

## DETERMINATION OF THE BUDGETS OF THE LOCAL GOVERNMENT UNITS IN POLAND

### URČOVANIE ROZPOČTOV ÚZEMNÝCH SAMOSPRÁVNÝCH CELKOV V POĽSKU

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#### ABSTRACT

*This article aims to analyze the regulation of Polish law concerning adoption of the budget of local government units. Analysis of the existing norms leads to the conclusion that the interpretation of the rules causes many doubts. In the author's opinion doubts arise, among others, regarding the possibility of influencing the work of the executive at the design stage of the budget. Also controversial is the content which should include the resolution of the legislative body of the local government unit on the mode of drafting the budget resolution. Question arises concerning the effects of not submit a draft budget resolution in the time required by law.*

#### ABSTRAKT

*Tento článok si kladie za cieľ analyzovať problematiku regulácie poľského zákona o prijatí rozpočtu územných samosprávnych celkov. Analýza existujúcich noriem totiž vedie k záveru, že samotný výklad pravidiel spôsobuje mnoho pochybností. Podľa názoru autora pochybnosti sa týkajú aj možností ovplyvňovania exekutívy v štádiu prípravy rozpočtu. Rovnako kontroverzným je aj obsah, ktorý má obsahovať rozhodnutie legislatívneho orgánu ohľadom spôsobu tvorby rozpočtového rozhodnutia. Vzniká aj otázka, aký je dôsledok nepredloženia návrhu rozpočtu v takej dobe, v akej je to požadované zákonom.*

#### I. INTRODUCTION

A scientific debate, the subject of which is the analysis of the effectiveness of the public law institution in connection with the world economic and financial crisis, requires the evaluation of the public finance law regulations in force. Within the framework of a normative research the current issue which requires the analysis is the evaluation of the public finance law regulations regarding the finance of a local government unit (referred to as - l.g.u.). It is beyond any doubt that local government units which run their own financial economy become involved in the particular areas of the national economy to a significant extent. The necessity of running finance research of l.g.u. results from the role what finance play in economy taking into account the fact that developing process of finance decentralization has an influence on gradual increase in both, a scale of expenses of l.g.u. and an increasing participation of those expenses in relation to GDP in most of the European countries<sup>1</sup>.

<sup>1</sup> See E. RUŠKOWSKI, *The basic determinants of decentralization of public finances*, State Control, 2006, special issue, p. 22; on the causes of expenditure growth of l.g.u. see. M. JASTRZĘBSKA, *Finance units of local government*, Warsaw 2012, p. 133-134.

At the same time, the limited frames of this paper make impossible to analyze all the normative problems connecting with finance of l.g.u. The aim of this study is to analyze the regulations of Polish public finance law concerning the first stage of budget procedure, that is the stage of designing and adopting the budget of l.g.u. which will allow to propose conditions for development of solutions that can be used to create an effective and rational system of finance. The rational, defect-free (in terms of “*the final effectiveness*” - in Polish theory of law it means that the law is a mean to achieve some purpose, and achieving this purpose through obeying the law means that it is effective) which do not raise concerns as regards the interpretation, enable the establishing of budget in an appropriate term thus they have a positive influence on finance economy of l.g.u. At the same time there is a doubts that requires verification in terms of whether existing regulations meet those requirements. It must be emphasized that the aim of present study is to evaluate the institution only on legal surface. In study as a research method it was used - analyzes of legal dogmatic.,

## II. BUDGETARY PRINCIPLES CONNECTED WITH ADOPTING THE BUDGET OF LOCAL GOVERNMENT UNIT

In theoretical terms the problem of adopting the budget of l.g.u. is connected with the necessity of keeping the numerous budgetary principles. Additionally, it shall be pointed out that in Polish law budgetary principles are generally perceived only as postulates of a doctrine that are addressed to the legislator who adopts the regulations of budget law and budget contractors. The completion of regulations of the budget law contributes to creating the effective and rational budget.

There are three directives that have the meaning for procedure of adopting the budget of l.g.u. and which should be mentioned within the framework of budgetary principles, they are as follows: priority, detailness (by some representatives of the doctrine also known as the principle of transparency) and openness of the budget.

The priority principle of budget does not have the normative character, it only constitutes the postulate predicting the necessity of adopting the budget before an effective period<sup>2</sup>. Currently, the meaning of this principle is increasing which is visible in reducing the legal term in which the budget of l.g.u. should be adopted and in consequences which result from not adopting the budget. The priority principle constitutes postulate which is proposed in the doctrine. It is realized in practice in connection with an effective period of regulations that refer to works in course of budget procedure and terms of adopting the budget.

Detail principle defined also as a specialization principle means that the budget is arranged in a clear way and thanks to this the establishing body which debate about the budget may familiarize with the budget and may decide about the directions and the size of disbursement of funds and about the types and the size of a budget<sup>3</sup>. It is pointed out in a doctrine that this principle is defined wider as a public transparency principle of a financial economy. In technical-organizational terms this principle means classifying the income and expenses according to homogeneous and understandable rules<sup>4</sup>. In political terms, this principle is expressed in the need of presenting the financial phenomena in the way enabling the evaluation of the activi-

<sup>2</sup> M. WERALSKI, *the State budget (in:) Legal and financial institution System of the PRL. Vol II. Budgetary institutions*, ed. M. Weralski, Ossolineum, 1982, p. 46.

<sup>3</sup> N. GAJL, *Finance and financial law*, Warsaw 1992, p. 146.

<sup>4</sup> B. BRZEZIŃSKI, M. KALINOWSKI, K. LASIŃSKI-SULECKI, W. MORAWSKI, E. PREJS, W. MATUSZEWSKI, A. OLESIŃSKA, A. ZALASIŃSKI, *The law of the Public Finances*, Toruń 2010, p. 56.

ty of public authority through the parliament and the society. Thus, the parliament may make decisions that are rationally and socially justified and the parliament may also evaluate the results of the activity of the executive body<sup>5</sup>.

An openness principle is treated as one of the oldest and basic principle. It is traditionally associated with a budget openness principle being understood as a postulate of a political-systemic character aimed at the legislator and the contractor of a budget<sup>6</sup>. In doctrinal terms and as regards the budget, an openness principle means postulate according to which it is necessary to inform about the financial activity of public authority. It is also necessary to inform about the presentation of financial phenomenons in a way that enables the evaluation of the activity in this area through establishing body and the society<sup>7</sup>. The realization of an openness principle is guaranteed by an openness of a debate over the budget at a stage of budget procedure. What is more, the realization of an openness principle is also guaranteed by the regulations predicting the citizen's right to obtaining information about the activity of bodies of the public authority and also about the activity of people who perform public functions.

### III. DESIGNING OF BUDGET OF THE LOCAL GOVERNMENT UNITS

According to the art. 233 of the Public Finance Act<sup>8</sup> of 27 August 2009 only the management board of the local government unit is responsible for preparing the project of budget resolution, preliminary budget resolution and the project of resolution to amend the budget resolution. This provision explicitly stipulates that only executive body is the entity authorized to preparing the project of a resolution and the project of resolution to amend the budget resolution. It is pointed out in the doctrine that provision's content was formulated incorrectly because as regards preparing of the project of budget resolution one cannot mention about the initiative in this scope. When it comes to preparing of the project of budget resolution it should be mentioned about the duty of preparing the project of budget resolution through management board and this duty results from acts' provisions which regulate the system of l.g.u.<sup>9</sup>.

The principle of preparing the project of budget resolution through the executive body of l.g.u. is the natural consequence of the rule according to which running of the financial economy of l.g.u., basis of which is the budget resolution, belongs to the competencies of the management board. If running of the financial economy on the basis of a budget resolution is the management board's duty then the project of the document, on which legislative body will proceed, should be prepared by this management board which subsequently will be assessed in connection with implementing the resolution.

During designing the budget resolution some question appears, namely whether it is possible that other entities may have influenced on the executive body's works at a stage of designing the budget. In theory it is possible that councilor or other entities may notify the management board about requests the main aim of which is to change the budget resolution<sup>10</sup>. As consistent with the law but non-binding should be treated the fact that councilors notify the requests regarding the proposed content of the budget resolution or requests regarding issuing an opinion as regards the proposed solutions. Legislative body cannot at the same time influence on the executive body in a binding manner, for example through giving clues regarding

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<sup>5</sup> *Ibidem*

<sup>6</sup> M. WERALSKI, *op. cit.*, p. 46.

<sup>7</sup> B. BRZEZIŃSKI, M. KALINOWSKI, K. LASIŃSKI-SULECKI, W. MORAWSKI, E. PREJS, W. MATUSZEWSKI, A. OLESIŃSKA, A. ZALASIŃSKI, *op. cit.*, p. 54.

<sup>8</sup> Uniform text, Journal of Laws from 2013, pos. 885 with amendments, referred to as "Public Finance Act".

<sup>9</sup> C. KOSIKOWSKI, *A new Act on Public Finances. Comment*, Warsaw 2010, p. 523.

<sup>10</sup> *Ibidem*. p. 524.

the tasks or the size of funds that should be included in the budget<sup>11</sup>. Non-interference of legislative body until submitting of the project of budget resolution results in the lack of possibility of imposing on the executive body the obligation to prepare the self-amendment in the project of budget resolution at the request of the legislative body. What is more, it also results in the lack of possibility of imposing on the executive body the obligation to justify in writing why councilor's requests were rejected<sup>12</sup>. In the opinion of supervisory body the indication in the resolution regarding the procedure of work connected with the project of the budget resolution the necessity of using by the management board certain indicators to the needs of preparing the project go beyond the rights of the executive body<sup>13</sup>. The executive body cannot also transfer and assign works connected with preparing of the budget project to another budget entity than the executive body because this body performs the task individually and is responsible for the realization of the task<sup>14</sup>.

Works on the project of the budget resolution shall take place on the basis of the provisions of a separate decision regulating this procedure. The applicable rules do not stipulate the specific solutions as regards the course of this procedure and there is no single normative standard applicable to all l.g.u. Lack of harmonization of this issue is associated with allowing each l.g.u. to develop their own procedures, taking into account the specificities of each l.g.u. Legal arrangements relating to the content of the resolution predicting the mode of proceeding within the budget provides the article 234 of Public Finance Act according to which the resolution of the legislative body of l.g.u. regarding works on the project of the budget resolution defines in particular the required detail of the draft budget of l.g.u. It defines also the time limits applicable during works on the draft resolution of l.g.u. and budgetary requirements for reasoning and information materials that the management board shall submit to the authority of a legislative body of l.g.u. together with the project of the budget resolution. Because the elements of the resolution were listed only as a sample, the resolution of the legislative body of l.g.u. regarding the budgetary decisions on the project can and should also contain other ingredients that will create the entire mode of adopting the budget. At the same time the question appears whether the listed ingredients in the resolution on the budget resolution proceeding may or must appear in the content of the resolution. In theory it is indicated correctly that the content of the article 234 of the Public Finance Act points out that these elements are mandatory<sup>15</sup>. The question also arises concerning a possible obligation to enact the resolution regarding works on the procedure of the project of budget resolution. For this reason, the article 234 of the Public Finance Act contains the phrase "specify", at first glance (*prima facie*), it should be considered that the adoption of the resolution in the above field is mandatory. At the same time, it should be noted that, in the absence of adoption of the resolution regarding works on adopting the budget, the applicable rules do not include instruments, thanks to which the legislative body might be obliged to adoption of the resolution (there is also no en-

<sup>11</sup> Resolution of Regional Accounting Chamber College in Opole, 28.09.2011, no 80/2011, LexPolonica. Polish Regional Accounting Chambers (RACH) acting on the basis of the Act of 7 October 1992 on Regional Accounting Chambers (an uniform text, Journal of Laws, 2012 pos. 1113). RACH have been established as the authority supervising and controlling the local government units in the area of financial management and procurement and operating information and training on budgetary matters. They are not part of the organizational system of local government, but the specially established state institution as controlling external to the authorities and local governments. RACH are state budget units.

<sup>12</sup> See resolution of RACH College in Warsaw of 4.12.2004., no 52.314.2012, LexPolonica, and resolution of RACH College in Warsaw 22.11.2011., no 25.289.2011, LexPolonica.

<sup>13</sup> Resolution of RACH College in Krakow of 21.09.2011, no KI-411/433/11.

<sup>14</sup> Resolution of RACH College in Wrocław, 4.04.2007, no. 44/07, LexPolonica and Resolution of RACH College in Bydgoszcz, 26.10.1994, nr XXV/107/94, LexPolonica.

<sup>15</sup> J.M. SALACHNA (in:) *Public finances. The practical comment*, ed. E. Ruśkowski and J.M. Salachny, Gdańsk 2013, p. 925; Similarly, The resolution of RACH College in Warsaw of 29.09.2010, no 242/K/2010, LexPolonica.

tity that could replace the legislative body). In the absence of a resolution concerning the procedure of works on the project of the budget resolution its adopting is done according to the general principles of creating resolutions. It should be noted, however, that this practice is compatible with the law but it may have a negative impact on the quality of the adopted budget. Specific nature of a budget resolution and its meaning for the financial economy require that the procedure of adopting the budget, especially at a stage of designing, should take into account the diversities connected with, among others, the necessity of preparing the project in a professional way or making some works public in order to enable conducting of a social debate. It is, above all, important in the case of units, the budgets of which characterize high amount of income and expenses.

Works regarding the project of a budget resolution start from the moment of designing the project of this resolution through the executive body. Thus there are not the legal basis for the executive body of l.g.u. to regulate the stage of works preceding the designing of budget resolution project. The executive body of l.g.u. do not have to define the duties of the treasurer and manager of units and departments before designing the budget resolution project<sup>16</sup>. The aforementioned point of view deserves the acceptance but it should be emphasized that it is even desirable to regulate the works before designing the project of resolution. The regulation of this issue should be done through the managing body and with using acts of internal character (for example regulation of village administrator, mayor of a town or a president).

On account of content of the mentioned article 234 the Public Finance Act the question appears, namely whether it is possible to include in the content of the budget resolution the rules regarding works on preliminary budget resolution and on resolution to amend the budget resolution. *A maiori ad minus* principle says that the possibility of regulating the resolutions' procedure and rules regarding the preliminary budget and resolutions to amend the resolution should be accepted in spite of the fact that resolutions other than budget resolution are not indicated in the art. 234 Public Finance Act. Thanks to such a solution l.g.u. may avoid the problems which might appear when it will be necessary to work on adopting the preliminary budget or changing the budget resolution and using in this situation the rules included in the resolution on works on the project of budget resolution by analogy. The executive body may in one resolution define the procedure of works on the resolution on budget resolution's changes and resolution on the preliminary budget but this procedure may also be adopted in the separate resolutions.<sup>17</sup> It is mentioned in the doctrine that the aforementioned solution is possible to be implemented, despite the fact that art. 234 The Act on Public Finances points out the compulsory elements of resolutions on the procedure of works on the project of the budget resolution. When there is such a situation that the procedure of works on preliminary budget is not adopted then the proceeding should be held on the basis of a resolution's regulations that define the procedure of works on the project of budget resolution on account of the character and preliminary's scope<sup>18</sup>.

In connection with the realization of the priory principle, in the content of the art. 238 par. 1 Public Finance Act the executive body has the instructive term given until the 15th of November the year before the budgetary year. In this term the executive body has to finish the stage of works on the project of budget resolution and has to submit it for giving an opinion to a legislative body and to the RACH – it is the supervisory and control body as regards the financial economy of l.g.u.<sup>19</sup> The above mentioned term has the instructive character but the

<sup>16</sup> Resolution of RACH College in Rzeszow of 23.03.2010, no VII/1191/2010, Legalis.

<sup>17</sup> J.M. SALACHNA (in:) *Public finances. Practical comment*, op. cit., p. 926.

<sup>18</sup> *Ibidem*

<sup>19</sup> Supervisory authorities on l.g.u. acting on the basis of the Act of 7 October 1992 on Regional Financial Chambers (an uniform text, Journal of Laws, 2012 pos. 1113).

final term of submitting the project of budget resolution by the management board is until the 31st of December the year before the budgetary year. The 31st of December is the final term because after this day the submitted project of the budget resolution is the base of financial economy of l.g.u.<sup>20</sup> Prejudicing of the project of a budget resolution entails legal consequences and running of a financial economy will be hindered if the project of the budget will not be submitted until this date.

A doubt arises that regards the results of not preparing and not submitting of the project of budget resolution in the statutory term as well as the possibility of enforcing this duty. Due to the fact that the indicated term has the instructive character there are not at this stage sanctions expected in u.f.p. thanks to which the management board may be forced to the behaviour consistent with the law. There is such a possibility that the instruments relying on the Regional Accounting Chamber's law may influence on the management board. It is also possible to demand the information and data regarding the organization and the functioning of commune. These information and data are indispensable to performing supervisory powers. The above-mentioned actions may result in sending the appropriate document reminding about the legal duty.<sup>21</sup> It must be stressed that sanctions of norms of public finance law result not only from the norms of this legal field but also from the regulations of other legal fields, for example administrative law or penal law. Criminal law sanctions are in the system of sanction's influence on the obliged entity. In this context lack of preparing and submitting of the project of budget resolution may be qualified as a criminal offence described in the content of the article 231 § 1 of the Penal Code of 6 June 1997 that is failure to fulfil public officer's obligations which act to the detriment of public and private interests<sup>22</sup>.

The possibility of carrying out an audit by the Regional Accounting Chamber was presented in the doctrine as an action, the purpose of which is to discipline the management board in the situation of not preparing and not submitting of the project of the budget resolution. Making expenses without the legal basis that is lack of the project of budget resolution from the 1st of January, budgetary year is a violation of a public finance discipline<sup>23</sup>.

The management board of l.g.u. is obliged to present to the legislative body of l.g.u. the opinion of Regional Accounting Chamber about the project of budget resolution before adopting the budget. The character of the opinion causes simultaneously that it is non-binding for the legislative body but it will be the basis for the evaluation of the project of the budget resolution in further works. Because it is the Regional Accounting Chamber that sends the opinion to the management board then the question arises regarding the evaluation of the situation in which the management board falls to perform the duties of presenting the evaluation of the situation to the legislative body before adopting the budget. Due to the sanction's absence in this respect the only possibility for the legislative body to adopt the budget resolution responsibly seems to be asking the Regional Accounting Chamber for sending the copy of the budget resolution.

#### **IV. ADOPTING THE BUDGET TROUHG TEH LEGESLATIVE BODY OF LOCAL GOVERNMENT UNIT**

Works of the legislative body, the result of which the budget resolution is adopted, are held on the basis of a mentioned resolution of the legislative body of l.g.u. regarding the procedure of works on the project of a budget resolution including the regulations resulting from other legal acts as regulations of the systemic nature and the statute of l.g.u. For that reason the

<sup>20</sup> E. RUŚKOWSKI, J.M. SALACHNA, *Local finances after accession*, Warsaw 2007, p. 211.

<sup>21</sup> J.M. SALACHNA (in:) *Public finances. Practical comment, op. cit.*, p. 939.

<sup>22</sup> Journal of Laws, no 88, item. 553 with later amendments.

<sup>23</sup> J.M. SALACHNA (in:) *Public finances. Practical comment, op. cit.*, p. 939.

course of works, as a rule, does not have the uniform character but it is the appropriate for the legislative procedure accepted for the particular l.g.u.

The issue which was regulated in an uniform way is the restriction of the legislative body when it comes to the interference into decision of the project of budget resolution. Such restrictions are described in the art. 240 par. 2 of the Public Finance Act according to which the legislative body is allowed to making amendments in the project of budget resolution. These amendments may decrease or increase the expenses but they cannot increase the assumed deficit. There are possible the changes which increase the income and simultaneously thanks to the unchanged level of deficit to increase the expenses. In the process of making amendments in the project of a budget two stages should be distinguished in which it is possible to make an amendment. The amendments can be made at the stage of introducing them into the project of a budget resolution and at the stage of the amendments which are introduced in budget resolution that has been adopted yet. If the restriction for the legislative body is expected only in the content of the mentioned art. 240 par. 2 of the Public Finance Act at the stage of introducing amendments into the project of a budget resolution then at the stage of making amendments in the adopted budget, the rights of a legislative body are limited taking into account the fact that the executive body has the initiative in this area<sup>24</sup>. Additionally, it shall be pointed out that the art. 240 par. 2 the Public Finance Act applies only to the project of a budget resolution and its records cannot be extended for instance to the resolutions which change the budget and which are implemented after adopting the budget. This thesis results from judicial decisions and is justified by the fact that the regulation of the art. 240 par. 2 the Public Finance Act should be interpreted strictly and from rules included there it cannot be concluded (*a contrario*) that in all the remaining cases which are not included in this regulation, the legislative body can make amendments in the budget<sup>25</sup>.

The matter of voting on the acceptance of a budget resolution was unified. The voting is open and is carried out according to general rules, it means that the resolution is adopted by a 2/3 majority of the votes cast provided that at least half of the members are present at the meeting. After adopting the budget resolution, the chairman of the board signs the resolution but it is not necessary to sign it because the projects become resolutions immediately after voting<sup>26</sup>.

According to the art. 239 The Public Finance Act the legislative body of l.g.u. adopts the budget resolution before the beginning of the budgetary year and in particularly justified cases not later than to the 31<sup>st</sup> of January the budgetary year. It is emphasized in judicial decision that statutory terms for adopting the resolution are categorical and cannot be postponed. If factual circumstances change after adopting the budget, the legislative body has the right to enter a correction also on the part of the expenses<sup>27</sup>. It is also unacceptable to shorten the statutory term in the resolution's regulations regarding the procedure of works on the project of a budget resolution<sup>28</sup>.

Due to the fact that in The Public Finance Act regulations there is a possibility to postpone the term of adopting the budget resolution to the end of January then the question arises how to understand "particularly justified cases". The doctrine emphasizes that this term should be

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<sup>24</sup> Resolution of the Supreme Administrative Court of 20 January 2010, ref. Act II GSK 276/09 <http://orzeczenia.nsa.gov.pl>.

<sup>25</sup> Resolution of the Voivodship Administrative Court of 25.10.2012., ref. Act I SA/OI 520/12. <http://orzeczenia.nsa.gov.pl>.

<sup>26</sup> Resolution of the Supreme Administrative Court of 16.11.2011., ref. Act II GSK 1137/10. <http://orzeczenia.nsa.gov.pl>.

<sup>27</sup> Resolution of the Voivodship Administrative Court 15.07.2011., ref. Act I SA/Łd 764/11. <http://orzeczenia.nsa.gov.pl>.

<sup>28</sup> Resolution of RACH College in Kielce of 1.12.2010 r., no 66/2010, LexPolonica.

associated with the extraordinary event of a random nature (for example natural disaster) as well as with usual circumstances such as not adopting the state budget until the end of a year. The mentioned state budget contains in its content the amount of income sent to the l.g.u. in the form of subsidy<sup>29</sup>. It should be stressed that in the situation of adopting the budget resolution after the 31<sup>st</sup> of December and before the 31<sup>st</sup> of January there are not sanctions in this range although there are not particularly justified reasons. It cannot be concluded that the resolution adopted in this way is not valid and that this does not influence on its realization because even in case of not adopting the budget the expenses are performed after the 31<sup>st</sup> of December on the basis of the applicable project. The term "particularly justified cases" included in the commented regulation has the real meaning only in connection with the Regional Accounting Chamber's evaluation of resolution's legality regarding the procedure of works on the project of the budget only if the resolution include situations' catalogue qualified as those cases.

Due to the fact that there is such a possibility to proceed on the budget until the 31<sup>st</sup> of January the budgetary year, it is necessary to establish the legal basis for l.g.u. to run the financial economy mainly as regards performing the expenses. According to the art. 240 par. 1 of the Public Finance Act until adopting the budget resolution, however not later than until the 31<sup>st</sup> of January the budgetary year, the project of budget resolution presented to the legislative body is the basis for financial economy. It is confirmed that financial operations carried out until the time of adopting the resolution on the basis of the projects are calculated in lieu of budget resolution's provisions<sup>30</sup>.

In case of the situation in which the executive body does not prepare the project or does not submit it to the legislative body until the 31<sup>st</sup> of January the question appears what is the basis for running the financial economy. It seems that in this situation there are not basis for running the financial economy and the possible expenses cannot be realized until the time of establishing the substitute budget<sup>31</sup>.

On the basis of the art. 240 par. 3 the Public Finance Act, in the case of not adopting the budget resolution by 31<sup>st</sup> of January of the financial year, the Regional Accounting Chamber no later than the end of February of the financial year determine the budget of the l.g.u. in their own tasks and tasks assigned. The reasons for which the budget resolution has not been taken do not have the importance. The objective condition "no budget resolution" will cover also situations where in relation to the budget resolution they proved accusations not consistent with the law and was eliminated from the market law. Established by the Regional Accounting Chamber budget referred to as "an alternative budget" by its nature is not a budget within the meaning of The Public Finance Act and does not substitute it fully which results in the fact that in the doctrine it is named as "financial plan of l.g.u."<sup>32</sup>. Determining the replacement budget as an emergency measure, does not realize all the budgetary principles including the need to balance the budget and its yearlong time<sup>33</sup>. With regard to the shape of the budget set by the Regional Accounting Chamber it should be noted that the only statutory requirement is to include tasks and tasks assigned of l.g.u. Moreover, the editors' provision governing the obligation of determining the budget indicates that the Regional Accounting Chamber cannot go beyond the range specified in the Act. Due to the limited range of a budget, it is the possibility of forming resolutions by the legislative body, in which other issues

<sup>29</sup> C. KOSIKOWSKI, *op. cit.*, p. 531.

<sup>30</sup> *Ibidem*, s. 532

<sup>31</sup> *Ibidem*

<sup>32</sup> E. RUŚKOWSKI, J.M. SALACHNA, *Local finances...*, *op. cit.*, p. 213.

<sup>33</sup> R.P. KRAWCZYK (in:) *Public Finance Act*, 2008, ed. C. Kosikowskiego, Warsaw 2008, p. 380



related to the budget can be regulated. These issues will supplement the budget allowing the same the l.g.u. for proper operation<sup>34</sup>.

## V. PROGRAM OF RECOVERY PROCEEDINGS FOR THE LOCAL GOVERNMENT UNITS

When analyzing the problem of determining the budget of the local government unit - you should also refer to the "Program of recovery proceedings" - a new institution of the Polish public finance law. The reason for introducing this institution into the established law was a significant reduction of the regulations on borrowing capabilities of the local government units that have been in force since 2014. The possibility of introduction of the "Program of recovery proceedings" shall, at the same time, allow the local government units to adopt budgets without observing the required relationships of the incomes towards the expenditures and debts.

In Article 240a of The Public Finance Act, that has been in force since 28 December 2013, and has been introduced, in connection with the amendment of the The Public Finance Act by the Act of 8 November 2013 on amendment of The Public Finance Act and other laws, the conditions for starting the remedial actions, among others, in the absence of the possibility of adoption of the budget by the local government units and the threat to implementation of public tasks by the local government units have been regulated. In this situation, the Regional Accounting Chamber requests the local government units to develop and adopt the program of recovery proceedings and submit it for its approval by the Regional Accounting Chamber within 45 days of receipt of the request. The program of recovery proceedings shall be adopted as a resolution of the decision making body of the local government units for a period not exceeding 3 consecutive fiscal years. That program includes the analysis of finances of the local government units, including determination of the causes of the treat to providing the public services, plan of remedial projects, including timetable for their implementation, aiming to eliminate the threat to implementation of public tasks by the local government units and maintain an appropriate relationships of the incomes towards the expenditures and debts of the local government units and the anticipated financial results of individual remedial projects and definition of the methods for calculating them. It is necessary to obtain a positive opinion of the Regional Accounting Chamber with respect to the resolution of the program of recovery proceedings. The consequence of the negative opinion is the lack of possibility of implementation of the program and thus the use of that possibility provided for in the described regulation by the local government unit.

The result of implementing the program of recovery proceedings, which was approved by the Regional Accounting Chamber is the possibility of the decision making body of the local government unit to adopt the budget of the unit, which does not maintain the proper relationships of the incomes towards the expenditures and debts, and not maintaining that relationship can relate only to repayment of obligations existing at the date of adoption of the program of recovery proceedings. A number of specific restrictions on the conduct of financial management by the local government unit are associated with the implementation of the program. In particular, during the implementation of the recovery proceedings the local government unit may not make any new investments financed by a credit, loan or issue of securities, it may not provide financial assistance to other local government units, may not provide sureties, guarantees and loans, may not bear expenses for promotion of a unit, limits implementation of tasks other than the compulsory ones, financed with own funds and is obliged to adhere to the principle that until the date of completion of the recovery proceedings the amount of expenditures

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<sup>34</sup> A. GORGOL (in:) *Public Finance Act. Comment*, ed. P. Smolenia, Warszawa 2012, p. 1067.

on travel allowance of councilors and on remuneration of members of the local government unit board shall not exceed the amount of such the expenditures for the year preceding the year in which the resolution was adopted on the program of recovery proceedings.

In case of failure to develop the program of recovery proceedings by the local government unit or absence of a favorable opinion of the Regional Accounting Chamber on this program, the unit budget shall be obligatorily established by the Regional Accounting Chamber. In the case of determining the budget by the Regional Accounting Chamber, the relevant provision of Article 240 par. 3 of the Public Finance Act, determining the scope of the established budget and the financial management during the period until the date of determining the substitute budget, shall apply<sup>35</sup>.

## VI. FINAL CONCLUSION

Analysis of the Polish law regulations concerning the local government unit budget establishment leads to the conclusion that these regulations raise concerns in connection with loopholes, and ambiguous wording of some of the provisions and thus the possibility of different interpretations of their contents. The above problems that are associated with the application of the rules may result in distortion of the course of the budgetary procedure or, in extreme cases, the adoption of an unlawful budget. A particular risk occurs in the case of communes, in which the executive body (commune head, mayor, president), as well as the decision-making body, are elected in direct elections. Disputes of a political nature may, in this case, impact the course of the process of adoption of the municipal budget and its shape which in turn adversely affects the financial management of the local government units.

Among the many significant problems of interpretation should be noted the possibility, that after determination of the budget by the Regional Accounting Chamber, the decision making body may irretrievably lose the right to its adoption, or it may adopt the budget by replacing the budget allocated by the Regional Accounting Chamber and the lack of clear limits within which interference in the process of preparing the draft budget is permissible. In addition, doubts are raised due to the lack of a pattern of the course of the budget preparation works, instructional nature of certain terms, the observance of which is essential to the financial management and lack of penalties for the enforceability of part of the responsibilities of the local government units' bodies. In summary, analyzed regulation doesn't fulfill the requirement of passing the appropriate budget in timely manner, which has a negative impact on the finance of l.g.u. Therefore, with regard to the referred problems, the amendment to the provisions of the Public Finance Act provisions should be taken into consideration.

## KEY WORDS

budget, budget resolution, local government unit, budget procedure.

## KLÚČOVÉ SLOVÁ

rozpočet, rozhodnutie o rozpočte, územný samosprávny celok, schvaľovanie rozpočtu.

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<sup>35</sup> See further justification for the project of Act from November 8, 2013 amending the law on public finances and other laws (Sejm VII term no printing 1789).

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