

Constitutional sources of law in the Russian Federation - on the example of environmental protection acts

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Abstract

The constitutional catalog of sources of law, a clear and unquestionable division of acts into universally binding and internal ones, is, from the perspective of European democracies, of fundamental importance for the implementation of the principles of the rule of law, legalism and the rule of law. The essence of any democratic legislation is to base its functioning on the law established by the bodies appointed for this purpose, binding its addressees and enforced by public authorities, also with the use of coercive measures.

The purpose of this article is to outline the constitutional system of the sources of law of the Russian Federation and to illustrate it, as far as possible, with environmental protection acts. In particular, the subject of this work is to define the name of a given source, the authority competent to publish it, its function and place in the hierarchy, as well as promulgation rules. The key research problem is the distinction between the sources of universally binding law and the sources of internal law, as the provisions of the Constitution of the Russian Federation do not directly determine this. However, this issue is of fundamental importance from the point of view of the status of legal entities. Internal acts may be directed only to organizational units subordinate to the authority issuing these acts and may not directly regulate the sphere of rights and obligations, and constitute the basis for decisions towards citizens, legal persons or other entities.

Key words: Russian Federation, Constitution of the Russian Federation, federal law, decree, resolution, regulation, ordinance, rule of law, Constitution of the Republic of Poland, rule of law, environmental protection

1. Introduction. Basic concepts and principles

In Russian literature, the term source of law means “*the will of the state expressed in the form of legal norms*”⁷⁰. In other words, it is the form by which the will of the state becomes the

⁷⁰ М.Ю. Спирин, *Соотношение истока права, источника права и формы права с позиции волевой концепции правообразования*, „Юридический Вестник Самарского Университета” 2018, nr 1, <https://cyberleninka.ru/article/n/sootnoshenie-istoka-prava-istochnika-prava-i-formy-prava-s-pozitsii-volevoy-kontseptsii-pravoobrazovaniya>, [24.08.2019].

binding legal norm⁷¹. However, unlike the Constitution of the Republic of Poland (KRP)⁷², Constitution of the Russian Federation (KFR)⁷³ it does not contain a separate chapter on sources, and it does not use the concept in question at all (*istocznik prawa*). The catalog of sources and their hierarchy should therefore be reconstructed on the basis of the analysis of the provisions of the KFR and the views of the doctrine.

The purpose of this article is to outline the system of constitutional sources of law in the Russian Federation, illustrated by normative acts in the field of environmental protection. In particular, its subject is to determine the name of a given source, the body competent to publish it, its function and place in the hierarchy, and promulgation rules. The key research problem will be an attempt to distinguish between the sources of universally binding law and the sources of domestic law, as the provisions of the KFR do not directly determine this. However, this issue is of fundamental importance from the point of view of the rightful status of legal entities, as internal regulations cannot directly regulate the sphere of rights and obligations, and may not constitute the basis for decisions towards citizens, legal persons or other entities.

In the study presented below I analyze: the text of the KFR published by the Sejm Publishing House in 2000, also available on the website of the former Bureau of Studies and Expertise of the Chancellery of the Sejm RP⁷⁴, the original KFR text available on the Kremlin website (<http://constitution.kremlin.ru/>), federal laws, secondary and executive acts, including acts specifying the procedure for establishing and publishing sources of law, views of Russian and Polish doctrine. As a comparative model, however, I adopt the structure of the sources of law specified in the Constitution of the Republic of Poland.

The first article of the KFR proclaims the rule of law, stating that "*The Russian Federation - Russia is a democratic federal state of law with a republican form of government*". In the Polish literature on the subject, the rule of law means: "*the concept of a state in which the applicable law has a superior position in the political system, binds the rulers and determines the scope of their competences, and guarantees citizens a number of rights and freedoms. In a state governed by the rule of law, state bodies and institutions may act only to the extent specified by law, while citizens may do whatever is not prohibited by law*".⁷⁵ The system of the rule of law is built on the basis of the principles of: the sovereignty of the nation, the division and balance of powers, binding the activities of all organs of public authority to the legal order subordinated to the constitution, judicial control of the activities of public administration and subsidiarity.⁷⁶

⁷¹ 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].

⁷² The Constitution of the Republic of Poland of April 2, 1997, adopted by the National Assembly on April 2, 1997, adopted by the Nation in a constitutional referendum on May 25, 1997, signed by the President of the Republic of Poland on July 16, 1997 (Dziennik Ustaw [Dz.U.] z 1997, nr 78 poz. 483).

⁷³ Конституция Российской Федерации Принята всенародным голосованием 12 декабря 1993 г. <http://constitution.kremlin.ru/> [24.08.2019].

⁷⁴ Konstytucja Federacji Rosyjskiej przyjęta w ogólnonarodowym referendum w dniu 12 grudnia 1993r., <http://biurosej.sejm.gov.pl/uzup/mid-112.pdf>, *Konstytucja Rosji*, tłum. A. Kubik, Warszawa 2000.

⁷⁵ J. Zakrzewska, *Państwo prawa a nowa konstytucja*, [in:] *Prawo w zmieniającym się społeczeństwie pod red. Grażyny Skapskiej*, Toruń 1992, p. 325–334.

⁷⁶ A. Pakuła, *Od państwa policyjnego do państwa neopolicyjnego. Objawy polityzacji demokratycznego państwa prawnego*, [in:] *Cywilizacja administracji publicznej Księga jubileuszowa z okazji 80-lecia urodzin prof. nadzw. UW dr hab. Jana Jeżewskiego pod red. Jerzego Korczaka* Wrocław 2018, p.381.

In Marxist doctrine, this principle was a priori rejected as an element of the capitalist system.⁷⁷ Contemporary Russian literature, on the other hand, derives from this principle the ideas of protecting dignity, freedom and human rights.⁷⁸, the supremacy of the act in the legal order, counteracting the dictatorship of the majority, despotism and the police state⁷⁹. However, according to W. D. Zorkin, this principle is “*still waiting for its conceptual - doctrinal elaboration*”⁸⁰ by the Russian jurisprudence of the 21st century. In Russian science “*there is no consensus of views, even as to the basic features of the rule of law*”⁸¹.

These difficulties, I believe, result from the tsarist and Soviet system traditions that determined significant inconsistencies with the Western model of the rule of law. I assume that the fundamental difference may result from the significant advantage of the executive in the political system of the Russian Federation, which leads to an imbalance in the principle of balancing the powers. An illustration of this fact is, inter alia, the lack of the expressis verbis obligation of the authorities to act not only on the basis of, but also within and within the limits of the law, and the lack of control of the activities of executive authorities in the course of administrative judiciary.

2. The authority of the Russian Constitution and federal law over regional law

The Russian constitution provides for the division of sources into federal and regional based on the federal structure of the state.⁸² Federal law is valid for the entire territory of the country, and regional law only for a specific entity.⁸³ Federal law has supremacy over regional law. This is due to Art. 4 (2) of the KFR: “*The Constitution of the Russian Federation and federal laws have the highest binding force in the entire territory of the Russian Federation*”. Federal law is directly applicable throughout the country, it is stipulated in Art. 76 (1): “*With respect to matters falling within the competence of the Russian Federation, federal constitutional laws and federal laws having direct effect throughout the territory of the Russian Federation shall apply*”. Therefore, listed in Art. 76 sec. 1 types of normative acts are in force automatically upon publication, producing direct legal effects without any implementation of them into the system of federation entities.

Art. 15 of the KFR states that

„1. *The Constitution of the Russian Federation shall have the highest independent legal force and shall apply throughout the territory of the Russian Federation. Laws and other legal acts*

⁷⁷ В. Н., Кудрявцев Е. А Лукашева, *Социалистическое правовое государство: проблемы и суждения*, Москва 1989. p. 5-6. <http://lawlibrary.ru/article1074651.html>, [24.08.2019].

⁷⁸ М. Н.Марченко, *Правовое государство*, Энциклопедия юриста. 2005, https://dic.academic.ru/dic.nsf/enc_law/1732, [24.08.2019].

⁷⁹ 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/Хроп/04.php, [24.08.2019].

⁸⁰ В. Д. Зорькин, *Конституционно-правовое развитие России*, М.: Норма, 2011. p. 52-53, <https://www.twirpx.com/file/1560679/>, [24.08.2019].

⁸¹ *Ibidem*.

⁸² Por. A. Bosiacki, H. Izdebski, *Konstytucjonizm rosyjski. Historia i współczesność*, Kraków 2013, p.298.

⁸³ Por. R. Tokarczyk, *Prawo amerykańskie*, Warszawa 2009, p. 26.

enacted in the Russian Federation should not contradict the Constitution of the Russian Federation.

2. Bodies of state authority, organs of local self-government, persons holding state functions, citizens and their organizations shall be bound by the Constitution of the Russian Federation and the laws.

3. Laws are officially published. Laws not published do not apply. Any normative legal acts concerning the rights, freedoms and obligations of a person and a citizen do not apply if they have not been officially announced to the public.

4. The generally recognized principles and norms of international law and international agreements concluded by the Russian Federation constitute an integral part of its legal system. If an international agreement concluded by the Russian Federation provides otherwise than provided for by law, the rules of the international agreement shall apply”.

It follows from the above article, first, that in the hierarchy of sources, the highest position is occupied by the Constitution of the Russian Federation, to which all other legal acts should comply. Secondly, the constitution and statute (law) are directly binding, ie all mentioned in para. 2 Art. 15, the addressees are obliged to comply with them, provided that they have been officially announced and made public (Article 15 (3)).

3. Federal constitutional law

Pursuant to Art. 15 (1) of the KFR, the Act is the second, after the constitution, source of universally binding law. The Russian constitution mentions two types of laws, namely the federal constitutional law and the federal law. A federal constitutional law is passed by a qualified majority by the Federal Assembly and deals with issues of the highest national importance. Article 108 of the KFR states that:

"1. Federal constitutional laws are adopted on matters provided for by the Constitution of the Russian Federation.

2. A federal constitutional law is considered adopted if it has been approved by a majority of at least three-fourths of the total number of members of the Federation Council and at least two-thirds of the total number of deputies of the State Duma. The President of the Russian Federation shall sign the adopted federal constitutional law and order its promulgation within fourteen days”.

The content of the Constitution of the Russian Federation determines the matter that should be regulated by a federal constitutional law. These matters include, in particular, the admission to the Russian Federation and the creation of a new entity (Article 65 (2)), change of the status of the entity of the Russian Federation (Article 66 (5)), the state flag, coat of arms and anthem of the Russian Federation (Article 70) , referendum (Article 84 (c)), conditions for introducing martial law (Article 87 (3)), conditions for introducing a state of emergency (Article 88) and others. The constitutional rank of the adopted regulations, the adopting entity - the bicameral Federal Assembly, and the requirement of a qualified majority of votes indicate the primacy of the federal constitutional law over the federal law. It is stated in Art. 76 sec. 3: "Federal laws may not conflict with a federal constitutional law." An example of a federal constitutional law on environmental protection is the Act of May 30, 2001. - state of emergency, also applicable in the event of natural disasters, natural disasters and technical failures.

4. Federal law

A federal law is an act enacted in matters falling within the competence of the Russian Federation and in matters falling within the joint competence of the Russian Federation and its constituent entities (Article 76 (1) and (2) of the KRF). The division of competences is specified in Articles 71 and 72 of the KFR, as well as federal agreements and other agreements on delimiting the scope of competences and powers (Article 11 (3) of the KRF). Using natural resources, protecting the natural environment and ensuring ecological safety; natural areas under special protection; protection of historical and cultural monuments is an example of common competences of the Russian Federation and its entities (Article 72 (e)).

As already established, a federal law must comply with the constitution and federal constitutional laws. A federal law is passed by the State Duma, and its entry into force requires the approval of the Federation Council, the signature of the President of the Russian Federation and an announcement in an official promulgation body. The right of legislative initiative is vested in the President of the Russian Federation, the Federation Council, members of the Federation Council, Deputies of the State Duma, the Government of the Russian Federation, legislative (representative) bodies of constituent entities of the Russian Federation. The right of legislative initiative is also vested in the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation - in matters falling within their competence (Article 104 (1) of the KFR). It is worth noting here that, unlike the KRP (Article 118 (2)), the KRF lacks the institution of civic legislative initiative.

The Russian constitution does not express the principle of an exclusive statutory form for the regulation of the most important public matters, including human and civil rights and freedoms. With art. 15 sec. 3, second sentence of the KFR states that the rights, freedoms and obligations of a person and a citizen may be regulated not only by statute, but also by "*any normative legal acts*", as long as they are officially announced to the public. Art. 55 (3) KFR: "*Human and citizen rights and freedoms may be limited by federal law only to the extent necessary to protect the foundations of the constitutional system, decency, health, rights and legal interests of other persons, and to ensure the country's defense and security countries*". Thus, premises limiting human and civil rights and freedoms may be included in broadly understood federal law, which, apart from statutes, also includes numerous types of lower rank acts. These issues are regulated differently by Art. 31 sec. 3 of the Code of Civil Procedure, which states that "*restrictions on the exercise of constitutional freedoms and rights may be established only by statute and only if they are necessary in a democratic state for its safety or public order, or for the protection of the environment, health and public morality, or the freedoms and rights of others. These limitations shall not violate the essence of freedoms and rights*".

Pursuant to the federal law of June 14, 1994. - on the procedure for the publication and entry into force of federal constitutional laws, federal laws, acts of the Houses of the Federal Assembly, the role of promulgators in which federal constitutional laws and federal laws are published are the paper and electronic editions of *Parliamentskaya Gazeta* (<https://www.pnp.ru/>), *Collection of the legislation of the Russian Federation* (www.szrf.ru/), *daily Rossiyskaya Gazeta* (<https://rg.ru/>) and the official online legal information portal www.pravo.gov.ru⁸⁴

⁸⁴ 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].

Examples of the most important federal laws in environmental protection are: the Act of January 10, 2002 - on environmental protection⁸⁵, an act of a horizontal nature, containing general provisions relating to all components of the environment, introducing basic concepts, principles, rights and obligations of citizens, ecological requirements for economic activity and legal framework instruments. Then, the acts regulating individual matters, including, inter alia: the Act of March 14, 1995. - about particularly protected natural areas⁸⁶, Act of April 24, 1995 - on the animal world⁸⁷, Act of 24 July 2009 –About hunting and the conservation of hunting resources⁸⁸, Act of December 20, 2004 - on fisheries and the conservation of biological water resources⁸⁹, Act of 5 July 1996 - about state regulation of activities in the field of genetic engineering⁹⁰, Act of February 23, 1995 - about natural healing resources, healing and spa towns and resorts⁹¹, Act of May 1, 1991 - on the protection of Lake Baikal⁹², Act of November 30, 1995 - on the continental shelf of the Russian Federation⁹³, Act of November 23, 1995 – about ecological expertise⁹⁴, Act of May 4, 1999 - on the protection of atmospheric air⁹⁵, Act of February 21, 1992 - about the subsoil⁹⁶, Act of March 26, 1998 - about precious metals and precious stones⁹⁷ and a novelty in federal legislation, the Act of December 27, 2018. –About

⁸⁵ 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].

⁸⁶ Федеральный закон от 14.03. 1995 N 33-ФЗ – Об особо охраняемых природных территориях,
<pravo.gov.ru/proxy/ips/?docbody=&nd=102034651> , [24.08.2019].

⁸⁷Федеральный закон от 24.04.1995 N 52-ФЗ – О животном мире,
http://www.consultant.ru/document/cons_doc_LAW_6542/, [24.08.2019].

⁸⁸Федеральный закон от 24.07. 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].

⁸⁹Федеральный закон от 20.12. 2004 N 166-ФЗ – О рыболовстве и сохранении водных биологических ресурсов, <https://rg.ru/2004/12/23/rybolovstvo-dok.html>, [24.08.2019].

⁹⁰ Федеральный закон от 5. 07. 1996 N 86-ФЗ – О государственном регулировании в области генно-инженерной деятельности, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102042295>, [24.08.2019].

⁹¹ Федеральный закон от 23.02. 1995 N 26-ФЗ – О природных лечебных ресурсах, лечебно-оздоровительных местностях и курортах,
<pravo.gov.ru/proxy/ips/?docbody=&nd=102034405>, [24.08.2019].

⁹²Федеральный закон от 1.11. 1999 N 94-ФЗ – Об охране озера Байкал,
<www.kremlin.ru/acts/bank/13787>, [24.08.2019].

⁹³ Федеральный закон от 30.11. 1995 N 187-ФЗ – О континентальном шельфе Российской Федерации
<http://base.garant.ru/10108686/#ixzz5UeEhrwGl>, [24.08.2019].

⁹⁴ Федеральный закон от 23.11. 1995 N 174-ФЗ – Об экологической экспертизе,
<pravo.gov.ru/proxy/ips/?docbody=&nd=102038321>, [24.08.2019].

⁹⁵ Федеральный закон от 4.05. 1999 N 96-ФЗ – Об охране атмосферного воздуха,
<www.kremlin.ru/acts/bank/13789>, [24.08.2019].

⁹⁶Федеральный закон от 21.02.1992 N 2395-1 – О недрах,
<pravo.gov.ru/proxy/ips/?docbody=&nd=102014778>, [24.08.2019].

⁹⁷ 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].

the responsible treatment of animals⁹⁸. Federal laws also include the codes of the Russian Federation: of Water of June 3, 2006.⁹⁹, of Land October 25, 2001.¹⁰⁰ and forestry of December 4, 2006¹⁰¹.

5. International Agreement

The last source referred to in Art. 15 KFR is an international agreement. The Constitution recognizes the primacy of international treaties over a federal law: "If an international agreement concluded by the Russian Federation provides otherwise than provided for by law, the rules of the international agreement shall apply (Article 15.4, second sentence)." However, unlike the NPC, the Russian constitution does not distinguish between ratified and non-ratified agreements, which raises interpretation problems 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 issue.¹⁰² International agreements ratified by law are published in the Assembly of Legislation of the Russian Federation and on the portal www.pravo.gov.ru¹⁰³.

6. The decree and *rasporazhenije* of the President of the Russian Federation

The next position in the hierarchy of sources is occupied by sub-statutory and executive acts enacted by the federal executive and legislative bodies listed in the constitution. Due to the presidential model of the political system, the highest position in this category is occupied by the decree of the President of the Russian Federation. Pursuant to Art. 90 KFR:

1. *The President of the Russian Federation issues decrees and regulations.*
2. *The decrees and orders of the President of the Russian Federation shall be binding on the entire territory of the Russian Federation.*
3. *The decrees and orders of the President of the Russian Federation shall not be in conflict with the Constitution of the Russian Federation and federal laws*".

A decree is an act with the force of law issued not by parliament but by an executive branch.¹⁰⁴ The decree of the President of the Russian Federation (decrees) should be consistent with the Constitution of the Russian Federation and federal laws. In principle, this act does not require the countersignature of representative organs, with two exceptions stipulated in the constitution. Pursuant to Art. 102 (1) a and b of the KFR, The Federation Council approves the

⁹⁸ 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].

⁹⁹ Водный кодекс Российской Федерации от 03.06.2006 N 74-ФЗ, <http://docs.cntd.ru/document/901982862>

¹⁰⁰ Земельный кодекс Российской Федерации от 25.10.2001 N 136-ФЗ, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102073184>, [24.08.2019].

¹⁰¹ Лесной кодекс Российской Федерации от 04.12.2006 N 200-ФЗ, <https://rg.ru/2006/12/08/lesnoy-kodeks-dok.html>, [24.08.2019].

¹⁰² M. Micińska – Bojarek, *Umowy międzynarodowe Federacji Rosyjskiej w dziedzinie ochrony środowiska*, Przegląd, „Studia Iuridica Toruniensia” 2016, T X.

¹⁰³ *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/

¹⁰⁴ *Słownik języka polskiego*, <https://sjp.pwn.pl/sjp/dekret;2554532.html>, [24.08.2019].

decrees of the President of the Russian Federation - on the introduction of martial law and - on the introduction of a state of emergency. The decree of the President of the Russian Federation may contain abstract-general or concrete-individual norms. In the first case, we are dealing with the so-called a normative decree, undoubtedly constituting the source of universally binding law. For example, it will be the decree of August 2, 2010. - on the introduction of a state of emergency in seven entities of the Russian Federation due to fire safety¹⁰⁵. An example of a decree containing specific and individual norms is the decree of June 21, 1996. – about granting state awards¹⁰⁶. In the practice of holding his office, President V. Putin often uses this competence, spending on average from a few to a dozen or so decrees a month¹⁰⁷.

The second type of act issued by the president of Russia in the original wording of the KRF is called the *rasporaženiye* while the above-mentioned parliamentary translation - the ordinance. In the Great Russian Legal Dictionary, the term *rasporaženiye* is defined as one of the sub-statutory acts issued by an authority (the President of the RF, the Government of the Russian Federation) or a governing body within its competence, which is binding on the natural and legal persons to whom it was addressed.¹⁰⁸ It is a self-contained act issued for the quick and effective resolution of operative tasks.¹⁰⁹

The KFR does not prejudge the nature of this act and does not state that it is an executive act to the act, but requires its compliance with the constitution and federal laws. It is therefore a form of exercising executive power. Presidential *rasporaženiye*, just like the decree, may contain abstract and general norms (e.g. on the organization of a ceremonial reception on the 25th anniversary of the¹¹⁰) or specifically - individual (e.g. - awarding prizes¹¹¹). A certain lack of consistency can be seen here, the awards of the President of the RF may be awarded both by a non-normative decree and by means of a decree. This proves, in my opinion, the lack of a principled approach to the issue of the sources of law, characteristic of European countries, including Poland. Matter of the *rasporaženiye* relates to current, internal and organizational issues. On the basis of the above findings, I believe that the nature of the shock of the President of the Russian Federation corresponds more closely to the source of the internal law, i.e. to the ordinance. In the practice of the presidency of V. Putin, this act is issued less frequently than the decree, on average several times a month.

¹⁰⁵Указ Президента Российской Федерации от 2.08.2010 N 966 – Об объявлении чрезвычайной ситуации, связанной с обеспечением пожарной безопасности, в семи субъектах Российской Федерации, <http://kremlin.ru/news/8558>, [24.08.2019].

¹⁰⁶ 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].

¹⁰⁷ <http://kremlin.ru/acts/bank>, [24.08.2019].

¹⁰⁸ *Большой юридический словарь*, М. А. Я. Сухарев, В. Е. Крутских, А.Я. Сухарева, Инфра, 2003.

¹⁰⁹Чем 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].

¹¹⁰Распоряжение 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].

¹¹¹Распоряжение Президента Российской Федерации от 12.11.2018 N 335-рп – О поощрении, <http://kremlin.ru/acts/bank/43723>, [24.08.2019].

7. Resolution and rasporenije of the Government of the Russian Federation

Another entity authorized by the constitution to publish sources is the Government of the Russian Federation. It consists of the prime minister, deputy prime ministers and federal ministers appointed pursuant to Art. 111 - 112 KFR. The organizational structure of the Government of the Russian Federation has specific characteristics. The decree on the structure of federal bodies of executive power, issued each time after winning presidential elections, places individual ministries and other bodies of executive power under the leadership of the president or prime minister.

The issues of the government's legislative powers are the subject of Art. 115 KFR:

"1. On the basis of and implementing the Constitution of the Russian Federation, federal laws and normative decrees of the President of the Russian Federation - the Government of the Russian Federation issues resolutions and regulations and ensures their implementation.

2. The resolutions and orders of the Government of the Russian Federation shall be binding in the Russian Federation.

3. Resolutions and orders of the Government of the Russian Federation, if they are inconsistent with the Constitution of the Russian Federation, federal laws and decrees of the President of the Russian Federation - may be canceled by the President of the Russian Federation."

The first paragraph of the commented article clearly states that the resolution and ordinance of the Government of the Russian Federation are executive acts in relation to the above-mentioned sources of universally binding law of a higher level. As in the case of regulating the president's legislative powers, the regulation is listed as the second most important legal act, which suggests its lower rank.

The resolution in the original wording of the constitution is called a *postanovlenie*. According to doctrinal definitions, it means: a legal act passed by a collective body for the purpose of solving the most important and principled problems facing given bodies and establishing permanent norms and rules of conduct regulating the rights and interests of natural and legal persons¹¹²; a government act, taken within the scope of powers vested in it for the purpose of implementing laws¹¹³. It follows from the above that a government resolution is an act issued for the purpose of implementing an act, constituting a source of universally binding law. An example of such an act in environmental protection is the resolution of the Government of the Russian Federation of June 29, 2011. - about the federal target program "Overcoming the effects of radiation accidents in the period up to 2015"¹¹⁴.

The resolution of the Council of Ministers is the equivalent of a resolution of the Russian government in the Polish system. However, let us pay attention at this point to Art. 92 paragraph 1. Of the Polish Constitution, which states that: "*Regulations are issued by the organs specified*

¹¹² Словари и энциклопедии на Академике, <https://official.academic.ru/18535/Постановление>, [24.08.2019].

¹¹³ Т. Н. Радько, *Теория государства и права в схемах и определениях*, Проспект, 2011.
https://normative_reference_dictionary.academic.ru/, [24.08.2019].

¹¹⁴ 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].

in the Constitution, on the basis of a detailed authorization contained in an act and for the purpose of its implementation. The authorization should define the authority competent to issue the regulation and the scope of matters to be regulated as well as guidelines concerning the content of the act”.

The main difference is that the resolutions adopted by the Government of the Russian Federation do not require “specific authorization contained in the act”. The above-mentioned resolution of the Government of the Russian Federation of June 29, 2011. - about the federal target program "Overcoming the effects of radiation accidents in the period until 2015" does not refer to any specific provision of the act that would constitute an authorization to issue the act in question. In the first articles of the resolution, however, we can find a reference to the titles of several acts and other statutory acts, the subject of which is overcoming the effects of radiation emergencies, which apparently constitutes a general statutory authorization to issue an act. The analysis of the texts of federal laws shows that these acts do not contain detailed authorizations defining the authority competent to issue the implementing act and the framework content of the act. Thus, the resolutions of the Russian Government are adopted on the basis of general delegation within the framework of the legislative powers of the body. In principle, in order to implement a given act, the government may pass any number of resolutions, with the content it deems appropriate, subject to the requirement of compliance with higher-level acts and with the scope of its competence.

Rasparazienije of the Government of the Russian Federation, translated in the parliamentary edition of the KFR as a regulation, in my opinion is also rather an act of internal law, especially since there should be some normative difference between the function of a directly binding resolution and a racial paralysis. An example of such an act in the field of environmental protection is the electric shock of the Russian Government of November 17, 2008. - about the concept of long-term social and economic development in the period until 2020¹¹⁵. This act corresponds to the content of Polish resolutions of the Council of Ministers constituting planning and strategic documents, being sources of internal law¹¹⁶.

It should be noted that the Constitution of the Republic of Poland, apart from the Council of Ministers, also authorizes other entities to issue ordinances, orders and resolutions, namely: the Prime Minister (148 item 3 of the KRP) ministers managing the government administration department (149 section 2 of the KRP) the chairman of the committee, referred to in Art. 147 paragraph. 4 (149 (3) of the KRP, the National Broadcasting Council (Article 213 (2)). At the same time, the KRP determines the internal nature of resolutions and orders: they must be issued on the basis of the law and may not constitute the basis for decisions against citizens, legal persons and other entities (93 (2) of the KRP). There are no equivalents of the above-mentioned provisions in the Russian constitution. As already mentioned, the KRF is silent about which of the sources mentioned in its text have internal charter and which are generally applicable. Moreover, apart from the President of the Russian Federation and the Government of the Russian Federation, the KFR does not authorize other organs of the executive power to issue normative acts. In particular, it is silent about acts issued by federal ministers.

¹¹⁵ 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].

¹¹⁶ Resolution No. 239 of the Council of Ministers of 13 December 2011 on the adoption of the National Spatial Development Concept 2030, (Monitor Polski [MP] 2012, poz.252).

Sources of law established by the President of the Russian Federation and the Government of the Russian Federation, 10 days after their signing, are published in *Rossijskoj Gazietie*, the Assembly of Legislation of the Russian Federation and the portal (www.pravo.gov.ru), the functioning of which is ensured by the Federal Security Service of the Russian Federation (!). The normative acts of the President of the Russian Federation shall enter into force throughout the territory of the Russian Federation seven days after their official publication. Other acts of the President of the Russian Federation, including those containing information constituting a state secret or confidential information, shall enter into force upon signing. This is provided for in the decree of May 23, 1996 - on the procedure for the publication and entry into force of the acts of the President of the Russian Federation, the Government of the Russian Federation and the normative legal acts of the federal bodies of executive power¹¹⁷.

8. Resolutions of the Federal Assembly

The last source of federal law mentioned in the KFR are resolutions adopted by the chambers of the Russian parliament (Federal Assembly). The upper house is the Federation Council. It is composed of two representatives of each of the constituent entities of the Russian Federation, one from the representative and executive arm of the state authority of the entity (Article 95 (2) of the KFR).

The Federation Council adopts resolutions on exhaustively defined issues falling within its competence. These are: a) approving border changes between subjects of the Russian Federation; b) approval of the decree of the President of the Russian Federation on the introduction of martial law; c) approval of the decree of the President of the Russian Federation on the introduction of a state of emergency; d) resolving the issue of possible use of the Armed Forces of the Russian Federation outside the borders of the Russian Federation; e) ordering the election of the President of the Russian Federation; f) removal from office of the President of the Russian Federation; g) appointment of judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation; h) appointment and dismissal of the Public Prosecutor General of the Russian Federation; i) appointing and dismissing the deputy chairman of the Audit Chamber and half of its members (Article 102 (1)).

The lower house of parliament is the State Duma. This body adopts resolutions on the following exhaustively specified issues: a) granting consent to the President of the Russian Federation for the appointment of the Prime Minister of the Government of the Russian Federation; b) giving a vote of confidence to the Government of the Russian Federation; c) appointment and dismissal of the President of the Central Bank of the Russian Federation; d) appointing and dismissing the Chairman of the Accounts Chamber and half of its members; e) appointing and dismissing the Plenipotentiary for Human Rights, f) announcing amnesty; g) making accusations against the President of the Russian Federation for removal from office (Article 103 (1)).

9. Regional law

¹¹⁷ 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].

Regional law is the law enacted by subjects of the Russian Federation. Compared to all countries of the world with a federal system, Russia is distinguished by the "asymmetric" status of its constituent parts, as it includes as many as six types of entities: republic, autonomous oblast, autonomous district, country, oblast, city of federal importance. In total, the state consists of 85 entities, called regions, including: 22 republics, 9 countries, 46 oblasts, 3 cities of federal importance, 4 autonomous districts and one autonomous oblast.

The diverse status of the constituent parts of the Russian Federation results from national-territorial and territorial premises. Historical and geopolitical aspects are also important. The types of units distinguished according to national and territorial conditions are republic, autonomous region and autonomous district. From the ethnic point of view, in these units a significant percentage of the population declares a nationality other than Russian (Russkaya). The names of entities usually come from the names of nationalities, eg Buryat Republic, Jewish Autonomous Oblast, Evenki Autonomous Okrug.

In turn, ethnic Russians (Russkiye) dominate in territorial units (oblasts, countries and cities of federal importance). At the same time, oblasts and countries have basically the same systemic status. The difference in the names of these units comes from historical reasons. In tsarist Russia, the administrative units located along the borders of the empire were called countries. The names of oblasts and countries are usually derived from geographical names, eg Primorsky Krai, Arkhangelsk Oblast.

The Constitution of the Russian Federation guarantees the equality of rights of all constituent entities of the Russian Federation in mutual relations with federal state authorities (Article 5 (4) of the KFR). However, the legal status of the various entities varies considerably, de jure and de facto. Among the subjects of a federation, the republics have the most independent position. The constitution of the Russian Federation defines them as states. The republic has its own constitution and legislation. The constitution of the republic may define other official languages, treated on an equal footing with the Russian language. Only the republic has the right to its constitution. The country, province, city of federal significance, autonomous province and autonomous district have their own statute and legislation (Article 5 (2) of the KFR). In fact, the Republic of Chechnya is the most independent of all federation entities. Due to the geopolitical realities of the Caucasus, it has the most extensive force structures directly subordinated to the president of the republic¹¹⁸.

More about the competences of the law-making entities of the federation is provided in Art. 76 section 4. KFR: "Outside the scope of activities of the Russian Federation and the joint scope of activities of the Russian Federation and the constituent entities of the Russian Federation, the republics, countries, oblasts, cities of federal importance, the autonomous oblast and autonomous districts constitute their own legal regulations, including the issuance of laws and other normative legal acts". This article therefore grants the federal regions the power to enact laws and other legal acts. On the other hand, their place in the hierarchy of sources is determined by par. 5 Art. 76 of the KFR, which states that the laws and other normative legal acts of the constituent entities of the Russian Federation may not contradict federal laws issued on matters "falling within the scope of the Russian Federation's activity" and on "joint actions of the Russian Federation and constituent entities of the Russian Federation". In the event of a conflict, federal law prevails. It follows that according to the division of competences between

¹¹⁸ *Armia Kadyrowa. Powołanie Gwardii Narodowej osłabi „czeczeńską niezależność”*,

<https://www.defence24.pl/armia-kadyrowa-powolanie-gwardii-narodowej-oslabi-czeczenska-niezaleznosc>, [24.08.2019].

the federation and its entities, as defined in Art. 71 and 72 of the KFR, federal laws relating to the exclusive competence of the federation and the joint competence of the federation and regions, take precedence over regional laws. However, in the event of a contradiction between a federal law and a normative legal act of a subject of the Russian Federation issued in matters falling "outside the scope of the activities of the Russian Federation and the joint scope of activities of the Russian Federation and subjects of the Russian Federation", the normative legal act of the subject of the Russian Federation shall apply (Article 76 (6) KFR).

Regional law is promulgated in accordance with the principles set out in the legislation of the entity in question. The standard is publication on the official websites of regional public authorities, for example in the Republic of Tatarstan it will be the website of the State Council of the Republic of Tatarstan (<http://gossov.tatarstan.ru/zakon/>). The regional law on environmental protection is, for example, the Law of the Republic of Ingushetia of December 5, 2017. – About the subsoil.¹¹⁹

10. Examination of the compliance of legal sources with the Constitution of the Russian Federation

The sources of law listed in the KFR are subject to constitutional examination. A ruling in this matter is issued by the Constitutional Court of the Russian Federation on the basis of requests from the President of the Russian Federation, the Federation Council, the State Duma, one fifth of the Federation Council members or deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation and the authorities legislative and executive branch of subjects of the Russian Federation. The application may concern the compliance testing of the following sources:

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

b) the constitutions of the republics, statutes, as well as laws and other normative acts of the constituent entities of the Russian Federation, issued on matters falling within the scope of activities of the organs of state power of the Russian Federation and the joint scope of activity of organs of state power of the Russian Federation and state organs of the constituent entities of the Russian Federation;

c) agreements between public authorities of the Russian Federation and public authorities of constituent entities of the Russian Federation and agreements between public authorities of constituent entities of the Russian Federation;

d) international agreements of the Russian Federation prior to their entry into force (Article 125 (2) of the KFR).

Moreover, Art. 125 paragraph 4 KFR provides for the possibility of submitting a constitutional complaint in an individual case. "*The Constitutional Court of the Russian Federation, on the basis of complaints about violations of the constitutional rights and freedoms of citizens and requests of courts, examines, in accordance with the procedure provided for by federal law, the constitutionality of the law applied or applicable in a specific case*".

¹¹⁹ Закон Республики Ингушетия от 05.12.2017 N 50-ПЗ – О недрах, docs.cntd.ru/document/450231566, [24.08.2019].

Acts or their individual provisions considered as inconsistent with the constitution "lose their legal force" and international agreements inconsistent with the constitution "are not subject to implementation and shall not apply" (Article 125 (6) of the KFR).

On the other hand, the examination of compliance with the Act of acts of lower government is provided for in Art. 120 sec. 2 KFR. It shows that a common court which, in the course of examining a case, finds that an act issued by a state authority or another body is inconsistent with the Act, rules in accordance with the Act.

Summary and final conclusions

Summing up the findings, it should be stated that the system of legal sources in the Russian Federation differs significantly from the Polish model. The Constitution of the Russian Federation does not contain a separate chapter on sources, and does not use the term "source of law" at all. The constitutional, federal sources of universally binding law, apart from the constitution itself, include a federal constitutional law, a federal law, a presidential decree and a resolution of the Russian Government. The Russian constitution does not divide sources into universally binding and internal sources. However, the analysis of legal acts and doctrine views presented in this article shows that federal sources of internal law are reports (orders) of the President and reports (orders) of the Russian Government as well as resolutions of the Federal Assembly.

The rights and obligations of citizens may be regulated by acts of various rank. The Russian Constitution does not introduce the principle of exclusive statutory regulation for the most important public matters, including human and civil rights and obligations, and does not provide for a civic legislative initiative.

Contrary to the Polish model, executive acts to federal laws, i.e. resolutions of the Russian Government, are issued without the detailed authorization contained in the act. While observing the rigor of its competences and complying with the higher-level acts, the body itself decides on the number of required executive acts and their content. This allows the Russian executive to shape the desired legal status almost unlimitedly, which in turn strengthens the advantage of the executive in the state's political system.

In addition to the sources of federal law, the KFR grants law-making powers to the federal regions, which may adopt their own constitutions or statutes and regional laws.

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