| Chapter 4 |

Regulation of Public Finances in Hungary in Light of Financial Constitutionality

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ABSTRACT

The first section of this chapter presents the historical development and theoretical division of financial law. The fundamental legal institutions of modern financial law are widely regulated in the Hungarian Fundamental Law. Public finance constitutionality is an important area of financial jurisprudence. Based on the fundamental law regulations, certain areas of financial jurisprudence are presented in each section: public finances, financial and asset management, the system of public burden bearing and public burdens, public asset management, and the monetary system. The presentation of the basic legal institutions of the constitutionality of public finances allows the reader to get an overview of the Hungarian system of financial law.

KEYWORDS

Constitutionality of public finances, constitutional law of finance, public finances, budget, financial law, asset management, public burdens, taxation.

1. The system of the Hungarian financial law

The Hungarian financial law—similarly to that of the other countries—has undergone a tremendous development. The importance of regulating financial law was acknowledged by scholars as early as in the 1800s, and it was primarily examined from an administrative point of view, focusing on financial management. Financial law was interpreted as a part of administrative law. Financial law, therefore, as financial management, serves for raising the resources for the functioning of the state as part of administrative law and is an activity that falls within the general scope of economy. The scientific literature of that time points out, however, that administrative law was underdeveloped until 1848, thus neither the development of financial law was significant until then.[1] Nevertheless, there is a scientific point of view of the time which

1 Lechner, 1892, pp. 1-10. According to the author, the reason for the lack of legal development is the underdevelopment of economic and social life. As these began to evolve, so did the development of law in the field of administrative law.

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already talked about financial law that encompasses the system of rules of financial management and that aimed to generate state revenues, satisfy the demands of the government, and perform public tasks. It is clear, therefore, that financial law in this period meant a set of rules for public finances, including the right to receive state revenue, the right to tax and the system of financial management.[2] Public finances, state economic sciences[3] were identified as financial studies, of which the set of rules and regulating financial management constituted financial law. Around this time, the concept of an independent financial law appeared in scientific literature.[4] Although certain authors of this time still perceived financial law as a part of administrative law, highlighting that this is the law of financial administration—an administrative activity that seeks to manage state revenues, public expenditures, and related public affairs.[5]

The independence of financial law as a branch of law is not questioned nowadays from the perspective of whether it would be a part of administrative law, instead, we face the problem that financial regulation has become vastly diversified and it covers a wide range of regulatory areas and even this legislation is expanding rapidly in the 21st century. The importance of financial law already exceeds the ideas outlined in theoretical viewpoints of the previous historical periods. As economic and social conditions are evolving, it is the task of the legislature to keep up with these changes. Thus, following the historical antecedents, it is worth examining the contemporary financial legal theories on the place and role of financial law in Hungarian legal regulation.

The socialist regulation of public finances brought a rupture in the development of financial law. The field of public finances initially seemed to be less important in the period of socialism. However, after the economic reform of 1968, the importance of these increased, and fields such as tax law and budget law, which are important areas of financial law even nowadays, gained strength. Considering the above, the notion and the subject of financial law may seem narrower compared to the contemporary financial law, but as early as in the 1970s, the jurisprudence developed a complex system of financial law. Financial law—according to the definition of that time—regulates the finances of the state: the legal relations, legal institutions, procedures, and financial control established by the financial activities of the state. The definition points out that not all financial relations constitute a subject of financial law, only those which are related to public finances, thus, one of the parties in financial regulation must always be the state. However, the seemingly narrower scope of the socialist financial regulation and theory already highlights the significance of regulating financial law which is justified by the regulatory areas of financial law.[6]

2 Szigethy, 1893, pp. 5-7.
3 Surányi-Unger, 1936, pp. 1-6.
4 Mariska, 1900, pp. 1-4.
5 Tomcsányi, 1933, pp. 379-381, Szontagh, 1937, pp. 56-64.
6 Meznerics, 1977, pp. 17-35. The division of financial law according to the author: corporate and cooperative finances, tax law, banking and credit system, investment financing system, insurance financing system, financial control system, financial law of international relations.

Following the end of socialism in Hungary, the development of financial law has accelerated since the 1990s. The rapid changes in the economic conditions and the accelerated financial legislation created such legal institutions that previously were not present in financial regulation nor did they constitute its subject matter. Accordingly, the concept of financial law expanded in the 1990s.[7] The literature points out that those relations of public finances belong to financial law, which are necessary for providing the financial means and conditions necessary to perform the functions of the market economy and the state. The concept of public finances, however, is interpreted in a broad sense by this viewpoint. Financial relations that fall into this category constitute binding rules and they are established within the financial system. Public finances, therefore, cover not only public funds but also legal relations that the state intends to control, supervise, and regulate. As a result, financial jurisprudence of the early 1990s interpreted the fields of financial law in a broad sense, thus financial law included—apart from the system of public finances—certain finances of enterprises and natural persons, finances of banks and insurance systems, as well as international and integration finances.[8] These tendencies raise the question of whether the diversified and broad legislation could be classified as a single branch of law, and whether it is necessary to define legal structures because of the complexity of the legal relationship. In many cases, several branches of law regulate the modern financial relations. To seize the features of the regulation and unify them, in my opinion, the delimitation of financial law is crucial. The contemporary Hungarian financial jurisprudence opts for the independent nature of financial law and it defines financial law as an independent branch of law.

The current theories of financial law provide an answer to the legal development trends of financial law and its definitions. Even though the approaches are diverse, the definition of the fields of financial law shows similarities. There is a viewpoint that approaches the issue from the side of the economic policy. Financial law, therefore, regulates the centralization and the distribution of a specific part of the GDP, the financial management of commercial entities, fields of monetary policy and financial obligations of certain legal entities through a public financial base system.[9]

The other viewpoint considers the internal division of the law to be systematized by subjects. It divides financial law to the law of public finances, enterprises, individuals, organizations operating as associations and international financial law, including financial law of the European Union.[10]

The third opinion represents the most acknowledged theoretical point of view, which, in my opinion, explains the system of financial law in the most comprehensive way. It approaches from the side of the financial system financial law is the set of norms of public law that regulates the financial system. The financial system covers

7 Deák, 1993, pp. 456-460.
8 Nagy, 1992, pp. 4-10.
9 Földes, 2003, pp. 22-24.
10 Erdős, 2004, pp. 222-224.

three areas according to scientific literature. The system of public finances, which incorporates the management of public finances (central, state, and municipal management), i.e., the system of public revenues (taxation) and public expenditures. The monetary system includes the central bank, while the financial market covers the financial intermediaries that are credit institutions, insurers as well as investment companies, the stock market and other organizations operating on the market. Based on the definition, the literature divides the financial law into six parts:[11] accountancy law; public finances law; law of public revenues; law of the monetary system; public law of the financial market; international and European financial law.

The rules of accountancy law provide information on the financial position of economic entities which facilitates the control and preparing decision-making. Public finances law encompasses the rules of budget, asset management, public debt, and budgetary bodies. Substantive and procedural rules of tax law, duties and other public charges are a part of law of public revenues. The law of the monetary system consists of rules regarding the central bank. Public law of the financial market includes regulation concerning financial intermediaries (financial institutions, insurers, investment companies and the stock market) and their supervision. International and European financial law encompasses international agreements and European legislative measures related to financial law.

To sum up, it can be concluded that financial law can be divided into national and international financial law. Under the previously mentioned, five areas of domestic financial law can be distinguished, of which the public law regulation belongs to financial law. International financial law incorporates international agreements and treaties, of which the subjects are states, international organizations, and integrations. Besides financial transfers between states, financial law separates the areas of financial sovereignty, as international financial law precedes national financial law.[12]

International financial law, therefore, can be divided into several parts based on the subject of the regulation:[13] international budget law (international agreements, investment financing); customs law; law of the international monetary system and paymentsint; ernational and supranational tax law; budget systems of intergovernmental organizations (e.g., the United Nations); international financial control and the financial control of international organizations; financial law of integrations, financial law of the European Union.

Being one of the most important sets of rules of modern society, financial law is changing together with the economic life, competing with changing financial constructions. The continuous challenges and the legislative responses to them created a rapidly changing regulatory system which faces increased challenges. These challenges could be illustrated well by highlighting certain areas. One of these challenges

11 Simon, 2019a, pp. 27-28.
12 Nagy, 2003a, pp. 187-188.
13 Ibid., pp. 191-206.

for financial regulation is the development of modern technologies.[14] Problems related to digitalization arise both in taxation and in regulating the financial market. Tax evasion of multinational technology companies and the circumvention of the rules are significant for the lack of revenue in taxation.[15] A unified international regulatory practice and introducing a global minimum corporate tax have already emerged. However, introducing a robot tax is also an important issue in connection with the development of artificial intelligence.[16] Financial developments are equally important for regulating the financial and the monetary market, which mainly appeared in the technological sector but were achieved by the economy of the Community. Fintech companies demand participation in the financial market and generate competition with traditional credit institutions and investment companies. Technology innovations are beneficial for consumers but because of the balance of market competition and consumer protection, the extension of strict rules are required in this market sector as well.[17] With cryptocurrencies coming from Community economy, the legislature also faces a similar problem.[18] These funds are involved with a specific technological background in the financial market processes but also, depending on their prevalence, they can cause a regulatory constraint or prohibition. Concerning cryptocurrencies, another problematic issue is the monetary regulation of the central bank, since this role and therefore the effectiveness of the economic policy might be hampered by a currency that was not issued by the central bank.[19]

Constantly recurring economic crises and their solution might be challenging for the economic policy. These crises break out for various reasons, therefore, different solutions must be found that consider the experiences from the history of economy. The solutions have an impact on the management of public finances, so they might lead to the possible reconsideration of budget expenditures and revenues and regulating public burdens. The economic crisis of 2008 started in the banking sector of the United States and evolved into a global economic crisis which raised the need for a stricter regulation of financial markets instead of the previous deregulation of it. The economic role of the state rises also in connection with the covid pandemic crisis. Crisis management requires stronger state intervention, which, however, limits the development of a free market and has a strong influence on it through subvention policies. Economic and social problems require legislative solutions, which belong to financial law.

Actual issues of financial law also include the question of environmental financial affairs. The management of economic and social problems arising from heavy pollution might also belong to fiscal policy, including financial regulation. In environmental finances, environmental taxation and environmental aids are particularly

14 Nagy, 2020, pp. 32-40.
15 Erdős, Nagy and Varga, 2012, pp. 13-24.
16 Kovacev, 2020, pp. 183-218.
17 Nagy and Csiszár, 2016, pp. 977-1001.
18 Nagy and Nyilasi, 2018, pp. 69-79.
19 Nagy, 2019, pp. 5-14; Nagy, 2020, pp. 32-40.

important.[20] The European Union has a great impact on national regulations; however, certain countries might use different solutions.[21] There is an increasing emphasis in the literature on indirect economic regulation,[22] through which the importance of environmental taxes will increase with other budgetary and economic incentives.[23]

A significant area for the further development of financial law is international and integration financial law, among which the regulations of the EU must be highlighted.[24] Because of globalization, national laws of certain countries face difficulties with regulating global companies, therefore, international regulation will become increasingly important.[25] In financial law, however, this raises important sovereignty issues, since fiscal and monetary policies are the responsibilities of the state.[26] Taxation, for example, plays a key role in public finances, performing public tasks can thus be ensured.[27] The government is always responsible for performing public tasks, which must not be threatened when the government transfers part of the right to taxation or grants aid to the operation of international and integration organizations. Several other areas could be listed where the financial regulation faces challenges. The highlighted areas rather illustrate the diversity of financial jurisprudence.

2. Constitutional law of public finances

2.1. Constitutional regulatory issues of financial law

The constitutional foundations of financial law are not a new field in jurisprudence, the level of regulation differs from era to era. The new Fundamental Law of 2011 opened a new path in the Hungarian regulation by the extension of the constitutional rules related to financial law.[28]

The constitutional regulation of public finances, the constitution of public finances form part of a larger economic constitution. The economic constitution is part of the constitutional regulation where the fundamental economic rights and principles, the provisions regarding market economy, economic provisions on the tasks and powers of certain public bodies and restrictions of these can be found. The constitution of public finances is within the economic constitution interpreted in a broad sense, which rules primarily concern monetary and fiscal policy. The literature also highlights that state power and public finances cannot be interpreted without each other, public finances are the conditions and the measures of state power,

20 Nagy, 2013, pp. 73-84.
21 Ibid., pp. 515-528.
22 Nagy, 2014, pp. 77-88.
23 Nagy, 2015, pp. 128-148.
24 Csűrös, 2015, pp. 14-50.
25 Pardavi, 2015, pp. 75-105.
26 Horváth M., 2005, pp. 10-75.
27 Horváth M., 1999, pp. 112-143.
28 The Fundamental Law of Hungary.

therefore, provisions regarding this matter require constitutional regulation.[29] The constitutions provide rules on which financial relations must be regulated by law, thus norms that oblige the legislature to enact public finance laws can be found in the constitutions. However, these norms have changed throughout history and nowadays they set out not only legislative matters but they expanded into chapters about public finances that prescribe detailed rules. This process took place also in the Hungarian constitutional regulation and the current Fundamental Law encompasses detailed financial rules, so today's constitutional rules of public finances can be called the constitutional law of public finances.[30] Provisions regarding public finances determine the legal institutions of public finances and the essential rules of money and asset management and public charges. The constitutional regulation, however, is not exhaustive, the detailed constitutional rules are set out in cardinal laws which require the 2/3 of the votes in the parliament. Consequently, the Hungarian constitutional law of public finances is two-tiered, as cardinal laws also provide fundamental constitutional rules concerning public finances.[31] There are several laws of this kind (Act on the Hungarian National Bank, Act on the State Audit Office, etc.) but the Stability Act is particularly important as a comprehensive regulation of several legislature areas.[32]

The regulatory method of public funds of the Fundamental Law is twofold: on the one hand, it sets out principles, on the other, it provides concrete cases. It sets out norms that are related to budget management, by creating the principle of a balanced, transparent, and sustainable budget management. In connection with budget management, to reduce state debt, the Fundamental Law provides prohibitive standards.[33]

If the constitutional rules of financial law are examined structurally, a significant part of the rules could be found in a separate chapter on public funds. Some rules on public funds are set out in different chapters as well.

The chapter on public funds includes:[34] legislative obligation on the central budget and its implementation, authorization of the government on annual budget management, the principles of budget management, determination of the optimal (50% of the GPD) government debt ratio and related budget management, budget management during a special legal order, limitation of the powers of the Constitutional Court, rules on the property of the state and of local governments as national assets, the notion of public funds and the principles on managing public funds, the Hungarian National Bank, the State Audit Office, the Fiscal Council.

Besides the chapter on public funds, several other rules on public funds could be found in the Fundamental Law. In the chapter 'Foundation', which contains the

29 Drinóczi, 2012, pp. 6-7.
30 Nagy, 2003b, pp. 35-38.
31 Simon, 2019b, pp. 2-11.
32 Act CXCIV of 2011 on the economic stability of Hungary, Act CXXXIX of 2013 on the Hungarian National Bank, Act LXVI of 2011 on the State Audit Office.
33 Simon, 2019a, pp. 36-39.
34 Fundamental Law, Articles 36-44.

theoretical and basic provisions of the law, the principle of a balanced, transparent, sustainable budget, the declaration of the forint as the official currency, the obligation to preserve public and national property are set out. The obligation to bear the public burden and detailed rules on asset management could be found in a different chapter in the Fundamental Law. Regarding public burdens, the legislature states that everyone must be responsible for him- or herself and must be obliged to contribute to performing state and community tasks according to his or her abilities and possibilities.[35] It further points out that natural resources and cultural values form the common heritage of the nation, and it must be the obligation of the state and everyone to protect and maintain them.[36]

In the chapter 'Freedom and Responsibility' where fundamental rights and obligations, public liability, social security, the pension system, and the principle of the finances of the healthcare system are set out.[37]

A section on public funds has been added to the chapter 'The state', in which several financial law institutions are defined in line with the above. In addition, this chapter contains several provisions about finances. Such provisions are about the budgetary powers of the National Assembly, the powers of the President of the Republic related to the budget, a ban on holding a national referendum on certain financial matters and the principles of the economy of local governments.[38]

To sum up the constitutional law of public funds, the Fundamental Law regulates the following: public funds and asset management, government debt; public charges; money and monetary system.

The main organ for protecting the Fundamental Law is the Constitutional Court. It examines the consistency of the jurisprudence of the courts with the Fundamental Law and international law. It has a right to the annulment of laws, court decisions that are contrary to the Fundamental Law or international law. However, the power of the Constitutional Court is limited in financial matters, which can be regarded as a special limitation of the powers with certain exceptions.[39] The limitation of powers is related to the rules on government debt. If the government debt exceeds half of the gross domestic product, the Constitutional Court cannot annul laws on the central budget and its implementation, on central and local taxes, charges and customs, nor the provisions of these laws, according to the general rule.[40] An exception to this rule is when the Constitutional Court overrides these laws in relation with the right to life and human dignity, the right to personal data, the right to freedom of conscience, religion and thought or the right to the Hungarian citizenship. The case when procedural

35 Szilovics, 2020, pp. 33-35.
36 Fundamental Law, Foundation, Articles K-P.
37 Fundamental Law, Freedom and Responsibility, Articles XIX–XXX.
38 Fundamental Law, state, Articles 1-34.
39 Kecső, 2020, pp. 473-474.
40 Kecső, 2012, pp. 418-423.

requirements of legislation and the publication of these laws are not met; then the Constitutional Court has right to annul without limitations.[41]

2.2. Public funds and asset management, and public debt

The constitutional regulatory system of public funds is not new in the domestic regulation, but the provisions of the previous constitution were not as detailed as in the current one. However, the re-regulation of public funds was forced by the financial-economic crisis of 2008. The new Fundamental Law lays down the essential provisions of rule-based fiscal policy.

According to the literature, the rule-based fiscal policy is defined by the following:[42] budget policy rules, planning requirements; procedural rules; transparency standards, reporting system; and institutional guarantees for compliance with the rules.

One of the most important tasks of the state is performing public services. To guarantee public services, budgetary resources are needed which are secured by the annually adopted budget law. While the act on public finances sets out general, framework rules of the central budget, including procedural rules, specific budget laws set the financial framework for a given economic year and provide rules for that certain year. The creation of the regulatory system of the budget law is therefore a recurring activity, with yearly recurring tasks and rules on power and procedures. That is why this procedural order is called the budget cycle.[43] The particularity of the budgetary cycle is that on one hand, it is a document that determines the rules of the central budget—which requires special planning and approval—on the other, it is an act, therefore the set of rules of legislation also applies for it.

The budgetary procedure, the budget cycle means the order of planning, implementation and control of the budget and it covers all phases of the procedure.[44]

The relationship between the executive and the legislative power is particularly important in the budgetary procedure. The balanced relation of the two branches and the division of power between them is crucial. In the Hungarian regulation, the Fundamental Law and the framework rules of the Act on Public Funds provide the necessary legal framework, thus the fundamental decisions originating from state sovereignty are taken by the parliament.[45]

The role of the Fiscal Council is determining so that the National Assembly can take a well-founded decision about the approval of the budget and therefore, to ensure its adoption, the opinion of a professional body that is independent from the executive branch is necessary. The contribution of the council is essential in the budget approval process to comply with the government debt rule.

41 Fundamental Law, Public Funds, Article 37.
42 Kovács, 2016, p. 321.
43 Bán and Simon, 2007, pp. 129-131.
44 Ibid., p. 129.
45 Sivák and Vígvári, 2012, p. 108.

The Fiscal Council is a body that supports the legislative activity of the National Assembly, which examines the grounds of the central budget. The council is involved in the drafting of the law on the central budget and its preliminary approval is required for the adoption of the law. Because of these rights, the council has a significant effect on the compliance of the budget to the Fundamental Law, and it specifically monitors the compliance of the rules on government debt ratios. The president of the Fiscal Council, the president of the Hungarian National Bank and the president of the state Audit Office are the members of the council. The President of the Republic appoint the president of the council for six years. The organization and the operation of the council are regulated thoroughly in the Act on the Economic Stability of Hungary.[46]

The duties and the powers of the Fiscal Council are the following: expression of opinion regarding the central budget; decision on the preliminary approval; examination of the ratio of government debt.

The expression of opinion extends to several phases of the budgetary procedure. The expression of opinion of the council is not only limited to a mere right to advice or comment, but in several cases, the legislature also prescribes certain consequences that affect the order of the procedure. (Such a case, *inter alia*, is an opinion on the draft sent to the government, in which the council may indicate its disagreement. The government, therefore, must re-negotiate the draft.)

The decision on preliminary consent is also a strict quasi-veto power. The council is empowered by the Fundamental Law, stating that the consent of the council is required for the approval of the law on the central budget, to comply with the government debt rule.

The most important task of the council is to monitor compliance with the government debt rule. The provisions on the government debt rule are laid down in the Fundamental Law.[47] The essence of this rule is that the National Assembly must adopt such a budget law—to ensure sustainable public finances and responsibilities for the future generations—according to which the government debt must not exceed the half of the gross domestic product, that is the optimal ratio of government debt set out by the Fundamental Law. Currently, however, the government debt significantly exceeds this level, therefore, the parliament must adopt such a budget law that intends to reduce this debt until the optimal ratio is reached. Obviously, the Fundamental Law allows derogation from the general rules in certain cases when serious, unavoidable problems arise in matters that affect public finances. Such an exceptional situation arose during the economic crisis in connection with the covid pandemic.

The first phase of the budgetary procedure is budget planning. The aim of budget planning is to approve the planned revenues to be economically justified, and the planned expenditures to be necessary for the proper performance of public tasks. Preferences of budget planning are the most important factor in the budget planning mechanism. Expenditure should be used for the budgetary target system, and

46 Act CXIV of 2011 on the economic stability of Hungary, Articles 15–27.
47 Fundamental Law, Article 36 (4)-(5).

revenues should be grouped here to perform the public task. Obviously, the multiplicity of public tasks and goals and the scarcity of the available resources are sources of conflicts, therefore, coordination and harmonization between decision-makers and the establishment of budget preference systems are of crucial importance.[48]

Budget planning is typically a short-term activity that focuses on financial matters, however, demographic, economic conditions, and trends, as well as long-term goals and financial sustainability must also be considered. That is why the coordination of financial and realistic processes is important according to the literature, which could be realized with a complex strategic planning.[49] Under the current regulations, the government also carries out medium-term planning, since it also plans budget appropriations for the following three years.

Planning is facilitated by the principles that must be taken into consideration during the process. These principles ensure the efficiently and transparently operating economy and a system of legal guarantees.[50] The principles are divided into two groups: general and other principles (such as authenticity, completeness, etc.) can be distinguished.

The general principle is set out in the Fundamental Law.[51] The principle can be considered general because—according to the explanatory memorandum—the exercise of fundamental rights and the efficient operation of the state can only be guaranteed if the social and economic balance of the country is not threatened by problems of public finances. Therefore, the basic principle of budget management and budget planning is that Hungary implements the principle of a balanced, transparent, and sustainable budget management, which must be respected by all bodies operating in both sub-systems of public finances. Balance serves the predictable functioning of the state, transparency serves the democratic life operating with well-informed and responsible citizens and sustainability serves the responsibility for future generations. Sustainable public finance management encompasses several financial principles, but the previously mentioned government debt rule has particular importance. The Fundamental Law delegates the task and responsibility of planning to the government, and the government submits the bill on the central budget to the parliament. It is the parliament's right to decide on all public revenues and expenditures, which also determines the leeway of the executive power, the government. With the adoption of the budget law, the parliament determines its own leeway for public finances. This is defined by the Fundamental Law as the main task and power of the parliament.[52]

The Hungarian law does not set a deadline for the adoption of the budget, but the optimal case is when the budget is adopted by the end of the year preceding the year in question. However, it may occur that the adoption is delayed and the final

48 Bathó, 2009, p. 313.
49 Sivák, Szemlér and Vígvári, 2013, p. 102.
50 Bathó, 2009, p. 328.
51 Fundamental Law, Article N.
52 Fundamental Law, Article 1 (c). The National Assembly must adopt the central budget and approve its implementation.

vote will take place in the target year of the budget. Here, the ex-lex situation may arise in which the government does not have the power to continue budget management. According to the Budget Act, the government may implement the budget for one year, therefore a bridging rule is needed, under which the government may continue budget management. Such a rule was previously set out by the Public Funds Act, in today's regulation it is the Fundamental Law that provides regulation on the issue.[53] The Fundamental Law states that if the parliament fails to adopt the budget by the beginning of the calendar year, the government must be authorised to collect the revenues determined in laws, and, within the framework of the appropriations determined in the Act on the central budget for the previous year, disburse expenditures on a *pro rata temporis* basis.

It may happen during the final vote that the parliament does not vote or does not accept the budget law or its adoption is in delay. Here, to not threaten public finances and not to last for an indefinite time, the Fundamental Law provides a solution.[54] The President of the Republic, while simultaneously setting a date for new elections, may dissolve the National Assembly when it fails to adopt the central budget for the year in question by 31 March.

If the budget is approved, the parliament authorizes the government to collect revenues and to implement expenditures (appropriation).[55] The principle of responsible budget management must obviously apply to the government.

Public funds used in the management of public finances must be accounted for, and after the financial year, the government is required to report on implementing the budget. Budget reporting is a technical and legal act, the conditions of which are set out in different acts apart from the Fundamental Law.[56] The government must implement the central budget lawfully and expediently through the efficient management of public funds and transparency, and it must report this to the National Assembly. The report and implementing the budget is approved by the parliament, by controlling its execution at the same time. The government implements the budget. Therefore, with the approval of the National Assembly, it discharges the government from liability.

The reporting system also allows the control of the implementation of the budget, but besides this, it is also necessary to set up the control system for public finances as well. The purpose of the control of public finances is to use public funds and national assets to ensure a lawful, economic, efficient, and effective management and the proper and lawful fulfilment of reporting and information obligations. The control system of public finances involves both sub-systems, which are divided by scholars to external audit and internal financial control.[57]

53 Fundamental Law, Article 36 (7).
54 Fundamental Law, Article 3 (3) b.
55 Fundamental Law, Article 36 (3).
56 Győrffi, 2009, p. 639.
57 Sivák, Szemlér and Vígvári, 2013, p. 152.

The Public Finance Act, however, divides the control system of public finances into three areas: external audit of public finances; government control of public finances; the internal control system of public finances.

The tasks related to the external audit of public finances are executed by the state Audit Office.[58] The state Audit Office is the supreme financial and economic audit organ of the National Assembly which is independent from any other bodies in its activities. It has general competence for the management of public funds and local governmental properties. The explanatory memorandum of the regulation also points out that the legislature opted for the office-type audit among the court-type, authority-type and office-type audit models. Thus, the state Audit Office does not have direct sanctioning powers; therefore, its suggestions and findings are implemented through the activities of other organizations.

Besides public finance management, public asset management is also a constitutional area of high priority. Assets available for public finances are part of public finance management and assets that are not part of asset management, but they play an important role in performing public tasks and they constitute revenues for public finances. From this theoretical aspect, the asset can be divided into public finance assets and assets that do not belong to public finances, however, the legislation does not follow this division.[59] Assets that are available to the state and to the local governments thus form the basis for performing public tasks, and serve as a source of revenue for performing public tasks. The Fundamental Law also emphasizes performing public tasks.[60] The constitutional regulation points out that the purpose of national property is to serve public interest and to meet public needs, of which the detailed regulation is set out in a cardinal law, the Act on National Assets.[61] As a result, national property enjoys high protection.[62]

The law divides assets both horizontally and vertically. Horizontally, the national asset can be divided to two equal parts, property of the state and that of the local governments. The explanatory memorandum of the law points out that the principle of lawful division prevails in the division of the assets of the state and of local governments, thus the assets are linked with performing tasks. This reflects the basic principle that the primary purpose of national assets is performing public tasks. This division applies in the regulation as well. The general rules on national assets cover both types, however, the property of the state and the property of local governments are regulated specifically and separately in the acts on state property and in the Local Government Act.

58 Act LXVI of 2011 on the state Audit Office.
59 Bán and Simon, 2007, pp. 164-169.
60 Fundamental Law, Articles 38-39.
61 Act CXCVI of 2011 on national assets.
62 Téglási, 2013, pp. 86-87.

Under the unified regulation, the National Property Act defines national property as a whole entity, considering both the property of the state and the property of local governments.[63]

Vertically, national assets can be divided into four categories, primarily from the perspective of the severity of regulating asset management and the protection of the assets. The categories of assets are defined according to the gravity of public interest in the protection and preservation of national property, thereby defining stricter or more permissive rules. The four categories apply to the entirety of the assets; thus, these categories appear in the division of both state and municipal assets.

The four categories of national assets: (a) exclusive property of the state and of local governments, (b) national assets of outstanding importance for the national economy, (c) national assets with limited marketability, and (d) business assets.

Exclusive property of the state and of local governments are completely illiquid. It means that, as a rule, the property cannot be alienated, right of use, right of installation of masts, for example, cannot be established, it cannot be mortgaged, and shared property cannot be established on it. An exception from this rule is the establishment of the right to use or the right of way for the benefit of entities authorized for public interest in a separate legal act.[64]

National assets of outstanding importance for the national economy are those which do not belong to the category of exclusive properties but of which the preservation by the state or local governments are justified overall and which is an outstanding purpose of asset management. Generally, these assets are also subject to restraint on alienation and encumbrance, except for the right to use and right of way established by law.[65]

Assets with limited marketability are national assets that do not belong exclusively to the state nor to the local governments and that are not considered as national assets of outstanding importance. The property can be managed under the conditions specified by law or local governmental decree, so the management of these assets are limited and fixed.[66]

Business assets are the part of national assets that do not belong to the state treasury or to local governmental assets. Elements of business assets do not fall into particularly protected assets, the right to manage them is not limited by law. These assets are not subject to the prohibition of alienation and encumbrance, they can be managed freely by the state and local governments, within the limits of the general rules of asset management. This property can be alienated, encumbered and rights representing assets can be registered to them. The purpose of business assets is to provide revenues, enforce strategic economic interests and perform certain public tasks in a marked-based way in return for payment.[67]

63 Act CXCVI of 2011 on national assets, Article 1.
64 Act CXCVI of 2011 on national assets, Article 3 (1) 3.
65 Act CXCVI of 2011 on national assets, Article 3 (1) 12.
66 Act CXCVI of 2011 on national assets, Article 3 (1) 6.
67 Act CXCVI of 2011 on national assets, Article 3 (1) 18.

National assets belonging to the state—considering asset categories set out above—could be divided into two categories: treasury assets and business assets. The treasury assets encompass exclusive state assets, national assets of outstanding importance for the national economy, as well as state assets with limited marketability. Business assets cover marketable elements which do not belong to the treasury assets.

The assets of the local government can be either fixed assets or business assets. Fixed assets are divided into two categories by the law: illiquid assets and assets with limited marketability. Non-marketable fixed assets are the exclusive property of the local government and the national assets of outstanding importance for the national economy. Non-marketable elements are local roads, squares, parks, water utilities and assets that are classified as such by law or local governmental decree. The classification of property with limited marketability lasts until the asset directly serves performing public tasks or the exercise of public power. These include utilities, the building of the institution performing a public task and a share in a company performing a public task. Municipal business assets include those marketable elements that do not belong to fixed assets.

The right to manage national assets is divided, the ownership, the exercise of the rights, the utilization and the management of the property are typically separated from each other. The ownership of national property belongs to the state and the municipality, which merely represents the owner status, because the beneficial of the right to utilization exercises the right of management over the property.

The beneficial of the ownership rights over national assets is entitled to exercise all rights and obligations of the state or of the local government.[68] This means that the rights holder has the right to operate, and thus the right to the possession, use, collection of its fruits, maintenance, renovation, development, but also to grant these rights further. Besides the rights, the rights holder bears the obligations of the ownership which is regulated by civil law as a general obligation in addition to the obligations specified in property acts.[69]

With a local government, the rights holder is the local representative body, while with the state, the law defines the personal scope broadly. The rights holder of the state-owned national assets are[70] the minister, central budgetary institution, enterprises owned 100% by the state, companies owned 100% by an enterprise owned 100% by the state, person specified in an individual governmental decree.

The law narrows the personal scope with national assets of outstanding importance for the national economy, as in this case, only the minister, central budgetary institution and enterprises owned 100% by the state could be the holder of the rights.

The rights of the asset manager are limited and not exhaustive, the legislature even determines which asset elements can be managed by whom. There are trustees who can exercise the rights over the whole national asset: budgetary bodies; national

68 Act CXCVI of 2011 on national assets, Article 3 (1) 17.
69 Bende and Szabó, 2014, p. 14.
70 Act CXCVI of 2011 on national assets, Article 7/A.

self-governments and their associations, as well as institutions under their maintenance and management; public bodies.

Another group of persons can only be trustees specifically with state or municipal property. With state-owned national assets, the rights holder can also be the local government and institutions under their maintenance and management, enterprises owned 100% by the state or companies owned 100% by an enterprise that is owned 100% by the state (excluding public bodies), and legal entities individually specified in law.

With national assets owned by the local government, in addition to the above-listed entities, the state, the local government, national self-governments, association of self-governments and institutions under their maintenance or management and enterprises owned jointly or separately by these, as well as entities owned by these enterprises. With assets of the local government, ecclesiastical legal entities can also be rights holders to carry out their activities.[71]

2.3. The rules of public burden-sharing

The performance of public tasks requires regulatory, legislative, as well as financing activities. Legal acts determine the public tasks and conditions of their performance and because of budget management, the conditions for the financing of performing public tasks are set up.

The state withdraws resources from the private sector (allocation) within the framework of its economic function and then divides these resources again (redistribution), and it influences the market economy with fiscal and monetary tools (stabilization).[72] The public needs are met through performing public tasks. The performance of public tasks can be carried out in several forms. The most typical is to carry out the tasks through budgetary bodies in the framework of public finances. The budgetary bodies carry out public tasks as a core activity as part of public finances, as a unit of public finances.

Public tasks can be financed from both public and private sources. Private financing can be realized through fee financing or by borrowing and raising capital. With fee financing, the principle of 'the user pays' applies, as users of public services contribute to the maintenance of the services. Two types of usage fees can be distinguished, fees related to the fact of usage, or fees proportionate to usage. With usage fees, various public policy preferences can be enforced in the form of reduced fares.

The other source of funding that is dominant in the public sector, are public revenues that are collected by the state as a payment obligation based on the obligation of public burden-sharing.[73]

Public burden-sharing is set out in the Fundamental Law, which—in accordance with the principle of social justice—applies generally to all persons and

71 Act CXCVI of 2011 on national assets, Article 3 (1) 19.
72 Vígvári, 2009, p. 39-41.
73 Sivák and Vígvári, 2012, pp. 86-90.

organizations.[74] To ensure financial resources necessary for the financing of public tasks, everyone is obliged to contribute to cover the requirements of common needs, according to their financial capacity and their participation in the economy. With natural persons, the Fundamental Law takes into consideration the burdens related to child-rearing.[75] This is enforced by the legislature in personal income taxation in the form of tax base reduction. The detailed rules of public burden-sharing are set out in a cardinal law, namely in the Stability Act.[76] Thus, based on public burden-sharing, all natural persons, legal entities and other legal entities contribute to the cover of common needs in Hungary.

According to both the Fundamental Law and the Stability Act, the obligation to pay public charges is derived from the principle of public burden-sharing, i.e., in Hungary, all natural persons, legal entities and other legal entities contribute to the cover of common needs, thus, to the financing of public tasks through the fulfilment of payment obligations.[77] The law distinguishes between public burdens and fines. The latter are not regarded as public burdens, since fines are imposed as a legal consequence in connection with an unlawful behaviour, which is set out by law.

Types of public burdens

Regular or exceptional public burdens without remuneration	Public burdens in exchange for public services
taxes	supervision fee
duties	procedural fee
contributions	administrative service fee
capital transfer tax	surcharges
allowances, others	

The Stability Act defines the scope of public revenues. The basis of the categorization is the fact whether the rights holder of public services (that is the subject of the payment obligations) provides direct counter-services or not. Typically, with procedural fees and charges, counter-service is attached.

The regulation of public burdens also determines the hierarchy of laws imposing obligations.[78] As a general rule, imposition of public burdens, the scope of obliged persons, allowances, exemptions may only be set out by law or by local governmental decree, and only binding regulation of the European Union or international

74 Deák, 2016, pp. 46-52.
75 Fundamental Law, Article XXX (40).
76 Act CXCIV of 2011 on the economic stability of Hungary, art. 28–29.
77 Act CXCIV of 2011 on the economic stability of Hungary, art. 28.
78 Bordás, 2018, p. 5.

agreements could be contrary to them. With certain public burdens, exceptional rules may apply with an extraordinary event or natural disasters.

The amount of allowance can be set out by governmental decree; however, service charges and surcharges may only be issued with the approval of the minister responsible for tax policy in a ministerial decree. In the latter case, authorization of a law or a governmental decree is required. Administrative service fees and surcharges may also be established by the president of the Hungarian National Bank, the president of the National Media and Infocommunications Authority, and the president of the Hungarian Energy and Public Utility Regulatory Authority.

With an extraordinary event that affects a wide range of persons, the minister responsible for tax policy may issue a decree on omitting the charges. The law also sets out certain limits regarding public burdens:[79] prohibition of retrospective effect, time limits, economicity, regulation technology, child-rearing.

The prohibition of retrospective effect means that public burdens may not be increased, expanded, abolished, and allowances or exemptions may not be limited for the period that precedes the entry into force of the law. Payment reduction or exemption may not be introduced either retrospectively, which reduces the total payment obligation. An exception to this rule can be an EU regulation, international agreement, or the case when the benefit or the exemption affects all legal entities without distinction.

Under the time-limitation rule, minimum 30 days must pass between the promulgation and the entry into force of the law that establishes the obligation to pay, the scope of persons, the increase of payment obligation, or terminating the allowance or exemption.

Concerning the regulation that established the obligation to pay, it is an important issue that the expected costs must not exceed the expected revenues. In determining the obligation to pay, it must be taken into consideration that administrative costs (levying, collection, registration, etc.) must not be disproportionately high compared to revenues, nor can exceed them.

The establishment, amendment and repeal of public burdens can only be set out by law that regulates the same or similar living conditions. With this provision, the legislature aims to facilitate the transparency of the regulation, since the obligation to pay laid down in other legal acts hinders the recognition of these rules.

The consideration of the burdens of child-rearing is also set out in the Fundamental Law, which is incorporated into the rules on public revenues by the Stability Act as well. The law states that the costs of child-rearing must be considered during the calculation of work-income. This rule applies in personal income taxation in the form of allowances. The rules of public burdens are strict and binding, but in certain cases, the Stability Act allows the application of different rules as well. Therefore, time-limitation rules and economic issues must not be taken into consideration with the application of a binding EU rule or an exceptional payment obligation. EU regulation

79 Act CXCIV of 2011 on the economic stability of Hungary, Articles 29–38.

may override domestic rules, so because of binding legal acts, the rules on payment obligation might differ from how they are set out in the Stability Act.

2.4. Money and the monetary system

The Fundamental Law regulates two areas regarding money and monetary system: the official national currency and the legal status of the Hungarian Central Bank.

The declaration of the official national currency appears in the Fundamental Law and in the Act on the Hungarian National Bank.[80] The Fundamental Law states that the official currency is the forint, however, it does not exclude the official currency nature of foreign currencies. All official currencies are protected by law, although with a national currency, it means a special legal protection. The Hungarian National Bank is entitled to issue banknotes and coins in the national currency, i.e., in forint. Banknotes and coins issued by the Hungarian National Bank are the official money of exchange in Hungary, which must be accepted in every payment in the nominal value.[81]

The declaration of the forint as the national currency did not appear in the constitutional regulation before, only in the Act on the National Bank. The Fundamental Law, however, incorporated this rule among the constitutional rules, which, on one hand, has a symbolic meaning; on the other, it is significant with the change of currency, since the modification of the Fundamental Law is needed, which is of particular importance with the introduction of the euro.[82]

The legal status of the Hungarian National Bank is set out by the Fundamental Law, declaring that the central bank of Hungary handles monetary policy and supervises the financial intermediary system. This also means that the two-level bank system is declared at a constitutional level and that fiscal and monetary policy are divided.[83]

Responsibility for monetary policy means that the central bank has influence in macroeconomical processes through indirect economic mechanisms.[84] The primary purpose of monetary policy is defined by the Act on the National Bank which states that the primary aim of the Hungarian National Bank is to reach and maintain price stability which is the most important economic function of the central bank. Maintaining price stability practically means keeping the inflation rate at a low level.[85] This is an important goal for every central bank because the high and variable price level causes damages in the economy, increases the costs of transactions and pricing and it has other distorting effects in economic life, such as high costs of interest.[86] Besides

80 Fundamental Law, Article K: The official currency of Hungary must be the forint. See also: Act CXXXIX of 2013 on the Hungarian National Bank, Article 4 (2) and Article 23 (2).
81 Nagy, 2019, pp. 5-10.
82 Simon, 2019b, pp. 20-21.
83 Vértesy, 2019, pp. 55-56.
84 Lentner, 2013a, pp. 36-38.
85 Simon, 2019a, pp. 243-246.
86 Lentner, 2013b, pp. 200-201.

the primary goal, the support the stability of the monetary intermediary system. This means that the monetary intermediary system must be resistant to crises and it must help economic development with financial resources. The balance of monetary and fiscal policy ensures the balance of economic policy as well, that is why the Act on the National Bank prescribes that the central bank must support the economic policy of the government without threatening price stability.[87]

The amendment of the constitutional regulation orders the central bank to supervise the financial system, that is implemented in Hungary since 2013. Previously, a separate supervisory body performed the task, which was dissolved and the central bank took over the supervision activity.

Three levels of the surveillance system can be distinguished:[88] (a) financial supervision of certain countries, (b) regional, international supervision (e.g., the European Union), (c) global international supervision.

The Hungarian central bank supervision encompasses microprudential and macroprudential supervision. Microprudential supervision is the institutional and operational supervision of individual financial intermediaries. Macroprudential supervision means the comprehensive supervision of the entire financial intermediary system, in the framework in which the central bank explores the business and economic risks threatening the financial intermediary system, and it promotes the prevention of systemic risks and seeks to reduce and eliminate them.

The Fundamental Law also guarantees rules that ensure the independence of monetary policy: regulating the organization and operation of the Hungarian National Bank in a cardinal law, the appointment of managers, obligation to report to the National Assembly, power to legislate.

Constitutional rules and the Act on the National Bank as a cardinal law guarantee the full operational, institutional, personal, and financial independence of the central bank: neither the institution nor the decision-making bodies can be influenced in performing their tasks. This is reinforced by the provision that the President of the Hungarian National Bank is only responsible for the activities of the central bank in front of the parliament, but this does not mean subordination and it has no legal consequences. Independence is ensured through the appointment of leaders across election cycles, i.e., the president of the republic appoints the president and the vice presidents of the Hungarian National Bank for six years. The power to legislate ensures regulatory independence to the central bank, as it is the President of the national bank that is entitled to issue a decree, which has a high position in the hierarchy of laws, as it cannot conflict with the acts of the parliament only and it obligates the bodies, enterprises and natural persons that are subject to its legislation.

87 Simon, 2019a, pp. 245-246.
88 Glavanits, 2015, pp. 93-95.

3. Summary

The development and the evolvement of the Hungarian financial law to become an independent field is the result of an integral legal development. During its historical development, it had been part of administrative law and even nowadays several similarities can be found between the two fields. This resemblance prevails in general administrative rules, which can be mentioned primarily as background rules. The system of finite rules of financial law has developed and special rules of financial law also prevail in substantive and procedural rules of other fields of law.

Regarding the independent legal nature of financial law, the only aspect that still leaves room for doubts is that whether the extensive regulation that evolved rapidly can be synthesize within only one branch of law—whether the voluminous legislation leads to the fragmentation of financial law and thus to the separation of certain areas from financial law? (With several Western European countries, for example, tax law is already considered a separate branch of law.)

Because of the strengthening economic role of the state, constitutional issues of public finances arose. The new Hungarian constitutional regulation treats public finances as a particularly important area, defining the basic legal institutions of fiscal and monetary policy. Concerning the Hungarian regulation, we can speak not only about the constitutionality of public finances, but about a detailed constitutional regulation of public finances, that is well reflected by the independent chapter about public finances inserted in the Fundamental Law. However, it is important to emphasize that the Hungarian constitutional law of public finances is two-tiered: besides the Fundamental Law, cardinal laws also regulate related issues. The most significant of them which contains general rules is the Stability Act.

The public debt rule became a fundamental legal institution of the constitutional law of public finances; therefore, it serves as a reference point for financial budget management. Apart from setting the optimal public debt rule, all areas of budget management are subordinated to the reduction of public debt, except those exceptional circumstances which justify the suspension of this rule. (Such a case was, for instance, the economic crisis caused by the pandemic.)

To conclude, we can state that since the change of regime we have been experiencing the renaissance of financial law in Hungary, moreover, because of the development of economic life, financial regulatory needs arise that have been less significant or even unknown two or three decades ago. One of the important factors of social welfare is public finance relations, which, however, require mature and balanced financial regulation. That is why jurisprudence has a very important role to play in finding appropriate solutions to regulatory challenges.

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