

DEVELOPMENT OF BUDGETARY RULES IN THE CZECH REPUBLIC

Abstract

At a time when more and more demands are made on public budgets, it is appropriate to evaluate the rules governing the institutes of budget management and consider strengthening the instruments that ensure efficient, economy and effective management of public funds. For this reason, the contribution is devoted to the analysis of the development of budgetary rules in the Czech Republic, especially to the analysis of breach of budgetary discipline, which is an important part of the financial management and control of public budgets. This article also follows the outputs of the Ministry of Finance project, co-financed by the EEA and Norway grants 2014-2021, which is dedicated to strengthening public financial management and control¹.

Keywords: budget, budgetary discipline, financial management and control

Introduction

In modern history, the budgetary rules for the territory of the Czech Republic were adopted into legislation during the era of the First Republic. Subsequently, the established trend was interrupted and suppressed as a result of the World War II and subsequent new social and political arrangement. Therefore, the development of budgetary rules over the last 30 years can be described as

a revolution, as it responded to changes that took place in the field of public administration and followed the changes in the overall society. This article is based on the basic premise that the regulation of budget rules as a tool of financial management always lags behind the legal regulation of the organization of the public administration, the activity of which is connected to. On the basis of this premise, a hypothesis was established, the verification of which is the goal of this contribution: The development of individual institutes of management of public funds is not balanced, gradual nor connected to each other. Conversely, in the course of time, respective institutes have the tendency of distancing while, on the contrary, they should follow and complement each other. The main method used is the system analysis method through the examination of individual parts of the system of public funds management, the analysis of its respective parts and their mutual relations. This article also includes the interim results of the analysis of violations of budgetary discipline, processed within the project of the Ministry of Finance of the Czech Republic: Strengthening the management and control of public finances.² In view of the fact that the article is focused mainly on violations of budgetary discipline, its content is based on the analysis of related budgetary rules, i.e. budget rules after 1970, even though the rules for managing public funds on the territory of the Czech Republic have always been modified in a relatively comprehensive manner. When Czechoslovakia was created, it was a legal arrangement taken over from Austria-Hungary. This was followed by the reform carried out in 1927, which lasted in a cer-

¹ Strengthening public financial management and control, co-financed by the EEA and Norway grants 2014-2021. More information available at: <https://www.mfcr.cz/cs/verejny-sektor/kontrola-verejnych-financi/posileni-rizeni-a-kontroly-verejnych-fin>; <https://www.mfcr.cz/en/themes/strengthening-public-financial-managemen..>

² For more information see research of Czudek (2022).

tain form even in the first years after the Second World War, until 1947. Fundamental changes were made to the budget rules, following the societal changes in 1959 and especially following the establishment of the federation in 1968.³

Analysis

The management of public funds was regulated in the Budget Rules Act of 1971⁴. This legislation was later adopted and substantially slimmed down in the Budget Rules Act of 1989⁵ and subsequently used in the Budget Rules Act of 1990⁶. All three laws regulating budget regulated also the general control powers of the government as the highest executive body responsible for the management of public funds and the Ministry of Finance, or Ministry of Finance, Prices and Wages⁷ respectively, as well as local financial authorities. In contrast, the legislation from 1989 and 1990 contained only a brief definition of the scope of control. At the same time, the Act on Budgetary Rules from 1971⁸ described the content of the audits performed as well as the rights and obligations of both the auditing and audited bodies in more detail. Despite the fact that in the 1970s, when the principles of the modern rule of law were fundamentally suppressed, the legal regulation of control activities was relatively detailed and, in terms of scope, it resembled today's legislation more closely than the regulation from the transitory period, i.e. in the beginning of the 1990s. The purpose of the legislation from the 1970s was to define the competence of state authorities sufficiently broadly

³ For more details see interdisciplinary publication of Marková and Boháč (2007).

⁴ Act of the Czech National Assembly No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic).

⁵ Act of the Czech National Assembly No. 163/1989 Coll., on the rules for managing budget funds of the Czech Socialist Republic (budgetary rules of the republic).

⁶ Act No. 576/1990 Coll., on the rules for managing budget funds of the Czech Republic and municipalities in the Czech Republic (budgetary rules of the republic).

⁷ Change in the name as a result of the expansion of the Ministry of Finance's competence based on Act No. 60/1988 Coll., on changes in the organization of ministries and other central bodies of the state administration of the Czech Socialist Republic.

⁸ Act of the Czech National Assembly No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic).

so that they could fulfil their function in protecting socialist interests and strengthening state discipline⁹, or so that control activity could serve the ruling political party to promote its interests. Since 1989, the main reason has been more extensive legislation in the area of protection of the rights and legally protected interests of citizens against unreasonable interference by state authorities and abuse of state power. On the contrary, in the case of the institute of violation of budgetary discipline, or consequences of unauthorized use of public funds, a completely different trend in the development of legislation can be seen. The act No. 137/1970 Coll., on the rules for the national budget of the Czechoslovak Federation and on the management principles for budget resources of the national budgets of the federation and republics was regulated by the "predecessor" of the current institute of violation of budget discipline. Until it came into effect, the unauthorized use of public funds was dealt with primarily through compensation for damages, potentially in the area of criminal law and, in the case of subordinate organizations, in the form of mandatory deduction, ordered by the founder, the Ministry of Finance or the government. However, the legal regulation of the violation of budgetary discipline vested in act No. 137/1970 Coll. was quite brief. The provisions of sec. 22 paragraph 1 of Act No. 137/1970 Coll. only stated that in cases of serious breach of budgetary discipline, i.e., violation of budget regulations, the government, or the Minister of Finance may reduce the funds provided from the national budget or determine the levy of illegally used funds to the national budget or the federal fund. In the case of provided subsidies, the provisions of sec. 22, paragraph 2 of act No. 137/1970 Coll., explicitly stated that in case of non-compliance with the purpose for which the subsidy was provided, the government may impose an obligation to return any public funds used illegally. The consequences of the unauthorized use of public funds were also stated in sec. 16 of act No. 137/1970 Coll., according to which, for any unauthorized use of public funds, relevant organizations depending on the national budget must, in addition to the mandatory levy, pay also a fine of 1 per mill from the amount withheld or illegally used. The relevant superior authority had the right to decide on the levy. The law did not provide further details on the imposition of levies or fines. Furthermore, the violation of budgetary discipline was regulated in act No. 163/1989 Coll., on the rules for managing budget funds of the Czech Socialist Republic

⁹ Sec. 1 par. 1 of act No. 103/1971 Coll., on the National Control.

(budgetary rules of the republic) and subsequently in act No. 576/1990 Coll., on the rules for managing budget funds of the Czech Republic and municipalities in the Czech Republic (budgetary rules of the Republic). In both cases, a violation of budget discipline was defined as an unauthorized use or withholding of funds from the national budget of the state fund. In the case of the applicability of act No. 163/1989 Coll., the violation of budgetary discipline also applied to funds entrusted to national committees, and in the case of act No. 576/1990 Coll., to funds entrusted to municipalities and district authorities, i.e., the successors of national committees. Before the act No. 163/1989 Coll. entered into force and effect, the institute of breach of budgetary discipline was not defined, even though the then valid and effective act No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic) regulated the consequences of non-compliance with financial and budgetary regulations or principles for the provision of subsidies and subsidies in sec. 17 of the act. Consequences of the violation could be the following: a reduction of the provided funds or a reduction of the overall financial relationship in the event that the national committee committed a violation of the regulations or principles, withholding of the provided funds and an order to return the provided funds. The government or the finance minister, if authorized to do so, decided on the consequences. The consequences were related to funds provided from the national budget and from the state fund. Furthermore, according to the provisions of sec. 33 paragraph 4 of act No. 60/1971 Coll., in the event that the control of the Ministry of Finance revealed a violation of financial or budgetary discipline, it issued an incentive to remedy any identified defects. In this case, however, the breach of financial or budgetary discipline was not specified. The provisions of sec. 16, paragraph 1 of act No. 163/1989 Coll., stipulated that the consequence of a breach of budgetary discipline is the levy of illegally used funds and a penalty for each day of delay in levy or for each day of unauthorized use of funds, in the amount of 1 per mill from the amount withheld or used without authorization, but not exceeding such amount. The penalty was not paid if it did not exceed the amount of CZK 100 in individual cases. Pursuant to the provisions of sec. 16 paragraph 4 of act No. 163/1989 Coll., in the event that a violation of budgetary discipline was identified within an internal control of the body, or organization that committed it, the penalty was halved. The levy for

breach of budgetary discipline and related penalties were imposed by several different state administration bodies depending on who committed the breach of budgetary discipline. In the case of funds from the national budget or state funds, the Ministry of Finance, Prices and Wages had the authority to grant concessions for the purpose of avoiding excessive harshness. In the event that funds from the national committee's budget were involved, the relevant national committee had this authority. The amount of the penalty and its halving in case of detection of a violation of budgetary discipline by internal control remained unchanged even in the case of regulation pursuant to act No. 576/1990 Coll. The amendment was seen in relation to the authorities competent to impose levies and penalties. In all cases, the competent authority was the territorial financial authority, regardless on the fact who committed the breach of budgetary discipline. The Ministry of Finance, on the other hand, remained the body that had the power to prevent the harshness of the law and could grant concessions.

For the funds that previously belonged to the national committees, the authority was transferred to the municipalities, as the related public funds were also transferred to them. The regulation of breach of budgetary discipline contained in act No. 576/1990 Coll. was effective without change until the act No. 218/2000 Coll. came into force.¹⁰

The trend where the legislation on the management of public funds is adopted with a considerable delay behind the regulation bringing fundamental changes in the functioning of public administration can also be traced in the adopted legislation in the area of financial management in general, with the only exception being the adoption of act No. 320 /2001 Coll., on financial control in public administration and on the amendment of certain legal rules (Financial Control Act). This law was adopted as a fulfilment of the pre-accession conditions for the entry of the Czech Republic into the European Union, i.e., two years in advance, regulating financial control according to the best known international good practice at the time, including international standards. However, it must be noted that the regulation of financial control has so far remained almost unchanged, which means that today it hardly corresponds to the latest findings and trends, even considering the significant changes in public administration that have been implemented in the Czech Republic in the meantime, its delay remains fundamental

¹⁰ For more information see research of Czudek (2022).

in such scale that legislative changes are more than desirable. Although the frequent amendments of legal rules can generally be considered as problematic because the legal certainty of its addressees is significantly reduced, cases where the legislation does not reflect changes in the scope of regulation are at least equally problematic from the legal certainty point of view.

The legal regulation of financial management in the late 1980s underwent significant amendments following the changes in society. In this period, the former regulation from the socialist era is gradually replaced by transitional institutions and institutes, which made subsequent formation of the foundations of the modern institutional and functional arrangement of financial management possible, persisting to these days. The so-called “post-November” legal regulations, i.e., regulations adopted after 1989, have also another characteristic element in common, namely the fact that significant interventions to the legislation occurred only during proceedings in the Parliament of the Czech Republic, i.e., that they are often the result of political compromise rather than professional discourse. This is also the reason why the development of budget rules, as well as every specific legislative change made in the last 30 years, resembles a revolution rather than an evolution.

At the turn of the millennium, a general trend of expanding financial management legislation could be seen, including budget management and control rules [see act No. 218/2000 Coll., on budget rules and on the amendment of certain laws (budget rules), amending the Act on budget rules from of 1990 and act No. 320/2001 Coll., on financial control in public administration and on the amendment of certain laws (Financial Control Act) subsequently]. This development was natural with regard to the fact that an activity that represents a significant intervention in the management of public funds needs clearly defined rules and limits in a modern rule of law, within which it can act as a manifestation of state power. In accordance with the principles of the rule of law and the principle of legality, public administration as well as the rules of management and control, must be implemented only on the basis of the law and within its limits, i.e., the specific authority of respective public body to dispose public funds and also to exercise control must be included in the law.

In accordance with these rules, the current budget rules were established in the form of act No. 218/2000 Coll., on budget rules and on the amendment of certain laws

(budget rules), coming into effect on January 1, 2001. In addition to preparations for joining the European Union there were fundamental changes in the system of public funds management caused by the abolition of district authorities at the end of 2002. District authorities were created by the transformation of district national committees at the end of 1990 (act No. 425/1990 Coll., on district authorities, the adjustment of their powers and some other related measures with effect from November 24, 1990). As the district authorities were established in 1990, they carried out state administration in the assigned section, which was followed by the legal regulation of public funds management and related control activities. Control authority in the area of financial control was entrusted to them only by act No. 147/2000 Coll., on district authorities, which came into effect on November 12, 2000. Originally, it was a matter of financial control in the terms of act No. 218/2000 Coll. (in particular sec. 41), which were supplemented by the financial control legislation according to Act No. 320/2001 Coll. from January 1, 2002. This law also extended the authority of district authorities to carry out financial control of their organizational components and state-financed organizations.

From the perspective of the analyzed violation of budgetary discipline, the current budget rules stipulate that the violation of budgetary discipline includes a whole range of diverse situations, which the lawmaker decided to punish with a levy for a violation of budgetary discipline and a related penalty. It follows from the definition of a violation of budgetary discipline that not all violations of budgetary rules or rules established by other legal regulations are to be punished. This was also confirmed by the decision of the Supreme Administrative Court, stating the following conclusion in its decision: “(p)when evaluating the indefinite concept of unauthorized use or withholding of funds [sec. 44 para. 1 letter b) of act No. 218/2000 Coll., on budgetary rules] it is necessary, among other things, to consider also the purpose of the provided public funds and its fulfillment. Based on this, not every violation of the relevant obligation is at the same time an unauthorized use of funds and as such must be returned to the public budget.” On the other hand, the legislator decided to sanction minor violations, based in the failure to meet pre-set deadlines, through a levy for the breach of budgetary discipline. In these cases, the levy is used to implement an obligation that was not fulfilled by the deadline, and the assessed penalty represents a penalty for delay. In addition to these insignificant deficiencies,

serious deficiencies consisting, for example, of non-compliance with the purpose for which the funds of the national budget were intended to be provided, are penalized through a violation of budgetary discipline.

Conclusion

The system analysis demonstrates that the hypothesis that was established at the beginning of this article was confirmed. The development of individual institutes of managing public funds is not balanced, gradual or connected to each other. On the contrary, in the course of time, there is a constant distancing of institutes, which, on the contrary, should follow and complement each other. This is illustrated by the example of the regulation of the control activity, the aim of which is to verify the fulfillment of budgetary rules and other rules for handling public funds, and the regulation of the institute of violation of budgetary discipline, which is supposed to be a way of solving the deficiencies identified in the control process. Regarding the legal regulation of control, we can see that even though the lawmakers were motivated to do so based on different reasons, the regulation was more detailed in the past than in the case of a breach of budgetary discipline, the legal regulation of which, on the contrary, has been extending in the last two decades. The future of the legal regulation of both budgetary rules and the control and violation of budgetary discipline in the Czech Republic is, to say the least, debatable. To cover this topic in full it should be noted that the application of legislation, in particular of the institute of breach of budgetary discipline, is significantly influenced by the jurisprudence of the Supreme Administrative Court as well. However, an analysis of the decisions would significantly exceed the scope of this article.

List of legal acts

- Act No. 137/1970 Coll., on the rules for the national budget of the Czechoslovak Federation and on the management principles for budget resources of the national budgets of the federation and republics, (*repealed*).
- Act of the Czech National Assembly No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic), (*repealed*).
- Act No. 103/1971 Coll., on the National Control, (*repealed*).

- Act No. 60/1988 Coll., on changes in the organization of ministries and other central bodies of the state administration of the Czech Socialist Republic.
- Act of the Czech National Assembly No. 163/1989 Coll., on the rules for managing budget funds of the Czech Socialist Republic (budgetary rules of the republic), (*repealed*).
- Act No. 425/1990 Coll., on district authorities, the adjustment of their powers and some other related measures, (*repealed*).
- Act No. 576/1990 Coll., on the rules for managing budget funds of the Czech Republic and municipalities in the Czech Republic (budgetary rules of the republic), (*repealed*).
- Act No. 147/2000 Coll., on district authorities, (*repealed*).
- Act No. 218/2000 Coll., on budget rules and on the amendment of certain laws (budget rules), as amended.
- Act No. 320 /2001 Coll., on financial control in public administration and on the amendment of certain legal rules (Financial Control Act), as amended.

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