performed within competences that it has been acknowledged in order to execute acts⁴⁶. The above statements imply that the resolution of the government is an act issued with the aim of executing an act, which is the source of commonly binding law. The example of such an act on conservation being the resolution of the Russian Federation Government from 29th June on federal purpose-oriented program “Overcoming the effects of radiation fallouts in the period by 2015”⁴⁷.

In Polish system a resolution of the Council of Minister is analogous to a resolution of the Russian Federation Government. However, one ought to pay attention at this place to art. 92 par. 1 of the Polish Constitution which states that, “Resolutions are issued by the organs determined in the Constitution on the basis of a particular entitlement included in an act and with the aim of executing it. The entitlement ought to determine the organ appropriate to issue a resolution as well as the scope of matters passed for the regulation and guidelines regarding the content of an act”.

The fundamental difference lies in the fact that resolutions passed by the Russian Federation Government do not require “a particular entitlement included in the act”. The above presented resolution of the Russian Federation Government from 29th June 2011 on the federal purpose-oriented program “Overcoming the effects of radiation fallouts by 2015”. does not refer to any particular regulation of an act, which could entitle for issuing an objective act. In the first articles of the resolution, however, there can be found the reference to the titles of a couple of acts and other lower rank regulations, whose aim is to overcome the effects of radiation events, which

⁴⁵ Словари и энциклопедии на Академике, <https://official.academic.ru/18535/Постановление>, [24.08.2019].

⁴⁶ Т.Н. Радько, *Теория государства и права в схемах и определениях*, Проспект, 2011. https://normative_reference_dictionary.academic.ru/, [24.08.2019].

⁴⁷ Постановление Правительства РФ от 29.06.2011 N 523 – О федеральной целевой программе «Преодоление последствий радиационных аварий на период до 2015 года», <https://rg.ru/2011/07/19/radiac-avarii-site-dok.html>, [24.08.2019].

⁴⁴ Указ Президента РФ от 15.05.2018 N 215 – О структуре федеральных органов исполнительной власти, <http://kremlin.ru/events/president/news/57475>, [24.08.2019].

apparently is a general statutory entitlement for issuing the act. The analysis of federal acts contents leads to the conclusion that these acts do not include any particular entitlement determining an organ suitable for issuing an executive act, nor a frame content of an act. Resolutions of the Russian Federation Government are passed on the basis of a general delegation within the legislative competence of an organ. In fact, the government may pass an undetermined number of resolutions to execute a particular act, and moreover it may decide on their content as long as it is in accordance with the acts of higher rank and the range of its competences.

Rasporazhenije of the Russian Federation Government, translated in the parliamentary publication of the Russian Federation Constitution as ordinance, is in my view, also more of an act of an internal law, especially that there ought to be a normative difference of a kind between the function of a directly binding resolution and *rasporazhenije*. An example of such an act regarding conservation being a *rasporazhenije* of the Russian Federation Government from 17th November 2008 on the Concept of a long-term socio-economic development within the period by 2020⁴⁸. This act is analogical with the contents of Polish resolutions of the Council of Ministers which are planning and strategic documents, being the sources of internal law⁴⁹.

It ought to be noted that apart from the Council of Ministers other subjects are entitled by the Constitution of the Polish Republic to issue ordinances, bylaws and resolutions. These subjects are as follows: the Prime Minister (148 point 3 KRP), ministers responsible for the work of the government administration (149 par. 2 KRP) the head of the committee referred to in art. 147 par. 4 (149 par. 3 KRP), National Broadcasting Council (KRRiT) (art. 213 par. 2). At the same time the Constitution of the Polish Republic determined the internal character of resolutions and bylaws: they must be issued on the basis of an act and cannot be the foundation of decisions towards citizens, legal entities and other subjects (93 par. 2 KRP). The Russian Constitution does not include any analogical regulations. As it

has been mentioned before, the Russian Constitution does not determine which of the sources listed in it are of internal character, and which are commonly binding. Moreover, apart from the Russian Federation President and Government no other organs of executive power are entitled in the Constitution to issue normative acts. There is no mention, in particular, about the acts issued by federal ministers.

The sources of law passed by the Russian Federation President and Government are to be published in *Rossijskaja Gazeta*, *Zebranie ustawodawstwa Federacji Rosyjskiej* and portal (www.pravo.gov.ru), whose functioning is secured by Federal Security Service of the Russian Federation (!), after 10 days since they have been signed. Normative acts of the Russian Federation President come into power on the whole area of the Russian Federation after seven days since they have been officially published. Other acts of the President, including the ones whose content refers to state secrets or confidential information, come into force on the day they are signed. It is stated in the decree from 23rd May 1996 on the procedure of publishing and coming into force of the acts issued by the Russian Federation President, Government and normative legal acts of the federal organs of executive branch⁵⁰.

Resolution of the Federal Assembly

The last source of law referred to in KFR is a resolution passed by the chambers of the Russian parliament (Federal Assembly). The higher chamber is called the Council of the Federation. It comprises of two representatives of each subject of the Russian Federation, in each case one represents a representative and another one executive organs of a given subject (art. 95 par of the Constitution).

The Council of the Federation passes resolutions in strictly determined matters included in the scope of its competences. These are as follows: a) confirming the changes of borders between the subjects of the Russian Federation; b) confirming a decree of the Russian Federation President on the introduction of marshal law; c)

⁴⁸ Распоряжение Правительства РФ от 17.11.2008 N 1662-р, – О Концепции долгосрочного социально-экономического развития Российской Федерации на период до 2020 года, https://rg.ru/pril/62/64/23/2074_strategiia.pdf, [24.08.2019].

⁴⁹ Por. Uchwała Nr 239 Rady Ministrów z dnia 13 grudnia 2011 r. w sprawie przyjęcia Konceptji Przestrzennego Zagospodarowania Kraju 2030, (M.P.2012, poz. 252).

⁵⁰ Указ Президента РФ от 23.05.1996 N 763 – О порядке опубликования и вступления в силу актов Президента Российской Федерации, Правительства Российской Федерации и нормативных правовых актов федеральных органов исполнительной власти, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102041458&rdk=1>, [24.08.2019].

confirming a decree of the Russian Federation President on the introduction of state of emergency; d) deciding on the issue of the possible use of Military Forces of the Russian Federation beyond the borders of the Russian Federation; e) decreeing the election of the Russian Federation President; f) dismissal of the Russian Federation President; g) appointing the judges of the Constitutional Tribunal of the Russian Federation, Supreme Court of the Russian Federation and Supreme Court of Arbitration of the Russian Federation; i) appointing and dismissing Attorney General of the Russian Federation; i) appointing and dismissing the deputy of the head of the Government Accounting Office as well as appointing its members (art. 102 par. 1).

The lower chamber of the parliament is called State Duma. This organ passes resolutions in the following enumerated matters: a) granting the President with the agreement to appoint the Prime Minister of the Russian Federation; b) granting the Russian Federation Government with vote of confidence; c) appointing and dismissing the Head of the Central Bank of the Russian Federation; d) appointing and dismissing the Head of National Accounting Office and half of its members; e) appointing and dismissing Human Rights Representative; f) announcing amnesty; g) making an accusations towards the Russian Federation President with a view of dismissal (art. 103 par. 1).

Regional law

Regional law is the one passed by the subjects of the Russian Federation. While compared to other states, the federal system of Russia stands out due to “asymmetric” status of its components, since it includes six types of subjects: republics, autonomous oblasts, autonomous okrugs, krais, oblasts, federal cities. Overall the state consists of 85 subjects, referred to as regions, in this number: 22 republics, 9 krais, 46 oblasts, 3 federal cities, 4 autonomous okrugs and one autonomous oblast.

The differentiation in the status of the Russian Federation components stems from the premises of national and territorial as well as territorial character. Additionally, historic and geopolitical aspects are of significance. The types of units distinguished due to national-territorial premises are republic, autonomous oblasts and autonomous okrugs. From the perspective of ethnical difference, the significant percentage of population in these units declares other than Russian (*ruskaja*) na-

tionality. The names of the subjects usually are derived from the names of nationalities: Republic of Buryatia, Jewish Autonomous Oblast, Evenk Autonomous Okrug.

On the other hand, in territorial units (oblasts, krais and federal cities) the ethnic Russians (*ruskije*) prevail. Oblasts and krais are in fact of identical system status. The difference in term derives from historic premises. In Tzars' Russia administrative units along the borders of the empire were called krais. The names of oblasts and krais come most frequently from geographical names, e.g. Primorsky Krai, Arkhangelsk Oblast.

The Constitution of the Russian Federation guarantees the equality of all the subjects of the Federation in their bilateral relations with the federal organs of state authority (art. 5 par. 4). However, the legal status of particular subjects differs significantly, *de jure* and *de facto*. Among the subjects of the federation the most independence is granted to republics. The Constitution describes them as states. A republic possesses its own constitution and legislation. The constitution of a republic may determine other official languages, treated equally with the Russian language. The only subjects entitled to a constitution is a republic. Krai, oblast, federal city, autonomous oblast as well as autonomous okrug have their own status and legislation (art. 5 par. 3). *De facto* it is Chechen Republic that stands out when it comes to independence. Due to the political reality of the Caucasus it possesses the most complex enforcement structures directly subdued to the president of the republic⁵¹.

Art. 76 par. 4 of the constitution determines the legislative competences of the federal subjects in a more detailed manner stating that, “Beyond the range of competences belonging to the Russian Federation and the common range of competences for the Russian Federation and its subjects, republics, krais, oblasts, federal cities, autonomous oblasts and autonomous okrugs constitute their own legal regulations, which also refers to issuing acts and other normative legal regulations”. Henceforth, the above mentioned article grants the competence to issue acts and other legal regulations to the regions of the federation. Whereas their position in the hierarchy of sources is determined in par. 5 of art. 76 of the Constitution stating that acts and other normative legal regulations of the Russian Federation subjects must not be contradictory to federal acts issued in cases”, within the

⁵¹ *Armia Kadyrowa. Powołanie Gwardii Narodowej osłabi „czeczeńską niezależność”*, <https://www.defence24.pl/armia-kadyrowa-powolanie-gwardii-narodowej-oslabi-czeczenska-niezalezosc>, [24.08.2019].

range of the Russian Federation competences". In case of contradiction it is the federal act that is in force. This means, that according to the division of competences between the federation and its subjects, determined in art. 71 and 72 of KFR, federal acts referring to the exclusive competence of the federation as well as the mutual competence of the federation and the regions, are superior towards a regional acts. In the event of contradiction between a federal act and a normative legal regulation of the Russian Federation subject issued in cases beyond", the range of competences of the Russian Federation and the common range of competences of the Russian Federation and its subjects", a normative legal act of a subject is in power (art. 76 par. 6 KFR).

Regional law is promulgated according to the rules determined in the legislation of a particular subject. It is a standard procedure to publish on the official Internet sites of regional organs of the public authority, e.g. in the Republic of Tatarstan it would be the site of the State Council of the Tatarstan Republic (<http://gossov.tatarstan.ru/zakon/>). The example of a regional act on conservation being the act of the Republic of Ingushetia from 5th December 2017 on Subsoil⁵².

Examination of the consistence of the sources with the Constitution of the Russian Federation

Sources of law referred to in the Constitution are to be examined towards their accordance with the Constitution. The judgment in this case is issued by the Constitutional Tribunal of the Russian Federation on the basis of motions of the Russian Federation President, Council of the Federation, State Duma, a fifth of the members of the Council of Federation or the members of State Duma, the Russian Federation Government, the Supreme Court of the Russian Federation and the Supreme Court of Arbitration, as well as the legislative and executive organs of the Russian Federation subjects. A motion may concern the examination of the following sources:

- a) Federal acts and normative acts of the Russian Federation President, the Federation Council, State Duma and the Russian Federation Government;

- b) Constitutions of the republics, statutory acts, as well as acts and other normative regulations of the Russian Federation subjects issued in matters within the range of competences of the state organs of the Russian Federation and the common range of competences of the state organs of the Federation and its subjects;
- c) Agreements between the state organs of the Russian Federation and the state organs of its subjects as well as agreements between state organs of the Russian Federation subjects;
- d) International agreements made by the Russian Federation before they come into power (art. 125 par. 2 KFR).

Moreover, art. 125 par. 4 KFR states the possibility of making a constitutional complaint in an individual case. "On the basis of complaints regarding the breach of constitutional rights and freedoms of citizens as well as the motions of courts, the Constitutional Tribunal of the Russian Federation examines the consistence of an act that has been applied or the one applicable in a particular situation with the Constitution in a due procedure determined by the federal act".

Acts or their regulations that are regarded as contradictory with the constitution, "become legally invalid", while international agreements that are contradictory with the constitution", are not to be introduced into the system of law and neither are to be applied". (art. 125 par. 6 KFR).

The examination regarding the consistence of lower rank acts with the constitution is determined in art. 120 par. 2 KFR, which states that a court of law which during the case will judge on the inconsistency of an act issued by a state organ or other one with an act, adjudicates according to the act.

Summary and final conclusions

Summing up the above presented findings, one comes into conclusion that the system of the sources of law in the Russian Federation differs significantly from the Polish model. The Constitution of the Russian Federation does not include a separate chapter devoted to the sources, and in general does not apply the term "a source of law". Apart the Constitution itself constitutional, federal sources of commonly binding law include federal constitutional act, federal act, presidential decree and resolution of the Russian Federation Government.

⁵² Закон Республики Ингушетия от 05.12.2017 N 50-ПЗ – О недрах, docs.cntd.ru/document/450231566, [24.08.2019].

The Russian Constitution does not introduce the division of the sources into commonly binding and internal ones. Nevertheless, the analysis of legal acts that has been conducted in this article as well as the attitude of the doctrine lead to the conclusion that *reaporażeniya* (bylaws) of the President and *rasporażeniya* (bylaws) of the Government as well as resolutions of the Federal Assembly are the federal sources of law of internal character.

Rights and obligations concerning citizens may be regulated by acts of various ranks. The Russian Constitution does not introduce the rule of exclusiveness of statutory regulation barely for public matters of greatest significance, including rights and citizens of human and citizen, neither does it allow legislative initiative for citizens.

Unlike in the Polish model, executive acts for federal acts, i.e. resolutions of the Russian Federation Government are issued lacking a detailed authorization expressed in an act. While obeying the demands concerning its competences and consistence with the acts of higher rank, an organ decides itself on the number of necessary executive acts as well as their content. It allows the executive branch in Russia to shape in almost unlimited manner a demanded legal reality, which in consequence founds the superiority of executive power in the system of the state.

Apart from the sources of federal law, the constitution grants regions of the federation with legislative competences due to which they may issue their own constitutions or statutes as well as regional acts.

Bibliography:

- Armia Kadyrowa. Powołanie Gwardii Narodowej osłabi „czeczeńską niezależność”*, <https://www.defence24.pl/armia-kadyrowa-powolanie-gwardii-narodowej-oslabi-czeczenska-niezaleznosci>.
- Bosiacki A., Izdebski H., *Konstytucjonizm rosyjski. Historia i współczesność*, Kraków 2013.
- Konstytucja Federacji Rosyjskiej przyjęta w ogólnonarodowym referendum w dniu 12 grudnia 1993 r., <http://biurose.sejm.gov.pl/uzup/mid-112.pdf>, *Konstytucja Rosji*, tłum. A. Kubik, Warszawa 2000.
- Micińska-Bojarek M., *Umowy międzynarodowe Federacji Rosyjskiej w dziedzinie ochrony środowiska*, Przegląd, „Studia Iuridica Torunensia” 2016, T X.
- Ochendowski E., *Prawo administracyjne*, Toruń 2009.
- Pakuła A., *Od państwa policyjnego do państwa neopolicyjnego. Objawy polityzacji demokratycznego państwa prawnego* [w:] *Cywilizacja administracji publicznej Księga jubileuszowa z okazji 80-lecia urodzin prof. nadzw. UW dr hab. Jana Jeżewskiego* pod red. Jeżewskiego Korczaka, Wrocław 2018.
- Słownik języka polskiego*, <https://sjp.pwn.pl/sjp/dekret;2554532.html>, [24.08.2019].
- Tokarczyk R., *Prawo amerykańskie*, Warszawa 2009.
- Zakrzewska J., *Państwo prawa a nowa konstytucja*, [w:] *Prawo w zmieniającym się społeczeństwie* pod red. Grażyny Skąpskiej, Toruń 1992.
- Анишина В., Лютый В., Марюшкин М., *Обществознание*, Том 2, Москва 2009, https://books.google.pl/books?id=M_OFDwAAQBAJ&printsec=frontcover&hl=pl#v=onepage&q&f=false,
- Большой юридический словарь*, М.А.Я. Сухарев, В.Е. Крутских, А.Я. Сухарева, Инфра, 2003, <http://www.booka.ru/books/2203#about>.
- Зорькин В.Д., *Конституционно-правовое развитие России*, М.: Норма, 2011, <https://www.twirpx.com/file/1560679/>.
- Кудрявцев В.Н., Лукашева Е.А., *Социалистическое правовое государство: проблемы и суждения*, Москва 1989, <http://lawlibrary.ru/article1074651.html>
- Марченко М.Н., *Правовое государство*, Энциклопедия юриста, Москва 2005, https://dic.academic.ru/dic.nsf/enc_law/1732
- Распоряжение*, <http://www.grandars.ru/college/pravovedenie/rasporiazhenie.html>.
- Радько Т.Н., *Теория государства и права в схемах и определениях*, Проспект, 2011, https://normative_reference_dictionary.academic.ru/.
- Спирин М.Ю., *Соотношение истока права, источника права и формы права с позиции волевой концепции правообразования*, <https://cyberleninka.ru/article/n/sootnoshenie-istoka-prava-istochnika-prava-i-formy-prava-s-pozitsii-volevoy-kontseptsii-pravoobrazovaniya>.
- Справочная информация: «Условия и порядок вступления в силу международных договоров Российской Федерации. Порядок их опубликования»* http://www.consultant.ru/document/cons_doc_LAW_128984/d08ff38dfcb4fb400212529ddd35a510474e73f4/.
- Хропанюк В.Н., *Правовое государство и его основные характеристики*, Теория государства и права под ред. В.Г. Стрекозова, Москва 2008, https://www.gumer.info/bibliotek_Buks/Pravo/Hrop/04.php,
- Чем отличается приказ от распоряжения? https://nsosvetnik.ru/drugoe/chem_otlichaetsya_prikaz_ot_rasporyazheniya/.