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Polish Film Institute – selected legal and financial aspects

**Polski Instytut Sztuki Filmowej –
wybrane aspekty prawno-finansowe**

Abstract. Legal issues concerning cinematography are a part of the constitutional regulations concerning national heritage and cultural heritage. Supporting the development of cinematography is the main task of the Polish Film Institute. The aim of this article was to examine the legal and financial issues concerning this state legal entity (in particular, its revenues and expenses). In addition, the authors intended to determine whether the Polish Film Institute is effective and whether its functioning is beneficial to Polish culture and national heritage. The publication uses a dogmatic-legal method and an empirical method (the financial plans of the Polish Film Art Institute from 2017–2022 were analysed).

Keywords: public finance; cinematography; National Film Institute; state legal person.

Streszczenie. Zagadnienia prawne dotyczące kinematografii wpisują się w regulacje konstytucyjne dotyczące dziedzictwa narodowego i dziedzictwa kulturowego. Wspieranie rozwoju kinematografii to główne zadanie Polskiego Instytutu Sztuki Filmowej. Celem artykułu było zbadanie zagadnień prawnych i finansowych dotyczących tej państwowej osoby prawnej (w szczególności jej przychodów i wydatków). Ponadto autorzy postawili sobie za cel ustalenie, czy Polski Instytut Sztuki Filmowej jest podmiotem efektywnym i czy jego funkcjonowanie jest korzystne dla polskiej kultury i dziedzictwa narodowego. W publikacji zastosowano metodę dogmatyczno-prawną oraz metodę empiryczną (analizowano plany finansowe Polskiego Instytutu Sztuki Filmowej na lata 2017–2022).

Słowa kluczowe: finanse publiczne; kinematografia; Polski Instytut Sztuki Filmowej; państwowa osoba prawna.

1. Introduction

Pursuant to Article 3(1) of the Act of 30 June 2005 on cinematography¹, the State exercises patronage over cinematographic activities as a part of national culture. This patronage comprises, in particular, supporting film production and promotion, dissemination of film culture, as well as protection of cultural heritage in the field of film. As stipulated in Article 3(2) of this Act, cinematography includes film creation, film production, film services and distribution and dissemination of films, including the activities of cinemas, dissemination of film culture, promotion of Polish film creation and the collection, protection and dissemination of film art resources.

The Act of 30 June 2005 on cinematography constitutes the concretisation and elaboration of Article 5 of the Constitution of the Republic of Poland of 2 April 1997², which stipulates, *inter alia*, that the Republic of Poland shall protect the national heritage and Article 6 of the Constitution of the Republic of Poland, according to which the Republic of Poland

¹ Consolidated text: Dz.U. [Polish Journal of Laws] of 2022, [poz.] item 1066.

² Dz.U. of 1997, No. 78, poz. 483 with subsequent amendments.

shall create conditions for the dissemination of and equal access to cultural goods, which are the source of the identity of the Polish nation, its survival and development³.

Tangible and intangible cultural heritage is an important factor in shaping human identity. The expression “cultural heritage” encompasses a range of cultural phenomena consisting of language, customs, rituals, everyday objects, artistic artefacts, architecture and all aspects of human activity⁴.

The main subject of regulation in the Cinematography Act is the issue of films. Article 4(1) of this Act defines the term “film” as a work of any length, including a documentary or animated work, consisting of a series of consecutive images with or without sound, recorded on any medium allowing multiple reproduction, evoking the impression of movement and constituting an original whole, expressing the action (content) in an individual form and, furthermore, with the exception of documentary and animated works, intended to be shown in cinemas as the first field of exploitation within the meaning of the provisions on copyright and related rights. A film is also a work which, due to circumstances beyond its control, has not been screened in a cinema.

Supporting the development of cinematography is the main task of the Polish Film Institute⁵, which was established on the basis of the Act on Cinematography. This law represents a systemic change in relation to previous legal regulations dedicated to the film art⁶. The aim of this article is to examine the financial issues of this entity, concerning primarily its revenues and expenses. In addition to the dogmatic-legal method, the authors used the empirical method – they analysed the financial plans of the Polish Film Institute containing numerous figures. The authors also set themselves the objective of determining whether the Polish Film Art Institute is an effective entity whose existence has legal and financial justification.

³ Articles 5 and 6 of the Constitution of the Republic of Poland, in the context of national heritage and cultural property, are analysed in details in: A. Frankiewicz, *Znaczenie prawne regulacji dziedzictwa narodowego i dóbr kultury w rozdziale I Konstytucji RP*, “Przegląd Prawa i Administracji” 2012, No 88, pp. 9–22.

⁴ A. Musiał-Gąsiorowska, *Prawne i organizacyjne aspekty popularyzacji dziedzictwa kulturowego – pryncypia*, “Przegląd Prawa Publicznego” 2019, No 3, p. 27.

⁵ Hereinafter also as: Institute.

⁶ R. Golat, *Podstawy prawa kultury*, Poznań 2006, p. 208.

2. Legal status and organisation of the Polish Film Institute

It follows from Article 7(1) of the Act of 30 June 2005 on cinematography that the Polish Film Institute is a state legal person. It performs tasks related to the state's policy in the field of cinematography. Pursuant to Article 10 of the Act, supervision of the Institute's activities is exercised by the minister competent for culture and national heritage protection.

The Institute is an entity of the public finance sector as defined in Article 9(14) of the Public Finance Act of 27 August 2009⁷. According to this provision, the public finance sector consists of, among others, "other state or local government legal persons established on the basis of separate acts in order to perform public tasks, excluding enterprises, research institutes, banks and commercial law companies"⁸.

It follows from Article 11(1) of the Cinematography Act that the Institute operates on the basis of that act and its statutes. The statutes are granted to the Institute by the competent minister by means of an ordinance in which he defines, in particular, the detailed scope of the Institute's activities, the internal organisation of the Institute, the detailed tasks of the Institute's bodies and the manner of their operation. The statute of the Institute was granted by the Ordinance of the Minister of Culture of 2 September 2005 on granting the statute of the Polish Film Institute⁹. The statute was contained in an annexe to this ordinance. It regulates in detail the tasks that the Institute performs, the Institute's bodies and their competences, the internal organisation of the Institute and its financial management.

It follows from Article 12 of the Cinematography Act that the Institute has two bodies: the Director and the Council of the Institute. The Director manages the Institute and represents it externally. The Director's

⁷ Consolidated text: OJ 2022, item 1634.

⁸ On the legal nature of these units of the public finance sector, see in more detail M. Cilak, *Komentarz do art. 9* [w:] Z. Ofiarski (red.), *Ustawa o finansach publicznych. Komentarz*, Warszawa 2020, p. 134 et seq.

⁹ Official Journal of the Republic of Poland "Monitor Polski" ["Polish Monitor"] of 2005, No. 52, item 722 with subsequent amendments.

tasks are specified by way of an example (construction: “in particular”) in Article 13(2) of the Act. The Director is appointed by the Minister following a competition. The competition commission is appointed by the Minister. It mainly consists of candidates proposed by film circles, including film creators, film producers and trade unions operating in the field of cinematography. The Director’s term of office lasts five years, and the function of a Director may be held for no more than two terms¹⁰. The Director is assisted in the performance of his/her duties by the Deputy Director, who is appointed and dismissed by the Minister on the proposal of the Director. For the appointment of the Deputy Director, there is, therefore, no competitive procedure. The Director and the Deputy Director are employed by an appointment (in Polish: “mianowanie”). The Minister may dismiss the Director based on the cases strictly specified in the Cinematography Act. Dismissal is made after consulting the Council, before an expiry of the Director’s term of office.

The second body of the Institute is the Institute’s Council. According to Article 15 of the Cinematography Act, it consists of 11 members appointed for a period of three years by the Minister. The Minister appoints the following members of the Council: three members proposed by filmmakers, one member proposed by film producers, one member proposed by trade unions active in the field of cinematography, five members proposed by the entities referred to in Article 19, paragraphs 1–5 (i.e. entities obliged by law to make contributions to the Institute) and one member representing the Minister. The tasks of the Institute’s Council are indicated by way of example (construction: “in particular”) in Article 17 of the Cinematography Act.

¹⁰ Therefore, it is a case of an appointment for a fixed period of time on the basis of specific provisions referred to in Article 68 § 1¹ of the Act of 26 June 1974 Labour Code (consolidated text Dz.U. of 2022, poz. 1510 with subsequent amendments). See in more detail: B.M. Ćwiertniak, *Komentarz do art. 68 [w:] K.W. Baran (red.), Kodeks pracy. Komentarz*, vol. 1, Warszawa 2022, Lex on-line.

3. Property and financial management of the Polish Film Institute

Pursuant to Article 9(1) of the Cinematography Act, the Institute independently manages its property and runs an independent economy within its resources, guided by the principle of an efficient use. The Institute is not allowed to carry out any economic activities.

The Institute's independence is not affected by the regulation contained in Article 10 of the Cinematography Act, according to which the Minister supervises the Institute's activities. Within the scope of the supervision, the Minister, *inter alia*, approves the Institute's annual activity plan and the draft annual financial plan; the approved draft annual financial plan of the Institute is forwarded to the minister responsible for public finance in accordance with the procedure outlined in the provisions regarding the draft budget act; the Minister considers and approves the Institute's annual activity report and annual financial report and appoints an auditor to audit the annual financial report.

The Polish Film Institute, like any other unit of the public finance sector, has an annual financial plan which is the basis of its financial management. The Institute's financial plan is an element of the annual budget act and is contained in the annexe entitled "Financial plans of state legal persons referred to in Article 9 item 14 of the Act of 27 August 2009 on public finance". Pursuant to Article 20(2) of the Cinematography Act, the annual financial plan includes:

- 1) revenue, including subsidies, with a breakdown by type,
- 2) operating costs, including expenditure on wages and salaries,
- 3) investment expenditure,
- 4) working capital balances at the beginning and end of the financial year.

The financial year of the Institute is the calendar year. The Institute shall keep its accounts in accordance with the rules laid down in the accounting regulations, and the Institute's annual financial statements shall be audited by a chartered accountant.

Pursuant to Article 21(1) of the Cinematography Act, the Institute creates a statutory fund and a reserve fund. Article 21(1)(3) indicates that the Institute also creates other funds if the obligation to create them results from separate regulations.

The statutory fund reflects the value of the property received by the Institute when it was established. It is increased by:

- 1) earmarked grants for investments to carry out the Institute's tasks,
- 2) a value of a property received free of charge on the basis of the decision of the competent authorities or on the basis of separate regulations,
- 3) part of the net profit.

In turn, the statutory fund is reduced by:

- 1) a value of a property transferred free of charge on the basis of the decision of the competent authorities or on the basis of separate regulations,
- 2) net losses not covered by the reserve fund.

A second mandatory fund (reserve fund) is created from the net profit. The write-down of the reserve fund may not be less than 10% of the net profit. The Institute may discontinue the write-off when the reserve fund exceeds the equivalent of 2% of the Institute's operating costs for the financial year. The purpose of the reserve fund is to accumulate funds to cover the net loss.

4. The Institute's income

Article 18(1) of the Cinematography Act lists the Institute's revenues:

- 1) subjective subsidies from the state budget, transferred by the Minister from the funds included in the budgetary part at his/her disposal,
- 2) revenue from the exploitation of films for which the Institute holds the copyright,
- 3) donations, legacies and bequests,
- 4) income from the Institute's assets,

- 5) funds granted by the Minister from the Cultural Promotion Fund referred to in Article 87 of the Act of 19 November 2009 on Gambling¹¹,
- 6) the payments referred to in Article 19(1) to (5), (6a) and (7) of the Cinema Act,
- 7) proceeds from penalties imposed pursuant to Article 19b.

It further follows from Article 18(2) that the Institute may receive earmarked subsidies from the state budget for the implementation of investment tasks.

An important provision is contained in Article 18(3), according to which the Institute's operating costs are to be covered by the revenue referred to in points 1, 3 and 4 above. These are the costs of the Institute as an entity, primarily related to expenditure on salaries (and salary derivatives), maintenance and operation of infrastructure.

The Institute's revenue, as indicated in Article 18(1), is of a varying legal nature and economic significance. It is worth theoretically analysing the sources listed in the last three points of the catalogue, and an empirical analysis of the Institute's revenue will be conducted in the context of its overall finances, as contained in the annual financial plans.

5. Funds allocated by the minister from the cultural promotion fund as revenue for the Polish Film Institute

Pursuant to Article 18(1)(5) of the Cinematography Act, the Institute's revenue comprises funds granted by the Minister from the Culture Promotion Fund referred to in Article 87 of the Act of 19 November 2009 on games of chance. The Culture Promotion Fund is a state purpose fund administered by the minister competent for culture and national heritage protection. The revenue of the Cultural Promotion Fund (Article 87(3)) is 20% of the revenue from surcharges referred to in Article 80(1) of the

¹¹ Consolidated text: Dz.U. of 2022, poz. 888 with subsequent amendments.

Gambling Act¹². According to this provision, surcharges are established in games covered by the state monopoly in the amount of:

- 1) 25% of the stake, the price of a ticket or other evidence of participation – in numbers games,
- 2) 10% of the stake, the price of the ticket or other evidence of participation in the game – in cash lotteries and telebingo.

Expenditure of the Culture Promotion Fund (Article 87, paragraph 4) is earmarked for the promotion or support of activities specified therein, including national and international artistic undertakings, including those of an educational nature, undertakings for the protection of Polish national heritage or tasks carried out as part of projects, including investment projects and projects co-financed by European and international funds, in the field of culture and protection of national heritage. The legislator in Article 87(5) explicitly indicated that the administrator of the Culture Promotion Fund transfers annually, by 30 March of the following calendar year, no less than 5% of the revenue referred to in Article 87(3) to the Polish Film Institute for the performance of the Institute's tasks.

The minister responsible for culture and national heritage protection is obliged to transfer to the Polish Film Institute the amount specified in the Gambling Act, which has the character of a minimum amount¹³.

The concept adopted by the legislator is that the revenue of a public finance sector entity, such as the Polish Film Institute, is at the same time an expenditure of another public finance sector entity, i.e. the Culture Promotion Fund. Thus, before they are disbursed, public funds “circulate” between entities of the public finance sector. A simpler solution would be

¹² The subsidisation of cultural endeavors through state monopoly gaming funds has its genesis in the UK's legislation, where arts and national heritage are two of the six spheres covered by the grant support of the lottery, T. Pietrucha, *Organizacja i zarządzanie funduszami celowymi na kulturę – analiza polskich i holenderskich doświadczeń w zakresie finansowania*, „Zarządzanie Publiczne” 2019, No 3(47), p. 166, DOI: 10.4467/20843968ZP.19.013.10689.

¹³ A similar regulation operated under the Act of 29 July 1992 on games and betting (consolidated text: Dz.U. of 2004, No 4, poz. 27 with subsequent amendments) – Article 47e(4a) added by Article 33(b) of the Act of 30 June 2005 on cinematography as of 19 August 2005. S. Radowski (ed.), M. Wierzbowski (ed.), *Ustawa o grach hazardowych. Komentarz*, 2019, Lex on-line.

to divide revenues from surcharges on games covered by the state monopoly between two authorised entities, i.e. the Culture Promotion Fund and the Polish Film Institute.

6. Payments referred to in Article 19(1) to (5), (6a) and (7) of the Cinematography Act, as revenue of the Institute

Article 19 of the Cinematography Act regulates payments made by various entities to the Polish Film Institute.

Article 19(1) of the Cinematography Act stipulates that the cinema operator shall make a payment to the Institute of 1.5% of a revenue generated from the screening of films and advertising in cinemas before a distribution with the distribution operator. It follows from Article 19(2) that the distribution operator shall make a payment to the Institute of 1.5% of a revenue derived from the sale and rental of media with films recorded on them and from agreements authorising other entities to perform such a sale or rental.

In turn, the television broadcaster shall make a payment to the Institute of 1.5% of a revenue derived from commercial broadcasts or of the revenue derived from the fees collected directly from subscribers for access to broadcast programmes if that revenue is higher in a given settlement period (Article 19(3) of the Cinematography Act). If a television programme broadcaster has its registered office in another Member State of the European Union, it shall make the payment referred to in Article 19(3), determined on the basis of the revenue generated in the territory of the Republic of Poland (Article 19(3a)).

Contributions to the Polish Film Institute are also made by the following:

- 1) an operator of a digital platform – at a rate of 1.5% of a revenue generated from fees for access to television programmes broadcast or re-broadcast on the digital platform (Article 19(4)),

- 2) a cable television operator – 1.5% of a revenue generated from fees for access to rebroadcast television programmes and provision of re-broadcast services (Article 19(5)).

The Institute's revenue also comprises payments made by on-demand audiovisual media service providers. It amounts to 1.5% of a revenue generated by the fees for access to on-demand audiovisual media services made available to the public or 1.5% of a revenue generated by the broadcasting of commercial communications if this revenue is higher during the relevant reference period (Article 19(6a)). If the entity providing the on-demand audiovisual media service is established in another Member State of the European Union, it shall make a payment on the basis of the revenue generated in the territory of the Republic of Poland.

The Institute's revenue is also derived from the source specified in Article 19(7) of the Cinematography Act – a public television broadcaster is obliged to allocate no less than 1.5% of annual receipts from the licence fees to film production. The broadcaster shall submit an annual report on the performance of this obligation to the Director of the Institute by the end of the first quarter of the calendar year. In the event that the amount indicated above is not spent in full on the production of films, the broadcaster shall forward the difference resulting from the settlement to the Institute within 1 month after the end of the first quarter of the calendar year.

The provisions of Section III of the Act of 29 August 1997 shall apply *mutatis mutandis* to dues for payments to the Institute under Article 19, paragraphs 1–5, 6a and 7 of Tax Ordinance¹⁴ (except that the powers of the tax authority are vested in the Director, and the powers of the appeal authority are vested in the Minister)¹⁵. Section III of the Tax Ordinance regulates tax liabilities; therefore, it is significant that the tax provisions for payments that are due to the Institute should not be applied di-

¹⁴ Consolidated text: Dz.U. of 2021, poz. 1540, with subsequent amendments.

¹⁵ Assigning to the Director of the Polish Film Institute the powers of a tax authority in relation to the obligation of payment to the Institute of 1.5 per cent of a revenue by the entities listed in the Act, the Constitutional Tribunal, in its judgement of 9 October 2006, found it to be consistent with Article 2 of the Constitution of the Republic of Poland, K 12/06 (Dz.U. of 2006, No 187, poz. 1389).

rectly but accordingly. In connection with the reference to Section III of the Tax Ordinance, a doubt arose as to whether the payments referred to in Article 19(1)–(5), (6a) and (7) are tax-related or another type of public tribute. In this respect, the Supreme Administrative Court (SAC) made a correct statement in a judgement of 10 May 2012¹⁶, stating that the payments specified in Article 19(6) then in force (the equivalent of the repealed provision is now Article 19(6a)) are of an obligatory nature and are public tributes to the Institute, other than taxes, fees and non-tax budget dues. The analysis of the SAC can be extended, with certainty, to the contributions regulated by Article 19(1) to (5) and (7)¹⁷.

The funding model of the Institute, which assumes the existence of compulsory contributions from cinema exhibitors, television broadcasters or cable operators, must be considered compatible with the European Union competition law. The existence of these contributions cannot be regarded as a restriction on the freedoms of the internal market, as they are funds transferred as a part of the patronage exercised by the State over cinematography, which is understood as part of national culture¹⁸.

7. Penalty payments as income for the Institute

Article 19b of the Cinematography Act regulates issues concerning fines for a cinema operator's failure to comply with information obligations. It appears that these penalties are administrative fines outlined in Article

¹⁶ II GSK 542/11, LEX No 1451915.

¹⁷ The fees paid by cable TV operators cannot also be considered as copyright fees, such as, e.g. a reprographic fee. D. Sokołowska, *Opinia prawna z dnia 22 stycznia 2015 r. sporządzona dla Stowarzyszenia Autorów ZAiKS w sprawie: skargi konstytucyjnej z dnia 20 listopada 2014 r. (SK 32/14) w przedmiocie niezgodności z Konstytucją art. 79 ust. 1 lit. b) ustawy o prawie autorskim i prawach pokrewnych z 4 lutego 1994 r., „Przegląd Ustawodawstwa Gospodarczego” 2015, nr 8, Lex on-line.*

¹⁸ A. Jurkowska-Gomułka, *Zasady funkcjonowania mediów a przepisy UE. Glosa do wyroku TS z dnia 5 marca 2009 r., C-222/07*, Lex on-line 2010.

189a et seq. of the Act of 14 June 1960 – Code of Administrative Procedure¹⁹. They are revenue streams for the Institute.

A cinema operator failing to submit the data referred to in Article 19a of the Cinematography Act or failing to submit them on time shall be subject to a fine of between PLN 1,000 and PLN 100,000, which shall be imposed by a decision of the Director of the Institute. When determining the amount of the fine, the Director of the Institute shall take into account previous violations of the obligation to submit data by the entity running the cinema, the scope and type of data not submitted or not submitted on time and the size of the activity conducted by the entity (Article 19b(3))²⁰.

The fine shall be paid into the Institute's bank account within 14 days from the date on which the decision imposing it became final. The provisions of Section IVa of the Code of Administrative Procedure shall apply to fines. The Institute shall be the creditor of the monetary penalty dues, within the meaning of the provisions on enforcement proceedings in administration, and the higher-level authority competent to consider a complaint against a decision of the creditor of the monetary penalty dues shall be the Minister.

8. Expenditure of the Institute

The Institute's expenses are primarily related to the costs of the operation of the entity and the tasks it performs. Article 8 of the Cinematography Act generally indicates that the Institute performs tasks within the scope of the state's policy in the field of cinematography. When constructing a catalogue of exemplary tasks (the construction "in particular"), the following was indicated:

¹⁹ Consolidated text: Dz.U. of 2022, poz. 2000 with subsequent amendments.

²⁰ Penalties of this kind are primarily intended to have a repressive and preventive role. Sometimes, however, they are also assigned the function of forcing the obliged entity to fulfil its legal obligation. It should be noted, however, that such a penalty is not an instrument of enforcement of obligations of a monetary nature within the meaning of the provisions on enforcement proceedings in administration, H. Kisilowska, G. Zieliński, *Administracyjne kary pieniężne – funkcja prewencyjna i represyjna*, "Prawo w Działaniu" 2020, No 43, p. 163, DOI: 10.32041/pwd.4309.

- 1) creating the conditions for the development of Polish film production and film co-production,
- 2) inspiring and supporting the development of all genres of Polish film-making, in particular, art films, including the preparation of film projects, film production and film dissemination,
- 3) supporting activities aimed at creating conditions for universal access to the achievements of Polish, European and world cinema,
- 4) supporting film debuts and the artistic development of young filmmakers,
- 5) promoting Polish filmmaking,
- 6) co-financing of projects concerning the preparation of film projects, film production, film distribution and film dissemination, promotion of Polish film-making and dissemination of film culture, including the production of films undertaken by Polish communities,
- 7) providing expert services to public administrations,
- 8) supporting the maintenance of film archives,
- 9) supporting the development of a potential of Poland's independent film industry, in particular, small and medium-sized film entrepreneurs,
- 10) supporting audiovisual production under the terms of the Act of 9 November 2018 on financial support for audiovisual production²¹,
- 11) giving each film screened in a cinema an individual identifier published on the Institute's website in the Public Information Bulletin,
- 12) supporting solutions that make it easier for people with visual and hearing disabilities to enjoy cinematographic heritage.

Chapter 3 of the Act ("Subsidising undertakings in the field of preparation of film projects, film production, film distribution and dissemination of films, promotion of Polish filmmaking and dissemination of film culture") regulates an issue of subsidising film projects in great detail. The co-financing of film projects is the primary task of the Institute; therefore, it is understandable that it generates the largest expenditure.

Pursuant to Article 22(1) of the Cinematography Act, any entity conducting activity in the field of cinematography, whether Polish or from

²¹ Consolidated text: Dz.U. of 2021, poz. 198.

another Member State of the European Union, the Swiss Confederation or a Member State of the European Free Trade Association (EFTA) – a party to the Agreement on the European Economic Area, regardless of the organisational and legal form and ownership structure – may apply for co-financing of an undertaking in the field of preparation of film projects, film production, film distribution and dissemination, promotion of Polish film creation and dissemination of film culture.

Co-financing of a project is granted on the basis of the criteria indicated in Article 22(2) and is provided in a form of a grant. In the case of projects concerning the preparation of film projects and film production, it is also provided in a form of a loan or a guarantee. The co-financing of a project may not exceed 50% of the film budget, with the exception of films whose content and form are artistically ambitious and of limited commercial value or are directorial debuts (difficult film) and low-budget films. In each case, the amount of co-financing for a project cannot exceed 90% of the project budget. The Institute grants co-financing to a project by means of a civil law agreement to be concluded on behalf of the Institute by the Director after consultations with experts. According to Article 25 of the Act, the entity receiving funding is obliged to use the funds received in accordance with the purpose for which they were obtained and in accordance with the project funding agreement. This means that the Director's authoritative action of granting funds by means of an administrative decision is excluded. This position is also confirmed by case law²².

It follows from Article 23(5) of the Cinematography Act that the entity receiving funding for a project is obliged, in the event of making a profit from the project, to return the funding for the project in accordance with the rules set out in public finance regulations. This means that the expenditure incurred may result in future income up to the amount of support received by the subsidised entity.

²² Decision of the Supreme Administrative Court of 5 February 2014, II GSK 91/14, Lex No 1452778. Thus, in the case of settlement of disputes arising in cases of co-financing of projects from the Institute's funds, the common court will have jurisdiction.

9. The Institute's financial plans for 2017–2022

The financial plan of the Institute, being – as a state legal person – an entity of the public finance sector within the meaning of Article 9(14) of the Public Finance Act of 27 August 2009, is a part of the annual Budget Act. In the Budget Acts for 2017–2022 (the financial plans for the last six years were examined), the financial plans of state legal entities were included in Annex No. 14. The financial plan of the Polish Film Institute was included in the following individual years:

- 1) Table 5 (Budget Act 2017 of 16 December 2016)²³,
- 2) Table 6 (Budget Act 2018 of 11 January 2018)²⁴,
- 3) Table 8 (Budget Act 2019 of 16 January 2019)²⁵,
- 4) Table 11 (Budget Act 2020 of 14 February 2020)²⁶,
- 5) Table 11 (Budget Act 2021 of 20 January 2021)²⁷,
- 6) Table 11 (Budget Act 2022 of 17 December 2021)²⁸.

The Institute's income and expenditure (costs) varied from year to year during the period under review; however, the differences (year-on-year) were not significant. Thus, the income/expenditure (costs) planned for each year was as follows:

- 1) PLN 149,489k/149,489k (2017),
- 2) PLN 158,671k/158,671k (2018),
- 3) PLN 186,621k/186,621k (2019),
- 4) PLN 309,207k/309,207k (2020),
- 5) PLN 260,680k/260,680k (2021),
- 6) PLN 275,680k/275,680k (2022).

It is easy to observe that expenses (costs) were planned at amounts equal to the planned revenues. The planned revenues (and costs) increased systematically from 2017 onwards to reach a peak in 2020. In 2021,

²³ Dz.U. of 2017, poz. 108.

²⁴ Dz.U. of 2018, poz. 291.

²⁵ Dz.U. of 2019, poz. 198.

²⁶ Dz.U. of 2020, poz. 571.

²⁷ Dz.U. of 2021, poz. 190.

²⁸ Dz.U. of 2022, poz. 270.

a decrease in revenues and costs can be observed, with plans for 2022 again showing an upward trend.

The analysis of the revenues allows a conclusion to be drawn that the basic sources of revenue for the Polish Film Institute were the payments regulated in Article 19 of the Cinematography Act, at least in the first years of the analysed period. In individual years, they amounted to the following:

- 1) PLN 125,000k (2017) – this represented 83.62% of the planned total revenue,
- 2) PLN 132,100k (2018) – this represented 83.25% of the planned total revenue,
- 3) PLN 133,308k (2019) – this represented 71.59% of the planned total revenue,
- 4) PLN 136,180k (2020) – this represented 44.04% of the planned total revenue,
- 5) PLN 119,290k (2021) – this represented 45.76% of total planned revenue,
- 6) PLN 134,480k (2022) – this represented 48.78% of the planned total revenue.

Although in 2017–2019, contributions regulated by Article 19 of the Cinematography Act accounted for approximately 25% of the Institute's total revenue, in 2020–2022, they accounted for less than 50%. What was the reason for the decrease in the share of payments regulated by Article 19 in total revenue? An analysis of the financial plans shows that the amount of funds transferred from the state budget to the Institute increased in the second half of the period under review. In individual years, the Institute's revenue from this was as follows:

- 1) PLN 11,069k (2017) – subsidies from the state budget, accounted for 7.40% of the planned total revenue,
- 2) PLN 12,451k (2018) – grants from the state budget, represented 7.85% of the planned total revenue,
- 3) PLN 12,969k (2019) – subsidies from the state budget, accounted for 6.95% of the planned total revenue,

- 4) PLN 127,390k (2020) – subsidies and subventions from the state budget, accounted for 41.20% of the planned total revenue,
- 5) PLN 126,210,000 (2021) – grants and subsidies from the state budget, accounted for 48.42% of the planned total revenue,
- 6) PLN 126,210k (2022) – grants and subsidies from the state budget, accounted for 45.78% of the planned total revenue.

Grants (subsidies and grants) from the state budget, which were a marginal source of an income for the Institute in 2017–2019, became one of the two main sources of an income from 2020 onwards, with 2021 being the dominant source.

The Institute's other income (including funds received from the European Union and funds from other units in the public finance sector) was of symbolic financial importance during the period under review.

As far as the Institute's expenditure (costs) is concerned, the costs of performing tasks predominated, which primarily included expenditures classified as "funds transferred to other entities". In each year, task-related expenditures amounted to the following:

- 1) PLN 132,038k (2017) – this represented 88.33% of the total planned costs,
- 2) PLN 141,332k (2018) – this represented 89.07% of the total planned costs,
- 3) PLN 165,914k (2019) – this represented 88.90% of the total planned costs,
- 4) PLN 281,470k (2020) – this represented 91.03% of the total planned costs,
- 5) PLN 236,000k (2021) – this represented 90.53% of the total planned costs,
- 6) PLN 251,000k (2022) – this represented 91.05% of the total planned costs.

There is no doubt that task expenditure (funds provided primarily to filmmakers) accounted for approximately 90% of the total planned expenditure in each year of the period under review.

An obvious question arises: What were the operating costs of the Polish Film Institute? What part of the expenditure was related to the Institute's operating costs, i.e. primarily salaries and maintenance of the infrastructure? According to the Institute's financial plans, the expenditure planned to cover the operating costs amounted to the following:

- 1) PLN 10,739k (2017) – this represented 7.18% of total planned costs,
- 2) PLN 11,339k (2018) – this represented 7.15% of total planned costs,
- 3) PLN 13,425k (2019) – this represented 7.19% of total planned costs,

- 4) PLN 21,737k (2020) – this represented 7.03% of the total planned costs,
- 5) PLN 20,680k (2021) – this represented 7.93% of total planned costs,
- 6) PLN 20,680k (2022) – this represented 7.50% of the total planned costs.

Between 2017 and 2022, the Institute’s planned operating costs were 7.15%–7.93% of the total planned expenditure. Therefore, it should be recognised that the costs are (in percentage terms, relative to total expenditure) constant and relatively small from year to year.

10. Conclusions

The Polish Film Institute independently manages property and operates independently within its means, following the principle of their efficient use. It performs the tasks assigned to it by law, using the revenue assigned to it by the Act on Cinematography. The Institute’s expenditure (costs), in turn, is a derivative of the tasks performed. The analyses in the normative sphere were based on the provisions of the Constitution of the Republic of Poland and the Cinematography Act, whereas the empirical research was limited to the financial plans contained in the last six budget acts (2017–2022).

An analysis of the Institute’s financial plans established that, until 2019, the Institute’s main income came from the payments regulated in Article 19(1–5), (6a) and (7) of the Cinematography Act. From 2020 onwards, a “competitive” (in terms of amount) source of funding for the Institute emerged in the form of funds from the state budget. Budgetary subsidies until 2019 were also present, but they were symbolic in nature.

The state can finance cinematography in a number of ways. First and foremost, it should be kept in mind that the tasks of a government administration in a field of cinematography are performed by the minister responsible for culture and national heritage protection. The functioning of the Polish Film Institute cannot be regarded as an activity of a competitive nature. The Institute supports and complements the activities of the minister in charge of culture and national heritage protection.

The support given to the Institute from the state budget in 2020 should be viewed positively. The increased revenue of this entity allowed for an increased expenditure on tasks. Importantly, the Institute’s operat-

ing costs as an entity of the public finance sector consumed less than 8% of its revenue in the period under review. The Polish Film Institute is not an entity whose main expenditure is maintaining itself and its employees.

Films produced with a mass audience in mind are, by definition, intended to generate an income for producers and creators. Films with “non-commercial” themes, such as art films, are rarely financially successful. Public support makes it possible to produce and distribute valuable films, which is a part of the creation of a cultural heritage. It is important that the Institute supports not only the production of feature films, but also documentaries and animated films.

It should be emphasised that the Institute does not limit itself to financing film production. It also deals with film education, dissemination of film culture, development of cinemas and promotion of Polish films abroad. Recently, it has also supported Polish–Ukrainian film projects. There is no doubt that the Institute has made a major contribution to cultural heritage in the area of cinematography.

Disbursement of public funds at the Institute’s disposal is based on the provisions of the Cinematography Act, and financial support is granted after consultations with experts who are representatives of the film and opinion-forming circles and are appointed by the Minister. This means that the disbursement of the Institute’s funds is based on merit criteria.

It is not uncommon for productions receiving funding from the Institute’s resources to be not only artistically successful (as measured by the awards which they have received) but also financially successful. This demonstrates the soundness of the Institute’s decisions on project funding.

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