

CHAPTER 8

SLOVAKIA: NEVERENDING STORY ABOUT FISCAL RESPONSIBILITY



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Abstract

This chapter addresses the issue of budget management in Slovakia. The importance of this issue for the state is emphasised by the fact that the essential aspects constituting the foundations of public finances are directly regulated in the Constitution of the Slovak Republic. The Constitution regulates not only the basic rules for the creation and content of public budgets but also the powers of the supreme constitutional bodies in this field. An extremely important area of regulation is the prevention of excessive deficit and excessive state debt. For this purpose, significant constitutional changes took place in Slovakia, which led to the creation of a new constitutional body, the Council for Budget Responsibility. Similarly, responsible budget management is equally important at the local self-government level, where the legislation also establishes several brakes to prevent deficit budgeting and the indebtedness of self-government. In this chapter, we discuss these complex issues in detail and highlight the key aspects of Slovak legal regulation. At the end of the chapter, we deal with the current challenges for budget management in Slovakia, which are connected to the growing deficit and the associated need to find new sources of income for public budgets, as well as the reduction of public expenditures.

Keywords: *public finance in Slovakia, budgetary rules, budgetary responsibility, state debt, Supreme audit office, Council for Fiscal Responsibility*

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1. Constitutional rules of public finance

The fundamental law of the Slovak Republic is the Constitution of the Slovak Republic (hereinafter: the ‘Constitution’). The Constitution was adopted on 1 September 1992, that is, before the establishment of the Slovak Republic on 1 January 1993. It was promulgated in the Collection of Laws of the Slovak Republic under No. 460/1992 and has been amended 23 times. At the time of its adoption, the Constitution laid down, among other things, the basic elements of the new Slovak statehood (state sovereignty) and established a catalogue of fundamental rights and freedoms, dividing state power into three branches. Naturally, when it was adopted, the Constitution also included norms regulating the foundations of financial management and the control of public finances. In its previous form, the Constitution already declared the state budget to be adopted by law, the principle of the division of taxes and fees into state and local areas, the principle of the legality of imposing taxes and fees, the separation of the state budget from the budgets of local governments, and the independent budget audit by the Supreme Audit Office (SAO) of the Slovak Republic.

Of course, the Constitution has undergone a complex evolution in the more than thirty years since its entry into force, and many amendments have had a direct or indirect impact on public finances. In what follows, we precisely assess the current state of the Constitution through the prism of the constitutional regulation of these amendments. However, as shown below, the constitutional regulation of the sphere of financial law not only concerns issues of public finances and budgetary management but also includes the principle of the legality of imposing taxes and fees and the positions of the National Bank of Slovakia and the SAO.

1.1. Constitutional foundations of the budgetary management of the State

The constitutional foundations of public finances are found in Title Three of the Constitution, which stipulates in Art. 58 that the financial management of the Slovak Republic shall be maintained through the state budget, which shall be adopted by a law. Thus, it is the Constitution that directly provides for the legal form of adoption of the state budget, which can be considered one of the most important acts of state power. The literature on financial law in Slovakia perceives the state budget on several levels, namely (i) the set of monetary relations through which the national cash fund is created, distributed, and used in a non-repayable way; (ii) the basic financial programme of the State, which includes the majority of the State’s expected revenues and expenditures in a given year; and (iii) the national cash fund, that is, a monetary substrate in which its revenues are collected so that they can subsequently be used for budget expenditures.¹

¹ Babčák, Cakoci and Štrkolec, 2022, pp. 187–188.

According to the Constitution, only a law can determine the revenues of the state budget, the rules of budgetary management, and the relations between the state budget and the budgets of territorial units. The importance of the state budget as the basic financial and economic instrument of the national fiscal policy is also underlined in the Constitution by the fact that the state budget (as well as taxes and fees) cannot be the subject of a referendum (Art. 93). The above can be viewed as both a manifestation of the constitution-making body's mistrust of the will of the people expressed through this instrument of direct democracy and a constitutional safeguard against a possible referendum on, for example, the question of a significant increase in the expenditure of the state budget with a negative impact on the stability of public finances.²

The constitutional regulation of the state budget is followed by several laws adopted directly on the basis of constitutional authorisation. The most important sources of budget law include the Act on the Budgetary Rules of Public Administration,³ the Act on the Budgetary Rules of Local Government,⁴ and the State Budget Act.⁵

1.2. Constitutional foundations of the budgetary management of local government

The foundations of the regulation of local government in the Slovak Republic are found in Title Four of the Constitution, which defines municipalities and higher territorial units as local government units. The Constitution accepts local government as an important constitutional value that enjoys constitutional protection and considers the principle of local government as one of the fundamental principles upon which the Constitution is built.⁶ At the same time, the Constitution defines the basic parameters of the existence and functioning of municipalities and higher territorial units, including the independence of local government units as self-governing and administrative units, own territory and population, own assets and financial resources, the right to associate for securing matters of common interest, decisions on matters of local government by local referendum or by their own bodies, and the original power to issue ordinances of general application in matters of local government.

2 Drgonec, 2019, p. 1252.

3 Act No. 523/2004.

4 Act No. 583/2004.

5 For the year 2023, Act No. 526/2022 on the state budget for 2023, which determines the specific amounts of state budget revenues and expenditures, as well as the state fiscal deficit. A particularly important part of the State Budget Act comprises the provisions delineating the amount of the state's liabilities for the repayment of the principal of the government debt and the limit for the state's public expenditures. However, for the first time, the limit for public expenditures was approved directly in the State Budget Act only for the current fiscal year 2023 as a result of a significant amendment to the Act on the Budgetary Rules of Public Administration, which entered into force on 1 April 2022.

6 Orosz and Svák, 2022, p. 18.

Art. 65 of the Constitution also regulates the principles of the financial management of local government. According to the Constitution, municipalities and higher territorial units are legal persons that manage their own property and financial means independently under the conditions laid down by a law. Municipalities and higher territorial units shall finance their needs primarily from their own revenues, as well as state subsidies. A law shall lay down which taxes and fees are to be a municipality's revenue and which are to be a higher territorial unit's revenue. State subsidies may be claimed only within the limits of a law. The constitutional concept of the budgetary management of local government, thus, enshrines two basic principles: the principle of the priority of financing from own revenues and the prohibition of imposing taxes and fees other than those provided for by a law. Thus, if a law does not establish a tax or fee at all or does not establish it as a revenue of local government, local government cannot impose such a tax or fee.⁷ Consequently, it follows that the state must create a legal environment that realistically enables municipalities and higher territorial units to conduct their own budgetary management, particularly by creating sources of revenue that are sufficient for the performance of their tasks and functions.⁸

The constitutional regulation of the budgets of local government is followed by several laws adopted on the basis of constitutional authorisation. The most important sources of budget law include the Act on the Budgetary Rules of Local Government, the Act on the Budgetary Allocation of Income Tax Revenues to Local Government,⁹ the Act on Local Taxes and Local Fee for Municipal Waste and Small Construction Waste,¹⁰ and the Act on the Local Development Fee.¹¹

1.3. Constitutional foundations of budgetary management control

One of the constitutional foundations of budget law is Art. 60, which establishes the SAO as an independent authority that audits the management of the budget and financial resources of the state, local government, and public institutions. Its scope of competences extends to all persons who manage and handle these resources.

The SAO was one of the constitutional bodies established by the Constitution when it was adopted by the Slovak National Council on 1 September 1992. The direct establishment of the SAO as an audit authority within the constitutional text was standard in comparison with the constitutions of other democratic states (which

7 Drgonec, 2019, p. 1120.

8 The current status quo has been criticised as sub-optimal. See: Kačaljak, 2023.

9 Act No. 564/2004, which stipulates that personal income tax is the revenue of municipalities (70%) and higher territorial units (30%).

10 Act No. 582/2004, which establishes a system of eight local taxes that are the revenues of the municipal budget but, in its current wording (as of 2015), does not provide for any local tax that could be imposed by higher territorial units.

11 Act No. 447/2015, which provides for the possibility of municipalities imposing a development fee. See: Popovič, 2016.

were also used as a basis for the Constitution), with the SAO being established as a ‘new type’ of audit authority. The establishment and constitutional fixation of the SAO as an independent authority standing outside the system of other state bodies was a manifestation of the effort to create a *sui generis* audit institution to ensure effective control over the management of state finances.

The constitutional regulation of the SAO has undergone several developments; however, the current situation has been in force since 2006. In the above-mentioned development of the constitutional regulation, the constitution-making body has twice expanded the SAO’s competences in order to give it the broadest possible ‘scope’ in relation to the audit of public finances and public property. In the current constitutional situation, the scope of the SAO’s competences (without claiming to be exhaustive) includes state finances, local government finances, other public finances on a national scale, foreign (mainly European) finances, mixed finances, and private finances guaranteed by the Slovak Republic.¹²

From a theoretical perspective, the SAO’s independence can be perceived mainly in terms of institutional and personal independence. Institutional independence ensures that the scope of its competences is not influenced by anyone or anything. This independence serves to ensure freedom from constraints by another public authority in the SAO’s exercise of its powers as an independent audit authority.¹³ It is expressed in the fact that the SAO is independent of other public authorities and has autonomy in the procedure of selecting the audited entities, determining the subject of the audit, and its performance. The SAO is bound only by the Constitution and the law.

Personal independence is expressed in the SAO’s management and in filling its management positions. The SAO is headed by its President. The SAO’s President and Vice-Presidents are elected and removed by the National Council of the Slovak Republic (hereinafter: the ‘National Council’). The problem with personal independence being defined in this way is that the Constitution does not provide any prerequisites or conditions under which the National Council can remove the President and Vice-Presidents of the SAO. In this regard, the doctrine of constitutional law states that the Constitution does not create any guarantee of the personal independence of SAO officials.¹⁴ However, the above is partially remedied by legal regulation, as Act No. 39/1993 on the SAO sets out the prerequisites for the removal of SAO officials, including a final conviction for a criminal offence, incompatibility of functions, and failure to perform the duties stipulated under the SAO Act.

1.4. Constitutional guarantees for the preservation of the debt level

At the beginning of this section, we consider it necessary to clarify that the constitutional regulation of the fundamental issues of the functioning of the State

¹² Štrkolec, 2009, p. 359.

¹³ Drgonec, 2019, p. 1101.

¹⁴ Drgonec, 2019, p. 1102.

is defined not only in the Constitution but also in the constitutional laws. They have the same legal force, and their adoption requires a three-fifths majority of all members of the National Council (Art. 84 para. (4) of the Constitution). At the same time, the Constitutional Court does not rule on the conformity of a constitutional law with the Constitution (Art. 125 para. (4) of the Constitution); in fact, the constitutional text directly excludes the authority of the Constitutional Court to review the constitution-making activity of the National Council.¹⁵ In connection with the above, it is also typical for financial or, in a narrower sense, budgetary regulation that, in addition to the Constitution itself, constitutional laws regulate several issues. The doctrine of constitutional law calls this situation a polylegal constitutional order.¹⁶

The adoption of Constitutional Act No. 493/2011 on fiscal responsibility, which entered into force on 1 March 2012, was crucial for the constitutional guarantee of the level of public debt. This constitutional law was adopted to achieve the long-term sustainability of the Slovak economy, strengthen transparency and efficiency in the use of public finances, and promote Slovakia's long-term competitiveness, taking into account the requirements of economic and social justice and solidarity between present and future generations. The law deals with the establishment and scope of competences of the Council for Fiscal Responsibility, the rules of fiscal responsibility, and the rules of fiscal transparency. The Council for Fiscal Responsibility is an independent authority that monitors and evaluates the development of the Slovak economy and assesses the implementation of the rules of fiscal responsibility.

The most important provisions of the Constitutional Act on Fiscal Responsibility set an upper limit for public debt of 50% of gross domestic product (GDP), using Slovakia's level of debt as published by Eurostat as a reference value. The measures provided for in the Constitutional Act on Fiscal Responsibility are triggered when the debt level reaches 40%. Depending on the increase in the debt level, increasingly stringent measures are then triggered to pursue the debt reduction target, as follows.

The first level of the debt limit: If the amount of debt reaches 40% of GDP and is below 43% of GDP, the Ministry of Finance shall submit a written justification of the amount of debt to the National Council, including a proposal for debt reduction measures.

The second level of the debt limit: If the amount of debt reaches 43% of GDP and is below 45% of GDP, the government shall submit a proposal for debt reduction measures to the National Council, and the salaries of government members shall be reduced.

The third level of the debt limit: If the amount of debt reaches 45% of GDP and is below 47% of GDP, the Ministry of Finance shall block the state-budget expenditures to the amount of 3% of the total state budget expenditures approved by the State Budget Act for a given fiscal year; at the same time, no funds shall be released from

¹⁵ Orosz and Svák, 2022, p. 407.

¹⁶ Giba and Bujňák, 2020, p. 1107.

the Prime Minister's Reserve and the Government's Reserve, and the government may not submit to the National Council any proposal for the public administration budget entailing an increase in public administration expenditures compared to the previous year.

The fourth level of the debt limit: If the amount of debt reaches 47% of GDP and is below 50% of GDP, the government may not submit to the National Council any proposal for the public administration budget with a deficit, and municipalities and higher territorial units may only adopt a balanced or surplus budget for the following fiscal year.

The fifth level of the debt limit: If the amount of debt reaches 50% of GDP or more, the government shall ask the National Council for a vote of confidence.

For the sake of fairness, it should be added that, despite the period for which this constitutional law has been in force (more than 11 years), the transitional provisions of this constitutional law are still in effect, according to which these limits were 10% higher until the end of 2017 (i.e. the first level of the debt limit was above 50%, and the fifth level of the debt limit was above 60%); from 2018 to 2027, these limits are reduced by one percentage point each year.

However, this constitutional law also defines exceptions when these measures do not apply, usually referred to as 'escape clauses'. During a state of war, no measures apply until its end. In addition to this exception, other exceptions apply in the cases defined below, but only on the condition that the third level of the debt limit has been exceeded. If at least one of the following conditions is met, exceeding the third level of the debt limit will not lead to associated measures: (i) For the two years following the adoption of the Government Policy Statement or a vote of confidence in the government. This escape clause has been justified on the grounds that the measures described represent a significant interference with the government's otherwise free discretion to finance its priorities and implement the Government Policy Statement. It would, therefore, be undesirable and unfair if they were to be applied immediately after a new government took office, without giving the government room to implement the procedures to ensure debt reduction; (ii) For the following 3 years, if annual GDP growth is reduced by at least 12%; (iii) For the following 3 years, if expenditures for the recovery of the banking sector, expenditures to address natural disasters, and expenditures resulting from the implementation of international treaties exceed 3% of GDP in a given year.

Although Constitutional Act No. 493/2011 on fiscal responsibility is undoubtedly part of the constitutional order, over time, considerations have emerged on the need to directly regulate the long-term sustainability of budgetary management in the Constitution. These efforts culminated in the adoption of an amendment to the Constitution that entered into force on 1 January 2021 and explicitly states in Art. 55a that the Slovak Republic shall protect the long-term sustainability of its economy, which shall be based on transparency and efficiency in the use of public finances. In support of the objectives set out in this article, the constitutional law regulates the

rules of fiscal responsibility, the rules of fiscal transparency, and the scope of competences of the Council for Fiscal Responsibility.

Thus, the Constitution essentially incorporated into its text what had been part of the Constitutional Act on Fiscal Responsibility for years. In this context, the literature on constitutional law refers to the so-called fiscal constitution of Slovakia, which consists of Art. 55a of the Constitution, in conjunction with the Constitutional Act on Fiscal Responsibility.¹⁷ Although, given the polylegal nature of the constitutional order, the justification for this step was a matter of debate (as it essentially only declared a legal situation that had been in force for years), it was ultimately perceived as positive, mainly because: (i) it contributed to the clarity and consistency of the constitutional system; (ii) the Council for Fiscal Responsibility acquired the status of an authority directly established by the Constitution; (iii) fiscal responsibility rules and fiscal transparency rules became concepts of the Constitution itself, enshrining the constitutional mandate for their existence; and (iv) fiscal responsibility and fiscal transparency became constitutional values, and Art. 55a of the Constitution, in conjunction with the Constitutional Act on Fiscal Responsibility, can function as a reference norm in proceedings on the conformity of laws with the Constitution.¹⁸

2. The rules of guarantee for the preservation of fiscal deficit and government debt and the role of the central budgetary procedure and its stages

2.1. Institutional framework

The basic legal framework for the level of fiscal deficit and government debt in the Slovak Republic, as well as in other EU Member States, is the Treaty on the Functioning of the European Union (Art. 126 of the TFEU). The reference values are set by the Protocol on the Excessive Deficit Procedure annexed to the Treaties. The reference values in Art. 126 para. (2) of the TFEU are 3% for the ratio of the planned or actual government deficit to GDP at market prices and 60% for the ratio of government debt to GDP at market prices. The absence of an excessive government deficit is also a key criterion in terms of the convergence criteria for the adoption of the euro by Member States that have not yet adopted it (Art. 140 para. (1) of the TFEU).

¹⁷ Orosz and Svák, 2021, p. 758.

¹⁸ Orosz and Svák, 2021, pp. 756–757.

From the perspective of the Slovak Republic's membership in the European Union, the legal framework contained in the so-called 'Fiscal Compact', otherwise known as the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, which was signed by the 25 EU Member States in Brussels on 2 March 2012, is also important. In the Slovak Republic, the Fiscal Compact was published in the Collection of Laws under No. 18/2013 by the Communication of the Ministry of Foreign and European Affairs.

According to Art. 7 para. (5) of the Constitution, this Treaty takes precedence over laws in the hierarchy of legislation, which is directly expressed in the text of the Constitution by means of a precedence clause that demonstrates its primacy over laws at the national level.¹⁹ By signing the Treaty, the signatory Member States agreed to strengthen the economic pillar of the Economic and Monetary Union by adopting a set of rules intended to foster budgetary discipline through a fiscal compact, to fortify the coordination of their economic policies, and to improve the governance of the euro area, thereby supporting the EU's objectives for sustainable growth, employment, competitiveness, and social cohesion.

The main aim of this Treaty was to strengthen the budgetary discipline of the euro area countries and the Union in the wake of the financial crisis, the origins of which date back to 2008–2009.²⁰ To implement this Treaty, Act No. 36/2013 on the Scope of Competences of the Authorities of the Slovak Republic in Ensuring Fiscal Responsibility in the European Union was adopted. This Act established the obligation of the Ministry of Finance, in accordance with the Fiscal Compact, to submit budgetary and economic partnership programmes to the Council of the European Union and the European Commission for endorsement and monitoring, to implement these programmes, and to report ex-ante on public debt issuance plans.

The key national safeguards against excessive deficits are contained in several legal Acts that provide both the institutional and legal framework for safeguards to avoid such deficits and ensure compliance with the limits on government debt or public debt. The institutional framework consists of several bodies responsible for the management of public finances, whose powers and competences in the area of public finances as a whole are defined by the Constitution and laws. The supreme budgetary control authority is the National Council, which adopts the state budget, verifies its implementation, and adopts the annual national accounts (Art. 86 point (g) of the Constitution). The executive authority responsible to the National Council for the management of the state budget is the government (Section 30(1) of the Act on the Budgetary Rules of Public Administration). In addition to these supreme state bodies, the Ministry of Finance is, of course, also active in this area as it is the central state authority for finance under the Competence Act (Act No. 575/2001) and is responsible for formulating and implementing policy in this area.

¹⁹ Orosz and Svák, 2021, p. 103.

²⁰ Babčák, Cakoci and Štrkolec, 2022, p. 157.

To increase transparency in the budgeting procedure of the public administration, advisory bodies to the Minister of Finance have also been established, namely, the Tax Revenue Forecasts Committee and the Macroeconomic Forecasts Committee. The Tax Revenue Forecasts Committee prepares tax and levy revenue forecasts at least twice a year, by 15 February and 30 June of the current fiscal year. The Macroeconomic Forecasts Committee prepares macroeconomic forecasts at least twice a year, also by 15 February and 30 June of the current fiscal year.

The Council for Fiscal Responsibility is another constitutional authority with important powers in the area of fiscal responsibility and transparency. It prepares and publishes reports on long-term sustainability; prepares and submits assessments of compliance with the rules of fiscal responsibility and transparency to the National Council; prepares and publishes, on its own initiative, opinions on legislative proposals submitted to the National Council, in particular with regard to their impact on the public administration budget and long-term sustainability; and carries out other activities related to monitoring and assessing the development of the Slovak Republic's economy and assessing compliance with the rules of fiscal responsibility.

2.2. Impact of central budgetary planning and its methods to maintain a balanced budget

Central budgetary planning is reflected, first and foremost, in the fact that, since 2005, all public budgets are, in principle, part of the public administration budget, which represents the medium-term economic instrument of the national fiscal policy. This budget is prepared annually for at least three coming fiscal (calendar) years. The public administration budget consists of the state budget and the aggregate of the budgets of other public administration entities (e.g. municipalities, higher territorial units, state funds, higher education institutions, the Social Insurance Agency, and health insurance companies), including revenues and expenditures related to the implementation of public health insurance, for a given fiscal year and the following two years.

The legal requirement to prepare a balanced public administration budget was not part of the Act on the Budgetary Rules of Public Administration at the time of its adoption (2004). Only its amendment, which entered into force in 2014, established that the public administration budget was required to be balanced or in surplus. The adoption of this amendment was a direct consequence of the above-mentioned international treaty, the Fiscal Compact. For the sake of fairness, however, it should be noted that both the Fiscal Compact (Art. 3 para. (1)) and the Act on the Budgetary Rules (Section 30a) provide for the possibility of temporary deviations from this requirement.

In the Slovak Republic, a rule was implemented with effect from 1 April 2022, according to which a mandatory part of the public administration budget is the public expenditure limit. The public administration budget is prepared and implemented in accordance with this limit. This public expenditure limit is the main budgetary

instrument to ensure long-term sustainability and is understood as the maximum amount of total accrued consolidated expenditures of public administration in the uniform methodology applicable to the EU. However, this limit does not apply *ex-lege* to all public expenditures, as it excludes, for example, local government expenditures or EU budget funds, including those from the Recovery and Resilience Facility.

The public expenditure limit takes two basic forms: a short-term and a medium-term limit. The short-term public expenditure limit is set for each fiscal year and is part of the State Budget Act for the current fiscal year 2023 (Act No. 526/2022). The medium-term public expenditure limit for the following four years is approved by the National Council by a resolution, which is generally binding and published in the Collection of Laws of the Slovak Republic.

2.3. Procedure of the adoption of the budget and its implementation

The Act on the Budgetary Rules of Public Administration defines the state budget as the basic part of the public administration budget, which ensures the financing of the main functions of the state in a given fiscal year. The state budget for each fiscal year includes revenues, expenditures, financial transactions with state financial assets, and other transactions affecting the state financial assets or state financial liabilities.

Traditionally, the Slovak financial law literature describes that the adoption of the state budget is the first of three stages of the budgetary procedure. As such, the budgetary procedure should be understood in a broader sense than just the adoption of the budget. The three stages of the budgetary procedure are as follows: (i) preparing, discussing, and adopting the draft budget; (ii) implementing the budget; (iii) preparing, discussing, and adopting the draft annual accounts.²¹

Such a definition of the stages of the budgetary procedure is in principle similar to that in the Czech Republic, although in the Czech literature we encounter the opinion that the control of budget implementation is also a separate stage.²² In the Slovak Republic, control is perceived as an integral part of all stages of the budgetary procedure²³, although it is naturally true that its application is most pronounced at the stage of budget implementation.

In this part of the monograph, we will take a closer look at the first two stages of the budgetary procedure: budget adoption and budget implementation. According to the Constitution, the state budget is adopted by the National Council through the State Budget Act in a special legislative procedure, which we refer to as the ‘budgetary procedure’. This procedure is characterised by several differences from the normal legislative procedure, in particular: (i) The exclusive right of the government to submit a draft State Budget Act to the National Council (the right of budgetary

21 Babčák, Cakoci and Štrkolec, 2022, p. 208.

22 Karříková, Boháč and Kohajda, 2018, p. 139.

23 Babčák, Cakoci and Štrkolec, 2022, p. 209.

initiative). Thus, only the government has the right to submit this draft, while other entities with legislative initiative do not have such a right in relation to the state budget; (ii) The existence of statutory deadlines for the preparation and submission of the draft State Budget Act (by 15 October of the current year); (iii) The regular annual periodicity of the exercise of the right of budgetary initiative, which is connected with the limited period of validity and effect of the State Budget Act (one calendar year); (iv) A legal solution to the possible non-adoption of the State Budget Act, which is a temporary budget; (v) Prohibition of amending and repealing other laws through the State Budget Act; (vi) Setting the objectives to be achieved (amounts of revenues and expenditures) without specifying the procedures and means for achieving them.²⁴

Of course, before the draft state budget is submitted to the National Council, preparatory work is carried out, especially in the Ministry of Finance. This ministry coordinates the work on preparing the budget with other public administration entities (other ministries, constitutional bodies, central state bodies, other bodies and institutions). One of the Ministry of Finance's key responsibilities is to prepare the draft state budget in accordance with the stability programme, which is a requirement of the Stability and Growth Pact. This programme sets out a budgetary strategy to ensure excessive deficits are avoided and to achieve a position that ensures the long-term sustainability of public finances. The stability programme is usually published by the Ministry of Finance in April/May of a given year for a period of four years and constitutes the basis for work on the state budget.

The SAO also plays an important role in the procedure of preparing the draft state budget: the Ministry of Finance is obliged to submit the draft budget to the SAO, which prepares an opinion on it. Although the SAO's opinion is not binding for the National Council and its members, it is crucial for the preventive control of public finances and for averting the adoption of a budget with an excessive deficit.

The adoption of the state budget as part of the public administration budget is both a legal and a political matter. The state budget is not only an instrument for implementing national fiscal policy but also, ultimately, for policy in all key areas of the activities of the state and its bodies. It is through the revenues and expenditures in the state budget that the government, in implementing its policy statement, defines its policy priorities in defence, security, education, health, social affairs, justice, and other areas. The adoption of the budget is, therefore, usually a political rather than a legal issue, and the government majority naturally promotes its objectives in the state budget. Once adopted, the State Budget Act has the character of a purposive or teleological norm; in other words, it sets specific economic objectives on the revenue and expenditure side but does not define the instruments for achieving these objectives.

The second stage of the budgetary procedure is the implementation stage, which begins on 1 January of a given year. Budget implementation refers to the way in

²⁴ Babčák, Cakoci and Štrkolec, 2022, pp. 211–214.

which the various entities implement the objectives of the adopted budget on both the revenue and expenditure sides. On the revenue side, these objectives comprise the achievement of the expected budget revenues, which is mainly ensured by the proper and efficient collection of taxes and fees, as well as by ensuring a smooth flow of other revenues to the state budget. On the expenditure side, the main concern is to stay within the expenditure limit. This is because the public expenditure limit approved by the National Council is binding for all public administration entities whose expenditures are part of the public administration budget. The Ministry of Finance has a legal obligation to communicate these limits to all public administration entities within 30 days of the approval of the expenditure limit.

In the second stage of the budgetary procedure, the Ministry of Finance's obligation to monitor all public administration entities' compliance with the public expenditure limit is particularly important. It does so at least once per calendar quarter; if it finds data indicating that the public expenditure limit has been exceeded, it asks the ministry or other entity concerned to justify these data and, at the same time, to take measures to comply with the limit.

2.4. Budgetary control

As mentioned above, budgetary control is mainly applied at the budget implementation stage. Budgetary control may be internal or external. Internal control is performed by each public administration entity, whereas external control is performed by entities that are legally mandated to do so. Control at the budget implementation stage is performed in accordance with several laws and by a number of bodies. As far as external control is concerned, several types can be distinguished, depending on the position of the control authority and the legal regulation of this control. In terms of the importance of the role of the control authority in the hierarchy of these bodies, we distinguish the so-called parliamentary control, performed on the basis of the Constitution by the National Council, which has the power to control the implementation of the state budget. This type of control essentially represents parliamentary control of the government, which may be considered illusory in a normal situation where the government has a parliamentary majority. Nevertheless, this control is crucial in terms of democratic legitimacy because it is performed by the highest representative authority in a parliamentary democracy.

Audits performed by the SAO in accordance with Art. 60 of the Constitution and Act No. 39/1993 on the SAO. Unlike the National Council, whose composition reflects the results of free political competition, the SAO is an authority with independent status and constitutional regulation. Although the SAO is often referred to as another power in the State, it does not have sanctioning powers, which limits the implementation of the conclusions of its audit activity to some extent. From the perspective of public control over the management of public finances, it is important that the SAO's audit reports are made public.

Government audits in accordance with Act No. 357/2015 on Financial Control and Audit, which are performed by the Government Audit Office. This office has nationwide competence in relation to public administration authorities, local government, and legal persons established by them, as well as other persons managing public finances.

Internal control is performed in accordance with Act No. 357/2015 as basic financial control, administrative financial checks, and on-the-spot financial checks. This law defines a general rule on the responsibility of the statutory body of each public administration authority for the performance of this control.

In basic financial control, a public administration authority is always required to verify the compliance of each financial transaction or its part with the budget of the public administration authority, laws, contracts, and decisions, as well as internal rules at the relevant management levels.

A public administration authority is obliged to perform an administrative financial check of each financial transaction or its part to verify compliance whenever the public administration authority provides or has provided public finances to another person.

An on-the-spot financial check is a procedure by which a public administration authority gathers evidence, undertakes checks, and establishes the facts it deems necessary and is entitled to perform in its own organisational units, in legal persons falling within its funding or founding competence, in legal persons through which public finances are allocated from its budget, and in other persons in receipt of public finances allocated from the public administration authority's budget.

3. Budgetary management of local governments

3.1. Brakes to avoid excessive indebtedness

The basic rules for the budgetary management of municipalities and higher territorial units are contained in the above-mentioned Act on the budgetary rules of local government. The rules for avoiding excessive indebtedness are contained in several provisions and can be divided into preventive and protective measures. These rules are applied at all stages of the budgetary procedure, which at the level of local government is similar to that of the state budget (see above). Some of them are implemented exclusively by the local government unit concerned, whereas others involve the intervention of the Ministry of Finance. This intervention is logical as local government budgets are part of the public administration budget.

Basic preventive measures are naturally linked to the stage of budget submission and adoption. The budget of a municipality or a higher territorial unit is the basic instrument of financial management, regulating the financing of the tasks and

functions of the municipality or higher territorial unit in a given fiscal year and expressing the autonomy of their management.²⁵ At the level of the local government, a multiannual budget is also prepared as a medium-term economic instrument of fiscal policy, which expresses the objectives of the territorial development and the needs of the population, including the programmes of the municipality or higher territorial unit, for at least three fiscal years. The internal structure of the budget of a municipality or higher territorial unit is directly defined by the law, which stipulates that it is made up of the current budget (current revenues and current expenditures), the capital budget (capital revenues and capital expenditures), and financial transactions.

The main brake to avoid excessive indebtedness among local governments is the obligation to prepare the budget of a municipality or a higher territorial unit as a balanced or surplus budget, which implies that the law excludes, in principle, the preparation of a deficit budget, where expenditures would exceed revenues. However, this legal rule allows exceptions to its application in the following cases. The current budget may be prepared as a deficit budget if the expenditures are to be covered by earmarked funds from the state budget, the EU budget, or unspent funds from previous years. Nevertheless, the amount of deficit may not exceed the sum of these unspent funds. The capital budget may be prepared as a deficit budget if the deficit can be covered by unspent funds from previous years, repayable financing (loans), or the surplus of the current budget in the fiscal year concerned. As can be seen, in principle, these exceptions allow deficit budgeting in a relatively restrictive way, but always with the requirement to cover the deficit by other means.

Other preventive measures to avoid excessive indebtedness include limits and restrictions on the use of repayable financing, that is, credits and loans. The main restriction is that these funds may only be used to finance capital expenditures (i.e. investments). Local governments are not allowed to finance their current expenditures with borrowed funds. The law sets two basic limits for credits or loans: (i) the total amount of debt of a municipality or higher territorial unit may not exceed 60% of the actual current revenues of the previous fiscal year, and (ii) the amount of instalments of credits and loans in a given fiscal year may not exceed 25% of the actual current revenues of the previous fiscal year.

Other measures are implemented with the intervention of the Ministry of Finance and are classified according to their severity and impact on the economy of a municipality or higher territorial unit. These measures include a monitoring regime, a recovery regime, and a receivership.

3.2. Relationship with the central budget

The budget of a municipality or higher territorial unit expresses the autonomy of its management. These budgets include not only the revenues and expenditures

²⁵ Tekeli, Hoffmann and Tomaš, 2021, p. 386.

of the local government unit but also its financial relationship to the state (shared taxes, subsidies for the delegated exercise of state administration, other subsidies). Before we examine the budgetary relationship of the state to local government units, let us go back to 2004, when so-called fiscal decentralisation took place in Slovakia. The purpose and ultimate objective of fiscal decentralisation was to create instruments for municipalities, towns, cities, and higher territorial units that would enable these local government units to raise, through legal instruments, sufficient funds for the performance of their statutory functions,²⁶ as well as societal tasks. In its original version, the Local Taxes Act (2004) provided for eight local taxes that could be imposed by municipalities on an optional basis (real estate tax, dog tax, public space use tax, accommodation tax, tax on vending machines, tax on non-winning gaming machines, tax on nuclear installations, and tax on the entry and stay of motor vehicles in the historical part of towns) and one local tax that could be imposed by higher territorial units (motor vehicle tax). This situation lasted for ten years, when the legislature adopted the Motor Vehicle Tax Act (2014), under which this tax again became a state tax. In the case of local taxes (with the exception of the tax on nuclear installations), the principle applies that the municipalities influence their own budget revenues by setting their rates, increases, reductions, or exemptions.²⁷ Thus, the municipalities themselves construct the elements of these taxes so that their primary fiscal purpose can be fulfilled, and they have considerably stronger powers to influence their revenues than previously.²⁸

The financial relationship between municipalities or higher territorial units and the state is manifested on several levels. The first is the shares in taxes administered by the state. Under the above-mentioned Act on the budgetary allocation of income tax revenues to local government, personal income tax (but not corporate income tax) is the revenue of municipalities (70%) and higher territorial units (30%).

The second level of the financial relationship between higher territorial units and the state includes subsidies, especially those for the delegated exercise of state administration. According to Art. 71 para. (1) of the Constitution, the exercise of certain powers of local state administration may be delegated to municipalities and higher territorial units by a law, and the costs of the delegated exercise of local state administration shall be covered by the State. In this way, the State has delegated many powers of state administration to municipalities and higher territorial units. This has been most significant in primary and secondary education, where the State has delegated the exercise of state administration to municipalities (primary schools) and higher territorial units (secondary schools). The delegated exercise of state administration is financed through subsidies, the amount of which is approved in the State Budget Act (by way of illustration, the total amount was EUR 1.890 billion in 2023).

26 Jesenko, Vernarský and Molitoris, 2015, p. 106.

27 Štrkolec, 2022, p. 188.

28 Románová, 2011, p. 67.

4. New trends in national fiscal policy – crisis management and digitalisation

It is customary to refer to the current period as a period of multi-crisis. After the financial crisis, which began to take full effect at the turn of 2008–2009 and culminated in several European and national solutions, particularly in the banking sector, the budgetary impact of several other crises has also begun to take full effect since 2020. We are, therefore, currently living in crisis, or post-crisis, times, with the criterion for differentiation being the specific crisis we have in mind. The crisis triggered by the COVID-19 pandemic, the effects of which slowly began to recede in 2022, was essentially immediately replaced by the crisis triggered by the war in Ukraine, which was accompanied by an energy crisis. Finally, all these crises were topped off by the inflation crisis, which saw a sharp rise in interest rates by national central banks and the European Central Bank.

In 2023, we published a study in which we analysed the impact of the pandemic and inflation on tax law and, indirectly, on budget law.²⁹ Comparing the years 2019–2022, we concluded that the following trends were significant in the area of the tax revenues of the state budget: (i) a general year-on-year decline in the share of tax revenues for the state budget in its total revenues over the period examined (80%–75%–73%); (ii) a significant drop in income tax revenue (2019–2021), followed by a significant increase in this revenue (2021–2022); (iii) stable or partially increasing value-added tax revenue; and (iv) substantially flat and stable excise duty revenue.

The decline in public budget revenues during the pandemic was naturally accompanied by an increase in expenditure as the role of the state during this period was also to compensate citizens and businesses for the negative impacts of the pandemic. This, of course, had an impact on the public deficit. Whereas according to the Statistical Office of the Slovak Republic, the general government deficit oscillated between 1.01% and 1.21% of GDP in 2018 and 2019, this deficit rose above 5% of GDP in 2020 and 2021 (5.35% in 2020 and 5.43% in 2021). Although 2022 appeared to be a consolidation year (deficit at 2.04% of GDP), the deficit for 2023 was expected to be above 6% of GDP.

The next external factor with an impact on budgetary regulation and law, especially in 2022–2023, is rising inflation, which increased to 15.4% in the Slovak Republic in February 2023 (in September 2023, the level of inflation was at 8.2%). With regard to the State's efforts to help the population with, among other things, the consequences of inflation, mention may be made in particular of an act amending the Income Tax Act, which increased the child tax bonus from EUR 22.17, or EUR 44.34 (for a child under 6 years of age) per month, to EUR 50 per month (for a child over 18 years of age) and EUR 140 per month (for a child under 18 years of age), with effect from 1 January 2023. Although there are some corrective mechanisms in this

²⁹ Štrkolec, 2023.

amendment related to the maximum amount of the tax bonus, the aim of its authors, according to the explanatory memorandum, was to improve the financial situation of families with children as the tax bonus reduces the tax paid; in other words, a higher tax bonus means a lower tax. Of course, this measure will have a significant negative impact on public administration budget revenues, which have been quantified at 543 million in 2023. Ultimately, however, local governments will suffer most from this measure as the higher tax bonus per child will reduce the personal income tax collected, which, as a shared tax, is a crucial source of revenues for municipalities and higher territorial units.

Regarding the issue of digitalisation, the question of its impact on potential future increases in public budget revenues is particularly relevant. It can be stated that, regardless of the degree of changes that the development of new technologies will bring in the future, technological developments will clearly have a major impact on the shape of tax systems and budgetary revenues. The possible range of these changes is wide and includes a spectrum of new tax institutions ranging from the introduction of certain new types of taxes that will organically complement the 'traditional' forms of taxation (income tax, general tax on consumption) to a complete 'rebuilding' of the tax system based on priority taxation by new forms of 'digital taxes'.³⁰ Research on these new challenges for tax law can be conceived in several areas: (i) the taxation of activities based on advanced digital technologies,³¹ (ii) the taxation of the sharing economy, and (iii) the taxation of virtual currencies.³²

Several partial conclusions can be drawn from the above. As the main source of revenues for public budgets in the Slovak Republic, taxes have thus far only slowly, and to a limited extent, burdened the activities carried out in the digital world. The digital tax has not yet been introduced: digital platforms are taxed, but the question is whether the current legislation allows for their effective taxation at all.³³ Finally, virtual currencies (or the income from their sale) are subject to taxation; however, the revenue from them is marginal.

5. Conclusions

We can generally state that the legal regulation of budgets in Slovakia is in line with EU requirements. This was achieved mainly through the constitutional regulation of budgetary responsibility, the implementation of the Fiscal Compact,

30 Štrkolec, 2021, p. 379.

31 Hrabčák and Stojáková, 2020.

32 Popovič and Sábó, 2021; Štrkolec, 2023, pp. 99–101.

33 Simić, 2022, pp. 134–139.

and the adoption of legally binding EU acts.³⁴ However, due to the growing trend of deficit and government debt, it will be crucial in the coming years that the European and national rules for preventing excessive deficit and government debt are actually respected. One of the tools to achieve this is the aforementioned limiting of public expenditures, to which Slovakia has committed itself in the Recovery and Resilience Plan. In any case, it is clear that fiscal policy faces serious challenges. These challenges also naturally stem from the crisis management of the COVID-19 pandemic and the energy and inflation crises, which have collectively resulted in an increase in the public deficit, as well as in the national debt.

The so-called caretaker government, which exercised its powers between May and October 2023, has presented a proposal for measures to consolidate both the public deficit and the national debt. Without them, the forecasts for the Slovak Republic foresee a deficit level of 6.5% to 7.0% of GDP in 2024–2026 and a rise in government debt to 66.5% over the same period, well above the reference values set by the Protocol on the Excessive Deficit Procedure annexed to the Treaties. Of course, it should be added that once the new government, which emerged from the parliamentary majority after the September 2023 elections, is appointed in October 2023, the choice and implementation of these measures will be up to that government.

Among the key measures on the revenue side of the public budgets was a proposal to increase the VAT rate by 2%, increase the tax rates on tobacco products and alcoholic beverages, introduce a tax on sweetened beverages, tax real estate according to its value, and reintroduce inheritance and gift taxes. On the expenditure side of the public budgets, the most decisive proposals were related to the reduction of employment in the public sphere, the abolition of free trains for students and pensioners, and the abolition of support for reduced energy prices for businesses.

The consolidation of public finances is limited by the requirements stemming from legal regulation at the European and national levels. However, the choice of instruments for this consolidation is a purely political issue, in which the interests and programme orientation of the current government majority are reflected. In the conditions of the Slovak Republic, we will have to wait some time until specific instruments are selected and implemented as the currently appointed government (at the time of writing, October 2023) has not yet presented its programme declaration and is yet to be given a vote of confidence by the National Council.

34 For example, Council Directive 2011/85/EU of 8 November 2011 on requirements for the budgetary frameworks of the Member States, OJ L 306, 23.11.2011, 41–47.

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