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The constitutional conditions and models of political party funding

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Słowa kluczowe: konstytucja, finansowanie, partia, polityczna, jawność

Summary

From the perspective of the political party, defining the sources and funding models are very important issues. Defining the legal standards, which provide in particular the certain and secure political parties funding, in a right manner, enables to direct their main activity on the more substantive areas. The subject area of the sources and models of political parties funding causes a great deal of emotions and controversy, not only among the political class, but also among the representatives of the science world and scholars. While the issue concerning the scope and amount of the funds has been revived at almost every single local, parliamentary or presidential elections, the analysis of and debate on the systemic solutions have been continued permanently.

Streszczenie

Konstytucyjne uwarunkowania oraz modele finansowania partii politycznych

Niezwykle ważnym z punktu widzenia funkcjonowania partii politycznych zagadnieniem jest określenie źródeł i modelu ich finansowania. Odpowiednie sformułowanie norm prawnych zapewniających w szczególności pewne i stałe źródła finansowania par-

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tiom politycznym pozwala skierować ich główną aktywność na bardziej merytoryczne obszary. Tematyka źródeł i modeli finansowania partii politycznych budzi wiele emocji i kontrowersji nie tylko wśród klasy politycznej, ale także w gronie przedstawicieli nauki i doktryny. O ile samo zagadnienie źródeł i wysokości środków odżywa przy okazji praktycznie każdego wyborów samorządowych, parlamentarnych czy prezydenckich, o tyle analiza i debata nad rozwiązaniami systemowymi trwa w zasadzie permanentnie.

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From the perspective of the political party, defining the sources and funding models are very important issues². Defining the legal standards, which provide in particular the certain and secure political parties funding, in a right manner, enables to direct their main activity on the more substantive areas. What is more, the entire energy of the particular parties may be directed on the communication with the society and the implementation of the political programmes. On the other hand, the transparent, clear and fair regulations, defining the scope and rules of receiving the funds by the political parties, are useful from the society's perspective. It may result in lower mistrust towards the political parties and their members, and also in citizens' more conscious participation in the political life.

The subject area of the sources and models of political parties funding causes a great deal of emotions and controversy, not only among the political class, but also among the representatives of the science world and scholars. While the issue concerning the scope and amount of the funds has been revived at almost every single local, parliamentary or presidential elections, the analysis of and debate on the systemic solutions have been continued permanently. It results from the fact that the ability to obtain funds for the current and future activity of the political party is in fact one of the most important issues in the modern democracies³.

² The article includes materials and sources used also in the publication of M. Bidziński, *Finansowanie partii politycznych w Polsce. Studium porównawcze*, Warsaw 2011.

³ See more: H.E. Alexander, *Khayyam Zev Paltiel and Theories of Public Financing*, [in:] *Democracy with Justice. Essays in Honour of Khayyam Zev Paltiel*, eds. A.-G. Gagnon, B. Tanquay, Ottawa 1992, p. 362.

In the content of art. 11, section 2 of the Constitution of the Republic of Poland, it has been adopted that the fundamental principle that governs the political parties funding is the principle of openness and transparency. This regulation provides all citizens with a right to form freely the political parties and enables the political parties to operate, and it indicates that “Political parties funding is open and transparent”. The immense importance of the openness and transparency principle of political parties funding has been underlined by the fact that this principle has been included by the legislator in the first chapter of the constitution. It simply means that the transparency of the political parties’ activity, which has a direct impact on the nation’s economic – social relations and citizens, has a paramount importance in the Polish legal system and for the democracy as well. It is beyond any doubt that the openness and transparency principle, which applies to the financial sphere, guarantees that the subsequent normative acts governing the issues of political parties’ activity are to be adopted with respect of the principles of pluralism and transparency. This, in turn, provides the society with a guarantee that the legal system will be free of any acts or any other legal documents enabling indirectly the possibility to dissimulate or conceal the sources of political parties funding. The aim of such a regulation is to minimize the political corruption risk⁴, to provide the transparency of the particular political parties’ expenditures, and also to enable the society to control the functioning of the political parties. On the other hand, the implementation of such a principle and a compliance with it has a direct impact on providing the political pluralism. There is no doubt that enabling the political parties to obtain the funds from the unspecified sources, without the necessity of indicating the amounts and settling of transactions, would result in supporting the parties, especially the radical ones or those targeted on forcing the particular social group’s issue by the businessmen, companies or the particular interest groups. In practical terms, it would mean altering the party into the business tool of the particular pressure and interest groups, thereby excluding those groups who deal with the issues of a more social, state – oriented and general nature from the political arena.

It is worth pointing out that the importance of the openness and transparency principle and political pluralism have been repeatedly emphasised

⁴ See more: Constitutional Court’s decision of 14 December 2004, ref. no. K 25/03 (OTK-A 2004, no. 11, item 116).

in the Constitutional Tribunal's jurisprudence. As an example, the Tribunal in its judgement of 27 May 2003⁵ concluded that the political parties are not only entities authorised to influence the country's politics using democratic methods. As emphasised by the Tribunal, such an attitude cannot only derive from the stipulations included in the Constitution of the Republic of Poland. It only indicates "the rationale for functioning of the civil society, in which the citizens, constituting different formal structures (political parties, associations, social organisations, foundations), achieve their goals influencing the political issues". In the justification of the judgement, the Tribunal indicated that "the democratic system excludes the political party's monopoly on influencing the world's politics, which is an issue, among others, that distinguishes the democratic system from the totalitarian one. (...) The constitutional frames of civil society model are included in the provisions of art. 11–13 of the Constitution, having regard in particular to art. 12. of the Constitution. It is this relation between art. 12 and art. 4 of the Constitution that determines democratic character of the nation and citizens (...)". In the judgement of 14 December 2004⁶ the Constitutional Tribunal indicated that art. 11, section 2 of the Constitution of the Republic of Poland was not formed in order to limit the party's economic activity, but it constitutes only a tool, which enables to scrutinise the legality of funds obtained by the parties. Openness and transparency enable in particular to conduct the verification procedure of the election campaign funding, including the sources and also the scope of funding support. What is more, the Tribunal indicated that the principle presented in art. 11 of the Constitution of Republic of Poland shall be considered as a tool enabling to exercise a civil control of party's activity. This principle shall enable to assess the concordance of party's activity with the general applicable regulations, the party's goals indicated in the policy statement and the principles of the democratic state of law⁷.

⁵ Constitutional Court's decision of 27 May 2003, ref. no. K 11/03 (OTK-A 2003, no. 5, item 43).

⁶ Constitutional Court's decision of 14 December 2004, ref. no. K 25/03 (OTK-A 2004, no. 11, item 116).

⁷ In reference to openness and transparency principle see: Supreme Court verdict of 7 May 2005, I KKN 831/00, LEX no. 55245; Supreme Court verdict of 7 February 2007; Supreme Court verdict of 2 June 1999, I ACz 753/99, "Przeгляд Sejmowy" 2000, no. 4, section

On the other hand, it shall be indicated that the principle expressed in art. 11 of the Constitution means also the openness and transparency concerning the sources of funds obtained by the party, which are spent on the party's current and future activity. From the perspective of openness and transparency principle implementation, it shall be emphasized that the issue of a funding body is of a significant importance. The legislator does not evaluate the adherence level of the openness and transparency principle differently for the funds coming directly from the government budget and funds collected by the party on its own using the acceptable private legal sources. It results from the fact that the political parties, in accordance with the applicable regulations, are responsible for the registration and publication of any information concerning the party-owned movables and real estate which constitute assets, collected funds and funds' sources along with providing the value of the particular groups⁸. The notion "assets" used in the act and further stipulations is comprehended in the broader sense. In accordance with the accepted doctrine and legal provisions, the assets of the party shall include, inter alia: money, objects, benefits to be claimed at court or in a legal manner, lands and any other movables and real estate, irrespective of their location, and also liabilities, easement, shares and profits⁹.

The openness and transparency principle of political parties funding is connected with the political pluralism principle expressed in art. 11, section 1 of the Constitution. This regulation provides all entities with the freedom for creation and functioning of political parties. In particular, it grants a right to organize political parties and institutions, which are in opposition to the ruling elite. It is worth mentioning that the Polish citizens have a right of membership in parties on the voluntary basis and on the principle of equality, the parties are allowed to have a real impact on the nation's politics in accordance with the democratic principles. This principle is important due to the fact that if there were many political parties and there were not clear regulations concerning the methods of obtaining the funds and

100; Constitutional Court's decision of 13 July, P20/03, the Journals of Laws no. 167, item 1760.

⁸ A. Ławniczak, *Political parties funding*, Warsaw 2001, pp. 52–62.

⁹ M. Chmaj, *Freedom for the creation and functioning of political parties. Studium porównawcze*, Warsaw 2006, p. 105.

their accepted sources, it would be incredibly easy to disturb the balance on the political arena.

It is worth mentioning that the process of shaping the principles and methods of political parties funding is a phenomenon of a long-term and complicated character. However, the forms of political parties funding have evolved and it is now possible to distinguish three basic systems¹⁰: 1) a customized system; 2) a mass system and 3) a diversified system. In the first one, the funds were obtained by the parties from the limited number of entities. As a result, the main source of funds constituted the affluent representatives of elite and landowners. It caused that the party's existence and its goals' implementation were in a full harmony with the views of a particular catalogue of entities. In the second system and as the name suggests, wealth of the limited number of the entities did not determine the amount of funds, but a huge number of active or at least "paper" members was indicative of the funds amount¹¹. It is worth mentioning that the value of funds collected was often worked out not due to the dutifulness and devotion of the mass members, but it resulted from the membership and paying the fees, which had an obligatory character (disobedience could very often result in imposing a particular sanction). The third type of a political party funding is a so called diversified system. Obtaining the funds by the parties from all acceptable sources (the source number depends on the accepted sources catalogues, exclusions and bans concerning the ways of obtaining the funds) is a feature of that system. The membership fees in that system constitute usually a complement to the party's budget. It means that the diversified possibility of collecting the funds allows on their collecting both from the own intellectual activity, benefits resulting from owned mobilities and real estate, budget subsidies and also inheritances, legacies or donations. A significant advantage of such a solution is obtaining the funds by the parties in a balanced manner, very often inversely proportional to the gained public support.

¹⁰ M. Bidziński, *Finansowanie partii politycznych w Polsce*, Warsaw 2011, p. 40; cf. A. Ławniczak, *Finansowanie partii politycznych*, Warsaw 2001, p. 50.

¹¹ R. Herbut, W. Jednaka, *Partie i system partyjny w Polsce na tle tendencji rozwojowych w wybranych państwach Europy Środkowej i Wschodniej*, [in:] *The Evolution of the Polish Political System after 1989 in the View of the Comparative Theory of Politics*, ed. A. Antoszewski, Wrocław 1994, p. 133.

From the perspective of the current models of political party funding, there are the three most common models existing within the European states. Taking into consideration the funding body and the level of restrictions in regard to the acceptable sources, it is possible to distinguish the following funding models: 1) the liberal, 2) the restrictive and 3) the mixed one. The first of them was formed on the basis of principle of freedom in political parties funding. It is characterised by lack of particular restrictions concerning the sources of obtaining the funds, very often with two catalogues of sources of funding (open and closed). The first of them has been implemented by the right defining the stipulations of the legal regulations. The particular legal acts implicate that the political parties may obtain the funds in the manner similar to the activities allowed. Finland is an example of a country in which such a model of financing exists. The content of the relevant provisions has been limited to the indication that the political parties are authorised to obtain the funds in the form of grants. On the other hand, the Finnish applicable legal regulations do not exclude any other available methods and sources of obtaining the funds. A specific kind of liberal model “variation” is a system existing in Czech Republic and Slovakia. In those countries, the acts define precisely the allowed sources of obtaining the funds necessary for functioning of a party. Those sources include mostly: membership fees, donations, inheritances, profits from the party’s own assets and its activity, or the funds coming from the budget grants and subsidies¹².

The restrictive model has been formed by providing the acts with the clauses limiting the ways of obtaining the funds. The legal acts include the stipulations indicating unacceptable sources, from which the assets and funds of the party cannot be formed, or the range of unacceptable activities than cannot be undertaken by the political parties. The most common forms of restrictions and bans are: ban on running the business activity and organizing collections of funds, and also ban on using the sources not allowed under the law by the parties. Ukraine is an example of a country in which such a model of financing exists. The act applicable there does not indicate the acceptable sources of obtaining the funds, it only describes the sources from

¹² E. Barany, *Logika finansowania partii politycznych: doświadczenie słowackie*, [in:] *Prawne aspekty funkcjonowania partii politycznych w państwach Europy Środkowej i Wschodniej*, eds. A. Domańska, K. Skotnicki, Lodz 2003, pp. 223–228.

which the party's assets cannot be obtained. Some elements of that model may be also found in the regulations applicable in Russia, Moldova or Lithuania.

In the mixed model we deal with the solution in which the legislator indicates both the acceptable sources of obtaining the funds and the sources from which the party's assets cannot be obtained. The law states that the funds may usually come from: the membership fees, donations, inheritances, legacies, grants subsidies, while imposing the ban on running the business activities, organizing public collections and others. The relevant regulation is applicable in the Polish legal system. According to the art. 24, item 1 of an Act on Political Parties, the party's assets cannot come from the membership fees, donations, inheritances, legacies, profits from the assets or grants and subsidies determined by the acts. On the other hand, the legislator stipulated in the contents of art. 24, item 3 and 6 of an Act that the political parties are not authorised to run a business activity and organize a public collections.

Table 1. Models of political parties funding in the particular countries

Country	Legal basis for the source of political parties funding	Model of political parties funding
Poland	Act on Political Parties; Electoral Law to the Parliament and Senate of Republic of Poland	Mixed
Austria	Federal Act on tasks, funding and election campaign of the political party	Liberal (closed)
Czech Republic	Act of Political Parties	Liberal (closed)
France	Act on the Financial Transparency of a Political Life	Liberal (closed)
Spain	Organic Law on Political Parties Funding	Liberal (closed)
Lithuania	Act on Political Parties and Political Organisations	Mixed
Russia	Act on Political Parties	Mixed
Slovakia	Act on Political Parties and Political Movements	Liberal (closed)
Ukraine	Act on Political Parties	Restrictive

Source: Excerpt from the comparison of models of political parties funding: M. Bidziński, *Finansowanie partii politycznych w Polsce. Studium porównawcze*, Warsaw 2011, p. 44.

The analysis of the legal regulations and systems of political parties funding applicable in the particular countries indicates that the most efficient model is the mixed one. This is due to the fact that introducing the fully liberal principles concerning political party funding could result in the intensification of corruption practices¹³, in particular, it would prevent from actual controlling the sources of funds obtained. What is more, such a model seems to be coherent with the modern democratic solutions included in the constitutions of many European countries.

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¹³ M. Bartoszewicz, *Nadzór nad partiami politycznymi w polskim porządku konstytucyjnym*, Warsaw 2006, pp. 13–49. S. Bożyk, *Prawnoustrojowy status opozycji parlamentarnej w Sejmie Rzeczypospolitej Polskiej*, Białystok 2006, pp. 111–125.