

Krystyna SAWICKA*

LOCAL GOVERNMENT GRANTS TO FINANCE TASKS DELEGATED TO NON-PUBLIC BODIES

1. Introduction

Grants are payments that constitute budgetary expenditure of public bodies on behalf of budgets of other public bodies and other organizational units made on the basis of the Budget Act and executive acts [Chojna-Duch, 1988, 29 ff.; Dębowska-Romanowska, 1993, 44]. A grant involves a transfer of financial capital between budgets, and the consequence of being awarded a grant is a material benefit received by a grantee [Tegler, 1985, 631 ff.; Ostrowski, 1985, 631 ff.; Harasimowicz, 1988, 105]. The legal relation that is established between a granter and a grantee has a public character and must be authorized according to legally binding provisions. In comparison to other budgetary expenditure, grants form specific expenditure determined by the goals of the grant. Grants can be characterized as unilateral, voluntary and non-returnable, provided that they are awarded in accordance with the requirements of awarding grants and that they are used in accordance with their designation.

A budgetary grant is a payment unilaterally determined by the authorities acting within the limits of law on behalf of the state or local government. A granter usually selects the grantee and the subject matter of a grant, and determines the level of a grant, unless the legal provisions impose an obligation to grant, and determine the amount of a grant and granting procedure. This, however, is not a common solution. The state decides in an authoritative way on the scope of public

* Prof. Krystyna Sawicka, Wrocław University, Faculty of Law and Administration.

expenditure in the form of grants, and expresses its will in a detailed way in normative acts.

The legal grounds in the normative acts concerning granting are shaped in a diverse way expressing the will of the state regarding the possibilities and the scope of creating public expenditure in the form of grants. Such acts may specify the purpose (the type) of a grant, conditions determining granting, a granting procedure and a method of grant settlement. The complete grounds for granting should include either an obligation to grant a body, or the possibility to supply a body with public expenditure by means of a grant, the conditions on a grant, which determine the type of grant, as well as the level of a grant, or rules of calculating the level of a grant. An analysis of the appropriate legal provisions indicates that the legal grounds concerning granting may be shaped in a diverse way. This refers especially to the grounds for granting from a local government unit's budget, which are included in the appropriate regulations of the Public Finance Act of November 26, 1998 [Dziennik Ustaw, 1998b], as well as in executive acts. One dominant characteristic of grants received from a local government unit's budget is the fact that authorities of the unit have a free hand to establish the scope of granting [Witalec, 1999, 37]. As a rule, these grants do not have an obligatory character. Legal provisions usually authorize a local government unit to award a grant, but they do not determine the level of a grant. The regulations of the Education System Act of September 7, 1991 [Dziennik Ustaw, 1996a] are an exception. The regulations stipulate the obligation to grant specified educational institutions, and determine a method to calculate the level of a grant. As a rule, the legal grounds for granting resulting from these regulations indicate the possibility of granting to a body by determining the type of a grant or by specifying tasks, whose costs can be covered by funds received in the form of a grant. These grounds usually constitute the legal provisions that include the minimum regulation required to enable a local government unit to include expenditure in the form of a grant in its budget. The authorities of the units are given a free hand to create such grants. The position of a grant in the expenditure structure of a local government unit's budget depends both on the type of the unit's tasks and the organizational and legal forms in which the tasks are performed.

In accordance with the binding provisions, funds in the form of a grant may be spent from a local government unit's budget on tasks performed by organizational units that are created and supervised by their authorities, on tasks delegated to another local government unit by an agreement reached with this unit, and also on public purposes related to the

tasks of a local government unit performed by bodies outside the public finance sector.

Taking into consideration the subject matter of the grants from a local government unit's budget the following types of grants can be identified based on Art. 111 which refers to Art. 69 Par. 4 of the Public Finance Act:

1) grants for particular purposes – designated to finance tasks delegated to bodies not belonging to the public finance sector, or to finance tasks delegated to other local government's units, and to finance or partly subsidize the cost of an investment,

2) grants defined with respect to a grantee – designated to finance the current activity of a legally determined body,

3) grants defined with respect to an objective – payments for specified products or services, calculated according to unit rates,

4) grants to equip newly created budgetary units and auxiliary units of budgetary units with circulating funds that in fact have the nature of a grant for a particular purpose.

2. Conditions of giving grants for delegated tasks

The legal grounds to finance tasks delegated to bodies outside the public finance sector by means of a grant from local government units are constituted by the provisions of Art. 118 of the Public Finance Act in the wording of the amendment to the Act on Public Finance Act of May 7, 1999 [Dziennik Ustaw, 1999]. In the light of Art. 118, non-profit organizations that do not belong to the public finance sector may be awarded a grant from a local government unit's budget for public purposes connected with the realization of the unit's tasks. The delegation of a task and the awarding of a grant ensue on the basis of an agreement reached between a local government unit and a selected body. The procedure of obtaining a grant, the method of grant settlement, and the method of controlling the performance of a delegated task are determined by means of a resolution of the constitutive body of a local government unit, which ensures that the proceedings of awarding a grant and of grant settlement are open.

With reference to problems regarding the possibilities of granting in the case of tasks delegated by local governments units, the following issues should be taken into consideration: Who can receive a grant? What tasks can a grant be designated to? How should a body performing a task be selected? In what form should a task be delegated, and finally how should a grant be designated to perform a delegated task be settled, as well as how should the control of the realization of a task be exer-

cised? The next crucial issue is how the grants should be expressed in a budgetary resolution.

The range of the bodies to which a local government can delegate a task and which can be awarded a grant to finance its realization is wide. The condition determining the delegation of a task and the awarding of a grant is, apart from acting outside the public finance sector, the non-profit nature of an organization. This means that the scope of the eligible recipients of grants is limited to bodies that are not enumerated in Art. 5 of the act as bodies belonging to the public finance sector, and are not organizations aimed at profit making. Such bodies should include mainly social organizations, foundations, associations and non-governmental organizations. Such bodies lie outside a local government, *i.e.* the bodies are not related to local government in an organizational way or by capital [see Lachiewicz, 1999, 8].

The objective of granting is a public task whose accomplishment is an obligation of the local government unit that delegates this task. In the light of the regulations of executive acts, the notion of a public task is identified with the notion of a public task delegated by a unit of local government. The scope of the tasks of individual local government units is specified in the provisions of the acts that establish their structure. Due to the fact that the areas in which units act are usually convergent, *i.e.* they include the same fields of public administration (such fields as education, physical recreation, culture and arts, health protection and social welfare), the basic criterion on the delegation of tasks of individual local government levels are the provisions that attribute specified tasks to the levels.

The tasks delegated by local government units refer mostly to such fields as education, physical recreation and sport, health protection, social welfare or culture and national heritage protection. The grants specified in Art. 118 of the Public Finance Act may be awarded solely in order to finance a delegated task, which means it is the task that is object of the grant and not a body. This has consequences for the method of controlling the realization of a task and the method of grant settlement. The task delegated to a given body must be specified, which is essential in order to evaluate the realization of that task for a local government to settle a grant.

When delegating the tasks of local government units to bodies not belonging to the public finance sector it is crucial to:

- 1) select a body – the performer of a task,
- 2) guarantee that a task will be correctly performed, and that the funds received in the form of a grant will be effectively used to realize a task.

Normally, the selection of bodies to perform a task financed from public funds is subject to the provisions of the Public Order Act of June 1994. However, Art. 6 of this act excludes the cases of tasks financed by means of a grant [Dziennik Ustaw, 1998a]. In this case, selection is made on the basis of the provisions of Art. 25 Par. 2, Art. 92 Par. 5 and Art. 118 Par. 3 of the Public Finance Act.

In the light of the provisions of Art. 118 Par. 3, in the event that a local government intends to delegate tasks financed by a grant to bodies not belonging to the public finance sector, a constitutive body must adopt a resolution in which the following issues are regulated: 1) the proceedings of awarding a grant, 2) the method of grant settlement, and 3) the method of controlling the realization of a delegated task.

The procedure of awarding a grant must realize certain general goals in selecting the performer of a delegated task, and to guarantee both the realization of that task, and the effective use of funds received.

In accordance with Art. 25 of the Public Finance Act, all bodies are entitled to perform tasks financed from public funds. In the event that a body files a motion to receive funds to perform a specified task, they must present their offer in accordance with the rules of fair competition, and this guarantees that a task will be performed effectively, economically and on time. Therefore, the procedure must take into consideration the rule of fair competition by, for example, comparing all the properly submitted offers. Moreover, legislature places special emphasis on the fact that the proceedings of awarding and settling a grant are open. This openness is guaranteed by free access to information regarding the subject matter of delegated tasks and the rules of applying for a task by means of an act of a constitutive body. This act determines the list of tasks that a local government decides to transfer to bodies not belonging to the public finance sector, the form and content of offers, and a date by which offers must be tendered. In the case of settling a grant, such openness can be realized by making the settlement available.

The selection of the body that will perform a delegated task is made in accordance with Art. 92 Par. 5 of the Public Finance Act, by an open selection of the best offer under the provisions of the Public Order Act, *i.e.* by the proper use of Art. 25 and Art. 71, which relate to the appropriate documentary evidence of this selection and concern the fulfillment of a public order by private contract, which guarantees that a task will be realized effectively, economically and on time (Art. 25 Par. 2 of the Public Finance Act).

In the light of these regulations, the resolution of a constitutive body should include, among others, the following data in the section concerning the procedure of awarding a grant: the date by which offers must be

tendered, the requested contents of the offers, the procedure of dealing with offers, the criteria for selecting the best offer, and the body that will select an offer.

In the resolution of the constitutive body of a local government unit that is authorized by Art. 118 Par. 3 of the Public Finance Act, two more issues must be specified: the method of settling a grant awarded to finance a delegated task, and the method of controlling the realization of this task. A constitutive body should determine the specific conditions that a body receiving a grant should meet, in order to settle this grant. These conditions refer mostly to the provision of documentation of the expenses connected with the realization of a task. The rules of returning a grant are also connected with the grant settlement. Funds must be returned in the event that a delegated task has not been realized, or a grant has not been completely used, or has been used inconsistently with its designation. When specifying the method of controlling the realization of a delegated task, the following issues must be defined: the controlling body, or the method of appointing a controlling body, the procedure of exercising control, as well as the rights and obligations of the controller and the body being controlled.

The resolution of the constitutive body of a local government unit regarding the proceedings of awarding a grant, the method of grant settlement, and the method of controlling the realization of a delegated task is adopted on the basis of Art. 118 Par. 3 of the Public Finance Act. Due to its subject matter, this resolution includes rules of a general and abstract character that refer to the bodies that are external in relation to the structures of local government (so called third parties). Therefore, the resolution constitutes an act of local law that must be published in the Provincial Official Gazette [Dziennik Ustaw, 2000], in order to become effective.

The delegation of a task and the awarding of a grant ensue on the basis of an agreement reached between the management board of a local government unit and the body appointed on the basis of the procedure determined in the resolution of the constitutive body. With regard to creating the content of the agreement, Art. 118 Par. 2 refers to Art. 71 Par. 2 of the Public Finance Act. An agreement should specify the following issues: a detailed description of the tasks delegated and the date of its realization, the level of a grant and the means of its payment, the procedure of controlling the realization of a task and the method of settling the grant, as well as the rules of returning the part of the grant that has not been used. It should be emphasized that the provisions of the agreement concerning the method of grant settlement and the procedure of

controlling the realization of a task must be consistent with the appropriate regulations of the resolution of the constitutive body.

The issue of transferring certain tasks by a municipality to bodies outside the public finance sector must be settled during the phase of creating a budget. There are two possible solutions. Firstly, the proceedings of awarding a grant for a delegated task can be conducted during the development of a draft budget. In this case, apart from the level of a grant determined in the resolution and designated for the realization of a task, there should also be an appendix that includes specifications of the tasks delegated, the bodies that perform the tasks, and the level of the grant designated for each of the tasks. According to the second solution, just the global value of the grant to perform the tasks delegated is determined in the budgetary resolution, and the management board of a municipality appoints the bodies that will perform the specific tasks, and distributes the grant among the tasks during a budgetary year. This solution is considered to be legally binding, since one cannot draw the conclusion that only a constitutive body is authorized to split the amounts of a grant among the individual bodies who will perform the tasks from Art. 118 Par. 3 of the Public Finance Act.

3. The scope of grants

In the light of the analysis of the budget performance of local government units made in 1999-2000 by the regional audit chambers and presented by the National Council of Regional Audit Chambers to the Sejm (parliament) and the Senate of the Republic of Poland in the form of a report on the activity of the regional audit chambers and on the budget performance of local government units [*Sprawozdanie...*, 2001, 196-206], the basic goals of the grants awarded under Art. 118 of the Public Finance Act concerned the financing of tasks mainly belonging to the field of physical recreation and sport, social welfare, culture and arts, health protection, but also to education, tourism and housing.

The largest amounts of money were used to finance tasks in the field of physical recreation. According to Art. 4 of the Act on Physical Recreation of January 18, 1996 [*Dziennik Ustaw*, 1996], local government units are obliged to create the legal, organizational and economic conditions to develop physical recreation. Tasks concerning physical recreation are also included in the catalogue of public tasks in the acts on local government. The bodies to receive grants for particular purposes are mostly physical recreation associations – sports clubs and their associations, and student sports clubs that perform tasks and realize goals in the field of physical Recreation. The percentage share of these grants in

relation to the total amount of grants awarded under Art. 118 of the Public Finance Act amounted to 38.9% in 1999 and 41.7% in 2000.

The grants were designated mainly for sports education of school children, the organization of sports competitions and sports events, the maintenance of sports facilities and the purchase of sports equipment. Local government units delegate tasks concerning physical recreation to bodies outside the public finance sector, due to the fact that they do not possess the ability to perform such tasks. Besides, in accordance with the Act on Physical Recreation, the basic organizational units to perform the tasks in the field of physical recreation are sports clubs, and local government units must create legal, organizational and economic conditions for the development of physical culture.

Social welfare was the second biggest area, in which grants for public goals connected with the tasks of a local government unit were used. The tasks of the units in the field of social welfare are determined by the provisions of the Social Welfare Act of November 29, 1990 [Dziennik Ustaw, 1998]. Under Art. 12a Par. 1 of the Act, local government units are entitled to delegate tasks referring to social welfare to such bodies as: social organizations, the Roman Catholic Church and other churches, religious denominations, foundations and associations, as well as to employers and legal and physical entities. The total value of the grants designated for social welfare purposes constituted approximately 26% of all grants in 1999, and approximately 37% in 2000. These grants were given mainly to organizations acting in the field of social welfare, and also to such non-governmental organizations as Caritas and Roman Catholic organizations. The funds from the grants were designated for rendering assistance to families with many children, poor and old persons (among others serving meals and the purchase of warm clothes), as well as for managing accommodation for homeless people and other centers providing protection, including welfare centers.

The funds designated for public purposes in the field of culture and the arts constituted a significant percentage of grants. In 1999 these grants constituted approximately 17% of all grants for delegated tasks, and in 2000 only 7%, which indicates economical stagnation, including the stagnation of public finance. Under such circumstances, public expenditure on social welfare increases, and expenditure on culture and the arts decreases. The cultural activities of local government units are specified in the Act on Organizing and Performing Cultural Activities of October 25, 1991 [Dziennik Ustaw, 2001]. According to the provisions of the Act, performing cultural activities, *i.e.* creating, disseminating and protecting culture, belongs to the obligatory tasks of local government units. Local government units should also exercise patronage over cul-

ture, *i.e.* they should support and promote cultural activities, cultural education and cultural initiatives, and protect cultural heritage. Grants given in the field of culture and the arts were mainly designated to finance various artistic events (theater performances, exhibitions, concerts, festivals and competitions), as well as to finance the popularization of specified disciplines of arts, the culture of national minorities and the protection of monuments. As a rule, the bodies that received grants acted as associations or foundations; the associations of national minorities were also awarded grants.

Among the tasks delegated by local government units, there were also public tasks connected with health protection. The amounts designated to perform these tasks constituted approximately 11% of all grants in 1999, and approximately 8% in 2000. The objective of the tasks delegated by municipalities was to counteract alcoholism. The obligation to fight against alcoholism is imposed on municipalities by the Act on Educating in Sobriety and Counteracting Alcoholism of October 26, 1982 [Dziennik Ustaw, 1982]. Under the regulation of this Act, municipalities are obliged to draw up preventive programs and to solve the problems of alcoholism. Such programs should be financed from fees for granting permission to sell alcoholic beverages. The tasks delegated as part of such programs included: engaging in activities promoting living in sobriety, administering recreation rooms, consulting outlets and centers for persons addicted to alcohol, as well as performing socio-therapeutic activities. As a rule, such grants were given to associations, Roman Catholic and church organizations, AA clubs and Caritas.

4. Summary

Grants to perform tasks delegated to bodies outside the public finance sector form expenditure that is fully independently awarded by local government units. This independency is expressed in the selection of the tasks that are delegated, in instituting the procedure of applying for a grant to finance the realization of a delegated task, as well as in determining the level of a grant and the method of grant settlement, including the return of a grant that has not been used, or that has been used inconsistently with its designation, and the method of controlling the realization of a delegated task.

While selecting the performer of a delegated task financed by means of a grant, the Public Order Act does not apply. In accordance with Art. 92 Par. 5 of the Public Order Act, a body should be appointed according to an open selection procedure under the provisions of the Public Order

Act, which guarantees that a task will be performed effectively, economically and on time.

Taking into consideration the objective scope of grants, it may be stated that local government units decide to delegate tasks to bodies outside the public finance sector. Such tasks belong to fields in which a high number of such bodies (social organizations) act and realize goals that are convergent with the area of public tasks of local governments; *e.g.* in the field of social welfare, in which local government units, while carrying out the state's social policy, realize the idea of cooperation included in the Social Welfare Act.

Local government units also seize the opportunity to delegate tasks on the basis of Art. 118 of the Public Finance Act, when they have not established their own structures specialized in the performance of a certain category of tasks. This refers mostly to the performance of tasks in the field of physical recreation. The Act on Physical Recreation emphasizes organizational and economic aspects of the activity of local government, and not the direct realization of goals and tasks in this area, which changes the character of a grant for particular purposes to a grant to a grantee that is used to finance the day to day activities of sports clubs that realize goals and tasks in the field of physical recreation.

When delegating a task on the basis of Art. 118 of the Public Finance Act, Art. 5 of the Act must be considered in determining the range of the bodies of the public finance sector which have the right to obtain a grant. A task can be delegated to any body that has not been enumerated in Art. 5 as a body belonging to the public finance sector, provided that body does not act in order to realize a profit. One question could be raised as to whether the term non-profit should generally refer to a body's statutory activity or whether it is sufficient that a body, in order to perform a certain task, makes an offer to perform the task at the minimal cost that is indispensable to secure a good quality of a service. In accordance with the interpretation of Art. 118 of the Act in which such bodies are determined, non-profit refers to the statutory activity of the body to which a public task financed by means of a grant is delegated.

Art. 118 of the Public Finance Act, concerning grants for particular purposes to perform local government units' tasks specified by law, excludes entrepreneurs – *i.e.* bodies engaged in making a profit – from the range of bodies that are entitled to perform such tasks. Such bodies can at most apply to perform public tasks under the Public Utility Act of December 20, 1996 [Dziennik Ustaw, 1997], which prescribes the process of using public tenders when selecting such bodies. These bodies then receive funds in the form of direct expenditure from a local government

unit's budget designated, for instance, for the purchase of services provided by such bodies.

Literature

- Chojna-Duch, E., *Struktura dotacji budżetowej. Studium teoretyczno-prawne* (The structure of budget subsidies. A theoretical and legal study), Warszawa, 1988.
- Dębowska-Romanowska, T., *Zagadnienia prawne wydatków publicznych na rzecz osób trzecich* (Legal issues of public expenditure in aid of third parties), Łódź 1993.
- Dziennik Ustaw, No. 35, Item 230, with later changes, 1982.
- Dziennik Ustaw, No. 97, Item 329, with later changes, 1996.
- Dziennik Ustaw, No. 25, Item 13, with later changes, 1996.
- Dziennik Ustaw, No. 9, Item 43, with later changes, 1997.
- Dziennik Ustaw, No. 64, Item 414, with later changes, 1998.
- Dziennik Ustaw, No. 119, Item 773, with later changes, 1998a.
- Dziennik Ustaw, No. 155, Item 1014, with later changes, 1998b.
- Dziennik Ustaw, No. 49, Item 485, 1999.
- Dziennik Ustaw, No. 62, Item 718, with later changes, *The Act on Announcing Normative Acts and Some Other Legal Acts of July 20, 2000*, 2000.
- Dziennik Ustaw, No. 13, Item 133, 2001.
- Harasimowicz, J., *Finanse i prawo finansowe* (Finance and financial law), Warszawa, 1988.
- Lachiewicz, W., „Dotacje na finansowanie zadań zleconych podmiotom niepublicznym przez samorzady terytorialne. Wybrane problemy na tle przepisu Art. 118 ustawy o finansach publicznych” („Subsidies for financing tasks of local self-governments to be carried out by non-public entities. Selected issues in the light of Art. 118 of the Public Finance Act”), in: *Biuletyn Regionalnej Izby Obrachunkowej w Krakowie*, 3 (25), 1999.
- Ostrowski, k., *Prawo finansowe – zarys ogólny* (Financial law – a general outline), Warszawa, 1970.
- Sprawozdanie z działalności regionalnych izb obrachunkowych i wykonania budżetów przez jednostki samorządu terytorialnego w 2000 roku*, Krajowa Rada Regionalnych Izb Obrachunkowych, Warszawa, 2001.
- Tegler, E., „Dotacje i inne wydatki redystrybucyjne” („subventions and other redistributive expenditure”), in: *System instytucji prawno-finansowych PRL*, vol. 3, Ossolineum, 1985.
- Witalec, W., „Zakres stosowania dotacji w gospodarce finansowej jednostki samorządu terytorialnego” („The scope of use of subsidies for financing local self-government units”), in: *Finanse Komunalne*, 5, 1999.

In regard to this approach, it is worth answering the question regarding how the global decentralization process runs or what its direction is, and how its elements behave in the course of the transition that verify that process in specific time periods.