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Responsibility of local government entities related to the implementation of the budget formulation and execution process – selected issues¹

Odpowiedzialność jednostek samorządu terytorialnego związana z realizacją procesu tworzenia i wykonywania budżetu – wybrane zagadnienia

Abstract

The functioning of the local government in the state, finding its foundations in the decentralisation process, is related to the allocation of specific tasks to it and, as a consequence, to a relevant share in public revenues. Equipping local government units with financial resources is in fact an important element ensuring their ability to perform the entrusted public tasks, while running their own financial management allows for independent decisions on the manner of management of the entrusted public resources. Independent financial management relates to the adoption of a budget resolution on an annual basis, which is its basis, and with a specific procedure for budget execution. The granting of certain competences (public tasks), revenue authority and the attribute of independent running of the financial economy is connected to a specific mode of responsibility of local government units, which, like responsibility in financial law in general, is a complex issue and is characterised by a variety of applied sanctions and legal regulations. The sanctions applicable in this case – depending on the entity concerned – are primarily systemic financial law sanctions, administrative sanctions, sanctions for breach of public finance discipline, but also criminal sanctions, fiscal criminal sanctions and civil sanctions.

Keywords: *local government unit, budget, budgetary procedure, financial autonomy, sanctions*

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The manuscript was submitted by the author on: 4 September 2023; the manuscript was accepted for publication by the editorial board on: 21 September 2023.

¹ The article was written as part of the Central European Professors' Network (research project entitled: "Economic Governance from a Central European Perspective. State sovereignty and responsibility for a competitive economic integration within the European Union"), coordinated by the Central European Academy.

Streszczenie

Funkcjonowanie samorządu terytorialnego w państwie, mające swoje podstawy w procesie decentralizacji, związane jest z przyznaniem mu określonych zadań, a co za tym idzie również odpowiedniego udziału w dochodach publicznych. Wyposażenie jednostek samorządu terytorialnego w zasoby finansowe stanowi bowiem istotny element zapewniający zdolność do wykonywania powierzonych zadań publicznych, zaś prowadzenie własnej gospodarki finansowej pozwala na samodzielne decyzje dotyczące sposobu gospodarowania powierzonymi zasobami publicznymi. Prowadzenie samodzielnej gospodarki finansowej związane jest z przyjmowaniem corocznie uchwały budżetowej będącej jej podstawą oraz z określonym trybem wykonywania budżetu. Przyznanie określonych kompetencji (zadań publicznych), władztwa dochodowego oraz atrybutu samodzielnego prowadzenia gospodarki finansowej związane jest z określonym trybem odpowiedzialności jednostek samorządu terytorialnego, która tak jak ogólnie pojmowana odpowiedzialność w prawie finansowym jest zagadnieniem złożonym i charakteryzuje się różnorodnością stosowanych sankcji oraz regulacji prawnych. Zastosowanie znajdują w tym przypadku – w zależności od podmiotu, którego dotyczą – przede wszystkim sankcje systemowe prawa finansowego, administracyjne, za naruszenie dyscypliny finansów publicznych, ale również sankcje karne, karne skarbowe oraz sankcje cywilne.

Słowa kluczowe: jednostka samorządu terytorialnego, budżet, procedura budżetowa, samodzielność finansowa, sankcje

1. Introductory remarks

Liability in financial law is an extremely complex issue. This results, among others, from the fact that different categories of sanctions may apply in this case, apart from only systemic sanctions, which means the application of many legal regulations. The application of specific sanctions is additionally dependent on the entity to which the liability relates. Often, we are dealing with the confluence of several regulations applicable in one analysed case of infringement.

The above comments also apply to local government units, and the complexity of the solutions appears in the very scope of their financial management, including at the stage of preparation and implementation of the budget. This responsibility becomes particularly important also in the context of the principle of decentralization adopted in Poland and the participation of local government units in the performance of public tasks, and thus a significant share in the disposal of public resources. Local government units that have been granted financial independence in Poland, and thus the right to independently conduct financial management, implement it within the limits and under the rules resulting from applicable laws.

It should be noted that the budgetary procedure itself was created as a “tool” for specific purposes, which in the present case can be defined as the possibility of efficient and continuous financial management based on the budgetary resolution in relation to the financial year. The basic principles applicable under this procedure (such as the principle of priority or annuality), applicable deadlines and mechanisms enabling financial management, in the event of failure to meet them, allow the process of managing public funds to be carried out in an uninterrupted manner.

The fact that the above-mentioned principles are in force and the importance of the issues of financial management of local government units due to the disposal of public resources, means that the assumptions of the budgetary procedure cannot be omitted or shaped at one’s own discretion, not supported by specific regulations and the limits they set. Failure to comply with them is therefore related to the responsibility of the local government unit and its bodies.

2. Financial independence of local government units

The separation and functioning of local government in the state is related to the decentralization process, and thus the division of tasks and competences between the government administration and local government units. Participation in the exercise of public authority and the delegation of specific tasks, give rise to specific consequences, including those related to the distribution of public revenues, because equipping local government units with financial resources is an important element guaranteeing the ability to perform public tasks entrusted to them. This issue also becomes particularly important in the context of shaping the principles and limits of financial independence of local government units, guaranteed by providing these units with financial resources appropriate to the scope of tasks performed, and

the possibility of shaping their amount and spending. However, a manifestation of independent financial management is the annual setting of budget assumptions and decisions made by the competent local government authorities, making budget resolutions, and implementing the budget in accordance with the rules resulting from the regulations in force in this respect.

In accordance with the jurisprudence of the Constitutional Tribunal, the financial independence of local government should be understood as the right to independently conduct financial management by local government units. This independence is based on collecting income specified in the acts (revenue authority) and disposing of it – within the limits specified by the acts – for the implementation of legally defined tasks (expenditure authority)².

The basics of the functioning of local government, which in Poland operates on three levels (commune, powiat, voivodeship)³ are covered by the provisions of the Constitution of the Republic of Poland of 2 April 1997⁴ and many statutory acts, including, above all, political acts⁵. From the point of view of financial management, the Act of 27 August 2009 on public finances⁶ is of key importance and the Act of 13 November 2003 on the income of local government units⁷.

According to Art. 16 sec. 2 of the Constitution of the Republic of Poland, local government in Poland participates in the exercise of public authority. At the same time, the cited provision specifies that a significant part of public tasks vested in the local government under statutes is performed on its own behalf and on its own responsibility. The provisions of the Constitution of the Republic of Poland also regulate the so-called the principle of presumption of competence of local government (Art. 163) and divide the public tasks resting with it into own tasks serving to meet the needs of the local government community and constituting an essential element of all tasks performed by local government units, as well as tasks delegated by law (Art. 166)⁸. The principle of decentralization resulting from Art. 16 of the Constitution of the Republic of Poland is therefore the basis for the functioning of local government in Poland and assigns it the implementation of a significant part of public tasks. Detailed regulations specifying what specific tasks and to what extent

² Judgement of the Constitutional Tribunal of 16 March 1999, K 35/98, OTK 1999/3, poz. 37; see also A. Szewczuk, [in:] *Wybrane problemy finansów samorządu terytorialnego*, L. Patrzalek (ed.), Poznań 2008, pp. 217–221.

³ See more A. Borodo, *Samorząd terytorialny. System prawnofinansowy*, Warszawa 2008, p. 36 et seq.

⁴ Consolidated text: Dz.U. Nr 78, poz. 483 ze zm.; above all see Chapter VII of the Constitution of the Republic of Poland (Art. 163–172).

⁵ The Act of 8 March 1990 on commune self-government (consolidated text: Dz.U. z 2023 r. poz. 40 ze zm.), hereinafter: “a.c.s.g.”; the Act of 5 June 1998 on powiat self-government (consolidated text: Dz.U. z 2022 r. poz. 1526 ze zm.), hereinafter: “a.p.s.g.”; the Act of 5 June 1998 on the voivodeship self-government (consolidated text: Dz.U. z 2022 r. poz. 2094 ze zm.), hereinafter: “a.v.s.g.”.

⁶ Consolidated text: Dz.U. z 2023 r. poz. 1270 ze zm., hereinafter: “p.f.a.”.

⁷ Consolidated text: Dz.U. z 2022 r. poz. 2267 ze zm., hereinafter: “a.r.l.g.u.”.

⁸ See A. Skoczylas, W. Piątek, [in:] *Konstytucja RP. Komentarz*, Vol. II, Art. 87–243, M. Safjan, L. Bosek (eds.), Warszawa 2016, p. 880 et seq. and the literature cited there; see also: the decision of the Constitutional Tribunal of 30 November 1999, Ts 104/99, OTK 2000/1, poz. 21; the judgment of the Constitutional Tribunal of 16 March 1999, K 35/98, OTK 1999/3, poz. 37.

responsibilities of individual local government units are, are covered primarily by the provisions of local government acts⁹, which also determine other aspects of the functioning of communes, poviats and voivodeships.

In the scope of the issues discussed, attention should be paid to one more issue mentioned above, namely when determining the principles of operation of local government units implementing a significant part of public tasks, the relationship between the amount of public revenues at their disposal and the possibility of implementing their own tasks cannot be ignored. According to the opinion of the Constitutional Tribunal expressed in the judgment of 20 February 2002¹⁰ "municipal property was not granted to local government units for their arbitrary use, but for the implementation of public purposes, in particular for meeting the collective needs of the community. Reducing the income derived from this property means limiting their possibilities in this respect". It should be remembered that the very separation of municipal property is a consequence of the establishment of local government units as public law entities, therefore all solutions aimed at its protection should undoubtedly be of particular importance. Equipping the local government with specific assets provides it with the financial independence adopted in Polish solutions and is a guarantee of the effectiveness of the decentralization process¹¹. This interpretation is also supported by the provisions of Art. 165 sec. 1 of the Constitution of the Republic of Poland, which refers to the issue of legal personality of local government units and by granting them legal personality as well as property rights and other property rights, it guarantees the implementation of public tasks by them. The granted legal personality and assigned property rights also allow for the separation of local government units in relation to other public law entities and are an important element in recognizing their independence. This independence is subject to judicial protection, which guarantees its respect (Art. 165 sec. 2 of the Constitution of the Republic of Poland)¹².

The issue of the relationship between the share in public revenues and the scope of tasks performed by local government units is also regulated by Art. 167 sec. 1 of the Constitution of the Republic of Poland, according to which these units are provided with a share in public revenues appropriate to their tasks (principle of adequacy). The provision referred to in sec. 4 also includes a guarantee of practical application of a mechanism that is important from the point of view of local government, linking the case of introducing changes in the scope of tasks and competences of local government units (in the form of increasing them) with appropriate changes in the distribution of public revenues. Similar provisions are covered by the provisions of constitutional laws. Pursuant to Art. 7 sec. 3 a.c.s.g. transferring new own tasks to the commune, by way of an act, should be accompanied by

⁹ See above all, Art. 6 and 7 a.c.s.g., Art. 4 a.p.s.g., and Art. 14 a.v.s.g.

¹⁰ K 39/00, OTK-A 2002/1, poz. 4.

¹¹ K 39/00, OTK-A 2002/1, poz. 4.

¹² See D. Bach-Golecka, M.J. Golecki, [in:] *Konstytucja RP. Komentarz*, Vol. II, Art. 87–243, M. Safjan, L. Bosek (eds.), Warszawa 2016, p. 892.

providing it with the necessary financial resources for their implementation. This should be done by increasing the commune's own income or by way of subsidies. From Art. 56 sec. 3 a.p.s.g. and Art. 67 a.v.s.g. however, it follows that transferring new tasks to the powiat or (respectively) voivodeship, by way of an act, requires providing the financial resources necessary for their implementation in the form of increasing revenues¹³.

In accordance with the above comments, the consequence of any changes affecting the scope of tasks and competences of local government units causing their expansion should be appropriate changes in the distribution of public revenues. Increasing the financial resources of individual units in such a situation may take various forms. The changes may consist of increasing the own income of these units, but it is also possible to provide funds from an appropriate subsidy (see Art. 167 sec. 2 of the Constitution of the Republic of Poland). If, on the other hand, we are dealing with a decrease in the income of local government units, it should only result from limiting the catalogue of their tasks or reducing the scope of some of them. The provisions of the Constitution of the Republic of Poland do not specify the criteria for recognizing that the income of individual local government units at a certain level is adequate to the tasks assigned to them, leaving this issue to the discretion of the legislator¹⁴. At the same time, it should be noted that the jurisprudence of the Constitutional Tribunal grants the legislator far-reaching freedom in defining both the tasks, sources of income, and their amount in the case of individual local government units¹⁵. The Constitutional Tribunal also draws attention to the fact that the mere need to provide local government units with an appropriate level of income does not mean that it can be determined in isolation from the resources and financial capabilities of the state¹⁶. However, in the event of a dispute as to whether the adopted division of public revenue is adequate to the changes introduced in the scope of tasks of individual local government units, when these changes are made by the legislator, the matter will be resolved by the Constitutional Tribunal¹⁷.

Article 167 sec. 2 of the Constitution of the Republic of Poland also lists the basic categories of income of local government units, which include: own income, general subsidy and targeted subsidies from the state budget¹⁸. The issue of income of

¹³ See also Art. 9 sec. 2 of the European Charter of Local Self-Government of 15 October 1985 (Dz.U. z 1994 r. Nr 124, poz. 607 ze zm.), hereinafter: "ECLSG".

¹⁴ See judgment of the Constitutional Tribunal of 26 November 2001, K 2/00, OTK 2001/8, poz. 254; B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2009, comm. to Art. 167, p. 755.

¹⁵ See ruling of the Constitutional Tribunal of 23 October 1995, K 4/95, OTK 1995/2, poz. 11; ruling of the Constitutional Tribunal of 23 October 1996, K 1/96, OTK 1996/5, poz. 38; see also B. Banaszak, *Konstytucja...*, comm. to Art. 167, pp. 758-759.

¹⁶ Judgment of the Constitutional Tribunal of 12 April 2005, K 30/03, OTK-A 2005/4, poz. 35; judgment of the Constitutional Tribunal of 31 May 2005, K 27/04, OTK-A 2005/5, poz. 54; judgment of the Constitutional Tribunal of 1 April 2003, K 46/01, OTK-A 2003/4, poz. 27.

¹⁷ B. Banaszak, *Konstytucja...*, comm. to Art. 167, pp. 758-759. A. Mikos-Sitek, [in:] *Ustawa o finansach publicznych. Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych. Komentarz*, W. Misiąg (ed.), Warszawa 2019, p. 732.

¹⁸ For a detailed interpretation of the above-mentioned provision, see A. Mikos-Sitek, [in:] *Ustawa...*, p. 733.

local government units however, was regulated in detail by the Act of 13 November 2003 on the income of local government units. This Act (as in the case of Art. 167 sec. 2 of the Constitution of the Republic of Poland) in Art. 3 sec. 1 indicates three main categories of income of local government units, which are: own income, general subsidy and earmarked subsidies from the state budget, while the category of own income also includes shares in receipts from personal income tax and corporate income tax (Art. 3 sec. 2 and Art. 4 secs. 2 and 3, Art. 5 secs. 2 and 3, Art. 6 secs. 2 and 3 a.r.l.g.u.). Pursuant to Art. 3 sec. 3 a.r.l.g.u. the income of local government units may also be non-refundable funds from foreign sources, funds from the European Union (hereinafter: "EU") budget and other funds specified in separate regulation¹⁹.

In addition to the issue of income independence related to providing local government units with sufficient income from various sources, including primarily their own income, which these units have an impact on, one should also remember about expenditure independence. The independence of local government units in the latter area is manifested in the freedom to shape the structure of expenditure in a given budget year and the rules for their implementation. Expenses of the local government units are often referred to as the costs of public tasks performed by local government. These tasks are defined primarily by the provisions of constitutional laws, and in detail they also result from laws that regulate various areas of social relations. To put it simply, it can be assumed that the performance of expenditure by local government units is determined by the implementation of the tasks assigned to them by law. Expenses of individual local government units are incurred for the purposes and in the amount determined in the annual budget resolutions adopted by them²⁰.

Article 216 sec. 2 p.f.a. includes an open catalogue of local government budget expenses mentioning in this regard in particular:

- 1) local government's own tasks;
- 2) tasks in the field of government administration and other tasks assigned by statute to local government units;
- 3) tasks taken over by local government units for implementation by way of contract or agreement;
- 4) tasks carried out jointly with other local government units;
- 5) material or financial assistance for other local government units, specified in a separate resolution by the decision-making body of the local government unit;

¹⁹ See discussion of this issue A. Borodo, *Samorząd...*, pp. 57–61; A. Borodo, *Prawo budżetowe*, Warszawa 2008, p. 203 et seq.; A. Borodo, *Słownik finansów samorządowych*, Toruń 2007, p. 34; B. Banaszak, *Konstytucja...*, comm. to Art. 167, pp. 755–758; K. Piotrowska-Marczak, [in:] *Finanse publiczne jednostek samorządu terytorialnego. Źródła finansowania samorządu terytorialnego we współczesnych regulacjach prawnych*, J. Gliniecka, E. Juchniewicz, T. Sowiński (eds.), Warszawa 2014, pp. 61–64; A. Mikos-Sitek, [in:] *Finanse publiczne i prawo finansowe*, A. Nowak-Far (ed.), Warszawa 2020, pp. 321–331; D. Wróblewska, [in:] *Leksykon prawa finansowego*, A. Drwillo, D. Maśniak (eds.), Warszawa 2009, p. 91 et seq.

²⁰ E. Chojna-Duch, *Podstawy finansów publicznych i prawa finansowego*, Warszawa 2010, pp. 370–377.

- 6) programs financed with funds from the EU budget and non-repayable funds from aid granted by European Free Trade Association Member States and other non-repayable funds from foreign sources, whereby local government units may make the expenses indicated in point 6 only if they can include them in one of the points 1–5²¹.

The financial independence of local government units is also manifested in the tax authority granted to them related to their right to determine the amount of local taxes and fees. However, this right is not unlimited because, in accordance with the constitutional principle, it is exercised within the limits specified by law (Art. 168 of the Constitution of the Republic of Poland), which is in line with the interpretation of Art. 217 of the Constitution of the Republic of Poland²².

Under European Union law, a regulation that is important from the point of view of the issue of independence of local government units – although only indirectly related to it – is Art. 5 sec. 3 of the Treaty on European Union²³ regarding the principle of subsidiarity, which is the basis for the functioning of the EU and is of particular importance for determining the principles of joint decision-making. Pursuant to the provisions of the above-mentioned provision, the EU takes action in areas that do not fall within its exclusive competence only if and only to the extent that the objectives of the intended action cannot be sufficiently achieved by the Member States, both at central, regional and local, and if, due to the size or effects of the proposed action, they can be better achieved at EU level. The essence of the subsidiarity principle is therefore to adopt specific rules for the level of EU intervention in the case of competences shared between the EU and Member States. Its importance for the functioning of local government is primarily related to the assumption of acting and making decisions as close as possible to citizens – not only at the state or regional level, but also at the local level, and EU intervention is assumed only if it is able to act in a given matter more effectively than the Member States²⁴.

It should also be noted that the process of European integration is an important element of regionalization and development of regions²⁵. The rule of partnership and multi-level governance applicable within the framework of regional policy contributes to strengthening the independence of local government units, in particular voivodeship governments²⁶. The functioning of local government in Poland is also sig-

²¹ See Art. 166 secs. 1 and 2 of the Constitution of the Republic of Poland; see also A. Borodo, *Prawo...*, p. 215 et seq.; J.M. Salachna, [in:] *Nowa ustawa o finansach publicznych wraz z ustawą wprowadzającą. Komentarz praktyczny*, E. Ruśkowski, J.M. Salachna (eds.), Gdańsk 2010, p. 660 et seq.; A. Mikos-Sitek, [in:] *Ustawa...*, p. 736; T. Dobek, [in:] *Zagadnienia prawne finansów i gospodarki samorządu terytorialnego*, A. Borodo (ed.), Toruń 2008, p. 33 et seq.

²² See: A. Skoczylas, W. Piątek, [w:] *Konstytucja...*, Vol. II, Art. 87..., p. 933 and the literature cited there; B. Banaszak, *Konstytucja...*, comm. to Art. 167, p. 759. See also judgment of the Constitutional Tribunal of 28 November 2013, K 17/12, OTK-A 2013/8, poz. 125.

²³ Dz.Urz. UE C 202 z 7.06.2016 r., s. 13.

²⁴ See also Protocol No. 2 on the application of the principles of subsidiarity and proportionality.

²⁵ Z. Niewiadomski, [in:] *System Prawa Administracyjnego*, Vol. 6, *Podmioty administrujące*, R. Hauser, A. Wróbel, Z. Niewiadomski (eds.), Warszawa 2011, p. 158.

²⁶ See D. Bach-Golecka, M.J. Golecki, [in:] *Konstytucja...*, Vol. II, Art. 87..., p. 893.

nificantly influenced by the implementation of EU cohesion and agricultural policies, as well as the opportunities offered by the use of structural funds, the Cohesion Fund and agricultural funds²⁷.

In the analysed scope, attention should also be paid to the regulations covered by the European Charter of Local Self-Government, which primarily indicate constitutional provisions as the basis for the functioning of local self-government, which is of particular importance for its institutional position and the guarantee of compliance with the principle of local self-government (Art. 2 ECLSG)²⁸. Similarly, the provisions of the ECLSG regarding the competences of local communities indicate that the appropriate regulations are at the level of the constitution and the law (Art. 4 sec. 1 ECLSG). The European Charter of Local Self-Government also refers to the issue of the division of income between the state and local government, in accordance with Art. 9 sec. 2 ECLSG "The amount of financial resources of local communities should be adjusted to the scope of powers granted to them by the Constitution or law". Another aspect that is highlighted in the provisions of the ECLSG is the location of the center of responsibility for public affairs and decision-making by the authorities closest to the citizens. However, in the case of entrusting the performance of these functions to another authority, the scope and nature of the task as well as the requirements of efficiency and economy should be taken into account (Art. 4 sec. 3 ECLSG). Delegating competences to local communities should – as far as possible – ensure full freedom in choosing and adapting the method of exercising the delegated competences to local conditions. The European Charter of Local Self-Government also draws attention to the legal protection of local self-government, under which local communities have the right to judicial review in order to ensure the free exercise of powers and respect for the principles of local self-government provided for in the Constitution or in internal law (Art. 11 ECLSG)²⁹.

3. Budget procedure within the competences of local government bodies

The budget procedure, both at the state level and at the level of local government units, includes the stage of planning, adopting, implementing and controlling the implementation of the budget. In accordance with the applicable regulations – although with some simplification – it is assumed that the work related to the preparation of the draft budget resolution is the exclusive competence of the executive bodies of local government units (mayor, provost or city president – in a commune, management board – in a powiat and voivodeship), adopting the budget in the form of a budget resolution is the competence of the bodies constituting local

²⁷ S. Dudzik, I. Kawka, [in:] *System Prawa Administracyjnego*, Vol. 3, *Europeizacja prawa administracyjnego*, R. Hauser, A. Wróbel, Z. Niewiadomski (eds.), Warszawa 2014, pp. 543–553.

²⁸ See D. Bach-Golecka, M.J. Golecki, [in:] *Konstytucja...*, Vol. II, Art. 87..., p. 893.

²⁹ D. Bach-Golecka, M.J. Golecki, [in:] *Konstytucja...*, Vol. II, Art. 87..., p. 893.

government units (commune council, powiat council, voivodeship assembly), while the implementation of the budget is the responsibility of the executive bodies of local government units. Competences of individual local government bodies in the process of implementing the budget procedure are regulated by the Public Finance Act and systemic laws.

Pursuant to Art. 233 p.f.a. to the exclusive competence of the executive body of the local government unit should take the initiative to prepare drafts of all resolutions affecting the financial management, i.e. the budget resolution, the resolution on changes to the budget resolution and the resolution on the provisional budget. In this case, you should also pay attention to Art. 230 sec. 1 p.f.a., according to which the executive body of the local government unit also has the exclusive initiative in preparing a draft resolution on the multi-annual financial forecast (see Art. 226–232 p.f.a). Executive body of local government unit is responsible for the financial management of the local government unit and should therefore be equipped with competences enabling it to carry out related tasks – including both the planning and budget execution stages. Interpretation of Art. 233 p.f.a. should therefore take into account other provisions of the Public Finance Act related to the broadly understood process of working on the budget of local government units and applicable at its various stages (see in particular Art. 238, 240, 241, 247, 248, 265–271 p.f.a.). The competences of the executive bodies of individual local government units in the scope of preparing draft resolutions are also covered by the provisions of constitutional laws (see Art. 30 sec. 2 point 1 a.c.s.g, Art. 32 sec. 2 point 1 a.p.s.g., Art. 41 sec. 2 point 3 a.v.s.g. and Art. 18 sec. 2 point 4 a.c.s.g, Art. 12 point 5 a.p.s.g., Art. 18 point 6 a.p.s.g.).

Exclusivity of competences of the executive body of local government units in the scope of preparing a budget resolution means its independence in performing all activities related to this process, it also means that it is not subject to the influence of other bodies. This is justified by the general competence and responsibility of the executive body for the implementation of the budget, established by the provisions of the Public Finance Act (Art. 247). However, in the literature on the subject it is pointed out that this does not exclude the possibility of preparing a draft budget resolution in a specific scope by another entity (e.g. the treasurer), but the executive body ultimately decides in what form the draft is submitted to the decision-making body of the local government unit³⁰. Any suggestions regarding the shape of the budget resolution, the executive body of the local government unit should consider and assess their validity but is not bound by them. Application of the rule of exclusive competence of the executive body of local government units in the discussed scope, it also means that the decision-making body of the local government unit, when adopting changes to the budget resolution on the basis of a project submitted by the executive body of the local government unit is not authorized to introduce changes that are not covered by this project. Similarly, a proposal for changes to an already

³⁰ J.M. Salachna, [in:] *Budżet i wieloletnia prognoza finansowa jednostek samorządu terytorialnego od projektu do sprawozdania*, J.M. Salachna (ed.), Gdańsk 2010, p. 203.

adopted budget must come from the executive body of a local government unit, while in a situation where the decision-making body of a local government unit would like to introduce changes that are not covered by the initiative of the executive body of the local government unit, must obtain its approval³¹. The premise of exclusive competences of the executive body of local government units in this case, it means a prohibition on transferring them to another entity to any extent. This is tantamount to a prohibition on considering a draft budget resolution submitted by an entity other than the executive body of a local government unit³². This condition should also be understood as the obligation to adopt a budget resolution, which is the basis for conducting the financial management of a local government unit for a given budget year (Art. 211 sec. 4 p.f.a.) and its adoption within the deadlines provided for by the Act is important for maintaining the continuity of financial management and proper functioning of a given unit.

Remaining on the issue of preparing a draft budget resolution of local government units attention should be paid to the authorization addressed to the decision-making body of the local government unit covered by Art. 234 p.f.a. The above-mentioned provision regulates the principles of making decisions by the decision-making body of local government units on resolution on the procedure for working on the draft budget resolution. This resolution is an internal act and its addressee is the executive body of the local government unit, but also other entities participating in the work on the draft budget resolution³³. Since Art. 234 p.f.a. does not determine the period during which the resolution on the procedure for working on the draft budget resolution should be valid and with what frequency it should be adopted by the local government's decision-making body, it is considered appropriate to leave it to the decision of the local government's decision-making body and depending on the needs of a given local government unit³⁴.

Article 234 p.f.a. also defines the scope of the resolution on the procedure for working on the draft budget resolution, but does not regulate this issue in detail and only indicates the minimum content of such a resolution. Pursuant to the above-mentioned provision, such a resolution should include in particular:

- 1) required detail of the draft budget of local government units;
- 2) deadlines applicable in the course of work on the draft budget resolution;
- 3) requirements regarding justification and information materials that the management board will submit to the decision-making body of the local government unit together with the draft budget resolution.

³¹ See resolution of the Regional Audit Chamber in Łódź of 23 July 2012, 25/104/2012, OwSS 2013/1, s. 81; resolution of the Regional Audit Chamber in Łódź of 28 June 2012, 21/95/2012, OwSS 2012/4, s. 110.

³² C. Kosikowski, [in:] *Finanse samorządowe. 580 pytań i odpowiedzi*, C. Kosikowski, J.M. Salachna (eds.), Warszawa 2012, p. 477; C. Kosikowski, *Nowa ustawa o finansach publicznych. Komentarz*, Warszawa 2010, pp. 523–524; J.M. Salachna, [in:] *Budżet...*, pp. 201–203; L. Lipiec-Warzecha, *Ustawa o finansach publicznych. Komentarz*, Warszawa 2011, p. 1054; see also resolution of the Regional Audit Chamber in Wrocław of 2 November 2005, 81/2005, "Wspólnota" 2005, No. 25.

³³ Resolution of the Regional Audit Chamber in Wrocław of 15 September 2010, 72/10, unpublished.

³⁴ L. Lipiec-Warzecha, *Ustawa...*, p. 1058.

In the literature on the subject, attention is drawn to the fact that the scope of regulation of the discussed resolution of the decision-making body of the local government unit is only issues related to the mode of work on the draft budget resolution should be covered, and not to its content³⁵ and it should not interfere with the competences of the executive body of local government units implemented on an exclusive basis. It should, of course, be consistent with other principles that are the basis for work on the draft budget resolution specified under the Act³⁶.

Further competences related to the budget procedure are the responsibility of the executive body of local government units have been regulated by Art. 238 p.f.a. Pursuant to the above-mentioned provision, the draft budget resolution should be prepared and submitted (together with a justification and other information materials) by the executive body of the local government unit to the decision-making body of this entity and the locally competent regional audit chamber (for the purpose of providing opinions) by 15 November of the year preceding the budget year (Art. 238 secs. 1 and 2 p.f.a.). This deadline is of an instructive nature, and the provisions of the Public Finance Act do not provide for negative consequences of failure to meet it³⁷. However, it should be noted that compliance with this deadline by the executive body of the local government unit has a significant impact on the course of further work on the budget resolution, which is related to the procedure and deadlines for preparing draft financial plans of subordinate units (Art. 248 p.f.a.), but also the need for the decision-making body of the local government unit to become familiar with the opinion of the regional audit chamber before adopting a budget resolution (Art. 238 sec. 3 p.f.a.). This is also important in the context of implementing the budget principle of prioritization and observing the statutory deadlines for adopting a budget resolution (Art. 239 p.f.a.)³⁸. According to the above-mentioned principle, the budget should be adopted before the beginning of the period for which it is to be valid, i.e. before 1 January of the budget year. However, it should be noted that the provisions of the Public Finance Act also provide for a later date for adopting the budget, which may occur in particularly justified cases. In the event of such circumstances – if the body constituting the local government unit does not adopt a budget resolution before the beginning of the budget year – it may do so no later than 31 January of the budget year. The Act does not define “particularly justified cases” that may result in the subsequent adoption of the budget. The literature on the subject emphasizes that we should understand by them not only difficult-to-predict or random events (e.g. the introduction of a state of emergency), but also those occurring in the everyday practice

³⁵ A. Gorgol, [in:] *Ustawa o finansach publicznych. Komentarz*, P. Smoleń (ed.), Warszawa 2012, p. 1035.

³⁶ See C. Kosikowski, *Nowa...*, p. 525; J.M. Salachna, [in:] *Nowa...*, pp. 734–735; resolution of the Regional Audit Chamber in Rzeszów of 23 March 2010, VII/1191/10, OwSS 2010/3, s. 89–90; resolution of the Regional Audit Chamber in Łódź of 21 October 2010, 37/170/2010, OwSS 2011/1, p. 86–87.

³⁷ See: J.M. Salachna, [in:] *Nowa...*, p. 750; L. Lipiec-Warzecha, *Ustawa...*, pp. 1068–1069; R. Trykozko, *Ustawa o finansach publicznych. Komentarz dla jednostek samorządu terytorialnego*, Warszawa 2010, p. 413.

³⁸ See: C. Kosikowski, *Nowa...*, p. 530; A. Borodo, *Prawo...*, p. 27; T. Dębowska-Romanowska, [in:] *Prawo finansowe*, W. Wójtowicz (ed.), Warszawa 2000, pp. 71–72; R. Trykozko, *Ustawa...*, pp. 413–415; A. Mikos-Sitek, [in:] *Finanse...*, p. 262.

of budget work, such as failure to adopt the budget act before the beginning of the financial year, which, within the scope of specific content, influences the budgetary resolutions of individual local government units (e.g. targeted subsidies, general subsidy)³⁹. Adopting a budget resolution in the circumstances indicated above takes place, of course, without any negative consequences of such action on the part of the body constituting the local government unit.

The issue related to the division of competences between local government bodies in the process of implementing the budget procedure also requires attention to cases of introducing transitional solutions in the event of failure to adopt a budget resolution before the beginning of the budget year or at a later date specified in Art. 239 p.f.a. In such a situation, until the budget resolution is adopted (but no later than 31 January of the budget year), the basis for conducting financial management of local government units is a draft budget resolution (independent nature of the draft budget resolution)⁴⁰. According to Art. 240 sec. 1 p.f.a. this case concerns the project referred to in Art. 238 sec. 1 p.f.a., therefore, the draft in its original version (in which it was presented to the decision-making body of the local government unit and the regional audit chamber by 15 November of the year preceding the budget year)⁴¹. Article 240 sec. 2 p.f.a. defines the competences of local government bodies regarding introducing changes to the draft budget resolution. In this respect, it provides for limitations regarding the competences of the local government's decision-making body in relation to the draft budget resolution submitted by the executive body of this entity. The constituting body of the local government unit is not authorized to introduce to the local government into the draft budget resolution of any changes resulting in a decrease in revenues or an increase in expenses and, at the same time, an increase in the budget deficit of local government units. The constituting body of the local government unit in such a case should inform the executive body of the local government unit about the scope of the planned changes, the latter should respond to them and express or not consent to their introduction. Failure of the executive body to provide local government units with consent to the introduction of the proposed changes prevents further actions in this respect on the part of the local government body.

The Public Finance Act also indicates specific competences of local government bodies in the circumstances of adopting a resolution on the provisional budget. Pursuant to Art. 241 p.f.a. the body constituting local government unit – at the request of the executive body of the local government unit – may adopt a resolution on the provisional budget if the Council of Ministers adopts a draft act on the provisional budget at the state budget level. The adoption of a resolution on the provisional budget is conditional on the joint fulfilment of both conditions indicated above. The

³⁹ C. Kosikowski, *Nowa...*, p. 531; see also L. Lipiec-Warzecha, *Ustawa...*, pp. 1073–1074; A. Gorgol, [in:] *Ustawa...*, p. 1058.

⁴⁰ T. Dębowska-Romanowska, [in:] *Prawo...*, p. 81.

⁴¹ See resolution of the Regional Audit Chamber in Wrocław of 27 October 2010, 86/10, unpublished; resolution of the Regional Audit Chamber in Wrocław of 27 October 2010, 88/10, unpublished; see also R. Trykozko, *Ustawa...*, pp. 399 and 418.

provisions of the Public Finance Act provide for the possibility of using this solution in this case. The period of provisional validity in the case of local government units may not be longer than the period covered by the Act on the provisional budget. The stage of implementing the local government budget is primarily the responsibility of the activities and responsibilities of the executive body of the local government unit. Pursuant to Art. 247 sec. 1 p.f.a. local government budget is performed by its management board⁴², and the scope of its competences includes general supervision over the implementation – specified in the budget resolution – of revenues and expenses of the local government budget (Art. 247 sec. 2 p.f.a.), but also other activities related to this stage of work on the budget⁴³.

The provisions of the Public Finance Act indicate several important obligations of the executive body of local government units related to the initial stage of budget implementation of local government units following the adoption of the budget resolution. These activities concern primarily information obligations, under which the executive body of local government units, within 21 days from the date of adoption of the budget resolution, provides subordinate units with information on the final amounts of income and expenses of these units and the amount of subsidies and contributions to the budget (Art. 249 sec. 1 point 1 p.f.a.). The information provided by the executive body is the basis for the activities of the organizational units of local government units (implemented by the heads of these units) related to adapting the drafts of their financial plans to the data contained in the decision taken by the decision-making body of the local government unit budget resolution. Article 249 p.f.a. does not specify the deadline for the implementation of this obligation, however, in relation to local government budgetary units and local government budgetary establishments, these deadlines are specified in the provisions of the Regulation of the Minister of Finance of 7 December 2010 on the method of conducting financial management of budgetary units and local government budgetary establishments⁴⁴.

Pursuant to paragraph 8 sec. 5 of the above-mentioned regulation, heads of local government budgetary units, within a period not longer than 14 days from the date of receipt of information on the amounts of budget revenues and expenses adopted in the budget resolution, prepare financial plans of their units by adapting their projects to the data resulting from this resolution. In the case of a local government budgetary entity, its manager adapts it to the budget resolution and approves its financial plan within 10 days from the date of receipt from the executive body of the local government unit information on the amounts of the plant's revenues and costs as well as the amounts of subsidies and contributions to the budget (paragraph 39 of the regulation).

⁴² Pursuant to Art. 2 point 2 p.f.a. the term “management board” as used in the Public Finance Act also means the commune head, mayor and city president.

⁴³ C. Kosikowski, *Nowa...*, pp. 542–543; M. Durczyńska, H. Dzwonkowski, [in:] *Ustawa o finansach publicznych. Komentarz prawno-finansowy*, H. Dzwonkowski, G. Gołębiowski (eds.), Warszawa 2014, p. 656; J.M. Salachna, [in:] *Nowa...*, p. 795; J. Leńczuk, [in:] *Ustawa o finansach publicznych. Komentarz*, P. Smoleń (ed.), Warszawa 2012, pp. 1093–1094; L. Lipiec-Warzecha, *Ustawa...*, p. 1096; R. Trykozko, *Ustawa...*, p. 446.

⁴⁴ Consolidated text: Dz.U. z 2019 r. poz. 1718.

Pursuant to Art. 249 sec. 1 point 2 p.f.a. executive body of local government unit also prepares a financial plan for tasks in the field of government administration and other tasks assigned to local government units by separate acts. This obligation is fulfilled within 21 days from the date of adoption of the budget resolution. As the basis for this plan, the executive body of the local government unit adopts the amount of subsidies granted for this purpose in the budget year and the amount of income related to the implementation of these tasks, which are transferred to the state budget. The above-mentioned provision also regulates issues related to the financial plan of the local government unit (Art. 249 secs. 3 and 4 p.f.a.) and indicates the possibility for the executive body of a local government unit to prepare a schedule for implementing the local government budget in relation to a given financial year (Art. 249 sec. 5 p.f.a.).

Competencies of the executive body of local government units related to the implementation of the budgets of individual local government units and the issue of responsibility for their proper financial management also result from the regulations of individual political acts (Art. 30 secs. 1 and 2 point 4 and Art. 60 a.c.s.g.; Art. 32 secs. 1 and 2 point 4 and Art. 60 a.p.s.g.; Art. 41 secs. 1 and 2 point 3 and Art. 70 a.v.s.g.). The provisions of constitutional laws indicate the exclusive right of the executive bodies of local government units down to:

- 1) submitting proposals for changes to the budget (Art. 60 sec. 2 point 4 a.c.s.g., Art. 60 sec. 2 point 4 a.p.s.g., Art. 70 sec. 2 point 4 a.v.s.g.);
- 2) making budget expenditures (Art. 60 sec. 2 point 3 a.c.s.g., Art. 60 sec. 2 point 3 a.p.s.g., Art. 70 sec. 2 point 3 a.v.s.g.);
- 3) disposal of budget reserves (Art. 60 sec. 2 point 5 a.c.s.g., Art. 60 sec. 2 point 5 a.p.s.g., Art. 70 sec. 2 point 5 a.v.s.g.);
- 4) blocking budget funds, in cases specified in the provisions of the Public Finance Act (Art. 60 sec. 2 point 6 a.c.s.g., Art. 60 sec. 2 point 6 a.p.s.g., Art. 70 sec. 2 point 6 a.v.s.g.);
- 5) incurring liabilities covered by the expenditure amounts established in the budget resolution, within the framework of the authorizations granted by the decision-making body of the local government unit (Art. 60 sec. 2 point 1 a.c.s.g., Art. 60 sec. 2 point 1 a.p.s.g., Art. 70 sec. 2 point 1 a.v.s.g.);
- 6) issuing securities, within the framework of the authorizations granted by the decision-making body of the local government unit (Art. 60 sec. 2 point 2 a.c.s.g., Art. 60 sec. 2 point 2 a.p.s.g., Art. 70 sec. 2 point 2 a.v.s.g.)⁴⁵.

4. The nature of responsibility

Liability in financial law has a broad meaning and is characterized by a variety of applicable sanctions. Depending on the entity whose liability applies to, systemic financial law sanctions may apply, having their basis in public finance law. Another

⁴⁵ S. Gajewski, A. Jakubowski (eds.), *Ustawy samorządowe. Komentarz*, Warszawa 2018, *passim*.

group are administrative sanctions (applied, for example, by regional audit chambers). Sanctions for violating public finance discipline are also important from the point of view of public finances. Criminal⁴⁶ and fiscal penalties, and even civil sanctions⁴⁷, also apply. In the case of liability based on the provisions of financial law, there is generally no indication of guilt, and the protection of the state's financial interests has a significant impact on its formation. A characteristic feature of liability in financial law is also the possibility of the coincidence of several regulations on which it is based in the case of a specific entity and in relation to the same action. There are also no uniform procedures for dealing with cases of this type⁴⁸.

When addressing the issue of responsibility of local government units related to the implementation of the process of creating and implementing the budget, special attention should be paid to the application of systemic sanctions, which are covered primarily by the provisions of the Public Finance Act and we often identify them as key institutions of financial law (e.g. the institution of blocking planned budget expenditure). In the case of the discussed liability of local government units, attention should also be paid to administrative sanctions (applied, for example, by regional audit chambers)⁴⁹ and sanctions related to violations of public finance discipline (applied by committees adjudicating on cases of violation of public finance discipline)⁵⁰.

In the case of the issues discussed, attention should also be paid to the activities of regional chambers of audit, which supervise the activities of local government units in the field of financial matters and control financial management and public procurement (Art. 1 sec. 2 a.r.a.c.; Art. 171 sec. 2 of the Constitution RP). Pursuant to Art. 11 sec. 1 a.r.a.c. in the scope of supervisory activities, the subject-matter jurisdiction of regional chambers of audit includes resolutions and orders adopted by local government bodies in matters:

- 1) procedures for adopting the budget and its amendments;
- 2) budget and its changes;

⁴⁶ Where, for example, the criminal liability of public office holders is at issue; see in particular Art. 231, Art. 115 paragraphs 13 and 19 the Act of 6 June 1997 – Criminal Code (consolidated text: Dz.U. z 2022 r. poz. 1138 ze zm.); see also B.J. Stefańska, [in:] *Kodeks karny. Komentarz*, R.A. Stefański (ed.), Warszawa 2023, comm. on Art. 231; P. Daniluk, [in:] *Kodeks karny. Komentarz*, R.A. Stefański (ed.), Warszawa 2023, comm. on Art. 115; K. Walczuk, [in:] J. Taczowska-Olszewska, A. Brzostek, K. Walczuk, *Status prawny funkcjonariusza publicznego. Ochrona – obowiązki – odpowiedzialność*, Warszawa 2020, p. 162 et seq.

⁴⁷ See in respect of, for example, liability for damage caused in the exercise of public authority, J. Kuźmicka-Sulikowska, [in:] *Kodeks cywilny. Komentarz*, E. Gniewek, P. Machnikowski (eds.), Warszawa 2021, comm. on Art. 417.

⁴⁸ C. Kosikowski, [in:] *Finanse publiczne i prawo finansowe*, C. Kosikowski, E. Ruśkowski (eds.), Warszawa 2008, pp. 84–85.

⁴⁹ See the Act of 7 October 1992 on regional audit chambers (consolidated text: Dz.U. z 2023 r. poz. 1325), hereinafter: "a.r.a.c.".

⁵⁰ See the Act of 17 December 2004 on liability for violations of public finance discipline (consolidated text: Dz.U. z 2021 r. poz. 289 ze zm.). See also J.M. Salachna, *Rola odpowiedzialności prawnofinansowej w procedurze budżetowej jednostek samorządu terytorialnego*, [in:] *Uwarunkowania i bariery w procesie naprawy finansów publicznych*, J. Gluchowski, A. Pomorska, J. Szolno-Koguc (eds.), Lublin 2007, pp. 246–247; J.M. Salachna, *Odpowiedzialność w prawie finansowym*, [in:] *System Prawa Finansowego*, Vol. I, *Teoria i nauka prawa finansowego*, C. Kosikowski (ed.), Warszawa 2010, pp. 390–391.

- 3) incurring liabilities affecting the amount of public debt of a local government unit and granting loans;
- 4) principles and scope of granting subsidies from the budget of a local government unit;
- 5) local taxes and fees to which the provisions of the Tax Ordinance Act apply;
- 6) discharge;
- 7) multi-annual financial forecast and its changes.

During the supervisory proceedings, the board of the locally competent regional audit chamber may declare the budget resolution invalid (in whole or in part). If the budget resolution is declared invalid, the budget or the part thereof affected by the invalidity is also determined by the board of the chamber (see Art. 12 secs. 1–3 a.r.a.c.)⁵¹.

Both at the stage of creating and implementing the local government budget, the provisions of the Public Finance Act provide for the issuance of opinions by regional audit chambers for example in relation to the draft budget resolution. The fundamental criterion for the operation of the regional chamber of audit in the course of analyzing materials and shaping the content of opinions is the criterion of compliance with the law (legality)⁵². In this case, the provisions of the Public Finance Act do not specify the deadline for issuing an opinion by the regional audit chamber; however, it is assumed that an opinion on the draft budget resolution should be issued within a time limit that will enable the executive body of the local government unit to read its content and possibly responding to the comments contained therein. Pursuant to Art. 238 sec. 3 p.f.a. executive body of local government unit is also obliged to present this opinion to the decision-making body of the local government unit before adopting the budget.

The opinion of the regional audit chamber is not binding on the local government unit. Pursuant to Art. 21 sec. 1 a.r.a.c. issuance of a negative opinion on the draft budget of the local government unit by the regional audit chamber does not suspend the procedure of adopting the local government budget. Executive body of local government unit is obliged to present this opinion to the decision-making body of the local government unit together with a response to the allegations contained therein, which should take place before the adoption of the budget of the local government unit. From the opinion of the regional audit chamber to the executive body of the local government unit you are entitled to an appeal, which is considered by the board of the chamber, no later than within 14 days from the date of its submission (see Art. 20 sec. 2 in connection with Art. 13 point 3 of the a.r.a.c.).

Referring to yet another example – the provisions of the Public Finance Act also regulate the case of issuing an opinion on a draft resolution of local government units regarding the multi-annual financial forecast or its amendment (Art. 230 secs. 2–5 p.f.a.). In this case, the regional audit chamber issues an opinion with particular emphasis on compliance with the provisions of the Public Finance Act regarding the adoption and implementation of budgets in the following years for which liabilities

⁵¹ See more A. Borodo, *Prawo...*, pp. 252–254.

⁵² See Art. 171 sec. 1 of the Constitution of the Republic of Poland, see also Art. 85 a.c.s.g, Art. 77 a.p.s.g., Art. 79 a.v.s.g.

have been incurred and are planned to be incurred. In the context of the issues discussed, it is also worth paying attention to the institution of a substitute arrangement (Art. 240 sec. 3 p.f.a). This solution is used in the event of failure to adopt a budget resolution by 31 January of the budget year, which provides the regional audit chamber with a basis for establishing the budget of the local government unit in the scope of own tasks and commissioned tasks. The Public Finance Act sets the deadline for the regional audit chamber to take action by the end of February of the budget year.

It should be noted that in the event of violations being detected, supervisory authorities may apply measures provided for by law and interfere authoritatively with the activities of the supervised body. The activities undertaken by the supervisory authority are aimed at correcting and removing irregularities found in the operation of the supervised entity – however, the literature on the subject emphasizes that this should have its limits in the form of specific (specified by law) supervision measures. This is justified both by the generally accepted principles of legal supervision and, in the case of the issues discussed, also by the financial independence of local government units guaranteed by the provisions of the Constitution of the Republic of Poland⁵³.

It is also worth noting that the criterion of legality should apply to all forms of activity of local government units and supervisory authorities may interfere in it only when the law is violated⁵⁴. In the case of financial matters, there is also a danger that supervision will begin to take the form of co-management or substitute management⁵⁵. The admissibility of substitute actions is measured in this case by the absence of any obstacles in the performance of local government units their statutory tasks⁵⁶.

5. Final conclusions

The issue of responsibility of local government units related to the implementation of individual activities related to the budget procedure is of particular importance due to the fact that they have a significant part of public resources at their disposal. Shaping the principles of this responsibility, of course, requires thorough legal regulations and the functioning of a system of supervision over financial activities. However, we cannot forget that compliance with applicable regulations and rules is also of key importance in this case.

According to the results of inspection activities carried out by regional audit chambers, a total of 10,709 cases of irregularities were found in 2022 (5.5% more than in the previous year). The largest share of identified irregularities in the total number are those related to budget implementation – 35.8%, including income and revenues (22.0%) and expenses and expenditures (10.9%), in the field of accounting

⁵³ See Art. 165, 167 of the Constitution of the Republic of Poland; J.M. Salachna, [in:] *Budżet...*, p. 34.

⁵⁴ B. Banaszak, *Konstytucja...*, comm. do Art. 171, p. 768.

⁵⁵ T. Dębowska-Romanowska, *Prawo finansowe. Część konstytucyjna wraz z częścią ogólną*, Warszawa 2010, pp. 248–253.

⁵⁶ Judgment of the Constitutional Tribunal of 7 December 2005, KP 3/05, OTK-A 2005/11, poz. 131; Judgment of the Supreme Administrative Court of 4 November 1993, SA/Gd 1373/93, ONSA 1994/4, poz. 154, with gloss by M. Kasiński, "Samorząd Terytorialny" 1994, No. 5, p. 69.

Table 1. Number of irregularities detected as a result of inspections of regional audit chambers in 2018–2022

Specification	2018		2019		2020		2021		2022	
	number	structure (in %)	number	structure (in %)	number	structure (in %)	number	structure (in %)	number	structure (in %)
Total, including	12,404	100.0	11,845	100.0	10,677	100.0	10,152	100.0	10,709	100.0
General organizational arrangements	1,133	9.1	1,107	9.3	1,098	10.3	1,072	10.6	1,093	10.2
Accounting and reporting	3,642	29.4	3,401	28.7	2,760	25.8	2,625	25.9	2,843	26.5
Budget implementation incl.	4,795	38.7	4,525	38.2	4,077	38.2	3,668	36.1	3,837	35.8
– general issues regarding budget planning and implementation	479	3.9	449	3.8	336	3.1	301	3.0	308	2.9
– income and revenues	2,920	23.5	2,552	21.5	2,414	22.6	2,144	21.1	2,360	22.0
– expenses	1,396	11.3	1,524	12.9	1,327	12.4	1,223	12.0	1,169	10.9
Public procurement	1,231	9.9	1,192	10.1	1,185	11.1	1,298	12.8	1,445	13.5
Settlement of received and subsidies granted	530	4.3	587	5.0	501	4.7	415	4.1	451	4.2
The public debt	152	1.2	170	1.4	142	1.3	124	1.2	125	1.2
Property management	839	6.8	804	6.8	846	7.9	907	8.9	868	8.1
Settlements of local government units with organizational units	82	0.7	59	0.5	68	0.6	43	0.4	47	0.4

Source: Report on the activities of regional audit chambers and budget implementation by local government units in 2022, Warszawa 2023, p. 74.

and reporting (26.5%), general organizational arrangements (10.2%), public procurement (13.5%) and property management (8.1%)⁵⁷.

As for the financial effects of inspections carried out in 2022 (960 in total), 10,709 various types of irregularities were discovered, which concerned inappropriate actions of local government units, for a total amount of PLN 7,933,298.3 thousand. In this case, there was a decrease in the value of detected irregularities by 13.3% in relation to 2021. The structure of detected irregularities – depending on their type – was as follows:

- 1) depletion of public funds – PLN 45,328.1 thousand,
- 2) amounts obtained in violation of the law – PLN 28,919.9 thousand,
- 3) amounts spent in violation of the law – PLN 449,577.6 thousand,
- 4) amounts spent as a result of illegal activities – PLN 60,254.7 thousand,
- 5) amounts spent uneconomically, unintentionally or unreliably – PLN 5,749.9 thousand,
- 6) amounts corresponding to unreliable data in financial and accounting records or reporting – PLN 5,179,159.6 thousand,
- 7) other financial irregularities – PLN 1,661,592.1 thousand⁵⁸.

Table 2. Financial irregularities identified as a result of the inspection in 2022

Issue	Irregularities (in PLN thousand)	Structure (in %)
Total, including:	7,933,298.3	100.0
– general organizational arrangements	-	×
– accounting and reporting	5,635,102.1	71.0
– general issues regarding budget planning and implementation	75,010.5	0.9
– budget execution – budget revenues	74,424.2	0.9
– budget execution – budget expenditure	283,303.2	3.6
– public procurement	720,696.6	9.1
– settlement of received and granted subsidies	39,329.2	0.5
– the public debt	1,059,001.3	13.3
– property management	43,867.6	0.6
– settlements between local government units and organizational units	2,563.6	0.0

Source: Report on the activities of regional audit chambers and budget implementation by local government units in 2022, Warszawa 2023, p. 106.

Summarizing the above data, it should be noted that in the course of inspection activities carried out by regional audit chambers, the most frequently identified

⁵⁷ Report on the activities of regional audit chambers and budget implementation by local government units in 2022, Warszawa 2023, p. 74.

⁵⁸ Report on the activities of regional audit chambers and budget implementation by local government units in 2022, Warszawa 2023, p. 105.

irregularities were those related to budget implementation. They constitute 35.8% of the total number of irregularities identified in 2022 related to the activities of local government units.

The issues discussed are characterized by significant complexity, and the analysis carried out in this study is of a fragmentary nature, but what draws attention is primarily – inevitably to some extent – the multitude of regulations in force and applied in this case. This is due to the variety of sanctions used and different rules of liability reflecting its specific nature. Regardless of the changes introduced in this area in recent years, it is necessary for the legislator to take a systemic approach and create a clear framework for the liability system. Moreover, the scope of competences of individual local government bodies in the course of the budget procedure is not always sufficiently defined, although it seems that the doctrinal analysis of the provisions of individual public finance acts as well as the achievements of the jurisprudence and the applied practice have dealt with this to a significant extent. The need to develop effective solutions ensuring appropriate protection of the rules of the budget procedure also becomes particularly important if we take into account how many entities it affects. This concerns local government units, the executive and decision-making bodies of these units, and all persons involved in work on the budget at various stages. Therefore, if the legal and financial responsibility related to individual stages of work on the budget of local government units is to fulfil the educational and preventive role assigned to it; meeting the condition of a systemic approach in the development of applicable regulations remains particularly important.

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