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Dissenting Opinions in the Jurisprudence of Collegial Public Finance Bodies in Poland. Documentary Research*

Abstract

The purpose of this paper was to examine the practical operation of the concept of dissenting opinions submitted to decisions of collegial public finance bodies (joint adjudicating committee, inter-ministerial adjudicating committees, adjudicating committee at the Chief of Staff of the Prime Minister Chancellery, regional adjudicating committees at regional accounting chambers, the Main Adjudicating Committee, local government appeal boards) between 2004 and 2020. The research was conducted using the empirical legal studies method and the dogmatic method. The research material included an analysis of 42 proceedings (16 different factual and legal situations) in which judgments with

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a dissenting opinion were issued. This led to the following research conclusions: the number of dissenting opinions submitted to the decisions of collegial public finance bodies is small; the largest number of dissenting opinions was issued in cases of violation of public finance discipline resulting from the violation of public procurement regulations; the procedural function of dissenting opinions submitted to the decisions of collegial public finance bodies is very rarely used, in 81% of the examined cases the dispute in the adjudicating panel concerned only the interpretation of the law.

KEYWORDS: dissenting opinions, public finance body, adjudicating committee, local government appeal board, empirical legal studies

1 | Introduction

The legal basis for dissenting opinions (in cases of violation of public finance discipline) is Art. 134 Sec. 2 of the Act of December 17, 2004 on Liability for Violation of Public Finance Discipline[1], according to which „the judgment is signed by the chairman and members of the adjudicating panel, including the one voted out, who has the right to make a note of his or her dissenting opinion when signing the decision. The justification for the dissenting opinion shall be attached to the case file". According to paragraph 25 sec. 1 of the Regulation of the Council of Ministers of July 5, 2005 on the operation of adjudicating bodies in cases of violation of public finance discipline and bodies competent to perform the function of the prosecutor[2], „the chairman of the adjudicating panel announces the decision and gives the justification for it, even if none of the parties are present in the courtroom. If a dissenting opinion has been submitted, the chairman of the adjudicating panel shall also inform about it". The legal basis for the institution (in the case of tax proceedings conducted by local government appeal boards) of a dissenting opinion is Art. 17 sec. 4 of the Act of 12 October 1994 on local government appeal boards[3], according to which „a member of the adjudicating panel that has been outvoted has the right

1 Consolidated text of Dz. U. 2021, item 289, as amended, further LVPFD.
2 Consolidated text of Dz. U. 2019, item 189, as amended, further Regulation of the CM.
3 Consolidated text of Dz. U. 2018, item 570, as amended, further LGABA.

to submit a dissenting opinion when signing the decision, justifying it in writing within 7 days from the date of the meeting"[4].

There are some publications on the institution of dissenting opinions. However, the existing studies concern mostly dissenting opinions issued to court judgments[5]. So far, with exceptions, no research study has been published on dissenting opinions issued to decisions made by collegial public finance bodies. In Poland, one publication on this topic has been published, but as a result of a reactive research (Computer-Assisted Web Interview technique) conducted on research material in the form of questionnaires[6]. In contrast, the research material of this article consists of decisions accompanied by separate opinions.

Despite the limited interest in the doctrine, dissenting opinions submitted to the rulings of public finance bodies play a significant role. The most significant role of these opinions is their „procedural function", which gives them legal significance. This means that they can be used in the further course of ongoing proceedings, such as those concerning violations of public finance discipline or tax proceedings. It should be emphasized that in tax proceedings, a dissenting opinion may be submitted only at the stage of second-instance proceedings before the local government appeal board, which is why only administrative courts may take them into account when reviewing the lawfulness of a ruling. However, in proceedings for violation of public finance discipline, a dissenting opinion may be submitted to decisions of the committee of the first and second instance, meaning it may have a greater impact on the ongoing proceedings[7].

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4 See Monika Bogucka-Felczak Magdalena Budziarek, Monika Kapusta, Patryk Kowalski, „Survey on dissenting opinions in the jurisprudence of collegial public finance bodies in Poland" *Studia Iuridica*, No. 99 (2023): 362.

5 A detailed review of the literature is presented, i.a. Patryk Kowalski, „Funkcje zdań odrębnych od wyroków sądów administracyjnych w sprawach podatkowych" *Przegląd Sądowy*, No. 6 (2022): 66-71; Maciej Wojciechowski, *Spory sędziowskie. Zdania odrębne w polskich sądach* (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2019), 57-62.

6 See Bogucka-Felczak, Budziarek, Kapusta, Kowalski, „Survey on dissenting opinions", 362-378.

7 See more about the functions of separate opinions submitted to judgments of administrative courts – Kowalski, „Funkcje zdań", 72-77.

2 | Sampling scheme and research methodology

The primary research objective was to assess the practical functionality of the construct of dissenting opinions submitted to decisions made by collegial public finance bodies.

This goal could be achieved by solving the main research problem formulated in the question: what are the characteristics of cases in which rulings have been issued by collegial public finance bodies, and dissenting opinions have been submitted to them?

The above was necessary to formulate the research hypothesis, which reads as follows: cases concluded with decisions of collegial public finance bodies, to which dissenting opinions were submitted can be described by the following statements: The number of such opinions is not significant, given that they are rarely submitted in the application of public finance law. The largest number of dissenting opinions are submitted to decisions made by the second instance. The procedural function of dissenting opinions submitted to collegial public finance bodies is exercised to an average degree. Dissenting opinions are submitted much more often in cases of dispute over the interpretation of the law than in cases of dispute over the facts or evaluation of evidence.

The hypothesis rests on earlier research conducted by one of the co-authors, which shows that dissenting opinions are generally rarely submitted in tax cases decided by national courts (administrative courts[8]) and only sometimes in tax cases before international courts (European Court of Human Rights[9]). In addition, these research also revealed that dissenting

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[8] In the years 2004–2018, voivodeship administrative courts in Poland issued: 19,172 judgments in excise duty cases, of which 78 separate opinions were submitted [see Patryk Kowalski, „Polish Administrative Court's Dissenting Opinions in Excise Duty Cases" *Kyiv-Mohyla Law and Politics Journal*, No. 8 (2020): 199, 200]; 24 496 judgments in personal income tax cases, of which 33 separate opinions were submitted [see Patryk Kowalski, „Documentary and Guarantee Function of Polish Administrative Court's Dissenting Opinions in Direct Tax Cases" *European Journal of Behavioral Sciences*, No 2 (2019): 21]; 36 071 judgments in value added tax cases, of which 29 separate opinions were submitted [see Patryk Kowalski, „Zdania odrębne od wyroków wojewódzkich sądów administracyjnych w sprawach podatku od towarów i usług (2004–2018). Analiza ilościowa i jakościowa", [in:] *Regulacje prawa finansów publicznych i prawa podatkowego. Podsumowanie stanu obecnego i dynamika zmian*, ed. Paweł Borszowski (Warszawa: Wolters Kluwer, 2020), 307].

[9] In the years 1959–2020, European Court of Human Rights issued 179 judgments in tax cases, of which 46 separate opinions were submitted [see Patryk

opinions are submitted more often to decisions of higher instance bodies (the Supreme Administrative Court, the Grand Chamber of the Tribunal), and that the procedural function, i.e. the adoption by the court of second instance of the view expressed in the dissenting opinion, oscillates around 56% of cases (in the case of excise duty[10] and value added tax[11]). Obviously, these are conclusions drawn from research carried out for bodies other than the public finance ones, but still this does not prevent from the adoption of such a hypothesis.

The subject of the research were cases heard by collegial public finance bodies in Poland (committees adjudicating in cases of violation of public finance discipline and local government appeal boards). A decision was made to select some cases from those examined by the above-mentioned bodies since the beginning of their operation, i.e. from the entire „stock of cases" (an exhaustive research), as a research sample. The targeted sampling method was used based on the following criteria: type of public finance body, time-frame, type of decision, and the subject of the case.

Based on criteria presented in more detail in another study[12], the following entities were identified as collective public finance bodies: bodies adjudicating on cases of violation of public finance discipline [a joint adjudicating committee, 3 inter-ministerial adjudicating committees (an inter-ministerial adjudicating committee at the minister competent for public finance, inter-ministerial adjudicating committee at the minister responsible for public administration, inter-ministerial adjudicating committee at the Minister of Justice), an adjudicating committee at the Chief of Staff of the Chancellery of the Prime Minister, 16 regional adjudicating committees at regional accounting chambers (hereinafter: „RAC"), the Main Adjudication Committee (hereinafter: „MAC"), and 49 local government appeal boards (hereinafter: „LGAB")]. Thus, in total 71 public finance bodies were examined.

The period under study is from 2004 to 2020. The year 2004 was selected as the initial year due to the enactment of the reform of the administrative

Kowalski, „Statistical Picture of the European Court of Human Rights' Tax-Related Cases Containing Separate Opinions" *EC Tax Review*, No. 1 (2023): 31].

10 Kowalski, „Polish Administrative", 215, 216.

11 Kowalski, „Zdania odrębne", 321.

12 See Bogucka-Felczak, Budziarek, Kapusta, Kowalski, „Survey on dissenting opinions", 365, 366.

judiciary in Poland[13] and the implementation of the Act on Liability for Breach of Public Finance Discipline. On the other hand, 2020 marks the end of the period as the year when the research material was collected. This was determined by the timeframe of the grant that led to this publication. The authors wanted to examine cases concluded with lawful decisions, for which the right of appeal was also exhausted for administrative court proceedings.

The research focused on judgments final as to the merits of the case at hand, to which, in accordance with the Act, a dissenting opinion can be submitted. In the case of adjudicating committees, the legal basis is Art. 135 para. 1 in connection with art. 134 para. 2 LVPFD according to which the committee may rule that public finance discipline has been violated, acquit the defendant or discontinue the proceedings. When signing the decision, the outvoted member of the panel has the right to signal their disagreement with it. In the case of local government appeal boards, the legal basis is Art. 17 sec. 1, 4 in relation to art. 19 sec. 1 LGABA in relation to art. 207, 216 para. 1 and para. 2 of the Act of August 29, 1997 Tax Ordinance[14]. According to this regulation, in tax matters, decisions of local government boards are issued as decisions and rulings. These rulings generally address individual procedural issues that arise during the proceedings without judging the essence of the case. A member of the adjudicating panel who has been outvoted reserves the right to submit a dissenting opinion when signing the ruling.

The subject matter criterion relates to the type of the adjudicating body. Public finance law is a set of legal norms that regulate the functioning of public finances in a given country. So it is an extremely broad field divided into state budget law, public revenue law, local government public finance law, public banking law, and the European Union public finance law. The research was limited to the work of committees responsible for reviewing the violations of public finance discipline. The discipline of public finance is one of the concepts of the budget law and local government finance[15]. In the case of the jurisprudence of local government appeal boards, we decided to examine decisions regarding matters procedurally covered by the provisions of the TOA. The study did not address matters related to other public charges, i.e. fees other than local ones. This delimitation

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13 Act of 25 July 2002. Law on the system of administrative courts (Consolidated text of Dz.U. 2022, item 2492, as amended) entered into force on January 1, 2004.

14 Consolidated text of Dz.U. 2022, item 2651, as amended, further TOA.

15 Andrzej Borodo, *Finanse publiczne. Zagadnienia ustrojowe i prawne* (Warszawa: Wolters Kluwer, 2020), 34, 35, 39, 41.

of the scope was due above all to the fact that the 49 local government appeal boards work through adjudicating teams that deal with diverse issues. Not all adjudicators who rule on broadly understood charges have to consider cases decided on the basis of the TOA (taxes, local fees, grants, subsidies, etc.).

The research sample outlined in this way determined the course of the research.

Data collection took place from December 2021 to January 2023, during which all 71 financial public authorities were requested to provide a list of signatories of all decisions issued by a given body to which a dissenting opinion was submitted in the years 2004-2020. All that bodies which were targeted provided the requested information. However, seven of the bodies provided reference numbers for cases involving dissenting opinions, while the remainder declared that no such opinions were issued. It should be added that several of these bodies signaled that they were not sure of the correctness of the response given, because some files have already been archived while some other might be missing. Some bodies explained that their answers summarize pieces of information provided by the adjudicators in response to oral questions. Therefore, undoubtedly, the obtained data are incomplete, and access to judgments and dissenting opinions is limited, in particular due to the passage of time, the lack of a complete files, as well as changes in document management systems and staff rotation. Further analysis could therefore cover only documents held by these bodies and made available to the research team.

Seven of the targeted bodies were asked to submit rulings along with the reference numbers of second-instance or administrative court cases. All of the bodies submitted anonymized documents, resulting in the collection of files for 44 cases. Two cases were excluded from the final analysis because a dissenting opinion was submitted to the explanatory letter in one case, and the other case pertained to an issue that was not the subject under examination. The final research material included 42 cases, which files were examined.

The research was carried out using the document analysis method (as the leading one) and the legal-dogmatic (supplementary) method. The analysis of document content was conducted through a combination of qualitative and quantitative methods. The following computer software and databases were selected as research tools for this technique: Central Database of Jurisprudence of Administrative Courts (hereinafter: „CDJAC", http://orzeczenia.nsa.gov.pl); IBM SPSS Statistics, Microsoft Excel and Word

as software for analyzing the research material and presenting research results. The methods of analysis of the obtained research material belong to descriptive statistics and the dogmatic-legal method. Due to the lack of representativeness of the research sample, statistical inference methods were not used[16].

3 The main research

The analysis of the research material shows that from 2004 to 2020, collegial public finance authorities issued 42 rulings that included a dissenting opinion. Nominally, the largest number of judgments was issued by the Local Government Appeal Court in Wrocław (28), followed by the Main Adjudicating Committee (9), then the Regional Adjudicating Committee at the Regional Accounting Chamber in Kielce (2), the Regional Adjudicating Committee at the Regional Accounting Chamber in Rzeszów (2), the Regional Adjudicating Committee at the Regional Accounting Chamber in Łódź (1). No dissenting opinions were reported by other audited bodies.

A qualitative analysis of the cases modified the above data. It turned out that 28 decisions issued by the LGAB in Wrocław concerned *de facto* two similar, factual and legal situations. This led the authors to assume that the 28 judgments should be counted as really 2 different cases. Thus, the number of judgments with dissenting opinions (N) was reduced to 16 cases (MAC – 9 cases, RAC in Kielce and Rzeszów – 2 cases each, RAC in Łódź – 1 case, LGAB in Wrocław – 2 cases), i.e. N= 16.

16 See Justyna Wiktorowicz, Magdalena Maria Grzelak, Katarzyna Grzeszkiewicz-Radulska, *Analiza statystyczna z IBM SPSS Statistics* (Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2020), 36.

Table 1: Frequency table for the variable „Subject of the case decided by the collegial public finance body, which was concluded with a dissenting opinion [Z1]"

	Responses		% of cases
	N	%	
Non-compliance with public procurement regulations (Article 17 LVPFD)	9	47.4%	56.3%
Basic breaches of public finance discipline (Article 5 LVPFD)	2	10.5%	12.5%
Unauthorized disbursement of public funds (Article 11 LVPFD)	2	10.5%	12.5%
Violations by subsidized entities (Article 9 LVPFD)	2	10.5%	12.5%
Failure to perform obligations (Article 16 LVPFD)	1	5.3%	6.3%
Violations of the duty to transfer insurance premiums (Article 14 LVPFD)	1	5.3%	6.3%
Property tax rate	1	5.3%	6.3%
Participation of co-owners in tax proceedings (real estate tax)	1	5.3%	6.3%
Total	**19**	**100.0%**	**118.8%**

Source: own study

The first of the variables to be examined was the type of the subject matter of the case concluded with a dissenting opinion. There were 16 cases, but since some cases relating to public finance discipline were multi-aspect (multi-factor) ones, for Z1, N=19.

By far the largest number of cases in which dissenting opinions were submitted concerned violations of public finance discipline in the form of non-compliance with the provisions of the public procurement law (Article 17 LVPFD), which stipulates types of such violations. The obligation to spend public funds in accordance with the provisions of the Act of 11 September 2019 Public Procurement Law[17] results clearly from the provisions of the Act of 27 August 2009 on Public Finance[18].

According to Art. 44 sec. 4 PFA "public finance sector entities conclude contracts for services, supplies or construction works, on the terms set out in the provisions on public procurement, unless separate provisions provide otherwise". Moreover, pursuant to Art. 52 sec. 1 PPL, „the manager of the contracting authority is responsible for the preparation and conduct of the contract award procedure". „Persons other than the manager of the contracting authority are responsible for the preparation and conduct

17 Consolidated text of Dz.U. 2022, item 1710, as amended, further PPL.
18 Consolidated text of Dz.U. 2022, item 1634, as amended, further PFA.

of the contract award procedure to the extent to which they have been entrusted with activities involved in the procedure and activities related to its preparation" (Article 52(2), the first sentence, of the PPL)[19].

In the surveyed sample, there were 6 cases in which the party was charged with an infringement that met the criteria included in the disposition of Art. 17 LVPFD and 3 cases in which, in addition to the article in question, an act was alleged to have been committed under another provision of the Act – Art. 5[20] and Art. 11[21] LVPFD.

A detailed qualitative analysis was performed on some of the judgments with dissenting opinions. It was limited to abovementioned 9 cases in which the party was charged with an infringement meeting the criteria of at least Art. 17 LVPFD and all 2 cases issued by LGAC (11 in total). The remaining 5 cases of bodies adjudicating on cases of violation of public finance discipline were not discussed, because they concerned violations of articles other than art. 17 LVPFD, while art. 17 LVPFD is the most important in terms of frequency (56.3% of cases out of 118.8%)[22].

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19 See more Bogdan Artymowicz, „Art. 17", [in:] *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz,* ed. Anna Kościńska-Paszkowska (LEX/el. 2021), Thesis 1. See also Tomasz Robaczyński, Piotr Gryska, „Art. 17", [in:] *Dyscyplina finansów publicznych. Komentarz* (Legalis/el. 2006).

20 According to Art. 5 LVPFD, „a breach of public finance discipline is irregularities related to the determination, collection, investigation, redemption of receivables of the State Treasury, local government unit or other public finance sector unit". This provision does not contain any restrictions, it applies to all types of receivables – resulting from legal provisions, determined or specified by way of a decision, resulting from civil law relationships, including principal receivables, interest, contractual penalties, receivables resulting from prohibited acts – Krzysztof Subocz, „Art. 5", [in:] *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz,* ed. Anna Kościńska-Paszkowska (LEX/el. 2021), Thesis 1.

21 Based on Art. 11 LVPFD, a violation of public finance discipline consists in making an expenditure from public funds: without authorization or in excess of the authorization specified in the budget act, budget resolution or financial plan (point 1) or in violation of the provisions on making individual types of expenditure (point 2). Therefore, it is the financial management by the public finance sector entities that is protected, as it guarantees making expenditure under the financial plan (based on authorizations resulting from it), but also in the manner provided for individual types of public expenditure made by the entities of the public sector – Krzysztof Subocz, „Art. 5", [in:] *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz,* ed. Anna Kościńska-Paszkowska (LEX/el. 2021), Thesis 1.

22 Nevertheless, for research transparency, access to the types of cases was provided to interested readers here: the decision of the RAC in Rzeszów of 26 March 2015, 4010/3/2015; the judgment of RAC in Kielce of April 9, 2013, KDF-53/9/2013;

Turning to the analysis of individual judgments, it should be stated that in the judgment of the RAC in Kielce of October 30, 2018[23], the defendant was accused of adding two annexes to the original contract, which changed its essential provisions (division of the stage of a task into sub-stages and extending the deadlines for completing the task). In the opinion of RAC, this did not constitute a violation of Art. 17 sec. 6 LVPFD[24] in relation to art. 144 of the Act of January 29, 2004, Public Procurement Law in force on the date of the offense[25]. It was pointed out that liability for a violation of public finance discipline must be objective and can be attributed to an entity when it consists directly in violation of the disposition of the regulations, and not their interpretation.

In a dissenting opinion, it was stated that the accused had fulfilled the criteria of the alleged offense. It was pointed out that Art. 144 sec. 1e PPL of 2004 defines what changes to the provisions of the contract should be considered significant. In addition, it was argued that the specificity of the essential terms of the contract allowed for an amendment to the contract in specifically listed cases that did not occur in the factual state in respect to which the ruling was issued.

In the ruling of the RAC in Łódź of July 22, 2011[26], the director of a hospital was acquitted of the offense under Art. 17 sec. 1 point 4 LVPFD[27] consisting in the fact that the he did not call on the contractor to supplement the documents confirming the fulfillment of the conditions for participation in the procedure and, as a consequence, a public procurement contract for laundry services was awarded to the contractor who was subject to the exclusion from the procedure. The decision was justified by the fact that the description of the conditions for participation in the procedure cannot be understood in the narrow sense, that is, taking into account only the value of the services provided. The concept of „demonstrate the execution" is contrasted with the concept of „prove the execution".

In the dissenting opinion to the above ruling, it was highlighted that the contractor could refer to contracts that have not been completed (ongoing),

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the decision of the MAC of September 14, 2006, DF/GKO/4900/36/49/06/965; the decision of the MAC of April 22, 2013, BDF1/4900/14/18/RN-7/13/RWPD-1393; the decision of the RKO in Rzeszów of April 29, 2021, no. 4010/38/2020.

23 KDF-53/30/2018.

24 Dz. U. 2018, item 1458.

25 Dz. U. 2017, item 933, further PPL of 2004.

26 NDB-5000/Ł/22/2011.

27 Dz. U. 2010, no. 182, item 1228.

but only to the extent to which they had already been executed. They did not agree with the Committee's conclusion on the acquittal and found that the rules on public procurement affecting the outcome of the proceedings had been breached.

On February 3, 2014[28], the MAC upheld the RAC's decision, finding the mayor guilty of an offense under Art. 17 sec. lc LVPFD[29] for awarding public contracts in the field of construction in 2010 to contractors who pursuant to Art. 24 sec. 2 point 4 of the PPL of 2004[30], should be excluded from the open tender procedure, due to their failure to submit documents required by the specification of essential terms of the contract with the bid, which had an impact on the outcome of the procedure. This resulted in the imposition of a reprimand. The MAC pointed out that under the legal status in force at the time of the infringement and adjudication, an action consisting in awarding a public contract to a contractor who should be excluded from the procedure falls within the characteristics of offenses specified in Art. 17 LVPFD. At that time such behavior was covered by Art. 17 sec. 1 point 4 LVPFD, which was in force until February 11, 2012. However, after the act was amended, this behavior meets the characteristics set out in Art. 17 sec. 1c LVPFD, according to which „a violation of public finance discipline is an offense consisting in the violation of the public procurement law other than those listed in points 1-3, if this violation affected the outcome of the public procurement procedure" i.e., failure to comply with the obligation to reject bids submitted because potential contractors were not excluded.

In the dissenting opinion, the offense attributed to the defendant was challenged as the change in the legal status should be interpreted in favor of the accused party. In the opinion of the member of the panel, under the legal status in force at the time of adjudication, an action consisting in awarding a public contract to a contractor who should have been excluded from the procedure does not fall within the characteristics of offenses specified in Art. 17 LVPFD The behavior was covered by Art. 17 sec. 1 point 4, which was in force until February 11, 2012. The accusation of not excluding a contractor could not be considered against the defendant, because that was not punishable under the wording of the Act in force at the time when it was committed. Consideration and possible attribution of the allegation would clearly violate Art. 19 sec. 1 LVPFD, because it would

28 BDF1/4900/106/110/13/RWPD-142285.
29 Dz. U. 2013, item 168, and Dz.U. 2012, item 1529.
30 Dz. U. 2013, item 907, as amended.

result in a punishment for an act that was not considered punishable by law at the time it was committed. Awarding the contract is not the same as failing to exclude a contractor.

The decision of December 12, 2013[31], overturned the Regional Adjudicating Committee's earlier decision and acquitted the accused mayor of the alleged offense, i.e., Art. 17 sec. 1 point 1 and art. 17 sec. 1b point 2 LVPFD[32] of violating Art. 67 sec. 1 point 1 lit. a and art. 29 sec. 2 PPL of 2004[33] by awarding a public contract for promotion services in 2010 as a result of improper single-source procurement proceedings, which violated the principle of fair competition by appointing the contractor for the task. In the justification, the MAC explained that the defendant did not commit the alleged offense, because the city had previously decided to spend the funds on promotion. At the same time, it was observed that the act could fulfill the features of a violation of public finance discipline under Art. 15 LVPFD, but due to the content of Art. 131 of this Act, interpretation of the act under another legal provision would lead to going beyond the limits of the application for punishment.

One member of the collegial body disagreed with the above, stating in the dissenting opinion that it would not go beyond the limits of the application for punishment and Art. 131 LVPFD should be applied and the case should be referred back to the first instance body for reconsideration.

By the decision of the MAC of February 18, 2016[34], the RAC decision regarding the reprimand was revoked and the penalty was not imposed. However, the rest of the ruling was upheld. The RAC determined that the mayor of the city guilty of an offense under Art. 17 sec. 1b point 1 LVPFD[35] consisting in awarding, on January 2, 2014, a public procurement contract on terms of overdraft facilities to a contractor who was not selected in accordance with the procedure specified in the Public Procurement Law of 2004[36], which (on the date of adjudication) and on the date of awarding the contract constituted a violation of Art. 44 sec. 4 PF[37] and Art. 7 sec. 3 PPL of 2004, the MAC confirmed the violation of public finance discipline by the mayor, but objected as to the punishment considering it as

31 BDF1/4900/81/86/13/RWPD-81367.
32 Dz. U. 2013, item 168, and Dz.U. 2012, item 1529.
33 Dz. U. 2010, no. 113, item 759, as amended.
34 BDF1.4800.152.2015.
35 Dz. U. 2013, item 168, and Dz.U. 2012, item 1529.
36 Consolidated text of Dz.U. 2013, item 907, as amended.
37 Consolidated text of Dz.U. 2013, item 885, as amended.

too severe. It indicated that, despite the highly damaging consequences of the offense, other circumstances should have been taken into account, such as the conclusion of a loan agreement with the bank with which the defendant cooperated on a continuous basis, standards that banks should maintain, acting under the pressure of time, the fact that the defendant expressed remorse and assured that he would not commit such a violation in the future and his previous criminal record for violations of public finance discipline.

The dissenting opinion challenged the decision of the appellate body and presented the following arguments to support the need to impose a reprimand: many years of experience of the defendant as a manager of a public finance sector unit, violation of the basic principles of public procurement law, and the fact that Art. 34a sec. 4 LVPFD requires an obligatory imposition of a fine when a public contract has been awarded with a significant violation of the principle of fair competition or the principle of equal treatment of contractors.

By the decision of the MAC of March 29, 2018[38], the decision of the RAC was repealed in its entirety and the mayor accused of an offense under Art. 17 sec. 1 point 5 LVPFD[39], consisting in the failure to publish a public procurement notice in the Public Procurement Bulletin within 30 days from the date of conclusion of the contract, which is inconsistent with Art. 95 sec. 1 PPL of 2004[40] was acquitted. The justification pointed out that the posting of an advertisement outside of the statutory deadline was undisputed, but the offense under Art. 17 sec. 1 point 5 LVPFD consists in the failure to publish a contract notice, not in posting it untimely. The above-mentioned Art. 17 sec. 1 point 5 LVPFD is a provision of criminal and sanctioning nature and as such it cannot be interpreted broadly.

The dissenting opinion delivered to it questioned this position and suggested that the untimely posting of the advertisement may be tantamount to a failure to post the advertisement. Posting an advertisement with a 30-day delay is equivalent to no publishing an advertisement at all. Also, in LVPFD the delay in posting the advertisement has not been penalized.

The MAC's decision of February 11, 2013[41], upheld the RAC's decision, finding the mayor and the secretary of municipal authorities were found

38 BDF1.4800.8.2018.
39 Consolidated text of Dz.U. 2017, item 1311.
40 Consolidated text of Dz.U. 2016, item 2164, as amended.
41 BDF1/4900/130/131-132/12/3394.

guilty of infringing Art. 11 LVPFD[42] by exceeding the amounts specified for spendings in the financial plan of the municipal administration office for 2010. Their actions violated the provisions of Art. 44 sec. 1 points 2 and 3, art. 52 sec. 1 point 2 and art. 254 point 3 PF[43]. In addition, the mayor was found guilty of violating Art. 17 sec. 1 b point 2 of the LVPFD by awarding a public contract based on an inquiry for price quotation for the provision of school transport services, despite the fact that no premises stipulated in Art. 70 PPL of 2004[44] materialized at that time. On the other hand, pursuant to Art. 78 sec. 3 in conjunction with Art. 78 sec. 1 point 2 LVPFD the mayor and the secretary of the municipal authorities were acquitted of some charges linked with expenditures in excess of the scope of the authorization, i.e. violations of public finance discipline specified in art. 11 LVPFD. The MAC stated that the defendants did not exercise due diligence, foresight and caution in connection with the disbursement of public funds. It was not disputed in the proceedings that detailed procedures related to spending these funds were introduced in the municipal administration office, but they failed to fulfill their role in practice. The head of the municipality and the secretary made payments without double-checking the internal documentation to confirm that these expenses are included in the unit's financial plan. On top of that, MAC decided that the spending of public funds as a result of the reversed sequence of actions whereby the financial plan is amended first and then spendings are made on its basis, to be unlawful. The MAC found that when awarding the public contract, the head of the municipality ignored the principle of an open tender and restricted tender procedures as the basic ones for awarding public contracts. In justified cases, but only in the circumstances provided for in the Act, the contracting authority may use other procurement procedures. An extensive interpretation of the conditions for applying the request-for-quotations mode specified in Art. 70 PPL of 2004 was inadmissible. It is true that the PPL of 2004 does not explain in detail the expression „generally available services or supplies with established quality standards". School transport services require additional authorizations from the carrier, on top of the authorizations prescribed for all carriers in the Road Transport Act. Therefore, this service does not fall within the category of generally available services with established quality standards.

42 Dz. U. 2013, item 168.
43 Dz. U. no. 157, item 1240, as amended.
44 Dz. U. 2010, no. 113, item 759, as amended.

The dissenting opinion challenged the part of the MAC decision, which upheld the charges against the mayor for violation of Art. 17 sec. 1 b point 2 LVPFD. It was found, among others, that in the case at hand it was wrongly assumed that the mere fact of the obligation to have an additional permit prejudges about the lack of grounds for applying the request-for-quotes procedure. The mere fact that the state authorities issue authorization to carry out passenger transport services results in the setting of minimum service standards, which is why the school transport service was not a generally available one with established quality standards.

By the decision of the MAC of December 10, 2009[45], the decision of the regional committee was partly repealed and the defendant was partly acquitted and partly the charges were upheld. The first instance body found that the mayor guilty of infringing unintentionally Art. 17 sec. l point 3 LVPFD[46] by awarding a contract for the drafting of executive design documentation, the terms of which were defined in a way that violates the principle of fair competition and equal treatment of contractors by limiting access to the performance of the contract in question as a result of including in the specification of essential terms of the contract, the condition of having at least three years of experience in conducting activities related to designing large-scale structures contrary to the provision of Art. 22 sec. 2 in conjunction with Art. 7 sec. l PPL of 2004[47]. They was also found guilty of an intentional infringement under Art. 11 sec. l LVPFD, which consists of going beyond the statutory scope of the authorization to make expenditures from public funds under Art. 35 sec. 2 PF[48] as a result of the payment in September 2007 to the secretary of the municipality a cash equivalent for untaken annual leave due for previous years, contrary to Art. 171 § 1 of the Act of June 26, 1974, the Labor Code[49]. The defendant was reprimanded for both infringements. MAC repealed the decision regarding the first offense for which the accused party was acquitted, and as regards the second infringement, a reprimand was changed to admonition. For the rest, the ruling was upheld. The second instance body indicated that the evidence did not show that the conduct of the contracting authority was not unlawful as to the first infringement. The offsetting by the contracting

45 BDF1/4900/81/82/09/2763.
46 Dz. U. 2005, no. 14, item 114, as amended.
47 Dz. U. 2006, no. 164, item 1163.
48 Dz. U. 2005, no. 249, item 2104.
49 Dz. U. 2006, no. 217, item 1587, further LC.

authority of the condition is an act of unfair competition. Moreover, the conduct of the defendant is not inconsistent with Art. 22 sec. l point 2 of the PPL of 2004. According to the content of the above-mentioned, Contractors having the necessary knowledge and experience may apply for the contract. In the case at hand, the contracting authority, in order to ensure the execution of a specific project, namely the design of diverse large-scale facilities by experienced contractors with the knowledge necessary for the performance of the contract, included in the Terms of Reference a condition that they should carry out activities consisting in designing large-scale facilities for a period of at least 3 years. By setting the above condition, the contracting authority acted with the intention to ensure the seamless performance of the contract by a contractor fully capable to accomplish it. The penalty was reduced under following circumstances: no previous criminal record for violating public finance discipline, seeking a legal opinion before making a decision on the payment of the equivalent for annual leave, an outstanding track record as a head of municipality proven by distinctions and prizes awarded to the commune.

The dissenting opinion presents the view that the defendant should be acquitted of both offenses. In the opinion of member of the panel believes that the adjudicating committees are not intended to apply the provisions of the Code of Administrative Proceedings, including the derivation of norms of a substantive legal nature. Infringement of these norms would result in liability for the violation of public finance discipline, which is the competence of other bodies. The dissenting opinion pointed out that Art. 171 LC may be understood in various ways and does not limit the possibility of paying the cash equivalent in accordance with the will of the parties. As a rule, it is only a guarantee for the employee to receive the equivalent for their untaken paid annual leave in situations listed in this provision. In addition, the adjudicating committees in this case had no doubts that the amount paid as the equivalent was covered by the entity's financial plan. This means that as long as the authorized body does not find that this amount cannot be regarded as an expense for the benefit of the employee on the basis of the employment relationship binding him with the employer, the adjudicating committees cannot rule on the infringement of the provisions of the PFA.

By the decision of the MAC of January 21, 2016[50], the decision of the RAC was revoked and the case was referred back for reconsideration. By the decision of the first instance body, the accused deputy director of

50 BDF1.4800.121.2015.

the department of the city office was found guilty of an infringement under Art. 5 sec. 1 point 3 LVPFD[51] which consisted in allowing the municipality's receivables to expire by abandoning the timely pursuit of the municipality's claim for a one-time payment for the increase in the value of real estate caused by the adoption of the local spatial development plan from the company that sold the right of perpetual usufruct of plots covered by the local development plan. This violated Art. 37 sec. 6 in connection with art. 36 sec. 4 of the Act of 27 March 2003 on spatial planning and development[52] and Art. 42 sec. 5 PFA[53]. For this infringement a reprimand was imposed on the defendant. The first instance body acquitted the director of the department of the city office of the infringement of Art. 17 sec. 1b point 1 LVPFD (Article 17 section 1 point 1 of the act on the date of the infringement) consisting in awarding a number of public contracts for the provision of geodetic and cartographic services without applying the provisions of the Public Procurement Law, which violated Art. 3 sec. 1 point 1 in connection with art. 32 sec. 1 and sec. 2 PPL of 2004[54]. In the ruling, the factual status was determined erroneously due to the incorrect subsumption of Art. 37 sec. 6 in connection with art. 36 sec. 4 of the PPL, which assumed that the receivable existed and then expired. Meanwhile, the above-mentioned receivable did not arise at all due to the fact that the obligated entity did not receive any decision with this regard. It follows from the foregoing that what the defendant did cannot be regarded as a violation of Art. 5 sec. 1 point 3 LVPFD, but it meets the characteristics of Art. 5 sec. 1 point 1 LVPFD (undetermined receivables). With regard to the acquittal part, the committee incorrectly formulated the allegation without referring to the content of Art. 34 sec. 1 PPL of 2004. While making reference to it is necessary in case of these possible infringements, as it is only from its content that the obligation arises to apply the PPL of 2004 to individual contracts that gave rise to allegations in this case. Consequently, in both cases the ruling should be set aside in order to apply Art. 131 LVPFD.

In the opinion of the member of the panel who filed a dissenting opinion, the MAC should repeal the decision of the adjudicating committee with regard to its convicting part and acquit the deputy director of the alleged infringement, keeping in force the rest of it. A debt that never

51 Dz.U. 2013, item 168, and Dz. U. 2012, item 1529.
52 Consolidated text of Dz. U. 2015, item 199, as amended.
53 Consolidated text of Dz. U. 2013, item 885, as amended.
54 Consolidated text of Dz. U. 2015, item 2164.

existed cannot expire. Therefore, considering the act in the light of other provisions it is not reasonable. As for the acquittal part, the opinion of the regional committee was shared. It was found that the alleged infringement by the deputy did not meet the criteria of LVPFD. Consequently, it was unnecessary to apply Art. 131 LVPFD.

All cases examined by local government appeal boards regarding real estate tax.

The Local Government Appeal Board in Wrocław by 17 decisions[55] repealed in their entirety the decisions of the tax authority, in which taxpayers were assessed real estate tax using the rate applicable to „other buildings" and not, as the taxpayers pleaded, the rate applicable to residential buildings. The LGAB ruled on the merits of the case and determined the property tax liability at a lower rate for residential buildings.

The second instance body stressed that the dispute concerned the real estate tax rate applicable to a parking space in a car park, with a separate land and mortgage register, located in residential premises. Article 1a sec. 1 of the Act of 12 January 1991 on local taxes and fees[56] does not define a "residential building", although the term is used in art. 5 sec. 1 point 2 of the LTFA relating to the determination of real estate tax rates.

The first instance body decided that the car park should be taxed at the rate applicable to „other buildings". It went on to say that if a car park space makes part of a multi-family residential building it is part of the property and individual parking lots are intended for use under the *quoad usum* division, it should be taxed at the rate applicable to residential buildings, as it is not a separate taxable property. If, on the other hand, a car park constitutes a separate property, it is subject to taxation at the rate provided for other buildings or parts thereof (arguments supported by the statements of the Minister of Finance and the jurisprudence of administrative courts).

The LGAB disagreed with this interpretation, stating that the parking space should be taxed at the rate applicable to residential buildings. Firstly, it was pointed out that, according to the provisions of the construction law, buildings where at least half of the total usable area is used for residential

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55 April 6, 2011, SKO 4011/185/11, June 27, 2011, SKO 4011/276/11, SKO 4011/249/11, SKO 4011/287/11, SKO 4011 /250/11, May 5, 2011, SKO 4011/165/11, SKO 411/228/11, SKO 4011/235/11, June 14, 2011, SKO 4011/230/11, SKO 4011/254/ 11, SKO 4011/255/11; May 12, 2011, SKO 4011/252/11; February 2, 2012, SKO 4011/321/11/12, SKO 4011/322/11; May 17, 2011, SKO 4011/166/11; July 20, 2011, SKO 4011/346/11; On July 14, 2011, SKO 4011/358/11.

56 Dz. U. 2010, No. 95, item 613, as amended, further: LTFA.

purposes are residential buildings. Secondly, on the basis of numerous statements in the doctrine and jurisprudence, it was concluded that residential buildings are all rooms in a building that fulfil residential function. Thirdly, the secondary importance of the civil law division of real estate was invoked, because it is important mainly for transaction not tax-related purposes. For the latter, the functions that the structure performs are crucial, the so-called „architectural affiliation".

In a dissenting opinion, the view was expressed that the decision of the first instance body should be upheld. In the justification, it was argued that in both, the jurisprudence and the doctrine the term „real estate" used for the purposes of the real estate tax should be understood in line with its meaning laid down in the civil law. It was argued that the application of a lower tax rate to parts of a residential building that perform utility but not residential function is, in principle, incorrect.

On the other hand, SKO in Wrocław by 11 decisions[57] repealed the decisions of the tax authority in which taxpayers were charged with real estate tax using the rate applicable to „other buildings" when calculating it, and against the defendant's plea, applied the rate applicable to residential buildings. The LGAB repealed the decisions of the first instance body and discontinued the proceedings.

The LGAB pointed out that the tax obligation to pay the real estate tax or the construction tax for properties that are owned or co-owned by two or more subjects, rests jointly and severally with all co-owners or holders. Moreover, pursuant to Art. 92 § 1 TOA[58], if, in accordance with the tax laws, taxpayers are jointly and severally liable for tax obligations, and these obligations arise in the manner provided for in art. 21 § 1 point 2 TOA, jointly and severally liable are taxpayers who have been served with a decision establishing the amount of the tax liability. In the case of a decision determining the amount of property tax on land and a building owned by several entities, it is therefore necessary to indicate all co-owners in the decision and deliver the decision to all owners or co-owners, because only in such a case they are jointly and severally liable for the tax liability resulting from the decision.

57 May 29, 2012, SKO 4011/334/12, SKO 4011/337/12, SKO 4011/424/12, SKO 4011/453/12, SKO 4011/459/12, SKO 4011/323/12, SKO 4011/322/12, SKO 4011/325/12, SKO 4011/330/12, SKO 4011/356/12, SKO 4011/358/12.

58 Dz. U. 2005, no. 8, item 60.

In the cases under consideration, taxpayers purchased a share in a car park space and by that have, undoubtedly, become its co-owners. In accordance with Art. 3 sec. 4 LTFA[59], real estate tax applies to a car park understood as a space separated in civil law terms, not shares in the ownership of such premises held by individual co-owners. All co-owners should take part in the proceedings, which should end with a decision confirming joint and several tax liability of all co-owners.

Dissenting opinions highlight that the absence of information in the decision of the first instance body on joint and several liability of co-owners does not violate Art. 3 sec. 4 LTFA. This provision specifies only the type of liability of individual co-owners of real estate (the tax obligation on real estate or a building is imposed jointly and severally on all co-owners or holders), but it does not impose an obligation on the tax authority to affix a joint and several liability clause to the decision, indicating the place of its placement. Joint and several liability arises when the tax decision is delivered to at least two co-owners of the subject of taxation.

Table 2: Frequency table for the variable „Decision on the ruling of the collegial public finance body to which a dissenting opinion was submitted [Z2]"

	Frequency	%	Valid %	Cumulative %
Acquittal	7	43.8	43.8	43.8
Conviction upheld	7	43.8	43.8	87.6
Discontinuance	2	12.5	12.5	100.0
Total	**16**	**100.0**	**100.0**	

Source: own study

Another variable covered by the study was the decision, to which a dissenting opinion was submitted. In the case of adjudicating committees, three values of the variable were adopted: conviction, acquittal or discontinuance. This is consistent with the literal wording of the Act, because pursuant to Art. 135 sec. 1 LVPFD, the adjudicating committee issues a decision on liability for violation of public finance discipline, or a decision on acquittal, or a decision on discontinuation of the proceedings. In turn, according to Art. 147 sec. 1 LVPFD, as a result of examining the appeal at the hearing, the MAC shall issue a decision in which it maintains the decision

59 Dz. U. z 2010 r. Nr 95, poz. 613.

in force or repeals it in whole or in part and decides the case on its merits, or repeals the decision in whole or in part and discontinues the proceedings, or repeals the decision in whole or in part, and refers the case for reconsideration by the adjudicating committee.

Detailed data relating to the content of the decision have been discussed above. The aim of the analysis of the ruling was mainly to find out what rulings lead the most often to dissenting opinions. It was assumed that if a dissenting opinion was submitted only with regard to the penalty, the decision was qualified as a „ruling on liability upheld". Furthermore, if a dissenting opinion was filed with regard to one offense, only that part of the decision was considered in the frequency table. Moreover, if the MAC repealed the decision and referred it for reconsideration, the justification helped to determine whether the appellate body was more inclined to acquit the defendant or to recognize his liability.

These assumptions enabled us to determine that the analysis of the content of decisions of adjudicating committees, to which dissenting opinions were delivered, one can observe that they were submitted most often to decisions declaring the defendant guilty and to acquittals (7:7 ratio). However, it is not possible to indicate one specific type of ruling to which dissenting opinions were most often submitted.

In the case of dissenting opinions submitted to the decisions of local government appeal boards, three values of the variable were adopted: upholding, repealing and discontinuing. The legal basis for this assumption is Art. 17 sec. 1, 4 in relation to Art. 19 sec. 1 LGABA in relation to art. 233 paragraph 1 and 2 TOA. Pursuant to the last provision, the appellate body issues a decision in which it upholds the contested decision or repeals it in whole or in part, and in this respect it adjudicates on the merits of the case or, repealing this decision, it discontinues the proceedings in the case or repeals the contested decision in its entirety and refers the case back for consideration to the competent authority of the first instance or discontinues the appeal proceedings.

All the examined judgments issued by the LGAB (2) were decisions that repealed the decisions of the first instance body. Detailed information on the content of the decision is discussed above in this article.

Table 3: Frequency table for the variable „Nature of the dispute in the collegial public finance body [Z3]"

	Frequency	%	Valid %	Cumulative %
Dispute over the interpretation of the law	14	82.4	82.4	82.4
Dispute as to the interpretation of the facts or the assessment of the evidence	3	17.6	17.6	100.0
Total	**17**	**100.0**	**100.0**	

Source: own study

The next variable to be examined was the nature of the dispute in the collegial public finance body regarding the ruling. A dispute might concern the clarification of the facts of the case or the assessment of the evidence or the interpretation of the law. The research sample was 16, but due to the fact that in one of the cases the dispute concerned both aspects, in the case of Z3, N=17.

The conducted analysis revealed with regard to what dispute dissenting opinions were submitted most often. The collected data show that the vast majority of dissenting opinions were submitted in cases of dispute over the interpretation of the law (14 – 83%). In addition, in 13 cases (81%), the contentious situation concerned only the interpretation of the provisions.

Table 4: Frequency table for the variable „Review of a dissenting opinion delivered to the decision of a collective public finance body by an appellate body or an administrative court [Z4]"

	Frequency	%	Valid %	Cumulative %
Rulings which did not share legal reasoning of the dissenting opinion	4	23.5	23.5	23.5
Rulings which shared the reasoning of the dissenting opinion	4	23.5	23.5	47.0
Rulings which discontinued the proceedings	2	11.8	11.8	58.5
Not applicable	7	41.2	41.2	100.0
Total	**17**	**100.0**	**100.0**	

Source: own study

Another variable covered by the study was the procedural function of the dissenting opinion to the decision of collegial public finance bodies, i.e., determining whether the appellate body (MAC – in the case of RAC) and the administrative court (in the case of MAC or LGAB decisions) took into account the view expressed in the dissenting opinion as to the focus of the decision or rejected it. The research sample was 16, but due to the fact that in one of the cases the appellate body shared the arguments for one defendant expressed in a dissenting opinion and for the other expressed in the judgment, in the case of Z4, N=17.

While compiling the results, it was assumed that if a dissenting opinion was delivered to a part of the judgment (regarding one act), the procedural function was examined for this part of the judgment. Moreover, the final result of the case was included in the table, regardless of whether the case was examined only by the appellate body or also by the administrative court. Additionally, when the authority discontinued the proceedings in the case, a new value of variable Z4 was created (2 cases).

The research also revealed that 7 cases were not reviewed by the appellate body or the administrative court. These cases are marked as „not applicable". The above means that the dissenting opinion given in as many as 44% of the examined cases was not examined in the process of further application of public finance law.

4 | Summary

The aim of the article was to analyze how the concept of dissenting opinions submitted to the rulings of collegial public finance bodies in the years 2004-2020 worked in practice. Within the framework of the conducted research source materials were collected for further review to assess the use of dissenting opinions in practice – to the extent assumed by the authors in the introduction to this study. It seems that this concept has not been fully explored yet, and the findings may only contribute to further considerations.

In addition, empirical legal research enabled the validation of the research hypothesis, which was partly confirmed.

First of all, the number of dissenting opinions delivered to the abovementioned rulings is small. The research sample shows that collective

public finance bodies, i.e., all adjudicating committees and local government appeal boards issued 42 rulings in the years 2004–2020, which in fact can be treated as 16 different cases with dissenting opinions. Cases in which these rulings were issued represent different factual and legal situations. What needs to be emphasized is a relatively large number of cases examined by committees adjudicating on the offense under Art. 17 LVPFD – 9 cases out of 14 (64%). This means that such cases are the most „opinion-forming".

Secondly, the largest number of dissenting opinions were indeed filed at the level of second instance bodies, but mainly to MAC decisions (9 rulings), because the local government appeal boards issued 28 decisions in two factual and legal circumstances, so for the purposes of this research, they are treated as 2 cases.

Thirdly, the procedural function of a dissenting opinion delivered to the decision of collegial public finance bodies is performed only to a small extent. As many as 7 cases were not appealed to a higher instance or to an administrative court. Moreover, In only 4 cases was the view expressed in the dissenting opinion shared, leading to a change in the decision or its reissuing in a direction consistent with the view expressed in the *votum separatum*.

As a result of the conducted research, authors emphasized the differences between adjudicating bodies. Proceedings for violation of public finance discipline are pending in two instances before committees – collective bodies, and in each instance it is possible to submit a dissenting opinion. This gives a better chance of considering a dissenting opinion „in the course of a given case" and then (possibly) in the course of court proceedings. In tax cases, a dissenting opinion may be submitted only at the stage of proceedings before the body of second instance, which is a collegial body (MAC). This means that only the administrative court can read this opinion and possibly refer to it at the appeal stage. Thus, by definition, dissenting opinions should play greater role and have a bigger impact on the examination of cases in which they may be subject to the assessment by a larger number of entities that monitor the content of the ruling.

However, part of the hypothesis concerning dissenting opinions in a situation of a dispute as to the interpretation of legal provisions was largely confirmed. In 14 cases, this was the main dispute within the adjudicating panel. As to the assessment of the facts, the judiciary seems, in principle, to be more unanimous.

There is no doubt that the research conducted by the authors was necessary. The concept of a dissenting opinion was motivated by a specific goal.

By definition, regulations in this field were supposed to help in solving problems of interpretation by expressing doubts and searching for optimal solutions, and in the absence of one solution that would satisfy all members of the panel, give the right to express and justify a different position. This, in turn, could show more aspects of a given case to the adjudicating authorities in a higher instance or administrative courts, and even to the parties to the proceedings, which affects, for example, the implementation of the principle of persuasion.

Only empirical legal research could reveal whether dissenting opinions are used in practice and to what extent. At this point, it needs to be emphasized that the scope of the research has been defined narrowly; therefore, it is not possible to make a full analysis of dissenting opinions in the jurisprudence of collegial public finance bodies on this basis. Nevertheless, the research results presented in this paper are the first step towards a dogmatic assessment of this issue.

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