

THE PAST, PRESENT AND FUTURE OF THE PUBLIC FINANCES LAW IN HUNGARY

DOMINIKA BORSA

Faculty of Law, Széchenyi István University

Abstract

In my essay, I focus on the regulation of the Hungarian public finances law and especially on the act No. XXXVIII./1992 on Public Finances. The reason for this is that this act was modified several times – nearly one hundred times since it was adopted –, and the last amendment will come into force by 1st January 2010.

The above-mentioned act has a very important role concerning this field of law in Hungary, because it was initiated in order to give a stable and complex frame for the whole regulation of public finance. I wondered how an act, that was modified, on the average, at least five times yearly, could meet the requirements that an act should be transparent and calculable. Accordingly, this question was the starting-point of my research and I tried to make a comprehensive analysis, last but not least in order to evaluate one of the achievements of the Hungarian regime change on its 20th anniversary.

Key words

Public finances; act No. XXXVIII/1992.; transparency.

Financial law was and is a very sensitive field of law, and it has always had a very rugged fate, too. According to the different legal systems (anglo-saxon and continental) financial law, in some countries, belongs to some other field of law (for instance: administration law, constitutional law) while, in other countries, it is separated (like in Hungary). In the continental law there are some countries, where there is no standard financial law, but in others there is.

In Hungary, we have separated financial law, which contains the following fields of law¹:

1. Public finances law,
2. Accounting law,
3. Monetary law,
4. International financial law and

¹ István, Simon (ed.). Pénzügyi jog 1., Budapest, Osiris Kiadó, 2007.

5. The law of revenues.

In my research I deal with public finances law, and more precisely with its general regulation in Hungary.

The reason for this is, on the one hand, that in Hungary there is a general framework of statutory instruments, namely the Act no. XXXVIII/1992. on Public Finances, which was modified for the 94th time in this year. That is reason why I believe that an act like this can not meet the requirements, that it should be traceable and clear. Moreover, I also must say that the above-mentioned amendments will entry into force only by the 1st January 2010, so the regulation is still changing. On the other hand, I did my research on for systemizing the most important statutory instruments concerning this field of law in Hungary in order to help to see through its main regulation.

In order to achieve my aim, following the introduction of the history of Hungarian Public Finances Law, I focus on the content of the above-mentioned act and its relations with other statutory instruments.

THE CONFORMATION OF THE HUNGARIAN PUBLIC FINANCES LAW

This field of law was and is very ill-fated in the course of history, whereof there are many evidences. Let me demonstrate some of them.

First, if we see the evolution of budgetary law (that is implied on both side – the revenues and expenditures of the budget), we can diagnose that we had had to wait for it until 1848. In the middle ages Hungarian people (the orders) only had right to recommend taxes, but they did not have right to control the appropriation of public funds. (It was the king, who made decisions and he did not have to account for it.) So the budgetary law appeared thanks to the adoptions of some renowned international documents, such as the Constitution of the United States of America (that was adopted on September 17th, 1787) ², or in Europe, the Declaration of the Rights of Man and of the Citizen (that was adopted on August 26th, 1789) ³, or the

² Section 9. Clause 7. „No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and regular statement and account of the receipts and expenditures of all public money, shall be published from time to time.”

³ Article 14. „All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.”

Article 15. „Society has the right to require of every public agent an account of his administration.”

role model belgian regulation, the Constitution of Belgium⁴ (that was adopted on February 7th, 1831).

Second, we can see the typical attribution of budget, that was net (system) in its first period. It was Ferenc Deák, „the wise man of the nation”, who made a proposal for the first time for passing a budget, that had gross-system, (so in which the revenues and expenditures are separated in the course of accounting).

Third, we can see the role of State Audit Office. It was established for the first time in 1870, and worked until 1949. After that, it was abolished unfortunately (because of the then situation of Hungary’s political system) and it was reanimated in 1989, so it did not operate for fifty years.

And last but not least, we can also see the evolution of the main regulation of the Hungarian public finances law. The first act, that has public finances subject, was the act No. XX/1897 on Public Accountancy, that is considered to be the predecessor of our operative legal regulation. So, this act was the first step. After this, the second momentous act was the act No. II/1979 on Public Funds, that is the real direct antecedent act of the act No. XXXVIII./1992 on Public Finances, that is the operative legislation nowadays. The act on Public Funds was modified so many times, that in 1992 there was hardly any paragraphs of it, that were in force and had to be repealed.

THE ACT ON PUBLIC FINANCES

This act was adopted for tackle the problems that were illustrated above, that is to give a stable and complex framework for the regulation of public finances. However, in my opinion, it „opened Pandora’s box”.

According to the argument of the examined act, this act – within the confines of the Constitution of Hungary – should determine the financial framework of the operation of Hungary. The argument also emphasises that a regulation on the score of functioning of a state – as it is the most important participant of society and economy – is clamor for legal regulation. This is therefore so important among other things, because a state applies taxpayers’ money, who want to know what their money was spent on. (And it is also important, because money can be abstracted only in the necessary case and in the necessary measure, and also because the management of public funds is needed publicity.) And additionally, a state – opposite the other participants of market economy – has to advance on the grounds of more and more effective and more high-standardised carrying out

⁴ Article 174. „Each year, the House of Representatives passes the law that settles the final accounts and approves the budget. However, the House of Representatives and the Senate fix their respective operating allowances annually. All State receipts and expenditure must be included in the budget and in the accounts.”

of duties, and not on the grounds of pushing an advantage from unfair competition, or on turning to the maximum profit.

THE DOMAIN AND CONNECTION-POINTS OF PUBLIC FINANCES ACT

This act consists of 14+1 chapters, as follows:

Table 1: The structure of the act on Public Finances

1.	Chapter I: General provisions
2.	Chapter II: The Central Budget
3.	Chapter III: The jurisdiction and adjective rules concerning state budget
4.	Chapter IV: The budget of Special Funds
5.	Chapter V: The budget of Local Governments (From 01/01/2010, this chapter is going to be called: The budget of Governements)
6.	Chapter VI: The budget of Social Security
7.	Chapter VII: The functioning and management of budgetary agencies
7+1.	Chapter VII/A: The supply of public duties involvement in economic organizations
8.	Chapter VIII: The supply of money and the appropriation of budget estimate
9.	Chapter IX: Management of state assets
10.	Chapter X: The national debt
11.	Chapter XI: The information and balance system of public finances
12.	Chapter XII: The accounting of public finances
13.	Chapter XIII: Control of public finances
14.	Chapter XIV: Closing provisions

„As we can see” the act contains the fundamental definitions of public finances, such as the defintions of budget, budgetary revenues and expenditures, the definitions of fiscal deficit or surplus, the definitions of social security, segregated funds...etc., or the effect of the act.

At the same time, the definition of final account and the utterance of its importance are missing. And additionally there is a loophole now (from 1st July 2009 to 1st January 2010) because the definition of state budget is missing too, although the act use this term in many places.

I think that if we glance at the main structure of this act, it looks like that this act is very transparent, but if we see it in detailed, we will experience that this is not the truth. For instance if we take a look at the main principles of public finances (such as publicity, transparency, or the principle of yearly budget) unfortunately we can not see them systematically. And to top it all, the regulation concerning the Hungarian State Treasury and the Government Debt Management Agency are hidden in Chapter I. That is the reason why I suggest, that the rules concerning the Hungarian State Treasury should be relocated in Chapter VIII, and the rules concerning the Government Debt Management Agency should be relocated in Chapter X.

As we can see, this act is very comprehensive, and try to cover the main field of public finances. However it is obvious that this act can not cover the whole regulation concerning this field of law, and it is all right, but that is the reason why it is needed additional statutory instruments, implementing decrees. Thus, I made a table in which we can see the most important acts that are in connection with the act on Public Finances, as follows:

Table 2: The main statutory instruments concerning the Act on Public Finances

Acts:
Central Government:
Act No. XX/1949 on the Constitution of Hungary
Act No. XXXVIII/1989 on the State Audit Office
Act No. CVI/2007 on the State assets
Act No. CV/2008 on the legal status and management of budgetary agencies
Társadalombiztosítás:
Act No LXXX/1997 on the authorized of social security and private pension
Act No LXXXI/1997 on social security pensions
Act No LXXXII/1997 on private pension and private pension funds
Act No LXXXIII/1997 on the compulsory health insurances
Act No XXXIX/1998 on the control of social security funds and social security

agencies
Elkülönített állami pénzalapok:
Act No. IV/1991 on the promotion of unemployment and the supply of unemployed people
Act No. XXIII/1993 on the National Cultural Fund
Act No. CXVI/1996 on the atomic energy
Act No. LVIII/2003 on the Wesselényi Miklós Flood and Inland Water Protection Fund
Act No. II/2005 on the Homeland Fund
Act No. XC/2003 on the Research and Technological Innovation Fund
Helyi önkormányzatok:
Act No. LXV/1990 on Local Governments
Government Decrees:
217/1998. (XII. 30.) on the functional order of public finances
249/2000. (XII. 24.) on the distinctivenesses of budgetary agencies' accounting and reporting obligations
254/2007. (X. 4.) on the management of state assets

I must say that this table is not complete. For instance the Civil Code, or the main acts of adjective law (f.e.:concerning economic organizations or public administration), have also linkings to this act, but if someone wants to understand the main characteristics of the Hungarian public finances law, he or she has to start with the acts, that were incorporated in Table II.

CONCLUSION:

In my research, I tried to light upon a comprehensive view of the act on Public Finances in Hungary, that covers all the bases part of public finances law, even if it has some parts that only apply to one-one subsystem of public finances⁵. Moreover it has many linkages concerning other statutory instruments, that make it very difficult to see through the regulation, even if we only try to understand the main trend. Our cognitions are more difficult by the reason of the continuous changing of this act.

I can say that, this act can not fill the role, that it was devoted to it, according to the Parliament's will, and in accordance with the arguments of the act, that is the reason why it is not suited for helping the reform of public finances.

Literature:

- Gábor, Földes (ed.): Pénzügyi jog, Budapest: Osiris Kiadó, 2005, 371 p. ISBN: 963 389 553 7.
- István, Simon (ed.). Pénzügyi jog 1., Budapest, Osiris Kiadó, 2007, 493 p. ISBN: 978 963 389 961 8.
- Tibor, Nagy: Költségvetés és költségvetési jog 1848/49-ben. Állam- és Igazgatás. 1955. 3-4. ISSN: 0324-7171
- Tibor, Nagy: A költségvetési jog kodifikációja, Pénzügyi Szemle, 1958. Nr. 10.
- Vilmos Pál, Tomcsányi: Parlamentek költségvetési joga. Politikai tanulmány. Budapest, Benkő Gyula udv. Könyvkereskedése, 1908.
- 1992. évi XXXVIII. törvény az államháztartásról (Áht.) és Indokolása (Act on state budget and its argument).
- <http://www.magyarorszag.hu/kozigazgatas/intezmenyek/egyszerv/allszam> (30.11. 2009)

Contact – email

borsadominika@yahoo.com

⁵ Now we have four subsystems: the Central Government, the Social Security, the Segregated Funds and the Local Government subsystems. I must say, that there will be only two subsystems in Hungary from 1st January 2010, because the first three will constitute the central level and the local governments will constitute the governments level.