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Stability in public finance as a value protected in the Constitution of the Republic of Poland of 2 April 1997 and the condition of Poland's public finance

Abstract

The study focuses on issues related to public finance with particular reference to values protected in the Constitution of the Republic of Poland of 2 April 1997. The aim of the analysis is to determine directions of decisions of the Constitutional Tribunal in the protection of values important from the point of view of public finance. Stability of public finance is recognized as a value highly embedded in the hierarchy of constitutionally important interests. In the process of making and applying the law, these values should constitute guidelines that serve to assess the legitimacy of the changes introduced to the Polish financial and legal order. This, in turn, means special value attributed to protected goods in the event of divergence of public and private interests. This research is aimed at verifying the claim that the public interest cannot be examined on a one-tier basis, and the legal measures used should be proportionate and adequate to the intended purpose.

The research was conducted using the method of interpretation of laws in force and an analytical investigation. The sources used are relevant to legal sciences and include legal acts, literature and decisions of the Polish Constitutional Tribunal.

Keywords: stability of public finance, constitutional values, public finance

Introduction

Relations between the state and the citizen should be cemented by loyalty, i.e. trust in the state and the law it legislates. The essence of this loyalty lies in “the prohibition of setting specific “traps” on the citizen, making empty promises, and also state’s sudden withdrawal from the promises made or changing the established rules of conduct”.¹ In this context, it is important not only to counteract excessive state debt that prevents the increase in liabilities of the public finance sector in the following financial years, but also care for the economic credibility of the Republic of Poland on the international arena.

The state of public finance should be assessed from the perspective of values which found their systemic basis in the Constitution of the Republic of Poland of 2 April 1997.² Establishing what these values are and what their significance in the context of the current state debt is will constitute the realm of scholarly exploration – and thus the main goal – in the framework of this study. It should be pointed out that the author’s assumption is to rely not only on the regulations of ordinary law, but above all on the analysis of the decisions of the Constitutional Tribunal³ in which the main subject of examination was the condition of public finance. This has profoundly affected the sources of analysis used. In the process of making and applying the law, these values should constitute guidelines that serve to assess the legitimacy of the changes introduced in the Polish financial and legal order. This, in turn, means special value attributed to protected goods in the event of divergence of public and private interests. It was therefore considered legitimate to verify the claim that the public interest cannot be considered on a one-sided basis and that the remedies used should be proportionate and adequate to the intended purpose. Assumptions of this conducted research required the use of the method of investigation of the law in force and analysis of sources appropriate to legal sciences and covering legal acts, literature and judicial decisions of the Constitutional Tribunal.

Defined in this way, the research area has impacted the content of individual parts of the study, while the author consciously first seeks to identify and embed issues related to the state of public finance in constitutionally protected values, and then analyzes the discussed issues taking into account dozens of facts evaluated by the Constitutional Tribunal. The last part of the article – which will confirm the

1 Judgement of the Constitutional Tribunal of 12 December 2012, K 1/12, “OTK-A” 2012, no. 11, item 134.

2 Constitution of the Republic of Poland of 2 April 1997 (Dz.U. (Journal of Laws) no. 78 item 483 as amended); hereinafter: Polish Constitution.

3 Hereinafter referred to as “CT”.

relevance, gravity and research attractiveness of the discussed problems – is based on a statistical representation of the condition of public finance in Poland, taking into account data published by the Ministry of Finance and statistics resulting from budget laws as at 1 May 2024.⁴

The condition of public finance and constitutionally protected values

The philosophy of values is significantly linked with public finance, the public finance sector and the activity of entities in this sector. Therefore, the axiology of law should be the starting point in the process of creating financial law, including public law, because as early as at this stage the values that the law is supposed to guide, implement and turn into useful guidelines in practice for the implementation of the legislator's intentions are important. These values should be decoded primarily from the provisions of the Constitution of the Republic of Poland.

As aptly noted by Ofiarski,⁵ economic and financial balance represents an important constitutionally protected value, at the core of which lies the desire to provide the state with stable conditions for carrying out public tasks in the public interest.⁶ This view was based on the provisions of Article 216 of the Constitution of the Republic of Poland. Pursuant to Article 216(5), one may neither contract loans nor provide guarantees and financial sureties which would made government debt to exceed three-fifths of the value of the annual gross domestic product. The legislator lays down that the method for calculating the value of the annual gross domestic product and government debt shall be specified by statute. Legal writers point out that: “The state of relative sustainability of the financial economy in the state creates appropriate conditions for economic development and should be treated as an important element of the principle of rational conduct of the state's financial economy”,⁷ while public funds, in turn, are inseparably linked with this. In this regard, attention should be paid to having to preserve stability of sources of

4 Cf. W. Bożek, *Stabilność sektora finansów publicznych w warunkach pandemii COVID-19*, “Prawo Budżetowe Państwa i Samorządu” 2021, Vol. 9, No. 4, pp. 69–85, DOI: 10.12775/PBPS.2021.022.

5 Z. Ofiarski, *Komentarz do art. 216 Konstytucji RP*, in: M. Safjan, L. Bosek (eds.), *Konstytucja RP*. Vol. II. *Komentarz do art. 87–243*, Warszawa 2016, Legalis (access: 29.04.2024).

6 Also: Judgment of 4 December 2000, K. 9/6, “OTK ZU” No. 8/2000, item 294, judgment of the Constitutional Tribunal of 2000, K 8/00, “OTK” 4.12.2000, No. 9, item 294 and judgment of the Constitutional Tribunal of 27 February 2002, K 47/01, “OTK-a” 2002, No. 1, item 6. Cf. also: Ł. Kielin, *Równowaga budżetowa w świetle przepisów Konstytucji RP – zarys problemu*, in: E. Feret, P. Majka (eds.), *Księga Zjazdu Katedr i Zakładów Prawa Finansowego i Prawa Podatkowego “Misja prawa finansowego – wyzwania współczesności”*, Rzeszów 2023, p. 182.

7 Z. Ofiarski, *Komentarz do art. 216...*

financing and continuity – predictability – of processes that serve a specific public task.⁸ It must be borne in mind that these tasks vary in time and space, and their definition depends on the value system adopted,⁹ while at the same time determining both the obligation and the right of the state to satisfy the collective and individual needs of man.¹⁰

The logical consequence of the above is to provide competent public administration bodies with legal forms of action as well as a stable basis for financing their activities. There might be some difficulties in this area in reaching a compromise between what is important from the point of view of the functioning of the state and the sphere of private interests. Therefore, a proper understanding of the public interest, which seems to be the above-mentioned “compromise”¹¹ here, plays such an important role for public tasks carried out by public finance sector entities. The Constitutional Tribunal also¹² points out in its judgment of 4 May 2004 that the balance of public finance should be treated as a good which, in the hierarchy of constitutional values, is placed so high that it is protected by a constitutional restriction (i.e. an absolute ban on excessive indebtedness of the state).¹³

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- 8 An extensive discussion in this regard is offered in S. Kluza, *Stabilność finansowa jako dobro publiczne*, in: Z. Piątek, S. Olearczyk, *Przygotowania obronne w działach administracji rządowej*, Warszawa 2012, pp. 29–34, and in K. Kluza, S. Kluza, *Finanse publiczne a stabilność systemu finansowego*, in: M. Zioło (ed.), *Finanse publiczne*, Warszawa 2021, pp. 97–122. These issues are also taken up in D. Trzeszczoń, *Stabilność finansowa polskiej opieki zdrowia*, in: D. Wróblewska, W. Bożek (eds.), *Bezpieczeństwo i stabilność jako wartość chroniona na gruncie prawa polskiego*, Łódź 2022, pp. 71–72 and in K. Sarnacka, *Wpływ czynników zewnętrznych na stabilność i bezpieczeństwo systemu finansowego*, in: D. Wróblewska, W. Bożek (eds.), *Bezpieczeństwo i stabilność jako wartość chroniona na gruncie prawa polskiego*, Łódź 2022, pp. 38, 47.
- 9 M. Stahl, *Cele publiczne i zadania publiczne*, in: J. Zimmermann (ed.), *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa i Postępowania Administracyjnego, Zakopane 24–27.9.2006*, Warszawa 2007, pp. 95–116 and T. Dębowska-Romanowska, *Konstytucyjne cechy tożsamości ustroju polskich finansów publicznych*, in: E. Feret, P. Majka (eds.), *Księga Zjazdu Katedr i Zakładów Prawa Finansowego i Prawa Podatkowego “Misja prawa finansowego – wyzwania współczesności”*, Rzeszów 2023, pp. 79, 88–91.
- 10 J. Boć, in: J. Boć (ed.), *Prawo administracyjne*, Wrocław 2005, p. 16.
- 11 Cf. E. Wieczorek, *Niektóre aspekty ochrony konsumentów w świetle ustawy – Prawo działalności gospodarczej*, “Gdańskie Studia Prawnicze” 2000, No. 7, p. 625.
- 12 Judgement of the Constitutional Tribunal of 2 May 2004, K 40/02, “OTK-A” 2004 no 5, item 38.
- 13 Cf. T. Gwóźdź, D. Kołodziej, *Fiscal Sustainability – a Comparative Approach*, “Roczniki Administracji i Prawa” 2024, No. 1, p. 117 and judgement of the Constitutional Tribunal of 30 November 1993, K 18/92, “OTK” 1986-1995, Vol. IV, item 41 and judgment of the Constitutional Tribunal of 17 December 1997, K 22/96, “OTK ZU” No. 5–6/1997, item 71 and judgment of the Constitutional Tribunal of 24 November 2009, SK 36/07, “OTK ZU” No. 10/A/2009, item 151.

One needs to agree with Zawadzka-Pąk who claims that the objectives of public finance law are closely related to the protection of public values.¹⁴ The author, while conducting extensive investigation of the law in force, indicates several important general objectives, including “protection of the common good, optimally harmonized with the good of individuals”,¹⁵ “protection of the fiscal interest of the state”,¹⁶ “legal regulation of social, political and economic phenomena expressing the objectives defined by political and economic-financial directives”,¹⁷ She also specifies these objectives, noting that these values are also important from the point of view of “ensuring continuity of existence, efficient operation of the state and the well-being of its citizens by financing individual public policies”,¹⁸ “establishing efficient budgeting procedures (organizational goal)”,¹⁹ “proper shaping of mechanisms not only institutional (professional) control of public finance (...), but also social control of spending of public funds”,²⁰ “closing the economic gap in the public finance sector with legal mechanisms that force a minimum of rationality, efficiency and cost-effectiveness (rationalization of spending)”²¹ and “ensuring debt sustainability”²² and “conflict resolution”.²³

Such important goals will only be achieved if directions of actions taken relate to sustainable values, not to views dictated by particular interests of narrow social groups (in particular, i.e. important from the electoral point of view, and often constituting a distortion of the will of society). When assessing realistically the possibilities of reconciling conflicting interests, it must be borne in mind that there

14 The author analyses this area in her scholarly work. See U. Zawadzka-Pąk, *Cele prawa finansów publicznych a aksjologiczna analiza prawa – założenia oraz propozycja ujęcia badawczego*, “Krytyka Prawa. Niezależne Studia nad Prawem” 2024, Vol. 16, No. 1, pp. 235–251.

15 Ibidem, p. 244.

16 Ibid., with reference to: T. Dębowska-Romanowska, *Prawo finansowe. Część konstytucyjna wraz z częścią ogólną*, Warsaw 2010, p. 66.

17 U. Zawadzka-Pąk, *Cele...*, p. 244 with reference to: C. Kosikowski, *Problem kodyfikacji polskiego prawa finansowego*, “Acta Universitatis Lodzensis. Folia Iuridica” 1989, No. 40, p. 5.

18 U. Zawadzka-Pąk, *Cele...*, p. 245.

19 Ibidem, p. 246. Cf. Ł. Kielin, *Budżetowe procedury awaryjne w świetle Konstytucji RP oraz regulacji konstytucyjnych wybranych państw europejskich*, “Prawo Budżetowe Państwa i Samorządu” 2019, Vol. 7, No. 2, pp. 117–133, DOI 10.12775/PBPS.2019.016. U. Zawadzka-Pąk, *Cele...*, p. 246.

20 Ibidem.

21 Ibidem.

22 Ibidem, p. 247. More in: Wł. Grześkiewicz, *Wpływ zaległości budżetowych na bezpieczeństwo finansowe budżetu państwa*, “Prawo Budżetowe Państwa i Samorządu” 2018, Vol. 6, No. 3, pp. 45–67, DOI 10.12775/PBPS.2018.016..

23 U. Zawadzka-Pąk, *Cele...*, p. 247.

will always be individuals or social groups who, in their actions, will not be guided by solidarity in the pursuit of common goals. It is important, however, that in the conditions of a “clash” of interests,²⁴ the common good should not be weakened.

Values associated with public finance in the Constitution of the Republic of Poland may have both material significance and refer to formal and legal aspects of the state system.²⁵ The principle of the exclusivity of the legislative power to shape the revenues and expenses of the state is an essential element of a democratic state governed by law,²⁶ but it should mean here relative freedom of decision, balanced and tempered by the legislator’s duty to respect the principle expressed in Article 2 of the Constitution of the Republic of Poland.²⁷ It should be borne in mind that the legislator, anticipating the need for social control over the correctness of the processes that make up the management of public funds, has defined general principles related to the collection of public funds and their distribution in the Public Finance Act of 27 August 2009,²⁸ while guaranteeing the public the possibility of monitoring these processes, in accordance with the principle expressed in article 33(1) of the Public Finance Act, i.e. transparency of public finance.

The embedding of stability in public finance in values that are particularly important in public finance is confirmed by the judicial decisions of the Constitutional Tribunal, common and administrative courts, as well as numerous public administration bodies, both in the Republic of Poland and internationally.²⁹

Stability in public finance in the decisions of the Constitutional Tribunal

Stability in public finance is a subject of constant interest and in-depth analyses of the Constitutional Tribunal, which result, among others, from the dynamics of the processes comprising public finance, the seriousness of the issues analyzed

24 Judgement of the Constitutional Tribunal of 7 January 2004, K 14/03, “OTK-A” 2004, No. 1, item 1.

25 J. Zaremba, *Aksjologia prawa finansowego*, “Białostockie Studia Prawnicze” 2020, Vol. 25, No. 1, p. 92.

26 Judgment of the Constitutional Tribunal of 27 February 2002, K 47/01... and M. Wróblewska, *Różnicowanie obciążeń podatkowych podmiotów prowadzących działalność gospodarczą. Głosa do wyroku WSA z dnia 21 stycznia 2004 r., I SA/Łd 128/03*, “Gdańskie Studia Prawnicze – Przegląd Orzecznictwa” 2005, No. 1–2, p. 138.

27 Judgement of the Constitutional Tribunal of 22 May 2002, K 6/02, “OTK-A” 2002, No. 3, item 33.

28 The Public Finance Act of 27 August 2009 (Dz. U. (Journal of Laws) of 2023 item 1270 as amended), hereinafter: PFA.

29 Ł. Kielin, *Stabilność fiskalna jako wartość konstytucyjnie chroniona w Polsce na tle porównawczym*, Warszawa 2022, pp. 30–36.

and the importance of public finance in the process of state governance and the implementation of public tasks imposed on the state.

The 8 June 2010 judgment³⁰ indicated that the balance in the state budget was raised to the status of a constitutional value, included in the idea of the state as a common good for all citizens. It was stressed that the authorities must take it into consideration when deciding on each category of benefits that will entail a reduction in the state's finance.³¹

In practice, the scope of protection of goods (their valuation) must often be taken into account, which will entail having to distinguish "the value more protected."³² However, this cannot be done without balancing the public and private interests or maintaining appropriate proportions in terms of restrictions applied. Legal scholars and commentators³³ have expressed their position, which has also gained the approval of the Constitutional Tribunal, that "the good of man is the primary goal of the administration," although "the specific good of other individuals as a social group may weigh on the manner and extent of the protection of a particular individual interest". In this case, despite the fact that "the public interest is conducive to the pursuit of the individual interest", "in certain areas there is no other way of ensuring individual interests than by prior protection of the social interest."³⁴

In the circumstances of a particular case, the general good is compared, among others, with expenditures in particular segments of the health care service and salaries of the medical community,³⁵ with the "expectation" of judges for a salary increase in a certain amount and within a certain period,³⁶ "ensuring all pensioners due benefits, developed in a social insurance system based on an intergenerational

30 Judgment of the Constitutional Tribunal of 8 June 2010, SK 37/09, "OTK-a" 2010, No. 5, item 48, and also judgment of the Constitutional Tribunal of 4 December 2000, K. 9/00, "OTK ZU" 2000, No. 8, item 294, judgment of the Constitutional Tribunal of 4 December 2000, K 9/00...

31 Cf. Ł. Kielin, *Równowaga budżetowa w świetle przepisów Konstytucji RP – zarys problemy*, in: E. Feret, P. Majka (eds.), *Księga Zjazdu Katedr i Zakładów Prawa Finansowego i Prawa Podatkowego "Misja prawa finansowego - wyzwania współczesności"*, Rzeszów 2023, p. 185 and also A. Gorgol, *Równowaga budżetowa w świetle orzecznictwa Trybunału Konstytucyjnego*, "Państwo i Prawo" 2014, No. 9, pp. 23 ff. and A. Hanusz, *Równowaga budżetowa a zasady prawa*, "Państwo i Prawo" 2015, No. 9, pp. 20 ff.

32 Judgement of the Constitutional Tribunal of 18 February 2004, K 12/03, "OTK-A" 2004, No. 2, item 8.

33 J. Boć, *Obywatel wobec ingerencji współczesnej administracji*, Wrocław 1985, pp. 54 ff.

34 Judgement of the Constitutional Tribunal of 20 July 2004, K 11/02, "OTK-A" 2004, No. 7, item 66.

35 Judgement of the Constitutional Tribunal 7 January 2004, 14/03...

36 Ibid. and cf. judgment of the Constitutional Tribunal of 12 December 2012, K 1/12...

agreement,”³⁷ the need to “settle accounts for expropriated real estate,”³⁸ reducing or abolishing tax credits,³⁹ etc. Going further, it should be pointed out that the decisions of the Constitutional Tribunal have often given priority to maintaining the budgetary balance of the state over the protection of acquired rights. This was the case in, among others, the temporary abolition of indexation of salaries in the state budget sphere,⁴⁰ a temporary restriction of subsidies for political parties,⁴¹ a suspension of wage increases of state university employees,⁴² as well as restrictions on veterans’ rights.⁴³ It is worth noting that the assessment of specific facts required the Tribunal to analyze often complex and extraordinary circumstances concerning a given case related to the introduction of specific instruments into the Polish legal order. At that, what deserves approval is that the Constitutional Tribunal’s taking into account these circumstances, often concluded that the legislator did not go beyond its regulatory freedom. This is important in the context of the general values on which the democratic rule of law is based.

The 4 May 2004 judgment⁴⁴ rightly recognized that the cause of the State’s indebtedness lies in public expenditure that is higher than the capacity to generate revenue, and that the increase in public debt is not only due to the budget deficit at the central level or at the level of local budgets for a given year, but also due to “unredeemed” bonds and other securities and unpaid debt titles to cover deficits from previous years. It follows, therefore, that the problem of increasing public debt is the result of long-term processes of unsustainable financial economy, i.e. recurrent and unpaid budget deficits. In addition to the appropriate (sustainable) condition of public finance, the Constitutional Tribunal often refers to the need to maintain

37 Judgement of the Constitutional Tribunal 4 December 2004, K 9/00.... One may also mention the suspension of payment of social insurance benefits for accidents at work and due to occupational diseases, e.g. in judgment of the Constitutional Tribunal of 31 January 2006, K 23/03, “OTK ZU” 2006, No. 1/A, item 8, or limitations of rights guaranteed in the old pension system, as was the case in the judgment of the Constitutional Tribunal of 20 November 2001, SK 15/01, “OTK ZU” 2001, No. 8/A, item 252.

38 Judgement of the Constitutional Tribunal of 19 May 2011, K 20/09, “OTK-A” 2011, No. 4, item 35.

39 Judgment of the Constitutional Tribunal of 27 February 2002, K 47/01... and in its ruling of 12 January 1995, K 12/94, “OTK” 1986-1995, Vol. VI, item 2.

40 Judgement of the Constitutional Tribunal of 17 November 2003, K 32/02, “OTK-A” 2003, No. 9, item 93.

41 Judgement of the Constitutional Tribunal of 20 January 2010, K 6/09, “OTK-A” 2010, No. 1, item 3.

42 Judgment of the Constitutional Tribunal of 29 January 1992, K 15/91, “OTK” 1992, No. 1, item 8 and judgment of the Constitutional Tribunal of 18 January 2005, K 15/03, “OTK-A” 2005, No. 1, item 5.

43 Judgement of the Constitutional Tribunal of 9 March 2004, K 12/02, “OTK-A” 2004, No. 3, item 19.

44 Judgement of the Constitutional Tribunal of 4 May 2004, K 40/02, “OTK-A” 2004, No. 5, item 38.

budget balance⁴⁵ or financial balance,⁴⁶ to counteract excessive debt,⁴⁷ and to safeguard stability of state finance.⁴⁸

The Constitutional Tribunal pays particular attention in its decisions to individual categories of public funds, which are significant from the point of view of the above-mentioned values protected in the Constitution of the Republic of Poland. The Constitutional Tribunal refers to both public levies⁴⁹ and specific examples of taxes and other charges, such as public fees.⁵⁰ Public levies, due to their fiscal importance, have been recognized as an important element of the common good, safeguarded primarily by competent state authorities. At the same time, the state has an obligation to safeguard its rights related to public levies, as this ensures the implementation of basic public tasks. The Constitutional Tribunal's judgment of 16 April 2002⁵¹ indicates that the need for their implementation may lead to further restrictions on the disposal of the taxpayer's assets.

In the field of taxes, which are axiologically based on the concept of the common good, the Constitutional Tribunal expressed its opinion more broadly in its judgment of 16 October 2007,⁵² recognizing that Article 84 of the Constitution of the Republic of Poland expresses the principle of "constitutional debt," adding that the principles relating to the status of an individual and to their relations with the state (e.g. the rule of law, proportionality or equal treatment) refer to rights and freedoms as well as to obligations, thus also to the universal bearing of public burdens.⁵³ In this context, an apt comment from Dębowska-Romanowska⁵⁴ needs to be mentioned, namely that Articles 217 and 84 of the Constitution of the Republic of Poland impose on citizens a "permanent, uninterrupted civic obligation to maintain the state by means of taxes. It is an obligation which, by its intensity of

45 Judgement of the Supreme Administrative Court of 9 December 2009, II FSK/1099/10, LEX no. 1083501.

46 Judgement of the Constitutional Tribunal of 4 May 2004, K 40/02, "OTK-A" 2004, No. 5, item 38.

47 Judgement of the Constitutional Tribunal 12 December 2004, K 1/12....

48 Judgement of the Constitutional Tribunal of 15 July 2013, K 7/12, "OTK-A" 2013, No. 6, item 76.

49 Judgement of the Constitutional Tribunal of 16 April 2002, SK 23/01, "OTK-A" 2002, No. 3, item 26.

50 Judgement of the Constitutional Tribunal of 10 December 2002, PK 6/02, "OTK-A" 2002, No. 7, item 91.

51 Judgement of the Constitutional Tribunal of 16 April 2002, SK 23/01...

52 Judgement of the Constitutional Tribunal of 16 October 2007, SK 63/06, "OTK-A" 2007, No. 9, item 105.

53 Judgement of the Constitutional Tribunal of 20 November 2002, K 41/02, "OTK ZU" 2001, No. 2002, item 83.

54 T. Dębowska-Romanowska, *Zdanie odrębne do wyroku TK z 6.03.2002 r., P 7/00*, "OTK-A" 2002, no 2, item 13.

encroachment on property rights and other civil rights, by its constancy and repetition, cannot be compared with other duties; so great is its gravity.” In keeping with this view, it is necessary to go further, stating that the enforcement of public levies by the tax administration by means of legal measures provided for by law should also be considered as a legitimate public interest. These measures should not only be effective but also proportionate. The Constitutional Tribunal’s judgment of 18 October 2011⁵⁵ indicated that the purpose of collecting the tax must not violate other constitutional values, because their implementation also serves the common good, that is the Republic of Poland.

The above findings can be applied to the current state of public finance debt, which will be the subject of discussion in Chapter three herein.

Statistical reflection on the condition of public finance of the Republic of Poland

Assessing the state of public finance in the Republic of Poland is not a simple task. This is for a number of reasons. Not only are they based on the complexity of the discussed issues, but they are also a result of the dynamics of the economic and political situation of the state, which affects the types and amount of public spending, but also for purely normative reasons, i.e. those that are anchored in the PFA and other acts of public finance law. For example, it should be borne in mind that even the provision of official data by the Ministry of Finance on the state of public debt entails difficulties in categorical assessment of the condition of Polish public finance, threats to the budget balance, security of public tasks, etc. This is due, among others, to the fact that the main indicator concerning the assessment of the financial condition of the country, which must be understood as the relation of public debt to gross domestic product, as set out in Article 216(5) of the Constitution of the Republic of Poland, features a heterogeneous methodology of its calculation, since according to the so-called national methodology, this ratio amounted to⁵⁶ 39.1% in 2022,⁵⁷ and according to the so-called EU

55 Judgement of the Constitutional Tribunal of 18 October 2011, SK 2/10, “OTK-A” 2011, No. 8, item 83.

56 Data for 2023 will be available by the end of May 2024 (Article 38 PFA).

57 This value was given in the quarterly bulletin of the Ministry of Finance of 29 March 2024, “Zadłużenie Sektora Finansów Publicznych” IV kw. 2023, <https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych> (access: 1 May 2024), p. 1. The announcement of the Minister of Finance of 23 May 2023 on the announcement of amounts referred to in Article

methodology – it was as high as 49.8%.⁵⁸ The difference between the different approaches to calculating public debt (sovereign debt (SD) and general government debt (GGD)) is shown in Table 1.

Table 1. The ratio of sovereign debt to gross domestic product in 2018–2022

Sovereign debt to gross domestic product including national and EU methodologies (%)			
Year	SD	EDP	Difference
2018	46.5	48.8	2.3
2019	43.8	46.1	2.3
2020	48	57.6	9.6
2021	44.1	54.2	10.1
2022	39.4	49.3	9.9

Source: Ministry of Finance, <https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych> (access: 1 May 2024).

Sovereign debt at the end of 2023 amounted to approximately PLN 1,328.1 billion (national methodology), and according to the EU methodology for calculating public debt, this debt was higher by about PLN 363 billion and amounted to approximately PLN 1,691.1 billion. Detailed data on the amount of public debt and general government debt are presented in Figures 1 and 2. The analysis shows a significant difference, which clearly distorts the unambiguous interpretation of official statistics in the context of the actual state of public finance. It is impossible to assess whether a specific methodology or which methodology of calculating sovereign debt is (more?) correct, but at the same time there is no reason to believe any of them to be wrong.

The relation of sovereign debt (regardless of the methodology of its calculation) to gross domestic product should be examined in the context of the provisions of the Constitution of the Republic of Poland, but also the fiscal rules regulated in

38 and Article 38a of the Public Finance Act, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WMP20230000537/O/M20230537.pdf> (access: 1 May 2024) provides that it was 39.8% at the end of 2022.

58 This value was given in the quarterly bulletin of the Ministry of Finance of 29 March 2024, “Zadłużenie Sektoru Finansów Publicznych” IV kw. 2023, <https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych> (access: 1 May 2024), p. 1.

PFA, especially in Article 86, which sets the so-called prudential limits (above 55% and at least 60%). Their achievement implies the need to take specific actions that will lead to the restoration of stability in public finance. These actions should be directly linked to the need to reduce public expenditure and to intensify sources of public funding. The quantitative and qualitative fiscal rules regulated in Article 86 PFA yield important conclusions, and their application entails specific – sometimes measurable in a certain amount – consequences. Applying them under certain conditions may affect not only the employees of the state budget sphere and their remuneration, but also decisions taken at the local level (expenditure of the local government unit budget), as well as the financial situation of individuals (indexation of old age and disability pensions). The condition of public finance can thus clearly influence the need to value protected goods, which leads to the recognition that concern for stability and security in the discussed area of state activity is in the interest not only of state authorities, but also of other entities, including private law entities.⁵⁹

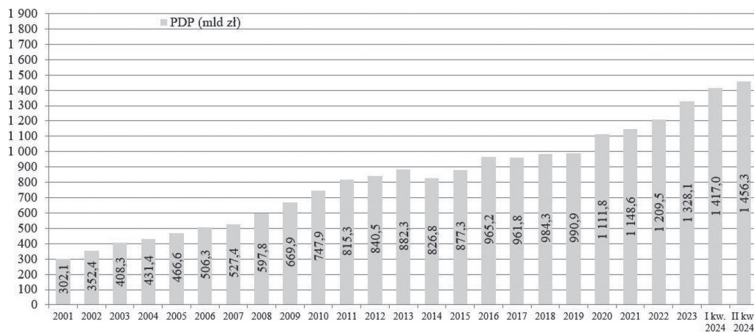


Figure 1. Sovereign debt

[note: PDP – sovereign debt; mld zł – PLN billion; kw – quarter; figures given in the Polish convention, where “,” denotes decimal places]

Source: Ministry of Finance, <https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych> (access: 1.05.2024).

⁵⁹ More in: A. Drwiłło, *Kontrowersyjne zagadnienia bezpieczeństwa finansowego*, in: E. Feret, P. Majka (eds.), *Księga Zjazdu Katedr i Zakładów Prawa Finansowego i Prawa Podatkowego “Misja prawa finansowego – wyzwania współczesności”*, Rzeszów 2023, pp. 101–102, 105, 109. On information aspects of security see: M. Janik, S. Hady-Głowiak, *Bezpieczeństwo informacji jako zadanie jednostek sektora finansów publicznych*, “*Studia Prawnoustrojowe*” 2023, No. 62, pp. 285–301, <https://doi.org/10.31648/sp.9284>.

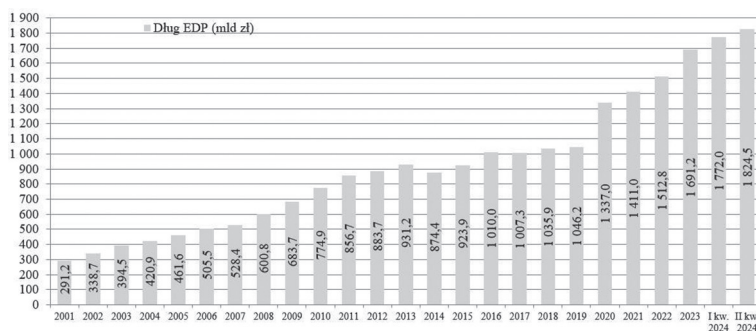


Figure 2. EDP

[note: mld zł – PLN billion; kw – quarter;
figures given in the Polish convention, where “” denotes decimal places]

Source: Ministry of Finance, <https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych> (access: 1.05.2024).

Conclusion

An important public interest is often manifested in the protection of the stability of state finance. This interest cannot be perceived only on a one-dimensional level, and therefore identified only with the fiscal interest of the state, because the protection of the financial security of the state serves the common good and makes it possible to implement the principle of social justice. The research also shows that actions related to the need to ensure stability in the public finance sector may have a direct impact on the well-being of private entities.

In conclusion, it was confirmed that the sustainable state of public finance (its stability and security) is a value that is rightly subject to constitutional protection. The body of decisions of the Constitutional Tribunal in this area is rich and well-established and concerns facts relating to specific issues in the field of financial law (e.g. types of public revenues: taxes, public fees) and in the realm of social insurance, health insurance, labour law, as well as areas of entrepreneurship, expropriation of real estate and many others.

The need to ensure permanent and stable sources of financing public tasks by the state arises primarily from the regulations contained in Chapter X of the Constitution of the Republic of Poland, but also Article 2 and Article 84 of this Act, or other editorial units of the Basic Law. For example, a reference in Article 1 to the common good of citizens (in the context of appropriate shaping of the state's public finance), may have a significant impact on the assessment of the introduced statutory regulations in matters concerning respect for the principles of good legislation.

Constitutionally protected values should provide a strong axiological basis for legal solutions introduced at the level of statutes and other legal acts.

It should be borne in mind that the protection of values that are part of the area of public finance is not absolute or predominant in relation to other constitutional values.⁶⁰ While the aim of the legislator is to maintain budget balance, the absence of such balance – as the experience of the Third Polish Republic shows – is an acceptable state. What is important is that the Constitutional Tribunal does not often question the legitimacy or the legislator's choice of a specific measure; it only does so if it confirms its disproportionate burdensomeness, inadequacy to the intended purpose or another unquestionable constitutional defect.

In conditions of increasing sovereign debt, it is important to consistently comply with the constitutionally defined rules, monitor the amount of this debt and its components and to verify the actions taken in practice (management of public funds) in terms of effectiveness, necessity, equity and purpose. Detailed rules in this respect are regulated in numerous acts (mainly in the Public Finance Act). The state of budgetary imbalance in the public finance sector, that is annually established public deficits, is not only undesirable, but also shows that the legislator rightly draws attention to values important from the point of view of security and stability of public finance.⁶¹ Respecting them is part of the correctness of the processes of collection and distribution of public funds.

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⁶⁰ Judgement of the Constitutional Tribunal of 27 February 2002, K 47/01....

⁶¹ Cf. E. Lotko, *Wybrane aspekty państwowego długu publicznego w Polsce w świetle ostatnich zmian ustawy o finansach publicznych*, in: Z. Ofiarski (ed.), *XXV lat przeobrażeń w prawie finansowym i prawie podatkowym – ocena dokonań i wnioski na przyszłość*, Szczecin 2014, pp. 86–87, 92–93.

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Stabilność w finansach publicznych jako wartość chroniona w Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku a stan finansów publicznych Rzeczypospolitej Polskiej

Streszczenie

W opracowaniu skoncentrowano się na zagadnieniach dotyczących finansów publicznych ze szczególnym odniesieniem się do wartości chronionych w Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku. Celem, który legł u podstaw prowadzonych analiz, jest ustalenie kierunków orzeczniczych Trybunału Konstytucyjnego w zakresie ochrony wartości istotnych z punktu widzenia finansów publicznych. Uznano bowiem, że stabilność finansów publicznych jest wartością wysoko osadzoną w hierarchii dóbr konstytucyjnie istotnych. W procesie stanowienia i stosowania prawa wartości te powinny stanowić wytyczne, które służą ocenie zasadności wprowadzanych zmian w polskim porządku finansowoprawnym. To zaś łączy się z potrzebą dokonywania wartościowania chronionych dóbr, gdy ma miejsce rozbieżność interesów: publicznego i prywatnego. Prowadzone badania mają sprzyjać weryfikacji twierdzenia, że interes publiczny nie może być rozpatrywany jednopłaszczyznowo, zaś stosowane środki prawne powinny być proporcjonalne i adekwatne do zamierzonego celu.

Badania prowadzono z wykorzystaniem metod dogmatycznoprawnej i analitycznej. Wykorzystane źródła są właściwe naukom prawnym i obejmują akty prawne, literaturę przedmiotu oraz orzecznictwo Trybunału Konstytucyjnego.

Słowa kluczowe: stabilność finansów publicznych, wartości konstytucyjne, finanse publiczne

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