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## State Special Funds in Poland and Uzbekistan: A Comparative Legal Analysis

**Abstract:** This paper presents a comparative analysis of state special funds in Poland and Uzbekistan, focusing on their legal dimensions within the framework of financial law. State special funds play a vital role in the allocation and management of public resources, serving as targeted financial mechanisms to address specific needs and promote socio-economic development. However, there is limited comparative research examining the legal frameworks and operational aspects of these funds in different jurisdictions. This study aims to fill this gap by conducting a comprehensive analysis of state special funds in Poland and Uzbekistan, providing valuable insights into their legal frameworks, objectives, structures, and operational mechanisms. The research objectives of this study include examining the legal frameworks governing state special funds in both countries, analysing their objectives and operational mechanisms, identifying similarities and differences, and assessing their effectiveness and challenges. By achieving these objectives, this study aims to contribute to the enhancement of financial-law practices in both jurisdictions and to provide knowledge for improving the legal frameworks and operational efficiency of state special funds.

**Keywords:** off-budgetary funds, public finance, public funds, state special funds

## Introduction

It should be noted at the beginning of this presentation of research issues that the term ‘state special fund’ translates into Polish as *fundusz celowy*. In principle, the name does not raise any doubts; it has already taken root in the legal literature on the subject, legal regulations, and jurisprudence. One could approach it in terms of linguistic analysis and insist that the word ‘fund’ (*fundusz*) would be sufficient, because by its very nature it means raising funds for a specific purpose.<sup>1</sup> It must be admitted that in English, there is some confusion due to the multitude of terms that relate to the institution we are examining in this article – for example earmarked funds, manual reserves, funds commitments, encumbrances, state funds, state special funds, public funds, off-budget funds, or extra-budgetary funds, and probably more. The ambiguity of terms in English and other languages is dictated by the fact that the general image of special-purpose funds is often presented in the context of all kinds of funds that have operated for many years, and which have nothing to do with the institution of state special-purpose funds (*fundusz celowy*) in terms of financial law and public finance. In this broad approach, the prototype is charitable funds, which in principle probably exist in every legal system. In such a broad approach to special-purpose funds, it should be recognized that they were established earlier than certain budgetary rules of states or cities. Here it is important to mention that in the Islamic world, *waqf* funds were formed, which in Arabic means “roperty withdrawn from civil circulation and transferred by the state for religious or charitable purposes” (Budiman, 2014, p. 22; Kuran, 2001, p. 15) Subsequently, these funds began to be endowed with various functions, among them social, economic, political, ideological, and other tasks.

Furthermore, the term ‘state special fund’ encompasses a range of financial mechanisms and institutions that go beyond the concept of a traditional fund. These funds are established by legislation and operate under specific legal frameworks, distinguishing them from other financial instruments or entities. They serve as dedicated channels for collecting, managing, and allocating public resources for specific purposes, such as infrastructure development, social welfare programmes, or economic stimulus initiatives. The inclusion of the term ‘special’ also highlights the distinctive nature of these funds. They are designed to address particular societal needs or strategic priorities, often requiring separate financial structures and mechanisms to ensure their effective implementation. The adjective ‘special’ underscores the targeted nature of the funds, indicating that they are not part of the regular budgetary

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1 A fund is a pool of money that is allocated for a specific purpose. A fund can be established for many different purposes: a city government setting aside money to build a new civic centre, a college setting aside money to award a scholarship, or an insurance company that sets aside money to pay its customers’ claims (Kagan, 2023).

process but rather represent a specific subset of public financial resources. Moreover, by using the term 'state special fund', this study acknowledges the legal and regulatory context in which these funds operate. They are subject to specific rules and regulations, governing their establishment, operation, reporting, and accountability. Understanding and comparing the legal frameworks surrounding state special funds in different jurisdictions is crucial for identifying best practices, addressing challenges, and fostering effective governance of these financial mechanisms.

The literature on the subject states that allocation of funds outside state budgets was gradual and that their creation was necessary for the state to be able to use its financial resources more effectively. The main objective of public funds is the implementation of public tasks and their financing out of the state budget or regional and local authority budgets. The essence of a public fund lies in the fact that individual public tasks are performed through their financing from separate budgets. In the broad sense, the financial aspect of financing such tasks lies in the fact that the fund is supplied with specific sources of public revenue for expenses with a specific purpose.<sup>2</sup> A link appears here between certain revenues and expenditures with specific goals (Kraan, 2004).

As with budgets, public funds perform a redistributive and control function. The redistributive function manifests itself, on the one hand, in the collection of revenues and their redistribution to specific social groups or individual sectors of the economy. In turn, the control function should in general allow for constant monitoring of the specific processes occurring within certain social groups or sectors of the economy (Sedova, 2007, p. 34).

A second justification for the creation of state special funds (especially off-budgetary funds) is their exemption from general budget rules and restrictive budget regulations. Legislatures have intentionally provided for the establishment of these financial-law institutions to operate independently from the state budget or the budgets of local government units. By doing so, the objective was to grant them certain flexibilities and autonomy in managing financial resources. The exclusion of off-budget funds from the traditional budgetary process allows for more efficient and streamlined decision-making regarding the allocation and utilization of funds. It enables specific sectors or initiatives to receive dedicated funding without being subject to the same constraints as the regular budgetary framework. It is important to acknowledge that the motivations behind the creation of off-budgetary funds may extend beyond purely financial considerations. Political factors and bypassing certain budget constraints (Kiss, 2007, p. 19; Lotko, 2021, p. 215) can also play a role in their establishment, although they are beyond the scope of analysis of this article. It is worth emphasizing that these funds should not be confused with special legal per-

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2 The Słownik PWN (n.d.) dictionary gives two definitions for 'fund': 'money collected for a specific purpose; also: an institution established to manage such money', 2. 'someone's financial resources'.

sons that act on behalf of the state and carry out its tasks, while in political terms, their main purpose is to remove them from the legal regulation of public finance.

## 1. The legal status of state special funds in Poland

The broad interpretation of the institution of a fund can be observed in the economic interpretation of the state budget, which should be regarded as a state fund tasked with the collection and spending of funds for public purposes. The process of financing public tasks is referred to as funding (*funduszowanie*), both in relation to budgets and separate public funds. It should be noted that, as a rule, legal specialists define a budget as a financial plan designed to control the collection and spending of public funds. In turn, the basic budgetary principle is the principle of non-funding (*niefunduszowanie*) (the principle of material unity or of universality) (Bitner, 2016; Kosikowski, 2008; Salachna, 2008). It is a demand that the budget be organized as one pool of public resources, which are allocated to the entire budget expenditure. This means that the creation of a public fund is an exception to the non-funding principle. In other words, non-compliance with this principle is the principle governing the functioning of public funds in Poland.

It should also be added that the creation of public funds is in violation of two fundamental budgetary principles – the principles of universality and of material unity. The principle of the universality of the state budget means the necessity of including all financial relations in the budget, whereas in the case of public funds, the flow of public funds occurs, in general, outside the state budget. In turn, the restrictive understanding of the principle of formal unity consists in the acceptance of one financial plan in order to implement the state's financial management, which is also contrary to the concept of public funds (Szołno-Koguc, 2007, p. 79).

Various forms of funding can be distinguished within the theory of public finance (e.g. net funding and gross funding), mostly as a result of the limited financial resources of the state. The variety of public funds and methods of funding are a manifestation of striving to achieve efficiency in the management of the state's public finances. Secondly, the creation and use of public funds result not only in the implementation of the principle of legality (the principle of legalism, of legal regulations, or of the rule of law) in the sphere of public finance, but also in the implementation of control over the function of finance. The downside of funding is the limitation, to a certain extent, of the implementation of tasks realized by funding (the inflexibility of budgetary management) or the positive discrimination of these tasks in relation to tasks implemented with funds from the state budget. The inefficiency of funding is also apparent when a public fund requires additional sources of financing for specific tasks (Masniak, 2014, p. 389). This, in turn, may result in the legislature issuing a ban on the creation of public funds or creating new public funds – something that has

taken place in Poland in the past (and also applies to other countries). Pursuant to the Act on Public Finance of 1998, activity-based funds were defined as statutory funds created prior to the date when the Act entered into force, the income of which comes from public revenues and the expenditure of which is intended for the implementation of specified tasks. It should be noted that new activity-based funds were created after this act entered into force. The prohibition on fund creation was ineffective, as activity-based funds are also created by statute. There may also be other reasons for the eradication of activity-based funds and the prohibitions on the creation of new such funds, apart from the broadly understood effectiveness of public finances.

Currently, the general issues concerning public funds in Polish financial law are regulated in the Act on Public Finance of 27 August 2009. It should be noted that Polish legislation refers to public funds as activity-based funds. The key to the interpretation of this legal institution is that its essence is the place where the funds for a specific purpose are collected and spent. Therefore, the use of the adjectival phrase 'activity-based', when referring to funds, becomes unnecessary. However, one should not dismiss the use of the term 'activity-based', if only for the reason that this term often occurs in the relevant literature and in practice. Regardless of differences of opinion on the terms 'activity-based fund' and 'state special fund', one must agree that the main focus should be placed on the concept of the fund. Every fund has a material aspect (as a rule, the allocation of funds) and an organizational aspect (i.e. clearly set rules regulating the collection and spending of funds for a specific purpose). In general, these two elements together allow us to develop a certain definition of a public fund which was omitted in the Act on Public Finance. The state special fund should be defined as a form of organization of public funds which is characterized by the intentional linking of statutory sources of income with the financing of the costs of a given state task (Niedzielska, 2022).

The public nature and subjective separateness of funds are expressed in Article 1 of the Act on Public Finance, which states that the Act defines the scope and principles of the operation of activity-based funds. It should be noted that the detailed regulations and financial management of public funds are defined in the acts under which the funds are created (Kosikowski, 2011). It is impossible to find clarification in the Act on Public Finance if a new activity-based fund is created under a new act which defines the specific principles of its operation contrary to the general provisions of the Act.

The general principles of financial management of public funds have been regulated in Article 29 of the Act on Public Finance. A particularly important limitation on the scope of the creation of funds is that the legislation only allows for funds to be created at the state level and only on the basis of a separate act. The creation of public funds on the basis of other legislative acts is prohibited. In practice, this means that for a new public fund to be created, a certain political compromise must be reached, in relation to both the idea of the new fund and the rules of its operation.

Another restriction on the operation of public funds is the definition of its income, which can only be sourced from public resources. On the other hand, the costs of funds are allocated to the implementation of specific state tasks. It should be noted here that the objectives of the legislation are for the financial management of public funds to be based on a plan of the income and costs of the implementation of specific state tasks. Referring to public resources as the fund's income also implies a prohibition on financing funds from other sources.

Pursuant to the provisions of the Act on Public Finance, state activity-based funds have no legal personality. The prohibition on funds having legal personality, which resulted from later changes in regulations in the sphere of public finance, meant that certain funds lost their legal personality on the day the Act on Public Finance came into force. Currently, in legal terms, according to the will of the legislature, a state activity-based fund is a separate bank account controlled by a minister appointed to the task or by another body specified in this Act. State activity-based funds do not include funds of which the only source of income, excluding interest from the bank account and donations, is a subsidy from the state budget.

The basis of the financial management of state activity-based funds is the annual financial plan. The financial plans of these funds, in turn, are annexes to the budget bill; in practice, this means the period of the annual financial plan of a fund is equivalent to the state budget year. The Act does not specify the minimum content of such a financial plan. In practice, financial plans of state activity-based funds are defined individually for each fund, in which the following aspects are outlined: the initial and final state of financial resources; receivables and liabilities; its own revenues; subsidies from the state budget and other public finance-sector entities; task implementation costs (including wages and wage-derived premiums); and tasks financed from the fund's resources. The financial plans of budgetary management institutions and state-owned legal persons are defined individually for each body and include a description of the initial and final state of current assets and the total amount of financial resources, receivables and liabilities, its own revenues, subsidies from the state budget, and the task implementation costs (Lipiec-Warzecha, 2011).

Regional and local authorities may be granted loans from the resources of state activity-based funds if the act which creates a given fund provides for this. The costs of a state activity-based fund may be covered only by the available financial resources, including current revenues, subsidies from the state budget, and residual funds from previous periods.

Changes may be made to the financial plan of state activity-based funds, consisting in increasing projected revenues and costs accordingly; however, changes to the financial plans of state activity-based funds may not result in an increase of subsidies from the state budget. If a state activity-based budget has payable liabilities, including credits and loans, then an increase in revenue is primarily allocated to their repayment. Changes to the amounts of revenues and costs of state activity-based funds

included in the financial plan are made by the minister or the body administering the fund, after obtaining the consent of the Minister of Finance and the opinion of the parliamentary budget committee.

Depending on the level at which public funds are managed, they may be classified as state or regional (regional and local authority) funds. Federal funds also exist in federal states. It should be added that under the current provisions of the Act on Public Finance, only state public funds are permitted. On the one hand, other funds will not be regarded as public funds in terms of this Act, but on the other, while they are not excluded, they will be subject to its provisions.

Due to the sources of funding, funds may have mandatory payments, for example taxes and public fees; the opposite will be voluntary payments, constituting contributions from private legal entities and natural persons. Due to the type of activity, state special-purpose funds can be broadly divided into those related to social insurance; those related to the social functions of the state; privatization; those related to the security and defence of the country; and those related to science, culture, and physical culture (Niedzińska, 2022).

Polish literature on public finance applies a division based on rationality and complementarity. Taking into account budgetary resources, the most significant is the division of state special funds based on the criterion of their relationship with the state budget. Three types of funds can be distinguished based on this criterion: autonomous state funds, state funds associated with the budget, and in-budget state funds. In the case of autonomous state public funds, no financing from the state budget occurs. In principle, this means that the financial plan of such a fund should be balanced or should have a surplus of collected revenues in relation to the expenses of the implementation of specific tasks. In turn, state funds are associated with the state budget by receiving subsidies, because, for various reasons, the financial resources allocated by the legislature do not cover all expenses, which prevents the funds from implementing their designated tasks. In-budget funds are not state activity-based funds within the definition of the Act on Public Finance. They do not exist as a separate fund, and they resemble a state activity-based fund in their construction only; the amount of expenditure for a specific task is dependent on the amount of income from a specific source (Masniak, 2014, p. 390).

## **2. The legal status of state public funds in Uzbekistan**

In general terms, Uzbekistan follows a similar approach to Poland in recognizing the significance of special-purpose funds as fundamental institutions within financial law and public finance. Both legal doctrine and regulatory frameworks in Uzbekistan acknowledge the importance of special-purpose funds in ensuring the targeted allocation of financial resources and promoting efficient utilization for spe-

cific statutory objectives. In Uzbekistan, special-purpose funds are established in 18 state special funds to address diverse areas of public interest, such as social welfare, healthcare, education, infrastructure development, and environmental protection. These funds serve as dedicated mechanisms to secure funding for priority sectors and initiatives beyond the scope of the general state budget. By designating specific sources of revenue and outlining clear expenditure objectives, earmarked funds enhance financial stability, planning, and execution in Uzbekistan's public finance system (Farkhadovich, 2016, p. 91; Samandarova & Eshov, 2023).

The legal framework surrounding special-purpose funds in Uzbekistan is characterized by various laws, regulations, and decrees that govern their establishment, operation, and financial management. The legislation provides guidelines for revenue collection, allocation mechanisms, budgeting procedures, and reporting requirements specific to each earmarked fund. This ensures transparency, accountability, and proper governance of the financial resources allocated to these funds (Rakhmonov & Umarovich, 2020). Furthermore, the doctrine in Uzbekistan recognizes the significance of earmarked funds as essential tools for economic development, social welfare, and public-service delivery. Legal scholars and experts emphasize the need for a robust legal framework that supports the efficient management and utilization of funds, enabling the effective realization of the designated objectives (Farkhadovich, 2016, p. 91).

The main legal regulation of the state budget economy and special funds in Uzbekistan is the Budget Code of the Republic of Uzbekistan, which was adopted by the Legislative Chamber on 28 November 2013 and approved by the Senate on 12 December 2013 (Budget Code of the Republic of Uzbekistan 2013). The Budget Code distinguishes between special-purpose funds and off-budgetary funds. At this point, it should be admitted that such a regulation is an expression of the transparency of public finances, because we know immediately what funds will not flow through the state budget or other budgets. According to the Code, state purpose funds are created for the implementation of state functions, the funds of which are formed from tax deductions, mandatory payments and fines, sponsorship funds, and other income established by decisions of the President and the Cabinet of Ministers of the Republic of Uzbekistan, as well as budget transfers and subsidies. State purpose funds can be created in the form of a legal entity or without such a formation, including under ministries, state committees, and departments. With regard to off-budgetary funds, the legislation does not introduce detailed legal provisions but only lists those that have been granted the status of extra-budgetary funds. Off-budgetary funds of budgetary organizations are the development fund of a budgetary organization; the Fund for Material Incentives and Development of Medical Organizations; off-budget funds of ministries, state committees, and departments; and extra-budgetary funds of budgetary organizations, formed at the expense of fees charged. It is worth noting that the extra-budgetary nature has only a symbolic meaning, because the legislation states in

further provisions of the Code that extra-budgetary funds are included in the consolidated state budget.

The Code pays special attention to selected funds and indicates in detail the sources of their income (revenues). The income of the development fund of a budgetary organization is derived from various sources, including saved funds (the funds that remain unused according to the cost estimate at the end of the last working day of the reporting quarter, with the exception of funds allocated for financing capital investments); income from the sale of goods, works, and services (revenue from the sale of products or services related to the organization's specific activities or areas of operation, calculated as the positive difference between the proceeds obtained from sales and the costs incurred in producing those goods, works, or services); lease of property (a portion of the income is obtained from the leasing of assets owned by the budgetary organization); reserved funds (funds that have been set aside and authorized for use by the budgetary organization); and charitable contributions (funds from charitable sources, which further contribute to its financial resources).

Similarly, the income of the Fund for Material Incentives and Development of Medical Organizations comprises the following sources: budget allocations (a portion of the overall budget allocated to a medical organization, up to a maximum of 5%); income from the sale of goods, works, and services (revenue generated from the sale of products or services offered by the medical organization, corresponding to its specific profile of activities, determined as the positive difference between the proceeds obtained from sales and the costs incurred in producing the goods, works, or services); saved funds (funds that remain unused according to the cost estimate at the end of the reporting quarter, excluding those designated for capital investments); lease of property (similar to the development funds, the Fund for Material Incentives and Development of Medical Organizations also receives income from leasing properties owned by the medical organization); reserved funds (budgetary organizations may allocate funds for specific purposes, and these reserved funds contribute to the income of the fund); and charitable contributions (received from charitable sources to further enhance the financial resources of the fund).

The formation of revenues for other off-budgetary funds of ministries, state committees, and departments in accordance with the prescribed procedure is governed by the relevant provisions of the Code. These funds are primarily financed through deductions from state duties, fees, non-tax payments, administrative fines, and financial sanctions. This ensures a stable source of income for these funds, enabling them to fulfil their designated purposes effectively. Budget organizations, on the other hand, establish their own extra-budgetary funds by collecting fees for various services and activities; these serve specific purposes, such as supporting the maintenance of pupils in state preschool educational organizations, extended-day groups in state schools, boarding schools, colleges of the Olympic reserve, and other educational institutions. Additionally, fees are collected for teaching in children's schools

for music and art, institutions of out-of-school education, as well as for education in secondary and higher special professional educational institutions. Fees are also collected for meals provided to individuals undergoing treatment in inpatient institutions, among other types of services as stipulated by law.

The amount of fees and the procedures for their collection and utilization, as well as any benefits or exemptions, are established by the relevant legislation. These provisions ensure transparency, fairness, and accountability in the collection and management of fees, and they aim to optimize the utilization of these resources for the intended purposes. It is important to note that the establishment and operation of off-budgetary funds and the collection of fees by budget organizations are governed by specific legal frameworks in line with the principles of financial law and public-finance management. These frameworks provide a clear set of rules and guidelines to ensure the proper administration of these funds and the fair implementation of fee collection procedures.

The legal framework surrounding special-purpose funds in Uzbekistan is comprehensive, consisting of laws, regulations, and decrees that govern their establishment, operation, and financial management. This framework provides guidelines for revenue collection, allocation mechanisms, budgeting procedures, and reporting requirements specific to each fund, ensuring transparency, accountability, and proper governance of allocated financial resources.

## Conclusions

This comparative analysis of state special funds in Poland and Uzbekistan sheds general light on their legal dimensions within the framework of financial law. The findings highlight the significance of these funds as targeted financial mechanisms for the allocation and management of public finances, aiming to address specific needs and promote socio-economic development. The study reveals that both Poland and Uzbekistan recognize the importance of state special funds in their legal frameworks. These funds are governed by specific legislation and regulations, outlining their objectives, structures, and operational mechanisms. They serve as dedicated financial instruments to support various sectors, such as social welfare, healthcare, education, infrastructure development, and environmental protection. Despite some differences in the legal frameworks and operational aspects of state special funds in Poland and Uzbekistan, both countries share common goals of public finances ensuring transparency, accountability, and the effective utilization of financial resources. The legal frameworks provide guidelines for revenue collection, allocation mechanisms, budgeting procedures, and reporting requirements, promoting sound financial management and governance.

To enhance the practices surrounding state special funds, several policy recommendations emerge from the research. Establishing clear and comprehensive legal frameworks with transparent governance mechanisms can foster effective management and utilization of financial resources. Strengthening coordination mechanisms among different funds and government entities is crucial to avoid duplication of efforts and to optimize resource allocation. Regular evaluations and impact assessments are essential to ensure the efficiency and effectiveness of state special funds in achieving their objectives.

Further research and collaboration in this area are encouraged to continue advancing the understanding and practices surrounding state special funds, fostering an exchange of knowledge and experiences between different jurisdictions. By learning from each other's successes and challenges, policymakers and practitioners can work towards optimizing the functioning of state special funds and ensuring their positive impact on public-finance management.

In conclusion, this comparative analysis provides valuable insights into the legal frameworks and operational aspects of state special funds in Poland and Uzbekistan. It contributes to existing knowledge on financial-law practices in both jurisdictions and offers recommendations for enhancing the effectiveness and efficiency of state special funds. Further research and collaboration in this area are encouraged, to continue advancing financial law and public-finance management in the context of state special funds.

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