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THE PROBLEM OF THE PROPORTIONALITY OF RETURN DECISIONS ISSUED IN ACCORDANCE WITH ARTICLE 207 OF THE PUBLIC FINANCE ACT – A COMMENT ON THE JUDGEMENT OF THE SUPREME ADMINISTRATIVE COURT FROM 8 MAY 2024 AND GSK 906/20

Summary

The European legislator has regulated the principles of measuring financial corrections made in the event of individual irregularities only in relation to public procurement. In the remaining areas of infringement of the law, when moderating the amount of the correction, the general provisions of the TFEU requiring Member States to combat fraud by means of measures that have a deterrent effect and provide effective protection should be followed. Due to the fragmentary scope of the indicated regulations, a number of juridical doubts arise requiring the presentation of a broader theoretical context, which may also supplement the argumentation contained in the judgement of the Supreme Administrative Court of 8 May 2024.GSK 906/20.

Keywords: financial correction, individual irregularity, reimbursement of subsidy, European funds.

PROBLEM PROPORCJONALNOŚCI DECYZJI ZWROTOWYCH WYDAWANYCH W TRYBIE ART. 207 USTAWY O FINANSACH PUBLICZNYCH – GLOSA DO WYROKU NACZELNEGO SĄDU ADMINISTRACYJNEGO Z DNIA 8 MAJA 2024 R. I GSK 906/20

Streszczenie

Prawodawca europejski unormował zasady miarkowania korekt finansowych dokonywanych w przypadku stwierdzenia nieprawidłowości indywidualnych jedynie w odniesieniu do zamówień publicznych. W pozostałym obszarze naruszeń prawa, miarkując wysokość korekty należy kierować się przepisami ogólnymi TFUE nakazującymi państwom członkowskim zwalczanie nadużyć finansowych za pomocą środków, które mają skutek odstraszający i zapewniają skuteczną ochronę. W związku z fragmentarycznym zakresem wskazanych uregulowań powstaje szereg wątpliwości jurydycznych wymagających przedstawienia szerszego kontekstu teoretycznego, który jednocześnie może stanowić uzupełnienie argumentacji zawartej w wyroku NSA z dnia 8 maja 2024 r. GSK 906/20.

Słowa kluczowe: korekta finansowa, nieprawidłowość indywidualna, zwrot dofinansowania, środki europejskie.

Introduction

The purpose of this commentary is to present a broader theoretical context of those elements of the judgement relating to the problems of proportionality in the process of imposing financial corrections, which were not fully developed in the justification of the judgement of the Supreme Administrative Court of 8 May 2024 dismissing the cassation appeal against the judgement of the Provincial Administrative Court in Warsaw of 5 November 2019[1] in the case of the complaint against the decision of the Minister of Investment and Development of 11 June 2018[2] on determining the amount of co-financing to be repaid with funds from the European Union budget. By this decision, the Minister upheld the decision issued in June 2017 by the Polish Agency for Enterprise Development (hereinafter: PARP), imposing on the appellant, Spółka z o.o. (hereinafter also referred to as the Company or the Plaintiff), the obligation to repay in full, along with interest, the funds transferred to the Plaintiff under the agreement on co-financing the project implemented by the Plaintiff under the Innovative Economy Operational Programme (hereinafter: PO IG).

The provisions of the above-mentioned agreement on co-financing the project implemented by the cassation complainant were of fundamental importance for shaping the factual circumstances of the case, including the reasons for terminating the agreement and requesting the repayment of the entire amount of the subsidy granted to the Plaintiff. Although this agreement is by its nature a civil law agreement, as an instrument serving the Applicant to obtain public funds, it caused the Plaintiff to enter the sphere of mandatory public law regulations and other soft regulations of the European funds implementation system, including the IG PO implementation system in the scope of the construction of contract templates adopted by the Polish Agency for Enterprise Development acting as the Managing Authority (hereinafter referred to as the MA). Hence, the commented judgement is an example of the practical and theoretical problems encountered by administrative and common courts in the process of establishing the relationship between civil law contracts and the mandatory provisions of national and European law.

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The co-financing agreement, which constitutes a fundamental element of the factual circumstances of the case, stated in § 3 sec. 1 that "The Beneficiary undertakes to implement the Project in full, as specified in the Material and Financial Schedule of the Project, (...), within the time specified in § 6 sec. 3, with due diligence, in accordance with: 1) the Agreement and its annexes, in particular the description included in the application for co-financing, (...), 2) applicable provisions of national and Community law". Whereas, in § 6 section 3 of this agreement[3], it is indicated that "the expenditure eligibility period for the Project begins on 2013-10-01 and ends on 2015-05-31"[4]. In turn, § 6 sec. 7 of the co-financing agreement states that "the completion of the Project implementation means: 1) the implementation of the substantive scope of the Project in accordance with the Substantive and Financial Schedule, (...), 2) documenting the

[1] File reference number V SA/Wa 1386/18, CBOSA
[2] No.: DIR-IV.7343.77.2017.RD.10, IK: 222575.
[3] In the wording given in the annex to the agreement on co-financing the implementation of the project.
[4] Therefore, during this period, the Company should fully implement the project in terms of both material and financial aspects.

purchase of goods or services with appropriate acceptance protocols or other documents confirming the compliance of the Project implementation with the terms of the Agreement, 3) the implementation by the Beneficiary of the full financial scope of the Project, which means that the Beneficiary has made all payments under the Project, i.e. incurred expenses and obtained documents constituting the basis for recognizing the expenses as eligible for support under the Project"[5]. Finally, in § 8 sections 1 and 2 of the funding agreement it was stated that the Beneficiary undertakes to achieve the assumed project goals and the indicators of achievement of these goals. In turn, in the application for co-financing, constituting an annex to the subject agreement, the Beneficiary indicated that as part of the project an innovative e-service would be created, prepared and implemented, the main functionality of which was to be a fully automated community warning system called "Omijaj.pl"[6].

In view of the dismissal by the Regional Administrative Court in Warsaw of the complaint against the decision of the Minister of Investment and Development upholding the return decision issued by PARP, based on the grounds specified in art. 174 points 1 and 2[7] (hereinafter: p.p.s.a.), the Appellant challenged the ruling of the Regional Administrative Court as follows:

1) incorrect interpretation and simultaneous incorrect application of Article 207 section 1 point 2 of the Act of 27 August 2009 on public finances (Journal of Laws of 2017, item 2077, as amended – hereinafter referred to as: PFA) consisting in the incorrect application of the above provision in this case and ordering the Company to return the funding received from European funds, while the Company did not use the funds received in breach of the procedures referred to in Art.184 of the Public Procurement Law, and therefore there were no grounds for applying the above provision;

2) incorrect interpretation of Article 1(2) of Council Regulation (EC, EURATOM) No. 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 1995.312.1 – hereinafter referred to as: Regulation No 2988/95), Article 2(7) in conjunction with Article 98(1) 2 of Council Regulation (EC) No 1083/2006 (Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999) by violating the principle of proportionality expressed in that provision, due to the fact that both the authorities and the Administrative Court wrongly identify the scope of eligible expenses covered by a possible irregularity with the gravity of that irregularity, which, due to the above, does not automatically have to amount to 100% and which the authorities of both instances, and in the course of judicial supervision also the Court of First Instance, should determine;

[5] The completion of the project implementation is the submission of the Beneficiary's application for the final payment to the Implementing Institution/Second Level Intermediate Body.

[6] In the table regarding quantified indicators of project objective implementation (item 20 of the application for co-financing in the wording given by annex no. (...) to the agreement), the Beneficiary indicated the following indicators: 1. product indicators: number of new e-services – 1 pc., mobile application module – 1 pc., (...) module – 1 pc., mobile payments module (...) – 1 pc., promotional module – 1 pc., 2. result indicators (target value): number of e-services provided – 1 pc., number of created, permanently filled jobs – 2 pcs., number of registered users to whom it will be possible to send advertising mailings – 50,000 pcs., number of Premium accounts sold on the (...) platform – 9,999 pcs., number of subscriptions for companies sold on the (...) platform – 613 pcs. (judgement of the Regional Administrative Court in Warsaw of 5 November 2019, file reference V SA/Wa 1386/18, CBOSA).

[7] Act of 30 August 2002 – The Code of Administrative Court Procedure (consolidated text: Journal of Laws of 2024, item 935).

3) failure to apply Article 325 of the Treaty on the Functioning of the European Union (consolidated version 2012/C 326/01 – hereinafter referred to as: TFEU), which resulted in the request for the repayment of 100% of the subsidy despite the fact that national and EU regulations do not grant the body such a right;
4) violation of Article 7, Article 75 § 1, Article 77 § 1 and 2 and Article 80 of the Act of 14 June 1960 – the Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended – hereinafter referred to as the Code of Administrative Procedure) due to the lack of exhaustive, reliable and comprehensive collection and consideration of the evidence collected in the case, resulting in an erroneous determination of the factual circumstances;
5) violation of art. 141 § 4 p.p.s.a. by failing to sufficiently explain the legal basis for the decision, consisting in failing to indicate which specific procedures specified in art. 207 sec. 1 item 2 and art. 184 p.p.p. the Company committed a violation against when using co-financing from European funds;
6) violation of Article 84 § 1 of the Code of Administrative Procedure by failing to apply it in this case and failing to request an IT expert to issue an opinion in this case, even though obtaining special information by the authorities of both instances was necessary to establish the correct factual circumstances in this case and, consequently, to issue a correct substantive decision.

Raising the above allegations, the Appellant requested that the contested judgement be set aside in its entirety and that the case be examined, as well as that the Company be awarded reimbursement of the costs of the cassation proceedings, including the costs of legal representation.

On the margin of the main, by its nature substantive law subject of the considerations undertaken in this commentary, it should be noted that the justification of the commented judgement in the part concerning the violation of procedural provisions (charges 4-6) was based on an exhaustive and comprehensive analysis of the relevant norms, case law and doctrinal views. The indicated reasons for the justification deserve recognition also due to the transparent and at the same time logical manner of interpretation of the provisions and the connection of the norms resulting from their content with the factual situation in the subsumption process, which in this case is an instrument of control over the correctness of the adjudicative actions of the lower court. The position of the Supreme Administrative Court presented in the commented judgement should be fully agreed with, according to which: "a cassation appeal is an appeal against a judgement issued by the court of first instance, and not a decision issued by a body". Hence, "the subject of consideration in administrative court proceedings is not an administrative case, but an administrative court case consisting in the examination by the administrative court of first instance of the legality of the contested act or action. "In turn, the Supreme Administrative Court, acting as a court of second instance, does not generally hear administrative court cases, but exercises control over the legality of judgements of the court of first instance"[8]. "Therefore, as it results from art. 3 § 1 of the p.p.s.a., when examining a complaint, the administrative court only exercises control over the activity of the body. Therefore, it follows from the adopted model of judicial and administrative

[8] *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, T. Woś (ed.), 2016, Lex/el., comment to art. 173.

review that the court does not apply the provisions of the Code of Administrative Procedure, but only assesses the correctness of their application by the authority. Therefore, in order to correctly formulate the allegations of a cassation appeal, it is necessary first and foremost to refer to the contested judgement, indicating, for example, what errors the court failed to notice in the findings of the factual circumstances of the case, or in the interpretation of the substantive law or its incorrect application by the authorities. The above circumstances were not raised in the cassation appeal and, what is more, it was not demonstrated that any possible breaches of the provisions of the Code of Administrative Procedure had a significant, rather than any, impact on the outcome of the case, which makes these allegations unjustified"[9].

It is worth referring much more broadly to the justification of the commented judgement in the part concerning the Appellant's allegations regarding the violation of substantive law due to its incorrect interpretation or incorrect application. At the outset, it should be stated that the allegation of the Appellant in cassation regarding the incorrect interpretation of Article 207 sec. 1 item 2 of the Public Finances Act and its simultaneous incorrect application due to the lack of premises justifying the finding of a breach of the procedures referred to in Article 184 of the Public Finances Act, was correctly refuted by the Supreme Administrative Court, in accordance with established case law and arguing that the "other procedures" referred to in Article 184 sec. 1 of the Public Finances Act also include procedures specified in the agreement between the beneficiary and the managing institution[10]. "Any deviation from the provisions of the agreement or a breach of EU or national law that has caused or could have caused damage to the general budget of the EU may be considered a breach of these procedures. For this reason, any irregularity that could potentially result in the payment of funds that should not have been paid, according to the terms of the contract or the law, is treated as an irregularity" [in the meaning of European law – author's note]. The Supreme Administrative Court also correctly noted that the conditions specified in Article 207 sec. 1 of the Public Finances Act for the repayment of funds allocated for the implementation of programmes financed with the participation of European funds in the form of their use contrary to their intended purpose or in breach of the procedures referred to in Article 184 of the Public Finances Act or collected unduly or in an excessive amount "should be interpreted in a uniform manner with the concept of "irregularity" within the meaning of Article 1 sec. 2 of Regulation No. 2988/95, as well as Article 2 item 7 of Regulation No. 1083/2006[11]".

According to Article 1(2) of Regulation No 2988/95, "irregularity" means any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by the Communities, either by reducing or losing revenue accruing from own resources collected directly on behalf of the

[9] On the sidelines, it is also worth pointing out the linguistic finesse with which the Supreme Administrative Court indicates to the cassation complainant and her professional attorney that the claim is burdened with scholastic deficiencies in the formulation and justification of the allegations.
[10] Compare judgements of the Supreme Administrative Court of 17 May 2017, file reference II GSK 2420/15, and of 9 January 2014, file reference II GSK 1546/12, CBOSA.
[11] See judgement of the Supreme Administrative Court of 4 April 2017, reference number II GSK 5056/16, CBOSA.

Communities or by making an unjustified item of expenditure[12]. In accordance with Article 325(1) and (2) TFEU, the Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

In the context of the cited regulations, it can be pointed out that the identification of the referents of the concept of "irregularity" proceeds in two ways. In the area of irregularities related to the violation of public procurement law, starting from the programming period 2000-2006, the EU Commission has been issuing guidelines in this area[13] to systematise violations of this area of law and to moderate the amount of financial corrections imposed. In the remaining areas of violations of law, the identification of irregularities takes place on the basis of case law[14], which then translates into the development of lines of case law and the crystallization of scientific views. In some EU member states, generalised types of irregularities also take a normative form. Such nature is also demonstrated by situations indicated in art. 207 sec. 1 points 1-3 of the Public Finances Law.

The judicial and normative agreement on the qualification of situations regulated in Article 207 paragraph 1 of the Public Finances Act entails the necessity to assess their functioning also from the perspective of the then applicable provisions of Article 98 paragraph 2 of Council Regulation (EC) No. 1083/2006. According to its content, the Member State is to make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. The corrections made by the Member State consist in cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularity and the financial loss incurred by the funds. In this way, one of the basic principles of imposing financial corrections becomes the principle of proportionality. The analysis of the guidelines formulated for the imposition of financial corrections both by the EU and by the minister responsible for Funds and Regional

[12] The essence of the concept of "irregularity" has not been modified to this day; see Article 2, point 31 of Regulation (EU) No 2021/1060 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund of the European Maritime, Fisheries and Aquaculture Fund and financial rules for those funds and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ EU, L 231, p. 159) and Article 2, point 17 of the Act of 28 April 2022 on the principles of the implementation of tasks financed from European funds in the financial perspective 2021-2027 (Journal of Laws, item 1079, as amended).

[13] The guidelines setting out the principles, criteria and indicative correction rates to be applied by the Commission services in determining the financial corrections provided for in Article 39(3) of Regulation (EC) No 1260/1999 were adopted by Commission Decision C/2001/476. European Commission Decision C(2013) 9527 final of 19 December 2013 established guidelines for determining financial corrections to be made to expenditure financed by the Union under shared management for non-compliance with the rules on public procurement, which replace those previously in force for financial corrections to be made for non-compliance with public procurement rules during the 2000-2006 and 2007-2013 programming periods: COCOF 07/0037/03, EFFC/24/2008 and Guidelines for determining financial corrections for non-compliance with public procurement rules in expenditure co-financed under the General Programme "Solidarity and Management of Migration Flows". See also guidelines on how to correct irregularities in public procurement in Poland for 2021-2027, MFiPR/2021-2027/18(1).

[14] See e.g. judgement of the CJEU of 8 June 2023 in case C 545/21, EUR-Lex – 62021CN0545 – PL.

Policy allows us to conclude that various possibilities for moderating the corrections have developed. These include the possibility of determining corrections' amount: in proportion to the period in which the durability of the project was not maintained; due to the scale of failure to complete the project and the degree of the irregularity (individual) and the socio-economic significance of the project. Proportionality in the process of calculating corrections is maintained by applying correction methods in the form of applying lump sum and percentage rates, as well as by determining the adequate amount of correction based on the actual value of the damage caused by the irregularity.

Although the Appellant formulated a cassation objection indicating a violation of the principle of proportionality "due to the fact that both the authorities and the Provincial Administrative Court wrongly identify the scope of eligible expenses covered by a possible irregularity with the weight of this irregularity, which, due to the above, does not automatically have to amount to 100%", the Supreme Administrative Court did not respond to this objection. From a procedural point of view, the Court of Cassation acted correctly in this case, as the indicated basis for the appeal was not covered by the claim to the Provincial Administrative Court. Although, in accordance with Article 134 of the P.P.S.A., the court decides within the limits of a given case without being bound by the objections and motions of the complaint and the legal basis invoked, and therefore the cassation appellant could effectively allege that the judicial review of the legality of the contested decision was defective, in view of Article 183 § 1 of the P.P.S.A., if such a situation occurs, the cassation appeal should raise an objection to the violation of Article 134 § 1 of the P.P.S.A. Since this objection was not raised in the cassation appeal, the Supreme Administrative Court could not conduct an instance-based review of the contested judgement in the aspect of omitting Article 98 paragraph 2 of Council Regulation (EC) No. 1083/2006[15] in the process of assessing the correctness of the administrative decision.

The indicated basis for the appeal may be, however, considered on doctrinal grounds. In particular, it should be noted in this respect that, from a technical and procedural perspective, the determination of a correction is the final effect of a whole set of declarations of will and knowledge, as well as accounting activities, which together constitute a special type of proceedings of a non-authoritative nature to which the provisions of the Code of Administrative Procedure do not apply[16]. Hence, "the declaration of imposition of a correction is devoid of the attribute of permanence within the meaning of Art. 16 of the Code of Administrative Procedure and is not binding on the body that imposed it, neither in the subsequent control proceedings nor in the proceedings aimed at issuing a decision on the repayment of the subsidy. In the latter case, the declaration of imposition of a correction is only one of the elements of the factual situation of the case. Therefore, after conducting an evidentiary hearing, the body may rule on the obligation to repay the subsidy for an amount higher or lower than that resulting from the declaration on the imposition of a financial correction"[17]. At the same time, although

[15] See B. Dauter in: *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, A. Kabat, M. Niezgódka-Medek, B. Dauter, 2004, Warszawa: LEX, art. 134 and art. 183.
[16] „Problematyka charakteru prawnego korekty finansowe", W. Fill, 2004, *ZNSA, 1*, pp. 23-39.
[17] *Ustawa o zasadach realizacji zadań finansowanych ze środków europejskich w perspektywie finansowej 2021-2027. Komentarz*, M. Perkowski, R. Poździk (eds.), 2023, Warszawa: Wolters Kluwer, art. 26. See also judgements of the Supreme Administrative Court: of 20 May 2021, I GSK 685/18, of 28 May 2021, I GSK 2188/18; of 27 May 2021, I GSK 1768/18; of 10 June 2021, I GSK 1870/18; of 19 May 2021, I GSK 658/18, CBOSA.

the basis for imposing the correction is the provision contained in the content of the project financing agreement, and the basis for issuing the repayment decision is the mandatory provision of the Act on Public Finances, in both situations the basis for demanding the repayment of the amount of the subsidy granted is the same circumstance of the beneficiary's failure to comply with the provisions of the agreement.

There are therefore two legal issues that the cassation appellant does not seem to notice and that the courts of both instances do not highlight. The first is the termination of the contract by the implementing institution and the resulting obligation of the parties to return the benefits received; in this case, the return of the entire subsidy received by the beneficiary. The second issue concerns the function and premises for shaping the content of the return decision issued pursuant to Article 207 of the Public Finances Act.

In the case in question, the grounds for terminating the contract constitute an important element of the factual circumstances in the administrative proceedings resulting in the issuance of a repayment decision. Due to the mandatory nature of Article 207 paragraph 1 item 2 of the Public Finances Act, it is not possible for the Managing Authority to issue a decision for an operational programme that would provide for any other effect than the repayment of the entire subsidy received. This provision only provides for the refund of the entire amount without the possibility of adjusting its amount. The situation could be different in the case of a request for the return of the entire subsidy made by the Implementing Authority as a result of terminating the project financing agreement, if the Managing Authority had decided on the possibility of moderating the financial consequences resulting from the irregularities that occurred (which it did not do)[18]. In the absence of any decisions by the Managing Authority in this respect, the Implementing Institution's demand for the repayment of the subsidy as a result of the irregularity identified and then the termination of the contract due to the irregularities identified should be identified as a financial correction referred to in Article 98 paragraph 2 of Council Regulation (EC) No 1083/2006, in this specific case of a disproportionate nature, covering the entire amount of the subsidy received by the cassation Appellant – in accordance with the provisions of the project co-financing agreement[19]. On the other hand, the issuance of a refund decision pursuant to Article 207 of the Public Finances Act should be perceived as a consequence of the beneficiary's lack of consent to make the correction; and therefore as only a supplementary instrument for determining the amount of the correction, enabling not only the control of the correctness of the determination of the amount subject to refund, but also, ultimately, its enforcement through administrative enforcement.

Although the adopted solutions of the management and control system do not provide for the consideration by the MA of the IG OP of reservations concerning the justification for terminating project co-financing agreements by the relevant Implementing

[18] In accordance with Article 98(2) of Council Regulation (EC) No 1083/2006, Managing Authority PO IG had the possibility to differentiate the amounts of financial corrections imposed depending on the circumstances of a given factual situation. However, when formulating the model co-financing agreement, it did not make use of this possibility, assuming that in the case of irregularities other than those concerning infringements of public procurement law, the correction should cover the entire subsidy granted – which, in my opinion, is also in line with the provisions of Article 98, paragraph 2.

[19] Being the result of the institutional system adopted by Managing Authority PO IG.

Institutions, in accordance with the provisions of the project co-financing agreements in the IG OP, including the agreements used in Measure 8.1 of the IG OP, which the project concerned, disputes arising from project co-financing agreements should be resolved primarily through negotiations between the parties to a given co-financing agreement, and in the event of a lack of agreement, they could be submitted for resolution to a competent common court. Such a solution is also included in § 17 of the project financing agreement in question. Hence, it was at this stage of the proceedings that the Appellant could have requested verification of the correctness of the drafting of the co-financing agreement template by the Managing Authority PO IG, since the Appelant noticed its inconsistency with the provisions of Article 98 paragraph 2 of Council Regulation (EC) No. 1083/2006[20].

The European legislator has, in principle, only extended its normative scope to corrections concerning individual irregularities concerning public procurement. In the remaining area – as the Appellant points out in her cassation appeal – the first step should be to follow the general provisions, namely Article 325(1) and (2) TFEU, which require Member States to combat fraud by means of measures that have a deterrent effect and ensure effective protection. Next by means of the provisions of EU regulations (in the analysed case 1083/2006), generally applicable national regulations and guidelines, the acceptance of which by the beneficiary constitutes an important clause in the construction of each agreement on co-financing a project from EU funds. Certainly, the TFEU implements both the provisions of the model contract not providing for the possibility of moderating the amount of the subsidy subject to repayment and the requirement resulting from Article 207 paragraph 1 of the Public Finances Act to repay the entire amount of the subsidy received as well as provisions of Article 325. Hence, even if the Appellant were to file a cassation claim with a common court concerning a breach of the principle of proportionality when determining the amount of the financial correction, it can be assumed that this court would confirm the justification, resulting from the cited legal regulations, for the IZ PO IG to demand that the Beneficiary repay the full amount of the subsidy granted.

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[20] See the procedural model of defending the beneficiary's rights arising from the project financing agreement before common courts, which culminated in the Supreme Court's judgement of 7 October 2015, file reference number I CSK 878/14, www.sn.pl/orzecznictwo.

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