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Mechanisms of protecting the institutional system in Poland

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Abstract

Motivation: Introducing changes in the formal part of the institutional system is a process subject to certain regulations in Poland. These rules are present at the *ex-ante* stage of the preparation of a draft normative act, and they consist of, *inter alia*, the procedure for Regulatory Impact Assessment (RIA) or the so-called legislative drafting principles; furthermore, they are present at the *ex-post* stage of the introduction of a normative act, which can also be noticed as part of certain RIA elements and of the activities of the Constitutional Tribunal (CT). The objectives of these procedures are indirectly related to the attempt to streamline the functioning of the institutional system, which affects many entities and elements, including, for example, economic development. In addition, the quality of the regulatory environment is one of the fundamental dimensions of the functioning of the state, and the identified elements are intended to result in the creation of necessary and beneficial regulations. With a total of 5,531 acts passed in Poland from 1991 to 28 June 2022, studies of institutional system protection mechanisms indicate their low effectiveness.

Aim: This article attempts to defend the thesis that *ex-ante* and *ex-post* types of institutional system protection mechanisms in Poland are only partially effective.

Results: The article identifies measures to protect against *ex-ante* and *ex-post* distortions in the functioning of the institutional system in Poland. The article attempts to defend the thesis that these mechanisms are not fully effective.

Keywords: regulatory impact assessment; institutional system; economic analysis of law
JEL: D02; K00

1. Introduction

The literature provides many definitions of the institutional system (cf. Sukiennik et al., 2017). One of them considers the institutional system to be a combination of diverse formal and informal institutions; the other one cogitates it as a system of rules, beliefs, standards and regulations that create regularities in the actions of business actors. Yet another definition indicates that this system can be understand as a network of interconnections between the streams of economic activities, i.e. consumption, production, and exchange (North, 1991). The definition cited at the beginning will be adopted herein, but with some alteration, i.e. the institutional system will be treated as a combination of diverse formal and informal institutions, and the relationships between them.

Thus, the institutional system consists of two elements, i.e. institutions — formal ones — which change relatively quickly, and informal ones, which take a long time to change (Williamson, 2000). The latter include the intermediate elements, i.e. the relationships between institutions that, under certain conditions, may generate increased costs for the functioning of the institutional system. For example, if institutions are not in harmony, i.e. the relationship between them is somehow disrupted, which may mean that institutions are competing, illogical, contradictory, inconsistent, etc., then the institutional system is not functioning optimally. Consequently, the cost of operating the institutional system is not at the lowest possible level. Therefore, it can be assumed that carrying out lawmaking activities in the absence of awareness of the importance of a coherent and well-thought-out institutional system for the proper functioning of the state and society can lead to crisis situations. Examples of these are some of the legal acts that have entered the legal framework in Poland and caused disruption to the institutional system, such as the *Act amending the personal income tax act, the corporate income tax act, and certain other acts* (2021) and the *Act amending the personal income tax act and certain other acts* (2022). It should also be pointed out that 5,531 legal acts with the status of an act of parliament have been passed in Poland since 1991 (cf. Table 1), so the research into the mechanisms of protection of the institutional system seems to be of cognitive and useful importance.

Accordingly, the adoption of the rule of law in the constitutional order implies certain obligations on the part of the public authorities related to the appropriate quality of the legislation (cf. Godłów-Legiędź, 2020). The idea that formal institutions (legal norms) are to take precedence over any other informal institutions (e.g. social norms), among other things, in order to guarantee the legal security of the individual, means that the lawmaking process must be streamlined, and above all — rational. Hence, the rules that are supposed to lead to the optimal functioning of the institutional system, and therefore the legal system[1], are embedded within the Polish legislative process. This pro-

[1] A legal system is defined as an ordered set of legal norms that are in force in a country at a certain time (Helios & Jedlecka, 2015).

cess makes it possible to introduce new formal institutions into a system that includes both legislation and, to put it somewhat simply, social norms, in such a way that they are in harmony with its other elements. In addition, a properly conducted lawmaking process makes it possible to detect elements that determine the lack of harmony within the newly created legislation. These disorders can be identified at different levels of regulatory hierarchy (cf. Czetwertyński et al., 2021) and even within different types of institutions (formal vs. informal), e.g. through public consultation. Thus, it can be assumed that the protection mechanisms included in the framework of the lawmaking procedure in Poland make it possible to reduce the operating costs of the institutional system — both in the sense of preventing their occurrence/increase of these costs (*ex-ante* protection mechanisms) and reducing them (*ex-post* protection mechanisms).

The procedures for the protection of the institutional system in Poland at the *ex-ante* stage are reflected in the following legal acts:

- regulations of the Council of Ministers (The announcement of the Prime Minister, 2016a);
- articles 118(3), 122(3), 133(2) of the *Constitution of the Republic of Poland* (1997);
- article 34 of the Standing Orders of the Parliament of the Republic of Poland (The announcement of the Marshal of the Sejm of the Republic of Poland, 2021);
- article 77 of the Rules and Regulations of the Senate (The announcement of the Marshal of the Senate of the Republic of Poland, 2018);
- article 50 of the *Public Finance Act* (2009);
- legislative Drafting Principles (The announcement of the Prime Minister, 2016b);
- other requirements defined as principles relating to issues of the legislative process or principles of correct or fair legislation, which are derived from the judicial decisions in judgements of the Constitutional Tribunal (CT). These include, among others, the following:
  - the requirement to submit a draft ready to be passed (e.g. Judgement of the Constitutional Tribunal, 2014a);
  - the principle of legal security and legal certainty (e.g. Judgement of the Constitutional Tribunal, 2012b);
  - the principle of protection of acquired rights (e.g. Judgement of the Constitutional Tribunal, 2006);
  - the principle of non-retroactivity (*lex retro non agit*) (e.g. Judgement of the Constitutional Tribunal, 2009);
  - the order to observe an appropriate adjustment period (*vacatio legis*) (e.g. Judgement of the Constitutional Tribunal, 2009);
  - the principle of definiteness of laws (e.g. Judgement of the Constitutional Tribunal, 2014b);
  - other.

In turn, the mechanisms of *ex-post* protection, i.e. those for assessing the results and evaluating the consequences of the functioning of the introduced normative acts with regard to the institutional system, are related to the activity of the Constitutional Tribunal, which performs hierarchical control of the compliance of legal norms (The announcement of the Marshal of the Sejm of the Republic of Poland, 2019), which is also defined by Articles 79, 188, items 1–3 and 5 of the *Constitution of the Republic of Poland* (1997). In addition, elements of *ex-post* protection of the institutional system are also included in the procedure of regulatory impact assessment (RIA) (The announcement of the Prime Minister, 2016a) in §152 to §156 and are related to the evaluation of introduced legislation.

The objectives of these *ex-ante* and *ex-post* mechanisms for the protection of the institutional system against disruptions in Poland are indirectly related to the attempt to optimise its functioning. It should be noted that the system affects the entities that operate within it, as well as elements, such as economic development, sustainable development, etc. Therefore, the presence of mechanisms to protect the institutional system is important because the quality of the regulatory environment is one of the fundamental dimensions of the functioning of the state under the rule of law, and the indicated elements of protection are intended to result in the creation of necessary and beneficial legal regulations. The article adopts the thesis that the quality of the RIO procedure as well as the mechanisms for protecting the institutional system in Poland is low. The aim of the article is an attempt to defend this thesis.

2. Literature review: framework

2.1 Harmonisation of the institutional system

The results of existing research suggest that an institutional system works best when it operates under conditions of maximum harmonisation, i.e. compatibility/consistency between institutions and their complementary nature (Chang, 2011; Czetwertyński et al., 2021; Fiedor, 2015; North, 1991; Pejovich, 1999). A harmonised institutional system increases the predictability of human interactions and therefore reduces uncertainty in economic processes (North, 2014; Wilkin, 2011). In addition, the same formal institutions can have different impacts depending on:

- the specifics of a particular institutional system;
- harmonisation of laws at different levels of the hierarchy of law in a given institutional system;
- harmonisation of informal institutions within a given institutional system;
- harmonisation of formal and informal institutions within a given institutional system.

The aforementioned harmonisation of institutions has been the implicit focus of research, including that of North (1990), who described the interaction between institutional conditions in the United States and Latin America. These institutions, despite their relative convergence, did not produce similar results. A similar relationship was observed by Chang (2011) in the context of institutions contributing to economic growth in some countries but not in others. Thus, it seems that it is not only the institutions as such that matter, but their harmonisation with other institutions, such as in the form of their complementary nature, fit or competitiveness in a given institutional system, is equally important. Studies on the relationship between institutions or their importance have also been conducted in Polish conditions, and they have concerned:

– the introduction into the institutional system of legal norms that are not complementary to informal institutions (Czetwertyński, 2019; Sukiennik, 2021);
– the quality of formal institutional subsystems (Borkowski, 2021);
– the antinomy of formal and informal institutions (Gruszewska, 2017);
– the importance of institutions for economic development (Staniek, 2012);
– the importance of institutions in the process of sustainable development (Fiedor, 2015);
– harmonisation of the institutional system (Czetwertyński et al., 2021; Malinowska, 2015; Sukiennik, 2020).

2.2 Disruption of the institutional system

The introduction into the system of institutions that are not in harmony implies the need for an enforcement monitoring agenda or incurring the costs of modifying/changing old institutions, which increases the costs of operating the institutional system (Sukiennik et al., 2017). In other words, imperfections and/or disruptions in this system occur when there is lack of harmonisation within informal and/or formal institutions. The aforementioned lack of harmonisation can occur in the following situations:

1. Informal institutions are not in harmony with formal institutions that work effectively, thus weakening the spirit of the written law, thereby reducing adherence to it.
2. Informal institutions are not in harmony with ineffective formal institutions, which means that acting in compliance with one institution results in violating another.
3. National formal institutions are not in harmony with other national formal institutions.
4. National formal institutions are not in harmony with existing international formal institutions within the EU, for example.

In the above cases (items 1 and 2), the operating costs of the institutional system are inflated, and members of society may attempt to reduce dissonance in the area of institutional inconsistency, either by acting on informal institu-

tions — this is less likely due to the long time needed for their transformation — or by intervening in formal institutions. As a result, the law may be reinterpreted so that it does not overtly contradict informal institutions. This is confirmed, for example, by Czetwertyński's (2022) research on copyright enforcement and oline piracy. On the other hand, in the third and fourth cases, depending on the relationship (hierarchy) between laws, some national formal institutions may be transformed (if inconsistencies are observed and effectively reported), which may or may not be compatible with national informal institutions and/or with other national formal institutions, and, consequently, these changes may lead to a reduction/increase in the disruption of the institutional system. Thus, it can be argued that carrying out lawmaking activities in the absence of awareness of the importance of a coherent and well-thought-out institutional system for the proper functioning of the state and society can lead to the unintentional creation of a crisis situation.

The progression of change in the institutional system area is described by the so-called institutional change cost theory. According to this theory, the course of regulatory change is a derivative of the non-optimality of the functioning of the institutional system and the costs of changing individual laws (Sukiennik et al., 2022). A great deal of significance is given here to the costs that have to be incurred in the process of institutional change, which include the expenses of abolishing the old institution and the costs accompanying the introduction of a new institution or the amendment of an old institution. Hence, some inefficient institutions may not be changed, precisely because of the high cost of their transformation. Lissowska (2008) adds that where the costs of institutional incompatibility are not high, the obsolescence of standards is tolerated. In other words, ineffective *ex-ante* protection mechanisms for the institutional system may lead to a situation where *ex-post* protection mechanisms may not work due to the excessive cost of transforming the institution over a certain time horizon. In such a situation, the institutional system is not working optimally, but also the change itself is not desirable, for example, due to the time horizon chosen by the legislator to assess the operating cost of the institutional system[2].

Moving on, the aforementioned *ex-ante* and *ex-post* procedures are supposed to lead to an institutional system that works optimally. However, it is important to be aware that in order to achieve such a situation, the internal consistency of the legal system and its harmonisation both within and between formal and informal institutions is necessary. Furthermore, constant changes in formal institutions mean that such an equilibrium is not permanent and should be treated as a desirable end state. Wilkin (2011) expresses a similar opinion, arguing that a state of institutional equilibrium does not mean a fixed point, but rather the fulfilment of certain criteria in a dynamic environment over the long term.

[2] In the RIO guidelines in Poland, the time horizon is 10 years (Ministry of Economy & Chancellery of the Prime Minister, 2015); it is similar in the Polish *Public Finance Act* (2009).

3. Methods

This article addresses issues within the field of economic analysis of law and new institutional economics. This subject is part of a field of theoretical research devoted to lawmaking, in particular with regard to the mechanisms of rational lawmaking. The issue of assessing the impact of legal regulation, which derives from utilitarian-rationalist roots, is an important issue in contemporary legal theory and practice. This implies that the intent of proportionate public intervention is to lead to effective and legislative practice with known consequences, which predicts the effects of regulation through an economic analysis of the law.

This article reviews and structures Polish legislation on *ex-ante* and *ex-post* mechanisms for the protection of the institutional system, as well as the academic record in the area of RIO and other mechanisms for the protection of the institutional system. It should be noted, however, that this is a difficult endeavour since the instruments of *ex-ante* and *ex-post* protection of the institutional system in Poland are included in legal acts in a fragmented manner, mostly without a direct foundation in constitutional or statutory norms, as illustrated by the RIO procedure. For this reason, the issues concerning RIO in the Polish legal literature are mainly presented as minor contributions, with no output in the form of monographs. However, there are few academic publications in the area of the addressed issue, which describe the problem of the quality of lawmaking from the perspective of legal science or economic analysis of law. Few studies and expert opinions are also available, the results of which will be cited.

In summary, this article collects research material and then uses the dogmatic-legal method, and, forther on, applies deductive reasoning to achieve the stated aim. This aim is to defend the thesis stating that *ex-ante* and *ex-post* mechanisms for protecting the institutional system are not fully effective as a safeguard against disruption. However, it should be noted that there are limited opportunities to achieve such a goal. This is due to the impossibility of taking into account all possible cases of operation of mechanisms of protection of the institutional system, so the main research material used was that which generalises information on the effectiveness of the institutional system protection mechanisms in Poland[3].

[3] The regulatory impact assessment from 15 February 2011 to 18 September 2022 was conducted on 19018 documents (RCL, 2022). In turn, the Constitutional Tribunal has examined precisely 12,560 different cases between 1986 and 28 June 2022 (Internetowy Portal Orzeczeń Trybunału Konstytucyjnego, 2022).

4. Results: evaluation of the effectiveness of mechanisms for protecting the institutional system

4.1 Evaluation of the effectiveness of *ex-ante* mechanisms for protecting the institutional system

In this section, an assessment of the *ex-ante* mechanisms for protecting the institutional system will be made. The *ex-ante* mechanisms for protecting the institutional system include the legislative drafting principles and other requirements that are derived from the judicial decisions embodied in the judgements of the Constitutional Tribunal. An example is the principle of definiteness of the law, the enforceability of which has been doubted, e.g. in the case of the repeatedly amended Act on Counteracting Drug Addiction, which has been discussed by economists (Sukiennik, 2017), lawyers (Krajewski, 2001) or, finally, the *Judgements of the Constitutional Tribunal* (2012b). Another example of failure to follow the principles of good legislation can be found in the situation described by the Supreme Audit Office (2017), which involved two Ministry of Economic Development drafts. These drafts were subjected to scrutiny for the proper execution of the legislative procedure, the requirements of which they did not meet. Specifically, "for the two drafts UD201 and UC170, there were 15 and 18-day deadlines, respectively, for taking a position in the public consultation. This was inconsistent with § 21(2) and (3) of Ordinance No. 39 of the Director General of the Ministry of Economy, which stipulates that the duration of consultations may not be less than 30 days, and if a member of the Ministry's Authorities decides to conduct simplified consultations — not less than 21 days". Similar cases can also be found when interpreting other principles of good legislation, such as proportionality (cf. Klinowski, 2009), or other (cf. Constitutional Tribunal Office, 2015). However, the protection mechanisms described above are encumbered by cognitive limitations and there is no way to achieve a complete sample here[4]. Thus, it is impossible to keep track of, or even to identify, all the instances of the possibility of using such mechanisms to protect the institutional system, which come at a cost to its functioning.

[4] The matter of achieving a complete sample, or limited cognitive capabilities, is debatable, due to the fact that the number of CT proceedings in the field of assessing the coherence of legal norms (*ex-post* and *ex-ante*), is finite. Since 1986, there have been 1992 cases of *ex-post* institutional system protection and 39 cases of *ex-ante* protection at the stage of so-called proper (substantive) recognition (Internetowy Portal Orzeczeń Trybunału Konstytucyjnego, 2022). However, it should be noted that the number of entities that can raise interpretive issues of *a posteriori* (consequential) nature to the CT is limited by Constitution, and similarly the protection of *a priori* (antecedent) nature is the exclusive prerogative of the President. It follows that it is not known whether instances of actual or hypothetical non-compliance do not exist and that there have not been more, hence the assumption of the impossibility of achieving a complete sample.

Another element of protection is the possibility of *a priori* (antecedent) control by the CT. However, it should be noted that the only entity authorised to initiate it is the President of the Republic of Poland. Thus, the CT's role in the case of *ex-ante* protection of the institutional system is very limited. As a result, since the inception of this institution (*a priori* control of the CT), the President has exercised it 39 times (in fact, the first such proceeding took place in 2004), including 13 times in the last 10 years, of which 5 times in the last 5 years (Internetowy Portal Orzeczeń Trybunału Konstytucyjnego, 2022). At the same time, the CT recognised 12,560 cases, so *a priori* control accounted for 0.31% of total cases and 1.19% of cases recognised at the proper recognition stage. Thus, it can be considered a very rarely used institution, and its share in the process of protecting the institutional system in Poland is marginal. Moreover, due to the limitation associated with the ability of a single entity to initiate *a priori* control, it is reasonable to assume that the effectiveness of this type of protection is not complete[5].

Another mechanism for *ex-ante* protection of the institutional system is the RIO procedure, which applies to the drafting of government documents (The announcement of the Prime Minister, 2016a), such as a draft act. This procedure, according to the Supreme Audit Office (2017), is expected to contribute to increasing awareness among the authorities of the consequences — both benefits and costs — of their decisions and actions; integrating different policy areas; increasing transparency and improving the consultation process; and making authorities more accountable for their decisions. In its area of operation, several studies have so far been undertaken on the quality of this procedure in Poland, which have shown that it is treated as a certain requirement rather than a tool for improving the quality of legislative activities. For example, in a study conducted between 2001 and 2005, it was noted that the quality of acts with RIO performed was rather low, and out of 162 RIOs studied, not a single attempt was made to compare costs and benefits (Zubek, 2007). Later, between 2015 and 2017, the Supreme Audit Office (2017) conducted a similar study. The audit covered four ministries, i.e. the Ministry of Finance; the Ministry of Family, Labour and Social Policy; the Ministry of Agriculture and Rural Development; the Ministry of Economic Development; and the Chancellery of the Prime Minister. Between 2015 and 2016, they processed a total of 125 draft acts and guidelines to draft acts, including 24 in the Ministry of Labour and Social Policy, 44 in the Ministry of Finance, 30 in the Ministry of Agriculture and Rural Development, and 27 in the Ministry of Finance. The research found that conducting impact assessments is not widely perceived as an instrument for improving the law to support decisions of lawmakers on regulatory solutions. In situations where the political aspect prevails, the impact assessment may be performed just to fulfil the formal requirement. Moreover, the results of the audit showed that, despite the establishment of a relatively comprehensive regulatory im-

[5] This is indirectly confirmed by the number of CT proceedings of *a posteriori* nature (cf. section 4.2).

pact assessment system in Poland between 2001 and 2015, carrying out impact assessments is not widely perceived as an instrument for improving the law, although such assessments, when done correctly, provide reliable information on the effects of adopted legal regulations. However, it should be noted that neither the 2001–2005 studies nor those from 2015–2017 are studies that could be considered representative.

However, the problems associated with the low effectiveness of the above-described mechanisms for protecting the institutional system in Poland are also present in studies or commentaries by other Polish researchers or publicists (cf. Rogowska-Tomaszycka, 2022; Sukiennik, 2017; Szpringer & Rogowski, 2007; Szymaniak, 2022; Wronkowska, 2002). For example, Bramorski (2018) describes a case where *ex-ante* mechanisms to protect the institutional system are circumvented by using the legislative route, which is characterised by inferior legislative tools, i.e. the submission of a large number of parliamentary bills that are not subject to the RIO procedure. Government drafts in each term of office of the Sejm accounted for 45% of the total number of drafts in the 6th term of office of the Sejm (Żuralska, 2012); 35% of the total number of drafts in the 7th term of office of the Sejm (Sejm RP, 2022); 52% of the total number of drafts in the 8th term of office of the Sejm (Gromek, 2020). Another element that makes the *ex-ante* mechanisms for protecting the institutional system within the RIO ineffective is the legislative procedure. This is because the draft brought before the Sejm is not subject to further scrutiny and the members deliberating on it have the opportunity to submit amendments to the draft. This results in the fact that the final, enacted law may have a completely different wording than the initial draft, and thus deviate from what was established in the RIO (cf. Biernat, 2016; Frączak et al. 2022).

In conclusion, based on the cited studies, expert opinions, the cited opinions of researchers and publicists, as well as the very structure of the normative acts where *ex-ante* protection mechanisms of the institutional system are legally binding, they cannot be considered as effective protection of the institutional system against disruptions resulting from changes in formal institutions.

4.2 Evaluation of the effectiveness of *ex-post* mechanisms for protecting the institutional system

In this section, an assessment of the *ex-post* mechanisms for protecting the institutional system will be made. The first of the identified *ex-post* mechanisms for protecting the institutional system will be the activity of the CT, whose key competence is to derogate from the legal system norms of a lower order that are not in line with norms of a higher order. It should be noted here that the Polish system of control of norms gives priority to *a posteriori* (consequential) control, i.e. the control concerns normative acts that have already been adopted or have already entered into force, or are still in the period of *vacatio legis*. Essentially, this control consists of ruling on the hierarchical (vertical) compliance of norma-

tive acts of a lower order with normative acts of a higher order and, in the event of non-compliance, eliminating the former from the system of applicable law. However, it should be noted that the number of entities that may turn to the CT with a request for interpretation is limited — Article 191(1) of the *Constitution of the Republic of Poland* (1997). Such entities include:

- the President of the Republic of Poland, the Speaker of the Sejm, the Speaker of the Senate, the Prime Minister, 50 members of the parliament, 30 senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor General, the President of the Supreme Audit Office, the Ombudsman;
- National Council of the Judiciary of Poland to the extent referred to in Article 186(2);
- constituent bodies of local government units;
- national bodies of trade unions and national authorities of employers' and professional organisations;
- churches and other religious associations;
- entities specified in Article 79 to the extent indicated therein.

The entities referred to in section 1 items 3–5 may make such a request if the normative act concerns matters within their scope of activity. This implies a limited effectiveness of this mechanism to protect the institutional system, consisting in the following: firstly, a finite number of entities may bring a case before the CT and to a limited extent; secondly, the CT itself has limited capacity to carry out its activities, which is determined by the human factor. In this aspect, the CT has recognised 12,560 cases since its inception (1986) (data current as at 28 June 2022), of which 1,992 cases involved the elements discussed and qualified in this article as *ex-post* mechanisms for protecting the institutional system (Internetowy Portal Orzeczeń Trybunału Konstytucyjnego, 2022). In other words, since 1986, the CT has recognised, at the stage of proper recognition, 1,992 cases, i.e. motions to ascertain the compliance of laws or ratified international treaties with the Constitution, and the compliance of laws with international treaties, the ratification of which required prior consent expressed in an act (1,008); legal questions concerning the compliance of a normative act with the Constitution, ratified international treaties, or acts (715); motions to ascertain the compliance of laws issued by central state bodies with the Constitution, ratified international treaties, or acts (269), out of which, in the last 10 years, that number amounted to 610.

The CT also performs the so-called signalling function, which is to submit comments to the relevant lawmaking bodies about identified deficiencies and gaps in the law, the removal of which is necessary to ensure the consistency of the legal system (The Constitutional Tribunal Act, 2015). It should be noted that the protection of the system is not effected by the CT in this case, but by other organs of the state. In other words, as a result of the judicial practice of the Constitutional Tribunal, the lawmaking bodies receive, as a rule, non-binding information on the necessity to amend the law (in a few situations,

the activity of the Constitutional Tribunal induces an obligation to take certain actions). It is therefore a soft (non-binding) instrument for *ex-post* protection of the institutional system. Moreover, the signalling function of the CT, which is a sort of soft tool to protect the institutional system, is rarely used. This means that since its inception, from the entry into force on 1 January 1986 of the Constitutional Tribunal Act of 1985, until 27 June 2022, the Constitutional Tribunal has issued 85 signalling decisions. Taking into account the fact that, while the 1997 Constitution was in force, the Constitutional Tribunal examined 3,241 cases on their merits (proper recognition), issued a judgement in 1,446 of them, and terminated the proceedings at the stage of the preliminary examination in 9,234 cases (Internetowy Portal Orzeczeń Trybunału Konstytucyjnego, 2022), it can be concluded that signalling decisions are issued extremely rarely and, as an instrument protecting the institutional system, play a marginal role.

An additional element of the *ex-post* protection of the institutional system is the use of the mechanism contained in the RIO procedure set forth in sections 152–156 of the Regulations of the Council of Ministers. So-called *ex-post* RIO consists of allowing evaluation of a normative act after its implementation. And while the idea of *ex-post* RIA seems correct, the incomplete effectiveness of this mechanism is determined, among other things, by section 152 of the present Regulations of the Council of Ministers, which pertains to the optionality of conducting this procedure. The Supreme Audit Office (2017) assessment of the quality of the execution of *ex-post* RIAs was also low[6]. In addition, as identified in the report, one of the weaknesses of the entire RIA procedure is the occasional planning of conducting *ex-post* RIAs of laws.

In summary, based on the above information, it can be concluded that the above-described *ex-post* mechanisms for protecting the institutional system are not effective as elements to protect the institutional system from disruption resulting from changes in formal institutions.

5. Conclusions

The subject of the effectiveness of *ex-ante* and *ex-post* institutional system protection mechanisms addressed in this article is of interest to economists and lawyers. The intent behind the public intervention is to predict the effects of regulation through an economic analysis of the law. After all, the quality of the regulatory environment is one of the fundamental dimensions of the functioning of the state, and the identified elements of *ex-ante* and *ex-post* protection are intended to lead to the creation of needed and beneficial regulations within the functioning institutional system. To reiterate, this article aims to defend

[6] It should be noted that the Supreme Audit Office (2017) assessed the RIO while it was still subject to the *Council of Ministers resolution* (2013). These regulations were significantly amended by the *Announcement of the Prime Minister* (2016a), i.e. the provisions providing for the so-called regulatory test, which in certain situations obliged to perform an *ex-post* RIA, have been removed.

the thesis that the *ex-ante* and *ex-post* mechanisms of protection of the institutional system are not fully effective as a protection of the institutional system against disruption. However, it is impossible to present all the studies on how these mechanisms work; neither is it possible to trace all the cases in which these mechanisms have been used or not used, so this objective can be considered partially fulfilled. Nevertheless, it should be noted that, for example, the number of CT proceedings regarding the *ex-post* protection of the institutional system (1992) shows that the efficiency (effectiveness) of the *ex-ante* protection mechanisms of the institutional system is not complete. The conclusion about the incomplete effectiveness of mechanisms to protect the institutional system, both of *ex-ante* and *ex-post* type, is also confirmed by the opinions of researchers, teams of researchers, reports of state institutions, or, finally, the low position of Poland in rankings on the quality of lawmaking or rankings taking into account this element (example: SGI, 2022; WJP, 2022). Thus, it seems that the thesis of the incomplete effectiveness of *ex-ante* and *ex-post* mechanisms for protecting the institutional system in Poland is plausible.

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Appendix

Table 1.
Number of acts passed in Poland, broken down by the Pariament term of office

	1st term of office	2nd term of office	3rd term of office	4th term of office	5th term of office	6th term of office	7th term of office	8th term of office	9th term of office
years	1991–1993	1993–1997	1997–2001	2001–2005	2005–2007	2007–2011	2011–2015	2015–2019	2019–present
number of acts passed	94	473	640	894	384	945	752	923	426

Sources: Own preparation based on: Kazalska et al. (2021), Sejm RP (2022).