

PRESENTATION ON JUDICIAL BUDGETING: DENMARK'S CASE

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Introduction

I have had the pleasure to talk about this subject (judicial budgeting) several times here in Romania. I will try this time to provide a new twist to my presentation, but of course with the aim to make it relevant to the general discussion today.

On earlier occasions I have compared how judicial budgeting is carried out in different European countries. This time, however, I will instead provide a more in-depth discussion on how judicial budgeting is carried out in one particular country: Denmark. It is in that context important to remember that administrative practices can rarely easily be transferred from one country to another, so my discussion of the situation in Denmark does not necessarily imply recommendations for what to do in Romania.

During my presentation I want to:

- Tell you about a success story about budgetary reform. It is not about court budgeting, but educational financing in Denmark.
- Explain how some of the ideas from educational finance were transferred to court budgeting.
- Discuss some organizational issues: How the roles are divided among judicial organizations, and how Denmark provides an example of a “happy divorce” between the judicial council/Court Administration and the Ministry of Justice.

Success story from Educational Finance

The public educational budget in Denmark is huge since education (from primary school to university) is free. Even the so-called “private” schools are largely funded by the public budget.

Unfortunately the educational budget was in the late 80'es early 90'es inefficiently managed. Some of the major deficiencies were:

- Budgets for educational institutions were not adjusted when the number of students changed.

- This implied that some educational institutions would end up with very high student/teacher ratios, while others would have very low ratios. In reality schools were “punished” for their ability to attract students.
- For the same reason educational institutions had no incentive to attract students or prevent drop-outs.
- There was a continuous political unrest and dissatisfaction with erosion of “standards”. When the number of students decreased schools might respond by increasing “quality standards”. When the number increased again students would go to the streets manifesting against “unfair” quality reductions, because they (and their teachers) had gotten used to the new higher standards.
- When finally budgets were adjusted (and this happened sometimes, of course) it was not done in a transparent way. Educational institutions with connections to “lobby” their case appeared to have an advantage.
- There was an extreme centralized control over educational spending. Almost every expense had to be approved by the ministry. Besides the bureaucracy, the problem was that often it would be the schools, and not the ministry, that had the best knowledge on how to wisely spend the money.
- If schools took found a way to save money, they would at the end of the fiscal year be “punished” by confiscation of any surplus they might have generated. They had no incentive to economize with resources.

A major reform of educational finance took place in order to deal with these problems. The budget of each educational institution was now made activity-based. For this purpose a price – or “taximeter”- was calculated for each type of student. For instance, at the university the taximeter for a law school student would be rather low, since such students can be taught in large classes without much use of expensive equipment. In contrast, the taximeter for medical students of students of physics would be much higher.

In addition, a separate taximeter (per student) was established for education, for administration, and for school buildings.

For higher education the taximeter-money is only paid to the university each time the student graduated an exam, thus providing an incentive for the university to improve teaching quality (it should be noted here that in Denmark there is an external body of examiners, so that universities will not be able to increase passing rates by providing “easy” exams or just passing all students).

Furthermore, educational institutions are now allowed to spend money based solely upon their own judgment and preferences (but still according to law, of course). They can freely shift money between the budgets for e.g. education, administration or buildings.

Educational institutions are now allowed to carry over savings from one year to another. As part of the reform a new type of “self-governing” institution was established. According to some legal interpretations it will now be unconstitutional for the government to confiscate the surplus of such institutions.

The reform did turn out to be a major success. I must confess that my interpretation here may be slightly biased, since I was heavily involved in some of the late phases of the reform. Some of the major accomplishments were:

- Increased completion among educational institutions. They now had a clear incentive to try to attract more students (by e.g. increasing quality) and to try to prevent drop-outs.
- Rapid discontinuation of unprofitable activities
- Vastly increased focus on “value for money”

Obviously, the reform initially met with fierce resistance from various “vested interests”. Fortunately, the politicians at the time were bold enough to implement the reform, and today the soundness of these new principles of educational finance are rarely put into question.

Implications for court budgeting

The success of the above mentioned reform of educational finance in Denmark did influence also court budgeting. In fact, court budgeting traditionally suffered from some of the same problems which plagued the educational sector:

- There was virtually no reallocation of budgets when activity changed. Court budgets reflected mostly historical spending patterns. The Ministry of Justice appeared to be reluctant to adjust budgets, perhaps because they were afraid this might be interpreted as an inappropriate interference in court matters.
- Rumors about major imbalances in the allocation of resources, e.g. the existence of highly understaffed and overstaffed courts, circulated. But the issue was not thoroughly analyzed.
- There was a detailed centralized control of spending decisions. This resulted in inefficient use of resources since courts were not allowed to spend the budget as they found most appropriate. There was a huge contrast between the authority and power granted to judges making important judicial decisions, and the lack of authority they had in relation to budgetary decisions.
- Courts had no incentive to save money, since any surplus by the end of the year was likely to be confiscated.

Of course there are some substantial differences between courts and educational institutions that one should consider here:

- Courts cannot (and should not) attract cases, like educational institutions can attract students. That said, courts facing a vastly increasing number of cases are likely to be much less “depressed” about that situation if they know that someone is monitoring the development and is prepared to adjust budgets accordingly.
- Courts are rarely able to adjust budgets as quickly as educational institutions, because judges cannot be transferred against their will. Still there is potential to adjust the budgets, it just takes more time, and in Denmark the number of clerks and deputy judges in each court can in fact be adjusted on the short-term since these groups of staff do not enjoy the same kind of protection against transfers.

The reform of court budgeting in Denmark, principally taking place from 2000 to 2002, had the following main characteristics:

- A system with case weights (much like the “taximeter”) was established. The weights were established as “cost per case” for different types of cases, reflecting time registration by staff and expert assessments.
- The weights are used to calculate court productivity as the weighted number of cases divided by the number of full-time equivalent judges and clerks (separate productivity indicators were established for judges and clerks).
- The productivity indicator is broken down for each court section, allowing courts to use the indicators for internal management.
- Resource allocation between courts is based upon the measure of court productivity. When vacancies arise, the Court Administration takes into account productivity when deciding what to do. If the court has a low productivity, the position will be reallocated to another court with high productivity.
- Courts have been required to establish targets for their productivity, broken down for each section.
- Courts are benchmarked on their productivity, so that they are compared to average court productivity as well as to the productivity of the 10 most productive courts.
- A pilot project was initialized on decentralization of economic management, allowing courts to spend the non-salary part of the budget according to their own judgment. Based on the results of the pilot the principle was eventually expanded to all courts.

The overall result of the budgetary reform – again my assessment may be slightly biased – was an increased court productivity and better value for money.

Organizational issues

It is finally relevant to consider that the reform of court budgeting was preceded by a reform of the organization of the judiciary. It may be argued that this organizational restructuring helped facilitate the budgetary reform.

While the budget had up to 1999 been managed by the Ministry of Justice, this responsibility was in 1999 transferred to an independent Courts Administration. At the same time, the competence to appoint judges was transferred from the Ministry to an independent Judicial Appointments Council.

With regard to the judicial budget, the Fiscal Bill contains one overall budget for all courts. The Courts Administration decides how to allocate this budget between courts.

When negotiating the overall court budget, the Court Administration has (as the only public institution in Denmark) special access to the parliament, if it feels that the Ministry of justice or the Ministry of Finance do not take proper care of court interests.

The Court Administration is responsible for ensuring a proper and appropriate economic management of the courts. The current president of the Court administration is not a judge.

The General Public Auditor audits the accounts of the courts and the Courts Administration. If the General Public Auditor finds an extreme case of economic mismanagement the Minister of Justice may dismiss the board of the Court administration (but this is the only situation when the minister may do so). In this way there is a certain “safeguard” against economic mismanagement by the otherwise independent Court Administration.

The organizational reform of the judiciary may also be perceived as a success. At the time, the Ministry of justice appeared to be happy to let go of the courts. The Danish Ministry of Justice traditionally perceives itself as the governments primary legal advisor (it provides legal advice to the other ministries), and it is not known for any strong competencies with regard to management and administration of organizations. Besides, the courts have since 1999 proven that they are quite able to manage themselves.

In this way, the Danish reform may be perceived as an example of a “happy divorce” between the Ministry of Justice and the court system. It should be noted, however, that there also in Europe appears to be examples of (largely) “happy marriages”, like in e.g. Finland and Germany.