Financial Law Review

No. 17 (1)/2020

UNIVERSITY OF GDAŃSK • MASARYK UNIVERSITY • PAVEL JOZEF ŠAFÁRIK UNIVERSITY • UNIVERSITY OF VORONEZH
http://www.ejournals.eu/FLR

RICHARD BARTES*

GUARANTEES OF LEGALITY AND SELECTED ASPECTS OF LEGAL LIABILITY IN SUBSIDY LAW

Abstract

The article is dealing with guarantees of legality and with selected legal aspects of the legal liability in subsidy law. The subsidy law is a constituent of the fiscal part of the Czech financial law. The importance of the subsidy law is intensified by the fact that the subject of the subsidy law is the redistribution of public money. In fact, public money is associated with the public interest and has to be therefore protected from a misusing and from a wasting. Such protection consists of legal instruments, which are of a preventive or punitive nature. These legal instruments are applied in subsidy legal relationships between a subsidy recipient and a subsidy grantor in case of violation of financial (subsidy) norms, which shall give rise to the legal liability. In some cases the sanction is applied by the subsidy grantor, sometimes by the tax administration. The main aim of the article is to confirm or disprove the hypothesis that sanctions in the subsidy law are the same for cases when a subsidy is provided from state funds and for cases when a subsidy is provided from territorial funds. The partial aim of the paper is to analyse when the subsidy grantor and the tax administration would apply the sanction and to present particular guarantees of legality in the subsidy law. The research methods used in the article are analysis and synthesis, description and comparative methods.

Key words: Legal liability; subsidy law; subsidy grantor; subsidy recipient

JEL Classification: K340, K34

1. Introduction

The subsidy law is a subsystem of the financial law, which according to the Brno Financial Law School is divided into fiscal and non-fiscal part [Mrkývka, Pařízková, 2012: 51-53]. The fiscal part consists, inter alia, of budgetary, tax or subsidy law. The non-fiscal part of the financial law includes financial markets law, foreign law or banking law. In other words, while the fiscal part of the financial law consist in the legal regulation of public finance with respect to public funds, the non-fiscal part of the financial law is the legal regulation of financial activities and the money mass.

The subsidy law is a subsystem of the financial law regulating public expenditure and as such has undergone literally turbulent and repeated changes in recent years. It was a gradual development of the area in question, which was necessarily (and usually also suitably) supplemented by the case law of the Czech Supreme Court or the Czech Constitutional Court. In any case, many changes had an impact on the legal certainty of the subsidy recipient and subsidy grantor within the framework of subsidy legal relationships, or rather within the subsidy process.

Despite many amendments made, it is still not possible to state that from the perspective of in force and effective legislation it is an area of law perfectly regulated. For this reason, the issue is still highly topical, it is an issue for legal practitioners (whether it is a subsidy grantor, a subsidy recipient or other persons providing legal services for these mentioned entities) always very important, for theoreticians very attractive and inspiring. The importance, respectively the attractiveness of this area is also enhanced the fact that the subsidy legal relationships regulate a specific range financial relations, whose

* The assistant lecturer at the Technical university of Ostrava, presently Ph.D. student at the department of the Financial law at the Masaryk University – Faculty of Law in Brno. At the moment studies the French school of public finances and he is the member of the Directorium of Alliance Francaise Brno. Contact: 391896@mail.muni.cz.

object is money drawn from public funds, for various subsidized projects (ideally) in the public interest. This fact implies the need, more precisely, the necessity to deal with the issue in greater depth.

The main aim of the article is to confirm or disprove the hypothesis that sanctions in the subsidy law are the same for cases when a subsidy is provided from state funds and for cases when a subsidy is provided from territorial funds.

The partial aim of the paper is to analyse when the subsidy grantor and the tax administration would apply the sanction and to present particular guarantees of legality in the subsidy law. The research methods used in the paper are analysis and synthesis, description and comparative methods. The case law of the Czech Supreme Court is the primary source of the article.

2. Guarantees of legality in general

The term „guarantee of legality" has a common basis in legal systems of different countries. The term in question is made up of terms "guarantee" and "legality". The term guarantee is intended to imply a guarantee function, in the form of a set of legal instruments (both of a substantive and procedural nature) laid down by law, which ensure the legality of public administration activities. The term of legality expresses the general binding of laws. The legality is manifested both by the binding nature for entities (public administration entities in the performance of their activities) by laws (or generally normative legal acts), i.e. the application level of the legality, and as a legislative level of legality which ensures, that the legal norm can be legislated only by the entity, which is endowed with a power to legislate within the framework of the statutory normative procedure and in the form prescribed by law. Thus, in the broadest sense of the word, it could be stated, that the term of "guarantee of legality" is an institute constituting one of the most important elements of the legal systems. This term is already directed to a specific entity and its specific activity, through which it fulfils its task entrusted by law. To ensure that tasks carry out in accordance with the law, the guarantee of legality in the public administration constitutes set of legal means contributing to this intent. Petr Průcha defines the so-called legal safeguards in the public administration as "the aggregate of legal means intended to ensure observance of the implementation of the law for the case of its violation." [Průcha, 2012: 324]. In summary, the term of "guarantees of legality" is set of substantive and procedural institutes that contribute to safeguarding the legality. In other words, it is a practical realization of an otherwise theoretical basis.

It is considered the following to be specific means, i.e. concrete forms of guarantees of legality in the public administration:

a) Control of public administration,

b) The right to information in public administration,

c) Annulment, amendment of defective administrative acts and other actions in public administration,

d) Exercising legal liability for violations of legal obligations,

e) Direct compulsion to comply with legal obligation (Průcha, 2012: 324].

In my opinion, in view of the financial law issue of the paper, this list could be extended to include, in addition to the "control of public administration", the institute of "supervision and surveillance". In this context, it may also be considered appropriate to refer to the instrument of "judicial dispute resolution" as another expression of guarantees of legality in public administration, because it is necessary to strictly distinguish between disputes arising from public-law relationships within legal relationships with administrative authorities (e.g. the disputed decision of the public administration authority can be annulled) from the settlement of such disputes within the administrative judiciary, which is conditioned by the unsuccessful exhaustion of remedies. These specific forms of guarantees of legality can be differentiated as preventive (which have purely preventive nature) and as subsequent (which have compensatory or repressive nature). It can be noted, that these guarantees in question are applicable both to legal transactions (i.e. actions) of the public administration and legal transactions of addressees of influencing by public administration. Impact of guarantees of legality can be internal (i.e. within the public administration) or external (i.e. outside public administration).

3. Terminological basis of the subsidy law

The basic starting point for next part of the paper is the legal definition of the term „subsidy" according to the Czech (subsidy) law, or rather the defining the subsidy law as a subsystem of the Czech financial law. The term of "subsidy" is used *promiscue* with terms such as subventions or public financial aid.

It can be stated that the term of "subvention" can be understood more extensive than the term of "subsidy" *sensu stricto*, because the term "subvention" expresses any public financial support provided thanks to public funds. In practice, such support may take the form of a financial contribution or financial support, but it may also take a form of an exception from the tax (e.g. income tax), a forgiveness of social contributions or sale of (most often municipal) lands at reduced prices. These forms of aid are primarily an economic advantage for the recipients and therefore these forms of aid are sometimes called as subsidy *sensu largo*.

By contrast, subsidy *sensu stricto* are state finance defined as: "*money of the state budget, of state financial assets or of the National Fund provided to legal or natural persons for a specified purpose*" [Act on budgetary rules and amending certain related acts, Art. 3/a]. Since 2015, subsidies as public finance provided by territorial self-governing units are also defined "*money provided from the budget of the local self-governing units, from the budget of the Capital*

City of Prague, from the budget of the Union of Municipalities or from the budget of the Regional Council of the Cohesion Region to defined purpose for legal or natural person, with the exception of the contribution pursuant § 28 and § 31" [Act on budgetary rules of territorial budgets, Art. 10a].

According to the Explanatory Memorandum to the Amendment to the Act No. 250/2000 Coll., the presented definition of subsidy was incorporated in connection with the incorporation of anti-corruption measures[1], which were primarily intended to make the process of providing public money from the territorial budgets more transparent.

On the basis of presented legal definitions, three specific features can be identified, namely for "state" subsidies and separately for subsidies granted from territorial budgets.

"State" subsidies are:

f) (public) money provided from the state budget/state assets/the National fund;

g) (public) money provided to legal or natural persons;

h) (public) money provided for specified purpose (i.e. special-purpose public money which were provided).

Analogously, it is possible to express the features of subsidies provided by individual territorial self-governing units- Subsidies provided from territorial budgets are:

i) (public) money provided from the budget of territorial self-governing unit, from the budget of the Capital City of Prague, from the budget of the Union of Municipalities or from the budget of the Regional Council of the Cohesion Region;

j) (public) money provided to legal or natural persons;

k) (public) money provided for specified purpose (i.e. special-purpose public money which were provided).

In this context, the definition of the "subsidy" can be followed by the definition of the "refundable financial assistance". This notion is also defined in both Act No. 218/2000 Coll. and Act No. 250/2000 Coll. The refundable financial assistance within the meaning the state level according the Article 3 point b) of the cited Act means "*money of the state budget, of state financial assets or of the National Fund which were provided, unless otherwise stipulated by a special law, interest-freely to legal or natural persons for specified purpose and the recipient is obliged to refund this money to the state budget, to the budget of state assets or to the budget of National Fund*".

The legal construction of the definition of the refundable financial assistance is defined analogously in case the source of the money is the budget of the territorial self-governing unit[2]. The refundable financial assistance is, like the subsidy *sensu stricto*, a special-purpose public aid from the public budget to which there is no legal entitlement.

On the contrary, for example a different feature is the fact that subsidy *sensu stricto* can be provided to a wider range of entities (recipients) in comparison with the refundable financial assistance, which is also apparent from the analysis of the Article 7 of the Act No. 218/2000 Coll.

However, especially in comparison to the legal definition of the subsidy *sensu stricto*, it is necessary to reflect recoverable of the refundable[3] financial assistance, from which it can therefore be *a contrario* concluded that the subsidy *sensu stricto (largo)* is non-repayable public money and therefore the above mentioned list of three characteristics of subsidies (both "state" subsidies and subsidies provided from territorial budgets) can be completed by the fourth feature – irrecoverable[4].

In summary, subsidies *sensu stricto* are public money provided from public budgets to legal or natural persons for a predetermined purpose without any obligation to return the public money to the original subsidy grantor. In other words, subsidies are non-repayable and special-purpose expenditures of the public budget.

However, the legislation does not always use explicitly the term of "subsidy" within the meaning of legal definitions mentioned above and in certain cases this term is replaced by another terms, but with the same meaning (material meaning), in which the term subsidy is defined for example in the Act No.

[1] Within these measures, the term "refundable financial assistance" in the Act No. 218 (250)/2000 Coll. was defined, the method of providing subsidies and refundable financial assistances, as well as the essential requirements for a subsidy application or repayable financial assistance, as well as the essential requirements of a public legal contract on the provision of the subsidy and the statutory obligation to publish these contracts were defined.
[2] According to § 10a (1) point. c) of the Act No. 250/2000 Coll., on budgetary rules of territorial budgets, as amended, refundable financial assistance is: "*money provided without interest from the budget of the territorial self-governing unit, from the Capital City of Prague, from the budget of the Union of Municipalities or from the budget of the Regional Council of the Cohesion Region to defined purpose for legal or natural person and its recipient is obliged to return the money to the budget provider within the specified period*".
[3] „Refundability", as an attribute of refundable financial assistance within the meaning of the Act No. 218/2000 Coll. is refundability without any interest, because the state or territorial unit does not provide public financial support to generate profits. It is the recipient´s obligation to return the provided money to the grantor within a predetermined period. The money may be returned to the original budget in the form of several instalments, which is the state budget income (according to § 6 point j) of the Act No. 218/2000 Coll.).
[4] Therefore, it can be summarized that while the subsidy is de facto base on the principle of donation, the refundable financial assistance is based on the principle of the loan.

218/2000 Coll., which has been already judged by the Czech Supreme Administrative Court (hereinafter "SAC") [Highest Administrative Court: 5 Afs 69/2010-135].

In the specific case, the SAC has ruled that the term "*benefit to mortgage credit*" within the meaning of the Article 1 of Government Regulation No. 249/2002 Coll., on the conditions for providing contributions to the mortgage loan for persons under 36 years of age, is in essence identical to the term of subsidy within the meaning of the Article 3a of the Act No. 218/2000 Coll., because the benefit to mortgage credit, as well as the subsidy within the meaning of cited Article, is *de iure* expressed by money drawn from the state budget (thus it constituting one of the forms of state aid) and provided to natural persons for a specified purpose without the obligation to refund it. (comp. Government Regulation on conditions for providing contributions to a mortgage loan to persons under 36 years of age, Art. 1, 2). Therefore, analogously, an application for the contribution in question is equal to the application for a subsidy within the meaning of the Act No. 218/2000 Coll.

On the contrary, in another case [Supreme Administrative Court: 7 Afs 93/2013-31] the SAC has ruled that if the state aid is classified as a subsidy, but it does not meet the legal definition of the subsidy within the meaning of the Act No. 218/2000 Coll. (or rather Act No. 250/2000 Coll.), it is not possible to consider such state aid as a subsidy within the meaning of mentioned acts. In the specific case, the Czech Ministry of the Environment rejected an application for an aid within the New Green Savings Programme, which, if awarded, would be provided from the State Environmental Fund of the Czech Republic. In other words, the financial aid from the New Green Savings Programme is paid to applicants as public money, which are the income of the State Environmental Fund (that is an independent legal person established by law (Act on the State environmental Fund of the Czech Republic), which has own budget) (see Act on the State environmental Fund of the Czech Republic, Art. 2a). There is no question of the fact that, according to the Article 7 point g) of the Act No. 218/2000 Coll., state budget expenditures include subsidies intended for state funds, but if the state fund in question subsequently provides public money (although still designated as a subsidy) to another natural or legal person, it is already *extemplo* public money distinct from public money provided from the state budget, state assets or from the budget of the National Fund and therefore this public money cannot be considered as subsidies within the meaning of the Act No. 218/2000 Coll.

On the other hand, it is still naturally a category of public finance, which could be described as state aid or subsidies *sensu largo*.

The term of „state aid", unlike the terms of the subsidy or of the refundable financial assistance, is not defined in the Act No. 218/2000 Coll., or in the Act No. 250/2000 Coll., or in any other Czech (financial) act. This term is more general than the aforementioned terms and it is a public aid provided by designated entity. The term in question is mentioned in the Article 107 (1) of the Treaty on Functioning of the European Union (Treaty on European Union). The state aid in this sense means all aid (i.e. the aid in any form) provided by a state or through state resources. In this context, it is not primarily a definition of the term in question, but the main objective is a legal regulation of the protection of the internal market[5] of the European Union, i.e. to prevent possible distortions of the competition in the relevant market, which could result from favouring certain companies or certain sectors of production because of the state aid provided in their favour. For this reason, this issue is partly legal, partly economic issue. The economic aspect is given by potential distortion of the competition as a result of the state´s preference for particular entity (company) or a production sector. In other words, the crucial criterion is, if the particular state aid is capable to distort the competition (at the Community level) or not.

For this reason, EU member states (and not supported companies) are the addressee of the legal rule and they are responsible for the conformity of the provided state aid with the EU law[6]. The example of the state aid within the meaning of the Article 107 (1) TFEU is not only the provision of public money, but also a sale or a lease at a price significantly lower than a market price[7].

Excluding legal and economic aspects, in connection with a providing of state aid, it is possible to speak secondary about a political aspect (because the state aid is provided the relevant entity or the relevant sector on the basis of political decision) and consequently about sociological or psychological aspect (i.e. the way of thinking and reactions of the society as a manifestation of state aid providing). In any case, the TFEU representing the EU primary law, provides legal basis for understanding the term at European law level and at the same time it defines conditions (Treaty on European Union, Art. 107/2, 3) under which the state aid (although because of its amount is not subsumable under "*de minimis aid*") is compatible with the EU internal market. Thus, it can be stated that the term of the "state aid" within the meaning of the TFEU is similar to the term of subsidy because of its material importance and at the same time because of its generality, but with the difference that the term of state aid is necessarily linked to the state as the entity providing this type of aid.

On the other hand, the term of the state aid within the meaning of the Article 107 (1) TFEU is in its meaning more extensive than the term of the subsidy *sensu stricto*, and therefore each subsidy within the meaning of the Article 3 point a) of the Act No. 218/2000 Coll. Favouring certain company or certain production sector is the state aid within the meaning of the TFEU (and therefore it is necessary to consider if the subsidy is compatible with the EU

[5] Within the meaning of the article 25 of the TFEU.
[6] The supervisory authority (with the relevant regulatory powers consisting, for example, in ordering the cessation of further providing of financial assistance or withdrawal of already provided subsidy) is the European Commission, which has replaces the Office for the Protection of Competition in this role since 2004. See the Act No. 215/2004 Coll., on the regulation of certain relations in the area of state aid and on the amendment of the Act on Support of Research and Development, in amendment. In: ASPI [legal information system]. Wolters Kluwer ČR [cit. 1.9.2019].
[7] In this context, I refer to Commission Regulation No. 1407/2013 of 18 December 2013. This regulation, in the case of state aid, defines a ceiling for *de minimis* financial assistance up to which Article 107 (1) TFEU is not be applied and therefore the state aid is considered compatible with the internal EU market. In other words, it is the state aid provided from the state resources to a company or a sector, but the aid is not able to distort competition by reason of its amount and therefore does not infringe Community law.

internal market or not)[8]. A similar relationship is between state aid and the refundable financial assistance within the meaning of the Article 10 (1) point a) of the Act No. 250/2000 Coll., because the refundable financial assistance is a type of state aid.

As for the term of money (which is connected with the term subsidy) can be noted, that this term can not be confused with the term finance. To clarify this term, Petr Mrkývka states: "*Finance has the nature of distributive, or rather redistributive relationships in which money is rearranged. Within these relationships, money is in motion, in flow among the subjects, funds, sectors*" [Mrkývka, 2014: 20]. In other words, financial relationships are a narrower category of relationships than monetary relationships. Therefore, it can be stated that all financial relationships are (or must be) monetary relationships as well. For this reason, the legal definition of the term of subsidy legitimately uses (in connection with the redistribution of funds drawn from public budgets) the term of "money" and not the term of "finance". Since generally the object of finance is money, In connection with subsidies we are talking about redistribution of money.

In this context, so-called subsidy relationships (as a specific type of financial law relationships) arise, which naturally have their essential elements (i.e. subject, object and content). These relationships are public-law relationships, whose subject is the subsidy grantor on the one hand, and the subsidy recipient on the other hand. While subsidy grantors of "state" subsidies are demonstratively mentioned in the Article 14 (2) of the Act No. 218/2000 Coll., subsidy grantors of territorial budgets are defines in the Article 10a (1) point a) of the Act No. 250/2000 Coll., in the latter case it is one of many manifestations of activities of public-law corporations in their independent competence. Subsidy recipients may be natural or legal persons, both public and private law. State funds, i.e. legal entities established by law, serving for the financial security of individually designated tasks and management of funds designated for these tasks, are also an important subject of subsidy relationships (Act on budgetary rules and amending certain related acts, Art. 28/1) Public money is thus allocated from own budgets of state funds (which co-create a system of public budgets) and state funds are themselves responsible for meeting their obligations. The providing of subsidies and refundable financial assistances from the state fund, including the manner of their provision, is regulated by a special legal regulation (Act on budgetary rules and amending certain related acts, Art. 28/6) (i.e. individual acts regulating the establishment of individual state funds - for example the Act No. 239/1992 Coll., on the State Fund of Culture of the Czech Republic, as amended). Individual state funds are the responsibility of relevant individual ministries that manage them. In other words, in the case of subsidy relationships, where one of the subjects is the state fund, two modes of subsidy providing can be distinguished. The first case, these are subsidies provided from the state budget in favour of the state fund budget (in this case the legal framework is the Act No. 218/2000 Coll.), the second case, these are subsidies provided from the state budget for individual subsidy recipients in order to achieve specified tasks (in this case the legal framework is the act establishing the relevant state fund).

The natural expression of the public-law nature of subsidy relationships is the unequal position of their subjects. More precisely, in this case, it is the supremacy of the subsidy grantor, who authoritatively determines, inter alia, conditions for providing the subsidy, requirements relating to the successful obtaining of the subsidy, respectively the amount of the provided subsidy. Nevertheless, it is not possible to consider, let alone accept absolute unilateral imposition and fulfilment of obligations, only in relation to the subsidy recipient under the legal title under which the subsidy is provided. In these intentions, the SAC has ruled [Supreme Administrative Court: 1 Afs 77/2010-81], that the subsidy grantor is obliged to fulfil obligations of the subsidy agreement and the subsidy grantor is obliged to provide not only relevant public money for a predetermined purpose to the subsidy recipient, but also to provide effective cooperation so that it could fulfil the stated objective to which the subsidy grantor had committed itself in the subsidy agreement. The object of subsidy relationships is the redistribution of public money with respect to a predetermined intent, as well as the behaviour of entities in the subsidy relationships ultimately related to or following the provided public money and aiming to fulfil the specified intent. Specific rights and obligations of subsidy relationships subjects arise either from legal norms (mainly norms of the budgetary law) or from decisions of public authorities (i.e. subsidy grantors), or rather from the legal title on the basis of which the subsidy is provided. The subsidy relationship arises on the basis of a legal norm (mainly[9] the budgetary law) and a lawful factor, which is either a decision to provide a subsidy, or a subsidy agreement[10]. A strict distinction must be made between the decision to award a subsidy as an individual administrative act of the public authority and an agreement to award a subsidy as a bilateral legal act[11] by a subsidy grantor and a subsidy recipient, because the specific form of the legal title affects the later possibility (or impossibility) of judicial review.

4. Guarantees of legality in the subsidy law

The term of guarantees of legality in the subsidy law is an issue, by its nature, partly administrative, partly financially. It is thus a connection of two separate legal branches, or rather an interdisciplinary approach to the issue where legal-theoretical aspects overlap with public finance discipline. Guarantees of legality in the subsidy law can be understood as a set of legal instruments whose task is to guarantee and ultimately also to ensure de facto compliance with the law within the relevant segment of the public financial activity. The importance and necessity of guarantees of legality are reinforced by the nature of the public sector and its tasks. The key task of the public sector is the providing of public goods, which are secured (mostly) by public finance (from the point of view of public funds, or rather from the point of fiscal view it is a public expenditure). However, public spending must be made within the limits set by legal, economic, sociological, political or, las but not least ethical aspects. In this context, Paul-Marie Gaudemet, the leading figure

[8] On the other hand, the subsidy within the meaning of the article 10a of the Act No. 250/2000 Coll., is not regarded as the State aid under the TFEU, because it is not provided from the state budget, but from the territorial budget.
[9] However, it is also possible to consider, for example, labour law norms in a situation where the subsidy is provided by the Labour Office within the implementation of the active employment support, for example to finance the establishment of socially useful jobs.
[10] Following the previous note (i.e. in connection with the active support of employment), an agreement on the establishment of a socially useful job can be stated as a legal fact giving rise to a subsidy legal relationship. This agreement is, as well as other agreements on the provision of a subsidy, the public law contract within the meaning of the article 159 of the Act No. 500/2004 Coll., Administrative Code, as amended.
[11] However, unlike the „standard" private contracting, the subsidy recipient does not have the possibility to influence the content of the agreement. Conditions are fixed by the subsidy grantor and the subsidy recipient either accepts the conditions or not (in this respect, the substance of concluding a subsidy agreement resembles the conclusion of an adhesive contract based on the „take it or leave it" principle). The contractual freedom of the subsidy recipient is thus considerably limited.

in the French public finance (or the French public finance law), has mentioned that public finances is a crossroads of disciplines [Gaudemet, Molinier, 1996: 22]. In other words, public finance is a discipline (inter alia scientific and educational) that can be related with the disciplines that are exemplified above. Subsidies *sensu largo* are expenditures intended to cover selected public sector financial liabilities. They are not mandatory liabilities (i.e. liabilities or expenditures arising from the law or other legal norms and contractual obligations), these are financial liabilities arising from legal titles, such as public-law contracts within the meaning of § 159 et seq. of the Code of Administrative Procedure (i.e. contractual financial liabilities, for example a subsidy agreement) or arising from legal titles such as individual administrative acts (i.e. non-contractual financial liabilities, for example a decision to provide a subsidy).

4.1. Subsidy applications (preparation)

This is a legal act, which is the result of previous preparations of the subsidy applicant, or rather potential subsidy recipient. An application for a subsidy must always contain requisites required by law and it is therefore decisive whether the applicant in interested in a "state" subsidy or a subsidy provided from a territorial budget. In the case of "state" subsidies, the list of obligatory requisites of the application is defined in the Article 14 (3) of the Act No. 250/2000 Coll., while for subsidies provided from territorial budgets, the obligatory list of requisites is defined in the article 10a (3) of the Act No. 250/2000 Coll. However, requisites defined in the aforementioned articles are an absolute minimum and in practice, these requisites are supplemented by other requirements required by a special act (e.g. Act on Education, Act on social services, Act on employment). It is also decisive, whether the requested subsidy is financed programmatically (i.e. within the meaning of the article 12 of the Act No. 218/2000 Coll.) or out of program. While in the case of a "program" subsidy application, its requirements are further defined by the documentation of the relevant program (i.e. beyond the scope of the Article 14 (3) of Act No. 218/2000 Coll.), in the case of "non-program" application, it requirements are defined by law, unless a subsidy grantor decides otherwise (for example through the issued methodology or principles annexed to the issued subsidy decision, or rather a subsidy agreement).

The decision-making process on a subsidy is regulated quite curtly. A properly submitted subsidy application is an essential for the subsidy decision. The decision-making process on a subsidy is conducted by a subsidy grantor. If the subsidy grantor complies to a subsidy application, the subsidy grantor issues a decision on a subsidy according to the Article 14 (4). Conversely, a subsidy grantor may, under the Article 14m, refuse an application in whole or provide a subsidy in part and reject the remainder. None remedy is permissible against the decision of the subsidy grantor, which in effect results in a purely one-step administrative procedure. The rules of the Administrative Procedure shall subsidiary apply to a subsidy decision-making process, but with the exception of the exhaustively listed provisions (according to the article 14q of the Act No. 218/2000 Coll.). According to the article 14 (1) of the Act No. 218/2000 Coll. (similarly according to the article 10a (2) of the Act No. 250/2000 Coll.) there is no legal entitlement to a subsidy, unless a special legal regulation provides otherwise. Therefore, a failure to grant a subsidy cannot constitute an infringement of the applicant's right to own property (or any other fundamental right). The subsidy recipient´s property right of public money arises when the subsidy is provided on the basis of the relevant legal title. For this reason, a decision of the subsidy grantor to not provide a subsidy does not interfere with the recipient´s property right (i.e. public money). This legal view is also supported by the judgement of SAC [Supreme Administrative Court: 5 Afs 69/2010 -135]. However, if the subsidy grantor breaches the conditions, which he defined ex ante and on the basis of this breach the subsidy grantor does not provide a subsidy, the subsidy recipient could defend itself in the administrative judiciary.

4.2. Lawful factors leading to the providing of a subsidy and related guarantees of legality

In the present case, there are the circumstances with which the legal norm attaches to the creation of a subsidy relationship, whereby the subjective rights and obligations of subjects (i.e. a subsidy grantor and a subsidy recipient) of these legal relationships are established. From the point of view of legal theory, these are subjective lawful factors, i.e. legal acts taking the form of an individual administrative act (i.e. decision to provide a subsidy within the meaning of the article 14 of the Act No. 218/2000 Coll.), and respectively public-law contracts in the meaning of the article 159 of the Act No. 500/2004 Coll. (i.e. an agreement on the provision of a subsidy within the meaning of the article 17 of the Act No. 218/2000 Coll., or and agreement on the provision of a subsidy within the meaning of the article 10a (3) of the Act No. 250/2000 Coll.).

Subsidy decision and subsidy contract - The subsidy decision is the final stage of the subsidy decision-making process. This process is started when the subsidy application is submitted. This process (in case of a positive subsidy decision) is ended when the subsidy (public money) is paid out (or conversely, in case of a negative subsidy decision, this process is ended by failure to provide a subsidy). From the terminological point of view, the term of decision is therefore narrower the term (subsidy) decision-making process, which was also inferred by the SAC [Supreme Administrative Court: 8 Afs 47/2013-45]. Here we can see the analogy of the terminological substance of these terms with terms such as budget and budgeting[12]. The decision to provide a subsidy is issued only in the regime of the Act. No. 218/2000 Coll., in the regime of the Act No. 250/2000 Coll., is issued a decision on the conclusion of a specific public-law contract on the provision of a subsidy. In the case of providing "state" subsidies, the legal title may also be an agreement on the provision of a subsidy. If a subsidy from a state fund is to be provided, the fundamental act is the act establishing the relevant state fund.

In the case of a decision to provide a subsidy, the requisites of legal titles required to obtain a "state" subsidy are defined in the article 14 (4) of the Act No. 218/2000 Coll., in the case of a conclusion of an agreement on the provision subsidy, its requirements are defined by a special act. The statutory requirements of a public-law contract on the basis of which a subsidy is provided from "territorial" budgets are defined in the article 10a (3) of the Act No. 250/2000 Coll.

[12] The budget is a narrower term, because the budgeting is a process that involves budget planning, execution and control.

5. Subsidy legal relationships and financial legal liability of its subjects

So-called subsidy relationships (as a specific type of financial law relationships) naturally have their essential elements (i.e. subject, object and content). These relationships are public-law relationships whose subject is the subsidy grantor on the one hand, and the subsidy recipient on the other hand. While grantors of "state" subsidies are mentioned in a non-exhaustive manner in the article 14 (2) of the Act No. 218/2000 Coll., grantors of subsidies from territorial budgets are defined in the article 10a (1) of the Act No. 250/2000 Coll., in the latter case it is one of many manifestations of the activities of territorial public-law corporations in their independent competence. Subsidy recipients may be natural or legal persons of both public and private law. For the rest, the author refers to the chapter 3. *in fine*.

5.1. Currency Exchange as a Financial Threat

It is the case law of the Czech Supreme Administrative Court, or the case law of the Czech Constitutional Court, which has for a long time brought to the area of the subsidy law (which often suffered from lack of clarity, the consequences of which are still evident) the necessary legal certainty.

The decision of the subsidy grantor on non-payment, respectively reduction of the subsidy according to the article 14e of the Act No. 218/2000 Coll., as well as the levy for breach of budgetary discipline stated by the tax administration are one of the most frequent objects of administrative judiciary in the area of the subsidy law.

The legislation in the order of the first sanction instrument depends on the legal title under which the "state" subsidy was provided. If the subsidy is provided to the subsidy recipient on the basis of an agreement on the provision of a subsidy within the meaning of the article 17 of the Act No. 218/2000 Coll., it is a bilateral legal act, which in fact has the character of a public-law contract within the meaning of the article 159 of the Act No. 500/2004 Coll. If the subsidy grantor fails to pay the awarded subsidy, the subsidy recipient may consider such legal action to be in breach of the agreement, or failure to comply with the agreement (public-law contract). In a situation, where one of the contracting parties expresses a disagreement with the legal action of the other party, its protection consists primarily in article 169, respectively 141 of the Code of Administrative Procedure, according to which it may initiate a dispute arising from a public-law contract (within which the parties have an equal position). A decision on a dispute arising from a public-law contract can be challenged by an action within the meaning of the article 65 of the Code of Administrative Procedure (the law does not allow appeal).

If the subsidy was provided on the basis of the subsidy grantor´s decision within the meaning of the article 14 of the Act No. 218/2000 Coll., then the non-payment (or reduction) of this subsidy is supported in the article 14e of the same Act. The Constitutional Court found [Constitutional Court: Pl. ÚS 12/14] the article 14e (4) of the Act No. 218/2000 Coll., in version in force until 19 February 2015, as unconstitutional, because it denied the possibility of judicial review of the decision on non-payment, respectively reduction of "state" subsidy. For this reason, the above mentioned provision has undergone turbulent changes. The measure within the meaning of the article 14e of the Act No. 218/2000 Coll., according to the SAC case law [Supreme Administrative Court: 6 Afs 270/2015-48], is an individual administrative act fulfilling the material and formal features required by the article 65 of the Act No. 150/2002 Coll., and can therefore be challenged as a decision in a material sense by an administrative action within the meaning of the Act No. 150/2002 Coll. The legitimacy of this legal construction is supported by the fact that a decision within the meaning of the article 14e of the Act No. 218/2000 Coll. substantially affects the legal sphere of the subsidy recipient and therefore the recipient of the subsidy cannot be denied access to the court as the only protection against the potential arbitrariness of the subsidy. The Constitutional Court in its judgement concerning the measure within the meaning of the article 14e of the Act No. 218/2000 Coll. and its impact on the subsidy recipient stated that: "*Such a measure can have a serious impact on a subsidy recipient, as it can lead to a frustration of his planned and subsidized project; eventually, it can lead to his liability for an inability to fulfil the obligation (typically pay the price of the ordered thing or service) to which he has undertaken, assuming that he will receive public money to pay his obligation*" [Constitutional Court: Pl. ÚS 12/14].

6. Legal liability of subsidy grantor

Since the subsidy relationships are legal relationships, where the subsidy grantor has the sovereign status, the subsidy grantor authoritatively decides on the conditions for providing a subsidy, which are defined in the legal title on the basis of which the subsidy is provided. The provision of public money to the subsidy recipient is the benefit of the subsidy grantor for the subsidy recipient, which has no consideration. Only subsidy recipient´s acceptance of predetermined conditions, which he undertakes to comply with, is an imaginary counterweight. The SAC has previously ruled that "*the subsidy grantor primarily creates a legal framework within the bounds of which the subsidy applicant is obliges to move*" [Supreme Administrative Court: 1 Afs 100/2009-63]. It is therefore entirely legitimate for the subsidy grantor to be legally responsible for a sufficiently definite definition of the conditions for the providing of the subsidy. In case the subsidy grantor insufficiently chooses the conditions of subsidy, the SAC has stated: "*If the subsidy grantor chooses to define uncertain legal terms that do not have a clear legal definition, the subsidy grantor has to subsequently bear any negative consequences resulting from the already established principle that the uncertainty of the legal concept in the subsidy agreement cannot to the debit of the subsidy recipient as a weaker party*" [Supreme Administrative Court: 9 Afs 202/2007-68]. The SAC on the need for clarity, respectively the clarity of conditions defined by the subsidy grantor further judged that the subsidy grantor is obliged to "*define subsidy conditions in a clear, definite and understandable manner, which ensures predictability of the procedure in case of a possible recovery of the provided subsidy or application of a sanction levy, respectively a situation, where the subsidy recipient is certain about the content of the subsidy conditions*" [Supreme Administrative Court: 5 Afs 90/2012-33]. In other words, the conditions, under which a subsidy is provided are an expression of the sovereignty of the subsidy grantor, who establishes the legal framework within which the subsidy is provided, but these conditions have to be established in accordance with the principles of legal certainty, predictability and legitimate expectations. The object of the cassation complaint was also a lack of clarity concerning, inter alia, the deadline by which the subsidy recipient should report in the final evaluation of the subsidized project. The subsidy grantor (Ministry of Industry and Trade) clearly indicated the deadline in the subsidy decision, but a different date was

defined in the conditions of provided subsidy. In a situation, when the subsidy recipient complied with the deadline specified in the subsidy decision, but no longer met the (different) deadline specified in the subsidy conditions, the SAC stated, that this lack of clarity regarding the different deadlines for submitting the final report cannot be borne by the subsidy recipient [Supreme Administrative Court: 4 As 117/2014-39]. If there is a possibility of double interpretation, the interpretation in favour of the subsidy recipient as the weaker party has to be chosen [Supreme Administrative Court: 6 Afs 55 /2016 – 70].

7. Legal liability of subsidy recipient

In case of violation of the relevant conditions, respectively obligations of the subsidy recipient, the Act No. 218/2000 Coll. differentiates three basic legal institutes as a possible manifestation of the subsidy recipient´s responsibility. The application of these legal institutes penalizes the recipient of the "state" subsidy. The legal institutes ma take the following form:

l) Non-payment, respectively reduction of the subsidy within the meaning of the article 14e of the Act No. 218/2000 Coll.;

m) Taking away a subvention within the meaning of the article 15 of the Act No. 218/2000 Coll.;

n) Levy for breach of budgetary discipline within the meaning of the article 44a of the Act No. 218/2000 Coll.

All mentioned specific forms of sanctioning are an expression of the establishment of the responsibility of the subsidy recipient in respect of the provision of a "state" subsidy under the Act No. 218/2000 Coll. As a result, the above-mentioned sanctioning legal institutes always lead to the same result, i.e. at least to a restriction on the free use of public funds, but the possibility of applying a specific form of sanction depends on whether the provided subsidy has already been paid to its subsidy recipient or not. In the case of subsidies provided from "territorial" budgets, the sanctioning legal institutes are limited only to the payment for breach of budgetary discipline within the meaning of the article 22 of the Ac No. 250/2000 Coll.

While only the relevant tax administration (the local tax office) has the power to decide on the levy for breach of budgetary discipline in case of "state" subsidies, the non-payment, respectively the reduction of the "state" subsidy, as well as its taking away, is decided by the relevant subsidy grantor. In the case of municipalities, the levy for breach of budgetary discipline for the "territorial" subsidies is decided in the independent competence. In the case of the region, the levy for breach of budgetary discipline is decided by the regional authority. Ultimately, it is irrelevant for the subsidy recipient of a "state" subsidy whether a levy has been applied for violating budgetary disciplines within the meaning of the article 44a of the Act No. 218/2000 Coll., or the subsidy was not paid in accordance with the article 14e of the Act No. 218/2000 Coll., because the promised subsidy is always minimally reduced. The difference between the above-mentioned institutes lies in the entity implementing this sanction instrument and whether the sanction is concerned to public money that have already been paid, respectively public money that will yet to be pay. Therefore, the SAC has stated, that both decision on the levy for the breach of budgetary discipline and the decision within the meaning of the article 14e have to be duly reasoned, because of its similar nature, consequences caused and reasons for issue [Supreme Administrative Court: 6 Afs 270/2015-78].

Ad a) Non-payment, respectively partial non-payment (reduction of the subsidy) within the meaning of the article 14e of the Act No. 218/2000 Coll., it is possible to proceed only under the conditions stipulated by law (i.e. in case of a reasonable suspicion of the subsidy grantor that the subsidy recipient has breached the obligations stipulated by law[13] failed to observe the purpose of the subsidy or the conditions[14] under which the subsidy was provided) and naturally if the promised subsidy has not yet been provided. In practice, however, there are situations where the subsidy is provided gradually in several separate phases[15].

Ad b) Taking away a subvention within the meaning of the article 15 of the Act No. 218/2000 Coll. is possible by the nature of the matter only in a situation where a decision to grant a subsidy has already been issued and under the conditions stipulated by law. The subsidy taking away procedure (which is a specific administrative procedure) is initiated by the subsidy grantor when he discovers that there are defective facts presumed by law[16]. In practice, however, the subsidy taking away procedure is less frequently used than sanctioning instruments within the meaning of the article 14e, respectively the article 44a of the same act, because it is not applied in principle in cases where the beneficiary violated the relevant conditions (obligations) imposed by the decision (public-law contract) in the provision of the subsidy. In practice, however, the subsidy taking away procedure is less frequently used than sanctioning instruments within the meaning of the article 14e, respectively the article 44a of the same act, because this process is not applied in principle in cases where the beneficiary violated the relevant conditions (obligations) imposed by the decision (or by the public-law contract) in the provision of the subsidy.

Ad c) Violation of the relevant conditions established by the decision on the providing of the subsidy, or by the public-law contract may be considered a breach of budgetary discipline (which may take several forms[17]) in the regime of either Act No. 218/2000 Coll., or Act No. 250/2000 Coll. Independently

[13] In the version effective until 19 February 2015, the violation of the law meant only the violation of public procurement rules (under the Public Procurement Act) co-financed from the EU budget. The current and effective legislation presupposes a number of possible infringements.
[14] Subsidy conditions are defined in the decision on providing of the subsidy, respectively in the subsidy agreement.
[15] For example, the subsidy recipient receives the entire subsidy after four years. The subsidy decision may provide that the money will be paid out in stages each year.
[16] For example, article 15 (1) point b) of the Act No. 218/2000 Coll., i.e. the finding that the data on the basis of which the subsidy was issued incomplete of false.
[17] Cases of breach of budgetary discipline within the meaning of the budgetary rules include, for example, unauthorized use or withholding of money; a breach of an obligation defined by law, decision or agreement of the providing of a subsidy, which is directly related to the purpose for which the subsidy

of the breach of budgetary discipline, the subsidy recipient may also commit other offenses through its actions. In this context, reference may be made, for example, to a possible breach of the provisions of the Public Procurement Act. However, not every violation of the relevant conditions, respectively the obligations is explicitly considered to be a breach of budgetary discipline, to which the sanction mechanisms of the subsidy law are to be reacted, which is in line with both the European Court of Justice (ECJ) and the SAC case law. In the case of the judgement of the Fourth Chamber of the ECJ, it was held that "*the finding of a minor irregularity does not, by virtue of the principle of proportionality, lead to the recovery of the funds in part*" [Court of Justice: C-465/10]. The SAC´s decision stating that "*any breach of the obligation in question does not immediately constitute an unauthorized use or withholding of the subsidy funds, which must be returned to the public budget*" is the same [Supreme Administrative Court: 4 Afs 117/2014-39]. Therefore, the SAC recalls the role of levy for breach of budgetary discipline (as a legal instrument having, inter alia, a sanctioning function), respectively its legitimate application, depending on the non-purpose of spending public funds; as well as the SAC recalls that the unauthorized use of public funds (as one of the forms of violation of budgetary discipline) must be understood as "*spending (i.e. consuming) funds for a specific purpose. The sanctioning levy has to be connected not with any violation of budgetary rules, but only with the use of funds for another purpose, as a result of which the state budget funds are not used at the time for the purpose for which they were intended*" [Supreme Administrative Court: 11 Afs 1/2004-73]. The SAC also particularized the unauthorized use of public budget funds, which means "*their unauthorized expenditure which is contrary not only to the purpose for which the funds were provided, but also to other conditions defined by law, by the public-law contract or by the decision on subsidy under which these funds were provided to the subsidy recipient*" [Supreme Administrative Court: 9 Afs 113/2007-63].

Therefore, not every violation of the obligation is at the same time an unauthorized use of public funds (or more generally a breach of budgetary discipline) and as such should not automatically result in the return of these funds (public money) back to the relevant public budget. In other words, even if the subsidy recipient violates the relevant conditions, respectively obligations defined in connection with the provided subsidy, which in the end have no (or totally negligible) influence on the purpose, respectively the ultimate objective of the subsidy provided, levies imposed by the financial authorities as a sanctioning instrument as a result of a breach of budgetary discipline are not reasonable. This may be, for example, a misconduct of the subsidy recipient of a purely administrative nature (for example, late payment of an invoice to a supplier[18], which in principle has no effect on the fulfilment of the purpose of the subsidy). The SAC also stated that the decisive moment for determining the unauthorized use of funds is the moment of their issuance contrary to the purpose of their provision [Supreme Administrative Court: 4 Afs 117/2014-47].

8. Legal certainty in the interference of selected sanctions measures

The levy for breach of budgetary discipline has, among other things, a sanctioning function, which should therefore determine its use in practice, and only as a result of breach of the relevant condition, respectively obligation, whose material aspect reaches a sufficient level. In these intentions, the SAC stated that "sanction levy should always be associated only with the unauthorized use of state funds, and its imposition cannot be based on a purely formalistic approach, regardless of the actual state of affairs. The crucial fact to assessing the case is therefore whether the taxpayer has used the funds provided to cover costs directly related to the financing of the supported project." [Supreme Administrative Court: 9 Afs 1/2008-45]. In other words, the crucial fact is whether the unauthorized use of public funds was contrary to the intended purpose of the subsidy. Thus, it is not permissible for a subsidy recipient (who has a status of a taxpayer during the process of levy for breach of budgetary discipline) to be obliged to be levied due to a defect having a formal character that may not have any effect on the planned intention. If the material nature of the infringement is sufficiently high, the levy should nevertheless be imposed in accordance with the principle of proportionality, because it is an interference by the public authorities with the subjective rights of the subsidy recipient. The SAC also stated [Supreme Administrative Court: 62 Af 22/2013-66], that the subsidy grantor in the decision on subsidy can define, in accordance with the principle of proportionality, which violation of the relevant condition is considered a serious and which is less serious. In accordance with the principle of proportionality, a levy for breach of budgetary discipline should correspond to the scale and gravity of the breach of budgetary discipline. In order for the decision to fix the levy to be reviewable, the levy should be duly reasonable, having regard to the scale and gravity of the breach of budgetary discipline.

The sanctioning instruments in the form of a levy for breach of budgetary discipline and measures according to the article 14e of the Act No. 218/2000 Coll. are often connected to each other and therefore they are intertwined, respectively replenishment. However, it is necessary to differentiate whether the financing (i.e. the actual payment of the subsidy for the subsidized project) is realized (i) ex ante or ex post (ii), as this affects the nature of the measure within the meaning of the article 14e. The proper determination of the moment when public funds were provided to the subsidy recipient is connected to the determination of the moment when the subsidy recipient breached budgetary discipline and the determination of the subsidy grantor authority´s power to assess that situation. In general, a subsidy grantor is entitled not to pay out that part of the subsidy that its subsidy recipient would have to pay as a levy for breach of budgetary discipline.

In the first case (i) it is a situation where the subsidy is paid to its subsidy recipient and he violates the relevant conditions, which the subsidy grantor (subjectively) considers a breach of budgetary discipline within the meaning of the article 44 of the Act No. 218/2000 Coll., and therefore the measure according to the article 14e (i.e. the non-payment or reduction of the subsidy) is applied. The subsidy grantor is obliged to inform not only the subsidy recipient, but also the tax administration about such a measure without undue delay. Possible levies for breach of budgetary discipline are the sole responsibility of the relevant tax administrator. If the tax administration decides the budgetary discipline was not breached by the subsidy recipient, the subsidy grantor is obliged to pay the remaining funds (subsidy) to the subsidy recipient. In such a case, the measure within the meaning of the article 14e,

was granted and which occurred prior to the receipt money from the relevant public funds and which lasts when the money is received into the subsidy recipient´s account.

[18] The SAC according to the judgement of 10 October 2014, case number 9 As 117/2014-39, does not consider a two-month delay in the transfer of the provided subsidy from the subsidy grantor´s account to the subsidy recipient´s account as a withholding of the subsidy in accordance with the Act No. 218/2000 Coll., as the subsidy was ultimately used in accordance with its original purpose.

i.e. non-payment (or reduction) of the subsidy, is of a temporary nature and, as a result, it is a suspension of the payment of the subsidy in question. The result of the tax administrator´s control is binding on the subsidy grantor. The SAC also stated [Supreme Administrative Court: 9 Afs 168/2017-36]. If the subsidy grantor fails to pay the remainder of the subsidy to the subsidy recipient (thereby in effect unlawfully withholding public funds), the subsidy recipient is entitled to file an action in accordance with the article 82 of the Code of Judicial Administrative Procedure. The temporary aspect of the measure within the meaning of the article 14e of the Act. No. 218/2000 Coll., which consists in non-payment, respectively in the reduction of the subsidy is given by its nature and duration defined by the tax administrator´s control. The interesting question is, within what deadline the subsidy grantor is obliged to pay the unpaid part of the subsidy to the subsidy recipient when the tax administrator decides that there has been no breach of budgetary discipline. The law does not regulate this situation in any way. The following legal opinion could be found as a suitable: A legal opinion [Matušková 2017: 6] referring to the possible application of the article 14e (4), according to which the subsidy grantor is obliged to pay the subsidy within five working days of the date on which the decision on objections comes into force stating that the non-payment (reduction) of the subsidy occurred unlawfully. On the basis of analogia legis, this provision can be applied to the situation (not regulated by law) where the unpaid (reduced) subsidy is to be paid to the subsidy recipient (after the tax administration decided that the subsidy recipient did not violate budgetary discipline and therefore the non-payment of the subsidy was only temporary).

Conversely, there may be a situation where the subsidy grantor takes a measure within the meaning of the article 14e (i.e. non-payment or reduction of the subsidy) and the tax administrator subsequently finds a breach of budgetary discipline and therefore the tax administrator issues a payment assessment stipulating the relevant levy. In practice, however, it is inadmissible for a subsidy recipient to pay a levy for a breach of budgetary discipline if the subsidy recipient has already been cut once due to a breach of the same conditions (the subsidy was not paid or reduce). Therefore the article 44a (5) point b) of the Act No. 218/2000 Coll., in version in force until 19 February 2015, imposed to the tax administrator a statutory obligation to set off the amount, which the subsidy grantor has not yet paid due to a suspected breach of budgetary discipline by the subsidy recipient. The tax administrator had to do this act so as part of the payment assessment. This statutory obligation, as well as the conduct of the tax administrator, who had already set off in the course of the payment assessment, could be only acknowledged, because the payment assessment stipulating the levy has the status of enforcement order. After the amendment (i.e. in version in force since 20 February 2015), the statutory obligation of the tax administrator (i.e. to set off the relevant amount) has disappeared from the legislation, which apparently weakened the legal certainty of the subsidy recipient. However, given that both the measure within the meaning of the article 14e, and the levy within the meaning of the article 44a are punitive, the subsidy recipient cannot be penalized twice for the same breach of the relevant condition (obligation). Thus, even in the wording of the current and in force legislation, there is nothing to prevent the tax authorities from continuing to use the legal institute of set off in this situation.

Similarly, there may be cases (ii), where the subsidy grantor (subjectively) considers that the subsidy recipient has breached the relevant conditions before the subsidy was paid to him. This is the case when the subsidy is provided with respect to the subsidized project, not ex ante, but only ex post. The subsidy grantor takes a measure within the article 14e and the subsidy grantor does not pay the subsidy, respectively he reduces the subsidy. However, in such a case, unlike the (i) first case, it is the final non-payment, respectively the reduction of the subsidy, because the tax administrator has not the power to decide on the levy for breach of budgetary discipline, if the subsidy recipient does not have a subsidy (the recipient could not therefore illegally use public funds). The SAC has ruled [Supreme Administrative Court: 6 Afs 270/2015-48], that the subsidy grantor´s decision on a measure within the meaning of the article 14e must in any case include information whether the subsidy reduction is temporary or definitive.

In practice, ex ante and ex post financing are often intertwined. The subsidy recipient receives part of the subsidy before the implementation of the subsidized project and he receives another part of the subsidy after the realization of the subsidized project. If the subsidy recipient violates the conditions of the part of the subsidy already received, the subsidy grantor suspends the payment of the remaining part of the subsidy and the tax administrator has the power to decide on the breach of budgetary discipline (even though the subsidized project was already partially funded and the violation of the condition was connected with the subsidy, which was already paid). The non-payment of the remaining part of the subsidy is therefore of a temporary nature. In other words, to determine the nature of the measure within the meaning of the article 14e of the Act No. 218/2000 Coll., it is crucial to determine whether the breach of the relevant conditions concerns the part of the subsidy already paid or the part of the subsidy to be paid.

9. Conclusion

The article deals with selected issues of one of the subsystems of the financial law, namely the subsidy law. The article analysed financial legal liability of both the subsidy grantor and the subsidy recipient. There were introduced, respectively, analysed possible situations in which the legal liability of these entities of subsidy legal relationships is based. There were also analysed the legal consequences, respectively sanctions that may be imposed on these entities under statutory conditions and these issues were subsequently compared with each other.

Based on the analysis carried out in the paper, it was identified as a relatively serious problem that in the case of subsidies provided from territorial budgets, the relevant subsidy grantor can use, unlike the “state” subsidy grantor, only a levy for breach of budgetary discipline as a sanction instrument, as also shown in the following table. This fact limits the subsidy grantor within his sanction-preventive reactions to undesirable behaviour of the subsidy recipient (in case the subsidy is provided from the territorial budget).

Table 1. Subsidy provider´s right to apply sanctions against the subsidy recipient

Type of sanctions	State subsidies		Subsidies provided from territorial budgets	
	Application of sanction	Sanction is imposed by	Application of sanction	Sanction is imposed by
Non-payment, reduction of a subsidy	YES	Grantor	NO	-
Taking away a subvention	YES	Grantor	NO	-
Levy for breach of budgetary discipline	YES	Tax administration	YES	Grantor

Source: author's own elaboration according to the Act No. 218/2000 Coll., respectively the Act No. 250/2000 Coll.

The table 1 (Subsidy provider´s right to apply sanctions against the subsidy recipient) shows the unequal position of the subsidy grantor, if the subsidy is provided from the territorial funds compared to the subsidy provided from the state budget (from state funds). The following options are available to solve this problem:

a) To equalize the position of the subsidy grantor in the case of "territorial" subsidies with the position of the subsidy grantor of "state" subsidies regarding the possibility of using all sanctions permitted by law.

b) To amend the levy for breach of budgetary discipline for "territorial" subsidies so that a potential sanction would be sufficient motivation for the subsidy recipient to comply with all stipulated subsidy conditions.

In particular, the second option would not primarily aim at sanctioning, i.e. punishing the subsidy recipient who violated predetermined conditions within the subsidy procedure, but it rather served as an incentive (at the same time as a possible prevention) for the subsidy recipient to abstain from any harmful conduct.

The article is based on the valid and effective legislation as of June 30, 2019. Until this time, the area of the subsidy law *en bloc* has undergone literally turbulent changes, as already mentioned in the introduction of the article. However, not only due to many amendments to the relevant acts (especially Act No. 218/2000 Coll.), but also due to the relevant case law (especially the SAC), legal certainty in this area of not yet very clear interpretation within (not only) legal liability in subsidy legal relationships was strengthened. The main aim of the article was to confirm or disprove the hypothesis that sanctions in the subsidy law are the same for cases when a subsidy is provided from state funds and for cases when a subsidy is provided from territorial funds. This hypothesis was disproved. The partial aim of the article was achieved thanks to appropriately chosen methods.

References:

Gaudemet, P.-M.; Molonier, J.: Finances publiques [Public Finance], Paris: Montchrestien, 1996.
Harris, P.: Corporate tax law, 2nd ed. Cambridge: University of Cambridge, 2013.
Matušková, T.: Problematické aspekty soudního přezkumu nevyplacení dotace [Problematic aspects of judicial review of non-payment of a subsidy], Soudní rozhledy [Judicial horizons], nr 11, 2017.
Mrkývka, P., Pařízková, I.: Základy finančního práva [Basics of Financial Law], 6th ed. Brno: Masarykova univerzita [Masaryk University], 2012.
Mrkývka, P.: Propedeutika finančního práva [Propedeutics of Financial Law], Brno: Masarykova univerzita [Masaryk University], 2014.
Průcha, P.: Správní právo : obecná část [Administrative law : general part], 8th ed. Brno : Doplněk, 2012.

Legal Acts:

Act No. 388/1991 Coll., on the State environmental Fund of the Czech Republic, as amended.
Act No. 239/1992 Coll., on the State Fund of Culture of the Czech Republic, as amended.
Act No. 215/2004 Coll., on the regulation of certain relations in the area of state aid and on the amendment of the Act on Support of Research and Development, in amendment.
Act No. 218/2000 Coll., on budgetary rules and amending certain related acts, as amended.
Act No. 250/2000 Coll., on budgetary rules of territorial budgets, as amended.
Act No. 435/2004 Coll., on employment, as amended.
Act No. 500/2004 Coll., Administrative Code, as amended.
Act No. 561/2004 Coll., Education Act, as amended.
Act No. 108/2006 Coll., on social services, as amended.
Act No. 134/2016 Coll., on public procurement, as amended.
Commission Regulation No. 1407/2013.
Consolidated version of the Treaty on European Union No. 2012/C 326/01
Government Regulation no. 249/2002 Coll., on conditions for providing contributions to a mortgage loan to persons under 36 years of age.

Court rulings:

Constitutional Court: Pl. ÚS 12/14.
Court of Justice: C-465/10.
Supreme Administrative Court: 11 Afs 1/2004-73.
Supreme Administrative Court: 9 Afs 113/2007-63.
Supreme Administrative Court: 9 Afs 1/2008-45.
Supreme Administrative Court: 9 Afs 202/2007-68.
Supreme Administrative Court: 1 Afs 100/2009-63.
Supreme Administrative Court:5 Afs 69/2010-135.
Supreme Administrative Court:1 Afs 77/2010-81
Supreme Administrative Court: 5 Afs 69/2010-135.
Supreme Administrative Court: 8 Afs 47/2013-45.
Supreme Administrative Court: 7 Afs 93/2013-31.
Supreme Administrative Court: 5 Afs 90/2012-33.
Supreme Administrative Court: 62 Af 22/2013-66.
Supreme Administrative Court: 4 As 117/2014-39.
Supreme Administrative Court: 6 Afs 270/2015-48.
Supreme Administrative Court: 6 Afs 55 /2016 - 70.
Supreme Administrative Court: 6 Afs 270/2015-78.
Supreme Administrative Court: 9 Afs 168/2017-36.

Other Official Documents:

Explanatory Memorandum to the Act No. 24/2015 Coll.