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Polish National Financing of Support to Mass Arrivals of Persons Fleeing Ukraine After 24 February 2022³

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Abstract

The article is focused on financing of Polish support to displaced persons arriving to Poland from Ukraine after 24 February 2022, so after the Russian invasion on Ukraine. Poland has introduced a new statute and has amended general rules applicable in mass influx situations. That area of law is regulated also by Directive 2001/55/EC which establishes a minimum standard of displaced persons' rights, leaving their financing primarily to national budgets. The Council Implementing Decision (EU) 2022/382 is the first law which has activated the Directive. Under the amended Polish law, support to persons from Ukraine is subject to the availability of national financial resources, which contradicts the principles of public finance law because Polish law does not establish predictable sources of financing, and spendings are not controlled by the Polish Parliament.

Keywords: mass inflow of displaced persons, financing support to persons fleeing Ukraine, state budget, predictability of financing, Parliamentary control of public spendings.

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Polskie finansowanie pomocy dla uchodźców z Ukrainy masowo przybywających do Polski po 24 lutego 2022 roku⁴

Streszczenie

Artykuł skupia się na problemie polskiego finansowania wysiedleńców z Ukrainy, którzy przyjechali do Polski po 24 lutego 2022, czyli po inwazji Rosji w Ukrainie. Polska przyjęła nową ustawę i znowelizowała prawo dotyczące masowego napływu wysiedleńców. Problematyka ta regulowana jest także dyrektywą 2001/55/WE, która ustanawia minimalne standardy w zakresie praw tych osób, pozostawiając finansowanie tych praw głównie budżetom krajowym. Decyzja implementacyjna Rady 2022/382 po raz pierwszy uruchomiła tę dyrektywę. Znowelizowane prawo polskie o pomocy dla wysiedleńców z Ukrainy uzależnia to finansowanie od dostępności środków krajowych. Jest to sprzeczne z zasadami prawa finansów publicznych, bo nie ustanawia przewidywalnych źródeł finansowania, a wydatki nie są kontrolowane przez Parlament.

Słowa kluczowe: masowy napływ wysiedleńców, finansowanie pomocy dla osób z Ukrainy, budżet państwa, przewidywalność finansowania, parlamentarna kontrola wydatków publicznych.

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Introduction

This article is focused on financing of Polish support to mass arrivals of displaced persons from Ukraine (hereinafter referred to as 'DPS') to Poland. Authors analyse if the way in which Polish law specified financial resources for protecting the rights of DPS is in-line with the principles of public finance law. In particular, they verify if the new rules of financing support to DPS guarantee stable and predictable sources of funding and if the Parliament sufficiently controls spendings on that support actions.

Before the Russian invasion on Ukraine (24 February 2022), the rights and obligations of persons seeking and receiving international protection in Poland were regulated by the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland⁵ (hereinafter referred to as 'the AGP'). This law has also established general rules dedicated to mass influx situations. The AGP applies only to some persons fleeing Ukraine. Other DPS benefit from the Act of 12 March 2022 on assistance to citizens of Ukraine in the context of the armed conflict in Ukraine⁶ (hereinafter referred to as 'the AUC'), which also amends the AGP.

The temporal scope of the text is limited to laws related to events which have started on 24 February 2022. This is the first time when the EU relied on Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof⁷ (hereinafter referred to as 'the Directive') to adopt Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection⁸ (hereinafter referred to as 'the CID'). The Directive leaves detailed regulations at the EU Member States' discretion. Adoption of the CID has not initiated substantial extra EU funding to frontline states. Thus, national financing has to be secured.

⁵ Dz.U. (Journal of Laws) of 2006 No. 234, item 1695, as amended.

⁶ Dz.U. of 2022, item 583, as amended.

⁷ OJ EC L 212 of 7.08.2001.

⁸ OJ EU L 71 of 4.3.2022.

Based on a comparative analysis of the AGP, the AGP rules amended by the AUC and the AUC itself, the authors welcome amendments to the AGP which have explicitly enumerated rights of mass influx protection beneficiaries. Still, a use of the dogmatic-legal method has proved that current regulations contradict with principles of public finance law, because Polish law does not establish predictable sources of financing DPS' rights. Moreover, financing the expenses for DPS beyond the state budget infringe the principle of budget completeness. Finally, special competences for the Prime Minister (hereinafter referred to as 'the PM') undermine the competences of the Parliament to decide about spending of public finances. Based on previous research findings on general principles of using specific financial budgetary reserves,⁹ the authors conclude that the adopted solution derogates from those rules by taking spendings out of control of the Parliament.

The first part of the text stresses the importance of international asylum law to Polish legislation. The following section focuses on rules adopted after 24 February 2022. Some rights of Polish citizens were made available to DPS, whereas other rights are provided *per analogiam* to the rights of persons who apply for a refugee status (hereinafter referred to 'asylum applicants') individually. The last section critically concludes that financing of support to DPS is not made from the state budget, what makes founding unpredictable and left without parliamentary control. The text ends with a brief summary. The article refers to law in force on 4 November 2022.

Polish and international law on asylum

States can establish and execute rules of entry of foreigners, but state's sovereignty in that regard is limited by international law, including asylum law. The UN Refugee Convention¹⁰ (hereinafter referred to as 'the UNRC') is the most important treaty dedicated to protection of foreigners. It is also one of the most commonly ratified UN conventions. It prohibits expulsions of persons in danger of a risk of persecution owing to reasons enumerated in the UNRC.¹¹ The adoption of the New York Protocol in 1967¹² was the last change to the UNRC. However, regional systems of

⁹ The specific budgetary reserves can only be used for the purpose for which they were created. Changes of their purposes are possible only in an agreement with the Parliament's committee for budgetary affairs. A. Borodo, *Commentary to Article 154 PFA* and W. Miemiec, *Commentary to Article 177 PFA*, [in:] Z. Ofiarski (ed.), *Ustawa o finansach publicznych. Komentarz*, Warszawa 2021 (LEX/el.).

¹⁰ United Nations General Assembly Resolution 429(V) of 14 December 1950.

¹¹ G.S. Goodwin-Gill, J. McAdam, *The Refugee in International Law*, 3rd ed., Oxford 2007, pp. 208–218.

¹² United Nations General Assembly Resolution 2198(XXI) of 16 December 1967.

human rights protection (e.g. the Council of Europe, hereinafter referred to as 'the CoE' and 'the EU') have expended rules on international protection.

The CoE is one of the oldest and the most advanced systems for the protection of human rights in the world. Owing to the European Court of Human Rights' dynamic interpretation of Articles 2 (right to life) and 3 (freedom from torture) of the European Convention on Human Rights and Fundamental Freedoms,¹³ protection from refoulement must be ensured, although this is not explicitly mentioned in the Convention.¹⁴ At a later time, collective expulsions, i.e. returns of persons who receive insufficiently individualised return decisions, have explicitly been prohibited.¹⁵

European Communities were established to foster economic integration. Human rights stemming from constitutional traditions of the Member States and the ECHR were later recognised by the Communities. The UNRC forms foundations of the EU's Common European Asylum System which has harmonised procedures and qualification standards in refugee and subsidiary protection cases. The System started as a set of the common minimum standards, but later the EU uniformed reception conditions and procedures for granting protection.¹⁶ States acting within EU law also have to respect the Charter of Fundamental Rights of the European Union of 7 December 2000,¹⁷ including its Articles 2 (right to life), 4 (freedom from torture), 18 (right to asylum) and 19(1) (prohibition of collective expulsions). The ECHR forms minimal standard when interpreting the Charter, but 'the law offering the highest level of protection (...) applies to the EU issues.'¹⁸ The CoE's and the EU's courts continue dialogue to coherently interpret human rights, but discrepancies appear in their practice.

In Poland the ECHR and the accession to the EU has been ratified with a prior consent in the statute. This has met procedural requirement envisaged in the Constitution of the Republic of Poland of 2 July 1997¹⁹ for treaties which regulate fundamental freedoms. Rules ratified in that way take precedence over statutes. Moreover, Article 9 of the Constitution established a general rule obliging a law-maker and law-implementing authorities (e.g. central and local administration) to

¹³ ETS No. 005 (1950).

¹⁴ A.G. Hurwitz, *The Collective Responsibility of States to Protect Refugees*, Oxford 2009, p. 190.

¹⁵ Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1963), securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, as amended by Protocol No. 11, ETS 46.

¹⁶ P. Sadowski, *Wspólny Europejski System Azylowy – historia, stan obecny i perspektywy rozwoju*, Toruń 2019.

¹⁷ Consolidated text OJ EU C 115 of 9.05.2008.

¹⁸ P. Sadowski, *The EU's Approach to the Extraterritorial Processing of Asylum Claims and Its Compliance with International Law*, "Revista General De Derecho Europeo" 2021, 53, pp. 43–44.

¹⁹ Dz.U. of 1998, item 483, as amended.

comply with international law. Still, Article 56 of the Constitution explicitly demands regulating rules on international protection in a statute which respects treaties that are binding Poland. Respect to the UN's and regional treaties on refugee issues is visible in the AGP. The status of a foreigner and stateless person applies for a refugee. Article 1(2) of the UNRC specifies that a refugee status is granted to a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.'

The enumeration of risks does not include general consequences of a war. They may, however, justify granting subsidiary protection. This is automatically verified by the Head of the Office for Foreigners (hereinafter referred to as 'the Head') after rejecting a refugee status.²⁰ A foreigner may also receive asylum if his stay in Poland serves an important (unspecified in law) interest of the state.²¹ All decisions are made after an individualised verification of each case. To facilitate registration, displaced persons from a country or a specified geographic region do not have to submit asylum applications because temporary protection is granted *in abstracto* by the Council of Ministers (hereinafter referred to as 'the CM').

For many years the number of foreigners residing in Poland was below 1%. The biggest number of asylum applications (15,253) was submitted in 2013.²² As of April 2022, there were 2.9 million of DPS in Poland.²³

DPS and Polish law

The Council Implementation Decision applies to displaced persons who have left Ukraine from 24 February 2022. It is obligatorily applicable to Ukrainian citizens, stateless persons or third-country nationals from countries other than Ukraine, who before that day enjoyed international protection or equivalent national protection in Ukraine, as well as to those legally resided in Ukraine on a basis of a valid Ukrainian permanent residence permit (and can prove this), and who are unable to return to the country or region of origin in safe and sustainable conditions.

²⁰ J. Chlebny, *Postępowanie w sprawie o nadanie statusu uchodźcy*, Warszawa 2011.

²¹ M. Wiącek, *Prawo cudzoziemca do uzyskania statusu uchodźcy*, [in:] E. Karska (ed.), *Uchodźstwo XXI wieku z perspektywy prawa międzynarodowego, unijnego i krajowego*, Warszawa 2020, p. 161.

²² Urząd do Spraw Cudzoziemców, *Zestawienie liczbowe dotyczące postępowań prowadzonych wobec cudzoziemców w 2013 r. (Wersja polska)*, Warszawa 2013, <https://archiwalna.udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne> (access: 06.11.2022).

²³ M. Duszczyk, P. Kaczmarczyk, *The War in Ukraine and Migration to Poland: Outlook and Challenges*, "Intereconomics" 2022, 3, p. 167.

Family members of Ukrainians and persons who had had protection in Ukraine are also benefiting from the CID. Poland has also extended protection to persons holding an official Polish document confirming their Polish origin.²⁴

Analysis of rights of persons seeking and receiving protection in Poland has already been made.²⁵ A list of services available to DPS is stipulated in AUC. Some of them expand subjective scope of regulations which have applied only to Poles, e.g. on:

- medical care and an assistance (excluding health resort treatment or rehabilitation) for at least 2 months, but not longer than a period of the validity of a certificate confirming that its holder may benefit from certain rights,
- performing work or running a business without a need to obtain a permit,
- access to:
 - registration of unemployed persons,
 - the Voluntary Labour Corps and social integration centres,
 - different forms of social assistance, e.g. family benefits and child benefits,
- free legal advice to persons providing temporary care to unaccompanied minors and those minors,
- supporting:
 - employment of persons with disabilities,
 - access to preparatory schooling and establishing new nurseries or children's clubs,
- a material benefits for pupils, and
- refinancing of medicine and special food and medical devices.

Preconditions to limit the benefits are the same as in Poles' cases. When deciding on granting/limiting benefits, a responsible institution 'takes into account' performing work or running a business by the person asking for support. This is in line with Article 13(3) of the Directive.

Other services are provided to DPS *per analogiam* to services guaranteed to asylum applicants. The list of these benefits includes, for instance, a free photography to obtain a Polish identification number (PESEL), access to housing, all-day food, transportation (especially of sick lying persons) to housing provided by the Head, as well as providing hygienic and cleaning materials. Some services are also available exclusively to DPS: Diia.pl (an electronic document confirming the legality of stay in Poland and allowing one to benefit from Schengen rules), re-financing

²⁴ P. Sadowski, *Czy zakres podmiotowy prawa polskiego jest zgodny z Decyzją wykonawczą Rady (UE) 2022/382 w sprawie masowego napływu wysiedleńców z Ukrainy?*, "Studia Iuridica" 2022, 94, p. 350.

²⁵ K. Płonka-Bielenin, *Zadania JST w ramach pomocy cudzoziemcom*, [in:] LEX/El. 2022 – Komentarz Praktyczny.

of housing and food provided by all subjects (in particular physical persons), changing universities' admission calendars and giving a conditional right to practice a profession for doctors, dentists, nurses and midwives.

Some DPS benefit only from the AGP's general rules on mass influx. Since the AGP's amendments entry into force, beneficiaries of mass influx can receive medical care. They are also entitled to assistance in accommodation and meals or a cash benefit and those who get such benefits have a right to:

- ❑ constant financial assistance for the purchase of cleaning and personal hygiene products or personal cleaning and hygiene products,
- ❑ help in a form of learning Polish and basic materials necessary to learn this language,
- ❑ teaching aids for children receiving education and care in, for instance, primary or secondary schools,
- ❑ financing journeys by public transport in particularly justified cases (e.g. for the purpose of treatment),
- ❑ access to Polish labour market without a need to obtain a work permit.

The Head provides cash benefits if he or she is unable to provide assistance in accommodation and meals. Under the AUC, providing this form of support, as well as medical care and assistance depends on availability of resources. The statute does not set the lowest limit of the rights of temporary protection beneficiaries. Thus, in case of far-going limitations of the AUC's rights, foreigners can rely on the AGP, because derogation from *lex specialis derogat legi generali* rule is justified by *effet utile*, the constitutional preference of EU law (the Directive sets a minimum standard which has to be ensured) over a statute and an interpretation of the national law in line with international law.

Polish financing support to DPS

The AUC introduced special arrangements for financing the assistance for DPS, deviating from usual rules for managing public funds. Sources of financing tasks for DPS include, in particular:

- ❑ resources of the Assistance Fund (hereinafter referred to as 'the AF'),
- ❑ state budget funds,
- ❑ own funds of local government units, unions of these units and the metropolitan association (hereinafter referred to as 'LGU'),

- ❑ funds of other units of the public finance sector (hereinafter referred to as 'UPFS').

The Assistance Fund was established in a state-owned bank, the Bank Gospodarstwa Krajowego (hereinafter referred to as 'the BGK'). According to Article 14(1) of the AUC, the AF's main purpose is to finance or subsidise the implementation of tasks to assist Ukraine, in particular citizens of Ukraine affected by the armed conflict on the territory of Ukraine. The Bank is not a unit of the public finance sector. Thus, the AF is not a part of this sector.

The Bank prepares a financial plan of the Assistance Fund. The draft plan is agreed with the Minister of Finance (hereinafter referred to as 'the MF') and approved by the PM. The plan forms the basis for making disbursements from the Fund's resources and for issuing bonds. The Bank shall report to the PM the implementation of the Fund's financial plan.

Entities implementing tasks referred to in the AUC can use the Fund's resources. Rules for making disbursements from the AF, and for entering into agreements between the BGK and the administrators of budgetary parts for financing or subsidising tasks, are determined by the PM in an agreement concluded with the BGK. The Fund's revenues come from e.g.:

- ❑ payments of funds by specified state UPFS units,
- ❑ funds from the EU's budget and non-refundable funds from aid granted by member states of the European Free Trade Association,
- ❑ payments from the state budget,
- ❑ proceeds from treasury securities transferred to the AF to subsidise its tasks,
- ❑ funds from bonds issued by the BGK for the Fund,
- ❑ other sources of an income.

AUC provides for the possibility of crediting the AF with contributions from specified public finance sector units and from the state budget. Under Article 14(22) of the AUC, the PM can issue an order to units listed in Article 9(5–8 and 14) of the Public Finance Act of 27 August 2009²⁶ (hereinafter referred to as 'the PFA') to contribute to the Fund. Those units include e.g. executive agencies, budget economy institutions, state purpose funds, the Social Insurance Institution and the President of the Agricultural Social Insurance Fund, as well as state legal entities, excluding enterprises, research institutes, banks and commercial law companies. When

²⁶ Dz.U. of 2022, item 1634, as amended.

issuing the binding order to make a payment, the PM shall determine its amount and deadline.

The issuance of the order is preceded by the receipt of information from the entities about the amount of unused funds from the AF as of the end of each quarter, and about the amount of funds of the units that could be transferred to the AF and of the entity's liabilities, by the PM pursuant to Article 14(17) and (21) of the AUC. Based on this information, the PM may issue a binding order to pay funds into the Fund. The issuance of this order to some units and its implementation shall have an effect on the amount of expenses or costs of that unit. The law lifted certain obligations provided for in the AUC on the financial plans. In particular, the expenses or costs stemming from the AUC can be higher than revenues or income. Also, a restriction on increasing costs of the entity was lifted.

Payment from the state budget to the AF is regulated by Article 19 of the AUC. It authorises the MF to plan in the draft budget an amount of the contribution to the Assistance Fund. The PM may also issue a binding order to the disposer of a part of the state budget, and, with regard to specific reserves, to the minister in charge of public finance, to pay funds into the Fund.²⁷

Article 21(1) of the AUC sets general rules on redirecting funds planned in the Polish Budget Law for 2022, including those from the earmarked reserves of the state budget. This adjustment gives a possibility to block budget expenditures and create a special purpose reserve for blocked expenditures to finance the costs associated with DPS or servicing the Treasury's debt. Blocking of expenditures means making a periodic interception or prohibition of all or part of the planned expenditures (Article 177 of the PFA). That prevention can last until the end of the fiscal year.

The scope of the blocking from the AUC is very broad, covering the funds of the entire state budget, including specific reserves. Executive branch is not limited in blocking the funds. This rule applies even to some specific entities or expenditures to which blocking from Article 177 or 179 of the PFA does not apply. Article 21 of the AUC does not require obtaining a favourable opinion from the parliamentary budgetary committee in case of deciding on blocking, or when creating an earmarked reserve for expenses blocked.

Some support to DPS is organised by the LGUs. To perform tasks, these units receive funds from the state budget. In addition, the AUC sets a possibility (but not an obligation) to increase the LGU's general subvention reserve and to transfer funds from that revenue before the usual deadlines. Those funds can finance

²⁷ M. Bitner, *Komentarz do art. 14*, [in:] P. Drembkowski (ed.), *Ustawa o pomocy obywatelom Ukrainy. Komentarz z wzorami dotyczącymi pobytu, dostępu do rynku pracy, świadczeń społecznych, edukacji i opieki zdrowotnej*, Warszawa 2022.

educational tasks to displaced children (Articles 50 and 109 of the AUC), provide targeted subsidies for the local governments' own tasks, and subsidise other UPFS's from the state budget.

Article 16(3) of the AUC authorises the BGK to issue bonds in Poland and abroad for the AF. The bonds are guaranteed by the State Treasury up to 100% of the outstanding cash benefits and of the interest. The Fund's financial plan forms the basis for the issuance of bonds. The Fund's resources may be used to redeem these bonds and interest on them. If these resources are insufficient to service these obligations, the MF is required to transfer the necessary resources to the Fund. The Bank may, after an agreement with the MF, finance a shortfall in the Fund's account for the implementation of the Fund's activities specified in Article 14(6) of the AUC.²⁸

The Fund's revenues come from the Treasury securities. According to Article 15 of the AUC, the MF may, at the request of the PM, transfer Treasury securities to the Fund to subsidise the Fund's tasks. These securities are, therefore, not sold but transferred free of charge to the AF. The Fund may dispose and derive economic benefits from them or hold securities assets.²⁹

In addition to the AF, the AUC provides some public authorities and bodies (e.g. the provincial governor, LGUs and others) with a right to provide assistance to DPS. Their support may be optional or mandatory.

The governor may provide assistance defined in Article 12(1) of the AUC. The ability to issue orders to local government units, as well as to other LGUs to carry out a specific task assisting DPS is an important power of the provincial governor. The unit which receives instructions implements the task as a delegated task of the government administration and receives funds from the state budget for this purpose. Moreover, the law envisages a 'possibility' of providing assistance (at their own initiative) by other authorities and units. For this purpose, they may use the State Treasury's property acquired or entrusted to them. The assistance is provided by many entities with different legal status e.g. the Governmental Agency for Strategic Reserves spent over PLN 238.4 million for this purpose (data as of 30 March 2022³⁰).

Local authorities may, on their own initiative and to the extent of their resources, provide assistance to DPS. The scope of tasks is determined in a resolution of the constituent body of the LGU. Forms and procedures for providing assistance are determined by the competent executive body of the relevant LGU. As of 30 August

²⁸ M. Sander, *Komentarz do art. 16*, [in:] K. Szmidt, P. Sawicki (eds.), *Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa. Komentarz*, Warszawa 2022.

²⁹ M. Bitner, *Komentarz do art. 15*, [in:] P. Drebnkowski (ed.), op. cit., Warszawa 2022.

³⁰ Cf.: I. Kacprzak, *Na utrzymanie uchodźców z Ukrainy potrzeba minimum miliarda złotych miesięcznie*, <https://www.rp.pl/konflikty-zbrojne/art36011801-na-utrzymanie-uchodzcow-z-ukrainy-potrzeba-minimum-miliarda-zlotych-miesiecznie> (access: 4.04.2022).

2022, the Polish system of collecting legal acts ('LEX') specified that there have been 343 resolutions and 20 orders on assistance, e.g. housing,³¹ support in the organisation of:

- ❑ daily affairs such as contacting authorities³²,
- ❑ integration activities or language learning in the form of:
 - organising summer vacation for displaced children,³³
 - psychological support,³⁴ and others.

The AUC provides for the possibility of making donations to the Fund by a wide range of 'public law entities' listed in Article 4 of the Law of 11 September 2019 on Public Procurement.³⁵ They may make payments or donations to the AF and other funds established in the BGK, as well as to state special purpose funds,³⁶ for tasks for the benefit of DPS, 'regardless of their statutory or charter purposes.'

Conclusions

General rules of public funds management implement basic constitutional standards on demarcation of competencies of the lawmakers and the executive in the management of public funds. Under these rules, the legislature decides on the allocation of public funds, and the executive executes these decisions.³⁷ The solutions adopted in the AUC, meanwhile, transfer the power to decide on the allocation of state budget expenditures to the PM, what sometimes seems to go too far, for

³¹ Cf.: Uchwała nr XLVI/24/22 Rady Miejskiej w Szczawnie-Zdroju w sprawie zakresu pomocy obywatelom Ukrainy, którzy w związku z konfliktem zbrojnym na terytorium tego państwa przebywają na terenie Uzdrawiskowej Gminy Miejskiej Szczawno-Zdrój, Dz.Urz. Woj. Dolnośląskiego of 2022, item 3142.

³² Cf.: Uchwała nr XLIII/293/2022 Rady Gminy Domaniów w sprawie określenia zakresu pomocy udzielanej obywatelom Ukrainy, którzy przybyli na terytorium Rzeczypospolitej Polskiej z terytorium Ukrainy w związku z działaniami wojennymi prowadzonymi na terytorium tego państwa oraz obywatelom Ukrainy posiadającym Kartę Polaka, którzy wraz z najbliższą rodziną z powodu tych działań wojennych przybyli na terytorium Rzeczypospolitej Polskiej, Dz.Urz. Woj. Dolnośląskiego of 2022, item 2927.

³³ Cf.: Uchwała nr XLI/419/2022 Rady Gminy Lubin w sprawie udzielenia pomocy dla obywateli Ukrainy, Dz.Urz. Woj. Dolnośląskiego of 2022, item 3776.

³⁴ Cf.: Uchwała nr XLI/332/2022 Rady Miejskiej w Żarowie w sprawie udzielenia pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa, Dz.Urz. Woj. Dolnośląskiego of 2022, item 3078.

³⁵ Consolidated text Dz.U. of 2022, item 1710.

³⁶ On state special purpose funds see: J. Wantoch-Rekowski, M. Cilak, T. Brzezicki, M. Serowaniec, M. Wilmanowicz-Słupczewska, *Public finance sector entities in Poland*, Toruń 2021, p. 180.

³⁷ C. Kosikowski, *Finanse publiczne w świetle Konstytucji RP oraz orzecznictwa Trybunału Konstytucyjnego*, Warszawa 2004, p. 33.

instance, the inability of the parliamentary committee to have a say on earmarked reserves created under the AUC or on blocking expenditures under this law, while even the CM in the event of a threat to the implementation of the budget law must obtain a positive opinion from the parliamentary committee before deciding to block expenditures.

Moreover, special fund (the Assistance Fund) was created at the BGK. Since the BGK is not the public finance sector unit, the AF is also excluded from this sector. Thus, the Fund is not included in the state budget, contrary to budgetary principles. These rules (including the completeness of the budget rule) require to cover all state revenues and expenditures from the state budget and to ensure the Parliament's control over the entire financial management of the state.³⁸ The concept of the state budget and its scope is undefined in the Constitution. Scholars correctly stress that 'a state of affairs in which, for example, state revenues and expenditures only in an insignificant part would be determined by the budget, even though the rest of the financial plans would be covered by the budget law, should be considered unconstitutional.'³⁹ Still, in 2022, outside the state budget and the scope of the budget act, an amount of at least PLN 70–75 billion (some of them under the AF) may be spent, which puts into question a credibility of the budget as the basic financial plan of the state.⁴⁰ The problem of 'crowding' some expenses beyond the Polish budget was noted by scholars.⁴¹

Under the AUC, certain tasks for the benefit of DPS are provided by LGUs. Those tasks are mandated tasks of government administration, so local governments are entitled to receive earmarked subsidies from the state budget in an amount that ensures full and timely implementation of these tasks. The provision of funding from the state budget also takes place when an entity carries out a governor's order. In contrast, the AUC frequently refers only to a possibility to transfer public funds for aid tasks. This does not promote certainty that the specified standard of care for DPS will be maintained.

³⁸ A. Borodo, *Współczesne problemy prawne budżetu państwowego*, Toruń 2014, p. 28; A. Shah, S. Schiavo-Campo (eds.), *Budgeting and budgetary institutions*, The World Bank 2007, p. 56.

³⁹ T. Dębowska-Romanowska, *Cechy ustawy budżetowej i budżetu w świetle art. 219 Konstytucji RP*, "Państwo i Prawo" 2000, 5, p. 18.

⁴⁰ LOS, *Rząd wydał gigantyczną kwotę poza budżetem. Przez to ten "staje się fikcją"*, <https://www.money.pl/gospodarka/rzad-wydal-gigantyczna-kwote-pozza-budzetem-przez-to-ten-staje-sie-fikcja-6806519127780064a.html> (access: 29.08.2022).

⁴¹ M. Ostrowski, *Problem wydatków sztywnych w budżecie państwa oraz zmieniającym się środowisku polskich finansów publicznych*, "Prawo Budżetowe Państwa i Samorządu" 2022, 2, pp. 87–89.

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