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Legal Security and Financial Security of Local Communities. Selected Issues

Bezpieczeństwo prawne a bezpieczeństwo finansowe społeczności lokalnych. Wybrane zagadnienia

SUMMARY

The study has been devoted to showing the relationship between legal security and financial security at the local government level. To this end, firstly some consideration has been given to determining the meaning of the terms "security" and "financial security" from the point of view of the state and local government. In addition, it has been shown that financial security is inextricably linked to the financial power enjoyed by the state, specifically by the bodies acting in its name and on its behalf. The power resulting from this is the financial power of local government units, which is enjoyed by such units although to a limited extent. However, it has been found that even this scope of legal regulations limiting the possibilities of authoritative financial activities of local government bodies is of key importance from the security viewpoint of local communities.

Keywords: legal security; financial security; financial power; local communities

INTRODUCTION

The issue of broadly understood security has been extremely important both from the viewpoint of citizens and the functioning of the entire state. Its special importance was highlighted in the doctrine of the early 19th century, raising the need to ensure the ongoing security of the people in addition to their other obvious needs related to physiology, membership, love, respect, and striving for self-realization[1].

[1] A.H. Maslow, *Motywacja i osobowość*, Warszawa 2006, pp. 115–122. Cf. A.K. Koźmiński, W. Piotrowski, *Zarządzanie – teoria i praktyka*, Warszawa 1995, p. 262. On this topic, see also

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Data: 06/11/2026 07:05:21

In addition, now, in the time of continuous political, economic, moral, and cultural changes the importance of ensuring security is not just a cliché. It has gained an extra dimension, manifested in the desire of each country to assure its safe functioning.

This state and local government units, operating in a decentralized way, are to create a sense of security for all citizens and each of them individually, and the relevant legal regulations are to serve for this purpose, including in particular those guaranteeing permanent access to financial resources. It is only thanks to them that the state and local government units can perform public tasks, both those that allow the state to fulfil its mission in terms of legislative, executive and judicial powers, as well as those that are strictly connected with ensuring security and public order.

Considering the aspect of the safe functioning of the state and local government units, one can point to two aspects of such security, i.e. legal security and financial security. The former is associated with the rule of law in the state and local government, while the latter is a condition for ensuring safe and sufficient access to financial resources adequate to the public tasks that they perform.

SECURITY AND LEGAL SECURITY

In order to cope with difficult security issues, in particular with financial security, one should begin with analysing the notion of security[2], understood as a safe and peaceful state[3], which is used every day in connection with various manifestations of human activity[4].

In colloquial terms, security should be identified with a certain comfort of functioning[5]. It is an antonym of the word "insecurity" and means counteracting

E. Ura, B. Sitek, T. Graca, *Potrzeby jako współczesny determinant treści praw człowieka*, Józefów 2017.

[2] When defining security, it can also be assumed that it is a state that gives a sense of certainty and a guarantee of its maintenance and a chance for its improvement – after *Słownik terminów z zakresu bezpieczeństwa narodowego*, Warszawa 2008, p. 14.

[3] See the meaning of the Polish term *bezpieczeństwo* in *Wielki słownik języka polskiego*, Warszawa 2006, p. 46.

[4] At the same time, one can distinguish variously named types of security, concerning, i.a., the country, international relations, the territory, Internet (in the network), work, energy supply, ICT, with the most known public security and order. See E. Ura, *Bezpieczeństwo i porządek publiczny – historia, teoria, praktyka*, Rzeszów 2003, p. 55. Cf. R. Zięba, *Bezpieczeństwo międzynarodowe po zimnej wojnie*, Warszawa 2008; R. Jakubczak, J. Flis, *Bezpieczeństwo narodowe Polski w XXI wieku*, Warszawa 2006, p. 67; *Słownik terminów z zakresu psychologii dowodzenia i zarządzania*, Warszawa 2000, p. 69; E.W. Pływaczewski, *Bezpieczeństwo obywateli – prawa człowieka – zrównoważony rozwój*, Białystok 2017.

[5] A. Czupryński, B. Wiśniewski, J. Zboina, *Bezpieczeństwo. Teoria – badania – praktyka*, Józefów 2015.

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Data: 06/11/2026 07:05:21

threats or dangers[6]. In the sense of the general public, security includes ensuring the needs of existence, survival, certainty, and stability[7].

In turn, the concept of "legal security"[8] is rarely described in the reference literature because it is considered as a natural matter[9], an obvious one because it is closely connected with the functioning of the rule of law, i.e. the state acting on the basis of applicable legal regulations. In fact, the concept of security in this sense is an undefined concept, often referred to as vague, indistinct, ambiguous, legally undefined, and evaluative[10], which should be associated with diverse types of it[11]. This diversity makes it difficult to define it unequivocally and, thus, it enforces an adaptation of the concept meaning to its subject scope in a general and narrow sense.

Generally, the term of legal security can be understood as the need for the state to introduce legal regulations in every area of a citizen's life[12], demonstrating

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[6] Threat should be treated as: a danger of a harm emergence; a dangerous situation that can lead to a harm; potential conditions that, by activating in a sequence of events, can lead to losses; a situation that can lead to injuries or loss of health; a source of danger; a source of possible injury or loss of health; a hazard; a risk (*Koncepcja graficznego przedstawiania terytorialnego rozkładu ryzyka i zagrożeń*, [in:] *Mapy terytorialnego rozkładu ryzyka*, red. M. Dietrich, J. Wolanin, T. Szopa, W. Roguski, M. Matyjewski, Warszawa 2004, pp. 20–38). Types of today's threats are shown, among others, by M. Tryboń, I. Grabowska-Lepczak, M. Kwiatkowski, *Bezpieczeństwo człowieka w obliczu zagrożeń XXI wieku*, „Zeszyty Naukowe Szkoły Głównej Służby Pożarniczej" 2011, nr 41, pp. 191–202; J. Kunikowski, *Bezpieczeństwo i zagrożenia współczesnego człowieka*, [in:] *Bezpieczeństwo człowieka a proces transformacji systemowej*, red. J. Dębowski, E. Jarmocha, A. Świderski, Siedlce 2006, p. 93.

[7] Security, being the primary need of man and social groups, is also the basic need of states and international systems, its lack causes anxiety and a sense of threat – after R. Zięba, *Pojęcie i istota bezpieczeństwa państwa w stosunkach międzynarodowych*, „Sprawy Międzynarodowe" 1989, nr 10.

[8] In the management doctrine, it has been clearly stated that the sense of security is a necessary element of every man's life values, because everyone should have the right to function without fear in the surrounding world. According to the A.H. Maslow's model (*op. cit.*, pp. 115–122), security needs stimulate actions, ensuring inviolability, and they are revealed when the existing habits prove to be of little use. In the pyramid (hierarchy) of needs that Maslow indicates, security comes second after physiological needs.

[9] In the theory of law, legal security is defined as a state achieved with positive law, guarding life goods, and human interests in a possibly complete and effective way. See J. Potrzeszcz, *Bezpieczeństwo prawne z perspektywy filozofii prawa*, Lublin 2013, p. 405.

[10] Reported after J. Dobkowski, *Administracja bezpieczeństwa i porządku publicznego wobec integracji europejskiej (wybrane uwagi)*, [in:] *Bezpieczeństwo wewnętrzne we współczesnym państwie*, red. E. Ura, K. Rajchel, M. Pomykała, S. Pieprzny, Rzeszów 2008, pp. 159–160.

[11] That is, i.a., global security, international security, regional security, national security, external security and internal security; ecological, economic, energetic, physical, IT (cybernetic, ICT) security; cultural, military, political, social and public and identification security. For more cf. *Słownik terminów z zakresu psychologii dowodzenia…*, p. 17; R. Lewandowski, *Polska Wytwórnia Papierów Wartościowych SA w systemie bezpieczeństwa ekonomicznego i publicznego*, „Copernican Journal of Finance & Accounting" 2013, nr 2, DOI: https://doi.org/10.12775/CJFA.2013.018, pp. 99–103.

[12] "The natural human right to legal security should find its protection in the state as a political existence form of the community present in it" – a thesis adopted as part of the study by Ł. Pikuła,

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Data: 06/11/2026 07:05:21

the manner required of them to behave, ordering them to respect them, under the threat of responsibility for non-compliance with the adopted legal regulations[13]. The concept of legal security should, therefore, be associated with the rule of law[14], i.e. with such a state in which law, being an abstract concept but related to legal regulations, determines the required and expected course of conduct for all persons in the territory of the state.

Perceiving the concept of security in a narrow approach, it can be assumed that public authorities representing the state and local government units, guided by the need to protect and care for the interest of the state, are, within their competences, to ensure compliance with the statutory framework of the required behaviour both by themselves (which is very important) and the citizens.

Recognition in the narrow approach of the legal security importance is fully confirmed in the traditional approach to the construction of a legal norm. The state and local government, precisely their organs acting on behalf of and for them, have been obliged to adopt and apply some legal regulations resulting primarily from the Basic Law[15]. The Polish Constitution must be the foundation for creating the legal situation in the entire country. Its provisions should be treated as a basic and indisputable normative act determining the strategy of economic, political and cultural actions for the state and self-government units operating within it, as well as financial actions.

What is extremely important, and at the same time determining the significance of the Basic Law, it should be an act incontestable by other legal acts that must adapt their provisions, which is obvious, to the constitutional regulations. In this regard, it is worth raising one more issue related to its stability and even continuity of use.

One should be fully convinced that the will of the legislator introducing some constitutional regulations strongly limiting the possibility of amending the Polish Constitution was to guarantee the continuity of its application. This unchanging content and application continuity of the Constitution ensures that every citizen

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Bezpieczeństwo prawne jako podstawowa wartość prawa w systemie prawa, „Przegląd Prawno-Ekonomiczny" 2017, nr 39, pp. 130–140.

[13] This is an expression of the introduction and application of a classic legal norm. See more widely on this subject, i.a., W. Serafin, *Zastosowanie probabilistyki w analizie zakresu zastosowania normy prawnej. Wstęp do dalszej dyskusji*, „Studia Prawnicze. Rozprawy i Materiały" 2015, nr 2, pp. 137–158.

[14] A. Dziadzio, *Koncepcja państwa prawa w XIX w. Idea i rzeczywistość*, „Czasopismo Prawno-Historyczne" 2005, t. 57(1), pp. 177–201; P. Uziębło, *Państwo prawa*, [in:] *Leksykon współczesnej teorii i filozofii prawa*, red. J. Zajadło, Warszawa 2007, pp. 221–228; J. Zakrzewska, *Państwo prawa a nowa konstytucja*, [in:] *Prawo w zmieniającym się społeczeństwie*, red. G. Skąpska, A. Marszałek, Warszawa 1992, pp. 325–334.

[15] Of course, we are talking about the binding Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483 as amended), hereinafter: the Polish Constitution or the Constitution.

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Data: 06/11/2026 07:05:21

can get to know it, also creating a sense of security of the stable operation of the state in its various aspects, primarily the financial one.

The consequence of the generally normalized issues is the need to clarify them in specific ordinary laws, which are not in opposition to the constitutional provisions and ratified international agreements[16], and they only implement the provisions contained in the Constitution. Ordinary laws are aimed at clarifying the constitutional provisions to ensure the safe functioning of the state.

FINANCIAL SECURITY AND FINANCIAL POWER OF THE STATE

One of the fundamental roles of the Constitution is to define some financial framework for actions of the state and local government units. Thanks to the supply of financial means, it is possible to ensure security for the state and its citizens.

The financial security of the state should be derived from its financial power[17]. Financial power grounded in the doctrine of administrative law means functioning of the public administration organs as entities (operating individually or collectively), separated in the administration structure, equipped with administrative power, having their own distinctive competences[18].

The origin of the power conceived like that, including financial power, must be seen in the 1990s when then the state[19] had the exclusive right to intervene and interfere in the sphere of citizens' activities. The justification for the operation of the state authority was striving to ensure the balance of public finances and the proper allocation of public resources.

In this respect, the state had coercion, manifested in the issued legal acts[20], justified by its need to ensure permanent access to revenues, while making expenses depending on the type of activity conducted by the state. Changes in the area of individual state tasks resulted in changes in expenditures on these tasks. Hence,

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[16] Pursuant to Article 87 (1) of the Polish Constitution, determining the sources of the universally binding law.

[17] The concept of financial power should be derived from the French doctrine (*pouvoir financier*), which in Poland replaced the narrower concept of the so-called tax power. See on this subject, i.a., P.M. Gaudement, *Finanse publiczne*, Warszawa 1990, p. 31; T. Dębowska-Romanowska, *Ogólna charakterystyka finansów publicznych i prawa finansowego*, [in:] *Prawo finansowe*, red. W. Wójtowicz, Warszawa 1996, p. 31.

[18] See J. Jendrośka, *Organizacja prawna administracji*, [in:] *Prawo administracyjne*, red. J. Boć, Wrocław 2000, p. 121.

[19] K. Sawicka, *Finanse samorządu terytorialnego – podstawy wyodrębnienia, struktura*, www.repozytorium.uni.wroc.pl/Content/42891/18_Krystyna_Sawicka.pdf [access: 10.12.2019].

[20] The reference literature treated them as "the basic form of expressing the state's will and regulating all social relations". See T. Rabska, *Prawo administracyjne stosunków gospodarczych*, Warszawa–Poznań 1973, p. 130.

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Data: 06/11/2026 07:05:21

the proportions of expenses for individual purposes changed[21], depending on the decisions of the state authorities. Financial power shaped in that way, granted to the state, was treated as its domain and inalienable right[22].

Also today, as part of the public authority decentralization in force, financial security should be associated with financial power of the state and the possibility of perceiving it also at the local government level can be derived from it. At the same time, it is obvious that financial power of the state is dominant, and only to a limited extent, one can point to its functioning also as part of public tasks conducted by local government units.

In this aspect, it is worth considering who should really enjoy financial power guaranteeing financial security of the operating state. In fact, the state understood as an area of citizens residing there, except for the authorities in power[23], may not be the subject of the realized financial power.

De facto, the right to have financial resources, within the framework of financial power, belongs to the State Treasury. The State Treasury, which has legal personality[24], has the ability to be the subject of the rights and obligations of the state. It is a real subject of civil law rights of the state (including property rights), representing the state as the owner of property, with the exclusion of parts held by other state legal persons (including special purpose funds, state-owned enterprises and banks, local government units, local government legal entities). As a legal entity, in legal transactions, it is equal to other legal and natural persons[25]. The only difference results from the above-mentioned state powers.

Clarifying the issues related to the role of the State Treasury as a real entity acting on behalf of the state's powers, it should be noted that in the field of property and interests protection, the State Treasury is replaced by the Office of General Attorney (*Prokuratoria Generalna*)[26], and in the area of state property management and privatization by the entities referred to in the Act of 16 December 2016 on the Rules of State Property Management[27]. At the same time, the State Treasury is not

[21] J. Jaśkiewiczowa, *Prawo finansowe*, Gdańsk 1990, p. 45.

[22] R. Mojak, *Konstytucyjna regulacja ustroju finansów publicznych a pozycja ustrojowa parlamentu i rządu w zakresie gospodarki finansowej państwa*, „Studia Iuridica Lublinensia" 2003, t. 1, p. 51.

[23] For more, see J. Wróblewski, *Klasowy charakter państwa*, [in:] *Teoria państwa i prawa*, red. W. Lang, J. Wróblewski, S. Zawadzki, Warszawa 1979, p. 130; G.L. Seidler, H. Groszyk, J. Malarczyk, *Wstęp do teorii państwa i prawa*, Lublin 1982, p. 47.

[24] Article 33 of the Act of 23 April 1964 – Civil Code (consolidated text Journal of Law 2019, item 1145 as amended), hereinafter: CC.

[25] As follows from the content of Article 34 CC: "The State Treasury is in civil law relations the subject of rights and obligations that relate to state property, not belonging to other state legal persons".

[26] It follows from the wording of Article 1 (1) of the Act of 15 December 2016 on the Office of Attorney General of the Republic of Poland (consolidated text Journal of Law 2019, item 1265 as amended).

[27] Consolidated text Journal of Law 2019, item 1302 as amended.

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Data: 06/11/2026 07:05:21

responsible for the obligations of state-owned enterprises and other state-owned legal entities, as well as local government units and local government legal entities, unless separate regulations may provide otherwise. On the other hand, state legal persons, as well as local government units and self-government legal persons, are never liable for the obligations of the State Treasury[28].

FINANCIAL SECURITY AND FINANCIAL POWER OF LOCAL GOVERNMENT UNITS

Referring to the issues raised above, they have been legally sanctioned by the provisions of the Polish Constitution in Article 15 introducing decentralization of public authority that local government units are independent legal entities separate from the state. According to the doctrine, they are "corporations, which are compulsory associations of residents of municipalities, established to exercise administrative power taken over from the state and to meet their (local) needs on their own and at their own responsibility"[29].

It must be considered as an undoubtful fact that their financial security should be associated with certain manifestations of financial power, which is obviously limited in relation to the state. For the purposes of systematizing them, income power, expenditure power and procedural power can be distinguished.

The first of these should be connected with ensuring them a legal access to funds for local government units, and some guarantees for their actual acquisition[30], which is fundamental to the decentralized operation of public authorities. When indicating income power, it should be related to creation[31] by financial law provisions of the right of each local government unit to obtain public funds from the

[28] It follows from the content of Article 40 §§ 1 and 3 CC.

[29] A. Agopszowicz, Z. Gilowska, *Ustawa o gminnym samorządzie terytorialnym. Komentarz*, Warszawa 1998, p. 47. See also the regulations resulting from Chapter VII of the Constitution and the regulations of the Act of 8 March 1990 on the Municipal Local Government (consolidated text Journal of Law 2019, item 506 as amended), Act of 5 June 1998 on the District Local Government (consolidated text Journal of Law 2019, item 511 as amended) and Act of 5 June 1998 on the Provincial Local Government (consolidated text Journal of Law 2019, item 512 as amended) – hereinafter also referred to as local government acts.

[30] It seems that this concept, which appears quite rarely in the reference literature, deserves a special prominence, as it determines the actual framework for the implementation of public tasks at the local government level. Without indication of legal regulations guaranteeing acquisition and spending of funds, one cannot speak of a real financial independence of local government units.

[31] The introduction of these regulations was a response to the regulations arising from Article 9 of the European Charter of Local Self-Government (hereinafter: ECLSG), drawn up in Strasbourg on 15 October 1985, ratified by Poland in 1994 (Journal of Law 1994, No. 124, item 607 with a corrigendum).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 06/11/2026 07:05:21

sources indicated in the Basic Law and in ordinary acts[32]. These legal regulations also guard the possibility of claiming unobtained funds, thus securing financing activities of local government units[33].

In terms of income power, it is worth emphasizing that the indication of three types of obligatory income of each local government unit is of fundamental importance, translating into achieving real financial resources from own revenues as well as general subsidies and targeted subsidies of the state budget[34]. In addition, it is also worth pointing out that it is possible to raise funds from other optional sources[35].

Among the indicated own revenues, the most important from the viewpoint of the analysed income power are undoubtedly those obtained as the so-called local taxes[36] or municipal taxes[37] acquired by municipalities, and local government taxes collected by districts and provincial local governments[38].

In the case of municipalities which, in accordance with the provisions of the Constitution, carry out all the tasks not reserved for other public authorities[39], it is extremely important to transfer, by virtue of Article 168 of the Polish Constitution, the right to determine the amount of local taxes and rates within the scope specified by the statute. Adoption of such a solution makes it possible to distinguish within income power also derivative tax power specified like that in the reference literature[40]. In addition to the possibility of influencing the amount of local taxes and rates, it also means that the decision making body may introduce reductions and

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[32] We are talking in particular about the Act of 27 August 2009 on the Public Finances (consolidated text Journal of Law 2019, item 869 as amended) and Act of 13 November 2003 on the Income of Local Government Units (consolidated text Journal of Law 2020, item 23).

[33] For more on this topic, see E. Feret, *Rola organów stanowiących i wykonawczych w zakresie dochodzenia środków publicznych w gminie*, [in:] *Pozycja ustrojowa organów jednostek samorządu terytorialnego*, red. B. Dolnicki, Warszawa 2019, pp. 165–181.

[34] According to the wording of Article 167 (2) and (3) of the Polish Constitution and Article 3 (1) and (2) of the Act on the Income of Local Government Units.

[35] Pursuant to Article 3 (3) the income of local government units may be: 1) non-returnable funds from foreign sources; 2) funds from the European Union budget; 3) other funds specified in separate provisions.

[36] Under the Act of 12 January 1991 on the Local Taxes and Rates (consolidated text Journal of Law 2019, item 1170 as amended) in conjunction with Article 9 (3) ECLSG.

[37] Reported after A. Hanusz, P. Czerski, *Gminne podatki i opłaty budżetowe*, Kraków 2004.

[38] In case of supra-municipal local government levels, this is a statutory share of the personal income tax and the corporate income tax. Article 5 (2) and (3) and Article 6 (2) and (3) respectively in conjunction with Article 3 (2) of the Act on the Income of Local Government Units. In case of districts, there are also additional revenues from rates due under the provisions of separate acts – under Article 5 (1) (1) of the Act on the Income of Local Government Units.

[39] Pursuant to Article 163 of the Polish Constitution and Article 6 (1) of the Act on the Municipal Local Government.

[40] This tax power vested in councils of municipalities, has not been guaranteed by the provisions of the Tax Code. Reported after A. Hanusz, *Samodzielność finansowa gmin a system podatkowy w Polsce*, „Roczniki Nauk Prawnych KUL" 1998, t. 8 (zeszyt specjalny), p. 49.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 06/11/2026 07:05:21

exemptions in relation to agricultural tax[41] and forestry tax[42], as well as the use of, i.a.: the institutions of postponing the tax and rate payment date; forced mortgage or tax lien; conclusion of a civil law agreement on the ownership transfer of assets or property rights in exchange for tax arrears[43].

Expenditure power of local government units cannot be identified with their financial independence with regard to their full autonomy of expenditure, use, disposal and finally management[44] of financial means. Neither in the doctrine nor in the judicial decisions it has ever been doubtful that the independence in shaping expenses must be carried out within the statutory limits, and it results from it, e.g., that the absolute priority of expenditure is for obligatory own tasks[45].

The legislator limits the expenditure possibilities of local government units by indicating the obligatory own tasks as well as commissioned tasks and the use of subsidies. The types of own tasks indicated by the legislator, which are to be implemented on the basis of local government acts, may only be modified by local government units in relation to the size and shape of the task being carried out in a given financial year[46]. In some cases, it is also possible to decide on the date of its implementation[47].

Similar restrictions should be associated with spending of funds for the implementation of tasks commissioned by statutes or government administration bodies. Commission of a task related to the award of funds means the need to use them for the implementation of the indicated task, as in the case of designated subsidies granted for a specific purpose, to a specific entity as an additional payment for goods or services[48].

Freedom in this area is provided by general subsidies granted to local government units[49], which may be spent within the purposes set by the decision-making

[41] Introduced under the Act of 15 November 1984 on the Agricultural Tax (consolidated text Journal of Law 2019, item 1256 as amended).

[42] Resulting from the regulation of the Act of 30 October 2002 on the Forestry Tax (consolidated text Journal of Law 2019, item 888).

[43] Based on the regulations arising from the provisions of the Act of 29 August 1997 – Tax Code (consolidated text Journal of Law 2019, item 900 as amended).

[44] The wording taken from the regulations of the Act on the Public Finances.

[45] M. Zubik, *Konstytucja III RP w tezach orzeczniczych Trybunału Konstytucyjnego i wybranych sądów*, Warszawa 2008, pp. 646–647; decision of the Constitutional Tribunal of 26 June 2014, K 13/12, OTK-A 2014, No. 6, item 66.

[46] T. Dębowska-Romanowska, *Wydatki na zadania własne gminy – granice prawne. Samorządowy poradnik budżetowy na 1997 r.*, [in:] *Zagadnienia ustrojowe i prawno-finansowe*, red. W. Miemiec, B. Cybulski, Warszawa 1997, p. 265.

[47] This does not apply if, e.g., remuneration, social assistance funds or housing benefits are to be paid in a timely manner.

[48] For more on this subject, see E. Feret, *Subwencje a dotacje*, „Zeszyty Naukowe Wyższej Szkoły Informatyki, Zarządzania i Administracji" 2015, z. 3(32), pp. 50–65.

[49] See P. Pest, *Konstrukcja prawna subwencji ogólnej w polskich regulacjach prawnych dochodów jednostek samorządu terytorialnego*, Wrocław 2018, pp. 22–23.

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Data: 06/11/2026 07:05:21

body[50]. As it results from the content of Article 9 (7) ECLSG, subsidies granted to local communities should not be allocated to financing specific projects. The essence of the general subsidy is that it is not to be granted to local government units to finance the implementation of specific projects, but so that they can freely conduct their own policy[51], as part of their statutorily guaranteed independent[52] rights.

Another kind of power, the so-called procedural power, should be associated with the separation of a financial plan in relation to the state as the basis for the independent financial management of a local government unit. A budget resolution, independently prepared, based also on its own long-term financial forecast[53], secures the annual collection and spending of funds for the implementation of public tasks primarily in the forms of local government budgetary units and budgetary establishments, as well as those operating independently within the public finance sector and outside it[54].

In addition to such obvious issues as those related to the own, independent budget procedure related to preparation, adoption, annual implementation, and settlement of budget implementation, it is also worth pointing to the possibility of making decisions regarding exclusion of certain tasks (statutorily specified in Article 14 of the Act on the Public Finances) to be implemented under net budgeting. The establishment of municipal, district or provincial budgetary establishments also lies with the decision-making bodies, which is reflected in the adopted budget resolution.

The budget resolution may also contain provisions pursuant to which a task is commissioned and a subsidy is granted in accordance with the provisions of the Act of 24 April 2003 on the Public Benefit Activity and Volunteerism, and if it concerns other tasks than those specified in this statute – on the basis of an agreement between the local government unit and the entity[55]. From the budget of a local government unit, some determined subsidies may also be granted for co-financing of investment costs related to performance of public tasks of the unit under public and private partnership agreements, taking into account the provisions on public and private partnership[56].

Finally, the confirmation of financial power in terms of procedure is the possibility of creating civic budgets – participatory budgets[57]. This type of budget

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[50] In accordance with Article 7 (3) of the Act on the Income of Local Government Units.

[51] See in this respect also W. Miemiec, *Prawne gwarancje samodzielności finansowej gminy w zakresie dochodów publicznoprawnych*, Wrocław 2005, p. 69.

[52] See more on the subject: J. Choińska-Mika, *Korzenie polskiej samorządności*, „Samorząd Terytorialny" 2001, nr 7–8, p. 3; H. Samsonowicz, *Samorząd miast Polski średniowiecznej*, [in:] *Polskie tradycje samorządowe a heraldyka*, Lublin 1992, p. 13.

[53] Pursuant to Article 226 (1) of the Act on the Public Finances.

[54] See more broadly: Article 4 of the Act on the Public Finances.

[55] In accordance with Article 221 of the Act on the Public Finances.

[56] Pursuant to Article 221a (1) of the Act on the Public Finances.

[57] On this subject, cf. M. Augustyniak, *Partycypacja społeczna w samorządzie terytorialnym w Polsce i we Francji. Studium administracyjnoprawne na tle porównawczym*, Warszawa 2017, pp. 374–395.

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Data: 06/11/2026 07:05:21

understood as a democratic process of discussion and decision making, in which each resident of the municipality decides how to spend part of the municipality or public budget, should be treated as a reflection of the informational cooperation of residents with the authorities[58].

In 2018, the regulations on a civic budget were added to the statutes on municipal, district and provincial local governments[59] that are applied for the years 2018–2023[60]. Pursuant to the statutory provisions, the civic budget was recognized as a special form of public consultations. Residents decide annually about a part of a municipality's budget expenses in a direct vote. The tasks selected under the civic budget are included in the budget resolution of the municipality. In the course of work on the draft budget resolution, the municipal council may not remove or change significantly the tasks selected under the civic budget. Details on the draft civic budget will be determined by a resolution of the decision-making body of the competent local government unit.

CONCLUSIONS

The conducted considerations have proved the necessity of such an operation of the state and local government units to ensure the security of the conducted activity. At the same time, despite some disputes in the doctrine regarding the importance of legal security, it is obvious that it means the necessity of state and local government authorities to act in accordance with the provisions of law primarily enshrined in the Basic Law. Only then one can point to the commonly understood security of citizens.

As it has been proved, such security can be ensured by securing funds necessary for the functioning of the state within financial power entitled to it. Such power, although strongly determined by the legal regulations, is also vested in local government bodies whose purpose is to act for the benefit of local communities. And although it should be recognized after the analysis of only selected regulations that local communities can feel safe by guaranteeing financial resources, one can postulate a real separation of financial power, justified fully by decentralization of public authority.

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[58] See more broadly on this subject, i.a., M. Gerwin, M. Grabkowska, *Budżet obywatelski*, [in:] *Partycypacja. Przewodnik Krytyki Politycznej*, Warszawa 2012, p. 100.

[59] Pursuant to Article 5a (3–7), Article 3d (3–6), Article 10a (3–6) of local government acts respectively. The changes were introduced pursuant to the Act of 11 January 2018 Amending Certain Statutes in Order to Increase the Participation of Citizens in the Process of Selecting, Functioning and Controlling of Certain Public Bodies (Journal of Law of 2018, item 130).

[60] Pursuant to Article 15 of the Act of 11 January 2018 Amending Certain Statutes.

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STRESZCZENIE

Opracowanie zostało poświęcone ukazaniu zależności pomiędzy bezpieczeństwem prawnym a bezpieczeństwem finansowym na szczeblu samorządowym. W tym celu w pierwszej kolejności przeprowadzono rozważania dotyczące określenia znaczenia pojęć „bezpieczeństwo" oraz „bezpieczeństwo finansowe", zarówno z punktu widzenia państwa, jak i samorządu terytorialnego. Ponadto wykazano, że bezpieczeństwo finansowe jest nierozerwalnie związane z władztwem finansowym przysługującym państwu, a dokładnie organom działającym w imieniu państwa i na jego rzecz. Za wynikające z tego władztwa uznano władztwo finansowe jednostek samorządu terytorialnego, które przysługuje tym jednostkom, choć w ograniczonym zakresie. Jednakże uznano, że nawet ten zakres regulacji prawnych, ograniczający możliwości władczego działania finansowego organów samorządowych, ma zasadnicze znaczenie z punktu widzenia bezpieczeństwa społeczności lokalnych.

Słowa kluczowe: bezpieczeństwo prawne; bezpieczeństwo finansowe; władztwo finansowe; społeczności lokalne