
A Rich Bankrupt Region – Mechanism of Levelling Out Income of Self-governing Territorial Units as a Barrier to Development of Mazowieckie Voivodship

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ABSTRACT

The Polish law on local governments income enacted in 2013 was considered by many as dysfunctional from the very beginning. The Constitutional Court has seemed judgments several times documenting its discrepancy with the Polish Constitution. The provisions of this law has led to the edge of bankruptcy the Polish richest region – Mazowieckie Voivodship. Today, after the last judgment of the Constitutional Court completion of the work on the amendment of the Act Is expected. This article explains some of the reasons that brought the need to change the law from 2013.

Since 2004 the system of levelling out self-governing territorial units has been binding in Poland. This system is regulated in the Act on Income of Self-Governing Territorial Units of 13 November 2003. However, this Act from the time it came into force, has given rise to a series of controversies. Some of its provisions were challenged in the Constitutional Tribunal as being contrary to the Constitution of the Republic of Poland. Since 2006 the Constitutional Tribunal has already issued several positive rulings in favour of the party challenging the rulings. Mazowieckie Voivodship also fell prey to the provisions of the Act which were flawed in their construction; the system of deducting surpluses from rich territorial self-governments and allocating them to the poorer ones is referred to as “Robin Hood tax”.

The main source of income in voivodships in Poland are participation in the receipts of tax from natural persons, residing in the voivodship (PIT), which is 1,60% and participation in the receipts of corporate income tax, from payers of this tax, who have their registered office in the voivodship (CIT), which istotals 14,75%. Moreover, the Act imposes a duty to deduct surplus over the set limit of 110% of income of the equivalent of 95% of the surplus. On this basis each year the Finance Minister, in accordance with the Act on Income of Self-Governing Territorial Units stipulates, based on data two years previously, the fixed amount which the Mazowieckie Voivodship, the principal payer on a national scale, pays into the national budget fowards regional subsidy from taxes received from legal and natural persons.

This system worked well, up to the time when, in subsequent years income tax increased, e.g. in 2006 638 million PLN was paid into to the state budget, i.e. 40% of income on these taxes, the voivodship therefore had at its disposal 962 million PLN to realize its own tasks (i.e. 207 PLN per inhabitant). However, in 2010 the first year when current payment receipts fell considerably due to the economic crisis (significant fall of income from the participation

in CIT tax), and as a result of the aforementioned Act, relations reversed and the voivodship already paid in 939 million PLN, i.e. 64% of income on this. The remaining amount in the voivodship budget is 533 million PLN (130 PLN per inhabitant), however in 2011, merely due the amendments of the Act amending selected legal regulations resulting from the state budget adopted, 40% of that income was paid in. In subsequent years of the crisis, budgetary income systematically fell, and the Mazowieckie Voivodship in order to repay financial commitments on regional subsidies, the level of which only fell slightly, had no option but to pay in amounts, which destabilized the budgetary equilibrium of the voivodship. In order to repay financial commitments to the national budget and ongoing activities the wealthiest voivodship in Poland, to avoid loss of financial liquidity, had no option but to take out bank credit. In 2013 the voivodship lost its credit rating and now was not in a state to make further monthly payments towards the regional subsidy. Towards the end of 2013 the Polish Parliament (*Sejm Rzeczypospolitej Polskiej*), in order to save the Mazowieckie Voivodship from bankruptcy, agreed to grant a loan bearing interest, from the national budget for the repayment of the regional subsidy to the state budget.

The self-government of the Mazowieckie Voivodship, from the time the Act on Income of Territorial Self-governments came into force, repeatedly pointed out the danger of destabilization in budgets of a series of self-governing territorial units (voivodship, county and communal). Due to the crisis in 2010 the Regional Assembly of Mazowieckie Voivodship had no option but to lodge an application at the beginning of 2011 to the Constitutional Tribunal requesting examination as to whether certain provisions of the Act on Income of Self-government Territorial Units might be unconstitutional. A social movement emerged in Warsaw which opposed excessive drainage of Warsaw's finances. Already in 2009 the Society for Praga Warsaw Associations noted the injustice of "Robin Hood tax" in respect to Praga – one of Warsaw's districts. In May 2010 signatures were collected for a petition to appeal to the Finance Minister requesting that Mazowsze be exempt from "Robin Hood tax". In July the petition which had 10 thousand signatures on it, was lodged at the Finance Ministry. At the same time, in June 75 Mazovian communes approached the Prime Minister and Finance Minister with a petition requesting exemption of Mazowieckie Voivodship from the obligation to pay "Robin Hood tax". In mid-November 2010 a Bill of the citizens Act was drafted "On Amendment of the Act on Income of Self-governing Territorial Units".

To introduce the Bill for parliamentary debate in May 2011 a social Committee of Legislative Initiative was formed – "STOP Robin Hood tax". Already in July of that year the committee was transformed into a national social movement. Other towns throughout Poland, including Kraków, Poznań, Gdańsk, Łódź, Wrocław and Katowice, signed the petition regarding the Bill of the Act "STOP Robin Hood tax". It received the support of dozens of communes and counties. In August 2011 the Legislative Initiative Committee lodged a citizens Bill reforming "Robin Hood tax" in parliament (*Sejm Rzeczypospolitej Polskiej*), and over 157 thousand signatures of supporters of this Bill. The canvassing for signatures throughout Poland turned out to be a huge success. The first reading of the Bill in parliament was on the 15 February 2012, after which the Bill went to the parliamentary committee in accordance with further procedure.

Running parallel with the initiative of the self-government of Mazowieckie Voivodship was the Bill restricting certain negative provisions of the Act, and primarily introducing a safety-threshold for payers, so that further payments would not be realized when it was exceeded, by the members of parliament, was received by the Parliamentary Committee. Work by the Parliamentary Committees on the Bill lasted up to 24 July 2012 when, at a sitting, the majority of parliamentary members voted to reject the Bill on the amendment of the Act on Income of Self-governing Territorial Units, and parliament did not engage in a plenary debate. Given these circumstances, the Constitutional Tribunal had to make known its stance on the issue of whether some of the provisions of the Act on the Income of Self-governing Territorial Units was unconstitutional, and which awaited a possible solution by parliamentary works on the Act. At the sitting on 4 March 2014, after 3 years after the application was filed, the Constitutional Tribunal examined the application of the Regional Assembly of Mazowieckie Voivodship in respect of the provisions on the income of a self-governing territorial unit. In its ruling, the Constitutional Tribunal found that the provisions of the Act were unconstitutional as "they do not guarantee voivodships preservation of the essential part of their own income in order to realize their own tasks, contravened art. 167 sections 1 and 2 in conjunction with art. 166 section 1 of the Constitution of the Polish Republic", and at the same time ruled that the challenged provisions would lose the force of law on the elapse of 18 months from the ruling, giving the legislator time to amend the provisions of the Act.

In mid 2014 the "Mazowiecki" Bill of the Act on Income of Territorial Self-Government and the Bill of the Act were put before the Finance Ministry. Discussions also commenced on comprehensive reform system of "Robin Hood tax" according to the Constitutional Tribunal's guidelines, which, in addition to voivodships, also included counties and communes. The ultimate decision was taken in October 2014 at the meeting of the Prime Minister with representatives of territorial self-governments and the "STOP Robin Hood tax" initiative. At this meeting the Prime Minister stated that she was in favour of a new and just solution and decided on a comprehensive reform of the system. As a result of this decision the Finance Ministry was to speed up the work on a comprehensive reform system which would apply not only to voivodships but also counties and communes. The Prime Minister placed the Finance Ministry under an obligation to prepare the provisions by April 2015.

At the same time the Finance Ministry, in realizing the assigned task regarding amendment of the negative provisions of the Act on Income of Territorial Self-Government and the deadline for implementation of the new provisions of the Constitutional Tribunal, prepared a "transitional legislative" Act for the budgetary year 2015 alone. Because of this Act the Mazowieckie voivodship paid in, in 2015 213 million PLN less than it would have from the current provisions in force to the national budget than under the currently binding provisions to the national budget as regional subsidy. This amount, although significant in the voivodship's budget will not contribute to any significant improvement of the voivodship's financial state, including reduction of financial commitments to the national budget and credit institutions. It will take the Mazowieckie Voivodship many years to achieve a financial balance.

In the statement of grounds for its ruling the Constitutional Tribunal stated, amongst others, that “Robin Hood tax” had been for many years imposed at an amount over the financial means of the voivodship. It also stated, that Mazowieckie Voivodship should not have contributed more than 30% of its income from tax. According to this calculation, from 2006 Mazovia paid over 1,82 billion more than it should have – incurring a debt for these payments and limiting expenditure on its own functioning and development. The management of the voivodship decided to apply for a refund of this money.

It should be emphasized that in the new financial perspective of the European Union, the government allocated almost twice as much money to the Regional Operational Programmes of voivodships. Mazowieckie Voivodship as a “developed region”, was the only one in the country which did not receive increased funds within the framework of the ROP. Because of this situation the range of resources for ROP between the national average for 15 voivodships – 942 euro per inhabitant, and in Mazowieckie Voivodship – 395 euro per inhabitant, is over two and a half times. In the previous perspective this difference was 30%.

Mazovia’s own funds, in the present perspective for the years 2014-2020 with considerably limited funds available from the European Union, are taking on a new and more significant importance, the main source of which is the participation in personal and corporate income tax. Presently, a considerable part of this sum continues to be returned to the national budget for regional subsidies for other voivodships.

The current “Robin Hood tax” regulation and also the new Finance Ministry regulations are not conducive to realizing the goals, which the Ministry of Infrastructure and Development has set down in strategic regional documentation – National Regional Development Strategy (NRDS) 2010-2020. There is talk in the Ministry of moving the epicentre of concentration from redistribution to competitiveness. The need to support the development of metropolises has also been indicated. Meanwhile, the proposals of the Finance Ministry are closer to the notion of redistribution.

The system of income of territorial self-governments should be as simple and transparent as possible, in particular for voivodships and counties, whose budget is based mainly on participation in personal and corporate income tax, subsidies and grants, and not on own income as in the case of communes. You should also bear in mind, that from 2006 EU funds became the main source of eradicating disparities in development.

A simple solution, which could regulate the situation and eradicate the causes of the problem, would be the changes set out in brief below:

1. Establishing a pool of resources in the national budget, which will replace the participations in personal and corporate income tax and payment towards an ‘equalizing’ subsidy which falls to all territorial self-government units at the commune, county and voivodship level.
2. An initial pool is defined on the basis of historical data, comprising:
 - a. Participation in personal income tax
 - b. Participation in corporate income tax
 - c. “Equalizing” subsidy, part of the national budget.

3. On the basis of this sum the percentage participation in personal and corporate income tax is determined which will be entered in the national budget destined for self-government territorial units.
4. From the pool of resources in the national budget from the part relating to income from personal and corporate income tax and “equalizing” subsidy three parts are separated designated for communes and for towns with rights of a county (the part belonging to the commune), counties and towns with the rights of a county (part belonging to the county) and for voivodships.
5. The proportions of the division are determined using historic data, according to amounts which fell to individual groups in previous years:
 - a. For voivodships approx. 14%,
 - b. For counties and towns with county rights (part belonging to a county) approx. 11%,
 - c. For communes and for towns with county rights (part belonging to a commune) approx. 75%.
6. The principal criterion used to divide the money should be population. The 90-92% division of resources should be based on population density (per inhabitant in residence) and the premium part 8-10% for entities in an exceptional situation (calculated based on one or two indices).

Possible theoretical solutions changing the present system or redistribution of financial resources, as set out above, are not solutions which will be met even with initial approval. For the issue of division of income between self-governing territorial units is of a political nature. An example of this is the longstanding fruitless battle of the Mazowieckie Voivodship for change of the redistribution system of income from taxation in parliament. The region has been isolated in this battle. Despite the fact that the favourable economic condition of the region is slowly becoming a thing in the past, it would be difficult to find parliamentarians and representatives of other regions who have understanding for the problems encountered by Mazovia. Although Mazovia is seen as the “driving force” of the development of the country and Warsaw as the metropolis plays a key role in this, problems relating to “Robin Hood tax” considerably weakening the strength of this “driving force”, have remained Mazovia’s problem. The facts presented in the article, including the legislative initiatives and their results and also social mobilization of various social groups in the region against “Robin Hood tax”, demonstrate how difficult and multi-dimensional a problem the construction of such a mechanism of “equalizing” the income of territorial self-government units is, which would support the poorest regions not leading to the creation of barriers for regional development to – “driving forces”. The ultimate formulation of the new legal regulations is likely to be a compromise, which must satisfy the beneficiaries of the present system, who are in the majority.

Bogaty region bankrutem – mechanizm wyrównywania dochodów jednostek samorządu terytorialnego jako bariera rozwoju województwa mazowieckiego

STRESZCZENIE

Ustawa o dochodach samorządu terytorialnego z roku 2013 od samego początku uważana była za przykład źle skonstruowanej i dysfunkcyjnej ustawy. Kilkakrotnie Trybunał Konstytucyjny Rzeczypospolitej Polskiej wydawał wyroki wykazujące jej niegodność z ustawą zasadniczą – Konstytucją Rzeczypospolitej Polskiej.

Zapisy tej ustawy doprowadziły na skraj bankructwa najbogatsze województwo Polski – województwo mazowieckie. Obecnie po ostatnim wyroku Trybunału Konstytucyjnego wszyscy oczekują zakończenie prac nad nowelizacją tej ustawy. W artykule starano się przybliżyć i wyjaśnić niektóre powody, które wpłynęły na potrzebę zmiany tej ustawy.
