

BENEFIT OF KIND AS A METHOD OF MANAGING RENT ARREARS IN THE MUNICIPALITY OF CZĘSTOCHOWA

Michał Dziadkiewicz¹, Jarosław Jan Jasinski²

¹PhD., Assistant Professor,

²PhD., Assistant Professor

*^{1,2}Institute of Logistics and International Management, Faculty of Management,
Czestochowa University of Technology*

ABSTRACT:

The article presents the problem of rent arrears as an essential aspect of managing the finances of municipalities. The issues of collectability of receivables of municipalities on account of the lease of municipal premises, in particular premises that belong to the municipal housing stock, were presented in relation to the legal provisions regulating the functioning of municipalities and determining their tasks, as well as the generally applicable provisions of the civil law. With reference to the causes of the emergence of debt on account of unpaid rent receivables, the article points out the possibilities to reduce debt by means of agreement and rational cooperation between debtors and creditors – local government units. Practical initiatives and measures taken in order to reduce the level of debt of the lessees of municipal premises are shown on the basis of examples of debt relief programs which function in municipalities and an analysis of the effects of one such programs, implemented by the Municipality of Czestochowa.

KEY WORDS:

Tasks of municipalities, municipal housing stock, management of receivables of the municipality, sources of municipal income (revenue), rent debt (rent arrears), debt reduction

INTRODUCTION

Local governments are not entities established in order to raise revenue. Public tasks assigned to them mostly involve only expenditures, however, the fact that local government units are not profit oriented, does not exempt them from taking measures to recover their arrears, which include, among others, receivables due to financial liabilities of the lessees of municipal premises. It seems that such a situation affects the attempts to define the notion of financial management of the municipality, which may be referred to as a decision-making process aiming at the implementation of the main goal of the local government, based on the use of various sorts of instruments, techniques, criteria and rules to control the course of events related to the collection and expenditure of monetary resources placed at the disposal of the local government in a way that enables the most rational management of these resources [1].

THE FUNCTIONING OF MUNICIPALITIES AND SOURCES OF SOME OF THEIR TASKS IN LEGAL TERMS

The legal act that regulates the functioning of municipalities and defines their tasks is the Law of 8 March 1990 on local government (i.e. Dz. U. (*The Journal of Laws of the Republic of Poland*) no. 142 of 2001, item 1591, as amended). This law states that, among other things, municipalities perform public tasks assigned to them on their own behalf and at their own risk. These tasks are not only the subject of legal analyses, but also of interest to economic sciences, including the management science [2]. Among the statutory own tasks of municipalities is the creation of conditions to meet the housing needs of the local community. The municipality, under the rules and in cases provided for in the Law, provides social and substitute housings, but also meets the housing needs of households with low income [3]. The municipality performs these tasks by means of using the municipal housing resources or in some other way [4]. Allowing the municipality a possibility to carry out the tasks of creating the conditions to satisfy the housing needs of the local community in some other way than with the use of the municipal housing stock, relates to the regulation of Art. 20 (1)(10) of the Law of 21 June 2001 on the protection of the rights of tenants, municipal housing stock and on amending the Civil Law, from which it follows that the municipality may, but does not have to own the housing stock; however, if the municipality creates or owns the housing resources, then it has to do it only in order to create the conditions to fulfil the housing needs of the local community or in order to provide social housings or substitute accommodation under the rules and in cases provided for in the Law, as well as to cater for the residential needs of households with low income. Autonomy of municipalities in managing their property is of considerable significance here [5].

THE HOUSING STOCK OF THE MUNICIPALITY AS A SOURCE OF ITS INCOME

The housing stock of the municipality, which is created and managed by a local government unit in order to implement its public tasks, imposed upon the municipality by Art. 4 of the Law on the protection of the rights of tenants, are premises owned by the municipality, municipal legal persons or commercial companies established with the share of the municipality, except for social housing associations, as well as premises which remain in autonomous possession of these entities [6]. Flats which belong to that stock are intended for rent. This applies to this group of the community which is not able, using their own capabilities (both financial and living), to rent a flat on the aftermarket, as well as build it or buy it. The function that those municipal flats are to perform is to provide assistance to people with a low standard of living (the poorest). It should also be noted that the management of the municipal housing stock is to enable the municipality to generate revenue [7]. The fundamental source of income derived from the rental of municipal premises is the payment of rent, periodically paid to the municipality by tenants. The lack of these payments from tenants causes an actual decrease in revenues to the municipal budget, and as a result, also a real reduction of financial resources possessed by the municipality. Such a state of affairs,

occurring in practice too frequently, forces municipalities to take measures in order to eliminate the debt of tenants of municipal premises, and at least to reduce its level. Bearing in mind that the tenants of premises that belong to the municipal housing stock are mainly people struggling with marginalization and social exclusion, who cannot overcome their difficult situation on their own, municipalities are forced to use such tools of managing rent arrears that would ensure optimum effectiveness, while adjusting to the situation of the indebted at the same time. This includes tools of social economy that reduce negative effects of marginalization and social exclusion, used by entities which implement tasks of vocational and social reintegration by means of providing the following services:

- developing skills that enable to perform social roles and to achieve social positions available to those who are not subject to social exclusion;
- acquiring professional skills and apprenticeship training, retraining or raising qualifications;
- teaching life planning and satisfying the needs through one's own effort, especially due to the opportunity to earn their own income via employment or economic activity [8].

PRACTICAL POSSIBILITIES OF REDUCING RENT ARREARS OF THE LESSEES OF MUNICIPAL PREMISES

Skilful management of rent arrears from tenants of municipal premises is therefore particularly important for municipalities, and it requires undertaking various steps to eliminate or at least reduce those arrears. Searching for ways to reduce rent arrears from tenants of municipal premises, municipalities resort to various solutions, among which the idea of working off the arrears by the indebted is enjoying a growing interest. Such a solution is generally beneficial for both indebted individuals and for municipalities which manage their own housing stock. Programs to reduce rent arrears of users of social housing units may function on the basis of social economy entities that are provided for by law (Social Integration Centre or Social Integration Club). They are also adopted and implemented as solutions which function independently, whereas basic elements of such programs coincide with those that were characterized earlier. In a simplified variant, concentrated mostly on the material aspect of providing assistance to tenants of municipal premises, local government units adopt programs which are meant to facilitate the repayment of debts to the municipality due to the use of municipal dwellings. These programs are directed to those who are in a difficult material situation and are intended to increase the sense of economic security of the poorest, especially when their debt due to unpaid rent results from a difficult life situation caused by such factors as long-term unemployment, disability or other random events. Implementation of such programs, excluding most of the activities designed for social reintegration of the indebted, is usually less expensive and therefore more cost-effective. Attempts to implement the idea of working off rent arrears to the municipality by debtors, undertaken by local governments more and more frequently, take advantage of the opportunities that are created by provisions of the civil law, and in particular art. 453 and 659 of the Civil Law [9]. Generally speaking, these provisions allow to replace the obligation to pay the rent in money

with the fulfilment of another benefit [10]. From the perspective of the civil law, a change of the subject of the benefit does not cause any significant problems. However, it should be emphasized that in case of benefits resulting from the lease of municipal premises, owned by the municipality, it is necessary to take into account not only the civil law aspects of the change, but also aspects of the administrative and financial laws. After all, the creditor under the lease of municipal premises is a local government unit, i.e. an entity subject to the discipline of public finances.

DEBT CLEARING PROGRAMS WHICH DO NOT INCLUDE SOCIAL INTEGRATION OF THE DEBTORS

An example of a program that is mainly geared towards helping to pay off rent arrears of tenants of the premises belonging to the municipal housing stock, is the regulations of actions on facilitating the repayment of liabilities to the municipality of Czestochowa due to using the premises that are part of the housing stock of the Municipality to those who are in a difficult financial situation, introduced by the order of the Mayor of The City of Czestochowa [11]. The administrative and legal basis for the program is the Order no. 2366/14 of the Mayor of Czestochowa, through which the aforesaid regulations were introduced, whereas the detailed terms and conditions of using the projected facilitations were included in particular provisions of the regulations. The simplification, which may be noted in the discussed solution, is expressed in a relatively liberal way of defining the conditions for the debtors to participate in the debt reduction scheme or, as is formulated in the cited documents, the facilitation of the repayment of liabilities arising from the use of residential premises to persons in a difficult financial situation. Analyzing the regulations, it is easy to notice that in fact it is a *sui generis* record of the action procedure for the recovery by the municipality of the unpaid receivables arising from the use of municipal premises. This procedure in its first part involves activities that are characteristic to the pre-court debt collection (the initial stage of asserting receivables), specifying the conditions and dates of their implementation, while in the second part it is focused on preparing and carrying out the judicial enforcement of receivables with simultaneous termination of the lease contract to the debtor. The third part, however, is devoted exclusively to the assistance (facilitation) to those tenants who are burdened with arrears in paying rent debt. Written in the regulations, the facilitation in paying off the debt occurs in two variants. The first one is a possibility of spreading the debt into instalments, while the second one, particularly interesting from the view of the subject matter of this article – a variant of settling the arrears in the form of benefit in kind. The condition for the use of a relief in paying off the rent arrears, in the form of spreading it out into instalments, is a relevant request of the debtor, and this activity is carried out in accordance with the rules set out in the respective resolution of the City Council on the detailed principles of amortizing, postponing and spreading into instalments the receivables of the Municipality of Czestochowa along with the subordinate organizational units of the Municipality of Czestochowa due to civil-law receivables and cash equivalents. Giving the debtor the possibility to settle his/her rent debt in the form of instalments does not determine the possibility of immediate chargeability in relation to the entire debt or its unpaid part, when the debtor

violates the terms of the payment by instalments, particularly the payment deadlines imposed on it. The use of the second facilitation under the regulations – the possibility to settle one's arrears in the form of benefit in kind, also takes place at the request of the debtor, however, the assessment of the financial situation of the applicant is carried out on the basis of the criteria concerning the income eligibility specified in the law of 21 June 2001 on housing allowances, entitling to receive a housing allowance, as well as (alternatively) the situation resulting, among other things, from the long-term unemployment of the debtor, his/her disability or other fortuitous events that prevent the debtor from the fulfilment of financial liabilities arising from the lease of the municipal premises [12]. The debtor presents the fulfilment of these conditions in the request for spreading the rent debt or independent fees into instalments or settling rent arrears in the form of benefits in kind. As the regulations provide for, the benefit in kind may be carried out by means of performing various tasks agreed with the debtor, resulting from the needs of the municipality, such as cleaning of buildings, pavements, car parks or playgrounds, painting window frames, door woodwork, fences, posts, benches.” - § 14 paragraph 2 of the Regulations. In legal and organizational terms of the scheme, it should be noted that the characterized above benefit in kind is carried out on the basis of the contract-agreement, related to the repayment of one's debt in the form of benefits in kind by persons having a legal title to the premises or by persons who use the premises without the legal title (in the latter case, the benefit in kind also applies to the debt for the compensation for the non-contractual use of the premises). The legal structure of the contract is based on the provisions of art. 453 and 659 § 2 of the Civil Code, whereby the parties to the contract clearly express their consent to change the form of payment of the rent debt from monetary benefit to benefit in kind. In contrast to the debt relief programs, based on employing the debtors on the basis of the provisions of the labour law, the regulations clearly state as follows: „The debtor who is settling his/her debt in the form of benefits in kind is not an employee under the provisions of the Labour code.” - § 19 of the Regulations. Therefore, the Municipality is not obliged to create and maintain jobs in compliance with the conditions regulated by provisions of the widely understood labour law, which is economically more beneficial for the municipality, and from the perspective of the debtors, not without significance is the flexibility of the suggested solutions, both in terms of the time, place and type of the provided benefit, as well as the possibility to entrust the provision of the benefit to a third party (while complying with the specific conditions that result from the contract-agreement).

RENT IN THE FORM OF BENEFIT IN KIND IN THE PRACTICE OF THE MUNICIPALITY OF CZESTOCHOWA

Analysis of the program of paying off debt arrears in the form of benefit in kind, implemented by *ZGM TBS Czestochowa sp. z o.o.*, included the first months of its operation. Fig. 1 illustrates a general amount of liabilities included in the program. The amounts are significant for the lessor and in particular months they exceed the amount of 250 thousand zlotys (PLN). This allows to assess the scheme at the very

beginning as a relevant tool of the out of court recovery of debt that arises from the use of premises.

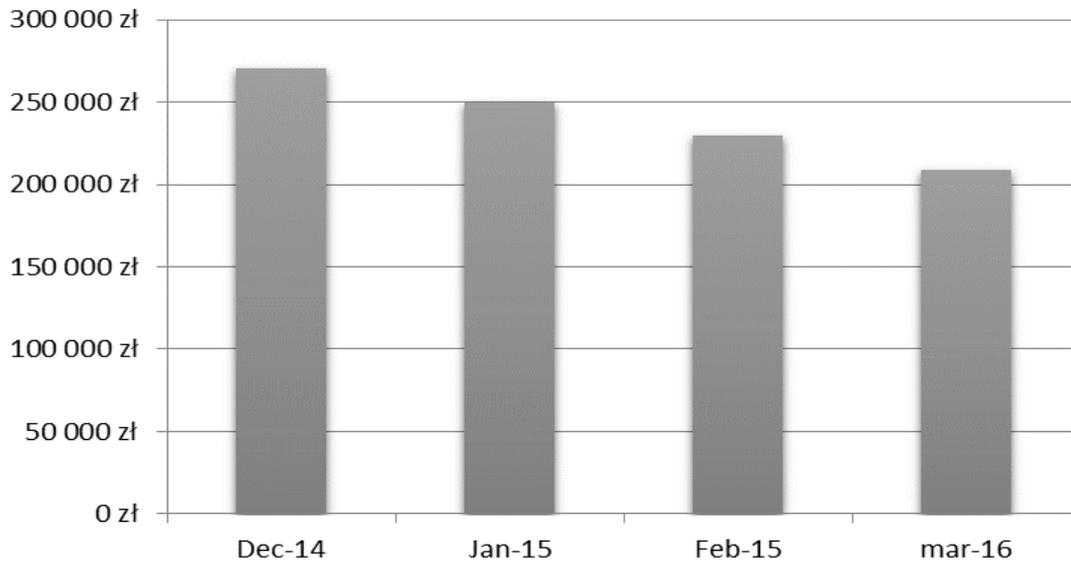


Fig. 1

Amounts of liabilities included in the benefits in kind program (own study).

Figure 2 presents the structure of debt that was included in the program. In case of 33% of the debtors, these are debts over 10 thousand zlotys (PLN), while the greatest debt was nearly 40 thousand zlotys (PLN). These kinds of debt are very high and their incurrence is connected with the pronounced eviction with the right to social housing. This means that those debtors are not in principle subject to judicial recovery, and such a significant increase in the debt is caused by the possibility of executing the eviction judgement or is created together with the fact of using the social premises. The very fact that those debtors make effort in order to work off their receivables deserves a positive evaluation, because apart from reducing the liability of the company, it does not bear the high cost of enforcement proceedings which, in case of this type of debtors, are nevertheless discontinued as ineffective. Another group of debt is represented by 38 % of the debtors – with the debt under 10 thousand zlotys (PLN). The program, targeted at this group of debtors, allows to avoid the debt spiral leading to the accumulation of high arrears, which somehow condemn the debtor to using social housing or, if he/she does not have such rights, even threaten with eviction into the street. In this case, the benefits of the debt collection that the Municipality obtains, are combined with the aim to avoid social exclusion of those debtors or an increase in the phenomenon of homelessness. The last group of debtors – 29 % are small debtors with arrears up to 1 thousand zloty (PLN). Such debt does not generally even entitle the lessor to terminate the lease agreement. In this case, the decision to include this group of debtors within the program was dictated by an intention to promote attitudes of lessees who aim at avoiding the accumulation of rent arrears. The lessor allows those who were not able to settle the debt in cash for reasons of chance, to work it off in the form of benefit in kind.

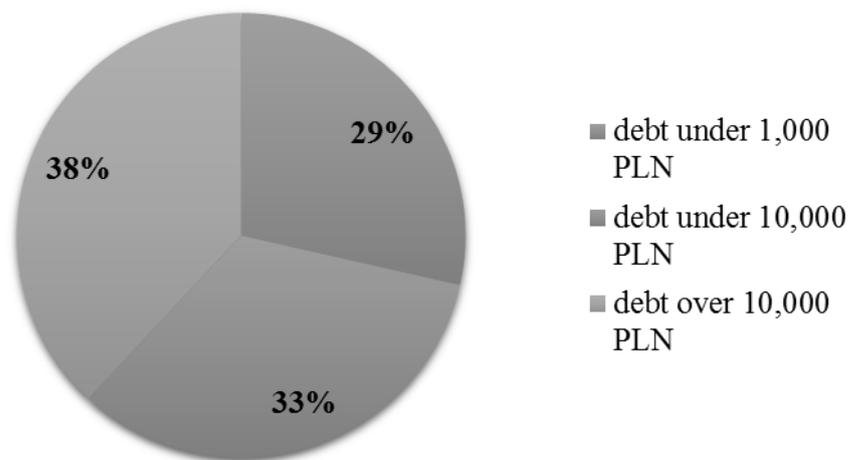


Fig. 2
Debt structure included in the benefits in kind program (own study)

Another figure (Fig. 3) presents the average value of the debt that is being worked off. These amounts exceeded 700 PLN monthly – which exceeds the average rent and considerably exceeds the value of rent for social or temporary housing. Obviously, a higher average amount of the debt to be worked off would enable more effective debt reduction of tenants, however, the possibility to increase it is limited by the abilities of the municipality to provide a package of paid benefits for the debtors. Still, it is worth emphasizing that in some cases the monthly amounts of the debts to be worked off exceeded one thousand zloty.

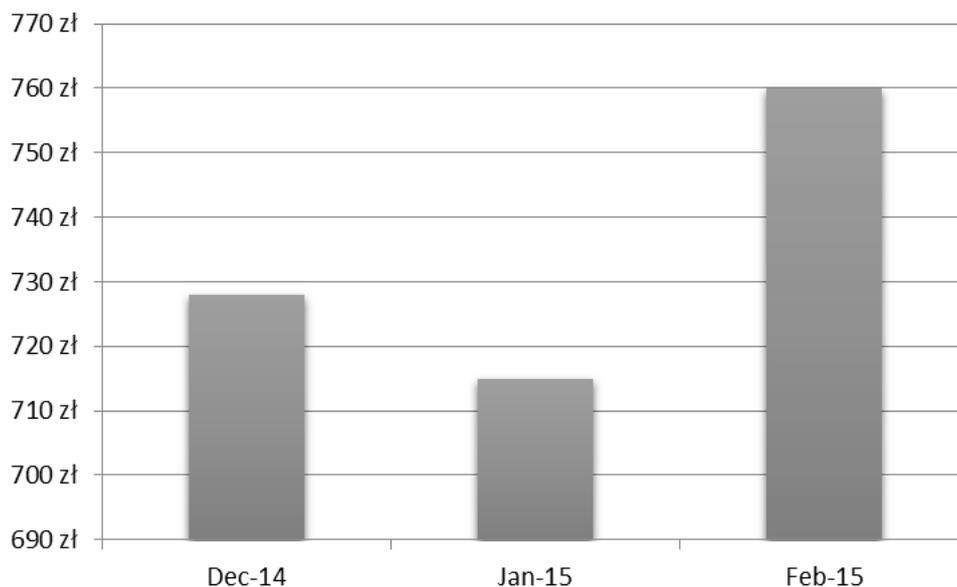


Fig. 3
Average value of the debt that is worked off as part of the benefits in kind program (own study).

Figure 4 presents forms of benefits in kind that were implemented in the first month of the operation of the scheme. In case of a significant part of debtors – 35%, these

were jobs not requiring any qualifications connected with the supervision of the real estate managed by the Company. The second group of works – 42%, were jobs as an office assistant, involving the distribution and dealing with correspondence, information etc. The third group of debtors – 23 %, were workers with qualifications enabling them to perform renovation works, specifically works connected with painting staircases. It is worth noting that in the group of skilled workers there were some difficulties with implementing the program, e.g. quitting the scheme when it was in progress, excused by circumstances that "professional responsibilities" did not allow to continue it. These incidents indicated that a small part of debtors hid their income or did some odd jobs while receiving formally unreported payment for their performance („to hand”) and thus avoiding any possible deductions related to the existing debt. But even in such cases, the implementation of the program enabled to determine the persistence in failing to pay off one's debts and was an important argument in judicial recovery proceedings, or lawsuits for eviction from premises.

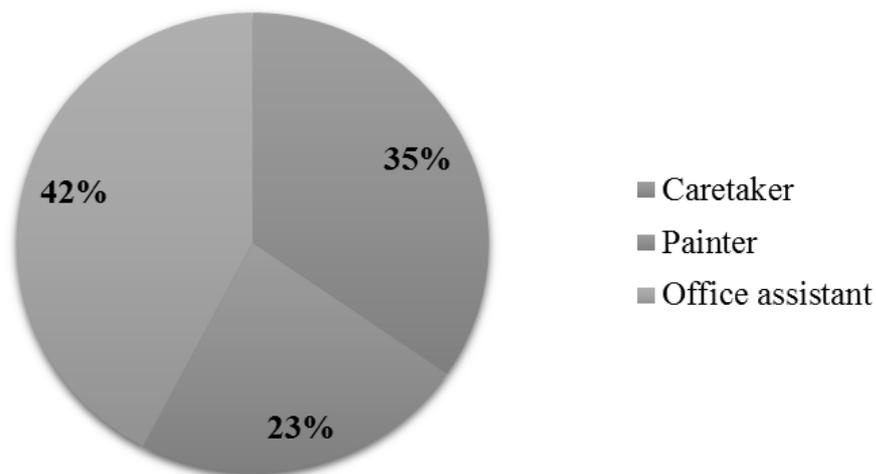


Fig. 4
Forms of benefits in kind carried out during the program (own study)

SUMMARY

The management of finances of the local government unit is an element of managing the functioning of this unit, and the management of regional and local development. The local government performs many tasks which affect the state of land development of the municipality and the standard of living of its residents. A necessary condition for autonomy is to have a sufficiently high sum of financial resources to cover the costs of current operations and capital expenditure. This condition seems to be one of the most important ones. An inseparable element of the realization of the budget of a local government unit is to ensure the implementation of the projected income. Taking into account the fact that the income from the assets of the municipality, which is its housing stock, depends largely on the environment, including changes of the economic situation of the local government community members, proper management of rent arrears of tenants of

municipal premises is particularly important for the implementation of the municipal budget. arrears to the municipality under the lease of municipal premises cannot be avoided, bearing in mind personal characteristics of tenants and a difficult life situation they usually encounter. Therefore, making all possible attempts to decrease the level of rent arrears, also by means of alleviating the difficult material situation of tenants, is an essential element of the proper management of financial resources of the municipality.

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