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THE CONSTITUTIONALISATION OF THE TAX SOVEREIGNTY OF EUROPEAN AUTONOMOUS TERRITORIES

Summary. This article presents the results of a comparative legal research concerning tax sovereignty granted to 13 European autonomous territories by constitutional law. Research material includes the constitutions of the main states and legal acts constituting the autonomous territories as well as selected scientific publications in the field of tax sovereignty and territorial autonomy. The most important research findings are as follows: tax sovereignty has been constitutionalised for the vast majority of European autonomous territories (11 out of 13); tax sovereignty has been regulated in only 2 constitutions (but in relation to 7 autonomous territories); the scope of granted tax sovereignty differs between the autonomous territories (some norms indicate the structural elements of the tax, while others define tax sovereignty in very general terms); the provisions granting tax sovereignty are protected against amendment, but, in principle, the approval of the central state is required;

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Madeira and the Azores are, in the opinion of the authors, characterised by the highest level of constitutionalisation in terms of tax sovereignty.

Keywords: autonomous territory, tax sovereignty, territorial autonomy, taxes, constitution

1. INTRODUCTION

Nowadays, as a result of the progressing economic crisis, the concept of “tax sovereignty” is gaining importance. Literature indicates two ways of understanding the term “tax sovereignty”, i.e. either in an external or in an internal way¹. External tax sovereignty is often analysed in the context of a state’s independence in the face of external pressures from other states or international organisations that want to influence its tax policy². On the other hand, tax sovereignty understood internally is the state’s right to tax individuals in accordance with the applicable tax law in its territory³.

Tax sovereignty in the internal sense is undoubtedly related to constitution – the highest ranking act in the hierarchy of internal law. Introducing a public financial standard to the constitution serves to ensure fiscal stability. Constitutions are directly applicable, characterised by a qualified amendment process, and resistant to momentary impulses, which makes the constitutional norms of financial governance less vulnerable to current political needs⁴.

Tax sovereignty in the internal aspect does not necessarily apply to the state itself. As a result of the constitutional process of financial public decentralisation, a state shares its power with its internal entities (usually local government units)⁵. This leads to the following problem:

¹ See more in V. Raritska, *Tax Sovereignty as a Fundamental Characteristic of Tax Law System*, [in:] M. Radvan (ed.), *System of Financial Law. System of Tax Law. Conference Proceedings*, <https://is.muni.cz/repo/1353424/system-of-tax-law.pdf#page=346>, Brno 2015, p. 344.

² Y. Brauner, *An Essay on BEPS, Sovereignty, and Taxation*, [in:] S.A. Rocha, A. Christians (eds.), *Tax Sovereignty in the BEPS Era*, Kluwer International 2017; A. Christians, *Sovereignty, Taxation and Social Contract*, “Minnesota Journal of International Law”, 2008, vol. 18 cited for T. Dagan, *Klaus Vogel Lecture 2021: Unbundled Tax Sovereignty – Refining the Challenges*, “Bulletin For International Taxation” 2022, July, <https://www.ibfd.org/sites/default/files/2022-09/ifa-free-bit-article.pdf>, p. 318.

³ See more T. Dagan, *Klaus Vogel...*, p. 318 and others.

⁴ Ł. Kielin, *Constitutionalisation of Fiscal Rules in Times of Financial Crises: A Cure or a Trap?*, “Financial Law Review” 2021, no. 22(2), p. 96.

⁵ See more about the decentralisation process in M. Bogucka-Felczak, *Konstytucyjne determinany funkcjonowania mechanizmów korekcyjno-wyrównawczych w systemie dochodów jednostek samorządu terytorialnego*, Warszawa 2017, pp. 40–51.

what if an autonomous territory or territories, which have been granted a constitutional special legal and political status, function alongside local government units within the state?

The extensive literature on the tax sovereignty of the state or the tax power of local government units, as well as on autonomous territories, generally overlooks the tax sovereignty of autonomous territories. The existing publications discussing autonomous territories in a monographic manner, including from the comparative perspective⁶, analyse issues of tax sovereignty in the background.

For example, M. Suksi in his monograph comparing territorial autonomies devoted a few pages to the issues of taxation, focusing mostly on issues of the division of competences, participation through elections and referendums, the executive power of territorial autonomy, and international relations⁷. Moreover, T. Benedikter, when comparing the 10⁸ (20⁹), analysed in the first place issues such as the division of powers, history, elections, etc.¹⁰

This article is intended to fill this gap.

2. RESEARCH METHODOLOGY

The subject of the research is the tax sovereignty of European autonomous territories according to constitutional legal acts.

According to E. Tegler, tax sovereignty can be considered in two aspects: territorial and material. The first one means that it is implemented

⁶ See, for example, A. Przyborowska-Klimczak, *The Role of Parliamentary Bodies of Autonomous Territories in European States*, "Studia Iuridica Lublinensia" 2022, Issue 5, <https://journals.umcs.pl/sil/article/view/14659/pdf>; P. Łaski, *Autonomous Territory In the Light of International Law*, "Teka Komisji Prawniczej PAN Oddział w Lublinie" 2022, XV, no. 1, <https://ojs.academicon.pl/tkppan/article/view/4462>

⁷ M. Suksi, *Sub-State Governance through Territorial Autonomy. A Comparative Study in Constitutional Law of Powers, Procedures and Institutions*, Berlin 2011, pp. 166–170.

⁸ T. Benedikter, *Territorial autonomy as a means of minority protection and conflict solution in the European experience – An overview and schematic comparison*, <http://www.gfbv.it/3dossier/eu-min/autonomy.html> (access: 20.07.2023).

⁹ T. Benedikter, *The World's Modern Autonomy Systems. Concepts and Experiences of Regional Territorial Autonomy*, Bolzen 2009.

¹⁰ Similar thematic proportions were used in the following studies: Y. Ghai, S. Woodman, *Practising Self-Government: A Comparative Study of Autonomous Regions*, Cambridge University Press 2013.

within a specific territory and it is not allowed to extend beyond the territorial scope of the operation of a given public-legal entity. The second aspect consists of the right to introduce taxes, the right to collect benefits from taxes, and the right to administer them¹¹. In the material aspect, the right to introduce taxes can be legally defined as the scope of powers to make decisions on tax matters. These decisions may concern the construction of the individual components of a tax (such as the subject of taxation, tax base, rates, reliefs and exemptions, payment dates and methods). The tax authority may be concerned with shaping the content of the tax liability, i.e. issuing individual decisions regarding annulment, deferral, spreading into instalments, tax collection and execution¹².

For the purposes of the study, it was assumed that tax sovereignty understood solely as the right to introduce new taxes (including structural elements) will be subjected to the analysis.

There are two main definitions of territorial autonomy. The first one combines the concept of territorial autonomy with a separate type of statehood. Territorial autonomy is a type of exercise of public authority in a decentralised state. This leads to the creation of a regional or autonomous state, which is an “intermediate” state between a unitary state and a federal state¹³. The second definition (the one adopted in this article) combines the lexical approach to autonomy (self-determination, independence) with geographical location and separateness¹⁴. An autonomous territory in this second group of definitions is a territorial

¹¹ E. Tegler, *Władztwo podatkowe gminy*, [in:] W. Miemiec, B. Cybulski (eds.), *Samorządowy poradnik budżetowy na 1997 rok*, Warszawa 1997, pp. 375–376 cited for J. Glumińska-Pawlic, *Konstytucyjne gwarancje władztwa podatkowego jednostek samorządu terytorialnego. Teoria i praktyka*, [in:] R.P. Krawczyk, A. Borowicz (eds.), *Aktualne problemy samorządu terytorialnego po 25 latach jego istnienia*, Łódź 2016, <https://doi.org/10.18778/8088-114-3.03>, p. 30. See also D. Godula, *Problematyka władztwa podatkowego gminy*, [in:] W. Miemiec (ed.), *Finanse samorządowe po 25 latach samorządności. Diagnoza i perspektywy*, Warszawa 2015, p. 412; W. Miemiec, *Prawne gwarancje samodzielności finansowej gminy w zakresie dochodów publicznoprawnych*, Wrocław 2005, p. 104.

¹² E. Kornberger-Sokołowska, M. Bitner, *Prawo finansów samorządowych*, Warszawa 2018, p. 35

¹³ J. Iwanek, *Pojęcie autonomii terytorialnej we współczesnej europejskiej przestrzeni demokratycznej*, [in:] M. Domagała, J. Iwanek (eds.), *Autonomia terytorialna w perspektywie europejskiej*. Tom I, *Teoria – Historia*, Toruń 2014, p. 20

¹⁴ M. Bogucka-Felczak, P. Kowalski, *Financial Sovereignty of Autonomous Territories in 20th Century Central and Eastern Europe*, “Historia Constitucional” 2022, Issue 23, p. 301.

entity within a sovereign state that has been granted asymmetric powers (compared to other units within the state, such as local government units)¹⁵.

Autonomous territories were selected for the study according to the following criteria. First, only those located geographically within mainland Europe were selected. All overseas territories (e.g. the French Antilles, the Netherlands Antilles) or territories located geographically outside the European continent (e.g. Greenland) were rejected. Due to disputes over the eastern border between Europe and Asia, the Nenets Autonomous District was excluded from the research.

Secondly, only autonomous territories of those countries where there is a continental law system – rather than a common law system (Northern Ireland, Wales) or a mixed system using common law (Scotland) – were selected. Common law systems are not open to comparison with continental system countries, and the vast majority of European countries are characterised by the latter system.

Thirdly, the authors wanted to study only those autonomous territories that are directly or indirectly constitutionalised¹⁶. Terms such as “autonomy” and “autonomous territory” have been inserted into all European constitutions. The research tool used for this was the <https://www.constituteproject.org> database¹⁷.

The application of these criteria led to the selection of the following list of autonomous territories¹⁸: the Autonomy of the Åland Islands (Finland), the Autonomous territorial-unit of Gagauzia (Moldova), the Azores and Madeira Autonomous Regions (Portugal), the Autonomous Province of Vojvodina (Serbia), the Autonomous Republic of Crimea

¹⁵ Definition based on A. Ichijo, *What are Territorial Autonomies and Why the Handbook?*, [in:] B.C.H. Fong, A. Ichijo (eds.), *The Routledge Handbook of Comparative Territorial Autonomies*, Routledge New York 2022.

¹⁶ The lack of constitutionalisation of Svalbard in the Constitution of Norway was the reason for excluding this island from the study.

¹⁷ See more in Z. Elkins, T. Ginsburg, J. Melton, *Constitute: The World's Constitutions to Read, Search, and Compare*, <https://www.constituteproject.org/content/about> (access: 21.07.2023).

¹⁸ Kosovo and Metohija (further Kosovo) were not included in the study due to their international status. The authors refer to the official position of Poland on this subject. Kosovo's independence as a state (the Republic of Kosovo) was recognized by Poland on February 26, 2008, similarly to most European Union countries (M. Ickiewicz-Sawicka, *Pogranicze Serbsko-Albańskie – konflikt o Kosowo*, [in:] J. Regina-Zacharski, R. Łoś (eds.), *Sąsiedztwo i pogranicze – między konfliktem a współpracą*, tom 2, Łódź 2013, p. 95).

(Ukraine)¹⁹, Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Sudtirol (further: Trentino-Alto Adige), and Valle d'Aosta/Vallee d'Aoste (further: Valle d'Aosta) (Italy). The list was supplemented with other European autonomous territories meeting the previous criteria: Mount Athos (Greece), which is referred to as territory with ancient privileged status²⁰, and Faeroe Islands (Denmark), which are only mentioned in the Constitution of Denmark in a few paragraphs next to Greenland.

The above led to the collection of research material in the form of 8 constitutions and 14 legal acts constituting the autonomous territories²¹.

3. COMPARATIVE LEGAL RESEARCH

3.1. The Åland Islands

The Finnish Constitution²² contains scant regulation regarding the autonomy of the Åland Islands. The main legal act only contains norms referring to the Act on the Autonomy of the Åland Islands²³ (in legislative matters – Section 75 of the Finnish Constitution, in local government matters – section 120 of the Finnish Constitution). An interesting regulation in the field of financial public matters is Section

¹⁹ The Autonomous Republic of Crimea was included in the research despite the fact that it is, *de facto*, under the control of the Russian Federation. The Republic of Poland officially (<https://www.gov.pl/web/diplomacy/mfa-statement-on-the-sixth-anniversary-of-russias-annexation-of-crimea>, access: 20.07.2023) condemns the violation of Ukraine's integrity and sovereignty, as does the United Nations General Assembly in Resolution adopted on 27 March 2014, 68/262 entitled Territorial integrity of Ukraine (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/455/17/PDF/N1345517.pdf?OpenElement>, access: 20.07.2023).

²⁰ Article 105(1) of The Constitution of Greece As revised by the parliamentary resolution of May 27th 2008 of the VIIIth Revisionary Parliament, <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agliko.pdf> (access: 7.06.2023).

²¹ In addition, the Autonomous Communities of Spain, despite the extensive autonomy of individual communities, could not be classified as autonomous territories due to the unitary nature of Spain as a country.

²² The Constitution of Finland 11th June, 1999 (731/1999, amendments up to 817/2018 included), <https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf> (access: 13.06.2023).

²³ Act on the Autonomy of Åland (16th August, 1991/1144), https://peacemaker.un.org/sites/peacemaker.un.org/files/FI%20SE_930101_Act%20on%20the%20Autonomy%20of%20Åland.pdf (access: 13.06.2023).

58 of the Finnish Constitution, which lists matters in which the President of Finland makes decisions without a draft submitted in advance by the Government. One of them is the matters referred to in the Act on the Autonomy of the Åland Islands, other than those relating to the finances of the Åland Islands.

Although Section 121(3) of the Constitution stipulates that municipalities have the right to levy a municipal tax, this does not apply to the Åland Islands, as they have their own self-government in accordance with section 120.

The Act on the Autonomy of the Åland Islands clearly indicates the tax sovereignty granted to the Åland Islands. First of all, Section 27(36) indicates that the State shall have legislative power in matters relating to taxes and dues, with the exceptions provided for in section 18, subparagraph 5. Section 18(5) indicates that the Island shall have legislative powers with respect to the the additional tax on income for Åland and the provisional extra income tax, as well as the trade and amusement taxes, the bases of the dues levied for Åland and the municipal tax. Section 27(36) in conjunction with section 18(5) as the basis for tax sovereignty for amendments require concerted action by both the state and the autonomous authorities.

According to Section 69, the Åland Autonomy Act can only be amended, repealed or made exceptions by coherent decisions of the Parliament of Finland and the Parliament of Åland. In the Parliament of Finland, decisions are taken in the manner provided for amending and repealing of the Constitution, and in the Parliament of Åland, by a majority of at least two-thirds of the votes cast.

3.2. The Mount Athos

The Constitution of Greece contains an entire article relating to the autonomy of Mount Athos (Aghion Oros). Article 105 is placed in section VI entitled "Administration". Article 105 contains legal norms determining the sovereignty of this area, the role of the Ecumenical Patriarchate, the division of the area into twelve Holy Monasteries, and the role of the governor. Art. 105 of the Constitution also contains a reference to the separate legal act, which is to regulate customs and tax privileges.

The Constitutional Charter of the Holy Mountain of Athos of 1924²⁴ does not contain provisions directly granting Mount Athos tax sovereignty. Instead, it provides numerous tax privileges. In one of the initial articles of this act, Art. 12, it is explicitly stated that Mount Athos enjoys, according to the ancient established customs, special privileges and tax immunities that are clearly set out in the present Constitutional Charter.

The above was mainly introduced via Legislative Decree of the 10th September, 1926, on the Ratification of the Constitutional Charter of Mount Athos²⁵.

Article 2 of the Decree and Article 167 of the CCMA contain the following subject-object and subject exemptions in the tax structure: produce from Athos is exempted from any tax on land income and other direct income; transfer and income from any property located on Mount Athos are exempt from taxation (this applies to manual workers – monks, but not to merchants who are practicing their trade on Mount Athos); monks living on Mount Athos are exempt from consumption taxes on products produced and consumed locally, with the exception of taxes on tobacco, powder, and other explosive substances and monopoly goods; all contracts governing the transfer of rights to real estate on Mount Athos and drawn up by the competent monastic authorities or Hiera Koinotis are exempt from a stamp tax; fishing on Mount Athos for consumption by the monks is not subject to taxation.

3.3. The Azores and Madeira

The Portuguese Constitution²⁶ regulates the autonomy of the archipelagos of the Azores and Madeira in several places. According to Article 5(1) and 6(2), the Azores and Madeira are components of Portuguese territory while also constituting separate autonomous regions, with their own political and administrative statutes and authorities. Other provisions of the constitution concern, *inter alia*, the administrative division of the autonomy (Article 236(2)); the competence of the Court

²⁴ Further: CCMA, <https://www.mountathos.org/en-us/Athonite-Meadow/Historical-and-Legal-Documents/Mount-Athos-Institutional-Chart.aspx> (access: 22.06.2023).

²⁵ Further: Decree, <https://www.mountathos.org/en-us/Athonite-Meadow/Historical-and-Legal-Documents/Mount-Athos-Institutional-Chart.aspx> (access: 22.06.2023).

²⁶ Constitution of the Portuguese Republic Seventh Revision, 2005, <https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf> (access: 22.06.2023).

of Auditors over the archipelagos (Article 214(1)(4)); the substantive limits of amendments to the Constitution (Article 288 (o)). In addition, the entire Title VII “Autonomous Region” contains legal norms on, among other things, the political and administrative system (Art. 225); statutes and electoral laws (Art. 226); powers of the autonomous regions (Art. 227); legislative autonomy (Art. 228); cooperation between bodies that exercise sovereign power and regional bodies (Art. 229).

The Portuguese Constitution explicitly provides for the financial governance of the autonomous regions, although it does not specify what these powers include, referring to the statutes of the archipelagos. According to Art. 227(1)(i) of the Constitution, the autonomous regions shall be territorial bodies corporate and shall possess the following powers, which shall be defined in their statutes: to exercise their own power to tax as laid down by law as well as to adapt the national fiscal system to the specificities of the region under the terms of framework laws passed by the Assembly.

The tax sovereignty is regulated in the Political and Administrative Statute of the Autonomous Region of Madeira²⁷ and in the Political and Administrative Statute of the Autonomous Region of the Azores²⁸.

First of all, Art. 107(1, 2) the Statute of Madeira provides in principle that the Autonomous Region of Madeira exercises its own fiscal powers in accordance with the provisions of this Statute and the law. The region also has the power to adapt the national tax system to regional specificities in accordance with the law. A similar regulation is provided for in Art. 20(1, 2) of the Political and Administrative Statute of the Autonomous Region of the Azores.

Art. 135(1) of the Statute of Madeira divides these “tax powers”, *inter alia*, into regulatory, administrative, and legislative powers. On the other hand, Art. 50(1) of the Statute of the Azores divides these powers into “taxation powers” and “adaptation powers”.

In the case of the Autonomy of Madeira, legislative and regulatory competences comprise the following powers: the power to create and regulate taxes, in force only in the Region, defining the respective incidence, rate, tax benefits, and guarantees for taxpayers under the conditions set out in this law; the power to adapt national taxes to regional specificities, in

²⁷ https://www.cne.pt/sites/default/files/dl/legis_eparam_2012.pdf (access: 22.06.2023).

²⁸ https://www.alra.pt/documentos/estatuto_pt.pdf (access: 22.06.2023).

terms of incidence, rate, tax benefits, and taxpayer guarantees, within the limits set by law and under the terms of the following articles (Art. 135(2) of the Statute of Madeira).

Subsequent articles grant the regions the power to create and regulate contributions for improvement in force in the Region, to tax increases in the value of real estate resulting from works and regional public investments, and to create and regulate other special contributions tending to offset the higher regional expenses resulting from private activities that are exhausting or aggressive to public goods or the regional environment; to define measures, namely of a fiscal nature, to compensate for decreases in the value of real estate resulting from administrative decisions or regional public investments (Art. 136(1, 2)); the authority to levy surcharges on taxes in force in the Region, under the terms of the applicable tax legislation (Art. 137); tax regulatory powers relating to matters subject to regional legislative powers (Art. 139); in case of the adaptation of the national system to the regional specificity, the legislative body may, under the terms of the law, reduce the national rates of income tax, value added tax to the limit of 30% (Art. 138(2)) or set different limits for the rates of municipal contributions for real estate (Art. 138(4)).

Similar regulations are provided for in the Statute of the Azores. The Region has the power to: create and regulate taxes, defining their respective incidence, rate, liquidation, collection, tax benefits and guarantees of tax payers, in the terms of the Finance Law of the Autonomous Regions, including the power to create and regulate contributions on improvements to charge added value on real estate deriving from renovation and regional public investment and to create and regulate other special contributions tending to compensate greater regional expenditure deriving from private activities, that may erode or jeopardise public assets or the regional environment; adapt national taxes to the specific characteristics of the Region, in matters of tax incidence, rates, tax benefits and guarantees for taxpayers, in the terms of the Finance Law of the Autonomous Regions; levy surplus charges upon the collection of taxes implemented in the Autonomous Region of the Azores; reduce, in the terms of the Finance Law of the Autonomous Regions, the rates of national income and value added taxes, and of special consumer taxes, in accordance with current legislation; determine the application, in the Autonomous Region of the Azores, of reduced rates of the Tax on the Income of Collective Persons defined in national legislation (Art. 50(2) of the Statute of the Azores).

Article 227(1) (i) of the Constitution of Portugal as the basis for tax sovereignty for amendment require the launch of the procedure for amending the Constitution, which is characterised by: a need for 5 years to pass since the date of publication of the last law amending the ordinary Constitution (Art. 284(1)); an amendment to the Constitution requires a resolution by a majority of two-thirds of the total number of deputies, and in the case of an extraordinary amendment – four-fifths of the total number of deputies (Art. 286(1) in connection with Art. 284(2)); acts amending the constitution must respect the substantive limits of the amendment, which include, among others, political-administrative autonomy of Madeira and the Azores.

In turn, the amendment of the statutes of both archipelagos takes place at the initiative of the Assembly, which is approved by the Assembly of the Portuguese Republic (Article 137 of the Statute of the Azores and Article 148 paragraph 1 and paragraph 4 of the Statute of Madeira).

3.4. The Gagauzia

The Constitution of Moldova²⁹ provides for Gagauzia as an autonomous territory in two articles. According to Article 110(1), the autonomous territorial unit of Gagauzia is one of the territories into which Moldova is divided, right next to villages, towns, and districts. Article 111, on the other hand, is entirely devoted to the autonomous territory. It contains several references to Gagauz legislation on: rights and freedoms (Section 2); authorities (Section 3); budget (Section 5); control of compliance with Moldovan legislation in Gagauzia (Section 6).

According to Art. 12(2) point d, of the Law of the Republic of Moldova – On the special legal status of Gagauzia (Gagauz Yeri)³⁰, and according to Art. 51(2) point d. of the Code of Gagauzia (Gagauz Yeri)³¹, the powers of the People's Assembly of Gagauzia include passing laws on local taxes.

²⁹ Constitution of the Republic of Moldova Adopted on 27th July, 1994, with Amendments through 2016 https://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf (access: 7.07.2023).

³⁰ Further: The law on the special legal status, December 23rd, 1994, No. 344-XIII, as amended, <https://halktoplushu.md/archives/8> (access: 7.07.2023).

³¹ Further: The Legal Code, No. 28-XXX/I, 5.06.1998, as amended <https://halktoplushu.md/archives/103> (access: 7.07.2023).

Art. 12(2) point d, the of the law on the special legal status as a basis for tax sovereignty for amendment requires three-fifths of elected deputies of the Parliament of the Republic of Moldova (Art. 27(2) of the law on special legal status). Surprisingly, Art. 51(2) point d. of the Legal Code as another basis for tax sovereignty for amendment requires the adoption of a law by the People’s Assembly of Gaguzia by referendum or on its own initiative. The law is adopted by a majority of two-thirds of elected deputies (Art. 93(1,2) of the Legal Code).

3.5. The Vojvodina

The Constitution of Serbia³² regulates the issues of autonomy of Vojvodina in many places, but two types of provisions can be identified, i.e. those where Vojvodina is mentioned by name and those that use the term “autonomous provinces”. According to Art. 182(2), the Republic of Serbia consists of the autonomous province of Vojvodina and the autonomous province of Kosovo and Metohija. Apart from Art. 184(2) and 185(2) of the Constitution (issues of budgetary autonomy and the Statute), the Constitution no longer uses the term “Vojvodina”. There are many articles in the Constitution of Serbia where the legislator indicates the status of the autonomous province, its rights and obligations. There are no provisions for tax sovereignty among them.

The Statute of the Autonomous Province of Vojvodina³³ also does not provide for a legal norm establishing the tax sovereignty of this territory. Moreover, these issues are not mentioned in Art. 31 of the Statute, which lists the competences of the legislative body of the autonomy – the Assembly of the Autonomous Province of Vojvodina.

3.6. The Faroe Islands

The Danish Constitution³⁴ only regulates the issues of autonomy of the Faroes in a few places. The constitution does not devote a separate article to them, but indicates their rights in several places (e.g. regarding

³² Constitution of the Republic of Serbia with amendments of 2006, http://www.parlament.gov.rs/upload/documents/Constitution_%20of_Serbia_pdf.pdf (access: 7.07.2023).

³³ “Official Gazette of AP Vojvodina”, number 20/2014, <https://www.skupstinavojvodine.gov.rs/Strana.aspx?s=statut&j=EN> (access: 7.07.2023).

³⁴ The Constitutional Act of Denmark of 5th June, 1953, https://www.thedanishparliament.dk/-/media/sites/ft/pdf/publikationer/engelske-publikationer-pdf/the_constitutional_act_of_denmark_2018_uk_web.ashx (access: 7.07.2023).

representation in the Folketing – Art. 28, 32(5); principles of conducting referenda – Art. 42 par. 8).

The Home Rule Act of the Faroe Islands³⁵ clarifies the status of the Faroe Islands not as an “autonomy” but as a “self-governing community within the Danish Kingdom” (Section 1). According to this legal act, the Faroe Islands take over certain affairs and fields of affairs from the State. The Faroese Home Government can decide that all or some of these of affairs and fields of affairs shall be transferred at once to the Home Government, with the consequence that the expenses involved are born by the same. With the same consequence the Home Government can decide at a later state that affairs and fields of affairs in the list which are not transferred at once, shall be transferred to the Home Government. In similar manner, it is the duty of the Home Government to take over affairs and fields of affairs enumerated in the list when the state authorities wish it to do so (Section 2). What is more, the Home Government in case of affairs and fields of affairs has the legislative and administrative authority (Section 4).

Some of these “Special Faroese Affairs” include: municipal affairs including: local government administration, supervision and taxation (List A, point 2), and direct and indirect taxes, including: stamp duties, totalised duties, duties on special Faroese lottery. Handling charges such as legal fees and land registration fees shall accrue to the authority which defrays the cost of the institution concerned (List A, point 6).

The Home Act Rule does not contain provisions for amending this act. It should be noted that the Home Rule Act was passed by the Danish Parliament with the approval of this act by the Faroese Parliament.

3.7. Crimea

The Constitution of Ukraine³⁶ regulates the autonomy of Crimea in a number of places. According to Article 133(1), the system of administrative and territorial structure of Ukraine is composed of the Autonomous Republic of Crimea, *oblasts*, districts, cities, city districts,

³⁵ No. 137 of 23rd March, 1948, <https://english.stm.dk/media/10516/fo-hjemmestyrellov-uk.pdf> (access: 7.07.2023).

³⁶ Constitution of Ukraine Adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28th June, 1996 Amended by the Laws of Ukraine, http://biblioteka.sejm.gov.pl/wp-content/uploads/2017/06/Ukraina_ang_010117.pdf (access: 20.07.2023).

settlements, and villages. Other provisions of the constitution concern, *inter alia*, Crimea as an integral part of Ukraine (Article 134); stressing that Crimea has its own Constitution adopted by the Verkhovna Rada of Autonomy and approved by the Verkhovna Rada of Ukraine by at least half of its constitutional composition (Article 135(1)); the prohibition of non-conformity of normative acts of the autonomy with the Constitution of Ukraine and laws of Ukraine (Article 135(2)); the identification of the authorities of Crimea (Articles 136, 139); the competences of the Autonomy (Articles 137 and 138).

It should be emphasised that pursuant to Art. 138 sec. 1 point 4 of the Constitution of Ukraine, it is the responsibility of Crimea to develop, adopt, and implement the budget of the Autonomy in accordance with the tax and budget policy of Ukraine. In turn, Art. 138 sec. 2 of the Constitution provides that the laws of Ukraine may add other powers to the Autonomy.

The Constitution of the Autonomous Republic of Crimea³⁷ defines Crimea's tax sovereignty in several places. The most important of them is Art. 18 sec. 1 point 14 of this act, according to which, the powers of the Autonomy shall include: fixing, under Ukrainian legislation, revenues forming the budget of the Autonomous Republic of Crimea; securing the implementation of the same; conducting experiments in taxation sphere; fixing local taxes and fees; as well as patenting specific activities and, in general, exercise of such other powers in budget and taxation sphere, as provided for by Ukrainian laws.

Moreover, Art. 26 sec. 2 point 8 is a clarification of the previous article, as it states that it is within the power of the Verkhovna Rada of the Autonomous Republic of Crimea to fix taxes and tax benefits under Ukrainian laws.

The above-mentioned articles providing for the tax sovereignty of Crimea may be amended by a decision of the Verkhovna Rada of the Autonomous Republic of Crimea adopted by the majority of votes of the total membership. However, changes must be approved by the Verkhovna Rada of Ukraine (Article 27(1) in connection with Article 48(3) of the Crimea Constitution).

³⁷ Adopted at the second session of the Supreme Rada of Autonomous Republic of Crimea on 21st October, 1998, As amended by the Law of Ukraine, <https://web.archive.org/web/20140312144006/http://www.rada.crimea.ua/en/bases-of-activity/konstituciya-ARK> (access: 20.07.2023).

3.8. Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige, and Valle d'Aosta

According to Art. 114(1) of the Constitution of Italy³⁸, the Italian Republic is composed of municipalities, provinces, metropolitan cities, regions, and the state. There are 20 regions, 5 of which have “special forms and conditions of autonomy” (Art. 116(1) in conjunction with Art. 131 of the Constitution). These regions are: Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige, and Valle d'Aosta. In addition, the Trentino-Alto Adige region is divided into the autonomous provinces of Trento and Bolzano. The Constitution of Italy does not specify the forms and conditions of these regions, but refers to the special statutes adopted by constitutional law.

It needs to be emphasised that the Constitution of Italy directly grants tax powers to all local government units. According to Art. 119(2), municipalities, provinces, metropolitan cities, and regions shall have independent financial resources. They set and levy taxes and collect revenues of their own in compliance with the Constitution and according to the principles of coordination of State finances and the tax system. They share in the tax revenues related to their respective territories. The above means that all five regions also have tax sovereignty, so an analysis of the norms of individual constitutional acts will be used to compare the legal regulation of this sovereignty.

According to the Article 5 of the Statute of Friuli-Venezia Giulia³⁹, while observing the general limits indicated in Article 4 and in harmony with the fundamental principles established by State laws in individual matters, the Region has legislative power to establish regional taxes, as provided for in Article 51.

Pursuant to this article, the revenues of Friuli-Venezia Giulia also consist of the income from its assets or from its own taxes which it has the right to establish under regional law, in harmony with the tax system of the State and the Municipalities, including in the form of metropolitan cities (Article 51(1)). What is more, the revenue relating to own taxes and

³⁸ The Constitution of the Italian Republic, 27th December, 1947, https://www.quirinale.it/allegati_statici/costituzione/costituzione_inglese.pdf (access: 8.07.2023).

³⁹ Statute Special of Autonomous region Friuli Julian Venice constitutional law – 31st January, 1963, no. 1 and later changes and additions, Coordinated text January 2022, https://www.consiglio.regione.fvg.it/cms/export/sites/consiglio/istituzione/allegati/Allegati_istituzione_statuto/Statuto-aggiornato-gennaio-2022.pdf (access: 8.07.2023).

co-participations and surcharges on state taxes that the laws of the State attribute to the local authorities is due to Friuli-Venezia Giulia with reference to the local authorities of its territory, without prejudice to financial neutrality for the State budget (Art. 51(2)). In addition, the Region is entitled to certain modifications of the structural elements of local and state tax obligations. In compliance with the European Union's rules on state aid, the Region may: with reference to the state taxes for which the State foresees the possibility, modify the rates, reducing them beyond the currently established limits and increasing them, within the maximum level of taxation established by state legislation; provide for exemptions from payment; introduce tax credits and deductions from the tax base; in the matters within its competence, institute new local taxes, regulating, also in derogation from state law, among other things, the methods of collection; regulate local municipal taxes of real estate nature established by state law, also notwithstanding the same law, defining the methods of collection and allowing local authorities to modify the rates and to introduce exemptions, deductions (Art. 51(4) a-b-bis). According to Art. 51(6), if the law of the State establishes a tax due to the provinces, this tax and the powers recognised to the provinces in relation to it are attributed to the Region.

The other Regions, on the other hand, do not mention tax matters within the competence of the legislature (Article 3 and following of the Special Statute of Sardinia⁴⁰; Article 14 and following of the Special Statute of Sicily⁴¹; Article 4 and following of the Special Statute of Trentino Alto-Adige⁴²; Article 2 and following of the Special Statute of the Valle d'Aosta⁴³).

⁴⁰ Special statute for Sardinia Constitutional Law 26th February, 1948, no. 3, Current coordinated text, updated as at 30th December, 2013, https://www.regione.sardegna.it/documenti/1_5_20150114110812.pdf (access: 8.07.2023).

⁴¹ Special Statute of Sicilian Region, constitutional law 7th February, 2013, no. 2, published in the GU of the Republic no. 41 of 18th February, 2013, <https://www.ars.sicilia.it/sites/default/files/downloads/2019-06/Statuto2019.pdf> (access: 8.07.2023).

⁴² The Special Statute for Trentino Alto-Adige, 1st January, 2015, <https://www.consiglio.provincia.tn.it/news/web-radio/archivio/Mp3/statuto%20speciale%20annotato.pdf> (access: 8.07.2023).

⁴³ Special Statute of Valle d'Aosta Constitutional Law 26th February, 1948, no. 4, https://www.regione.vda.it/Autonomia_istituzioni/lostatuto_i.aspx (access: 8.07.2023). The exception is Art. 3(f), according to which the Region has the power to issue legislative norms for the integration and implementation of the laws of the Republic, within the limits indicated in the previous article, to adapt them to regional conditions, in the following matters: regional and municipal finances.

Despite this, the aforementioned statutes specify the scale of the granted authority. Extensive legal regulation is provided in the Special Statute for Trentino-Alto Adige which grants tax sovereignty to both the entire region and the two autonomous provinces – Trento and Bolzano. The region and the provinces have the power to establish their own taxes with laws in harmony with the principles of the State tax system, on matters of their respective competence (Article 73(1)). However, only provinces can establish taxes and levies on tourism (Article 72); in relation to the state taxes for which the State provides for the possibility, can in any case modify the rates and provide for exemptions, deductions as long as they are within the limits of the higher rates defined by the state legislation (Article 73(1a)). Additionally, the provinces have legislative competence in matters of local finance. In matters of competence, the provinces may institute new local taxes. The provincial law regulates the aforementioned taxes and local municipal real estate taxes established by state law, also in derogation from the same law, defining the methods of collection and may allow local authorities to modify the rates and to introduce exemptions, deductions. The distribution of revenue and the surtaxes on state taxes that the laws of the State attribute to the local authorities are due, with regard to the local authorities of the respective territory, to the provinces. Where the state law regulates the establishment of additional taxation however named by the local authorities, the related purposes are provided by the provinces by identifying criteria, methods, and limits of the application of this discipline in the respective territory (Article 80(1–3)).

Pursuant to Art. 10⁶ of the Sardinian Statute, the Region, in order to promote the economic development of the island and in compliance with the Community legislation, with respect to the state taxes for which the State provides for the possibility, may, without prejudice to the coverage of the standard requirement for the financing of the essential levels benefits concerning civil and social rights referred to in Article 117(2) (m) of the Constitution: a) provide for tax breaks, exemptions, tax deductions, deductions from the taxable base and to grant, with charges borne by the regional budget, contributions to be used in compensation in accordance with state legislation; b) change the rates upwards within the taxable values established by state law or downward to zero.

According to Article 12(2) of the Special Statute of Valle d'Aosta, the Region can institute its own taxes and surcharges in compliance with the principles of the current tax law.

Additionally, Article 36(1, 2) of the Statute of Sicily indicates that the Region approves certain taxes to meet financial needs and production taxes are reserved to the State.

Article 119(2) of the Italian Constitution as the basis for tax sovereignty to amend, requires the launch of the procedure for amending the Constitution, which is characterised by: the adoption of the amendment by both chambers of the parliament in two consecutive debates, with an interval of no less than three months, by an absolute majority of members of each chamber in the second ballot (art. 138(1)); Laws may be submitted to a referendum if, within three months of their promulgation, one-fifth of the members of one of the chambers or five hundred thousand voters or five regional councils request so (art. 138(2)); no referendum is held if the law was passed in the second ballot by a majority of two-thirds of its members (art. 138(3)).

The aforementioned constitutional procedure is applied to all statutes of Italian autonomous territories with the following changes, among others: the initiative for amendments can also be exercised by the Regional Council, government or parliamentary initiatives to amend this Statute are communicated by the Government of the Republic to the Regional Council, which shall express its opinion within two months, approved modifications are not subject to a national referendum (Art. 63(1–4) of the Friuli-Venezia Giulia Statute; Art. 54(1–4) of the Sardinian Statute; Art. 41ter(1–4) of the Statute of Sicily; Art. 103(1–4) of the Statute of Trentino Alto-Adige; Art. 50(1–4) of the Special Statute of the Valle d’Aosta).

However, Art. 51 of the Friuli-Venezia Giulia Statute, Art. 10⁶ of the Sardinian Statute, Art. 72, 73, 80 of the Statute of Trentino Alto-Adige, may be modified with state laws, at the request of the Government and of the Region. Additionally, in case of Friuli-Venezia Giulia, Sardinia, state law has to be consulted with the Region (Art. 63(5) of the Friuli-Venezia Giulia Statute; Art. 54(5) of the Sardinian Statute; Art. 104(1) of the Statute of Trentino Alto-Adige).

What is more, according to Art. 50(5) of the Statute of Valle d’Aosta, the modification of Art. 12(2) of the Statute will be established by state law as the “financial regulation of the Region” (in agreement with the Regional Council).

4. FINAL REMARKS

The conducted analysis does not exhaust all issues related to the constitutionalisation of the tax authority of European autonomous territories. The authors have narrowed the subject of the research to the most important constitutional legal acts and to the autonomous territories located in continental Europe. Moreover, the research results were obtained using linguistic and systemic interpretation solely on the basis of the collected research material. Expanding the research material in the future, e.g. by other types of legislation, case law, and by including other territories for comparison purposes, may provide different conclusions in the future⁴⁴.

Nevertheless, according to the authors, the comparative study provided many valuable quantitative and qualitative findings. Out of 13 autonomous territories included in the study, it was found that not all systemic legal acts contain a norm granting tax sovereignty. In the case of Vojvodina and Mount Athos, neither the Constitutions of Serbia and Greece nor the acts establishing the autonomy contain legal norms of this type. Art. 2 of the Decree and Art. 167 of the CCMA provide only objective and subjective tax exemptions. However, the remaining 11 autonomous territories have appropriate legal regulations in their constitutional legislation.

The tax sovereignty of not all remaining autonomies is written into the main state constitutions. The Portuguese Constitution (Art. 227(1) (i)) and the Constitution of Italy (Art. 119(2)) contain relevant standards in their content (which is more or less similar). Both articles confer the right to impose taxes (although only the Portuguese constitution uses the term “sovereignty”), provided that it is in accordance with national legislation. Only the Constitution of Portugal in Art. 227(1) grants the right to adjust (adapt) the national tax system to the specificities of the autonomous regions.

The above means that only the tax powers of Madeira, the Azores, Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige, and Valle d’Aosta have been introduced into the Constitution of the main state. Unlike the other autonomous territories (Åland Islands, Faroe Islands, Crimea and Gagauzia).

⁴⁴ In particular, it seems advisable to examine the relationship between the tax sovereignty of autonomous territories in the process of applying tax law and the degree of the constitutionalisation of the tax sovereignty granted to them.

The tax authority of all 11 autonomies has been incorporated into their statutes. The difference between individual legal norms granting tax sovereignty lies in the scale of its granting.

The most laconic and thus explicitly not limited to a selected structural element of the tax or type of tax are the regulations of the statutes of Gagauzia, Crimea, and Valle d'Aosta (although the regulations of the two latter autonomies contain a reference to the internal tax law). The statutes of some Italian and both Portuguese autonomies provide for detailed fiscal powers with regard to the indicated structural elements of regional taxes and, in addition to the above powers, the authorities of the autonomies may modify certain structural elements in the field of central taxes (Friuli-Venezia Giulia, Trentino-Alto Adige, Madeira and the Azores). The exception in this regard is the Sardinian statute, which only provides for adaptive powers with regard to structural elements in the field of state taxation. In turn, the statutes of the Åland Islands and the Faroe Islands grant tax sovereignty in the field of selected types of taxes. Finally, reference should be made to the statute of Sicily, which provides for the right of the region to approve certain taxes and reserves the tax sovereignty in relation to production tax to the state.

There is no doubt that the provisions conferring tax sovereignty in the constitutions of Italy and Portugal are protected against their derogation by the binding special procedure for amending the constitution. It is difficult to say which of the legal acts is more protected. The Portuguese Constitution provides for a more difficult majority when amending the ordinary constitution (2/3 of all deputies, while in the Italian Constitution it is an absolute majority). However, Portugal has a unicameral parliament, while Italy has a bicameral one. Nevertheless, from the point of view of autonomy, it is very important that the laws amending the Portuguese Constitution respect the substantive limits of the amendment, which include the political and administrative autonomy of Madeira and the Azores.

On the other hand, the protection of legal norms of tax sovereignty in the statutes of autonomies is more or less similar. As a rule, and without going into the details described above, it is up to the autonomy authorities to initiate the change procedure, but in virtually every case the central state authority must approve the change. The exception is the Faroe Islands, where the statutory provisions do not contain a procedure for amending this legal act.

It should be also emphasised that in the case of Gagauzia, the method of amendment varies depending on the type of legal act. The act on the special status of Gagauzia requires a decision of the main state's legislative body to

be amended. In turn, the Legal Code of Gagauzia requires the legislative body of the autonomous territory to amend a law or a referendum.

Taking everything into consideration, in the opinion of the authors, it is the Portuguese autonomous territories that are characterised by the highest level of constitutionalisation in terms of tax sovereignty. The norms providing for this authority are found both in the Constitution and in the statutes of both territories. The Constitution of Portugal, apart from the explicitly granted tax authority, grants the right to adjust (adapt) the national tax system to the specificity of autonomous regions. These powers are confirmed and detailed in the statutes of Madeira and the Azores. The Portuguese constitution is very strongly protected against changing the norms in the field of tax powers (one of the material boundaries of change is precisely territorial autonomy).

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KONSTYTUCJONALIZACJA WŁADZTWA PODATKOWEGO EUROPEJSKICH TERYTORIÓW AUTONOMICZNYCH

Streszczenie. Artykuł przedstawia wyniki badań komparatystyki prawniczej dotyczącej władztwa podatkowego przyznanego 13 europejskim terytoriom autonomicznym przez prawo konstytucyjne. Materiał badawczy obejmuje: konstytucje państw głównych oraz akty prawne konstytuujące terytoria autonomiczne, a także wybrane publikacje naukowe z zakresu władztwa podatkowego oraz autonomii terytorialnej. Do najważniejszych wyników badań należą m.in.: władztwo podatkowe zostało skonstytucjonalizowane w większości przypadków europejskich terytoriów autonomicznych (11 z 13); władztwo podatkowe zostało uregulowane tylko w 2 konstytucjach (ale w odniesieniu do 7 terytoriów autonomicznych); zakres przyznanego władztwa podatkowego jest zróżnicowany (niektóre normy wymieniają elementy konstrukcyjne podatku, inne określają władztwo podatkowe w sposób bardzo ogólny); przepisy przyznające władztwo podatkowe są chronione przed ich zmianą, ale co do zasady wymagana jest zgoda państwa centralnego; Madera i Azory, zdaniem autorów, charakteryzują się najwyższym stopniem konstytucjonalizacji w zakresie władztwa podatkowego.

Słowa kluczowe: terytorium autonomiczne, władztwo podatkowe, autonomia terytorialna, podatki, konstytucja.