

Łukasz Regner

“Limitations of the Public Finance Transparency”

Summary

The doctoral dissertation's subject is: “The Limitations of the Public Finance Transparency”. Therefore the dissertation shows in the first order, that public finance in a democratic state of law has to be subject to certain principles, one of which is the public life transparency principle followed by the principle of public finance transparency. On the other hand, both in the public sphere, as well as in the area of citizens' private life it is possible to enumerate the values, laws and interests deserving special strengthened protection. The reason is that their violation could cause excessive harm for public or private interest. Those values and interests are *inter alia*: individual privacy, freedom of entrepreneurship, in addition - state security and public order.

There exist some tensions between the principle of public finance transparency and duties of protection of certain categories of information, that results from their contrary nature. The purpose of the dissertation is to analyse the conflict outlined above, as well as to identify the other factors limiting public finance transparency. The aim is to identify the solutions that will enable the combination of public finance transparency and the necessity to protect certain categories of information. In other words, the objective of the dissertation is to determine the optimal model, that will guarantee as broad as possible access to the information from the scope of public finance, moreover, providing that the categories of data worthy of being protected from disclosure are correctly identified, while also ensuring that this protection will be as effective as possible.

The thesis is divided into three chapters, the first of which is dedicated in general to the transparency of public finance. The chapter describes the origin of this principle and the role it plays in providing the transparency of public life, in connection with the law of access to information. It also describes the position of transparency and access to information with regard to international law, to the law of the European Union and to Polish law. It stresses the significance of the transparency principle in public finance and describes the governing finance law regulation.

The second chapter is dedicated to the limits of public life transparency, as well as the identification and analysis of the legal limitations possible to occur in the context of the public finance transparency. This chapter describes the factors limiting the transparency caused by the necessity of protection of public interest, justified private interest, or both (of mixed origin), and also technical and organizational limitations.

The third chapter outlines the particular situation of public finance transparency limitations and analyses if the particular legal regulations are correct. It contains the proposals of particular legal solutions aimed at proper balancing of transparency and protection of information.

The thesis of the dissertation is: The public finance transparency principle is one of the principles, on which the public finance system in the democratic state of law is based. However, there exist the values so significant, from the point of view of public and private interest, that their protection may limit the fulfilment of the transparency principle. Nevertheless, those limitations should only take place in cases that are justifiable and strictly ruled by law, only when the potential harm for a citizen or for the state, resulting from disclosure of the information would outweigh the resulting benefits.

It was shown in the dissertation, that the transparency principle should be granted the highest importance, and its regulation should have a function of *lex generalis*. The limitations of transparency, that also protect the values of profound importance to the state and its citizens should have a value of *leges speciales*, the regulation of which should be precise and should not allow an interpretation broader than allowed from the viewpoint defined by the reason of the protection. The exceptions from the principle of transparency should concern cases, the significance of which justifies keeping certain information in secret from society and its members. The secret therefore should not concern examples, which in case of disclosure would bring less harm to the individual, society or state, than when keeping such information secret. As the analyses clearly show, all information concerning public finances should be transparent, unless the particular regulation of a state act (or international agreement), which aims at protecting the value of special significance, recognised by the Constitution of the Republic of Poland, clearly excludes this transparency.

The dissertation identifies the number of cases, where the balancing of transparency and protection of information within the regulations is improper. It also illuminates the legislative

defects of the regulations from this domain and where possible, suggests accomplishing the relevant interpretation of legal provisions, aimed at resolving the problems of interpretation. Where there is no possibility of such interpretation, the suggestions of legal changes are presented, both by extending the information duties or by introducing the broader protection of certain information. In particular, the dissertation includes the recommendations of unifying the regulations and making them more precise. Furthermore, filling in the identified legal loopholes, in particular by clear verification of both form and time limit (frequency) regarding the presentation of information and the scope of the disclosed data.