

## FINANCIAL SECURITY OF LOCAL GOVERNMENT IN POLAND

**Kobyłski Piotr**

*Ph.D., research and teaching assistant professor,  
Department of Public Law, Faculty of Law and Administration,  
University of Radom. Kazimierz Pułaski,  
Radom, Poland*

**Paweł Śwital**

*Ph.D., research and teaching assistant professor,  
Department of Public Law, Faculty of Law and Administration,  
University of Radom. Kazimierz Pułaski,  
Radom, Poland*

This study is another voice in the discussion on the financing of local government units in Poland, based on an analysis of legal provisions related to the functioning and financing of local government institutions and their application in practice in recent years. This is an important issue, as the legislator specifically addressed this issue, indicating in Article 16 of the Constitution of the Republic of Poland that local government participates in the exercise of public authority. The study will therefore address the legal status of local government in the context of the stability of their sources of funding. The main thesis of the study is linked to the evaluation of the model, which *de lege lata* is supposed to ensure an adequate amount of public funds for the activities of local government.

The set goals determined the choice of the layout of the study and research methods. The work assumes methodological pluralism. The two main research methods used in the work are the dogmatic-legal method and the theoretical-legal method. The historical-legal method and legal functionalism were used as an auxiliary, which allowed to present the subject of research from the point of view of its evolution, and thus to obtain a full picture of the discussed issues.

Legal regulations should warrant actions that give rise to civic trust in a public authority. Open resolutions are a practical instance of such actions as they relate to the citizens' right to information about the activities of public authorities. The principle of openness belongs among the standards of the democratic rule of law. It is also an unquestionable systemic principle grounded in the Constitution under the Polish legal order.<sup>13</sup> The literature defines it, among other things, as "the right to search for, demand, receive and diffuse information, to informing and being informed".

As B. Dolnicki and R. Cybulska are right to note, the principle of openness is an extraordinarily important part of the operation of public authorities, with the

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<sup>13</sup> Górzyńska T., *Geneza i rozwój prawa do informacji*, [in:] *Dostęp do informacji publicznej w Polsce i w Europie. Wybrane zagadnienia prawne*, eds. E. Pierzchała, M. Woźniak, Opole 2010.

openness of local government bodies, closest to local residents, being crucial. It needs to be regulated broadly enough, therefore, and precisely enough, to make its exercise real and satisfying the needs of the population. The right to public information, an expression of individual empowerment, is a pre-requisite to and a guarantee of the remaining subjective rights of an individual. Having access to public information, an individual becomes a partner of administrative authorities<sup>2</sup>.

It has already been mentioned the principle of the openness of public financial administration is formally introduced to the Polish legal order by Article 61 of the Polish Constitution. As far as statutory regulations are concerned, Chapter 4 of the Act of 27 August 2009 on public finance,<sup>25</sup> Article 61 CSGA, Article 61 DSGA, and Article 72 VSGA are of paramount importance. The legal science distinguishes openness in its formal and material sense. The former allows for the monitoring of financial administration, while the openness in its material sense denotes the ability of the actual understanding of the processes that are part of public finances<sup>3</sup>. It should also be emphasized the openness of communes involves the citizens' right to information, entry to the meetings of local councils and their committees, and access to documents produced in the exercise of public tasks, including the minutes of the meetings of the communes bodies and local council committees. This openness also encompasses the citizens' right to information about the positions taken by individual councilors in voting on matters important to local residents. Thus, each piece of information on public property must be made available, not only in the cases listed by the provision, e.g., Article 6 (1) (2) (f), Article 6 (1) (3) (b) and (f), Article 6 (1) (4) (d), Article 6 (1) (5) (c) API. The administration of public resources is undoubtedly open and must be treated as public information<sup>4</sup>.

The financial security of the state should be derived from its financial authority. Financial authority, rooted in the doctrine of administrative law, means the functioning of public administration bodies as entities (acting individually or collectively) separate in the administrative structure, endowed with administrative authority and possessing their own distinctive competences. Within the framework of the existing decentralization of public power, financial security should be linked to the state's financial authority and derived from it, allowing it to be perceived at the local government level as well<sup>5</sup>.

It is obvious that the state's financial authority is dominant, and only to a limited extent can its functioning also be indicated within the public tasks carried out by the bodies of local government units. Among the identified own revenues,

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<sup>2</sup> Dolnicki B., Cybulska R., *Realizacja zasady jawności i dostępu do informacji publicznej w samorządzie terytorialnym*, [in:] *Korupcja i antykorupcja – wybrane zagadnienia*, eds. J. Kosiński, K. Krak, Szczytno 2011.

<sup>3</sup> Cwalińska J., *Czy dostęp do informacji publicznej stanowi gwarancję praw podmiotowych jednostki? Zagadnienia wybrane*, [in:] *Prawo do informacji publicznej. Efektywność regulacji i perspektywy jej rozwoju*, red. M. Maciejewski, Warszawa 2014.

<sup>4</sup> Jonung L., Larch M., *Improving Fiscal Policy in the EU: The Case for Independent Forecasts*, "Economic Policy" 2006, vol. 21(47), DOI: <https://doi.org/10.1111/j.1468-0327.2006.00162.x>

<sup>5</sup> Bitner M., *Wpływ budżetowania memorialowego na kształt i funkcjonowanie zasad budżetowych w prawie budżetowym jednostek samorządu terytorialnego*, "Samorząd Terytorialny" 2012, no. 5.

the most important from the perspective of financial authority analysis are undoubtedly those obtained through the collection of so-called local or municipal taxes (collected by municipalities) and local government taxes (collected by counties and voivodeships)<sup>6</sup>.

In the case of municipalities, which according to the regulations of the Constitution carry out all tasks not reserved for other public authorities, it is extremely important to transfer, by virtue of Article 168 of the Constitution of the Republic of Poland, the right to determine the amount of local taxes and fees within the scope defined by law. Adopting such a solution allows for the distinction within the financial authority, as described in the literature of the subject, of derivative tax authority. In addition to the possibility of influencing the amount of local taxes and fees, it also means the possibility of introducing by the legislative body exemptions and reductions in agricultural and forestry taxes, as well as the use of, among others, the institution of transferring the payment deadlines of taxes and fees; compulsory mortgage or treasury pledge; concluding a civil law agreement for the transfer of ownership of property or property rights in exchange for tax arrears<sup>7</sup>.

The legislator limits the spending possibilities of local government units by indicating mandatory own tasks and commissioned tasks, as well as the use of subsidies. The types of own tasks specified by the legislator, which are to be carried out based on local government laws, can only be modified by local government units in relation to the size or shape of the task being carried out in a given budget year. In some cases, there is also the possibility to decide on the deadline for its completion. Similar limitations must be associated with the expenditure of funds for the implementation of tasks commissioned by laws or government administrative bodies. Commissioning a task related to the allocation of financial resources requires their use for the implementation of the specified task, similar to targeted grants awarded for a specific purpose to a specific entity as subsidies for products or services. The freedom in this regard is ensured by general subsidies granted to local government units, which can be spent within the goals defined by the legislative body. As stated in Article 9(7) of the Local Government Finance Act, subsidies granted to local communities should not be used to finance specific projects. The essence of general subsidies is that they are not granted to local government units for the financing of specific projects, but rather to allow them to freely conduct their own policy within the independently granted statutory powers<sup>8</sup>.

This realization requires an efficient model of financing. Without an open financial administration of communes, the local government could be incapable of discharging these tasks. The fact the local government obtains financial

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<sup>6</sup> Borodo A., *Finanse publiczne. Zagadnienia ustrojowe i prawne*, Warszawa 2019.

<sup>7</sup> Misiąg W., Niedzielski A., *Openness and Transparency of Public Finances in Poland in the Light of the International Monetary Fund Standards*, "Journals of the Gdańsk Institute for Market Economics" 2001, no. 29.

<sup>8</sup> Izdebski H., *Kierunki rozwoju zarządzania publicznego w Europie*, [in:] *W poszukiwaniu dobrej administracji*, eds. H. Izdebski, H. Machińska, Warszawa 2007.

resources in its own name and responsibility implies the need for a comprehensive surveillance of public finances. Administration of public funds outside the state budget produces a risk of some of this revenue to escape such a surveillance. The limited opportunities for the surveillance of the local financial administration provide conditions conducive to the waste of public funds. The irrational spending on some of the public tasks, for instance, in a situation of fiscal deficit, jeopardizes the stability and integrity of the whole financial system. A lack of transparency often leads to the separation of some public funds, thus interfering with a reasonable management of all of the funding. This results in a growing fiscal deficit. Security can be ensured by securing the financial resources necessary for the functioning of the state within its financial authority. This authority, although strongly regulated by legal regulations, also belongs to local government bodies, whose goal is to act for the benefit of local communities. And although it should be recognized after analyzing only selected regulations that local communities can feel secure by guaranteeing financial resources, it is also possible to call for the real separation of financial authority, fully justified by the decentralization of public authority<sup>9</sup>.

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<sup>9</sup> Fleszer D., *Zakres jawności działania organów stanowiących jednostek samorządu terytorialnego*, "Samorząd Terytorialny" 2010, no. 4.