

THE IDEA OF THE LOCAL GOVERNMENT'S THE AUTONOMY AND FINANCIAL INDEPENDENCE

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Abstract

The autonomy of the local government units is a very important and interesting matter. There are several factors that constitute this autonomy. One of the most important is the financial independence of local government. In the Polish legal system the basic principles of the finances of the local self-government have the highest rank, as they are included in the Constitution from 1997. The financial autonomy of the local self-government is expressed through independence in obtaining funds as well as the independence of their spending. Important for the government is not only to receive funds from the state budget but also to find the legal way of self-financing. The level of financial independence of the local self-government is an indicator of its autonomy.

Keywords: *local self-government unit, financial autonomy, financial independence, structure of the local self-government's budget, local self-government's revenue, local self-government's expenses*

Introduction

The reflections regarding autonomy in learning are closely related to one of the stages on the path to full statehood, obtaining a specified status in international relations. However, considering the development trends of self-government in Europe, putting the new objectives in front of the self-government and the guiding theme of this conference - it is worth considering the autonomy of local government relate to the financial independence of local government.

It is clear, that issues of the autonomy of the local self-government can never be a subject to similar assumptions and objectives as, for example, the issues of the autonomy which is oriented towards statehood. Finding and fixing the basic framework for the autonomy of the local self-government must also be linked, analyzed and diagnosed in the context of local self-government's finance, in particular, in the context of the financial independence which is necessary to carry out statutory tasks.

It can be assumed that we are talking here about the idea of self-government financial security. Security, which, as the system, provides an appropriate level of financial independence of the local self-government and in practice, it is characterized by a high level of the income autonomy¹.

For example, the reform of the territorial self-government in Poland established the principle that the essential part of the decision regarding the source of the local self-government's incomes is located outside of this self-government and it significantly limits the local autonomy in this area. In Poland, the local self-government has little effect on the

¹ See M. Kosek-Wojnar, *Problem samodzielności finansowej jednostek samorządu terytorialnego*, Zeszyty Naukowe Wyższej Szkoły Ekonomii w Bochni, No. 2, 2004, p. 11.

size and amount of the income. However, the legal framework and the system of redistribution and control work correctly and directly contribute to the stabilization of the local self-government. This stabilization is focused on self-reliance, self-management and self-financing.

Ukraine, geographically very close to us, it is a country which, on the one hand, declares a desire of positive, internal changes and even aspirations to join the EU, on the other hand, it is an example of the lack of legal changes in the local self-government. In fact, Ukraine, in the field of legal regulations regarding the territorial self-government, still basically remains in the system coming from the last political period. The highest authorities, together with the President of Ukraine promise the decentralization reforms, but the real balance of these activities is insignificant². In 1997, Ukraine has ratified the European Charter of Local Self-Government and has committed to increase the rights and autonomy of local government units.

The subject of this study is the analysis of the relationship the autonomy of the local self-government in the in perspective of the deficiency of this autonomy in financing area. In the terms of our interest, it must be said that local self-government units are financially dependent on the central government. Local incomes are low and dependent on subsidies from the central budget.

The autonomy of local self-government is one of the basic postulates of the European Charter of Local Self-government (11 October 1981). This autonomy should manifest itself in the self-determination of their territorial boundaries, in the defining its internal structure and in the freedom to execute the mandate of the elected representatives of the local authorities. The local self-governments should have their own financial resources and freely dispose them. Listed above the guarantees of the autonomy are requested and postulated at the European level³. Ukraine is a classic example of the deficiencies of democracy and thereby the deficiencies of autonomy of the local self-governments.

The idea and the sense of financial independence of the local self-government

The recent concepts show that the financial independence of the local self-government manifests itself in two areas that make up a complete picture. Namely refers to the independence of incomes and the independence of the expenses – all, based on the transparent rules of law, providing clear and real incomes of the territorial self-government units as well as far-reaching autonomy in making decision regarding expenses of the local self-government units. In this case, the principle of independence, which is written in the Constitution in art. 16, paragraph 2 and art. 165, can realized.⁴

Mentioned earlier example of Ukraine, but also examples of other countries of the former socialist bloc, including Polish, make the question of financial autonomy of the local self-government units still present and valid.

From the point of view of the universal constitutional values, the transparent division of tasks and responsibilities between the central government and various levels of the local self-government units should be established. A further consequence of this is the need to deepen the discussion about the autonomy of local self-government. It has to be admitted,

²See presidential statement posted on its website, <http://www.president.gov.ua/news/25730.html>, <http://www.president.gov.ua/news/25571.html>, <http://www.president.gov.ua/news/25902.html> [access: 2013-08-01].

³ See B. Sitek, D. Barańska, K. Naumowicz, *Funkcjonowanie samorządu terytorialnego w wybranych krajach UE*, Olsztyn 2001, pp. 48-50.

⁴ See K. Byjoch, J. Sulimierski, J.P. Tarno, *Samorząd terytorialny po reformie ustrojowej państwa*, Warszawa 2000, p. 20.

next steps of the reform of local self-government in Poland expanded the range of tasks (strengthen independence), but according to the local self-government's authorities, it is inadequately to the funding for these tasks⁵.

In the Polish legal system the basic principles of the finances of the local self-government have the highest rank, as they are included in the Constitution from 1997. In accordance with art. 167 of the Constitution – the local self-government has a guarantee of participation in the state's incomes according to the given tasks.

„Article 167

1. *Units of local government shall be assured public funds adequate for the performance of the duties assigned to them.*
2. *The revenues of units of local government shall consist of their own revenues as well as general subsidies and specific grants from the State Budget.*
3. *The sources of revenues for units of local government shall be specified by statute.*
4. *Alterations to the scope of duties and authorities of units of local government shall be made in conjunction with appropriate alterations to their share of public revenues.”*⁶

According to the art. 167, paragraph 2 of the Constitution, The revenues of the local self-government units are their own revenues as well as general subsidies and specific grants from the State Budget. Stability of these sources and their transparency is guaranteed in paragraph 3 of above mentioned article in which is said that those sources of the local self-governments incomes must be specified by statute. Going forward, the legislature predicted the evolution of the model of the local self-government and the possibility of further decentralization of task focused on the increasing the autonomy of the local self-government and the legislator ordered that this changes in the duties and powers of the local self-government should be made in conjunction with appropriate changes in the share of public revenues. There are several examples in recent times where changes in this area caused protests by the local self-government units in relation to the fact that the change of the task from central authority to the local self-government was inadequate to the change of the value of the task⁷.

In view of the number of related complaints of the local self-government units concerning violation of the principle of proportionality arising from art. 2 of the Constitution, the sentence of the Constitutional Court has been issued with the written grounds, together with the voice of a separate of Judge CC Mr. Zdzisław Cieslak from 31th January 2013⁸. In response to the request of the applicants, the Marshal of the Sejm, on behalf of the legislature, states that: *the charge of non-compliance of art. 29, paragraph 1 and art.30 paragraph 1 of the Act on revenues of the local self-government units with the principle of proportionality arising from art. 2 of the Constitution is unfounded. He makes the following arguments: The Constitution expresses the standards, which are axiological justification for the institution of the horizontal alignment of the financial disproportions of the local self-government units. The article 167, paragraph 2 of the Constitution does not*

⁵ See W. Breński, *Poczta Polska – mechanizmy dostosowawcze na drodze do Unii Europejskiej*, [in:] S.J. Pastuszka, J. Broniś (red.), *Wyzwania stojące przed samorządem terytorialnym w obliczu integracji Polski z Unią Europejską*, red. naukowy, Kielce 2003, pp. 101-111.

⁶ Ustawa zasadnicza z 2 kwietnia 1997r. Konstytucja RP (Dz. U. 78 Nr 483).

⁷ R. Przybyszewski, K. Atamańczuk, *Administracja publiczna w wymiarze społecznym i humanistycznym. Założenia, teraźniejszość i przyszłość*, Toruń 2011, p. 32 n.

⁸ <http://www.stopjanosikowe.pl/wyrok-trybunalu-konstytucyjnego-z-pisemnym-uzasadnieniem-wraz-z-glosem-odrebnym-sedziego-tk-pana-zdzislawa-cieslaka-z-dnia-31-stycznia-2013-r/> [access: 22.07.2013].

exclude the correctional institutions of the compensatory payments. In the light of the jurisdiction of the Constitutional Court, the system of compensatory payments can have constant nature and it can serve offsetting significant difference in the financial position of the local self-government units. The boundaries of the legal autonomy of the legislator are determined by the prohibition of arbitrary interference in the financial autonomy of the local self-government units. The crossing of those boundaries could only happen if the legislator's decisions violate this principle by being entirely apart from the incomes and expenses affecting the economic situation of the local self-government unit. On the basis of the contested regulation the legislator did not exceed this limit. The legislator, by choosing a particular model of a mechanism based on objective and factual criteria, acting in its legislative autonomy, did not violate the principle of proportionality arising from the article 2 of the Constitution.

In the judgment to the mentioned statement, in part, where the non-compliance with the Constitution has not been established, the Constitutional Tribunal stated in summary that: "*the principle of adequacy cannot be absolutized but on the other hand, the line of the interference in this principle must be drawn*". In the light of the jurisdiction of the Constitutional Tribunal, the modifications in income's sources are permitted if "*there are no obvious disparity between the scope of the tasks and the level of income*", "*does not cross out the suitability of local participation in public revenue*", "*the legislator did not violate drastically the local self-government unit's financial independence*", "*the whole sources of income - required by law for the local self-government units - provide the participation in the public incomes "properly" to their tasks and do not lead to actual strikeout income of the local self-government unit.*"

Similar cases of decisions regarding the decentralization of tasks and the provision of financing are a real example of proper practice, where the existence of the legislative, judicial, and executive power cooperate with the idea of the autonomy of the local self-governments.

Continuing and at the same time returning to the merits, it should be pointed out that there are several Acts which describe the financial system of the local self-government units. However, the substantial catalog of local self-government revenue was included in the Act on Local Self-government Revenue⁹. This Act defines a source of income for the three levels of self-government in Poland: municipality, county and voivodeship (province). The legislator, in separate chapters, regulates financial management for each level of the self-government separately.

Mentioned regulation on the autonomy of the local self-government comes from the transparency of the division of stages of the local self-government's financial policy in fifth chapter of the Act on Public Revenue. The legislator in detail indicates:

- The rules of planning of public funds and administrating them,
- The rules of elaboration of the budget acts,
- Multi-annual financial prognosis and the rules and procedures for their adoption,
- Organizational and legal forms of the units from the public finance sector,
- The rules of the financial control in the local self-government units.

The local self-government finances in the light of the state budgeting

In the literature, it is accepted that the budget is a yearly financial plan, which is set out in the specified legal procedure¹⁰. The main idea of the budget is to plan two opposing

⁹ Ustawa z dnia 13 listopada 2003r. o dochodach jednostek samorządu terytorialnego (Dz. 203 U. 1966 z późn.zm).

¹⁰ M. Chmaj, *Prawo samorządu terytorialnego*, Difin 2013, pp. 202-207.

financial phenomena – scheme of income and scheme of spending. Several major budgetary rules are mentioned: the principle of unity, the principle of transparency, the principle of budgetary balance and the principle of detail. In particular, we are interested in the principle of a balanced budget. The problems of balancing revenue and expenditure are a very actual matter for various levels of state administration. We are interested in the status quo of the local self-government units in this regard. The distribution of funds to the local self-government units and the nature of the autonomy of those local self-government units in searching new sources of funding projects or the budget deficit comes from the legal division of competence between central and local government authority. The system of distribution of funds has been evolving for years in Poland. Most critical in this regard is the financial shortfall due to budget deficits. By law, it must be covered by the local self-government units by the sale of securities issued by the local self-government units, credit, loans, etc.

There is a very actual question regarding the scope and possibility of doing business, which goes beyond public utility by the local self-government units. In accordance with art. 10 of The Municipal Services Management Act¹¹, the local self-government units, beyond the area of public utility, may create or join the commercial companies. The legislator has only set two restrictions. Firstly, there must be the unmet needs of the local community in the local market and secondly, there must be unemployment in the municipality which has negative impact on the life quality of local community. Both conditions clearly orient and limit the possibilities of new legal forms that may be contributing to the improvement of the economic situation of local self-government units. The legislature allowed the local self-governments to conduct business but the basic goals, objectives and mission of the self-government units cannot be lost from the horizon. The question of the advantages and disadvantages of this approach remains unanswered for now. Is this passible, that the local self-government unit led by highly predisposed people entering the open market game, could achieve success without neglecting its statutory duties determined by law.

It is worth to mention that the restrictions from art. 10, paragraph 3 of the above Act, concerning creating and accessing into the commercial companies, which are in paragraph 1 and 2, do not apply to owning by the self-government stocks and shares of companies engaged in banking activities, insurance and business advisory, promotional, educational and publishing activities for local government, as well as other companies important to the development community, including sports clubs operating as an association of capital company. There are still some restriction in this regulation but it gives several opportunities to gain additional profit to the company and at the same time to the local self-government by payment of dividends. Eventually, we have to agree that, the ability to take on new profitable activities without any restrictions in relation to the local self-government units would have negative impact on statutory purposes of the local self-government.

The structure of the budget and the status quo of local self-government autonomy

¹¹ Ustawa z dnia 20 grudnia 1996r. o gospodarce komunalnej (Dz. U. z 2011 Nr 45, poz. 236).

There are two different local self-government power sources – the sources of income and the sources of revenue.¹² Therefore we need to agree with the view that one can speak of the local self-government's autonomy in terms of income and revenues.

The autonomy in terms of income refers to the powers held by the local self-government in the area of fiscal policy. This applies to the tax authority which is assigned by law to the local self-government. The local government fiscal policies also benefit from the budget deficit and from providing guarantees. Some measure of the degree of the local self-government unit's autonomy is the scale of the distribution of income and expenditure by the local self-government unit. This is the real proof of the extent of the autonomy of local self-government. We have to also agree with the point of view that the incomes of the local self-government units are not single economic category, which directly shows differences in degree of independence between the various local self-government units¹³.

It seems that the situation in which the level of income fully coincide local self-government spending would be sufficient to complete financial independence of the local self-government. However, it would conflict with the wider range of legal acts, especially of the need of vertical and horizontal redistribution of funds. Finally, doubt and questions arise about the role of the state as a being, its purpose and about the role of integrity of the system and about the role of the constitutional principle of solidarity.¹⁴

The autonomy in terms of revenues of the local self-government unit means that there is the directory of permissions assigned to the authority of the local self-government units in obtaining the returning sources of financing. The range of these instruments is wide and it includes the possibility of taking out loans, credits, etc. The legislature creating the legal system, insofar as possible, also anticipates the danger of autonomy. Therefore, there are also such instruments as: control of local debt, setting debt limits, the period of debt, etc.

An interesting analysis was made by a team led by prof. Zbigniew Mikołajewicz. This analysis was made as a part of the project under the grant competition organized by the Ministry of Regional Development and co-funded by the European Union under the Operational Program Technical Assistance and concerned the local self-government finance in Opole province. Namely, in that study, conclusion, based on data, was made that the local self-governments did not have their own financial resources in fulfilling the statutory task in the form of development policy. In the studied period, it is observed that capital expenditure grew faster than total expenditure (in particular in 2003, 2005 and 2006). The funds for investments of the local self-government units was largely obtained from EU grants.¹⁵

Conclusion

In search of the horizon for the understanding of the autonomy of local self-government, going back to ancient Rome can be very useful.¹⁶ The history of the Roman Empire has its own characteristics which is related to the conquest of different people and cultures on a long timeline. Roman jurists, serving government at various times, tried to choose and suggest the best institutions created to ensure the integrity of the empire. Finally, the model

¹² See M. Kosek-Wojnar, *Problem samodzielności finansowej jednostek samorządu terytorialnego*, Zeszyty Naukowe Wyższej Szkoły Ekonomii w Bochni, Nr 2, 2004, p. 12.

¹³ See W. Breński, *Poczta a samorząd terytorialny*, Informacja Pocztaowa Nr 2/2005, p. 26-48.

¹⁴ See M. Wierzbowski and others, *Prawo administracyjne*, Warszawa 2006, p. 232 n.

¹⁵ Z. Mikołajewicz, *Finanse samorządu terytorialnego w Polsce na przykładzie województwa opolskiego*, Polskie Towarzystwo Ekonomiczne Oddział w Opolu, Opole 2010. p. 84

¹⁶ B. Sitek, *Funkcjonowanie samorządu terytorialnego w wybranych krajach UE*, Olsztyn 2011, p. 33.

of leaving the autonomy to local authorities proved to be the best. But, there were limitations – local authorities could only make decision regards local issues. The municipalities or colonies could be the examples of some sort of autonomy.

It turns out that the historical analysis of the legal status clearly shows a trend of autonomy of the local self-government, regardless of political systems or history period. There is a need to maintain a certain autonomy of the local community. This includes deciding on the scope of financial management and the running costs and it could also include the priority investment for local residents. Current problems - associated with the development of the national social contract that is contained in the Constitution, together with the evolution and development of the self-government institutions in Poland and in the EU - make that the case is important but also it is very complicated matter for the various political groups.

The postulate of this analysis is the necessity to attempt to create new forms of autonomous institutions offering new opportunities for the local self-government units. The condition is not to violate the fundamental interests of the state and not to reduce the power of the state as a whole entity. Therefore, the search must have expanded horizon of public consultation, as well as there must be the quasi- opportunity to periodically implement alternative, new and additional instrument of financial management in the local self-government. The real example is the matter of limitations contained in article 10, paragraph 3 of The Municipal Services Management Act. Again, we have to refer to the restrictions contained in paragraph. 1 and 2 of mention article of The Municipal Services Management Act. These restrictions do not apply to owning by the self-government units the stocks and shares of companies engaged in banking activities, insurance and business advisory, promotional, educational and publishing activities for local government, as well as other companies important to the development community, including sports clubs operating as an association of capital company.

The problem or the question about different and new activities, may be not important in the scope of entire country but it may be crucial for some of the local self-government units because of their localization. We are talking here about special tourism opportunities, forms of profit from the promotion of resorts, etc. There are some well-known examples where the local self-government units are involved in such activities – for example involvement in capital investment connected with the cable railway around the town of Zakopane. However, in my point of view, these are very timid steps and it indicate on very prudent interpretation of law's regulations.

There are other examples of the local self-government units with low budgets, which are characterized by incomes coming only from the agricultural tax. In current legal situation, these self-government units have no real chance to be involved in banking, insurance, educational or publishing activities. These local self-governments have perhaps one specific attribute, which is possible to be commercially used in modern world but in this legal status, the local self-government is limited to obtain money from the central budget only.

The discussion on the autonomy of the local self-government units in terms of financial independence will be continued and it is natural. However, the problem is that today, the Acts' regulations offer a chance of seeking their own creativity for many local governments, but for a small group of the local self-governments are necessary to function in stagnation. Finally, the difference of potential, the rate of investment, the scale of the fight against unemployment between the various local self-governments are increased. It must be clearly stated that it is partly the fault of existing law's regulations.

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