

Katarzyna Tomaszewska\*

## Register of Contracts as an Instrument to Optimise the Level of Transparency of the Activities of Political Parties

Rejestr umów jako instrument optymalizacji poziomu jawności działania partii politycznych

The obligation established by the Act of 14 October 2021 Amending the Act – the Penal Code and Certain Other Acts (Journal of Laws item 2054) for political parties to publish and keep the register of contracts up to date is a legal response to the social demand for individuals to have as many instruments as possible that ensure access to public knowledge. Information on the spending of funds granted to political parties from the State budget should be considered as such knowledge. The article primarily aims to interpret the provisions constituting the basis for the functioning of the register and to establish the significance of its maintenance in a democratic state ruled by law.

**Keywords:** register of contracts, political parties, universal right to information, access to public information

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Ustanowiony na mocy Ustawy z dnia 14 października 2021 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, Dz.U. poz. 2054, obowiązek publikowania i bieżącego aktualizowania przez partie polityczne rejestru umów stanowi prawną odpowiedź na społeczne zapotrzebowanie posiadania przez jednostki jak największej liczby instrumentów gwarantujących możliwość pozyskiwania wiedzy publicznej. Za taką wiedzę należy uznać informacje dotyczące wydatkowania przez partie polityczne środków pochodzących z budżetu państwa. Zasadniczymi celami opracowania są interpretacja przepisów będących podstawą funkcjonowania wskazanego rejestru i ustalenie znaczenia jego prowadzenia w demokratycznym państwie prawa.

**Słowa kluczowe:** rejestr umów, partie polityczne, powszechne prawo do informacji, dostęp do informacji publicznej

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\* **Dr Katarzyna Tomaszewska**

University of Wrocław, Faculty of Law, Administration and Economics, Poland  
Uniwersytet Wrocławski, Wydział Prawa, Administracji i Ekonomii, Polska  
[katarzyna.tomaszewska@uwr.edu.pl](mailto:katarzyna.tomaszewska@uwr.edu.pl), <https://orcid.org/0000-0003-4024-0036>

## I. Introduction

Despite the lack of a legal definition, the issue of openness is not unknown to modern man. Its intuitive understanding as knowledge of everything happening around us, as a rule, does not deviate from the meaning presented in the legal doctrine and the case law. Individuals living in a given place and at a given time know the importance of transparency in a democratic state. As Teresa Górczyńska points out, openness is an element of a democratic state ruled by law; it is a testimony to democratising social and political relations.<sup>1</sup> It should permeate the entire functioning of public entities, making the results of their activities available, highlighting the correctness of procedures or, on the contrary, pointing out possible abuses, errors or defects. A special relationship between openness and democracy is pointed out by Agnieszka Piskorz-Ryń, who states that the availability of public information guarantees a democratic system of government, and a democratic system of government is indispensable to the actual implementation of the right to public information.<sup>2</sup> ‘Transparency promotes accountability and provides citizens with information about the actions taken by their government.’<sup>3</sup>

Transparency is a relatively broad concept in terms of meaning. Its essential component is the universal right to public information, referred to in Article 61 of the Constitution of the Republic of Poland.<sup>4</sup> The definition of this right contained therein indicates a broadly defined list of entities obliged to provide information. However, it is impossible to find political parties in this list. This does not coincide with the content of Article 4(2) of the Act of 6 September 2001 on Access to Public Information (hereinafter referred to as: ‘AAPI’).<sup>5</sup> The information obligations of political parties

<sup>1</sup> T. Górczyńska, *Prawo do informacji i zasada jawności administracyjnej. Orzecznictwo Sądu Najwyższego, Naczelnego Sądu Administracyjnego i Trybunału Konstytucyjnego* (Zakamycze, Kraków, 1999), p. 11.

<sup>2</sup> A. Piskorz-Ryń, ‘Jawność i ograniczenia jawności publicznych zasobów informacyjnych’, in G. Szpor (ed.), *Jawność i jej ograniczenia*, vol. V: *Dostęp i wykorzystywanie*, ed. A. Piskorz-Ryń (C.H.Beck, Warszawa, 2015), p. 18. See also Resolution of the Supreme Administrative Court of 11 April 2005, ref. no. I OPS 1/05 and S. Osowski, B. Wilk, ‘Jawność jako zasada demokratycznego państwa prawa’, *Krajowa Rada Sądownictwa*, no. 4 (2016), pp. 27–34.

<sup>3</sup> J. Wanna, *Opening Government: Transparency and Engagement in the Information Age*, in J. Wanna, S. Vincent (eds), *Opening Government: Transparency and Engagement in the Information Age* (ANU Press, Canberra, 2018), <[https://www.jstor.org/stable/j.ctv1rmjnj.5?searchText=Opening+government+Transparency+and+engagement+in+the+information+age&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DOpening%2Bgovernment%253A%2BTransparency%2Band%2Bengagement%2Bin%2Bthe%2Binformation%2Bage%26so%3Drel&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&refreqid=fastly-default%3Aa5fb819382e850eeabb355dd0bac1170&seq=3](https://www.jstor.org/stable/j.ctv1rmjnj.5?searchText=Opening+government+Transparency+and+engagement+in+the+information+age&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DOpening%2Bgovernment%253A%2BTransparency%2Band%2Bengagement%2Bin%2Bthe%2Binformation%2Bage%26so%3Drel&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3Aa5fb819382e850eeabb355dd0bac1170&seq=3)>, accessed 5 June 2024.

<sup>4</sup> The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended). R. Šabić points out that the right to information has been recognised and confirmed as a special right within the framework of fundamental human rights, see R. Šabić, *Right to Free Access to Information of Public Importance (Legal Framework, Implementation Problems, Perspectives)*, <[https://www.jstor.org/stable/resrep32501?searchText=Right+to+free+access+to+information+of+public&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DRight%2Bto%2Bfree%2Baccess%2Bto%2Binformation%2Bof%2Bpublic%26so%3Drel&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&refreqid=fastly-default%3Acab489c1f901040ed7c2b092436da8c&seq=3](https://www.jstor.org/stable/resrep32501?searchText=Right+to+free+access+to+information+of+public&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DRight%2Bto%2Bfree%2Baccess%2Bto%2Binformation%2Bof%2Bpublic%26so%3Drel&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3Acab489c1f901040ed7c2b092436da8c&seq=3)>, accessed 17 June 2024.

<sup>5</sup> Journal of Laws of 2022, item 902.

are specified not only in the content of the AAPI but also in the Act of 27 June 1997 on Political Parties<sup>6</sup> (hereinafter referred to as: ‘APP’). The obligation for political parties to keep a register of contracts, introduced with the entry into force of the Act of 14 October 2021 Amending the Act – the Penal Code and Certain Other Acts,<sup>7</sup> is of significant importance in this regard. It is closely related to the transparency of the activities of political parties and sources of their funding, referred to in Article 11(2) of the Constitution of the Republic of Poland and in Article 23a of the APP.

The main objective of this study is to present the importance of the register of contracts in a democratic state ruled by law. To achieve this objective, a general characterisation of the register of contracts concluded by political parties seems to be helpful as it allows for certain reservations to be raised regarding the way it is legally regulated and to the presentation of data in its contents.

## II. Political parties as entities obliged to provide public information

As already indicated, the constitutional list of entities obliged to provide information does not refer directly and explicitly to political parties. The situation is different as far as the provisions of the AAPI are concerned, where in Article 4(2), political parties are expressly listed among the entities obliged to provide information. This is despite their explicit exclusion from the group of entities performing public duties, as referred to in Article 4(1) of the AAPI. This provision indicates that ‘public authorities and other entities performing public duties are obliged to make public information available...’, and then the provision sets out a specific list of entities. On the one hand, the above wording leads to the conclusion that exclusion from the list laid down in Article 4(1) of the AAPI means that the excluded entities have no competence to perform public duties, but on the other hand, the group of entities included in the list is not closed (the list includes only the examples of entities). This means that in addition to the entities included in the list, there may also be other entities which, despite not being explicitly included in Article 4(1) of the AAPI, perform public duties and are therefore subject to information obligations.<sup>8</sup> However, the inclusion of political parties in this group under Article 4(1) of the AAPI, considering the content of Article 4(2) of the AAPI, is not justified. This would prove that the content

<sup>6</sup> Journal of Laws of 2023, item 1215.

<sup>7</sup> Journal of Laws item 2054.

<sup>8</sup> As D. Fleszer points out, without professional knowledge in the field of constitutional, administrative or financial law, it is impossible to create a list of entities that are obliged to provide public information, see D. Fleszer, ‘Prawo do informacji a partycypacja obywatelska’, *Roczniki Administracji i Prawa*, no. 1 (2019), pp. 91–108. K. Kędzierska points out that the definition of political parties implies that these entities are allowed to carry out public duties, see K. Kędzierska, ‘Zakres podmiotowy udostępnienia informacji publicznej’, in P. Szustakiewicz (ed.), *Dostęp do informacji publicznej* (C.H.Beck, Warszawa, 2016), p. 120. T.R. Aleksandrowicz similarly notes: ‘The legislator has made a tacit assumption that these entities, *ex definitione*, perform the duties of public authorities, that they were established for this purpose’, see T.R. Aleksandrowicz, *Komentarz do ustawy o dostępie do informacji publicznej* (LexisNexis, Warszawa, 2002), p. 93.

of the provisions is irrational. Michał Bernaczyk rightly points out that Article 4(2) of the AAPI is a self-standing provision,<sup>9</sup> separate from Article 4(1) of the AAPI, and creates a different legal basis for the information obligation by specifically indicating the entities without any explicit reference to the performance of public duties or to the disposal of public assets.<sup>10</sup> This does not imply complete disregard for these aspects when determining whether a political party qualifies as an entity obliged to provide access to public information.<sup>11</sup> As indicated by the Constitution of the Republic of Poland, the group of entities obliged to provide information should include, *inter alia*, organisational units to the extent to which they perform the duties of public authorities and manage communal assets or the property of the State Treasury.<sup>12</sup> As the Supreme Administrative Court points out: ‘From the perspective of the provisions of Article 61(1) of the Constitution of the Republic of Poland read in conjunction with Article 4(2) and Article 1(1) of the AAPI, a political party is an entity which, in certain situations, performs “duties of public authorities”, and thus performs duties falling within the broader category of public duties.’<sup>13</sup> This is despite the content of Article 6 of the APP, according to which political parties may not perform duties assigned to public authorities by law, nor may they replace public authorities in the performance of their duties. Moreover, even if it were assumed that a political party does not perform the duties of public authorities, this is not equivalent to the non-application of the second part of the constitutional premise, namely the management of the property of the State Treasury, or, as the AAPI puts it, the disposal of public assets.<sup>14</sup>

At this point, it is worth mentioning the view expressed by Sebastian Gajewski. According to this author, the fact that political parties receive subsidies or grants does not mean that it is permissible to assume that political parties manage public assets because, as the author points out, as soon as such funds are credited to

<sup>9</sup> M. Bernaczyk, *Obowiązek bezwzrostowego udostępniania informacji publicznej* (Wolters Kluwer, Warszawa, 2008), p. 235.

<sup>10</sup> Judgment of the Supreme Administrative Court of 18 January 2023, ref. no. III OSK 6461/21.

<sup>11</sup> See for more information Judgment of the Supreme Administrative Court of 16 December 2022, ref. no. III OSK 5482/21. M. Jabłoński and K. Wygoda emphasise that the tendency to construe the obliged entities in a broad, functional way is still unchanged, see M. Jabłoński, K. Wygoda, ‘Komentarz do art. 4 Ustawy o dostępie do informacji publicznej’, in A. Piskorz-Ryń, M. Sakowska-Baryła (eds), *Ustawa o dostępie do informacji publicznej. Komentarz* (LEX, 2023), para 9.

<sup>12</sup> A different position is taken by M. Bernaczyk, M. Jabłoński, K. Wygoda, who point out that Article 61(1) of the Constitution of the Republic of Poland does not apply to such entities, see M. Bernaczyk, K. Wygoda, M. Jabłoński, *Biuletyn Informacji Publicznej. Informatyzacja administracji* (Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław, 2005), p. 154.

<sup>13</sup> Judgment of the Supreme Administrative Court of 16 December 2022, ref. no. III OSK 5482/21.

<sup>14</sup> Although the conjunction ‘and’ is used in the provisions of the Constitution of the Republic of Poland, and its literal understanding would require the fulfilment of both conditions at the same time, the use of the conjunction ‘or’ in the wording of the provisions of the AAPI makes it permissible to qualify an entity as an entity obliged to provide information on the basis of one of the two premises, that is performing the duties of public authorities or managing public assets; see also Resolution of the Supreme Administrative Court of 11 April 2005, ref. no. I OPS 1/05.

a political party's bank account, they become its private assets.<sup>15</sup> In the light of the above statement, the question arises: how can the obligation of political parties to disclose information regarding the expenditure of subsidies be justified, given that such funds are deemed to become their private property upon being credited to their accounts? The wording of Article 34 of the APP indicates that political parties must prepare annual financial information on the subsidies received and the expenses incurred from them, and the annual financial information is published in the Public Information Bulletin (hereinafter referred to as: 'PIB'). Admittedly, according to a view that is well-established in the legal doctrine, the PIB may contain information beyond the scope of the information required by Article 6 of the AAPI, and even information that does not have any features of public information because, pursuant to the wording of the AAPI, this is not prohibited. Nevertheless, the mere fact that there is an obligation to submit such data to the State Electoral Commission (hereinafter referred to as: 'SEC'), and that such data is subsequently made public, does not constitute grounds for concluding that the spending of such public funds is a private matter of political parties. The unique nature of the subsidies is also determined by the obligation to keep them in separate sub-accounts of bank accounts of political parties (Article 29(4) of the APP). In addition, A. Piskorz-Ryń emphasises that regardless of the source of funds intended for political party's purposes, the manner in which the funds are spent is a public matter.<sup>16</sup> Therefore, any information on this subject has the characteristics of public knowledge that is subject to disclosure.

Moreover, it is worth noting the content of Article 11(1) sentence 2 of the Constitution of the Republic of Poland. According to this provision: 'Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means.' At the same time, the financing of political parties is open to public inspection. It should be emphasised that during over twenty years of the AAPI being in force, these two elements, that is influencing the formulation of the policy of the State by democratic means and the financing of political parties being open to public inspection, were considered to be the sources of the information obligation imposed on political parties. In addition, a provision that has similar content to Article 11(1) sentence 2 of the Constitution of the Republic of Poland is the first provision in the APP, which is the basis for the functioning of political parties (see Article 1(1) of the APP). According to Article 1(1) of the APP, a political party is an organisation which aims to participate in public life by exerting democratic influence on the formulation of the policy of the State or to exercise public authority. Thus, the activities of political

<sup>15</sup> S. Gajewski, 'Informacja o działalności partii politycznych jako informacja publiczna', *Przegląd Prawa Publicznego*, no. 4 (2022), pp. 5–18.

<sup>16</sup> A. Piskorz-Ryń, 'Umowa koalicyjna jako informacja publiczna będąca w posiadaniu partii politycznej. Głos do wyroku Naczelnego Sądu Administracyjnego z dnia 16 grudnia 2022 r., III OSK 5482/21', *Orzecznictwo Sądów Powszechnych*, no. 7–8 (2023), p. 64.

parties in the public sphere are not and should not be questioned. The constitutionally guaranteed right to public information allows access to and review of all documents related to the functioning of political parties, mainly documents related to how political parties obtain and spend their funds.<sup>17</sup>

Due to the broad understanding of the concept of public knowledge, the participation of political parties in elections, the registration of election committees and candidates, the actual or only hypothetical influence of a political party on who is appointed to public offices, the use of public funds in the form of grants or subsidies are all public affairs information about which is subject to disclosure.<sup>18</sup> The activity of political parties in the public sphere, manifested in activities directly influencing the way in which the State power is exercised,<sup>19</sup> determines the existence of the information obligation. The limitation under Article 6(1) points 2 and 3 of the AAPI does not negate this obligation. Although the cited provision refers to the availability of information concerning the organisational and functional sphere of the entities obliged to provide information as listed in Article 4(1) of the AAPI, it should not be forgotten that, similarly to the content of Article 4(1) of the AAPI, the content of Article 6 of the AAPI is also characterised by being open to interpretation. It contains an open list of examples which are only intended to indicate to interested entities what the basic categories of matters information about which is public information are. This is closely related to the principle of universality, which relates to the issue of access to public information and implies a broad grasp of information that fall into the category of public knowledge. Although the limitation resulting from Article 6(1) points 2 and 3 of the AAPI may raise a number of doubts, in particular when compared to Article 4(2) of the AAPI, it does not change the status of political parties as entities obliged to provide information, nor does it prove that a specific type of public information has been created that relates exclusively to them.<sup>20</sup> The above statement deserves to be considered from the perspective of the case law and special provisions that remain outside the scope of application of the AAPI. In its judgment of 16 December 2022, the Supreme Administrative Court took the position that: ‘The indication in Article 6(1) points 2, 3 and 4 of the

<sup>17</sup> M. Bidziński, ‘Jawność finansowania partii politycznych. Analiza porównawcza’, in T. Gardocka (ed.), *Obywatelskie prawo do informacji* (Wolters Kluwer, Warszawa, 2008), p. 181. See also: Judgment of the Supreme Administrative Court of 25 May 2021, ref. no. III OSK 916/21; Judgment of the Supreme Administrative Court of 22 June 2022, ref. no. III OSK 4839/21; Judgment of the Supreme Administrative Court of 13 January 2023, ref. no. III OSK 6566/21; Judgment of the Supreme Administrative Court of 1 March 2024, ref. no. III OSK 214/23.

<sup>18</sup> M. Bernaczyk, *op. cit.*, p. 235; see also: Judgment of the Supreme Administrative Court of 11 April 2005, ref. no. I OPS 1/05; Judgment of the Constitutional Tribunal of 18 July 2012, ref. no. K 14/12, OTK ZU 7A/2012, item 82; Judgment of the Supreme Administrative Court of 25 May 2021, ref. no. III OSK 916/21; Judgment of the Supreme Administrative Court of 22 June 2022, ref. no. III OSK 4839/21.

<sup>19</sup> Judgment of the Supreme Administrative Court of 16 December 2022, ref. no. III OSK 5482/21.

<sup>20</sup> For more information, see Judgment of the Supreme Administrative Court of 16 December 2022, ref. no. III OSK 5482/21.



AAPI that public information is information about the entities and about the rules of operation of the entities referred to in Article 4(1) of the AAPI does not automatically mean that information about the activities of political parties is not public information.<sup>21</sup>

### **III. General characteristics of the register of contracts concluded by a political party**

The concept of introducing a register of contracts as an efficient instrument to prevent corruption has already appeared in the Bill on Transparency in Public Life.<sup>22</sup> Although, at that time, it was planned not as a register of contracts concluded by political parties but as a register of civil law contracts, and the bill was not passed and did not enter into force, the idea underlying the creation of this type of register has remained. This is reflected in the register of contracts concluded by public finance sector entities and in the register of payments and contracts of political parties, introduced by the Act of 14 October 2021.

According to Article 27a of the APP, a political party must maintain and update a register of contracts, which is a summary of information on contracts concluded by the party. This definition, in contrast to the definition of the register of contracts concluded by public finance sector entities,<sup>23</sup> referred to in Article 34a of the Act of 27 August 2009 on Public Finance<sup>24</sup> (hereinafter referred to as: 'PFA'), deserves to be assessed positively. Although the nomenclature used by the APP refers to a register, functionally, this type of data collection has the characteristics of a registry rather than a register.<sup>25</sup> The inclusion of data in the register does not condition anything or lead to the acquisition of a specific status or particular rights, even though the data collection itself is characterised by a high order level.<sup>26</sup> There is also an authority controlling the fulfilment of the obligation to maintain and keep the register

<sup>21</sup> See Judgment of the Supreme Administrative Court of 16 December 2022, ref. no. III OSK 5482/21. See also Article 8 of the APP.

<sup>22</sup> Bill on Transparency in Public Life, <<https://bip.brpo.gov.pl/sites/default/files/ustawa-o-jawnosci-zycia-publicznego-projekt-z%208-stycznia-2018.pdf>>, accessed 12 June 2024.

<sup>23</sup> Under Article 34a(2) of the Act of 27 August 2009 on Public Finance (Journal of Laws 2024, item 1530, as amended), the register of contracts is an ICT system within the meaning of Article 3(3) of the Act of 17 February 2005 on the Computerisation of the Activities of Entities Performing Public Tasks (Journal of Laws of 2024, item 1557, as amended).

<sup>24</sup> Journal of Laws of 2024, item 1530, as amended.

<sup>25</sup> See P. Litwiński, 'Jawność umów w świetle ustawy z dnia 14 października 2021 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw', in M. Błachucki, G. Sibiga (eds), *20 lat ustawy o dostępie do informacji publicznej. Podsumowanie i perspektywy ustawowej regulacji prawa do informacji publicznej* (Wydawnictwo INP PAN, Warszawa, 2022), p. 265.

<sup>26</sup> The APP indicates that the contract search shall be based on the information specified in Article 27a(6)(7).

up to date. However, the criterion of producing significant legal effects as a result of making an entry in the register, as noted by Tomasz Stawecki in his study on public registers, is not met.<sup>27</sup>

The primary role of the contract register is to inform the interested individuals of the existence of a particular contract, the content of which is subject to disclosure under the provisions of the AAPI. While the right to information about a contract and its content was already guaranteed in the AAPI, the lack of information about the existence of a specific contract resulted in requests for access to a certain group of contracts dating from a specific time or concerning a particular matter. This created an opportunity for political parties to invoke the need to process information the disclosure of which requires a specific justification based on the importance of the disclosure process to the public interest. This has weakened the effectiveness of information access requests. The fact that the existence of a specific contract is known and the availability of metadata concerning the contract make it possible to obtain the given contract in its entirety, or facilitate the retrieval of relevant information from the content of the concluded contract.

The minister in charge of public finances, obliged to be guided by the need to guarantee the completeness, uniformity and transparency of data to be disclosed in the register of contracts concluded by a political party, after consulting the SEC, defined the template for the data set in question, thus giving it a standardised character.<sup>28</sup> Taking into account the subject matter, that is considering, on the one hand, the entity responsible for feeding the content of the register and, on the other hand, the category of the recipients of its content, it becomes possible to qualify the data set in question as a public register.<sup>29</sup> This is confirmed by the definition set out in Article 3(5) of the Act of 17 February 2005 on the Computerisation of the Activities of Entities Performing Public Tasks.<sup>30</sup> The register of contracts concluded by a political party is a set of data intended for material and technical operations by entities obliged to provide public information.

Regarding the subject matter, the APP does not determine the nature of the contracts to be included in the register. This implies that it is correct to claim that, from a substantive point of view, the register refers to all kinds of contracts, ‘including contracts with other political parties, associations, foundations, or political movements, such as those that are not financial in nature’.<sup>31</sup> As is clear from the content of Article

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<sup>27</sup> See T. Stawecki, *Rejestry publiczne. Funkcje instytucji* (Lexis Nexis, Warszawa, 2005), pp. 22–27. See also K. Nyczaj, J. Ruszkowski, ‘Definicje, klasyfikacje oraz modele integracji rejestrów publicznych’, *Wiadomości Statystyczne*, no. 12 (2009), pp. 20–38.

<sup>28</sup> See Regulation of the Minister of Finance of 23 May 2022 on the Template for the Register of Contracts Concluded by Political Parties (Journal of Laws item 1119). See the explanatory memorandum to the Bill Amending the Act – the Penal Code and Certain Other Acts, Sejm Paper no. 1252, <<https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=1252>>, accessed 17 June 2024.

<sup>29</sup> See also P. Litwiński, *op. cit.*, p. 265.

<sup>30</sup> Journal of Laws of 2024, item 1557, as amended.

<sup>31</sup> Judgment of the Voivodeship Administrative Court in Gdańsk of 5 April 2024, ref. no. III SAB/Gd 4/24.



27a(4) of the APP, it is possible to inform of the contracts that may be subject to sharing under the AAPI.

In defining the substantive framework of the register, the APP does not apply an amount criterion (lower or upper financial threshold) to classify the contracts that are within its scope. As the APP stresses, this type of a data set is not a complete set of information on contracts. Although it is possible to consider the register an effective tool for acquiring knowledge, it merely records the existence of contracts, relying solely on general information, particularly concerning the conclusion and validity of those contracts.

According to Article 27a(5) of the APP, the contract register includes information on contracts concluded in written, documentary, electronic or another special form. The question arises as to what is meant by ‘other special forms’. Taking into account civil law provisions, it must be pointed out that the wording of Article 27a of the APP refers to contracts concluded in writing, in the form of a notarial deed, in the form with officially certified signatures or in the form with an officially certified date. The information published in the register also includes information on contracts concluded in documentary or electronic form. All aforementioned forms of contracts are special forms<sup>32</sup> (hence, the statutory term ‘and other special forms,’ used at the end of the provision, does not raise any doubts). Zbigniew Radwański points out that the forms presented above constitute the most important group among all types of contract forms.<sup>33</sup> However, these are not all the special forms of contracts that can be distinguished in law. The classification of special forms of contracts may also be based on the criterion of the method for contract execution, the criterion of the consequences of failure to comply with the form or the criterion of the source of the obligation to observe the form.<sup>34</sup> This leads to the conclusion that the list of contract forms in the provision in question is broad, and yet it creates a kind of restriction. Oral agreements are not included in the list despite the fact that they are not prohibited in legal transactions, they produce specific legal effects and are evidenced by invoices or receipts confirming their existence. However, in the light of Article 27a(5) of the AAPI, oral contracts are excluded from the scope of the obligation to ‘describe’ contracts in the register.<sup>35</sup> This does not mean that information regarding oral contracts is subject to confidentiality. Under Article 4(3) of the AAPI, information that is held by the obliged entity, that has not been excluded from the disclosure process under Article 5 of the AAPI and that does not fall within the scope of application of other provisions, is subject to obligatory disclosure. This

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<sup>32</sup> Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna* (C.H.Beck, Warszawa, 2015), pp. 236–237.

<sup>33</sup> *Ibidem*.

<sup>34</sup> K. Górńska, ‘Czynności prawne na tle innych zdarzeń cywilnoprawnych’, in E. Gniewek, P. Machnikowski (eds), *Zarys prawa cywilnego* (C.H.Beck, Warszawa, 2014), pp. 166–167.

<sup>35</sup> I am following P. Litwiński’s position here; see P. Litwiński, *op. cit.*, p. 272.

is not equivalent to limiting the obligation to provide access to specific documents recorded on paper or electronically. This is also the difference between public information subject to disclosure under the AAPI and access to documents of the EU institutions and bodies, referred to in Regulation 1049/2001.<sup>36</sup> In addition, the so-called intermediate documents (bills, invoices) related to the existence and implementation of a given contract are an essential source of information about its content. They ‘deserve’ to be made public, provided that the limitation on their availability stemming from the obligation to respect public and private secrets does not apply. Notwithstanding the above, it should also be pointed out that, as follows from the content of Article 27a(7) of the APP, information on the follow-up to a contract, that is its supplementation, amendment, termination, withdrawal from it or its expiration, is also made available in the register.

The list of information to be made public in the register is specified in Article 27a(6) of the APP. Due to the way it is presented, it should be stated that this is a closed list. The register of contracts concluded by a political party contains the number of the contract (if assigned), as well as information about the date and place of its conclusion, its duration, the parties to the contract, the subject and value of the contract and the mode of its conclusion. This information makes it possible to find a specific contract, which can then become the subject of a request to disclose its content. Although the content of Article 27a of the APP suggests that information about a particular contract should be presented broadly, it should be noted that this closed list of contract information that can be found in the register may be subject to limitations due to the content of Article 5 of the AAPI.<sup>37</sup> Where a restriction is invoked on grounds of personal privacy or business secrecy, as referred to in Article 5(2), sentence 1 of the AAPI, it must be ensured that the principle of specific labelling of information published in the PIB (Article 8(5)(6) of the AAPI) is properly complied with. In line with this principle, the application of a restriction to the publication of data in the register requires specifying the scope of data that is not to be made available, indicating the legal basis for the restriction of access and the person or body that has imposed the restriction, as well as indicating the interest of the entity (person) because of which the publication has been excluded.<sup>38</sup> At the same time, due diligence should be exercised when indicating in the interest of which entity (person) the publication has been excluded, so that the reference to the interests of the so-called protected entity (person) does not make the restriction on access to data that was applied to be illusory in practice.

<sup>36</sup> See Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (Official Journal of the European Union L 145 of 31.5.2001, pp. 43–48).

<sup>37</sup> Under Article 27a(4) of the APP, the provisions of Article 5(1)(2)(2a) of the AAPI shall apply *mutatis mutandis*. See also R. Horbaczewski, *Partie polityczne będą od lipca raportować wpłaty i umowy, ale jest haczyk*, <<https://shorturl.at/gAlax>>, accessed 9 May 2025.

<sup>38</sup> I am following P. Litwiński’s position here; see P. Litwiński, *op. cit.*, p. 274.

#### IV. Method for presenting the content of the register of contracts

As is clear from the wording of Article 27a(3) of the APP, a political party shall make available and keep up to date the created register of contracts on its PIB website on an ongoing basis. This is partly due to its electronic nature as it is maintained in an ICT system (see Article 9(2) of the APP). This leads to the conclusion that the content of the register is another example, in the Polish legal system, of information that is subject to mandatory publication on an electronic ICT publication website. The PIB should contain the information specified in Article 6 of the AAPI, as well as other data required by specific legal provisions.

Unlike the general provisions of the AAPI, the APP unambiguously defines the deadline for entering information in the register of contracts concluded by a political party. Despite the principle of priority of the non-request mode according to which the publication of information in the PIB is of fundamental (primary) importance (Article 10 of the AAPI), the AAPI has not set a specific deadline by which the information should be published. This implies the need to refer to the general provisions of the AAPI which provide for the principle of promptness and timeliness in the disclosure of public information (Articles 10(2) and 13(1) of the AAPI). The content of the APP makes it possible to claim that the provision concerning the publication of data in the register repeats, in principle, the content of the provisions of the AAPI on the publication of information in the PIB. According to Article 27a(8) of the APP, information shall be published without undue delay but not later than within 14 days from the date of the conclusion of a contract or the occurrence of a circumstance that has led to its amendment, supplementation, termination, expiration or withdrawal from it. Piotr Sitniewski, who distinguishes between the terms ‘promptly’ and ‘without undue delay’ (both used in the AAPI), specifies that the time limit ‘without undue delay’ is counted in days.<sup>39</sup> At the same time, the former time limit may be counted in hours.<sup>40</sup> Accordingly, when specifying the deadline for the disclosure, the APP uses the indefinite term ‘without undue delay’ to denote the minimum timeframe, and the term ‘14 days’ to indicate the final deadline. Despite referring to the provisions of the AAPI, the APP does not permit a political party to extend the deadline for disclosure of public information. The deadline extension is closely related to the SEC’s application of the warning measure. In such a case, an additional 7-day deadline is set for a political party to fulfil its information obligation (Article 27b of the APP).

The above analysis confirms that the power to supervise compliance with the obligation to publish information in the register has been vested in the SEC. There is no provision in the AAPI equivalent to Article 27b of the APP. Within the framework of the AAPI, it is impossible to find rules that would indicate a body supervising the

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<sup>39</sup> P. Sitniewski, *Dostęp do informacji publicznej. Pytania i odpowiedzi. Wzory pism* (Wolters Kluwer, Warszawa, 2016), p. 93.

<sup>40</sup> *Ibidem*.

fulfilment of the obligation to publish information in the PIB (information under Article 6 of the AAPI) or at least carrying out an inspection to verify whether the obligation has been fulfilled. In any case, it is not the minister in charge of information technology that is such a body, despite the fact that the minister creates the PIB homepage, collects relevant data on it and provides a centralised system of access to public information (Article 9(1)(4) of the AAPI). Failure to publish information on the PIB or the irregularity of publication of information on the PIB are not, pursuant to the AAPI, automatically sanctioned. This is because, in the light of the general provisions of the AAPI, information that has not been made available in the PIB is made available upon request. In this way, the interested party is not entirely deprived of the opportunity to obtain public information. The penalty is imposed only when all means of obtaining information to which an individual is entitled have been exhausted (see Articles 3 and 7 of the AAPI) and thereafter the instruments for challenging negative decisions, for example decisions not to provide public information, of the entity obliged to provide it have been exhausted. This way of penalising the failure to fulfil the information obligation also shows the difference between the content of Article 27c of the APP and the general provisions: the AAPI. According to Article 27c of the APP, an entity that fails or neglects to fulfil the obligation to maintain, keep up to date or make available a register of contracts, or disseminates false information, is subject to a financial penalty of 50% of the value of the subject of the contract covered by the obligation (but not less than PLN 1,000 and not more than PLN 30,000). The financial penalty may be imposed again. It is worth noting that the criminal sanctions provided for in the event of failure to comply with the obligations related to keeping the register of payments or the register of contracts concluded by a political party were modified in the finally adopted APP. The bill tabled by MPs provided that: ‘Whoever does not fulfil or prevents others from fulfilling the obligation to maintain (...) the register of contracts referred to in Article 27a(1), or provides false data therein, shall be subject to a financial penalty, a community sentence or deprivation of liberty for up to 2 years.’<sup>41</sup> The proposed sanctions were similar to those included in the adopted AAPI. Accordingly, the mitigation of the discussed sanctions within the APP and their limitation solely to financial penalties appears unwarranted, given that the existence of the data set (register) is intended to facilitate individuals’ access to information upon request. Under Article 2(1) of the AAPI, everyone has the right to access public information.

## V. Summary

The legally guaranteed transparency of the activities of public entities allows the public to control the current activities of the authorities in their daily functioning.

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<sup>41</sup> See the bill tabled by MPs amending the Act – the Penal Code and certain other acts, Sejm Paper no. 1252, <<https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=1252>>, accessed 17 June 2024.

The national law provides for several institutions and solutions that form a set of instruments for social control of the public authorities. Most of them have been established by the provisions of the AAPI. This group also includes the registers of contracts concluded by political parties, which have been in place since 1 July 2022 and which are a measure to counter corruption and prevent similar irregularities.<sup>42</sup> This is particularly important in view of the long-standing reluctance of political parties to share information about their current activities financed by multi-million subsidies. It is not mandatory to disclose this type of information in the PIB, and making it available upon request is often met with resistance of political parties that is difficult to overcome. Monika Augustyniak describes the provisions on the registers of contracts concluded by political parties as the first of five groups of anti-corruption rules.<sup>43</sup> The knowledge that there are new ways of providing public information leads to an increase in public confidence not only in the ruling parties but also in all other political parties, operating on the basis of the principle of political pluralism.<sup>44</sup>

Despite some reservations related to the nomenclature used in the APP and insufficient regulation of the registers of contracts concluded by political parties, it should be pointed out that its existence facilitates access to public information upon request and, thus, strengthens the constitutional principle of political parties financing being open to public inspection. This is significant in view of rare (because it is done only once a year) publication by the SEC of information on the spending of public funds by political parties (see Article 34(5) of the APP).

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<sup>42</sup> See Judgment of the Voivodeship Administrative Court in Gdańsk of 5 April 2024, ref. no. III SAB/Gd 4/24.

<sup>43</sup> M. Augustyniak, *Instrumenty antykorupcyjne w samorządzie terytorialnym* (LEX, 2022), chapter 3, part 3. See also Judgment of the Supreme Administrative Court of 19 December 2017, ref. no. I OSK 661/17.

<sup>44</sup> The media, NGOs, entrepreneurs and ordinary citizens can thus request and receive information and, in that way, learn about abuses of power in various areas, see A. Földes, M. Martini, M. Jenkins, *Right to Information in International Law*, <[https://www.jstor.org/stable/resrep20597.4?searchText=Right+to+information+in+international+law&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DRight%2Bto%2B%2Binformation%2Bin%2Binternational%2Blaw%26so%3Drel&ab\\_segments=0%2Fbasic\\_search\\_gsv2%2Fcontrol&refreqid=fastly-default%3A04e91a2313caa2c8ca3c9662382052ab&seq=1](https://www.jstor.org/stable/resrep20597.4?searchText=Right+to+information+in+international+law&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DRight%2Bto%2B%2Binformation%2Bin%2Binternational%2Blaw%26so%3Drel&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3A04e91a2313caa2c8ca3c9662382052ab&seq=1)>, accessed 17 June 2024.

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