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IMPACT OF THE COVID-19 PANDEMIC ON THE PROCESS OF MAKING PUBLIC FINANCE LAW NORMS IN POLAND

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Abstract

The article analyses and evaluates the legislative changes introduced to provide public funding to combat the effects of the COVID-19 pandemic. Therefore, regulations on the budgetary procedure and multi-annual financial planning required during the state of epidemic threat or the state of epidemic have been analysed. The study verified the assumption that the performance of financial activities at the time of epidemic threat consisting in collecting and disbursement of funds by bodies governed by public law under new conditions entailed fundamental changes in the design, adoption and implementation and auditing the central state budget and budgets of local government units. The aim of the work is to show that the episodic solutions introduced due to the effects of the COVID-19 pandemic in the area of collecting public funds and their disbursement by public law entities are conducive to more flexibility in public financial management. To the necessary extent, justified by the need to finance tasks to counteract the COVID-19 pandemic, the regulations analysed herein have ensured the protection of the stability of public finance.

Key words: COVID-19, public finance law, budgetary procedure, public financial management, stability public finance.

JEL Classification: H71, H72, G01, K39

INTRODUCTION

The pandemic of COVID-19 has significantly affected the functioning of society, including the legal order. In the pandemic-caused situation, it was first and foremost necessary to introduce restrictions on the exercise of certain freedoms and rights. At the same time, a need has arisen to finance public tasks to counter the negative health and economic effects associated with the spread of COVID-19. This study addresses the legislative changes introduced to provide public funding to combat the effects of the COVID-19 pandemic. Therefore, regulations on the budgetary procedure and multi-annual financial planning required during the state of epidemic threat or the state of epidemic have been analysed. The study verified the assumption that the performance of financial activities at the time of epidemic threat consisting in collecting and disbursement of funds by bodies governed by public law under new conditions entailed fundamental changes in the design, adoption and implementation and auditing the central state budget and budgets of local government units. Exceptional legislative changes should primarily aim at ensuring the proper implementation of extraordinary tasks, i.e. those addressing the effects of the pandemic in question.

The changes made to the financial legislation include numerous rights and obligations in terms of the budgetary procedure and multi-annual financial planning. These changes are, in principle, of an episodic character. By nature, therefore, they should apply for a predetermined period of time. In fact, episodic provisions contain derogations from certain provisions, while their duration is clearly defined¹. The period of applicability of episodic regulations is usually determined in particular by specifying the calendar year or calendar years². For this reason, it appears that episodic provisions are therefore linked to *ad hoc* normative amendments to be in force in a clearly defined period³. In accordance with § 29c of the Rules of legislative technique, episodic provisions may be included in a separate law. The provisions of an episodic nature governing exceptional rights and obligations in respect of the budgetary procedure and multi-annual financial planning at the time of the epidemic threat are mostly included in a separate law.

The paper therefore presents an analysis of selected provisions of the Act on special solutions related to the prevention, countering and fight against

¹ See § 29a of the Rules of legislative technique.

² See § 29b (1) item 1 of the Rules of legislative technique, as well as M. Moras, P. KroczeK, *Nowelizacja „Zasad techniki prawodawczej”: przepisy epizodyczne*, „Forum Prawnicze” 2016, no. 2, p. 34.

³ For more detail on the concept of episodic provisions, see M. Kłodawski, *„Regulacje” na tle ujęcia przepisów epizodycznych w „Zasadach techniki prawodawczej”*, „Przegląd Legislacyjny” 2016, no. 4, p. 26; M. Moras, P. KroczeK, *Nowelizacja...*, p. 36, as well as G. Wierczyński, *Redagowanie i ogłaszanie aktów normatywnych. Komentarz*, Warszawa 2016, pp. 222-224.

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COVID-19, other infectious diseases and crisis situations caused by them⁴. The Act entered into force on 8 March 2020. As regards public finance law, it should be noted that that the Act was substantially amended on 31 March 2020⁵. In addition to this normative act, selected episodic provisions introduced in the Public Finance Act have been examined⁶.

The study has been prepared in this field according to the scientific methodology adopted in the legal sciences. It was therefore not necessary to describe all the phenomena that occur in social and economic life and the data available on them. The method of study required a dogmatic analysis of selected provisions and an evaluation thereof, taking into account, in particular, the criterion of protection of the public interest. As regards the rules of public finance law, the public interest mainly consists in the benefits which the state and local authorities derive from collecting and disposing of funds, so that they can carry out their public tasks⁷. At the same time, it is also in the public interest to properly dispose of the funds collected. It should be noted that the issue of the impact of the COVID-19 pandemic on the process of creating norms of public finance law in Poland has not received sufficient attention in the literature. However, most publications available include studies that focus on assessing the state of public finances from the perspective of economic sciences⁸.

⁴ Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych (Dz.U. z 2020 r. poz. 1842 ze zm.) [Act on special solutions related to the prevention, countering and fight against COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 1842 as amended), hereinafter referred to as: "the Act on special solutions related to COVID-19".

⁵ Ustawa z dnia 31 marca 2020 r. o zmianie ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustaw (Dz. U. z 2020 r. poz. 568 ze zm.) [Act of 31 March 2020 amending the Act on special solutions related to the prevention, countering and fight against COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 568), hereinafter referred to as: "the Act amending the Act on special solutions related to COVID-19".

⁶ Ustawa z dnia 27 sierpnia 2009 r. o finansach publicznych (Dz.U. z 2021 r. poz. 305 ze zm.) [Act of 27 August 2009 on public finance (Journal of Laws of 2021, item 305 as amended) hereinafter referred to as: „the Public Finance Act” or "PFA".

⁷ For more detail on this topic, see: A. Hanusz, *Ochrona interesu publicznego w procesie stanowienia prawa finansowego*, „Przegląd Sejmowy” 2020, no. 1, p. 66.

⁸ Cf. W. Misiąg, *Wpływ pandemii COVID-19 na polskie finanse publiczne – źródła finansowania, wydatki, procedury*, "Kwartalnik Prawno-Finansowy" 2020, no. 1, p. 7 et seq.; K. Kostyk-Siekierska, *Wpływ pandemii COVID-19 na sytuację finansową i funkcjonowanie jednostek samorządu terytorialnego*, "Zeszyty Naukowe Małopolskiej Wyższej Szkoły Ekonomicznej w Tarnowie" 2021, no. 3, p. 29 et seq.; M. Ziolo, B. Z. Filipiak, *Finanse zrównoważone wobec ryzyka zdrowotnego kreowanego przez COVID-19 i jego skutków społeczno-gospodarczych*, [in:] *Wpływ COVID-19 na finanse. Polska perspektywa*, ed. M. Zaleska, Warszawa 2021, p. 105 et seq.;

I. DRAFTING AND ADOPTING THE STATE BUDGET AND THE BUDGETS OF LOCAL GOVERNMENT UNITS, TAKING INTO ACCOUNT THE EPISODIC PROVISIONS APPLICABLE DURING THE COVID-19 PANDEMIC

As indicated by scholars in the field, the budgetary procedure consists of a number of legal and factual activities governed by law, which relate to budget-making, implementation of the budget and review of its implementation⁹. The initial stage of the budgetary procedure thus understood consists of activities related to drafting and adopting the budget. It is worth noting that the stage of drafting the state budget and budgets of local government units is preceded by multi-annual financial planning. In accordance with the provision of Article 105(1) PFA, the basis for the preparation of the draft budget act for the next financial year is the State's Multi-Annual Financial Plan. The obligation to adopt that plan by 30 April each year is the responsibility of the Council of Ministers¹⁰. The State's Multi-Annual Financial Plan is to be drawn up for the financial year concerned and three consecutive years¹¹. However, in accordance with Article 76 of the Act amending the Act on special solutions related to COVID-19, it was assumed that in 2020, the Council of Ministers was not required to draw up the State's Multi-Annual Financial Plan. In the legislature's view, the adoption of a multi-annual financial plan covering 2020 and the subsequent three years would not be advisable given the dynamics of the social and economic changes resulting from the outbreak. It has been assumed that in this timeframe it is not possible to determine sustainable social and economic policy objectives and planned measures affecting the level of revenue and expenditure of the public finance sector.

Apart from the state financial sector, the obligation of multi-annual financial planning also rests with local government units. The initiative for drawing up a draft resolution on the multi-annual financial forecast and amending it is solely up to the executive body of the local government unit¹². A resolution on this matter must be adopted by the legislative body of the local government unit concerned¹³. The legislative body of the local government unit, like the

S. Franek, *Konsekwencje kryzysu COVID-19 dla finansów jednostek samorządu terytorialnego w krajach UE*, "Optimum. Economic Studies" 2022, no. 3, p. 55 et seq.; M. D. Bordo, J. V. Duca, *How the new fed municipal bond facility capped municipal-treasury yield spreads in the Covid-19 recession*, "Journal of the Japanese and International Economies" 2023, vol. 67, p. 1 et seq.; P. Csanyi, R. Kucharčík, *Slovakia and the Slovak local governments response to COVID-19 challenges*, "Zhurnal Issledovani Sotsial'noi Politiki" 2023, vol. 21, no. 1, p. 107 et seq.; J. Kubiček, P. Morda, *Fiscal Deficit and Money Issuance in Czech Republic during COVID-19 Pandemic*, "Politická Ekonomie" 2023, vol. 71, no. 1, p. 68 et seq.

⁹ Cf. A. Hanusz, *Procedura budżetowa*, [in:] *Prawo finansowe*, ed. *idem*, Warszawa 2022, p. 127.

¹⁰ See Article 106 (2) PFA.

¹¹ See Article 103 PFA

¹² See Article 230 (1) PFA.

¹³ See Article 230 (6) PFA.

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Council of Ministers, adopts a multi-annual financial forecast every year, thus in the perspective of one financial year. According to Article 227(1) PFA, the multi-annual financial forecast covers not only the period of the financial year concerned but at least three consecutive financial years¹⁴. On the other hand, the debt forecast, which forms part of the multi-annual financial forecast, must be drawn up for the period for which commitments are made and are planned to be made¹⁵. Generally speaking, the Council of Ministers' obligation of multi-annual financial planning, like the same obligation of the authorities of the local government unit, is regulated in a similar way. The difference boils down to the obligation incumbent on local authorities to draw up a debt forecast for the period for which financial commitments have been made and are planned to be made. In view of this, it seems understandable why the executive and legislative bodies of local government were not exempted in 2020 from the obligation to draw up and adopt a multi-annual financial forecast, as was done for the central government sector.

However, in accordance with Article 15zn (3) of the Act on special solutions related to COVID-19, it is possible to amend the local government unit's multi-annual financial forecast. However, the general condition for such changes is the need to ensure that the tasks related to combating COVID-19 are properly fulfilled. The body entitled to amend the resolution on the multi-annual financial forecast is the executive body of the local government unit, i.e. the village mayor, mayor, president of the city, district executive board or voivodeship executive board. This is the way the legislature granted resolution-making powers to the executive authorities, which constitutes a development of the powers previously conferred on them. In the light of the provisions of the Public Finance Act, the power to make amendments to the multi-annual financial forecast, excluding changes in the limits of commitments and amounts of expenditure on projects, is conferred on the executive body of the local government unit¹⁶. However, the legislative body of the local government unit may authorise the executive body to amend the limits of commitments and sums of expenditure for the implementation of a project financed with EU funds or from other non-returnable foreign sources. The norm resulting from Article 15zn (3) of the Act on special solutions related to COVID-19 is a development of the co-competence of the legislative and executive bodies to amend the multi-annual financial forecast of the local government unit, justified by the protection of the public interest. Hence, the need to fulfil tasks related to counteracting COVID-19 makes it possible for the

¹⁴ On the multi-annual financial forecast of the local government unit, see: K. Sawicka, *Gwarancje prawne stabilności finansowej jednostek samorządu terytorialnego – wybrane instytucje systemu budżetowego*, [in:] *Problemy finansów i prawa finansowego. Księga jubileuszowa dedykowana profesor Elżbiecie Chojna-Duch*, ed. M. Bitner, Wrocław 2021, p. 269.

¹⁵ See Article 227 (2) PFA.

¹⁶ See Article 232 (1) PFA.

executive body to amend the multi-annual financial forecast of the local government unit adopted by the legislative body of that unit.

The rules related to the drafting of the State budget and budgets of local government units are still included almost exclusively in the provisions of the Public Finance Act. The assumptions of the draft state budget for the following year, taking into account the arrangements and directions contained in the State's Multi-Annual Financial Plan, in accordance with Article 138(1) PFA, shall be presented to the Council of Ministers by the Minister of Finance. Due to the absence of an obligation to adopt the State's Multi-Annual Financial Plan in 2020, the Minister of Finance is authorised to present the assumptions of the State's draft budget in 2021 without having to take into account the arrangements and directions of action contained in the State's Multi-Annual Financial Plan.

However, the norms restricting sovereign public debt should be taken into account when drafting and adopting a budget act. This concerns in particular the constitutional rule under Article 216(5) of the Polish Constitution¹⁷. Indeed, the maximum permissible limit on the sovereign debt may not exceed 60% of the annual gross domestic product¹⁸. It is worth emphasizing that the legislature, despite the effects of the COVID-19 pandemic, has not changed the regulation laid down in the Public Finance Act concerning the limit of sovereign debt. Consequently, the legal norms which provide for the consequences in cases where the ratio of the amount of government debt to gross domestic product is greater than 55% and less than 60% continue to apply¹⁹. The failure to repeal a norm under the Public Finance Act regulating the debt limit should be considered as a measure conducive to the sustainability of public finance. However, this can be a barrier to investment spending in both the short and long term²⁰.

However, the declaration of the state of epidemic in the entire territory of the Republic of Poland is a condition for non-application of the provisions covering the stabilising expenditure rule²¹. The rule in question is intended to

¹⁷ Cf. P. Kucharski, *Konstytucyjny zakaz finansowania deficytu budżetowego przez NBP a prawo Unii Europejskiej*, „Państwo i Prawo” 2011, no. 3, p. 19 et seq.

¹⁸ For more detail, see A. Hanusz, P. Szczęśniak, *The reduction of excessive government debt in the European Union law and its impact on the Polish legal system*, "Nihon University Comparative Law" 2018, vol. 35, p. 65 et seq.

¹⁹ See Article 86 (1) point 2 PFA.

²⁰ It is worth mentioning the role of the standard resulting from Art. 220 sec. 2 of the Constitution. The possibility of increasing the state's public debt was significantly limited by the ban on incurring liabilities in the central bank of the state. Cf. R. Rybski, *Zakaz pokrywania deficytu budżetowego w centralnym banku państwa a sytuacje kryzysowe*, [in:] *Finanse publiczne w sytuacjach kryzysowych. Zagadnienia prawno-finansowe*, ed. G. Kuca, Kraków 2022, p. 231 et seq.

See Article 148 (5) of the Polish Constitution.

²¹ For more on the expenditure stabilisation rule. see R. Mroczkowski, *Numeryczne reguły wydatkowe jako instrumenty wzmacniające stabilność fiskalną*, [in:] *Institucje prawnofinansowe w warunkach kryzysu gospodarczego*, eds. W. Miemieć, K. Sawicka, Warszawa 2016, p. 319 et seq.

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limit the rate of growth of public expenditure. When adopting the budget, the spending limit established pursuant to Article 112aa(1) PFA may not be exceeded. The stabilisation expenditure rule determined in the provisions of the Public Finance Act affects the level of expenditure of public authorities, including central government authorities, state auditing and law protection authorities, courts and tribunals, as well as local government units and their associations and metropolitan unions. The stabilising expenditure rule continues to include the National Health Fund, the Bank Guarantee Fund and funds established, entrusted or transferred to the Bank Gospodarstwa Krajowego under separate laws.

In accordance with Article 112d(1) PFA, the stabilising expenditure rule does not apply in cases of declaration of martial law, emergency law in the entire territory of the Republic of Poland and state of natural disaster in the entire territory of the Republic of Poland. Apart from the above mentioned states of emergency, the second condition which entitles the non-application of the stabilising expenditure rule is a decrease in annual growth in the value of gross domestic product. This should be more than two percentage points below the medium-term rate of change in the value of gross domestic product at constant prices. As has been said, the provision of Article 112aa (1) governing the rules limiting the amount of public expenditure, does not apply in the case of declaring the state of epidemic in the entire territory of the Republic of Poland. The competent authority for declaring the state of epidemic throughout the whole territory of the Republic of Poland is the Minister competent for health matters. The state of epidemic is declared by the Minister competent for health matters by regulation in consultation with the Minister responsible for public administration, at the request of the Chief Sanitary Inspector²².

It should be noted that the suspension of the application of the maximum expenditure limit allowed the Bank Gospodarstwa Krajowego to spend funds to counter the economic impact of the COVID-19 pandemic. In accordance with Article 65(1) of the Act amending the Act on special solutions related to COVID-19, a COVID-19 Response Fund was established in the Bank Gospodarstwa Krajowego. This fund is intended for financing the tasks related to countering the effects of the pandemic. The Fund's resources may also be used for the redemption and payment of interest on bonds issued by the Bank Gospodarstwa Krajowego in Poland and abroad and the costs of their issuance, as well as expenditure incurred in carrying out tasks related to the prevention of COVID-19²³. Disbursements from the COVID-19 Response Fund are made on the basis of

²² See Article 46 (2) of the Act of 5 December 2008 on the prevention and combating infections and infectious diseases in humans (Journal of Laws of 2020 item 1845 as amended) [ustawa z dnia 5 grudnia 2008 r. o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi (Dz. U. z 2020 r. poz. 1845 ze zm.)].

²³ For more detail, see Article 65 (5) of the Act amending the Act on special solutions related to COVID-19.

a payout order submitted to the Bank Gospodarstwa Krajowego by the President of the Council of Ministers. The Fund's resources derive from the cash contributions of certain public finance entities²⁴ and from the State budget, including European funds and proceeds from the sale of Treasury securities. The Fund, established at the Bank Gospodarstwa Krajowego, is also fed with financial resources from the budget of the European Union, which, with the agreement of the European Commission, can be used to support the implementation of tasks related to countering the pandemic effects²⁵. All such financial resources should be classified as public funds. In 2020, the total disbursements from the COVID-19 Response Fund amounted to over a hundred billion PLN.

Some changes in the area of adopting the budget have also been made to concern local government units. According to Article 239 PFA, the local government unit's legislative body is obliged to adopt a budget resolution before the beginning of the financial year. In particularly justified cases, the legislative body may adopt the budget of the local government unit no later than on 31 January of the financial year. However, the provisions of the Act on special solutions related to COVID-19 modified the date of adoption of the budget resolution of the local government unit. Pursuant to Article 15z of that law, the local government unit's legislative body could, in particularly justified cases, adopt the budget resolution for the financial year 2021 no later than on 31 March 2021. Until the adoption of the budget resolution for the financial year 2021, but not later than 31 March 2021, the financial management of the local government unit was based on the draft budget resolution submitted to the local government unit's legislative body. As can be seen, in 2021 the final time limit for the adoption of the budget resolution was extended from 31 January to 31 March²⁶. This constitutes a significant departure from the principle of budgetary antecedence, which can be inferred from Article 239 PFA. However, the full respect of the principle of budgetary antecedence seems justified in view of the substantive and formal difficulties involved in adopting a budget resolution during the COVID-19 pandemic. The need to adopt a budget resolution before the beginning of the financial year would require the budgetary resolution to be amended during the financial year in the light of growing epidemic problems.

When adopting the budget of a local government unit, as well as in the case of adopting the budget act, the statutory rules limiting the budget deficit

²⁴ This regards, inter alia, executive agencies, budgetary institutions, state special-purpose funds, the Social Insurance Institution and other central-government or local-government legal persons established under separate laws.

²⁵ For more detail, see Article 65 (4) of the Act amending the Act on special solutions related to COVID-19.

²⁶ In view of the above, it is only after 31 March of the budgetary year when the powers of the Regional Audit Office referred to in Article 240(3) PFA, consisting in a substitute adoption of the budget of a local government unit in the field of its own tasks and outsourced tasks, become valid..

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remain in force. Pursuant to Article 242(1) PFA, the local government unit's legislative body may not adopt a budget in which the planned current expenditure is higher than the planned running revenue plus the budget surplus from previous years and the appropriations available²⁷. However, the provisions of an episodic nature provide for a derogation from the principle of balancing the budget of the local government unit in its running part. Pursuant to Article 15zoa(1) of the Act on special solutions related to COVID-19, the local government unit, when amending the budget, is authorized in 2020 to adopt a budget in which the planned current expenditure is higher than the planned current revenue plus the budget surplus from previous years and free appropriations. A derogation from the principle of balancing the local government unit's budget in the current part is therefore exceptionally permissible²⁸. This may occur when the running costs have been incurred to carry out the tasks of countering COVID-19 in so far as they have been financed by property income or repayable funds²⁹. Likewise, running expenditure may exceed running revenue if there has been a loss of revenue due to the COVID-19 pandemic³⁰. The loss of revenue for the local government unit due to COVID-19 is a reduction in revenue, calculated as the difference between the unit's planned revenue in the amended budget and the planned revenue reported by the unit in the first quarter of 2020. Importantly, the assessment of whether the principle of balancing the budget of the local government unit in its running part in the financial year 2020 is fulfilled should take into account the running expenditure incurred to perform the tasks related to COVID-19 response and the loss in revenue generated as a result of the outbreak of the pandemic³¹. It should be noted that the proposed legislative amendment of an incidental nature is aimed only at temporarily relaxing the restrictions on the obligation to balance the budgets of local government units. Thus, the derogation from the principle of balancing the budget of the local government unit in its running part enables public financial activities to be carried out in accordance with the law in a manner undisturbed by the impact of the COVID-19 pandemic.

Moreover, during the adoption of the budget for the local government unit the application of the norm resulting from Article 243(1) PFA was excluded by of the Act on special solutions related to COVID-19. This provision regulates the so-called individual debt ratio set for each local government unit. According to it, the

²⁷ For more detail on this topic, see: P. Szcześniak, *Prawne ograniczenia pozyskiwania środków zwrotnych przez jednostki samorządu terytorialnego*, [in:] *Źródła finansowania samorządu terytorialnego*, ed. A. Hanusz, Warszawa 2015, pp. 384-385.

²⁸ For more detail on this topic, see: J. Łubina, *Oddziaływanie pandemii COVID-19 na finanse jednostek samorządu terytorialnego*, "Prawo Budżetowe Państwa i Samorządu" 2021, no. 4, p. 112-113.

²⁹ See Article 15zoa (1) item 1 of the Act on special solutions related to COVID-19.

³⁰ See Article 15zoa (1) item 2 of the Act on special solutions related to COVID-19.

³¹ See Article 15zoa (4) of the Act on special solutions related to COVID-19.

local government unit's legislative body may not adopt a budget the implementation of which will result, in the budget year concerned and each subsequent year, in the ratio of the total amount of repayments of loans and credits and redemptions of securities issued, together with interest and discount due from them, to the planned revenue exceeds the individual debt ratio in question³². This indicator shall be determined separately for each local government unit. The individual debt ratio shall be calculated as the arithmetic average of the running income ratio calculated for the last seven years, less running expenditure.

However, the individual debt ratio referred to under Article 15zob (1) of the Act on special solutions related to COVID-19 will not be applicable for securities redemptions, repayment of instalments of loans and credits, including interest due and discount, issued or incurred in 2020 respectively, up to the amount of loss in the unit's income resulting from the COVID-19 pandemic. On the other hand, running expenditure incurred in 2020 for the implementation of tasks counter the COVID-19 pandemic will not be included in running expenditure for the purpose of calculating the individual debt ratio in 2021 and beyond. This is another solution not applied before to protect the financial stability of local government. Otherwise, the expenditure incurred to combat the effects of the COVID-19 pandemic would limit the possibility of acquiring refundable funds for the basic objectives pursued by local authorities.

II. IMPLEMENTATION AND AUDITING THE IMPLEMENTATION OF THE STATE BUDGET AND THE BUDGETS OF LOCAL GOVERNMENT UNITS, TAKING INTO ACCOUNT THE EPISODIC PROVISIONS APPLICABLE DURING THE COVID-19 PANDEMIC

It should be assumed that the implementation of the budget of the State or a local government unit is the entirety of activities consisting in the collection of revenue and the execution of budgetary expenditure, the execution of operations relating to the collection and repayment of public debt, therefore the collection of budgetary revenue and the execution of budgetary expenditure, as well as operations relating to the closure of bank accounts³³. In addition, changes to this plan are sometimes needed at the budget implementation stage. This is the case when legally various events that are unforeseen from the point of view of the financial management occur in the course of the financial year. The changes due to the effects of the COVID-19 pandemic have significantly influenced the rules governing the implementation of the State budget and local government budgets.

Some of them met the criteria set out in the legal norms governing the implementation of budget. Others went beyond the previous conditions defining the use of rules contained in legal norms. For this reason, they had to be

³² Cf. P. Szczęśniak, *Prawne ograniczenia...*, [in:] *Źródła...*, ed. A. Hanusz, pp. 385-386.

³³ Cf. A. Hanusz, *Procedura...*, [in:] *Prawo...*, ed. *idem*, p. 136.

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supplemented, either by amending the existing legal provisions or by creating new ones. As regards the rules for the implementation of the state budget, the systemic position of the President of the Council of Ministers as a body of executive branch has become particularly important. This body has been granted new powers which fundamentally change the existing rules for the implementation of the State budget. First of all, the President of the Council of Ministers was granted under the Act on special solutions related to COVID-19 extensive powers to reallocate planned budget expenses between the different subdivisions of the budgetary classification. Prior to these amendments, the President of the Council of Ministers could, by regulation, reallocate the planned budgetary revenue and expenditure between parts of the State budget only when a ministry was dissolved or transformed³⁴. The same power also applied to cases of dissolution or transformation of budgetary parts holding bodies, offices and agencies reporting to or supervised by the President of the Council of Ministers³⁵.

Currently, the powers of the President of the Council of Ministers, including the reallocation of planned budget expenses, are also based on Article 31(1) of Act on special solutions related to COVID-19. Pursuant to that provision, in order to prevent the COVID-19 pandemic, the President of the Council of Ministers is empowered to reallocate, by an ordinance, the planned budget expenditure between parts and sections of the State budget. In doing so, account shall be taken of the amount and type of necessary support for budget implementing entities and the current implementation of expenditure for the different parts and sections of the State budget. It should therefore be noted that the President of the Council of Ministers, as an executive body, has acquired the previously non-existent right to modify the State's revenue and expenditure plan on his own. Such substantial amendments to the budget, without the need to amend the budget act, could previously only be made by the Council of Ministers. The existing scope of such powers was provided for in Article 180 PFA. In the event of declaration of an emergency on the territory of the State or a part thereof, the Council of Ministers is empowered, by regulation, to reallocate the planned budgetary expenditure between parts and sections of the State budget in order to carry out the tasks arising from the provisions on the introduction of that emergency. On the other hand, the powers of the President of the Council of Ministers under Article 31(1) of the Act on special solutions related to COVID-19 have not been limited to the period during which an the state of epidemic threat or state of epidemic persists. The only reason that entitles the President of the Council of Ministers to reallocate the planned budget expenditure between parts and sections of the national budget is the need to counteract the COVID-19 pandemic. This wording may raise doubts as to the scope of the norm arising from

³⁴ See Article 172 (1) PFA.

³⁵ See Article 172 (3) PFA.

Article 31(1) of the Act on special solutions related to COVID-19. The duration of applicability of the regulation, which entitles the President of the Council of Ministers to reallocate planned budget expenses between parts and sections of the state budget, has not been clearly established. Therefore, such a regulation may contradict the provision of Article 219(1) of the Polish Constitution, which provides for the obligation to adopt the state budget for the financial year in the form of a budget act. On the other hand, the making of significant changes to the budget by the President of the Council of Ministers limits the role of the Sejm as the body authorizing the basic financial plan of the state, which must be adopted in the form of a budget act in the form determined by the Sejm. Any deviation from this principle must be justified in axiological terms. It is only the state of epidemic as the *ultima ratio* of the solutions in question.

The President of the Council of Ministers is also entitled, pursuant to Article 31 (2) of the Act on special solutions related to COVID-19, to decide on blocking the planned expenditure with regard to the entire state budget, specifying the part of the state budget and the total amount of expenditure that is subject to blocking. Such normative solution is a novelty in the Polish financial legislation. The power to block expenditure with regard to the entire budget has hitherto been vested in the Minister of Finance and the Council of Ministers by virtue of the provisions of Articles 177 and 179 PFA. According to them, the Minister of Finance is entitled to block expenditure in the scope of the entire budget in the case of finding mismanagement in certain units, delays in the performance of tasks, excess of funds held and breach of the rules of financial management³⁶. However, the power to block expenditure regarding the entire budget does not extend to public finance entities referred to in Article 139(2) PFA, i.e. the Chancellery of the Sejm, the Chancellery of the Senate, the Chancellery of the President of the Republic of Poland, the Constitutional Tribunal, the Supreme Audit Office, the Supreme Court, the Supreme Administrative Court together with regional administrative courts, the National Council of the Judiciary, common courts and the Commissioner for Human Rights. However, the Council of Ministers, pursuant to Article 179(4) PFA, decides on blocking the planned expenditure of the state budget for a determined period of time. However, it may do so upon obtaining a positive opinion of the Sejm's committee responsible for the budget³⁷. It therefore appears that, in the light of the rules contained in the Act on special solutions related to COVID-19, the President of the Council of Ministers has been given the power to block expenditure within the entire state budget by administrative decision. This competence is limited only by the condition in the form of the objective of countering COVID-19. Like in the case of reallocation of planned expenditure, the power to block expenditure is not

³⁶ See Article 177 (1) PFA.

³⁷ See Article 179 (1) PFA.

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temporally limited to the period of the state of epidemic threat or state of epidemic. This means, as stated above, strengthening the position of the President of the Council of Ministers in the implementation of the state budget and further restricting the role of parliament as the body adopting the norms of financial law.

Implementation of the decision to block expenditure with regard to the whole budget, however, the President of the Council of Ministers is obliged to entrust the Minister of Finance, sharing in this respect the powers specific to this body³⁸. Importantly, the funds blocked by the President of the Council of Ministers may form a new special-purpose reserve to counter COVID-19. The allocation of this reserve must be carried out by the Minister of Finance at the request of the budgetary part administrator carrying out the task of countering COVID-19³⁹. However, the administrator's request must be accepted by the President of the Council of Ministers.

The impact of the COVID-19 pandemic is also seen with regard to the norms governing budget amendments based on carry-overs from budgetary reserves. This is a reallocation of expenditure from the classification provided for the budgetary reserve to the appropriate classification of other expenditure⁴⁰. Under Article 15zm(1) of the Act on special solutions related to COVID-19, the President of the Council of Ministers is authorized to issue binding instructions to the Minister of Finance to change the intended use of the special-purpose reserve, together with an indication of its position and amount, in order to finance the tasks related to countering the pandemic. Changing the intended use of the special-purpose reserve by the Minister of Finance does not require obtaining the opinion of the Sejm's committee responsible for budgetary matters⁴¹. It is therefore a derogation from the obligation under Article 154(9) PFA. In accordance with the norm derived from this provision, the change of the intended use of the special-purpose reserve requires the Minister of Finance to obtain a positive opinion of the Sejm's committee responsible for budgetary matters. The new normative solutions should be assessed positively, taking into account the possibility of the flexible and rapid spending of budget reserves, adapted to changes resulting from unforeseeable needs related to countering the COVID-19 pandemic⁴². At the same time, it should be noted that equipping the President of the Council of Ministers with the power to issue binding instructions to the Minister of Finance constitutes a derogation from the norm expressed in Article 146(4) point 6 of the Constitution. According to this provision, the Council of Ministers, as a

³⁸ See Article 31 (3) of the Act on special solutions related to COVID-19.

³⁹ See Article 31 (5) of the Act on special solutions related to COVID-19.

⁴⁰ Cf. A. Hanusz, *Procedura...*, [in:] *Prawo...*, ed. *idem*, p. 145.

⁴¹ See Article 15zm (2) of the Act on special solutions related to COVID-19.

⁴² Cf. G. Kuca, *Formy elastycznego wykonywania budżetu państwa w dobie pandemii COVID-19*, [in:] *Finanse publiczne w sytuacjach kryzysowych. Zagadnienia prawno-finansowe*, ed. G. Kuca, Kraków 2022, p. 151 et seq.

constitutional body which shapes the State's policy, is obliged to direct the implementation of the state budget. The President of the Council of Ministers is not empowered by constitutional norms to direct the implementation of the state budget, but only to coordinate and control the work of the members of the Council of Ministers⁴³. The power of the President of the Council of Ministers to issue binding instructions to the Minister of Finance regarding the changes in the allocation of the special-purpose reserve thus limits the role of the Council of Ministers as the authority in charge of the implementation of the State budget. This also constitutes, in the light of Article 149(1) of the Constitution, a limitation of the political role of the Minister of Finance. This provision makes it clear that ministers are in charge of certain sections of government administration.

At the same time, under episodic provisions, the time limit for the distribution of specific-purpose reserves was extended in 2020 from October 15 to December 31 of that year⁴⁴. On the other hand, funds included in the specific reserves of the state budget through 2020 could be spent for the implementation of tasks related to countering COVID-19, regardless of the intended use of the reserves⁴⁵. Therefore, the distribution of the special-purpose reserve for the implementation of tasks did not require a change in the intended use of the reserve in 2020. The distribution of the specific-purpose reserve for tasks related to countering COVID-19, even when these tasks have not been in line with the intended use of the reserve, was carried out by the Minister of Finance at the request of the competent administrator implementing the task, but with the prior approval of the President of the Council of Ministers⁴⁶. This demonstrates, on the one hand, that the management of budget funds has become more flexible, while on the other hand, it increases the powers of the executive branch in relation to the legislative branch.

The impact of the COVID pandemic is also seen in relation to the rules for the implementation of budgets of local government units. Due to the need to counteract the effects of the pandemic, the legislature broadened the powers of the village mayor, mayor, city president, the district executive board and the voivodeship executive board as entities implementing the budgets of local government units. Pursuant to Article 15zo(1) of the Act on special solutions related to COVID-19, the executive body of the local government unit has been given the power to reallocate expenditure between budgetary subdivisions. The reallocation of expenditure between budgetary subdivisions can only be made in order to ensure the proper execution of the tasks of countering the COVID-19. The norm resulting from Article 15z (1) of the Act on special solutions related to

⁴³ See Article 148 (5) of the Polish Constitution.

⁴⁴ See Article 31n (1) of the Act on special solutions related to COVID-19 in conjunction with Article 154 (1) PFA.

⁴⁵ See Article 31o (1) of the Act on special solutions related to COVID-19.

⁴⁶ See Article 31o (3) of the Act on special solutions related to COVID-19.

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COVID-19 constitutes a derogation from the general prohibition on reallocation of expenditure between budget sections referred to in Article 258(1) point 1 PFA. The executive body of a local government unit is, as a rule, entitled to make changes to the expenditure plan, but excluding reallocation of expenditure between sections of budgetary classification. In addition, the village mayor, mayor, president of the city, the district executive board or the voivodeship executive board are entitled to delegate certain powers to other organizational units of the local government unit to reallocate the planned expenditure. To this end, the executive body is not obliged to obtain authorization from the legislative body of the local government units, which is an exception to the norm resulting from Article 258(1) points (2) to (4) PFA and weakens the scope of the powers of legislative bodies of local government units⁴⁷. In such cases, that provision obligates the legislative body to authorise the executive authority, however, to delegate certain powers to reallocate the planned expenditure to other organisational units of the local government unit. However, the proposed extension of the executive body's powers to reallocate planned expenditure is limited in time, which should be assessed positively, taking into account the protection of the financial stability of local government units. The provisions of the Act on special solutions related to COVID-19 indicate that reallocation of expenditure between budget classification sections and the transfer of these powers to other organizational units may take place during the period of the state of epidemic threat or state of epidemic and the associated risk of significant breach of the deadlines and conditions for the performance of the tasks of local government units.

Moreover, the municipality's executive body, in accordance with Article 15zo of the Act on special solutions related to COVID-19, is entitled to obtain returnable funds by way of a loan or credit or the issue of securities, without having to obtain the opinion of the Regional Audit Office. This solution is a deviation from the general obligation laid down in Article 91(2) PFA. Under that provision, the assuming by a local government unit of a debt arising out of a loan, credit or issue of securities shall require the executive body of the local government unit to obtain the opinion of the Regional Audit Office on the possibility to repay the debt. Like the powers relating to the reallocation of expenditure, the power to raise repayable funds without having to obtain the opinion of the Regional Audit Office can only be exercised during the period of a state of epidemic threat or state of epidemic. The temporal limitation of the derogation must be assessed positively. Otherwise, the Regional Audit Offices would be deprived of the possibility to supervise the financial affairs of local government units in the long term.

⁴⁷ See Article 15zo point 1 of the Act on special solutions related to COVID-19.

The impact of the COVID-19 pandemic on the financial activities of local government units is also seen in the norms on granting subsidies to local government budgetary establishments. Such public finance entities carry out the local government's own tasks for consideration, covering the costs of their activities from their own revenues⁴⁸. However, sometimes the operating costs of a local government budgetary establishment may exceed the revenues it earns. Therefore, the legislature generally permits the granting of various forms of subsidies to a local government budgetary establishment. The amount of specific subsidies granted from the budget of a local government unit shall not exceed 50% of its operating costs⁴⁹. However, in accordance with the provisions of the Act on special solutions related to COVID-19, a local government budget establishment which carried out tasks related to countering COVID-19 is entitled in 2020 and 2021 to receive from the local government unit's budget a specific subsidy in excess of 50% of its operating costs⁵⁰. Such an episodic solution gives local authorities more flexibility in conducting financial management, which should be approved.

The more flexible financial management by the local government unit is also the purpose of Article 15zzzf of the Act on special solutions related to COVID-19. According to that provision, the legislative body of a local government unit may decide by a resolution not to pursue claims of a civil-law nature accruing to the local government unit or to its organizational units against entities whose liquidity has deteriorated due to the negative economic consequences of COVID-19. Basing the reasoning on the principle of linguistic interpretation *lege non distinguente nec nostrum is distinguere* [where the law does not distinguish, neither should we distinguish], the concept of entities whose liquidity has deteriorated due to the negative economic consequences of COVID-19 must be understood as both private-law entities and public-law entities. Entities, regardless of their legal form, should be obliged to fulfil a monetary performance of a civil law nature to local government units or their organizational units. Entities whose liquidity deteriorated due to COVID-19, are obliged to submit a request to waive the claim. To limit expenditure and the loss of own revenue resulting from it, the legislature provided for limiting the local government body running into debt. According to Article 15zc(1) of the Act on special solutions related to COVID-19, the total amount of debt of a local government unit as of the end of the financial year 2020 may not exceed 80% of the total income of that unit in that financial year.

Under the applicable legal provisions, the implementation of the state budget and budgets of local government units is subject to initial and subsequent

⁴⁸ See Article 15 (1) PFA.

⁴⁹ See Article 15 (6) PFA.

⁵⁰ See Article 31p and Article 31pa of the Act on special solutions related to COVID-19.

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review by the bodies which have adopted the budget. It should be noted that the COVID-19 pandemic did not result in the need to make substantial changes to the rules governing the exercise of scrutiny by the Sejm and the legislative body of the local government unit respectively. The provisions of the Act on special solutions related to COVID-19 provide for the possibility of changing the time limit for adopting a resolution on granting discharge to the executive body of the local government unit⁵¹. The institution of discharge constitutes a statutory control of a body responsible for the implementation of the budget by the executive body. Therefore, the consideration of the report on the implementation of the budget act or budget resolution requires taking into account the episodic provisions.

CONCLUSION

In conclusion, it should be assumed that the episodic solutions introduced due to the effects of the COVID-19 pandemic in the area of collecting public funds and their disbursement by public law entities are conducive to more flexibility in public financial management. To the necessary extent, justified by the need to finance tasks to counteract the COVID-19 pandemic, the regulations analysed herein have ensured the protection of the stability of public finance. The rights and obligations related to the budgetary procedure and multi-year financial planning were subject to significant modification. First and foremost, the obligation to adopt the State's Multi-Annual Financial Plan was abandoned, but local government units were not exempted from the obligation of multi-annual financial planning. However, the executive body of the local government unit is authorised to make changes to the multi-annual financial forecast due to the need to ensure the proper implementation of tasks related to the prevention of COVID-19. The new normative solutions were introduced in two ways. First, by amending the provisions of the Public Finance Act, and second, by introducing a completely new law. These laws contain both episodic provisions and provisions without a predetermined duration.

However, the state of epidemic has not affected constitutional and statutory regulations on the limit of State's sovereign debt. On the other hand, the state of epidemic is a prerequisite for non-application of rules covering a stabilising expenditure rule. However, the suspension of the application of the maximum expenditure limit allowed the Bank Gospodarstwa Krajowego to spend public funds to counter the economic impact of COVID-19.

The impact of the COVID-19 pandemic has been the most visible in the rules governing the implementation of the state budget and budgets of local government units. This resulted in a fundamental change in the systemic position of the President of the Council of Ministers. In order to counter the COVID-19 pandemic, the President of the Council of Ministers was granted powers to

⁵¹ See Article 15zzh (1) of the Act on special solutions related to COVID-19.

reallocate planned budget expenditure between parts and sections of the state budget. Similar powers had so far been conferred on the Council of Ministers in certain cases. However, the powers of the President of the Council of Ministers were not temporally limited due to the duration of the state of epidemic threat or state of epidemic. This may give rise to constitutional doubts under currently applicable law. The only reason that entitles the President of the Council of Ministers to reallocate the planned budget expenditure between parts and sections of the national budget is the need to counteract the COVID-19 pandemic. Moreover, the President of the Council of Ministers was granted the right to block planned expenditure within the entire state budget because of the need to counter the pandemic. The exercise of this power has been temporally limited. A form of strengthening the cooperation between bodies of the executive branch is the issuance of binding instructions to the Minister of Finance by the President of the Council of Ministers. These instructions concern changes in the use of the special-purpose reserve due to the need to finance pandemic prevention tasks. The President of the Council of Ministers has therefore obtained the powers to manage, to a statutorily defined extent, the implementation of the state's budget, which until now could only be constitutionally exercised by the Council of Ministers. These powers may interfere with the constitutional powers of other ministers, including the Minister of Finance.

The COVID-19 pandemic has also resulted in changes in the rules of implementing the budgets of local government units. The legislature extended the powers of the village mayor, mayor, city president, the district executive board and the voivodeship executive board as entities implementing the budgets of local government units. The executive body of the local government unit has acquired under applicable law the power to reallocate expenditure between budget subdivisions. Unlike the powers of the President of the Council of Ministers, the power to reallocate expenditure between budget subdivisions may be exercised during the state of epidemic threat or state of epidemic. In the case of local government units, during the period of an epidemic or epidemic situation, derogations from the principle of balancing the budget in its running part and the supervision exercised by regional audit offices over acquiring funds of a returnable nature have been relaxed. All these solutions should be assessed not only from the perspective of the current epidemic situation, but also at the systemic level, the framework of which is determined primarily by the constitution.

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