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The misuse of administrative resources (public resources) during electoral processes (ECPRD Request No. 4859)¹

Niewłaściwe wykorzystanie zasobów administracyjnych (zasobów publicznych) podczas procesów wyborczych (wniosek ECPRD nr 4859)

The author analyses the legislation concerning the electoral process, including regulations on election campaign expenditures, the duration of election campaigns and the supervision exercised by the National Electoral Commission. In the author's opinion there are no significant shortcomings regarding the Polish legislation and the practice of its application, which could lead to misuse of administrative resources (public resources) during the electoral processes.

Keywords: administrative resources, electoral campaign, Electoral Code

Autorka dokonuje analizy ustawodawstwa w zakresie procesu wyborczego, w tym przepisów dotyczących wydatków na kampanię wyborczą, czasu trwania kampanii wyborczych oraz nadzoru sprawowanego przez Państwową Komisję Wyborczą. Zdaniem Autorki nie odnotowano istotnych niedociągnięć w polskim ustawodawstwie i praktyce, które mogą prowadzić do niewłaściwego wykorzystania zasobów administracyjnych (zasobów publicznych) podczas procesów wyborczych.

Słowa kluczowe: zasoby administracyjne, kampania wyborcza, Kodeks wyborczy

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In response to ECPRD Request No. 4859 regarding “The misuse of administrative resources (public resources) during electoral processes” the Bureau of Research provides the following information.

In order to ensure the integrity of the election campaign, Polish law regulates the expenditure on the election campaign, its duration and establishes the National Electoral Commission as the supervising institution. Legal acts containing regulations relating to the election campaign are:

- Act of 5 January 2011 – Election Code (i.e. Journal of Laws of 2020, item 1319),

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- Act of 27 June 1997 on political parties (i.e. Journal of Laws of 2018, item 580, of 2021, item 1407).

Regulations on election campaign expenditure

Election campaign financing is public. This issue is regulated by Chapter 15, Section I of the Election Code. The expenditures incurred by election committees in connection with the ordered elections are covered from their own sources.

The financial management of an election committee is the responsibility of its financial representative.

Moreover, pursuant to Article 142, the financial representative submits a financial report to the election authority to which the election committee submitted a notice of establishment of the committee, within 3 months from the election day. In elections to the Sejm and Senate, elections to the European Parliament and elections for the President of the Republic of Poland, the National Electoral Commission (electoral authority) publishes the financial report of the electoral committee in the Public Information Bulletin within 30 days of its submission.

The National Electoral Commission shall also publish the submitted financial report in the Official Journal of the Republic of Poland “Monitor Polski”. Subsequently, the election authority to which the financial report was submitted shall, within 6 months from the date of submission of the financial report, accept the report without objections or accept the report indicating its deficiencies, in particular if the funds raised, accepted or spent in breach of the regulations do not exceed 1% of the total amount of income of the election committee, or reject the report if it finds, *inter alia*, that the election committee organises public collections or accepts funds from a source other than the Electoral Fund.

If there are doubts as to the correctness of the financial report, the competent election authority shall call upon the election committee to remove the defects in the report or to provide explanations within a specified deadline.

An electoral committee may raise and spend funds only for election-related purposes. However, it is prohibited for an electoral committee to raise funds before the date of acceptance by the competent electoral authority of the notice of establishment of the committee and after the election day. It is also prohibited for an electoral committee to spend funds before the date of acceptance by the competent electoral authority of the notice of establishment of the committee and after the date of submission of the financial report, as well as for an electoral committee to give financial benefits to another electoral committee. Furthermore, it is prohibited for an electoral committee to conduct public collections.

The regulations also define, on the basis of the minimum remuneration for work, the maximum sum of contributions made to a given electoral committee by a Polish citizen – a candidate for an MP, a member of the European Parlia-

ment, a senator and a candidate for the office of President of the Republic of Poland. If the sum of contributions exceeds the permissible limit, the excess shall be subject to forfeiture to the State Treasury.

The Electoral Code also regulates the expenses of election committees on election campaigning. The expenditures of an electoral committee which in a given election has nominated candidates for more than one elected body, allocated for this purpose, are limited by a total limit, which is formed by adding together the limits established by the specific provisions of the Code.

In addition, Article 132 § 1 of the Election Code indicates that the financial resources of an electoral committee of a political party may come only from the electoral fund of that party, created on the basis of the provisions of the Act of 27 June 1997 on political parties (Journal of Laws of 2018, item 580), and the financial resources of a coalition electoral committee – from the electoral funds of the political parties comprising the electoral coalition.

Pursuant to Article 132 § 5 of the Election Code, election committees are not allowed to accept material benefits of a non-monetary nature, with the exception of: free distribution of election posters and leaflets by natural persons, assistance in office work provided by natural persons, use of objects and equipment, including motor vehicles, made available free of charge by natural persons, free provision of places to display election materials by natural persons not conducting economic activity in the field of advertising.

Moreover, the issue of an electoral fund is regulated by Chapter 4 of the Act on Political Parties. Pursuant to Article 35 of the abovementioned Act, a political party shall establish a permanent Election Fund to finance the political party's participation in elections to the Sejm and Senate, elections to the President of the Republic of Poland, elections to the European Parliament and elections to local government authorities. Expenditure by a political party for this purpose may be made only through the Election Fund from the date of commencement of the election campaign. For this purpose, the funds are transferred to a separate bank account of the respective electoral committee. The funds collected under the Electoral Fund may come from the political party's own contributions and donations, bequests and legacies.

Article 36a indicates that the total sum of payments made by a natural person to the Election Fund of a given political party in one year may not exceed 15 times the minimum remuneration for work established on the basis of separate provisions, valid on the day preceding the payment. If more than one national election or referendum is held in a given calendar year, the total sums of payments to the Election Fund referred to above may be increased to 25 times the minimum remuneration for work established on the basis of separate regulations in force on the day preceding the payment. This does not apply to by-elections to the Senate and by-elections, re-elections and early elections and new elections to the bodies forming local government units falling during the term of office.

National Electoral Commission, practice of the supervision process

The National Electoral Commission (hereinafter: PKW) supervises the integrity of election campaigns and the entire election process. According to Article 160 § 1 of the Election Code the basic task of the National Electoral Commission is to supervise the observance of the election law. This supervision covers the activities of all entities that take part in the electoral process (including lower-level electoral bodies, electoral committees, the media and the press). Significant regulations in this scope are also contained in Chapter 4 of the Rules of the National Electoral Commission.

Pursuant to § 18 of the aforementioned Regulations, the Commission, in supervising the observance of the election law, issues guidelines and explanations and information on the provisions of the law, annuls resolutions and other decisions of lower-level electoral bodies adopted in violation of the law or inconsistent with its guidelines and refers the cases for reconsideration or makes a different decision in the case. In addition, it examines complaints against the activities of lower-level electoral bodies. The Commission may also request periodic information from the lower-level electoral bodies on the performance of their tasks. Moreover, the Commission's tasks include the analysis of problems related to the application of electoral law and submitting appropriate proposals to the competent authorities.

Within the framework of performing the aforementioned tasks, the Commission may commission employees of the National Election Office or other persons proposed by the Secretary of the Commission to carry out checks. Moreover, it may entrust the performance of specific tasks and works to lower-level electoral bodies. Inspection reports are presented to the Commission without delay.

Pursuant to the wording of Article 161 § 1 of the Election Code, the National Electoral Commission issues guidelines binding election commissioners, election officials and election commissions of a lower level, as well as explanations for government administration bodies and bodies of local self-government units, as well as organisational units subordinate to them that perform tasks related to the conduct of elections, and for election committees and radio and television broadcasters.

Moreover, it should be indicated that the acceptance of election committees' financial reports referred to in Article 142 § 1 of the Election Code, as well as information and reports referred to in Article 34(1) and Article 38(1) of the Act of 27 June 1997 on political parties (Journal of Laws of 2001, No. 79, item 857, as amended) is carried out by the Secretary of the Commission or employees of the National Electoral Bureau authorised by the Secretary of the Commission.

The Commission shall examine the abovementioned report or information:

- 1) assessing its compliance with the regulations governing the financing of election campaigns or political parties;
- 2) calling upon the reporting entity to remove defects in the report or to provide explanations within a specified time limit;
- 3) ordering the preparation of expert reports or opinions;

- 4) by requesting from public administration bodies assistance necessary for the examination of the report;
- 5) requesting the control, revision and inspection bodies operating in government administration and local self-government to make available the results of inspection proceedings conducted by these bodies.

The Secretary of the Commission then submits the report or information to the Commission together with the results of the examination and a draft resolution on acceptance without reservations, acceptance with an indication of deficiencies or rejection of the report or information.

The duration of the election campaign

According to Article 104 of the Election Code, the election campaign shall commence on the date of publication of the announcement of the competent authority ordering the elections and shall end 24 hours before the voting day, which is, in the case of elections to the Sejm and Senate – the day falling within 30 days before the expiry of the four-year term of office of the Sejm and Senate.

Shortcomings in legislation and practice that may lead to misuse of administrative resources during electoral processes

No significant shortcomings were noted in this respect. The only doubts arose in the context of changes in the composition of the National Electoral Commission, which were introduced by the amendment to the Election Code, which entered into force in November 2019. From now on, the composition of the National Electoral Commission includes: one judge of the Constitutional Tribunal, designated by the President of the Constitutional Tribunal, one judge of the Supreme Administrative Court, designated by the President of the Supreme Administrative Court, 7 persons qualified to hold the position of a judge, designated by the Sejm. Previously, the function of a member of the National Electoral Commission was held by three judges each from the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court. The abovementioned amendment was mainly accused of weakening the independence of the National Electoral Commission members. However, the election practice does not confirm the above mentioned doubts.

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Akty prawne

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