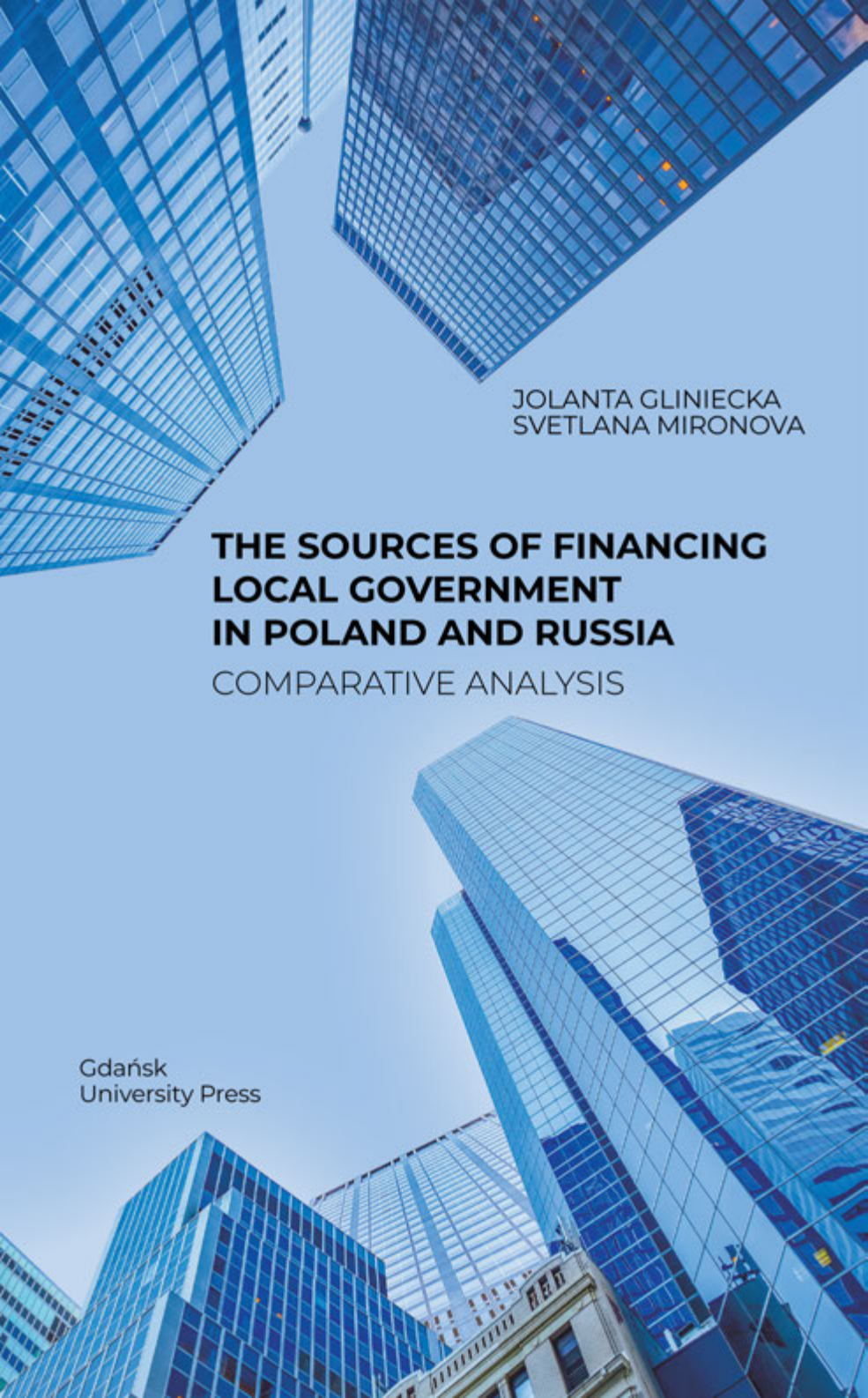

JOLANTA GLINIECKA
SVETLANA MIRONOVA

THE SOURCES OF FINANCING LOCAL GOVERNMENT IN POLAND AND RUSSIA

COMPARATIVE ANALYSIS

Gdańsk
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Introduction

European Charter of Local Self-Government which was adopted in 1985 as recognition of local democracy by Council of Europe member states sets out the concept of local self-government: "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population."[1] This provision is implemented through the establishment of financial foundations of local self-government, including provisions on the right of local governments "to adequate financial resources of their own, of which they may dispose freely within the framework of their powers" and "Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate." The principle of transferring financial resources to municipalities to fulfill their authority, enshrined in the European Charter, is also reflected in the legislation of European states, including Poland and Russia, on the basis of which incomes of municipalities are formed.

The sixty-year period of operation of Poland's local government units as independent public law bodies, separate from the state, was marked by significant changes in the structure of sources of their financing. The implementation of public tasks by state agencies and local government units requires a proper distribution of public revenues. The latter, together with local government's assets and income derived from activities of municipal companies, provide the material basis for implementation of

[1] European Charter of Local Self-Government, https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a088 (accessed: 8.11.2018).

public functions. Without, however, a proper division of public revenues, the local government units, when undertaking public tasks on their own behalf and responsibility, may actually prove incapable of carrying them out. It is for that very reason that a system of revenue sources has to be built, corresponding with the public assignments which the local government is supposed to fulfil. The sources of the revenue forming the system in question should be productive and diversified enough to enable funding the tasks regardless of the current economic condition of the state. The financing of the responsibilities should be ensured by revenues put to the local government's exclusive use. Their structure should thus leave the local government units freedom to finance the public tasks, as needed by the local community. Subsidies (grants) from the central budget are supplemental to the local government's own revenue. They form a financial mechanism whereby the financial resources that are lacked by local government units can be provided to enable the units fully fund their public assignments.

In Russia, as well as in Poland, there are significant changes in the structure of revenues of local budgets in different historical periods. The independence of local self-government, enshrined in the Constitution of the Russian Federation, within its powers, as well as the independence of local governments from state authorities, including in matters of forming the local budget, establishing local taxes and fees, using and disposing of municipal property, predetermine the analysis of local budget revenues, identifying hidden reserves for their formation, as well as identifying ways to further improve in this direction.

Municipalities in Russia are full-fledged subjects of financial legal relations, having their own powers in the financial sphere. However, still one of the unresolved issues remains the question of the financial independence of municipalities. Independence of municipalities is limited primarily in the formation of budget revenues. The lack of sufficient own financial resources, a high proportion of interbudgetary transfers from regional budgets in the structure of local budget revenues, makes it impossible to exer-

cise their powers to the proper extent, which casts doubt on the very fact that the local government is independent as a whole.

In 2018, Russia celebrates several jubilees at once – 25 years from the date of adoption of the Constitution of the Russian Federation, 20 years from the date of adoption of the Budget Code of the Russian Federation and part one of the Tax Code of the Russian Federation, 15 years from the date of adoption of the Federal Law "On the general principles of local government in the Russian Federation." The long-term effect of the above-mentioned laws predetermines the need for research from the point of view of the practical implementation of the principle of financial independence of municipalities in terms of generating local budget revenues, which are fixed by law. How budgetary federalism is built in Russia and how it affects the formation of local budget revenues. It is necessary to conduct an analysis of legislation and law enforcement practice to answer these questions.

The main objective of this study is to describe the sources of funding of the local government and to discuss legal issues related thereto, such as the correctness of the adopted legislative solutions and due application of legal regulations providing for specific types of revenue of the local government units in Poland and Russia. Meeting the objectives should allow for both general and theme – specific assessment of legal rules concerning individual sources of financing of local government units and provide grounds for making necessary and instructive comparisons. The analysis of legal architecture of the system of local government revenues is preceded by a discussion of legal environment of financial management of local government units and theoretical considerations on various models of distribution of sources of revenue between the state and local government. Issues of purely economic nature, such as those of returnable revenues related to the financial market, have been left outside the scope of this study.

The publication is divided into two parts.

Part one is devoted to the sources of Poland's local government revenues and discusses, in particular, the Polish law providing for

the same in the years 1918–2018, theoretical options for distribution of revenues between the central budget and budgets of the local government, the concept of a mixed system of sources of revenues of local government, the property taxation system and the system of income derived from economic activity.

The dogmatic legal considerations are focused on providing characteristics of relevant legal acts concerning the sources of local government financing. The primordial study material has included numerous sources of law, such as (in the case of the inter-war period) the Constitution of 1921 (the "March Constitution"), the Act on Temporary Regulation of Municipal Finance or the Stamp Duty Act, and (in the post-war time) the Constitution of the Republic of Poland of 1997, the European Charter of Local Self-Government, Public Finance Act, Act on Revenues of Local Government Units, Act on Local Taxes and Fees. The legal acts that provide the basis for the receipt of income by Poland's local government units also include pieces of legislation concerning the assessment and collection of taxes and charges and the gaining of other kinds of revenues. The list of relevant legal acts in question is rather extensive.

Part two of the study discusses sources of local government revenues in Russia. The Russian legislation for the period of 1918–2018 is investigated, it is shown how the system of formation of revenues of local budgets evolved in different historical periods. Particular attention is paid to the modern period of formation of the revenue part of local budgets, which is due to the current budget and tax legislation of Russia. The analysis of theoretical studies on the formation of public revenues in Russia, the ratio of state and municipal revenues, the implementation of fiscal federalism and the delimitation of revenue sources between the budgets of different levels of government, the peculiarities of the formation of revenues of local budgets related to the features of local government are carried out.

The book is devoted, however, not only to dogmatic legal matters as it is also, to a certain extent, a theoretical study. None-

theless, when making general assertions about the examined legal phenomena, it makes use of relevant achievements of jurisprudence.

No monographic study on matters of revenue sources of local government units in Poland and Russia, discussed taking a systemic and comparative approach, has been developed so far. The presented publication is hoped to close the gap in that regard, if only to a certain extent.

Part I

1. Polish law of local government revenues in the years 1918–2018

1.1. Interwar period

One of major tasks of the Polish state in the initial years of the inter-war period was to create a unified system of public revenues. The three legal systems to which the country was subject at that time, resulting from the fact that before 1918 the territory of Poland was governed by the alien powers that had partitioned it at the end of the eighteenth century, required possibly quick unification. Meeting the objective was, however, hard to achieve, and not only due to the differences in the legal schemes existing in the territories of former partitions, but also owing to the World War One hostilities, as a result of which the areas of so-called Galicia and Cieszyn Silesia, as well as Spisz and Orawa, were additionally separated politically. Building a uniform legal system was just as needed as it was hard, considering the financial difficulties experienced by the Polish state and further aggravated due to the lack of a single system of public revenues.[2]

The legal basis for the sources of local government financing was established as early as in the Constitution of 1921. The act in question proclaimed a principle of strict delimitation of the revenues of the state and local government (Art. 69). The said meant, first of all, that the taxes were to be divided into two groups – those paid to the State Treasury and those accruing to the budgets of the local government.[3] Actually, the rule was not adhered

[2] Cf. E. Strasburger, *Ustrój skarbowy Rzeczypospolitej Polskiej*, Warszawa 1922, p. 300.

[3] Cf. H. Izdebski, *Samorząd terytorialny w II Rzeczypospolitej* [in:] *Samorząd terytorialny i rozwój lokalny*, eds. A. Piekara, Z. Niewiadomski, Warszawa 1992, p. 91 *et seq*.

to, as the systems of state and local government taxes, owing to further detailed legal solutions adopted, remained closely linked to each other.[4]

The constitutional principle establishing a division between the sources of the state and local government revenues was part of a general trend aimed at making the local government a system of bodies independent of the state, providing a sort of a guarantee for the operation of the democratic rights and freedoms. The trend towards local government independence, certainly enough, was not only reflected in their financial autonomy, but was also an overall feature of Poland's Constitution of 1921.

Two years later, the Act of 11 August, 1923, on Temporary Regulation of Municipal Finance was adopted.[5] The piece of legislation, which – despite its title – remained in force until the end of the pre-war period, was during that time amended on a cyclical basis; this eventually led to the establishment of a rather confusing system of local government revenues. Actually, hardly was it a system at all, as it lacked traits of transparency and consistency. Of the two its main its features one was a connection existing between it and the system of state revenues, while the other consisted in a plethora of highly varied forms of revenue accruing (tax shares, surcharges and independent taxes), due to which the scheme was permanently criticised in literature, to mention just the opinions by E. Taylor,[6] J. Bar[7] or L. Kurowski[8].

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4 Cf. M. Jaroszyński, *Finanse samorządowe w gospodarce planowej* [in:] *Wybrane źródła i literatura do obowiązującego prawa finansowego*, Toruń 1949, p. 565 *et seq*.; J. Harasimowicz, *Rozwój terenowego prawa finansowego w Polsce*, Warszawa 1952, p. 1 *et seq*.

5 The Act of 11 August, 1923 on Temporary Regulation of Municipal Finance (Journal of Laws No. 94, item 747).

6 Cf. E. Taylor, *Polityka skarbowa i system podatkowy RP*, Poznań 1929, p. 363.

7 Cf. J. Bar, *Osobliwe ramy organizacyjno-formalne gospodarki samorządów*, Samorząd 1936, No. 48.

8 Cf. L. Kurowski, *O możliwości upraszczania samorządowego systemu podatkowego*, Warszawa 1939.

It should be reminded at this occasion that in the period in question the local government was entitled to surcharges to the state land tax (up to 100% of the principal tax), to the state real property tax (up to 100% of the tax in rural communities and up to 57.5% in cities), to the state tax on construction sites (only in cities, up to 100% of the principal tax), to the industrial tax (up to 30% of the price of the registration card and industrial certificate), to inheritance and donation tax (10%), to the income tax, as charged on the territory of the former Prussian partition (up to 5% of income on what was termed as the funded income and up to 3% on remuneration), to stamp duties concerning transfer of real estate ownership (in the amount of 50% of the fee), and to notary fees (only in the former Russian partition and exclusively in cities), to excise patents (up to 100% and even 200% of the state charge) and a surcharge on excise duty (30% for beer and wine, 25% for electricity and 15% for other excise goods).

The local government's share in State Treasury revenues included the income tax, industrial turnover tax, special tax on remuneration paid from public funds, the tax on premises and the monopoly levy imposed on spirits.

The local government was also authorised to charge, as independent taxes, the tax on state-owned land (only in the former Russian partition), real estate tax (instead of a surcharge to the state tax on real property – only in cities), tax on luxurious accommodation, hotel tax, top-up tax (only in rural municipalities), tax on festivals, entertainment and shows, tax on signboards, advertisements and advertising announcements, dog tax, tax on protested bills of exchange, tax on hunting right, mine tax, railway cargo tax and investment tax.

The highest revenue was gained by the local government thanks to the state tax surcharges. The local authorities' own taxes were, as a source of revenue, of marginal significance. Under such circumstances hardly could the local government pursue any independent income policy, all the more that – besides its own taxes – a majority of revenues were not managed by the

local government units or their associations. As a result, the local government had no influence on the assessment and collection, much less timeliness and promptness of the transfer thereof.

Considering the inability to immediately unify legal regulations on the sources of public revenues (e.g. fees), it became necessary to adopt a number of provisional legal solutions within the framework of the legislation inherited from the partitioning powers. This became reflected in the unification of collection of those charges on legal transactions, the distinctness of which was most prominent.[9] In practice, two paths were followed: in the case of certain charges separate legislative acts were passed (regarding, for instance, stamp duties on official applications and certificate or bills of exchange), in the event of others amendments to the regulations in force were only made, consisting in the unification and increase of the rates charged. The rates were raised not only in pursuit of a better implementation of their fiscal function, but also due to the Polish *marka* (as the transitional Polish currency after regaining independence was called) losing its purchasing power. For some time it was a significant trait of public charges in this country, at least before 1924, when the inflation skyrocketed.

During the first years of Poland's regained independence, a whole range of legal acts concerning public charges were enacted. While their number was considerable, their scope of operation varied, being either national or covering just the territory of a single partition, which made the application of them a strenuous task. No wonder that the legislator was aiming at *inter alia*, unification of the legal rules. High hopes to achieve that goal were associated to the drafted code of stamp duties, eventually passed as an Act of Parliament on 1 July, 1926.[10]

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[9] Matters of municipal fees were originally provided for by the Act of 11 August, 1923 on Temporary Regulation of Municipal Finance (Journal of Laws No. 94, item 747), amended on 17 March, 1932 (Journal of Laws No. 25, item 223) along with two implementing ordinances of the Minister of Internal Affairs of 18 March, 1924 (Journal of Laws No. 31, item 317) and of 16 August 1924 (Journal of Laws No. 82, item 790).

[10] Journal of Laws No. 98, item 570.

The reform of stamp duties, carried out in 1926, should not be viewed as a measure undertaken for formal reasons only (those of unification of legal rules regarding the charges in question). Since the legislator put to regulation, under the same label of stamp duty, both the fees paid on official applications and, on the other hand, those concerning legal transactions performed under provisions of the private law, covered by the Act were essentially different pecuniary performances, some of them being public fees, other – turnover taxes.[11] Once an arrangement of the kind has been applied many times since the pre-war era, and as it may still give rise to objections, it is already at this point that the problem of drawing a line between taxes and fees in the Polish system of budget revenues should be mentioned. In that respect in Poland, after World War II in particular, to give the system a better formal shape, attempts were made to separate the two kinds of levies. It should be stated, though, that separation of charges and taxes is, in practical terms, an issue secondary to the original one – that of the instrumental nature of pecuniary performances. Using taxes referred to as fees and charges, being partly themselves and partly taxes, sometimes contributes to a better achievement of the fiscal objective of the instrument used. Therefore, it is not possible to advocate depriving charges of their tax features radically nor to draw a sharp dividing line between the levies in question.

When making a general assessment of the legislation on local government revenues in the inter-war period, two of its features are well-worth mentioning. The first is unconstitutionality, since the principle of distribution of income sources between the state and local government, as proclaimed by the basic law, was not given due attention in the legislation enacted below the constitutional level. Its role was made insignificant due to the introduction, on a broad scale, of sources of local government income linked to the state revenue sources. The other feature is multiple draining of the economically identical subject and source of

[11] Cf. A. Rozenkranz, *Ustawa o opłatach stemplowych*, Warszawa 1933, p. XIX; M. Gutkowski, *Prawo skarbowe*, Wilno 1936, p. 2.

taxation. This was certainly inevitable, given the multitude of the ways in which the levies were imposed.

1.2. The post-war period

In the post-war period, a reform of the local government income system (mostly taxes) was started very soon. As early as before the end of the war, on 13 April, 1945, a relevant decree was passed.[12] Temporary in nature, it remained in force not longer than until the end of 1945. The decree did restructure revenues of local government by eliminating the multitude of the existing taxes and in a technically clear way delimited the sources of public revenue between the state and local government. Three taxes were left to the latter, viz. the land tax, real property tax and tax on premises, to be levied and collected in accordance with the rules set up in the pre-war legislation.[13] At the same time the decree suspended the powers of local government units to add surcharges to state taxes and to enjoy having shares in the latter.

A further reform of the local government income was brought about by two Decrees of 20 March 1946 on Municipal Taxes[14] and on Municipal Finance.[15] Both of them were founded upon the same general assumptions as the decree of 1945 and may be considered an extension of the principles adopted by the Consti-

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[12] The Decree of 13 April, 1945 on the Reform of Local Government Tax System (Journal of Laws No. 13, item 73).

[13] In particular, the land tax was to be collected under the Decree of the President of the Republic of Poland of 4 November, 1936, on Amendments to the Regulations on State Agricultural Tax (Journal of Laws no. 85, item 593); the real estate tax under the Decree of the President of the Republic of Poland of 14 January, 1936 on the Real Estate Tax (Journal of Laws No. 3, item 14); the tax on premises under the Decree of the President of the Republic of Poland of 14 November, 1935 on the Tax on Premises (Journal of Laws No. 82, item 505).

[14] Journal of Laws No. 19, item 128; cf. also L. Kurowski, *Charakterystyka ogólna prawa o dochodach komunalnych* [in:] *Wybrane źródła i literatura*…, Toruń 1949, p. 570 *et seq*.

[15] Journal of Laws No. 19, item 129.

tution of 1921 (the earlier mentioned "March Constitution"). The rule of distribution of sources of income between the state and the local government was retained, with but two exclusions: the State Treasury had the right to profit from part of the proceeds of local government's land tax, and the local government – from part of the state's turnover tax receipts. Retained as local government taxes were ones established as such by the decree of 1945, yet the pre-war legal architecture of the levies was abandoned, new concepts of those having been developed.

The 1940s were the final years of existence of the local government. The Act of 20 March[16] liquidated it in Poland and established in its place the so-called people's councils as local bodies created under the communist-borne unity of power scheme.

After forty years of the absence of local government in Poland, thanks to the socio-political transformation carried out in 1989, the institution was brought back to life by the Act of 8 March, 1990.[17]

The re-establishment, after many decades, of the institution of local government in Poland, has put before the theory and practice a challenging task of creation of a quality local government financial system. An indispensable element thereof is the reasonably identified sources of income. The task is undoubtedly difficult to accomplish, due to the numerous economic, political and social factors that must come into consideration.

In the new period of development of the re-established local government in Poland two stages can be distinguished: the initial one, covering the years from 1990 to 1997 and the one that followed – from 1997 until now.

The pieces of legislation which, during stage one, shaped the budget revenues of municipalities in their various dimensions were: the Constitution, the Local Government Act, Budget Law

[16] Journal of Laws No. 14, item 130.

[17] The Act of 8 March, 1990 on Local Government (consolidated text: Journal of Laws of 1996, No. 13, item 74 with further amendments).

Act, Act on Local Taxes and Fees and the Act on the Financing of Municipalities. It was the legal rules contained therein that provided the legal basis for the financial management of local government units.

The piece of legislation establishing the fundamental rules of operation of the local government at that time was the Constitutional Act of 17 October, 1992 on Mutual Relations between the Legislative and Executive Powers of the Republic of Poland and the Local Government,[18] which referred to the local government as the primordial form of organisation of local public life. The Act stated that local government units were legal persons and vested in them the right of ownership of property and other property rights constituting their assets. The municipality was proclaimed the basic unit of local government. The main types of revenues of local government units were their own revenues, subsidies and grants, the sources of income concerning the fulfilment of public tasks having been given statutory guarantees.[19]

The fundamental rules concerning municipal financial management were established by the Act on Local Government. The latter provided for two groups of municipal revenues. Group one included sources of income of primordial importance – receipts from taxes, fees and other revenues mentioned in separate Acts of Parliament as municipal revenues, income derived from municipal assets and general subsidies from the central budget. Group two was formed by supplementary revenues. These, according to the legislator, included budgetary surplus of the past years, earmarked subsidies for performance of tasks commissioned to the units, proceeds of self-taxation raised by the inhabitants, subsidies, donations and bequests and other income.

The principles of financial management of municipalities at that time were also regulated by the Act of 5 January, 1991 – Budgetary

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[18] Journal of Laws No. 84, item 426 with further amendments.

[19] The Act of December, 1990, on Municipal Revenues, Rules for Subsidising Municipalities in the Years 1991–1993 and on Amendments to the Act on Local Government (Journal of Laws No. 89, item 518).

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„[...] the problem of giving local self-government units their own, efficient sources of income, allowing them to finance the tasks assigned to them, is „always" arouse high emotions.
[...] the monograph fills the gap on publishing market, because up to now there was no study designed as a compendium of comparative law on the sources of financing local government in Poland and Russia, using a systematic approach [...] book in many aspects is a very interesting and even innovative work."

From the review of Professor J. Glumińska-Pawlic

„The advantage of the monograph is the use of the comparative legal method of scientific research. Comparative legal studies in combination with the traditional historical, normative and sociological vision of law make it possible to look at a number of traditional problems of legal science from a special point of view, taking into account the trends in law development in the modern world."

From the review of Professor A.G. Paul

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