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The Openness of the Commune's Financial Administration

Jawność gospodarki finansowej gminy

ABSTRACT

The principle of openness of public administration is one of the basic principles in a democratic state. The openness of public administration is also regarded as its fundamental value. It defines the standards of administrative activity, access to information and the controlling functions of citizens, and builds trust in a public authority. The aim of the article is to present legal regulations concerning the openness of the commune in its financial administration. The paper presents the principle of openness of public administration, the dimensions of openness in the practice of communes, the relevant standards arising from the substantive law regulations, as well as selected international experience in this area. Therefore, the choice of the subject of the analysis was dictated by a gap in the legal literature. This is an additional premise that justifies undertaking the indicated research tasks. Against the background of the applicable legal provisions, it should be considered whether the actions taken by the legislator allowed for the creation of a properly functioning model of transparency in the financial management of a commune. Over the years, it has undergone some transformations, which may

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cause freedom or lack of the possibility of a logically correct, functional, and systemically consistent interpretation. The set goals determined the choice of the layout of the study and research methods. The work assumes methodological pluralism. The two main research methods used in the work are the dogmatic-legal method and the theoretical-legal method. The historical-legal method and legal functionalism were used as an auxiliary, which allowed to present the subject of research from the point of view of its evolution, and thus obtain a full picture of the discussed issues.

Keywords: openness; financial administration; commune; access to information; public authority

INTRODUCTION

The right of access to information is among the areas of greatest interest to legal science, judiciary, and the practice of public administration. The principle of openness in administrative law is understood as the general provision to all citizens of information available to public administration. The principle of openness of public financial administration, in turn, is a guarantee of the constitutional principle of the right to information about the activities of public authorities and the holders of public functions, expressed in Article 61 (1) of the Polish Constitution.[1] Article 61 of the Act of 8 March 1990 on the commune self-government[2] includes the principle of openness of the financial administration. Likewise, Article 61 of the Act of 5 June 1998 on district self-government[3] stipulates the administration of financial resources available to a county is open. A parallel regulation is contained in Article 72 of the Act of 5 June 1998 on voivodship self-government.[4] It needs to be stressed the principle of fiscal openness is regarded as "the principle of principles". An open budget is accessible not only to individuals (authorities) obliged to know its contents, e.g. the members of representative bodies, but also easily accessible and comprehensible nationally. Without such openness, there are no healthy public finances.[5] The openness of commune's administration has the fundamental advantage of allowing for effective participation in decision-making processes that concern local matters. This enhances citizens' trust in public authorities and contributes to the discharge of public tasks as part of jointly developed solutions without causing problems to administrative practice or acceptability of such behavior to all parties.

[1] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.8.2023).

[2] Consolidated text, Journal of Laws 2021, item 1372, hereinafter: CSGA.

[3] Consolidated text, Journal of Laws 2022, item 1526, hereinafter: DSGA.

[4] Consolidated text, Journal of Laws 2022, item 2094, hereinafter: VSGA.

[5] B. Dolnicki (ed.), *Jawność w samorządzie terytorialnym*, Warszawa 2015, p. 8.

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It should be added that 30 years have passed since the restoration of the functioning of the local government as a public law association separate from the state. The flourishing of local government resulted in a significant increase in the number of legal acts concerning its construction. It must be noted, though, the same period has been a time of building a model of financing for the public finance sector entities. Article 167 of the Polish Constitution guarantees the autonomy of local government and ensures its share in public revenue appropriate to its tasks. Own revenue, grants, and designated subsidies from the state budget make up the model of financing of public finance sector entities. Section 3 of that provision is worth noting as it stipulates the sources of revenue must be determined in law. Thus, the financial autonomy of the local government is warranted. The legislation guarantees in effect that as the tasks and competences of local government change, appropriate modifications to the distribution of public revenue must follow. This model is expected to allow communes to discharge the public tasks they are established for. Most of these tasks are realized by the local government as part of the public law regime.

For the purpose of analyzing this subject matter, the authors begin by addressing the nature and meaning of the openness principle and its realization in the domestic legislation, since the principle of openness is one of the crucial legal principles. It is reflected in fundamental civil rights, giving a legal guarantee of access to public information. As far as the budget is concerned, it relates to the operation of a commune and its bodies, citizens' access to information, and any other activities in the area of financial administration. Next, the financial reporting system is discussed. As a rule, the structure of the material and financial statements should meet legal requirements so that it can be considered open and transparent. This is an important issue because it allowed the authors to discuss the standards of transparency of public finances in selected countries of the International Monetary Fund (IMF).

It is also worth considering against the background of the applicable legal provisions, it should be considered whether the actions taken by the legislator allowed for the creation of a properly functioning model of transparency in the financial management of a commune. Over the years, it has undergone some transformations, which may cause freedom or the lack of the possibility of a logically correct, functional, and systemically consistent interpretation.

The set goals determined the choice of the layout of the study and research methods. The work assumes methodological pluralism. The two main research methods used in the work are the dogmatic-legal method and the theoretical-legal method. The historical-legal method and legal functionalism were used as an auxiliary, which allowed to present the subject of research from the point of view of its evolution, and thus to obtain a full picture of the discussed issues.

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THE NATURE AND MEANING OF THE OPENNESS PRINCIPLE

The concept of openness in public administration is extensively characterized by some representatives of the legal doctrine.[6] Under a democratic rule of law, the openness and transparency of public life should be matters of principle, while restriction on the access to information should be exceptions with good reasons.[7] Openness as the operating principle of public power, including public administration, can be seen as the model for such power in a democratic state. It transforms as public life changes.[8] As T. Górzyńska notes, "openness is a condition of realizing the right to information".[9] Openness must be interpreted broadly, namely, as the right of access to any activities or the lack of activities of the particular public institutions and their representatives.[10] It becomes part of all the legal mechanisms of social control over the public power.[11] Thus, only an informed citizen can feel a partner of the administration capable of exercising their controlling rights, of making conscious decisions, and having opinions about the administration. The openness of administration is a way of boosting public trust, especially at the local level. It is also a means to alleviating and reducing social anxieties.[12] Legal regulations should warrant actions that give rise to civic trust in a public authority. Open resolutions are a practical instance of such actions as they relate to the citizens' right to information about the activities of public authorities. The principle of openness belongs among the standards of the democratic rule of law. It is also an unquestionable systemic principle grounded in the Constitution under the Polish legal order.[13] The literature defines it, among other things, as "the right to search for, demand, receive and diffuse information, to informing and being informed".[14]

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[6] P. Fajgielski, *Informacja w administracji publicznej. Prawne aspekty gromadzenia, udostępniania i ochrony*, Wrocław 2007, p. 19; W. Taras, *Informowanie obywateli przez administrację*, Warszawa 1992, p. 8.

[7] Judgment of the Voivodeship Administrative Court in Gdańsk of 27 September 2017, II SA/Gd 258/17, LEX no. 2369948.

[8] A. Piskorz-Ryń, *Pojęcie ponownego wykorzystywania informacji sektora publicznego w świetle dyrektywy 2003/98/WE*, "Samorząd Terytorialny" 2015, no. 4, p. 34.

[9] T. Górzyńska, *Prawo do informacji i zasada jawności administracyjnej. Orzecznictwo Sądu Najwyższego, Naczelnego Sądu Administracyjnego i Trybunału Konstytucyjnego*, Wrocław 1999, p. 28.

[10] M. Jabłoński, *Jawność działania władz publicznych jako dobro wspólne*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2018, vol. 80(1), p. 39.

[11] B. Opaliński, *Dostęp do informacji publicznej jako emanacja zasady jawności życia publicznego*, "Przegląd Prawa Publicznego" 2019, no. 7–8, p. 35.

[12] A. Piskorz-Ryń, *Prawo do informacji od podmiotów wykonujących administrację publiczną w polskim porządku prawnym*, "Samorząd Terytorialny" 2000, no. 7–8, p. 97.

[13] M.I. Ulasiewicz, *Zasada jawności w planowaniu przestrzennym*, "Przegląd Prawa Publicznego" 2021, no. 4, p. 19.

[14] T. Górzyńska, *Geneza i rozwój prawa do informacji*, [in:] *Dostęp do informacji publicznej w Polsce i w Europie. Wybrane zagadnienia prawne*, eds. E. Pierzchała, M. Woźniak, Opole 2010, p. 13.

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The principle of openness of commune bodies is universal and intended to provide everybody with a free access to information about the activities of the commune.[15] Access to information realizes the constitutional law and stresses the right of every individual to information in the sense of searching for and transmitting information and ideas by any means and regardless of any borders.[16] The Constitutional Tribunal defines public information as any message produced by broadly defined public authorities and holders of public functions or referring to public authorities, as well as produced or referring to other entities discharging public functions by carrying out the tasks of public power and administration of municipal property or Treasury assets.[17] As B. Dolnicki and R. Cybulska are right to note, the principle of openness is an extraordinarily important part of the operation of public authorities, with the openness of local government bodies, closest to local residents, being crucial. It needs to be regulated broadly enough, therefore, and precisely enough, to make its exercise real and satisfying the needs of the population.[18] The right to public information, an expression of individual empowerment, is a pre-requisite to and a guarantee of the remaining subjective rights of an individual. Having access to public information, an individual becomes a partner of administrative authorities.[19]

The rules and procedures of access to public information are set out in the Polish Constitution and in the Act of 6 September 2001 access to public information.[20] The duty of making public information available to citizens arises from Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms[21] and Article 19 of the International Covenant on Civil and Political Rights.[22] The subjective and objective scopes of "public information" are defined by Article 61 (1) and (2) of the Polish Constitution, while the conditions of acceptable restrictions by Article 61 (3) of the Polish Constitution. The notion of public information should

[15] Judgment of the Voivodeship Administrative Court in Wrocław of 7 May 2008, III SA/Wr 120/08, LEX no. 506857.

[16] M. Jaśkowska, *Dostęp do informacji przetworzonej*, [in:] *Sądownictwo administracyjne gwarantem wolności i praw obywatelskich 1980–2005*, eds. J. Góral, R. Hauser, J. Trzciński, Warszawa 2005, p. 275.

[17] Judgment of the Constitutional Tribunal of 13 November 2013, P 25/12, OTK-A 2013, no. 8, item 122.

[18] B. Dolnicki, R. Cybulska, *Realizacja zasady jawności i dostępu do informacji publicznej w samorządzie terytorialnym*, [in:] *Korupcja i antykorupcja – wybrane zagadnienia*, eds. J. Kosiński, K. Krak, Szczytno 2011, p. 165.

[19] Z. Niewiadomski, *Pojęcie administracji publicznej*, [in:] *System Prawa Administracyjnego*, vol. 1: *Instytucje prawa administracyjnego*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2010.

[20] Consolidated text, Journal of Laws 2020, item 2176, as amended, hereinafter: API.

[21] Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on 4 November 1950, subsequently amended by the Protocols Nos. 3, 5 and 8 as well as supplemented by the Protocol No. 2 (Journal of Laws 1993, no. 61, item 284, as amended).

[22] International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966 (Journal of Laws 1997, no. 38, item 167).

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be based primarily on the objective criterion, which defines it as the activities of public authorities and other holders of public functions.[23] Formulating the principle of the "right to information" in Article 61 of the Polish Constitution, the legislator set the basic rules of interpretation of this right. If this is a constitutional right, the laws determining the method of access to information should be interpreted in such a way as to guarantee to citizens and other persons and individuals extensive entitlements in this respect, while any exceptions should be defined narrowly. This means the application to these laws of such interpretative principles that foster expansion, not narrowing of the information duty. The method of access to public information governed by the API is commendable. The first and basic way is the publication of official documents in the Public Information Bulletin; the second, providing information at the request of an interested party or by publishing it in a customary way; the third, the right to attend meetings of collegiate public authorities, though only those elected by the general public. The API prohibits demanding a person exercising their right to public information to disclose their legal or factual interests.[24]

THE ACCESS TO INFORMATION ABOUT THE FINANCIAL ADMINISTRATION OF A COMMUNE

It has already been mentioned the principle of the openness of public financial administration is formally introduced to the Polish legal order by Article 61 of the Polish Constitution. As far as statutory regulations are concerned, Chapter 4 of the Act of 27 August 2009 on public finance,[25] Article 61 CSGA, Article 61 DSGA, and Article 72 VSGA are of paramount importance. The legal science distinguishes openness in its formal and material sense. The former allows for the monitoring of financial administration, while the openness in its material sense denotes the ability of the actual understanding of the processes that are part of public finances.[26] The principle of openness in its formal dimension has become a major rule of the public finances, since the legislator has devoted to it a whole chapter of the prevailing law governing the public finances. The openness of budget debates is among the key warranties of this principle, therefore. This applies both to the debates prior to budget approval and reporting debates of budget performance. In addition, the principle

[23] K. Karsznicki, *Kryteria dostępu do informacji publicznej*, "Prokuratura i Prawo" 2015, no. 11, pp. 112–113.

[24] J. Cwalińska, *Czy dostęp do informacji publicznej stanowi gwarancję praw podmiotowych jednostki? Zagadnienia wybrane*, [in:] *Prawo do informacji publicznej. Efektywność regulacji i perspektywy jej rozwoju*, red. M. Maciejewski, Warszawa 2014, p. 83.

[25] Consolidated text, Journal of Laws 2021, item 305, as amended, hereinafter: PFA.

[26] L. Lipiec-Warzecha, *Komentarz do art. 33 ustawy o finansach publicznych*, LEX no. 97496.

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provides for an appropriate publication of budget resolutions (Article 34 (1) PFA) and public information about subsidies issued from local government budgets.

It should also be emphasized the openness of communes involves the citizens' right to information, entry to the meetings of local councils and their committees, and access to documents produced in the exercise of public tasks, including the minutes of the meetings of the communes bodies and local council committees. This openness also encompasses the citizens' right to information about the positions taken by individual councilors in voting on matters important to local residents.[27] It applies to information about a community's financial affairs, too. In accordance with Article 11b (2) CSGA, the proceedings of committees (including the audit committee) are open, thus, other persons, even from outside a commune, can take part in such meetings, of course without the right to vote.[28] This allows citizens to participate in the processes of making decisions on financial matters and setting rules as part of committee work on the budget of a local government entity. A judgment of the Voivodeship Administrative Court in Gliwice needs to be highlighted in this connection which points out the list of public matters included in Article 6 API is not exhaustive. This is a straight result of the wording of that provision, which stipulates public information on public property shall be made available. Thus, each piece of information on public property must be made available, not only in the cases listed by the provision, e.g., Article 6 (1) (2) (f), Article 6 (1) (3) (b) and (f), Article 6 (1) (4) (d), Article 6 (1) (5) (c) API. The administration of public resources is undoubtedly open and must be treated as public information.[29]

The fact that access to the documentation of commune bodies is specified in the statutes of a local government body deserves to be noted. The authorization under Article 11b (3) CSGA, like the Voivodeship Administrative Court in Poznań notes, applies solely to organizational and technical matters of a local nature specific to a given local government entity and associated with the access to and use of documents. The phrase "the principles of access to and use of documents" in this provision must only be understood to refer to technical, organizational and disciplinary directives that indicate the methods of realizing the substantive content of the right to information, whose scope is determined by Article 61 (1) and (2) of the Polish Constitution and by the laws designated by Article 61 (3) of the Polish Constitution.[30]

[27] Judgment of the Voivodeship Administrative Court in Gdańsk of 4 March 2020, II SA/Gd 585/19, LEX no. 2822036.

[28] Judgment of the Voivodeship Administrative Court in Lodz of 8 May 2014, I SA/Łd 6/14, LEX no. 1467626.

[29] Judgment of the Voivodeship Administrative Court in Gliwice of 13 November 2017, IV SAB/Gl 217/17, LEX no. 2406147.

[30] Judgment of the Voivodeship Administrative Court in Poznań of 24 October 2019, IV SA/Po 586/19, LEX no. 2735769.

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THE NATURE AND SIGNIFICANCE OF THE FINANCIAL REPORTING SYSTEM

A legal standard results from the way the law is applied. E. Łętowska is correct to point out "the level of legal protection in a state cannot be determined if the standard is unknown".[31] What is more, not all regulations are applied to practice to the same extent. Meanwhile, the principle of transparency of public financial management should be respected in all financial plans, and not only in the budget.

In a democratic state ruled by law, information about the position of the entire public sector finances should be complete and data should be clearly presented by public institutions. In this connection, openness should be seen as the duty of presenting income and spending to the public – to representative bodies, social organizations, and other selected parties. The Fiscal Transparency Code, adopted by the IMF,[32] requires a distinct separation of the public sector from the whole economy. It also draws attention to an accurate division of tasks and competences in the public sector, stressing the necessity of continual information about the past, present, and planned condition of the sector. The IMF prioritizes the determination of standard accounting principles of the public finances that allow for an unambiguous determination of revenue, expenditure, and financial result of the public sector.[33] Therefore, treating the balance of the public sector as a constant part in the assessments of its financial situation is of key importance. The public information about the macroeconomic and political assumptions for a projected budget, clear procedures of fiscal performance and reporting need to be remembered as well. This gives rise to the duty of regular public information about progress on fiscal performance, with a particular emphasis on any deviations.[34] This is definitely a grave challenge of ensuring an external, independent assessment of information on the public finances.

[31] E. Łętowska, K. Sobczak, *Rzeźbienie państwa prawa. 20 lat później*, Warszawa 2012, p. 13.

[32] The Fiscal Transparency Code, https://www.imf.org/external/np/fad/trans/Code2019.pdf (access: 22.7.2021).

[33] L. Jonung, M. Larch, *Improving Fiscal Policy in the EU: The Case for Independent Forecasts*, "Economic Policy" 2006, vol. 21(47), pp. 492–495.

[34] European Commission, *Taxation Trends in the European Union. Data for the EU Member States, Iceland and Norway*, 2020, https://euagenda.eu/upload/publications/taxation-trends-in-the-european-union.pdf (access: 28.7.2023), pp. 27–30.

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Openness is served by the standard principles of accounting[35] as well and classifying public income and expenditure, too.[36] They add a specific and practical dimension to the basic principles of public finances, for instance, determining the duty of clarity of the intention of a fiscal resolution.[37] Book-keeping records of the local government sector of the public finances, kept in line with the Accounting Act, are a major source of information about the management of a local government organization. The accounting of local government serves to gather, process, and present data. They are necessary for the purposes of analysis, evaluation, and surveillance of fiscal performance, financial plans, as well as the property and financial standing of a commune.

It follows unequivocally that reporting is an essential part of accounting, a statement of assets, equity, liabilities, and financial result for an entire reporting period.[38] It must be added the legislation does not allow for simplified records, the so-called abbreviated book-keeping, for organizations managing public funds.[39] Communes are therefore bound to prepare reports of fiscal revenue, fiscal expenditure, budget surpluses or deficits, liabilities by debt classes, pledges and guarantees, receivables, selected financial assets, cash in bank, the State Treasury liabilities and receivables for mandated work. In addition, a commune provides information about the fiscal balance, total balance, consolidated balance, cumulative profit and loss account, a statement of fund changes.[40] It should be emphasized a failure to draft and submit the statements or the preparation of untrue statements are in violation of Article 18 of the Act of 17 December 2004 on liability for violating public finance discipline.[41] Nonetheless, Po-

[35] Accounts are maintained in accordance with the Act of 29 September 1994 on accounting (consolidated text, Journal of Laws 2021, item 217), the Regulation of the Minister of Finance of 5 July 2010 on the special principles of accounting and account schedules for the state budget, the budgets of local government entities, budget entities, local budgetary entities, state dedicated funds, and state budgetary entities based outside the Republic of Poland, dated 201 (Journal of Laws 2010, no. 128, item 861), the Regulation of the Minister of Finance of 19 January 2006 on the principles of accounting and account schedules for the recording of taxes, charges, and non-tax budgetary receivables in tax authorities reporting to the public finances minister (Journal of Laws 2006, no. 17, item 134, as amended), the Regulation of the Minister of Finance of 25 October 2010 on the principles of accounting and account schedules for the tax authorities of local government entities (Journal of Laws 2010, no. 208, item 1375).

[36] W. Wójtowicz, *Zasady publicznej gospodarki finansowej*, [in:] *Zarys finansów publicznych i prawa finansowego*, ed. W. Wójtowicz, Warszawa 2020, p. 42.

[37] C. Kosikowski, *Prawo finansowe w Unii Europejskiej i w Polsce*, Warszawa 2005, p. 294.

[38] K. Winiarska, *Sprawozdawczość w sektorze finansów publicznych*, [in:] *Sprawozdawczość finansowa i budżetowa jednostek sektora finansów publicznych*, ed. K. Winiarska, Warszawa 2016, p. 19.

[39] Cf. Article 2 (1) (4), (5), and 7 of the Accounting Act.

[40] M. Kaczurak-Kozak, *Sprawozdawczość finansowa jednostek sektora finansów publicznych*, [in:] *Rachunkowość jednostek sektora finansów publicznych i instytucji finansowych*, ed. T. Kiziukiewicz, Warszawa 2014, pp. 54–55.

[41] Consolidated text, Journal of Laws 2021, item 289.

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land fails to meet the requirements set by the IMF's Fiscal Transparency Code. Above all else, the financial reporting of local government is very limited. Summary figures of many organizations, e.g. independent healthcare or cultural institutions, are absent. It is difficult to analyze revenue and expenditure due to the frequent flows of public funds among local entities. Commune's reporting fails to disclose tax expenditures. The form of reports by communes is not standardized. The legal science postulates expanding the subjective scope of the duty of auditing to every commune, not to those with populations above 150,000, which is the case now. M. Bitner points to the need of introducing the accrual principle as the key rule of book-keeping records, given the international accounting standards of the public sector.[42] Linking reports with the book-keeping and recording system appears necessary and will help to depart from the double reporting. A regulatory change that would oblige an authority to disclose all of its income wherever it comes from seems reasonable as well. The reports of communes are the key parts of the management control system, which enables an effective administration of public funds.

STANDARDS OF TRANSPARENCY OF PUBLIC FINANCES IN SELECTED COUNTRIES OF THE INTERNATIONAL MONETARY FUND

Generally, in the IMF countries, the concept of transparency is rather used, which, however, in fact refers to the titular transparency. It therefore applies to all stages of the budgetary procedure. The legislator of the European Union does the same. In this way, the following are subject to publication in the Official Journal of the EU: the final adopted general budget, amending budgets, budgets amending the general budget, summing up of budgetary and financial management institutions, and the consolidated annual financial summing up.[43]

Thus, the purpose of the principle of financial administration openness is therefore control over the state of this administration. Its function is thus not solely informative, since it is also expected to counteract developments that are doubtful from the viewpoint of legality. The openness of commune financial administration is subject to no exceptions. Providing full access to information about how public funds are managed is crucial, regardless of whether they are paid to community staff or to entities outside its structure.[44] The clear principles of financial management

[42] M. Bitner, *Wpływ budżetowania memoriałowego na kształt i funkcjonowanie zasad budżetowych w prawie budżetowym jednostek samorządu terytorialnego*, "Samorząd Terytorialny" 2012, no. 5, p. 26.

[43] M. Tyniewicki, *Znaczenie klasycznych zasad budżetowych w budżecie ogólnym Unii Europejskiej*, [in:] *Finanse publiczne i prawo finansowe – realia i perspektywy zmian. Księga jubileuszowa dedykowana Profesorowi Eugeniuszowi Ruśkowskiemu*, eds. L. Etel, M. Tyniewicki, Białystok 2012, p. 220.

[44] A. Borodo, *Finanse publiczne. Zagadnienia ustrojowe i prawne*, Warszawa 2019, p. 177.

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are easier to execute and thus support the discipline of public finances. W. Misiąg and A. Niedzielski are right to point out the scale of waste is reduced as well, since inefficiencies become more prominent. The clear principles of financial administration are of particular importance in case of deficits in the balance of current payments.[45] An open financial administration of a commune directly relates to the accumulation and distribution of public funds. It helps to evaluate the assignment of financial resources to specific public tasks. Article 2 (1) of the Act of 29 June 1995 on official statistics[46] needs to be mentioned at this point, which envisages a system collecting statistics, the storage and compilation of these data, the publication and propagation of statistical results as official statistical data. The legislation binds communes to provide public services, free of charge, with administrative data, including those from IT system databases, as well as statistics on activities and their results as they are defined in a current program of public statistical research.[47] It needs to be pointed out, however, Poland has never developed any standards of commune financial administration, therefore, an assessment of the Polish local government in this respect needs to be compared to the other members of the IMF.

It should be stressed an important section of the IMF states applies some concepts classified as non-fiscal tax expenditures. The European Commission follows the rules set by the IMF to indicate the need to control such spending.[48] This is certainly crucial to fiscal revenue. Therefore, the EU member states have been obliged to publish details about the impact of non-fiscal expenditure on public revenue by force of Article 14 (2) of the Council Directive 2011/85/EU since 1 January 2014.[49] The Commission has not determined a standard procedure, however. Reports vary first of all in their time scopes. Poland, Austria, and Belgium limit themselves to the presentation of past fiscal effects, whereas countries like Sweden, France, or the Netherlands publish estimated future non-fiscal expenditure. R. Budlewska rightly notes only the countries forecasting such expenditure are able to include their reports into the budgeting process "at all its stages, including the most important one, of planning, or making decisions to select the instruments to realise the specific goals of socio-economic policy".[50] As a rule, a majority of the EU countries' reporting

[45] W. Misiąg, A. Niedzielski, *Openness and Transparency of Public Finances in Poland in the Light of the International Monetary Fund Standards*, "Journals of the Gdańsk Institute for Market Economics" 2001, no. 29, p. 9.

[46] Consolidated text, Journal of Laws 2021, item 955.

[47] Cf. Article 13 (3) and Article 30 of the Official Statistics Act.

[48] European Commission, *op. cit.*, pp. 84–85.

[49] Council Directive 2011/85/EU of 8 November 2011 on requirements for the budgetary frameworks of the Member States (OJ L 306/41, 23.11.2011).

[50] R. Budlewska, *Raporty tax expenditures jako element ram budżetowych w krajach Unii Europejskiej*, [in:] *Tax expenditures jako narzędzie transparentnej polityki fiskalnej – definicja, szacowanie i ocena*, ed. R. Dziemianowicz, Warszawa 2015, p. 160.

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fails to meet this condition or to compare the effectiveness of alternative solutions, one cannot therefore speak of a full realization of the principle of the openness of financial administration.

The formula of the project-based budget is an interesting way of improving the transparency of financial administration. It enjoys a large freedom of distributing funds, grouped into programs, which helps to use information about performance in the process of budget preparation. First of all, though, it guarantees the transparency of the goals to which public funds are assigned. It was introduced to France on the foot of the so-called new financial constitution, or the organic financial law of 1 August 2001. The scheme comprises both the central and local expenditure arranged by purposes. All public projects should be subject to metrics and their realization should be measured as appropriate. Article 27 of the organic law introduces three types of public book-keeping: the fiscal book-keeping of receipts and expenditure, general book-keeping of all operations, and analytical book-keeping of costs of the actions taken to carry out programs. The fiscal book-keeping records fiscal spending at the time of payment and revenue at the time of collection. The general book-keeping on the so-called accrual basis provides for a reliable and complete description of the property and financial situation. The costs can be analyzed owing to the information supplied by the general book-keeping.[51] The legal science points out a project-based budget provides the conditions for rationalizing public expenditure, yet not for its unconditional attainment in the short term.[52] The multi-year local financial plans need to be mentioned at this point. They were first introduced in the United States and applied to local authorities in financial straits as part of corrective actions.[53]

The complicated legal relations that result from the definition of the public finance transparency standard also require clarification of the concept of the financial equalization mechanism. It is worth referring to the German model here. The finances of the German local government are regulated in three ways: by the basic law, the land constitutions, and the European Charter of Local Self-Government.[54] The local mechanism of financial disgorgement is noteworthy. Article 106 (7) of the Basic Law obliges the lands to actuate the mechanism. A land awards funds to its

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[51] F. Adam, O. Ferrand, R. Rioux, *Finances publiques*, Paris 2007; A. Barilari, *La LOLF et la responsabilité des acteurs pour la mise en oeuvre des politiques publiques*, [in:] *Économie politique de la LOLF*, eds. E. Arkwright, C. de Boissieu, J.-H. Lorenzi, J. Samson, Paris 2007, pp. 141–142.

[52] A. Barilari, *op. cit.*, p. 303.

[53] M. Stęszewski, *Wieloletnia prognoza finansowa jednostki samorządu terytorialnego*, "Biuletyn Skarbowy Ministerstwa Finansów" 2008, no. 2, p. 5.

[54] European Charter of Local Self-Government drawn up in Strasbourg on 15 October 1985 (Federal Law Gazette 1987, II, p. 66). See also T.I. Schmidt, *Financial Foundations of the Functioning of the Local Government in Germany*, [in:] *Samorząd terytorialny w Polsce i w Niemczech*, eds. M. Geis, G. Grabarczyk, J. Kostrubiec, J. Paśnik, T.I. Schmidt, Warszawa 2015, p. 183.

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communes based on their populations and tax potentials.[55] The German legislation has in this manner applied Article 9 of the European Charter of Local Self-Government, which stipulates, i.a., the protection of financially weaker communes requires disgorgement procedures or balancing actions in order to correct the effects of unequal distribution of the potential sources of income, while the communes should be appropriately consulted as to how the resources from the income redistribution will be awarded. This is an example of good governance or public participative administration. Importantly, the model highlights such standards as openness and the dialogue with citizens. This openness comprises in particular the citizens' right to information and access to the documentation of public tasks.[56]

The considerations expressed above leave no doubt that access to information about the financial economy has also become a standard. The Slovakian and Czech legislations provide for the publication of the so-called contract rosters.[57] This is a summary of contracts executed by an entity of the public finance sector. This system is expected to link the scope of work realised by a given entity of the public finance sector with the financial resources it administers. In Slovakia, there is a single central roster of contracts signed by financial administration entities. A contract which is not published in the central roster no longer applies. A similar solution is implemented in the Czech system of public finances. This is one more instance in the catalogue of realisations of the openness of financial administration. Both the Slovakian and Czech rosters of contracts encompass all of the contracts entered into by a public finance sector entity. Importantly, the information about additions or modifications to contracts, termination by consent of both parties or withdrawal from a contract are to be provided, too. In this way, each aspect of a contractual relationship involving a public finance entity is supervised. Pursuant to Article 13 of the Polish API, entities entering into contracts with public finance sector entities must supply such information on request without undue delay not later than 14 days after such request.

CONCLUSIONS

In conclusions it should be noted that the discussed legal regulations do not allow for an unambiguous answer to the question asked about the assessment of the current model of transparency of the financial management of a commune. Although one can argue with the accuracy of the adopted solutions, undoubtedly,

[55] Idem, *Die Grundlagen des kommunalen Finanzausgleichs*, "Die Öffentliche Verwaltung" 2012, pp. 8–15.

[56] H. Izdebski, *Kierunki rozwoju zarządzania publicznego w Europie*, [in:] *W poszukiwaniu dobrej administracji*, eds. H. Izdebski, H. Machińska, Warszawa 2007, p. 21.

[57] https://www.crz.gov.sk (access: 25.7.2023); https://smlouvy.gov.cz (access: 25.7.2023).

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due to the needs of practice, the advantages resulting from the essence of its functioning cannot be overestimated.

The principle of transparency is implemented by the obligation to publish the budget resolution and other planning documents and reports on the implementation of the budget. Legal solutions that may become a guarantee of rational management of public funds are such tools as, e.g., the obligation to consider information on the state of property or the obligation to audit the annual financial statements of commune self-governments by a statutory auditor.

This realization requires an efficient model of financing. Without an open financial administration of communes, the local government could be incapable of discharging these tasks. The fact the local government obtains financial resources in its own name and responsibility implies the need for a comprehensive surveillance of public finances. Administration of public funds outside the state budget produces a risk of some of this revenue to escape such a surveillance. The limited opportunities for the surveillance of the local financial administration provide conditions conducive to the waste of public funds. The irrational spending on some of the public tasks, for instance, in a situation of fiscal deficit, jeopardizes the stability and integrity of the whole financial system. A lack of transparency often leads to the separation of some public funds, thus interfering with a reasonable management of all of the funding. This results in a growing fiscal deficit. A lack of openness and access to information about the local financial administration also impedes the possibility of transferring public funds between relevant financial entities as social and economic conditions change.

As D. Fleszer aptly notes, however, national self-government regulations relating to the principle of openness are mostly of a framework nature. The detailed method of its application is left to the statutory provisions. There is a real concern as to whether the cited sources of administrative law will ensure full and correct implementation of the principle of transparency at the level of the commune self-government.[58]

It can be also concluded the risk of a significant limitation to the principle of openness in the financing of local government is unacceptable in a democratic rule of law. It is a departure from the key principle of the democratic system, namely, the primacy of transparency in the determination of objectives of the public financial activities. To be precise, this would lead to an actual "degeneration" of a commune's financial autonomy. Like the Constitutional Tribunal is correct to state, "as part of the financial administration, communes can do only what is allowed by legislation". The Tribunal stresses the finances of communes are a subject of public law, with the prevailing principle that what the legislation allows is permissible. As a result of

[58] D. Fleszer, *Zakres jawności działania organów stanowiących jednostek samorządu terytorialnego*, "Samorząd Terytorialny" 2010, no. 4, p. 48.

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this financial autonomy of communes, the sources of revenue identified by legislation are close-ended, which means a commune can exercise its financial autonomy only in relation to the revenue assigned to it by law.[59] Following the extraordinarily apposite remark of M. Jaśkowska concerning the access to information, "the right to information and the idea of the so-called transparent state should be weighed against restrictions arising from the national and public interest, maintaining reasonable proportions between the law and protected values".[60]

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[59] Judgment of the Constitutional Tribunal of 24 November 1998, K 22/98, LEX no. 34617.

[60] M. Jaśkowska, *Ponowne wykorzystanie informacji publicznej*, [in:] *Dziesięć lat polskich doświadczeń w Unii Europejskiej. Problemy prawnoadministracyjne*, ed. J. Sługocki, Wrocław 2014, p. 238.

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ABSTRAKT

Zasada jawności działania administracji publicznej jest jedną z podstawowych zasad w państwie demokratycznym. Jawność działania administracji publicznej uznawana jest także jako jej wartość podstawowa. Określa ona standardy działania administracji, dostępu do informacji i sprawowania funkcji kontrolnych przez obywateli oraz buduje zaufanie do organu władzy publicznej. Celem artykułu jest przedstawienie prawnych regulacji dotyczących jawności działania gminy w obszarze gospodarki finansowej. W pracy przedstawiono pojęcie i zakres zasady jawności działania administracji publicznej, wymiary realizacji jawności w praktyce działania gminy, standardy wynikające w tym zakresie z przepisów prawa materialnego, a także wybrane doświadczenia międzynarodowe w tym obszarze. Wybór przedmiotu analizy podyktowany został luką w literaturze prawa. Stanowi to dodatkową przesłankę uzasadniającą podjęcie wskazanych zadań badawczych. Na tle obowiązujących przepisów prawa należy rozważyć, czy działania podjęte przez ustawodawcę pozwoliły na stworzenie właściwie funkcjonującego modelu jawności gospodarki finansowej gminy. Przez te lata uległ on pewnym przeobrażeniom, co może powodować dowolność bądź brak możliwości poprawnej logicznie, funkcjonalnej i spójnej systemowo interpretacji. Wyznaczone cele przesądziły o wyborze układu opracowania i metod badawczych. Praca zakłada pluralizm metodologiczny. Dwiema głównymi metodami badawczymi, jakie zostały wykorzystane, są metoda dogmatyczno-prawna oraz metoda teoretyczno-prawna. Pomocniczo sięgnięto po metodę historyczno-prawną i funkcjonalizmu prawniczego, co pozwoliło na zaprezentowanie przedmiotu badań z punktu widzenia jego ewolucji, a dzięki temu uzyskanie pełnego obrazu omawianej problematyki.

Słowa kluczowe: jawność; gospodarka finansowa; gmina; dostęp do informacji; władza publiczna