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INFORMATION SYSTEM IN FUNCTION OF DEVELOPMENT OF THE PUBLIC FINANCE

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ABSTRACT

Financing of public needs on state and local government levels is impossible to ensure, among other things, without corresponding information system. It is actually the information system that is supposed to enable promptness and accuracy during the registering of all resources of the public revenue, as well as transparency of that information, and their sufficiency. The authors are analyzing and researching that on the example of one, though very specific, non-fiscal resource of the public revenue – capital properties selling revenue. Some forms of capital properties, which have had their base and character in the former legal and constitutional system, today exist under a different legal regime. Namely, Constitution of the Republic of Croatia¹ no longer knows about the institute of public property, it guaranties the property rights, and defines the Republic of Croatia as a Welfare State.

KEYWORDS:

Public financing, public revenues, non-fiscal revenues, public property, informational system.

INTRODUCTION: BUDGET REVENUE – NOTION, SORTS AND IMPORTANCE

“Public (State) revenues are the means of financing, i.e. fulfilling of public (state) needs.”² As far as the functioning of the vital state functions are concerned, they are “conditio sine qua non” from its first slave-holding, non-democratic forms, all through the modern, democratic, highly-industrialized forms of today.

According to the valid laws, i.e. under the provisions of article 2, subsection 7 of the Budget Law, “revenues are all non-payable and nonrecurring current and capital receipts with or without counter obligations, except nonobligatory and non-payable receipts without obligations.”³

In economic literature public revenues are divided according to different bases, and they can be: according to the way of realization – originating and deriving; according to the time of collecting – ordinary and extraordinary; according to the accomplished tariff – equivalent and general tariffs; according to the status of person being charged – revenues from natural persons and revenues from legal persons; according to the object of revenue – revenues in money and subsistence revenues; according to the territorial principles – revenues of smaller territorial units and revenues of broader territorial units; according to the legal basis of accomplishing – voluntary revenues, contractual revenues and compulsory revenues. However, one of the best divisions is the one with respect to

the need of using the fiscal sovereignty, i.e. division to fiscal and non-fiscal revenues.

¹ “Narodne novine”, nrs. 56/1990, 135/1997, 8/1998, 113/2000, 124/2001;

² Jelčić, B.: *Rječnik javnih financija i financijskog prava*, Informator, Zagreb, yr. 1981, p. 82

³ “Narodne novine”, nr. 92/1994

Fiscal revenues⁴ are those revenues which are introduced by public government, i.e. the state, by its authority, i.e. by using of fiscal sovereignty, and by which we understand the constitutional and legal power and right to constitute the fiscal revenues, that is their introduction and determination of their amount. Different forms of fiscal revenues are: taxes, customs duties, contributions, tariffs and para-fiscalities.

According to the basis of alimending non-fiscal revenues are different from fiscal ones, basic distinction being in the fact that the former don't appear as a result of legitimate means of public enforcement. Their budget alimentionation is exclusively the product of state's and its citizens' disposition. There are two financial interests at their budget alimentionation. The first interest, a public one, is generated by the state, that is, by her units of local government, and its goal is satisfying the public expenditure. The second interest, a private one, exists at those natural or legal persons who want to achieve profit by buying of certain property, exploiting of certain concession or something like that. It should be pointed out that this kind of public revenues comes in different forms and out of different resources. Structurally speaking, these revenues are not as stabile as it is the case with fiscal revenues.

The basis of alimending of these revenues can be: on the basis of property (dominium), special forms of financial-monetary activity of the state, and on the basis of other non-fiscal resources.

It is very hard to make a precise distinction of non-fiscal revenues, because their alimentionation is not based on fiscal sovereignty of the state, as it is the case with fiscal revenues. Financial theoreticians use various distinctions, and the one most commonly used is the one that divides non-fiscal revenues on:

- Public properties revenues;⁵
- Revenues based on gifts, heritage or legacies;⁶
- Revenues from new emissions of money;
- Public (state) debts;
- Revenues founded on credit bases;
- Public (state) loans;
- After war revenues.

⁴ *Fiscus* (Latin) – basket, hamper for collecting money – in ancient Rome it meant the place at which the collecting of means, mostly money, for leading the numerous wars took place. Later on, *fiscus* became the synonym for Roman Empire Treasury, to which all the state revenues were collected. During the time, *fiscus* has gained two different meanings: a) state in private-legal respect, as a bearer of property and property-derived rights; and b) State Treasury. Under the term *fiscus* most commonly we understand the State Treasury into which are collected budget revenues on the basis of taxes, customs duties, tariffs, contributions and other forms of revenues. Besides that, term *fiscus* is often used as a synonym for the state or a unit of local government as a bearer of the right to prescribe and collect certain forms of fees by force on their territory.

⁵ Public (state) properties revenues in financial literature are usually divided on: domain revenues, revenues from public (state-owned) companies, revenues from securities, revenues from own investments undertaken by state or its units of local government, revenues from selling of the public properties, revenues from public institutions, revenues from activities of governmental bodies, after war revenues etc.

⁶ Colloquially, term legacy is used for a gift with destination.

Legatum (Latin) – bequest, heritage. Word *legatum* comes from verb *lego*, *legare*, which means to prescribe a certain obligation or duty to someone, or to choose someone in intention of him doing something. In that sense it was created as a legal term for law of succession (*legatum*), and so is the word *legatum-legatus Caesaris*, i.e. *legatio*, which means an emissary, delegated to a certain duty or work, i.e. legation.

Romac, A.: *Rimsko pravo*, Pravni fakultet, Zagreb, yr. 1981, p. 391.

PUBLIC PROPERTY – DEVELOPMENT, CHARACTERISTICS AND THE NECESSITY OF ITS TRANSITION

In former socialist states there was a certain form of socialist property⁷ which presented a type of collective property. This type of property emerged for the first time, naturally, in the Soviet Union, and it was present in all ex-socialist states. However, former Yugoslavia, as well as its republics and autonomous provinces, were developing a different form of socialist property, which was a constitutional category during their existence, and was defined as a public property. According to that, we can see that the public property was an original form of socialist property, different from the state-owned socialist property. Socialist character of the property was formulated in the Constitution of the SFRJ (Socialist Federative Republic of Yugoslavia) from the February 21, 1974, as well as in the constitutions of the republics and autonomous provinces. In article 12, subsection 1 of the Constitution of the SRH (Socialist Republic of Croatia), as well as in constitutions of other republics, the definition of public property was taken from the federal constitution, and it goes as follows: “means of production and other means in joined work, products of joined work and the income created by the joined work, means of satisfying communal and general needs, natural wealth and goods in general usage, are considered as public property.”

Constitution of the Republic of Croatia no longer knows about the institute of public property, it guaranties the property rights, and defines the Republic of Croatia as a Welfare State. Article 48, subsection 1 of the Constitution of the RH (Republic of Croatia) declares: “Property rights are guaranteed.”⁸ Namely, that constitutional provision means return to the roots of civil constitutionality, it removes all previous restrictions to the property rights which existed in SRH (Socialist Republic of Croatia). It demanded a new, adequate legislative which would allow the transition of public property into the new, by its characters different forms of proprietary relations. However, it needs to be pointed out that the problem of transition i.e. privatization in the Republic of Croatia was somewhat more complicated than in other ex-socialist countries, primary because of the ideological construction of the term public property. Namely, public property had not been arranged as a legal, but as a socio-economical relation, where there was no bearer of property rights.

⁷ “Property is such socio-economical production relationship transformed into a legal relationship in which, by the power of legal regulations, certain thing wholly belongs to a certain legal subject.”

Vedriš, M.:– Klarić, P.D.: *Gradansko pravo*, “Narodne novine”, Zagreb, yr. 1996, p. 183

⁸ Provisions of the article 50 of the Constitution of the Republic of Croatia anticipate certain property restrictions in special situations: “It is possible under the law, with respect to the interests of the Republic of Croatia, to restrict or dispossess the property, with compensation according to the market prices. Entrepreneurs freedom and proprietary rights can be exceptionally restricted by law in order to protect the interests and security of the Republic of Croatia, nature, human environment and the health of the people.”

During the existence of the Socialist Federative Republic of Yugoslavia, and of course the Socialist Republic of Croatia, tenant's right of tenure was a part of the constitutional rights. The provisions of article 64, subsection 1 of the Constitution of SFRJ (Socialist Federative Republic of Yugoslavia),⁹ that is the article 242, subsection 1 of the Constitution of SRH (Socialist Republic of Croatia)¹⁰ declare: "It is guaranteed to the citizen in the public apartment that he will acquire a tenant's right of tenure by which he is insured that, under certain conditions provided by law, he may permanently use the apartment¹¹ which is public-owned to satisfy his personal and his family's housing needs."

Tenant's right of tenure as a constitutional right enabled the resident to permanently and without any restrictions use the apartment area on which he had tenant's right in a way which was provided by Law on the Housing Relations,¹² and whose provisions obliged him to care for and upkeep the apartment, but with his part in management of the building. According to that, bearer of the tenant's right had to behave in a way of a good host, unless he wanted to get in the position of losing his right of tenure.

According to the provisions of article 4 of the Law on the Housing Relations, tenant's right was only possible for the public-owned apartment, and it was valid from the day of moving into the apartment based on the legitimate decision on giving the apartment on usage or based on some other valid legal bases (article 59, subsection 1). However, Law on the Housing Relations anticipated some other bases for gaining of tenant's right, e.g. gaining of the right of tenure after tenant's death (article 67) etc. Tenant's right of tenure was acquired for the indefinite period.

Distributors of the tenant's right, according to the provisions of the article 11 of the Law on the Housing Relations, could have been the following: organizations of joined work, work communities, Self-managed interest community of pension and disability insurance of the workers of Croatia, fundamental communities of pension and disability insurance of the workers, social organizations, socio-political organizations, and the owner of the family house or the apartment as a special part of the building when they are used by a person on which the article 3, subsection 2 of the respective Law can be applied. Besides the mentioned, as distributors of the apartments, according to the provisions of the article 18, subsection 4, of the Law on the Housing Relations, could have emerged self-managed interest communities in the housing sphere. Housing contract could have been established only between mentioned legal persons and citizen who fulfilled all legal presuppositions for acquiring the tenant's right.

To conclude, housing contract existed between the distributor who distributed the apartment on use, on one side, and the bearer of the tenant's right, on the other side, and was based on the existing legal regulations concerning the housing relations and on the contract on the usage of the apartment into which they mutually entered.

REVENUES FROM THE SALE OF PUBLIC APARTMENTS AS BUDGET INCOMES

As a part of its legislative policy, the legislator has chosen to conduct a transition to market economy, when apartments are concerned, only for the apartments which have been

⁹ "Službeni list" SFRJ, nr. 9 from February 21, 1974

¹⁰ "Narodne novine", nr. 8 from February 22, 1974.

¹¹ According to the provisions of the article 6 of the Law on Housing Relations under the term apartment it is considered: "A set of rooms whose purpose is the permanent tenure with necessary side rooms, which, by rule, make a single construction unit and have their own main entrance." With respect to the defining of the term apartment, the Law on Apartments Renting in article 2 has a normative approximation: "By apartment it is considered a set of rooms whose purpose is the tenure with necessary side rooms, which make a single construction unit and have their own main entrance."

¹² The Law on Housing Relations was published in "Narodne novine", nr. 51/85 from December 17, 1985, and came into effect on December 25, 1985.

public property, by their selling to the bearers of the tenant's right of tenure. On the other hand, for the apartments that were owned by someone and whose residents had a right of tenure, Croatian National Parliament decided to transfer these relations into lease relations, which are by its character an institute of the classic civil law, in a way that previous bearers of the right of tenure become leaseholders, and previous distributors of the right of tenure who have been and stayed the owners of the apartments, in respect to the former bearers of the right of tenure and present leaseholders, become lessors.¹³ During the period of transition to the market economy and privatization, the first step was the introducing of the Law on Selling of the Apartments under the Right of Tenure,¹⁴ which had a function of transformation of the public ownership over these apartments into the ownership right. Later on, by the end of 1996, the Law on Ownership and Other Actual Rights¹⁵ which totally made the order in the area of legal ownership relations under the Constitution of the Republic of Croatia, and by that in the area of housing relations.

The Law on Apartment Leasing¹⁶ was introduced to make the order in relations that were earlier defined by the Law on Housing Relations, and that also presents an adjustment to the Constitution of the Republic of Croatia in the housing sphere. According to that, by the introducing of the Law on Apartment Leasing and the Law on Ownership and Other Actual Rights, the Law on Housing Relations was suspended in whole.¹⁷

The sale of the apartments under the right of tenure was uniquely regulated on the state level, and particularly only the value of the land on which the building was erected, that was left under the jurisdiction of the City Councils; e.g. in Osijek – the value of the land was determined according to the Decision on the city zones by which the value of the land was determined and incorporated into the apartment price.¹⁸

The sale contract was made in a written form. It had all the compositions according to the Law on Obligatory Relations, but, of course, with arrangement on the price and the way of paying, and other special features which were proscribed by the provisions of the Law on Apartments Sales.

After the conclusion of the contract, the seller was obliged to send the contract to the appropriate public defender on evaluation in eight days term. If the public defender concludes that the arranged price is lower than it should be according to the provisions of the Law on Apartments Sales, he was obliged to call the interested parties to adjust the price within 60 days by the amendment to the contract. Otherwise, the public defender was obliged to pursue an action for the annulment of the contract in six months term after the day he was delivered a contract on evaluation. When the public defender has received the contract for evaluation and concluded it was valid, he was obliged to confirm that by endorsing. After that the parties were obliged to verify their signatures. Signatures of the parties could not have been verified without the confirmation of the public defender, which means that that the contract could not have been registered in the land register of the authorized municipal court.

¹³ The legislator has especially protected that category of bearers of the right of tenure who had that right over the apartments in which are private property by the institute of the protected rent. Namely, the legislator did not allow them to buy the apartment under the same conditions as he did to the bearers of the right of tenure who lived in the apartments which were public property. By deciding this, the legislator decided to support the continuity of property right over the apartments, as a guaranteed constitutional right. The legislator has introduced a special kind of lease protection by the institute of lease on an unlimited period, by the protected rent and by the defining of the possible reasons for the cancellation of the contract.

¹⁴ "Narodne novine", nr. 43/1992

¹⁵ "Narodne novine", nr. 91/1996

¹⁶ "Narodne novine", nr. 91/1996 and 48/1998

¹⁷ The legal procedures started according to the provisions of the Law on Housing Relations before the Law on Apartment Leasing became effective should be finished according to the provisions of the Law on Housing Relations (article 52, subsection 1 of the Law on Apartment Leasing);

¹⁸ "Službeni glasnik Općine Osijek", nr. 7/1991

Land register is held at locally authorized municipal court. According to the provisions of the article 33 of the Law on Basic Property-rights Relations, the buyer becomes an owner from the moment of registration in land register.¹⁹ However, if the real property is not registered in the land register, right of apartment ownership is gained by archiving of the contract in the land-registry service of the court of the area on which the apartment is located and by the registering in the book on contract registrations which the court has founded.

The alimentionation of non-fiscal income from the sale of the apartments under the right of tenure was achieved by transferring of the property rights from seller to buyer, i.e. by a legal procedure²⁰ which is known by a term sale,²¹ and whose provisions always have to be in accord to the article 454 of the Law on Obligatory Relations.

“(1) The seller is obliged by the sale contract to hand over the item he is selling to the buyer in such a manner that the buyer can gain a control over it, i.e. the property right, and the buyer is obliged to pay the agreed price to the seller.

(2) The seller of a certain right is obliged to get the right he has sold to the buyer, and when the fulfillment of that right is demanding a possession of the item, to hand him over the item.”

INFORMATIONAL SYSTEM AS A BASIS FOR SUPERVISING AND EVIDENTING OF THE BUDGET REVENUES

Given the fact that in this case we have a partly brand new, non-fiscal form of the budget revenues, it was necessary to do the following: to change the existing informational system, and to adjust it to the new demands during the alimentionation of non-fiscal revenues from the sale of the apartments. In other words, it was necessary to build a completely new informational system which had to comply with all the technical and administrative demands to achieve the principles of promptness and efficiency during the alimentionation of this kind of budget revenues. However, this informational system, in order to comply with the demands of present and future times, has to more fully comply with certain demands, and which by their character present a basis of every informational system:

- Data accumulation,
- Data processing,
- Updating (storing) of the data and the information,
- Delivering of the data and the information.²²

CONCLUSION

¹⁹ “Narodne novine”, nr. 53/1991

²⁰ Legal action is the expression of the will of one or more parties, according to which the legal system relates legal consequences, which actually the parties are trying to achieve.

Perić, B.: *Struktura prava*, Pravni fakultet, Zagreb, yr. 1980, p. 62

²¹ A sale is a contract by which one side (the seller) is obliged to the other side (the buyer) to hand them over a certain item, and the buyer is obliged to pay a certain amount of money as a price for buying of the handed item. A sale is mostly a two-sided legal business, but it can be multi-sided by its character, when there are more than two sellers or buyers. In real estates market it is conducted in a written form, based on the sale contract. The basic elements (essentialia negoti) of the sale are the item of the sale and the price. By its character a sale can be: two-sided or multi-sided legal business; collectible legal business; consensual legal business; formal legal business; causal legal business.

²² Birolla, H. and others: *Osnove informatike, osmo izmjenjeno i dopunjeno izdanje*, Informator, Zagreb, yr. 1989, p. 55.

Globalization, specific characteristics of the certain countries, different historical heritage, and the changes of the political systems have their own repercussions on all the areas of social and economical activities, and especially in the informational sphere. On the other hand, since the fiscal strain level of the citizens of the Republic of Croatia has reached its maximum, more attention should be paid on non-fiscal financing of the public needs on the state and local government levels, and which will not be possible without an adequate support to the informational system. Therefore, more attention should be paid to the development of the informational system that will be in the function of promptness, accuracy and efficiency during the satisfying of the public needs.

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