

## Human (citizen) rights and legal and financial regulations in Poland

### ABSTRACT

According to the undertaken topic, the determining of possibilities of protecting human rights within the scope of financial regulations binding in Poland will be the subject of this consideration. In this regard, the selected provisions of financial law – those which safeguard the protection of human rights as well as those which may cause their violation will be analyzed. The conclusions resulting from this study will allow determining to what extent the national financial law regulations encroach on the essence of the rights guaranteed by constitutional provisions and where the justifications for violation of these rights should be found. The study will find its basis in the analysis of applicable legal regulations, in the literature on the subject as well as in the judicial decisions.

**KEYWORDS:** *citizens' rights and freedoms, the Constitution of the Republic of Poland, legal and financial regulations, restrictions and violations of civil rights and freedoms.*

### Introduction

In accordance with the undertaken topic, the subject of these considerations covered by this study will be determining the possibilities of protecting human (citizen) rights in the scope of financial regulations

being in force in Poland. In order to present the indicated issue, the study will consist of two thematic areas. The first one will be devoted to indicating the constitutionally guaranteed basic and the most important human and citizen rights and freedoms in Poland. The second thematic area will talk about those financial law regulations which clearly affect these rights and freedoms, sometimes leading to their restriction by too big state interference.

The aim of the study is to prove three research theses. First of all, the rights and freedoms of human (citizen) are guaranteed by the Constitution of the Republic of Poland. Secondly, the citizen's rights should be considered in the category of acquired rights and it means that they are inalienable on the basis of the provisions of ordinary laws. Thirdly, however, the specificity of the legal and financial regulations makes it possible to limit constitutional rights, sometimes leading to their restriction or even deprivation of those rights and freedoms.

The legal and dogmatic method will be used in this study due to the application of the legal regulations, the literature on the subject and the judicial decisions. It will also be necessary to use the comparative method, due to the analysis of regulations arising from the constitutional law and the financial law.

## Constitutional regulations regarding civil rights and freedoms

The binding provisions of the Constitution of the Republic of Poland<sup>1</sup> provide for the cardinal rights and civil freedoms which result *expressis verbis* from the content of its provisions. According to the article 30 of the Polish Constitution *"The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the*

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<sup>1</sup> Act of 2<sup>nd</sup> April 1997, Dz. U. 78. 483, as amended (hereinafter: the Polish Constitution or the Basic Law).

*obligation of public authorities*”. The article 31, paragraphs 1–3 of the Basic Law, states that the human freedom is subject to legal protection (Tuleja, 2007, pp. 315–316 and Todos, 2016, pp. 40–66)<sup>2</sup>, therefore everyone is obliged to respect freedom and law of others. Hence, it is unacceptable to force a person to do what the law does not require from her or him. At the same time, the restrictions on the use of constitutional freedoms and rights may be established only by acts and only when they are necessary in a democratic state due to the need to ensure its security, public order, or to protect the environment, public health and morality, or freedoms and the rights of others. However, even in such cases, these restrictions must not violate the essence of freedoms and rights<sup>3</sup>.

The legal regulations mentioned above result in many rights which are to ensure the preservation of the rights and freedoms for every Polish citizen. Of course, among them, also from the point of view of the legal and financial issues, the most important should be this provision which guarantees respect for the inherent and inalienable dignity of every human being. Because of the adoption of this cardinal and basic principle, every citizen should have a sense of belonging to a state which is to guard his or her dignity, beginning with the moment of birth and lasting until death. Therefore, both the state and other citizens (in mutual relations) must respect this value as assigned and inalienable, and therefore they have no right to violate it. On the other hand, the state – public authorities – has the burden of making every effort to guarantee the constitutionally confirmed dignity of every citizen.

Importantly, the Constitution of the Republic of Poland also grants the freedom to every person (citizen) to decide about herself or himself and about her or his actions in all spheres of functioning. Due to the fact that everyone must respect own freedoms as well as the freedoms of others, without the possibility of entering, limiting or depriving them, it should be considered

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<sup>2</sup> The right to a court should be derived from this regulation as the rights which are protected constitutionally and statutorily – protected by the Constitution and by the Acts.

<sup>3</sup> More on this topic: The Supreme Court Judgment of 8<sup>th</sup> May 1997, I PKN 125/97, OS-NAPiUS 1998 no5, item 152.

unacceptable for anyone to force such action which is not provided by law. Only the legal regulations, and due only to the occurrence of the above-mentioned premises, justify a violation of this principle both in Polish and international legal regulations (Jasudowicz, 2017, pp. 8–9).

On the basis of these regulations, which should be considered immovable (in principle) from the point of view of every citizen, the current Constitution of the Republic of Poland indicates in detail the regulations defining different types of freedoms and rights, which under the Basic Law can be divided into three chronologically ordered groups: the personal freedoms and rights, the political freedoms and rights and the economic, social and cultural freedoms and rights.

### Personal freedoms and rights

The personal freedoms and rights constitute the most numerous group of freedoms and rights referred to in the articles from 38 to 56 of the Polish Constitution. For the purposes of this study, which is intended to demonstrate the possibility of interference or violation of the rights and freedoms, it is worth referring to several of them (Ombudsman, 2019, pp. 4–5).

The first should be associated with the protection of the most precious value that is life. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment. In this respect, the personal immunity and personal freedom of a person apply. We are talking here about a person who has the right to legal protection of private and family life, honour and good name as well as to decide about her or his personal life.

The result of adopting such provisions is the integrity of the house, apartment, rooms or vehicle, which can be searched only in the cases specified in the Act and in the manner specified therein. Hence, the forfeiture of things may take place only in cases specified in the Act and only on the basis of a final court decision.

Every human being (citizen) is also guaranteed freedom of conscience and religion, and what is important from the point of view of the legal and financial regulations, everyone has the freedom to express their views and to obtain and spread the information.

### Political freedoms and rights

The political freedoms and rights are described in the articles from 57 to 63 of the Polish Constitution. Also in this respect, the Basic Act, apart from ensuring the freedom to organize peaceful gatherings and participate in them (with restrictions only resulting from the Act), provides – which is very important from the point of view of further considerations related to financial and legal regulations – that Polish citizens exercising full public rights have the right to access public service on equal terms. In addition, as confirmation of the aforementioned right to obtain information, a citizen has the right to obtain information on the activities of public authorities and people performing public functions.

Everyone also has the right to submit petitions, applications and complaints in the public interest (Stahl, 2007, p. 95) with their consent to the public authorities and the social organizations and institutions in connection with the tasks they perform in the field of public administration.

### Economic, social and cultural freedoms and rights

Finally, there are the economic, social and cultural freedoms and rights which are indicated in the articles from 64 to 76 of the Constitution of the Republic of Poland. These types of freedoms and rights should be considered the most important from the point of view of the analyzed relationships with the legal and financial regulations. According to the adopted regulations, everyone has the right to health protection. The education in public schools is free and the public authorities provide universal and equal access to education for citizens.

The role of the state is also to ensure in its social and economic policy that the good of families is taken into account, in particular those who are in difficult financial and social situation, with many children and incomplete, as they have the right to special assistance from public authorities. In addition, everyone is guaranteed the freedom of artistic creation, scientific research and publication of their results, the freedom of teaching, as well as the freedom of using cultural goods.

What is fully justified, the abovementioned freedoms and civil rights, since guaranteed by the most important legal act, were secured by means of protection of freedoms and rights in the provisions arising from the content of articles 77–81 of the Polish Constitution. Everyone has the right to compensation for damage caused to her or him by the unlawful operation of a public authority, and nobody may be stopped by the Acts to use the court proceedings for claiming the infringed freedoms or rights.

The implication of the abovementioned regulations is that each party has the right to appeal against judgments and decisions issued in the first instance, since everyone whose constitutional freedoms or rights have been violated has the right, under the principles set out in the Act, to lodge a complaint to the Constitutional Tribunal regarding compliance with the Constitution of the acts or other normative regulations on the basis of which a court or public administration body finally stated about her or his freedoms or rights or obligations set out in the Constitution (Banaszak, 2012, p. 72 and Zieliński, 2002, p. 697). Everyone also has the right to submit, under the principles set out in the Act, the complain to the Ombudsman with a request for help in protecting their freedoms or rights violated by public authorities (Zięba-Załucka, 2018, pp. 22–32).

## Financial and legal regulations and civil freedoms and rights

The aforementioned, due to technical requirements, only in a selective manner, freedom and human (citizen's) rights are to guarantee her or his independent and unrestricted operations. According to this background, it seems that everyone also has the right to benefit from the tasks implemented by the state – the organs of central and local government (Pijewski, 2018, pp. 38–39).

However, these simply trivial statements are subject to disturbance due to the norms resulting from the applicable financial regulations. To clarify the thesis, it is necessary to start with the basic issues, namely the indication that under the provisions of the law, the state budget adopted annually and

the budgets of local government units (due to decentralization of public authority)<sup>4</sup> form the basis for the accumulation and spending of funds by the state and individual local government units<sup>5</sup> (Patrzalek, 2019, p. 5).

In view of the above, the Sejm (according to the article 219, paragraph 1 of the Constitution of the Republic of Poland) adopts the state budget for the financial year in the form of a budget Act, as in the case of local government units, their budgets are also adopted for the financial year, in the form of the budget Resolution<sup>6</sup>. As a result of these legal regulations, it should be assumed that the abovementioned freedoms and civil rights are subject to limitation due to the fact that the public and local government bodies may only have specific monetary resources at their disposal.

Although the budget Act or the budget Resolution, as adopted, is of a prognostic nature, however, the Constitution does not allow the possibility of taking loans or granting financial guarantees and sureties, as a result of which the state public debt will exceed 3/5 of the value of the annual gross domestic product<sup>7</sup>. Due to this, it is extremely important to maintain an appropriate ratio of budget revenues to their expenditure to lead to the implementation of civil freedoms and rights (Malinowska-Misiąg, 2018, pp. 32–39).

In this regard, it is crucial to build the proper income structure of the state budget as well as the income structure of the local government units. In this respect, decisive importance should be attached to those financial regulations that guard the collection of funds. The most important, because derived from

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<sup>4</sup> The content of the article 15 and 16 of the Constitution of the Republic of Poland states, among others, that „*The basic territorial division of the State shall be determined by statute, allowing for the social, economic and cultural ties which ensure to the territorial units the capacity to perform their public duties*”, and “*Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility*”.

<sup>5</sup> The conclusion from the wording of the article 163 of the Constitution is that the organs of public authority of a central governmental nature are to safeguard civil liberties and rights.

<sup>6</sup> In accordance with the article 239 of the Act of 27<sup>th</sup> August 2009 on public finance Dz. U. 2017. 869, consolidated text.

<sup>7</sup> In accordance with the article 216, paragraph 5, first sentence.

constitutional regulations, is the article 84 indicating that “*Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute*”.

This legal regulation may be considered in various aspects. First of all, it is the area of identifying the party obliged to meet the tributes. In this aspect, the constitution-maker has left no doubt that everyone residing or having their registered office in the Republic of Poland (Dobaczewska, 2018, p. 497) must comply with this obligation and that this responsibility is of progressive nature, at least until the changes in the Polish Constitution.

Secondly, the used wording clearly indicates the necessity of providing tributes in the scope specified in the provisions of the ordinary Act (Gomułowicz, Mączyński, 2016, pp. 157–159). Therefore, the ordinary law – the Act specifies the concepts such as: everyone, the situation (an event whose occurrence causes the necessity to pay the tax) and the amount of the tribute (as evidenced by the regulation arising from the content of article 217 of the Constitution)<sup>8</sup>.

Thirdly, the constitution-maker, apart from the taxes to which it indicates by name, does not define the concept of burdens and public tributes, which means that the most important duty of citizens is the necessity of paying taxes and other indefinite tributes (Miemiec, 2018, pp. 50–60). The clarification in this respect (also incomplete) is introduced by the Act on public finances, indicating that public revenues are public levies, which include: taxes, contributions, fees, profit payments from state-owned enterprises and sole proprietorships of the State Treasury and state-owned banks, and also other cash tributes which the obligation to incur for the benefit of the state, local government units, state earmarked funds and other units of the public finance sector results from separate acts<sup>9</sup>.

An important issue related to the specified tributes, in particular taxes, is their effective collection by the state or the local government units. The

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<sup>8</sup> “The imposition of taxes, other public tributes, the definition of entities, objects of taxation and tax rates, as well as the rules for granting reliefs and redemptions and the categories of entities exempt from taxes is done by the Act”.

<sup>9</sup> In accordance with the article 5, paragraph 2.

applicable legal provisions introduce a number of legal regulations which are to secure their acquisition, which can be considered as a certain limitation of citizens' freedoms and rights. These statutory rights are related to the collection of taxes and fees resulting from the general principles of the Tax Code<sup>10</sup>. In this regard, from the point of view of the analyzed methods of collecting own income tax, the regulations regarding primarily securing the implementation of tax obligations in the form of the possibility of establishing a compulsory mortgage and tax lien<sup>11</sup>, tax arrears and the consequences of its creation<sup>12</sup>, the possibility for the municipality to establish a prolongation fee<sup>13</sup> and pursuing claims by way of enforcement proceedings<sup>14</sup> apply.

The above-mentioned methods of obtaining funds by the state or the local government units although it should be considered justified due to the need to ensure a steady flow of funds, it can also be considered in terms of restrictions on civil freedoms and rights.

## Conclusion

The applicable legal and financial regulations impose a number of tribute obligations on citizens by means of ordinary laws, which sometimes violate their acquired rights. Obviously, due to the above comments, the justification for such possibilities should be seen in the so-called state financial authority – which should be considered *de lege lata* conclusions. On the basis of applicable legal regulations, due to the decentralization of public authority, this financial authority should be understood more broadly, as it also applies to some extent to the local government units. This scope of authority, however,

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<sup>10</sup> Act of 29<sup>th</sup> August 1997. Dz. U. 2019.900, as amended, consolidated text.

<sup>11</sup> Chapter 3 of the Tax Code.

<sup>12</sup> Chapter 5 of the Tax Code.

<sup>13</sup> This is of particular importance due to the possibility of claiming deferred or installment tributes, which constitute the income of the commune budget. See. Article 57 §7 of the Tax Code.

<sup>14</sup> Act of 17<sup>th</sup> June 1966 on enforcement proceedings in administration. Dz. U.2018.1314 as amended, consolidated text.

is much narrower because, as by the rule, the state has the obligation to carry out all public tasks. Hence, the state has the constitutional power to obtain the necessary financial resources from every citizen.

Importantly, the guarantees contained in the Constitution of the Republic of Poland in the field of civil freedoms and rights are limited and sometimes even violated – which has been proved in this short study. However, even in such situation, it is indispensable for the action of the state or local government units based on applicable legal regulations.

The absence of uniform definitions of the terms used by the Basic Law – Constitution and the ordinary laws seems to be a worrying situation. It may bring the uncertainty and the fears of citizens about which payments or tributes the state or local government units will request. Considering the fact that the state constructing a new spending model in the form of 500+ program, the Large Family Card or the so-called the thirteenth pension needs the flow of new financial resources. Hence, as the *de lege ferenda* postulate, the need to define public tributes expected from each of us can be assumed.

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