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From Democracy to Budgetocracy: How Budget Law Can Reconfigure the Constitutional Order

Od demokracji do budżetokracji: Jak prawo budżetowe może przekształcać porządek konstytucyjny

Abstract

This article examines the phenomenon of budgetocracy, understood as the use of the state budget as a tool for exerting financial pressure on constitutionally independent bodies. Focusing on the Polish case, it analyses the unprecedented elimination of funds for the remuneration of judges of the Constitutional Tribunal in the Budget Act for 2025. The article argues that financial independence constitutes a fundamental component of judicial independence and that unrestricted parliamentary control over public financing enables de facto modification of the constitutional order through ordinary legislation. Drawing on constitutional analysis and European standards, the study demonstrates that such practices undermine the separation and balance of powers and threaten the foundations of the rule of law.

Key words: budgetocracy; budgetary autonomy; Constitutional Tribunal; power of the purse; constitutional safeguard

Streszczenie

Niniejszy artykuł analizuje zjawisko budżetokracji, rozumianej jako wykorzystywanie budżetu państwa jako narzędzia wywierania presji finansowej na konstytucyjnie niezależne organy. Skupiając się na przypadku Polski, autor bada bezprecedensowe wyeliminowanie środków

na wynagrodzenia sędziów Trybunału Konstytucyjnego w ustawie budżetowej na rok 2025. W artykule argumentuje się, że niezależność finansowa stanowi fundamentalny składnik niezawisłości sędziowskiej, a nieograniczona kontrola parlamentarna nad finansami publicznymi umożliwia de facto modyfikację porządku konstytucyjnego za pomocą zwykłego ustawodawstwa. Opierając się na analizie konstytucyjnej oraz standardach europejskich, opracowanie wykazuje, że tego rodzaju praktyki podważają zasadę podziału i równowagi władz oraz zagrażają fundamentom praworządności.

Słowa kluczowe: budżetokracja; autonomia budżetowa; Trybunał Konstytucyjny; władza nad finansami (power of the purse); gwarancje konstytucyjne

1. Introduction

The recent years of Polish history have given renewed relevance to the ancient Chinese curse: “May you live in interesting times.” Undoubtedly, from the perspective of a scholar specializing in constitutional financial law, the present moment is exceptionally interesting, as the Budget Act has become yet another “victim” of the constitutional crisis ongoing since 2015. Public authorities whose financial plans must be included in the Budget Act have effectively become hostages of this dispute.

As a consequence, the budget act increasingly ceases to perform the role assigned to it by the constitutional framers—that of the state’s financial plan—and instead becomes another instrument in the hands of the legislative and executive branches, enabling their dominance over the judiciary and over other constitutional safeguards. In a situation of escalating political conflict, constitutional custom and principles inherent in the democratic rule-of-law state play an ever-diminishing role, while the parties involved make instrumental use of the formal powers legally available to them.

The centrist-liberal coalition governing Poland since 2023 proved unable, through statutes regulating the organisation and procedure of proceedings, to subordinate the Polish Constitutional Tribunal (hereinafter also referred to as the Tribunal or the CT), in which until December 2024 all fifteen judges had been elected by the previous conservative parliamentary majority. Consequently, the political confrontation with

the Tribunal was shifted to an instrument that—pursuant to Article 224(1) of the Constitution¹—the President of the Republic of Poland (a position held since 2015 by candidates affiliated with the conservative camp) cannot veto: the budget act.

During the parliamentary proceedings, the budget of the Constitutional Tribunal was reduced by PLN 10.8 million in comparison with the revenue and expenditure plan included in the governmental draft budget (approximately one-sixth of the Tribunal's total budget²). The legislator openly acknowledged that the purpose of this reduction was to deprive the Tribunal of funds necessary to pay judicial salaries, thereby effectively attempting to “starve” the institution financially.

This unprecedented practice is of particular interest from the perspective of constitutional financial law. It demonstrates how, through an ostensibly “ordinary” statute, the constitutional system may in practice be reshaped—by hindering or even preventing constitutional bodies from exercising their constitutionally assigned powers. It is self-evident that if the Constitution provides, first, that a given authority exists, and second, that it is vested with specific competences which it is obliged to exercise, then adequate financial resources must be allocated to that authority within the state budget. Otherwise, it would be unable to employ administrative staff, maintain appropriate infrastructure, or—particularly in the case of the Constitutional Tribunal—to remunerate judges whose salaries, pursuant to Article 195(2) of the Constitution, are subject to special constitutional guarantees.

The author refers to this phenomenon as budgetocracy. The purpose of this article is therefore to analyse the phenomenon of budgetocracy—that is, the modification of the constitutional structure of the state through the use of the budget act. This analysis is conducted on the example of Poland and the omission, in the Budget Act for 2025³, of funds designated for the remuneration of judges of the Constitutional Tribunal.

The Polish case was selected deliberately. Attempts by the legislative and executive branches to exert influence over the judiciary are not new in the history of democratic systems. Likewise, the manipulation of court budgets and judicial remuneration has occurred even in states commonly regarded as liberal rule-of-law democracies. The Polish case, however,

¹ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997 No. 78, item 483).

² Judgment of the Constitutional Tribunal of 6 May 2025, case no. K 2/25, OTK-A 2025, item 51.

³ Budget Act for the Year 2025 of 9 January 2025 (Journal of Laws 2025, item 63).

is unprecedented. It does not concern the freezing of judicial salary increases, nor even a nominal reduction thereof, but rather their complete elimination from the state budget. No political actor in contemporary history has gone this far.

This is all the more striking given that the case concerns Poland—a Member State of the European Union and a member of the Council of Europe—a state which, in Article 2 of its own Constitution, defines itself as a democratic state governed by the rule of law. Moreover, the budgetary cuts in question were adopted by the liberal coalition governing since 2023, whose leaders identified the restoration of the rule of law as one of the central objectives of their administration and explicitly committed themselves to this goal before European Union institutions⁴.

The research applies a dual methodology: dogmatic-legal analysis and process tracing. The former involves interpretation of the constitutional provisions underpinning the Constitutional Tribunal—particularly Articles 188–197 of the Constitution—as well as the principles governing its financing from the state budget. The model of financing the Tribunal (and other judicial authorities) will be compared with models adopted in other states. The analysis also addresses the constitutional character of the budget act in light of Article 219 of the Constitution, as well as the jurisprudence of domestic and international courts and tribunals concerning judicial remuneration as a guarantee of judicial independence.

This analytical framework serves as a form of “stress test,” revealing how formally sound institutional arrangements may conceal latent vulnerabilities that can be exploited by legislative and executive authorities. Process tracing is employed to reconstruct the sequence of legislative and political developments since 2024 that led to a structural repositioning of the Constitutional Tribunal within the constitutional order.

⁴ [4] Polish Ministry of Justice, *Polish Minister of Justice presents Action Plan for restoring the rule of law*, 20 February 2024, <https://www.gov.pl/web/justice/polish-minister-of-justice-presents-action-plan-for-restoring-the-rule-of-law> [accessed: 6 August 2026]; European Commission, *Poland's efforts to restore rule of law pave the way for closing the Article 7 procedure*, IP/24/1222, 20 February 2024, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_24_1222/IP_24_1222_EN.pdf [accessed: 6 August 2026]; European Parliament, *Resolution on the Commission's 2023 Rule of Law report* (Report on the Commission's 2023 Rule of Law Report), European Parliament document TA-9-2024-0108_EN, 28 February 2024, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0108_EN.html [accessed: 6 August 2026].

2. The Budget as a Guarantee of Judicial Independence

International scholarly literature emphasises that judicial independence has not only an institutional dimension—understood as the prohibition of interference by other branches of power in adjudication—but also a material dimension⁵. The latter requires such shaping of the judge’s legal status as to ensure resilience against economic and political pressure. Judicial remuneration and the budget of the judiciary therefore do not constitute an ordinary element of fiscal policy, but rather one of the key instruments safeguarding the principle of the rule of law.

This issue has been addressed in numerous documents of the Council of Europe, including the Magna Carta of Judges⁶, the European Charter on the Statute for Judges⁷, and reports of the Venice Commission⁸, as well as in documents of the United Nations⁹ and judicial associations. These bodies consistently stress that excessively low or arbitrarily determined judicial remuneration fosters corruption and violates the requirement of judicial independence.

In practice, this standard is expressed through three elements:

1. Level of remuneration — it must be commensurate with the importance of the office, meaning that it should ensure a dignified standard of living in light of the economic conditions of the given state, including in relation to average wages and the remuneration of other “comparable public functions”.
2. Stability and predictability — mechanisms for determining and adjusting judicial remuneration should be based on clear, objective, and preferably automatic criteria (such as inflation indices or public-sector wage indices), in order to minimise annual political “battles over pay rises”.

⁵ K. Bodnaruk, *Multidimensional Judicial Independence*, Chapel Hill 2016; C. Grabenwarter, *Separation of Powers and the Independence of Constitutional Courts*, Report prepared for the Venice Commission, Strasbourg 2011; D. Kochenov, M. Bonelli, *The EU Rule of Law Crisis: From Indeterminacy to Vulnerability*, „German Law Journal” 2020, vol. 21, pp. 1–20.

⁶ Magna Carta of Judges (Fundamental Principles), Consultative Council of European Judges (CCJE), adopted on 17 November 2010.

⁷ European Charter on the Statute for Judges, Council of Europe, adopted in Strasbourg on 8–10 July 1998.

⁸ Venice Commission, *Report on the Independence of the Judicial System Part I: The Independence of Judges*, adopted by the Venice Commission at its 82nd Plenary Session, Venice, 12–13 March 2010.

⁹ UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers: Visit to Uzbekistan, UN Doc. A/HRC/44/47/Add.1 (20 April 2020).

3. Resistance to instrumentalisation — the judicial budget must not be used as a tool of pressure or retaliation against the judiciary, for example through selective freezing of judges' salaries or through drastic cuts that render the exercise of constitutional functions impossible.

In this sense, the judiciary's budget—although formally a part of the state budget adopted by parliament—performs the function of a constitutional safeguard. It limits the political discretion of the parliamentary majority wherever financial restrictions could in practice undermine the independence of the third branch of government.

The issue of judicial remuneration has also been addressed by the Court of Justice of the European Union (hereinafter: the CJEU). Case C-64/16 *Associação Sindical dos Juizes Portugueses*¹⁰ constitutes a landmark in the development of the EU standard of protection of the material dimension of judicial independence. In those proceedings, the Portuguese association of judges of the Court of Auditors challenged national provisions introducing temporary salary reductions across the entire public sector as part of an austerity programme adopted after the financial crisis, which also affected judges.

According to the applicants, those measures infringed judicial independence by interfering with one of its core safeguards—stable and adequate judicial remuneration. The Supremo Tribunal Administrativo referred a preliminary question to the CJEU, asking whether such reductions were compatible with Article 19(1) TEU¹¹, which requires Member States to ensure effective judicial protection in the fields covered by EU law, read in conjunction with Article 47 of the Charter of Fundamental Rights.

For the first time, the Court explicitly conferred upon Article 19(1) TEU the character of a general “rule of law clause”, holding that all national courts which may apply EU law must satisfy the requirements of independence and impartiality. In this context, the Court formulated the pivotal statement contained in paragraph 45 of the judgment, according to which “the receipt by members of the judiciary of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence.”

¹⁰ Court of Justice of the European Union (Grand Chamber), *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, Case C-64/16, EU:C:2018:117 (27 February 2018).

¹¹ Treaty on European Union (consolidated version), OJ C 202, 7 June 2016, pp. 13–45.

Judicial remuneration was thus clearly classified not as a social benefit, but as an essential guarantee—one of the structural pillars of judicial independence. The CJEU further clarified that the level of remuneration must be sufficiently high to shield judges from economic pressure and the risk of corruption, and that the mechanism for its determination must be based on legal provisions and objective, stable, and predictable criteria. This excludes discretionary, year-to-year manipulation of judges' salaries depending on the current political interest of the governing majority.

In that case, the Court also formulated a test for permissible derogations, composed of three elements. First, salary reductions must have a clear statutory basis and rely on general, objective criteria—for example, a uniform percentage reduction applicable to all groups within the public sector—so as to prevent selective “punishment” of judges while leaving other professional groups unaffected. Second, the measures must pursue a legitimate objective of general interest (such as the correction of an excessive budget deficit in conditions of an exceptional economic crisis) and apply in a non-discriminatory manner to the entire public sector, rather than being clearly targeted solely at the judiciary. Third, the reductions must be strictly temporary and must not, in the longer term, undermine the standard of commensurability of remuneration with the judicial function—that is, they must not lead to a lasting lowering of salaries below the threshold necessary to ensure judges' economic independence.

Scholarly literature has rightly observed that in this manner the CJEU “breathed life” into Articles 2 and 19 TEU, transforming the abstract reference to the rule of law into concrete, judicially reviewable standards concerning judges' working conditions, including their remuneration¹².

In Case C-216/18 PPU *Minister for Justice and Equality*¹³, the Irish High Court examined the execution of a European Arrest Warrant issued by a Polish court and, in light of the ongoing judicial reforms in Poland, raised doubts as to whether the person concerned would not be exposed to a breach of the right to a fair trial before an independent and impartial tribunal, guaranteed by Article 47 of the Charter and Article 6 ECHR¹⁴.

¹² L.D. Spieker, *Breathing Life into the Union's Common Values: On the Judicial Application of Article 2 TEU in the EU Value Crisis*, „German Law Journal” 2019, vol. 20, no. 8, pp. 1182–1213.

¹³ Court of Justice of the European Union (Grand Chamber), *Minister for Justice and Equality v LM* (Deficiencies in the system of justice), Case C-216/18 PPU, EU:C:2018:586 (25 July 2018).

¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Rome, 4 November 1950, as amended by Protocols Nos. 11 and 14.

The CJEU expressly recalled that the requirement of judicial independence encompasses not only formal guarantees (such as irremovability or appointment procedures), but also the material conditions for the exercise of judicial office—particularly the stability of remuneration and protection against repressive measures interfering with the status of judges. Although in Case C-216/18 the Court did not conduct a detailed assessment of salary regulations, it applied the logic developed in Case C-64/16: where the overall design of the system—including the methods of appointment, promotion, and remuneration of judges—gives rise to serious doubts as to their independence and impartiality, this directly affects the assessment of the risk of infringement of Article 47 of the Charter within the framework of the European Arrest Warrant procedure.

It should further be noted that the issue of judicial remuneration has also been addressed by national courts and constitutional tribunals in EU Member States. By way of example, the German Federal Constitutional Court (judgment of 4 May 2020¹⁵), the Slovenian Constitutional Court (decision as of 1 June 2023¹⁶).

A similar position was adopted by the Polish Constitutional Tribunal in its judgment of 8 November 2023 (case K 1/23¹⁷), in which it declared unconstitutional the provisions of the so-called “accompanying budget act” for 2023 that, for the third consecutive year, reduced the increase in judicial remuneration in relation to the statutory indexation mechanism. In that judgment, the Tribunal emphasised that the principles governing the determination of judicial salaries must exclude any form of discretion on the part of the legislative and executive branches.

All of the documents and judgments cited above underline the central role of judicial remuneration in safeguarding the independence of the “third branch”. What is of particular importance, however, is that they all concern regulations freezing or reducing the growth of remuneration—that is, phenomena considerably less “drastic” than the one analysed in the present article.

¹⁵ Federal Constitutional Court of Germany (Bundesverfassungsgericht), judgment of 4 May 2020, 2 BvL 4/18, Reports of the Federal Constitutional Court (*BVerfGE*) 155, 1

¹⁶ Constitutional Court of the Republic of Slovenia, decision of 1 June 2023, case no. U-I-772/21.

¹⁷ Judgment of the Constitutional Tribunal of 8 November 2023, case no. K 1/23, OTK-A 2023, item 80.

3. Unity and Universality of the Budget vs. Judicial Independence – Financing of Judges in the Polish Legal System

Although, pursuant to Article 173 of the Constitution, courts and tribunals constitute a separate power and are independent of the other branches, their financial plans are incorporated into the Budget Act—that is, an act of universally binding law adopted by the Sejm and signed by the President. This means that the financial dimension of the independence of courts and tribunals ultimately depends primarily on representatives of the legislative branch, who hold the power of the purse.

Pursuant to Article 219 of the Constitution, the Budget Act constitutes the basic financial plan of the state. Paragraph 1 of this provision states that the Sejm adopts the state budget for a given fiscal year in the form of a Budget Act. Paragraph 3 further provides that this act includes the “revenues and expenditures of the state”. From these provisions, Polish legal doctrine has derived the principle of unity¹⁸.

From the above provisions it follows that, for a given fiscal year, only one budget and only one Budget Act may be adopted. Consequently, it is postulated that the revenues and expenditures of the state should be planned within a single legal act. For this reason, the Constitution does not allow for the existence of any other financial plans that would be competitive with the Budget Act. In Polish public finance doctrine, this has been referred to as the principle of formal unity¹⁹.

Article 219 of the Constitution also gives rise to the principle of universality (or completeness). In its broad understanding, this principle requires that the entirety of the public financial plan be approved by the legislative authority, and thus enacted in the form of a statute. When combined with the principle of formal unity, it follows that the state’s

¹⁸ T. Dębowska-Romanowska, *The Concept of the Principles of Unity and Universality of the Budget in Legal Scholarship and Their Significance for Determining the Subjective and Objective Limits of the Budget Act*, „*Studia Prawno-Ekonomiczne*” 1978, vol. 21; T. Dębowska-Romanowska, *Commentary on Article 219*, [in:] *Constitution of the Republic of Poland. Volume II: Commentary on Articles 87–243*, M. Safjan, L. Bosek (eds.), Warsaw 2016.

¹⁹ J. Szolno-Koguc, *Principles of Budgetary Management in Theoretical Perspective*, „*Annales Universitatis Mariae Curie-Skłodowska. Sectio H. Oeconomia*” 2005, no. 39, p. 7.

financial plan should be adopted in the form of a single statute—the Budget Act²⁰.

Constitutionally justified exceptions to the principle of universality concern primarily the financial plans of units of local self-government, which enjoy constitutionally guaranteed budgetary autonomy. In light of constitutional provisions, it is also permissible to exclude from the scope of the Budget Act the financial plans of higher education institutions or cultural institutions. Neither the constitutional framers nor the ordinary legislator, however, decided to exclude—by way of exception—the budgets of judicial authorities, including the Constitutional Tribunal, from these principles.

Like other central state authorities, the Constitutional Tribunal is a state budgetary unit. Pursuant to Article 11 of the Public Finance Act²¹, budgetary units are organisational entities without legal personality that finance their expenditures directly from the state budget and transfer all collected revenues to the state budget account.

This budgetary subordination to parliament, and the necessity of including the Tribunal's financial plan in the Budget Act, is to some extent compensated by the institution of so-called budgetary autonomy. Pursuant to Article 139(2) of the Public Finance Act, when preparing the annual draft Budget Act, the Minister of Finance is obliged to include the revenue and expenditure plan submitted by the President of the Constitutional Tribunal without modifying the proposed figures. Moreover, during the fiscal year, the Minister of Finance may neither block the Tribunal's expenditures nor subject the institution to spending reviews or audits, thereby ensuring its formal independence from the executive branch.

However, the actual amount of funds allocated to the Tribunal ultimately depends on the Sejm, which adopts the annual Budget Act and retains the power to amend the government's budget proposal. In this manner, the legislature is capable of influencing the Tribunal's operational capacity.

Furthermore, the Constitution affords special protection to the remuneration of judges of the Constitutional Tribunal. Pursuant to Article

²⁰ P. Pest, *Chapter II: The Principle of Completeness (Universality) of the Budget (the Principle of Parliamentary Authorisation of State Revenues and Expenditures)*, [in:] *Budgetary Principles and Contemporary Challenges*, Warsaw 2025.

²¹ Public Finance Act of 27 August 2009 (consolidated text: Journal of Laws 2025, item 1483, as amended).

195(2) of the Constitution, judges of the Constitutional Tribunal are guaranteed working conditions and remuneration corresponding to the dignity of their office and the scope of their duties. An analogous provision is contained in Article 178(2) of the Constitution with regard to judges of ordinary courts.

It should be emphasised that this solution is by no means atypical in comparative perspective. Control over the public purse belongs to parliament, regardless of whether state financial plans are adopted—as in Poland—in a single legal act, or in separate legislative instruments. In a report of the Venice Commission, it was explicitly stated that “funding of courts is part of the State budget presented to Parliament by the Ministry of Finances²².”

In other states, mechanisms exist—similarly to those in Poland—aimed at preventing the executive branch from interfering with the budgets of judicial authorities. By way of example, in the United States there operates a mechanism that legally prohibits the President from altering the budget proposal prepared by the judiciary prior to its submission to Congress. In the United Kingdom, the Supreme Court has concluded a special concordat with the government, under which the Lord Chancellor undertakes to transmit the Court’s budget request to the Treasury unchanged, acting solely as an intermediary²³. In Denmark, there exists the Court Administration—an independent body responsible for managing the courts’ budget. It has the legal authority to present its own budget directly to Parliament; however, it is noted in the literature that the Administration has never actually exercised this power²⁴.

As a comparative curiosity, it may be noted that Article 177 of the Constitution of Costa Rica²⁵ expressly specifies a minimum level of budgetary expenditure on the judiciary. Pursuant to this provision, such expenditure may not be lower than 6% of total budgetary revenues in a given year. In U.S. state law, the doctrine of so-called inherent judicial power has also emerged, under which a court may, in extreme

²² Venice Commission, *Report on the Independence of the Judicial System...*, p. 11.

²³ Concordat between the Ministry of Justice (MoJ) and the Supreme Court of the United Kingdom (UKSC), October 2024 (on file with the Supreme Court of the United Kingdom).

²⁴ European Network of Councils for the Judiciary (ENCJ), *Denmark Factsheet*, https://www.encj.eu/images/stories/pdf/factsheets/domstolsstyrelsen_denmark.pdf [accessed: 6 August 2026]; The Judiciary Hub, *Denmark – The Judiciary Map*, 5 March 2023, <https://judiciaryhub.eu/country/denmark/> [accessed: 6 August 2026].

²⁵ Constitution of the Republic of Costa Rica (Political Constitution), adopted on 7 November 1949, as amended.

circumstances, order the allocation of additional funds beyond those granted by the legislature. It is emphasised in the literature, however, that a court may resort to this power only where it is absolutely necessary to perform the duties required by federal and state constitutional law²⁶.

4. Budgetocracy in Practice – the Reduction of Funds for Judicial Remuneration in the Budget Act for 2025

It should be noted that the Budget Act for 2025 was not the first instance in which the budget of the Constitutional Tribunal was significantly reduced in comparison with the amount proposed in the draft budget. When adopting the Tribunal's budget for 2016, the Sejm reduced the planned expenditures from PLN 33.95 million indicated in the draft to PLN 30.65 million. Members of Parliament from the Law and Justice party (PiS) justified this amendment by referring to allegedly excessive remuneration of Constitutional Tribunal judges, the Tribunal's low efficiency (an average of six cases per judge per year), as well as unnecessary expenditures planned in connection with the celebration of the Tribunal's 30th anniversary²⁷. Although this reduction was substantial, it did not lead to institutional paralysis and remained within the margin of parliamentary discretion.

Far more severe cuts were introduced with the adoption of the Budget Act for 2025. The Sejm reduced the Tribunal's expenditures by PLN 10.6 million—from PLN 63.6 million provided for in the draft to PLN 52.6 million²⁸. This reduction was not incidental: in practice, it resulted in the complete elimination of funds allocated for the remuneration of judges of the Constitutional Tribunal. As explained by the Chair of the Parliamentary Public Finance Committee, "the proposers' intention was to ensure that there would be no funds for the remuneration of the Tribunal's members in this budget." Opposition Members of Parliament

²⁶ [The Courts' Inherent Power To Compel Legislative Funding of Judicial Functions, „Michigan Law Review” 1983, vol. 81, pp. 1689–1712.

²⁷ Record of Proceedings of the Public Finance Committee, meeting of 14 January 2016, Sejm of the Republic of Poland, 8th term, document no. FPB-26, <https://www.sejm.gov.pl/Sejm8.nsf/biuletyn.xsp?sknrn=FPB-26> [accessed: 6 August 2026].

²⁸ Record of Proceedings of the Public Finance Committee, meeting no. 109 of 21 November 2024, Sejm of the Republic of Poland, 10th term, amendment no. 12 to the 2025 state budget.

pointed out the unlawfulness of such action, noting that both the Constitution and statutory provisions guarantee judges the right to receive remuneration in the amount specified by law, irrespective of ongoing political disputes²⁹.

This marked the first attempt in the history of the Third Republic of Poland to “starve” a constitutional body by paralysing its activity through the refusal to pay constitutionally guaranteed salaries. Similar budgetary cuts were also applied to the National Council of the Judiciary (KRS).

The President of the Republic of Poland challenged the relevant budgetary provisions before the Constitutional Tribunal. The standards of review included Article 10 of the Constitution, which formulates the principle of separation and balance of powers, as well as the constitutional provisions defining the position and competences of the Constitutional Tribunal (Articles 188 and 189 in conjunction with Article 195(2) of the Constitution) and of the National Council of the Judiciary (Articles 179 and 186 of the Constitution).

In its judgment of 6 May 2025, the Constitutional Tribunal held that the provisions of the Budget Act, insofar as they set the expenditures of the Constitutional Tribunal and the KRS below the amounts specified in the draft budget for 2025—thereby limiting the ability of those bodies to perform their constitutionally defined tasks—were unconstitutional. The Tribunal ordered the Sejm to immediately amend the Budget Act and instructed the Minister of Finance to disburse the necessary funds³⁰.

When examining the “reduced” financial plans of the Constitutional Tribunal and the KRS, the Tribunal—as it openly acknowledged—was confronted with an unprecedented task. For the first time, the challenged provisions did not contain general and abstract legal norms, but rather numerical values—namely, the budgetary expenditures allocated to those institutions. It is impossible to determine arbitrarily which amount of budgetary expenditure may be regarded as constitutional and which may not.

For this reason, when assessing the compliance of the financial plans of constitutional bodies with the principle of checks and balances, the Tribunal formulated what it described as budgetary boundary conditions, that is, limits on the legislature’s discretion in adopting budgets of all

²⁹ Judgment of the Constitutional Tribunal of 6 May 2025, case no. K 2/25, OTK-A 2025, item 51.

³⁰ Judgment of the Constitutional Tribunal of 6 May 2025, case no. K 2/25, OTK-A 2025, item 51.

constitutional bodies that do not form part of the government administration.

These conditions were defined as follows:

- The financial plans included in the Budget Act must ensure that constitutional bodies are provided with sufficient funds necessary for the efficient, continuous, and full performance of constitutionally defined tasks, as specified at the statutory level.
- The financial plans included in the Budget Act must ensure that constitutional bodies are provided with sufficient funds necessary for the continuous and timely fulfilment of financial obligations for which they are responsible as representatives of the State Treasury.
- The financial plans included in the Budget Act must take into account the requirement of uninterrupted functioning of constitutional bodies.
- Significant changes in financial plans compared with previous years should result from constitutional or statutory modifications of the scope of tasks assigned to constitutional bodies. These bodies must be afforded the possibility to adapt to functioning under new conditions³¹.

In the judgment at issue, the Tribunal ordered the amendment of the unconstitutional statute and instructed the Minister of Finance to disburse funds for judicial remuneration from the targeted reserve. The judgment, however, was not published by the Prime Minister in the *Journal of Laws of the Republic of Poland*. The government did not submit a draft amendment to the Budget Act, and the Minister of Finance refused to release the funds. As a result, as of 2025, judges of the Constitutional Tribunal hold claims for unpaid remuneration against the State Treasury.

The Tribunal's ruling therefore has a universal character and guarantees that public authorities—regardless of changes in political majorities—must each year be provided with financing enabling the full performance of their constitutionally assigned tasks.

The phenomenon of systematically limiting the budgets of constitutional bodies represents a broader process that may be described as “budgetocracy”—a mode of governance through fiscal control, in which the state's financial mechanisms are used as instruments of institutional marginalisation and the weakening of bodies designed to constrain political power. This concept reflects a fundamental premise of constitutional

³¹ Judgment of the Constitutional Tribunal of 6 May 2025, case no. K 2/25, OTK-A 2025, item 51.

law: genuine independence of the judiciary and constitutional bodies requires not only procedural and personal safeguards (such as fixed terms of office, immunities, and qualification requirements), but above all financial independence—that is, protection against political pressure exercised through arbitrary budgetary reductions.

Scholarly literature clearly demonstrates that budgetary systems exert a direct and measurable influence on judicial autonomy, decision-making independence, and the capacity to effectively perform constitutional functions³². Granting parliament full control over the financing of constitutional bodies therefore enables de facto modification of the constitutional order through ordinary legislation. If parliament may deprive constitutional organs of the resources necessary for their operation by means of a regular budget act, it effectively circumvents the constitutional hierarchy of norms and the principle of supremacy of the Constitution.

This practice constitutes yet another element in the erosion of liberal democracy and the strengthening of legislative dominance. It may lead to a form of budgetocracy, in which parliament—holding the power of the purse—is capable of unilaterally suspending constitutional bodies by withholding their funding. In Poland, this phenomenon culminated in 2025, when the Sejm chose to “starve” the Constitutional Tribunal by entirely eliminating budgetary allocations for judges’ remuneration—a step without precedent in the history of the Third Republic of Poland.

In this manner, through an ordinary statute, the Sejm is able to effectively alter constitutional arrangements regulated by a hierarchically superior Constitution. Since the Constitution provides both for the existence of the Constitutional Tribunal and for the exercise of specific competences, it necessarily entails the obligation to secure adequate financial resources for that purpose.

This mechanism thus enables the elimination of all effective safeguards limiting parliamentary power and constitutes a violation of the principle of separation and balance of powers—a conclusion expressly emphasised by the Constitutional Tribunal in its judgment of 6 May 2025, case no. K 2/25.

³² A.S. Kewhitt, *Using Inherent Judicial Power in a State-Level Budget Dispute*, „Duke Law Journal” 2013, vol. 62; G. Webb, K.E. Whittington, *Judicial Independence, the Power of the Purse, and Inherent Judicial Powers*, „Judicature” 2004, vol. 88, no. 1, pp. 12–18.

5. Conclusions and De lege Ferenda Proposals

The fundamental problem with the phenomenon of “budgetocracy” analysed in this article lies in the fact that it arguably constitutes the simplest, fastest, and most effective means by which the legislative and executive branches may dominate not only the judiciary, but, in essence, all constitutional safeguards that are institutionally independent from them. This mechanism is so universal that it may, in principle, be applied in virtually any democratic state: in accordance with the power of the purse doctrine, the budget is adopted by parliament and executed by the government.

At present, no effective mechanisms exist that would allow for systemic control of this phenomenon, as such control would necessarily entail a limitation of parliament’s formal competences in the field of budget-making (and possibly also a restriction of the government’s authority in the process of budget execution). The use of the budget as an instrument for influencing the independence of constitutional safeguards may take various forms—ranging from the complete elimination of their budgets (“switching off the lights”), through more limited yet still severe cuts, to even the mere threat of such reductions.

If parliament were to make the level of funding granted to constitutional safeguards dependent on the behaviour of their members, it could, through a form of financial incentive structure, exert real influence over the functioning of those bodies. In the post-liberal constitutional environment, budgetocracy may therefore become the most effective mechanism for dismantling the foundations of liberal democracy.

Undoubtedly, this calls for a broader definition of the limits of parliament’s budgetary authority—such as that formulated by the Constitutional Tribunal in its judgment K 2/25, in which it articulated “budgetary boundary conditions”. It would be justified to strengthen the financial independence of constitutional safeguard institutions, while at the same time preserving democratic oversight exercised by the elected legislature over the budgetary process.

This could be achieved, for example, by establishing a constitutionally guaranteed minimum level of financing for such bodies, defined in relation to GDP or as a percentage of total state expenditures. At the statutory level, it would also be possible to extend budgetary autonomy,

which in Poland—as in most democratic states—currently protects constitutional bodies only against interference by the executive branch.

Such autonomy could be broadened, for instance, by introducing a requirement that any parliamentary modification of the expenditure plans of constitutional safeguard institutions be accompanied by a formal justification. In such a model, it would be reasonable to require parliamentarians to acquaint themselves with the opinion of the affected body, and failure to take that opinion into account—following a comply-or-explain formula—would necessitate a separate vote, potentially by a qualified majority.

Consideration might also be given to the introduction of a statutory prohibition on reducing the level of expenditure allocated to constitutional bodies below that of the previous fiscal year, unless such a reduction were justified by a constitutional modification of that body's competences. Drawing inspiration from the doctrine of inherent judicial power, it could likewise be envisaged to grant such bodies the possibility of directly petitioning parliament for an increase in funding up to the level of a “functional minimum”.

The case analysed in this article illustrates only on a limited scale the destructive potential of budgetocracy. In an era marked by the erosion of liberal democracy, the state budget may easily become an arena of political conflict. It is therefore crucial to draw conclusions from the problem described above and to secure, in advance, the financial independence of constitutional safeguards—for such independence constitutes the very foundation of their autonomy as such, and of their capacity to perform the role entrusted to them by the constitutional framers.

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