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## **Autonomy of local government as regards tax revenues – the legal aspects**

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**Summary:** The issue of local government units' autonomy as regards tax revenues is analysed based on the source literature and the judicial decisions of the Constitutional Tribunal. The author has studied mainly the legal aspects of financial and revenue autonomy of communes. Moreover, the problem of poviats' and voivodeships' autonomy in tax issues has been presented. However, the rights of poviats and voivodeships to influence revenues are limited. Nevertheless, it can be acknowledged that the powers of communes as regards taxes are properly governed.

**Key words:** sources of revenues, revenues of local government units, own revenues, tax revenues, financial autonomy, revenue autonomy.

### **Samodzielność samorządu terytorialnego w zakresie dochodów podatkowych – aspekty prawne**

**Streszczenie:** Problematyka samodzielności jednostek samorządu terytorialnego w zakresie dochodów z tytułu podatków analizowana jest na podstawie literatury przedmiotu i orzecznictwa Trybunału Konstytucyjnego. Autorka bada głównie aspekty prawne samodzielności finansowej i dochodowej gminy. Przedstawiony jest również problem samodzielności powiatów i województw w sprawach podatków. Uprawnienia do kształtowania dochodów przez powiaty i województwa występują jednak w ograniczonym zakresie. Uznać natomiast można, że uprawnienia podatkowe gminy są poprawnie uregulowane.

**Słowa kluczowe:** źródła dochodów, dochody jednostek samorządu terytorialnego, dochody własne, dochody podatkowe, samodzielność finansowa, samodzielność dochodowa.

## **1. Introduction**

The Constitution of the Republic of Poland provides for legal regulations

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regarding the powers of local government units concerning their budget management<sup>2</sup>. Article 167 of the Constitution governs the provision of local government units with sources of revenues<sup>3</sup>. It defines the rights of local government units to participate in public revenues according to the duties assigned to them, as well as the right of local government units to general subsidies and specific grants from the state budget. Article 168 of the Constitution, in turn, defines the right of local government units to set the level of local taxes and charges to the extent established by statute<sup>4</sup>. Moreover, the Constitution provides for the right of ownership and other property rights of local government units (Art. 165, paragraph 1), which is of significance for the revenues of local government units from the use of municipal assets. The Constitution also provides for the right to statutorily specify the sources of revenues for local government units (Art. 167, paragraph 3). With the above-mentioned rights granted to local government units, the Constitution defines the scope of their financial autonomy<sup>5</sup>.

The financial autonomy of local government units denotes the right of these units to manage their own finance independently within the framework defined by the Constitution of the Republic of Poland and by statute<sup>6</sup>. Financial autonomy is one of the constituent features of local self-government<sup>7</sup>. However, the principle of financial autonomy of local government units is not directly defined in the Constitution or statute<sup>8</sup>.

Financial autonomy is manifested in the rights of local government units to make decisions regarding the accumulation of revenues, looking for the opportunities to obtain revenues, making expenditures on financing of their duties, as well as regarding the budgetary procedure<sup>9</sup>. The financial autonomy of local government units is visible in the following areas: revenues, expenditures, the budgetary procedure, borrowing, and the issue of bonds<sup>10</sup>. Therefore, the scope of the financial autonomy of local government units defined by statute is wider than the constitutional regulations, as it also covers the budgetary economy aspect<sup>11</sup>.

The source literature defines the revenue autonomy of local government units as the right of these units to possess and influence their own revenues, the right of local authorities to have funds at their disposal and the right to determine and

<sup>2</sup> E. Kornberger-Sokołowska, *Decentralizacja finansów publicznych a samodzielność finansowa jednostek samorządu terytorialnego*, Warszawa 2001, p. 45.

<sup>3</sup> T. Dębowska-Romanowska, *Prawo finansowe Część konstytucyjna wraz z częścią ogólną*, Warszawa 2010, p. 230.

<sup>4</sup> K. Sawicka, *Samodzielność finansowa samorządu terytorialnego w świetle orzecznictwa TK*, [in:] A. Gomułowicz, J. Małecki (ed.), *Ex iniuria non oritur ius: księga ku czci profesora Wojciecha Łączkowskiego*, Poznań 2003, p. 105, 106.

<sup>5</sup> E. Kornberger-Sokołowska, *Decentralizacja finansów...*, op. cit., p. 45.

<sup>6</sup> A. Borodo, *Samorząd terytorialny System prawnofinansowy*, Warszawa 2012, p. 60.

<sup>7</sup> M. Ofiarska, Z. Ofiarski, *Samodzielność jako fundamentalna wartość samorządu terytorialnego*, [in:] I. Czaja-Hliniak (ed.), *Nauka prawa finansowego po I dekadzie XXI wieku Księga pamiątkowa dedykowana Profesorowi Apoloniuszowi Kosteckiemu*, Kraków 2012, p. 339.

<sup>8</sup> *Ibid.*, p. 326.

<sup>9</sup> J. Glumińska-Pawlic, *Konstytucyjne gwarancje samodzielności finansowej j.s.t.*, [in:] A. Łabno, E. Zwierzchowski (ed.), *Księga pamiątkowa profesora Marcina Kudeja*, ed. Katowice 2009, p. 37.

<sup>10</sup> A. Borodo, *Samorząd terytorialny...*, op. cit., p. 61.

<sup>11</sup> J. Glumińska-Pawlic, *Konstytucyjne gwarancje samodzielności finansowej...*, p.35.

obtain them<sup>12</sup>. A properly developed system of budgetary revenues is of significant importance for the correct operation of local government units<sup>13</sup>.

Moreover, it is worth highlighting that the potential (ability) of local government units to accumulate revenues, according to their own will and at their sole discretion, in order to perform their local government duties is associated with financial control<sup>14</sup>.

This study shall analyse certain aspects of the financial autonomy of local government units in Poland, mainly as regards the system of tax revenues of local self-governments.

## 2. Legal construct of the communes' autonomy as regards local taxes

Pursuant to Art. 167 of the Constitution, the revenues of local government units cover their own revenues, general subsidies and specific grants from the state budget. The degree and scope of the financial autonomy of commune authorities are determined by own revenues, which constitute a special type of local government revenues<sup>15</sup>. They are mainly local taxes (property tax, farm tax, forest tax), as well as percentage shares in personal income tax (the commune share of around 38%) and in corporate income tax (the commune share of around 6.71%). The efficiency of the sources of own revenues determines the scope and manner of performance of own duties, and it is necessary for local government units to maintain their financial autonomy<sup>16</sup>.

The literature devoted to local government finance presents a variety of opinions as regards the types of revenues of local government units that are or rather should be considered to be own revenues. The discrepancies are caused, inter alia, by no uniform definition of own revenues in the applicable laws and regulations<sup>17</sup>.

In connection with the lack of a definition of own revenues of local government units in the provisions of law, there have been attempts to provide their doctrine definition. The doctrine provides two concepts of own revenues of local government units: own revenues in the strict sense and own revenues in the broad sense<sup>18</sup>.

Own revenues of local government units in the strict sense include only those revenues which are connected with tax control or ownership of specific sources of revenues or the rights to implement and influence specific revenues. Pursuant to Art. 167, paragraph 2 of the Constitution, own revenues of local government units in

<sup>12</sup> K. Surówka, *Samodzielność finansowa samorządu terytorialnego w Polsce Teoria i praktyka*, Warszawa 2013, p. 22.

<sup>13</sup> E. Kornberger-Sokołowska, *Teoretyczno – prawne aspekty realizacji zasady adekwatności środków do zadań*, [in:] H. Izdebski, A. Nelicki, I. Zachariasz (ed.), *Finanse komunalne a konstytucja*, p. 12.

<sup>14</sup> A. Borodo, *Władztwo finansowe samorządu terytorialnego – zagadnienia ogólne*, [in:] R. Mastalskiego (ed.), *Księga jubileuszowa profesora Marka Mazurkiewicza Studia z dziedziny prawa finansowego, prawa konstytucyjnego i ochrony środowiska*, p. 132.

<sup>15</sup> J. Kotlińska, *Dochody własne j.s.t. w Polsce*, „Ruch prawniczy, ekonomiczny i socjologiczny” 2009, LXXI, z. 3, p. 145.

<sup>16</sup> T. Dębowska-Romanowska, *Prawo finansowe Część konstytucyjna...*, op. cit., p. 245.

<sup>17</sup> J. Kotlińska, *Dochody własne j.s.t. w Polsce*, „Ruch prawniczy...”, op. cit. p. 143.

<sup>18</sup> E. Ruśkowski, J. M. Salachna, *Finanse lokalne po akcesji*, Wolters Kluwer 2007, p. 107.

the broad sense include those revenues which do not constitute subsidies and specific grants from the state budget, that is, also shares in government taxes<sup>19</sup>. Shares in government taxes, pursuant to Art. 3, paragraph 2 of the currently applicable Act on revenues of local government units are also own revenues of local government units. Own revenues of local government units which are not controversial include, among others, local taxes and charges. Pursuant to Art. 217 of the Constitution, the imposition of taxes and other public levies, the specification of those subject to taxation and tax rates, as well as the principles of granting tax reliefs and remissions, and defining categories of entities exempt from tax shall be by means of statute. Therefore, Art. 217 of the Constitution directly formulates the principle of statutory exclusivity as regards tax issues, and fails to provide for an option to govern them by way of other legal acts<sup>20</sup>. On the other hand, pursuant to Art. 168 of the Constitution, which is a special provision, local government units have the right to set the level of taxes and charges “to the extent established by statute”<sup>21</sup>. The authority provided for in Art. 168 of the Constitution does not result from the general principle of their autonomy, but requires an unambiguous statutory authorization<sup>22</sup>. This right refers mainly to communes. Tax control, which in Poland is granted to the commune level of local self-government only, denotes the right of competent authorities to influence individual elements of taxes, and to make decisions as regards determining tax obligations or influencing tax liabilities<sup>23</sup>. Tax control of communes results from the legislator’s will, and it is not of autonomous nature<sup>24</sup>.

Local taxes and charges are the only source of own revenues in regard to which local government units can attempt at adopting their own fiscal policy<sup>25</sup>. The doctrine distinguishes three types of jurisdiction (authorities) of local government units as regards public revenues, i.e. taxes. They include the authority to take over revenues from individual taxes, to enact legal provisions regarding taxes and to provide administration as regards individual taxes<sup>26</sup>. The authority of commune councils to enact legal provisions on tax issues is one of the major powers of communes and indications of tax control<sup>27</sup>. It is worth emphasising that the right to enact legal provisions regarding taxes is granted only to commune councils as decision making

<sup>19</sup> E. Ruśkowski, J. M. Salachna, *Finanse lokalne po ...*, op. cit., p. 107.

<sup>20</sup> J. Glumińska-Pawlic, *Podatki i opłaty lokalne jako źródło finansowania zadań samorządu terytorialnego a zasada zróżnicowania i elastyczności określona w art. 9 ust. 4 EKSL*, [in:] J. Gliniecka, A. Drywa, E. Juchniewicz, T. Swoiński (ed.), *Finansowanie samorządu terytorialnego i jego zadań a EKSL*, p. 357.

<sup>21</sup> K. Sawicka, *System prawnofinansowy samorządu terytorialnego*, [in:] *Nauka prawa finansowego po I dekadzie XXI wieku Księga pamiątkowa dedykowana Profesorowi Apoloniuszowi Kosteckiemu*, Kraków 2012, p. 381.

<sup>22</sup> J. Glumińska-Pawlic, *Podatki i opłaty lokalne jako źródło finansowania zadań samorządu terytorialnego...*, op. cit., p. 357.

<sup>23</sup> E. Kornberger-Sokołowska, *Finanse jednostek samorządu terytorialnego*, Warszawa 2012, p. 103.

<sup>24</sup> K. Sawicka, *System prawnofinansowy samorządu terytorialnego*, [in:] *Nauka prawa finansowego po I dekadzie XXI wieku Księga pamiątkowa dedykowana Profesorowi Apoloniuszowi Kosteckiemu*, Kraków 2012, p. 381.

<sup>25</sup> J. Glumińska-Pawlic, *Podatki i opłaty lokalne jako źródło finansowania zadań samorządu terytorialnego...*, op. cit., p. 353.

<sup>26</sup> A. Borodo, *Samorząd terytorialny...*, op. cit., p. 68.

<sup>27</sup> *Ibid.*, p. 69.

bodies. On the other hand, the tax powers of the communes' executive bodies are connected with the capacity to make individual decisions regarding tax burden<sup>28</sup>.

The principle of financial autonomy of local government units is highlighted in Art. 165, paragraph 2 of the Constitution, pursuant to which this autonomy is protected by the courts. The statutory guarantee of the sources of revenues is instrumental as regards the basic aim, which is the provision of adequate means for the performance of duties<sup>29</sup>.

The Constitutional Tribunal has frequently adjudicated on financial autonomy of local government units. In one of its judgements, the Constitutional Tribunal interpreted the notion of the autonomy principle. According to the judgment of the Constitutional Tribunal as of 24 March 1998 (ref. no. 40/97 OTK 1998 No. 2, item 12), "the essence of the principle of financial autonomy is reflected in providing local government units, above all, with revenues enabling them to fulfil the public duties entrusted to them, giving them the freedom to influence their expenditures and establishing adequate formal and procedural guarantees".

In the cited interpretation of financial autonomy, the provision of revenues allowing for the performance of public duties assigned to local government units comes to the fore. Local self-government was established for the purpose of performing public duties aimed at satisfying the needs of a self-governing community as its own duties. It is its right and obligation to perform its own duties. Local government units perform their own duties unaided and on their own responsibility. These duties are the core of local self-government<sup>30</sup>.

Art. 167, paragraphs 1 and 4 of the Constitution provide for the principle of adequacy between local government units' revenues and their duties, which means that local government units are assured a share in public revenues adequately to the duties assigned to them, and any changes to the scope of duties and authorities of local government units are made along with appropriate changes in their share in public revenues<sup>31</sup>.

Nevertheless, an increase in the scope of a performed duty does not always have to denote an increase in the amount of funds granted to local government units. In its judgment as of 1 April 2003 (K 46/1, Lex no. 78047), the Constitutional Tribunal adjudicated that one of the ways of providing adequate funds for performance of new public duties can be, inter alia, new legal solutions forcing more rational management of funds. On the other hand, in its judgment as of 25 July 2006 (K 30/40, OTK ZU No. 7/A/2006, item 86), the Constitutional Tribunal emphasised that Art. 167 of the Constitution cannot be viewed irrespective of the financial situation of the country as a whole, and cannot result in depriving the government administration of funds for the performance of its duties.

According to the Constitutional Tribunal, the inconsistency of legal regu-

<sup>28</sup> E. Kornberger-Sokołowska, *Finanse jednostek samorządu...*, op. cit., p. 106.

<sup>29</sup> K. Sawicka, *Samodzielność finansowa samorządu terytorialnego w świetle orzecznictwa TK, Ex iniuria non oritur ius...*, op. cit., p. 115.

<sup>30</sup> A. Borodo, *Samorząd terytorialny...*, op. cit.

<sup>31</sup> T. Dębowska-Romanowska, *Prawo finansowe. Część konstytucyjna...*, op. cit., p. 238.

lations with Art. 167, paragraph 4 of the Constitution can be established only on the grounds of obvious disproportions between the scope of duties and the level of revenues upon the distribution of funds between the government administration and individual levels of local self-government<sup>32</sup>.

According to the judicial decisions of the Constitutional Tribunal, e.g. the judgment as of 24 March 1998 (ref. no. K. 40/70, ZU OTK No. 2/1991, item 12), Art. 167, paragraph 3 (the sources of revenues of local government units are specified by statute) can be regarded as the expression of a more general principle which guarantees to communes not only that specific funds are made available to them, but also which guarantees that communes are able to use these funds on their own, and, therefore, to make expenditures and influence their duties by means of them.

### **3. Poviats and voivodship autonomy as regards tax revenues**

However, it should be pointed out that self-governing voivodships (16 voivodships) and poviats (314 poviats) to this day cannot exercise the constitutionally guaranteed right to set the level of local taxes and charges to the extent established by statute, as poviat and voivodship self-governments do not have their own separate tax sources. Tax revenues of poviats and voivodships are only constituted by the shares of these communities in income tax. Tax revenues of poviats include 10.25% of personal income tax and 1.40% of corporate income tax. By contrast, tax revenues of voivodships comprise 1.60% of personal income tax and 14.75% of corporate income tax. The above-mentioned percentage shares are defined in the Act of 13 November 2003 on revenues of local government units (Journal of Laws 2003, No. 203, item 1966). They are fixed, and they are the expression of distribution of tax revenues between the state and local government units. They cannot be influenced or altered by means of legal provisions enacted by poviat and voivodship authorities. Therefore, tax control of local government units is limited at self-governing poviat and voivodship level. These levels of self-government do not obtain own revenues in the form of local taxes. The legislator has not provided these units of local government with adequate sources of tax revenues, which could be influenced and developed by poviat and voivodship legislative bodies.

### **4. Conclusion**

In Poland, revenue autonomy of communes is, in principle, properly governed both by the Constitution and laws on local government revenues. Communes have been provided with a number of own taxes and charges. They have the rights to influence, by means of statute, certain element of local taxes, i.e. tax rates, exemptions and reliefs.

However, voivodship and poviat self-governments have limited revenue

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<sup>32</sup> Judgment of the Constitutional Tribunal as of 31 May 2005 (K 27/2004, OTK ZU 2005/5A, item 54).

autonomy. Therefore, it is advisable to extend the financial competence of poviats and voivodeships by way of granting to these levels of self-government public revenues in the form of own taxes. Currently, voivodeships and poviats, in fact, cannot exercise the rights to influence the amount of taxes.

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