

Elżbieta Feret

University of Rzeszow, Poland

eferet@ur.edu.pl

ORCID ID: <https://orcid.org/0001-0001-9281-0316>

Constitutional and Legal Regulations on Financial Security and the Security of the Financial Interest of the State in Regard to the Challenges of the 21st Century

Abstract: This study demonstrates the interdependence of constitutional regulations and two types of state financial security: general financial security and the security of the financial interest of the state. An indication of these two types is possible due to existing legal regulations resulting primarily from constitutional regulations, but also from ordinary laws that allow for the analysis of the activities of public authorities in the field of collecting and spending public funds, in the budgetary, tax and banking contexts. The considerations discussed here are of particular importance due to the unstable political, economic, social and, above all, financial situation. In such difficult circumstances, it seems obvious that constitutional regulations should be the basis for ensuring the financial security of the state, while indicating to what extent the applicable provisions meet the challenges of the modern, unstable world. The considerations have been based primarily on the regulations resulting from the Constitution of the Republic of Poland, with an indication of which are the most important from the point of view of the adopted topic, the regulation of separate acts. In order to discuss the selected issues, it has also been necessary to refer to selected bibliographic items and court decisions. The study is selective and not comprehensive, constituting a stimulus for further research in this area.

Keywords: banking regulations, budget regulations, Constitution of the Republic of Poland, financial power of the state, financial security of the state, security of the financial interest of the State Treasury, tax regulations

Introduction

Pursuant to the Constitution of the Republic of Poland (1997), the functioning of public authorities should be fully coupled with the performance of public tasks for

the benefit of citizens (Judgment of the Constitutional Tribunal 2000). Their proper performance is determined by the efficient and effective operation of public authorities, especially in crisis situations (Kuca, 2022a, pp. 151–152). While the basis for their efficient operation should be derived from constitutional regulations and from ordinary laws providing for the need to perform specific public tasks, their effectiveness should be associated with proper and adequate, i.e. safe, financing of their activities. The issue of the state's financial security, understood in this way, is particularly important now, during the pandemic, the war in Ukraine and ever-increasing inflation. At such a time, it is extremely important to ensure a state of social awareness, in which the existing level of threat should be minimized as much as possible without arousing fears for the future. For this purpose, it is necessary to refer to the constitutional provisions that regulate various aspects of the state's activity, in particular those that guard the financial security of the state. Due to the importance and the multifaceted nature of this issue, it will be discussed only in relation to selected constitutional and financial aspects that, in my opinion, are the most important, constituting an incentive for further considerations in this regard (Etel & Strzelec, 2021, pp. 21–23).

1. Financial security and the security of the state's financial interest

To start with, it is worth highlighting the fact that the Basic Law should be considered as the source of issues related to the financial security of the state (Raczkowski, 2014), which doctrine considers to be 'the starting point of the entire legal order in the country', protecting the 'common good of all citizens' (Bartosiewicz, 2006, p. 7; Liżewski, 2021, pp. 8 & 11), therefore also in the field of financial matters.¹ Against the background of these regulations, financial security should be considered, according to jurisprudence, as tantamount to the need to protect the financial interest of the state (Judgment of the Constitutional Tribunal 1993; Judgment of the Constitutional Tribunal 1994; Judgment of the Constitutional Tribunal 2002), which is also indicated by doctrine (Potrzeszcz, 2006, p. 18). The sources of the use of such a concept should be sought directly in the provisions of the Basic Law, in particular as indicated in the Constitution,² the public interest, important private interests, an important economic interest of the state, an interest of the state, an interest of the State Treasury, and the public interest in radio and television broadcasting (Woźniak, 2017).

Against the background of these scopes of constitutional protection, which are diverse and usually referred to, it must be recognized that all of them boil down to the safe operation of public authorities, acting to ensure public security (Zawisza, 2015,

1 Financial security is currently the most important component of economic security and the main foundation of national security as broadly understood.

2 Mentioned in Article 17, Sections 1, 22, 63 and 213 of the Constitution of the Republic of Poland.

pp. 71–73). Public security is the basis but also the common denominator for the finance-oriented, qualified financial security of the state as referred to in the title, and sometimes also the financial security of the State Treasury, which will be discussed later. At the same time, it is worth noting that both concepts should be understood as aiming at an ideal state of lack of financial threat, which does not exist, although public authorities should strive to achieve it.

In order to distinguish between the above-mentioned terms related to financial security, it is necessary to indicate obvious differences that are important for conducting financial and legal security considerations. The concept of the financial security of the state, despite the frequent use of the term, is a colloquialism and is not legally defined. Comparing it with the financial protection of the state, it should be considered that it concerns people permanently settled in a certain territory, having their own government, political system and law (Świat Książki, 2006, p. 632), i.e. an organized social group – the population of the state, the people, a social group operating through a specific state apparatus in a given area. Thus, financial security understood in this way has a wide subjective scope, referring both to the state understood as public authorities acting for and on behalf of the state and as its individual citizens or their groups residing in a given area.

Financial security of the State Treasury, on the other hand, is a concept used much less often in practice, and more in legal regulations. It means the obligation to protect the financial interests of a clearly specified and defined entity, the State Treasury. The State Treasury is a legal person that, acting in civil law relations, is the subject of rights and obligations that relate to state property that does not belong to other state legal persons (Article 34, Civil Code 1964). The need to ensure the security of the financial interest of the State Treasury (Krawczyk, 2021) is indicated by the Fiscal Penal Code (F. P. C. 1999), whose regulations recognize as a fiscal offence those types of crime that threaten the State Treasury with financial loss to the amount of at least ten times its substantial value (Article 53(11), F. P. C. 1999). In particular, these prohibited acts are related to budgetary and tax activities.

Against this background, it is also worth referring to the justification of the need to ensure the protection of the financial security of the state and the security of the financial interest of the State Treasury. In this regard, it is indispensable to refer to the financial power reserved primarily for the state (Feret, 2019).³ The financial power of the state as broadly understood should be reduced to the exertion of a real influence on the environment by laying down absolutely *erga omnes* binding norms, the observance of which is secured by the possibility of applying legal coercion (Mańczyk, 2018, p. 208). It consists *de facto* but also *de jure* in the conduct of independent fi-

3 Although, due to the decentralization of public authorities, one cannot forget about the financial power of local government units, which I consider to be derivative, secondary to the financial power of the state.

nancial management by authorized public authorities in the scope of obtaining (enforcing) financial resources within the framework of their executive powers (Kirchof, 1982, 1–28), but also spending them under public law in the name of the common good, i.e. public interest (Dębowska-Romanowska, 2010, pp. 31–32), in accordance with the adopted monetary policy.

A properly functioning state, i.e. a state that performs public tasks on behalf of its citizens, must be equipped with appropriate financial resources. For this purpose, it is necessary to introduce legal regulations, primarily in the Basic Law, which indicate the legal basis for their permanent, systematic acquisition and effective enforcement on the basis of regulations resulting from lower-order acts. These legal regulations should be treated as a guarantee of ensuring the financial security of the state and the security of the financial interest of the State Treasury.

2. Constitutional budget regulations, the financial security of the state and the security of the financial interest of the State Treasury

To demonstrate the constitutionally defined financial security of the state through the prism of budgetary issues, it should be noted that the current Constitution of the Republic of Poland devotes its Chapter 10 to regulations regarding public finances (Public Finance Act 1998).⁴ The legislation defines this concept by recognizing that public finances are funds for public purposes, collected and spent in the manner specified in the Act (Article 216(1) of the Constitution). On this basis, the Public Finance Act (Article 3) clarifies the concept of public finances, recognizing that these are processes related to the collection of public funds and their distribution.

Against this background, it is important to add that these statutory processes are principles, rules and methods of obtaining funds for public purposes (called public funds by the Public Finance Act) and their distribution, which are based on the annually adopted state budget and budgets of local government units. At the same time, it is important that the Constitution of the Republic of Poland explicitly states that ‘the Sejm shall adopt the state budget for the financial year (Judgment of the Supreme Administrative Court 2022) in the form of a Budget Act’ (Article 219(1)).

The Constitution also clearly indicates the deadline for taking actions aimed at passing the Budget Act. Pursuant to its regulations (Articles 222–224), it should be considered a rule that the Council of Ministers submits a draft Budget Act for the following year to the Sejm no later than three months before the start of the budget year. The Senate may adopt amendments to the Budget Act within 20 days from the date of its submission to the Senate, and the president signs the Budget Act within

4 The first Public Finance Act of 26 November 1998 was introduced under the Constitution of the Republic of Poland.

seven days. Therefore the Budget Act, adopted annually before the start of the financial year equivalent to the calendar year, is the basis for the conduct of the state's financial management, guaranteeing the proper collection and spending of public funds in accordance with the law, based on the principles set out in the provisions of the Public Finance Act (Article 109(4)). This is because the Public Finance Act (Article 1(4–5)), striving to ensure the financial security of the state in the budgetary sense, indicates, by specifying the subject matter covered by its regulations, that it concerns the principles and control modes of processes related to the collection and distribution of public funds, property management, the principles of state public-debt management, and prudential and remedial procedures (see Kuca, 2022b). The legislation refers directly to the financial security of the state in connection with defining the principles of financing the borrowing needs of the state budget (Article 78(3)(1)), the State Treasury debt-management rules (Article 78(g)(2)), implementation of investments under public-private partnership agreements that may not threaten the security of public finances (Article 133(c)(3)) and the implementation of long-term programmes to ensure the security of the state, in particular those related to its defence (Article 136(2)).

On the basis of the regulations resulting from the Public Finance Act concerning the financial security of the state, expressed generally or explicitly, the legislation also indicates the need to ensure safe operation of the State Treasury. Pursuant to the Act, the State Treasury was empowered to issue bonds, to grant guarantees and sureties (Adrian & Fine, 2009, pp. 412–414), to purchase property for purposes justifying its expropriation or to expropriate it, to take out loans and credits (also from the European Community and Member States) and to make other operations directly related to the management of the state public debt (Public Finance Act, Articles 49, 60(2), 62(1)(3), 80 and 84). The basis for granting such powers to the State Treasury are derived from the Constitution of the Republic of Poland. The regulations adopted by the legislation clearly indicate the possibility of borrowing and granting financial guarantees and sureties by the state (implicitly, by the State Treasury), as well as of the purchase, sale and encumbrance of property, shares or stocks, and the issuing of securities by the State Treasury (Article 216(2) and (4) of the Constitution). At the same time, it should be emphasized that, with reference to these regulations, the Basic Law introduces a cardinal principle to protect the financially secure operation of the State Treasury by limiting its operation in taking out such loans or granting financial guarantees and sureties as a result of which the state public debt would exceed three-fifths of the value of the annual gross domestic product (Article 216(5) of the Constitution).

3. Constitutional tax regulations, the financial security of the state and the security of the financial interest of the State Treasury

When examining constitutional regulations in relation to the issue of financial security from the perspective of tax, one should first refer to those constitutional regulations that introduce cardinal principles related to tax assessment. In this regard, it is necessary to refer to the general but very important provision resulting from Article 84 of the Constitution, according to which 'everyone is obliged to bear public burdens and benefits, including taxes, as specified in the Act'. This regulation, considered as a doctrine (Bernat, 2018, p. 38), as the basis for imposing taxes on citizens in Poland, should be treated as a guarantee of the financial security of the state. The state, i.e. the public authorities actually acting on its behalf, gains the certainty of collecting the funds necessary for the annual implementation of public tasks, as each citizen will make payments in the form of various cash benefits. Importantly, from the point of view of the state's financial security from the perspective of tax, the legislation considers taxes to be the most important group of such benefits, which should be associated with the name of this type of cash benefit, as is also confirmed by doctrine, which recognizes that 'one of the elements of the state's system are public levies – including taxes' (Dębowska-Romanowska, 2009, p. 110).

Recognition of the special rank and importance of taxes is also evidenced by those constitutional regulations that clearly refer to the provisions of separate acts related to their imposition, determination of entities, objects of taxation and tax rates, as well as the rules for granting reliefs and redemptions, and categories of entities exempt from taxes (Article 217 of the Constitution). It is worth noting that these issues, rightly raised by constitutional regulations, give rise in practice to a number of problems of interpretation, starting from the indication of the subjective scope affecting the actual possibility of applying tax preferences through the objective scope (Popławski et al., 2022, pp. 771–787).

While conducting further considerations of the aspect of constitutional and legal tax solutions protecting the financial security of the state, one should also refer to the regulations resulting from Article 167, in conjunction with Article 168, of the Basic Law (March, Judgment of the Constitutional Tribunal 1998; November, Judgment of the Constitutional Tribunal 1999; Judgment of the Constitutional Tribunal 2005). In the context of decentralization of public authorities (Kallas, 2002), the legislation does not forget to indicate the sources of obtaining funds for local government units that perform public tasks not reserved for other public authorities. Local government units obliged to perform statutory public tasks are financially secured, having the right to make their own income, among which the most important is tax.

In the case of local government, the most important monetary benefits are local taxes and fees, i.e. property tax, taxes on means of transport, market fees, local fees and administrative fees (Local Tax and Fee Act 1991). In relation to these, the constitutive

body of a local government unit was constitutionally equipped with the right to determine their amounts within the limits specified in the Act (Article 168 of the Constitution). At the same time, it is worth noting that although this is very important, it is not the only tax revenue indicated by the Basic Law in the case of local government units. The Constitution also provides that local government units are guaranteed a share in public revenues in accordance with the tasks assigned to them, while at the same time indicating that their sources of income are specified in the Act. Its regulations show that the revenues of local government units are also shares in income taxes from natural and legal persons (Article 3(2), Local Government Unit Income Act 2003).

Directing these considerations to determining the importance of constitutional regulations from the point of view of the financial security of the State Treasury's interest in tax terms, it must be unequivocally stated that the legislation does not directly express the need for financial security in relation to this entity. There can be no doubt, however, that such protection was provided for, which results from the provisions of the Tax Ordinance (Tax Ordinance Act 1997). The provisions of this Act, indicating the subject matter covered by its regulations, directly state that it applies primarily to taxes, but also to fees and non-tax receivables of the state budget and budgets of local government units, and tax authorities are authorized to determine or specify them (Article 2(1)(1), Tax Ordinance Act 1997). Later, defining tax in Article 6 of the Act, the legislation states that 'tax is a public law, a gratuitous, compulsory and non-returnable cash benefit to the State Treasury, province (*województwo*), district (*powiat*) or commune (*gmina*), resulting from the Tax Law'. The adoption of such a *prima facie* definition confirms the security of the financial interest of the State Treasury, which acts as a tax creditor. It is the Treasury, not the state, that receives funds from taxes, because it is the Treasury, not the state, that was endowed with legal personality. For this reason, it is also the Treasury that was designated as the entity authorized, *inter alia*, to acquire an inheritance in its entirety as a way of extinguishing a tax liability towards a tax remitter or collector, and to purchase property for purposes justifying its expropriation or to expropriate property as part of a deduction (Articles 59(2)(7) and 64(1)(3), Tax Ordinance Act 1997).

4. Constitutional banking regulations and the financial security of the state

Finally, referring to the issue of constitutional banking regulations in relation to the financial security of the state, reference should be made to the provisions of Article 227 of the Constitution. Under this provision, the legislation addresses the issue of financial security from the perspective of banking regulations in the most complete manner, stating that 'the central bank of the state is the National Bank of Poland' and has the exclusive right to issue money (Ruśkowski, 2021, p. 11), determine and imple-

ment monetary policy and be responsible for the value of the Polish currency (Ofiar-ski, 2020, p. 117).

The constitutionally provided powers of the National Bank of Poland (NBP) are manifested in the statutory objectives of its activities related primarily to maintaining a stable price level while supporting the economic policy of the government (Zubik, 2021,31–51). In this area of activity, the NBP was authorized to organize monetary settlements in the field of foreign-exchange reserves management, conduct foreign-exchange activities within the limits specified by statutes, conduct banking services for the state budget, and regulate the liquidity of banks and their refinancing (Articles 3(1) and (2)(1–5) of the National Bank of Poland Act 1997). Due to these objectives, the NBP has been recognized by doctrine as the basic element of the financial safety net (Kraś, 2013, p. 189).

The fact that the Constitution of the Republic of Poland also defines the structure of the Bank, indicating its president, Monetary Policy Council and management board, can be considered as confirmation of the significance and role of the NBP. In order to ensure the financial security of the state, the activities of these bodies should be coupled with the activities of the state authorities responsible for running the state's financial management. The necessity of such linkage of actions results directly from the constitutional provisions, where the legislation stipulates that the Monetary Policy Council establishes the assumptions of the monetary policy annually and submits them to the Sejm for information simultaneously with the submission of the draft Budget Act by the Council of Ministers. Also, after the end of the financial year, the Monetary Policy Council submits a report on the implementation of the monetary policy assumptions to the Sejm within five months of the end of the financial year (Article 227(6) of the Constitution).

Conclusion

The considerations here prove that the Basic Law should be treated as the basis for regulations which guard the financial security of the state. Although the legislation does not use this term, there can be no doubt that the adopted constitutional regulations are to safeguard security, as broadly understood, in its various aspects, including financial security. This financial security should be equated, based on the applicable legal regulations, with both the financial security of the state and the concept of the security of the financial interest of the State Treasury. Such types of security can be distinguished in the financial context analysed, with the former being of a colloquial nature and the latter of a qualified one. The constitutional regulations serve to highlight them, which should be considered from three financial perspectives: budgetary, tax and banking. In relation to these, the Constitution of the Republic of Poland introduces cardinal regulations, which are the basis for the regulation of ordinary laws. It is based on these that

ordinary statutes specify constitutional regulations. Such a role for the Constitution is particularly important from the point of view of public authorities that perform public tasks and their need to take action. Without constitutionally defined financial rules for their operation, the financial security of the state, which is necessary to preserve its identity and financial independence, cannot be guaranteed.

REFERENCES

- Act of 23 April 1964 on the Civil Code, (Journal of Laws of 2022, item 1360, as amended).
- Act on Local Tax and Fee Act of 12 January 1991 (Journal of Laws of 2023, item 70).
- Act on National Bank of Poland Act of 29 August 1997 (Journal of Laws of 2022, item 2025).
- Act on Tax Ordinance Act of 29 August 1997 (Journal of Laws of 2022, item 2651, as amended).
- Act on Public Finance Act of 26 November 1998 (Journal of Laws of 2003 No. 15, item 148, as amended).
- Act of 10 September 1999 on the Fiscal Penal Code (Journal of Laws of 2022, item 859, as amended).
- Act on Local Government Unit Income Act of 13 November 2003 (Journal of Laws of 2022, item 2267).
- Act on Public Finance Act of 27 August 2009 (Journal of Laws of 2022, item 1634, as amended).
- Adrian & Fine. (2009). *Categorical grants-in-aid*, Scientific Research from the Ministry of Education, KAKEHN, Japan Society for the Promotion of Science, 412–414.
- Bartosiewicz, M. (2018). *Wybrane zagadnienia prawa konstytucyjnego*. Wrocław 2006, pp.106.
- Bernat, R. (2018). Konstytucyjny nakaz ponoszenia ciężaru podatków – wybrane zagadnienia. *Acta Iuris Stetinensis*, 3(23), (p. 38).
- Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, item 483, as amended).
- Dębowska-Romanowska, T. (2009). *Pojęcie podatku i innych danin publicznych w świetle Konstytucji*. In W. Miemiec (Ed.), *Stanowienie i stosowanie prawa podatkowego. Księga jubileuszowa Profesora Ryszarda Mastalskiego*, Wrocław UNIMEX 2009 (p. 110).
- Dębowska-Romanowska, T. (2010). *Prawo finansowe. Część konstytucyjna wraz z częścią ogólną*. Warszawa, C. H. Beck (p. 109).
- Etel, L., & Strzelec, D. (2021). On evidence preclusion in tax and control procedures: A comparative legal approach. *Białostockie Studia Prawnicze*, 26(4), 21–23.
- Feret, E. (2021). Przejawy władztwa finansowego na szczeblu samorządowym – wybrane zagadnienia. *Kwartalnik Prawno-Finansowy*, 1, 61–85.
- Judgment of the Constitutional Tribunal of 14 June 2000, file ref. P 3/00, OTK ZU No. 5.
- Judgment of the Constitutional Tribunal of 16 March 1998, file ref. K 35/98, OTK ZU No. 3.
- Judgment of the Constitutional Tribunal of 18 October 1994, file ref. K 2/94, OTK 1994.
- Judgment of the Constitutional Tribunal of 2 March 1993, file ref. K 2/92, OTK 1993.
- Judgment of the Constitutional Tribunal of 25 June 2002, file ref. K 45/01, OTK ZU No. 4/A/2002.

- Judgment of the Constitutional Tribunal of 3 November 1998, file ref. K 12/981998. <https://www.saos.org.pl/judgments/205793>
- Judgment of the Constitutional Tribunal of 6 September 2005, file ref. K 46/04, OTK ZU No. 8/A/2005.
- Judgment of the Supreme Administrative Court of 10 March 2022, file ref. act I GSK 2286/18, LEX.
- Kallas, M. (2002). *Konstytucyjna zasada decentralizacji władzy publicznej*. In E. Gdulewicz & H. Zięba-Załucka (Eds.), *Dziesięć lat Konstytucji Rzeczypospolitej Polskiej* Rzeszów, Uniwersytet Rzeszowski (pp. 121–133).
- Kirchhof, P. (1985). *Die kommunale Finanzhoheit*. In G. Püttner (Ed.), *Handbuch der kommunalen Wissenschaft und Praxis* (Vol. 6: Kommunale Finanzen) (pp. 1–28). Springer-Verlag.
- Kraś, I. (2013). Polityka banku centralnego a bezpieczeństwo finansowe państwa. *Przegląd Strategiczny*, 1, (p.189).
- Krawczyk, M. (2021). OLAF w systemie kontroli Unii Europejskiej. *Kontrola Państwowa*, 6, 21–40.
- Kuca, G. (2022a). *Formy elastycznego wykonywania budżetu państwa w dobie pandemii COVID-19*. In G. Kuca (Ed.), *Finanse publiczne w sytuacjach kryzysowych. Zagadnienia prawno-finansowe* (pp. 151–152). Kraków, Wydawnictwo Księgarnia Akademicka.
- Kuca, G. (2022b). Problem deprecjonowania budżetu państwa. *Państwo i Prawo*, 10, pp. 321–332.
- Liżewski, B. (2021). *System prawa a porządek prawny. Między konstrukcją normatywną a prawem w działaniu*. C. H. Beck.
- Mańczyk, P. (2018). Władztwo finansowe jednostek samorządu terytorialnego w kontekście uprawnień gminy. *Ekonomiczne Problemy Usług*, 133(1), 208.
- Ofiarski, Z. (2020). Założenia polityki pieniężnej Rady Polityki Pieniężnej a ochrona ustroju pieniężnego jako wartości publicznej. *Białostockie Studia Prawnicze*, 25(1), 115–128.
- Popławski, M., Teszner, K., & Charkiewicz, M. (2022). Konstytucyjne uwarunkowania stosowania przepisów normujących ulgi w spłacie zobowiązań podatkowych. In R. Skarżyński, E. Kuźlewska, J. Matwiejuk, A. Jackiewicz, L. Jamróz, A. Bartnicki & K. Bezubik (Eds.), *Prawo konstytucyjne w systemie prawa: księga jubileuszowa dedykowana profesorowi Stanisławowi Bożykowi z okazji 70. rocznicy urodzin i 45-lecia pracy naukowej* (pp. 775–787). Białystok: Temida 2.
- Potrzeszcz, J. (2006). Bezpieczeństwo prawne w orzecznictwie polskiego Trybunału Konstytucyjnego. *Roczniki Nauk Prawnych Kul*, 26(1), 7–40.
- Raczkowski, K. (2014). Bezpieczeństwo finansowe. In J. Płaczek (Ed.), *Ekonomika bezpieczeństwa państwa w zarysie* (pp. 291–324). Warszawa Difin 2014.
- Ruśkowski, E. (2021). On priority research problems in the scope of public finance control in Poland. *Białostockie Studia Prawnicze*, 26(4), 9–18.
- Świat Książki (2006). In *Wielki Słownik Języka Polskiego* (p. 632).
- Woźniak, M. (2017). Interes publiczny i dobro publiczne w prawie administracyjnym na tle konstytucyjnej zasady dobra wspólnego. *Przegląd Prawa Konstytucyjnego*, 38(4), 151–173.
- Zawisza, J. (2015). Administracja publiczna w kształtowaniu bezpieczeństwa wewnętrznego państwa. *Przedsiębiorczość I Zarządzanie*, 26(6), 71–73.
- Zubik, M. (2001). Narodowy Bank Polski (analiza konstytucyjno-ustrojowa). *Państwo i Prawo*, 6, 31–51.