

КОНСТИТУЦИОННОЕ И АДМИНИСТРАТИВНОЕ ПРАВО

M. Pietkiewicz

SUPERVISION OF FUNDING POLITICAL PARTIES IN POLAND

Outline of funding of political parties

The role of finance in the policy of political parties cannot be overestimated, it has a significant impact on competition in politics and is important for those politicians who want to gain or maintain power. Some peoples sees in money main motor of politics, and their lack as a barrier to access to power /1/. Stipulations concerning the role of the money in politics must ensure and maintain fair competition between parties already functioning, as well as between old and emerging parties /2/.

The purpose of this study is to show how the funding system of political parties in Poland works and a brief history of the issue.

At the outset it is worth to focus on the same meaning of supervision, because it is often confused with control.

Generally by control we mean comparing the existing state of the state which should be, determine reasons for the differences (if there are any) and then transmission of the results to proper authorities. The essence of control is therefore to observe certain phenomenas, analysis of their nature, and transmission of conclusions to public administration /3/.

Supervision has a broader meaning than control. Polish Constitutional Tribunal defines supervision as the specific procedures, which gives right bodies of public authority the law of establishing the facts, as well as correcting activities of supervised organ /4/. The control do not foresees the possibility imperious interference in the activities of the controlled organ.

With the above definition shows that the concept of supervision is broader than the control, because in addition to control activities there is the possibility of applying supervisory measures.

Evolution of supervision of political parties in the years 1990 – 1997

The issue of financial supervision of political parties, actually until 1990, was not raised in the Polish legislation, until the first in Polish history - Political Parties Act /5/, in 28 July 1990 introduced a normative principles of obtaining funds for party activities. Under the act any property of political parties for achieving its goals could come from membership fees, donations, bequests, income from property and income from economic activity, but only in the form of cooperatives and participation in companies and the public generosity.

It should be noted that this law also introduced a number of penalties for acts contrary to the established principles of finance. It was forbidden to use any kind of support and financial assistance of foreign persons within the meaning of foreign exchange act and the corporation with the exclusive participation of foreign entities, otherwise benefits being obtained in this way, should be confiscated to the State Treasury.

According to the electoral law to the Polish Parliament Act /6/ from 1990 Election Committee, which has registered a list of candidates in more than one constituency must submit - the National Electoral Commission (further as NEC), and if the registered list of candidates in one constituency to proper district electoral commission within 3 months from the date of election financial report, containing information about incurred costs associated with running the election campaign and the sources of funding to conduct the election campaign.

NEC had no supervisory powers on evaluating of the report because, under the Act NEC or the Regional Electoral Commission could only occur on its own initiative or at the request of the electoral committee, to proper Board of Tax with the request for audit expenses related to the activities of the committees Election to the election campaign.

Thus evolved the issue of financial supervision of the lots under the Act of 1990. It begs the conclusion that the legislature relied on the goodwill of the party in compliance with the prohibitions and limitations stipulated in the Act. Should be noted that the existing penalties were not enforceable. The reason for this was lack of regulations and proceeding rules to deal with a breach of these prohibitions.

Supervision of the political parties in the years 1997 – 2001

This state of affairs lasted until 27 June 1997, when a new law on political parties was passed /7/. The purpose of the amendment was to increase state oversight over the finances of political parties to organize their sources of funding and setting the party funding from the state budget /8/. However this act didn't introduce any radical changes, but it clarified some issues relating to party funding, but still not providing effective supervisory tools. Emphasized only disclosure of funding of political parties - in chapter 4 of Art. 23a as follows: " Sources of financing of political parties are public."

According to the law of 1997, each party was required to submit annually to the three types of information at different levels of openness:

1. annual financial information about received from the state budget subsidies and of expenditure on the statutory objectives to be submitted to the NEC and transferred to the registry court in the officially fixed form for the calendar year but before 31 March the following year and announced to the public in newspaper with nationwide coverage. Sanction for failure to make this information at a time and manner specified by statute was the loss of the right to receive a grant in the next calendar year;

2. summary information on the officially fixed form of the sources of obtaining funds and expenditure incurred by the Fund for Electoral previous year, with the disclosure of those whose donations to the fund exceed the 10 - times the projected average wage in the public sector budget which is made available for public inspection in the manner and manner specified by resolution of the NEC, sanction for failure to submit this information in a manner and time limit prescribed by law and for violation of the provisions was blocked at the request of NEC by the Ministry of Finance, the Electoral Fund account for 3 years;

3. information on sources of funding in the previous year, to be submitted on a officially fixed form in Warsaw District Court (registry court), no later than 31 March next year with a copy of information to NEC, in the absence of this information, the court called the party to make such a document within next 3 months, and if ineffective or in lapse of the time limit, after the hearing passed a resolution on deleting the political party of record. The Act did not stipulate the procedures to make public such a complex information. Those who were interested could only get from the court copies of statements and could take notes, which made it difficult to access data on the sources of party financing, since the court records only acted on the principle of formal openness made entries /9/.

It must be noted that the legislature had counted on action in good faith and honesty of political parties in the submission of the required reports. Therefore, NEC's role was limited to verifying the information in terms of formal - legal and in particular for their conformity with the law.

Accordingly, there were numerous demands to reform the financing policy, and strengthening the powers of NEC. Although the regulation included a large number of prohibitions and orders, but there was no legislation allowing for the enforcement of sanctions for breaching the rules. It was no secret that the best solution is to strengthen the constitutional position of the apolitical financial control body, which was NEC. Numerous demands in this case resulted in "revolutionary" law of 12 April 2001 Ordination to the Sejm and Senate Act /10/, which amended the Law on political parties.

Supervision of the political parties from 2001 to the present day

Amendments to the Act introduced an absolute ban on commercial activities by political parties except its own business which involves selling text of the statutes or the party's program, as well as objects symbolizing the party and the dissemination of publications and business objectives of the party.

Infringement of the aforementioned Law was devoted a separate chapter. Penalty for violation of the prohibition of party funding from public funds was the loss of the right to receive in the next calendar year, grants from the budget and forfeiture to the National Treasure of financial benefits resulting from the violation of the prohibitions.

Unfortunately, there haven't been settled any principles on which the forfeiture is to take place, as well as there were no regulations concerning the control of breach of statutory prohibitions. As a result, there were no cases of practical application of this provision. In the case of the right of a political party to receive a grant from the state budget, the role of NEC was limited to confirmation of entitlement to this subsidy and to determine the number of seats obtained provided by the political party. Request for payment of the special-purpose grants in subsequent years was submitted to the Minister of Finance, through the NEC, which confirmed the right of the party to pay the subsidy after its reporting obligation for the previous year.

NEC, however, still did not have any further powers and instruments of control and supervision entitling her to verify the accuracy of their data.

Because of the magnitude of the problem, which is the possibility of supervision of political parties and the continuing shortcomings in legislation, there were numerous demands reform of the financing policy, and strengthening the powers of NEC.

The current regulation concerning the financial reporting of political parties differs significantly from previous arrangements. The legislature ceased to rely on the goodwill of the parties in the reliability of the reports drawn up and has strengthened the position and role of the NEC. It armed her with the supervision tools of financial reporting instruments, not only in formal way but also in terms of veracity of data contained in those reports.

It should be noted that the parties are required to submit annual information to NEC about the subsidy received and about incurred expenses form the subsidy. For each calendar year, information must be submitted no later than 31 March the following year together with the opinion and the auditor's report, which selects the NEC.

Election reports of election committees National Electoral Commission publishes in the Official Gazette "Polish Monitor" within 14 days of submission to the NEC.

There have also been introduced some control procedures, which gives the NEC 4 months from the date of submission of information on the possibility of:

1. adoption of the report without reservation,
2. adoption of the report, while pointing to its failure or

3. rejection of the report - in the case record: collection or spending assets of the electoral committee in violation of the law, transmission of the electoral committee or coalition electoral committee or the adoption by the Committee of the money or non - monetary values in violation of the law, carrying out public collections despite the prohibition referred to in the Act or the adoption by the election committee of a political party funds from a source other than the electoral fund of the party.

If the NEC has some reservations about the information it may request the political party to remove the defect or supplement the data and to clarify doubtful issues in a specified period. NEC has the right to commission expert reports or opinions and request the necessary assistance to State Administration in the process of inspection.

An additional guarantee of the accuracy of reports is the possibility to submit written and reasoned objections within 14 days of notice of political parties reports by the NEC, by other political parties, organizations or associations which statutory goals are actions related to the analysis of political party financing. However, representatives of these organizations indicates a very short time for any possible response to published reports /11/. NEC has a duty to provide a written response within 60 days of a reservation.

Rightly observes Professor Granat, the provision of Article. 34a of this Act guarantees the formal protection of a political grouping from unauthorized operation of state authority, and through the normalization of terms, rules of conducting and the form and content of the NEC rulings, as well as her omnipotence is limited and so is discretionary nature of the state /12/.

In case of rejection of information by the NEC, a political party is entitled, within 7 days of delivering resolution, to file a complaint to the Supreme Court against the provisions of the NEC on the rejection of information. It should be noted that this is a deadline period and his exceeding shall result in rejecting a complaint by the court. Examination of the complaint is performed in non-litigious way under the provisions of Civil Procedure Code. The Supreme Court resolves the complaint by voting (7 judges) and issues a decision within 60 days from the date of service of the application, the decision is final and with no right to appeal. If the court finds the complaint legitimate, NEC is required to immediately issue a decision to accept the information.

It is also worth mentioning that in the absence of information on grants received and the expenditure incurred from the grant, within a specified period or when the information will be rejected by the NEC and the Supreme Court will dismiss the complaint, political party loses the right to grant the following calendar year.

Second report under Article. 35, paragraph. 3, is to inform the NEC of setting up or liquidation of the electoral fund. However, the legislature has not indicated any penalty for failure to perform this obligation, which demonstrates that the Act has certain shortcomings of the legislative.

Another report, which must be submitted to NEC by the party, is a statement of sources of obtaining funds by the party, including bank loans and conditions for their acquisition and the costs incurred by the Fund in the election in the previous calendar year. This report should be submitted by 31 March each year /13/. To the information the opinion and report of the auditor should be included regarding funding the party election. NEC selects the auditor and the covers all costs. NEC is required to announce the report together with the auditor's opinion on "the Polish Monitor" within 14 days of their submission to the NEC.

NEC has 4 months to adopt the report, together with the opinion of the auditor's report and can accept it without any reservations, indicate shortcomings, or even reject the report. Rejection occurs when: political party conducts any commercial business, when party gathers financial resources from public collections with violation to the law, also when party collects funds beyond the bank account, when party gathers funds from individuals who are not domiciled in the Republic of Poland (with the exception of Polish citizens residing abroad) or foreign residing in the territory of the Republic of Poland, or raises funds from other prohibited sources, collects assets for the election campaign without the electoral fund, or raises funds on a separate election fund bank account.

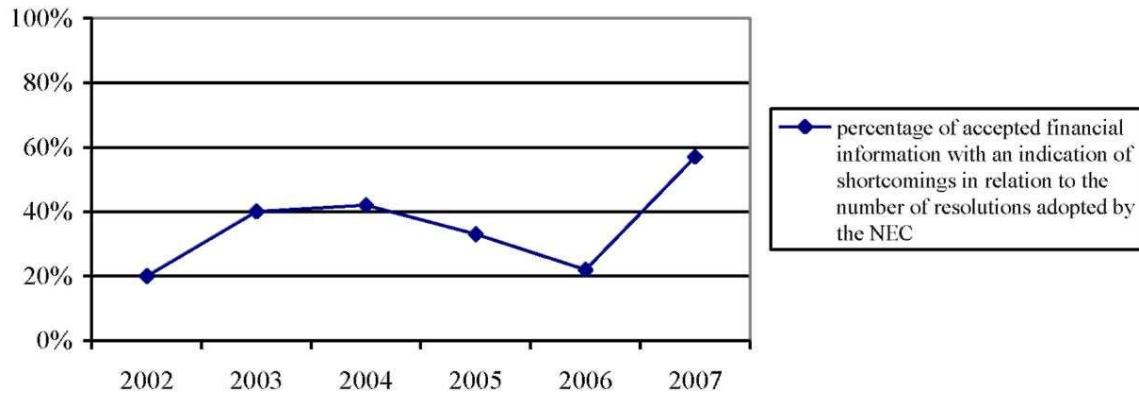
If the NEC rejected the report, because of the reasons given above, the party shall have the power to lodge a complaint regarding the rejection of the report to the Supreme Court within 7 days. The court shall consider the complaint and issue a ruling on the matter within 60 days from the date of service of the application, the ruling is final with no right to appeal. In case of no submission by party of financial information within a specified period by law, is to apply the NEC to the Warsaw Regional Court requesting the cancellation of its registration. After hearing the court shall issue an order to remove the entry of a political party from the records.

Financial reports of political parties are a form of control of the legality of obtaining funding sources. The sanctions in the form of losing the right to grant, for the submission of incorrect reports, is certainly a painful measure, particularly in view of the role of the state budget in the financing of political parties.

Table 1 The provisions of the NEC on election information /14/

Reporting Year	Number of parties receiving subsidies	provisions of the NEC on the financial information			
		Number of resolutions adopted	Information accepted unreservedly	Information taken with an indication of shortcomings	Information refused
2001	0	-	-	-	-
2002	10	10	8	2	-
2003	10	10	6	4	-
2004	7	7	4	3	-
2005	6	6	4	2	-
2006	9	9	7	2	-
2007	7	7	2	4	1

the above table can provide the following chart:



From the above chart, you can deduce quite a disturbing phenomenon, which is a very high percentage of failures in the financial statements of political parties. In 2002 (at 10 taken in two resolutions NEC pointed notice), there was a lack of highly specialized staff in a political parties responsible for the creation and presentation of the annual information like auditors, accountants, lawyers, economists. However, data from the year 2007 (at 7 NEC resolutions adopted at 4 pointed out weaknesses and rejected the one information) shows a series of problems posed by financial statements submitted annually to the NEC, and at the same time as the supervision of such an institution is needed.

It must be noted that this is still control of a repressive nature - so-called post factum control. Changes that should be made on this issue, which certainly are needed, are regulations to monitor the preventive approach.

The role of the National Electoral Commission and other bodies in the supervision of the finances of political parties

It should be noted that NEC plays a major role in the supervision of party finances. It is the supreme electoral authority in the Polish legal system. In recent years its role in political life of parties is becoming more serious matter. It is provided with various control instruments. In recent years, the functions and tasks of the NEC changed very much; from the body preparing, organizing and conducting elections and referendums NEC has become primarily a control body of campaign financing and monitoring the statutory activities of registered political parties /15/.

NEC's duty inter alia is to safeguard the proper financial management conducted by political parties and election committees of the party. NEC position must be strengthened so much that voters and supporters of political parties had a real sense of participation in the electoral process and governance. The authors of report on the financing the last presidential campaign calls for transparency and legality of funding sources by:

1. obligation to submit and publish at least 2 financial reports (one for a short time before the election, and second overall, after the elections). In order to fully implement the principle of public financing of election campaigns, election committees should be required to submit to the NEC, during the 10 days before the vote, partial financial reports. Such report should be posted, within 48 hours on the website of NEC,

2. allow NEC for preventive checks during election campaigns, if there is suspicion of illegal campaign financing, or other offenses against the election of financial support. It is essential within the NEC (National Electoral Office) to create its own team of auditors, since the present practice of using outside services, was not always effective,

3. Create possibilities for immediate informing the NEC about emerging irregularities, including the use of modern methods of online reporting, eliminating the existing time limit for election audit and the submission of objections by NGOs,

4. Introduce a full catalogue of financial sanctions and criminal (in relation to the illegal donors, financial agent, candidate, electoral chief of staff and every person involved in illegal financial transactions), with the possibility to unregister the electoral committee /16/.

These demands show how imperfect system of financial oversight of political parties is in Poland at the moment. Changes are needed and there is nothing to doubt. NEC should not only deal with caring about the legality and transparency of financial policies. Other bodies are also equipped with some elements of control, but because of the primacy of NEC in this area of the field their powers goes into background. Practice shows that an effective control requires the involvement of other state bodies. Especially important is NEC cooperation with the Tax Inspection Office and the Supreme Chamber of Control.

Moreover, the demand to concrete cooperation with other state bodies you can observe improvements in the supervision of party finances by the creation in 2006, the Central Anticorruption Bureau (further as CBA). The tasks of the CBA in the fight against corruption in public and economic life is identification, prevention and detection of crime against the financing of political parties, as defined in Article. 49d, and 49f of the Political Parties Act, if they are in relation to corruption.

Granting CBA certain powers to supervise the financing of political parties remains a controversial issue. Rightly observes Professor. M. Chmaj, that CBA "is an institution subordinate to the Prime Minister, which may in future lead to an instrumental treatment of supervisory powers" /17/. Besides putting the supervision of party funding body, which

is politically linked with the crew of the ruling is contrary to the recommendations of the Council of Europe. They express themselves accurately, that the primacy of the financial supervision authority of the party should exercise apolitical, but with numerous powers.

Limited powers in the supervision of political parties have also the Supreme Chamber of Control (further as SCC), which is constitutional, supreme organ of state audit, in contrast to the CBA, subordinate to the Sejm.

According to the Act on the SCC President of the Supreme Chamber of Control may ask the Constitutional Court requesting a declaration of conformity with the Constitution of the purposes or activities of political parties.

In practice, however, explains a spokesman of SCC Blazej TORANSKI: "*SCC cannot control the activities of political parties. Act on the SCC, however, allows the possibility to check how the parties comply with the financial obligations to the state, i.e. as management of funds from the grant budget*". In addition he said that so far "*the SCC undertook no such control [...] SCC checked on the occasion of the budgetary control how the Ministry of Finance to fulfill an obligation to pay subsidies to political parties*" /18/.

However, it should be noted that mentioned above organs, equipped with a wide range of possibilities of control, aren't using their powers as often as they should.

The overall conclusion is that the issue of supervision of party finances in the Polish legal system is fairly well regulated. Obviously, this regulation is not without flaws, but as presented above, in the past 15 years, the legislature has made quite a big step forward, and most importantly in the right direction. However, this subject matter and the legal solutions are always determined by the activities of members of parliament and senators, who at any rate, are members of political parties.

Therefore, you can forget a truly effective legal solutions of party funding, until the time when members of parliament and senators submit the interest of voters and the country over one self's and party.

1.F. Rymarz, *Jawnosc i kontrola finansowania dzialalnosci statutowej partii (w praktyce Panstwowej Komisji Wyborczej)*, Przeglqd Sejmowy 3 (62)/ 2004.

2.K. H. Nassmacher, *Analiza porownawcza finansowania partii politycznych w ustabilizowanych demokracjach*, [w:] *Kulisy finansowania polityki* red. M. Walecki, s. 11.

3.J. Starosciak, *Prawo administracyjne*, Warszawa 1975, s. 346.

4.Uchwała z 5 października 1994 r. „Wsp6lnota” 1994, nr 48, str. 18

5.Dz.U.1990.54.312 (uchylona z dniem 19 wrzesnia 1997 r.).

6.Dz.U.1991.59.252 (uchylona z dniem 17 czerwca 1993 r.).

7.Dz. U. z 1997 r., Nr 98, poz. 604.

8.M. Chmaj: Status srodkow otrzymywanych przez partie polityczne z budzetu pahstwa z tyuiu subwencji. *Poblematyka jawnosci* [w:] *Subwencje z budzetu pahstwa dla partii politycznych. Jawnosc i kontrola* red. J.Zbieranek s. 16

9.F. Rymarz, *Jawnosc i kontrolafinansowania...*, op. cit, s. 34.

10.Dz. U. z 2001 r. Nr 46, poz. 499, z pozn. Zm.

11.Instytut Spraw Publicznych, *Wybory prezydenckie 20005. Monitoring finansow wyborczych*. Warszawa 2006, op. cit, s. 74

12.M. Granat, A. Gorgol, J. Sobczak, *Ustawa opartiach...* op. cit. str. 142.

13.The Supreme Court in its resolution of October 3, 2002 (III, S 24/02, OSNP 2003 / 4 pos. 92) stipulated that provided that in Article. 38 Political Parties Act to the reporting date on the source of obtaining funds no later than 31 March each year is a statutory term and its crossing should result in rejecting a report

14.M. Chmaj Nadzyr organyw pacstwa nad finansowaniem partii politycznych [w:] *Subwencje z budietu ...* op. cit s. 25.

15.F. Rymarz, *Jawnosc i kontrola...*, op. cit.

16.Instytut Spraw Publicznych, *Wybory prezydenckie 2005. Monitoring jinansow wyborczych*. Warszawa 2006, op.cit., s. 91.

17.M. Chmaj, *Wolnosc...*, op. cit., s. 159.

18.M. Chmaj *Nadzyr organyw pacstwa*, op. cit. s. 30.

С.К. Атаханова

ҚАЗАҚСТАНДА ТІКЕЛЕЙ ДЕМОКРАТИЯНЫҢ БІР НЫСАНЫ БОЛЫП ТАБЫЛАТЫН РЕФЕРЕНДУМҒА БАЙЛАНЫСТЫ АЗАМАТТЫҚ СОТ ІСІН ЖҮРГІЗУДІҢ КЕЙБІР КОНСТИТУЦИЯЛЫҚ-ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІ

Қазіргі кезеңдегі демократиялық елдердің барлығы референдумды, мемлекеттік маңызды мәселелерді шешудің бірден-бір демократиялық жолы ретінде таниды. Қазақстанда дамыған мемлекеттердің үрдісіне ілесу үстінде қоғамдағы маңызды мәселелерді демократиялық жолмен шешуге көңіл қойып отырған мемлекеттердің бірі болып табылады. Сондықтан да, референдум Қазақстанның конституциялық кеңестігінде маңызды роль атқарады. Осы жерде республикалық референдум дегеніміз не? - деген мәселеге тоқталық өту қажет болып табылады. Себебі, референдум мәселесінің ұғым-түсінігін айқындамай, оны өткізудің негіздері туралы сөз қозғау қиын. Қазақстан Республикасының 2 қараша 1995 жылы қабылданған “Республикалық референдум туралы” конституциялық заңында оған мынандай түсінік берілген: “Республикалық референдум – Қазақстан Республикасы Конституциясының, конституциялық заңдарының, заңдарының және мемлекеттік өмірінің өзге е неғұрлым маңызды мәселелеріне арналған шешімдерінің жобалары бойынша бүкілхалықтық дауыс беру” [1, 39 б]. Кейбір зерттеуші ғалымдар референдумды өткізудің конституциялық – құқықтық мәдениетінің әлі қалыптаса қоймағандығын былай түсіндіреді: “Институт народовластия – референдум является одним их важных в казахстанской модели народовластия на переходном этапе его развития.

На сегодняшний день Казахстан не имеет достаточно большого опыта в проведении референдумов, как, например, Италия или Швейцария. Однако, у нас имеются достаточно большие возможности в применении данного непосредственного института народовластия, что подтверждает конституционно-нормативная база” [2,