EASTERN EUROPEAN JOURNAL OF TRANSNATIONAL RELATIONS

Legal consequences of exhaustion of the amount allocated for co-financing of projects under the appeal procedure in the 2021-2027 financial perspective

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Abstract. Analysis and assessment of the legal effects of exhausting the amount allocated for co-financing of projects under the appeal procedure in the system of implementation of the EU cohesion policy in Poland in the 2021-2027 financial perspective. Literature review, analysis of relevant legal regulations and the jurisprudence of administrative courts. The provisions of the Act on the rules for the implementation of tasks financed from European funds in the 2021-2027 financial perspective erroneously equate the exhaustion of the amount allocated for co-financing of projects under a measure or region category with the sum of funds distributed by concluding agreements or issuing administrative decisions on project co-financing. They do not take into account the fact that due to, e.g. the availability of additional financial resources resulting from termination of co-financing agreements or an increase in the euro exchange rate, the exhaustion of the allocation may change until the end of programme's implementation period. It is necessary to shape the appeal procedure in such a way that will provide the applicants with a real chance of obtaining co-financing, because the implementation and protection of their constitutional rights cannot depend on the exhaustion of the available allocation of financial resources.

Keywords: EU funds, cohesion policy, appeal procedure, financial allocation.

JEL Classification: G38, K39.

Citation: Snarski, S.J., & Martyniuk, M. (2023). Legal consequences of exhaustion of the amount allocated for co-financing of projects under the appeal procedure in the 2021-2027 financial perspective. *Eastern European Journal of Transnational Relations*, *7*(1), 75-83. https://doi.org/10.15290/eejtr.2023.07.01.07

Academic Editors: Rafał Poździk & Marek Martyniuk

Publisher's Note:

INTRODUCTION

The key legal act regulating at the national level the procedure for obtaining and spending funds from the European Union budget in the current programming period is the Act of 28 April 2022 on the rules for the implementation of tasks financed from European funds in the 2021-2027 financial perspective (Journal of Laws of 2022, item 1079; hereinafter: the Implementation Act). The main part of its provisions entered into force on 4 April 2022. As was the case under the Act of 11 July 2014 on the principles of implementing cohesion policy programmes financed under the 2014-2020 financial perspective (Journal of Laws of 2020, item 818, as amended), the Implementation Act in Article 56(6) stipulates that a negative assessment also covers a case in which a project – despite meeting the required selection criteria and obtaining the appropriate number of points – cannot be selected for co-financing due to the exhaustion of the amount allocated for the co-financing of projects in a given call for proposals. This regulation therefore leads to a certain dissonance. On the one hand – pursuant to Article 51(1)(1) in conjunction with Article 50(3) of the Implementation Act – the competent institution in the call for proposals specifies the amount allocated for co-financing, and therefore potential applicants should be aware of certain financial limitations. On the other hand, applicants have a legitimate right to expect that their projects will be awarded funding if they meet the required selection criteria. However, in practice, one often has to deal with a situation where, as a result of an incorrect assessment made by experts, the scores awarded to some projects are corrected in favour of applicants as a result of launching an appeal procedure (Porzeżyńska, 2021, p. 416). Therefore, the following question arises: can the refusal to grant project co-financing motivated by the exhaustion of funds be replaced by the obligation of the competent institutions to properly shape the procedures for submitting applications, so that the appeal procedure in these circumstances does not turn out to be illusory and ultimately meaningless.

Considering the importance of the research problem indicated above, the aim of this paper is an attempt to analyse and assess the legal consequences of exhausting the amount allocated for co-financing of projects under the appeal procedure in the system of implementation of the EU cohesion policy in Poland in the 2021-2027 financial perspective. The research process was based on the formal dogmatic approach. Legal regulations relevant to the subject matter, available literature relating to the research area and the jurisprudence of administrative courts (including the principles of interpretation formulated therein) were analysed. The considerations undertaken in this paper have been limited to the procedure of selecting projects for co-financing through a competitive process, because according to the wording of Article 63 of the Implementation Act, applicants whose projects have not been selected for co-financing in a non-competitive manner are not entitled to launch an appeal procedure (Snarski & Martyniuk, 2023, p. 39).

EXHAUSTION OF THE AMOUNT ALLOCATED FOR CO-FINANCING OF PROJECTS

The competent institution responsible for carrying out the call for proposals has a strictly specified amount of funds allocated for co-financing projects under this call, which at the same time determines the scope of financial support to a limited number of projects (Jaśkiewicz, 2014, pt. B.1). Applicants can obtain information about this amount due to the fact that – as has already been indicated – it is an obligatory element of the call for proposals announcement. However, the Implementation Act in Article 56(6) provides that the exhaustion of the amount allocated for co-financing projects in a given call for proposals is an independent premise for a negative assessment of the project. Article 63 of the Implementation Act stipulates that in the event of a negative assessment of a project selected in a competitive manner, the applicant has the right to lodge a protest in order to re-verify the submitted application in terms of meeting the project selection criteria. Nevertheless, pursuant to Article 78 of the aforementioned act, the appeal procedure does not suspend the conclusion of co-financing agreements with applicants whose projects have been selected. Therefore, the problem of admissibility and conditions for limiting

applicants' rights under the appeal procedure arises when, in the opinion of the competent institution, the amount allocated for co-financing projects in a given call for proposals will be exhausted.

It should be noted that the completion of the procedure necessary for selecting projects for co-financing does not mean that the list of selected projects has a definitive character. On the basis of Article 57(5) of the Implementation Act, after the completion of the procedure for selecting projects for co-financing, the competent institution may select projects that have been negatively assessed due to the exhaustion of the amount allocated for co-financing projects, provided that the amount requested is available within a measure or region category (if under the measure the amount allocated for project co-financing is divided into region categories). However, the construction of the above-mentioned provision means that, for incomprehensible reasons, the discretionary powers of the competent institution include the possibility of increasing the allocation in the event that these funds are still available under a given measure or region category, and the project which, despite meeting the selection criteria, was assessed negatively only due to the lack of funds allocated for co-financing projects in a given call for proposals. The obligation imposed on the competent institution to prove that the amount of funds transferred under the given call for proposals cannot be increased would allow the elimination to a large extent, of the illusory nature of the appeal procedure in a situation where, despite launching an instance control and verifying the initial assessment of the application, the project could not receive co-financing, because the funds under the call for proposals have already been distributed by concluding agreements with other applicants. In the indicated case, the competent institution should obligatorily analyse the amount of funds available under a measure or region category and transfer them in such a way as to increase the amounts available under the call for proposals (Porzeżyńska & Woźniak, 2023a, p. 481).

The above regulation shows that the amount allocated for co-financing projects in a given call for proposals should not be equated with the allocation available under a specific measure or region category. The first of the above-mentioned amounts is each time determined by the competent institution in the call for proposals announcement and must be comprised within the limits indicated in the allocation available under a specific measure or region category. On the other hand, the latter amount is specified in the detailed description of the priorities of a specific programme and its change is made by the competent institution through a special procedure. Should this change necessitate shifts between priorities, this would constitute a change to the programme itself, which would require approval by the European Commission (Ostałowski, 2016, p. 381).

The provision of Article 77(2) of the Implementation Act refers to the allocation available under a measure or region category. In point 1, it stipulates that if at any stage of the appeal procedure the amount allocated for co-financing projects under a measure or region category is exhausted, the competent institution to which the protest has been submitted, leaves it without consideration. However, in an analogous situation, the administrative court, taking into account the complaint, only states that the project assessment was carried out in a way that violates the law and does not refer the case for reconsideration (Article 77(2)(2) of the Implementation Act). An important novelty compared to the provisions of the substantially similar legal act in force in the 2014-2020 financial perspective is the introduction in Article 77(3) of the Implementation Act of the definition of exhaustion of the amount allocated for co-financing projects under a measure or region category. According to this definition, the first condition for exhausting this amount is a situation in which the funds allocated for co-financing projects have been allocated to projects selected for implementation (i.e. appropriate agreements have been finalised with the applicants or decisions on project co-financing have been issued). The second premise leading to the exhaustion of the allocation is the distribution of funds intended for co-financing projects that have been selected for implementation under the call for proposals, even though the project co-financing agreements have not yet been concluded with their applicants or decisions on project co-financing have not been taken. In the latter case, however, the legislator stipulated that the funds exhausted by the projects selected for implementation are released again if it is impossible to conclude a project co-financing agreement or to issue a decision on project co-financing referred to in Article 61(3) and (4) of the analysed act.

The explanatory memorandum to the government's draft Act on the rules for the implementation of tasks financed from European funds in the 2021-2027 financial perspective indicates that the re-availability of funds for co-financing projects in a measure or region category will not cancel the decisions issued pursuant to Article 77(2), because for its application it is enough for the allocation to be exhausted at any stage of the appeal procedure (Sejm paper no. 2022/IX term of office of the Sejm, p. 54). However, the doctrine emphasizes that the literal wording of Article 77(3) of the Implementation Act and the use of the conjunction "and" in its content means that the above-mentioned premises must occur jointly. Such a construction of the provision should be assessed critically, as the first condition (i.e. the conclusion a co-financing agreement or issuing a decision on co-financing) may occur only in a situation where the project meets the project selection criteria, as a result of which it is selected for funding. The positive assessment of the project is approved by the competent institution if there are no obstacles specified in Article 61(3) and (4) of the Implementation Act, resulting in the fulfilment of the second condition, i.e. conclusion of an agreement or adopting a decision on co-financing. However, it is not possible to conclude a co-financing agreement or issue a decision to co-finance a project if the project does not meet these criteria or has been negatively assessed (Porzeżyńska & Woźniak, 2023b, p. 674; Talaga, 2020, p. 144).

According to the established case law of the Supreme Administrative Court issued on the basis of the provisions of the legislation applicable in the 2014-2020 financial perspective, the mere inclusion of a project on the list of projects selected for co-financing is of a declaratory nature and cannot be treated on an equal footing with distributing the amount allocated for co-financing, as it does not mean that the project will be implemented and that the funds allocated for its implementation have already been exhausted (see e.g. judgements of the Supreme Administrative Court: of 21 April 2022, I GSK 568/22, LEX no. 3340704; of 17 March 2022, I GSK 228/22, LEX no. 3365987; of 16 July 2020, I GSK 309/20, LEX no. 3058641). Exhaustion of the amount allocated for co-financing projects means its actual distribution, and not only the potential possibility of spending it (see e.g. judgements of the Supreme Administrative Court: of 21 August 2020, I GSK 499/20, LEX no. 3077944; of 15 July 2020, I GSK 252/20, LEX no. 3064734; of 23 June 2020 I GSK 308/20, LEX no. 3028793). The actual exhaustion of the amount allocated for co-financing projects means at least the existence of legally binding obligations to spend these funds, i.e. the agreement or decision on co-financing, which is the basis for co-financing of a given project (see judgement of the Supreme Administrative Court of 22 June 2020, I GSK 299/20, LEX no. 3028714). In other words, simply placing a project on the list of projects selected for co-financing does not constitute a binding obligation to conclude a co-financing agreement. At this stage, the applicant does not obtain a claim for the conclusion of the co-financing agreement. The competent institutions have the possibility to change their decision in the event of circumstances preventing the transfer of support in the period between the acceptance of the ranking list and the date of conclusion of the agreement (see judgement of the Supreme Administrative Court of 11 March 2020, I GSK 300/20, LEX no. 3020259). Consequently, the only ground for refusing support during and after the appeal procedure should be the actual exhaustion of funds under a given measure or region category (Porzeżyńska, 2021, p. 422).

Considering the above, it is worth stressing that even the actual exhaustion of the amount allocated for co-financing projects under a measure or region category may be variable until the end of the implementation period of a given programme (see judgement of the Supreme Administrative Court of 19 March 2021, I GSK 93/21, LEX no. 3179142). As a result, the construction of Article 77(3) of the Implementation Act, to the extent that it equates the exhaustion of this amount with the allocation of funds by concluding agreements or adopting decisions on co-financing projects, should be considered as raising serious doubts. The level of contracting resulting from the concluded co-financing agreements is variable, because in the event of irregularities in the implementation of projects, they may be resolved, and the funds paid unduly may be returned in whole or in part pursuant to Article 207(1) of the Act of 27 August 2009 on public finance (Journal of Laws of 2022, item 1634, as amended). In addition, the relationship between the level of contracting and the amount of allocation available under a measure or region category is not constant due to the volatility of the EUR exchange rate (the currency in which the level of allocation

is expressed in the programme documents) against the PLN (the currency in which project co-financing is expressed). Hence, even the exhaustion of the allocation in the final phase of implementation of a given measure is not a certain and final state. Until the end of programme implementation, it may change due to the emergence of free funds as a result of termination of co-financing agreements or an increase in the euro exchange rate (Ostałowski, 2016, p. 380). Therefore, the actual exhaustion of the amount allocated for project co-financing may take place only when the funds allocated for project co-financing are credited to the accounts of the applicants whose projects have been selected for implementation, and then they will be irreversibly distributed and will not be returned (Porzeżyńska & Woźniak, 2023b, p. 675).

OBLIGATION TO PROPERLY REGULATE THE APPEAL PROCEDURE

Due to the fact that pursuant to Article 77(2) of the Implementation Act the consequence of exhausting the amount allocated for co-financing projects under a measure or region category means the termination of the appeal procedure, from the point of view of protecting the rights of applicants it is important to design the project selection procedures in such a way that the appeal procedure launched in circumstances related to the exhaustion of this amount does not turn out to be illusory. Under the current legal status, a situation may arise in which, despite an increase in the score awarded to a given project as part of its re-assessment, the relevant institution refuses to grant co-financing, justifying it by exhausting the allocation as an objective circumstance. However, due to the fact that pursuant to Article 78 of the legal act in question the appeal procedure does not suspend the conclusion of co-financing agreements with applicants whose projects have been selected for co-financing, the relevant institutions should not claim that even a positive consideration of a protest or acceptance of a complaint does not guarantee obtaining co-financing for a project submitted by a potential applicant. The jurisprudence emphasizes that the content of this provision should not be used as an excuse or sanction for incorrectly performed assessment of the project and signing of the agreement, when as a result of the appeal procedure it turns out that another project was rated higher. A competent institution that decides to conclude an agreement before the end of the appeal procedure does so on the basis of the risk that another project will receive a higher number of points. As a consequence, this institution runs the risk of their actions being declared unlawful by an administrative court (judgement of the Supreme Administrative Court of 21 July 2020, I GSK 587/20, LEX no. 3050033).

The fact that the appeal procedure does not suspend the conclusion of agreements with applicants whose projects have been selected for co-financing does not absolve the national authorities from their responsibility to design and comply with the competition rules and procedures in such a way that proving arguments regarding the original faulty assessment of a project would allow the applicant to actually obtain the requested co-financing. Otherwise, the appeal procedure, and in particular the judicial review of the actions of public administration authorities that dispose of EU funds, would become ostensible (see judgement of the Supreme Administrative Court of 11 April 2019, I GSK 378/19, LEX no. 2705555). Moreover, there are no grounds for worse treatment of those applicants, whose projects received a proper assessment only as a result of a successful outcome of the appeal procedure than from applicants whose projects were positively recommended from the beginning (judgement of the Supreme Administrative Court of 18 January 2022, I GSK 1577/21, LEX no. 3331036). Otherwise, the constitutional principles of social justice and equal treatment by public authorities may be violated (judgement of the Provincial Administrative Court in Gorzów Wielkopolski of 5 May 2020, I SA/Go 127/20, LEX no. 2983928). The competent institution is obliged to take into account the principle of equal access to assistance for all categories of beneficiaries under the programme, transparency of the rules applied in project assessment, and its impartial and reliable evaluation (Wlaźlak, 2015, p. 746).

Both in the judicature and in the doctrine, it is rightly indicated that the competent institution, referring to Article 77(2) of the Implementation Act as the legal basis for refusing to grant funding, may not be limited only to the general conclusion that funds have been exhausted without citing circumstances confirming this fact and without

indicating relevant documents to prove the existence of this fact (see judgement of the Provincial Administrative Court in Wrocław of 6 July 2017, III SA/Wr 444/17, LEX no. 2366872). In particular, this institution should indicate that the amount allocated for co-financing projects under a measure or region category has been exhausted, as relevant agreements have been signed with potential beneficiaries and there has been no termination of agreements or return of funds that would provide the programme with additional money. In addition, the institution managing EU funds should prove that the appropriate reserve for the co-financing of projects has been exhausted in the appeal procedure, for objective reasons it was not possible to increase the allocation or overcontracting, and the signing of agreements was suspended during the appeal procedure if there was a risk that projects intended for co-financing as a result of this procedure could be deprived of co-financing due to the exhaustion of funds. If the above criteria are not met, then in fact we are not dealing with the exhaustion of the amount allocated for project co-financing, which is the basis for the end of the competition and appeal proceedings (Porzeżyńska & Woźniak, 2023b, p. 683).

As mentioned before, the concept of exhaustion of the amount allocated for co-financing projects under a measure or region category should be distinguished from the exhaustion of the amount allocated for co-financing projects in a given call for proposals (see e.g. judgement of the Provincial Administrative Court in Kraków of 18 February 2021, I SA/Kr 1075/20, LEX no. 3168412; judgement of the Supreme Administrative Court of 11 April 2018, I GSK 1866/18, LEX no. 2495893). Exhaustion of the allocation under the call for proposals only results in a reduction in the number of projects selected for co-financing. In the light of Article 56(6) of the Implementation Act, in a situation where a project cannot be selected for co-financing due to the exhaustion of the amount allocated for co-financing projects in a given call for proposals, the applicant has the right to lodge a protest. The resolution of such a protest may be appealed against to the administrative court. However, in this mode, the regulation contained in Article 77(2) of the Implementation Act will not be applicable. If the authority invokes the exhaustion of funds for co-financing, it is the court's duty to examine this fact, whether the circumstances raised by the authority have been proven, and whether in the course of the proceedings the authority was guided by the provisions of the law and the evaluation system (judgement of the Supreme Administrative Court of 21 August 2020, I GSK 607/20, LEX no. 3063975). If the complaint is upheld by the competent voivodeship administrative court, the project may receive a higher score during re-evaluation, which will result in qualifying it for co-financing despite the exhaustion of funds allocated for a given call for proposals, but with the available allocation for a measure or region category (Ostałowski, 2016, p. 381).

Referring to the scope of regulation of Article 77(2)(1) of the Implementation Act, it should be emphasized that it applies only to appeal proceedings. If the amount allocated for co-financing of projects under a measure or region category is exhausted, the competent institution to which the protest has been submitted leaves it without consideration, at the same time instructing the applicant about the possibility of lodging a complaint to the administrative court. This is of key importance for the effectiveness of a legal remedy in the appeal procedure of project assessment, and thus the effectiveness provided in the indicated mode of legal protection (see judgement of the Provincial Administrative Court in Poznań of 11 February 2020, III SA/Po 803/19, LEX no. 2783148). If the applicant decides to lodge a complaint against the information that the protest has been left unconsidered, the court examines the correctness of demonstrating that the allocation has been exhausted by the competent institution. In a situation where the court finds that the authority wrongly referred to this premise in the course of considering the protest, it will take the complaint into account and refer the case for reconsideration by the competent institution as part of the appeal procedure. However, in a situation where the authority correctly determines that the amount allocated for co-financing of projects under a measure or region category has been exhausted, the court, within the limits of the case, performs a comprehensive review of the legality of the project assessment procedure (Porzeżyńska & Woźniak, 2023b, p. 685). This control is necessary for the possible determination of the civil law liability of the competent institutions participating in this assessment. A finding by the administrative court that the project evaluation was carried out in violation of the law and that this violation had a significant impact on the evaluation

result may be the basis for the liability of public authorities under the Act of 23 April 1964 – Civil Code (Journal of Laws 2022, item 1360, as amended; hereinafter: c.c.) (Ostałowski, 2016, p. 384; Sawczuk, 2011, p. 84).

In a situation where the protest has been substantively assessed by the competent institution, and it was only at the stage of proceedings before an administrative court that the funds were exhausted, the court under Article 77(2)(2) of the Implementation Act, taking into account the applicant's complaint, states that the project evaluation was carried out in violation of the law, but does not refer the case for reconsideration. A judgement allowing the complaint and stating that the project assessment is unlawful gives rise to determining the liability for damages of the competent public administration authorities. A final judgement of the administrative court resolving the issue of the unlawfulness of the assessment is binding for the common court examining a possible claim for damages. The legal basis for liability for damages is Article 417^1(2) or (3) c.c., while an administrative act that may cause damage is the project assessment approved by the competent institution (Ostałowski, 2016, p. 386).

CONCLUSIONS

The appeal procedure regulated in the Implementation Act is largely based on the normative solutions applicable under the analogous legal act relating to the previous financial perspective (Snarski & Martyniuk, 2023, p. 39). An example of a newly introduced legal regulation is Article 77(3) of the Implementation Act, containing a legal definition of exhaustion of the amount allocated for co-financing projects under a measure or region category. In fact, this definition assumes that the moment of exhaustion of the allocation takes place when the funds allocated for co-financing projects under a measure or region category have been allocated to projects covered by co-financing on the basis of signed agreements or decisions on co-financing projects. These projects had to have been previously deemed eligible based on an approved positive assessment by the competent institution, provided that there are no conditions obliging or authorizing the competent institution to refuse to conclude an agreement or to issue a decision to co-finance the project. However, this provision should be assessed critically, as it does not take into account the fact that even the exhaustion of the allocation in the final phase of implementing a given measure or providing support within a given region category is not a certain and final state. It may change until the end of programme implementation due to the emergence of free funds as a result of termination of co-financing agreements or an increase in the euro exchange rate. The exhaustion of the amount allocated for co-financing must be reflected in reality, and result in the objective inability to provide financial support.

Assessing the legal consequences of exhausting the amount allocated for project co-financing as a basis for refusing to grant support in confrontation with the beneficiary's right to an effective remedy, in particular, in the event of an increase in the project's score as a result of the appeal procedure, it should be noted that exhaustion of the allocation lies entirely beyond the applicant's control. Both at the stage of submitting the application and then during the appeal procedure, the entity applying for financial support has no possibility to predict whether such exhaustion will occur (judgement of the Supreme Administrative Court of 11 March 2022, I GSK 108/22, LEX no. 3344128). In the event that the project evaluation carried out by the competent institution pursuant to Article 44(1) of the Implementation Act is the only substantive administrative act in the matter, exhaustion of the allocation after lodging a protest results in shifting the burden of examining the correctness of the assessment to the administrative court, because the authority of the second instance is then limited only to sending information pursuant to Article 77(2)(1) of the Implementation Act. In this case, transferring to the administrative court the obligation of the second instance authority to control the correctness of the assessment of projects carried out in the first instance significantly limits the rights of applicants and raises doubts in the context of its compliance with the principle of two-instance administrative proceedings expressed in Article 78 of the Constitution of the Republic of Poland (Ostałowski, 2016, p. 385) and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Journal of Laws of 1993, No. 61, item 284, as amended) (Perkowski & Martyniuk, 2017, p. 57).

In addition, the analysis of the regulation of Article 77(2)(1) of the Implementation Act leads to the conclusion that in the event of exhaustion of the amount allocated for co-financing projects to the extent that it deprives the applicant of the right to re-evaluate the substantive assessment of his project by the competent institution, it also violates the right to two-instance proceedings. Incidentally, it should also be noted that information on the lack of available allocation under a measure or region category referred to in Article 77(4) of the Implementation Act is not subject to control by a higher instance authority, which should be considered unjustified, given the direct involvement of the relevant institution in the case. In turn, the wording of Article 77(2)(2) of the Implementation Act raises doubts as to its compliance with the right to a court and the right to an effective legal remedy, expressed respectively in Article 45(1) of the Constitution of the Republic of Poland and Article 47 of the Charter of Fundamental Rights of the European Union (Official Journal of the EU of 26.10.2012, C 326/391). The procedure regulated therein precludes effective judicial review of a decision unfavourable to the applicant by preventing him, for reasons beyond his control, from questioning the negative assessment of the project and concluding the co-financing agreement due to the exhaustion of the allocation. This circumstance is not entirely objective and can be shaped to a large extent by the authorities involved in the distribution of EU funds. At the same time, one should not lose sight of the fact that an important element of the principle of procedural fairness is, in particular, the right for a party to the proceedings to challenge the decision issued by the first instance authority and to obtain a ruling allowing not only for the substantive examination of the case, but also for effective protection of rights and freedoms (Wilk, 2022, p. 210; Muzyczka, 2022, p. 81; Ostałowski, 2016, p. 385).

In conclusion, it should be emphasized that the appeal procedure, both at the administrative and the subsequent judicial stages, in its current form does not ensure effective control of project assessment. If during the verification of the assessment of a given project the allocation was exhausted, this may not block the applicant from the real possibility of questioning the conducted assessment (judgement of the Supreme Administrative Court of 2 July 2020, I GSK 357/20, LEX no. 3050506). As the Supreme Administrative Court aptly pointed out in its judgement of 29 November 2011, II GSK 1213/10, LEX no. 1094694, "in a democratic state governed by the rule of law, it is not acceptable to exercise by the entity of the legal remedies available to it (appeals, complaints to the court), not bearing the signs of rowdiness or abuse of the right to appeal, at the same time – as a result of the time needed by the courts or administrative authorities to recognize them – it leads to the loss of the right (claim), which the individual seeks to protect by means of these remedies". The implementation and protection of the constitutional right of applicants to two-instance proceedings or the right to a court cannot be dependent on the amount of available allocation under a measure or region category. It is therefore necessary to shape the appeal procedure in such a way that it allows for real obtaining of co-financing after its launch (see judgements of the Supreme Administrative Court: of 11 April 2019, I GSK 378/19, LEX no. 2705555; of 4 September 2019, I GSK 1391/19, LEX no. 2727597).

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