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Public funds for political parties and liability for violation of public finance discipline in Poland

Introduction

According to Article 11 of the Constitution of the Republic of Poland[1] , Poland ensures the freedom to form and operate political parties, which bring together Polish citizens on a voluntary and equal basis to influence the formation of state policy by democratic means[2]. The financing of political parties is open, and their assets are formed from membership fees, donations, inheritances, bequests, income from property and from grants[3] and subsidies determined by law. The rules for determining the amount of grants and subsidies are set forth in the Election Code and the Law on Political Parties. Thus, according to Article 150 of the Election Code, a political party whose electoral committee participated in the elections, a political party that is part of an electoral coalition, as well as an electoral committee of voters participating in elections to the Sejm and the Senate, is entitled to a subjective grant from the state budget for each

[1] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483 as amended).

[2] This is provided for in Article 24(1) of the Act of 27 June 1997 on political parties (consolidated text Journal of Laws of 2023, item 1215).

[3] Act of 5 January 2011 Electoral Code (consolidated text, Journal of Laws of 2022, item 1277, as amended).

parliamentary and senatorial seat obtained[4]. The subjective grant is provided only to the amount of expenses shown in the financial report. However, the amount of the subjective grant to which a political party that is part of an electoral coalition is entitled is determined by dividing the amount so calculated between the parties that are part of the coalition in proportions corresponding to the proportion of payments of funds made by the individual parties that have formed an electoral coalition to the electoral committee formed by the coalition. The transfer of the subjective grant to the designated bank account is made by the Minister of Finance on the basis of information from the National Electoral Commission on those eligible to receive the subjective grant and the number of seats obtained by the electoral committee in question. The subjective grant is paid within 9 months from the election day. Analogous rules have been adopted for each seat obtained as a member of the European Parliament.

In turn, a political party that:

1) in elections to the Sejm independently forming an electoral committee received nationally at least 3% of the validly cast votes for its district lists of candidates for deputies, or
2) in elections to the Sejm was part of an electoral coalition whose district lists of candidates for deputies received at least 6% of the validly cast votes nationwide,

is entitled to receive, for the duration of the term of the Sejm, in accordance with the procedure and principles set forth in the Law on Political Parties, a subsidy from the state budget for statutory activities. The subsidy to which an electoral coalition of political parties is entitled is divided for the benefit of the parties that are part of the coalition in proportions that cannot be changed, and are specified in the agreement establishing the electoral coalition. Failure to specify this proportion makes the subsidy ineligible. The agreement shall be submitted to the National Electoral Commission for registration under pain of invalidity. If the electoral coalition dissolves after being entitled to the subsidy, the subsidy shall be due to the political parties that are part of the electoral coalition in the proportions specified in the agreement establishing the electoral coalition. The subsidy is due starting from 1 January of the year following the year in which the election was held and is paid until the end of the year in which the next election is held. The transfer of the subsidy to the bank account designated by the political party is made by the Minister of Finance and is accumulated in a separate subaccount of the political party's bank account. Expenses related to the subsidy

[4] The amount of the subjective grant is calculated by dividing the total expenditure on the election campaign of the electoral committees (up to the amount of the expenditure limits to which they are entitled as provided for in the Sejm and Senate elections) which have obtained at least 1 seat by the number of elected deputies and senators and multiplying by the number of deputy and senatorial seats obtained by the electoral committee concerned.

are also covered by the state budget in the "Budget, public finances and financial institutions" section.

The political party keeps its accounts in accordance with the provisions of the Accounting Act of September 29, 1994[5], while the detailed rules are set forth in the provisions of the Ordinance of the Minister of Finance of 23 January 2003 on the principles of accounting by a political party[6]. It specifies, in particular, the rules for documenting and recording revenues, expenses, settlements and assets, and the preparation of financial statements - including the rules for recording and accounting for public funds received.

1. The concept of public funds

The Polish legislator did not define the concept of public funds, but only used the formula of a non-classical scope definition, stopping at Article 5 of the Law on Public Finance[7] enumerative enumeration of the types of funds having the status of "public." This means that under the current law, the characteristics of monetary funds considered to be public are not specified, but only their categories are listed[8]. Public funds are all monetary receipts that a given public entity is constitutionally or statutorily authorized to collect, as well as those receipts that accrue to a given entity as income and benefits from property rights, their sale or exchange, as well as receipts from the sale of products and services provided by units of the public finance sector. In turn, Article 6 of the Law indicates that public funds are allocated for: public expenditures and public disbursements.

According to the adopted rules, the right to carry out tasks financed by public funds is vested in all entities, and public expenditures should be made:

1) in an expedient and economical manner, observing the principles of obtaining the best results from the given expenditures and the optimal selection of methods and means to achieve the set objectives;
2) in a manner that allows timely implementation of tasks;
3) in the amount and on dates resulting from previously incurred obligations.

The Law on Public Finance introduced the principle of equality of subjects in access to public funds, unless the laws provide otherwise. The principle of expediency in the management of public funds has been strongly emphasized, understood in such a way that if the holder of funds has a choice of how to finance tasks, he should choose a more efficient use of public funds by refraining from

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[5] Consolidated text Journal of Laws 2023, item 120, as amended.

[6] Journal of Laws No. 11, item 118.

[7] Act of 27 August 2009 (consolidated text of 2023, item 1270, as amended).

[8] Szerzej J. Salachna, *Środki publiczne, ich formy prawne oraz zasady realizacji w sektorze finansów publicznych* [in:] *System prawa finansowego. Tom II. Prawo finansowe sektora finansów publicznych*, E. Ruśkowski (ed.), Warszawa 2010, p. 81.

financing expenditures with public funds or entrusting the implementation of a task to an entity outside the public finance sector[9]. On the other hand, entities applying for the allocation of public funds for the implementation of a specific task should submit bids for their implementation in accordance with the principles of fair competition, ensuring the implementation of tasks in an effective, timely and economical manner.

2. Grants and subsidies as a category of public funds

Grants and subsidies are legal and statutory regulations for the performance of public tasks both inside the public finance sector and through external entities, e.g. through public-private contracting.

The term "grant" *[pl. dotacja]* is derived from the Latin word *"donatio,"* which means a donation, an endowment, equipping someone with material goods. This concept is also defined in the doctrine, assuming that a grant is *a benefit made from the budget of a public entity to third parties, based on the norms of financial law in the mode of authority*[10]. Thus, a budget grant is nothing but a special type of expenditure from the budget. If a grant is provided from the state budget or from the budget of a local government unit, then on the basis of the applicable regulations, it is always to serve the purpose of financing and proper implementation of a public task. This is because this is what Article 126 of the Public Finance Act stipulates, additionally indicating that grants are funds subject to special settlement rules. A grant - unlike a subsidy - always has a strict purpose, it is not of a general nature, and the legislator, when granting the right to grant it, always specifies its nature (subjective, specific or special-purpose grant). Thus, a grant should be treated exclusively as a transfer of public funds for the proper implementation of a specific task of a statutory and mandatory nature. Thus, a grant is a special legal form of financing specific tasks from the budget and may be used only if permitted by law.

A grant cannot be used to finance purposes other than the implementation of public tasks and cannot be spent on the current activities or investments of NGOs, since the administration's interest is not to finance the current statutory activities of the third sector, but the effective implementation of public tasks. The state budget may provide special-purpose, specific and subjective grants. Subjective grants include funds for an entity designated in a separate law or international agreement, exclusively for financing current activities within the scope specified in a separate law or international agreement. Such a law is the Election Code Act, already referred to above. It should be noted, however, that

[9] Z. Ofiarski, Mokrzyc M., B. Rutkowski B., *Reforma samorządu terytorialnego, Tom II. Zagadnienia finansowo-prawne.* Szczecin – Zielona Góra 1999, pp. 24–25.

[10] See Z. Ofiarski, *Subwencje i dotacje jednostek samorządu terytorialnego*, Warszawa 2002, p. 26.

the subjective grant is not, however, "purely" subjective, because when it is regulated, the purpose of financing (current activities) is indicated - admittedly very generally and at the same time broadly.

As for the subsidy, on the other hand, it is not clear in the Polish legal order whether it is a special, unique form of financial relations between the state as a whole and local governments, or whether it can also be used as a form of power supply for special social organizations such as political parties. And yet this is a legal and financial construction, the purpose of which is to create a public law claim for the due amount of benefit from the state budget, that is, a claim that abolishes the formal nature of the budget law as a planning act that has no effect on third parties - and therefore an exception to Article 219(1) of the Polish Constitution. Therefore, although a subsidy is different from a grant, both are intended to create predictable and claimable amounts of revenue in line with the amounts from the expenditures contained in the Budget Law[11]. Indeed, both grants and subsidies are currently among the most important institutions derived exclusively from financial law, i.e. constitutional institutions. Their systemic feature is that they bear the hallmarks of expenditures to further allocate funds for public or social tasks, equated with public tasks. Thus, they serve the collective interest - collective needs, not individual needs, even if their beneficiary is a natural or legal person.

3. The concept of public finance discipline and responsibility for its violation

The disposition of public funds and the management and administration of the property of the State Treasury and local government units are subject to a special legal regime, since budget expenditures are used to carry out the tasks of public authority, which pursues social, economic and classical state functions. Care for the rational management of public funds and property requires compliance with the general principles, that is, legality, economy, thriftiness, expediency[12] irrespective of the legal nature of the entities implementing public tasks and the organizational form of the holder of the funds. In turn, the principles of responsibility of entities making decisions on financial matters related to the collection and disbursement of public funds are regulated in the provisions of the Act of 17 December 2004 on responsibility for violation of public finance

[11] T. Dębowska-Romanowska, *Wydatki publiczne, ich formy prawne oraz zasady realizacji w sektorze finansów publicznych.* [in:] *System prawa finansowego.* Vol. II *Prawo finansowe sektora finansów publicznych.* E. Ruśkowski (ed.), Warszawa 2010, p. 127 et seq.

[12] Cf E. Ruśkowski, J. Stankiewicz, *Prawo budżetowe.* [in:] *Polskie prawo finansowe,* Warszawa 1998, p. 67; J. Stankiewicz, *Dyscyplina finansów publicznych.* [in:] *Finanse publiczne i prawo finansowe.* E. Ruśkowski (ed), Warszawa 2000, pp. 273–275.

discipline[13]. A violation of the discipline does not have to be directly related to the occurrence of damage to the property of the State Treasury or another public entity - it is sufficient that there was a deviation from the accepted rules, even if it has not yet caused real negative consequences, although it could lead to such consequences. The law does not contain a legal definition of liability, nor does it define the concept of "public finance discipline," but the literature assumes that the discipline of public finances should be understood as a catalogue of rules that relate to the proper management of public funds, formulated in the regulations governing not only financial law, but also the public procurement system or accounting principles [14] or that it is an obligation to comply with all regulations governing the management of property and public funds by budget administrators or other entities using these funds[15]. The legislator adopted the solution of including in the law a closed catalogue of acts that can be considered a violation of public finance discipline, which in practice raises numerous doubts about the correctness of actions and behaviour, both for administrators of public funds, control bodies and commissions adjudicating cases of violation of public finance discipline. Actions or omissions listed in the law that are detrimental to public finances do not fulfil the elements of crimes or offenses and are not subject to criminal or fiscal criminal liability.

In the doctrine of financial law, it is commonly believed that the discipline of public finances is an obligation "to comply with the legally prescribed rules for the establishment, collection and enforcement of receivables that constitute public funds and their management on a microeconomic scale, i.e. in units of the public finance sector and outside them, if these entities use public funds"[16]. On this basis, it can be assumed that the term "discipline" should be understood as the obligation imposed on certain categories of entities (disposing of public funds) to comply with the adopted principles and rules of conduct. Thus, the object of protection is discipline, expressed in the proper, lawful functioning of the public finance sector, and, in particular, checking whether the management of public funds and public assets is effective and whether the procedures and scope of authority to dispose of public funds are strictly respected.

Not only employees of public finance sector units, but also other persons outside the sector to whom public funds have been transferred for use or disposal, or activities related to the use or disposal of such funds, may be held lia-

[13] Consolidated text Journal of Laws of 2021, item 289 as amended

[14] L. Lipiec-Warzecha, *Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych. Komentarz.* Warszawa 2012, p. 26 et seq.

[15] C. Kosikowski, *Dyscyplina finansów publicznych oraz odpowiedzialność za jej naruszenie*. [in:] *Finanse publiczne i prawo finansowe.* C. Kosikowski, E. Ruśkowski (eds.) Warszawa 2008, p. 818.

[16] C. Kosikowski, *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz i przepisy*. Warszawa 2000, p. 10.

ble[17]. Pursuant to Article 4 of the Act, the following are subject to liability for violation of public finance discipline: persons who are members of the governing body of an entity not included in the public finance sector, to which public funds have been transferred for use or disposal, or who manage the property of such units or entities, as well as other persons who are entrusted with the performance of duties in such entity by a separate act or on the basis of such act, the non-performance or improper performance of which constitutes an act violating public finance discipline, and persons who perform, on behalf of an entity not included in the public finance sector, to which public funds have been transferred for use or disposal, activities related to the use or disposal of such funds.

Taking into account the cited provisions, it should be noted that the circle of entities liable for violation of the public finance discipline does not include only persons who are employees of entities included in the public finance sector, but has been expanded to include persons performing on behalf of an entity not included in the public finance sector activities related to the use of public funds, which were transferred to such an entity for use or disposal. The ratio legis of this solution is to extend liability also to persons who receive and manage public funds within the framework provided by the law. Thus, acts constituting a violation of public finance discipline have a potentially unlimited circle of addressees who dispose of such funds. Evaluating the adopted solutions, it should be noted that the legislator has not introduced correct solutions concerning both the responsibility of individuals making decisions individually and those who are members of collegial bodies, which in practice leads to difficulties in their application and subsequent enforcement of responsibility, especially with regard to entities outside the public finance sector[18].

According to the adopted rules, a person liable is the one who has committed an act in violation of discipline, as defined by the law in effect at the time of its commission, and to whom fault can be attributed at the time of the commission of such violation, as well as a person who has given an order to perform an act in violation of public finance discipline. A violation of discipline is considered to have been committed at the time when the perpetrator acted or omitted to act that he was obligated to do. Ignorance that an act or omission constitutes a violation of public finance discipline does not exclude liability, unless the ignorance was justified. A necessary element for liability is the degree of harmfulness of the violation to public finances, which is assessed according to the severity of the duties violated, the manner and circumstances of the violation and its con-

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[17] W. Miemiec, *Odpowiedzialność za naruszenie dyscypliny finansów publicznych*. [in:] *Prawo finansowe.* R. Mastalski, E. Fojcik-Mastalska (eds.), Warszawa 2013, p. 116.

[18] Cf. P. Stanisławiszyn, *Zmiany w odpowiedzialności za naruszenie dyscypliny finansów publicznych jako przykład sanacji finansów publicznych w Polsce*. [in:] *Sanacja finansów publicznych w Polsce*. *Ogólnopolska Konferencja Naukowa nt. „Aspekty prawne i ekonomiczne"*. K. Święch, A. Zalcewicz (eds.), Szczecin, 2005, pp. 380–382.

sequences. The law does not precisely define the legal nature of this responsibility, however, the essence of all the solutions adopted supports the fact that it should be classified as responsibility of an administrative nature[19]. However, responsibility for violation of public finance discipline is independent of the responsibility defined by other provisions of the law, in particular criminal law, criminal fiscal law, labour law and even civil law. Punishment of a person responsible for a violation of public finance discipline does not limit the rights of the State Treasury to seek compensation for the damage suffered.

The catalogue of penalties that can be applied by the commission adjudicating cases of violation of public finance discipline is specified in Article 31, paragraph 1 of the Law and is closed in nature. The penalties for violations of public finance discipline are: a warning, a reprimand, a fine and a ban on performing managerial functions related to the disposal of public funds for a period from one year to five years from the date the ruling becomes final. The ban excludes, for the period specified in the ruling on punishment, the possibility to:

1) perform the functions of: manager, deputy manager or general manager, member of the board of directors, treasurer, chief accountant or deputy chief accountant, head or deputy head of a unit directly responsible for the execution of the budget or financial plan of a public finance sector unit;
2) representation of the property interests of the State Treasury, a local government unit or another unit of the public finance sector;
3) membership in the governing, supervisory and executive bodies of state and local government legal entities.

The execution of this penalty consists in observing the prohibition of entrusting the punished person with a function, and if he holds such a function, the execution of the penalty consists in removing him from it without delay. The matter of enforcement of the penalty may seem simple if the punished person is and remains an employee of a public finance sector entity, while the enforcement of the penalty imposed on a person who is not an employee of the public finance sector is completely illusory, and the results of statutory protection of public finance discipline are non-existent.

The concept of liability gives rise to many theoretical and legal disputes and is most often considered on the basis of various branches of law (civil liability, criminal liability, constitutional liability). Liability on the basis of public law is considered as the possibility, provided by law, for a public administration body to activate ex officio sanctions against a specific entity whose action or omission is negatively evaluated on the basis of the applicable legislation. Measures of a sanctioning nature provided by law are implemented in the forms peculiar to

[19] Among others J.M. Salachna, *Wpływ nowych uregulowań odpowiedzialności za naruszenie dyscypliny finansów publicznych na naprawę finansów publicznych*. [in:] *Sanacja finansów publicznych*…, p. 425.

the administration and according to the relevant procedure, usually taking the form of fines, whose purpose is primarily to cause annoyance and stigmatize the behaviour (action or omission) of this entity[20]. The responsibility of bodies managing entities with public funds must be considered in conjunction with the responsibility of individuals acting as a body or on its behalf, since it is the individual as the backbone of the organization that is responsible for its actions or omissions. The triggering of the procedure to hold an entity accountable is an action or omission, and therefore any form of activity that leads to a violation of the law, or situations in which action should have been taken, but the entity acted passively[21].

4. Reports of political parties on the use of public funds

Both the Election Code and the Law on Political Parties stipulate an annual obligation to submit to the National Electoral Commission financial information on the subsidy received and expenses incurred from the subsidy, as well as financial reports of electoral committees.

Pursuant to the provisions of the Law on Political Parties (Articles 34-34c), the information is submitted by 31 March of the following year, accompanied by the report of an auditor selected by the NEC. The cost of the auditor's report is covered by the National Election Bureau. Settlement of the subsidy from the state budget is made on the basis of cash realization of subsidy receipts and expenditures made from subsidy funds. A political party shall prepare an annual financial report as of the end of the fiscal year and as of any other balance sheet date, which shall consist of a balance sheet, a profit and loss account and additional information, which shall include explanations not included in the balance sheet and profit and loss account, necessary to evaluate the financial management of a political party. The National Electoral Commission shall, within 6 months from the date of submission of the information, either accept it without objection, or accept it with an indication of deficiencies, or reject the information. Rejection of information takes place if it is found that a political party uses funds from the subsidy received for purposes unrelated to its statutory activities. The NEC, while examining the information, may commission the preparation of expert reports or opinions. If the information is rejected, the political party has the right, within 7 days from the date of delivery of the decision to reject the information, to file a complaint with the Supreme Court against the decision of the National Electoral Commission. The Supreme Court shall review

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[20] See A. Michór, *Z problematyki odpowiedzialności administracyjnej.* [w:] *Nowe problemy badawcze w teorii prawa administracyjnego*. J. Boć, A. Chajbowicz (red.), Wrocław 2009, s. 650.

[21] Further J. Glumińska-Pawlic, *Odpowiedzialność administracyjna (publicznoprawna).* [in:] *Odpowiedzialność osób zarządzających podmiotami gospodarczymi. Ujęcie publicznoprawne.* J. Glumińska-Pawlic (ed.), Warszawa 2022, p. 145 et seq.

the complaint with a panel of 7 judges and shall issue a ruling on the matter within 60 days from the date of service of the complaint. There is no legal remedy against the decision of the Supreme Court.

A political party loses its right to receive a subsidy for one year if:

1) it fails to submit information by the deadline;
2) the information is rejected by the National Electoral Commission, or
3) the Supreme Court dismisses the complaint.

The loss of a political party's right to a subsidy occurs in the following calendar year after the year in which one of the indicated events occurred.

In turn, the Election Code, in Article 147-148, provides that in the event of failure to timely submit a financial report by:

1) an electoral committee of a political party - the political party is not entitled to a grant and the right to a subsidy,
2) coalition electoral committee - a political party that is part of an electoral coalition is not entitled to grants and the right to a subsidy,
3) electoral committee of voters - it is not entitled to grants.

If the National Electoral Commission rejects the financial report or rejects the complaint, the grant to which the political party or electoral committee is entitled is reduced by an amount equivalent to three times the amount of funds raised or spent in violation of the regulations. On the other hand, if the NEC rejects the financial report or rejects the complaint, the subsidy to which the political party is entitled, as referred to in the Law on Political Parties, is reduced by an amount equivalent to three times the amount of funds raised or spent in violation of the Election Code. However, the reduction in the amount of the grant or subsidy may not exceed 75% of the amount of both the grant and the subsidy.

The electoral body to which the financial report has been submitted shall make public in the Public Information Bulletin, in the form of an announcement, information on accepted and rejected financial reports of electoral committees.

It follows from the cited regulations that the financial consequences in the event of rejection of a financial report will be borne by the political party, and not by its bodies or persons who were negligent or disposed of public funds in violation of the regulations. There is no doubt that both the raising of funds by political parties and the proper disbursement of funds should be subject to special scrutiny, and severe consequences should be drawn against those guilty of irregularities.

Summary

In the current state of the law, it is not possible to hold persons and bodies of political parties with significant financial resources liable for violations of public finance discipline. This is due to the fact that irregularities in the disburse-

ment of subsidies and subjective grants to political parties are not listed in the closed catalogue of acts constituting a violation of public finance discipline. In this situation, it is reasonable to formulate a postulate that persons disposing of funds transferred from the state budget should also bear responsibility for violations of public finance discipline. Expanding the catalogue of acts to include the expenditure of funds received by political parties in violation of the law is also worth considering. The sanctions provided for in the Law on Political Parties and the Election Code target only the party that loses the money to which it is entitled, and do not apply to specific individuals responsible for the improper disbursement of these funds.

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Środki publiczne dla partii politycznych a odpowiedzialność za naruszenie dyscypliny finansów publicznych w Polsce

Streszczenie

Celem artykułu jest przedstawienie problematyki korzystania przez partię polityczną ze środków publicznych w formie dotacji podmiotowych i subwencji z budżetu państwa. Partia polityczna jest dobrowolną organizacją obywateli Rzeczypospolitej Polskiej, którzy ukończyli 18 lat, występującą pod określoną nazwą, stawiającą sobie za cel udział w życiu publicznym poprzez wywieranie metodami demokratycznymi wpływu na kształtowanie polityki państwa lub sprawowanie władzy publicznej. Przekazane do dyspozycji partii środki publiczne podlegają rozliczeniu w składanych Państwowej Komisji Wyborczej informacjach finansowych o otrzymanej subwencji oraz o poniesionych z subwencji wydatkach, a także w sprawozdaniach finansowych komitetów wyborczych. Stwierdzone nieprawidłowości mogą skutkować pomniejszeniem wysokości dotacji lub subwencji. Nie stanowią natomiast naruszenia dyscypliny finansów publicznych, a osób winnych nie można pociągnąć do odpowiedzialności prawnej.

Słowa kluczowe: partia polityczna, środki publiczne, dotacje, subwencje, odpowiedzialność, dyscyplina, finanse publiczne.