

THE CONVERGENCE OF PROCESSES OF CONSTITUTIONALIZATION OF TAX LAW SYSTEMS IN POLAND AND UKRAINE

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Abstract. This study aims to compare the constitutional standards of Polish and Ukrainian tax law systems. The initial hypothesis has been adopted that there are significant similarities in the systemic solutions applied in both countries, which indicates the existence of processes of both the constitutionalization of tax law and the convergence of their legal systems. Considering that both processes are not yet completed, there is a need to establish systemic standards that are common and possible differences in their regulation. The research problem determines the choice of methods necessary to solve it. The dogmatic method will make it possible to determine the legal acts in force and their content. Whereas the comparative method enables comparison of the constitutional standards of Polish and Ukrainian tax law.

Keywords: constitutionalization, convergence, tax law, tax system

PRELIMINARY REMARKS

The Constitution is the foundation on which both the tax law system and the tax system are based. Undoubtedly, without tax law, there are no taxes. They constitute pecuniary performances with statutory characteristics, incurred in favor of a public law body.¹ The definition of a tax in the strict sense contained in the Tax Ordinance² begins with an indication of its public law character.³ This leads to the conclusion that taxes are legal institutions whose construction and functions are determined by the public interest and not by the individual interest of the entities obliged to pay them. Tax law belongs to a branch of public law, for which there is also a typical power of action of administrative bodies, which are superior to the addressees of tax responsibilities and have the power to use coercion to enforce those obligations. In every state of parliamentary democracy, tax issues are reflected in the content of the Basic Law. This is due to the essence of parliamen-

¹ For more on the doctrinal definition of tax, see comments by W. Wójtowicz [Wójtowicz 2020, 154–56].

² The Polish Constitution does not contain a definition of tax. The meaning of constitutional terms should not be limited to their statutory definitions. T. Dębowska–Romanowska noted that only some elements of the doctrinal and legal definition of tax were reflected in the Basic Law [Dębowska–Romanowska 2010, 138].

³ See Article 6 of the Act of 29 August 1997, the Tax Ordinance Act, Journal of Laws of 2020, item 1325 as amended [hereinafter: TOA].

tarianism aptly described by the rule without representation, there is no taxation. The imposition of taxes is a traditional prerogative of the legislature,⁴ and this arrangement is an expression of a kind of social contract. In a democratic state of law, taxpayers are voters whose votes influence the outcome of parliamentary elections and have an indirect impact on the functioning of the tax administration and the setting of tax policy objectives. Constitutional tax law is necessary because it interferes with persons and citizens' rights and freedoms. In this case, there is a conflict between fiscal objectives and individual interests. This should be resolved by establishing in the Basic Law the acceptable scope, form and content of interference in the sphere relevant for each individual and the whole society. The choice of legal solutions in the legislative process is not arbitrary but determined by constitutional axiology and system standards [Gorgol 2015, 50]. The provisions of the Basic Law protect the rights and freedoms of persons and citizens,⁵ and this is manifested, *inter alia*, in the determination of the material and formal prerequisites for admissible interference with these values.⁶ It is also important to assume that interference by public authorities in subjective rights and freedoms is an acceptable exception to the principle of public authorities refraining from such activities [Idem 2020b, 168–69]. This leads to the conclusion that the choice of specific tax instruments and their formalization should take into account both public and individual interests [Idem 2019, 139]. There is a need to look for solutions, which would implement the protection of both interests as much as possible. This also raises the question of research, what should be the relationship between an essential individual interest and the public interest in a field regulated by law? In theory, three constitutional solutions are possible: the primacy of the public interest, the supremacy of the protection of taxpayers' rights and freedoms, and the equivalence of both interests. This article will attempt to determine, based on an analysis of the constitutional standards of Poland and Ukraine, which of the theoretical models are reflected in the content of the basic laws of both countries.

The regulation of tax issues in constitutional provisions has positive consequences for the security of both public finances and the state and local government. Correctly, selected instruments and legal procedures for their application allow the body of public law to take the actions necessary to eliminate the events causing the violation of its fiscal interests or the negative consequences of their occurrence. The constitutionalization of the tax law causes its stabilization and predi-

⁴ Compare Article 120 in connection with Article 84, and Article 217 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended) [hereinafter: the Polish Constitution], and Article 85, and Article 91 of the Constitution of Ukraine adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996 (The Official Bulletin of the Verkhovna Rada of Ukraine No. 30, item 141 as amended) [hereinafter: the Ukrainian Constitution].

⁵ Compare Article 30 of the Polish Constitution, and Article 21, and Article 22, and Article 64, and Article 157 of the Ukrainian Constitution.

⁶ Compare Article 31(3) of the Polish Constitution, and Article 22, and Article 64 of the Ukrainian Constitution.

ctability of the activities of tax authorities. The amendment of the Basic Law is more difficult than the revision or derogation of other national laws, as it requires a qualified majority of votes.⁷ The stability of the law is a systemic value, but it can be inconvenient when fast action by public authorities is needed. For this reason alone, constitutional tax law should be neither too detailed nor a complete, comprehensive regulation. The predictability of interference in the freedoms and rights of the taxpayer forces the formulation of minimum standards of the Basic Law and is one of the vectors of the constitutionalization of tax issues.

Countries have different systems of tax law.⁸ However, a convergence process can be observed, which makes the content of constitutional tax law more similar. In this paper, an attempt was made to compare the constitutionalization of the tax law systems of Poland and Ukraine. The choice of both countries is not accidental. They differ in the degree to which they meet their expectations of membership in the European Union, as Poland is the Member State and Ukraine is in the pre-accession stage of integration. It is worth noting that Ukrainian doctrine [Olinyk 2014, 101–102] aptly emphasizes that Ukraine has an active policy integration into international and European structures, and in this connection, one of the basic moments of Euro-integration policy is an approximation of legislation of the national legislation of Ukraine to the legislation of the European Union. Adaptation is the main way of approaching domestic legal norms to European standards. Poland and Ukraine also vary in the conditions of the political transformation process, the degree of Europeanization of tax law, the structure of society, the state of the national economy, and relations with Russia.⁹ However, they have common historical experiences and their legal systems show similarities. It should be stressed that despite these differences the fundamental laws of Poland and Ukraine were created at a similar time.¹⁰ The thesis of mutual inspiration by the systemic standards and the process of their cross-border penetration into national legal systems is already supported by the fact that the principles of the primacy of the Constitution and the direct applicability of the Constitution apply not only the same content in the basic laws of both countries, but are also placed in the same drafting unit, both in an article having the same number and in the section regulating the systemic general principles, starting the normative content of each of them.¹¹

⁷ Compare Article 235(1) of the Polish Constitution, and Article 64, and Article 155 of the Ukrainian Constitution.

⁸ The supporters of the positivist approach for the understanding of the tax law, as a result of the study of the tax-legal doctrine of modern Ukraine, consider that all post-socialist states have the same “post-Soviet model of the tax law” [Patsurkiv’s’kyy and Savkina 2017, 192]. This thesis ignores the obvious fact that each state has its own legal system and legal culture [Khudyk 2018, 13].

⁹ See for more Berenson 2018, 5–6 and 56–58.

¹⁰ The Polish Constitution was adopted on 2 April 1997. In turn, the Ukrainian Constitution was adopted earlier on 28 June 1996.

¹¹ Compare Article 8 of the Polish Constitution, and Article 8 of the Ukrainian Constitution.

1. CONSTITUTIONALIZATION OF TAX LAW SYSTEMS

The very name of the constitutionalization aptly indicates its connection with the constitutional law. On the one hand, it can be seen as a legislative procedure aimed at establishing constitutional laws. In the second perspective, its essence can be identified with the very result of the law-making process. From the point of view of the assumptions and research concept adopted in this article, constitutionalization will be considered in this final aspect.

As already mentioned, tax issues are a typical content of constitutional provisions in a democratic state ruled by law. The subject matter and scope of the constitutionalization of this sphere of social relations need to be clarified. For there is a doubt whether the basic law should regulate the tax system or the tax law system? The tax system is the total of taxes applicable in a given country and tax rules. This leads to the conclusion that its existence is not the same as the very fact of applying a tax. The concept of a single tax does not meet the systemic requirement of multiple taxes. What is more, the collection of taxes alone is also insufficient for the tax system to exist. Tax rules are its second indispensable element, which is necessary not only for the existence of this system but also to give it a specific structure and content. They may reflect current legislation or describe the ideal tax system.¹² Convergence is a process that brings together real national tax systems that, to varying degrees, can be in line with the doctrine's demand for ideal system features.

It should be emphasized that it is neither necessary nor possible to regulate the entire tax system in the Basic Law. The constitutionalization of the tax law of Poland and Ukraine confirms this standard, which may also be considered a sign of their systemic convergence. Tax issues are a normative matter of considerable quantitative and qualitative complexity. These issues have material, formal, and organizational aspects. The Constitution should regulate only fundamental issues for the functioning of the tax system and the application of tax law. Concerning the tax system, it should be emphasized that the Basic Law should primarily contain tax rules, not individual taxes. It is not possible to regulate all taxes by constitutional provision, because such a complex matter would not fit into a single legal act. Predictability and certainty of taxation force detail and precision of tax lawmaking. However, constitutional standards are only basic and general arrangements.¹³ Tax statutes play a fundamental role in the construction of the technical elements of individual taxes, but they also require the regulation of implementation issues in regulations and local legal enactments. Foreign factors also

¹² W. Wójtowicz identifies system rules with tax rules and makes their subjective division [Wójtowicz 2020, 172].

¹³ A. Khudyk even emphasized that the leading provisions present the highest degree of generalization and significance of the legal requirements for the regulation of public finances and determine the main directions and tendencies of the legal regulation of the financial system, lawmaking and enforcement [Khudyk 2015, 228].

make it necessary to apply supra-statutory acts, which are ratified international agreements¹⁴ and directly applicable in Poland the EU laws.¹⁵ As already mentioned, the full constitutionalization of tax law would be detrimental to the praxeology of its application. The highest level of constitutional standards in the system of national law favors their stability but makes it difficult to respond to the dynamic social, economic, and political changes. The tax law system, and not the entire tax system, should be the subject of constitutionalization because the provisions of the Basic Law go beyond that. They also apply to the establishment and application of this law.

The constitutionalization of substantive tax law can be seen as a process with different content and scope. This results from the different wording of the legal language used to construct the provisions of the Basic Law. Tax issues can be described in a more or less complex way, including more general terms than tax. In strict terms, only tax issues are subject to constitutionalization. Then, in the text of the Basic Law, the vocabulary typical of substantive tax law appears, that is, the noun “tax” and the adjective “tax.” In a broad sense, however, constitutionalization requires the use of wording whose scope of meaning includes, apart from tax issues, also the matter of other public duties. The Polish Constitution uses such terms as “tax,” “public imposts” and “responsibilities and public duties.”¹⁶ This means that the normative description of tax issues includes terms of varying degrees of complexity. Another narrow formula for the constitutionalization of the substantive tax law was introduced into the Ukrainian Basic Law. The lack of Polish equivalents of public imposts, responsibilities, and public duties implies the need to use terms typical for taxes. It is worth noting that the Constitution of Ukraine juxtaposes taxes with levies, which should be paid following the procedure and to the extent established by law.¹⁷ The notion of the levy is not clarified by indicating its public essence. It cannot be considered a broader term than or identical to a tax, since it is juxtaposed with it by the conjunction “and.” The two parts of the constitutional phrase have separate designations. Ukrainian doctrine stresses that the term „levy” has a different legal nature and number of meanings: first, forced transfer or confiscation of unpaid sums of levies within the prescribed period; secondly, a certain amount of money that has to be paid for damages; thirdly, penalties for the illegal activities [Vdovichen 2007, 873].

The choice of the method and level of detail in the regulation of tax issues in the Basic Law should be rational. The narrow or broad approach to the constitutionalization of tax law systems requires, first of all, to determine whether taxes

¹⁴ Compare Article 87(1), and Article 91 of the Polish Constitution, and Article 9 of the Ukrainian Constitution.

¹⁵ See Article 91(3) of the Polish Constitution.

¹⁶ Compare Article 84, and Article 217 of the Polish Constitution.

¹⁷ See Article 67 of the Ukrainian Constitution. A. Khudyk noted that this constitutional norm is a peculiar benchmark for all tax legislation, it shows the social and legal essence of the tax system, shows the most important legal features of taxes and fees, makes it possible to distinguish tax payments from other legal phenomena [Khudyk 2018, 16].

have such advanced individual features that they differ significantly from other public imposts. In Polish conditions, it is reasonable to settle taxes together with these performances.¹⁸ A comparison of the tax and charge already confirms that there is only one significant difference between the two public imposts. The taxes are free of charge and the fees are payable. The Polish Tax Ordinance defines the tax in both strict and broad terms.¹⁹ Tax in the broad sense also includes tax advance payments, tax instalments, fees, and non-tax budgetary dues. This leads to the conclusion that for the application of general tax law there is a need to introduce a more general notion concerning tax. In constitutional terms, this is precisely public imposts. The ambiguity of the vocabulary “ax” used in Polish tax law and the extension of its scope of meaning to charges and other public impost testifies to the low degree of occurrence of the tax’s characteristics in the strict sense and the domination of the characteristics typical for each levy. The validity of the Polish variant of broad constitutionalization is also confirmed by the existence of similar structural elements of taxes and fees and their typical basic fiscal function. In turn, the inclusion of public imposts in the scope of the general tax law makes the Polish Tax Ordinance an act of tribute law [Gorgol 2013, 3–15]. Since the tax is defined in this law in both strict and general terms and is the subject of a liability relationship, also the concept of tax obligation in the broadest sense is a tributary obligation.

The Ukrainian Tax Code contains a definition of tax and fees. The tax is a compulsory, unconditional payment to the appropriate budget charged from taxable persons under this Code.²⁰ However, the fee is also associated with the contribution. According to the code definition, it constitutes an obligatory payment to the relevant budget charged from the payers of dues on the condition they obtain a special benefit, including those in the form of an official act (Article 6(2) TCU). It should be stressed that there is no statutory definition of a fee in Polish law, which makes it difficult to apply the Tax Ordinance not only to public imposts. This is also the reason why the designer of the notion of “non-tax budgetary dues” is questionable. Its definition is negative because this wording means dues not being taxes or fees, which constitute income of the State budget or the budget of a territorial self-government unit, resulting from relationships under public law (Article 3(8) TOA). The Ukrainian tax law does not contain a legislative error in Polish law, manifesting itself in an unreasonable failure to define the fee. However, it is doubtful that the fee is identical to other public imposts, which is a social and health insurance contribution. In the Code’s definition of tax and fee, there is no direct reference to the pecuniary performance as a necessary feature of public imposts, but to the act of paying it. This leads to the conclusion that the

¹⁸ See for more Gorgol 2020a, 51.

¹⁹ Compare Article 6 and Article 3(3) TOA.

²⁰ See Article 6(1) of Tax Code of Ukraine adopted by Verkhovna Rada of Ukraine on 2 December, 2010 (The Official Bulletin of the Verkhovna Rada of Ukraine No. 30, item 141 as amended) [hereinafter: TCU].

tax in this approach is regulated in a less specific way than in Polish law. This may cause a blurring of its scope of meaning and hinder the application of tax regulations. The undoubted advantage of Ukrainian law is the definition of the tax system of Ukraine (Article 6(3) TCU). It is the aggregate of national and local taxes and fees, which are collected in a manner specified in the Tax Code of Ukraine. There is no such definition in Polish law, although its formulation would undoubtedly have a significant cognitive value and a system of public levies in order. In the code definition of the tax system, however, there is an error of too narrow scope of regulation of this institution. As already mentioned, the collection of taxes alone is not sufficient to construct a system [Orliuk 2003, 239; Voronova 2012, 364], as the second necessary element of the system, tax rules, has been omitted. As in Polish law (Article 5 TOA), the Tax Code of Ukraine also contains a definition of tax liability as an institution of general tax law (Article 14(1.156) TCU). This wording shall be used as the sum of money that a taxable person, including the tax agent, must pay to the relevant budget as tax or duty on the grounds under the procedure and within the time frame prescribed by the tax legislation, including the sum of money specified by the taxable person in the tax receipt and not repaid within the time frames prescribed by the law. This leads to the conclusion that this institution is covered in a broad sense. Other public levies than taxes may also be the subject of the liability relationship. Concluding this part of the considerations on the constitutionalization of the tax law of Ukraine, it should be emphasized that the omission of the tax in a broad sense in its content justifies the normative description of this process without public imposts and the more general formulation of “responsibilities and public duties.”

The constitutionalization of material and procedural tax obligations should be considered in the widest possible context, i.e., within the framework of regulating responsibilities and public duties. This is supported by the fiscal interests of the state and local government units and the requirements of decent legislation. From the point of view of the need to create an efficient system for meeting the financial needs of a public law body, the universality of paying public levies, which manifests itself in determining the widest possible subjective range of application, is of crucial importance. As already mentioned, the high degree of generality of the constitutional provisions requires that this obligation be shaped uniformly for public duties and thus without taking into account their specific characteristics. It would not be appropriate to multiply the number of regulations for the obligation to pay public impost by referring to each category of pecuniary performance separately since the subsequent regulations would differ very slightly. The content of the obligation would be the same, and its normative description would contain the object of the differential only in the form of a change in the nomenclature of the public levy.

The constitutionalization of the entitlements of tax entities requires the resolution of the dilemma to what extent the formula of human and civil rights and freedoms is capacious to tax law solutions? Can all entities be covered by this fo-

rmula? It is worth noting that the Polish Constitution contains the chapter named: “Freedoms, Rights and Obligations of Persons and Citizens.” It is placed after the first chapter titled “The Republic.” In turn, the first part of the Ukrainian Constitution is the “General Principles,” followed by “Human and Citizen’s Rights, Freedoms and Duties.” This shows the same, uniform, formal aspect of the constitutionalization of rights, freedoms, and obligations. These issues are important for the functioning of a democratic state ruled by law that respects, protects, and strengthens the freedoms and rights rightly obtained. The constitutional formula has clearly emphasized the subjective aspect. Freedoms, rights, and duties apply only to persons and citizens. Therefore, there are doubts whether these solutions apply to legal persons and organizational units having no legal personality? The findings of the linguistic and grammatical interpretation justify a positive answer to this question, and the results of the functional system interpretation contradict them. It is, therefore, necessary to postulate the elimination of these differences of interpretation in the explicit regulation in the Basic Law of freedom, rights, and duties of each subject regardless of his civil status and citizenship.

Constitutional tax law cannot ignore the issue of regulating taxpayers’ rights,²¹ but this can happen in two ways. First, subjective tax rights are treated as manifestations of a broader category of human and civil rights and freedoms. They are distinguished by the fact that they are related both subjectively to tax entities and subjectively to tax regulations and the matters contained therein. However, they are not so important distinctions that their regulation takes the form of introducing a separate category of economic tax rights to the traditional catalog of human and citizen’s rights and freedoms. The second solution emphasizes the need to create new, specific constitutional standards for the taxpayer’s rights, especially the right to predictable taxation [Gorgol 2017, 219–30] and the right to good tax administration [Idem 2018, 389–401]. In this respect, the system of rights and freedoms has too narrow scope of meaning and is inadequately structured with dynamic changes in tax regulations and the existence of unusual categories of recipients of tax obligations. Neither the Polish nor the Ukrainian Basic Law has any provisions whose *ratio legis* would only standardize the rights of tax subjects. From this fact, representatives of Ukrainian doctrine even conclude that the Constitution of Ukraine does not establish the rights of the individual in the tax legal relations [Khudyk 2018, 17]. This view is not valid as the taxpayer’s rights are determined by the interpretation of its provisions. For the same reason, there is also a controversial thesis that not including any of the rights of the individual in the tax relations directly into the Constitution of Ukraine undoubtedly negatively affected the extent of their constitutional protection in comparison with all other human rights directly recorded in it [ibid., 18]. In turn, the representatives of Polish doctrine emphasize that there is a need to introduce into the Basic Law the provisions regulating directly the subjective tax rights. However, even in the

²¹ This matter is one of the key issues of the constitution and is reflected in its construction.

current state of law, they are anchored in the provisions located outside of Chapter II of the Polish Constitution.

The issue of tax laws should not be reduced and should only apply to tax subjects. The constitutional tax law should also define the rights of a self-governing tax creditor. Their establishment in the Basic Law is connected with the division of public funds between the state and local government units, the standards of self-government, and financial independence of these units. For this reason, both the Polish and Ukrainian constitution guarantee the entitlements defined as a tax authority exercised in the field of local taxes and fees.²² This common element of the constitutionalization of tax law systems also proves their Europeanization. Both Poland and Ukraine have implemented the tax standards recommended in the European Charter of Local Self-Government.²³

2. MANIFESTATIONS OF CONVERGENCE OF CONSTITUTIONAL TAX LAW OF POLAND AND UKRAINE

The constitutional standard common to Poland and Ukraine requires that the obligation to pay tax shall be established in a statute.²⁴ As already mentioned, the addressee of this duty is everyone. The constitutional feature of the subjective universality of tax payments should not be understood as an injunction to set only general taxes or a prohibition to differentiate the subjective scope of particular taxes. This is due to the reference to the statute, which should define this aspect of taxation. The Constitution of Ukraine indicates the need for a statutory determination of both the procedure and the extent of the tax. The Polish Constitution, on the other hand, requires the statute to establish a tax. *Prima facie*, both regulations have different content. The Ukrainian solution seems to be more controversial, as its literal understanding would mean that every tax law should include the provision specifying a precise amount of tax to be paid. This would require only a lump-sum tax, a simplified form of taxation. Then the amount of tax would not be calculated but would result directly from the tax law. Undoubtedly, this type of abandonment of other non-flat-rate forms of taxation would be detrimental to the fiscal needs of the state and local government. It would also not be-

²² Compare Article 168 of the Polish Constitution, and Article 143 of the Ukrainian Constitution.

²³ The European Charter of Local Self-Government was drawn up within the Council of Europe by a committee of governmental experts under the authority of the Steering Committee for Regional and Municipal Matters on the basis of a draft proposed by the Standing Conference of Local and Regional Authorities of Europe (CLRAE), predecessor of the Congress of Local and Regional Authorities. It was opened for signature as a convention by the Council of Europe member states on 15 October 1985, and entered into force on 1 September 1988. As of 1 January 2010, the Charter had been ratified by 44 of the 47 Council of Europe Member States, including Poland and Ukraine. See Council of Europe, *European Charter of Local Self-Government and explanatory report*, https://www.ccre.org/img/uploads/piecesjointe/filename/charter_localselfgovernment_en.pdf [accessed: 08.01.2021].

²⁴ Compare Article 84, and Article 217 of The Polish Constitution, and Article 67 of the Ukrainian Constitution.

nefit the taxpayer, who would be deprived of the right to choose the most optimal form of taxation for him. A tax act is a source of tax liability, which is a general and abstract duty to pay tax (Article 4 TOA). The imposition of this liability should not be confused with the creation of a tax obligation. Such an obligation arises because of the transformation of the tax liability, which is the result of the delivery of a decision determining its amount or occurs under the statutory tax law now of the appearance of the event described in it. This leads to the individualization of the tax entity and the concretization of its amount, time limits, and place of payment [Gorgol 2020c, 182]. Usually,²⁵ the amount of tax is calculated using the technique of self-calculation by the taxpayer, calculation by the tax remitter or tax assessment. This is not just an accounting process, but a wider range of activities aimed at applying the tax law. It requires the establishment of the structural elements of tax and tax policy measures that apply to facts. For this reason, it is inappropriate to link the statutory determinability feature only to the result of the tax calculation and to omit those factors that affect the amount of the tax obligation. The Polish constitutional standard combines statutory determinations of tax, imposition of tax liability, subjective and subjective scope of taxation, tax rate, and rules of granting reliefs, remissions, and categories of taxpayers exempt from taxation (Article 217 of the Polish Constitution). This solution makes taxation, i.e., not only tax, more predictable, which increases the degree of taxpayer protection.²⁶

The Ukrainian Constitution includes a ban on holding a referendum on taxes. There is no equivalent to this in the Polish Basic Law (Article 84 of the Ukrainian Constitution). This lack of convergence is incomprehensible. The Polish solution is reasonable. A referendum is a means of direct democracy, implementing the principle of popular sovereignty²⁷. The Polish solution is reasonable. A referendum is a means of direct democracy, implementing the principle that the supreme power in the Republic is vested in the Nation. There is no justification for an absolute ban on conducting a referendum on any tax issue. It does not have to be of a law-making or binding nature for public authority. Citizens should have the opportunity to express their opinions on tax matters, initiate, or postulate changes in tax law aimed not only at establishing new legislation but also at repealing a legal act or some of its provisions. However, the modified ban on holding a referendum on taxes can be seen as a necessary instrument for the implementation of the constitutional standard of statutory determinability of taxation. Since the issue of the tax statute is reserved for the parliament, it cannot be replaced by a binding referendum. It is also worth noting that the constitutional principle of the legal order in Ukraine is the prohibition of forcing anyone to do what is not provided for in the legislation (Article 19 of the Ukrainian Constitution). This leads to the conclusion that the imposition of the obligation to pay the tax can only

²⁵ The exception is the typical lump-sum tax.

²⁶ This issue is particularly highlighted by T. Nowak. See for more Nowak 2020, 57–156.

²⁷ Compare Article 4 of the Polish Constitution and Article 69 of the Ukrainian Constitution.

be derived from the statutory tax law. It should be considered as a justified Ukrainian prohibition to hold a law-making referendum on the introduction or abolition of the tax,²⁸ the determination of the procedure for its payment, and the amount. However, there is no systemic justification for extending its scope to every referendum and all tax matters.²⁹

As already mentioned, a manifestation of the convergence of the Polish and Ukrainian tax law systems is the equipping of local self-government units with the tax authority to execute local taxes, and in Poland also local fees.³⁰ In the Polish Constitution, it is referred to as a right whose scope is defined by statute. The phrase “the right to set the level of local taxes and charges” refers to the content of this right. In turn, the Ukrainian Basic Law does not use this wording. Nevertheless, it follows from the essence of this constitutional standard that it grants and guarantees subjective public law. It is governed by the formula of a mandatory task, which is to determine taxes and collect them under the statute. The Ukrainian solution is more legitimate than the Polish one. It is a mistake to reduce the essence of the tax authority to only determine the amount of tax. Local self-government units have an influence on tax law-making and its application, including the collection of their income. Local legal enactments regulate, within the limits of statutory authority, certain structural elements of local taxes and tax policy measures. Such action, however, goes beyond the findings of the grammatical-linguistic interpretation of the tax authority regulation.

CONCLUSIONS

The basic laws of Poland and Ukraine contain standards of tax law with a significant degree of similarity in their content and regulation. These findings confirm the thesis that the legal systems of both countries were subject to both constitutionalization and convergence processes. Although the social, economic, and political conditions of these processes are not the same, they have not led to significant differences in their results in Poland and Ukraine. This leads to the conclusion that the decisive factor determining the course of constitutionalization and convergence was, and still is, the common goal of introducing and strengthening the solutions typical of a democratic state ruled by law. This paradigm inspired the search for systemic solutions that would constitute the foundation of the legal system, guarantee the financial security of the state, protect individual freedoms and rights, reflect the requirements of decent legislation, and facilitate the application of the law. Tax issues cannot be omitted from the constitution of a de-

²⁸ Without a tax liability, there is no tax, and statutory tax law only implies that liability.

²⁹ It should be noted that in the Ukrainian literature the prohibition of referendums on tax issues is regarded as one way of real protection of the individual's right to tax in societies where there is low as the general legal culture, and especially the tax and legal culture [Khudyk 2018, 19]. This argument is not persuasive because the prohibition itself is a negative interference with human subjective rights. Nor is there any evidence to support its effectiveness.

³⁰ Compare Article 168 of the Polish Constitution and Article 134 of the Ukrainian Constitution.

mocratic state ruled by law, but it is neither possible nor reasonable for it to regulate completely the tax system and the tax law system. Constitutional tax law introduces standards that are general and abstract. The nature of these provisions makes them determine the most fundamental systemic issues. Within the framework of the tax system, the fundamental law should regulate the matters of tax rules, not individual taxes or their entire aggregate. In turn, the tax law system should be shaped by giving the constitution the character of the supreme law that is directly applicable; indicating in it the sources of laws and their legal force; placing the obligation to pay tax; formulating the conditions for imposing other tax obligations; guaranteeing the protection of tax rights; establishing the minimum content of the tax law; regulating tax legislation, and even formulating the most important directives for applying the law.

Both the Polish and Ukrainian Basic Law implement the classical concept of rights and freedoms, which is subjectively related to persons and citizens. This solution does not take into account the broader scope of the addressees of tax payment obligations, which also includes legal persons and organizational units having no legal personality. Only among the constitutional regulations of obligations is there a standard that relates directly to tax issues. The Polish Constitution introduced an injunction for the statutory determination of responsibilities and public duties. The Ukrainian solution applies to taxes and levies. There is no provision in the constitutional law of both countries that establishes directly and exclusively the right for the taxpayer. Undoubtedly, this example of the convergence of the Polish and Ukrainian tax law systems and the current state of their constitutionalization confirm the thesis that both processes should be continued. Although representatives of Polish science formulate subjective tax laws based on the interpretation of the provisions of the Basic Law, it should be recognized that there is a need to specify in its content at least the right to predictable taxation and the right to good tax administration. The concept of rights and freedoms of persons and citizens should also be changed by adapting it to the specifics of a wide range of tax law subjects. In the Polish Basic Law, the interference of public authorities in rights and freedoms is an exception, not a rule. This means the existence of a constitutional standard of the primacy of individual interest over the public one. However, public authorities should strive to consider these interests as far as possible. There is no such approach in the Ukrainian Constitution, and the doctrine even formulates a thesis about the equivalence of public and private interests.

Without a statute, there is no tax. This common Polish and Ukrainian standard also reflects the achievements of European parliamentarianism. The stipulation of the statutory right to tax is necessary because it interferes with the sphere of subjective rights and freedoms. However, from the point of view of constitutional tax law, the application of this standard must make taxation more predictable for the tax subject. This issue should not be reduced to the determination of the amount of tax but should be considered broadly by stipulating that the tax statute sho-

uld regulate those tax construction elements and tax policy instruments that shape the obligation to pay tax.

The Basic Law of Ukraine formulates a ban on conducting a referendum on tax issues. It has no equivalent in Polish law. The Ukrainian solution is not justified, because the elimination of this instrument of direct democracy violates the principle that the supreme power in the Republic is vested in the Nation. Because of the principle of statutory determinability of taxation, it should be limited only to those referenda on tax matters, which are of a lawful nature and are incompatible with it. The present standard is too broad as it extends to all tax referenda, and this is for issues that do not only need to be regulated by statute.

The Polish Constitution correctly defines the tax authority of local self-government units as their right, and its scope extends to local taxes and fees. In Ukrainian law, however, its description takes the form of performing a public task. However, it is rightly connected not only with determining the local tax but also with its collection. The disadvantage of the Polish solution is also the connection of the tax authority only with the issue of determining the amount of public duty, and not with the formation of its constructional elements, determining the instruments of tax policy and the use of facultative reliefs in the repayment of tax obligation.

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