

Political Party and Election Campaign Financing In Poland

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1. Legislation

The financing of political parties and election campaigns in Poland is governed mainly by two pieces of legislation. Party financing is regulated under the Law on Political Parties of July 27, 1997, as amended significantly in 2001. Campaign financing is regulated in the Election Code adopted on January 5, 2011. The Election Code is a comprehensive law covering all types of elections and election campaign formats.

1.1. Rules on Party Financing in Poland

The activity of political parties in Poland is regulated by the Law on Political Parties of 1997. This law defines the sources of funding for political parties, rules on how the party's money is to be spent and existing control measures and possible sanctions. The transparency of sources of party financing is the underlying principle enshrined in the Law (Article 23a). In addition, the Constitution of the Republic of Poland makes reference to party financing: Article 11 Paragraph 2 provides that 'the financing of political parties shall be open'

1.1.1. Rules on Income

Subsidies from the state budget are one of the major sources of funding for political parties. They are available to those political parties which received a minimum of 3 % of votes¹ in parliamentary elections to the Sejm and Senate (Lower and Upper House of the Polish Parliament, respectively). Subsidies are proportionate to the level of voter support and are granted for one term, i.e. 4 years, and are paid in quarterly instalments². For example in 2013, the Civic Platform (the ruling party) received PLN 17,729,870.91 (€ 4.27m), Law and Justice (the largest opposition party) PLN 16,545,829.92 (€ 3.89m), Palikot's Movement³ received PLN 7,468,033.83 (€ 1.76m), the Polish Peasant Party (the ruling coalition partner) PLN 6,372,937.24 (€ 1.5m) and the Democratic Left Alliance PLN 6,293,068.99 (€ 1.48m).

Another important source of party financing is what is known as 'earmarked subsidy' (*dotacje podmiotowe*) which is disbursed to political parties⁴ which as a result of elections have introduced at least one deputy or senator to the Sejm, the Senate and the European Parliament. The subsidy is a form of a reimbursement of the party's election campaign expenses. Its amount is proportional to the number of acquired seats and may not exceed the amount of actual expenditures. The subsidy is paid once within 9 months of the date of the

¹ The threshold for seats in the Sejm is 5 per cent; therefore it is possible for party outside the parliament to receive subsidies.

² In case parliament is dissolved and early elections are called the subsidy will be disbursed in proportion to the actual duration of the term.

³ The party has used the name Twój Ruch or 'Your Move' since October 2013.

⁴ Earmarked subsidies are formally paid to election committees, special legal entities formed for the duration of an election campaign. Election committees formed by political parties and voter groups are entitled to earmarked subsidies.

election. For example, in connection with the parliamentary elections in 2011, political parties received: Civic Platform PLN 29,274,776.20 (€ 6.88m), Law and Justice PLN 30,120,511.00 (€ 7.08m), Palikot's Movement PLN 1,753,422.87 (€ 0.41m), the Polish Peasant Party PLN 5,287,607.24 (€ 1.24m) and the Democratic Left Alliance PLN 4,758,846.52 (€ 1.11m).

Donations are another important source of income. Monetary donations to political parties may be provided only by natural persons who are nationals of Poland and have permanent residence in Poland. The limit on annual contributions from one person to one political party is 15 times the minimum wage⁵, i.e. PLN 24,000 (5,650 €) in 2013. There is no limit to the number of such donations to any party, and the above limit applies to one party, which means that any number of donations to any number of political parties is allowed, provided that no more than PLN 24,000 is paid any one party. Clearly, this is a purely hypothetical situation which probably never happens in real life.

The Law on Political Parties also allows in-kind donations to political parties and they are subject to the same limitations as monetary donations, i.e. the amount may not exceed € 5,650⁶ per year and may only come from individuals who are Polish citizens and have permanent residence in the Poland.

Donations to political parties exceeding PLN 1,600.00 (€ 375)⁷ may only be made via bank transfer, credit card or by cheque (in practice, this first form applies), so that hard cash is eliminated which is inherently more likely to cause irregularities.

Monetary and in-kind donations from any other entities such as foreign nationals, private sector companies, and state-owned enterprises shall be prohibited. In principle, it is prohibited to raise funds from any other sources than those explicitly listed as acceptable in the Law on Political Parties, even if such other sources are not explicitly listed as prohibited. An example would be the use of public funds, e.g. the use of official cars or offices of public institutions. The Law does not explicitly prohibit this but the only permitted public aid is provided in the form of subsidy and earmarked subsidy and any use of any other public funds shall constitute a violation of the Law on Political Parties.

Notably, political parties may only accumulate funds in bank accounts. Membership fees are an exception and they can be stored by local party branch offices in the form of cash on hand, provided they do not exceed PLN 1,600.00 (about € 375)⁸ per year per one party member and are dedicated to 'to cover expenses associated with ongoing operations'⁹.

Apart from the subsidies, earmarked subsidy, donations and membership fees, parties may hold assets that may come from inheritances, legacies and income from property. Parties may also receive income from interest on funds held in bank accounts and deposits, from trading in Treasury bonds and Treasury bills, from the sale of its asset, e.g. sales of the published party statute or manifesto or any objects symbolizing the party and publications promoting the goals and the activity of the party and providing minor services to third parties while using its own officer equipment.

⁵ Minimum salary evolves and may be different each year: it was PLN 1,600 (approximately € 353) in 2013.

⁶ 15 times the minimum salary in 2013.

⁷ Minimum salary in 2013.

⁸ Minimum salary in 2013

⁹ Quote from the Law on Political Parties.

Further, political parties have the right to take out loans to support their core operations, e.g. campaigning before elections. In order to reduce the risk of irregularities relating to loan collateral, loan guarantee may only be provided by private individuals and each private individual shall be limited to guarantee an amount of up to PLN 24,000.00 (€ 5,650)¹⁰.

No political party is allowed to engage in business, conduct public fund-raising campaigns or lend its premises (unless it is to be used as an office by a Senator, MP or local council member).

There is no cap on the revenues of any political party with the only limitation being with respect to the income sources and limits imposed on those sources.

1.1.2. Rules on Party Expenditures

The laws and regulations on political parties' expenditures are very limited. According to the Law on Political Parties, any political party can allocate its assets only to purposes consistent with its statutes and to charity.

In addition, each political party shall set up two types of special funds: an Expert Fund and an Election Fund.

Funds accumulated in the Expert Fund may be used to finance legal, political, sociological and socio-economic research, publishing and education related to the core activity of the political party. The Expert Fund uses a separate sub-account of the party's main bank account and can only be supplied from the party's own payments. In addition, parties that receive subsidies are required to transfer 5 - 15 % of the amount of subsidy to the Fund Expert.

The other type of fund, the Election Fund, is created by a political party in order to finance its participation in elections to the Sejm and Senate, the election of the President of the Republic of Poland, in elections to the European Parliament and in local elections. This fund is fixed, i.e. funds are also collected between elections and expenditures incurred by the political parties during elections must be covered solely via this Fund. The Fund is managed by the party's financial officer. The Election Fund shall use a separate bank account and can be supplied only from the party's own contributions and donations, legacies and bequests. The total amount of individual contributions to the Election Fund in any political party may not exceed PLN 24,000 (€ 5,650). Exceptionally, this limit may be higher if more than one election is held in any given calendar year but may not exceed a total of PLN 40,000 (€ 9,410). No payments may be made in cash but checks, bank transfers or credit card payments are allowed. The option for any natural person to make contributions to the Election Fund does not prejudice making payments to the party's main account. Thus, any private individual may contribute a total of PLN 48,000 (€ 11,300), i.e. € 5,650 to the main account of the party and to its Election Fund, respectively.

1.1.3. Controls and Sanctions

The State Electoral Commission (SEC) is the regulator responsible for the oversight of political party financing. This body is established under the Election Code which stipulates that SEC shall be the 'highest electoral authority competent in the conduct of elections and referendums.'

The State Electoral Commission is made up of:

- 1) Three Constitutional Court judges nominated by the President of the Constitutional Court;
- 2) Three Supreme Court judges nominated by the Senior President of the Supreme Court;

¹⁰ 15 times the minimum salary in 2013.

3) Three Supreme Administrative Court judges nominated by the President of the Supreme Administrative Court.

These judges are appointed as SEC members by President of the Republic by way of a presidential determination.

In addition to the SEC, the Election Code sets up the National Election Office - an auxiliary institution to SEC providing administrative, organizational and financial support.

The State Electoral Commission generally enjoys a good reputation and has been recognised as an independent institution¹¹. It is pointed out, however, (including in the GRECO report¹²), that SEC has fairly modest human resources for the level of its responsibilities.

Political parties submit two types of reports to the State Electoral Commission each year. One called the *Financial Information on the Received Subsidy* covers the subsidy and the related expenditures. The other type of report, also submitted annually, is the *Report on Funding Sources, Including Bank Loans and Their Terms and Conditions and on Expenditures From the Election Fund in the Preceding Calendar Year*.

Political parties submit their financial statements to the National Electoral Commission by 31 March of each year. Such statements shall be submitted with an attached auditor's opinion and report. The auditor is selected by the State Electoral Commission (SEC). The costs of the auditor's opinion and report are covered by the National Election Office. The State Electoral Commission shall publish the statements in the Official Journal of Poland within 14 days of the date of submission of to the State Electoral Commission and on its website.

SEC has six months to decide on its response to financial statements: it may take note without any reservations; take note but indicate irregularities or reject them. Financial statements will be rejected if it is found that the political party at hand has used its subsidy for purposes unrelated to its core activities. If in doubt, SEC may request clarification from a political party and may also request the assistance of public authorities including financial audit and control agencies such as tax authorities the extent necessary for the inspection. Other political parties, associations and foundations (but only those which have analysis of political party financing as part of their core activity set out in their statutes) may submit their protests to SEC. The Commission is required to respond in writing within 60 days of the filing a protest. This instrument has not been properly applied in real life.

In case the National Electoral Commission rejects a political party's financial statement such party shall have the right to appeal to the Supreme Court. If the Supreme Court upholds the SEC decision the political party loses its right to receive subsidies for one year. The same sanction will be imposed on a party which fails to submit their financial statement on time.

The other type of report submitted by political parties, i.e. *The Report on Funding Sources, Including Bank Loans and Their Terms and Conditions and on Expenditures From the Election Fund in the Preceding Calendar Year*, shall be submitted to the National Electoral Commission by 31 March of each year and it shall include the attached auditor's opinion and report with respect to payments to the Election Fund. The auditor is selected by the State Electoral Commission and the costs of drafting the opinion and the report shall be covered by the National Election Office.

¹¹ A. Kobylińska, G. Makowski, M. Solon-Lipiński, *Mechanizmy przeciwdziałania korupcji w Polsce* [Anti-corruption Mechanisms In Poland], Warsaw 2012.

¹² *Political financing: GRECO's first 22 evaluations. Third evaluation round*, GRECO, 19 May 2010, http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco%282010%298_RapportYVDouplet_EN.pdf, s. 17

Within six months of the date of report submission, the State Electoral Commission: 1) shall accept the report without reservation; 2) accept the report indicating the deficiencies, 3) reject the report.

The report will be rejected if:

- 1) The political party engages in business activity;
- 2) It publicly raises funds;
- 3) It accumulates funds outside the bank account;
- 4) It collects or raises funds from other prohibited sources;
- 5) It accumulates funds and incurs expenditures to support election campaigns while bypassing the Election Fund;
- 6) It accumulates Election Fund money outside a separate bank account;
- 7) It receives non-monetary contributions in breach of the applicable limits.

Furthermore, the report will also be rejected in case any loan is guaranteed in a manner other than that permitted or if contribution limits are violated.

In case of rejection of the report by the National Electoral Commission, the political party at hand has the right to appeal to the Supreme Court. If the Supreme Court upholds the SEC decision the political party loses the right to receive subsidies for the next 3 years in which it would otherwise be authorised to receive subsidies. This penalty is very severe and has already been applied (e.g. against the Polish Peasant Party, which has very adversely affected the financial standing of the party).

In case a political party fails to submit its statements within the deadline, the State Electoral Commission shall apply to the competent court requesting the deletion of the party from the register of political parties. This sanction was used against the Palikot's Support Movement in 2011 which resulted in deregistration. The party leader filed a new application to register a new political party called Palikot's Movement¹³.

Political parties generally comply with the said laws and regulations, at least formally (reporting). While SEC does not officially engage in training or manual development party activists who are responsible for finance usually maintain working contacts with the National Electoral Office staff and seek their advice in case there interpretation issues¹⁴.

1.2. Rules on Campaign Financing

The Election Code adopted in 2011 defines campaigning methods in all types of elections, including rules on funding the campaign. The only entity that has the right to participate in the election is the election committee. Depending on the type of election, the right to create election committees is granted to political parties, voters and associations and community organisations. Election Committee may raise and spend funds only for purposes related to elections.

The election officer shall be responsible for the financial liabilities of the committee. In the event that the assets of the financial agent could not be used to satisfy any claims against the electoral committee, the liability

¹³ <http://wiadomosci.wp.pl/kat,1342,title,Palikot-bedzie-mial-dwie-partie-wlasnie-zakladanowa,wid,13379048,wiadomosc.html?ticaid=112712>

¹⁴ J. Zbieranek, *Subwencje z budżetu państwa dla partii politycznych. Jawność i kontrola*, [Government Subsidies for Political Parties. Openness and Controls] Warsaw 2008.

is taken over the political party, association or voters which form a voters' election committee, depending on the type of the committee.

1.2.1. Rules on Election Committee's Revenues

In addition to the above restrictions, electoral committees are not allowed to engage in public fund-raising nor can one committee raise funds and transfer them to another committee. Election committee's are subject to other fund-raising restrictions and the type of restriction depends on the type of the election committee. For example an election committee of a political party (or coalition of political parties) is not allowed to raise funds from any source other than the political party's own Election Fund¹⁵. In the case of electoral committees set up by organizations and voters funds may only derive from the contributions of individuals and bank loans taken out by these committees. The election committee of any candidate for the office of the President of the Republic of Poland is a unique type of committee. Although formally a committee of voters, it can raise funds not only from the contributions of individuals and bank loans but also from the Election Fund of the political party supporting the presidential candidate.

Contributions from private individuals¹⁶ are subject to the same limit as contributions from private individuals to political parties, i.e. PLN 24,000 (€ 5,650). Among exceptions are contributions from candidates of the given committee, in which case the cap is equal PLN 72,000 (€ 16,940)¹⁷.

Similarly, contributions from individuals may only be effected via by bank transfer, credit card or payment by check. A similar concept applies to as the guarantees of to loans taken out by the election committee: only a private individual may be a guarantor of such loans and the amount shall not exceed the individual contribution limit of € 5,650.

Election Committees are not allowed to accept any in kind donations except poster and leaflet distribution service. They may also use the premises and office equipment of the entity¹⁸ that has formed the committee free of charge.

1.2.2. Rules on Election Committees ' Expenditures

Election Committees may only spend funds for purposes related to elections, i.e. rallies, posters, leaflets, use of mass media, office rental etc. Election committees are not allowed to donate to charity even if this were be made to promote the election committee (or candidates)¹⁹.

Expenditures of the election committee may not exceed a certain limit specified in the Election Code. It is calculated differently for each type of election, for example, the spending limit for the largest committees²⁰ in

¹⁵ The Election Fund is discussed in the party financing section.

¹⁶ As mentioned earlier, they may be made towards election committees of votes, organisations and the presidential candidate.

¹⁷ 45 times the lowest salary in 2013.

¹⁸ Depending on the type of committee, this may be a political party, an association or a group of voters.

¹⁹ Unlike election committees, political parties may donate to charity.

²⁰ In parliamentary and local elections, the amount of limit on election committee spending will depend on the number of constituencies in which the committee has registered its candidate. The

parliamentary elections in 2011 amounted to approximately PLN 30m (approximately € 7m) in local elections in 2010, about PLN 42m (approx. € 10m). In the elections to the European Parliament in 2009, the limit for all of the committees was PLN 10,351,733.84 (€ 2.43m).

Apart from the general limit on expenditures, committees are not allowed to spend more than 80 % of their spending limit on activities deemed to be advertising, i.e. on billboards, TV spots exercised.

Election committees are required to place their names on campaign materials such as leaflets, posters, TV spots and radio. Moreover, the information, communications, appeals and mottos published in printed press at the expense of election committees must include an indication by whom they are paid and from whom they originate.

Election committees are entitled to free publication of campaign content on public radio and television between the 15th day before election day till the end of the election campaign. Each committee shall be entitled to the same amount of time, which will depend on the number of the participating committees²¹. Committees may not transfer the airtime to other committees.

1.2.3. Controls and Sanctions

Election committees shall keep records of:

- 1) bank loans, including the name of the lending bank, and all relevant terms and conditions of the loan, in particular, the loan date, amount, interest rate and other acquisition costs, guarantees and fixed maturity date;
- 2) Contributions in excess of PLN 1,600.00 (€ 375)²² from one individual donor, including the name and place of residence of the individual.

Election committee shall publish such records on their website as soon as during the election campaign and update them at least once a week. They should be available at least until the date of submitting the financial statements in SEC, i.e. for up to 3 months after the date of the election.

The committee's financial officer is required to submit to the National Electoral Commission (or with the election commissioner for local election committees) reports on revenues, expenditures and financial commitments of the committee, including bank loans and their terms and conditions, within three months of the committee. The committee should attach the auditor's opinion on the report. The auditor is selected and paid by SEC.

For elections to the Sejm and Senate, to the European Parliament and the election of the President of Poland, the State Electoral Commission shall publish the election committee's financial statements on its website within 30 days of their submission. A sample financial statement and detailed information on its content, as well as a list of validating documents to be attached to the statement will be provided in a regulation passed by the Minister of Finance Regulation, subject to consultations with the State Electoral Commission.

The documents, which are attached to statements such as invoices, contracts, etc., are available to everyone in SEC headquarters in Warsaw, under the Law on Access to Public Information.

figures relate to election committees which registered candidates nearly everywhere in Poland in the 2011 national and 2010 local elections.

²¹ The Election Code provides details of how airtime allocations must be calculated.

²² Minimum salary in 2013.

Within six months from the date of the financial statements, the State Electoral Commission shall:

- 1) Accept the report without reservations;
- 2) Accept the report, pointing to misconduct, or
- 3) Reject the report if it finds that:
 - a) The acquisition or disbursement of funds by the election committee has been done in violation of the period of acquisition and disbursement of funds or spending limit;
 - b) Public fund-raising has been conducted despite the ban;
 - c) Any funds have been received by the election committee of a political party or a coalition election committee from a source other than the Election Fund;
 - d) Any funds or in-kind contributions other than those permitted have been received by the committee of voters or election committee of an organisation;
 - e) Any in-kind contributions have been received by the committee of a political party or a coalition election committee in violation of existing legislation.

If in doubt, SEC may request clarification from a political party and may also request the assistance of public authorities including financial audit and control agencies such as tax authorities to the extent necessary for the inspection.

Political parties, electoral committees involved in any election, associations and foundations (but only those which have the analysis of party financing as their core activity) may submit protests to SEC with regard to the financial statements. SEC has a duty to respond in writing within 60 days of such a protest.

In case the National Electoral Commission rejects a political party's financial statement such party shall have the right to appeal to the Supreme Court. If the Supreme Court upholds the SEC decision the political party loses its right to receive subsidies for one year. The same sanction will be imposed on a party which fails to submit their financial statement on time.

In case of rejection of information by the National Electoral Commission political party has the right to appeal to the Supreme Court. If the Supreme Court upholds SEC's decision election committees entitled to the earmarked subsidy will that amount reduced by an amount equal to three times the amount of funds raised or spent in violation of the rules²³. If a report filed by the election committee of a political party is rejected the subsidy shall be reduced by an amount equal to three times the amount of funds raised or spent in violation of the rules.

In case the election committee of a political party fails to submit its financial statements the party has formed the committee will not receive either type of subsidy. If a committee of voters fails to submit reports such committee will not receive the earmarked subsidy²⁴.

2. Current Practices

²³ Grounds for rejecting a report are thoroughly discussed earlier.

²⁴ Voter's election committees do not receive any subsidy by definition. Subsidies may only be paid to election committees formed by political parties.

Campaigns are often conducted by unauthorized entities. This statement applies to preliminary campaigns (before the formal announcement of the election campaign) and illegal campaign financing by entities other than the election committee during the election campaign proper. For preliminary campaigns, there is a gap in the legislation that allows any entity to engage without limitation in the promotion of a still not formally proposed candidate before the announcement of the election campaign. SEC cannot inspect such actions or impose penalties.

As for illegal campaign financing, special attention must be given cases of abusing the currently held public office for the purpose of promoting the holder's image.

Another problem is the hidden campaign financing by unauthorised entities. This applies especially to the politicians' expenses incurred during elections where such expenses are often invisible or difficult to quantify for an outside observer. Such expenses include, for example, research reports or social research and advertising. Because the latter is a strongly elusive category it may be the case that only a portion of such expenses will be covered by the election committee while the rest will be covered by entities which not authorised to conduct the campaign.

The source of such problems is the scope of SEC's control over the committee finance. The Commission is limited primarily to auditing campaigns based on accounting documents supplied many months after the campaign. For this reason, it is not able to compare the reality of the campaign with the image emerging from financial statements. Furthermore, there are not mechanisms to support the development of non-governmental organisations that would engage in election campaign financing.

There are many weaknesses of the current party financing system. Firstly, it is difficult for citizens to get detailed information on how political parties are spending public money. There are indeed annual financial statements but they are several pages of tables often presenting general categories of expense. Another problem is the set of powers of SEC. It focuses primarily on accounting controls and not on substantive assessments. In addition, only a certified auditor will normally have access to the original source documents and mainly only in the party headquarters. The concept of formal protests lodged by NGOs and other political parties with SEC must be better regulated. The practice is now ineffective and the legislation offers no effective tools for thorough preparation of protests.

Both the state and social scrutiny of this important area of public life is not satisfactory. This may lead to political parties losing their sense of accountability which may adversely affect the quality of the political process in Poland.