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TNOiK – „Dom Organizatora" w Toruniu
55800

Wydawnictwo
„Dom Organizatora"
jest członkiem
Polskiej Izby Książki

Recenzent
Dr hab. Rafał Dowgier, prof. UwB

ISBN 978-83-7285-998-3

Printed in Poland
Toruń
Wydanie I
Druk ukończono w 2021 r.

przygotowanie do druku

Projekt okładki
Piotr Kabaciński

Grafika na okładce © Texture of brown leather for decorative background.
autor: Burapa Nammulsint

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List of abbreviations

Art. – article
BFG – Bank Guarantee Fund
CBOSA – Central Database of Administrative Court Judgements
CSO – Central Statistical Office
Journal of Laws – Polish Journal of Laws
FEP – Bridging Pension Fund
FRD – Demographic Reserve Fund
FUS – Social Insurance Fund
IGB – budgetary authority
j.s.t. – local government unit
k.c. – Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2020, item 1740, as amended)
Constitution – Constitution of the Republic of Poland, Basic Law – the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483 with amendments)
k.p. – Act of 26 June 1974. – Labour Code (consolidated text: Journal of Laws of 2020, item 1320 as amended)
KRRiT – National Broadcasting Council
KRUS, Kasa – Agricultural Social Insurance Fund
Legalis – Polish Legal Information System
LEX – Polish Legal Information System
NFZ – National Health Fund
NIK – Supreme Audit Office

NSA – Supreme Administrative Court
Par. – paragraph
p.s.w.n. – Act of 20 July 2018 – Law on higher education and science (consolidated text: Journal of Laws of 2021, item 478 as amended)
PAN – Polish Academy of Sciences
PRL – People's Republic of Poland
RP – Republic of Poland
PAPD – Ombudsman for Children
SN – Supreme Court
SPZOZ – Independent Public Health Care Institution
u.f.p. – Act of 27 August 2009 on public finance (consolidated text: Journal of Laws of 2021, item 305)
uLRN – Law of 21 February 2019 on the Łukasiewicz Research Network Consolidated text: OJ of 2020, item 2098.
u.o.p.d.k. – Act of 25 October 1991 on organising and conducting cultural activity (consolidated text: Journal of Laws of 2020, item 194, as amended)
u.s.g. – Act of 8 March 1990 on municipal self-governament (consolidated text: Journal of Laws of 2020, item 713 as amended)
u.s.p. – Act of 5 June 1998 on district government (consolidated text: Journal of Laws of 2020, item 920)
u.s.w. – Act of 5 June 1998 on province self-government (consolidated text: Journal of Laws of 2020, item 1668 as amended)

u.z.m. – Act of 9 March 2017 on the metropolitan association in the Silesian Voivodeship (consolidated text: Journal of Laws of 2017, item 730 as amended).

u.z.z.m.p. – Act of 16 December 2016 on principles of state property management (consolidated text: Journal of Laws of 2020, item 735 as amended)

uPAN – Act of 30 April 2010 on the Polish Academy of Sciences (consolidated text: Journal of Laws of 2020, item 1796)

uSBŁ – Act of 21 February 2019 on the Łukasiewicz Research Network (consolidated text: Journal of Laws of 2020, item 2098)

WSA – Provincial Administrative Court

ZUS, Zakład – Social Insurance Institution

Introduction

The notion of a public finance sector has not been defined by acts regulating public finance issues in Poland. Normative acts only indicate entities which constitute that sector. It seems reasonable to assume that the public finance sector constitute organisational units which are established by the State or a local government unit and perform public tasks. However, those tasks must be at least financed from public funds. According to A. Błaszko, subjects participating in public and private life in social and economic reality interact on different planes. Scopes of civil-legal and administrative-legal relations interpenetrate each other, and participating entities belong to different spheres of public and private activity. A binding division of public and private spheres is widely accepted. It differentiates entities participating in these spheres organisationally and legally. This division can be found in both legal and economic sciences. The Public Finance Act constitutes a kind of a code for entities of the public finance sector. It is used not only within the scope of finance itself, but also as regards defining the institutional, organisational and legal framework for the entities of this sector[1].

M. Cilak points out that although there is no legal definition of the public finance sector, it is possible to specify this sector's main features and entities which belong to this sector. The notion of the "sector of public finance" indicates its link with public finance and it covers entities connected with public finance, which are running public financial management. The importance of differntianting the public finance sector has mainly organisational, accounting and statistical, as well as legal dimension[2].

[1] A. Błaszko, *Finanse publiczne – komentarz do ustawy*, INFOR, Warszawa 2017, p. 39.

[2] M. Cilak [in:] *Ustawa o finansach publicznych. Komentarz*, edited by Z. Ofiarski, Wolters Kluwer, Warszawa 2020, pp. 128–129.

The so-called budget principle characterises public sector activities. Its essence lies in the fact that the service provided by public sector entities is not defined by profit. The service is defined by a decision made through political and administrative proceedings based on common social objectives. The budget principle therefore is the opposite of the market principle. The rationale of one is to make a profit, the other a political-administrative process[3].

For the state and its institutions (e.g. military, administrative), there has to be state financial management. Only its scope can be disputed, which depends on many factors, such as the State of the economy of a given period and the applied concepts of state policy, connected, e.g. with a liberal state or a welfare state[4].

In the Public Finance Act of 26 November 1998[5], Article 5 enumeratively indicates which entities belong to the public finance sector. In turn, the Act of 30 June 2005 on Public Finance[6] Article 4(1) enlists entities which constitute this sector, and Article 4(2) introduces a normative division of the public finance sector into three subsectors:

1) government,
2) local government, and
3) social security.

The currently binding Act of 27 August 2009 on Public Finance[7] has adopted the concepts implemented by the previous acts on public finance, i.e. it does not define the public finance sector but limits itself (Article 9) to an enumerative list of entities constituting this sector. In this Act, there is no normative division of the public finance sector into subsectors.

The authors of this monograph focused their research on the analysis of particular entities constituting the public finance sector

[3] A. Borodo, *Polskie prawo finansowe – zarys ogólny*, Towarzystwo Naukowe Organizacji i Kierownictwo „Dom Organizatora", Toruń 2003, p. 15.
[4] *Ibidem*, p. 16.
[5] Journal of Laws of 1998, No. 155, item 1014.
[6] Journal of Laws of 2005, No. 249, item 2104.
[7] Consolidated text: Journal of Laws of 2021, item 305; hereinafter: „u.f.p.".

in Poland. Results of their research have been presented in chapters concerning particular entities or groups of entities.

The monograph takes into account the state of law as of 31 March 2021.

Chapter 1. **PUBLIC AUTHORITIES, STATE CONTROL AND LAW ENFORCEMENT BODIES, COURTS AND TRIBUNALS**

1.1. Introduction

The public finance sector comprises entities formed on different legal basis, the different scope of activity, and which apply the rules of financial management stipulated in the Public Finance Act to a different extent. In the light of Article 9(1) of the Act of 27 August 2009 on public finance, the entities constituting the sector of public finances also indicates public authority bodies, including government administration bodies, state control and law protection bodies, as well as courts and tribunals. The Public Finance Act does not contain a legal definition of a public authority. Therefore, the primary criterion for determining whether an entity belongs to the public finance sector or not, will be its systemic status indicating that it belongs to the system of state bodies. This special status of public authority bodies is a derivative of a principle of separation of powers adopted in the Constitution of the Republic of Poland of 2 April 1997[8]. Indeed, Article 10 of the Constitution of the Republic of Poland states explicitly that: "The system of the Republic of Poland is based on the division and balance of legislative power, executive power and judicial power". Article 10(2) of the Constitution specifies that "legislative power is vested in the Sejm and the Senate, executive power in the President of the Republic and the Council of Ministers, and judicial power in courts and tribunals". Therefore, it is worthwhile to outline issues related to the

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

systemic position and competencies of the respective public authorities comprising the public finance sector.

1.2. Legislative authorities – Sejm and Senate of the Republic of Poland

In the Constitution of 2 April 1997, the law-making bodies are bicameral and consists of the Sejm and the Senate. The systemic position of the organs of legislative power is evidenced by Article 4(2) of the Constitution of the Republic of Poland. This provision states that "The people exercise power through their representatives or directly". In conjunction with Article 10(2) of the Constitution defining the Sejm and Senate of the Republic of Poland as the organs of legislative power, this provision means that the Sejm, together with the Senate, are currently the only representative organs in the Republic of Poland which have a privilege of a direct representation of the subject of sovereign power.

The Sejm and Senate are equivalent in terms of legitimacy, but this does not mean that their powers are equal. In this respect, the Constitution of 1997 has retained the model of bicameralism, which gives broader possibilities of action to the Sejm[9] than to the Senate, especially regarding the creation and control of a government, where the Sejm has its competencies, not vested at all in the Senate.

The Sejm of the Republic of Poland consists of 460 members. They are elected in a secret ballot by a universal suffrage, equal, direct, and proportional representation. The Senate, in turn, is made of 100 senators elected by a universal suffrage, direct and by a secret ballot, in single-member constituencies. The term of office of the Sejm and the Senate, according to the Constitution, is four years. It begins on the day of the first meeting of the newly elected Sejm, and it lasts until the day before the next Sejm's first sitting.

[9] Cf. L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu,* Wolters Kluwer, Warszawa 2019, pp. 218–219.

Concerning an exercise of constitutional powers, attention should be drawn to the role envisaged for the Parliament and its organs by Article 235, paragraphs 1–7 of the Constitution. It provides for the participation of the Sejm and the Senate in the procedure for amending the Constitution. At least 1/5 of the statutory number of deputies or the Senate of the Republic of Poland may lay down a legislative initiative concerning the amendment of the Constitution.

Another area of significant power of the Sejm is its creative power. This role primarily concerns a right to appoint and dismis the Council of Ministers. Currently, the Constitution stipulates that the procedure for creating the Council of Ministers may be carried out in three stages, with the first stage belonging to the President of the Republic, the second to the Sejm, and the third (again) to the President of the Republic. Should the creation process fail in the third stage, the President must shorten the term of office of the Sejm, which is incapable of creative action (Article 155).

Both chambers (i.e. the Sejm and the Senate) participate in nominating numerous organs of the State and thus appoint or elect holders of various offices. The Sejm (with the consent of the Senate) appoints the President of the Supreme Audit Office, the Ombudsman, the Children's Rights Ombudsman, 2 deputy presidents and members of the Tribunal of State, 15 judges of the Constitutional Tribunal, 3 members of the Monetary Policy Council, 2 members of the National Broadcasting Council, members of the National Judiciary Council (they are drawn from among MPs and judges), members of the Board of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, and 3 members of the National Media Council. The 9th Sejm has also recently elected members of the National Electoral Commission.

The next group of the Sejm's functions includes a power of scrutiny. It is exercised *in pleno* by the Sejm's committees, or through individual means of the parliamentary control. The source of the Sejm's powers of control over the government and a state administration is the constitutional principle of a parliamentary (political) responsibility of the government before the Sejm. Aside from the institution of a vote of

no confidence (Article 157), the Constitution of 1997 does allow MPs to submit parliamentary questions and inquiries which are individual means of parliamentary scrutiny of the government and its members (Article 115)[10].

Finally, the Sejm (and only the Sejm) has a severe means of control over the government. This influence takes the form of a right to assess an execution of a budget law (a so-called discharge of the government), and to obtain information on the State's indebtedness (Art. 226(2)). The latter right corresponds with an obligation of the Monetary Policy Council (this duty is articulated in the Constitution of the Republic of Poland) to present assumptions of the monetary policy to the Sejm for its information (Art. 227(6)).

Furthermore, this group of powers also includes a right of the Sejm to bring the highest state officials (except for the President of the Republic) before the Tribunal of State in case of a culpable violation of the Constitution or a statute. These persons may be tried as regards issues that fall within the scope of their office or are in connection with the position they have been holding. A right to submit complaints to the Constitutional Tribunal should also be indicated as a part of the procedures and institutions enabling the Sejm and Senate to exercise their scrutiny. According to Article 191(1) of the Constitution, the Speakers of both Houses of the Parliament were granted a right to submit motions concerning a compliance of laws issued by the central state bodies with: the Constitution, ratified international agreements, and statutes.

The Sejm also has decision-making powers in some issues of domestic and international policy. For example, Article 89(1) of the Polish Constitution provides for a consent to be given in a form of a law (thus – with the participation of the Senate) for the ratification of certain categories of major international agreements relating to peace, alliances, political or military treaties, freedoms, civil rights or obligations set out in the Constitution, Poland's membership in an international organisation, as well as those having a significant financial

[10] Cf. J. Wawrzyniak, *Sejm a Prezydent Rzeczypospolitej Polskiej i Rada Ministrów*, Wydawnictwo Sejmowe, Warszawa 2016, pp. 156–165.

burden on the State, and on matters regulated by law or where the Constitution requires a law.

Finally, a specific power of the Sejm that does not fall within the classification adopted above is the power of the Sejm to order (by an absolute majority of votes in the presence of at least half the statutory number of deputies) a referendum on matters of a particular importance for the State (Article 125(1) of the Constitution of the Republic of Poland).

Intra-organisational powers also constitute an essential group of powers of the legislative authorities. The legal basis for these powers is Article 112 of the Constitution, which entrusts the determination of the detailed organisation and procedures of the Sejm and Senate to the chambers themselves, which should do so by enacting their regulations. Each Chamber's rules are adopted entirely autonomously, without a need to cooperate or act with anyone else from the group of state bodies.

1.3. Organs of the executive

1.3.1. Introduction

The authors of the Constitution of 2 April 1997, drawing on Polish political traditions, adopted a dualistic executive model. It assumes an existence of two executive authorities: the President and the Council of Ministers. At the same time, it needs to be stressed that their role in the exercise of this function is not equal. This is because the burden of exercising executive power has been placed on the Council of Ministers[11].

1.3.2. President of the Republic of Poland

Article 126 paragraphs 1 and 2 of the Constitution of the Republic of Poland is significant for a general definition of the constitutional

[11] G. Kuca, *Zasada podziału władzy w Konstytucji RP z 1997 roku*, Wydawnictwo Sejmowe, Warszawa 2014, pp. 187 et seq.

position of the President of the Republic of Poland. According to its provisions, "The President of the Republic of Poland is the supreme representative of the Republic of Poland and the guarantor of the continuity of state authority. 2. The President of the Republic of Poland shall ensure observance of the Constitution, safeguard the sovereignty and security of the State and the inviolability and integrity of its territory". The thesis that Article 126 does not have the character of a competence provision, but it only serves as a basis for reconstructing the general lines of the President's systemic tasks in the Constitution, should be endorsed. There is no coincidence in a fact that after Paragraphs 1 and 2, Article 126 is followed by Paragraph 3, which expressly provides that "the President of the Republic shall perform his tasks within the scope and on the principles outlined in the Constitution and the laws"[12].

The President of the Republic is elected for a five-year term. He/She may be re-elected only once. All citizens of the Republic of Poland who are at least 35 years of age, are not deprived of their electoral rights to the Sejm, and collect at least 100,000 signatures in support of their candidature have a right to stand for election.

The legislature characterises the President as the supreme representative of the Republic, and the guarantor of the continuity of state power. However, this does not mean that the President is the highest authority in the Republic of Poland. The question as to what is meant by the President's beeing a "representative of the Republic" is that he is the country's representative internally, i.e. in internal relations, and externally, i.e. in international relations[13]. Within the scope of his competences, the President of the Republic of Poland, among other things: ratifies and denounces international agreements, of which he notifies the Sejm and the Senate; appoints and dismisses

[12] J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997*), Wydawnictwo Sejmowe, Warszawa 1999, pp. 10–18.

[13] Z. Witkowski, *Prezydent Rzeczypospolitej Polskiej,* [in:] *Polskie prawo konstytucyjne w obliczu wyzwań współczesności*, (eds.) Z. Witkowski, D. Lis-Staranowicz, M. Serowaniec, Towarzystwo Naukowe Organizacji i Kierownictwo „Dom Organizatora", Toruń 2021, pp. 320–321.

the plenipotentiary representatives of the Republic of Poland in other states and at international organisations; as well as he accepts the letters of credence and dismissal of diplomatic representatives of other states and international organisations accredited to him (Article 133 of the Constitution). The second function of the President should also be mentioned, namely that he is described as a "guarantor of the continuity of state power". Therefore, we are inclined to see the President as the guarantor of the continuity of state power, a kind of a "constant force of the State" that stands above the changing political arrangements[14].

Against the background of Article 126 of the Constitution, however, the President of the Republic also performs two crucial tasks when he acts as an organ of an executive power:

1) a guardian or a guarantor of a respect for the Constitution, and
2) a guardian (a guarantor) of the fundamental carriers of the State's existence, i.e. its sovereignty, security and an inviolability and indivisibility of State's territory.

These tasks, particularly the role of a "guarantor of compliance with the Constitution", are backed up by several critical legal measures of different effectiveness, enabling him to exercise activities, and, to actively protect the Constitution. These measures include, for example, a right of a refusal to sign a law passed by the Parliament, which is commonly referred to as a "right of veto suspending laws". The President should use this measure, if he wishes to give the Parliament a chance to verify what he considers to be an erroneous legislative decision. As an alternative right, the Constitution gives the President, a right to verify a law by the Constitutional Tribunal as being unconstitutional, if, in his opinion, the law directly contravenes the Constitution or if he only suspects that the law or specific provisions thereof conflict with the Constitution. Here, the President does act

[14] Z. Witkowski, *Dyrektywa „współdziałania władz" jako element organizujący życie wspólnotowej państwowej w świetle Konstytucji RP z 2 kwietnia 1997 r.,* [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej. Jubilee Book dedicated to Prof. Maria Kruk-Jarosz,* (eds.) J. Wawrzyniak and M. Laskowska, Wydawnictwo Sejmowe, Warszawa 2009, pp. 139–145.

pre-emptively (i.e. before signing the Act) as the guardian of the Constitution to counteract the constitutionally flawed decision of the Parliament. It should be borne in mind, however, that the President may also act with such an intention, i.e. to ensure the constitutionality of an entire system of laws which are binding in the State, in a consequential, i.e. repressive, mode – when a law has been signed by him and when the law has already entered into legal force. In the practice of its operation, it turns out that the law is seriously flawed from the point of view of its constitutionality (Article 191 paragraph 1 (1) of the Constitution)[15]. Another legal measure enabling the President to play the role of the guardian of the Constitution is his entitlement under Article 192 (read in conjunction with Article 189 of the Constitution) in the light of which the President may act as the initiator of a motion for a resolution on a competence dispute arising between central organs of the State. Although the President does not act here as a supreme arbiter or a judge-moderator of constitutional conflicts, he, undoubtedly, acts as an impartial regulator of the constitutional game, ensuring that all State's constitutional organs act according to the established rules. The view that the function in question requires the President to take special care to ensure that he exercises the powers vested in him in the spirit of a full compliance with the letter and a spirit of the Constitution, and strictly in line with the principles laid down in other relevant ordinary laws, is, therefore, fully justified.

One of the important consequences of the fact that the President is vested with the guarantor of the State's security is that the function of the Supreme Commander of the Armed Forces of the Republic of Poland is also placed in his hands (Article 134 paragraph 1). The President of the Republic of Poland, upon the prime minister's motion, also approves the national security strategy, plans for national defence system exercises, and decides on the Introduction or modification

[15] D. Dudek, *Prezydent a rząd – rozdzial zadań i kompetencje ustrojowych (The President vs. the Government – Distribution of Tasks and Systemic Competences),* [in:] *Dwadzieścia lat transformacji ustrojowej w Polsce. 51st Nationwide Meeting of Constitutional Law Chairs and Departments*, *Warszawa, 19–21 June 2009.*, (eds.) M. Zubik, Wydawnictwo Sejmowe, Warszawa 2010, pp. 123–125.

of a specific state of national defence readiness. The President of the Republic of Poland may order general or partial mobilisation, and a use of the Armed Forces to defend the Republic of Poland. He also decides on sending troops abroad. The Head of State also confers military ranks and a rank of a general. In the event of threats indicated in the Basic Law, he may also introduce, at the request of the Council of Ministers, a martial law or a state of an emergency[16].

In addition, the President of the Republic of Poland appoints judges of: the Supreme Court, common courts, administrative courts, and military courts. Under the current Constitution, the President may apply an act of a clemency to any convicted person, except to persons who have been convicted by the Tribunal of State.

1.3.3. The Council of Ministers and government administration

A careful reading of the Constitution leaves no doubt that it is the Council of Ministers that is the main centre of executive power in Poland today, within the two-element executive system. After all, it is the Council that the system's law-maker categorically appoints in Art. 146(1) of the Constitution "to conduct the internal and foreign policy of the Republic of Poland", and to "direct the entire government administration". The Council "shall [also] take decisions in all matters of State policy not reserved for other organs of State or local government" – Article 146 paragraph 2. This provision contains a clause, inapplicable to any other organ of the State, formulating a presumption of competence. Thus, the Council of Ministers is competent in all matters of State policy not reserved for other organs of State or local government.

The Council of Ministers consists of the Prime Minister and the ministers. A Deputy- Prime Minister of the Council of Ministers and chairpersons of committees specified in the acts of law may be appointed to the Council of Ministers. The President and vice-presidents of the

[16] Z. Witkowski, M. Szewczyk, M. Serowaniec, *Model cywilnej i demokratycznej kontroli egzekutywy nad siłami zbrojnymi Rzeczypospolitej Polskiej*, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika w Toruniu, Toruń 2018, pp. 52–78.

Council of Ministers may also perform a function of a minister/ministers or a Chairman/Chairmans of a committee (Article 147 of the Constitution of the Republic of Poland).

The nature and place of the Council of Ministers in the state apparatus' structure is determined mainly by its competencies. They are currently laid down in Article 146 of the Constitution. This is not an exhaustive list. A whole range of essential competencies of the government has been enumerated in other provisions of the Constitution and other ordinary laws.

The Council of Ministers performs several functions and tasks, among which are:

1) the law-making function and its control,
2) an executive function,
3) the function of governance, and
4) a managerial and coordinating function[17].

Law-making and control functions stem clearly from Article 146(4)(2) of the Constitution. Within the scope and on the principles set out in the Constitution and in other laws, the Council of Ministers is competent to issue regulations. These are the so-called executive regulations, as they may be issued "based on and in order to execute laws".

In discussing the law-making and control functions, one cannot ignore significant power of the Council to initiate laws. This is a crucial prerogative of the government as it can be seen in the context of its functions regarding a governance of the State, which will be discussed further on, i.e. in the context of orienting and stimulating the legislative activity of the Parliament, following its best knowledge of the State's law-making needs. In some matters, namely those stipulated in Article 221 of the Constitution (the Budget Act, the Act on Budgetary Provision, Amendments to the Budget Act, the Act on Incurring Public Debt and the Act on Granting Financial Guarantees by the State), the Council has even a monopoly of the law-making initiative. Finally, the Council of Ministers (and only the Council of Ministers) may decide to

[17] P. Sarnecki, *Zakres i funkcje Rady Ministrów*, [in:] *Rada Ministrów. Organisation and functioning,* (eds.) A. Bałaban, Zakamycze, Kraków 2002, p. 193–194.

consider its draft law as an urgent one. Consequently, that law may be referred to the Sejm using the so-called fast legislative track.

The executive function of the Council is indicated in Article 146(4)(1) of the Constitution. In the light of this provisions, the Council of Ministers ensures the execution of laws, acting within the scope and on the principles set out in the Constitution and statutes. Closely related to the executive function of the Council of Ministers discussed here is the government's obligation, arising from Article 226(1) of the Constitution, to annually present a report to the Sejm on the execution of the Budget Act. It is a mere consequence of the fact that the Council of Ministers directs an execution of a budget and adopts a closure of State accounts (Article 146(4)(6)).

The functions of governance can be derived from the arrangements contained in Article 146(1) and (4) points 7, 8, 9 and 11 of the Constitution. It follows from these provisions of the Constitution that the Council of Ministers exercises a general leadership in external relations and national defence areas, as well as it ensures the external security of the State and its internal security and public order. This means that the Council of Ministers sets the directional guidelines for State policy in the most vital and sensitive areas of the State's existence. In this respect, the above-described authority is free to take the necessary actions with a long-term time horizon.

Finally, we distinguish the managerial and coordinative function of the Council of Ministers. This role provides an ability to direct government administration bodies, coordinate their activities, and control them to ensure efficiency and coherency, and (thus) – the effectiveness of its actions. In line with article 146(3) of the Constitution, the Council of Ministers manages and controls government administration. However, the above-described authority also bears responsibility before the Sejm for the actions of this administration, which is seen as a whole (Article 146(4)(3)).

There are no provisions in the Constitution of the Republic of Poland indicating an operation or a mere existence of central government administration bodies. Particularity of these bodies can be derived from the fact that these authorities' scope of activity

covers the entire territory of the country. At the systemic level, these bodies are not part of the Council of Ministers. Nevertheless, they are subordinate to the Sejm, the Prime Minister or the relevant ministers who manage individual branches of government administration, following the provisions of the Act of 4 September 1997 on branches of government administration. The establishment of a central government administration body requires to indicate the provision creating the body in a legal act of a statutory rank. To exemplify central government administration bodies, in particular, the following bodies may be indicated: The Chief Labour Inspector, the President of the Office for Competition and Consumer Protection, the National Defence Committee, the President of the State Atomic Energy Agency, or the President of the Central Office of Measures.

1.4. Courts and tribunals

1.4.1. Introduction

According to Article 173 of the Polish Constitution, "courts and tribunals are separate and independent from other authorities". However, it follows from the Polish Basic Law that both the Constitutional Tribunal and the Tribunal of State are not organs of the judiciary. Hence, judiciary function is performed only by courts. The most important differences between tribunals and courts can be found by analysing: a particular procedure for appointing judges of the Constitutional Tribunal and members of the Tribunal of State, a lack of a judicial supervision by the Supreme Court, as well as a lack of links between tribunals and the National Council of the Judiciary[18]. In addition to the differences between courts and tribunals, however, some similarities have allowed the Constitutional Tribunal and the Tribunal of State to be classified as organs of judicial power in Poland (Article 10(2) of the Constitution). Firstly, tribunals, like courts, are independent from the legislature and the executive bodies. Secondly,

[18] Cf. B. Banaszak, *Prawo konstytucyjne*, C.H. Beck, Warszawa 2004, p. 113.

tribunal judges, like court judges, are independent. Thirdly, the rules of procedure before tribunals are modelled on court procedure.

1.4.2. Courts

The Constitution, in Article 175, establishes a closed circle of courts administering justice in Poland, consisting of the Supreme Court, ordinary courts, administrative courts, and military courts[19]. The Constitution thus lists two types of special courts – administrative and military – alongside the common courts and the Supreme Court. These courts are situated outside the system of common courts, and their jurisdiction covers certain clearly defined groups of cases. The same constitutional principles apply to their functioning as apply to common courts[20].

According to Article 183(1) of the Constitution, the Supreme Court supervises activities of common and military courts in the area of adjudication (the so-called judicial supervision). In exercising its judicial supervision, the Supreme Court recognises appeals against final second instance court decisions (cassation appeals against decisions of common courts and cassations, as well as appeals against decisions of military courts). Unlike common courts, the Supreme Court does not, therefore, hear cases. As a part of its supervision over the activities of common and military courts, the Supreme Court also adopts resolutions resolving discrepancies regarding an interpretation of the law revealed in the case law of common courts, military courts or the Supreme Court.

Under Article 177 of the Constitution, ordinary courts exercise the administration of justice in all matters, except matters which are statutorily reserved for the jurisdiction of other courts. In this provision, the legislature has determined that the common courts bear the primary burden of administering justice on behalf of the Republic.

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[19] M. Serowaniec, *Theoretical and practical aspects of the principle of independence of the judiciary in Poland*, "Kobe University Law Review" 2019, No. 52, pp. 135–140.

[20] M. Serowaniec, *Sądownictwo*, [in:] *Prawo konstytucyjne*, (eds.) Z. Witkowski i A. Bień-Kacała, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2015, p. 464–465.

Hence, ordinary court's jurisdiction is somewhat presumed. This means that in the absence of a clear statutory reservation, common courts are competent to hear a case. The structure of common courts consists of district courts, circuit courts, and courts of appeal. Common courts are established, closed, and their seats are fixed by the Minister of Justice who acts through regulation, after consultation with the National Council of the Judiciary[21].

In turn, the Supreme Administrative Court and other administrative courts exercise control over public administration activities to the extent defined by a statute. This control also includes adjudication regarding compliance of resolutions of local government bodies and normative acts of local government administration bodies with the statutes (Art. 184 of the Constitution of the Republic of Poland). In the light of the Act of 30 August 2002 of Law on proceedings before administrative courts, this control includes adjudication on complaints against:

1) administrative decisions,
2) decisions given in administrative proceedings which may be contested or which terminate the proceedings and decisions on the merits, as well as decisions given in enforcement and security proceedings, which may be contested,
3) other acts or activities in the field of public administration concerning rights or obligations arising from the provisions of law, other than those specified above,
4) written interpretations of tax law provisions issued in individual cases,
5) failures to act or protract conduct of proceedings in the cases referred to above,
6) local law acts of local self-government bodies and territorial government administration bodies, as well as other acts of these bodies undertaken in public administration matters,

[21] A. Szmyt, *Ocena zgodności z Konstytucją RP projektu nowelizacji ustawy – Prawo o ustroju sądów powszechnych,* [in:] *Współczesne problemy sądownictwa w Republice Czeskiej i Rzeczypospolitej Polskiej,* (eds.) Z. Witkowski, J. Jirásek, K. Skotnicki, M. Serowaniec, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika w Toruniu, Toruń 2017, pp. 259–262.

7) acts of supervision over the activities of local self-government bodies (Article 3 paragraph 2 of the Act).

The structure of administrative courts consists of the Supreme Administrative Court with its seat in Warsaw, and voivodship administrative courts created for one or more voivodships. The President of the Republic of Poland, at the request of the President of the Supreme Administrative Court, by way of regulation, creates and abolishes voivodship administrative courts and determines their seats and area of jurisdiction. Cases belonging to the jurisdiction of administrative courts are recognised in the first instance by voivodship administrative courts. The Supreme Administrative Court, in turn, exercises supervision over the activities of voivodship administrative courts in the area of voivodship administrative courts' adjudication. In particular, the Supreme Administrative Court adjudicates on appeals against decisions of lower courts and it adopts resolutions clarifying legal issues, as well as it adjudicates on other matters belonging to its jurisdiction under other acts.

Martial courts shall exercise their powers within the Armed Forces of the Republic of Poland to administer justice in criminal cases. They shall adjudicate in other cases if they have been transferred to their jurisdiction by separate acts. The structure of military courts consists of military circuit courts and military garrison courts[22].

1.4.3. Constitutional Court

While the judiciary organs are "courts of fact", the Constitutional Tribunal is often referred to as a "court of law" or a "court over law". These terms are closely related to the basic function of the Constitutional Tribunal, namely the control of the constitutionality of normative acts. Following Article 188 (1–3) of the Constitution, the Constitutional Tribunal adjudicates, *inter alia*, in cases concerning: a compliance of laws and international agreements with the Constitution; a compliance of laws with ratified international agreements, a ratification which

[22] M. Serowaniec, *Sądownictwo.., op. cit.,* pp. 456–468.

required prior consent expressed in a statute; a compliance of legal regulations issued by central state bodies with the Constitution, ratified international agreements and statutes.

Pursuant to Article 194(1) of the Constitution of the Republic of Poland, the Constitutional Tribunal is composed of 15 judges. They are chosen individually by the Sejm for nine years term from among persons distinguished by their knowledge of the law. Candidates for the post of the Constitutional Tribunal judge may be put forward by the Presidium of the Sejm, or by a group of at least 50 Members of the Parliament.

In the light of the provisions of the binding Constitution, the scope of competencies of the Constitutional Tribunal includes: widely understood control of constitutionality (both *ex ante* and *ex post* control, including resolving legal questions of courts and constitutional complaints), adjudication of an unconstitutionality of aims and activities of political parties, adjudication of competence disputes between central, constitutional organs of the State, as well as an adjudication of temporary substitution of the President of the Republic by the Marshal of the Sejm (when the President himself cannot delegate his duties to the Marshal). It is worth noting that the Constitutional Tribunal investigates individual proceedings exclusively at the request of the entitled entities.

The judges of the Constitutional Court are independent. However, it is worth to note a specific wording of the Constitution in this regard. While judges of courts (common, administrative and military courts) and judges of the Tribunal of State are subject only to the Constitution and statutes (hence, they are independent as specified under Article 178(1), judges of the Constitutional Tribunal are only subject to the Constitution (Article 195 of the Constitution). Such an understanding of the independence of the judges of the Constitutional Tribunal is a logical consequence of the Tribunal's competence to review the constitutionality of normative acts[23].

[23] A. Kustra-Rogatka, *Trybunał Konstytucyjny*, [in:] *Polskie prawo konstytucyjne w obliczu wyzwań współczesności*, (eds.) Z. Witkowski, D. Lis-Staranowicz, M. Serowa-

1.4.4. The Tribunal of State

Under Article 174 of the Polish Constitution, The Tribunal of State passes sentences on behalf of the Republic of Poland. However, the Tribunal of State is not a court and it does not exercise the administration of justice. It is a body of a special kind. Firstly, it is an organ of the judicial power competent to enforce the constitutional liability of persons holding the highest State offices. On the other hand, the Tribunal of State has a competence of a criminal court, since in the light of the provisions of the 1997 Constitution it is also competent to enforce criminal liability for offences committed by the Head of State (Article 145(1)), as well as members of the Council of Ministers (Article 156(1)). Thus, by ruling on criminal responsibility, the court becomes an organ of the judiciary.

The Tribunal of State's decisions are fully independent, autonomous, and they are binding all state bodies. The Tribunal does not exercise its functions *ex officio,* but at the request of an authorised body, the Sejm.

The Tribunal of State is a collegiate body consisting of 19 members: the Chairman who is, *ex officio*, the First President of the Supreme Court, as well as two deputy chairmens, and 16 members who are elected by the Sejm from the deputies and senators for a duration of the Sejm's term of office. Candidates for the Tribunal of State's judges may be put forward by the Speaker of the Sejm, and groups of at least 35 deputies. Members of the Tribunal are elected jointly unless the Sejm decides otherwise. The Sejm's resolution is passed by an absolute majority of votes in the presence of at least half of the statutory number of deputies (Articles 26(2) and 31(1) of the Rules of the Sejm). It is worth noting here that the deputy chairmen and at least half of the members of the Tribunal of State should have the qualifications required to hold the position of a judge (Article 199

niec, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2021, pp. 403–408.

of the Constitution). The Constitution does not even assume that these persons should be distinguished by their legal knowledge concerning the remaining members.

1.5. State control and law enforcement authorities

1.5.1. Introduction

Poland's bodies of state control and law protection do not exercise legislative, executive or judicial authority. Their task is primary to ensure that the bodies which are exercising power, respect the rule of law, as this rule guarantees a proper functioning of a democratic state and protection of individual rights. The Basic Law enumerates the Supreme Audit Office, the Ombudsman, the Children's Rights Ombudsman, and the National Broadcasting Council as state control and law protection bodies. Due to the different nature of these bodies, the organs of state control and law protection are described in a separate chapter of the Constitution of the Republic of Poland.

1.5.2. Supreme Audit Office (NIK)

The Constitution of the Republic of Poland of 2 April 1997 establishes the Supreme Audit Office as the supreme body of state control. The Constitution characterises the relationship between the Supreme Audit Office and the Sejm, lists main competencies of the Supreme Audit Office, enumerates the audit reports submitted to the Sejm, specifies the procedure for appointing the President of the Supreme Audit Office, his immunity and incompatibility, as well as establishes the principle of the collegial action of the Chamber.

The legal and constitutional status of the Supreme Audit Office is based on Article 202 of the Polish Constitution. According to this provision, the Supreme Audit Office is the chief organ of state control, is subordinate to the Sejm and operates on a collegial basis (Art. 202(1–3)). The literature points out that the "supreme" nature of the Supreme Audit Office means that this body constitutes a separate division within

the system of state bodies, and the authority decides independently and finally, without the possibility of annulment or change of its decisions by another state body[24]. It should also be noted that an audit carried out by the Supreme Audit Office is conducted with a view to ensure proper functioning of the entire system of state bodies, while the audit powers of the Supreme Audit Office are of a general nature and cover the majority of state activities in all areas. The Supreme Audit Office has special powers concerning control and inspection bodies of the government administration and local self-government[25].

The principle of NIK's subordination to the Sejm which is stipulated in Article 202(2) should be understood in multiple senses. The Sejm exercises a limited personal authority over NIK as regards the appointment (and dismissal) procedure of the Office President, Vice-Presidents, and Director-General. The Supreme Audit Office also submits annually to the Sejm: an analysis of an execution of a state budget and the assumptions of monetary policy; an opinion on a discharge to the Council of Ministers; information on the results of inspections, as well as conclusions and speeches specified in the Constitution (Art. 204(1) of the Constitution) [26]. The obligation to annually submit to the Sejm information on the results of inspections must be linked with the obligation to annually submit a report on the Sejm's activities, as indicated in Article 204(2) of the Constitution. This report is then subject to review at a session of the Sejm.

According to Article 203 of the Constitution, the Polish law-maker has also specified a scope of subject and object-related control activities of NIK. In a light of Article 203(1), the Supreme Audit Office exercises a mandatory control over the activities of government administration

[24] Cf. M. Serowaniec, *Konstytucyjne gwarancje niezależności najwyższych organów kontroli w państwach członkowskich UE*, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2018, pp. 155–158.

[25] Cf. A. Sylwestrzak, *Najwyższa Izba Kontroli. Studium prawnoustrojowe,* Wydawnictwo Sejmowe, Warszawa 2006, pp. 170–171.

[26] Cf. M. Serowaniec, *Najwyższa Izba Kontroli,* [in:] *Polskie prawo konstytucyjne w obliczu wyzwań współczesności*, (eds.) Z. Witkowski, D. Lis-Staranowicz, M. Serowaniec, Towarzystwo Naukowe Organizacji i Kierownictwo „Dom Organizatora", Toruń 2021, pp. 509–511.

bodies, the National Bank of Poland, state legal persons, and other State organisational units. This control is carried out taking into account the following criteria: legality, economy, purposefulness, and reliability. The criterion of legality covers the control of a compliance of the controlled entity's activities with the law. The criterion of the economy is related to the striving for the outlays incurred during the activities of the controlled entity to bring the best results (the so-called maximisation of the effect), and for the intended purpose to be achieved at the lowest costs, however, without harming the quality of the effects of these activities (the so-called minimisation of the outlays). Reliability means checking whether the activities of the controlled entity are in compliance with the requirements of technical developments and knowledge, and with the principles of a good faith. In turn, examining the criterion of purposefulness means checking whether the activities of the controlled entity lead to the intended purpose (objectiveness of purposefulness), but also whether the manner of achieving the intended purpose has been accurately selected (methodical purposefulness).

A personal scope of an *ad hoc* control is regulated in Article 203(2–3). Such a control may be exercised from the point of view of three criteria: legality, economy, and reliability regarding local government bodies, municipal legal persons, and other municipal organisational units (Article 203 par. 2). Following the provisions of Article 203 par. 3 of the Constitution, the Supreme Audit Office may also audit other entities and business entities from the point of view of two criteria: legality and economy to the extent to which these entities use state or municipal property or funds, or fulfil their financial obligations to the State.

1.5.3. Ombudsman

The systemic position of the Ombudsman is defined by Article 210 of the Constitution of the Republic of Poland, from which it follows that: "The Ombudsman shall, in his activities, be independent, autonomous from other state bodies and shall be answerable only to the Sejm on the principles laid down by law". Both the Constitution of the

Republic of Poland and the Act of 15 July 1987 on the[27] Ombudsman set out in general terms the requirements for candidates for the office of Ombudsman. Article 209(3) of the Polish Constitution stipulates that an Ombudsman cannot belong to a political party, a trade union or engage in public activities which are incompatible with the dignity of his office. These prohibitions constitute a formal guarantee of the impartiality of the person performing the function of the Ombudsman. In the light of Article 2 of the Act, the Ombudsman may be distinguished by his legal knowledge'. Undoubtedly, this term is not identical to a possession of a legal education.

The Sejm appoints the Ombudsman with the consent of the Senate at the request of the Speaker of the Sejm or a group of 35 Members. The resolution of the Sejm on the appointment of the Ombudsman (an absolute majority of votes makes the appointment) is immediately sent by the Speaker of the Sejm to the Speaker of the Senate. Then, within one month of the date on which the resolution of the Sejm is sent to the Senate, the Senate adopts a resolution on the consent to the appointment of the Ombudsman. Failure by the Senate to adopt a resolution within one month shall constitute the consent. If, however, the Senate refuses to give its consent to the appointment of the Ombudsman, the Sejm appoints another person to the post of Ombudsman, and the procedure for appointing the Ombudsman begins anew.

Action by the Ombudsman shall be taken:

1) at the request of citizens or their organisations,
2) at the request of self-governing bodies,
3) at the request of the Ombudsman for Children,
4) at the request of the Ombudsman for Small and Medium-sized Enterprises,
5) on its initiative.

The Ombudsman, after examining any request addressed to him, may:

[27] Consolidated text: Journal of Laws of 2020, item 627 as amended.

1) take up the matter,
2) to merely indicate to the applicant the remedies available to him,
3) refer the matter to the competent authority,
4) not take up the case, informing the applicant and the person concerned accordingly.

When conducting an independent investigation, the Ombudsman shall have a right to request explanations, to present the files of any case dealt with by the chief and central bodies of state administration, bodies of government administration, bodies of cooperative, social, professional and socio-professional organisations and bodies of organisational entities having legal personality, as well as bodies of local self-government and self-government organisational units[28].

In the light of Article 191(1)(1) of the Constitution of the Republic of Poland, the Ombudsman may address requests to the Constitutional Tribunal in cases on:

1) compatibility of laws and international agreements with the Constitution of the Republic of Poland,
2) compatibility of laws with ratified international agreements when ratification required prior consent by law,
3) compliance with legal regulations issued by central state authorities with the Constitution, ratified international agreements and acts,
4) compatibility with the Constitution of the aims or activities of political parties.

According to Article 16(2)(3) of the Act, the Ombudsman may also register and participate in proceedings before the Constitutional Tribunal in constitutional complaints cases[29].

[28] D. Ossowska-Salamonowicz, *Rzecznik Praw Obywatelskich,* [in:] *Polskie prawo konstytucyjne w obliczu wyzwań współczesności,* (eds.) Z. Witkowski, D. Lis-Staranowicz, M. Serowaniec, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2021, pp. 521–524.

[29] J. Święca*, Ustawa o Rzeczniku Praw Obywatelskich. Komentarz. Komentarz do art. 16*, C.H. Beck, Warszawa 2010, Legalis.

1.5.4. Ombudsman for Children Rights

The Children's Ombudsman can be qualified as a law-protecting body. However, the provision establishing the Children's Rights Ombudsman is found not in Chapter IX of the Constitution (concerning bodies of state control and protection of the law), but in the section devoted to freedoms and rights of an individual. The competence and method of appointment of the Children's Rights Ombudsman are set out in the Act of 6 January 2000 on the Children's Rights Ombudsman[30].

In the light of Article 7(1) of the above-mentioned Act, the PAPD is a body which is independent from other state bodies, and which is accountable only to the Sejm. The Ombudsman is appointed by the Sejm, with the consent of the Senate, at the request of the Speaker of the Sejm, the Speaker of the Senate, a group of at least 35 deputies or at least 15 senators. The Sejm appoints the Ombudsman by means of a resolution which the Speaker of the Sejm passes to the Speaker of the Senate. The term of office of the Ombudsman is 5 years, and it begins when he is taking an oath before the Sejm. The Ombudsman is obliged to present annually to the Sejm and the Senate information on his activities and observations on the state of observance of children's rights.

The primary task of the PAPD is to "uphold the rights of the child as set out in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other legal provisions while respecting the responsibilities, rights and duties of parents". (Article 1(2) of the Act). The Ombudsman should take "measures to ensure the full and harmonious development of the child, with respect for his/ /her dignity and subjectivity" (Article 3(1) of the Act). As a child's rights protection body, he should take measures to ensure a right to life and health protection, a right to be brought up in a family, a right to decent social conditions, a right to education, as well as a protection of the child from violence, cruelty, exploitation, demoralisation, neglect

[30] Journal of Laws of 2000, No. 6, item 96 as amended.

and other ill-treatment (Article 3(1–3) of the Act). Within the scope of his competencies, the Children's Rights Ombudsman may, *inter alia*, demand from public authorities, organisations or institutions explanations, information or an access to files and documents, including those containing personal data. He may also take part in proceedings before the Constitutional Tribunal in cases initiated by a motion of the Children's Rights Ombudsman or in cases of a constitutional complaint, concerning the rights of the child, and he may participate in these proceedings. Moreover, he may apply to the Supreme Court with motions on resolving divergences in an interpretation of a law within the scope of legal regulations concerning the rights of the child, or he may file a cassation appeal or a cassation complaint against a final decision.

1.5.5. National Broadcasting Council

In the light of Article 213(1) of the Constitution of the Republic of Poland, the National Broadcasting Council shall guard a freedom of speech, a right to information and a public interest in broadcasting. The Council is also treated as an important institutional guarantee of freedom of speech (Article 54 of the Constitution of the Republic of Poland), freedom of the means of social communication (Article 14 of the Constitution of the Republic of Poland) and the right to information (Article 61 of the Constitution of the Republic of Poland). The Broadcasting Act of 29 December 1992[31] defines the KRRiT as a state authority which is competent in broadcasting matters. It is established to safeguard freedom of expression in radio and television, the independence of broadcasters and audiences' interests, as well to ensure that radio and television broadcasting is open and pluralistic.

The KRRiT is a collegiate body, which is not specified in the Constitution of the Republic of Poland. Article 214(1) of the Constitution of the Republic of Poland only indicates that the appointment to the Council is done jointly by the Sejm, the Senate,

[31] Consolidated text: Journal of Laws of 2020, item 805 as amended.

and the President of the Republic of Poland, leaving it to the law-maker to specify the details of the procedure. Currently, the National Broadcasting Council is composed of five members appointed: by the Sejm (2), by the Senate (1) and by the President (2), from among persons distinguished by their knowledge and experience in the field of social media (Article 7 of the Act).

The KRRiT, in carrying out its duty to uphold freedom of expression, a right to information and the public interest in broadcasting, performs, *inter alia*, the following functions:

1) protection of freedom of expression and protection of public interest[32]. The most important task of the KRRiT is to ensure the fulfilment by the public media of the so-called public mission, which is a part of the notion of public interest in radio and television[33]. The basic condition for the fulfilment of the public mission is the independence of the public media from the authorities (Article 21(1) of the Act),
2) law-making (regulatory) – under Article 213(2) of the Constitution of the Republic of Poland – the KRRiT issues regulations, and in individual matters it adopts resolutions. The Council may specify by ordinances: how broadcasters ensure access to information enabling identification of the programme and its broadcaster; a minimum share in the television programme of programmes in Polish, the language of a national or ethnic minority or in a regional language or the data that should be contained in the application for concession, as well as the detailed procedure in matters of granting and withdrawing concessions and the amount of the fee for granting concessions,
3) concession and control – distribution of radio and television programmes, except public radio and television programmes, requires obtaining a concession. The body competent to decide matters concerning the concession is the Chairman of the KRRiT.

[32] D. Ossowska-Salamonowicz, *Komentarz do art. 18*, [in:] *Ustawa o Radiofonii i telewizji. Komentarz*, (eds.) A. Niewęgłowski, Warszawa 2021, LEX.

[33] Judgment of the TK of 9.09.2004, K 2/03, LEX No 122368.

After consultation with the President of the Office of Electronic Communications, the Chairman of the Council announces in the Monitor Polski information about the possibility of obtaining a licence and specifies the conditions for obtaining it. The Chairman of the Council may decide on the withdrawal of the licence, if the broadcaster improperly fulfils the conditions of the licence (Article 33–40b of the Act),

4) repressive – which consists of a possibility for the Chairman of the Council to impose administrative fines on a broadcaster, e.g. up to 50% of the annual fee for the right to use the frequency designated for broadcasting a programme, and, if the broadcaster does not pay the fee for the right to use the frequency, a fine of up to 10% of the broadcaster's revenue earned in the previous fiscal year for infringement of certain provisions of the Broadcasting Act 34.

1.6. Other supervisory and law enforcement bodies

In addition, the group of entities classified as control and law enforcement bodies also includes the National Election Office, General Inspector for Personal Data Protection, Institute of National Remembrance, Internal Security Agency and Intelligence Agency, Border Guard, Military Police, Prosecutor's Office and Police. The principles of operation and organisation of these entities are specified in separate acts.

1.7. Summary

In the light of the findings presented in the above, it should be emphasised that public authority bodies which constitute a part of the public finance sector, are entities with a diverse legal form, different

[34] J. Sadomski, *Komentarz do art. 213,* [in:] *Konstytucja RP. Część II. Komentarz do art. 87-243*, (eds.) M. Safjan, L. Bosek, Warszawa 2016, Legalis.

scope of activities, and applying, to a different extent, the financial management principles set out in the Public Finance Act. Therefore, the basic criterion determining whether this group of entities belongs to the public finance sector will be their specific systemic status, indicating that they belong to the system of state bodies.

Chapter 2. **LOCAL SELF-GOVERNMENT UNITS AND THEIR ASSOCIATIONS, METROPOLITAN ASSOCIATIONS**

2.1. Legal basis

The Constitution of the Republic of Poland of 2 April 1997 devotes separate provisions to local self-government. Chapter VII (which is entitled "Territorial Self-Government", Articles 163–172) is entirely dedicated to a territorial self-government. Noteworthy are also Articles 15–16 of the Constitution of the Republic of Poland which refer to local government seen in a system of public authority, and Article 94 of the Constitution of the Republic of Poland, granting local government authorities, on the basis and within the limits of the authorisations contained in the Act, the right to enact acts of local law which apply in the territory where these authorities operate.

The Constitution of the Republic of Poland introduces a principle according to which the territorial system of the Republic of Poland ensures the decentralisation of public authority (Article 15(1) of the Constitution). The essence of decentralisation is in transferring public administration tasks to other units (including local government units), which remain in formal independence from the State[35]. It is argued in the literature that "the independence of local authorities is guaranteed by the conferral of appropriate competencies, the possession of adequate financial resources enabling them to pursue their policies"[36].

[35] On the independence of local self-government see more: J. Dobkowski, *Pojęcia i konstrukcje prawa samorządu terytorialnego ograniczające wszechwładzę państwa*, „Samorząd Terytorialny" 2020, No. 7–8, pp. 36–43.

[36] P. Tuleja, *Komentarz do art.15,* [in:] P. Czarny, M. Florczak-Wątor, B. Naleziński, P. Radziewicz, P. Tuleja, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2019, LEX.

The principle of decentralisation is linked to the territorial division of the State, namely to the basic territorial division of the State, taking into account social, economic or cultural links, and ensuring the ability of territorial units to perform public tasks is determined by law.

In the literature, it is recognised that "the local government is a separate association of local society in the structure of the state, created by law, established to carry out public administration independently, equipped with the material means to carry out the tasks imposed on it"[37].

The essence of the territorial self-government is defined in terms of the system by Article 16(1) of the Constitution of the Republic of Poland, according to which all the inhabitants of the units of the fundamental territorial division constitute, by operation of law, a self-governing community. The membership of a territorial self-government unit thus arises *ex lege* and is obligatory. It is not possible to voluntarily resign from the membership of the local government unit. The membership of the local or regional authority is linked to a residence. A term "place of residence" has not been defined in the provisions of the Constitution of the Republic of Poland, so in order to determine the meaning of the above term, it is necessary to apply the systemic interpretation, including the provisions of the Election Code[38] or the Civil Code[39].

The Electoral Code defines the concept of a permanent residence as residing in a specific location at a designated address with the intention of a permanent residence. The judicature assumes that "when assessing permanent residence as an intention, it should be borne in mind that the mental component of *animus* cannot be assessed solely based on an inner conviction, a positive emotional attitude to a given locality or, finally, a verbal declaration or assurances by the person

[37] E. Ochendowski, *Prawo administracyjne. Część ogólna*, Towarzystwo Naukowe Organizacji i Kierownictwo „Dom Organizatora", Toruń 2018, p. 353.

[38] Act of 5 January 2011. – Election Code, consolidated text: Journal of Laws of 2020, item 1319.

[39] Act of 23 April 1964. – Civil Code, consolidated text: Journal of Laws of 2020, item 1740 as amended.

concerned. It must be expressed in the form of concrete verifiable behaviour that will confirm it. In other words, the declaration must still be accompanied by everyday factual and legal actions that will be its expression"[40]. The provision of Article 28 of the Civil Code introduces the principle that one can have only one domicile. The concept of the domicile consists (according to Article 25 of the Civil Code) of two elements. The first one is a permanent residence, understood as a life activity (*corpus),* and the second element – a will to stay in a specific place (*animus)*. It is assumed that "both these elements must be present together. However, an interruption in residence caused by special circumstances, such as serving a prison sentence, being called up for military service or taking up studies in another place, does not change residence in the legal sense. Stay in a penitentiary, a military unit, or a place where an individual takes up studies is temporary and does not amount to a residence in these places. The place of residence of a person in the discussed situations is where the person stays during passes or days off from study, to which he intends to return after completing his sentence, service or studies"[41].

It should be noted that a mere the intention to permanently reside in a given place, what is manifested by acquiring ownership of or renting of a flat or house, is insufficient". Such an intention should be connected with staying in a given place. Such a stay should have the features of permanence, which are intended to transfer the centre of one's life interests to that locality. The place of a residence is not determined solely by an administrative criteria, such as, for example, registering at a given address (this is only a registration duty), these criteria may be of an additiona character, but the place of a residence is determined by the fact of staying in a given place and making this place the centre of one's life.

Article 16(1) of the Constitution of the Republic of Poland, which enables the self-government to participate in the exercise of public

[40] Judgment of the WSA in Gliwice of 3.06.2019, III SA/Gl 493/19, CBOSA.

[41] Judgment of the Supreme Administrative Court of 5.12.2019, I OSK 956/18, LEX nr 2785835.

authority, provides an important guarantee of the self-government's independence. Self-government performs a significant part of public tasks granted by a statute in its name and responsibility.

Modern territorial self-government was initiated by creating municipalities forming local government units. This step was done in 1990 based on the Act on Local Government[42]. The Introduction of the territorial self-government units in the organisational structure of the State was connected with a political transformation of the 90s of the XX century, which took place in Poland.

Poland's current basic territorial division has been in place since 1 January 1999, and was introduced by an act on the Introduction of the basic three-level territorial division of the State[43]. Since then, Poland has a three-level territorial division of the country, which consists of municipalities (2477 including 302 urban municipalities, 652 urban-rural municipalities and 1523 rural municipalities), districts[44] (314 districts and 65 cities with district rights), and voivodships[45] (16)[46].

2.2. Legal position of a local self-government

The status of local government units can be found in the Constitution. In contrast, detailed issues related to the functioning of individual local government units are contained in acts of a statutory rank, and in the statutes of individual local government units, which should be classified as acts of local law, i.e. acts of universally binding law.

[42] Act of 8 March 1990 on municipal self-government (consolidated text: Journal of Laws of 2020, item 713 as amended).

[43] Act of 24 July 1998 on the introduction of the basic three-tier territorial division of the state (consolidated text: Journal of Laws of 1998, No. 96, item 603 as amended).

[44] Act of 5 June 1998 on district self-government (consolidated text: Journal of Laws of 2020, item 920).

[45] Act of 5 June 1998 on province self-government (consolidated text: Journal of Laws of 2020, item 1668 as amended).

[46] Data as of 1 January 2021 according to CSO information.

The Constitution of the Republic of Poland provides for an obligatory existence of local government units only at the level of the municipality, which is the basic unit of a local government (Article 164(1) of the Constitution). Other regional or local and regional self-government units shall be specified by a statute (Article 164(2) of the Constitution).

Local government units belong to the so-called category of public law persons. They perform tasks under public (administrative) law, but they are also involved in civil law relationships. In the public law sphere, local government bodies are entitled to issue administrative decisions according to the Code of Administrative Procedure, and tax decisions following the Tax Ordinance[47]. A body to which one can appeal against the decision issued in the first instance by the local government unit body is a local government appeals board[48], unless the law provides the otherwise.

In a sphere of civil rights, local government units have been endowed with legal personality. They are entitled to an ownership and other property rights (Article 165(1) of the Constitution of the Republic of Poland). Providing local government units with a communal property is one of the guarantees of their independence and relative independence concerning from the State[49]. The guarantee of the independence of local government units is the judicial protection of this independence. In this respect, the Constitutional Tribunal stated that "The protection of this value may not exclude or abolish completely or in a significant part the right of the law-maker to shape relations in the State. This independence consists, *inter alia*, in the operation of the self-government within the framework of laws, which should also be understood to mean that the purpose of laws limiting the independence of self-governments – including, in particular, municipalities as basic

[47] Act of 29 August 1997. – Tax Ordinance (consolidated text: Journal of Laws of 2020, item 1325, as amended).

[48] Act of 12 October 1994 on self-government appeal colleges (consolidated text: Journal of Laws of 2018, item 570).

[49] More: K. Balicki, *Mienie komunalne jako jeden z konstytucyjnych gwarantów samodzielności samorządu gminnego*, „Finanse Komunalne" 2017, No. 7–8, pp. 81–88.

units"[50]. The extend of a judicial protection covers both common and administrative courts.

The Constitution of the Republic of Poland has introduced a principle of a presumption of competence in the performance of public tasks for local government, if it is not reserved by the Constitution or by statute for the bodies of other public authorities[51].

It should be noted that local government units perform their tasks through their constituting and executive bodies (Article 169(1) of the Constitution). Issues concerning the bodies will be discussed in the below, in a part of a text relating to the system of particular local government units.

The basic task of local government units is to perform public tasks[52]. Two categories of public tasks should be distinguished. These are own tasks and commissioned tasks. Own tasks serve to satisfy the needs of the local government community (Article 166(1) of the Constitution). In contrast, commissioned tasks may be assigned to a local government unit by a way of law, if they result from the justified needs of the State. When delegating tasks to a local government unit, the State should order their proper financing, adequate to the scope of the delegated task[53].

2.3. Revenue of local government units

The Constitution of the Republic of Poland has ensured that local government units have an appropriate share in the State's public revenues in accordance with the tasks assigned to them, i.e. the Constitution has provided for a principle of adequacy (Article 167(1)

[50] Judgment of the TK of 8.04.2009, K 37/06, OTK-A 2009, No 4, item 47.

[51] More: M. Masternak-Kubiak, *Komentarz do art. 163,* [in:] *Konstytucja Rzeczpospolitej Polskiej. Komentarz*, (eds.) M. Haczkowska, Warszawa 2014, LEX.

[52] M. Mączyński, *Pojęcie zadania publicznego a zadania samorządu terytorialnego*, „Finanse Komunalne" 2019, No. 1–2, pp. 105–112.

[53] A. Szymczak, *Przekazywanie zadań zleconych jednostkom samorządu terytorialnego – gwarancje konstytucyjne*, „Finanse Komunalne" 2019, No. 10, pp. 7–17.

of the Constitution). Within the scope of ensuring revenues of local self-government units, it is also possible to distinguish:

1) a principle of statutory transfer of sources of public revenue to a local government (Article 167(3)),
2) a principle of transferring revenue from the central level to a local government (Article 167(2)),
3) a principle of a basic character of own revenues of a local self-government as regards financing own tasks (Article 167(2) read in conjunction with Article 166 par. 1 of the Constitution),
4) a principle of ensuring obligatory, supplementary financing of local government tasks by general subsidies, and purpose-specific subsidies from the state budget (Article 167(2) in conjunction with (1) and 166(1))[54].

In addition, local government units have a right to determine a level of taxes and local fees to the extent specified in the law (Article 168 of the Constitution).

2.4. Supervision of the activities of local authorities

Decentralisation of the State does not mean that the independence of a local self-government is of an absolute nature. An institution of supervision is a tool that limits the self-government's independence. The concept of supervision has not been defined in the law. However, in the doctrine of administrative law it is assumed that "supervision is a measure of the actual independence and autonomy of the decentralised entity. In order to maintain true decentralisation, it is therefore important to regulate supervision precisely by law, and above all to establish clearly in the law the means of supervision, i.e. the legal instruments at the disposal of the supervisory bodies and the criterion (criteria) on the basis of which supervision is to be carried out"[55].

[54] After the judgment of the TK of 4.03.2014, K 13/11, OTK-A 2014, No. 3, item 28.
[55] J. Zimmermann, *Prawo administracyjne,* Wolters Kluwer, Warszawa 2008, p. 228.

The criterion of supervision was introduced in Article 171(1) of the Constitution of the Republic of Poland, from which it follows that the activities of a local self-government are subject to supervision from the point of view of their legality.

The organs of supervision over the activities of local government units are: the Prime Minister and voivodes, and in respect of financial matters – regional chambers of audit (Article 171(2) of the Constitution). Additionally, the Sejm, upon the motion of the President of the Council of Ministers, may dissolve the constituting body of a local government, if that body grossly violates the Constitution or laws (Article 171(3) of the Constitution). Under supervision, an authoritative interference of the State in the independence of local self-government units is possible.

2.5. Municipality

Act of 8 March 1990 on municipal self-government[56] regulates detailed matters concerning the regime of a municipality on Municipal Self-Government, and the statutes of a given municipality adopted within the powers set out in the Act (Art. 3(1) of the u.s.g). The essential features of municipality self-government can be derived from its inhabitans who by the law form a self-governing community (Art. 1(1) of the u.s.g.), as well as a certain territory (Art. 1(2) of the u.s.g.). The establishment of a municipality falls within the competence of the Council of Ministers, which through a regulation:

1) creates, merges, divides, and abolishes municipalities and sets their boundaries,
2) gives a municipality or a town a status of a city and determines its boundaries,
3) establishes and changes the names of municipalities and seats of their authorities (Article 4(1) of the u.s.g.).

[56] Act of 8 March 1990 on municipal self-governament (consolidated text: Journal of Laws of 2020, item 713 as amended); hereinafter: "u.s.g.".

The municipality has a legal personality. The municipality's tasks include meeting the collective needs of the community. In particular, its tasks include the following matters:

1) spatial planning, real estate management, environmental and nature conservation, and water management,
2) municipal roads, streets, bridges, squares, and traffic organisation,
3) water supply, sewage disposal and treatment, maintenance of cleanliness and sanitation, landfill and disposal of municipal waste, as well as electricity and gas supply,
4) telecommunications activities,
5) local collective transport,
6) health protection,
7) social assistance, including centres and care facilities,
8) family support and foster care system,
9) municipal housing,
10) public education,
11) culture, including municipal libraries and other cultural institutions, as well as protection and care of historical monuments,
12) physical culture and tourism, including recreational areas and sports facilities,
13) markets and market halls,
14) communal greenery and trees,
15) communal cemeteries,
16) public order and citizens' safety, as well as fire and flood protection, including equipping and maintening of a municipal flood store,
17) maintenance of municipal public and administrative facilities and equipment,
18) family-friendly policies, including the provision of social, medical and legal care for pregnant women.

By way of an Act, a municipality may be obliged to perform tasks delegated to it by government administration and the sphere of organisation of the preparation and holding of general elections and referenda (Art. 8(1) of the u.s.g.). In addition, the municipality may

also perform tasks assigned to it by the government administration based on an agreement with the government administration bodies (Art. 8(2) of the u.s.g.).

A municipality has a dual system of authorities consisting of a municipality council (a city council, if the seat of the municipality council is located in the city situated in the territory of that municipality), and a wójt (a mayor, a city president). The municipality council is the decisive and controlling body (Article 15(1) of the u.s.g.). Its term of office lasts 5 years from the election date (Article 16 of the u.s.g.). The municipality council is composed of councillors elected in direct elections, and their number depends on a number of inhabitants of the municipality (from 15 to 45 councillors). The municipality council is responsible for all matters falling within the scope of activities of the municipality, unless the law provides otherwise (Article 18(1) of the u.s.g.).

The head of the municipality is the executive body of the municipality (Article 26(1) of the u.s.g.); his term of office begins on the day on which the term of office of the municipality council commences or on the day on which he is elected by the municipality council and expires on the day on which the term of office of the municipality council expires. As a rule, the head of the municipality (the wójt, the mayor, the city president) is elected in direct elections and he must hold Polish citizenship.

The task of the head of the municipality is to execute the resolutions of the Municipal Council, as well as to perform the tasks of the municipality specified by the provisions of law (Art. 30(1) u.s.g.). In particular, the mayor:

1) prepares draft resolutions of the Municipal Council,
2) draws up develops programmes following the procedure laid down in the provisions on the principles of development policy,
3) determines how resolutions are to be implemented,
4) managemes municipal properties,
5) implements budget,
6) employs and dismisss managers of municipal organisational units (Article 30 (2) of the u.s.g.).

The tasks of the head of the municipality council include issuing administrative decisions in individual matters within the scope of public administration (Article 39(1) of the u.s.g.). The administrative apparatus through which the heads of municipalities perform their tasks is the municipality office (Article 33(1) of the u.s.g.).

2.6. District

The district's system's basic acts are the Act on district government, as well as the statutes of the respective district. The powiat is a local self-governing community, which by law is formed by its inhabitants (Article 1(1) of the Act on district government) and the relevant territory (Article 1(2) of the Act on district government). The powiat has a legal personality, and its independence is subject to judicial protection (Article 2(2–3) of the Act).

Currently, there is a category of towns with district rights, the so-called "grodzki" districts – these are municipalities that perform the tasks of both a municipality and a district.

The competence to create a district was granted to the Council of Ministers, which by decree:

1) creates, merges, divides and abolishes districts, and determines their boundaries,
2) establishes and changes the names of districts and the seats of their authorities (Article 3(1) of the u.s.p.).

The task of districts is to perform public tasks of supra-municipal character, as defined by statutes. For example, it can be indicated that these are tasks in the field of:

1) public education,
2) health promotion and protection,
3) social assistance,
4) family support and foster care system,
5) family-friendly policies,
6) supporting people with disabilities,
7) public transport and public roads,

8) culture and protection and care of monuments,
9) physical culture and tourism,
10) geodesy, cartography and cadastre,
11) real estate management,
12) architectural and construction administration,
13) water management,
14) environmental and nature conservation,
15) agriculture, forestry and inland fishing,
16) public order and security of citizens,
17) flood protection, including equipment and maintenance of the district flood store, fire protection and prevention of other extraordinary threats to human life and health, as well as the environment,
18) counteracting unemployment and increasing activisation the local labour market,
19) consumer protection.

Other tasks may also be delegated to the district. Such a delegation is based on specific laws.

The Act of 5 June 1998 on district government[57] includes the district council and district management as district authorities (Article 8(2) of the u.s.p.). The starosta also has the status of an organ. The district council is the governing and controlling body of the district, and its term of office lasts 5 years, counting from the date of the election. The district council comprises councillors elected in direct elections. Their numbers vary from 19 to 29 persons (Article 9 of the u.s.p.). Exclusive powers of the district council include: making local laws, including the statute of the district; electing and dismissing the management board and determining the remuneration of its Chairman; adopting resolutions on the amount of taxes and charges within limits set out by the law, as well as adopting resolutions on certain property matters of the district (Article 12 of the u.s.p.).

[57] Act of 5 June 1998 on district government (consolidated text: Journal of Laws of 2020, item 920); hereinafter: "u.s.p.".

The district board is the territorial self-government unit (Article 26(1) of the u.s.p.). The district board consists of 3 to 5 persons. It is elected by the district council. It consists of the starost, deputy starost and other members (Art. 26–27 of the u.s.p.).

The starosta directs the work of the management board. The district's task is to carry out resolutions of the district council, and duties of the district as defined by law (Article 32(1) of the u.s.p.). In contrast, the management board carries out the tasks of the district with the assistance of a district office and district organisational units, including a district labour office.

In individual matters of public administration belonging to the district's jurisdiction, decisions are issued by the starost (Art. 38(1) of the u.s.p.).

2.7. Voivodeship

As a rule, the organisation of a voivodeship is governed by the provisions of the Act of 5 June 1998 on province self-government[58] and the Voivodeship Statute. A voivodeship is formed by its inhabitants, who *ex lege* constitute a regional self-governing community, and by a relevant territory (Article 1(1–2) of the u.s.w.). The objective of the voivodeship self-government is to perform public tasks of a voivodeship nature if those tasks are not assigned by statute to the organs of a government administration (Article 2(2) of the u.s.w.). It should be noted that the scope of an activity of the voivodeship self-government does not infringe the independence of districts and municipalities (Article 4(1) of the u.s.w.). The independence of the voivodeship is guaranteed, *inter alia*, by the fact that the voivodeship is granted legal personality, and the self-government is also guaranteed judicial protection.

[58] Act of 5 June 1998 on province self-government (consolidated text: Journal of Laws of 2020, item 1668 as amended); hereinafter: "u.s.w.".

The tasks of the voivodship self-government concern in particular:

1) public education, including higher education,
2) health promotion and protection,
3) culture and protection and care of monuments,
4) social assistance,
5) family support and foster care system,
6) family-friendly policies,
7) modernisation of rural areas,
8) spatial development,
9) environmental protection,
10) public transport and public roads,
11) physical culture and tourism,
12) protection of consumer rights,
13) defence,
14) public security,
15) counteracting unemployment and increasing activisation the local labour market,
16) telecommunications activities,
17) protection of employees' claims in the event of the employer's insolvency (Article 14(1) of the u.s.w.).

Moreover, special laws may define that the matters belonging to the scope of action of the voivodship constitute tasks of government administration to be performed by the board of the voivodship (Article 14(2) u.s.w.).

The Act of 5 June 1998 on province self-government explicitly includes the voivodeship parliament and the voivodeship board among the voivodeship authorities (Article 15 of the u.s.w.). The Marshal also has independent powers when he acts as a voivodeship authority. The province council is the provincial governing and controlling body. Its term of office lasts five years, starting from the date of elections (Article 16(2) of the u.s.w.). The voivodship council is composed of councillors elected in direct elections. There are thirty councillors in voivodships with up to 2,000,000 inhabitants, and three councillors for every additional 500,000 inhabitants.

The exclusive competence of the regional assembly includes, among other things:

1) establishing local law acts (in particular: provincial statute, rules of managing provincial property, rules and procedures of using provincial public facilities and equipment),
2) adoption of a voivodship development strategy,
3) adoption of a zoning plan,
4) adopting a resolution on the procedure for work on a draft budget resolution,
5) adopting a resolution on the details of an executive system of a voivodeship budget, with a proviso that these details may not be less than specified in separate regulations,
6) adopting a regional budget,
7) defining the rules for granting of subsidies from a voivodeship's budget,
8) reviewing reports on an implementation of a voivodeship budget, a voivodeship financial statements and reports on an implementation of a voivodeship multi-annual programmes,
9) passing a resolution on granting or not granting discharge to a voivodship board for implementation of a voivodship's budget,
10) examining a report on the State of a voivodeship and passing a resolution on whether or not to give a voivodeship board a vote of confidence on this account,
11) adopting, within the limits laid down by law, rules on local taxes and charges,
12) passing resolutions on entrusting the tasks of voivodeship self-government to other units of territorial self-government,
13) adopting the "Priorities of the voivodship's foreign cooperation",
14) adopting resolutions on participation in international regional associations and other forms of regional cooperation,
15) electing and dismissing of the provincial executive board and determination of the remuneration of the provincial Marshal,
16) examining reports on the activities of the voivodship board, including in particular its financial activities and the implementation of the programmes referred to in point 2,

17) appointing and dismissing, at a request of a Marshall of a Voivodeship, a Voivodeship Treasurer who is the chief accountant of the Voivodeship budget,
18) adopting resolutions to establish associations and foundations, dissolve them, and join or leave them.

A voivodship board is an executive body of a voivodship. The board comprises of 5 persons, and includes a Province Marshall as its Chairman, a Deputy Marshall or 2 Deputy Speakers, and other members (Art. 31(1–2) of the u.s.w.). The Sejmik of the Voivodship elects members of the Board.

The voivodeship Marshal organises the work of the voivodeship board and the Marshal's office, manages the voivodeship's current affairs, and represents the voivodeship externally in urgent matters which are connected with a direct threat to a public interest or directly endangering health and life. In matters that might cause considerable material losses, the voivodeship marshal takes necessary steps that fall within competencies of the voivodeship board (Article 43(1–2) of the u.s.w.). Moreover, voivodeship marshal is also authorised to issue administrative decisions (Article 46(1) of the u.s.w.).

In addition, the voivodship marshal is the head of the Marshal's office, as well as the superior of the employees of this office and the heads of the voivodship self-governmental organisational units.

2.8. Municipal association

Municipalities have a right to establish an intercommunal (municipal) associations. Normative grounds for the operation of municipality associations have been laid down in the Act on communal self-government (Art. 64 and subsequent articles of u.s.g.). The provisions precisely define types of tasks which may be delegated to a such association. In practice, there are municipal associations whose tasks are related to achieving a specific goal, e.g. gasification

of municipalities participating in the association[59]. The objective of a municipal association is to perform public tasks, which are under the responsibility of local government units. A municipal association is entitled to perform both its own and commissioned tasks.

Districts also have the possibility of establishing associations (Article 65 of the u.s.p., and there is also a possibility to establish district-municipality associations (Article 72a of the u.s.p.).

The case law assumes that "the association – by the will of the municipalities associated with it – relieves them of the tasks entrusted to them. Its position, assessed in terms of its subject matter, is thus not different from that of the associated municipalities. Nor is it – as the Court of Second Instance held – a "specialised entity" professionally engaged in the performance of the tasks entrusted to it, but an organisation of municipalities enabling them to join forces in order to more easily and on a larger scale satisfy the collective needs of communal communities"[60].

The individual units shall decide whether to establish an association. They do so in a form of a resolution establishing the association. In that resolution the objective of the association should be specified. Cooperation in that format is, therefore, voluntary. The obligatory establishment of a municipal association may only result from a law, which additionally specifies the tasks of the association and the procedure for approving its statute.

For the association to exist, its statute must be adopted by the councils of the local government units concerned.

Adopting the statute and its promulgation means that the rights and obligations of the entities participating in the association are transferred to the association from the date of the promulgation of the statute. This means that "the association becomes an entity entitled and obliged to perform the tasks entrusted to it, and at the same time the municipality loses the right to perform public tasks to the extent

[59] Communal Union for Gasification with the seat in Stryszawa, liquidated on 28 October 2005, Dz. Urz. Woj. Małopolskiego No. 612 – 17.11.2005, item 4202.

[60] Supreme Court in its judgment of 6.05.2011, II CSK 409/10, LEX No. 863960.

to which they are performed by the association, taking into account the legal nature of the association, i.e. that it has a civil and public law personality; this is an agreed delegation (entrustment) of tasks to municipalities, which the association will perform in its name and on its responsibility"[61].

Delegating certain tasks to an association consequently means that they must be performed in specific forms. It is permissible for municipal associations to perform public tasks in forms typical of administrative law (e.g. issuing administrative acts, enacting local law), but they may also be performed in civil law forms (e.g. conclusion of contracts)[62].

The association's establishment means that the delegated public tasks will be performed in its name and on its account, as it were, in the place of the local and regional authorities forming the association. In practice, this means that the bodies of the association will perform the tasks.

The association's organs are its assembly, which has decision-making and control powers, while the executive body is its board of directors.

2.9. Metropolitan association

A metropolitan association may be established as an entity performing public tasks related to local self-government units. Currently, there is no legal regulation allowing to establish such an association which could operate through the country. A law on metropolitan associations was established in 2015[63] and was repealed in 2017, while no metropolitan associations have been established on its basis.

There is currently a law on a metropolitan association in the Silesian Voivodship.

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[61] WSA in Wrocław in the judgment of 7.02.2011, II SA/Wr 559/10, CBOSA.

[62] M. Kasiński, *Związki międzygminne a działalność nadzorcza regionalnych izbrachunkowych*, „Samorząd Terytorialny" 1994, No. 5, p. 27.

[63] Act of 9 October 2015 on metropolitan associations (Journal of Laws of 2015, item 1890 as amended).

Pursuant to Article 1(2) of the current Act of 9 March 2017 on the metropolitan association in the Silesian Voivodeship[64], a metropolitan association is an association of municipalities of the Śląskie Voivodeship which are characterised by strong functional links and advanced urbanisation processes, as well as they are located in a spatially coherent area with a population of at least 2,000,000.

A metropolitan association is created on the basis of a regulation of the Council of Ministers. Currently, there is a regulation of the Council of Ministers on the establishment of a metropolitan association in the Silesian Voivodeship called "Górnośląsko-Zagłębiowska Metropolia"[65].

The metropolitan association carries out public tasks in the following areas:

1) the shaping of spatial order,
2) social and economic development of the metropolitan union area,
3) planning, coordination, integration and development of public transport, including road, rail and other track-based transport, and sustainable urban mobility,
4) metropolitan passenger transport,
5) cooperation in determining the course of national and provincial roads in the area of the metropolitan association,
6) promotion of the metropolitan association and its area (Article 12(1) of the u.z.m.).

It is also possible to delegate other public tasks to the association, both within the scope of self-government and government administration.

The organs of the metropolitan association are the assembly and the management board of the metropolitan association (Article 18 of the u.z.m.).

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64 Act of 9 March 2017 on the metropolitan association in the Silesian Voivodeship (consolidated text: Journal of Laws of 2017, item 730 as amended); hereinafter: "u.z.m.".

65 Ordinance of the Council of Ministers of 26 June 2017 on the establishment in the Silesian Voivodeship of a metropolitan association named "Górnośląsko-Zagłębiowska Metropolia", Journal of Laws of 2017, item 1290.

Chapter 3. **BUDGETARY ENTITIES**

3.1. General characteristics

Budgetary units constitute one of the basic organisational and legal forms of the public finance sector. They are classic institutions of budgetary law, fully respecting a principle of budget completeness[66]. The organisational-legal form of a budgetary unit is commonly used to perform numerous public tasks. Budgetary entities include units serving public administration bodies that carry out public tasks, e.g. ministries, embassies, communes and cities officies, county and voivodeship offices, schools, kindergartens and nurseries, organisational units of the army, police, tax offices, courts, organisational units of the prosecutors offices, as well as other state and local government institutions. The organisational-legal form of a budgetary unit is an organisational form which is appropriate above all for units of the public administration apparatus.

The legal definition of a budgetary unit is contained in Article 11(1) of the Act of 27 August 2009 on public finance[67] following which "budgetary entities are organisational units of the public finance sector without legal personality, which cover their expenditure directly from the budget, and transfer the revenue collected to the account of the state budget or the budget of a local government unit respectively".

In the light of this definition, the essential feature of a budgetary unit is related to a budget in which unit's revenue and expenditure

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[66] A. Borodo [in:] A. Borodo, B. Brzeziński, E. Drgas, J. Głuchowski, J. Jezierski, *Zarys prawa finansowego,* UMK, Toruń 1986, p. 44.

[67] Act of 27 August 2009 on public finance (consolidated text: Journal of Laws of 2021, item 305).

are fully entered into. Thus, the expenditure of the budget unit is fully financed from the budget, and the revenue collected by the budget unit is paid to the budget. This method of financing is called a gross budgeting. Another feature is a lack of a legal personality which results in budgetary units operating as organisational units of the State Treasury (State budgetary units) or local government units (local budgetary units).

In terms of the system, three basic groups of budgetary units can be distinguished: budgetary units which are the executive apparatus of the legislative and executive power (chancelleries, offices, ministries, offices), budgetary units which are organisational units subordinated to or supervised by state or local government executive power bodies, as well as budgetary units without formally separate offices, including courts and tribunals and state control and law protection bodies[68].

Budgetary units are historically the oldest form of a gross budgeting in Poland. First mentions of gross budgeting date back to 1768[69]. The essence of the gross budgeting is in full financing of an entity's activities from the budget. Financing takes place through the direct transfer of funds to the entity's account. The gross budgeting is connected with a principle of universality (completeness) of the budget. Its political significance was expressed because the state administration could not increase its expenditure beyond the limit which is allowed by the budget act by a way of covering such expenditure with the revenues it earned. Not only was it considered incompatible with the principle of gross budgeting for state entities to consume for their own purposes cash revenue, but also revenue in kind (e.g. heating rooms occupied by a budgetary entity with wood from state forests without taking into account such an operation in the budget on the revenue and expenditure side)[70].

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[68] C. Kosikowski, *Komentarz do art. 11,* [w:] C. Kosikowski, *Ustawa o finansach publicznych. Komentarz,* Lexis Nexis 2011, LEX.

[69] C. Kosikowski, [in:] *System instytucji prawno-finansowych PRL. Volume II. Instytucje budżetowe,* Zakład Narodowy im. Ossolińskich, (eds.) M. Weralski, Wrocław––Warszawa–Kraków–Gdańsk-Łódź 1982, p. 307–311.

[70] M. Weralski, *Socjalistyczne instytucje budżetowe,* Wydawnictwo Prawnicze, Warszawa 1966, p. 62.

The gross budgeting applies to non-productive units. It is characterised by a lack of a connection between revenues of a budget unit and its expenditures. Budgetary units usually provide services free of charge or for a small fee. Their revenues are small or they are not-existent. On the other hand, expenditures on a maintenance of these units must be made[71]. Thus, there are no incentives to rationalise financial management, minimise expenditure, and increase a revenue. The financial management of a budget unit is relatively rigid, it is subject to strict rules regarding an accumulation of an income and making expenditures. A budget entity may spend only as many funds as they have been allocated in the adopted budget, and only for purposes which comply with the budget classification divisions[72]. The adopted financing model is irrational from the economic point of view. It generates unnecessary cash flows, it is associated with a lack of a financial autonomy, as well as it imposes economically irrational budgetary principles regarding the financial management of a budget unit, e.g. an expiry of an expenditure is not implemented at the end of the financial year.

As a result of these limitations, budgetary units are not very well suited to tasks of an economic nature which require greater financial autonomy. The gross budgeting was no longer sufficient, because the scope of states' tasks was broadening, and traditional tasks such as national defence, administration and justice expanded when states started to provide more services to the population and undertook tasks of an economic nature[73]. Therefore, derogations from the gross budgetary principle have started to be introduced in the form of net budgeting, which allows individuals to use their own resources to meet their needs, and to settle accounts with the budget only through the budget outturn[74].

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71 A. Borodo [in:] A. Borodo, *op. cit*., s. 44.

72 *Ibid.*

73 B. Kolanowska-Kowalska [in:] *Finanse w gospodarce kapitalistycznej,* (eds.) M. Kucharski, Państwowe Wydawnictwo Naukowe, Warszawa 1986, p. 206.

74 M. Weralski, *op. cit.*, s. 63.

3.2. Exceptions to the gross budgetary principle

There are exceptions to the gross budgeting principle. The exceptions in the form of auxiliary holdings and special funds which applied in the People's Republic of Poland and later, before an adoption of the current u.f.p., are of a historical significance.

An auxiliary holding was a part of the primary activity or of a secondary activity of a budgetary unit that required organisational separation and whose income was used for expenses related to the activity. The holding carried out production activities, but it was not an economic activity taken by private entrepreneurs. Profits of an auxiliary holding were an income of a budget and holding's losses were covered by a budget expenditure. The legislation also obliged auxiliary holdings to provide services to the parent budgetary unit at cost, and to pay a certain proportion of the profit generated to the budget. In the Public finance of 2009 the law-maker abandoned an institution of a holding, considering it ineffective[75]. Thus, in currently enforced law auxiliary holdings do not exist as budgetary units.

Special funds were set out in laws from the communist era and from later times. They were used when an ancillary activity or a part of the main activity did not have to be organisationally separated from the main activity of a budgetary unit. Special funds could be allocated directly by a budget unit for its own needs without a gross settlement with the budget, what formed the essesnce of these funds. In the Public Finance Act of 1998 these funds were replaced by incentive funds and own revenues[76].

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[75] Explanatory Memorandum to the Draft Law on Public Finance of 20 October 2008, p. 3, Parliamentary Paper No. 1181, Sejm of the 6th legislature.

[76] L. Lipiec-Warzecha, *Finanse publiczne. Komentarz do art. 23,* 2008, LEX. The replacement of special funds with incentive funds and own income took place under the amending act of 25 November 2004. (Journal of Laws of 2004, No. 273, item 2703) amending the 1998 u.f.p. as of 1 January 2005.

The 2009 Public Finance Act abandoned incentive funds, as well as it replaced own income accounts of budgetary units with the concept of separate bank accounts. Some budgetary units may collect revenues from specific sources, and can independently spend them for the purposes indicated in the Act. The possibility of creating such accounts is limited to budgetary units which conduct an activity specified in the Education Act (state and local government units – Article 11a, 223 of the u.f.p.), as well as state budgetary units, which have their seat outside the Republic of Poland and are subordinated to the minister competent for foreign affairs or to the minister competent for the economy (Article 163 of the u.f.p.)[77].

3.3. Legal subjectivity of a budgetary unit

In the light of Art. 11 of the Act on public finance, budgetary units do not have a legal personality. Therefore, they are *statio fisci* (state budget units) or *statio municipi* (local government budget units). However, the lack of this attribute also results from a general principle which is expressed in Article 33 of the Civil Code. In the light of this principle only those organisational units to which specific provisions grant legal personality are legal persons. However, the issue of the legal subjectivity of a budgetary unit should be examined in the context of various fields of law.

From the civil law point of view, a budgetary unit without legal personality does not exist independently in legal transactions. Therefore, it cannot sue or be sued. Hence, the claim should be addressed to the legal person whose organisational unit is a budgetary unit. This situation has specific consequences in civil and commercial cases. The designation of a budgetary unit as a party defendant in such a case (instead of designating the State Treasury or a local government

[77] For more on this topic, see P. Lenio, *Rachunki dochodów własnych jednostek budżetowych,* „Prawo Budżetowe Państwa i Samorządu" 2014, No. 1, pp. 147–171, DOI: http://dx.doi.org/10.12775/PBPS.2014.009.

unit) results in the rejection of the statement of the claim, and, in the event of a ruling, the invalidity of the proceedings (Article 199(1)(3) in (2) Article 379 of the Code of Civil Procedure[78]).

The inability to acquire property or property rights is a consequence of a lack of legal personality. A budgetary unit is not an owner of the property which it manages. Article 12 of the u.f.p. states that the authority which creates a budgetary unit determines the property "transferred to this unit for management". The legal construction of this management is determined by the provisions of the Act on a real estate management (a permanent management).

In a local government property management, managers of local government organisational units without legal personality act on an individual basis under a power of attorney which is granted by the head of the local authority or the management board of the local authority. (Article 47 of the u.s.g., Article 56(1) of the u.s.w.) or a "power of attorney to make declarations of will" (Article 48(2) of the u.s.p.). Managers shall perform actions on behalf of and for the benefit of the local authority, not on their own behalf or that of the budgetary unit they manage. This action is considered to be a general power of attorney. The literature indicates that the performance of actions by a manager acting within the scope of a power of attorney requires a countersignature of the treasurer of the local government unit, if the action may result in a monetary liability. Managers of state organisational units are authorised to represent the State Treasury under Article 6(2) of the Act of 16 December 2016 on the Principles of State Property Management[79].

However, in certain areas of law, a budgetary unit is a subject of certain rights and obligations, and it has a capacity of a court (so, a capacity to sue and to be sued). Under Article 3 of the Labour Code[80]

[78] Act – Code of Civil Procedure of 17 November 1964, consolidated text: Journal of Laws of 2020, item 1575 as amended.

[79] Act on principles of state property management of 16 December 2016, consolidated text: Journal of Laws of 2020, item 735 as amended; hereinafter: "u.z.z.m.p.".

[80] Labour Code of 26 June 1974, consolidated text: Journal of Laws of 2020, item 1320 as amended.

a budgetary unit is an employer, if the unit employs employees. Therefore, the unit may be a party to court proceedings in labour law cases. This is not changed by the regulation according to which certain activities within the scope of the labour law are performed not by the budgetary unit as an employer, but by other persons or bodies indicated in the acts. A general principle which is formulated in Article 3^1 of the Labour Code states that actions concerning labour law are performed by a person or a body managing this organisational unit or another person appointed for this purpose.

Additionally, concerning local government employees, the provisions of the Labour Code are complemented by the provisions of the Local Government Employees Act[81] which defines who is the employer of: heads of villages (mayors, city presidents), starosts, deputy starosts, county board members, marshals, deputy marshals and voivodeship board members. The employers of the above-mentioned persons are the municipalities, districts, and provinces respectively, which are budgetary entities. The Act on Local Government Employees also lists activities which under the labour law are performed in cases of the above-mentioned persons by persons other than the employers so defined. Also, heads of local government organisational units (including those operating in the form of budgetary units) do not take actions under the labour law in their own cases, but these cases are made by the respective heads of commune heads, starosts or marshals of provinces. However, in court disputes, the party is the organisational unit to whom the plaintiff provides work, not a head of the commune, a head of a district, a head of the voivodship or a self-governmental unit[82].

Budgetary units are legal forms of financial law. The literature expresses the view that they have legal subjectivity under this law, as the provisions on public finance grant them certain rights and obligations related to financial management, including an execution of a budget, a preparation and an approval of financial plans, an

[81] Act on local government employees of 21 November 2008, consolidated text: Journal of Laws of 2019, item 1282.

[82] Judgment of the Supreme Court of 20.10.1998, I PKN 390/98, LEX No 35430.

execution of public revenues and expenditures[83]. Budget entities operate based on their financial plans, the principles of which are defined in the Regulation of the Minister of Finance of 7 December 2010 on the manner of financial management of budget entities and local government budget entities[84].

3.4. Creation, merging and liquidation of budget units

The budgetary entities may be established by the State bodies or by the local government units. Their creation, merging and liquidation is regulated in articles 12 and 13 of the Public finance Act. State budget units are established by ministers, heads of central offices, voivodes, as well as other bodies acting according to other acts. Moreover, the right to create budgetary units implementing tasks of the government administration is vested in the Prime Minister. Local government budget units are established by local government bodies: commune councils, county councils, and voivodship assemblies. Separate acts also allow to establish budgetary units by inter-municipal associations. The law does not provide for a possibility to establish budgetary units by associations of poviats, but a doctrine indicates that this process is permissible[85]. The only metropolitan association which exists in Poland – Dolnośląsko-Zagłębiowska Metropolia[86] – can establish budgetary units. Budgetary units may also be established directly, according to the Act, e.g. regional chambers of auditors[87].

[83] T. Augustyniak-Górna, *Podmiotowość finansowoprawna jednostek budżetowych,* „Acta Universitatis Lodziensis. Zeszyty Naukowe Uniwersytetu Łódzkiego. Humanities and Social Sciences" 1979, Seria I, zeszyt 65, pp. 87–105.

[84] Consolidated text: Journal of Laws of 2019, item 1718.

[85] K. Bandarzewski, *Komentarz do art. 69,* [in:] *Ustawa o samorządzie powiatowym. Komentarz*, (eds.) P. Chmielnicki, Lexis Nexis 2005, LEX.

[86] Act on the metropolitan association in the Silesian Voivodeship of 9 March 2017. (Journal of Laws of 2017, item 730 as amended).

[87] K. Kopyściańska, *Komentarz do art. 12,* [in:] *Ustawa o finansach publicznych. Komentarz*, (eds.) Z. Ofiarski, Wolters Kluwer 2020, LEX.

The body establishing the budgetary unit shall grant statutes to that unit. The statutes shall constitute the basis for operations of the budgetary unit. It determines, in particular, the unit's name, seat and subject of activity. The phrase "in particular" indicates that the said elements determine the minimum content of the statutes. A statute is an act of internal law[88]. Therefore, in the light of Article 12 of the u.f.p., the body establishing the budgetary unit is oblidged to provide the statutes of the unit. However, there may be exceptions to the rule mentioned in the above, since the provision described above provide that the statutes are granted "unless separate acts provide otherwise".

The same authorities which may set up budgetary units may also merge units and liquidate them. The liquidation of a budgetary unit shall entail an obligation to determine a destination of the property held in the management of the unit, and to assume receivables and liabilities of the liquidated unit.

[88] Judgment of the WSA in Poznań of 20.04.2016, IV SA/Po 109/16, LEX no 2027422.

Chapter 4. **BUDGETARY ESTABLISHMENTS**

4.1. General characteristics of budgetary undertakings

A budgetary undertaking is an organisational unit which uses a net budgeting method in its budget. The method assumes that operating costs are covered by revenue generated and that the budget is settled through the financial result achieved at the end of the accounting period. This form of connection with the budget ensures greater flexibility of financing than the gross budgeting method. For this reason, budgetary establishments are a convenient form of conducting economic activity, although it should be noted that their activity has a different purpose and character than that of private entrepreneurs.

Budget establishments as an organisational and legal form were established in 1958. They were State organisational units, whose type of activity justified the dependence of expenditures of these units on their income, entitling them to use an income generated for expenditures arising from their activity. Thus, surpluses or shortages of budgetary establishments constituted budget revenues or expenditures[89]. During the PRL period, budgetary establishments were used for various activities, including for social facilities (nurseries, kindergartens, children's holiday homes and others), municipal management establishments and field service establishments, and others such as water boards, institutes, central laboratories[90].

After the transformation of the political system, budgetary establishments could be state-owned or local self-government owned. They could have been established to perform various tasks.

[89] C. Kosikowski, [in:] *System..., op. cit.*, p. 319.
[90] *Ibidem*, p. 320.

This situation changed with an entry into force of the Public finance Act of 2009. The law-maker abandoned an institution of state budgetary establishments, and limited the scope of tasks that could be performed by local government budgetary establishments. All state budgetary establishments were liquidated or transformed into other organisational and legal forms[91], since the Act on public finance of 2009 has no longer provided for this organisational and legal form. The resignation from state budget establishments was justified by a need to increase a transparency of the public finance sector. Following the postulates of the self-governmental side, the legislator left the self-governmental budgetary establishments, but limited the scope of their operation[92]. Local government budget establishments which performed tasks that did not fall within the scope of the new legislation were liquidated or transformed. Following the Act on public finance of 2009 only local government budget establishments may, therefore, be established, transformed into another organisational and legal form, merged or liquidated by the decision-making bodies of the local government.

As indicated by the law-maker in the justification to the draft of the Public finance Act of 2009, the purpose of establishing budgetary establishments was to separate such tasks from the budget implementation which would have the possibility of "self-financing" without involving budgetary funds. A budget establishment is an independent organisational unit without legal personality, performing its tasks for a fee and covering the costs of its operations mainly from revenues which it has generated (a possibility of receiving subsidies is limited by law). Investments of these units are financed or co-financed from the budget[93].

[91] In accordance with Article 87 of the Act of 27 August 2009 – Provisions introducing the act on public finance (Journal of Laws of 2009, No. 157, item 1241), liquidation of state budgetary establishments and self-government budgetary establishments conducting activity outside the scope provided for in the new regulations was to be completed by 31 December 2010.

[92] Explanatory Memorandum to the Bill on Public Finance, Sejm Paper No. 1181, Sejm of the 6th legislature, p. 5.

[93] *Ibidem.*

Considering the above, it can be concluded that a budgetary establishment is a form similar to a self-government enterprise which is performing the tasks of a local self-government unit[94]. However, a budgetary establishment does not have a legal personality, and it is using the legal personality of a local self-government unit in legal transactions. It is linked to the budget by the net budgeting method. Therefore, from a legal point of view, a local government budgetary establishment cannot be considered an entrepreneur, i.e. an entity performing business activity within the meaning of the Act of 6 March 2018 – Entrepreneurs' Law[95].

4.2. Tasks of the budgetary establishment

As indicated in the above, when introducing the current Public Finances Act in 2009, the law-maker aimed to limit the application of the form of a budgetary establishment, liquidating state-owned establishments, and limiting the scope of tasks that could be performed by local government establishments.

According to Art. 14(1) of the Public Finance Act, in the form of a local government budgetary establishment the own tasks of j.s.t. may be performed in the field of: housing management and the management of commercial premises; roads, streets, bridges, squares and the organisation of road traffic; water supply and sewerage, the removal and treatment of municipal sewage, the maintenance of cleanliness and order and sanitation, landfills and the neutralisation of municipal waste, the supply of electricity and heat, as well as gas; local public transport; markets and market halls, municipal greenery and trees; physical culture and sport, including the maintenance of recreational areas and sport facilities; social assistance, professional and social reintegration and professional and social rehabilitation of

[94] L. Lipiec-Warzecha, *Ustawa o finansach publicznych. Komentarz do art. 14,* ABC 2011, LEX.

[95] Consolidated text: Journal of Laws of 2021, item 162.

disabled persons; the keeping of various species of exotic and domestic animals, including in particular the breeding of endangered animals in order to protect them outside their natural habitat; cemeteries.

According to this provision, the own tasks of a local government budgetary establishment falling within the scope of the areas mentioned above may be performed in the form of a local government budgetary establishment. The notion of own tasks has no legal definition. However, according to Art. 7(1) of the Act u.s.g., "satisfying the community's collective needs is one of the gmina's tasks". Therefore, it is acknowledged that own tasks are public tasks that the local government performs to satisfy local community's collective needs. This distinguishes own tasks from the tasks which are delegated from the scope of government administration which are performed to satisfy the needs of the State as a whole. The decision as to whether a given task is own task is determined by the provisions of the acts regulating the system of self-government[96], as well as the acts establishing the given tasks of a self-government.

Local government budgetary establishments seem to be a particularly convenient form of performing the self-government tasks of public utility. These are tasks which aim at "current and uninterrupted satisfaction of the collective needs of the population by way of generally available services". (Art. 1(2) of the Act of 20 December 1996 on municipal management[97]). Although, in accordance with the Act on municipal management, budgetary establishments may only perform tasks which are falling within a public utility, they may not perform tasks outside this sphere. In determining the permissible scope of the establishment's activities, therefore, not only Article 14 u.f.p., but also the provisions of the Act on Municipal Management should be taken into account[98].

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[96] The laws regulating the system of local government units are: Act of 8 March 1990 on communal self-government, as well as Act of 5 June 1998 on poviat self-government and Act of 5 June 1998 on voivodship self-government.

[97] Consolidated text: Journal of Laws of 2021, item 679.

[98] M. Ofiarska, *Komentarz do art. 14,* [in:] *Ustawa o finansach publicznych. Komentarz,* (eds.) Z. Ofiarski, Wolters Kluwer 2020, LEX.

The catalogue of tasks set out in Article 14 of the u.f.p. is of a closed nature. However, separate acts may provide for a possibility to perform other tasks in the form of a local government budgetary establishment. An example can be found in Art. 3(2) of the Act on Social Employment of 13 June 2003[99] which was in force in the period 1 January – 4 September 2010, which constituted the only basis for establishing a social integration centre by local governments in the form of a local government budgetary establishment. It was not until 4 September 2010 that the catalogue in Art. 14 of the Act on Social Employment was supplemented[100] by point 7a, which added a possibility to implement vocational and social reintegration tasks in a form of a local government budgetary establishment[101].

It should be noted that the possibility of performing tasks in the form of a local government budgetary establishment does not imply an obligation to use this form. Self-government entities may create other organisational units (e.g. budgetary units), legal persons (e.g. commercial law companies) in order to perform their tasks, they may also commission the performance of these tasks to private entrepreneurs. The principles according to which specific tasks are performed are determined by special laws.

4.3. Financial management of a budgetary undertaking

Following Article 15 par. 1 of the Act of 27 August 2009 on Public Finance, a local government budgetary establishment performs its tasks for a fee, covering the costs of its operations from its revenues, with the possibility of receiving a grant from the budget of the local government. In the light of this provision, two important features of the financial

[99] Consolidated text: Journal of Laws of 2020, item 176.

[100] Article 2 of the Act of 22 July 2010 amending the Act on Social Employment and certain other acts (Journal of Laws of 2010, No. 152, item 1020).

[101] M. Ofiarska, *Komentarz ..., op. cit.*

management of a local government budgetary establishment may be indicated:

1) performing tasks for a fee,
2) covering – as a rule – the costs of its activity with its own revenues.

Paid performance of tasks is the principle of operation of a local government budgetary establishment. Therefore, establishments may perform tasks in which such a payment may be established. In particular, they may supply utilities such as water or heat, provide an access to services such as sports or recreation, etc. Prices for communal goods and services of a public utility nature and the use of public facilities and equipment of local government units are set by the decision-making body of the local government unit[102]. Since the operation of local government budgetary establishments does not aim at making profit but on ensuring an access to the offered goods and services to the widest possible public, the prices for their services cannot be fully market-driven[103]. Prices may be reduced, but they should not be increased in a way unjustified by the actual costs of performing the task[104].

Covering operating costs by own revenues means that the local government budgetary undertaking is oriented towards self-financing. Therefore, there is a relationship between revenues and costs of its activities and an incentive to increase revenues and to reduce costs.

However, the incentive to increase the economic efficiency of plant's activities is weakened as a result of settling the budget through the financial result. The surplus of working capital obtained at the end of the reporting period should be paid to the municipal budget. In contrast, a subsidy from the municipal budget may cover the shortfall of funds (within limits specified in the Act). On the other hand, the establishment has no incentive to increase its revenues, since it is

[102] Article 4 of the Law of 20 December 1996 on municipal management.

[103] M. Ofiarska, *Komentarz ..., op. cit.*

[104] C. Banasiński, K. Jaroszyński, *Komentarz do art. 4,* [w:] C. Banasinski, K. Jaroszyński, *Ustawa o gospodarce komunalnej. Komentarz,* Wolters Kluwer 2017, LEX.

obliged to pay the surplus to the local government budget. It could cover its current operating costs, but the necessity to pay any surpluses to the local government budget would deprive the establishment of a chance to generate funds for an investment. Hence, the establishment can receive subsidies from the local authority budget for investment purposes.

The law-maker has provided an exception to the principle of the net budgeting of a local government budgetary establishment. Following Art. 15(7) of the Public finance Act, the surplus of working capital established at the end of the reporting period is paid by the local government budgetary establishment into the budget of the local government unit, unless the constituting body of the local government unit decides otherwise. In such a case the surplus will remain in the establishment, which will not be so dependent on subsidies from the local authority budget. From the point of view of the local authority, the burden of subsidies for the establishment on the budget will be reduced. There will also be no need for irrational flows of funds between the budget and the establishment, consisting on the one hand of the payment of a surplus to the budget by the establishment, and on the other hand of the receipt of a subsidy from the same budget due to the fact that after paying the surplus the establishment has no funds for further activities. The release of the establishment from the obligation to pay the surplus of working capital to the budget leads to an increase in the financial independence of the establishment, but at the same time to a reduction in its links with the budget of the local authority.

A local government budgetary establishment shall carry out its financial management based on an annual financial plan which comprises revenues, including subsidies, a balance of receivables and liabilities at the beginning and the end of the period, as well as settlements with the budget.

Owing to the above features of a financial management of a local government budgetary establishment such entities may carry out their activities, even if these activities are not profitable. Of course, insufficient revenues may result from: prices lowered below the market

value, the local government's social policy, and the necessity to pay any surpluses to the budget. However, a lack of sufficient revenues is not a premise for the liquidation of an establishment. To the contrary, owing to a wide possibilities of granting subsidies, the establishment can continue its operation even in case of a lack of a profit. Thanks to that possibility, local government budgetary establishments can ensure continuity of performing tasks entrusted to them.

An activity of a local government budgetary establishment, even though it is based on the principle of self-financing, cannot be regarded as an economic activity carried out by private entrepreneurs. The latter one is guided by an economic calculation, which determines a type and a manner of enterpreneur's activity, and an enterpreneur cease it in case of a lack of an adequate profit. On the other hand, in case of a local government budgetary establishment, the purpose of its operations is to ensure that the population's collective needs are met on an ongoing and uninterrupted basis through generally available services. Therefore, the profitability of such an activity is not the decisive criterion for undertaking and continuing thereof.

Therefore, a local government budgetary establishment may not be regarded as an entrepreneur within the meaning of the Entrepreneurs' Law. According to Article 4(1) of the Entrepreneurs' Law, an entrepreneur is, among others, an organisational unit that is not a legal person, to which a separate act grants legal capacity, performing a business activity. On the other hand, doing business means organising a profit-making activity which is performed continuously on one's behalf. Apart from having "legal capacity" and acting on one's behalf, recognition of a local government budgetary establishment as an entrepreneur is precluded by the necessity to conduct business activity which is understood as a profit-making activity. Profit-making character means striving to achieve a surplus of an income over activity costs, regardless of the motivation, and the actual outcome of the activity. Since, as indicated in the above, the purpose of operations of a local government budgetary establishment is to perform the tasks of the local government and not to act for profit, its operations cannot be deemed to be an economic activity within the meaning of the Business

Enterprise Law. Therefore, a budgetary establishment cannot be deemed to be an entrepreneur.

4.4. Grants to a budgetary undertaking

A local government budgetary establishment may receive subsidies from the budget of a local authority. Establishments may require subsidies owing to the following reasons:

1) a performance of public service tasks involving a lack of cost-effectiveness,
2) a need to pay surplus working capital to a local authority's budget, unless a decision-making body of a local authority decides otherwise.

A local government budgetary establishment may receive subsidies from the budget of the local government:

1) subject matter,
2) subjective,
3) targeted,
4) for the initial provision of working capital for a newly established local government budgetary institution.

According to Article 130(1) of the Public Finance Act – appropriations intended to subsidise specific types of products or services calculated on a per-unit basis. They serve to subsidise the current operation of the plant. Amounts and scopes of subsidies are specified in a budget resolution, and the local government body sets the rates. Subject matter subsidies should not compensate for the difference between revenues and operating costs of an establishment. A subject matter subsidy is justified by an assumption that the price of a municipal or social service does not compensate for its production costs[105].

Subjective subsidies may be granted to local government budgetary institutions if separate laws provide so. In the absence

[105] L. Lipiec-Warzecha, *Ustawa ..., op. cit.*

of relevant provisions of separate acts, subjective subsidies for local government budgetary establishments shall not apply.

Targeted grants are intended for a specific purpose. Therefore, according to Article 15(3)(2) and (3) of the Public Finances Act, one can distinguish purpose-specific subsidies for current tasks financed with the participation of funds from the budget of the European Union and non-refundable funds from assistance provided by the EFTA Member States and other funds from non-refundable foreign sources, as well as purpose-specific subsidies for financing or co-financing of costs of investment implementation.

The total subsidy for a budgetary establishment in a given budgetary year may not exceed 50% of the establishment's operating costs. That limit constitutes a limit for subsidising the current activity of an establishment. The amount of subsidy for an establishment from the local government's budget is, therefore, not unlimited, but it relates to the costs of its operations. The indicated limit does not include targeted grants. Investments carried out by establishments may be costly and they may exceed the financial capacity of those units. In turn, including targeted subsidies for current tasks financed from foreign funds could limit the possibility of obtaining funds from the EU budget. Therefore, the law-maker did not decide to include any of the types of targeted subsidies in the limit of 50% of the operating costs of an establishment.

Chapter 5. **EXECUTIVE AGENCIES**

5.1. Definition and grounds for action

Executive agencies are a relatively new type of public finance sector entities. These type of agencies have been introduced by the provisions of the Public Finance Act of 27 August 2009. The literature indicates that the executive agencies were modelled on legislative solutions which have been functioning within the framework of Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes concerning executive agencies of the European Union[106].

In the light of Article 18 of the Public Finance Act an executive agency is a state legal person created on the basis of a separate act to perform State tasks. The rules of operation of an executive agency shall be specified by the act hat creates the agency and the statute of the agency. Regarding the statute, the Council of Ministers may determine by way of a regulation the requirements which have to be met by the statute of an executive agency. The aim of this regulation is to ensure a uniform and transparent internal organisation of executive agencies in institutional terms.

Executive agencies also operate under the provisions of the Public Finance Act.

It should be emphasised that not every entity which is referred to as an "agency" is an executive ag ency within the meaning of the Public

[106] P. Lenio [in:] *Prawo finansów publicznych z kazusami i pytaniami*, W. Miemiec (eds.), Wolters Kluwer, Warszawa 2020, p. 112.

Finance Act. The Polish Air Navigation Services Agency may serve as an example.

5.2. Legal and financial issues

An executive agency conducts financial management according to the rules outlined in the Public Finance Act and the Act establishing it. Under Art. 21(1) of the Act on public finance an annual financial plan provides the basis for the financial management of the executive agency, and it includes:

1) an income from operations,
2) subsidies from the State budget,
3) a statement on the operating costs of the executive agency and on performance of its statutory tasks,
4) financial result,
5) appropriations for property expenditure,
6) funds allocated to other entities,
7) receivables and payables at the beginning and end of the year, and
8) cash balances at the beginning and end of the year.

According to Article 21(2) of the Public Finance Act the draft annual financial plan of an executive agency shall be determined by its competent authority in an agreement with the minister supervising the executive agency. After achieving an approval from the minister who exercises his supervision, the draft is submitted to the Minister of Finance. This is done according to the procedure and within the deadlines specified in the provisions on work on the draft budget law. As a part of the draft financial plan, a plan on revenues and expenditures of the executive agency is drawn up, which are included in a deadline for their payment (Art. 21(3) of the Public finance Act).

Article 21(4) of the Public Finance Act introduced the principle that in the income and expenditure plan of the executive agency the planned expenditure should not be higher than the planned income. Planned expenditures may exceed planned revenues with the consent of

the minister supervising the executive agency, issued in agreement with the Minister of Finance.

Revenues and costs specified in the financial plan of the executive agency may be changed after obtaining the consent of the minister supervising the agency. The consent is issued after obtaining the opinion of the parliamentary committee responsible for the budget. The Minister of Finance must be immediately notified about the changes. It is important to note that amendments to the executive agency's financial plan may not increase the agency's liabilities or worsen the agency's projected financial result, unless other laws provide otherwise.

Receipts and expenditures of executive agencies are not receipts and expenditures of the state budget. Finances of executive agencies are not covered by a state budget management. However, from the formal point of view, they are an element of the Budget Act, as the financial plans of executive agencies are placed as an annex to the Budget Act.

An executive agency may receive subsidies from the state budget within the scope specified in separate acts. An executive agency may also commit itself for a period of implementation exceeding one financial year, if the expenditure necessary to service the commitment is included in the annual financing plan.

Article 21(10) of the Public Finance Act indicates that the Council of Ministers may determine, by a regulation, a manner of conducting financial management of executive agencies, taking into account a need to ensure uniformity of rules for financing executive agencies, and to observe principles of openness and transparency.

The financial management of the executive agency is based on a net budgeting[107], it is obliged to pay the surplus of funds determined at the end of the year remaining after payment of tax liabilities. The payment must be paid annually to the state budget, to the current account of revenues of the state budgetary unit serving the minister

[107] J. Wantoch-Rekowski, W. Morawski, *Podstawy prawa finansów publicznych. Podręcznik akademicki*, Towarzystwo Naukowe Organizacji i Kierownictwo „Dom Organizatora", Toruń 2019, p. 60.

who supervises that agency,. The surplus shall be transferred by the executive agency immediately after the payment of liabilities due from the reporting period is made, but not later than by 30 June of the year following the year in which the surplus arose. The Council of Ministers may, acting on a motion of the minister supervising the executive agency, express consent not to pay the surplus to the state budget in particularly justified cases resulting from the necessity to ensure efficient and full performance of the executive agency's tasks. This approval takes a form of a resolution.

5.3. Executive agencies currently operating in Poland

5.3.1. Introduction

There are currently 10 entities which have a status of executive agencies in Poland. These are: the Polish Space Agency, the National Institute of Liberty – the Centre for Civil Society Development, the Polish Agency for Enterprise Development, the National Centre for Research and Development, the National Science Centre, Mthe ilitary Property Agency, the Agency for Restructuring and Modernisation of Agriculture, the National Support Centre for Agriculture, the Central Research Centre for Cultivated Plant Varieties, as well as te Strategic Reserves Agency.

In the Budget Law of 20 January 2021, which is valid for the year 2021[108] the above-mentioned agencies' financial plans are included in an Annex 11.

5.3.2. The Polish Space Agency

The Polish Space Agency operates based on the Act of 26 September 2014 on the Polish Space Agency[109]. This agency carries out tasks in the field of supporting:

[108] Journal of Laws of 2021, item 190.
[109] Consolidated text: Journal of Laws of 2020, item 1957.

1) space industry,
2) research,
3) use of space,
4) a development of space technology, including satellite engineering, as well as
5) a use of research and its results for utilitarian, economic, defence, national security and scientific purposes.

The Polish Space Agency is also responsible for initiating, preparing and implementing assumptions, major research directions and development programmes which are of a significant importance to the national interest and the national economy regarding space exploration and utilisation. It identifies and analyses, in cooperation with the competent ministers, challenges and problems in international cooperation in space exploration and utilisation. Moreover, the Agency represents the Republic of Poland in the international arena. It supports state authorities in matters concerning space policy, including by preparing and making available to those authorities analyses and reports on space exploration and its use in various economic sectors and the fields of state defence and security. The Act regulates all tasks of the Agency on the Polish Space Agency[110].

5.3.3. The National Institute of Liberty – The Centre for Civil Society Development

The National Institute of Freedom – The Centre for Civil Society Development (National Institute) operates based on the Act of 15 September 2017 on the National Institute of Freedom – The Centre for Civil Society Development[111].

[110] For an extensive discussion of the legal and financial issues related to the Polish Space Agency see: J. Wantoch-Rekowski, R. Kwaśniewski, M. Wilmanowicz, *Polish Space Agency – an outline of the legal and financial issues*, "Prawo Budżetowe Państwa i Samorządu" 2018, No. 4, pp. 73–89, DOI: http://dx.doi.org/10.12775/PBPS.2018.023.

[111] Consolidated text: Journal of Laws of 2018, item 1813 as amended.

The tasks of this executive agency are listed in Articles 23–27 of the Act. First of all, it should be pointed out that the National Liberty Institute manages programmes supporting the development of a civil society. These programmes are adopted by a resolution by the Council of Ministers.

For example, it can be pointed out that the tasks of the National Institute of Freedom include an implementation of activities aimed at supporting the development of a civic community and a civil society in the Republic of Poland. Those actions include in particular enhancing institutional efficiency of non-governmental organisations and other organised forms of a civil society, their independence and professionalism, while preserving their civic character. The tasks of the National Institute also include strengthening the potential of non-governmental organisations and other organised forms of civil society, in particular by supporting their acquisition of extra-budgetary funds for activities aimed at supporting the development of a civil society and supporting the development of their staff, with particular emphasis on volunteers and community workers.

5.3.4. The Polish Agency for Enterprise Development

The Polish Agency for Enterprise Development operates based on the Act of 9 November 2000 on establishing the Polish Agency for Enterprise Development[112]. The Agency is a part of the Polish system of development institutions. It does not undertake profit-oriented activities. This entity carries out the state's development tasks regarding:

1) entrepreneurship,
2) innovation,
3) the internationalisation of the economy,
4) information society,
5) labour market and human capital, and
6) regional development.

[112] Consolidated text: Journal of Laws of 2020, item 299.

5.3.5. The National Centre for Research and Development

The National Centre for Research and Development operates based on the Act of 30 April 2010 on the National Centre for Research and Development[113].

This executive agency performs extremely important tasks in scientific research and development – it manages, finances or co-finances strategic programmes in this field. The Agency also plays an important role in managing, financing or co-financing an implementation of scientific research and development works which are implemented to the benefit of national defence and security. Important tasks of the National Centre for Research and Development include stimulation of investment by entrepreneurs in scientific activity, in particular, through:

1) co-financing projects run by an entity with the capacity to put the results of the project into practice,
2) supporting an acquisition by scientific and higher education entities of funds for scientific activities from sources other than the state budget.

Other tasks of the Agency include:

1) supporting the commercialisation of the results of scientific research or development work and other forms of their transfer to the economy,
2) initiating and implementing programmes involving financing of scientific research or development work and activities preparatory to the implementation of the results of scientific research or development work, and
3) participation in an implementation of international research or development programmes, including those co-funded from foreign sources.

[113] Consolidated text: Journal of Laws of 2020, item 1861 as amended.

5.3.6. The National Science Centre

The National Science Centre operates based on the Act of 30 April 2010 on the National Science Centre[114].

Core tasks of this executive agency include:

1) funding of basic scientific research,
2) funding for other research,
3) supervising an implementation of fundamental research,
4) international cooperation in the framework of funding for basic research activities,
5) inspiring and monitoring the funding of basic research from resources outside the state budget.

5.3.7. The Military Property Agency

The Military Property Agency operates under the Act of 10 July 2015 on the Military Property Agency[115].

The Agency shall exercise the property rights and other rights *in rem* entrusted by the State Treasury (on its behalf and for its benefit), concerning:

1) agency's property,
2) property of the State Treasury.

The Agency's tasks can be divided into:

1) own tasks (e.g. a management of the State Treasury's property, turnover of property, property records),
2) tasks in the field of defence and state security,
3) tasks commissioned by the Minister of National Defence.

5.3.8. Agency for Restructuring and Modernisation of Agriculture

The tasks and organisation of the Agency for the Restructuring and Modernisation of Agriculture are laid down in the Act of 9 May

[114] Consolidated text: Journal of Laws of 2019, item 1384 as amended.
[115] Consolidated text: Journal of Laws of 2021, item 303 as amended.

2008 on the Agency for the Restructuring and Modernisation of Agriculture[116].

The Agency's task include, among others, supporting:

1) investments in agriculture, fisheries, processing of agricultural products and processing of fish, crustaceans and molluscs,
2) improvement of the agrarian structure, including in particular by creating and extending of family holdings within the meaning of the provisions on the formation of the agricultural system,
3) the development of organic farming and ecological education.

The Agency carries out its tasks primarily by subsidising interest on bank loans, by partial repayment of the capital of bank loans, by granting guarantees and loan sureties, as specified in the financial plan, and by granting guarantees for the repayment of student loans incurred based on the provisions on higher education and science.

It should be stressed that the Agency carries out many important tasks related to the mechanisms of the EU Common Agricultural Policy.

5.3.9. The National Support Centre for Agriculture

The organisation and tasks of the National Agricultural Support Centre are defined by the Act of 10 February 2017 on the National Agricultural Support Centre[117]. This agency performs tasks resulting from the state policy, particularly in the field of implementation and application of instruments of agricultural support, active agricultural policy and rural development. The tasks of this executive agency also include:

1) creation and improvement of the area structure of family farms,
2) creation of conditions conducive to a rational use of a production potential of the Treasury Agricultural Property Stock,
3) restructuring and privatisation of the Treasury's property used for agricultural purposes,
4) trading in real estate and other assets of the State Treasury,

[116] Consolidated text: Journal of Laws of 2019, item 1505 as amended.
[117] Consolidated text: Journal of Laws of 2020, item 481.

5) administration of the Treasury's property resources intended for agricultural purposes,
6) security of the State Treasury's assets,
7) initiation of land management work,
8) support the organisation of farms on the State Treasury land,
9) support for measures to promote renewable energy sources, in particular in agriculture,
10) collecting, analysing and making available information on agricultural and food markets.

It follows from Article 10 of the Act on the National Support Centre for Agriculture that entities from the public finance sector may, with the consent of the minister competent for rural development, entrust the National Centre with an implementation of tasks defined for them, by providing the National Centre with adequate funds for this purpose.

5.3.10. The Central Centre for Cultivar Testing

The Central Centre for Cultivar Testing problems are regulated by the Act of 25 November 2010 on the Central Centre for Cultivar Testing[118]. This agency performs state tasks within the scope of:

1) examination and registration of plant varieties,
2) post-register varietal experimentation, and
3) legal protection of plant varieties.

Article 6 of the Act specifies that this entity may provide research, experimental, training or I.T. services in the field of seed.

5.3.11. The Strategic Reserve Agency

The Strategic Reserves Agency was established by the Strategic Reserves Act of 17 December 2020[119]. The Agency is a legal successor of the formerly functioning Material Reserves Agency.

[118] Consolidated text: the Journal of Laws of 2017, item 2109.
[119] Journal of Laws of 2021, item 255.

Strategic reserves are created in the event of a threat to state security and defence, security, order and public health, as well as the occurrence of a natural disaster or a crisis, to support the performance of tasks in the area of state security and defence, the restoration of critical infrastructure, mitigating the disruptions in the continuity of supplies serving the functioning of the economy and meeting the basic needs of citizens, saving their lives and health, realising the national interests of the Republic of Poland in the area of national security, fulfilling its international obligations, as well as providing assistance and support to entities of public international law.

Strategic reserves may include, *inter alia*, raw materials, materials, equipment, machinery, structures, critical infrastructure elements, production capacity, service capacity, livestock, petroleum products, agricultural and agri-food products, foodstuffs and ingredients, medical devices, medicinal products and veterinary medicinal products.

Strategic reserves constitute a separate property of the Treasury. Still, in cases justified by economic calculation or by specific technological or organisational considerations, the Agency is allowed to maintain strategic reserves in the form of assortment entrusted to public administration bodies or constituting the property of entrepreneurs or entities not being entrepreneurs in warehouses at their disposal.

Of a great importance in the context of strategic reserves is the Strategic Reserve Agency. Its tasks include:

1) maintaining strategic reserves, including holding, exchanging or replacing them and performing maintenance on the strategic reserves held,
2) implementing the decisions of the Prime Minister concerning the creation, release and liquidation of strategic reserves,
3) managing and letting against payment, in particular, based on tenancy or leasing agreements, real estate owned or controlled by the Agency or providing other services related to real estate management,
4) making available strategic reserves and carrying out other tasks in the framework of assistance and support to entities governed by public international law, and

5) creating and maintening of agency stocks of crude oil and fuels in accordance with the principles set out in the Act on Stocks of Crude Oil and Petroleum Products and performance of other duties arising from this Act.

Chapter 6. **BUDGETARY MANAGEMENT INSTITUTIONS**

6.1. Legal status

The Public Finance Act of 27 August 2009 abolished auxiliary farms which operated in Poland since the 1950s. The Act also established budget economy institutions. From the organisational and financial point of view, the aforementioned auxiliary farms constituted a separate part of a basic activity of a local government budget unit or a side activity of that unit[120]. These farms could operate until the end of 2010. The introduction of new organisational forms of entities of the public finance sector was a long-term process due to the need to make ownership and personnel transformations[121].

Following the law-maker's assumption, public tasks which had been performed so far by auxiliary holdings of budgetary units were to be taken over by budgetary units or, due to the scale and scope of activity and its specificity, were to be performed in another organisational form, including precisely in the form of budgetary economy institutions[122]. These institutions were to replace auxiliary holdings of budget entities, as well as state budget establishments[123].

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120 A. Borodo, *System finansowy samorządu terytorialnego w Polsce,* Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2011, p. 38.

121 See: K. Winiarska, *Formy organizacyjno-prawne jednostek sektora finansów publicznych*, „Zeszyty Naukowe Uniwersytetu Szczecińskiego. Finanse, Rynki Finansowe, Ubezpieczenia" 2011, No. 32, pp. 677–688.

122 Print No. 1181, Explanatory Memorandum to the Government Bill on Public Finance, 2008, source: https://orka.sejm.gov.pl/Druki6ka.nsf/0/B6424AF9598E217FC12574EA002C08AC/$file/1181-uzas.doc (accessed 25.03.2021).

123 M. Duda, *Instytutcja gospodarki budżetowej*, [in:] *Prawo finansów publicznych, Kompendium akademickie*, (eds.) P. Smoleń, Wolters Kluwer, Warszawa 2012, p. 31.

Bearing the above in mind, budgetary economy institutions constitute a relatively new organisational and legal form of entities of the public finance sector. They have been introduced to fill a certain gap.

According to Article 23(1) of the Public finance act a budgetary economy institution (hereinafter: "I.G.B." or "institution") is a unit of the public finance sector established to perform public tasks. Therefore, it follows from Article 23(1) of the Public finance act that a budgetary economy institution is a unit of the public finance sector established to implement public tasks. The unit performs separate tasks against payment and covers its operating costs and liabilities from the revenue obtained. Moreover, an institution acquires legal personality upon its registration in the National Court Register.

The main idea behind the creation of budgetary economy institutions is to ensure self-financing. Therefore (as E. Rutkowska-Tomaszewska rightly points out), they should be established only when the public tasks assigned to them guarantee a full realisation of this idea. Otherwise, the creation may prevent this idea's objective by strengthening and improving public finance transparency from being achieved[124].

6.2. Creation principles

There are two ways of establishing the I.G.B. The first one provides for the institution's creation by the Minister or the Head of the Chancellery of the Prime Minister, when the Head acts with the approval of the Council of Ministers, granted upon its request. In this case, the Council of Ministers keeps control and has an influence over the creation of the I.G.B.[125]. In the request referred to above, the Minister or the Head of the Chancellery of the Prime Minister shall

[124] E. Rutkowska-Tomaszewska, *Jednostki sektora finansów publicznych* [in:] *Prawo finansowe*, (eds.) R. Mastalski, E. Fojcik-Mastalska, Wolters Kluwer, Warszawa 2013, p. 76.

[125] *Ibidem*, p. 75.

specify: a government administration body performing functions of the founding body; an object of the basic activity; the sources of revenue; and the appropriation of profit.

Pursuant to the second mode of establishing the I.G.B., the institution is established by the authority or a head of the unit referred to in Article 139(2) of the u.f.p. as the body performing functions of the founding body, i.e. the institution is established by the body or the head of the unit referred to in Article 139(2) of the Act on the Act on public finance as the founding body, i.e. the Chancellery of the Sejm, the Chancellery of the Senate, the Chancellery of the President of the Republic of Poland, the Constitutional Tribunal, the Supreme Audit Office, the Supreme Court, the Supreme Administrative Court together with the pro vincial administrative courts, the National Council of the Judiciary, common courts, the Ombudsman, the Children's Rights Ombudsman, the National Broadcasting Council, the President of the Office for Personal Data Protection, the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, the National Election Office and the National Labour Inspectorate. In this mode, the above-mentioned entities are not obliged to obtain an approval of the Council of Ministers. Still, it is sufficient to inform the Prime Minister about the establishment of an institution.

However, we cannot forget about the third mode of the I.G.B. formation, which consists of transforming auxiliary holdings of state budgetary units into the I.G.B. This mode has been regulated in details in the Regulation of the Council of Ministers of 21 September 2010 on the manner and procedure of transforming auxiliary holdings of state budgetary units into budgetary economy institutions[126]. The necessity to ensure a continuity of an implementation of public tasks in the sphere of the public finance sector is the most fundamental objective of this procedure. The regulation defines a manner and a procedure of transforming auxiliary state budget units into budgetary

[126] Journal of Laws of 2010, No. 181 item 1217 as amended.

economy institutions. The transformation of an auxiliary holding into a budgetary economy institution occurs at the moment of a registration of a budgetary economy institution into the National Court Register.

As rightly pointed out by C. Kosikowski, the norms of financial law are established to implement the assumptions of the socio-economic and financial policy of the State[127]. It should be stressed that legal, financial and organisational issues of the institution of the budgetary economy are rarely analysed by the doctrine of financial law[128]. However, referring to the practical aspects of the third mode, it is worth pointing to the results of the Supreme Audit Office's audit on the actual functioning of budgetary economy institutions. The analysis of a property and financial situation of the institutions shows that in 2011–2012 there was a significant deterioration in the effectiveness of operations in six of eight audited I.G.B.s which were established as a result of a transformation of auxiliary holdings. In the first half of 2013, this situation has already occurred in relation to seven out of eight institutions[129]. It follows from the results of the analysis that the transformation of auxiliary holdings into I.G.B.s did not contribute to or did not strengthen institutions in question, and the transformation did not improve the transparency of public finances. In line with the position of the N.I.K., it is advisable to establish and operate only those I.G.B.s which are capable of self-financing, and whose predominant source of revenue is a sale to entities from outside the public finance sector, as otherwise an unjustified flow or transfer of funds will take place[130].

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127 C. Kosikowski, *Prawo finansowe, Część ogólna,* Dom Wydawniczy ABC, Warszawa 2003, p. 52.

128 See: J. Wantoch-Rekowski, W. Morawski, M. Noga, *Logistics Service Centre – legal, financial and organisational issues*, „Prawo Budżetowe Państwa i Samorządu" 3(8)/2020, DOI: http://dx.doi.org/10.12775/PBPS.2020.018, pp. 72–87.

129 NIK, Informacja o wynikach kontroli – Funkcjonowanie instytucji gospodarki budżetowej, KBF-4101-05-00/2013, No. 24/2014/P/13/037/KBF, 2011, source: https://www.senat.gov.pl/gfx/senat/userfiles/_public/k8/komisje/2014/kbfp/materialy/nikkontr1.pdf (accessed 01.04.2021).

130 *Ibidem.*

6.3. Financing principles and an annual financial plan

Finally, it is worth pointing out that public finance management takes place through various organisational forms which manifest a varying degree of connections with the budget[131]. Concerning the I.G.B., P. Panfil points out that "The analysis of legislative solutions leads to the conclusion that they do not unambiguously determine the type and nature of links between this organisational and legal form and the state budget", and also: "At the same time, the view should be shared that the name given to this organisational-legal form is inadequate for the rather loose connection of the institution of a budgetary economy with the state budget"[132].

An I.G.B. may receive subsidies from the state budget to implement public tasks, if separate laws provide for such a possibility. The entitlement mentioned in the above, which is provided for in Article 24(1) of the Public Finance Act, constitutes an exception to the principle of self-financing activities by entities operating in this organisational and legal form[133]. According to Article 132(2)(2) of the u.f.p., earmarked subsidies for financing or co-financing investment costs of budgetary economy institutions may be granted from the state budget.

Moreover, under Article 24(2) of the u.f.p., an annual financial plan provides the basis for a financial management of a budgetary economy institution. It includes:

1) an income from operations,
2) subsidies from the state budget,

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131 *Prawo finansów publicznych*, (eds.) B. Brzeziński, A. Olesińska, Towarzystwo Naukowe Organizacji i Kierownictwo „Dom Organizatora", Toruń 2017, p. 63.

132 P. Panfil, *Sektor finansów publicznych,* [in:] *Podstawy finansów i prawa finansowego* (eds.) A. Drwiłło, Wolters Kluwer, Warszawa 2011, p. 340.

133 A. Grabowicz, *Art. 24,* [in:] *Ustawa o finansach publicznych. Komentarz prawno-finansowy,* Wydawnictwo Sejmowe, Warszawa 2014, LEX.

3) a statement of costs:
   a) on functioning of budgetary management institutions,
   b) on performance of discrete tasks,
4) appropriations for property expenditure,
5) a financial result,
6) receivables and payables at the beginning and end of the year, and
7) cash balances at the beginning and end of the year.

According to Article 122(1)(1)(b) of the u.f.p. the financial plans of an I.G.B. constitute annexes to the Budget Act. In line with Article 27 (2)(4) of the u.f.p., a Director of an I.G.B. is responsible for preparing a draft annual financial plan. The draft annual financial plan is submitted to the body performing functions of the founding body. Submission is made according to the procedure and within the timeframe specified in the provisions concerning the draft budgetary act. Moreover, financial plans of institutions of the budgetary economy are presented separately for each entity, with a distinction being made between initial and final balances of current assets and cash, receivables and liabilities, own revenues, subsidies from the state budget, and costs of task execution.

Importantly, the costs of a budgetary economy institution may be incurred only within the framework of revenues obtained, taking into account a possibility of using funds from previous periods which remain at the disposal of the budgetary economy institution. The financial plan of the institution of the budgetary economy may be amended in the budgetary year after obtaining a consent of a body performing the functions of a founding body; however, such amendments may not increase a subsidy from the state budget or a deteriorating of the planned financial result. The Minister of Finance should be immediately notified on the changes made to the I.G.B.'s financial plans. Furthermore, changes to the financial plan may be made during a financial year with the consent of the body performing the functions of the founding body which was issued in an agreement with the Minister of Finance. These changes would consist of an increase of costs above the planned revenue, but not more than the amount of funds from previous periods that remain at the disposal of the institution of the budgetary economy.

6.4. Liquidation and conversion

In the liquidation of I.G.B.s the allocation of the property of the liquidated institution shall be determined by a body exercising functions of a founding body. The allocation shall be made in an agreement with a minister responsible for the state assets. Moreover, the body performing the functions of the founding body takes over the receivables and liabilities of the liquidated I.G.B.

The established entity shall take over the receivables and liabilities of the budgetary economy institution being wound up for conversion into another organisational and legal form, which shall also apply *mutatis mutandis* to mergers of budgetary economy institutions.

Examples of liquidated institutions of the budgetary economy are: the Educational Publishing House PARPAMEDIA in Warsaw[134], and the Central Documentation Centre for Geodesy and Cartography[135].

6.5. Statutes, property and finance

The statutes granted by a body exercising functions of a founding body shall constitute the basis for the I.G.B.s' activities. The statutes of a budgetary economy institution shall specify in particular:

1) its name and a seat,
2) its core business,

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134 Order of the Minister of Health of 20 August 2013 on liquidation of the Educational Publishing House PARPAMEDIA in Warsaw, Dz.Urz. Min. Zdrow. of 2013, item 29.

135 Order No. 19 of the Chief Geodesist of the Country of 1 September 2017 on liquidation of the budgetary economy institution Centralny Ośrodek Dokumentacji Geodezyjnej i Kartograficznej, source: http://www.gugik.gov.pl/__data/assets/pdf_file/0003/89040/Zarzadzenie-GGK-z-dnia-1-wrzesnia-2017-w-sprawie-likwidacji-gospodarki-budzetowej-Centralny-Osrodek-Dokumentacji-Geodezyjnej-i-Kartograficznego.pdf (accessed 27.03.2021).

3) sources of revenue,
4) a procedure and rules for amending the Statutes,
5) a state of a working capital equipment and donated assets,
6) rules for carrying out non-core activities, if the institution will carry out such activities.

It should also be pointed out that the organisational bylaws issued by the Director of the I.G.B. define an internal organisation of the budgetary economy institution. In addition, IGB shall be guided by the principle of efficiency in its use of property. The property of IGB may comprise:

1) transferred to property ownership,
2) property constituting equipment provided by the body exercising the functions of the founding body on a loan basis,
3) property acquired from own resources.

To incur obligations above 30% of an annual revenue, the I.G.B. shall be required to obtain a consent of the body performing functions of the founding body. The I.G.B. may also dispose fixed assets. However, disposal, i.e. lease, rental or lending of assets may be effected only on terms and conditions determined by the authority performing the functions of the founding authority, while taking into account the provisions on real estate management.

It should be stressed that the I.G.B. fund represents the value of the institution's assets. The fund of the I.G.B. shall be increased or decreased by the amount of changes in the value of assets resulting from:

1) revaluation of fixed assets on the basis of separate regulations;
2) mergers and divisions of budgetary economy institutions on the basis of closing balances of the divided or merged entities.

Moreover, the I.G.B. creates a reserve fund from net profit for:

1) financing investments;
2) covering of the net loss.

6.6. Director of a budget economy institution

A director of an institution of budgetary economy shall be appointed and dismissed by a body performing functions of the founding authority. The tasks of the Director of the I.G.B. include:

1) managing the I.G.B.,
2) representing the I.G.B. externally,
3) preparing and making organisational rules of the I.G.B.,
4) preparing a draft annual financial plan,
5) preparing annual accounts of the I.G.B.,
6) preparing the I.G.B.'s annual activity report.

Chapter 7. **STATE SPECIAL PURPOSE FUNDS**

7.1. History of the Special Purpose Fund

As indicated in the justification to the government's draft law on public finance of 20 October 2008[136], target funds were created almost from the beginning of the Second Republic of Poland. A rapid development of special-purpose funds which has began at the threshold of the 1960s continued almost uninterruptedly until the end of the 1990s. As a result, funds of a very diverse nature were established, both at the central and local levels. The Act of 5 January 1991 on Budget Law was an important step towards putting a fund management in order.. However, despite the measures taken in its wake concerning abolitions and liquidations of many earmarked funds, this form has not ceased to exist; to the contrary, its development could, again, be observed in subsequent years.

The special-purpose fund was exemplarily defined in the legislation in the already repealed Act on Public Finance of 26 November 1998. It follows from Article 22(1) and (8) of this Act that "a special-purpose fund is a fund established by law, the revenues of which come from public funds, and the expenditures of which are intended for the implementation of separate tasks" with the proviso that "a budgetary law may specify a different purpose for the expenditures of a special-purpose fund than the law creating the fund, provided that it does not receive a subsidy from the state budget". However, the literature on the subject rightly emphasises that the use of the expression "the fund is

[136] Print No. 1181, source: https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/1181 (accessed 01.04.2021).

a fund" is a clear example of a tautological definition which contains a logical error (defining *idem per idem*)[137].

The term "fund" particularly emphasises the allocation of funds for precisely defined purposes, as a result of which the term "special-purpose" is added to the name of the fund in the literature[138]. A lack of a specific statutory definition means that the term "special-purpose fund" is sometimes used to refer to various entities that include a word "fund" in their names[139]. The literature indicates that the terms "special-purpose fund" and "fund" are frequently attributed to the same content, *inter alia*, in legal language[140] . However, many special-purpose funds can be distinguished. Differences between them can be seen, among others, in the motives for their creation, their features, the varied sources of financial support, and the purpose of their spending[141]. In the past, *inter alia*, there were field funds for the protection of agricultural land, which, however, in 2010 were abolished and incorporated into local government budgets[142].

7.2. The concept of a special fund

The fund-type economy functions alongside the budget-type economy[143]. The budget is the primary instrument and the tool of a country's public finances. Moreover, it is a legal, political, and financial act detailing the monetary income and expenditure of the

[137] E. Malinowska-Misiąg, *Art. 29 ustawy o finansach publicznych,* [in:] *Ustawa o finansach publicznych. Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych. Komentarz* (eds.) W. Misiąg, Warszawa 2019, C.H. Beck, Legalis.

[138] J. Szołno-Koguc, *Miejsce funduszy celowych w systemie finansów publicznych*, Annales Universitatis Mariae Curie-Skłodowska, Lublin, vol. XXXVIII, sectio H 2004, p. 97.

[139] E. Malinowska-Misiąg, *op. cit.*

[140] B. Kucia-Guściora, *Status prawny funduszy celowych*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2004, rok LXVI – zeszyt 4, pp. 5–6.

[141] J. Szołno-Koguc, *op. cit.*, p. 97.

[142] A. Borodo, *Polskie prawo finansowe. Zarys ogólny*, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2010, p. 93.

[143] *Prawo finansów publicznych*, (eds.) B. Brzezinski, *op. cit.*, p. 146.

State[144]. The budget is characterised by a certain degree of versatility, for example from the perspective of collecting revenue from various sources and the possibility of spending the resources collected for various purposes[145]. Special-purpose funds apply principles of a financial management which are specified in the Act of 27 August 2009 on public finance. Currently the state special-purpose funds do not have a legal personality and are created under a separate act.

An entity which is to be granted legal personality may not be regarded as a special-purpose fund within the meaning of Article 29 of the u.f.p., nor may it be a fund from the exclusive source of whose revenue, except for interest on a bank account and donations, is a subsidy from the state budget[146].

7.3. Finances of state special-purpose funds

The revenues of the State special-purpose fund shall come from public funds, whereas costs shall be incurred for the performance of separate state tasks. The state special purpose fund constitutes a separate bank account which is managed by a minister who is specified in establishing the fund or by another authority specified in the Act of 27 August 2009 on public finance. However, it is worth pointing out that legal regulations to date have rarely specified special-purpose funds as separate bank accounts, but have provided for special-purpose funds to be endowed with a legal personality[147].

State special-purpose funds do not include funds whose only source of revenue is a subsidy from the state budget, but this rule does not apply to interests on bank account and donations. The basis

144 A. Borodo, *Finanse publiczne, zagadnienia ustrojowe i prawe*, Wolters Kluwer, Warszawa 2019, p. 14.

145 J. Szołno-Koguc, *op. cit.*, p. 98.

146 P. Lenio, *Państwowe fundusze celowe,* [in:] *Prawo finansów publicznych z kazusami i pytaniami,* (eds.) W. Miemiec, Wolters Kluwer, Warszawa 2018, p. 111.

147 A. Mikos-Sitek, *Formy organizacyjne jednostek sektora finansów publicznych,* „Kwartalnik Prawa Publicznego" 2010, No. 4, p. 52.

for the financial management of the state special-purpose fund is an annual financial plan. State special-purpose funds administrators draw up financial plans in a task-based arrangement for the financial year and two subsequent years. The plan in question may be amended in the form of an increase in projected revenues and, respectively, costs. The amendments shall be made by a minister or a body disposing of the fund after obtaining a consent of the Minister of Finance and an opinion of the Parliamentary Committee for the budget. These changes may not increase subsidies from the state budget.

The increase of revenues of the state special-purpose fund is primarily allocated to repay possible mature liabilities, including credits and loans. On the other hand, under Art. 78d u.f. p. the Minister of Finance (who acts within the framework of managing the Treasury debt, including financial assets referred to in Art. 78(1)(2) of the Act on Public finance and to finance the borrowing needs of the state budget) is authorised to accept a management free resources of state special-purpose funds. The authorising officers of state special-purpose funds shall transfer free funds to the Minister of Finance for management, except for funds originating from budgetary grants. The unambiguous purpose of the above provision is to raise funds for the state budget.

If the law creating the fund provides so, loans may be granted to local government units from the resources of the state special-purpose fund. As far as the costs of the state special-purpose fund are concerned, it should be emphasised that they may be covered only within the framework of available financial resources comprising of current revenues, including subsidies from the state budget, and remnants of resources from previous periods. Revenues of state earmarked funds are public funds constituting non-tax budgetary receivables of a public-law nature. Following the provisions of the Public Finance Act, local government units can contract loans in state special-purpose funds to finance expenditures on investments and investment purchases, including those covered by the undertakings referred to in Article 226(3) of the Public Finance Act, provided that the law creating the fund provides for such a possibility. If the volume of revenues or

costs included in the financial plan exceeds PLN 40,000,000, an internal audit shall be carried out in state special-purpose funds. As follows from Article 277(2) of the u.f.p., internal audit units of state special-purpose funds are created in budgetary units servicing those funds.

7.4. Examples of earmarked funds

Table 1. Selected state special-purpose funds

No.	Name
1	the Social Security Fund
2	the Bridging Pension Fund
3	the Reprivatisation Fund
4	the State Fund for Rehabilitation of Disabled Persons
5	the Labour Fund

Source: own elaboration.

The Social Insurance Fund (F.U.S.) is a state special purpose fund, established to perform tasks within the scope of social insurance, which *explicitly* results from Article 51(1) of the Act of 13 October 1998 on the social insurance system[148]. Moreover, the Social Insurance Institution is the administrator of the Social Insurance Fund. The Fund's revenues come from, *inter alia*, social insurance contributions which are not subject to transfer to open pension funds, and funds compensating for the amounts of contributions transferred to open pension funds and other sources specified in Article 52(1) of the above-mentioned Act. Moreover, the F.U.S. may receive subsidies and interest-free loans from the State budget, within limits specified in the Budget Act.

The Bridge Pension Fund is a state special purpose fund established to finance bridge pensions (Article 29(1) of the Act of 19 December 2008 on Bridge Pensions[149]).

[148] Consolidated text: Journal of Laws of 2021, item 423 as amended.
[149] Journal of Laws of 2018, item 1924 as amended.

Reprivatisation Fund, under Article 56(1) of the Act of 30 August 1996 on Commercialisation and Certain Entitlements of Employees[150] is established from revenues generated from the sale of shares belonging to the Treasury.

The Labour Fund is a state purpose fund at the minister's disposal relevant for labour (Article 103 of the Act of 20 April 2004 on employment promotion and labour market institutions[151]).

An interesting and unique example of fund is the State Fund for Rehabilitation of Persons with Disabilities, which following Article 45, par. 1 and 2 read in connection with Article 45(2a) of the Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities[152], is a state purpose fund, within the meaning of the provisions on public finance. However, the provisions of Article 29(3–4) of the u.f.p. do not apply to the State Fund for Rehabilitation of Persons with Disabilities. What is more, the State Fund for Rehabilitation of Persons with Disabilities has legal personality.

It is worth emphasising again that many special purpose funds are not classified as state special-purpose funds within the meaning of Article 29 of u.f.p., such as the Bank Guarantee Fund, which only resembles a foundation-type entity, although the purpose and nature of the tasks entrusted to it prove that it has the status of a legal and financial institution[153]. It should be pointed out that legal regulations concerning the full assessment of the legal nature of the cited entity have been subject to numerous changes[154]. For example, the Bank Guarantee Fund, regulated by the provisions of the Act of 10 June

150 Journal of Laws of 2021, item 425 as amended.

151 Journal of Laws of 2020, item 1409 as amended.

152 Journal of Laws of 2021, item 573 as amended.

153 C. Kosikowski, *Prawo gospodarcze publiczne,* Wyd. Naukowe PWN, Warszawa 1994, p. 50 et seq; A. Nadolska, *Obowiązkowa składka na fundusz gwarancyjny banków oraz kas – charakter prawny i znaczenie uchwał Rady Bankowego Funduszu Gwarancyjnego w kształtowaniu jej wysokości (zarys problemu i przyczynek do dyskusji)*, „Bezpieczny Bank" 2019, No. 2 (75), p. 15.

154 J. Szambelańczyk, *XXV lat działalności Bankowego Funduszu Gwarancyjnego w Polsce,* „Bezpieczny Bank" 2020, No. 3 (80), p. 13.

2016 on the Bank Guarantee Fund, deposit guarantee scheme and compulsory restructuring[155]. It is a legal person performing tasks specified in the Act, while it is not a state legal person, and is not a unit of the public finance sector. Thus, it does not constitute a state special purpose fund. However, the assessment of the legal nature of the above-mentioned fund has sometimes been the subject of controversy. However, it is indisputable that the mission of the BFG is to undertake activities for the benefit of the stability of the domestic financial system[156]. Another example is the Insurance Guarantee Fund, which is responsible for safeguarding the interests of insured persons and paying out benefits. In turn, according to the legal definition (Article 3(1)(50) of the Act of 11 September 2015 on insurance and reinsurance activity) it is "a separate fund of assets constituting a reserve formed from insurance premiums, invested in a manner set out in the insurance contract".

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155 Journal of Laws of 2020, item 842 as amended.

156 See: Z. Ofiarski, *Istota i zakres kontroli wykonywanej przez Bankowy Fundusz Gwarancyjny,* „Białostockie Studia Prawnicze" 2019, No. 3, pp. 53–65.

Chapter 8. **INSURANCE ENTITIES**

8.1. Introduction

It follows from Article 8(9) of the Act of 27 August 2009 on public finance that the public finance sector consists, *inter alia*, of the Social Insurance Institution (Zakład Ubezpieczeń Społecznych, ZUS) and funds managed by it, as well as the Agricultural Social Insurance Fund (KRUS) and funds managed by the President of the Agricultural Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego).

The entities mentioned in the above perform the tasks of the State in the sphere of social insurance: general insurance and agricultural insurance.

The Social Insurance Institution is the administrator of two state special-purpose funds: the Social Insurance Fund (SIF) and the Bridging Pension Fund (FEP). ZUS is also the body of the Demographic Reserve Fund (FRD), which is a state legal person.

In turn, the President of the Agricultural Social Insurance Fund is involved in the operation of the following funds:

1) the Pension Fund,
2) the Prevention and Rehabilitation Fund,
3) the Administrative Fund,
4) the Contribution Fund, and
5) the Incentive Fund.

The rules of functioning of the Social Insurance Institution (ZUS) and the funds managed by this entity are primarily based on the provisions of the Act of 13 October 1998 on the social insurance system and the Act of 19 December 2008 on bridging pensions[157].

[157] Consolidated text: Journal of Laws of 2018, item 1924.

In turn, the issue of agricultural insurance and entities implementing that insurance is regulated in the Act of 20 December 1990 on farmers' social insurance[158].

8.2. The Social Insurance Institution

The Social Insurance Institution is a state organizational unit which has a legal personality. The seat of the establishment is the capital city of Warsaw. The Social Insurance Institution operates based on the Act on the Social Insurance System and other acts regulating its particular scope of the Insitution's activities. The Social Insurance Institution comprises of the Head Office and organizational field units (branches, inspectorates, and field offices).

The currently operating Social Insurance Institution has a relatively long history. It was created by the Regulation of the President of the Republic of Poland of 24 October 1934 amending the Act of 28 March 1933 on social insurance (known as the Integration Act)[159].

The scope of the Institution's activities includes, but is not limited to:

1) implementing social security legislation,
2) giving an opinion on draft legislation in the field of social security,
3) implementing international agreements and conventions in the field of social security,
4) controlling a fulfilment of social insurance obligations by the payers of contributions and by the insured, as well as other tasks assigned to the ZUS, and
5) popularising knowledge on social insurance.

The scope of the ZUS's activities includes running the contact point referred to in Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, for the exchange of data within

[158] Consolidated text: Journal of Laws of 2021, item 266.
[159] Journal of Laws of 1934, No. 95, item 855.

the Electronic Exchange of Social Security Information System with regard to:

1) the determination of the applicable legislation,
2) sickness benefits in cash,
3) maternity and equivalent paternity benefits,
4) invalidity benefits,
5) old-age benefits,
6) survivors' pensions,
7) cash benefits in respect of accidents at work and occupational diseases,
8) death grants,
9) pre-retirement benefits,
10) special non-contributory cash benefits,
11) the recovery of contributions or overpaid benefits.

The Social Insurance Institution has three bodies, which are:

1) the ZUS President,
2) the Board of Directors, whose chairman is ex officio the ZUS President,
3) the Supervisory Board of the ZUS.

Activities of the establishment are managed by the ZUS President who represents the Establishment externally. The Prime Minister appoints the President of the establishment at the minister's request competent for social security matters. The appointment is made after the minister's consultation with the Supervisory Board of the establishment. The Prime Minister dismisses the President of the Establishment upon the motion of the minister competent for social security matters.

The Social Insurance Institution – as a public finance sector entity – operates based on a financial plan. The ZUS has a statutorily defined catalogue of revenues and expenditures. The following should be indicated as examples of revenues of the ZUS:

1) a deduction from the FUS, the amount of which is specified annually in the Budget Act on the basis of the financial plan of the FUS approved by the minister competent for social security, in consultation with the minister competent for the Budget,

2) proceeds with other tasks assigned to the establishment,
3) subsidies from the state budget.

As far as expenses are concerned, it should be emphasised that the Social Insurance Institution manages its property and conducts independent financial management within the limits of its resources. The main expenditures include:

1) expenditure on wages and salaries,
2) expenditure on the purchase of goods and services,
3) costs of the day-to-day operations of the Plant Supervisory Board,
4) investment expenditure.

8.3. The Social Insurance Fund

The Social Insurance Fund is a state purpose fund established to implement tasks in social insurance area. Its administrator is the Social Insurance Institution. The FUS has a statutorily defined catalogue of revenues and expenditures.

As defined by the Social Insurance System Act, the modern Social Insurance Fund grew out of the Social Insurance Fund which was established in the 1980s.[160].

The FUS is not a homogeneous fund. It consists of five funds:

1) pension,
2) disability fund,
3) sickness fund,
4) accident fund, and
5) reserve fund.

The reserve fund may be used to make up shortfalls in the disability, sickness or accident fund. Concerning the pension fund, the Demographic Reserve Fund performs the function of a reserve fund.

[160] J. Wantoch-Rekowski, *Składki na ubezpieczenie emerytalne – konstrukcja i charakter prawny*, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2005, p. 6.

The basic revenues of the Social Security Fund include:

1) social security contributions,
2) subsidies from the state budget,
3) payments from the State budget and other institutions, transferred for the benefits entrusted to the Institution,
4) funds from interest on the FUS bank account.

The Act on the Social Insurance System, in Article 53(1), provides that, within the limits set out in the Budget Act, the FUS may receive subsidies and interest-free loans from the State budget. Subsidies and loans may only be used to supplement the funds for the payment of benefits guaranteed by the State, if revenues transferred to the FUS bank account and funds accumulated in the reserve fund do not ensure full and timely payment of benefits financed from the FUS revenues. In turn, with the consent of the minister competent for public finance, the FUS may contract loans.

In turn, the funds accumulated in the FUS are mainly financing:

1) the payment of benefits under the pension, disability, sickness and accident insurance schemes,
2) expenditure on disability prevention,
3) repayment of credits and loans with interest, if these credits and loans were taken to pay contributions from the FUS,
4) interest for late payment of benefits, as well as
5) dues to contributors.

The majority of an expenditure by the Social Insurance Fund is related to the payment of insurance benefits. However, there are also expenditures which result from the execution by the ZUS of tasks financed temporarily from the Social Insurance Fund's resources (e.g. an execution of commissioned tasks), which are then subject to a reimbursement from the State Budget resources[161].

[161] J. Wantoch-Rekowski, *System ubezpieczeń społecznych a budżet państwa – studium prawnofinansowe*, Lex a Wolters Kluwer business, Warszawa 2014, p. 132.

8.4. The Bridging Pension Fund

The Bridging Pensions Fund was established by the Act of 19 December 2008 on bridging pensions. This fund has a state special purpose fund which was established to finance bridging pensions. It is administrated by the ZUS.

Like any state special purpose fund, the Bridge Pension Fund has a statutorily defined catalogue of revenues and expenditures. In the light of Article 30(1) of the Act on Bridging Pensions, the most important revenues of the the FEP include:

1) contributions to the FEP,
2) subsidies from the state budget,
3) interest on the FEP's bank accounts,
4) interest on late payment of contributions to the FEP, and
5) repayment of benefits unduly received, together with interest.

As far as budgetary subsidies are concerned, the law-maker indicates that the FEP receives them within limits specified in the Budget Act. On the other hand, the funds accumulated within the Bridging Pension Fund are primarily used to finance the payment of bridging pensions.

8.5. The Demographic Reserve Fund

The Demographic Reserve Fund is a reserve fund to the pension fund. It secures the funds that are necessary to pay pensions.

The Demographic Reserve Fund is not a state special purpose fund. It is a legal entity whose body is the Social Insurance Institution. The Social Insurance Institution disposes the Demographic Reserve Fund's funds and represents the Fund externally. The seat of the Fund is the seat of the Social Insurance Institution.

The Demographic Reserve Fund operates based on the Act's on the Social Security System provisions, as well as on the basis of the

Fund's statute which is granted to it by the minister competent for social security by a way of an ordinance.

The purpose of creating the Demographic Reserve Fund was to maintain the stability and self-sufficiency of the pay-as-you-go pension system. In periods of fluctuation in the size of particular age groups, as has happened and is happening not only in Poland, the financial capacity to pay benefits due may be undermined. It is possible that current contributions of economically active people will be insufficient to finance the payment of pension benefits. In such a situation, the obligation to contribute to the pension system would overburden the State budget. The necessity of an involvement of budgetary funds in the pension sphere results from Article 67(1) of the Constitution of the Republic of Poland. This provision grants to the citizens of the Republic of Poland a right to social security in case of their inability to work due to illness or disability, and after reaching the retirement age. This provision also indicates that laws determine the scope and forms of social security. One of such acts is the Act on the Social Insurance System, which in Article 2(3) indicates that the State guarantees the payment of social insurance benefits. In turn, it follows from Article 62 of this Act that the State budget guarantees the payment of pensions from the Social Insurance Fund. The establishment of the Demographic Reserve Fund, thus, fulfils (in a sense) a protective function for the State[162] budget.

In accordance with Article 61(1) of the Act on Social Insurance System, a financial management of the Demographic Reserve Fund is based on a multi-year rolling forecast of revenues and expenditures of the pension fund. This forecast is based, in particular, on assumptions concerning the demographic and socio-economic situation of the country, and in particular on assumptions concerning fertility, mortality, economic growth, amount of earnings, migration, inflation, unemployment rate, the structure of the population divided into individual occupational groups and groups outside the labour force, as well as indexes for the valorisation of contributions and benefits paid

[162] J. Wantoch-Rekowski, *Składki..., op. cit.*, s. 88.

from social insurance. This forecast is prepared by the Management Board of the Insurance Company. It is presented to the Council of Ministers every 3 years, by 30 June, together with an opinion of an actuary acting on the basis of the regulations on insurance activity.

It should be stressed that the Demographic Reserve Fund cannot take loans or credits. This fund supports the pension fund, but it is the State budget that guarantees the payment of pension benefits from the Social Security Fund.

The two basic revenues of the Demographic Reserve Fund are: a part of the pension insurance contribution scheme, and funds from the sale of shares and stakes owned by the State Treasury. The accumulated funds of the FRD can only be used:

1) to make up for the demographic shortfall in the pension fund,
2) as an interest-free loan to supplement resources of the pension fund for the current payment of benefits, ensuring the financial liquidity of the FUS, repayable within no more than 6 months from the date of receipt of the resources by the FUS.

Through a regulation, the Council of Ministers may order a use of the resources of the SDF to make up for a shortfall in the pension fund which result from demographic reasons. The use takes into account the need to ensure the payment of benefits financed from the pension fund. Also, the Council of Ministers, by means of a regulation, may order the use of the FRD funds for an interest-free loan, specifying a date and a manner of repayment of the loan, taking into account the need to ensure the payment of benefits financed from the pension fund.

The essence of the Demographic Reserve Fund is to invest funds in order to support the pension fund in case of threatened solvency of pension benefits. The law-maker explicitly indicated in Article 63 paragraph 1 of the Act that the Demographic Reserve Fund invests its resources in order to achieve their maximum security and profitability. In the initial period of its operation, the investment opportunities were very limited and came down to investing assets in the Treasury bills and bonds, as well as other securities issued by the State Treasury.

The essence of an idea of creating the Demographic Reserve Fund in Poland should be regarded as a definitely positive idea. The

accumulation of financial resources to replenish the pension fund when the demographic situation is particularly unfavourable is a solution beneficial to the entire financial system of social insurance and public finance in Poland. However, correct theoretical assumptions have not been fully implemented in practice. Firstly – since 1999 the Fund has not received contributions in the amount assumed (10%), but it obtained contributions which were ten times lower (0.1%). Later, the amount of the contribution to the Fund was increasing until it reached 0.35%. Thus, in real terms, 1/3 of what was originally assumed was transferred to the Fund for many years.

Moreover, until 2008, no resources from the privatisation of the Treasury assets were transferred to the Fund. The fundamental problem with the existence and the activity of the Demographic Reserve Fund is that its role is underestimated and it is considered instrumentally. It should be noted that for the first time the FRD received funds from the privatisation of the Treasury assets in 2009, and already in the following year, by way of a regulation of the Council of Ministers, it was ordered to use part of the Fund's resources. One might be tempted to state that funds from the privatisation of the Treasury assets were seen not as an element of a long-term building of reserve resources, but as a transitional stage for redirecting those resources to the Social Insurance Fund. Several tens of billions of PLNs from the Demographic Reserve Fund have already been used since 2010 without any significant solution to the pension fund's problems. The use of these funds is justified only by voices related to current, rather than long-term, budgetary policy. Because of the actions of the Council of Ministers which regularly uses the resources of the Demographic Reserve Fund, it is reasonable to argue that in the future this Fund will no longer be able to fulfil the role for which it has been set up[163].

[163] J. Wantoch-Rekowski, *Dezaktualizacja znaczenia Funduszu Rezerwy Demograficznej jako fundusz rezerwowy w systemie finansowym ubezpieczenia emerytalnego*, [in:] *XXV lat przeobrażeń w prawie finansowym i prawie podatkowym – ocena dokonań i wnioski na przyszłość*, Z. Ofiarski (eds.), Wydawnictwo Uniwersytetu Szczecińskiego, Szczecin 2014, p. 925.

8.6. The Agricultural Social Insurance Fund

According to Article 2 par. 1 of the Act of 20 December 1990 on social insurance for farmers, social insurance for this socio-professional group is provided by the Agricultural Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego, KRUS). Pursuant to Article 75 of that Act the Fund runs an independent financial system.

An important role in the functioning of the Fund is played by the President of the Fund, who is a central organ of a government administration. He is subordinate to the minister in charge of rural development. The Prime Minister appoints the President of the Fund upon the motion of the minister in charge of rural development. The President of the Council of Ministers also dismisses the President of the Fund.

The President of the Fund may have two or more deputies. A deputy President of the Fund is appointed by the minister competent for rural development. The minister acts upon a motion of the President of the Fund. The minister competent for rural development also dismisses a deputy President of the Fund.

The President manages the Fund and performs tasks provided for in the Act, as well as tasks arising from other regulations.

The law-maker indicates that the position of the President of the Fund as well as the position of the Deputy President of the Fund may be occupied by a person who:

1) holds a Master's degree or equivalent,
2) is a Polish citizen,
3) enjoys his/her full rights as a citizen,
4) has not been convicted of an intentional crime or an intentional fiscal offence by a final judgment,
5) has managerial competencies,
6) has at least 6 years of experience, including at least 3 years in a management position

7) is both educated and knowledgeable about matters falling within the jurisdiction of the President of the Fund.

The Agricultural Social Insurance Fund has an extensive structure, within which one can distinguish:

1) a head office,
2) regional branches,
3) field offices, and
4) other organisational units.

In addition to the provisions of the Act on social insurance for farmers, the Fund operates on the basis of statutes which are granted by the minister competent for rural development. Statutes are adopted by a way of a regulation, after consultation with the Farmers' Council. These documents specify therein the internal organisation of the Fund. The current statute results from the appendix to Regulation No 14 of the Minister of Agriculture and Rural Development of 20 May 2010 on granting statute to the Agricultural Social Insurance Fund[164]. It results from it that the President manages the Fund with a help of:

1) deputy presidents,
2) heads of offices and team leaders in the Central Office of the Fund,
3) directors of regional branches, and
4) directors of inpatient rehabilitation facilities.

Kasa Rolniczego Ubezpieczenia Społecznego operates in the field of:

1) services provided to insured persons and other beneficiaries in matters concerning insurance coverage, insurance premiums, as well as granting and paying insurance benefits,
2) the tasks defined in Articles 63 to 66 of the Act on Social Insurance of Farmers,
3) handling the work of the Farmers' Council,
4) informing insured persons and other beneficiaries about their rights and obligations stemming from the Act and promote the Fund's activities.

[164] Official Journal of the Ministry of Agriculture and Rural Development 2010, No. 10, item 10, as amended.

The Council of Farmers is an important entity within the Kasa's structure. The Council of Farmers consists of 25 members. It is appointed by the minister competent for rural development. Members are choosen from among candidates proposed by socio-professional organizations of farmers and trade unions of individual farmers (organisations must have a nationwide scope of activity), as well as the National Council of Agricultural Chambers. At the beginning of the term of office, at least 15 members should be fully insured, and at least 5 members should receive a pension from an insurance. The Minister in charge of social security, the Minister in charge of rural development, the Minister in charge of public finance and the President of the Fund or their representatives shall participate in the meetings of the Farmers' Council in an advisory capacity. The term of office of the Council of Farmers lasts 3 years.

The Farmers' Council has a right to control and to evaluate the activities of the Fund. For this purpose, the Council may require information and explanations from the President of the Fund. The Council can also make documents publicly available. The President of the Fund is obliged to respond within 14 days to post-control conclusions and other postulates of the Council of Farmers concerning activities of the Fund.

8.7. The Pension Fund

The Pension Fund is a state purpose fund within the meaning of the Public Finance Act. It has no legal personality. This fund fulfils in the sphere of contributions and insurance benefits in agriculture a similar function to the Social Insurance Fund in the general insurance system[165].

[165] See in more detail J. Pawłowska-Tyszko, *Ocena funkcjonowania Funduszu Ubezpieczeń Społecznych (FUS) i Funduszu Emerytalno-Rentowego (FER) w kontekście realizacji funkcji zabezpieczenia społecznego,* „Ubezpieczenia w rolnictwie. Materiały i studia" 2019, No. 71, pp. 7–29.

The Pension Fund is intended to finance primarily:

1) benefits from pension insurance,
2) pensions from other social insurance to be paid together with benefits from the pension insurance scheme, including supplements,
3) reimbursement of certain costs to the Social Insurance Fund, where pension legislation provides for such reimbursement,
4) health insurance:
   a) farmers and their domestic workers covered by social security,
   b) recipients of contributory pensions,
   c) farmers who are not subject to social insurance but who are subject to health insurance.

In turn, the resources of the Pension Fund are primarily created:

1) from pension insurance contributions,
2) from a grant from the state budget.

8.8. The Prevention and Rehabilitation Fund

The Prevention and Rehabilitation Fund is a state purpose fund within the meaning of the Public Finance Act. It has no legal personality.

This fund is intended to finance costs (borne by the Fund) related to:

1) an agricultural training allowance,
2) activities to prevent accidents at work and occupational diseases in agriculture,
3) actions to help people who are incapacitated or at risk of total incapacity.

The resources of the Prevention and Rehabilitation Fund come primarily from:

1) a deduction from the Contribution Fund of up to 6.5% of a planned expenditure from that Fund,
2) subsidies from the State budget,
3) interest earned on investments of the unrestricted resources of the Prevention and Rehabilitation Fund.

In the event of a shortfall in the Prevention and Rehabilitation Fund, the shortfall shall be met from the Contributory Fund.

8.9. The Administration Fund

The Administration Fund is a state purpose fund within the meaning of the Public Finance Act. It has no legal personality.

The Administrative Fund is used to finance insurance service costs, except for costs covered by the Contributory Fund or the Prevention and Rehabilitation Fund. In addition, the Administrative Fund finances the costs of servicing health insurance tasks.

The Administration Fund is made up of:

1) deductions from the Contribution Fund and the Pension Fund of up to 12% of the planned expenditure of the Contribution Fund, and up to 3.5% of the planned expenditure of the Pension Fund,
2) reimbursement by competent institutions of costs related to the provision of health insurance, and performance of other tasks entrusted to the President of the Fund according to separate regulations,
3) interest earned on investments of uncommitted resources of the administrative fund.

In the event of a shortfall in the Administrative Fund, the shortfall shall be met from the Contributory Fund.

8.10. The Social Insurance Contributory Fund for Farmers

The Social Insurance Contributory Fund for Farmers is a legal person. The management function is performed *ex officio* by the President of the Fund who acts under a supervision of the Farmers' Council. The Contribution Fund is supervised by the Contribution Fund Supervisory Board. The Contribution Fund Supervisory Board comprises 5 representatives of the Farmers' Council, and 2 representatives appointed by the minister competent for rural development. Moreover,

every of the following institutions appoint 1 of its representative: the minister competent for public finance and the minister competent for social security. After consultation with the Farmers' Council the minister competent for rural development shall, through an ordinance, grant statutes to the Contribution Fund.

The Contribution Fund is intended to finance:

1) benefits from accident, sickness and maternity insurance,
2) direct operating costs of the Farmers' Council,
3) costs of managing the Fund and discharging its obligations as a legal person,
4) the activities of the Fund, and
5) a shortfall in the administrative fund and a shortfall in the prevention and rehabilitation fund.

The contributory fund shall be constituted primarily from contributions to accident, sickness and maternity insurance and from other sources specified in the statutes of the contributory fund to ensure that the expenditure of the contributory fund is fully covered. In the event of a shortfall in the contributory fund, a bank loan may be taken in the amount necessary to cover that shortfall. The loan repayment shall be taken into account when determining the amount of the contribution for accident, sickness and maternity insurance during its repayment period.

8.11. The Incentive Fund

The President of the Fund, in agreement with the Council of Farmers, may create an Incentive Fund as a part of a write-off for the Administrative Fund, calculated from the Contributory Fund, setting the number of resources of this Fund in a given calendar year in an amount not lower than 4% of the planned expenditure of the Contributory Fund. Funds from the Incentive Fund go to employees of the Agricultural Social Insurance Fund.

The incentive fund is administered by the President of the Fund who acts in an agreement with the Chairman of the Farmers' Council,

on the basis of regulations adopted by the Farmers' Council. Payments from the incentive fund are made outside the limits resulting from the regulations on shaping salaries in the state budget sphere.

Chapter 9. **Health care entities**

9.1. Introduction

The public finance sector entities include those that operate in the area of a broadly understood health care, i.e. the National Health Fund, and independent public health care institutions.

The National Health Fund is regulated mainly by the Act of 27 August 2004 on health care services financed from public funds[166]. In turn, independent public healthcare institutions are regulated by the Act of 15 April 2011 on medical activity[167].

The entities mentioned in the above are not the only ones operating in the Polish health care system. However, there is no doubt that these bodies play a key role in that system.

In Poland, health was recognised as a public good. Consequently, in practice, a principle of solidarity and joint responsibility for financing expenditures on health was adopted. Placing health high in the hierarchy of human values and assigning it a social value makes health an object of interest not only for the parties directly involved, but also for the State. The State's responsibility for health security and proper health facilities is included in most, if not in all national constitutions. Poland is no exception to this rule. Article 68 of the Polish Constitution obliges public authorities to ensure an equal access to health services which are financed from public funds[168].

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166 Consolidated text: Journal of Laws of 2020, item 1398 as amended.

167 Consolidated text: Journal of Laws of 2020, item 295 as amended.

168 A. Pietraszewska-Macheta [in:] *Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych. Komentarz*, (eds.) A. Pietraszewska-Macheta, Wolters Kluwer, Warszawa 2018, pp. 123–124.

9.2. The National Health Fund

9.2.1. Legal status

The National Health Fund is a state organisational unit with a legal personality. Consequently, the provisions of the Civil Code concerning legal persons apply to this entity. The Fund has an attribute of a legal personality only because the legislature has provided so. The National Health Fund is not an organisational unit (*statio fisci*) competent to represent the State Treasury. Still, it is an independent and separate legal person, acquiring rights and incurring obligations in its name. At the same time, as a state organisational unit, it is subject to the rigours of public finance. Therefore, it is not a public administration body in the constitutional sense and, in general, it cannot apply legal measures specific to public administration bodies. It can issue administrative decisions only under specific provisions[169].

The National Health Fund is composed of the Fund's headquarters and voivodeship branches. The seat of the Fund is the capital city of Warsaw. The National Health Fund operates on the basis of acts and statutes. The statutes shall be granted by the minister competent for health matters. They are adopted by a way of a regulation and they specify in particular,an organisational structure of the Fund, including the headquarters and voivodeship branches of the Fund and their seats, in order to ensure efficient performance of tasks by the Fund.

Voivodship branches of the Fund are established in accordance with a territorial division of the country. Field offices may be established in voivodship branches. This is done under rules laid down in the Fund's statutes.

[169] I. Kowalska-Mańkowska [in:] *Ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych. Komentarz*, (eds.) A. Pietraszewska-Macheta, Wolters Kluwer, Warszawa 2018, p. 699.

9.2.2. A Supervision of the Fund

A supervision of the Fund's activities shall be exercised by the minister competent for health matters. Under the principles provided for in the Act and in special regulations, the supervision of the Fund's financial management shall be exercised by the minister competent for public finance, applying the criteria of legality, reliability, expediency and economy.

The Minister responsible for health matters may examine decisions taken by the director of a voivodship branch of the Fund, and resolutions adopted by the board of a voivodship branch of the Fund.

The minister responsible for health matters, as part of his supervision, is authorised in particular to demand that the Fund provide him with access to documents relating to the Fund's operations, or copies thereof, as well as to familiarise himself with their contents. What is more, the Minister is entitled to demand all information and explanations concerning the Fund's operations from the Fund's Council, the President and Deputy Presidents of the Fund, boards of voivodeship branches of the Fund, directors of voivodeship branches of the Fund, employees of the Fund and other persons performing work for the Fund on the basis of a contract of mandate, an agreement to perform a specific task or another agreement to which the provisions concerning the commission apply in accordance with the Civil Code.

The powers of the minister who is in charge of health shall be vested in the minister in charge of public finance, respectively, with regard to the supervision of the financial management of the Fund.

9.2.3. The Scope of the Fund

One of the most important tasks of the Fund is to manage its financial resources, primarily health insurance contributions.

The Fund is obliged to ensure that insured persons can receive health care. This goal is achieved by concluding agreements with providers of health care and by covering the resulting expenses from

the collected contributions. Within the scope of these measures the Fund acts in its name on behalf of the insured[170].

The statutory catalogue of the Fund's tasks is very extensive. The Fund's scope of actions includes, in particular:

1) determining a quality, an availability as well as analysing the costs of health care services necessary for the proper contracting of health care services,
2) conducting tenders, negotiations and concluding contracts to provide healthcare services, as well as monitoring their implementation and accounting,
3) financing of guaranteed benefits,
4) developing, implementing, delivering, financing, monitoring, supervising and controlling health programmes,
5) performing commissioned tasks, including those financed by the minister competent for health matters, in a particular by implementing health policy programmes,
6) health promotion and disease prevention,
7) maintening of the Central List of Insured Persons.

The National Health Fund is an entity that does not conduct economic activity. Therefore, it is important to note that the Fund cannot be the owner of entities carrying out medical activities within the meaning of the provisions on therapeutic activity.

9.2.4. Organs of the Fund

Organs of the Fund are: The Council of the Fund, the Fund President, the councils of the Fund's voivodship branches, as well as the directors of the Fund's voivodship branches. There is a statutory presumption of a competence of the President of the Fund. It applies to matters which are not reserved for the tasks of the Council of the Fund, the council of the Fund's voivodship branch or the director of the Fund's voivodship branch.

[170] *Ibidem,* p. 703.

The Council of the Fund is composed of ten members who are appointed by the minister competent for health matters. The term of their office is 5 years. The Council of the Fund performs statutory tasks, including controlling a current activity of the Fund in all areas of its activity, and controlling a correct implementation of the Fund's financial plan.

The activities of the Fund shall be managed by the President of the Fund, who represents the Fund externally. The minister shall appoint the President of the Fund competent for health matters from among the persons selected in an open and competitive recruitment procedure. The appointment is made after consultation with the Council of the Fund. The minister in charge of health issues dismisses the President of the Fund after consultation with the Council of the Fund. The scope of actions of the President of the Fund shall include, in particular, conducting financial management of the Fund, as well as effective and safe management of the funds and property of the Fund.

The Fund's voivodship branches have consultative and supervisory boards. The Fund's Voivodship Branch Council comprises of nine members who are insured persons residing in an area of operation of a given Fund's Voivodship Branch. Those members are appointed by the competent voivode. The tasks of the board of a voivodship branch of the Fund include: giving an opinion on the draft financial plan of the voivodship branch of the Fund, adopting the work plan of the voivodship branch of the Fund and giving an opinion on the report on the execution of the financial plan of the voivodship branch of the Fund for a given year.

A voivodship branch of the Fund shall be managed by the director of the branch. He shall also represent the Fund externally. The director of the voivodship branch of the Fund shall be appointed and dismissed by the minister competent for health matters. The minister acts after obtaining an opinion from the Fund's Voivodship Branch Council and the President of the Fund.

9.2.5. Financial management of the Fund

The National Health Fund conducts its financial management in accordance with the rules laid down in the Act on financing health

care services. The Fund's financial resources are public, and Bank Gospodarstwa Krajowego provides banking services to the Fund.

The National Health Fund creates a basic fund and a supplementary fund. The approved net profit shall increase the supplementary fund for the financial year. In contrast, in case of a negative financial result, the supplementary fund shall be decreased by the approved net loss for the financial year.

The most important source of a revenue for the National Health Fund is health insurance premiums. An extensive, complete catalogue of revenues of the Fund is indicated in the Act on health care services financed from public funds in Article 116(1). It is worth noting that Article 116(1) includes revenues from credits and loans which the National Health Fund may take.

In turn, Article 117(1) lists the expenses of the Fund. The cost of health care services for insured persons is the most important expense.

The income and expenditure of the Fund shall be set out in a financial plan of the Fund, which shall be prepared annually by the President of the Fund to ensure that the plan is balanced in terms of an income and an expenditure.

9.3. Independent public health care units

9.3.1. Introduction

Medical entities in Poland can take a form of the entities indicated below, insofar as they carry out therapeutic activity:

1) entrepreneurs,
2) independent public health care institutions,
3) budgetary entities, including state budgetary entities established and supervised by the Minister of National Defence, Minister in charge of internal affairs, Minister of Justice or the Head of the Internal Security Agency, having in their organisational structure an outpatient clinic, an outpatient clinic with a sick bay or a primary care physician, a primary care nurse or a primary care midwife,
4) research institutes,

5) foundations and associations whose statutory aim is to perform tasks in a field of health protection and whose statutes allow them to carry out medical activities,
6) legal persons and organisational units acting on the basis of the provisions on the State's relation to the Catholic Church in the Republic of Poland, on the State's relation to other churches and religious associations and guarantees of freedom of conscience and religion,
7) military units.

The Act of 15 April 2011 on medical activity[171] determines, among others, the rules of performing medical activity in Poland, and the rules of functioning of entities performing medical activity that are not entrepreneurs. Independent public healthcare institutions (SPZOZ) form one group of the entities to which detailed regulaitons of this Act apply. These institutions play a very important role in the health care system in Poland.

9.3.2. Creation of SPZOZ

An establishment of an independent public healthcare institution shall be made through a regulation, an order or a resolution of the competent authority of the establishing entity. When establishing an independent public health care institution, the necessity to ensure the health security of citizens and the rational organisation of health care shall be taken into account.

An independent public healthcare institution is subject to an obligation to be registered into the National Court Register. After registration an independent public healthcare establishment acquires legal personality.

The regulation, order or resolution referred to above shall include:
1) a name and registered office of the independent public healthcare establishment,
2) identification of the type of therapeutic activity,

[171] Consolidated text: Journal of Laws of 2020, item 295 as amended.

3) identification of the property with which the autonomous public healthcare establishment is equipped.

9.3.3. Legal and financial issues of SPZOZ

An independent public healthcare institution shall conduct financial management pursuant to the Act on medical activity principles set forth. An institution covers its operating costs and settles its obligations from its resources and obtained revenues.

The basis for the economy of an independent public healthcare institution can be found in a financial plan established by a manager manager of an independent public healthcare institution. The Manager shall prepare and make available each year in the Public Information Bulletin a report on an economic and financial situation of an independent public healthcare institution. This must be done within 2 months from the date of an expiry of a deadline for preparing the annual financial statement.

An independent public healthcare institution shall manage a property which it owns. An independent public healthcare institution may obtain financial resources, among others, from:

1) remunerated medical activities, unless otherwise provided for in other laws,
2) discrete activities other than those mentioned in point 1, where such activities are provided for in the statutes,
3) interest on deposits, and
4) donations, bequests, inheritances, and public donations, including those from abroad.

9.3.4. Liquidation of SPZOZ

An independent public healthcare institution shall be liquidated through an ordinance, a regulation or a resolution of a competent body which created the entity. The regulation, the order or the resolution on liquidation of an independent public healthcare institution shall include, in particular:

1) an identification of the establishment to be wound up,
2) determination of the date on which the health services were discontinued, not earlier than 3 months from the date of the regulation, order or resolution,
3) an indication of a date on which liquidation is opened, no later than 30 days after the date referred to in point 2,
4) determine a manner and a procedure for a disposal of tangible and intangible assets, and
5) an indication of a date on which the liquidation is completed.

Following its liquidation, the liabilities and receivables of a separate public health care institution shall become liabilities and receivables of the State Treasury, a medical higher education institution, or a competent local government unit.

Independent public health care institutions can be also merged. Such a merge may be a result of:

1) a transfer of the whole property of at least one autonomous public health care establishment (institution that is being acquired) to another autonomous public health care establishment (acquiring institution),
2) creation of a new autonomous public health care establishment arising from at least two merging autonomous public health care establishments.

Chapter 10. **SCIENCE AND HIGHER EDUCATION ENTITIES**

10.1. Legal bases

The legal basis for the functioning of science and higher education entities are linked to a right to education. In accordance with the provision of Article 70(1) of the Constitution of the Republic of Poland, everyone has a right to education, and education up to the age of 18 is of a compulsory nature. The Constitution of the Republic of Poland introduced the principle of free education in public schools. In contrast, a chargeability of certain educational services which are provided by public higher education institutions may only result from the act of law (Article 70(2) of the Constitution of the Republic of Poland).

The right to education formulated in the above-desribed way imposes an obligation on the authorities to ensure that citizens have universal and equal access to education. This rule applies to an access to education at primary, secondary and higher levels. To this end, the authorities create and support systems of individual financial and organisational assistance for pupils and students (Article 70(4) of the Constitution of the Republic of Poland). Specific solutions are contained in special regulaiton of the statutory rank.

With regard to the systemic issues related to the functioning of higher education, it should be noted that higher education institutions are granted an autonomy, the scope of which is determined by the provisions of the Act. The above principle is pointed out in the judicature, where it is argued that "a higher education institution shall be autonomous in all areas of its activities pursuant to the rules laid down in the Act. This autonomy consists, *inter alia*, in independence in the election of the bodies of a higher education institution, into which

the bodies of government administration and local self-government units may interfere only in cases provided for in a law"[172].

Currently, issues related to the formation of the education system are regulated in the Act on Higher Education and Science[173] and in its implementing provisions. However, other important scientific institutions operate based on special laws dedicated to these institutions.

The higher education and science system consists of:

1) universities,
2) federations of higher education and science stakeholders,
3) the Polish Academy of Sciences, acting based on the Act on the Polish Academy of Sciences[174],
4) scientific institutes of the Polish Academy of Sciences,
5) research institutes, acting pursuant to the law on research institutes[175],
6) international scientific institutes established under separate acts – these institutions are operating in the territory of the Republic of Poland,
7) the Łukasiewicz Centre, operating under the Łukasiewicz Research Network Act[176],
8) institutes operating within the Łukasiewicz Research Network,
9) the Polish Academy of Arts and Sciences,
10) other bodies carrying out primarily scientific activities on an independent and continuous basis.

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172 Judgment of the Court of Appeal in Szczecin of 15 May 2018, III APa 25/17, LEX nr 2531861.

173 Act of 20 July 2018 – Law on higher education and science, consolidated text: Journal of Laws of 2021, item 478 as amended.

174 Act of 30 April 2010 on the Polish Academy of Sciences, consolidated text: Journal of Laws of 2020, item 1796.

175 Act of 30 April 2010 on research institutes, consolidated text: Journal of Laws of 2020, item 1383.

176 Act of 21 February 2019 on the Łukasiewicz Research Network, consolidated text: Journal of Laws of 2020, item 2098.

10.2. Universities and federations

A university is a basic unit of the Polish higher education system. In the 2019/20 academic year, there were 373 universities in Poland with 1,204.0 thousand students. Women accounted for 57.6% of all students. Public universities had 71.6% of the total number of students[177].

Higher education institutions are organisational units possessing legal personality (Article 9, paragraph 1 of the Act of 20 July 2018 – Law on higher education and science[178]), while their independence (autonomy) is laid down in the provisions of the Act (Article 9(2) of the p.s.w.n.). The the foundation of a higher education institution are natural persons. Staff, doctoral students and students by virtue of law (Article 10(1) of the p.s.w.n.) constitute the community of the Institution. Members of the community of a higher education institution shall have active electoral rights in the Institution (Article 10(2) of the p.s.w.n.).

In particular, the basic tasks of the university are:

1) a provision of degree courses,
2) a provision of postgraduate studies or other forms of training,
3) conducting scientific activities, providing research services and transferring knowledge and technology to the economy,
4) providing doctoral training,
5) training and promotion of university staff,
6) creating conditions for people with disabilities to participate fully in:
   a) a process of admission to a university for the purpose of education,
   b) education,
   c) carrying out scientific activities,

[177] *Szkolnictwo wyższe i jego finanse w 2019 r.*, Główny Urząd Statystyczny [*Higher education and its finances in 2019*, Central Statistical Office], Warszawa, Gdańsk 2020.

[178] Act of 20 July 2018 – Law on higher education and science (consolidated text: Journal of Laws of 2021, item 478 as amended; hereinafter: "p.s.w.n.").

7) educating students in responsibility for the Polish state, national tradition, strengthening democratic principles and respect for human rights,
8) creating conditions for the development of students' physical culture,
9) disseminating and multiplying scientific and cultural achievements, including through collecting and making available library, information and archive collections,
10) working for local and regional communities.

On the other hand, the primary task of a vocational university is to provide specialised education.

With regard to the criterion of the founder, two types of higher education institutions may be distinguished: public and non-public higher education institutions (Article 13(1) of the p.s.w.n.). A state authority establishes a public higher education institution. In comparison, a non-public higher education institution is established by a natural person or a corporate body other than a local government unit or a state (a local government) corporate body.

The specificity of a particular higher education institution is reflected in its name (Article 16(1) of the p.s.w.n.). In this respect it is possible to distinguish:

1) an academy (name of an academic institution),
2) a polytechnic (name of an academic institution having an academic rank of A+, A or B+ in at least 2 disciplines in engineering and technical sciences),
3) a university (the name of an academic institution of higher education with an academic rank of A+, A or B+ in at least 6 scientific or artistic disciplines, encompassing at least 3 fields of science or art).

The bodies of a higher education institution are: in case of a public higher education institution – the board of trustees, the rector, and the senate, and in case of a non-public higher education institution – the rector and the senate. Within the framework of the granted autonomy, a statute of a higher education institution may also provide for other bodies (Article 17 of the p.s.w.n.).

A public university, depending on its type, is created by a way of:

1) an act, if it is a public university-type higher education institution,
2) a regulation of the minister responsible for higher education and science, if it is a public non-university higher education institution.

A non-public higher education institution acquires legal personality upon its entry into the register of non-public higher education institutions (Article 37(1) of the p.s.w.n.). The entry itself takes the form of an administrative decision of the competent minister (Article 39(1) of the p.s.w.n.).

Federations are a special institutional form established for the realisation of state tasks in the field of science. A federation may be established by:

1) a public university with a public higher education institution, a research institute, an institute of the Polish Academy of Sciences or an international institute,
2) a non-public higher education institution with a non-public academic institution (Article 165(1) of the p.s.w.n.).

The Federation shall be established for the purpose of jointly performing tasks in respect of:

1) carrying out scientific activities,
2) doctoral training,
3) the award of academic or artistic degrees,
4) commercialisation of results of scientific activity and know-how related to these results (Article 165(2) of the p.s.w.n.).

The organs of the federation are the president and the assembly of the federation. The statute may also provide for other federation organs (Article 169(1) of the p.s.w.n.).

10.3. The Polish Academy of Sciences and the organisational units created by it

The Polish Academy of Sciences, which was established in 1951 by the Act of 30 October 1951 on the Polish Academy of Sciences[179]

[179] Journal od Laws of 1951, No. 57, item 391.

has special status in the system of Polish science. The Academy was established in order to secure conditions for Polish science comprehensive development and full flowering, as well as to give scientific research a direction that would meet the essential needs of the Nation, based on the progressive traditions of Polish science and its great achievements, as well as on the best achievements and experiences of all the institutions and scientific associations that had been active up to that time, in particular the Polish Academy of Arts and Sciences and the Warsaw Scientific Society. Furthermore, the Academy aimed to unite outstanding Polish scientists to ensure creative scientific work. Currently, the Polish Academy of Sciences status is regulated by the Act of 30 April 2010 on the Polish Academy of Sciences[180].

The Academy serves the development, promotion, integration and dissemination of science and contributes to education and the enrichment of national culture (Article 2(1) of the uPAN).

The Academy's tasks include, in particular:

1) carrying out scientific activities,
2) supporting the development of young researchers,
3) training at a doctoral school, in post-graduate studies and other forms of training,
4) formulating principles of ethics in science,
5) providing opinions and programmes on scientific matters and on a practical application of scientific results,
6) carrying out, at the request of the President of the Republic of Poland, the Speaker of the Sejm or the Speaker of the Senate, ministers or central government administration bodies or on its initiative, opinions, assessments, expert opinions and forecasts concerning matters which are significant for planning and implementing of the State policy,
7) giving opinions on draft legislation concerning science, its applications and education,

[180] Act of 30 April 2010 on the Polish Academy of Sciences (consolidated text: Journal of Laws of 2020, item 1796; hereinafter: "uPAN").

8) cooperating with universities, federations of higher education and science system entities, the Łukasiewicz Centre and institutes operating within the Łukasiewicz Research Network, research institutes and scientific societies, in particular in the field of scientific activities,
9) cooperating with the socio-economic environment as regards scientific activities to implement their results,
10) developing international scientific cooperation by creating scientific consortia and carrying out research projects together with foreign partners,
11) participating in international scientific organisations and research programmes and interacting with foreign scientific institutions,
12) concluding agreements on scientific cooperation with international scientific organisations and foreign scientific institutions (Article 2(2) of uPAN).

The Academy has legal personality and its seat is in Warsaw. The bodies of the Academy are:

1) the General Assembly of the Academy,
2) the Presidency of the Academy,
3) the President of the Academy, as well as
4) the Chancellor of the Academy.

The basic scientific unit of the Academy is a scientific institute (Article 42 of the Academy).

10.4. Institutes operating within the Łukasiewicz Research Network

A new institution of the Polish science system is the Łukasiewicz Research Network. The establishment of the network should "constitute an effective technological and intellectual base for public administration, a kind pf a 'bridge' between science and economy. The establishment of the Network will ensure synergy effects from coordination of research themes and concentration of knowledge and resources within particular

thematic areas resulting from strategic areas"[181]. The Network is formed by: the Łukasiewicz Centre and 32 institutes operating within the Network (Article 1(1) of the Law of 21 February 2019 on the Łukasiewicz Research Network[182]).

The objectives of the Network are:

1) carrying out applied research and development work, and (in justified cases) also fundamental research, including research for the defence and security of the State, which is of particular importance for an implementation:
   a) an economic and innovation policy of the State as set out in development strategies,
   b) national science policy,
2) knowledge transfer and implementation of research and development results in he economy,
3) supporting the economic policy of the State, in particular by carrying out:
   a) forecasts of trends and impacts of technological change that may have a strong impact on society and its development,
   b) analyses of the State of the art and preparation of technological road maps for public policy purposes,
4) conducting activities aimed at creating public awareness of advanced technologies.

Both the Łukasiewicz Centre and the Network Institute have the status of state legal entities, which are established to plan and coordinate scientific research and development work (Art. 2 and Art. 3 of the uLRN).

The tasks of the Łukasiewicz Centre include:

1) providing cooperation mechanisms for the entities forming the Network,
2) providing financial resources to meet the Network's objectives,
3) implementing research projects under the Network's objectives,

[181] Explanatory Memorandum to the Bill Sejm print 3114, 10 December 2018, p. 75.

[182] Consolidated text: Journal of Laws of 2020, item 2098; hereinafter: "uLRN").

4) commercialising of research and development results or know-how related to these results,
5) implementing international cooperation in scientific research and development work and commercialisation (Article 2(2) of the uLRN).

The tasks of the Network institute, on the other hand, include:

1) an implementation of research projects under the Network's objective,
2) a commercialisation,
3) an international cooperation in the field of research and development and commercialisation.

The organs of the Łukasiewicz Centre are:

1) the President,
2) the Łukasiewicz Centre Council (Article 10 of the uLRN).

The bodies of the Network institute are:

1) the director,
2) the board of the Network institute (Article 20 of the uLRN).

Chapter 11. **STATE AND LOCAL GOVERNMENT CULTURAL INSTITUTIONS**

11.1. Categories of cultural institutions

The cultural sector covers both institutional culture – a State and a local government cultural institutions, as well as non-institutional culture – various associations, foundations or private enterprises[183]. According to the definition made by A. Borodo "a cultural institution is an organizational form of state or local government activity in the field of culture that has been legally separated (i.e. has legal personality)"[184]. The Act of 25 October 1991 on organizing and conducting cultural activity[185] does not directly define a "cultural institution".

As the first category of cultural institutions is concerned, it is worth to focus on state cultural institutions which, in accordance with Article 8 of the Act on cultural institutions, are established by ministers and heads of central offices who organise cultural activity and for whom conducting such activity is the primary statutory objective.

It follows from the content of Article 9(1) of the Act on organizing and conducting cultural activity that, in addition to state cultural institutions, a second category is distinguished, i.e. local government cultural institutions which are created by local government units. This

[183] A. Gronkiewicz, A. Ziółkowska, *Kultura jako przedmiot zainteresowania prawa administracyjnego,* [in:] *Administracyjnoprawne aspekty działalności kulturalnej: kwestie wybrane,* (eds.) A. Gronkiewicz, A. Ziółkowska, Katowice, Wydział Prawa i Administracji Uniwersytetu Śląskiego; Włocławek, TOP Advertising Agency, p. 19.

[184] A. Borodo, *Słownik finansów samorządowych*, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", Toruń 2007, p. 59.

[185] Consolidated text: Journal of Laws of 2020, item 194 as amended; hereinafter: "u.o.p.d.k.".

possibility held by a local government unit is a manifestation of the organisation of cultural activity, which constitutes the basic statutory objective and which is an own task of local government units of an obligatory nature. As the Supreme Administrative Court indicated in its judgment of 1 September 2014: "In other words, cultural institutions are an organisational and financial form of cultural activity of local governments in the field of culture"[186].

Consequently, the name "cultural institution" is reserved exclusively for entities whose founder and operator is a specific government administration body or a local government unit[187]. Moreover, according to the Act on Organising and Conducting Cultural Activity, the entities establishing the aforementioned cultural institutions are referred to as organisers. The law-maker has indicated that whenever the Act refers to a cultural institution without further specification, it should be understood as both a state and a local government cultural institution.

One cannot forget the third category of cultural institutions – joint cultural institutions (Article 21 of the u.o.p.d.k.) as entities creating state and local government cultural institutions, i.e. organisers, on the basis of an agreement concluded between themselves, have a possibility to:

1) create or merge cultural institutions that they operate,
2) operate as a joint cultural institution run by one of the cultural institution organisers.

Organisers may establish cultural institutions:

1) based on a contract concluded with a natural person, a legal person or an organisational unit without legal personality,
2) with its seat in the territory of the Republic of Poland, on the basis of a contract concluded with an entity carrying out activities in the field of a national heritage protection established under foreign law.

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186 II FSK 2009/12, CBOSA.

187 A. Mituś, *Tworzenie i funkcjonowanie instytucji kultury,* [in:] A. Gawrońska-Baran, I. Fischer, T. Krywan, M. Mędrala, A. Mituś, S. Liżewski, E. Ostapowicz, K. Pawlik, E. Perłakowska, M. Rotkiewicz, J. Słupski, K. Szocik, S. Tyrakowski, K.M. Wojciechowska, *Vademecum dyrektor instytucji kultury,* C.H. Beck, Warszawa 2019, p. 3.

Artistic institutions are cultural institutions established for carrying out artistic activities in the field of theatre, music, dance, with the participation of artists and performers, in particular: theatres, philharmonics, operas, operettas, symphony and chamber orchestras, song and dance ensembles and choral ensembles. The cultural activity of an artistic institution is organised on the basis of artistic seasons[188] for which repertoire plans are established.

Significant regulations in this respect are also contained in specific laws. An example is the Act of 21 November 1996 on museums[189], pursuant to which a museum – after a positive opinion of the Council for the Affairs of Museums and Places of National Remembrance – may be merged with other cultural institutions operating on the basis of regulations on the organisation of cultural activity, on condition that the merger does not result in a detriment to the performance of current tasks (Article 5a of the Act on museums).

Another example is the Act of 15 January 2015 on the transformation of single-person companies of the State Treasury conducting activities using cultural assets into state cultural institutions[190]. According to the aforementioned Act, a company may be transformed into a state cultural institution if it carries out activities involving cultural goods, the use of which in a non-profit-making manner is in the public interest for the purposes of:

1) permanent protection of cultural assets,
2) the dissemination of cultural goods on account of their significance to cultural heritage and their aesthetic and cognitive value,
3) making cultural objects available for artistic or educational activities.

As A. Mituś rightly points out, the term "cultural institution" currently covers all entities, both from the social and private sector, conducting cultural activity[191]. This follows from the fact that a use of

[188] The artistic season starts on 1 September and ends on 31 August of the following year.

[189] Consolidated text: Journal of Laws of 2020, item 902 as amended.

[190] Consolidated text: Journal of Laws of 2017, item 1357 as amended.

[191] A. Mituś, *op. cit.* , p. 4.

the name "cultural institution" is not threatened with sanction if it is used by an unauthorised entities'[192].

11.2. Finance of state and local government cultural institutions

Cultural institutions for which the organizers are local government units, may receive targeted subsidies for tasks covered by a state patronage. Subsidies may include targeted subsidies to finance or co-finance the costs of investment implementation. Subsidies come from the state budget from the part at the disposal of the minister responsible for culture and national heritage protection. As A. Borodo points out, although cultural institutions conduct their financial management on a fee-paying basis, budget subsidies are usually their main revenue component[193].

It is the organiser's responsibility to provide necessary resources to start and to carry out cultural activities, as well as to maintain the facility in which these activities are carried out. However, state and self-government cultural institutions, as well as some entities of the public finance sector such as the Agricultural Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego) or independent public health care institutions, are independent in terms of drawing up financial plans, as these plans are not subject to an approval[194].

The revenues of a cultural institution include, *inter alia*, incomes from its activities, such as rental incomes, incomes from the sale of tickets or events, admission fees to the museum, subsidies from the budget and funds received from natural and legal persons[195].

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192 *Ibid,* p. 4.

193 A. Borodo, *Polskie prawo finansowe… 2010, op. cit.*, p. 91.

194 A. Hanusz, *Jednostki sektora finansów publicznych działające na podstawie odrębnych ustaw*, [in:] *Prawo finansowe. Wybrane zagadnienia*, (eds.) A. Hanusz, Wydawnictwo Sejmowe, Warszawa 2019, p. 85.

195 A. Borodo, *Słownik finansów…, op. cit.*, p. 60.

Cultural institutions for which the organisers are local government units may receive targeted subsidies for tasks covered by a state patronage, including targeted subsidies for financing or co-financing of costs of investment implementation from the state budget from the part at the disposal of the minister competent for culture and national heritage protection.

11.3. Creation, statutes and organisational regulations of the cultural institution

According to Article 3(1) of the u.o.p.d.k., cultural activity may be conducted by legal persons, natural persons, and organizational units without legal personality. Cultural activity within the meaning of the Act of 25 October 1991 on the organisation and pursuit of cultural activity consists of creation, dissemination and protection of culture. It does not constitute economic activity within the meaning of other law provisions.

It follows from the content of the Article 9(1) of the u.o.p.d.k. that local government units organise cultural activity by establishing local government institutions of culture, for which conducting such an activity is the primary statutory objective. Conducting cultural activity is an own task of local government units. This taks is of an obligatory character.

Ministers and heads of central offices establish state cultural institutions by ordinances, while local government cultural institutions are established by resolutions adopted by:

1) the municipal council, as provided for in Article 18(2)(9)(h) of the Act of 8 March 1990 on municipal self-Government,
2) of the county council, in accordance with art. 12 item 8 letter i of the Act of 5 June 1998 on county government[196],
3) provincial assemblies, on the basis of art. 18 item 19 letter f of the Act of 5 June 1998 on the self-government of the voivodship.

[196] Consolidated text: Journal of Laws of 2020, item 920 as amended.

An example of the above-mentioned laws can be found in the Ordinance of the Minister of Culture, National Heritage and Sport of 16 March 2021 on the establishment of a state cultural institution – the National Museum in Wrocław[197], which is supervised by the minister responsible for culture and national heritage protection, who provides the funds necessary for the Museum's maintenance and development.

Acts on the establishment of local government cultural institutions are subject to a supervisory review of their legality, and indirectly to judicial review. The legality of commune council resolutions, county council resolutions and provincial assembly resolutions on the establishment of cultural institutions is subject to an examination by the competent provincial governor. In contrast, the provincial governor's supervisory decision is subject to a review by an administrative court[198].

As follows from the content of art. 11 of the Act on cultural institutions, the organiser issues an act on the establishment of a cultural institution. He defines its subject of activity, a name and registered office, and determines whether a given cultural is an artistic institution. A cultural institution conducting cultural activity in more than one organisational form may be established. Such institution are in particular: theatres, operas, operettas, philharmonics, orchestras, film institutions, cinemas, museums, libraries, culture houses, artistic centres, art galleries, and research and documentation centres in various fields of culture.

Importantly, cultural institutions operate on the basis of an act on their establishment, and the statutes granted by the organiser. These statutes include:

1) a name, a territory and a seat of the cultural institution,
2) scope of activity,
3) management and advisory bodies and procedures of their appointment,

197 Official Journal of the Ministry of Culture and National Heritage 2021, item 20.

198 P. Antoniak-Tęskna, *Komentarz do art. 11*, [in:] *Organizowanie i prowadzenie działalności kulturalnej. Komentarz*, 2019, LEX.

4) identifying sources of funding,
5) rules for statutory changes,
6) provisions concerning the pursuit of activities other than cultural activities, if the institution intends to carry out such activities.

The organisational bylaws shall define an internal organisation of a cultural institution and shall be issued by the director of the institution, after consultations with the organiser and after receiving opinions of the trade union organisations and artists' associations operating in the institution.

According to the judicature, a cultural institution, beeing a legal person, is a legal entity which is completely separated from a municipality. A cultural institution independently manages its own property, fixed assets, revenues, and costs. Its independence as a legal person is equivalent to the fact that the organiser may not independently modify the scope of the cultural institution's activities (judgment of the WSA in Warsaw of 20 March 2008[199]).

11.4. A register of cultural institutions

Cultural institutions acquire legal personality and may commence their activities upon registration in the register kept by the organiser. The entry in the register of cultural institutions is, therefore, a constitutive act. The following data are collected in the register:

1) a designation of a cultural institution, in particular an entity with which an organiser jointly operates a cultural institution, and a name of the organiser's agent making an entry,
2) an organisation structure of cultural institutions, in particular:
   a) a name of a director of the cultural institution and his deputies, or an identity of a natural person to whom the director's duties have been entrusted, or to whom the management of the cultural Institution has been entrusted,

[199] I SA/Wa 134/08, LEX nr 507844.

b) names of representatives of a cultural institution empowered to perform legal acts on behalf of the institution and their terms of reference,
c) a name of the organiser's agent repsonsible for registration,

3) concerning a property of a cultural institution, in particular a name of an organiser's agent repsonsible for registration,
4) merger, division and liquidation of a cultural Institution, in particular a name and surname of a liquidator and a name and a surname of an organiser's representative making repsonsible for registration.

Currently, a cultural institution's data are *ex officio* subject to an entry in the register. However, a manner of keeping and making available the register of cultural institutions, including the scope of data included in the register, a procedure of making entries, amendments and deletions of entries, and the specimen of the register book are specified in the regulation of the Minister of Culture and National Heritage of 26 January 2012 on the manner of keeping and making available the register of cultural institutions[200].

The Register of Cultural Institutions is kept in an electronic form, making printouts and preventing entry by an unauthorised person. As indicated by the Provincial Administrative Court in Rzeszów in its judgment of 19 May 2010[201]. The establishment of a legal entity upon its entry in the register entails that it may not be liquidated otherwise than in accordance with the procedure outlined in the 1991 Act on Organising and Conducting Cultural Activity. According to the position of the WSA: "the register of cultural institutions, like any other register kept by administrative authorities, has a guarantee character. By its nature, it is a public register, and its function is to protect legal transactions. Making an entry in the register is a substantive and technical act, so the effects proper to declarations of intent cannot be applied to this form of administrative action".

[200] Journal of Laws of 2012, item 189.
[201] II SA/Rz 275/10, LEX nr 674397.

11.5. A director of a cultural institution

An organiser appoints a director of a cultural institution. The provision of Article 15(1) of the u.o.p.d.k. stipulates the necessity for the organiser to consult various entities before appointing the director of a cultural institution, i.e. trade unions operating in the cultural Institution, and professional and creative associations competent with regard to the type of the activity conducted by the cultural Institution. It is worth pointing out that the above-mentioned consultations are obligatory for appointing the director of a cultural institution outside a recruitment procedure. In contrast, it is optional to select a candidate for the director through a recruitment procedure referred to in Article 16 of the u.o.p.d.k. The provision of Article 15(1) of the u.o.p.d.k. does not specify many material and procedural issues concerning rules of appointing and dismissing the director of a cultural institution. Among others it does not explain how we should understand a the term "professional and creative associations". Moreover, it does not specify the legal form of opinions formulated by those associations and a procedure for obtaining opinions (judgment of the WSA in Gliwice of 10 January 2013[202]).

In this respect, the position of the Supreme Administrative Court presented in the judgment of 8 August 2012 should be quoted[203]. According to the Supreme Administrative Court, the law-maker, by introducing an obligation to consult trade unions and professional and artistic associations, intended first of all to create a possibility for organizations operating in the broadly understood culture to express their opinion on an appointment or a dismissal of a director of a cultural institution operating in a territory of an Institution. Therefore, in the NSA's opinion, there are no grounds for a restrictive interpretation of Article 15(1) of the Act on Culture by assuming that it

[202] IV SA/Gl 1044/12, Legalis No 767118.
[203] II OSK 1295/12, Legalis No 542998.

refers only to associations to which the director belongs or operates in that institution.

The *ratio legis of the* provision mentioned above is a possibility of expressing an opinion, both on an appointment and a dismissal of a director of a cultural institution by professional and creative associations operating in the area of operations of this cultural institution, which by the subject and purpose of their activity cooperate or should cooperate with a given cultural institution (what follows from the judgment of the WSA in Warsaw of 21 September 2011[204]). It is indicated in the case law that such an opinion is completely different from an opinion expressed by trade unions, as, among other things, the opinion is an exceptional solution resulting from the specific nature of cultural institutions and the tasks they perform.

The procedure for the appointment of the director of a state cultural institution also provides another element in obtaining the consent of the minister competent for culture and national heritage. If an act appointing a director of a state cultural institution is issued without a consent of the minister competent for culture and national heritage, this would result in the act being defective[205]. The organiser is in all cases obliged to address an appropriate request to the minister[206].

Pursuant to Article 15(5) of the u.o.p.d.k., the organiser, before appointing the director, shall conclude a separate written agreement with the director. The parties shall specify organisational and financial conditions of the cultural institution's activity and the programme of its operation. This agreement shall enter into force on a date of an appointment of the director. Any refusal by a candidate for the post of a director to conclude a contract shall result in his/her non-appointment. The above-mentioned programme shall be made public within 7 days of the appointment of the director of the cultural institution. Publication should be made by:

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204 II SA/Wa 1447/11, Legalis No 380360.

205 S. Gajewski, *Komentarz do art. 15,* [in:] S. Gajewski, A. Jakubowski, *Ustawa o organizowaniu i prowadzeniu działalności kulturalnej. Komentarz,* Wydawnictwo C.H. Beck, Warszawa 2016, Legalis.

206 *Ibidem.*

1) the organiser on its website in the Public Information Bulletin or
2) the cultural institution on its website.

The statutes of a cultural institution may provide for creation a post of a deputy director or deputy directors. In such a case, the statutes shall specify the number of positions of deputy directors and the procedure for their appointment and dismissal. As indicated by the Silesian Governor in the supervisory decision of 9 December 2015[207], it is impossible to apply the regulation concerning an appointment or a dismissal of deputy directors when a specific number of posts to be filled has not been determined, therefore this lack causes that further provisions of the resolution concerning the appointment and the dismissal of the deputy director should be considered incorrect.

11.6. A dismissal of a director of a cultural institution

A dismissal of a director of a cultural institution before an expiry of the specified period for which he has been appointed may take place if one of the conditions enumerated in Article 15(6) of the u.o.p.d.k. occur:

1) at the director's request,
2) because of illness permanently preventing the director from carrying out his duties,
3) following an infringement of the law made in connection with his post,
4) in the event of withdrawal from the contract referred to in paragraph 5,
5) in the case of a transfer to a state cultural institution pursuant to Article 21a(2)-(6) of the u.o.p.d.k.

In accordance with the statutory regulation, in matters concerning an appointment and a dismissal of a director of a cultural institution, in matters which are not regulated by the Act, the provisions of Articles 68–72 of the Labour Code apply. However, due to the specific nature of

[207] Silesia 2015/6889, NPII.4131.1.498.2015, LEX No. 1944245.

Article 15 of the Act on cultural institutions, the possibility of applying Article 70 of the Act of 26 June 1974 Labour Code is excluded.

As the Supreme Administrative Court rightly pointed out in its judgment of 2 June 2016 [208]: "the appointment and dismissal of managers (directors) of cultural institutions has a dual character: a public-legal act within the scope of public administration and, due to the effects it produces, an act within the scope of labour law"[209]. As the Supreme Administrative Court indicated in the decision of 3 February 2012[210]: "The legality of the dismissal of the director of a cultural institution should be subject to the control of an administrative court, and in the remaining scope (e.g. a legitimacy of a dismissal) to the jurisdiction of a labour court. The purpose and the result of judicial-administrative control is to eliminate unlawful acts and actions of public administration bodies from legal order, and to restore the *status quo*. The subject of control of legality is, in this case, observance of the law by the bodies executing public administration, i.e. protection of the subjective right. The subject matter of control exercised by common courts, on the other hand, is the protection of subjective rights concerning the complainant's employment relationship, should be preceded by an examination as to whether the procedure for adopting the resolution (...) was observed. Only a validly adopted resolution may produce any legal effects and be subject to a review by a common court".

11.7. Agreement on the management of a cultural institution

There is a noticeable trend of increasing participation of private entities in the administration process, and the encroachment of organizational forms, methods and institutions of private nature

[208] II OSK 585/16, CBOSA.

[209] So: the judgement of the Supreme Administrative Court of 31.01.2012, ref. No. II OSK 2526/11, CBOSA.

[210] II OSK 2693/11, CBOSA.

into the sphere of administrative law[211]. These goals takes various forms, including an increase in the importance of consensual forms of administration, including contracts derived from civil law[212]. Therefore, a possibility to entrust the management of a cultural institution to a natural or legal person on the basis of a contract, which is an alternative form of a management of a cultural institution, may manifest the phenomenon of the growing importance of civil law contracts in carrying out administrative tasks[213].

The possibility mentioned in the above is provided for in Article 15a par. 1 of the u.o.p.d.k., according to which the organiser may entrust the management of a cultural institution to a natural or legal person. The provisions of the Act of 11 September 2019 – Public Procurement Law[214] shall apply to the selection of the manager. Such entrustment shall take place on the basis of an agreement on the management of the cultural Institution. The agreement shall be concluded between the organiser and the manager for a definite period, not shorter than three years.

Moreover, the an agreeme nt on a management of a cultural institution shall specify:

1) the conditions for the remuneration of the trustee, taking into account the principle of the balance of benefits,
2) the method of profit distribution,
3) criteria for evaluating the performance of the manager,
4) a control procedure,
5) contractual penalties for non-performance or improper performance,

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211 M. Ofiarska, *Umowa jako forma działania administracji w wybranych systemach prawa,* [w:] *Nauka administracji wobec wyzwań współczesnego państwa*, (eds.) J. Łukasiewicz, Rzeszów 2002, p. 409; K. Zalasińska, *Muzea publiczne. Studium administracyjnoprawne,* LexisNexis, Warszawa 2013, p. 15.

212 K. Zalasińska, *Muzea publiczne..., op. cit.,* pp. 15–16.

213 S. Gajewski, *Komentarz do art. 15a,* [in:] S. Gajewski, A. Jakubowski, *Ustawa o organizowaniu i prowadzeniu działalności kulturalnej. Commentary*, Warszawa 2016, Legalis.

214 Journal of Laws of 2019, item 2019 as amended.

6) the grounds and procedure for terminating the contract before its expiry.

When the administrator is a legal person, the agreement should provide for who will perform the management on its behalf.

11.8. Employees of cultural institutions

There are special rules of employment and of renumerating employees in cultural institutions. As emphasized in the literature on that theme, cultural institutions constitute a distinctive employer compared to the other employees[215]. Accordingly, issues of remuneration are regulated, not only in the Act on the organisation and conduct of cultural activities, *inter alia* in the content of the regulation currently in force, i.e. the regulation of the Minister of Culture and National Heritage of 22 October 2015 on the remuneration of employees of cultural institutions.

According to Article 26a(1) of the u.o.p.d.k., the provisions of the Labour Code apply to employees of cultural institutions in matters not regulated by the Act. In turn, art. 26a(2) of the u.o.p.d.k. provides a legal definition of a term an "artistic employee", according to which such an employee is a person employed in a cultural institution to perform work consisting in creating, developing or artistically performing works in the field of theatre, music, dance, film or other audiovisual arts.

The reference period of working time in a cultural institution may be extended to 12 months. However, the extension must be justified by reasons relating to the organisation of work and it is must comply with the general rules on employees' health and safety. The determination of the extended billing period to the extent and within the limits set out above takes place on the basis of:

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215 M. Culepa, *Wstęp,* [in:] M. Culepa, J. Kaleta, *Pracownicy instytucji kultury. Szczególne zasady zatrudniania i wynagradzania,* Wiedza i Praktyka, Warszawa 2014, p. 7.

1) a collective agreement, if one exists in the cultural institution concerned, or
2) an agreement between the employer and the employees, in accordance with the employer's usual procedure, after prior notification to the competent labour inspector.

Working time schedules of employees are established for periods of not less than 2 weeks. Therefore, Article 151^{12}, first sentence, of the Labour Code, which stipulates that an employee working on Sundays should have Sunday off at least once every 4 weeks, does not apply to employees of cultural institutions.

It follows from the wording of Article 31a(1) of the u.o.p.d.k. that an artistic employee may receive additional remuneration, in particular for a participation in a specific role in a performance or a concert, for directing, stage design, choreography or musical direction of a performance or for co-creation of an audiovisual work within the meaning of the provision of Article 69 of the Act on copyright and related rights. If the tasks referred to above are performed by employees employed as director or deputy director of a cultural institution, the provisions of Art. 5(1) and (4) of the Act of March 3, 2000 on the remuneration of persons managing certain legal entities. If the artistic worker uses at work, with the consent of the employer, his own instrument or his own accessories for the instrument, stage clothing, prop or tools, then he/she is entitled to a cash equivalent for their use.

Chapter 12. **OTHER LEGAL ENTITIES BELONGING TO THE PUBLIC FINANCE SECTOR**

12.1. Concept of the State and a local government legal persons

In the Polish legal order, a general rule regarding the possession of legal personality by an entity is outlined in Article 33 of the Act of 23 April 1964 – Civil Code, according to which legal persons are the State Treasury and other organisational units which are granted legal personality by special provisions. In the light of this provision, legal personality cannot be presumed, it should be explicitly provided for by law.

Although Article 35 of the Civil Code indicates that provisions determine an establishment, a structure, and a dissolution of legal persons. It is also permissible to regulate a legal person's organisation and a manner of activity in the statute.

Legal entities may be created by state bodies and by local government bodies. Some of entities may belong to the public finance sector, while others may not. Legal persons belonging to the public finance sector are listed in various sections of Article 9 of the Act on public finance. Art. 9(14) of the u.f.p. regulates state or local government legal persons established under separate acts in order to perform public tasks, excluding enterprises, research institutes, institutes operating within the Łukasiewicz Research Network, banks and commercial law companies, other than those specified in the previous paragraphs. In the light of this provision, one may speak of state and self-government legal persons.

Firstly, it has to be determined what features allow a given legal entity to be considered as "state" or as a "self-governing" body.

According to C. Kosikowski, ownership relations are the criterion distinguishing state, municipal and other legal persons. Thus, state legal persons are legal persons created from a part of a state property, and these persons are acting on the basis of this property. However, such prerequisites as creation by state authorities, performance of state tasks by a legal person, financing of its activity with state funds, submission of its activity to state control or supervision are insignificant[216].

A broader definition of state legal persons is contained in the Act of 16 December 2016 on principles of state property management[217]. Article 3 explicitly lists 38 entities as state legal persons. These entites are defined by a type or a name, including executive agencies, budgetary economy institutions, state cultural institutions, the Polish Film Institute, the Polish Horse Racing Club, public universities, and state independent health care institutions and others. In the light of this law, a state legal person is an organisational unit with legal personality, established by or on the basis of a law or in execution of a law by a governmental administration body in order to perform public tasks. Moreover, in the state legal persons:

1) the right to confer and amend the statutes provided for in the provisions of the law regulating the structure of that legal person shall be vested in a government administration body, or such provisions shall provide that the right to participate in the constituting body of the legal person, including the right to amend the statutes, shall be vested entirely in the State Treasury, and
2) the right to the surplus between the revenues and costs of that legal person, if disposable, provided for in the provisions of the law governing the structure of that legal person, shall vest in the State Treasury in full, unless those provisions provide for a manner of disposing of the surplus other than the right to the surplus, and
3) in the event of dissolution or other loss of legal existence by that legal person, the rights to its assets, including the right to dispose of those assets, shall vest exclusively in the State Treasury.

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216 C. Kosikowski, *Ustawa o finansach publicznych. Komentarz,* Lexis Nexis 2011, LEX.
217 Consolidated text: Journal of Laws of 2020, item 735 as amended.

A state legal person shall not lose its status if the provisions of the law creating the legal person grant a right to participate in its constituting body, exclusively or in part, to an entity or entities other than a governmental administration body – if the governmental administration body exercises a supervision over such legal person under the principles set forth in the law on the principles of state property management.

Because of this wording of Article 3 of the u.z.z.m.p., it should be assumed that state legal persons are all the entities listed in that provision by genre or name, as well as all the entities fulfilling the prerequisites specified in that provision (establishment by way of an act or on its basis or in its performance to perform tasks of government administration, establishment by a government administration body, the right of a government administration body to grant statutes to a legal person, a right to the State Treasury's share in a legal person, a right to an income generated by a legal person and a right to dispose of a property after liquidation of a legal person).

Local government legal persons are units of local self-government: municipalities, counties and voivodeship governments, as well as other local government legal persons.

A general legal definition of a local government legal person has been formulated only in relation to a county and a voivodeship legal persons. In line with Art. 46(2) of the u.s.p., county legal persons are, apart from counties, local government organisational units to which statutes directly grant such a status, as well as those legal persons that can be created only by counties on the basis of other statutes. An analogous definition is provided in Article 47(2) of the u.s.w. In the first case, the status of a county or a provincial legal person is determined by a provision of the act, on the basis of which the legal person is created. Provincial funds for environmental protection and water management are the only self-government legal persons covered by Article 9(14) of the u.f.p. which have such status awarded directly by virtue of an act of law. The status of the self-governmental legal person referred to in Article 9(14) of the u.f.p. is directly granted to these persons by Article 400(2) of the Act of 27 April 2001 –

Environmental Protection Law[218]. In the second case, it is not required to have the status of a local government legal entity directly by virtue of the act. Still, a separate act must provide for an exclusive competence of a poviat or a voivodship to establish a given type of a legal entity. Poviat legal persons fulfilling this requirement are associations of poviats (however, they are not covered by the scope of art. 9(14) of the u.f.p.), and voivodship legal persons – voivodship road traffic centres (art. 116 of the Act of 20 June 1997 – Road Traffic Law[219]). Such a rigorous interpretation of Article 46(2) of the u.s.p. and Article 47(2) of the u.s.w., respectively, means that such legal persons as commercial capital companies, cooperatives or other entities created by these local government units could not be recognised as poviat or voivodship legal persons. Hence, there have been views allowing a more liberal interpretation of Article 46 of the u.f.p. in the literature (which, as it seems, may be appropriately applied also to Article 47 of u.s.w.[220]). On this basis, entities established by local government bodies, but which local government bodies do not have exclusive competence to establish (e.g. commercial law companies, cooperatives) can be recognised as self-government legal persons.

12.2. State and local government legal persons covered by Article 9(14) of the u.f.p.

In many cases doubts may arise as to whether a given state or local government legal person belongs to the public finance sector. Article 9(14) of the Act on Public Finance indicates that the public finance sector includes only state and local government legal persons characterised by both:

1) creation under the Acts,
2) established to carry out public tasks.

[218] Consolidated text: Journal of Laws of 2020, item 1219 as amended.
[219] Consolidated text: Journal of Laws of 2021, item 450 as amended.
[220] J. Jagoda, *Komentarz do art. 46,* [w:] (eds.) B. Dolnicki, *Ustawa o samorządzie powiatowym. Komentarz,* 2020, LEX.

Thus, this regulation eliminates from the scope of the public finance sector state and local government legal persons which are established in other way than based on statutes and for purposes other than a performance of public tasks. In reality, however, this does not dispel doubts, since the term "based on statutes" may mean both creation directly by statute, and creation by acts issued by government administration bodies or local government bodies "based on the statute". Moreover, the second element – the performance of public tasks – is characteristic to almost all public entities, so it cannot effectively delimit the catalogue of state legal persons belonging to the public finance sector.

Art. 30(2) of the u.f.p. is helpful in determining which state legal persons belong to the public finance sector. In accordance with the aforementioned provision, financial plans are the basis for financial management of state and local government legal persons. Moreover, in accordance with Article 122 of the u.f.p., financial plans of state legal persons referred to in Article 9(14) o the u.f.p. are included in appendices to the Budget Act.

The analysis of Article 33 of the Budget Act for 2021 of 20 January 2021[221] indicates that among state legal persons referred to in Article 9(14) of the u.f.p, several groups can be distinguished: scientific institutes (e.g. the Marek Karp's Centre for Eastern Studies, the Zygmunt Wojciechowski's Western Institute, the Wacław Felczak's Polish-Hungarian Cooperation Institute, the Central Europe Institute, the Polish Economic Institute, the Polish Institute of International Affairs), agricultural advisory centres national parks, institutions performing tasks in the scope of environmental protection (the National Fund for Environmental Protection and Water Management), regulators of specific markets (e.g. the Polish Horse Racing Club, the Polish Forestry and Hunting Association), state institutions (e.g. Polish Agricultural Research Institute, National Fund for Environmental Protection and

[221] Journal of Laws of 2021, item 190.

Water Management). State legal persons include[222], for example, the Polish Horse Racing Club, the State Water Management Company Wody Polskie, the Office of the Financial Supervision Authority), institutions ensuring public safety in specific areas (e.g. air traffic – the Polish Air Navigation Services Agency, technical installations – the Office of Technical Inspection, the Transport Technical Inspection, products with regard to which conformity assessment is carried out with the requirements laid down in the law – the Polish Centre for Accreditation), and others, ensuring the implementation of various public tasks (e.g. the National Property Stock, the Social Insurance Institution, the Financial Ombudsman). The detailed catalogue of all legal entities covered by Article 9(14) of the u.f.p., listed in Article 33 of the Budget Act for 2021, includes 67 entities.

The provincial funds for environmental protection and water management are self-governmental legal persons falling within the scope of Article 9(14) of the u.f.p. As indicated in the previous section, their legal status does not raise any doubts as it results directly from Article 400(2) of the Environmental Protection Act.

12.3. Entities excluded from the public finance sector pursuant to Article 9(14) of the Act

Commercial law companies, state-owned enterprises, banks, research institutes and institutes operating within the Łukasiewicz Research Network were explicitly excluded from the scope of the public finance sector.

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[222] More on the regulation of a horse racing market: M. Leciak, *O karnoprawnej regulacji wyścigów konnych w Polsce,* „Wojskowy Przegląd Prawniczy" 2013, No. 3, pp. 68–81.

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