




Rationalization of the local budget economy: a comparative analysis of the legislative basis in Poland and Romania in the concepts of positive law and natural law

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Abstract

Motivation: The contrast between positive law and natural law regarding the rationalization of public budget management is strongest at the local government level. Local government finances are governed by the budget law enacted by parliament. However, it is at the subnational level of government where the natural right to self-determination and making rational decisions in the interest of local communities is most apparent.

Aim: This article evaluates and compares the scope and instruments of Polish and Romanian budget laws that enable the rationalization of managing subnational budgets from the perspective of positive law and natural law. The article is based on research using qualitative methods (a literature review and a critical examination of financial legislation in Poland and Romania) and a descriptive comparative analysis.



Results: The research confirms the main thesis of the article that the pillar of budget management rationalization in Polish and Romanian local governments is a symbiosis of positive law with natural law, the underpinning and enhancement of which should be formal legislation.

Keywords: rationalization; management of local budgets; positive law; natural law

JEL: H70; H71; H77

1. Introduction

Rationalization is a broad term that usually relates to planned, purposeful, and reasoning-based activity. In the context of public finances and financial law, it is most frequently understood as efforts to reform a public finance system, reduce spending, and change its structure or base in order to make the most of public funds for the benefit of local communities. Unlike the positive law perspective that points to formal, legislative rules as the basis of local finance rationalization, natural law holds that the management of public funds is a natural right of people to undertake rational activity in their own interest and in accordance with their conscience. The importance of being able to undertake rational activity derives from the fact that fundamental public policy choices must consider both social equality and policy effectiveness. However, as “the choice in democracies is political” (Hillman, 2009, p. 519), public finance management and rationalization require the use of rational solutions based on legislation and theoretical principles described in the doctrine (Heckelman & Miller, 2015). As a result, the rationalization of public budget management must overcome many barriers to be successful (Guziejewska, 2013, pp. 55–69; Hijal-Moghrabi, 2019, pp. 387–406).

In modern democracies, the basis of government decentralization processes is positive law, whereas the concept of local government is associated with natural law and entities’ natural right to self-determination. The status of local government is determined by a more or less conscious acceptance of one of two concepts that explain its emergence. According to the first concept, a municipality is an independent being that has rights similar to the natural rights of other entities. The second concept holds that a municipality should be fully controlled by the central government because it is established by it to deliver services on its behalf (Sochacka-Krysiak, 1993, p. 17). Although essentially different, the concepts are also similar to some extent, as both divide local government services into local and those that are provided on behalf of the government. The distribution of powers and rights between the central and subnational levels of government depends on which of the concepts is considered more appropriate. The proponents of the state theory of local government perceive such distribution as a devolution of power because the central authorities that create local governments also grant them specific rights. The approach can also be called a functional one in the sense that it considers the existence of local government sensible as long as it supports the efficiency and effectiveness of the state

and of public service financing. Regardless of the original concepts and evolution of the role of local government, local finances have in time become part of countries' public finance systems, influencing their fiscal legislation (Modlin, 2010, pp. 571–593; von Daniels, 2016, pp. 1–14; Wildasin, 1997, pp. 14–33).

Assuming that the economic system, as well as the public sector, should be created and managed according to the principles of efficiency, equity, economy, and effectiveness, a practical problem arises as to how to make the frequently overregulated public finance systems respect them. For the sake of illustration, the budget law is so rigid that even the annual budgeting requirement frequently leads to irrational financial decisions being made at the end of the year.

This article attempts to assess whether the elements of positive law can be a basis for and strengthen the elements of natural law in local budget management. We assert that local government finances are the most appropriate for studying the problem of rationalizing budget management from the perspective of natural law and positive law because the natural right to self-determination is the essence of territorial self-government (Alexandru & Bălan, 2014, p. 578). The following comparative analysis of Polish and Romanian legal and financial systems is performed to learn more about the legal instruments and regulations that support the natural right of local governments to rationalize the management of their budgets. The findings of the comparative analysis are used as an argument in support of strengthening natural law at the local government level with positive laws.

2. Literature review

Understanding the rationalization of the budgetary process, in general, and the rationalization of local budget management, in particular, is a difficult task. We assert that this concept could be analysed through the lens of natural law and positive law because the natural right to self-determination is the essence of territorial self-government.

Examining the concept of local government requires a philosophical-contextual look at the status of entities' natural right to self-determination (Alexandru, 2013, p. 27). In that respect, the most consecrated definition of self-determination provides that all peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. This article was inserted in the two human rights covenants at the insistence of the newly independent, postcolonial members of the United Nations.

This notion appeared in the philosophy of Immanuel Kant in the eighteenth century. It was considered the seeds of the UN's concept of the right to national self-determination (Freeman, 2019, p. 2), which had serious implications in the field of public administration (Farazmand, 2009, p. 1012; Kiel, 1989, p. 549). The origin of the self-determination concept goes back to the writings of Mill, Marx, and Engels and, even earlier, to the work of Thomas Aqu-

nas (Fuller, 1964, p. 162). Therefore, the value of self-determination must be assessed in the broader context of the values of democracy, human rights, and justice.

One interpretation (Mälksoo, 1999, p. 76) of self-determination is offered by the principle of justice. Since the major concern for natural law is justice, the right of self-determination was qualified as a concept of natural law. Unlike positive law, which emphasizes the reliance on formal rules and procedures even when they are unjust, it is enough for natural law to be just in order to exist. (Schein, 1992, p. 78). One of the few cases of the “existence” of natural law is the Nuremberg Tribunal, which condemned Nazi leaders for having obeyed unjust positive laws, i.e., for having violated natural law by obeying positive law. According to Radbruch’s (1956, p. 345) formula, statutory law is intolerably incompatible with the requirements of justice; statutory law must be disregarded in favour of justice. Going further with these hypotheses, Viola (2017, p. 1) wondered whether effectiveness and formal validity are all that is required for there to be “a legal system” and whether a connection with criteria of justice is not necessary (Alexy, 1989, p. 170).

Winston (1981, p. 32) believes that a public body must not perform *ultra vires* acts, i.e., beyond its powers. Such conduct should undoubtedly be the consequence of observing a moral procedural principle. Equally, citizens’ freedom from possible abuses of public power must be protected by respecting a substantial moral principle. This context of internal and external constraints configures “a natural law of institutions and procedures.”

The conceptual problems that relate to the right of peoples to self-determination in order to manage their local affairs may be reduced to the controversy of how to reconcile irrational financial decisions with the rationalization of budget management. At the heart of local budget management and transformation processes is the concept of self-determination (Simon, 1972, p. 165; 1979, p. 497). In this sense, based on their natural right to self-determination, local governments are capable of learning, adjusting, and adapting to environmental pressures to make the best choice for the community they run (Farazmand, 2009, p. 1014).

Central to the concept of local budget management is that budgetary decisions are not context-free (Rubin, 1996, p. 123). The environment surroundings that affect and shape the direction of the budget are the interactions among the different actors in the budgetary process. It was argued by Hijal-Moghrabi (2019, p. 402) that this nonlinearity explains why it is so hard to rationalize the budgetary process.

Understanding the concept of local budget management requires a deep understanding of the relationships between the natural right of local government to self-determination and the necessity to adopt rational decisions. This understanding is essential because of its significant implications on the budget, which is more than a fiscal plan. It is also a plan of action, a statement of preferences, and a document of political economy.

3. Methods

This study is primarily based on comparative analysis because it aims to evaluate the range and types of tools available under the budget law in Poland and Romania for local governments to rationalize the management of their finances.

The analysis is conducted in the general framework of the concepts of positive law and natural law presented in the literature. The empirical analysis focuses on the elements of budgetary and financial legislation in both countries pertinent to the purpose of the study. The research used qualitative methods such as a literature review, a critical analysis of Polish and Romanian budget and financial laws, as well as the descriptive tools of comparative analysis.

4. Results and discussion

4.1. The legislative basis of the rationalization of local budget management in Poland

The national, local, and regional budgets are governed in Poland by the same legislation. However, there is also legislation that specifically applies to subnational budgets and selected entities in the public sector, e.g., enterprises established and controlled by municipalities. The key law that sets out the rules of public budget management in Poland is the *Act on public finance* (2009). Local and regional finances are also subjected to the *Act on local government revenues* (2003) and tax laws regulating local taxes. Many of the laws that enable budget management rationalization are formal and only indirectly relate to the rationalization and effectiveness of public finances. The provisions of the second of the acts were clearly intended as a formal and legal framework, as they provide the rules on determining subnational governments' own revenues (mainly their shares of national taxes) and general grants, and invoke specific executive provisions. The statutory rules for calculating the amounts of intergovernmental transfers (including national tax shares) are a guarantee for subnational governments of revenue certainty. Thus, they ensure the stability of financial management by regional and local authorities rather than directly contributing to its rationalization.

No legal definition of public expenditure rationalization or effectiveness has been created in Poland, so in most cases, they are interpreted in the economic sense. Then, rationalization is understood as efforts to produce the best results from minimum resources. Unfortunately, the performance of many assets utilized in the public sector is hardly measurable. Chapter 5 of the public finance act "Rules of public fund management" establishes that public expenditures must be made in a purposeful and sparing manner according to the following rules: 1) the best results from available resources, and 2) an optimal match between means and methods and the goals (art. 44, item 3, par. 1). The same ar-

ticle (par. 2 and 3) requires that expenditures be made in such a manner as to allow the timely completion of tasks and in amounts and on dates that allow the liabilities to be met. Other key budgeting rules include annual budget execution, a budget classification system, as well as a range of formal regulations introduced into parliamentary acts by the ministry of finance as executive ordinances. Experience shows that formal regulations differently influence the rationality of financial management in municipalities, in some cases making it less effective.

Past implementations of task-based budgeting in Poland show that local governments use few tools of modern financial management and resist using novel solutions unless they are required by law. The range of instruments that municipalities can use to rationalize budget management broadly includes budget planning and execution methods, methods for evaluating public services and projects, the public procurement system, financial control and audit, outsourcing and privatization, surveys of preferences of municipal service users, and elements of e-government. As for budget planning, the historical method of budget planning is the most common, which is unfortunate because it does not require monitoring or the systematic evaluation of progress towards accomplishing public goals and tasks. The main instruments for rationalizing budget management are the regulatory provisions of the budget law. Ironically, the provisions often have a different effect than intended, such as making authorities seek any way to spend unused funds in the last months of the year to close the budget accounts by the end of December.

The predominant use of traditional budget planning in the local government sector is due to the fact that no law requires the entire budget to be prepared using the task-budgeting approach. The public finance act only requires that it be applied to some budget items such as public administration services delegated by the government, multiannual financial forecasts, and management control. Further, article 40, item 3, par. 2 of the act subjects the accounting systems of local government units, local government budgetary units, and local government budgetary establishments to special regulations on documenting the execution of task-based budgets. Unfortunately, the provisions do not regulate the management of the whole budget, and, worse still, they lack key elements of task-based budgeting, such as public service indicators. The advantages of task-based budgeting are well covered, in contrast to risks to rational budget management in municipalities that may arise from poorly planned or executed task-based budgets. The main types of such risks that have been identified in Poland include (Filipiak & Dylewski, 2018, pp. 12–21; Misiąg, 2005, pp. 153–160; Przygodzka & Truszkowska-Kurstak, 2011, p. 657):

- the inappropriate selection and inconsistent construction of measures of public services, which may result in errors in the evaluation of their efficiency;
- a mismatch between the structure of services and public demand that occurs when the effects of an expenditure are determined based on the evaluation made by the service provider rather than the opinions of the service users;

- insufficient knowledge of the local community's needs when its satisfaction with services is inadequately monitored (limited to the regulatory requirements);
- problems with determining the real costs of services due to the inappropriate allocation of indirect costs;
- the construction of public service measured exclusively by the providers of public services and their staff may result in their inadequacy;
- a lack of strict division of responsibilities and clear rules regulating the accountability of personnel at different levels of the local government structure to fulfill their responsibilities may prevent the relationship between spent funds and the effects of public services from being correctly determined; and
- a motivational system that does not reward staff for performing their duties is unlikely to make them more productive and responsible.

The use of instruments that enable local governments in Poland to rationalize budget management depends on whether they are required by law or not. It is probably for this reason that task-based budgeting, which is optional, has not replaced the traditional approach to budgeting in municipalities and other entities. This observation is validated by the results of a survey of 50 mayors from rural and urban municipalities, all of whom implemented the internal audit function as a means of rationalizing financial management or improving the operational efficiency of their units only because it was required by law. Nevertheless, 30 of them acknowledged that internal audits made their municipalities more efficient, with 20 respondents rating the improvement as significant (Bartoszewicz & Lelusz, 2009, pp. 145–156).

The internal audit function was made mandatory for the general government sector by the public finance act in 2002 as an instrument necessary for local governments to rationalize their financial management. It is very complex and influenced by various exogenous and endogenous factors. The purpose of internal audits is to evaluate the effectiveness and rationality of financial management in local governments by reviewing accounting documents, accounting entries, and all processes through which public funds are raised and spent. The municipal management systems are analyzed in terms of their adequacy, efficiency, and effectiveness to provide the authorities with objective and independent knowledge of areas in need of improvement. Thus, the internal audit has a direct influence on the rationality of decision-making in municipalities and more economical use of public funds, without waste and misspending. As such, it can replace the very formal and strict budget law to some extent.

Participatory budgeting is an interesting case of an instrument created under natural law that came ahead of formal legislation. Since 2011, when it was first used by the Polish municipality of Sopot, the number of users (towns, cities and municipalities) has grown to around 320. Despite its increasing popularity, the parliamentary acts on municipal, poviát, and voivodeship governments were not amended until 2018, when provisions were added that regulate participatory budgeting. They became effective starting from the 2018 elections for local

governments. The details of how participatory budgeting should proceed are decided in resolutions made by municipal, powiat, or regional councils. In municipalities other than towns with powiat status, participatory budgeting is not mandatory. Compared with traditional budgeting, this instrument is very rarely used in Poland, making it a means for strengthening local democracy rather than a full-fledged way to rationalize the management of public finances at sub-national levels of government.

4.2. The legislative basis of the rationalization of local budget management in Romania

The current Romanian performance budgeting model combines elements of presentational performance and some elements of the performance-informed type. The steps of the budget drafting process at central and local levels are regulated by both the law on public finances and the law on fiscal-budgetary responsibility. A separate *Law regarding local public finances* (2006) regulates the budgetary procedure by laying out the principles and rules for the drafting, approval, execution and control of the local budgets (Mullins, 2007, p. 225). The provisions of the acts set up the formal and legal framework, as they provide the rules concerning local governments' own revenues (local levies, such as property tax, which are collected locally), distributed quotas from central tax sharing, the administration of public goods, and various other sources allowed by law (such as donations and subsidies). Transfers from the state budget to the local budget are made to support local investments, to implement national programs (e.g., environment, education, health), or other special purposes (regional development programs). Therefore, this contribution helps preserve the stability of financial management by regional and local authorities without questioning the need to rationalize the expenditures.

Like Poland, Romania does not have a legal definition of public expenditure rationalization, which tends to be understood in the economic sense. Evidence shows that for modern financial management tools to be effective, legal solutions are necessary. Romania is also similar to Poland in the range of instruments that municipalities can use to rationalize budget management.

Romanian public budgeting is based on a line-item system that, according to György et al. (2011) offers advantages such as: (i) relative simplicity; (ii) comprehensibility and ease of administration and monitoring of revenues and expenditures (Lazăr & Inceu, 2004a, p. 86). The main problem of line-item budgeting is that the expenditure items are not related to achieving a broader program or to policy objectives to develop the local economy. Line-item budgets list operating needs (such as wages and salaries), items allocation (such as goods and services) (Lazăr & Inceu, 2004b, p. 168), and they present a detailed destination map for each amount spent.

The analytical classification of line-item system features is excessive and conducive to the emergence of financial barriers to budget management,

which compromises the chances of achieving public goals and tasks (György & György, 2010, p. 363). Unfortunately, line-item budgeting does not support rationalization understood as obtaining the best results with minimum resources. According to Schaeffer and Yilmaz (2008, pp. 8–9), the line-item budget provides little information about the cost or performance of programs delivered. Decision-makers do not have an overview of how expenditures are prioritized and rationalized, or which projects should be funded or rejected. Another disadvantage is related to the timeframe, which in this case is a single budget cycle resulting in a lack of knowledge of the multi-year implications of the decisions made. From the point of view of integrated financial management, the budget is the first document an authority or an institution should create (Högye & Mc-Ferren, 2003, p. 19).

The National Reform Program of Romania (Council Recommendation..., 2020, p. 151), which provides for the reform of public administration, is stalling. There is no effective framework in place for strategic and budgetary planning, which has a knock-on effect on the strategic vision for the long-term development of the country, the prioritization of actions, and policy coordination at the central and local levels. The lack of planning and wrongly executed budgets lead to several risks, such as a lack of knowledge of local community needs, an inappropriate assessment of the real costs of services, and the development of incomplete documentation, which leads to the procurement of inappropriate goods and services. The sectoral strategic framework is fragmented and sometimes overlaps, which results in a lack of prioritization and rationalization of actions to be taken within sectors (World Bank, 2020, p. 21). The high fragmentation of powers and resources continues to affect the delivery of public services, especially at the local level and in poor communities.

In Romania, the internal public audit has a short history (Macarie & Moldovan, 2017, p. 23). Article 9 of *Law regarding the internal public audit* (2002) requires the heads of public entities to establish the internal audit function in the organization and, when such a function already exists, prohibits the use of auditors in other capacities. One of the key responsibilities of the internal audit is to make sure that all expenditures have been properly authorized. In order to provide decision-makers with the information necessary to assess the performance of an organization or to evaluate the effectiveness of a program, the need to extend the scope of the audit is acknowledged. Without effective audit, it is impossible to evaluate the efficiency and effectiveness of the budgeting system. The audit function provides the key feedback loop in the budgeting rationalization process. (Nistor & Deaconu, 2016, p. 625)

Romanian legislation does not provide a working definition of the concept of participatory budgeting. However, there is a legal framework for the transparency of local decision-making (William et al., 2015, p. 14), which obliges local authorities to inform and consult the citizens (Chen & Neshkova, 2019, p. 3), legitimizing the forms of participatory budgeting. Public participation (including participatory budgeting) is regulated by the administrative code,

the budgetary rules, and the requirement of transparent decision making (Boc, 2019, p. 42).

In recent years, this instrument has become much more frequently used in Romania than traditional budgeting. It is regarded as an effective tool for stimulating citizens' involvement in the activities of local government. Participatory budgeting is also a mechanism that encourages transparent and more efficient resource allocation tailored to the specific needs of local communities rather than an instrument used to rationalize the management of public finances at local levels (CDLR, 2011, p. 10).

4.3. Comparing traditional and innovative instruments for rationalizing local budget management

Table 1 compares traditional and new instruments in Poland and Romania that allow local governments to rationalize the management of their budgets. The traditional budget law frequently causes rigidities and inefficiencies in the management of public finances. A remedy for these problems is the use of modern financial management methods in the general government sector that derive from specific laws and the natural right of local governments to self-determination and make rational decisions about their communities.

Comparing Polish and Romanian legislation on local financial management instruments reveals that their basis is positive law and traditional public finance acts, along with complementary acts. There are many innovative solutions that Poland and Romania could — but do not — use. A large number of them derive from natural law and do not need formal legislation to be implemented by local governments, a sufficient reason for their practical use and the governments' right to self-determination. As a result, there is room for local governments in both countries to develop their own approaches and initiatives within local budget management based on their right to self-determination and self-government.

Further research in this area is needed to determine how many and which local governments use natural law instruments and tools other than those provided by traditional budget law to rationalize their financial management. From the perspective of the new political economy, it would also be very interesting to know what factors, external and internal, make local governments implement them.

5. Conclusion

Rationality is one of those words that the science and practice of public life use the most frequently, even though it has not been clearly defined in either law or economics. Etymologically, rationality means acting based on scientific reasons and rules, in a reasonable manner and according to one's knowledge. Sociology assumes that the actions of a rational entity are guided by its community's

hierarchy of values and preferences. Hence, natural law and the pragmatism of acting can be used to the greatest extent for local budget management.

Our comparative study of Poland and Romania has shown that, as a result of both countries giving priority to positive laws, the budget law provisions are the main framework for local governments' efforts to rationalize the management of their budgets. By contrast, the opportunities created by natural law (participatory budgeting, modern budget planning methods, consultations with communities, direct budgetary control of the residents, and solutions of self-determination and independent decision-making about budget expenditures) are used much more rarely. In many cases, local governments avoid active management of their budgets without a proper legislative basis. While more detailed research is needed to determine the range of financial management methods that derive from natural law and the circumstances in which local governments use them, the current findings suggest that local government efforts and initiatives to rationalize budget management are largely determined by national legislation. One issue of rational budget management could be the need to increase their capacity to make predictions, to curtail the conservative forecasts made by the authorities, especially on revenue and expenses that it is not necessary to reduce. Therefore, regarding budgeting in Poland and Romania, there are no short-term solutions, only long-term ones.

Formal legislation can be a significant impediment to the rational management of local finances. Many of its weaknesses can be mitigated by using, wherever possible, methods based on local governments' natural right to self-determination and autonomy. An effective precaution for reducing the risk of local authorities and decision-makers who attempt to abuse their powers is allowing local communities to have direct control over their decisions. Local governments in Poland and Romania should also consider wider consultations with communities, as well as surveying their preferences as to the range and types of public services because in planning local budget expenditures, residents' needs should have priority over traditional budgeting methods.

In both Poland and Romania, there are many opportunities to implement solutions based on the natural law concept, especially in the current period of the Covid-19 pandemic, which has reinforced centralist tendencies, but that also requires that many actions and decisions be made locally. Both previous experiences and the challenges associated with the pandemic have created many opportunities for local governments in both countries to use the natural rights concept as a vehicle for managing and rationalizing their budgets.

The economic crises in recent decades and the need to improve the rationalization of local budgets in the phase concerning budget deficit could become a chance to address the planning of medium and long-term sustainable budget management.

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Appendix

Table 1.
A comparison of instruments relating to the management of local budgets in Poland and Romania

Instrument	Poland: Legislative Basis	Romania: Legislative Basis
openness of public finances	The Public Finance Act	The Public Finance Act
transparency of budgetary process	The Public Finance Act	The Public Finance Act
fiscal rules at local level	The Public Finance Act	The Public Finance Act
traditional planning	The Public Finance Act	The Public Finance Act
innovative planning (zero base budgeting, cost-benefit analysis, etc.)	non-existent	non-existent
participatory budgeting	The Municipal Government Act, the Poviats Government Act, and the Voivodeship Government Act	non-existent
task-based budgeting	There is no legislation regulating the preparation of the whole local budget; some local governments use task-based budgeting as an option; task-based budgeting is mandatory only for some activities such as preparing a multiannual financial forecast in the extent of municipal investment projects.	The public budget continues to be the classical one, while the ISP (Institutional Strategic Plans) is a separate document that mainly presents the priorities of the policy agenda and shows and monitors the results (outputs, outcomes).
local referenda & public consultations	The municipal government act and the general requirement to hold public consultations in cases specified by law. The way public consultations are carried out meets with strong criticism due to cases of authorities abusing them.	The administrative code and other pieces of legislation regulate the obligation of municipalities to consult the population in the decision-making process. The way public consultations are carried out is formal because there are no provisions related to the way citizens' feedback is implemented following consultations.
expert methods	non-existent	non-existent
analysis of demand-supply and preferences of selected public services in local community, public choice elements	non-existent	non-existent
public procurement law	The Public Procurement Law	The Public Procurement Law
internal audit	The Public Finance Act	The Public Finance Act
the supervisory authority	The law on Regional Chambers of Audit, which have the right to verify the formal and legal aspects of local financial management, but do not assess it in terms of purposefulness and rationality.	The law on Regional Chambers of Audit, which have the right to verify the formal and legal aspects of local financial management, but do not assess it in terms of opportunity of the decision.

Source: Own preparation.