

REGULATION OF PUBLIC FINANCES  
IN LIGHT OF FINANCIAL  
CONSTITUTIONALITY

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# REGULATION OF PUBLIC FINANCES IN LIGHT OF FINANCIAL CONSTITUTIONALITY

*Analysis on Certain Central and  
Eastern European Countries*

*Edited by*  
Zoltán NAGY



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## | INTRODUCTION |

Zoltán NAGY

Public finance law is one of the most dynamically developing areas of law in recent decades, covering a wide range of knowledge through its diverse regulatory areas. The complexity of social life creates major challenges for public finance law. The economic crises of recent years have significantly highlighted the importance of regulation and the role of the state in public finance matters. Public finance regulation is becoming an increasingly important part of the economy, and permeates an ever-widening range of economic and social activities. Without a knowledge of finance, it is no longer possible to have a complete picture of the various areas of law, and the study of law cannot be complete without such knowledge.

This book is the first in a series that covers the public finance law of Central Europe, broken down into its various sub-areas. The book forms the teaching material for the public finance law modules of the Central European Academic (CEA) Scholarship PhD programme, which provides a comprehensive overview of the national regulation and comparative legal presentation of each Central European country. The book can help financial law practitioners familiarise themselves with financial legislation in Central Europe, and provides useful insights for researchers in the field. Central European countries have undergone similar economic transformations in recent decades, which have created similar problems in their respective societies, and it is useful to review the legal solutions that have been successful—or less successful—in addressing these issues. Legislation in these countries can also provide important lessons for the future by learning from each other's regulatory peculiarities. CEA Scholarship PhD students will already have this knowledge after successfully completing the public finance law courses, which is true even though public finance law is the fastest-changing area of law.

The first chapter of the book deals with the theoretical issues of public finance, presenting the basic features of the legal institutions used in the regulation, and their integration into the economic and legal system. Without an understanding of the basic economic phenomena, it is impossible to interpret the legal institutions and concepts correctly. The economic role of the state—the concept and importance of money—will guide the reader towards an understanding of the public finance regulatory system.

The second part of the book covers national regulatory models in each of the Central European countries. The national models illustrate the development and system of public finance regulation in each country. The main idea behind the

book was to provide a comprehensive overview of public finance law by presenting the constitutional rules on public finance. The authors present each area of public finance with a different emphasis based on national constitutional arrangements. This illustrates the different levels of constitutional regulation.

The third part of the book presents a comparative analysis of national regulations, analysing the different national solutions, pointing out similar and different regulatory models. This part of the book is also a summary chapter.

The authors hope to have produced a useful book in the field of public finance law, which will enhance the knowledge and understanding of finance for PhD students and practitioners in other areas of law.

# Regulation of Public Finances in Poland in Light of Financial Constitutionality

Mariusz CHARKIEWICZ – Mariusz POPŁAWSKI

## ABSTRACT

This chapter deals with the notion, scope of public finance, and legal sources regulating this field. There are many difficulties in formulating a definition of finance law, which result from the diversity of the matter regulated by public finance. Financial law comprises many acts of law and accompanying executive acts. All these regulations define the rules of collecting and spending money for public purposes. The norms of financial law serve the purpose of realization of social and economic tasks of the state. The basis of this field of law is the Polish constitution. The aim of this article is to present areas of regulation, current problems, and challenges of the financial law, as well as to bring closer the constitutional regulations and principles relating to finance. General principles concerning economy in public finance constitute an important element of the socioeconomic system of a country. Hence, they should be, and are, properly regulated in the basic law. In the Polish Basic Law, public finance is directly addressed, first, in Chapter X, entitled 'Public Finance'. However, it is also dealt with in other articles scattered in the remaining chapters. The issues of the state's financial system are further regulated in Chapter VII—'Local government' (art. 167, art. 171 par. 2, et al.); in Chapter VI—'The Council of Ministers and government Administration' (Article 146, paragraph 2, items 5 and 6). In many places, the constitution also refers to concepts from the financial system, such as 'financial outlays, not provided for in the Budget Act (art. 190 par. 3), or 'financing of political parties, which is to be public' (art. 11 par. 2).

## KEYWORDS

Financial law, tax law, budgetary law, customs law, public banking law, foreign exchange law, monetary law, social security system, constitution, financial principles, legal institutions.

## 1. Financial law theory: Areas of regulation, and current problems and challenges of financial law

### *1.1. The concept of finance and financial law*

Finance is inseparably connected with money, because it is most often understood as the process of collecting and spending money. For finance, also called financial phenomena, movement of money is proper, which usually takes the form of streams flowing between the participants of financial relations.<sup>1</sup> Money serves to satisfy

| 1 Ostaszewski, 2007, p. 15. |

various needs; it is an economic category. The economic literature mentions several functions of money as a measure of value, a means of payment, a means of exchange and a means of accumulation.<sup>2</sup>

Public finance should be understood as the processes of collecting and spending money to satisfy public needs. The essence of public finance is therefore both the accumulation and spending of money strictly related to the existence of public needs.<sup>3</sup> Public needs are characterized because they always occur in relation to a certain collective, such as society, communal or regional community. Satisfying such needs therefore requires the accumulation of certain monies, primarily as taxes, fees, and duties.

The role of public finance in satisfying public needs varies and changes over time. Public finance and implementing functions ascribed to it, in particular redistributive and stimulatory functions, contribute to this. Public finance should be linked to the type of state.<sup>4</sup> A socialist type of state will be characterized by a greater scope of public finance, since it is involved in the sphere of economic, social and administrative activities. On the other hand, the capitalist type of state bases its activity on private property and rarely engages in the economic sphere.<sup>5</sup>

Just like any other important sphere of public life, the field of public finance is regulated by the law in force, and all legal regulations covering public finance are called the financial law. In the financial law literature, one can find a different understanding of this field of law. In a large sense, financial law is treated as a separate branch of law covering such areas as budget law, tax law, customs law, public banking law, foreign exchange law and social security law. The binding force of these areas is their monetary character—i.e., the collection of money and its allocation for public purposes. However, in a strict sense, only those legal norms should be included in this field of law, which cover state finances and finances of local government units, and it only concerns the processes of collecting and spending money in relation to state bodies, although this approach seems to be too narrow.<sup>6</sup>

In the light of the Public Finance Act, public finance includes processes related to accumulation of public funds and their allocation, in particular: accumulation of public revenues and income; disbursement of public funds; financing of borrowing needs of the state budget; assumption of liabilities involving public funds; management of public funds; management of public debt and settlements with the European Union budget. It should be emphasised that the most frequent processes of collecting and spending money for public purposes have been indicated based on this act, and it is not a closed catalogue. The legislature expresses it unequivocally by using the term ‘in particular’.

2 Bednarski and Wilkin, 2005, p. 329.

3 Drwiłło, 2018, p. 30.

4 Kosikowski, 2001, p. 11.

5 Drwiłło, 2018, p. 34.

6 Ibid., p. 39.

The norms of financial law serve the social and economic tasks of the state. They describe the powers and duties of financial law subjects. Most often, they have an imperative character, but there are also technical norms. They are also characterized by an objective character, i.e., the objective character of both the premises of the obligation to observe the financial law, and the application of the norms of this law by the courts and public administration bodies.<sup>7</sup>

The place of financial law in the Polish legal system is determined primarily by the sources of this field. The sources of law should be understood as formalised acts of state authority containing legal regulations, which appear in an appropriate form and are issued in the required procedure.

In presenting the sources of financial law, reference should be made first to the Constitution of the Republic of Poland. The constitution regulates the basic principles of public finance such as, i.e., collection and disbursement of funds for public purposes in the form of a law, adoption of the state budget and introduction of changes to the budget law or the law on provisional budget, imposition of taxes and other public charges, or determination of the principles of self-government finance. Among the internal sources of financial law a large role should be attributed to the Public Finance Act, which in the literature on the subject is treated as an act codifying financial law.<sup>8</sup> It regulates such issues as: management of public finance rules, state public debt, budget resolutions of local government units. In turn, the financial activity of local government units is regulated by the Act on Communal Self-government,<sup>9</sup> the Act on Poviát (county) Self-Government<sup>10</sup> and the Act on Voivodship<sup>11</sup> (regional) Self-Government. Separate legal acts of statutory rank are regulated taxes in the Act of 29/08/1997—Tax Ordinance. Individual taxes are also regulated by statutory provisions. Sometimes one tax is regulated by one act of law, and sometimes one tax act regulates several taxes. However, the statutory form is always used for introducing this type of financial benefit. The basic legal acts regulating certain segments of public finance also include the Act of 29/08/1997 on the National Bank of Poland, the Act of 29/08/1997—Banking Law, and the Act of 19/03/2004—Customs Law. International agreements as a source of law refer mainly to tax and customs law.

Regulations also occupy a specific position among the sources of financial law. Their application is required because laws are not legal acts, which should regulate detailed or frequently changing issues. They regulate only those issues that have been specified in the provisions of laws.<sup>12</sup>

The sources of financial law also include acts of local law.<sup>13</sup> Their application is territorially limited. They are a manifestation of the activities of local government

7 Ibid. p. 39.

8 Ibid., p. 45.

9 Act of 8.03.1990 Journal of Laws of 2021, item 1038 as amended.

10 Act of 5.06.1998 Journal of Laws of 2020, item 920 as amended.

11 Act of 5.06.1998 Journal of Laws 2021, item 1038 as amended.

12 Drwillo, 2018, p. 45.

13 Siuda, 2003, p. 33.

units at a certain level. The provisions of local law are issued by local government bodies and local government administration bodies on the basis and within the limits of statutory authorizations. Local self-government bodies are empowered to make laws universally binding in their activity. The powers of local self-government bodies to enact a local law in the sphere of finance relate mainly to taxes, fees and property management.<sup>14</sup>

### ***1.2. Financial law versus tax law, budgetary law, customs law, public banking law, foreign exchange law, currency law and the social security system***

Tax is one of the basic financial institutions—it combines legal and economic elements. Next to fees, surcharges, and duties, taxes are one form of public levy, simultaneously constituting the basic source of budget revenues. It is defined as a compulsory public law money consideration, free of charge, non-returnable, for the benefit of the state or a local government unit, resulting from an act of law.<sup>15</sup> The public-law nature of a tax means that only public authorities may unilaterally establish such an obligation. The authority entitled to receive the tax may, using the coercive measures provided for by law, enforce the payment due or secure its future realization, which makes it a coercive payment. The monetary character, in turn, distinguishes a tax from other contributions in kind. It is also gratuitous in that there is no direct counterpart by the public law body in return for the tax. On the other hand, its non-refundable character implies a definitive assumption of the tax liability by the relevant public law body.<sup>16</sup>

Budget law is a branch of financial law that systematises the functioning of the state budget. Budget law, in a strict sense, norms the framework of the state budget, its structure and the rules of its preparation, passing and execution. Apart from the state budget, there are also budgets of local government units—communes, districts and voivodeships. They are annual local government financial plans, approved as a budget resolution of the local government unit, and executed by their executive bodies.

Customs law is a separate field of law defined primarily by the subject it covers.<sup>17</sup> Customs law comprises all the legal provisions regulating the principles of foreign trade in goods, including in particular the collection of customs duties and charges, the rights and obligations of persons exporting and importing goods from abroad, the powers of customs authorities and the control of customs trade. Customs law, as a branch of public law, is based on authority. The object of its protection is the broadly understood public good closely connected with the exchange of goods in relations with other states. As A. Drwiłło writes, it is difficult to include contemporary customs law indiscriminately in any branch of law. According to him, it should be treated as

14 Drwiłło, 2018, p. 47.

15 Ofiarski, 2013, p. 22.

16 Kosikowski and Ruśkowski, 2008, p. 465.

17 Drwiłło, 1998, p. 11.

a separate branch of law, connected especially with financial, administrative, and criminal law.<sup>18</sup>

Banking law may be understood as the totality of legal norms regulating the structure, organization and activities of banks. Such an understanding of banking law does not, however, allow for its recognition as a uniform field of law.<sup>19</sup> It includes regulations of both public law (concerning, among others, the principles of creation and organization of banks) and private law (e.g., regulation of obligatory relations arising during performance of banking activities). However, banking law shows many connections with different branches of law. The public law part of banking law is strongly connected with financial law. An element of public financial activity is, for example, the activity of the central bank and goals it performs, such as issuing money or conducting monetary policy.

Foreign exchange law is also an integral part of financial law. It is a set of regulations governing the possession of foreign currencies and other values regarded as foreign exchange and their use in trading. Legal regulations included in the foreign exchange law should be connected with their subject, i.e., foreign currencies. Under the notion of foreign exchange, there are titles entitling to receive or dispose of foreign funds, i.e., credit and settlement documents, such as bills of exchange, cheques, money orders, letters of credit expressed in foreign currency. Receivables on bank accounts denominated in foreign currency are also accepted as a form of foreign exchange in the broader sense.<sup>20</sup>

The currency law, in a broad sense, is the totality of legal regulations which establish a given type of money. This law includes in its scope the legal regulations establishing the principles of the monetary system of the state and the problems of monetary circulation. The literature on the subject shows that the currency law plays an important role as it affects important aspects of economic, social and political life.<sup>21</sup>

Social insurance is the most common form of state care for citizens. Insurance implies a form of financial commitment by citizens who, in return for their contributions, are to receive a benefit based on the type, nature, size and duration of the contribution. In the literature, social insurance finance is rightly seen as part of public finance, or as related to the system of public finance.<sup>22</sup> Social insurance finance includes processes related to the accumulation of financial resources on the one hand and their disbursement on the other. Social insurance revenues have been and continue to be a source of constant problems because social insurance contributions, the main income of public insurance funds, do not cover expenditure on insurance benefits such as pensions and disability benefits.

18 Drwiłło, 2018, p. 366.

19 Wójtowicz, 2017, p. 437.

20 Drwiłło, 2009, pp. 70-71.

21 Drwiłło, 2018, p. 341.

22 Brzeziński, 2010, p. 151.

### ***1.3. State budget and budgets of local self-government units—current problems and challenges***

The budget and budgetary management based on it are of crucial importance for the proper condition of public finance, and thus for the proper performance of financial management in the state. The very notion of a budget is multifaceted, as a budget can be considered as a financial plan, a stock of public funds, streams of financial flows, a legal act producing legal effects, and an act of political choice. The feature that distinguishes the public budget from other financial plans is its political and legal status. It finds its expression in the political and legal acceptance of the budget by the representative bodies (in the case of the state budget—the parliament, and with local government budgets—by the bodies that constitute local government units).<sup>23</sup> The budget can thus be defined as an annual plan of income and expenditure, as well as revenues and expenditures of state authorities, bodies of control and protection of the law, courts and tribunals, and government administration, being an annex to the budgetary act adopted for the period of the calendar year called the budgetary year. In the same way, it serves to fulfil the tasks of local government units, for which it is an annual plan of revenues and expenditures, as well as revenues and expenditures.

The dynamic environment makes the developing market economy face ever new challenges to economics and management. One of the fundamental issues that has a key impact on the functioning of market mechanisms is risk. Because of its interdisciplinary nature, the term ‘risk’ can be interpreted in different ways depending on the conditions in which it is analysed. Risk is crucial to the functioning of the public finance sector. The government’s budgetary policy is based on many assumptions and forecasts. ‘Assessing the functioning of the budget, one may conclude that it is a device similar to a suction and pump, i.e., it receives streams of income from some entities and transfers them to others’.<sup>24</sup> The most acute problem in this area of public life is public debt. Public debt can be defined as the aggregate of budget deficits incurred in previous periods.<sup>25</sup> An unbalanced budget causes a constantly indebted state. This problem is noticeable in many countries of the European Union, especially in the eurozone. Disproportionate expenses in relation to limited income make it necessary to issue treasury securities. Their interest rate is determined crucially by the credibility of a country in the international arena, the ratings of rating agencies and the general situation in financial markets. A very worrying phenomenon is the high cost of servicing public debt. In 2010, domestic debt servicing rose to PLN 27bn, and foreign debt servicing to PLN 8bn, while two years earlier it stood at PLN 22bn and PLN 6bn respectively.<sup>26</sup> An effective fiscal policy should consider long-term consequences of actions taken today in public finance. Implementation of the necessary reforms of public finance, which arouses social protests, will ensure a stable

23 Bitner et al., 2011, p. 80.

24 Kocurek, 2012, p. 99.

25 Owsiak, Kosek-Wojnar and Surówka, 1993, pp. 58-70

26 Kocurek, 2012, p. 100.



economic growth by limiting the risk of budget imbalance and reducing the level of public debt in relation to GDP.<sup>27</sup>

Sovereign public debt has a significant impact on the economy. A persistent budget deficit can also directly affect the rate of economic growth, understood as an increase in the country's ability to produce goods and services to meet the specific needs of society.

#### ***1.4. Taxes and the tax system—current issues and challenges***

Polish tax system is plagued by difficulties such as a lack of a clearly defined function and coherence; a high tax burden; and the complex, unfriendly and volatile nature of the tax system. The combination of these three problems unfortunately leads directly to many companies and individuals opting for the grey economy and avoiding paying taxes, and the Polish tax system in such a situation becomes ineffective. The functions of the Polish tax system have not been defined anywhere. As a result, the tax system currently in force should not be referred to as such, as it fails to meet the criterion of purposefulness, internal logic and transparency. The lack of a clear vision of the tax system has fostered and continues to foster constant changes and amendments. Thus, on the one hand, the fiscal pressure on the budget leads to a continuous expansion of the tax base without the necessary balancing of fiscal effects with the social costs of their collection from the point of view of development goals and minimization of distortions in the functioning of the price mechanism, while 'the Polish tax system is characterized by a significant expansion of non-fiscal functions and variability of privileges made available over time'.<sup>28</sup> Diversified tax rates, various tax preferences and conditions allowing for their use, as well as the frequency of their changes contribute to the complexity and instability of the Polish tax system, and thus to higher costs related to tax payment and collection.<sup>29</sup>

The principle of certainty is the foundation which should characterise any rational tax system.<sup>30</sup> However, Polish 'legislative practice leads to the conclusion that the creation of tax law is largely a chaotic process'.<sup>31</sup> The Polish tax system is not only one of the least stable but also the most complicated among all OECD countries.<sup>32</sup> Many provisions are unclear to taxpayers, tax authorities and even judges adjudicating in tax cases.<sup>33</sup> This leads to contradictory rules, uncertainty for taxpayers about whether and how much tax they should pay, and poor efficiency in tax administration. In other words, the frequent changes and complexity are the clearest evidence that the Polish tax system needs radical reform.

27 Ibid., pp. 93-102.

28 Zbroińska, 2009, p. 100.

29 Zbroińska, 2008, pp. 91-110.

30 Sosnowski, 2012, pp. 59-72

31 Mączyński and Sowiński, 2005, pp. 35-45.

32 Sustainable Governance Indicators 2011: [http://www.sgi-network.org/pdf/SGI11\\_Scores\\_Values.xls](http://www.sgi-network.org/pdf/SGI11_Scores_Values.xls) (accessed on 16.06.2021).

33 Oniszczyk, 2011, pp. 95-100.

### ***1.5. Banks and banking law—current issues and challenges***

The volatility of the environment is a fundamental challenge for modern banking. The most important is certainly the changeability of the business environment. It forces the banks to constantly search for new banking products, better satisfying customer needs and allowing to better face the competition. However, the most troublesome for banks seems to be the changeability of the ‘regulatory’ environment—a network of legal regulations and many other norms restricting the banks’ activities.<sup>34</sup> Act of 29 August 1997.—Banking Law (consolidated text: Journal of Laws of 2012, item 1376, as amended) is one of the most frequently amended Polish laws. This is mainly because of the changeability of the European law, which the act must consider, and in the scope of directives—implement their provisions to the Polish legal order. Because of this changeability, the act has already lost the cohesion of its structure. The Banking Law is not the only law which sets the framework for the activities of Polish banks, but other laws relevant to this field have not remained stable either. Banking services are characterized by a clearly increased (compared to other) economic risk and a threat of infringement of the interests of customers who are non-professional market participants. This is linked to the characteristics of these services, such as their high degree of difficulty and complexity, often because of their packaged nature, and the lack of information and transparency. The practice also shows that the behaviour of entities (banks) offering financial services, despite the introduced information obligations, prohibition on misleading and issuance of unfair commercials, is far from balance, honesty, reliability, professionalism and respect for the legitimate interest of the client—which is so desirable to build the trust of non-professional market participants in banking institutions.<sup>35</sup> One might get the impression that the inadequacies and even shortcomings of national legal regulations result mainly from hasty and ill-considered implementation of directives. A high level of consumer protection, also in the financial services market, can be achieved by eliminating discrepancies in mandatory national provisions.<sup>36</sup> The prerequisite for effective protection of non-professional financial market participants, especially consumers, is also cooperation between the various protection bodies, rather than competition between them, as is sometimes apparent in the practical operation of the financial market. Such cooperation should encompass all authorities and institutions whose purpose is to eliminate abusive practices by traders towards their clients, in particular consumers.<sup>37</sup>

34 Góralczyk, 2014.

35 Rutkowska-Tomaszewska, 2013, p. 30.

36 Góralczyk, 2014.

37 Ibid.

## 2. Constitutional regulations and financial principles: Legal institutions, areas of regulation, and current regulatory issues

### 2.1. *The Polish constitution as a source of financial and tax law*

The constitutional catalogue of sources of law in Poland includes: constitution, acts, ratified international agreements, regulations, acts of local law (in the activity of the bodies that established them).

The fundamental source of financial law is the Constitution of the Republic of Poland, ratified 2 April 1997. (Journal of Laws No. 78, item 483). Next in line are international agreements ratified with the consent of the act, which take precedence over the act in the situation when they conflict with the act (article 91 of the constitution). Next are regulations issued based on specific authorizations in a statute (art. 93 of the constitution). The constitution is a normative act universally binding on the territory of the country or in the sector of activity of the body. In the Constitution of the Republic of Poland, Chapter X is devoted to public finance. It contains information defining the process of collecting and disbursing public financial resources (article 216 paragraph 1) as well as the role of the state in this respect. Adopting the state budget, as well as its changes or preliminary budget, is also presented (articles 219-225). The provisions of the constitution have the character of general principles that must be respected when creating the tax law. In the constitution, there are regulations concerning the tax system. They define the tax base (art. 84); the definition of the essential elements of the construction of taxes (art. 217); introducing a specific procedure for the enactment of tax laws (art. 213) and the competence of self-governing bodies to create tax laws (art. 168). The constitution stipulates that imposing taxes is only possible by law (by parliament). The most important elements of a tax must be specified in the law. The constitution also does not allow for tax laws to be treated in an accelerated manner (they cannot be introduced in an extraordinary manner). Local government bodies (municipal councils) have the authority to set the amount of taxes and local government fees.<sup>38,39,40</sup>

### 2.2. *Constitutional and public finance rules (Articles 216–227)*

The general principles that concern the economy in public finance are an important element of the social and economic system of the country. For this reason, they must be reflected in the Basic Law. Having interpreted the contents of the Constitution of the Republic of Poland, it is possible to identify four general principles of public finance in the Polish law. The first principle provides for statutory regulation of public financial management. The second principle is to guarantee protection of the state's financial interests. The third principle concerns the assurance of adequate financial

38 Act of 2 April 1997, Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

39 Borodo, 2000, pp. 27-29.

40 <https://www.biuro24h.pl/zrodla-prawa-podatkowego/> (accessed on 14.06.2021).

basis for the activities of local government units. The catalogue closes with the principle of guaranteeing protection of fundamental rights and financial interests of citizens.

The principles of public finance are (a) the principle of publicity (this principle states that the management of public resources is public, i.e., the citizen has the right to know and to supervise the state budget); (b) the planning principle (financial activities of public law entities and entities in the public finance sector are planned); (c) accounting principle (the economic entity is obliged to keep accounts and to draw up reliable financial statements, which makes it possible to analyse and control financial processes), (d) the principle of considering the financial consequences of legal acts and financial law (when proposing a bill, proposers must present the financial consequences of its implementation).

Chapter X places emphasis on social control relating to public finance management. This is confirmed by the fact that only by means of law can regulations relating to the collection and distribution of public finances be established (art. 216). Another important principle established in (art. 217) is the possibility of introducing taxes and other levies only by statute, which also increases the role of social control in the state. Article 218 of the Polish constitution establishes the obligation to regulate by law the organization of the State Treasury and the manner of management of state assets by the State Treasury. At the same time, together with other provisions of the Constitution of the Republic of Poland, it forms the basis for the view that the State Treasury is a legal entity of a special nature, deriving its legal personality directly from the Constitution of the Republic of Poland and the Civil Code. In article 219, the constitution empowers the Sejm to enact the state budget. The budget is enacted in the 'Budget Act'. The constitution in Article 227 gives the National Bank of Poland the status of a central bank, with the exclusive right to issue money, as well as to determine and implement monetary policy.<sup>41 42 43</sup>

### ***2.3. The constitution and basic concepts of public finance institutions***

Provisions defining the essence of a financial institution will be detailed norms when they indicate the basis of the institution in the procedure, which implies that it cannot be regulated in the ordinary law, and thus sufficiently define the essence of the institution—sufficiently characterise the essential features (detailed definition). If the provision insufficiently specified the essence of the institution, i.e., partially characterized the essential features, or did not do so at all. If the legislator has used the notion of a given institution as a notion that has an established meaning, then we are dealing with a general constitutional norm. The legislature leaves this essence to be regulated, supplemented also by an ordinary law.

41 Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

42 Kosikowski and Ruśkowski, 2003 pp. 260-264.

43 <https://zim.pcz.pl/znwz/files/Finanse-publiczne-w-wietle-Konstytucji-RP.pdf> p. 152 (Accessed on 14 June 2021).

If a provision has insufficiently defined the basis of a given institution, the assessment must be made with reference to the regulation of the ordinary law. To check whether a provision has sufficiently defined the basis of a given institution, the assessment must be made in the context of the possible scope of control of the constitutionality of the institution in question. In defining a financial institution there may arise the problem of the concepts of other financial institutions used to define it. A problem which, if it indeed arises, may negate or weaken the relevance of constitutionalization for the existence and functioning of a given financial institution.

The detailed definition of financial institutions and the introduction of financial restrictions into the constitution was introduced to realise the objectives of constitutionalization and to increase the scope of control over the creation of financial legislation.<sup>44</sup>

#### ***2.4. The constitution and the concepts of taxes and public burdens and benefits***

A tax is a statutorily defined benefit. Only a statute, pursuant to articles 84 and 217 of the Constitution of the Republic of Poland, is an act which may introduce the obligation to pay taxes. The act should also define the essential elements of this benefit. There is no formal-legal definition of a tax in the constitution. Features of a tax: a cash benefit, compulsory, non-refundable, free of charge, incurred to public law bodies.

The constitution includes taxes among public benefits that can only be imposed by law (Article 84). The law must specify: subject and object of taxation, tax rate, principle of concessions and write-offs, a catalogue of tax-exempt entities.

Taxes are tributes which constitute the largest revenue for the state budget. The Tax Act is an expression of the fact that in a democratic state under the rule of law, interference in the rights of a citizen must have constitutional legitimacy and the form of a law. Article 217 of the Constitution of the Republic of Poland reads: *‘the levying of taxes, other public levies, determining the subjects, objects of taxation and rates of taxation, as well as the principles for granting reliefs and remissions and categories of entities exempt from taxes shall be effected by way of law’*. Thus, the principle of imposing taxes by way of a law was included here, and this on an exclusive basis. Moreover, Article 123 par. 1 of the constitution of the Republic of Poland refers explicitly to *‘draft tax laws’*. Article 84 is placed among the provisions of the Constitution of the Republic of Poland defining other duties of a man and a citizen.<sup>45</sup>

The public burdens and benefits referred to in Article 84 of the Constitution of the Republic of Poland are of an alimony nature, in that they serve to feed the state, and are not of a repressive nature. This makes it possible to consistently separate these burdens and benefits from sanctions of a repressive nature, including penalties

44 [https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6127/1/Konstytucyjne\\_uwarunkowania\\_tworzenia\\_i\\_stosowania\\_prawa\\_finansowego\\_i\\_podatkowego.pdf](https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6127/1/Konstytucyjne_uwarunkowania_tworzenia_i_stosowania_prawa_finansowego_i_podatkowego.pdf) pp. 35-44. (Accessed on 14 June 2021).

45 Etel et al., 2005, pp. 21-27.

imposed by the authorities administering the justice system, but also from administrative sanctions, in particular tax sanctions.

Regardless of whether these benefits are monetary, in-kind or strictly personal, including those restricting individual freedom, their purpose is always to provide some benefit to the state. These benefits do not have to be exclusively of a pecuniary nature, but they always increase the revenues of the state or reduce its expenditures by directly satisfying public needs without financial outlays on the part of the state or local government. Their essence always lies in the fact that they serve to fulfil certain public tasks, which are statutorily assigned to the state. The Constitution of the Republic of Poland in Article 84 itself does not introduce political boundaries for imposing various categories of burdens and benefits by way of law.<sup>4647</sup>

### ***2.5. The constitution and the creation and application of tax law (Article 2, Article 78, Article 87, Article 217)***

In the creation of the taxation system and the creation of individual taxes, tax principles are used, which are not homogeneous and, in addition, are subject to modification all the time. The quality of tax law is related to the quality of legislation. We can indicate principles of a normative nature (indicated in the provisions of the tax law), as well as those that are more recommendations or proposals for the legislator. In the second group we can distinguish such principles as: the creation of tax law by qualified personnel, the assessment of the economic effects of a given tax regulation, the rational activities of the tax legislator, consistency and stability of tax law.

An important role in the creation of tax law is played by the principles published in the Constitution of the Republic of Poland. Article 2 of the Constitution of the *Republic of Poland (The Republic of Poland is a democratic state under the rule of law, realizing the principles of social justice.)*, concerning democratic principles of the state under the rule of law, is significantly applicable.

In the Constitution of the Republic of Poland, Articles 84 and 217, regulate the universality of the obligation to bear a tax burden, but on condition that it is introduced by a law, the features (elements) of which are precisely defined by the basic law. The political freedom to impose public levies may not be unlimited, and their introduction may not harm the fundamental rights and freedoms of citizens and the democratic nature of the state. Tax law norms are extremely important for the creation of tax laws and their control in terms of compliance with the constitution. We may additionally enumerate such normative principles as: the principle of exclusiveness of the legislative power in shaping taxes (art. 84 and 217 of the constitution), the principle of statutory determination of all the elements of the tax construction (art. 217 of the constitution), the principle of legality of the basic acts of the tax law (art. 94 of the constitution), the principle of non-retroactivity of the law (*lex retro non agit*), the principle of protection of the rightfully acquired rights, the prohibition to introduce

46 Safjan and Bosek, 2016, pp. 1882–1897.

47 Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

changes in the tax law during the tax year, the principle of openness (art. 88 of the constitution), the principle of certainty of the law, the principle of determination of the provisions of the tax law. Tax laws are currently referred to as laws regulating tax structures, the content of which is set out in constitutional provisions. Drafts of such laws require an opinion from the minister of Finance to determine the financial consequences of their enactment and may not be of an urgent nature, and any amendments to such laws made during the year should take effect only from the beginning of the new fiscal year, unless they are beneficial to taxpayers.<sup>48 49</sup>

In accordance with Article 87 of the constitution, sources of universally binding law also include acts of local law, enacted within the area of their activity by local government bodies and local government administration bodies, on the basis and within the limits of authorizations contained in the Act in accordance with rational law-making standards. The legislative process is multi-stage and requires specific actions and organization, viz: pre-legislative work, design work, arrangements, to provide opinions and consultations on drafts or normative acts, enactment of the law, signing and announcing it, to issue implementing acts, examination of the compatibility of a normative act with the constitution.<sup>50</sup>

## ***2.6. The constitution and public debt in times of crisis (Article 216(5))***

Tax is the main source of public revenue. It is a non-refundable acquisition of cash resources from taxpayers. Public borrowing is an additional source of creating monetary resources. Its feature is repayability. Public loans are repayable, although they are not always returned. They play an important role when budget expenditures are higher than budget revenues. A significant problem of Polish public finance is public debt. In economic terms public debt means the total amount of liabilities of public sector entities towards entities not belonging to this sector. The source of repayment of these liabilities are public funds. The reason for public debt is public borrowing, as it is of repayable nature and additionally causes costs connected with its incurring and repayment. Public debt is the subject of regulation of the Act of 2 April 1997, the Constitution of the Republic of Poland. Legislator uses two terms 'state public debt' and 'public debt'. The first term denotes the determination of the debt ceiling in a given year and the second one is related to the exclusivity of the legislative initiative of the Council of Ministers concerning the act on incurring public debt. However, the constitution does not indicate a legal definition of these terms. In the provisions of the constitution, we find a principle that indicates to us the amount of the national debt. This principle prohibits borrowing or granting financial guarantees and sureties, the consequence of which is that the state public debt will exceed 3/5 of the value of the annual gross domestic product. The constitutional provisions not only determine the amount of the state public debt, but also determine the rank of the legal act through

48 Act of 2 April 1997 Constitution of the Republic of Poland (Journal of Laws No. 78, item 483).

49 Etel et al., 2005, pp. 78-84.

50 Safjan and Bosek, 2016, pp. 51-61.

which loans may be contracted and financial guarantees and sureties granted. In the light of the constitutional provisions, the principles and procedure of taking out loans and granting financial guarantees and sureties may be determined by law.<sup>51</sup> Annual GDP and national public debt should also be calculated by law. Debt management of the public finance sector in 2009–2011 did not consider the global financial crisis that began in late 2008. The effects of this crisis are also being felt in Poland. As a result, public expenditures were reduced by about PLN 20 billion in 2009. This also results in a change of the public finance sector debt management strategy in the nearest future. The most important difficulty depending on public debt is a change of debt management strategy, i.e., adaptation of this method to a completely different situation of public finances in the world. The global crisis affects the state of public debt finances of the Polish state. It is important that the debt management strategy of public finance should work to maintain the required by law ratio of the State Treasury debt to GDP. The basic manifestation of the impact of the global financial crisis is an increase in the foreign currency exchange rate, which causes an increase in the level of Polish debt in foreign currencies. The increase of the foreign currency exchange rate also influences the increase of its servicing costs.<sup>52</sup>

## ***2.7. Constitutional guarantees and limitations of the financial independence of territorial government units***

For municipalities to be able to carry out their activities, they should be equipped with financial resources, which is why their share in public revenues must be ensured. The financial system of local government and the transparent distribution of revenue sources should be standardized in the constitution, which will guarantee the financial basis of local government and safeguard the stability of its operations. The independence of municipalities depends on political freedom and the provisions of the law on municipal self-government. Important aspects that influence the independence of municipalities are the systems of financial support and the manner of redistribution of tasks and responsibilities among different segments of public authority. Of course, self-governance does not mean financial self-sufficiency.

Therefore, sources of revenue are divided into own and foreign, or internal and external sources of supply. The financial independence of municipalities is a result of the decentralization of public finance, and this is due to the possibility of sharing some of the attributes of financial power with the state. It means that they are granted the right to independently carry out financial management within the framework defined by the constitution and laws in the following spheres: collecting revenue, obtaining returnable income, making expenditures, creating and executing the budget.

51 Ibid., pp. 51-61.

52 [https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6127/1/Konstytucyjne\\_uwarunkowania\\_tworzenia\\_i\\_stosowania\\_prawa\\_finansowego\\_i\\_podatkowego.pdf](https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/6127/1/Konstytucyjne_uwarunkowania_tworzenia_i_stosowania_prawa_finansowego_i_podatkowego.pdf) pp. 248-253. (Accessed on 14.06.2021).



Elements of self-reliance include: the statutory transfer of the corresponding own revenue, the power to make and apply financial regulations, the right to borrow, loans and bond issues, the right to decide independently on the direction of expenditure and the choice of the mode of procurement, the power to adopt the budgetary procedure, the budget (provisional budget) and amendments thereto, the power to carry over and block expenditure, the creation and disposal of reserves, the right to implement the budget itself and to evaluate the executive body by means of the institution of vote of approval.

Restrictions on the activity of municipalities in the performance of public tasks may be created only in the form of statutes. This does not give complete freedom to the legislator, as the constitutional principles of self-governance of municipalities bind the state authorities. Autonomy is also subject to limitations by statute, but only if they are justified by constitutionally defined objectives and constitutionally protected values. The Constitutional Tribunal recognizes as unconstitutional those restrictions that meet the requirements of the constitution in formal and procedural terms, as well as in substantive terms. Legislative interference with the rights vested in communes is therefore possible. However, it may not be excessive, and the legislator may not introduce restrictions that exceed a certain degree of inconvenience. The right to manage, settle and resolve matters of a local nature under one's own responsibility must stem from a legal norm, and the exclusive source of public authority for local government is the law enacted by the state. The limits of the self-government's autonomy are set out in the provisions regulating the collection of revenue from specific sources and in the provisions specifying the principles and forms of expenditure. The doctrine and the judiciary have never doubted that the independence of the municipality's expenditure-making must be exercised within the statutory limits, which imply, among other things, the priority of expenditure on obligatory own tasks. Municipalities may have various new tasks and financial burdens within their competence, and there is no absolute prohibition in the constitution to make certain expenditures obligatory. This means that the form of a law is necessary not only for the general establishment of the obligation to incur certain expenditures for specific purposes, but also for the establishment of the amount of these expenditures. The general level of financial obligations must be possible to establish already based on the statutory regulation, which should maintain an appropriate degree of precision and detail, and cannot be limited to blanket references to executive regulations. On the other hand, the norm contained in article 167, paragraph 4 of the constitution imposes an obligation to introduce appropriate changes in the division of public incomes between the state and the local government, if such changes are made within the scope of the latter's tasks and competences. Thus, assigning new tasks without ensuring new sources of public revenue or increasing the efficiency of the existing ones, will constitute a violation of the constitutionally determined scope of the revenue authority, which is one of the guarantees of its financial independence.<sup>53</sup>

53 Safjan and Bosek, 2016, pp. 953-977.

### 3. Summary

The fundamental source of financial law is the Constitution of the Republic of Poland. Next in order are international agreements ratified with the consent of the Act, which have precedence over the Act in the situation where they conflict with the act. Next are regulations issued based on specific authorizations included in a statute. The constitution is a normative act universally binding on the territory of the country or in the sector of an authority's activity. In the Constitution of the Republic of Poland, Chapter X is devoted to the issue of public finance. It contains information defining the process of collecting and spending public financial resources as well as the role of the state in this respect. The issue of adopting the state budget, as well as its changes or budgetary provisions is also presented. The provisions of the constitution have the character of general principles that must be respected while creating the tax law. In the constitution there are regulations concerning the tax system. They define: the basis of taxation; the determination of the essential elements of the construction of taxes; the introduction of a specific procedure for the enactment of tax laws and the competence of local bodies to create tax laws. The constitution stipulates that the imposition of taxes is only possible by law (by the parliament). The most important elements of a tax must be specified in the law. The constitution also does not allow for tax laws to be treated in an accelerated manner (they cannot be introduced in an extraordinary manner). Local government bodies (municipal councils) have the authority to set the amount of local government taxes and fees.

Thus, in presenting the sources of financial law, reference should be made first to the Constitution of the Republic of Poland. The constitution regulates the basic principles of public finance, such as, inter alia: collection and disbursement of funds for public purposes in the form of a statute, passing the state budget and introducing changes in the budget act or in the act on a provisional budget, levying taxes and other public charges, or defining the principles of self-government finance. Among the internal sources of financial law a large role should be attributed to the Public Finance Act, which in the literature on the subject is treated as an act codifying the provisions of financial law. It regulates such issues as: management of public finance rules, state public debt, budget resolutions of local government units. In turn, the financial activity of local government units is regulated by the Act on communal self-government, the Act on Poviat Self-Government and the Act on Voivodship Self-Government. Separate legal acts of statutory rank are regulated taxes in the Tax Ordinance Act. Individual taxes are also regulated by statutory provisions. Sometimes one tax is regulated by one act of law, and sometimes one tax act regulates several taxes. However, the statutory form is always used for the introduction of this type of financial benefit. The basic legal acts regulating certain segments of public finance also include the Act on the National Bank of Poland, the Banking Law and the Customs Law. In turn, international agreements as a source of law refer mainly to the tax and customs law.

Regulations also occupy a specific position among the sources of financial law. Their application is required because laws are not legal acts, which should regulate detailed or frequently changing issues. They regulate only those issues that have been specified in the provisions of laws.

Among the sources of financial law, it is also necessary to mention local acts of law. Their application is territorially limited. They are a manifestation of the activities of local government units of a certain level. The provisions of local law are issued by local government bodies and local government administration bodies on the basis and within the limits of statutory authorizations. Local self-government bodies are empowered to make laws universally binding in the area of their activity. The powers of local self-government bodies to enact local law in the sphere of finance relate mainly to taxes, fees and property management.

The sphere of public finance, due to its complexity, faces many challenges and problems. One of the problems in this area of public life is public debt. Public debt can be defined as an aggregate of budget deficits incurred in previous periods. An unbalanced budget is the cause of a constantly indebted state.

Moreover, the Polish 'legislative practice leads to the conclusion that the creation of tax law is largely a chaotic process.<sup>54</sup> Polish tax system is not only one of the least stable. Many provisions are unclear, both for taxpayers and for tax authorities and even judges adjudicating in tax cases. This leads to contradictory regulations, a lack of certainty for taxpayers as to whether and how much tax they should pay, and poor efficiency in tax administration.

Another problematic element of the financial law system is the volatility of the 'regulatory' environment—a network of legal regulations and numerous other norms restricting the activities of banks. Practice also shows that the behaviour of entities (banks) offering financial services, despite the introduction of information obligations, prohibition on misleading and issuance of unfair advertising, is far from balance, honesty, reliability, professionalism, and respect for the legitimate interests of the client—so desirable for building the trust of non-professional market participants in banking institutions.

**Table 1.** Financial constitutionality in context

Article 2 of the Polish Constitution	The Republic of Poland is a democratic state governed by the rule of law, implementing the principles of social justice.
Article 78 of the Polish Constitution	Each party shall have the right to appeal against judgments and decisions rendered at first instance. Exceptions to this rule and the procedure for appealing shall be laid down by law.

<sup>54</sup> Mączyński and Sowiński, 2005, pp. 35–45.

Article 84 of the Polish Constitution	Everyone is obliged to pay public burdens and benefits, including taxes, as defined by law.
Article 87 of the Polish Constitution	The sources of universally binding law of the Republic of Poland are: constitution, laws, ratified international agreements and regulations. The sources of universally binding law of the Republic of Poland are, in the area of activity of the authorities which established them, acts of local law.
Article 216(5) of the Polish Constitution	No loans may be contracted or financial guarantees and sureties provided, as a result of which the state public debt exceeds 3/5 of the value of the annual gross domestic product. The method of calculation of the value of the annual gross domestic product and the state public debt shall be laid down by law.
Article 168 of the Polish Constitution	Local government units have the right to set the amount of local taxes and charges to the extent specified by law.
Article 216 of the Polish Constitution	Funds for public purposes shall be collected and spent in the manner prescribed by law.
Article 217 of the Polish Constitution	The levying of taxes, other public tributes, determination of entities, subjects of taxation and tax rates, as well as the principles of granting reliefs and remissions and categories of entities exempted from taxes shall be made by law.
Article 218 of the Polish Constitution	The organization of the State Treasury and the way the State Treasury's assets are managed are defined by law.
Article 219 of the Polish Constitution	<p>(1) The Sejm passes the state budget for the financial year in the form of a budget law.</p> <p>(2) The principles and procedure for the preparation of the draft state budget, the degree of its detail and the requirements to which the draft budgetary law should conform, as well as the principles and procedure for the implementation of the budgetary law shall be determined by law.</p> <p>(3) In exceptional cases, state revenues and expenditures in a period of less than one year may be determined by a law on a preliminary budget. The provisions concerning the draft budgetary law shall apply accordingly to the draft law on budgetary provision.</p> <p>(4) If the Budget Act or the Budget Provisional Act has not entered into force on the date of the beginning of the financial year, the Council of Ministers shall conduct financial management based on the bill submitted.</p>

Article 220 of the Polish Constitution	An increase in expenditure or a reduction in revenue planned by the Council of Ministers may not cause the Sejm to establish a budget deficit greater than that provided for in the draft budget law.
Article 221 of the Polish Constitution	Only the Council of Ministers may initiate legislation on the Budget Act, the Budget Provisional Act, amendments to the Budget Act, the Act on the incurrence of public debt and the Act on the provision of financial guarantees by the state.
Article 222 of the Polish Constitution	The Council of Ministers shall submit to the Sejm, at the latest three months before the beginning of the financial year, a draft budgetary law for the following year. In exceptional cases, a later submission of the draft is possible.
Article 223 of the Polish Constitution	The Senate may pass amendments to the Budget Act within 20 days of the day on which it is referred to the Senate.
Article 224 of the Polish Constitution	The president of the Republic shall within 7 days sign the Budget Act or the Budget Provision Act presented by the speaker of the Sejm.
Article 225 of the Polish Constitution	If, within four months of the submission of the draft budget act to the Sejm, it has not been submitted to the president of the Republic for signature, the president of the Republic may, within 14 days, order that the term of the Sejm be shortened.
Article 226 of the Polish Constitution	The Council of Ministers shall, within five months of the end of the financial year, submit to the Sejm a report on implementing the Budget Act together with information on the state debt position.
Article 227 of the Polish Constitution	National Bank of Poland

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