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TRENDS OF RECONSTRUCTION OF THE SYSTEM OF BALANCING LOCAL BUDGETS IN POLAND

I. The term „balancing local budgets” is rather ambiguous. A few more accurate definitions are necessary here. From the etymological point of view „balancing” means coming back to a state of balance. For that reason the term may be referred only to those systems where the state ex definitione takes on a legal obligation that local budgets will correspond to the rule of budgetary balance. So „balancing” may be realized by the state accepting the concept that local organs are territorial state organs, or else basing upon the so-called „state theory of local government”, according to which local government acts only as empowered by the state and within limits settled by the state.

Basing upon the principle of natural rights of local government it would be more correct to refer to „alimentation of local budgets”. Selection of that or another conception of local organs is here of decisive importance.

Further questions connected with „balancing” or „alimentation” are a problem of relation between tasks and expenditure of the local government and its revenue. The problem is a certain modification of the former discussions on the preponderance of public expenditure or public revenue in the system of budgetary balance. Budgetary balance can be realized not only by subsidizing local budgets but also by structural or legal-administrative reduction of their tasks and expenditure.

Thus my report will refer to „balancing” or „alimentation” only by adjusting the sources of local revenue to tasks and expenditure which are constitutionally determined and established. Finally, my considerations will refer to public revenue and not private revenue.

II. The question of balancing local budgets are an intricate complex of difficult political, structural and legal-financial problems. Theoretical tendencies and models are usually confronted with a pragmatic and common sense

approach, resulting from long ages of political experience of a country, and also from the experience of other countries.

As a result the practically accepted legislative solutions are usually a sort of compromise between the postulates of the doctrine, the existing facts and historic conditions on one hand, and an intention to take over the structural experience of other countries on the other hand. It is rather an exceptional legal-political situation when imposed constitutional solutions as regards provision of public revenue for local government bodies work well in practice. They become then a basis for further structural solutions and also a source of inspiration for legislation of other countries (as it happened in the case of FRG constitution of 1949).

III. However, Poland of 1989 and the 1990s is facing problems of a different quality, uncomparable to changes of a kind of historic compromise, as it usually occurs in other countries. A necessity arises to break completely away from the legal-structural solutions which were in force for nearly 40 years. There is no doubt for the whole community that the most evident example of a showy and formal character of the so-called „people's democracy” were just the organs of local authorities and administration. The text of the preamble to the legislation on people's councils and the so-called „general principles” had nothing in common with the detailed solutions which decided on the actual functioning of people's councils. Also the Lenin's and Stalin's conception of people's councils as territorial organs of comprehensive state authority resulted in a defeat. The concept of combining organs of comprehensive state authority with local government organs by means of imposing on them *ex lege* a character of local and also social local government organs should be considered a misunderstanding. Combining two completely inconsistent legal-structural solutions in one organ should be in advance considered impossible and expecting a defeat.

In the present situation, in the course of preparations of restitution of local government in Poland, we face a possibility of various solutions. Here some problems arise, important and interesting not only from the pragmatic point of view, but also from the theoretical one.

First of all, we must realize that the process of restitution of real local government will have a total impact, it means it will cause a change of the whole political and economic structure of Poland. Establishing organs of local government means a need for a constitutional solution of the question of legal-public tasks, that is obligations undertaken by the state and other public bodies in social, cultural and educational spheres. Only next the question of division of tasks between the state and the local government should be decided, defining and determining in this way the term „own tasks of local government”, based on the natural character of local government, and the tasks

commissioned by state organs and other legal-public subjects. For these reasons such decisions should come before a determination of the system of revenues of local government in Poland.

It can be found to be a travesty of the old dispute about preponderance of public expenditure in relation to revenue. My option is structural adjusting the legal-public revenue of the local government to its tasks and expenditure, where „balancing” or „alimentation” of local budgets is connected with the tasks of local government.

Therefore the tasks and expenditure connected with them should essentially influence the classification and legal system of revenue of people's councils as local government bodies.

According to the structural division of tasks into own tasks and commissioned ones, the division of revenue should be: own revenue and the revenue for realization of commissioned tasks. It is the major structural division of revenue of local government. It should be remarked that it is a division different from the division between public and private revenues. The revenue from own property and the public revenue can be destined for own tasks. The tasks commissioned by the state can be financed from public revenues (tasks). However, possibilities of various contracts, common realization of public programmes by the state together with different legal-public bodies should not be precluded. In my opinion a kind of dualism of financial economy of local government is necessary, which will separately treat the problem of aliment-ation of local budgets for realization of own tasks of local government, and separately in the sphere of tasks commissioned by state organs.

The differences are as follows:

1) As regards tasks commissioned in legal-public form, or even realized on a basis of agreement between the state and the local government, the principle of budgetary balance must be preserved. The budget of own tasks of local government, for political reasons, cannot be required to be absolutely balanced, and only the purposefulness of legal regulation of limits of debt liabilities of local government bodies should be considered.

2) As regards tasks commissioned in legal-public form by the state, the law must secure means of functional supervision of state organs over the realization of tasks for which the organs are responsible. It must be reflected in construction of legal-public revenues for the purpose. On the other hand, supervision over realization of expenditure on own tasks may have only a merely legal and formal character, which excludes any legal means of influence of the state on own revenues of local government, and also any change of means already obtained from the state budget.

3) Political responsibility of local government organs, connected with

obtaining acceptance of accounts, can only concern the realization of budgetary revenues for own tasks.

Classification and typology of local government revenues should correspond to those structural principles.

IV. In conditions of Poland of 1990s there are still problems of models of legal constructions of local government revenues, on which the new system will be based. There is a variety of possibilities. First of all, there is a strong tendency to go back to traditions of Polish territorial local government from before 1939, and even to base the new local government on that legislation, with its characteristic principle of separation of local government revenues from state revenues, by means of shares, so-called „surcharge” to state taxes, etc.

However, permanent development of systems of local government in Western democratic countries and formation of new institutions of legal-public revenue recommend a reception of those newer solutions. It is an effect of taking over by the state and local government of major social, cultural and health services, which in 1930s were not a subject of legal-public norms and obligations. Although that process is lately strongly criticized from conservative-liberal positions, only some reduction and not elimination of that role of local government is discussed. The new tasks are met by new constructions of subventions and shares, developed in 1970s and 1980s, as well as the already before introduced forms of division of municipal revenues among local governments of the same tier.

Finally, the third rivalling solution is basing upon the existing developed forms of alimentation of local budgets. Abandoning structural and political forms does not mean a complete abandoning the already developed legal forms of budgetary revenue, such as objective grant, subvention for commissioned task, etc., which exist in the present legislation.

Each of those options has serious arguments. Reception of the system of balancing local budgets as applied in capitalistic countries would doubtlessly allow the Polish local government to catch up with the most modern solutions and meet the demands of modern times. Still, it is difficult to decide on one of those systems, due to an inner diversity of trends and opinions which exist in Poland now. The economic crisis and unbalanced public finances do not recommend a mechanical adaptation of models. The legislation from before 1939 is obsolete. That system was developed „toward strengthening the function of the President”, and did not prevent a crisis of municipal finance, already in the interwar period.

Arguments against reception of the at present existing instruments of balancing the local economy are: they do not function well in practice, they are somehow showy, their legislation is incorrect.

In the existing situation, with an assumption of complete abandoning the former structural solutions and restitution of real local government, after a structural division of tasks between the state and local government is introduced, it should be aimed to work out, by adaptation from other legal systems, such financial-legal institutions providing local budgets, which have proved correct in practice of other countries, but which would not be conflicting with the existing inner situation in Poland.

V. Concluding the presented considerations I think that in the range of realization of own tasks by the future local government in Poland we should speak about creation of a system of alimentation of local budgets, and a system of balancing can be applied to financing tasks commissioned by the state, temporary or permanent.

In the sphere of alimentation of local government budgets own revenue is very important, both public and private. Still we are not discussing them here. A supplementary source of alimentation should be the general objective grants (total grants), which are the Polish equivalent of the FAG System (Finanzausgleich System). These grants are a legal-public payment of the state, of unreturnable character, non-equivalent and unconditional, of general purpose, given on the basis of objective criteria, determined by regulations. Local government should have a subjective right to those grants, and the claim for subventions should be realized in a form determined by law. Such general grants are the source of alimentation of local government budgets, and also a form of distribution of public expenditure of the state.

Also some forms of division of legal-public revenues of the state among local governments of different tiers are possible. It would be a form of fractional participation by local governments of different tiers in the revenues from certain taxes and public duties. The size of the percentage participation would be determined by constitutional regulations, and it would be stable. It means that local governments would have a legal right to execute that revenue.

Another source of alimentation of local budgets can be legal-public loans from local government compensation funds. However, in the sphere of realization of tasks commissioned to local government by the state, legislation should introduce a requirement of realization of the principle of balance. Balancing can be realized by means of various legal constructions depending on the character of the commissioned task.

To realize tasks commissioned for an unlimited period to local governments of a certain tier, the correct legal form seems to be shares in state budget revenues, which means a form of percentage participation in legal-public revenue from certain taxes and duties, determined by legislation, which would also regulate the commission of task. The shares should be under functional supervision and control of state organs. It would be an element of assessment of degree and quality of realization of commissioned tasks. All local

governments would have a right to shares and losses to be covered in case of delayed payment.

To realize tasks commissioned to local governments for one year or several years periods the most correct seems the construction of purpose grant for the task commissioned. Such tasks normally need an acceptance of local government organs. The size of grant from the state should be then determined on the basis of equivalent. Failing to realize the task should result in withdrawing the subvention, and even in paying compensation by the local government.

On the other hand, if the subvention was not paid by the state it would result in a duty to cover losses. This type of grant is a form intermediate between payments based on contract and public-legal ones, with a domination of the latter. It means that settlement of controversy and the procedure of payment have a public-legal character.

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TRENDY REKONSTRUKCJI SYSTEMU BILANSOWANIA LOKALNYCH BUDŻETÓW W POLSCE

Opracowanie omawia krytycznie wzajemny stosunek dwu pojęć: „równoważenia budżetów lokalnych” oraz „zasilania budżetów lokalnych” wraz z wynikającymi stąd implikacjami ustrojowymi, a nawet doktrynalnymi. „Równoważenie” to termin oznaczający planowe, redystrybucyjne oddziaływanie Państwa na swe organy zdecentralizowane. Charakterystyczne jest tu połączenie oddziaływania na stronę dochodową z oddziaływaniem na stronę wydatkową budżetów lokalnych. Natomiast „zasilanie” oznacza oddziaływanie tylko na stronę dochodową, bez prawa oceny ze strony Państwa racjonalności i celowości wydatków budżetu samorządowego. Ta forma jest związana z uznaniem niepaństwowego, „naturalno-prawnego” charakteru samorządu terytorialnego. Na tym tle uznaje się konieczność preponderancji zadań samorządu nad jego dochodami. Zadania te muszą być realizowane w sposób stabilny opierając się na konstytucyjnych podstawach. Niezbędność ustrojowego podziału na zadania własne i poruczone jest oczywista. Wywieracć ona będzie wpływ na klasyfikację dochodów, a także swoisty dualizm gospodarki budżetowej. Zadania poruczone mogą być finansowane przede wszystkim z dochodów publiczno-prawnych, w tm głównie dotacji na zadania zlecone. Nie można wykluczyć wszakże dochodów z tytułu podatków państwowych, w formie udziałów lub dodatków, gdy chodzi o zadania przekazane na czas nieoznaczony na drodze ustawowej. Na finansowanie zadań zleczanych na drodze umownej służyć będą dochody prywatno-prawne. Z finansowaniem zadań zleczonych łączy się kwestia nadzoru funkcjonalnego organów administracji państwowej.

W zakresie finansowania zadań własnych konieczne jest – obok restytucji instytucji okresu międzywojennego – także czerpanie wzorów ze współczesnych państw demokratycznych. Konieczność ta wynika z przejścia przez samorząd nowej sfery zadań socjalnych na całym świecie. Chodzi o nowoczesne formy partycypacji we wpływach publiczno-prawnych Państwa, a zwłaszcza o dotacje ogólne oparte na kryteriach zobiektywizowanych.