# COMPARATIVE STUDY ON REFUNDS STIPULATED IN THE BUDGETARY DISCIPLINE ENFORCEMENT REGULATORY FRAMEWORK IN THE VISEGRÁD COUNTRIES

Petra Kerndlová,[*] Radim Boháč,[**] Ondřej Málek,[***] Michal Tuláček[****]

***Abstract:*** *Refunds play a crucial role in enforcing budgetary discipline across regulatory frameworks, ensuring that public funds remain aligned with their intended purposes. This article aims to explore the similarities and differences of the budgetary enforcement regulatory framework with respect to refunds among Visegrád countries. The article concludes that the legal regulation of the refunds is considerably similar, however, there are several notable differences in the refund regulation amongst the Visegrád countries that are further discussed in the article. Utilizing a comparative method of research, primarily based on a questionnaire survey conducted by the authors and responded to by a team of legal scholars, this article offers valuable insights for legal scholarship and policymaking within the Visegrád countries.*

***Keywords:*** *refunds, budgetary discipline enforcement, comparative study, Visegrád countries*

## INTRODUCTION[1]

In this article, we present a comparative study focused on the refunds stipulated in the budgetary discipline regulatory frameworks, which are currently in force in the Visegrád countries, namely (in alphabetical order) Czechia, Hungary, Poland, and Slovakia. This article is part of a series of three mutually related comparative studies on various aspects of this regulation. In the other two articles, there are conducted comparative studies on supervisory procedures and penalties.

The research team previously proposed an optimal regulatory model of budgetary discipline enforcement[2] which can be used in an evaluation of the qualities of any particular budgetary discipline enforcement regulatory framework. The model was created as a country independent. Thus, it does not highlight or suppress any particular feature of an existing regulatory framework. The research team's goal is to perform a normative

[*] Mgr. Petra Kerndlová, Faculty of Law, Charles University, Prague, Czech Republic, ORCID: 0000-0001-9167-5860.
[**] Professor JUDr. Radim Boháč, Ph.D., Faculty of Law, Charles University, Prague, Czech Republic, ORCID: 0000-0003-4496-4699.
[***] Mgr. Ondřej Málek, Faculty of Law, Charles University, Prague, Czech Republic, ORCID: 0000-0001-8052-3159.
[****] JUDr. Mgr. Michal Tuláček, Ph.D., Faculty of Law, Charles University, Prague, Czech Republic, ORCID: 0000-0001-9385-6104.

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[2] BOHÁČ, R., SEJKORA, T., ŠMIRAUSOVÁ, P., TULÁČEK, M. Regulatory Model of the Budgetary Discipline Enforcement. *Studia Iuridica Lublinensia.* 2023, Vol. 32, No. 1, pp. 11-39. DOI <http://dx.doi.org/10.17951/sil.2023.32.1.11-39>.

analysis of budgetary enforcement regulatory frameworks, which are currently in force in the Visegrád countries. However, such analysis needs as its first step to fully understand these regulatory frameworks, before they can be analysed in deep.

There is no literature concerning the theoretical background of the refund, though it is one of the key corrective measures in the budgetary discipline enforcement regulatory framework. The obligation to refund arises in case of a breach of some legal obligation. It can generally be said that in the event of a breach of a legal obligation, legal liability arises. The functions of a sanction for any breach are preventive, reparative, satisfactory, or repressive.[3] In the case of a breach of budgetary discipline (or other similar instances in countries that do not recognise the concept of budgetary discipline), a new (secondary) obligation arises in relation to funds that have been mismanaged. If the aforementioned situation occurs, the obligation to refund arises. The primary function of the refund is reparative because it acts as compensation for the harm caused by the breach of a legal obligation and it ensures that public funds will not be used against their intended purposes. The reparative function prevails in the field of private law and the most notable examples include liability for damages or unjust enrichment. Although there are several publications researching the topic of the returns of public funds back to the public budget or the administrator of its chapter in the respective Visegrád countries, there has never been a comparative study of the refunds' regulations in all of the Visegrád countries. The authors of this article use as a source mainly the answers based on the questionnaire survey prepared by the authors and answered by a team of legal scholars from Hungary, Poland, and Slovakia.

Since there is no in-depth analysis of the current budgetary discipline enforcement frameworks among the Visegrád countries, there is a research gap on this topic which can be filled by a comparative analysis of various aspects of the budgetary discipline enforcement regulatory frameworks relevant to the proposed regulatory model.

All of the Visegrád countries faced the same difficulties and presented similar approaches during the transformation to a democratic regime after being under the Soviet Union's influence and shared similar experiences connected with the process of entering the European Union, which occurred in 2004. Moreover, all of these countries base their legal system on a Western rule of law concept and European "unity of values".[4] Furthermore, there is a wide cooperation among the academics and practitioners in the area of financial law and two of the abovementioned countries (Czechia and Slovakia) were federated, which brings them closer. Therefore, in this article, the research team proposes the following hypothesis: *"With respect to the refunds stipulated in the budgetary enforcement regulatory framework, there are no significant differences among the Visegrád countries"*. To test this hypothesis, we will answer the research question *"What are the similarities and differences of the existing budgetary discipline enforcement regulatory frameworks in the Visegrád Group countries with respect to refunds?"*

[3] KNAPP, V. *Teorie práva [Theory of law]. 1st edition*. Praha: C. H. Beck, 1995, p. 201.

[4] POPŁAWSKI, K. Introductory parts to the constitutions of Visegrad Group countries. Their relevance, constitutional identity and relation towards European Constitutional Identity. *Central European Papers*. 2020, Vol. 7, No. 1, pp. 45–46.

## I. METHODOLOGY

All three articles share a common methodology, which is in-depth discussed in the first of them.[5] To avoid unnecessary replication, we will here provide only a short overview of the methodology. For further details, please see the first article on supervisory procedures.

The article is based on the comparative method. First, the research team cooperated with legal scholars from all Visegrád countries whose expertise was in financial law. For the sake of clarification, the term "financial law" in the Visegrád countries is used in the sense of a body of laws that regulate all financial relationships (monetary relationships related to the creation, distribution, and usage of monetary funds), rights, powers, and obligations. This means that financial law includes not only banking law, securities law, or insurance law (as is common in most countries) but also monetary law, tax law, subsidy law, and budgetary law.[6] The scholars from Visegrád countries participated in a questionnaire survey on this topic. Afterward, the research team created a set of *tertia comparationis* $T_1, \ldots, n$ related to refunds in general based on the information captured in the survey. Each *tertium comparationis* was clearly defined and the relevant part of each regulatory framework related to the area covered by this *tertium comparationis* was described. Afterwards, all regulatory frameworks were compared using this *tertium comparationis* to find similarities and dissimilarities as defined above.

Together, these comparisons provide answers to the research question stated in the introduction.

## II. RESEARCH AND RESULTS

In the previously proposed optimal regulatory model of the budgetary discipline enforcement,[7] the refund was classified as a corrective measure aiming at returning public funds to their intended purpose back to the public budget or to the administrator of its chapter. Refunds are regulated in some way in each of the legal orders of the Visegrád countries, though the level of regulation and the fields of the regulation may differ.

The following set of *tertia comparationis* was created to assess the different aspects of regulation of the refunds. The data obtained from the questionnaire surveys were used to identify the *law in books* and *law in action* concerning these *tertia comparationis*.

[5] MÁLEK, O., BOHÁČ, R., KERNDLOVÁ, P., TULÁČEK, M. Comparative Study on Supervisory Procedures in the Budgetary Discipline Enforcement Regulatory Framework in the Visegrád Countries. *The Lawyer Quarterly.* 2024, Vol. 14, No. 2, pp. 145–156.

[6] KARFÍKOVÁ, M. *Teorie finančního práva a finanční vědy [Theory of financial law and financial science]*. Praha: Wolters Kluwer, 2018, pp. 3–34.

[7] BOHÁČ, R., SEJKORA, T., ŠMIRAUSOVÁ, P., TULÁČEK, M. *Regulatory Model of the Budgetary Discipline.* pp. 11–39.

| n | $T_n$ |
|---|---|
| 1. | The legal framework regarding the substantive aspects of refunds is rather codified. |
| 2. | Refunds are regulated as more than one legal institute / concept. |
| 3. | The obligation to refund is directly linked to the breach of the budgetary discipline. |
| 4. | An unauthorised use or retention of funds is a reason for a refund. |
| 5. | The purpose or objective of the refund is corrective. |
| 6. | Another measure may be imposed in case of an untimely refund. |
| 7. | The amount of the refund is determined as an amount of the funds improperly used or withheld. |
| 8. | There is a *de minimis* rule when the obligation to refund the funds does not arise. |
| 9. | All entities and all types of public budgets may be obliged to refund. |
| 10. | The procedure of the refund is regulated as a standard administrative procedure. |
| 11. | The body that conducts the control of the management of the funds is the same one as the entity deciding on the refund. |
| 12. | The administrative practise is legally binding when it comes to returning of the public funds. |
| 13. | The authority has no discretion whether or not to impose the obligation to refund. |
| 14. | It is possible to appeal against the decision on the refund. |
| 15. | It is possible to lodge an administrative lawsuit against a final decision on the refund. |
| 16. | The public funds are protected in case of a diversion of the funds or foreclosure of the managing entity. |

$T_1$: It relates to the question of whether the legal framework regarding the substantive aspects of refunds is rather codified, partially codified, or fragmented. If the regulation of the substantive aspects of the refunds is contained in a single legal norm and regulation of the procedural aspects of the refunds in another legal norm, the legal framework is con-

sidered as rather codified. In Czechia, the substantive aspects are mainly regulated by two separate laws;[8,9] one is regulating the refunds of the funds from budgets on the state level, and the other is regulating the refunds of the funds from the local budget. Thus, the legal framework in Czechia is not considered as codified, but rather partially codified. In Hungary, the substantive aspects of the refunds are in a single law,[10] which constitutes its legal framework as codified. Similarly, in Poland, the regulation of refunds is codified in a single law.[11] Refunds are also regulated in a single law[12] in Slovakia, thus it is considered as codified.

*$T_2$*: The legislation may contain one or more institutes/concepts that can result in a refund. In Czechia, there are two institutes/concepts that may result in a refund of the public funds; 1) levy for the breach of the budgetary discipline and 2) repayment of the subsidy. The rest of the Visegrád countries do not distinguish multiple types of refund institutes/concepts. In Hungary and Poland, the legal regulation or theory does not explicitly name the institute/concept that regulates the refund. For the purpose of this *tertium comparationis* this is considered as if these countries would have a single institute/concept that results in a refund. In Slovakia, there is just one institute/concept for the refund and it is a levy for the breach of the budgetary discipline.

*$T_3$*: It concerns the question of whether the reason for a refund is a breach of budgetary discipline. The Czech and Slovak legal frameworks are very similar in this matter because the law specifies the reasons that constitute a breach of budgetary discipline and outlines which of those breaches create an obligation to refund the funds. Hungarian legal framework does not contain the concept of budgetary discipline or define its breach; thus, the obligation to refund the funds does not arise from the breach of budgetary discipline. Although the law in Poland does define the breach of the budgetary discipline, it is not listed as a reason for a refund. However, in most cases, the obligation to return the funds is due to the fact that budget discipline has been breached.

*$T_4$*: For the assessment of this *tertium comparationis* it was not required to have the exact wording "unauthorised use or retention of the fund" in a law or legal framework, but rather to determine if an unauthorised use or retention of funds established a reason for a refund. In Czechia, there are several different reasons for an entity to return funds, and among them is the unauthorised use or retention[13,14] probably the most common violation in practice. The sole reason within the Hungarian legal framework for which a specific entity is obligated to refund the funds is the unauthorised use of budget support. Similarly, in Poland, the grounds for being obligated to refund arise if the funds were used contrary to their intended purpose, or if they were misappropriated improperly or excessively. These cases may be classified as unauthorised use of funds. In Slovakia, there are several different reasons for an entity to return the funds and some of them can be considered as

[8] Act no. 218/2000 Coll., on budgetary rules.
[9] Act no. 250/2000 Coll., on budgetary rules of the local budgets.
[10] Act CXCV from 2011 on public finance.
[11] Act no. 157 from 2009 on public finances.
[12] Act no. 523/2004 Coll., on the budgetary rules of the public administration.
[13] Section 44, par. 1 letter a), b) of the Act no. 218/2000 Coll., on budgetary rules.
[14] Section 22, par. 1 of Act no. 250/2000 Coll., on budgetary rules of the local budgets.

unauthorised use or retention of the fund, although the wording in the law is a little bit more specific when it states that the reason for a refund is the use of funds contrary to the intended purpose or in excess of the authorisation.

$T_5$: In the proposed optimal regulatory model of the budgetary discipline enforcement the refund was classified as a corrective measure, meaning that the main objective of a refund shall be to repair the breach rather than sanction the entity. This $T_5$ is consistent in all of the Visegrád countries since the amount of the refund is determined as the amount of the improperly used or withheld funds.

$T_6$: If the entity is obligated to return the funds, another measure may be imposed in case of an untimely refund along with the refund itself. Each of the legal frameworks in the Visegrád countries recognises some kind of measure that is imposed in case of an untimely refund. In Czechia and Slovakia, along with the levy for the breach of budgetary discipline, a penalty may be imposed on the entity. In Hungary and Poland in case of an untimely refund, the entity needs to pay a default interest.

$T_7$: In all Visegrád countries, the amount of the refund is determined as the amount of the funds that were improperly used or withheld. The Czech law is more specific because it states that the subsidy provider may specify in the subsidy decision or subsidy contract the exact percentage in which the levy may be imposed.

$T_8$: Poland is the only country that does not have a *de minimis* rule for refunds (or monetary measures). The amount when the obligation to return the funds does not arise (although other conditions were met) is in Czechia the equivalent to EUR 40 in Czech crowns (for the penalty, it is equivalent to EUR 20 in Czech crowns), while in Hungary it is only the equivalent to EUR 2.5 (for the refund) and in Slovakia, it is EUR 40 (for the refund plus penalty).

$T_9$: According to the full-coverage principle, budgetary rules should apply to the entire public sector, including all entities and all types of budgets. It can be assumed that in Czechia and Slovakia, the full-coverage principle applies because there are no specific entities or budgets that are excluded from the obligation to refund. Although in Hungary and Poland, there is no provision explicitly excluding some types of funds, this is implicitly the case. That is because the obligation to refund applies only to budgetary support (subsidy; in Hungary) or subsidies (from state or local budgets) and funds from the EU funding projects and programs (in Poland).

$T_{10}$: The refund procedure includes, in particular, the decision-making process by the authority to determine whether an entity has committed an act that necessitates a refund, as well as the collection of such a refund where the entity fails to comply voluntarily with the obligation. In Hungary, Poland, and Slovakia, these procedural aspects are governed by the law (Administrative Code or Administrative Procedure Code) that applies to standard administrative proceedings. In Poland, in addition to the standard administrative law the Tax Procedure Code is also applied. In Czechia, the Tax Procedure Code applies to the administration and collection of the levies of the breach of budgetary discipline and penalties, and the levy is considered as a tax for these purposes.

$T_{11}$: In Czechia, the body deciding is the tax office with regard to the state budget and various local bodies with regard to the local budgets. The tax offices do not necessarily control the management of the funds as a whole, but just the breach of budgetary discipline, so the tax office can decide whether to impose a levy or penalty. Regarding the

local budgets, the control may be conducted by the provider of a subsidy, which generally is the municipality or the region. In Hungary, the regional body of the Hungarian State Treasury is authorised to decide on the refund and also control the management of the funds. In Poland, the entity controlling the management of the funds and deciding on the refunds is the same, specifically different bodies such as the Minister of Finance and other budgetary unit managers. In Slovakia, the levy for the breach of budgetary discipline, penalty or fine shall be imposed and enforced by the controlling authority, the auditing authority, or the supervisory authority of the State within the scope of its competence (which can be the Government Audit Office or the Ministry of Finance).

$T_{12}$: Each of the Visegrád countries recognises the principles of legal certainty and legitimate expectations in an administrative practice when it comes to refunds. In some cases, administrative practise can be considered as a binding and material source of law, but it is necessary to note that it does not have the same nature or power as a written law.

$T_{13}$: None of the legal frameworks allow the authority to have a discretion whether or not to impose the obligation to refund. Once the conditions stipulated in the legal norm are met, the authority has to impose the obligation to return the funds. However, the authority may have some degree of discretion, for example, in deciding the exact amount of the refund.

$T_{14}$: In all of the Visegrád countries, it is possible to appeal against the decision on the refund. In all of the countries except Czechia, the standards of defence against a decision imposing an obligation to refund do not differ from a decision against standard administrative individual legal acts. Under Czech law, such a process is governed by the Tax Procedure Code, and the conditions of the appeal in a tax proceeding are different than those in the standard administrative appeal.

$T_{15}$: It is possible to lodge an administrative lawsuit against a final decision on the refund in all of the Visegrád countries. This action shall subsequently be decided by the administrative courts.

$T_{16}$: In all of the jurisdictions, the public funds are protected in some way in case the obligation to return the funds arises but the entity faces foreclosure or the funds were diverted to a third party. One of these methods may be the exclusion of certain special purpose funds from the debtor's assets during bankruptcy (in Czechia) or the possibility to impose the obligation to refund to a third person (in Hungary and Poland).

Below there is a table that simplifies the relation of each of the countries' frameworks to the *tertia comparations*. Y = Yes, meaning that the statement made in the *tertium comparationis* is true and the legal frameworks can be considered as similar. N = No, meaning that the statement made in the *tertium comparationis* is false.

| Tn | Czech Republic | Hungary | Poland | Slovakia |
|---|---|---|---|---|
| 1. | N | Y | Y | Y |
| 2. | Y | N | N | N |
| 3, | Y | N | N | Y |
| 4. | Y | Y | Y | Y |
| 5. | Y | Y | Y | Y |
| 6. | Y | Y | Y | Y |
| 7. | Y | Y | Y | Y |
| 8. | Y | Y | N | Y |
| 9. | Y | N | N | Y |
| 10. | N | Y | N | Y |
| 11. | N | Y | Y | Y |
| 12. | Y | Y | Y | Y |
| 13. | Y | Y | Y | Y |
| 14. | Y | Y | Y | Y |
| 15. | Y | Y | Y | Y |
| 16. | Y | Y | Y | Y |

## III. DISCUSSION

The concept of refunds is a key part of the budgetary enforcement framework. The consequences of the breach of the budgetary discipline may vary from corrective measures (including the refunds) to exclusionary measures, or to penal measures (penalty or criminal offence). As previously stated, refunds generally fall under the category of the corrective measures, because their main objective is to return the public funds to their intended purpose.

One of the first aspects to assess in with respect to the refunds, is whether the regulatory framework is rather codified, partially codified, or fragmented. Generally, the legal regulation of the budgetary discipline in the central European countries is badly arranged and non-systematic. The optimal situation is if the regulatory framework is in a single piece of legislation considering the need for coherence in the budget system, thus the legal framework should be rather codified as suggested in $T_1$.[15] The legal framework was assessed as codified even if the regulation of the substantive aspects of the refunds (i.e. when the obligation to return the funds arises, how the amount of the refund is determined, etc.) are in a single piece of legislation and regulation of the procedural aspects of the refunds (i.e. procedure for obtaining evidence, issuing a decision, imposing an obligation to return the funds, etc.) in another single piece of legislation. In general, the regulatory

[15] BOHÁČ, R., SEJKORA, T., ŠMIRAUSOVÁ, P., TULÁČEK, M. *Regulatory Model of the Budgetary Discipline Enforcement.* pp. 11–39.

framework of the budgetary discipline is considered partially codified in the Visegrád countries, because there are several laws that govern the different aspects of the budgetary discipline (supervisory procedures, penalties, liability for the breach, etc.). When it comes to the regulation of the refunds (specifically of the substantive aspects of the refunds) this is deemed as rather codified with the exception of Czechia. There are two main sources of law in regard to the refunds in Czechia – Act no. 218/2000 Coll., on budgetary rules (including but not limited to Sections 14f, 44, and 44a), which governs the breach of the budgetary discipline and return of the funds from the state level budgets and Act no. 250/2000 Coll., on budgetary rules of the local self-government unit budgets (including but not limited to Sections 22 and 28), which governs the breach of the budgetary discipline and return of the funds from the local self-government unit budgets. In Hungary, the refunds of the budgetary support are stipulated in the Act CXCV from 2011 on public finance, which covers the whole field of public finances. Similarly, in Poland, the regulation of the refunds can be found in the Act No. 157 from 2009 on Public Finances, which is a law regulating the entire system of public finances in Poland. In Slovakia the substantive aspects of the refunds are also governed by a single piece of legislation, Act no. 523/2004 Coll., on the budgetary rules of the public administration. Although Czechia is listed here as an exception to the rule, which does not meet the requirement of full codification of refund legislation, it would be too harsh to describe the legislation as incoherent or inconsistent. This is because each of the laws regulates refunds from a different budget, which reduces the risk of inconsistencies or ambiguity between these laws. The legal framework in regard to the procedural aspects of the refunds is described in more detail below in the section on $T_{10}$.

The refunds can be regulated as a single or more the one legal institute / concept which is the subject of $T_2$. Under Czech law, there are two legal institutes / concepts that can be considered as refunds. One of them is called *repayment of the subsidy* and it applies only with respect to the subsidies (naturally). The repayment of the subsidy is a precautionary measure, and it can be imposed only based on the control results. The second one is a *levy for the breach of the budgetary discipline* and it can be imposed in case of the breach of the budgetary discipline and as a result of a procedure that determines if the budgetary discipline was breached or not. If the obligation to pay the levy for the breach of the budgetary discipline is imposed and the entity has already paid the repayment of the subsidy, this repayment of the subsidy is set-off against the levy for the breach of the budgetary discipline. In the rest of the Visegrád countries, only one legal institute / concept is recognised. In Hungary and Poland, the law does not give any name to the refund obligation; it only sets out the obligation to return the funds if certain conditions are met. In Slovakia, the legal institute / concept is called *a levy for the breach of the budgetary discipline* and it is quite similar in its nature to its Czech counterpart.

In view of the fact that refunds are part of the regulatory model of budgetary discipline enforcement, it can be assumed that the obligation to make a refund is linked to a breach of budgetary discipline. Based on this assumption, the statement in $T_3$ was made. Since the concept of the budgetary discipline and its breaches may vary across these countries, $T_4$ was created. It is based on the assumption that the most typical case of breach is an unauthorised use or retention of funds, which should be included as a reason for the refund in all legislation. Under Czech law, the obligation to return the funds is directly linked

to the breach of the budgetary discipline in case of the levy for the breach of the budgetary discipline. Since the repayment of the subsidy is a precautionary measure, it may be imposed for a larger number of cases than just the breach of the budgetary discipline (namely for breaches of the legislation or conditions on which the subsidy was granted). A breach of the budgetary discipline may appear in a number of cases, and all of these may result in the imposition of a levy. Typical cases of the breach of the budgetary discipline are an unauthorised use of funds, unjustified retention of funds, or failure to transfer funds but there are many more. Similarly, in Slovakia, the obligation to return the funds is linked to the breach of the budgetary discipline, and there are several kinds of breaches. Again, typical cases are an unauthorised use of funds, unjustified retention of funds, or failure to transfer funds, but also wasteful, inefficient, and ineffective use of public funds. It is worth mentioning that not all of these types of breaches result in a levy. In Hungary, the law does not recognise the concept of budgetary discipline at all. This fact is very important because it differentiates the Hungarian legal framework from the other Visegrád countries in a fundamental way. Since the concept of budgetary discipline is not recognised, the obligation to refund occurs in the event of an unauthorised use of budget support. In Poland, the concept of the breach of the budgetary discipline is well-known, but it is not directly linked to an obligation of the entity to return the funds. The law states that if the subsidy from the state budget, local budget, or the funds from the European Union are misused or used improperly or excessively, they need to be refunded. In principle, this can be subsumed under an unauthorised use or retention of funds. Thus, in all of the Visegrád countries, the entity may need to return the funds in case of an unauthorised use or retention of funds, so all of these countries are similar in this aspect. However, they differ as to whether the obligation to make the refund is linked to a breach of budgetary discipline or not, which is a very important aspect of the refunds' legal framework.

As previously stated, the objective of the refund is to return the public funds to their intended purpose and repair the infringement. Based on this assumption the $T_5$, that the purpose or objective of the refund is corrective, was made. This assumption turned out to be true for all of the countries. The fact the refunds are a corrective measure is mainly based on the fact that the amount of the refunds is in principle determined in proportion to the breach of the obligation. In case the amount of the refund is not in proportion to the seriousness of the breach, it can be viewed that the purpose or objective of the refund is also punitive and some authors may see the refund as a sanction.[16] This is certainly the case of the Czech levy for the breach of the budgetary discipline. It is therefore possible to speak of a dual nature of the levy. Because the main objective of the refund is to repair the infringement and return the public funds, there is usually another sanction whose objective is to sanction the entity in case of an untimely refund (see *tertium comparationis* $T_6$). Under Czech law, such a sanction is a penalty. The penalty may be imposed along with a levy for the breach of the budgetary discipline with the exception of the breach of the budgetary discipline caused by a contributory organization according to Section 28 of the Act on budgetary rules for local budgets. Since the repayment of the subsidy is considered

[16] BOHÁČ, R. *Daňové příjmy veřejných rozpočtů v České republice. [Tax revenues of the public budgets in Czechia].* Praha: Wolters Kluwer Czech Republic, 2013, pp. 260–263.

a precautionary measure, it is not possible to impose another sanction for an untimely refund along with the repayment of the subsidy. The penalty starts to count from the same date as the day of the unauthorised use or retention of funds (except in the case when the breach occurred before the funds were made available to the beneficiary), and the maximum amount is the amount of the levy. This means that the penalty accrues even before the decision on whether a breach of the budgetary discipline is made. The rate of the penalty is currently 0,04 % of the levy. The concept of a penalty is also used in the Slovak legal framework, and it starts to count from the date of the breach of budgetary discipline (with some exceptions). Although the maximum amount of the penalty is also capped by the amount of the levy, the rate is slightly higher at 0,1 %. Besides the penalty and the levy, a fine can be imposed in case of a breach of the budgetary discipline as mentioned above. Hungary and Poland have a slightly different approach to what measures may be imposed in case of an untimely refund. They use an interest instead of a penalty. The main difference between the interest and the penalty is that while the penalty rate is contained in the law governing the refund (therefore, the penalty rate is quite stable), the interest rate is contained in a different piece of legislation, and is it also used for other late payment or breached of obligations. In general, the interest rate is deemed as the "cost of money". But in the case of Hungary, the interest rate is determined according to the governmental decree (which is a central bank-based rate plus 8 bps), and in the case of Poland, the interest rate is the same as the interest rate for tax arrears. It can be presumed that the purpose of these interests is not only to compensate the cost of money but also to discourage the entity from repeating such infringement. With respect to the sanctions that are imposed in case of an untimely refund, all of the legal frameworks are quite similar, although each of the jurisdictions has its specifics, especially when it comes to the nature of the sanction.

Generally, there are two ways of how to approach the determination of the refund amount. Firstly, the entity has to return all of the funds regardless of the fact what obligation has been breached, and secondly, the entity has to return only the amount of the funds that were improperly used or withheld. The second approach was considered more suitable since the main purpose of the refund shall be corrective, so it was used in $T_7$. The issue of determining the amount of the refund is quite complex, but the general rule in all of the Visegrád countries is that the refund shall be in the amount of the improperly used or withheld funds. Though this rule may seem simple, in practice the determination of the exact amount of the improperly used funds may cause some problems. In Czechia, it can be explicitly stated in the decision on the grant of the subsidy (or the public law contract) what amount shall be refunded according to the infringed obligation. Such an amount can be expressed as a fixed amount, fixed percentage, or a percentage rate. If it is determined as a percentage rate, the authorised entity shall decide based on the seriousness of the breach of the obligation and its effect on compliance with the purpose of the funds provided. As established by case law, the principle of proportionality plays a major role. This principle means that even if the amount of the refund is not specified in the subsidy decision (by percentage or otherwise), the authorised entity shall decide the amount of the levy based on the seriousness of the infringed obligation. But it has not always been this way. Previously, the case law implied that the authorised body may determine the levy as the total amount of the provided funds even if the breached obligation was of an administrative nature or less significant. The main argument for this approach is that there

is no right for a subsidy, and it is a benefit of the state, so it is not unjust to impose a full refund even in the event of a breach of an administrative obligation.

As follows from the nature of the refund as a corrective measure, the maximum amount of the refund is capped as the amount of the provided funds. However, there is usually also a *de minimis* rule determining the amount up to which the levy is not to be imposed (as suggested in $T_8$). Every Visegrád country, except Poland, has its own version of *de minimis* rule. In Czechia, if the amount of the levy is CZK 1,000 or less (which equals circa EUR 40) or the amount of the penalty is CZK 500 or less (which equals circa 20 EUR; for local budgets, the amount for the minimum penalty is also CZK 1,000), neither the refund nor the penalty is imposed. In Hungary, the minimum amount is set at HUF 1,000 (which equals circa EUR 2.5), but only with regard to the budgetary support of local budgets. In Slovakia, the amount of the minimum refund together with the penalty is EUR 40. It is evident that the thresholds at which the obligation to pay a refund or penalty does not arise are most leniently set in Czechia, while in Hungary, this *de minimis* rule could be considered rather symbolic. This raises the question of whether it would be appropriate for the legislature to consider raising this amount so that it makes sense to have the *de minimis* rule.

The full-coverage principle means that the budget rules should apply to all budgets and all entities that manage public funds.[17] Since the full-coverage principal is the goal of the budgetary rules, including the enforcement of the budgetary discipline, there shall be no exception to the entities or public budgets that may be obliged to return the improperly (in other unlawful matters) used funds as $T_9$ suggests. None of the legal frameworks explicitly stipulate any exception to the entities managing the public funds or types of budgets. Nevertheless, this exception may be implicit, because the obligation to refund may be imposed only in the cases that are governed by the law. In Hungary, the obligation to return the funds is only applicable for budget support, which is subsidies. This means that other public budgets are excluded from the obligation to return the funds. Similarly, in Poland, the obligation to return the funds is only applicable for subsidies (either from state-level budgets or local self-government budgets) and for European resources. This is not the case in Czechia and Slovakia since the levy for the breach of budgetary discipline may apply to essentially all public budgets and entities. This is another very important distinction between the legal frameworks for refunds in Hungary and Poland versus Czechia and Slovakia. The fact that the obligation to return the improperly used funds only applies to subsidies means that the full-coverage principle does not apply in Hungary and Poland.

In the field of administrative law, there usually is an Administrative Code (or other similarly named piece of legislation) that governs the procedural aspects (such as initiation of proceedings, evidence, issuance of decision, review of decision, etc.) for any administrative procedure. Even if the different fields of administrative law have provisions that regulate certain aspects of the administrative procedure in that specific field, the Administrative Code shall be used subsidiarily. Since the imposition of the refund may be considered to be part of administrative law, $T_{10}$ is based on the assumption that the imposition

[17] WORLD BANK. *Beyond the Annual Budget*. Washington, DC: World Bank, 2021.

of a refund is regulated as a standard administrative procedure. Generally, the Administrative Code or other similar law that regulates the imposition of individual legal acts is used for the administration of the refunds (and the penalty or interest). This is true for Hungary, Poland, and Slovakia. The regime in Poland can be referred to as more of a hybrid in the sense that the administration of the refunds is not only regulated by the Administrative Code but also by the Tax Procedure Code. In Czechia, the Tax Procedure Code is used and the levy (refund) is considered a tax. There are some major differences between the Tax Procedure Code and the Administrative Code in regard to the administration of refunds. To mention some of them, in the tax proceedings, an appeal has no suspensive effect, unlike administrative proceedings or the Tax Procedure Code contains more detailed regulation of certain institutes regarding the procurement of evidence. Some of the Czech legal scholars are more inclined towards the option that the levy should be administered according to the Administrative Code, as its character is closer to a fine than to a tax. To assess which of these approaches is better suited for the administration of the refund, it would be necessary to compare these laws in detail. Nevertheless, the fact that Tax Procedure Code is used exclusively in Czechia and simultaneously with the Administrative Code in Poland while Hungary and Slovakia use only the Administrative Code (or similar legislation) is an important difference between these legal frameworks.

The question of which entity is entitled to decide on the imposition of a refund is necessary to assess, because it may influence the continuity of the supervisory procedure with the refund process. If the authority conducting the control of the management of the funds also decides on the refund (as $T_{11}$ suggests), the length of the refund process can be reduced as the new authority does not have to study the supporting documents in order to issue a decision, etc. Under Czech law, there is more than one authorised body to decide on the imposition of the refund based on the type of refund (levy for the breach of the budgetary discipline or repayment of the subsidy), and also the fund or entity to which the breach of the budgetary discipline relates. The authorised entity to decide on the repayment of the subsidy is the subsidy provider. The subsidy provider is also the body conducting the control of the management of the funds. Tax offices are the authorised body to decide on the levy for the breach of budgetary discipline with respect to the funds from the state-level budgets. Regarding the local budgets, the authorised body is one of the local bodies depending on the budget from which the funds were granted. If a contributory organization breaches the budgetary discipline, its founder is the authorised body. All of these authorities except the tax offices may conduct the control of the management of the funds. The tax offices assess whether budgetary discipline has been breached and if a levy for the breach of the budgetary discipline shall be imposed. In Hungary, the body that controls the management of the funds is the Hungarian State Treasury. The regional body of the Hungarian State Treasury is eligible to impose an obligation to return the improperly used funds. In Poland, the decision on the refund can be made by the Minister of Finance for the entire national budget or by the budgetary unit managers for their respective parts of the national budget. These authorities may also conduct managerial control. It is important to note that in Poland the ruling on the breach of the budgetary discipline is separate from the ruling on the refund (as well as the authority which is a different one in these cases). In Slovakia, the levy for the breach of budgetary discipline (or penalty or fine) is imposed and enforced by the controlling authority, the auditing

authority, or the supervisory authority of the State within the scope of its competence. This competence is stated in the Act no. 357/2015 Coll., on financial control and audit, and in most cases this authority is the Government Audit Office or the Ministry of Finance. It is quite obvious that the trend is that the body conducting the control of the management of the funds and the body deciding on the refund is the same. The most notable exception from this rule is the tax offices that decide on the imposition of the levy for the breach of the budgetary discipline in regard to the state-level budgets (which in practice is the majority of cases). One of the reasons that the authorised body is the tax office and not the body conducting the control of the management of the funds is the fact that for the administration of the levy, the Tax Procedure Code shall be used. However, it is worth considering whether the legislation in Czechia should be amended so that these refunds currently decided by the tax offices are decided by the authorities conducting the control of the management of the funds.

The question of whether the administrative practise in regard to the refunds is binding and can be used as a source of law is the *tertium comparationis* $T_{12}$. In all of the Visegrád countries, the nature of the administrative practise concerning refunds is very similar. The consistency in decision-making regarding refunds is underpinned by principles stemming from the rule of law, specifically, the principles of legal certainty and legitimate expectations, which are universally applicable in all of these countries. The principle of legitimate expectations is an expression of the more general requirement of the principle of legal certainty. The principle of legitimate expectation is inherently linked to administrative law to ensure that no unreasonable differences arise in the determination of factually identical or similar cases. In assessing whether administrative practise can be regarded as a source of law, a distinction must be made between formal and material sources. While administrative practise does not fall under the category of formal sources of law, it can be considered a material one, primarily due to the principles of legal certainty and legitimate expectations. That being said, administrative practise can be considered binding. According to case law in Czechia, if the legal practice giving rise to legitimate expectations is a settled, uniform and long-standing activity (or even inactivity) of public authorities which repeatedly confirms a certain interpretation and application of legal regulations, the administrative authority is bound by such practice. Only such administrative practice is complementary to written law and is capable of modifying the rules contained in a legal norm. This means that in some cases, an administrative practice can be binding.

The fact that the authority has any discretion in deciding whether or not to impose the obligation to refund is closely linked to the degree of independence of the authority. If the authority has no discretion (as $T_{13}$ suggests) in regard to the question of imposition of refund, the authority is fully bound by the wording of the law, which ensures that there are no significant differences (in accordance with the legitimate expectation principle mentioned above). On the other hand, there may be cases where the application of the law without correction may be too harsh or even unfair. For this reason, a waiver of the refund or the above-mentioned *de minimis rule* institutes exist. In all of the Visegrád countries, there is no discretion of the authority on deciding whether or not to impose the obligation to refund. However, the authority may have some discretion when it comes to the determination of the exact amount of the refunds (as mentioned in the part dedicated to $T_7$). Since there is no discretion whether or not to impose the obligation to refund, the coun-

tries may use the above-mentioned institutes that mitigate this. According to the information available to the authors, waiving the refund is possible only in Czechia. Except for Poland, all of the Visegrád countries apply *de minimis rule* (see part dedicated to $T_8$).

It is a standard in most of administrative proceedings to appeal against the individual legal act, which is why the assumption in $T_{14}$ is that it is possible to appeal against the decision on the refund. If the person (or entity) is not satisfied with the decision of the authority imposing the obligation to refund (or pay a penalty or interest), he/she/it can appeal against such decision in all of the Visegrád countries. In Czechia, the appeal procedure is regulated by the Tax Procedure Code in the same way as the proceedings at first instance. The appellate authority in this case is determined according to the authority deciding on the refund in the first instance. If the body in the first instance is the tax office, then the Appellate Tax Directorate, which is a body superior to the tax offices, decides on the appeal. If in the first instance, the body deciding on the refund is any other than the tax office, the appeal shall be decided by its respective superior authority. In the rest of the Visegrád countries, it is possible to appeal in accordance with their respective Administrative Codes. Given that, in Hungary, the regional body of the Hungarian State Treasury decides on the refund in the first instance, the second-instance body, i.e. the one that decides on the appeal, is the Hungarian State Treasury which is a central body. In Poland, the appeal is assessed by a higher administrative body, which is the Minister of Finance, institutions managing EU funds, or the director of a tax administration chamber. In Slovakia, the appellate body against the decision of the Government Audit Office is the Ministry of Finance. Thanks to the fact that it is possible to appeal against the decision on refund in all of the Visegrád countries and the body deciding on the appeal is a different one from the body deciding in the first instance, an independent review is assured.

A lawsuit is another typical means of defence against an individual legal act. This fact was the basis for establishing $T_{15}$. The approaches of the Visegrád countries with respect to the judicial review of the final decision imposing the obligation to refund are (once again) very similar. In all of these jurisdictions, the judicial review of such decisions is possible. Administrative courts are part of the judicial system in all of these countries. Since the final decision imposing the obligation to refund in the Visegrád countries is of an administrative nature, the judicial review of these decisions is performed by the administrative courts. There is also a special kind of administrative action, which is directed against the decision of the administrative authority. Although in Czechia, the decision to impose a levy (or penalty) is imposed by the tax offices, an action against the decision of an administrative authority, may also be brought against such decision of the tax office and is assessed similarly to the decisions of any other administrative authority. It is worth mentioning that the means of defence against the decision imposing an obligation to refund are not different form the usual standards of defence against individual legal acts.

The state has an interest in ensuring that public funds are protected not only when a breach of budgetary discipline occurs, but also in other cases such as a foreclosure or a diversion of the funds. This is the reason, why the *tertium comparationis* $T_{16}$ was made on the assumption that the public funds are protected in case of a diversion of the funds or a foreclosure of the managing entity. In Czechia, the funds that are purpose-designed, such as subsidy, are not part of the debtor's assets, which means that they cannot be affected by bankruptcy. The ineffectiveness of legal acts is a concept that is used in bank-

ruptcy laws in Czechia, as well as in Slovakia. It means some legal acts of a debtor may be adjudicated by the court as ineffective in case the debtor reduces the possibility of satisfying creditors or favours some creditors at the expense of others. Then the obligation to return to the debtor's assets the debtor's consideration resulting from ineffective legal acts is imposed on the persons for whose benefit the ineffective legal act was made or who benefited from it. However, subsidies are not included in the debtor's assets. In Hungary, the claims from other international sources based on public finance, the European Union, or international treaties are granted priority in the event of their satisfaction from the debtor's assets over general claims. Also, if the entity diverts the public funds to a third person and the funds must be refunded, the repayment obligation is imposed on that third party if the repayment obligation arises because the entity has not fulfilled its obligations. Similar approach to the diversion of the public funds is in Poland as well. In cases the public funds are diverted to a third party due to a breach of budgetary discipline, the obligation to refund can be extended to third parties responsible for such diversions (even in the form of joint and several liability). The principle of solidarity liability and third-party responsibility applies, particularly in scenarios involving misused EU funds. It is possible to summarize that in all of the countries, some kind of protection of public funds exists. But in Hungary, Poland, and Slovakia the regulation tends more towards the protection from the diversion of the funds, while in Czechia the purpose-designed funds (most notably subsidies) are exempted from the debtor's assets in case of bankruptcy.

While conducting the research the authors had to exclude some *tertia comparationis*. Firstly, there was a number of *tertia comparationis* that had to be excluded because of a lack of information about one or more of the legal frameworks. For example, at what stage of the budgetary process the refunds are set, the term in which the decision on the refund can be made, or from what moment the penalty or interest is being counted. Secondly, *tertium comparationis* concerning the question of whether a breach of the budgetary discipline and the obligation to refund are assessed in a single proceeding. This *tertium comparationis* was excluded because the Hungarian law does not define or recognise the concept of budgetary discipline or breach of budgetary discipline, so it could not be assessed.

The regulation of the refunds in all of the Visegrád countries is considered rather similar by the authors. The most similar legal frameworks with respect to refunds are the Czech and Slovak legal frameworks, especially their substantive part. This may be attributed to the fact that these countries were federated and split thirty-one years ago. Since the respective regulations of the breach of the budgetary discipline were implemented in both of these countries after the Velvet Revolution in 1989, these regulations are probably influenced by each other. The most significant difference when it comes to the substantive aspects of the refund regulations is that in the Hungarian legal system, there is no definition or even a mention of the concept of budgetary discipline. Nevertheless, the concept of a refund in case of an unauthorised use of the budgetary support exists (even though it applies only to the budgetary support and not to all of the public funds in general). The biggest difference when it comes to the Polish regulation of the refunds is that there is a personal liability for the breach of budgetary discipline and the obligation to refund the improperly used funds stands separately without a direct link to the breach of the budgetary discipline. So unlike in Czechia and Slovakia where the obligation to return the im-

properly used funds arises in case of a breach of the budgetary discipline, in Hungary and Poland, the obligation to return the funds is not linked to the breach of the budgetary discipline. Instead, the obligation to refund arises in case the funds are used contrary to their intended purpose, or if they were misappropriated improperly or excessively (Poland), or an unauthorised use of budget support (Hungary). However, these situations are typical cases of a breach of the budgetary discipline in Czechia, as well as in Slovakia. When it comes to the purpose or objective of the refund, the measures imposed in case of an untimely refund, and the determination of the amount of the refund there were no crucial differences identified.

Furthermore, when it comes to the procedural aspects of the legal frameworks of the Visegrád countries, they are really similar. The country that stands out the most with respect to the procedural aspects of the refund regulation is Czechia. It is mainly because the Tax Procedure Code is used for the administration of the levy for the breach of the budgetary discipline and the authority is (in most cases) deciding whether to impose the obligation to refund or not is the tax office. The norm in the rest of the countries is that Administrative Code is used to administer the refunds and the body deciding on the obligation to impose a refund is the same as the one conducting the control over the management of the funds. The Czech Tax Procedure Code and the Administrative Code are quite similar in a lot of ways, but there are some major differences that are based on the fact that the Tax Procedure Code is better suited for the administration of taxes and other monetary payments. But due to the fact that no in-depth analysis of the similarities and differences between the Tax Procedure Code and the Administrative Codes in the rest of the countries was conducted, the authors cannot determine how materially different these laws are. However, it is important to note that the administration of refunds in Poland is governed by both the Administrative Code and the Tax Procedure Code. The nature of administrative practise in the Visegrád countries can be considered as a material source of law and binding primarily thanks to the principles of legal certainty and legitimate expectations. With respect to the means of administrative or judicial recourse against the refund decision, the discretion of the authority deciding on the refund and protection of the public funds in case of a diversion of the funds or a foreclosure of the managing entity no significant differences were identified.

In light of the above-stated similarities and differences, the hypothesis "With respect to the refunds stipulated in the budgetary enforcement regulatory framework, there are no significant differences among the Visegrád countries" was not falsified. The regulatory framework with respect to the refund is definitely not significantly different in the Visegrád countries. The regulatory frameworks are rather similar though there are some differences that shall be noted. Namely, the non-existence of the concept of the breach of budgetary compliance in Hungary or the fact, that the legal regulation of the administration of refunds is in Czechia governed by the Tax Procedure Code and not by the Administrative Code (or other administrative regulation), as is the case in other jurisdictions.

## CONCLUSION

To answer the research question *"what are the similarities and differences of the existing budgetary discipline enforcement regulatory frameworks in the Visegrád Group countries*

*with respect to refunds?"* the authors conducted an in-depth comparative analysis of the current regulatory frameworks on refunds among the Visegrád countries. By carrying out this analysis, the authors concluded that the legal regulation of the refunds is very similar across the Visegrád countries and that several similar legal concepts are present in all of these jurisdictions. Firstly, the analysed jurisdictions include similar variations of the concept of the return of funds if the entity misuses them. Secondly, the main reason for the inception of the obligation to refund is unauthorised use or retention of funds. The third similarity is that the purpose of such measure is the same across all jurisdictions, specifically, to remedy the breach of a legal obligation, thus the purpose is corrective. Fourthly, the amount of the funds to be returned is generally determined as the amount of the funds that were improperly used or withheld. The fifth similarity is the existence of a measure that is imposed in case of an untimely refund, whether it is a penalty (in Czechia and Slovakia) or an interest (in Hungary and Poland). The purpose of such a measure is punitive, i.e. to punish the entity for breaching the established obligation and not returning it in time. A number of similarities were also identified with respect to the procedural aspects of the refunds. One of them being that the authority deciding on the refund has no discretion on the topic of whether or not to impose the obligation to refund. When it comes to the administrative practise with respect to refunds the principle of legal certainty and principle of legitimate expectations play a major role. Across all legal systems, it is possible to appeal against a decision on refund (including penalty or interest) and also, if necessary, to file an administrative lawsuit, so that the decision imposing the obligation to return the funds is reviewed by relevant courts. Finally, in all countries, the public funds are on some level protected in case of a diversion of the funds or foreclosure of the managing entity. All of these aspects contribute to similarities in relation to returning of funds in Visegrád countries.

Despite the above-mentioned conclusion, that the legal systems of the Visegrád countries are generally similar, it should be noted that there are, of course, several aspects in which the presented legal regulations differ. The first notable difference is the fact that in Czechia the refunds are regulated as more than one legal concept / institute (namely, the repayment of the subsidy and the levy for the breach of the budgetary discipline), while the other jurisdiction recognises the refund as only one legal concept / institute. Second difference is the fact that the obligation to return funds that are based on a breach of the budgetary discipline is stipulated only in Czechia and Slovakia. The Hungarian legal system does not recognise the institute of breach of the budgetary discipline, therefore the obligation to return funds is tied to the unauthorised use of budgetary support. While the Polish legal system recognises the concept of the breach of the budgetary discipline, the obligation to return the funds does not arise directly from this breach. In the event of a such breach of budgetary discipline, personal liability (for example of an employee) arises. The very obligation to return the funds to the public funds comes about in the case of their use contrary to their intended purpose, or if they are used illegally or excessively. Since the obligation to refund arises in a similar case, the absence of the concept of breach of the budgetary discipline was not deemed as a significant difference. Another significant matter in which the Czech legislation differs from other mentioned jurisdictions is the legal act that is applied in the administration of refunds (and penalties or interest). In Czechia, the Tax Procedure Code is applied and the refund is accordingly assessed as a tax,

while in other jurisdictions, the Administrative Code (or another similar general regulation governing the procedure for issuing individual administrative acts) is used (except for Poland, which utilizes both the Administrative Code and the Tax Procedure Code, but this distinction was not considered significant). Since the Czech Tax Procedure Code contains a number of identical mechanisms as Czech Administrative Code and no in-depth analysis of the similarities and differences between the Czech Tax Procedure Code and the Administrative Codes in the rest of the Visegrád countries was conducted, the authors cannot determine how different these laws are, these differences were not identified as fundamental as it would be in the case of use of legal regulation under private law.

The hypothesis that *"with respect to the refunds stipulated in the budgetary enforcement regulatory framework, there are no significant differences among the Visegrád countries"* was therefore not falsified and it can be said that no reason was identified to consider the legal systems of the Visegrád countries to be fundamentally different. This is consistent with the fact that these countries share common values, are members of the European Union, and there is cooperation among academics and practitioners in the area of financial law.