

## VACATIO LEGIS INSTITUTION – SENSE AND MEANING

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**Summary.** The task of this publication was to present well known law term *vacatio legis* in two meanings: narrow (as an adaptive period) and wide (as legal institution). With the analysis of phrases related to subjective term, such as: official announcement, entry into force, binding force and observance of law, there has been shown a few problems connected to temporal range of being in force by the law, also on a ground of changes brought by amendment of principles of legislative technique, that are in force since 1<sup>st</sup> March 2016.

Very interesting opinions arise from Polish Constitutional Courts and scientists statement with reference to the rule of proper period of rest. They emphasize and justify a claim that *vacatio legis* as legal institution, without any doubts, serves the protection of the rule of citizens' trust to state and law, and thus it guarantees constitutional rule of democratic state of law.

**Key words:** *vacatio legis*, announcement, entry into force, binding force, observance, legal act, the rule of trust to state and law, democratic state of law

### INTRODUCTION

Most of all lawyers know what *vacatio legis* is. In common opinion this term means a period of time between announcement of the legal act and its moment of entry into force<sup>1</sup>. However, we must be careful in this case, because some sources or publications show us a wrong definition of subjective phrase<sup>2</sup>. *Vacatio legis* is known also as “an adaptive period”, “an accommodative period”, “temporary or transition stage”, “period of rest” or even in jest as “a legal acts holiday”. The purpose of this period of time is to create a possibility of acquaintance with the new law before it begins to obtain. Moreover, this period should let us adapt and prepare to new conditions. The adaptive period also serves lawmaking subjects to create executive acts. This is a limited understanding of subjective term. Properly, this term still means a very important institution for each system of

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<sup>1</sup> *Mała Encyklopedia Prawa*, U. Kalina-Prasznic (ed.), C.H. Beck, Warszawa 2005, p. 664; M. Kuryłowicz, *Słownik terminów, zwrotów i sentencji prawniczych łacińskich i pochodzenia łacińskiego*, Ed. 2, Zakamycze, Kraków 2001, p. 94.

<sup>2</sup> *Vacatio legis* in this version is shown as a period of time between the moment of creating legal act and its entering into force – see J. Sondel, *Słownik łacińsko-polski dla prawników i historyków*, Wydawnictwo Universitas, Kraków 2005, p. 974; also: M. Grelewicz-La Mela, B. Nuzo, *Słownik prawniczy polsko-włoski*, Dom Wydawniczy ABC, Warszawa 2003, p. 451.

law, that guarantees the rule of democratic state of law. This wide meaning is confirmed by Polish Constitutional Courts statement and many scientists' opinion. The purpose of *vacatio legis* as an institution is to build and maintain trust between citizens, the state, and the law created by the states authorities. Besides, it eliminates the moment of surprise to society with the new regulations and prevents the situation of immediate acting of the law. This rule of trust in state and law is an element of the constitutional rule of democratic state of law. *Vacatio legis* also helps to raise the level of legal security on the citizens side (as the recipients of law) and on the authorities side (as the subjects that execute the law)<sup>3</sup>.

For some of readers the subject of this publication may seem quite clear and simple. There is however a need to emphasize that despite grounded rules of creating the law, different lawmaking subjects still make too many mistakes in this case. Because of this situation, presentation of *vacatio legis* as a basic institution for each system of law is still necessary and actual. It is worth describing especially in 2016, when amendment to a legislative directives called *Zasady techniki prawodawczej*, entered into force. Aiming at explanation of the extent of subjective institution, first we have to check some other terms related to *vacatio legis*, such as: announcement, entry into force, binding power and observance of law.

#### OFFICIAL ANNOUNCEMENT

*Vacatio legis* period begins in the moment, when the legal act is officially announced. That kind of regulation as legal act must have a proper announcement, which means that it must be published in official state journal (in Poland called for example "Dziennik Ustaw" or "Dziennik Urzędowy Monitor Polski"). Here we have to differentiate three terms: publication, announcement and promulgation. Publication is only a technical dimension of announcement, followed by a part of *promulgatio* institution – a main case for reaching the binding force of law. Publication only means insertion of the legal acts text in the proper edition (kind) of the state official journal. Announcement is the states authorities acting and its obligation, which let us know the new created regulations. Promulgation unites both these terms in a form of legal institution that is a fundament of each system of law. This is heritage of the Roman law system, where the rule *Lex non obligat nisi promulgata* guaranteed proper information of created laws. However, nowadays there cannot be promulgation and announcement without publication. Editing the official state journal, lawmaker obligates us to maintain the legal acts that has been put in it. Acting this way, he should familiarize us with new rules, before these rules begin to act in system of law. This construction is based on democratic state rules, in which the people choose their repre-

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<sup>3</sup> Interesting reflections about the legal security presents J. Potrzebny, *Bezpieczeństwo prawne z perspektywy filozofii prawa*, Wydawnictwo KUL, Lublin 2013.

representatives in common election and let them create the law. Our representatives must, however, give us an adequate time to adapt to the new obligations, and this time is just called the *vacatio legis* period<sup>4</sup>. A main thing is also a publication in the official journals, because we cannot acquire knowledge of a new law from TV, radio or even private legal sources. Every state or union of states has its own journal, and edits official texts of the legal acts or other documents. Only this form of announcement assure authenticity of published documents. There can be also an electronic form of announcement (special created state journals websites), that has been lately done in Poland, but in this form, the author of legal acts must secure the safe electronic sign system for each published rule. Proper announcement of legal acts is still a very important case for *vacatio legis* as an institution and each system of law<sup>5</sup>.

As a supplement of reflections presented above, we can explain that between the moment of passing the legal act and its official announcement, there is a very special period of time. We can call it a publishing expectation time. Nowadays, when the legal acts announcement is based on special states websites, this time has been shortened to a minimal period, because there is no need to edit, composite and print the paper form of the official journal. Also, there is no need to distribute this journal, because a proper file with legal acts text is placed in open to all space – the Internet. In Poland, official journals are available only in electronic form since 1<sup>st</sup> January 2012. Before this date, these journals were prepared in paper form and that is why the publishing expectation time in connection with the distribution time had strong influence on length of the *vacatio legis* period<sup>6</sup>.

#### MOMENT OF ENTRY INTO FORCE

Next case is an “entry into force” term. This is the final moment of *vacatio legis* period. We must explain, however, what does it mean and when the law can enter into force. Every observer of state and public life is interested in

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<sup>4</sup> Albeit, question of promulgation was not only reserved for democratic state. It was the fundamental case in ancient law such as the Empire of Rome law system. This kind of state and government has put the great base for law making rules, especially in case of *promulgatio* institution.

<sup>5</sup> Look: G. Wierczyński, *Redagowanie i ogłaszanie aktów normatywnych. Komentarz*, Wolters Kluwer, Warszawa 2010; also: M. Róg, *Elektroniczne ogłaszanie prawa*, Wrocław 2006, not published, access: [vagla.pl/skrypts/mgr\\_m\\_rog.pdf](http://vagla.pl/skrypts/mgr_m_rog.pdf).

<sup>6</sup> As an example we can take the situation when the legal act was passed on 1<sup>st</sup> March and entry into force moment was set on 1<sup>st</sup> April. If this legal act was published on 10<sup>th</sup> March, *vacatio legis* period has been shortened from 1 month to 21 days. Besides, we must take into account the time of distribution the paper official journal that lasts about a few days. Distribution period also shortens the *vacatio legis* period in factual dimension. The lawmaker cannot expect from addressees of norms to acquire knowledge about a new law before they have a factual possibility to read the legal acts text.

knowledge, how and when he must act in accordance with law rules. He wants to know when the new law starts to obey him, so he checks the official journals and reads the legal acts texts that has been put in it. Knowing the moment of entry into force of the legal act is still a main case for every addressee of new rules. Usually, in the legal acts text this moment is set in the last article or paragraph. We can find three main and most often used phrases in this rules:

– first tells that a legal act enters into force after some number of days after announcement day,

– second tells: a legal act enters into force in some set day (specific date),

– third tells that a legal act enters into force in the announcement day.

First possibility is quite safe – no one knows the day of new rules publication, but it doesn't really matter, because lawmaker provides some time to adapt to new rules. *Vacatio legis* period set in numbered days must be, however, adequate – not too short and not too long. It depends on the subject of a new regulation. In the Polish law system we can differentiate brand new rules and changing rules. First of them as a new regulations, which have never been before (or as a new point of view to some case) must have longer adaptive period. *Vacatio legis* length depends also on regulations' size, significance and level of intervention in system of law. Changing rules usually in the science of law has been divided into: changes, amendments and revisions. This distribution is based on the character and depth of changes in the changed rules. We can claim, that the length of *vacatio legis* period depends on the level of changes. Revision as an extraordinary point of view to some regulations, which puts the old rules upside down, should have a longer adaptive period than the usual change of the rule. Amendment as some kind of modernization (adaptation to new conditions) of regulation, states in the middle between change and revision. However, there can be apparently a little change that is very important to the system of law and needs more time to accommodate state structures and bureaucracy to new obligations. According to Polish Constitutional Court we can say that the model time to adapt to a new rule does not exist. Each situation is an individual case, that is why the constructors of regulations must analyze the consequences of changes and always set a proper *vacatio legis* period<sup>7</sup>. The length of this period depends also on character and dignity of normative change.

Second version is more dangerous – a lawmaker sets the moment of entering into force of a new rule in some specific date. He tries to maintain stable position of each regulation acting in the system of law. In the process of creating the law, specific date of changes is very important. However, this solution is ineffective – inflation of rules (a specially in the last months of each year) is the reason of legislation delays. A lawmaker – despite good will – sets the start day of obligation on a concrete date. The new created rule must wait in publishing

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<sup>7</sup> See especially: judgment from 1<sup>st</sup> June 2004 – U 2/03 (OTK-A 2004/6/54) and judgment from 3<sup>rd</sup> November 2006 – K 31/06 (OTK-A 2006/10/147).

line, because legislative services are overweight. This situation may provoke an unexpected shortening of *vacatio legis* period to a few days, or even completely eliminate it. The reflections presented above also refers to this version of the last rule. A legislator has a possibility to control the length of adaptive period by the date of reaching the binding force of the legal act. In the process of creating new rules, he should foresee the possible moment of publication and set the moment of entering into force wisely<sup>8</sup>.

Third possibility is the best way to destroy the *vacatio legis* institution. During the process of creating the law, in some cases we can find a piece of information about new solutions. We can read about it in the authorities official web sites, professional papers or the other mass media sources. We can know, that a new law will enter into force in the day of its announcement. Most important thing is, however, that we cannot know when will it happen. The second problem is the moment of obeying – the beginning or the end of the day. Scientists with all responsibility emphasize, that the act published for example at 10:00 AM starts to obtain backward from the beginning of this day (0:00 AM). In the history of publication of law in Poland there have never been a case, that official state journal was published at midnight. So we can say that obey start point set on the announcement day always bring the backward force of the rule. That is why many experts claim that the first moment of reaching the binding force of the new law should be set on the next day – the day after the announcement day<sup>9</sup>.

Beside solutions mentioned above, some acts send us, however, to the other acts, called “Przepisy wprowadzające”. This is a special kind of legal act that adjust only questions connected with preparing the system of law to new regulation that they put into force and situations between the old and the new law. This form of editing the legal acts in Polish law system is mainly reserved for very important acts or huge ones such as codes. Relation between the introducing and introduced act disables therefore the possibility of creating the last rule, setting the entry into force moment in introduced act<sup>10</sup>.

A quite new possibility, added to the rules of creating the law called *Zasady techniki prawodawczej* with amendment from 5<sup>th</sup> November 2015<sup>11</sup> is to set the entry into force moment on the day after the announcement day. This solution strengthens legal security and the rule of trust in state and law, because it

<sup>8</sup> A part of this reflection was presented earlier, in the point referred to official announcement.

<sup>9</sup> A. Gwiżdż, *Zagadnienia jawności prawa*, „Studia Prawnicze” 1981, nr 1–2, p. 98; W. Wróbel, *Zmiana normatywna i zasady intertemporalne w prawie karnym*, Zakamycze, Kraków 2003, p. 203.

<sup>10</sup> More about this kind of construction look: S. Wronkowska, M. Zieliński, *Komentarz do zasad techniki prawodawczej*, Wydawnictwo Sejmowe, Warszawa 2004, p. 114; M. Błachut, W. Gromski, J. Kaczor, *Technika prawodawcza*, C.H. Beck, Warszawa 2008, p. 85.

<sup>11</sup> *Rozporządzenie Prezesa Rady Ministrów z dnia 5 listopada 2015 r. zmieniające rozporządzenie w sprawie „Zasad techniki prawodawczej”* – Dz. U. poz. 1812.

prevents the situations of reaching the backward force of regulations. Addressees are obligated to respect new rules at the beginning of the day after announcement day. Due to this possibility, we have at least a few hours to read and understand the text of a legal act before it enters into force. Technically, the last moment when lawmaking services may publish the regulations text in states official journal (web site) is afternoon (about 5 or 6 p.m.). Application of described construction in this situation gives the legal act a way to enter into force from the beginning of the next day (0:00 hour), so the minimal *vacatio legis* period amounts about 5 hours. We should tell that finally scientists voice has been heard, but presented amendment didn't remove the possibility of setting the entry into force moment on announcement day. That is the reason of a claim that described legal act is unreasonable, incomplete and internal contradictory. Moreover, some changes have been made, which brought strange solutions, completely misunderstood for recipients of law. They also arose confusion in the area of effectiveness of law<sup>12</sup>.

Worth mentioning is also resignation from construction based on setting the two different moments: entering into force and application. Since 1<sup>st</sup> March 2016 (day that amendment entered into force) lawmaker can use three new solutions based on separation of two moments: entering into force and reaching the binding force of the legal act or selected rule (part) of this act<sup>13</sup>.

The above reflections lead us to an explanation of the question: what does it mean that the law enters into force? If we look at the system of law as some kind of complex consisting of different legal acts, we can imagine that this collection is quite compact and clear. If legislator decides to pass a new regulation, he must include this new act to the system. The moment of entering into force is then the moment of joining the system. Problematic case is, however, that the moment of entering into force is not always the moment of reaching the binding force of law, even if a legal act already functions in the system of law (has been incorporated to this system)<sup>14</sup>. That is the reason of the binding force of law descriptions necessity.

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<sup>12</sup> New possibilities created by the lawmaker are: 1) entry into force on the first day of the month that happens after numbered days, weeks, months or years from announcement day, 2) exception of the one moment of entering into force of whole legal act for settled rules of this act.

<sup>13</sup> 1) separation of the moments of entering into force and reaching the binding force, 2) separation of the moment of entering into force of the legal act and the moment of reaching the binding force of the selected rule of this act, 3) double separation: main moment of entering into force for a legal act and additional moment of entering into force for selected rule of this act with the moment of reaching the binding force of this selected rule.

<sup>14</sup> Interesting reflections in this case presents B. Kanarek, *Moc obowiązująca i moc prawna a zagadnienie derogacji*, in: Z. Tobor, I. Bogucka (ed.), *Prawoznawstwo a praktyka stosowania prawa*, Wydawnictwo UŚ, Katowice 2002, p. 186–192.

## BINDING FORCE OF LAW

Bearing in mind these problems, we have to find out, what is the binding force of law<sup>15</sup>. This consideration will help us to understand, when the legal act starts to obtain us. We can understand the binding force of law in a few planes. In the aspect of time this phrase means the moment of connection the legal acts addressees with the legal rules. That kind of obligation in the relation rule-person (group of persons, institution or company) should tell straight, what can we do, what cannot we do and what must we do. Tells us also what will happen when we act *contra legem* (against the law). This is the basic structure of legal rule: *hypothesis* (situation, conditions), *dispositio* (command of ones' behavior) and *sanctio* (punishment for acting against the law). When the lawmaking subjects want to impose on us some new obligations, they must strictly set the moment of new rules entry into force. Citizens' responsibility should be based on this requirement, especially in penal cases. Let us just see what can happen when a man acts against the law that he cannot know, against *dispositio* that entered into force with backward force, that no one could know its content before this time. This kind of situation in penal law is inadmissible, but why it still happens in other fields of law?

The essence of the binding force of law is a man as its subject. Basing on the contemporary philosophy of law we can say that a man is supposed to be the subject of law and each action of the lawmaking subjects. Each law is for man, not man for law. A lawmaker must take care of a man (as an addressee of legal acts) in every ways of his actions: creating, publishing and observing the law. He must also leave such a long period of time to let the addressees of the legal act read and understand the new law and to prepare their life and businesses to new rules. This is the main difference between the rule of law principles and the governing with the law actions. One of the essential elements of binding force of law is factual effectiveness that reveals next in constant acting realty of law<sup>16</sup>. The moment of reaching factual effectiveness of each legal act should be therefore the moment of entering into force and also the moment of reaching the binding force of this regulation.

In connection with reflections presented in previous part of this article, we can tell that reaching the binding force of law and entering into force does not always happen in the same moment. First of these cases is backward binding force of law. Last article or paragraph of the legal acts in this case is constructed this way: moment of reaching the binding force is set with a date that is backward in relation to the announcement day. Also in this situation we can find intentional or unintentional acting of lawmaking subject. Intentional acting is

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<sup>15</sup> Philosophical thesis on this subject refers A. Kość, *The binding force of law in the light of the contemporary philosophy of law*, "Review of Comparative Law" 7, 2002, p. 67–78.

<sup>16</sup> *Ibidem*, p. 68–69.

when lawmaker knows when the act can be published and purposely sets the date of entry into force on the day before the announcement day and even before the day of creating this act. Unintentional acting is whereas legislator sets the moment of entering into force on a future day, but as a result of delays in the publishing process this day passes and the act is announced after this set day. In this case we cannot see and know the document before it starts to act, because the date of reaching the binding force is previous in relation to the announcement date. Most of all law scientists and also courts judgments suggest the lawmaking subjects that they should set the entry into force moment on a future day to prevent the rules of proper legislation, strictly connected with the rule of democratic state of law.

Second case is diversion of two dates: the moment of entering into force and the moment of reaching the binding force of law. According to many scientific opinions and judgments, to prevent the rule of democratic state of law, lawmaking subject should set both this moments at the same day. Despite this rules, there is many cases of diversion of this dates. We can see that one legal act enters into force after 14 days of the publication day, but reaches the binding force one month back. Situation like this causes uncertainty among addressees of regulations, because it does not make the law clear. Moreover, sometimes there can be the other moment of observance of the same act or its part. Although there is one moment of entering into force, we can find two other: moment of reaching the binding force and moment of observance of the same rules. Sometimes, the legal act has one main moment of entering into force, but some its articles or paragraphs have the other moments. This situation is also incorrect, because of the lawmaking technique rules that require creating one beginning moment of obtain for all parts of the legal act<sup>17</sup>.

#### OBSERVANCE OF LAW

There are many publications concerning observance of law – most of all of them describe practical problems of observance, as a result of justice activity. Also, we can find some reflections about effectiveness of law connected to observance in the meaning of application, usage of official rule in a particular situation. Some descriptions of temporal dimension of observance hardly ever appear. Questions about how to put into practice chosen rules or legal acts and how to adapt to new conditions, still explain that temporal dimension of observance and effectiveness is interesting field to examine. One of the most important cases of certainty of law is showing the time limits to obey for each legal act. That is the

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<sup>17</sup> More about problems with diversion entering into force and reaching the binding force see: G. Wierczyński, „*Obowiązwanie*” a „*wejście w życie*” – uwagi polemiczne, „*Państwo i Prawo*” 2007, nr 2, p. 108 and next.

reason why the last rule of each regulation must be constructed precisely. In Polish law system we can find, however, many regulations that contain different phrases, problematic for recipients. Most often two of them have been constructed: observance and application. As an example we can take two simple situations: 1) entry into force moment is set on 1<sup>st</sup> March one's year and observance (application) moment is set on 1<sup>st</sup> January of this year; 2) entry into force moment is set on 1<sup>st</sup> January and the moment of observance (application) is set on 1<sup>st</sup> March. The main case in both of this situations is question of effectiveness of law and reaching the binding force. If we assume that only one certain date is the moment of entering into force, how can we explain the other moment (observance or application date) set in the same legal act? Which one is correct and more important? What is the reason of setting the entry into force moment, while observance or application date is previous (or later) to it? Moreover, if we choose the observance or application moment as more important date, what happens with effectiveness of entering into force moment? Will it become completely not fundamental and unimportant or just devoid of essence? Also, can we tell the same about a period of time between presented moments? These are the real problems that the citizens and states' authorities must deal with<sup>18</sup>.

Polish lawmaking services, finally detected these problems and prepared some upgrades in (described previously) amendment of *Zasady techniki prawodawczej* from 2015<sup>19</sup>. An important case is a decision of leaving the possibility of creating additional moment of observance or application for the benefit of the moment of reaching the binding force. The legislative motive of this change was practical problems with interpretation of rules that state these additional moments while depending on entering into force on a future event or creating the backward force of law<sup>20</sup>. In §§ 46 and 51 of described regulation legislator put a specific construction of diversity of two dates: entering into force and reaching the binding power. Previously § 46 provided the situations when a legal act enters into force in one moment, but singular rules (parts) of this act could be observed since a different moment, depended on a future event that was clear and certain for everyone. On the other hand, § 51 gave lawmaker a possibility to create factual backward force of legal acts with the additional moment of application to events that came into being before some date. However, not everything

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<sup>18</sup> We can meet quite similar problems analyzing two next phrases based on diversity of two moments. First of them tells that the legal act enters into force in one date, but some rules (some part) of this act or even whole of it concerns the situations came into being at the other date. Second situation is almost identical – some privileges or powers regulated by the legal act are vested in someone at the moment that states a different date than the moment of entering into force.

<sup>19</sup> Perspectives of changes have been described by M. Berek, *Zasady techniki prawodawczej – perspektywa zmian*, „Przegląd Legislacyjny” 2014, nr 3, p. 31 and next.

<sup>20</sup> There have been too much insinuations in this matter. No one really knew where to find the information about future event, what form this information need to have and who (which resort of authority) should be responsible for announcement of this information.

was precise in both of these cases. First of all, possibility written in § 46 was an exception to the prohibition depending on the entry into force moment on a future event. This exception was based on hitherto existing special conditions: 1) setting the observance moment with a way that is doubtless and 2) the moment of future event was official announced. Construction set in § 51 next took for granted that lawmaker can set the additional moment of application: 1) to events that came into being before some date or 2) also to events that came into being before some date. Because of the problems with range of future event and insinuations with temporal effectiveness and binding force of law while exercise with possibilities compressed in §§ 46 and 51 described legal act, legislator decided to finally resign from observance and application to reaching the binding force. This construction is closer and more certain to incorporation to the system of law moment, so it deserves approbation in this case.

Moreover, sometimes a legal act that entered into force and became a part of the system, does not act in this system because of a lack of executive rules or even because of conflicts between singular regulations. Some of these situations are result of mistakes or remissness of proper services, but in some cases effectiveness of concrete legal act depend on official announcement and construction of the last rule and intertemporal rules. If we take the system of law seriously, there cannot be any doubts with the moment of incorporation a legal act to the system and a moment of its excluding from this system. When both of this dates are certain, in each point of time we should tell without a hesitation, what is the number of legal acts functioning in the system of law. Unfortunately, the level of complication of the last rule in legal acts is still too high, due to this fact it does not promote the law certainty.

As we can see, the subject of temporal dimension of observance of law is therefore still actual and worth reflection. The idea that lawmaker should aim at, is to create the precise law, to pass legal acts that are clear and understandable for every addressees, not only for lawyers. Especially nowadays, when access to the law created by the state is much easier than a few years before. The Internet as a global network has been used as a source of announcement of the legal acts and that can be the reason of making the law more common. Information about the law is also distributed much faster than traditional (printed on paper) way. With reference to these claims, we have right to say that in each legal act, last rule setting the moment of entering into force or the moment of reaching the binding force, should leave no doubts in the matter of temporal effectiveness of this act or its part.

## THE MEANING OF VACATIO LEGIS AS INSTITUTION

Reflections presented above lead us to an explanation of *vacatio legis* as very important institution for each system of law<sup>21</sup>. This wide meaning of subjective phrase bases on claim that *vacatio legis* guarantees the rule of trust to the state and law, that next guarantees the rule of democratic state of law. This relationship was created by Polish Constitutional Court and science statement. In many judgments and publications, there has been shown significant influence of proper adaptive period to the legal security and feeling of certainty and stability at the citizens' side<sup>22</sup>. If we claim that *vacatio legis* period is proper in a particular case, we must be completely sure that the addressees of a legal act had an adequate time to read, understand and prepare to new conditions.

The base of *vacatio legis* as legal institution is thus a proper adaptive period in each case. This is the most problematic subject that has been analyzed most often by Polish jurisprudence. We can say that despite some grounded opinions, answer for the question of adequate (model) *vacatio legis* period does not really exist. Length of this period depends on range and character of change or new regulation and its level of intervention in the system of law. It is the reason why we cannot set the model period of rest for some sort of legal acts<sup>23</sup>. After a long discussion in Poland in 1991 minimal, standard period of rest was set in the number of 14 days. It has been written in legal acts that regulate the way of regulations announcement and edit of states official journals: first in the act from 30<sup>th</sup> December 1950 called *ustawa o wydawaniu Dziennika Ustaw Rzeczypospolitej Polskiej i Dziennika Urzędowego Rzeczypospolitej Polskiej „Monitor Polski”*<sup>24</sup> and finally in the act from 20<sup>th</sup> July 2000 called *ustawa o ogłaszaniu aktów normatywnych i niektórych innych aktów prawnych*<sup>25</sup>. Each legal act (new or changing one) is, however, a different situation, so the length of adaptive period must be individually estimated in each situation. *Vacatio legis* period must be then “proper”, what means that it should be “right”, “adequate”, “suitable”, “appropriate”, “opportune”, “due” and “correct”. When we give a positive answer to a question of “proper” adaptive period of a particular legal act, we are able to claim that in this case worked *vacatio legis* institution. We can claim that lawmaker thought about addressees of regulation, stood on their side and foreseen

<sup>21</sup> *Vacatio legis* as legal institution was named directly by Z. Duniewska, *Instytucja vacatio legis w prawie administracyjnym*, „Studia Prawno-Ekonomiczne” 1997, nr 56, p. 65–82.

<sup>22</sup> First important judgment (W 3/90 from 13<sup>th</sup> February 1990 – OTK 1991/1/27) was however based on the rule of law and order. While changes of governing system in Poland, this statement also changed for the benefit of the rule of democratic state of law. See for example judgments from: 11<sup>th</sup> September 1995 – P 1/85 (OTK 1995/1/3), 14<sup>th</sup> June 2000 – P 3/00 (OTK 2000/5/138), 10<sup>th</sup> December 2002 – K 27/02 (OTK-A 2002/7/92).

<sup>23</sup> For example 14 days for changing acts and 1 month for new ones.

<sup>24</sup> Dz. U. Nr 58, poz. 524.

<sup>25</sup> Dz. U. Nr 62, poz. 718.

that set period of rest will be sufficient for them to adapt to new rules. If a law-maker paid attention to this guarantee, we may be sure that he tried to provide protection of the rule of trust to state and law that is an element of the rule of democratic state of law.

Consideration that *vacatio legis* institution is fundamental for the rule of trust, lead to a claim that indirectly it is one of fundamentals of the rule of democratic state of law. This connection was emphasized very often by Polish Constitutional Court and other institutions and scientists. However, a different individual opinion has been presented, based on critics of above statement and a claim that dependence of these two rules is only a result of Polish Constitutional Courts decision<sup>26</sup>. Even if we accept this opinion that the rule of trust does not directly appear from the rule put in art. 2 of Polish Constitution, we must remember that many of rules written in this most important legal act have very wide extent. That is why these rules need to be interpreted by jurisprudence and doctrine. Especially scientists rendered services to a cause of the rule of democratic state of law meaning. It is worth emphasizing that guarantees of subjective rule are based on layer of values that are the fundamentals of law as idea<sup>27</sup>.

If we try to prove the connection between *vacatio legis* institution and the rule of democratic state of law, we can choose two ways. First, lead us to a deduction that the rule of proper *vacatio legis* is an element of the rule of straightforward legislation that arises from the rule of trust to state and law. What is more, the last rule is an element of the rule of democratic state of law. Second way is based on a conclusion that from the rule of democratic state of law we can work out among other things the rule of trust to state and law created by this state. Next from this rule we can work out the rule of honest legislation, which element is the order to set the proper adaptive period. It is also worth remembering that *vacatio legis* institution is also strongly connected with the idea of certainty of law, legal security and the rule of states' loyalty towards citizens. Moreover, the state of law rules' element is self obligation of the state to provide citizens the highest level of legal security and realization of material justice<sup>28</sup>.

It is worth mentioning that *vacatio legis* institution is connected also with detailed rules resulting from the state of law concept. In some publications this

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<sup>26</sup> J. Nowacki, *O uzasadnieniu zasady zaufania w orzecznictwie Trybunału Konstytucyjnego*, in: Cz. Martysz, A. Matan, Z. Tobor (ed.), *Zasady prawa. Materiały konferencyjne*, Oficyna Wydawnicza Branta, Bydgoszcz–Katowice 2007, p. 157–182.

<sup>27</sup> This issue refers in detail J. Potrzebszcz, *Idea prawa w orzecznictwie polskiego Trybunału Konstytucyjnego*, Towarzystwo Naukowe KUL, Lublin 2007, p. 11–14; see also: S. Wronkowska, *Charakter prawny klauzuli demokratycznego państwa prawnego (art. 2 Konstytucji Rzeczypospolitej Polskiej)*, in: S. Wronkowska (ed.), *Zasada demokratycznego państwa prawnego w Konstytucji RP*, Wydawnictwo Sejmowe, Warszawa 2006, p. 101–122.

<sup>28</sup> Look at: A. Kość, *Podstawy filozofii prawa*, „PETIT” s.c., Lublin 2005, s. 117.

institution is placed among elements of the rule of honest legislation<sup>29</sup>. *Vacatio legis* can be even numbered to the rules of creating the law in democratic state. In both of these statements the meaning of subjective institution cannot be, however, excluded as exceptional rule. We may present the command of set adequate period of rest in the group of requirements of the legal security, the command of the straightforward legislation rules' observance or the command of regulations' clarity. Also we can place it between meaningfully similar rules as prohibition of retroactive force of law or protection of laws rightly acquired. Without any doubts, justifiable is an opinion that the rule of proper *vacatio legis* period is an important element of correct course of legislative process. According to this rule, legislator is required to treat citizens with basic honesty rules, without any traps. He should provide certainty of law and legal security.

Leaving out the placement of the rule of proper adaptive period, reflections presented above let us claim that *vacatio legis* as important institution for each system of law, guarantees the rule of trust to state and law, and thus guarantees the rule of democratic state of law. This is the essence of subjective institution and its wide meaning.

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<sup>29</sup> T. Zalasinski, *Zasada prawidłowej legislacji w poglądach Trybunału Konstytucyjnego*, Wydawnictwo Sejmowe, Warszawa 2008, p. 50–54.

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#### INSTYTUCJA VACATIO LEGIS – SENS I ZNACZENIE

**Streszczenie.** Zadaniem niniejszego opracowania było przedstawienie powszechnie znanego terminu prawniczego *vacatio legis* w dwóch znaczeniach: wąskim (jako okres dostosowawczy) oraz szerokim (jako instytucja prawna). Poprzez analizę pojęć związanych z przedmiotowym terminem, takich jak: urzędowe ogłoszenie, wejście w życie, moc wiążąca prawa oraz stosowanie prawa, ukazane zostały niektóre problemy związane z temporalnym zakresem obowiązywania prawa, również na gruncie zmian wprowadzonych nowelizacją *Zasad techniki prawodawczej*, które obowiązują od 1 marca 2016 r.

Wielce interesujące opinie wynikające z orzecznictwa Trybunału Konstytucyjnego oraz poglądów doktryny odnośnie zasady „odpowiedniego” okresu spoczynku pozwoliły zaś na uwydatnienie i uzasadnienie twierdzenia, że *vacatio legis* jako instytucja prawna niewątpliwie służy ochronie zasady zaufania obywateli do państwa i tworzonego przezeń prawa, a przez to stanowi gwarancję konstytucyjnej zasady demokratycznego państwa prawa.

**Słowa kluczowe:** *vacatio legis*, ogłoszenie, wejście w życie, moc wiążąca, stosowanie, akt normatywny, zasada zaufania do państwa i prawa, demokratyczne państwo prawa