Articles Studia Iuridica Lublinensia vol. 35, 2, 2026
DOI: 10.17951/sil.2026.35.2.107-126

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The Essence, Nature and Significance of the Budget of a District Bar Association of Attorneys-at-Law

Istota, charakter i znaczenie budżetu okręgowej izby radców prawnych

ABSTRACT

The article is intended to analyse the complementary nature of legal solutions concerning the financial management of district bar associations of attorneys-at-law in Poland and the budgets they adopt and implement. This matter is of significant importance due to the nature of the tasks performed by the self-governing professional organization of attorneys-at-law (*samorząd radcowski*) for which the budget and its funds constitute the material and financial basis. In this context, it is necessary to thoroughly analyse the essence, nature, and significance of the budget of this unit of the professional self-government of attorneys-at-law. The currently applicable regulations, both at the level of statutory legislation and in bye-laws, should be considered insufficient. The absence of terminological precision often makes it impossible to interpret the provisions without raising doubt. Due to the self-governing nature of the bar association, new regulations should arise from internal organizational norms issued under an explicit and precise statutory delegation contained in the Attorneys-at-Law Act.

Keywords: budget; district bar association of attorneys-at-law; funds; resolution

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INTRODUCTION

The professional self-government of attorneys-at-law (Polish: *radcy prawni*, translated also as legal counsels or legal advisers) is one of the self-governing organizations of professions of public trust, as outlined by the Constitution of the Republic of Poland.[1] These types of self-governing organizations are assigned constitutional functions, which are performed through statutorily defined tasks. Professional self-government is one of the fundamental forms of decentralization of substantive public authority. The establishment of professional self-government aims to entrust its bodies with the execution of public tasks not performed by the central government or local government.[2] To be executed, these tasks require an appropriate organizational structure, the attribute of legal personality, and bodies with detailed powers and responsibilities assigned. Also essential, and perhaps first of all, are financial resources that enable the implementation of these goals. Without them, the concept of self-government independent of public authority becomes illusory. The holding of financial resources, often in considerable amounts, determines, in turn, the necessity of having a plan, specifying the manner of managing these resources and the purposes of spending the funds.

The aim and subject of this study is to analyse normative regulations, both statutory and internal, concerning the financial plan and budget of units of the bar association of attorneys-at-law at the regional level. Both in everyday language and in the scholarly literature, the term "budget" is understood in two ways. First, it is an annual financial plan covering income and revenue, as well as expenditure and outflow. Second, it is a place where financial resources are kept. The phrases "to spend from the budget" or "accumulate in the budget" are often used. The very word "budget" comes from the Latin *bulga*, which meant a bag, purse, or pouch. In Old English, "budget" meant a pouch, and in Old French, *bougette* – a diminutive form of *bouge* – meant a leather sack.[3] Historically, therefore, budget was defined and understood in the latter sense. However, in both cases, budget can be considered and described in terms of both public and private law. Accordingly, it will apply to the activities of public law entities with all the legislative and scholarly achievements of financial law, while in the second case it will describe the activities of private law entities.

The concept of budget is inextricably linked to the concept of financial activity, which means all processes of collecting and spending money.[4] It is clear that financial activities are carried out both in the public law sphere by entities governed by public

[1] Article 17(1) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

[2] P. Tuleja, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, LEX/el. 2023.

[3] W. Kopaliński, *Słownik wyrazów obcych i zwrotów obcojęzycznych*, Warszawa 1985, p. 65.

[4] As in, e.g., W. Wójtowicz (ed.), *Zarys finansów publicznych i prawa finansowego*, Warszawa 2004, p. 15; A. Komar, [in:] A. Komar, W. Łączkowski, *Finanse i prawo finansowe*, Warszawa

law, and in the private law sphere by entities governed by private law. Depending on the classification of the entity conducting financial activity as classified within one of these two spheres, legal regulations either in the area of public finance or in the area of private law, including civil law, will apply. In the constitutional context, this will mean either applying the provisions of Chapter X "Public Finance" or the provisions stipulating the protection of private property and the freedom of business activity.

The essence of the problem at issue is that the implementation of financial tasks is not and cannot be an end in itself. Financial activities should comply with several general assumptions and evaluation criteria, such as legality, purposefulness, economy, etc.[5] This is important in the context of the application of the provisions on adopting the budget of governing bodies of the bar association, its implementation and control of implementation, as well as legal liability for violation of the legality, purposefulness and economy in the field of financial activities of the bodies of its units. In this context, one should attempt to answer the question about the essence, nature and importance of the budget of the district bar association of attorneys-at-law and its financial activities. This is all the more so because such a budget may involve considerable sums.

Due to the scope and nature of the study, the legal-dogmatic method and the theoretical-legal method were used. The legal-dogmatic method covered the linguistic, systemic and teleological analysis of normative regulations both at the statutory and intra-organizational level relating to the budget of the district bar association of attorneys-at-law. On the other hand, the legal-theoretical method was used to analyse the literature in terms of the nature and importance of the basic financial plan of units of the bar association of attorneys-at-law. On an auxiliary basis, the historical-legal method was also used. The matter covered by the study has not been comprehensively analysed so far. The aspects related to the budget of the district bar association of attorneys-at-law were discussed fragmentarily by M. Kępa, M. Świstak, and T. Scheffler, among others. The achievements of financial law scholars concerning the nature of the financial plan and the rules governing it were also used.

DISTRICT BAR ASSOCIATION OF ATTORNEYS-AT-LAW AS A UNIT OF THE SELF-GOVERNMENT OF ATTORNEYS-AT-LAW

The bar association of attorneys-at-law is a self-governing organization of a profession of public trust. The functions of such professional self-governing organizations are defined by the Constitution of the Republic of Poland. These include representing members of certain professions of public trust and ensuring the

1985, p. 31. N. Gail (*Budżet a skarb państwa*, Warszawa 1974, p. 110 ff.) uses the term "budgetary management" (Polish: *gospodarka budżetowa*).

[5] A. Komar, *op. cit.*, p. 31.

proper practice of those professions within the limits of, and for the protection of, the public interest.[6] The internal organization of the professional self-government, including the distinction of the units of self-government and their bodies within its structure, should ensure the fulfilment of these functions.

Representing practitioners of a profession of public trust by the professional self-government means that the bodies of professional self-government, acting pursuant to laws and by issuing acts of internal law regarding the self-government community or individual members thereof, speak on their behalf. The bodies of professional self-government also hold a position presented towards the state authorities when it comes to matters related to the functioning of professional self-government and the practice of the profession. While representation is an outward-looking function, care relates primarily to the internal sphere of the functioning of professional self-government.[7] The exercise of care applies only to the members of a given local government. It involves formulating the rules for practicing the profession, including the above-mentioned deontic principles, and formulating the competences of self-government bodies that allow for the assessment of compliance with the rules and making such assessments in practice. The obligation to exercise care is the constitutional basis for disciplinary liability of members of the self-governing community before the self-government bodies. An element of this oversight is disciplinary justice administered by self-government bodies.[8] Such oversight must be exercised within the limits of the public interest. This means that the criteria of assessment of the proper exercise of the profession need to be clearly formulated.[9] This also applies to violations of norms and rules (if any) governing budgetary matters.

The professional self-government of attorneys-at-law has been legally entrusted with the responsibilities which form the fulfilment of constitutional functions. The responsibilities of the self-government of attorneys-at-law include, among other things, participation in providing conditions for the performance of statutory tasks of attorneys-at-law, representing attorneys-at-law and trainee attorneys-at-law and protecting their professional interests, preparation of trainee attorneys-at-law to properly practise the profession of attorney-at-law and for continuous professional development, and supervision over the proper practice of the profession by attorneys-at-law and trainee attorneys-at-law.[10] The professional self-government of

[6] Article 17(1) of the Constitution of the Republic of Poland.

[7] Judgment of the Constitutional Tribunal of 22 May 2001, K 37/00, OTK 2001, no. 4, item 86.

[8] Judgment of the Supreme Administrative Court of 30 January 2018, I OSK 1449/16, LEX no. 2466833.

[9] P. Tuleja, *op. cit.*; W. Bujko, *Odpowiedzialność dyscyplinarna*, [in:] *Zawód radcy prawnego. Historia zawodu i zasady jego wykonywania*, ed. A. Bereza, Warszawa 2015, p. 520; judgment of the Constitutional Tribunal of 18 February 2004, P 21/02, OTK-A 2004, no. 2, item 9.

[10] Article 41 of the Act of 6 July 1982 on attorneys-at-law (consolidated text, Journal of Laws 2024, item 499, as amended): hereinafter: the Attorneys-at-Law Act.

attorneys-at-law is a non-territorial professional self-government, the only substrate of which are members – attorneys-at-law and trainee attorneys-at-law, as well as lawyers from the European Union upon their entry on the register maintained by the district bar association of attorneys-at-law.[11] The self-government works on behalf and for the benefit of its members. At the same time, the attorney-at-law must respect and be loyal to the bodies of the self-government of attorneys-at-law. They are also required to comply with resolutions of the self-government, irrespective of their personal assessment.[12] This also applies to resolutions in the field of financial activities of the professional self-government. This, in turn, obliges its bodies to strictly adhere to legality and reliability in these matters.

The professional self-government of attorneys-at-law as such does not have legal personality. The only organizational units of the self-government that have legal personality are the district bar associations of attorneys-at-law and the National Bar Association of Attorneys-at-Law, which act through their bodies.[13] The activities of the district bar association are managed by the district bar council of attorneys-at-law. Only the council is authorized to represent the district bar council in external and internal relations, and only the council may authorize (by way of a resolution) to represent the district bar association in external relations.[14] This means that the dean is not a governing body of the district bar association of attorneys-at-law. However, the dean, together with the vice-deans, secretary, treasurer, and members, forms the board, which is the executive body of the district bar council of attorneys-at-law.[15] Therefore, only the district bar council of attorneys-at-law has legal personality and, consequently, legal capacity.[16]

The professional self-government of attorneys-at-law and its organizational units, including district bar associations of attorneys-at-law at the regional level, are not entities of the public finance sector and do not belong to the public finance sector as defined by the Public Finance Act.[17] The financial resources at the disposal of district

[11] Article 16(1) of the Act of 5 July 2002 on the provision of legal assistance in the Republic of Poland by foreign lawyers (consolidated text, Journal of Laws 2020, item 823, as amended). Pursuant to Article 16(2) thereof, a lawyer from the European Union enjoys all the rights and is subject to all the obligations of members of the professional self-government, with the exception of the right to stand for election to the bodies of that self-government. Accordingly, unless the context requires otherwise, any reference in the following study to legal advisers shall also be understood as including lawyers from the European Union.

[12] K. Kwapisz, *Ustawa o radcach prawnych. Komentarz*, Warszawa 2011.

[13] Article 5(2) of the Attorneys-at-Law Act.

[14] Article 52(1) of the Attorneys-at-Law Act.

[15] Article 52(2) of the Attorneys-at-Law Act.

[16] Decision of the Voivodeship Administrative Court in Bydgoszcz of 2 September 2014, II SAB/Bd 82/14, LEX no. 1525874.

[17] Article 9 of the Act of 27 August 2009 on public finance (consolidated text, Journal of Laws 2024, item 1530, as amended).

bar associations of attorneys-at-law are not included in the catalogue of public funds, either.[18] Consequently, the financial management principles outlined in that Act and in broadly understood financial law do not directly apply to them. This also has negative consequences, as it prevents the direct application of budgetary principles provided for in the legislation and by scholars of financial law, such as the principle of budget unity, budget transparency, or budget specificity. For the same reasons, the budget of a district bar association of attorneys-at-law cannot be given the character of unilateral guidance, which would mean that such a budget as a financial plan is binding only on the expenditure side, while on the revenue side, it is analytical in nature, meaning it is merely a forecast of their amount.[19]

At the same time, there is no doubt that the self-government of attorneys-at-law performs tasks of a public nature, which is a consequence of the status of the self-government of a profession of public trust. It also has financial resources derived from contributions from attorneys-at-law and trainee attorneys-at-law. Although these are not public funds within the meaning of the Public Finance Act, there is no doubt that they may be regarded as quasi-public funds. Units of the self-government of attorneys-at-law are classified as atypical administrative entities and are granted the power to issue so-called organizational acts.[20] These acts concern, among other things, the legal basis for the functioning of specific organizational structures and are addressed to entities within a given structure. For the case in question, this concerns the self-government structure.[21]

As regards financial management of the self-government of attorneys-at-law, this competence has been exercised to a very limited extent, only in two resolutions issued by the governing bodies of the bar association at the central level. The first is Resolution No. 7/99 of the Sixth National Congress of Attorneys-at-Law of 6 November 1999 on establishing the fundamental principles of financial management of the self-government of attorneys-at-law.[22] The second organizational act regulating financial management is the Rules of Financial Operations of the Self-Government of Attorneys-at-Law, constituting an appendix to Resolution No. 65/VII/2009 of the National Bar Council of Attorneys-at-Law of 6 June 2009 on the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.[23]

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[18] Article 5 of the Public Finance Act.

[19] W. Wójtowicz (ed.), *op. cit.*, p. 67.

[20] M. Stahl, [in:] *System Prawa Administracyjnego*, vol. 5: *Prawne formy działania administracji*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013, pp. 373–374; T. Rabska, *Akty organizacji w gospodarce narodowej*, [in:] *Studia z zakresu prawa administracyjnego ku czci prof. dr. hab. M. Zimmermanna*, ed. W. Jaśkiewicz, Warszawa–Poznań 1973, pp. 149–166.

[21] M. Świstak, *Charakter prawny uchwał organów samorządu zawodowego radców prawnych w Polsce*, Lublin 2018, pp. 137–138.

[22] Unpublished.

[23] Appendix to Resolution No. 819/XI/2022 of the Presidium of the National Bar Council of Attorneys-at-Law of 21 December 2022 on the publication of the consolidated text of the Rules of

In both cases, the overly laconic (from the point of view of the efficient functioning of the self-government of attorneys-at-law) regulation of financial management should be noted. There is also considerable terminological chaos. The terms "inflow", "income", and "revenue" are considered synonymous, likewise "expenses" and "costs". However, both in common language and, even more so, in the language of law and legal practice, these concepts are not identical; they denote completely different categories. It is generally accepted that the inflow to the budget includes both income and revenue. Incomes are non-refundable, while revenues are a repayable inflow to the budget. It should be expected that in the short or long term they will have to be repaid to their source. Such revenues may be, e.g., loans and credits. Therefore, these concepts cannot be equated. They play a completely different role in the process of planning and implementing the financial management of the self-government of attorneys-at-law, e.g. in limiting the excessive indebtedness of its units. The same applies to outflows from the budget. The terms of expenses and costs cannot be equated. It is obvious that every cost is an expense, but not every expense is a cost. Meanwhile, the authors of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law have created their own and extremely broad concepts of "revenue" and "costs". Revenue includes cash received and other financial assets acquired in connection with activities related to the performance of the tasks of the self-government of attorneys-at-law including received contributions, fees related to the decision on entry on the list of attorneys-at-law and trainee attorneys-at-law, handling fees, training fees, fees for services rendered to self-government members, assets acquired free of charge, as well as amounts due from the sale of assets and financial income, subsidies and subventions. Where a business activity is conducted, other financial assets acquired in the course of that business also constitute revenue.[24] On the other hand, the operating costs include in particular expenses related to the performance of the tasks of the self-government of attorneys-at-law, costs related to the promotion of the profession and the integration of members of the association. Administrative costs are also considered as costs, in particular salaries and social security contributions and other benefits for employees and other persons, costs of purchasing materials, energy and external services. Revenue and income, outflows, expenses and costs were all put in the common "purse".[25]

First of all, there is no definition of budget. There is not even any reference in this regard to any generally applicable legal provisions.[26] This lack of reference

Financial Operations of the Self-Government of Attorneys-at-Law, hereinafter: the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

[24] § 5(2) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

[25] § 5(3) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

[26] As in, e.g., the provision of Article 211 of the Public Finance Act.

is the root cause of further significant problems in the management of financial affairs by the district bar associations of attorneys-at-law. It is stated in the Rules of Financial Operations of the Self-Government of Attorneys-at-Law that the basis for the financial management of the district bar association of attorneys-at-law is annual budgets presented in the form of revenue and expenditure plans.[27] There are further terminological issues. For example, there is an unjustified equation of the concepts of draft budget and provisional budget.[28] Apart from attempting to define what a draft budget is, it should be noted that a provisional budget is, in fact, an already adopted budget for a period shorter than the fiscal year, usually for three months of the fiscal year.

The Rules of Financial Operations of the Self-Government of Attorneys-at-Law set out the principles of financial management used, e.g., by district bar associations of attorneys-at-law.[29] As defined in the Rules, financial management is a tool serving the implementation of statutory tasks, which are understood as the tasks of the self-government of attorneys-at-law specified in the Attorneys-at-Law Act, the secondary legislation adopted under the Act, and the resolutions of the governing bodies of the professional self-government of attorneys-at-law. These activities also include the performance of tasks delegated by state authorities.[30] District bar associations of attorneys-at-law manage their finances on an independent basis, planning the expenditure according to the principle of self-financing of activities with proceeds from membership contributions and other sources within the limits of applicable regulations, and keep accounting books in accordance with the Accounting Act.[31] It should be emphasized that financial independence is an important manifestation of the independence of each entity.[32]

DEFINITION AND LEGAL NATURE OF THE BUDGET

As already mentioned, neither the Attorneys-at-Law Act nor any of the organizational acts define the budget of the district bar association of attorneys-at-law. The term "budget of the district bar association of attorneys-at-law" appears only once in the Act.[33] The same applies to the Rules of Financial Operations of the Self-Government

[27] § 5(1) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[28] § 4b(3) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[29] § 1 of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[30] § 2(1) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[31] §§ 3 and 4 of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[32] M. Kępa, *Essence of Self-governance Illustrated with an Example of the Professional Self-government Body of Legal Counsels (in Poland)*, "Lex Localis – Journal of Local Self-Government" 2021, vol. 19(4), p. 905.
[33] Article 50(4) (5) of the Attorneys-at-Law Act.

of Attorneys-at-Law.[34] Given such sparse regulation, it is impossible to determine whether such a budget has a one-sided or double-sided authoritative nature. Is it binding only on the expenditure side, which means that it is not allowed to exceed its planned limit and such an excess entails a penalty, or is it binding also on the side of income? It is likewise impossible to provide an unambiguous answer to the question of whether the budget of a district bar association of attorneys-at-law is subject to the budgetary principles of unity, specificity, and openness formulated in financial law and intended to ensure financial discipline, and whether entities implementing such a budget must be subject to liability for non-compliance with these principles. The principle of unity in its substantive-law aspect requires that there should be no link in the budget between specific income items and specific expenditure items. Where certain income feeds into the budget, no one can predict for what purpose it will be spent. This is to ensure optimal and maximum flexibility in the performance of all tasks conferred upon the district bar association of attorneys-at-law. The principle of unity is generally applied in the budget of the district bar association of attorneys-at-law, with the statutory exception of financing the operation of the attorney training from fees paid by trainees.[35] The principle of specificity is manifested in the application of budget classification, i.e. the division of budget income, revenues, expenditures, and costs into specific groups and categories. This prevents the arbitrary transfer of funds between tasks carried out by the district bar association of attorneys-at-law. The existence and applicability of the feature of transparency of financial activities within the budget helps implement this principle. This, in turn, must clearly and precisely stem from a specific provision of law or of an organizational act.

The solution to this dilemma can be based on two assumptions. First, the legal principle concerned must be rooted *expressis verbis* in a specific provision. Since there are no such normative regulations, the aforementioned principles cannot be deemed applicable, and consequently, there can be no liability for their violation by individuals who implement the budget of the district bar association of attorneys-at-law. After all, there is *nullum crimen sine lege*.[36] The second assumption is based on the concept of systemic interpretation, which assumes that there cannot be a legal vacuum, and if a solution cannot be found within a specific area of law, we are obliged to seek an analogous solution within the entire legal system. At this point, the legislation and achievements of financial law scholars may be helpful.[37] Due to the arguments presented at the outset regarding the circumstances that both

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[34] § 4b of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

[35] Article 321(2) of the Attorneys-at-Law Act; M. Kępa, *Prowadzenie aplikacji radcowskiej – uwagi na temat aspektów finansowych*, "International Journal of Legal Studies" 2023, vol. 14(2), pp. 360–361.

[36] Cf. W. Bujko, *op. cit.*, p. 520.

[37] See M. Weralski, *Polskie prawo finansowe*, Warszawa 1964, pp. 10–11; T. Dębowska-Romanowska, [in:] *Prawo finansowe*, ed. W. Wójtowicz, Warszawa 1996, pp. 69–76; A. Drwiłło (ed.), *Podstawy finansów i prawa finansowego*, Warszawa 2018, pp. 415–418.

the district bar association of attorneys-at-law and the professional self-government of attorneys-at-law as a whole are not classified within the public finance sector, legal rules and principles related to this sector cannot be applied *mutatis mutandis*. According to the fundamental interpretative principle of "the rational legislator", if the rational legislator wanted to introduce such principles into the Polish legal order, they would have done so explicitly. The absence of such regulations means a lack of the intention of the lawmakers to regulate the issue of budgetary principles in the provisions concerning the functioning of the self-government of attorneys-at-law.

Another question emerges at this point: can such rules be introduced by means of organizational acts, such as the aforementioned Rules of Financial Operations of the Self-Government of Attorneys-at-Law or a resolution setting out the basic principles of financial management of the bar association? This question should be answered "yes". In fact, this is already happening to some extent. The provisions of the Rules clearly establish the principles of annual planning and prior adoption of the budget. These principles are also well known in the financial law legislation and scholarly opinion. In accordance with the Rules, the district bar council of attorneys-at-law conducts its financial and economic activities within the framework of an annual budget.[38] The financial management is based on annual budgets presented in the form of a revenue and expenditure plan.[39] The requirement to adopt the budget, not so much before the start of the financial year, but within a certain time limit, namely by 31 March of the financial year, is also clearly and explicitly regulated.[40] Although the Rules refer to the "adoption of the draft budget" and not the "budget", this is the least significant shortcoming of those contained in the regulations on budgetary matters related to the self-government of attorneys-at-law. There is also a surrogate of the principle of specificity of the budget. The district bar council has the right to make appropriate shifts of funds in the budget, provided that the expenses are covered by the proceeds earned.[41]

FORM OF THE BUDGET

The form of the budget of the district bar council is clear – it is included in the resolution of the assembly of the district bar association of attorneys-at-law. It is noted in the literature that budgetary resolutions are a category of planning acts in the budgetary sphere of a non-normative nature.[42] The adoption of the budget of the

[38] § 4b(1) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[39] § 5(1) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[40] § 4b(2) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[41] § 4b(4) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.
[42] M. Tabernacka, *Zakres wykonywania zadań publicznych przez organy samorządów zawodowych*, Wrocław 2007, p. 163.

district bar association of attorneys-at-law is the exclusive competence of the assembly of the district bar association of attorneys-at-law as the most important professional self-government body at the local level and requires the form of a resolution.[43] All the district bar association member attorneys and trainee attorneys (the latter without the right to vote) may take part in the assembly of the district bar association of attorneys-at-law.[44] However, where the number of members of the district bar association of attorneys-at-law exceeds 300, the assembly of the district bar association must be composed of delegates elected at meetings convened for individual regions covered by the activities of the given association.[45] Currently, due to the number of members in all 19 district bar associations of attorneys-at-law, their assemblies are composed of elected delegates. The assemblies of district bar associations of attorneys-at-law are collegiate bodies that make decisions in the form of resolutions.[46]

The adoption of the budget of the district bar association of attorneys-at-law is of a periodic, recurrent nature. This is related to the circumstance of the passage of time included in the budget period and the loss of the validity of the previous budget resolution. The periodicity of adopting budgetary resolutions results from their nature and essence.[47] As already mentioned, the draft budget for a given year should be adopted by 31 March of that year.[48] Until the budget for a particular year is adopted, the district bar council acts on the basis of a draft budget which corresponds to the inflows and expenditure of the district bar association for the relevant period of the previous year.[49] This is how the provisions of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law should be read and understood. Although the Rules use the phrase "draft budget (provisional budget)", the draft budget is not a provisional budget, as indicated above. A provisional budget is a budget adopted for a period of less than one year, usually three months. The assembly of the district bar association of attorneys-at-law does not proceed on a provisional budget, but on a draft budget resolution, and only the draft budget can be the basis for the council to perform financial management. This solution is identical to the principles adopted under financial law.[50]

Another normative flaw should also be pointed out. Until the budget for a given year is adopted, the district bar council operates under the draft budget, provided

[43] Article 50(4) (5) of the Attorneys-at-Law Act; § 4b(1) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

[44] Article 50(1) of the Attorneys-at-Law Act.

[45] Article 50(2) of the Attorneys-at-Law Act.

[46] M. Świstak, *op. cit.*, p. 95 and the literature referred to therein.

[47] M. Kępa, *Statutory Regulation on Financial Management in the Self-Government of Attorneys-at-Law in Poland*, "Teka Komisji Prawniczej PAN Oddział w Lublinie" 2023, vol. 16(2), p. 144.

[48] § 4b(2) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

[49] § 4b(3) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

[50] Article 145 of the Public Finance Act.

that such a draft is prepared and submitted. At present, there is no *panacea* for a situation where such a draft is not prepared and submitted. It is, of course, both a pathological and hypothetical situation, but the law should be comprehensive and must provide solutions to every problem, even potential ones.

As regards the preparation of the draft budget, it should be noted that the council treasurer is responsible for the financial management of the council, and it is the treasurer who prepares the draft budget of the district bar association of attorneys-at-law.[51] There are no regulations indicating the entity competent to adopt a resolution on the draft budget prepared by the council treasurer. The statutory regulations provide an open list of the competences of the council. Thus, it should be assumed that the adoption of the draft budget of the district bar association of attorneys-at-law is one of the responsibilities of the council.[52]

There are no statutory or internal regulation concerning the admissibility and procedure for amending the budget. The district bar council may make appropriate transfers of allocations in the budget only if the expenditure is covered by the inflows received. The above construct is not tantamount to a budgetary amendment.[53] The provision on the transfer of allocation is vague. It seems that the authors of this provision were concerned with the possibility for the council to allocate funds in the budget in a way that would not result in additional indebtedness of the association. However, the use of the phrase "provided that the expenses are covered by the inflows" invalidates this intention. As indicated above, the term "budget inflows" includes both non-repayable income of the budget and revenue of the budget which is of a repayable nature. Therefore, if the council decides to shift allocations and finance additional expenditure, e.g. from a loan, this will lead to additional debt of the association. The correct wording of this provision should be conditional on covering expenses with income earned. In such a situation and in such a form, this provision would respect the balance of budget income and expenditure adopted by the assembly of the district bar association of attorneys-at-law. Thus, in any case where a shift of allocations in the budget of a district bar association of attorneys-at-law leads to an increase in debt, the generally applicable rules should be applied, according to which if a specific form is required to perform a given action, the same form is also required to change that action.

It should be concluded that an amendment to the budget, including during the year, is possible under the general rules for adopting a resolution containing

[51] § 24(1) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law. For more details, see M. Kępa, *Status skarbników w samorządzie radców prawnych*, "Annales UMCS sectio G (Ius)" 2023, vol. 70(1), pp. 119–134.

[52] Article 52(1) in conjunction with Article 52(3) of the Attorneys-at-Law Act. See also T. Scheffler, [in:] *Ustawa o radcach prawnych. Komentarz*, ed. T. Scheffler, Warszawa 2022, pp. 788–789.

[53] § 4b(4) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

the budget. In order to amend a budget adopted in the form of a resolution of the assembly of the district bar association of attorneys-at-law, a resolution of that assembly amending the budget resolution is required, preceded by a resolution of the council on the draft budget amendment.

CONTENT OF THE BUDGET

As already mentioned, the budget of the district bar association of attorneys-at-law, regardless of the absence of a normative definition, constitutes a financial plan. A financial plan is a statement of anticipated inflows and outflows of a given entity in a specified time period in the future. Planning plays a coordinating role in the functioning of a given entity.[54] In view of the above, it is reasonable to present the normatively defined sources of financing the activities of units of the self-government of attorneys-at-law. The Attorneys-at-Law Act provides that the activities of the self-government are financed from membership contributions paid by attorneys-at-law and trainee attorneys-at-law, fees related to proceedings concerning entry on the list of attorneys-at-law and trainee attorneys-at-law, fines, and income from other sources, in particular subsidies and subventions, donations, and inheritances.[55]

Therefore, the inflows constituting income in the strict sense should include contributions from attorneys-at-law and trainee attorneys-at-law, as well as inflows related to proceedings for registration with the list of attorneys-at-law and trainee attorneys-at-law, referred to as fees. However, it should be emphasized that contributions are not any form of levy for the self-government of attorneys-at-law in the meaning of the Public Finance Act. Amounts due as membership contributions are civil-law receivables that may be pursued by the bodies of the self-government of attorneys-at-law to enforce payable receivables against an attorney-at-law in judicial proceedings before a common court.[56] The income, but of a punitive origin, should also include proceeds from monetary penalties as one of the disciplinary penalties imposed on attorneys-at-law.[57]

The above catalogue of sources of financing the activities of the self-government of attorneys-at-law is open, as evidenced by the use of the phrase "income from other sources". These include donations and inheritances obtained on general terms, clearly listed in the Attorneys-at-Law Act, as well as subsidies and subventions. There is no doubt that the terms "donation" and "inheritance" should

[54] A. Rutkowski, *Zarządzanie finansami*, Warszawa 2015, p. 477.

[55] Article 63 of the Attorneys-at-Law Act.

[56] Judgment of the Supreme Administrative Court of 12 April 2022, II GSK 1837/18, LEX no. 3338550.

[57] Article 65(1) (3) and (2) of the Attorneys-at-Law Act.

be used in the meaning of the provisions of the Civil Code.[58] However, as regards the terms "subsidy" and "subvention", they must be given the meaning that was developed in the legislation and by scholars of financial law. These are typical of and applicable only within the public sector. Those concepts do not exist in the area of private law. A subsidy is an expenditure made from the budget of a body governed by public law (the state budget, the budget of a local government unit) and from state earmarked funds for the benefit of third parties, on a sovereign basis and subject to specific accounting rules.[59] Subsidies are defined in a normative way in the Public Finance Act, while subventions are not. It is assumed that the subsidy is a form of non-repayable provision paid to various entities related to their activities. Subventions may be provided by different entities, but most often they involve financial state aid provided to various organizations and associations, including especially local-government ones.[60]

Due to the fact that district bar associations of attorneys-at-law have legal personality, they possess legal capacity and the capacity to perform acts in law, and by their acts they can acquire funds from other sources, including repayable ones, which should be defined as revenue. This group should include loans and credits.

VERIFICATION OF BUDGET IMPLEMENTATION

Due to the nature and importance of the district bar association of attorneys-at-law for this professional self-government body, the law and bye-laws provide for the control of its implementation. In this regard, the literature points out the existence of internal supervision (supervisory acts).[61] Despite the lack of a clear normative definition of the concepts of supervision and control, there are undoubtedly both links and differences between them.

The treasurer of the district bar council of attorneys-at-law is responsible for the financial management of the council and, in particular, for preparing the draft budget and reports on budget implementation.[62] On the other hand, supervision over the financial activities of the district bar council falls within the competence of the statutory body, namely the district audit committee. The committee performs its tasks by conducting audits, which include issuing opinions on the council's accounts and examining documents relating to the council's organisational and

[58] Article 888 ff. and Article 922 ff. of the Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2025, item 1071, as amended).

[59] A. Drwiłło, D. Maśniak (ed.), *Leksykon prawa finansowego*, Warszawa 2015, p. 98.

[60] S. Owsiak, [in:] *Leksykon finansów*, ed. J. Głuchowski, Warszawa 2001, p. 290.

[61] M. Świstak, *op. cit.*, pp. 153, 158, 377.

[62] § 24(1) of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

financial activities.[63] It should be noted that it is not only a formal examination (legality check), but it also concerns the purposefulness, reliability and economy of the activities carried out by the council with the use of the financial resources of the self-government of attorneys-at-law. This results from the essence and features of auditing (impartiality, professionalism, efficiency and effectiveness)[64] and the statutory nature of the body – the district audit committee. This is also confirmed in the practice of units of the professional self-government of attorneys-at-law. On the other hand, the powers of the assembly of the district bar association of attorneys-at-law include approving the reports of the district bar council of attorneys-at-law on the implementation of the budget.[65] This is done in the form of a resolution of the assembly of the district bar association of attorneys-at-law and is referred to as a supervisory act.[66] The assembly of the district bar association of attorneys-at-law approves the financial report of the council no later than by the end of the sixth month after the end of the reporting period, i.e. the calendar year, thus by 30 June of the following year. The report is prepared considering the state as of 31 December of the given year by the end of March of the following year.[67]

The powers of both the assembly of the district bar association of attorneys-at-law and the district audit committee in relation to the bar association's budget should be considered as activities of controlling rather than supervisory activities in the strict sense.[68] Controlling and supervision are categories that have many similarities. However, these categories are fundamentally distinct and should not be equated. Controlling is mainly a material and technical activity and is primarily aimed at establishing the actual state of affairs and comparing it with the desired state. Controlling activities are not subject to the jurisdiction of the courts. Supervisory activities, on the other hand, generally take the form of specific acts that make legally binding decisions on the situation of an individually defined legal entity in a specific factual situation. Supervision means the possibility of managing by issuing, as a rule, binding directives.[69] The measures taken by a supervisory body are intended to have direct legal effect, e.g. by imposing new obligations or revoking powers, or by repealing or declaring invalid certain actions of the supervised entity, and as such may be

63 Article 53 of the Attorneys-at-Law Act; § 30 of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

64 D. Tyrawa, *Dobra administracja a jej kontrola*, [in:] *Nadzór i kontrola w systemie wykonywania administracji publicznej*, eds. M. Czuryk, M. Karpiuk, Warszawa 2010, p. 63 ff.

65 Article 50(4) (5) of the Attorneys-at-Law Act.

66 M. Świstak, *op. cit.*, p. 377.

67 §§ 25 and 27 of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

68 M. Świstak, *op. cit.*, pp. 152–153.

69 J. Starościak, *Zarys nauki administracji*, Warszawa 1971, p. 352 ff.; W.M. Hrynicki, *Kontrola wewnętrzna w administracji publicznej jako instrument sprawnego zarządzania*, "Ius Novum" 2021, no. 3, p. 149.

challenged in court.[70] Under the applicable normative regulations, the actions of both the district audit committee and the assembly of the district bar association of attorneys-at-law regarding the budget at the stage after its implementation do not have these sovereign attributes.

CONCLUSIONS

Normative regulations concerning the budget of units of the self-government of attorneys-at-law are definitely insufficient. This mainly pertains to the internal organizational acts, including, in particular, the basic principles of financial management of the self-government of attorneys-at-law issued by the National Assembly of Attorneys-at-Law and the Rules of Financial Operations of the Self-Government of Attorneys-at-Law issued by the National Bar Council of Attorneys-at-Law. It is in these acts that issues concerning the essence, nature, and content of the budget should be regulated in the first place. It is where the budgetary principles of the self-government of attorneys-at-law should be formulated and precisely laid down. There is no legal obstacle that would prevent incorporating, in an appropriate and adequate manner, the legislative, judicial, and scholarly achievements from the area of public finance law into internal regulations of the professional self-government. As mentioned above, the bodies of the self-government of attorneys-at-law have at their disposal quasi-public funds derived largely from contributions paid by attorneys-at-law and trainee attorneys-at-law, the basis for which is an act of statutory level, namely the Attorneys-at-Law Act.

Due to the need to maintain the maximum level of self-governance by attorneys-at-law and their independence from public authorities, it is a matter to be regulated in an internal organizational act, such as a resolution containing the basic principles of financial management of the self-government of attorneys-at-law and the Rules of Financial Operations of the Self-Government of Attorneys-at-Law. For this reason, statutory regulation of budgetary issues in the Attorneys-at-Law Act, as well as in other acts, should be restricted to a minimum. Otherwise, public authorities could intervene in the activities of the self-government of attorneys-at-law and limit its independence and self-governance. A sufficient and appropriate measure would be to define the conceptual category of the budget of the district bar association of attorneys-at-law in the Attorneys-at-Law Act. Furthermore, it is reasonable to precisely formulate the statutory delegation of powers to the governing bodies of the self-government of attorneys-at-law at the national level (including the National Congress of Attorneys-at-Law) to regulate detailed issues in this area.

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[70] M. Jurzyński, *Kontrola a nadzór w administracji publicznej. Rozróżnienie pojęć na przykładzie wybranych kompetencji wojewody*, "Kortowski Przegląd Prawniczy" 2023, no. 3, p. 42.

The competence of state administration bodies to act and the scope of their sovereign powers to intervene in the sphere of rights and obligations of entities not subordinated to them, including self-governing entities with constitutional and statutory authorization, must be rooted in generally applicable legal provisions. This constitutional principle of legality of activities of state authorities also applies to professional self-government bodies, especially when these perform delegated tasks of state (public) administration.[71] Legal acts adopted by bodies of the self-government of attorneys-at-law can serve as a substantive legal basis for resolving matters only if they have been issued under the authorization contained in the Attorneys-at-Law Act and within the limits of that authorization. Furthermore, neither the existence nor the scope of such authorization can be presumed.[72] The need to define the basis for conducting the financial management of units of the self-government of attorneys-at-law, including at the regional level, where it is reflected annually in the form of a budget, stems from the public-law nature of the tasks performed.

It is absolutely necessary to systematize the terminology regarding the budget management of units of professional self-government of attorneys-at-law, especially with respect to the content of the budget. Terms such as "revenue", "income", "inflows", as well as "costs", "expenses", and "outflows" cannot be further used interchangeably and arbitrarily. This is especially important because it has further implications in tax law provisions, which precisely define these concepts and provide for specific financial and legal consequences for the incorrect classification of financial categories of the self-government of attorneys-at-law. It is also absolutely necessary to distinguish between the concepts of provisional budget and draft budget. These are entirely separate and independent concepts with different scopes.

It would also be advisable to define in the Rules of Financial Operations of the Self-Government of Attorneys-at-Law the essence and principles of the activities of earmarked funds, which may be established by district bar associations of attorneys-at-law within the limits of resources held by them.[73] Currently, there are no regulations providing for whether these funds may be created within the budget or whether they constitute a pool of financial resources outside the budget. There is also no answer to the question of whether expenditure from earmarked funds can be made within the limits of available funds or whether they are subject to requirements of one-sided authoritativeness. In other words, whether the regulations governing such a fund contain a financial plan in which the planned expenditure limit constitutes an absolute limit, regardless of the actual financial resources available in the fund.

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71 Article 7 of the Constitution of the Republic of Poland.

72 Judgment of the Supreme Administrative Court of 4 February 1998, II SA 1449/97, LEX no. 3023743.

73 § 8 of the Rules of Financial Operations of the Self-Government of Attorneys-at-Law.

Another issue, although linked to the budget, is the need to precisely regulate the sources of financing the activities of the self-government of attorneys-at-law, whose inflows are included in the budget and constitute the basis for the activities of units of the self-government performing statutory tasks. Especially the issues of subsidies and subventions, mentioned in the Attorneys-at-Law Act, require further elaboration and specification; this is related to the public-law nature of the tasks being performed.

It is also absolutely desirable to determine the consequences of non-approval of the report of the district bar council of attorneys-at-law on the implementation of the budget by both the district audit committee and the assembly of the district bar association of attorneys-at-law. This is extremely important from the point of view of, on the one hand, the systemic guarantees for the uninterrupted functioning of the bodies of the self-government of attorneys-at-law, and on the other hand, the real consequences of the failure by the bodies of the self-government of attorneys-at-law to comply with the principles of legality, legitimacy and economy.[74]

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ABSTRAKT

Celem artykułu jest analiza komplementarności rozwiązań prawnych dotyczących gospodarki finansowej okręgowych izb radców prawnych oraz tworzonych przez nie i wykonywanych budżetów. Ma to istotne znaczenie w związku z charakterem zadań realizowanych przez samorząd radcowski, dla których budżet i zgromadzone w nim środki stanowią podstawę materialną i finansową. W tym kontekście należy poddać gruntownej analizie istotę, charakter i znaczenie budżetu tej jednostki samorządu radcowskiego. Obecnie obowiązujące regulacje, na poziomie zarówno ustawowym, jak i aktów wewnątrzsamorządowych, należy uznać za niewystarczające. Brak precyzji terminologicznej często uniemożliwia dokonanie niebudzącej wątpliwości wykładni przepisów. Z uwagi na samorządowy charakter wspólnoty radcowskiej nowe regulacje powinny wynikać z unormowań rangi wewnątrzorganizacyjnej, wydanych na podstawie wyraźnej i precyzyjnej delegacji zawartej w ustawie o radcach prawnych.

Słowa kluczowe: budżet; okręgowa izba radców prawnych; środki finansowe; uchwała