

THE LEGAL NATURE OF SUBSIDY RELATIONS BETWEEN THE STATE AND THE LOCAL GOVERNMENT IN THE LIGHT OF THE CASE LAW OF THE CONSTITUTIONAL TRIBUNAL AND COURTS

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Abstract. In the discourse on the reform of the finances of local government units in Poland, which has been ongoing since the beginning of 2024, there has been a proposal to abolish the historical division of local government tasks into their own tasks and the state government administration tasks assigned to local government units. This postulate, which is quite surprising from the constitutional point of view, becomes particularly justified after analysing the long-term subsidy disputes between the state (State Treasury) and local government units of all levels (lasting since the beginning of the first local government reform in 1990). It can be assumed that the above postulate appeared as a response to numerous rulings of common courts, administrative courts and the Constitutional Tribunal on targeted subsidies granted to local government units from the state budget, most of which, unfortunately, were unfavourable to these units. In particular, the case law on targeted subsidies for public administration tasks, despite the commission nature of these subsidies, has systematically revealed and confirmed the strong inequality of the parties to the subsidy legal relationship between the state and local government. This has led to a widespread acceptance of the phenomenon of co-financing of the costs of the implementation of state tasks by local governments and, at the same time, to a general discussion on the legal admissibility of such co-financing. The purpose of the article is to analyse the legal nature of the subsidy relations between the state and local governments and to indicate the direction of their urgent reform (modification). The above analysis was carried out on the example of targeted subsidies granted to Polish local government units for the implementation of tasks delegated (commissioned) from the scope of state administration – based on court decisions and the case law of the Constitutional Tribunal made in this regard. The analysis used a dogmatic method (literature research) and an empirical method based on the study of judgments and decisions of administrative courts, common courts and the Constitutional Tribunal.

Keywords: subsidisation of local government; the state and local government; targeted subsidies.

INTRODUCTION

In the modern system of public finances, including those of the European Union, grants, subsidies, co-financing and financial support are common instruments used in the redistribution of public funds. The huge number and variety of subsidies granted from public funds (from the EU budget, the state budget, the budgets of local government units) also affect the ambiguous (non-uniform) legal nature of the subsidy relationship between the subsidizing entity (often incorrectly called the donor) and the subsidized entity (the beneficiary of the subsidy) [Ostrowska 2018b, 57]. However, subsidizing non-public entities has a different problematic dimension than subsidizing public entities, such as local government units. In the area of subsidies granted from public funds, the Polish legal system reveals in a special negative way the lack of regulation of the institution of the so-called “administrative contract”, which for decades has had its code regulation in other European countries, such as France, Germany, Spain, Estonia, Finland [Doliwa 2012, 294; Gonet 2011, 58-62; Śledzińska 2008, 179-92; Ostrowska 2018a, 13-17]. However, the administrative contract has not been regulated in the Polish Code of Administrative Procedure. The above is also reflected in the still unresolved legal nature of not only subsidy agreements (subsidy contracts), but also the nature of the subsidy legal relationship, which is described as hybrid or mixed (administrative-civil). The analysis of the nature of the legal subsidy relationship is also made difficult by the lack of regulation in Polish administrative law of the so-called non-authoritative or bilateral forms of administration actions. “Both Polish administrative legislation and the Polish administrative law doctrine have not yet adequately developed the issue of bilateral actions. Bilateral forms of administrative action are introduced into our legislation chaotically and sporadically” [Zimmermann 2016, 398].

The above-mentioned shortcomings and omissions in the regulation of bilateral forms of administration activity also have their consequences in the so-called public subsidy relations between two public entities. A clear example here is the relationship between the state (granting a subsidy from the state budget) and the local government unit (receiving the subsidy). The same legal status of these entities (public) seemingly suggests equality of rights and obligations of the parties to the grant-law relationship. Numerous case law of administrative courts and the case law of the Constitutional Tribunal in most cases give a stronger position to the state (legislator). This means resolving subsidy disputes to the detriment of local government units.¹

¹ Hereinafter: LGU.

The aim of this article is to analyze the legal nature of the subsidy relationship between the state and local government units on the example of subsidies granted from the state budget for the implementation of tasks entrusted to local government units in the field of state government administration. The research hypothesis was that the structure of commissioning tasks in the field of state government administration to local government units (provided for in Article 166(2) of the Constitution of the Republic of Poland) and the subsidy mechanism of their financing should be transformed into a completely contractual model of commissioning tasks.

1. SUBSIDIES FROM THE STATE BUDGET AS INCOME OF LOCAL GOVERNMENT UNITS

Both the provisions of the Constitution of the Republic of Poland² (Article 167(2)) and the European Charter of Local Self-Government³ (Article 9(7)) provide that the income structure of local government units may include transfer income (subsidies and subsidies from the state budget). However, there is a uniform opinion in the doctrine that the institution of a targeted subsidy transferred from the state budget to the budgets of local government units constitutes a significant limitation of the financial independence of these units. “Making the possibility of subsidizing local government tasks a regular, permanent instrument for financing these tasks is contrary to the idea of decentralization of public authority” [Gilowska 1999, 50].

The threat of excessive use of the institution of targeted subsidies (subsidies) by the central authorities was noticed by the creators of the EKSL, who included in it Article 9(7) which states: “As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.” In the official commentary on the above provision of the Charter, its signatories expressed the position that “block grants or even sector-specific grants are preferable, from the point of view of local authority freedom of action, to grants earmarked for specific projects.” Taking into account internal conditions, the predominance of earmarked subsidies over the general subsidy, may be acceptable, but only if the subsidy income does not constitute a dominant

² Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: Constitution of Poland or Polish Constitution].

³ European Charter of Local Self-Government, Strasbourg, 15.10.1985, Council of Europe, European Treaty Series No. 122 [hereinafter: ECLG], <https://rm.coe.int/168007a088> [accessed: 20.03.2024].

part of the total income of the local government. At the same time, the signatories of the Charter acknowledge that the complete elimination of targeted subsidies from the budgets of local governments is unrealistic, especially with regard to investment tasks.⁴

It seems that the demand expressed in the above provision of the Charter for limited use of earmarked subsidies is respected in most European countries, although in recent years there has been a phenomenon of increasing reliance of local governments on so-called transfer revenues. It is assumed that the higher the intergovernmental transfers, the greater is the financial dependence of local governments on other tiers of government and the lower is the local autonomy. The average for the OECD-European countries is 49.8%, which shows a strong dependence of local governments on intergovernmental transfers.

Research conducted by the Center for Public Administration Research shows that the highest rate of Local Government Dependency on Intergovernmental Transfers in 2021 occurred in such European countries as Lithuania (87.9%), Estonia (85.8%), Slovakia (77.8%), the Netherlands (74.7%), the United Kingdom (67.8%), and Austria (64.5%). On the other hand, the lowest rate occurred: in Switzerland (10.4%), France (22%), Portugal (31%), Spain (37.9%), Finland (31.7%), Sweden (37%). Poland, like other European countries (Germany, Italy, Belgium, Hungary) is in the group of countries with medium dependence of local governments on central transfers, where the dependence rate is in the range of 40-60%.⁵

According to the ECLG recommendation, a smaller part of the so-called transfer income of local governments in Europe should be earmarked grants. In Poland, the share of earmarked subsidies and earmarked funds in the total budget revenues of local government units in 2022 was 29.5% of their total revenues, and the structure of this group of revenues is as follows:

- subsidies for state government administration tasks assigned (commissioned) to local government units – 42.3%,
- subsidies for co-financing local government units own tasks – 21.8%,
- other subsidies and funds, including subsidies implemented on the basis of agreements and received from special purpose funds – 10.7%.⁶

⁴ Explanatory Report to the European Charter of Local Self-Government, Strasbourg, 15.10.1985, Council of Europe, European Treaty Series No. 122, p. 9, <https://rm.coe.int/16800ca437> [accessed: 18.09.2023].

⁵ Centre for Public Administration Research, *Local Government Dependency on Intergovernmental Transfers*, <https://www.kdz.eu/en/news/blog/european-local-government-finances-and-local-autonomy> [accessed: 20.03.2024].

⁶ See https://rio.gov.pl/download/attachment/129/sprawozdanie_za_2022_r.pdf [accessed: 20.03.2024].

From 2022, the group of targeted subsidies as the income of local government units also includes the so-called funds received by local government units from government earmarked funds operated by BGK (COVID-19 Response Fund and Ukraine Aid Fund). However, to this day, these measures do not have their own separate regulations in the public financial law of local government units similar to those that apply to general subsidies or targeted subsidies from the state budget [Ostrowska 2023, 259].

Poland can therefore be considered a country with an “average” level of decentralization of public revenues, because subsidies and earmarked funds do not constitute the dominant amounts in the total revenues of local government units. However, the majority of this group consists of subsidies for state government administration tasks assigned (commissioned) to local government units (42.3%), which should not necessarily be interpreted negatively. It is believed that local government units’ own tasks should, in principle, be financed with their own revenues, so the structure of local government units’ incomes should not include targeted subsidies to finance local government’s own tasks.

Each level of local government in Poland performs a certain number of state government administration tasks delegated by law. The applicable regulations in this area can be divided into two groups:

- 1) provisions of laws regulating the general principles of financing (subsidizing) tasks commissioned to local government units in the field of state government administration and other tasks commissioned by statute – Article 49-50 AILGU,⁷ Article 8(3-5) AMSG;⁸
- 2) provisions of separate laws establishing the obligation (order) to perform these tasks by local government units and specific rules for their implementation and financing, as well as the provisions of the ordinances to these laws regulating the procedure for granting and accounting for subsidies.

At present, the state government administration tasks carried out by the municipal government include: the payment of alimony fund benefits, the day-to-day operations of community care homes, the provision of textbooks to public schools, the reimbursement of excise tax on “agricultural fuel”, population registration, the issuance of identity cards, the payment of health premiums for eligible persons (such as the unemployed), and the preparation and holding of elections. The district government carries out tasks in the field of state government administration, such

⁷ Act of 13 November 2003 on the Income of Local Government Units, Journal of Laws of 2024, item 356 as amended [hereinafter: LGIA].

⁸ Act of 8 March 1990 on Municipal Self-Government, Journal of Laws of 2023, item 40 as amended [hereinafter: MGA].

as: management of the State Treasury's real estate resources, activities of the State Fire Service headquarters, activities of the district commission for assessing disability, and activities of the district construction supervision inspectorate. The voivodship government, in turn, carries out such state government tasks as: subsidies for free and discounted travel in bus transport, payment of compensation for damage caused by game animals, tasks related to the issuance of ADR certificates and transport psychology.

The obligation for local government units to perform specific tasks in the field of state government administration results from separate acts. On their basis, a regulation of a given minister (ordinance) is also issued, establishing a detailed procedure for providing local government units with a targeted subsidy for the implementation of these tasks. In most cases, these subsidies are granted on an "application" basis – the executive body of the local government unit is obliged to submit an application for a subsidy to the local voivode. The above application procedure indirectly contradicts the obligatory nature of these subsidies specified in Article 49 LGIA and Article 8(1) MGA. Most often, these subsidies are transferred to local government units in the form of a decision of the granting authority (e.g. the voivode), although the provisions of the laws also provide for the form of an agreement between the local government unit and a state government administration body.

2. SUBSIDIZING LOCAL GOVERNMENT IN THE LIGHT OF THE JURISPRUDENCE OF THE CONSTITUTIONAL TRIBUNAL

In the jurisprudence of the Constitutional Tribunal⁹ matters related to the income of local government units, including income from subsidies, have been resolved basically since the beginning of the restoration of local government in Poland in 1999. The Polish Constitution uniquely contains separate regulations regarding the revenues of local government units (Article 167 and Article 168), which became constitutional models in cases of complaints initiated by local government units against statutory and executive provisions adopted by state authorities in this respect.

In addition to constitutional models, Polish local governments, in disputes regarding their revenues, also refer to Article 9 of the European Charter of Local Self-Government, ratified by 46 member states of the Council of Europe, including Poland, in 1994 (in its entirety and without any reservations). The Charter provides local governments with strong financial guarantees, which is why it is taken into account in court decisions, although its importance would certainly be strengthened by incorporating its provisions

⁹ Hereinafter: CT.

into the European Union legal system. The literature emphasizes that “The European Charter of Local Self-Government does not refer to the European Union in the sense that the Union is not a party to this agreement, which well illustrates the complexity of the relationship between the Council of Europe and the European Union. The European Charter influences the system of the Union indirectly – through the member states that are (independently) bound by this legal act” [Lipowicz 2019, 147].

Both the Constitution of the Republic of Poland and the ECLG, with regard to the performance of state government administration tasks by local government units, provide for a formula of delegation of tasks and competencies. The provision of Article 166(2) of the Constitution of the Republic of Poland states that: “If the fundamental needs of the State shall so require, a statute may instruct units of local government to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute.” In turn, Article 4(5) of the ECLG defines the above delegation as “the delegation of competences to local communities by central or regional authorities,” and stresses that local communities should have full freedom to adapt the way they exercise these competences to local conditions.

However, the provisions of the Constitution and the ECLG do not refer to financial issues, nor do they specify the form and manner of financing of state government administration tasks carried out by local government units. Hence, Article 167(1) of the Constitution of the Republic of Poland is indicated as a constitutional guarantee of adequate state financing of these tasks, stipulating that territorial self-government units shall be provided with a share of public revenues adequate for the performance of the duties assigned to them. However, the term “share of public revenues” cannot be considered an unambiguous indication of the state’s obligation to fully cover the costs of implementing the above-mentioned tasks.

It was the principle of adequacy (proportionality), regulated twice in Articles 167(1) and (4) of the Polish Constitution and in Article 9(2) of the ECLG, that was the primary benchmark on the basis of which Polish local governments complained about regulations governing the determination and transfer of subsidies to them from the state budget or state purpose funds. More often, however, the subject of applications submitted by local governments to the Constitutional Tribunal were subsidies for co-financing their own tasks (their reduction or elimination) than subsidies for tasks assigned to them by the state government administration. The constitutional principle of adequacy has been widely analyzed in the doctrine of both administrative law and public finance law [Dębowska-Romanowska 2010, 239; Wójtowicz 2015, 2; Kornberger-Sokołowska 2001, 37; Ofiarska 2015, 183-96; Niezgoda 2012; Kłosowiak 2020, 288-99; Ostrowska 2014, 59-78].

However, despite repeated emphasis on the above constitutional and international standard guaranteeing local government units to adapt the financing of the tasks performed to their real costs, the Constitutional Court very rarely finds statutory or regulatory provisions regulating the income of local government units, including grant income, to be unconstitutional. The judgments or decisions of the CT issued in this regard almost unanimously illustrate the legal-financial relationship between the state and local government, interpreting it in favor of the state (legislature), granting it the exclusive right to determine the amount of funding for government tasks carried out by LGU. Taking into account the fact that the above-mentioned provisions of the Constitution do not specify the level (indicator) of adequacy, their interpretations carried out by the Constitutional Court usually granted the legislature a broad right to determine this level on its own. Only when, as a result of the introduction of a new regulation by the legislator (e.g., assigning a new task without indicating the sources of financing¹⁰), the level of adequacy became drastically low, causing the inability of LGUs to carry out the tasks assigned to them by law, and this inability was proven in detail by the applicant, the regulation was declared unconstitutional by the Constitutional Court.

“In the jurisprudence of the Constitutional Court, high formal requirements have been formulated for the entities initiating the proceedings regarding the manner of demonstrating that there has been a violation of the principle of adequacy of local government financing, derived from Article 167(1) and (4) of the Constitution. This is because, in this regard, the Court’s interference may take place only in cases of evident, sufficiently large or gross financial disproportionality between the scope of tasks of local government units and the level of their share of public revenues.”¹¹ Such a restrictive interpretation of the principle of adequacy has been adopted by the Constitutional Tribunal both in adjudicating cases of subsidy compensation mechanisms,¹² revenues from local taxes and fees,¹³ as well as in cases of revenues of TSUs from subsidies. The Constitutional Court stressed that it does not have the instrumentality to independently determine the correctness of the legislature’s implementation of the principle of adequacy. This is due to the lack of constitutional regulation of the standards

¹⁰ Judgment of the Constitutional Tribunal of 25 July 2006, ref. no. K 30/04, Journal of Laws No. 141, item 1011, OTK ZU 7A/2006, item 86.

¹¹ Judgment of the Constitutional Tribunal of 13 December 2018, ref. no. K 34/16, Journal of Laws item 2388.

¹² Judgment of the Constitutional Tribunal of 6 March 2019, ref. no. K 18/17, Journal of Laws item 525; judgment of the Constitutional Tribunal of 31 January 2013, ref. no. K 14/11, Journal of Laws item 193.

¹³ Judgment of the Constitutional Tribunal of 26 September 2013, ref. no. K 22/12, Journal of Laws item 1185.

for the implementation of individual tasks, and the Court cannot determine the appropriate or optimal level of their implementation, and therefore state unequivocally what level of measures would be adequate.

The inadequacy of the amount of the targeted subsidy provided to LGUs for the implementation of tasks was examined by the CT, among others, in the following cases (in which the decisions were made, unfortunately, to the disadvantage of the requesting LGUs):

- introduction in 2014, on the basis of the Act of June 9, 2011 on support for the family and the system of foster care,¹⁴ of new own tasks of municipalities and counties related to the obligation to employ foster care coordinators and family assistants without an adequate mechanism for financing these tasks, i.e. an increase in the targeted subsidy provided for this purpose from the state budget;¹⁵
- introduction in 2005 of an earmarked subsidy to subsidize the municipalities' own task of paying material assistance benefits to school students, which, according to the requesting municipalities, did not fully cover the costs of performing this task. The request of the municipalities, however, was not shared by the CT in its judgment.¹⁶ However, the previous system for the payment of material assistance benefits to school students, which did not provide for a source of funding for this task at all, was declared unconstitutional by the TC;¹⁷
- liquidation in 2004 of the subsidy transferred to communes to co-finance their own task consisting in the payment of housing allowances, which was found to be consistent with the Constitution by the Constitutional Tribunal, because the applicant communes did not demonstrate that the balance of their income referred to in Article 167(1) and (4) of the Constitution was shaken. Moreover, the Constitutional Tribunal stated that “the legislator is entitled to legislate in accordance with the political and economic assumptions it adopts, and the Constitutional Tribunal does not have the competence to assess the purposefulness of these regulations. Interference is permitted only in the event

¹⁴ Journal of Laws 2024, item 177.

¹⁵ Decision of the Constitutional Tribunal of 11 April 2017, ref. no. K 24/14, OTK ZU A/2017, item 26. In this case, initiated by 6 municipalities, the Court discontinued the proceedings as a result of the withdrawal of the application by the attorney for these municipalities due to the circumstances of the participation of Judge M.R. Muszyński appointed instead of Judge M. Zubik, which, according to the applicants, did not guarantee basic standards of procedural fairness.

¹⁶ Judgment of the Constitutional Tribunal of 20 March 2007, ref. no. K 35/05, Journal of Laws No. 53, item 358.

¹⁷ Judgment of the Constitutional Tribunal of 26 April 2004, ref. no. K 50/02, Journal of Laws, No. 109, item 1161.

of violation of constitutional norms. [...] The fact that an act expands the tasks of local government units cannot determine the unconstitutionality of a given regulation if revenues from other sources enable the implementation of individual public tasks. [...] The basis for determining the non-compliance of the Act with Article 167(1) of the Constitution may constitute only obvious disproportions between the scope of tasks and the level of income, occurring in the division of funds between government administration and individual levels of local government.”¹⁸

An analysis of the case law of the Constitutional Tribunal indicates that the constitutional and international principle of the adequacy of financial resources to the costs of public tasks performed by local government units has very rarely become the basis for determining the inconsistency of a specific provision of an act or regulation with the Constitution. Only when given provisions imposed a new task on local government units without indicating the source of their financing, the Tribunal ruled that they were inconsistent with the principle of adequacy resulting from Article 167(1) and (4) of the Constitution of the Republic of Poland and Article 9(2) EKSL, but this happened extremely rarely. Basically, only two such judgments can be mentioned.

The first is the aforementioned 2004 CT ruling on the obligation imposed on municipalities to pay material assistance benefits to school students without specifying the source of funding.¹⁹ The second judgment (from 2006) concerned the own task imposed on regional governments in the form of financing statutory entitlements to discounted travel by public transport in the form of the obligation to make additional payments to authorized carriers.²⁰

In the above judgment (of 2006), the Constitutional Tribunal made an extremely valuable interpretation of own tasks and tasks commissioned by local government units, which should also be used when designing the method of financing these tasks. The Constitutional Tribunal pointed out that “the legislator gives special meaning to the adjective ‘own’ when defining this type of tasks. Own task is a task which, in the light of Article 16(2) of the Constitution, the self-government shall exercise on its own behalf and under its own responsibility; while in the case of delegated tasks, we are dealing with delegating the task only for execution. From Article 166(1) 2 of the Constitution, therefore, it follows that in relation to delegated tasks,

¹⁸ Judgment of the Constitutional Tribunal of 31 May 2005, ref. no. K 27/04, Journal of Laws No. 102, item 861.

¹⁹ Judgment of the Constitutional Tribunal of 26 April 2004, ref. no. K 50/02, Journal of Laws No. 109, item 1161.

²⁰ Judgment of the Constitutional Tribunal of 25 July 2006, ref. no. K 30/04, Journal of Laws No. 141, item 1011, OTK ZU 7A/2006, item 86.

the role of local authorities is reduced to executive functions, not creative functions, because the law determines the manner of their performance. It is difficult to talk about the local (regional) nature of the task, especially to the extent that the regional government covers the costs of discounts for transport on a national scale to a carrier that could also sell tickets in another region (voivodeship). Therefore, in its current form, financing subsidies can hardly be considered a local task, in the sense given to this concept by Article 166 of the Constitution. It serves to implement the tasks of national policy.”

The jurisprudence of the Constitutional Tribunal shows significant differences between own tasks and tasks in the field of state government administration entrusted to local government units on the basis of acts, which should also be a model in determining the form and scope of financing these tasks. These differences are illustrated in the table below.

Table 1. Constitutional features of local government units’ own tasks and tasks entrusted to local government units in the field of state government administration – resulting from the jurisprudence of the Constitutional Tribunal

Constitutional features of local government tasks	
own tasks	tasks assigned in the field of state government administration
legal nature and manner of execution	
they are local in nature and serve to meet collective local needs	they are of a state-wide nature and serve to meet collective state-wide needs
they are typical local government tasks related to the functioning of the local community	they are typically state tasks related to the functioning of the state.
assigning them to be implemented by a given level of local government unit has a systemic nature and is related to the principle of decentralization of public authority (Article 15 of the Constitution of the Republic of Poland)	they are passed on to local government authorities for implementation only for pragmatic reasons (thanks to this, state tasks can be performed “closer to the citizen”)
they are permanently and statutorily assigned to the local government of a given level for independent implementation	they are temporarily or permanently transferred (commissioned) by law to the local government for implementation
the local government performs them creatively and independently	the local government performs them according to strictly defined rules, instructions and guidelines
they are performed on behalf and under the responsibility of the local government units	they are performed on behalf and under the responsibility of the State Treasury

source and form of financing	
they are financed from own income with the possibility of obtaining subsidies to co-finance own tasks	they are financed from a targeted subsidy from the state budget for tasks commissioned in the field of state government administration
their financing is independent and creative - local government bodies have the right to decide on the scope, method of implementation and financing of a statutorily defined task	their financing is not independent and creative - the scope, method of implementation and financing of the tasks statutorily entrusted to local government units are decided by the legislator and government bodies of executive power (minister, voivode)
they should be financed in compliance with the constitutional principle of adequacy (Article 167(1) and (4) of the Constitution, Article 9(2) ECLG)	they should be financed in compliance with the constitutional principle of adequacy (Article 167(1) and (4) of the Constitution, Article 9(2) ECLG)

Source: *own study based on the jurisprudence of the Constitutional Tribunal.*

The above differences between local government units' own tasks and tasks entrusted to local government units in the field of state government administration should also be reflected in the method and source of their financing – the sources and methods of financing them should be different. Most often, however, the Constitutional Tribunal pointed out that also when implementing and financing tasks in the field of state government administration, local government should use its attributes of independence, and therefore has the possibility of co-financing these tasks from its own revenues.

Paradoxically, it is the constitutional patterns regulating the independence of local government (Article 165 of the Constitution of the Republic of Poland) and the presumption of the implementation by local government of public tasks not reserved by the Constitution or statute for bodies of other public authorities (Article 163 and Article 164(3) of the Constitution) that are cited by the Constitutional Tribunal as the basis for the possibility of co-financing state government administration tasks from local government units' own revenues. However, in most cases, regional audit chambers (which are the supervisory bodies over local government units in financial matters) do not allow local governments to finance tasks commissioned in the field of state government administration from their own revenues.

In the 2001 judgment, the Constitutional Tribunal even stated that “the principle of appropriateness of the share in public revenues to the tasks assigned to the local government cannot be reduced only to the aspect of providing the appropriate amount or percentage of public revenues.” According to the Constitutional Tribunal, Article 167(1) of the Constitution “is primarily of a systemic and guarantee nature” and will apply in situations in which “the revenues flowing from the statutory revenues are so negligible

or insignificant that this leads either to forcing the local government to finance the entire task from other own income, or to refrain from carrying out this task, even though its performance is a statutory obligation of the local government.”²¹

3. SUBSIDIZING LOCAL GOVERNMENT IN THE LIGHT OF THE JURISPRUDENCE OF COMMON AND ADMINISTRATIVE COURTS

The unique role of local government units in the system of public authorities (as bodies carrying out a significant part of public tasks) means that subsidy relations between the state and local government are now the main issues of local government finances (which have not had such a problematic dimension as before). The doctrine of financial law also indicates that an important challenge for the science of public finance is “creating a model of legal subsidy relations and defining its inalienable features. At a time when financing various types of public tasks (including from EU funds) through grants is becoming common, research on the relationship between the grantor and the recipient of grants is a priority” [Dębowska-Romanowska 2010, 49]. These studies are particularly desirable in the case of targeted subsidies granted to local government units from the state budget for tasks commissioned in the field of state government administration. In the light of Polish regulations, the legal subsidy relationship between the state and local government units is of a mixed nature (administrative and civil).

On the one hand, these subsidies have the nature of an administrative and obligatory benefit to the local government unit (which means that the state may seek refund of the subsidy in an administrative manner), and on the other hand, they have the nature of a civil payment for the tasks performed (which means that the local government unit can claim their payment or additional payment under civil proceedings). The above dualistic legal nature of the subsidy relationship between the state and local government is illustrated in the table below.

²¹ Judgment of the Constitutional Tribunal of 28 June 2001, ref. no. U. 8/00, Journal of Laws No. 69, item 723.

Table 2. Civil and administrative law nature of targeted subsidies for tasks commissioned to local government units in the field of state government administration

Legal nature of targeted subsidy for tasks commissioned to local government units in the field of state government administration	
civil	administrative
<p>Article 49(6) LGIA</p> <p>In the event of failure to meet the condition of providing the local government unit with a special-purpose subsidy from the state budget for tasks commissioned within the scope of state government administration in a manner enabling full and timely performance of the commissioned tasks – the local government unit has the right to claim the due benefit together with interest in the amount determined for tax arrears, in court proceedings (in civil court).</p>	<p>Article 168-169 PFA*</p> <p>Subsidies granted from the state budget:</p> <ol style="list-style-type: none"> 1) in the unused part, 2) used contrary to its intended purpose, 3) collected unduly or excessively <p>– are subject to return to the state budget along with interest in the amount specified for tax arrears.</p> <p>Article 60-61 PFA*</p> <p>The refundable subsidy amounts constitute non-tax budgetary receivables of a public law nature.</p> <p>The administrative decision on the refund of the subsidy is issued by the authority granting the subsidy.</p> <p>The decision to return the subsidy may be appealed to the second instance administrative body and to the administrative court.</p>

* Public Finance Act of 29 August 2009 (PFA), Journal of Laws of 2023, item 1270.

Source: *own study*.

The analysis of court jurisprudence regarding targeted subsidies from the state budget for tasks entrusted to local government units in the field of government administration indicates that administrative courts very rarely rule in favor of the local government unit (upholding the administrative decision to return the subsidy), while civil courts more often issue judgments in favor of the local government unit (recognizing an action by a local government unit for payment or additional subsidy). Many Polish local government units (like the city of Poznań, the city of Kraków or the local government of the Masovian Voivodeship) file lawsuits in civil courts against the State Treasury for payment (compensation) of subsidies received from the state budget pursuant to Article 49(6) of the LGIA, and civil courts recognize these claims, awarding outstanding amounts of subsidies to local government units.²²

²² Judgment of the District Court in Warsaw of 18 June 2014, ref. no. II C 322/09, Lex no. 2088444; judgment of the District Court in Poznan of 22 October 2014, ref. no. XII C 1830/13, Lex no. 189281; judgment of the Court of Appeal in Katowice of 22 June 2022, ref.

The argumentation that was particularly favorable for local government units was presented by the Supreme Court in its judgment of April 12, 2023, examining the case of the Małopolska Regional Government's (Voivodeship's) lawsuit against the State Treasury (the Małopolska Voivode). The lawsuit concerned the payment of a special-purpose subsidy from the state budget to cover the implementation of a task commissioned from the government administration consisting in the construction of water improvement facilities and their maintenance (transferred to the voivodeship on the basis of the provisions of the Act and the concluded agreement). In this judgment, the Supreme Court rightly pointed out that "the source of the State Treasury's obligation to pay a special-purpose subsidy was from the beginning of Article 49 of LGIA, and not any agreement concluded between the parties. Targeted subsidy referred to in Article 49 is an obligatory subsidy. In this respect, the legislator assumed full responsibility of the government administration for financing public tasks commissioned to the local government, and no statutory provision imposes on local government units the obligation to finance the tasks commissioned within the scope of state government administration from their own revenues."

In another judgment in favor of local government units, the Supreme Court stated that the provision of Article 49 of LGIA constitutes "an independent basis for a claim for payment of the amount actually needed to fully perform the assigned tasks. It applies both in cases of transfer of the granted subsidy in an incomplete amount or in violation of the statutory deadline, as well as in cases of transfer of subsidies specified in the budget in an amount that does not ensure proper implementation of tasks."²³

However, in the cases under consideration regarding the decision to return the subsidy in question by the local government unit to the state budget, administrative courts carry out a different interpretation, unfavorable for the local government unit, of the subsidy legal relationship between the state and the local government unit. Refunds of subsidies used contrary to their intended purpose were quite often sought by voivodes from municipal governments in the case of subsidies provided for state government administration tasks related to population registration.

What is problematic in this respect is Article 49(3) LGIA, which states that the amounts of targeted subsidies for tasks entrusted to local government units in the field of government administration "are determined

no. I ACa 602/22, Lex no. 3435690; judgment of the Supreme Court of 12 April 2023, ref. no. II CSKP 1911/22, Lex no. 3594016.

²³ Judgment of the Supreme Court of 20 February 2015, ref. no. V CSK 295/14, Lex no. 1677176. See also: judgment of the Supreme Court of 1 March 2018, ref. no. I ACa 953/17, Lex no. 2665383; judgment of the Supreme Court of 28 March 2019, ref. no. I CSK 94/18, Lex no. 2652348.

in accordance with the principles adopted in the state budget for determining expenses of a similar type.” Therefore, even the adopted objective and nationwide indicators for determining the amount of subsidies for tasks in the field of population registration (i.e. calculated positions or man-hours) do not allow to cover the actual costs that Polish municipalities incur for the implementation of these very strategic state tasks. Another source of increased costs are different rules for determining the remuneration of state administration officials and local government officials. However, administrative courts do not take these different principles into account, acting only within the limits of the complaint filed against the decision to return the subsidy.

In the judgment of April 13, 2023, the Supreme Administrative Court clearly described the limited possibility for local government units to question the rules for determining the amount of subsidy granted from the state budget.²⁴ “In administrative and administrative court proceedings regarding the return of a subsidy used contrary to its intended purpose, it is not possible to question the principles adopted to determine the amount of a special purpose subsidy for this purpose, and indeed the principles adopted in the state budget for determining the amount of expenses of a similar type, according to which it is then determined by the competent the minister, the amount of targeted subsidies for the implementation of government administration tasks. The amount of expenditure allocated in the state budget for targeted subsidies and the principles adopted in this budget for determining expenses of a similar type escape from judicial control.”

When examining the issue of subsidies granted to local government units from the state budget for the implementation of commissioned tasks in the field of government administration, the Polish Supreme Audit Office indicated that currently the most important task of the state is to provide local government units with appropriate funds to finance the commissioned tasks, taking into account objective factors differentiating the amount of expenses incurred by them. At the same time, the Supreme Audit Office emphasizes that “estimating the expenses necessary to carry out the assigned tasks, taking into account the principle of economical management of public funds, is an extremely difficult task due to the occurrence of local factors influencing the differentiation of expenses in individual units. [...] On the one hand, the interest of the State Treasury and the principle of economic management of public funds

²⁴ Judgment of Supreme Administrative Court of 13 April 2023, ref. no. I GSK 159/19, <https://orzeczenia.nsa.gov.pl/doc/EB29B5392B> [accessed: 20.03.2024]. See also: judgment of Regional Administrative Court in Warsaw of 12 October 2018, ref. no. V SA/Wa 28/18, <https://orzeczenia.nsa.gov.pl/doc/CC3B2E8829> [accessed: 20.03.2024].

should be taken into account, and on the other hand – the independence of local government units in terms of shaping the level of remuneration and the obligation to treat employees performing their own and delegated tasks equally.”²⁵

CONCLUSIONS

The analysis of the jurisprudence of the courts and the Constitutional Tribunal on subsidy relations between the state and local government units showed the inequality of the parties to this relationship that has been maintained for years. Despite the equal legal status of these parties (public legal persons), the jurisprudence of the Constitutional Tribunal and administrative courts is dominated by granting the state (legislator) a stronger legal position to which the local government unit must submit. However, the jurisprudence of civil courts more often rules in favor of local government units, recognizing their claims for payment or additional subsidies.

The *in dubio pro tributario* interpretative principle introduced into Polish tax law in 2016 does not therefore have an adequate impact on local government subsidy law in the form of the *in dubio pro donatario* principle (doubts should be resolved in favor of the subsidized entity). However, it is noticeable that in civil jurisprudence (usually initiated by the subsidized party) the *in dubio pro donatario* principle dominates, while in administrative jurisprudence (administered in the appeal process against the administrative decision on the refund of the subsidy) the *in dubio pro donator* principle dominates.

The above-mentioned inequality between the parties is particularly visible in the case of targeted subsidies granted from the state budget for the implementation of tasks entrusted to local government units in the field of state government administration. It is a common practice in Poland that local governments co-finance state government tasks in significant amounts in order to maintain their implementation for the benefit of residents at an appropriate level [Królikowski 2022; Hendrysiak 2019]. As it turns out, even the principle of adequacy of the amount of financial resources held by local government units to the costs of tasks performed, even twice regulated in the Polish Constitution, is not a sufficient constitutional model to protect the legal interest of local governments. It should be assumed that the subsidy form of financing state tasks entrusted to local governments is conducive to maintaining the above inequality between the parties to the subsidy legal

²⁵ See *Informacja o wynikach kontroli, Dotowanie zadań zleconych jednostkom samorządu terytorialnego z zakresu administracji rządowej i innych zadań zleconych ustawami*, Najwyższa Izba Kontroli, Warszawa 2017, <https://www.nik.gov.pl/kontrola/P/16/009/> [accessed: 20.03.2024].

relationship. Therefore it should be transformed into a strictly contractual form of outsourcing tasks, or consideration should be given to transforming the tasks delegated to local government units in the field of state government administration into the local government's own tasks with an appropriate allocation of permanent own revenues.

As I. Lipowicz rightly points out, "the leniency of Polish administrative courts in the event of failure to provide the necessary financial resources for the implementation of tasks has, in my opinion, significantly facilitated the process of 'creeping' centralization. The key to maintaining balance in this respect is to divide tasks into those of a local nature and those of a supra-local nature. This division, in turn, is the source of the division of tasks into local government's own tasks and tasks commissioned (by the state). It is interesting that over the past 40 years, the duality of local government tasks has still been preserved even in Western European countries. [...] The vagueness of the criteria for dividing tasks into own and commissioned tasks is commonly criticized in the literature, but the attempt to abolish this dichotomy did not bring any fundamental change" [Lipowicz 2019, 195-200]

Regardless of the long-standing disputes over the financing of tasks entrusted to local governments in the field of state government administration, the current form of subsidy financing should undoubtedly be urgently reformed.

REFERENCES

- Dębowska-Romanowska, Teresa. 2010. *Prawo finansowe. Część konstytucyjna wraz z częścią ogólną*. Warszawa: C.H. Beck.
- Doliwa, Adam. 2012. *Osobowość prawna jednostek samorządu terytorialnego*. Warszawa: C.H. Beck.
- Gilowska, Zyta. 1999. "Finansowanie samorządu terytorialnego. Przesłanki i bariery." *Samorząd Terytorialny* 1-2:35-53.
- Gonet, Wojciech. 2011. *Zakres swobody zawierania umów przez jednostki samorządu terytorialnego*. Warszawa: Wolters Kluwer.
- Hendrysiak, Hanna 2019. "Samorządy chcą wykazać, ile dokładają do zadań zleconych." <https://www.prawo.pl/samorzad/samorzadowcy-chca-uwzglednienia-w-klasyfikacji-budжетowej,441914.html> [accessed: 20.03.2024].
- Kłowskiak, Miłosz. 2020. "Znaczenie zasady adekwatności dla funkcjonowania jednostek samorządu terytorialnego." *Studia Iuridica* 85:288-99. <https://doi.org/https://doi.org/10.31338/2544-3135.si.2020-85.19>
- Kornberger-Sokołowska, Elżbieta. 2001. *Decentralizacja finansów publicznych a samodzielność finansowa jednostek samorządu terytorialnego*. Warszawa: Liber.
- Królikowski, Jerzy. 2022. "Województwa mają dość dokładania do geodezji." <https://geoforum.pl/news/32776/województwa-maja-dosc-dokładania-do-geodezji> [accessed: 20.03.2024].

- Lipowicz, Irena. 2019. *Samorząd terytorialny XXI wieku*. Warszawa: Wolters Kluwer.
- Nieżgoda, Andrzej. 2012. *Podział zasobów publicznych między administrację rządową i samorządową*. Warszawa: Wolters Kluwer.
- Ofiarska, Małgorzata (ed.). 2015. *Europejska Karta Samorządu Lokalnego a prawo samorządu terytorialnego*. Szczecin: Uniwersytet Szczeciński. Wydział Prawa i Administracji.
- Ostrowska, Anna. 2014. "Dotacje celowe z budżetu państwa na zadania samorządu terytorialnego a konstytucyjna zasada adekwatności." *Prawo Budżetowe Państwa i Samorządu* 2, no. 2:59-78. <http://dx.doi.org/10.12775/PBPS.2014.017>
- Ostrowska, Anna. 2018a. "Koncepcja umowy administracyjnej na przykładzie umowy o dotację w świetle polskich i zagranicznych regulacji." *Prawo Budżetowe Państwa i Samorządu* 6, no. 3:9-27. <https://doi.org/10.12775/PBPS.2018.014>
- Ostrowska, Anna. 2018b. *Samorządowe prawo dotacyjne. Dotacje jako wydatki jednostek samorządu terytorialnego*. Warszawa: Wolters Kluwer.
- Ostrowska, Anna. 2023. "The Financial and Legal Nature of Quasi-Grants Transferred to Polish Local Government Units From State Government Earmarked Funds." *Teka Komisji Prawniczej PAN Oddział w Lublinie XVI*, no. 2:249-65. <https://doi.org/10.32084/tkp.6359>
- Śledzińska, Anna. 2008. "Umowy administracyjne wprawie i praktyce innych krajów." In *Umowy w administracji*, edited by Jan Boć, and Ludmiła Dziewięcka-Bokun, 179-92. Wrocław: Kolonia Limited.
- Wójtowicz, Katarzyna. 2015. "Przejawy naruszeń zasady adekwatności w procesie decentralizacji zadań publicznych w Polsce." *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu* 391:284-91.
- Zimmermann, Jan. 2016. *Prawo administracyjne*. Warszawa: Wolters Kluwer.