EXAMINATION PROCEEDINGS IN CASES REGARDING THE INFRINGEMENT OF THE PUBLIC FINANCE DISCIPLINE

PRIESKUMNÉ KONANIE VO VECIACH PORUŠENIA DISCIPLÍNY VO VEREJNÝCH FINANCIÁCH

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ABSTRAKT

Článok ilustruje najdôležitejšiu právnu úpravu konania pred komisiami prejednávajúcimi správy o porušení disciplíny vo verejných financiách. Súčasný zákon o zodpovednosti za porušenie disciplíny vo verejných financiách obsahuje výpočet konaní, ktoré konštituujú porušenie disciplíny vo verejných financiách a stanovuje okruh subjektov ktoré môžu byť zodpovedné za také porušenia. Analýza uvedenej regulácie ukazuje, že konanie ohľadom porušenia finančnej disciplíny je podobné s trestným konaním a ešte viac podobností vykazuje v porovnaní s disciplinárnym konaním. Tento článok predstavuje charakteristiku strán tohto konania, ich práv a povinností ako aj analýzu úpravy konania pred súdnymi orgánmi. Pozornosť bola venovaná normám upravujúcim porušenie pravidiel finančnej disciplíny zohľadňujúc ich súčasnú podobu i porovnávajúc ich s inými právnymi procesmi, najmä princípmi a pravidlami typickými pre občianske súdne konanie, trestné konanie, priestupkové konanie a správne konanie. Literatúra správne prízvukuje, že diskutovaný zákon o zodpovednosti za porušenie disciplíny vo verejných financiách predstavuje prvú reguláciu v poľskom právnom poriadku ohľadom zodpovednosti za nesprávnosti pri hospodárení s verejnými financiami.

ABSTRACT

The following paper illustrates the most important legal regulations concerning proceedings of Adjudication Committees on matters related to an infringement of public finance discipline. At present, the current law on liability of the infringement of public finance discipline includes an array of situations that constitute the infringement of public finance discipline as well as determines a range of entities that may be liable for such infringements. The analysis of the above mentioned legal regulations shows that the proceedings related to the infringement of public finance discipline are similar to the proceedings concerning criminal liability and even more similar to the disciplinary proceedings. This paper presents overall characteristics of parties in such proceedings, their rights and obligations as well as an analysis of regulations related to the proceedings of the adjudication entities. The attention was drawn to the rules associated with the proceedings in case of the infringement of public finance discipline both illustrating their present form and comparing them, maintaining the same procedure as in many other procedural regulations, to the principles and rules typical of the civil proceeding, the criminal proceedings, the law violation proceedings and the administrative proceedings. The literature rightly stresses that the discussed law on liability for the infringement of public finance discipline constitutes the first regulation in the Polish Legal System on liability for irregularities of managing public funds.

In this study, the legal regulations concerning an infringement of public finance discipline will be a subject of an analysis and only the proceedings will be emphasized during this analysis. In many cases, the author will compare the Act on liability for breach of public finance discipline with the Polish civil procedure, administrative law, criminal law and procedure in cases of offences.

By comparing these regulations, the author wants to decide on whether the mentioned regulations can be treated as a complex regulation in case of public finance discipline's breach. Moreover, this study aims at examination, whether the Act on liability for breach of public finance discipline should be treated as a separate legal instrument to the other regulations governing various types of procedures or there can be indicated some similarities.

The subject matter will be presented by introducing general issues and then, further stages of the proceedings will be presented. Regarding the rules of relevance, they will be compared to those of other disciplines of law. Also judgments and The Main Trial Commission's decisions will be considered during the analysis carried out by the author.

I. GENERAL REMARKS

The subject of this paper is to present the most important regulations regarding proceedings before commissions adjudicating cases of violation of public finance discipline. This stage of proceedings is called examination proceedings in contrast with its preceding stage which in the act is called investigation proceedings and is conducted by public finance auditors.

Like C. Kosikowski rightly points out collecting and spending public funds requires discipline. It is created by the very same rules of behavior determined by law for collecting and spending public money[1]. In Poland in 1958 a new type of measure was introduced within budget law, namely liability for violation of budgetary discipline. This liability was introduced independently from all other types of legal liability[2]. Subsequent acts until the present one maintain the existence of such a liability. Like A. Borodo rightly indicates the legal character of liability related to public finance discipline despite its numerous similarities to criminal, labor or administrative liability is characterized also by some distinct elements. It is typical for liability functioning in financial law and independent from liability determined by other legislation (e.g. of criminal law)[3].

The term "public finance discipline" does not have any statutory definition which obviously does not mean that it has not been defined by the doctrine. The quoted C. Kosikowski defines this term as obeying the legally determined rules of calculation, collection and payment of amounts due which constitute public funds and managing them in microeconomic scale, i.e. in the units of public finance sector and beyond them, if these subjects use public funds[4].

According to E. Malinowska-Misiąg and W. Misiąg, the public finance discipline means the duty of obeying the rules of managing public money, not including all the rules but only these violation of which was considered as action violating the public finance discipline (…)

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1 C. KOSIKOWSKI, Finanse publiczne i prawo finansowe, Wyd. Wyższej Szkoły Przedsiębiorczości i Zarządzania im. Leona Koźmińskiego, Warszawa 2001, p.301.

2 J. GLINIECKA, J. Harasimowicz, Zasady polskiego prawa budżetowego, Wyd. Oficyna Wydawnicza Branta, Bydgoszcz 2001, p. 106.

3 A. BORODO, Polskie prawo finansowe zarys ogólny, Wyd. Dom Organizatora, Toruń 2010, p. 76.

4 C. KOSIKOWSKI, Finanse publiczne …, op.cit p. 301.

Violation is already the very departure from the rules of functioning of the public sector even if it has not caused any real, negative results, though, it could lead to such results[5].

In the commentary of T. Robaczyński i P. Grysek it was indicated that the public finance discipline is obeying the rules of good financial management related to collecting and spending of public funds[6]. According to these authors this term encompasses the entirety of norms determining the desired behavior of the people liable for obeying the public finance discipline.

At present the binding legal act which determines the rules and the scope of liability for the violation of public finance discipline, the competent authorities and proceedings in cases of violation of public finance discipline is the act of 17 December 2004 on the liability for violation of public finance discipline[7].

Before this act came into effect, regulations regarding violation of public finance discipline were included in the act of 26 November 1998 on public finance[8] and specifically in chapter five entitled "Liability for violation of public finance discipline" (articles 137-179).

The currently binding act on liability for violation of public finance discipline comprises an array of situations which may constitute violation of public finance discipline. They have been listed in the articles 5-18c.

The act determines as well the range of subjects which may be liable for the violation of public finance discipline. In accordance with the article 4 these are:

1) persons who constitute the entity that implements the budget or the financial plan of the public finance sector unit which was handed over the public funds to use or have at their disposal or the body that manages them on the behalf of these units or bodies;
2) managers of the public finance sector units;
3) employees of the public finance sector units or other persons who, by a distinct act or on the basis of a distinct act, were entrusted with the duties in such unit, which if not performed or performed incorrectly constitute violation the public finance discipline;
4) persons who were handed over public funds to use or have at their disposal and who perform conduct related to the use of these funds or their administration on the behalf of a body which is not included in the public finance sector.

In case of violation of public finance discipline determined in the article 17, liable for violation of public finance discipline may be also the person who is not the employee of the unit of public finance sector, whom on the basis of regulations on public procurement the ordering party entrusted the preparation or conducting the proceedings for awarding public procurement and also the person who acts as the proxy of the ordering party. It shall concern the situations when the ordering party is the unit of public finance sector or the public procurement awarded is financed by public funds.

In case of violation of public finance discipline determined in the article 13 of the act, liable for it may be also:

1) persons who are obliged or authorized to act on the behalf of a body who by a distinct act or a contract or by agreement were entrusted with the determined tasks related to the completion of a program financed with the funds from the European Union budget, the

[5] E. MALINOWSKA-MISIĄG, W. MISIĄG, Finanse publiczne w Polsce, Wyd. Prawnicze Lexis Nexis, Warszawa 2007, p. 679.

[6] T. ROBACZYTŃSKI, P. GRYSEK, Dyscyplina finansów publicznych. Komentarz, Wydawnictwo C.H. Beck 2006., published in the computer software Legalis - commentary to article 19, thesis 4.

[7] Journal of Laws of 2005, No. 4, item 114 with later amendments.

[8] Journal of Laws of 1998, No. 155, item 1014 with later amendments.

aid funds awarded by the member states which are not subject to reimbursement in the context of European Free Trade Association (EFTA) or other funds from foreign sources which are not subject to reimbursement;

2) persons obliged to the completion of a project financed with the use of union or foreign funds who were handed over the public funds allotted for the completion of the project or who make use of these funds;

3) persons obliged or authorized to act on the behalf of a body obliged to the completion of the financial project with the use of union or foreign funds, who were handed over the public funds for the completion of this project or who use such funds.

Using the definition of a crime indicated by L. Gardocki[9] it can be pointed out that the violation of public finance discipline is the act:

1) of persons indicated in the article 4 of the act of 17 December 2004 on liability for violation of public finance discipline consisting in commission or omission of acts indicated in the articles 5-18c of the aforementioned act, culpable and socially harmful to a higher extent than to a very small extent;

2) also of persons indicated in the article 4a of the act consisting in commission or omission of acts indicated in the article 13, culpable and socially harmful to a higher extent than to a very small extent.

The rules of proceedings in the case for violation of the public finance discipline are similar to these that are implemented in case of legal liability, though despite everything these proceedings are closer to disciplinary proceedings and sometimes it is even indicated that they are special disciplinary proceedings or a type of liability of administrative character[10]. E. Chojna-Duch points out that the persons guilty of the violation of public finance discipline are not subject to order liability[11].

The similarity to the known rules of criminal law first of all results from the fact that certain rules of proceedings result from the Constitution of the Republic of Poland, like the principle of *nullum crimen sine lege*. T. Robaczyński i P. Grysek who were quoted above indicate that in case of liability for violation of public finance discipline this principle is subject to some limits in the context of its understanding in criminal law. It is about it that in the context of criminal law the criteria of a prohibited act must be precisely specified in the act so that in case of liability on the basis of the discussed act the criteria of acts which constitute the violation of public finance discipline in a substantial part must be interpreted in relation to implementing provisions and even acts of internal law or other documents, e.g. the scope of duties or a contract[12].

The basic principle of liability for violation of public finance discipline is also the principle of guilt, which means that the person to be held liable may be the person to whom the guilt can be attributed during the commission of the violation[13]. The clause 2 of the article 18 section 2 specifies that guilt cannot be attributed if the violation could not be avoided despite due diligence required from the person responsible for the performance of a duty, which if not performed or performed improperly constitutes an act that violates public finance discipline.

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9 L. GARDOCKI, Prawo karne, Wyd. C.H. Beck, Warszawa 2005, p.47.

10 Among others L. LIPIEC-WARZECHA, Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych. Komentarz, Wyd. Wolters Kluwer Polska, Warszawa 2008, p. 19-20.

11 E. CHOJNA-DUCH, Polskie prawo finansowe. Finanse publiczne, Wyd. Lexis Nexis, Warszawa 2006, p.150.

12 T. ROBACZYŃSKI, P. GRYSEK, Dyscyplina finansów … op. cit – commentary to the article 19, thesis 5.

13 Por. Z. OFIARSKI, Prawo finansowe, Wyd. C.H. Beck, Warszawa 2007, p. 300.

The foregoing regulations show that as opposed to criminal acts[14] in this case the legislator resigned from distinguishing between the forms of guilt, namely if it is intentional or unintentional guilt and it does not affect in any way the scope of liability for the violation of public finance discipline. This is underpinned notably by the way of derogation from the article 22 of the act[15], which defined two types of guilt. If the legislator repealed the regulation and there was no regulation of this type introduced to substitute it then in accordance with the principle of rationality of the legislation it shall be assumed that at present there are no grounds for distinguishing of the forms of guilt under the discussed act. In the literature the above-mentioned change was assessed positively indicating that the resignation from distinguishing between forms of guilt may cause the simplification and shortening of proceedings[16].

As far as the principle is concerned, the violation of public finance discipline is possible also by carrying out an order to perform an act that violates the public finance discipline and in criminal law such a situation is called directing the commission of a felony.

To be held liable for the violation of public finance discipline particular commission or omission must be proved as an action that violates the public finance discipline determined by the act that was legally binding during the commission of this action or its omission. As regards this principle it is impossible not to mention the article 24 of the act according to which if during the adjudication in the case for violation of the public finance discipline the legally binding act is different than the one that was legally binding during the commission of the violation of public finance discipline, decisive is the act that was legally binding in time of commission of the crime, if it is more favorable for the perpetrator[17].

The bodies relevant for cases for violation of public finance discipline can be divided into two main categories:

1) adjudication authorities
2) authorities relevant for performing the function of prosecutor

In the first category are included:

1) adjudication committees as bodies arbitrating cases of first instance
2) the Main Adjudicating Committee in cases relating to Violation of Public Finance Discipline as the body arbitrating cases of second instance.

The adjudicating committees in accordance with the article 46 of the act are:

1) joint adjudicating committee;
2) interdepartmental adjudicating committees at:

a) the minister who is relevant for the cases for public finance.
b) the minister who is relevant for the cases for public administration,
c) the Minister of Justice;

3) adjudicating commission at the Head of Office of the Prime Minister;

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[14] Article 9 of the Penal Code states that an offense is committed intentionally, if the offender intends or wants to commit it or predicts a possibility of committing it or agrees to commit it. An offense is committed unintentionally if the offender did not intend to commit it, however committed it for not taking proper precautions required in particular circumstances even though the offender predicted or could predict the possibility of committing this act.

[15] Article 22 repealed by the act of 19 August 2011 on change of act on liability for the violation of public finance discipline and other acts, Journal of Laws from 2011, No. 240, position 1429, which came into effect on 11 February 2012.

[16] A. SOBIECH, Okoliczności wyłączające odpowiedzialność z tytułu naruszenia dyscypliny finansów publicznych w nowym ujęciu, Prawo Zamówień Publicznych 2011., no 3, p. 12.

[17] See Decision of the Departamental Adjudication Comittee from 27 May 2010, ref. No. RKO-5/2007, published in the computer software Legalis.

4) adjudicating committees at the regional clearing houses.

In accordance with article 43 the adjudicating committee is composed of a chairman, one or two of his/her deputies and from 5 to 21 members. The second paragraph of that article determines that the Main Adjudicating Committee is composed of a Chairman, one or two of his/her deputies and from 15 to 21 members.

Article 45 of the act says that the members of adjudicating committees and the Main Adjudicating Committee shall be subject only to law, which means that in adjudication in cases concerning violation of public finance discipline they are independent. According to my own judgment Robaczyński T. and P. Grysek are right assessing negatively the indicated in the adjudication of the Supreme Administrative Court of 17 June 1997[18] narrowing of the independence of the members of the committee only to the independence from the authority the committee adjudicates to.

The investigation proceedings in cases of violation of public finance discipline, as well as performing the function of a prosecutor in the proceedings of first instance was entrusted to public finance auditors and their deputies (article 57).

The functions of the prosecutor before the Main Adjudicating Committee, are performed by Chief Public Finance Auditors and his/her deputies (article 58).

All the above mentioned public finance auditors should work to detect acts violating the principles of managing public funds and prosecute those who commit acts of violation of public finance discipline. According to the wording of the article 59 of the act it is the duty of public finance auditors who in their proceedings represent interests of the Treasury, local self-government units and other entities of the public finance sector. It should be noted that the competence of public finance auditors is not clear, especially in cases where the interests of various public sector entities may be contradictory[19].

II. PROCEEDINGS IN CASES FOR VIOLATION OF PUBLIC FINANCE DISCIPLINE – RULES

Proceedings in cases for violation of public finance discipline begin with investigation proceedings, which is led by the public finance auditor. The purpose of this proceedings is to verify if indeed the violations mentioned in the act of public finance discipline took place, to determine the persons who are liable for these violations, as well as to gather the evidence needed to file a motion for penalty.

One of the rules of proceedings in cases for the violation of public finance discipline is the principle of two instances. It is known to all the main judicial and administrative proceedings. For example, two-instance proceedings are: criminal proceedings, the proceedings in petty offence cases, court and administrative proceedings, administrative proceedings regulated by the Administrative Code and the tax proceedings under the provisions of the Tax Ordinance Act.

However, it should be added that this principle is not absolute, id est not all decisions made in the course of proceedings are subject to review. This applies only in cases strictly defined in the act, but what is most important the settlement ending adjudication of the first instance can always be appealed to the Main Adjudicating Committee in cases over Violation of Public Finance Discipline.

[18] Resolution of the Supreme Administrative Court of 17 June 1997, Ref. no. FPS 1/97, published ONSA 1997 No. 4, item 146.

[19] T. ROBACZYŃSKI, P. GRYSEK, Dyscyplina finansów … op.cit. – commentary to the article. 59 of the act.

Parties in the proceedings for violation of public finance discipline are the accused party, i.e, the person against whom the motion for penalty was filed and the prosecutor. The term "accused party" is identical to the one used in proceedings in petty offence cases.

One of the main principles is the right to defense, as expressed in the article 74 of the act. This law has a similar scope to the one granted to the accused party in criminal proceedings. The aforementioned provision apart from the general indication that the accused party has the right to defense during the course of all the proceedings, does not define this concept in a broad scope, only the sections 2 and 3 of this article mention as elements of this provision the possibility to present evidence in defense, motion for evidence and the right to the assistance of a defense lawyer[20].

Presentation of evidence in defense means the physical delivery to the authority of something that according to the accused party proves his or her innocence, filing motions for evidence means initiation of proceedings to verify the data that is significant for the circumstances of the case, with the help of evidence that is not at the disposal of the accused party and that he or she cannot present (provide, submit) to the authority to subject it to assessment.

Also the article 76 section 2 includes a regulation that is part of the right to defense, namely the possibility of refusing to answer questions or provide any explanations without giving any reasons that was created for the accused.

In the discussed proceedings the principle known from proceedings in petty offence cases and criminal proceedings is the principle of presumption of innocence. One of the most important elements of this principle is the order to operate to the advantage of the accused in case of doubts that cannot be removed (article 76 section 3). An important clue to the proper understanding and application of this principle is the decision of the Main Adjudicating Committee from 2 March 2009, which indicated that the regulation of the article 76 section 3 of the act of 17 December 2004 on liability for violation of public finance discipline applies only to the doubts which cannot be resolved and orders their interpretation that would be the most favorable for the accused party. This regulation does not apply in situations where doubt can be removed with the help of admissible evidence under the act[21].

The presented approach is shared in judicial rulings[22] and the doctrine[23] applied also to the criminal law.

In accordance with the wording of article 80, section 1 of the act in all stages of the proceedings for the violation of public finance discipline, starting from investigation proceedings, the authorities which conduct the proceedings are obliged to consider not only the circumstances unfavorable to the accused, but also the circumstances to his or her advantage. A kind of supplement to this obligation are the regulations included in the article 89 section 1, according to which the investigating authority is obliged to collect comprehensive evidence and review it thoroughly. The accused has the right to defense, which is not followed by his or her obligation to prove innocence, especially as the principle of the presumption of innocence orders to presume that the accused is innocent until proven guilty in an unequivocal way.

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[20] The accused in criminal proceedings in accordance with the article 77 of the Code of Penal Procedure and has the right to not more than three defense lawyers.

[21] Decision of the Main Adjudicating Committee from 2 march 2009. ref. no. BDF1/4900/114/103/08/1558, Publisher in: Biuletyn Orzecznictwa w sprawach o naruszenie dyscypliny finansów publicznych 2009, No 2, item 8, p. 62.

[22] Judgement of the Supreme Court – Criminal Division from 1 February 2012., ref. No. II KK 141/11, published in the computer software Legalis.

[23] T. GREGORCZYK, Kodeks postępowania karnego. Komentarz, Wyd. Kantor Wydawniczy Zakamycze, Kraków 2004, p. 38.

The evidence collected in the course of proceedings is usually, apart from the circumstances that can be taken into account against the accused party, the circumstances indicating his or her innocence. Already at the stage of investigation proceedings, the public finance auditor is required to examine and consider all the evidence, which applies also to subsequent stages of the proceedings, and thus the proceedings before the adjudication committee and the main adjudication committee. Violation of the article 80 section 1 and the article 89 section 1 of the act is one of the most common pleas raised in legal remedies against decisions of the committee adjudicating first instance cases. Usually the accused party then argues that no circumstances in their favour have been taken into account or that not all circumstances in their favour have been considered and the correct assessment of the collected evidence should lead to the conclusion that there is no basis for passing the decision that would pronounce the accused party guilty.

The discussed article 80 of the act in section 2 imposes the obligation that authorities and not only committees but also discipline auditors instruct the participants about their obligations and rights. The legislator in this case has, however, included certain limitations in the act, namely based on the literal wording of the provision it appears that the obligation to instruct applies only to provisions concerning cases for violation of public finance discipline. A limitation is also the indication that the obligation to instruct applies only to the necessary extent. This term is an underdefined phrase, however as indicated by the Regional Administrative Court in Warsaw in its judgment of 1 June 2011, referring to the commentary on the act on liability for violation of public finance discipline by L. Lipiec-Warzecha[24] the obligation to instruct, explain and inform the participants in the proceedings about their obligations and rights is not absolute and the legislator did not formulate the criteria of assessment of the "necessary extent" of these explanations within the meaning of the article 80, section 2 of the act, however, the findings in this scope cannot be freely interpreted[25]. In some cases, the act explicitly stipulates what the person who is being proceeded against should be instructed about and what after filing the motion for penalty the accused party should be instructed about. Regulations indicating the duty to instruct are: article 85 section 2, paragraph 6, 113 section 2, 121 section 3, 122, 135 section 2 paragraph 8, 179 section 2, 183 section 1.

Proper determination of facts requires evidence, which will concern the facts relevant to the case. As in other proceedings, in the proceedings in cases for violation of public finance discipline it is not necessary to prove the well known circumstances (common notoriety), as well as those that are known to the public appointed authority (official notoriety), in this case, however, if the authority takes into account these circumstances it should, in accordance with the article 88 of the act draw the attention of the parties to these circumstances.

In proceedings in cases for violation of public finance discipline, same as in criminal proceedings, proceedings in petty offence cases, civil, court and administrative proceedings, administrative proceedings, or others, no exhaustive list of evidence was determined or no gradation of this evidence was determined. The answer to the question of what may be evidence depends on the reality of the case, in other words, anything that will not lead to the rejection of evidence can be regarded as evidence.

The article 89 section 3 of the act indicates the cases in which it is reasonable to reject the evidence by the adjudication body; these are situations when:

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[24] Quoted by the Regional Administrative Court commentary: L. LIPIEC-WARZECHA, Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz, Wyd. Wolters Kluwer Polska - LEX, Warszawa 2012.

[25] Decision of the Regional Administrative Court in Warsaw from 1 June 2011, ref .no. V SA/Wa 2773/2010, Publisher in computer software Lex Polonica and on the website http://orzeczenia.nsa.gov.pl (access date: 23 January 2013).

1) the circumstances to be proven are not relevant to the case;
2) the circumstances that the motion concerns have already been proven as confirmed by the proposer of the motion;
3) the evidence is not useful to determine the circumstances;
4) the motion for evidence has been proposed with a clear intention to extend the proceedings;
5) it is not possible to take the evidence.

Rejecting of the motion for evidence takes place in the form of an order, in accordance with the article 124 sentence 3 of the act. The admission of evidence is, however, is in the form of a by-law, because the act does not include any regulation specifying requirements for the form of the order and in particular, it is indicated by fact that the wording of the article 124 refers only to the necessity of granting an order in the event of rejecting of the motion for evidence and the wording of the article 85 section 1 of the act provides that if the act does not require a ruling or order, by-laws should be established.

All mentioned cases are, of course, evaluative in nature, only the situation mentioned in paragraph 2 will not usually cause problems because if the proposer of the motion wants to prove a given matter of evidence and adjudicating committee finds that this matter of evidence has been proved in accordance with the claims of the proposer of the motion, then certainly the proposer of the motion will not be protest against such a situation. Theoretically, however, one can imagine a case where the accused party seeks to expand the evidentiary proceedings in order to cause that the prosecution of the offence is time-barred[26].

For the effectiveness of the proposed motion for evidence it is important to properly formulate an evidence claim, namely like it is expressed in the article 90 of the act, one should clearly identify facts that the party wants to recognize. One should also provide data for taking of evidence, in case of witnesses it shall be their name, surname and address to which summons will be delivered and in case of other evidence circumstances identifying this evidence in a sufficient way – that can be obtained by the adjudicating committee.

The articles 91, 91a and 91b of the act include detailed regulations on taking of evidence from the testimony of a witness and a penalty for breach of order that can be imposed on the person summoned as a witness.

The order dismissing the motion for evidence cannot be appealed, but the adjudication settlement can be challenged in the lodged appeal against the decision of the adjudicating committee ending the proceedings of the first instance.

If the committee dismisses the motion for evidence it can be reconsidered at the later stage of proceedings without any particular evidence (article 89 section 5). It will take place if in the opinion of members of the committee the previous evaluation of the motion made from the angle of dismissed evidence was incorrect. An opposite situation is also possible, namely when the motion for evidence will be accepted but taking of evidence has not taken place yet – then the order can be reconsidered id est the committee can change it on their own and dismiss the motion. Both situations result from the fact that the committee may notice their error in evaluating the admissibility of the motion and therefore the change of decision in a negative or positive way is more appropriate in this case, rather than continuation of proceedings with the motion for evidence whose acceptance or dismissal was unjustified.

[26] In accordance with the article 38 paragraph 1 of the act on violation of the public finance discipline, the prosecution is time-barred if 3 years have passed since the time of commission of the offence. If however in this period proceedings for the violation of the public finance discipline was initiated, the prosecution of the offence is time-barred as of the end of 2 years since the completion of this period.

The above practices are also followed in court. For example, the Code of Civil Proceedings in the article 240 specifies: The court is not bound by its evidentiary ruling and may in accordance with the circumstances revoke it or change it even at the closed door hearing.

In criminal proceedings the regulation included in the article 170 of the Criminal Code Proceedings is identical with the one found in the act on liability for violation of public finance discipline.

In my opinion, normalization of Civil Proceedings Code is inasmuch better as it in a more clear way shows that adjudication on the subject of motion for evidence may be changed in the course of the proceedings in a given instance and yet the regulations are not addressed only to persons who use them at work but first of all to all the people within the territory under particular legal order and it is important that they are as far as possible understood only with the use of linguistic interpretation.

To conclude this topic it should be added that in the discussed act, similarly to the Criminal Proceedings Code, there is no express regulation allowing for the dismissal of the motion for evidence that has been previously approved but not considered yet, but from the perspective of the article 89 section 3 it is clear that such an adjudication can be made. In a situation when the evidence is approved and considered but then the adjudication committee takes a stand that the motion for evidence should be dismissed then assessing all the evidence in the adjudication proceedings in the instance and exactly in its justification should present these circumstances indicating the reasons why this evidence was not relevant to the adjudication of the case.

III. PROCEEDINGS BEFORE THE ADJUDICATING COMMITEE

It is obvious that as in all other cases adjudication proceedings should be conducted before the competent authority. In proceedings for violation of public finance discipline in any case the examination as to jurisdiction takes place of its own motion. Therefore it is not like in many cases in civil proceedings where the lack of jurisdiction can be considered only if the party raises an objection. The discussed proceedings corresponds in this scope to the regulations that are known from criminal and administrative proceedings conducted in accordance with the Code of Administrative Proceedings.

One of the first actions that should be taken by the chairman of the adjudicating committee following the receipt of the motion for penalty is controlling whether it was filed to the proper committee. Moreover, the chairman should control other formal requirements for the motion mentioned in the article 110 section 1 and 2 of the act.

If the motion has been subject to formal control of the committee chairman it is forwarded to the adjudicating panel. The articles 113 and 113a impose on the committee chairman the duties of:

1. delivery of the copy of the motion for penalty to the accused party,
2. indication of place and time when the case records shall be made available to the accused party and his or her defense lawyer,
3. instruction about the right to file motions for evidence,
4. adjudication on the subject of the possible suspension and resumption of the proceedings and also initiation of separate proceedings for the case (of course if there is a legal basis for these decisions).
5. decisions about whether it is possible to hear and determine the cases for the violation of public finance discipline together, in which separate motions for penalty were filed.

At this initial stage the jurisdiction issues should be examined also, since in accordance with the article 111 section 2 the confirmation of lack of jurisdiction and filing the motion to the proper adjudication committee can take place at any stage of the proceedings, however not later than on the day of opening of evidentiary proceedings. In the available literature are found the views that the term specified in the article 111 section 2 is an instructive term since the article 157 section 1 paragraph 2 in the version as to the date of before the amendment of 19 August 2011 which came into effect on 11 February 2012[27] was the basis for the decision about the invalidity of the order or ruling if they were issued by an inappropriate committee[28]. By the power specified in the amendment the basis for confirmation of invalidity was overruled and simultaneously no amendment to the article 111 section 2 was made, which in my opinion shows that declining of jurisdiction may take place until the day of initiation of evidentiary proceedings. Then a kind of perpetuation of jurisdiction takes place (*perpetuatio fori*) but in a different form than it was known from the article 15 of the Civil Code Proceedings. As specified in the Criminal Proceedings Code the examination as to jurisdiction of the Court should take place at every stage of the proceedings and only the situation when an interior court adjudicated in the case of jurisdiction of a higher court a so called "absolute basis" for revoking the ruling (article 439 § 1 point 4 of the Criminal Proceedings Code). In other cases, jurisdiction, namely, where the court stated in open court that it is not the local jurisdiction or the courts in the lower order, it may refer the case to another court only when it becomes necessary to postpone the hearing (Article 35 § 2 of the Criminal Proceedings Code). In other cases of lack of jurisdiction, namely when the court during the main trial states that it is not the court of local jurisdiction or that the appropriate court should be inferior, then it can be submitted to be resolved in another court only when it is necessary to adjourn the trial (article 35 § of the Criminal Proceedings Code).

Analyzing the above regulations from different proceedings it can be concluded that the regulations included in the act on liability for violation of public finance discipline are intermediate between the ones known from the Civil Proceedings Code and the ones from the Code of Criminal Proceedings.

Adjudicating panels issue formal decisions at trial or sittings. In each case, the panel consists of three committee members (article 72 section 3 of the act). The sitting is scheduled only in the cases that are specified in the act such as these that the article 116 section 1 of the act refers to. The parties are not notified about the day of the sitting since it is a closed session so even if the party that was not notified about the sitting, in some way found out about the time and place of the sitting the aforesaid party could not participate in the session. To my mind it explicitly results from the formulation used by the legislator in the article 116 section 2 that "it is a closed session and the parties cannot participate in it".

The Code of Criminal Proceedings, which in so many aspects contains provisions that are similar to those included in the discussed act comprises disclosure principle. The Code of Criminal Proceedings allows both parties as well as the outsiders to participate in court sessions. There is no obligation to notify about the date of the session[29]. A party or another

[27] Act of 19 August 2011 on amendment to the act on violation of public finance discipline and other acts, Journal of Laws, No. 240, item 1429.

[28] See T. ROBACZYŃSKI, P. GRYSKA, Dyscyplina finansów … op.cit. – commentary to the article 111 of the act.

[29] Exceptions concern only the situations concerning sittings that are specified in the article 180 §2 Code of Criminal Proceedings, 184 §1 Code of Criminal Proceedings, , 237 §2 Code of Criminal Proceedings, 500 §4 Code of Criminal Proceedings, 530 §3Code of Criminal Proceedings, 531 §1 Code of Criminal Proceedings, 532 §3 Code of Criminal Proceedings, 535 §2 and 3 Code of Criminal Proceedings, 544 §3 Code of Criminal Proceedings.

person may, however, find out about the session from the cause list posted or obtain information about it in the view room[30].

Pursuant to the above-mentioned amendment, which came into effect on 11 February 2012 a written record shall be taken of what is said during the closed session in the course of proceedings in cases for violation of public finance discipline, which shall include:

1) date and place of the sitting and a reference to people participating in it;
2) course of the session, and - if necessary - other circumstances concerning the course of the session;
3) content of the rulings and orders made in the course of the session.

The court clerk, apart from the committee panel, also attends the closed session.

In the discussed proceedings just as in criminal proceedings or proceedings in misdemeanor cases the vast majority of decisions are taken during hearings; the hearing is the principle to which there are few exceptions. It is different in civil proceedings and it is not about the fact that adjudication at the hearing is not a rule, but in this proceedings in a significant majority of cases, it is possible to settle the particular issues during a closed session.

In chapter 8 of the act are included provisions primarily relating to the course of the trial, but also indicating that adjudicating committees may issue decisions and what information such decisions and their justification should include.

In accordance with the article 117 of the act, the chairman supervises the trial and is obliged to make sure that it proceeds correctly. These actions are primarily intended to ensure order during the hearing of the case, compliance with the law, and above all to prevent any violation of the rights of the accused party. The chairman shall ensure that the accused party is instructed in accordance with the requirements of the article 80, section 2 of the act. The literal wording of the mentioned article indicates that all the participants in the proceedings should be instructed but it appears that advising the prosecutor is generally unnecessary because it deals with this type of activity in a professional way and it can be assumed that he or she knows the regulations concerning his or her rights and duties. Thus, only in the case of the accused party it is important that due to ignorance of the law there was no deterioration of his or her trial situation.

Despite the fact that the chairman supervises the trial and is obliged to ensure that it proceeds in the proper way, other members of the panel are also responsible for ensuring the proper conduct of the trial and compliance with the law. Therefore, the obligation to instruct rests with all the members of the committee panel, but of course the satisfaction of requirements by one member of the panel exempts the others. The quoted article 80, section 2 of the act imposes a duty on the authority that conducts the proceedings to instruct, however making decisions by the panel on the behalf of the authority on whether instructions should be given and in what scope they should be given would be an unnecessary formality. This argument results from the fact that in the discussed proceedings the adversarial principle does not apply in such a scope like for example, in civil proceedings. Providing excessive instructions to the accused does not cause threat to the orderly conduct of the proceedings and does not upset the balance between the parties. In the course of the proceedings in cases for violation of public finance discipline, due to the wording of the article 80 section1 the bodies conducting the proceedings are obliged to perform research and consider the circumstances that are both in favor and against the defendant. The obligation to perform research imposes

[30] See commentary to the article 96 of the Code of Criminal Proceedings, [w:] K.T. BORATYŃSKA, A. GÓRSKI, A. SAKOWICZ, A. WAŻNY, Wyd. C.H. Beck 2012r., published in computer software Lex Polonica.

on the authority a much greater obligation than an obligation in a civil proceedings to examine evidence that shall allow to determine whether the accused committed the alleged offense (e.g. the article 128 section 3 of the act). In the compared civil proceedings and precisely in adjudication proceedings by way of contentious proceedings[31], giving one of the parties in a trial too far-reaching instructions may result in the deterioration of the procedural situation of the other party and sometimes even lead to their losing the case like in the situation when the court instructs the defendant about the merits of asserting the statute of limitation[32].

The trial, in contrast to the sitting of a court is open. An exception to this rule is established by the article 119 section 2, indicating that waiver of disclosure shall take place only for national security and protection of classified information and due to the disturbance of peace and public order. In each case, including those referred to in the preceding sentence the delivery of decision on public finance discipline is public. The delivery of the decision shall not be confused with giving oral announcement of the reasons for the court's decision which takes place immediately after the announcement of the decision (article 136 of the act). This stage of proceedings may be conducted in camera and shall not be disclosed to other parties than the accused party or the prosecutor.

Due to the principle of transparency in the article 119 section 4 of the act introduces an obligation to notify about the date and subject of the trial by posting the information in the seat of the adjudication committee in a public place. This should be done at least 7 days before the trial. In the civil and criminal proceedings and proceedings in misdemeanor cases, the administrative and judicial proceedings the information about the parties in the proceedings, subject and date of initiation of proceedings is posted on the so called "cause lists", however in contrast to the proceedings in cases for violation of public finance discipline in these proceedings the information is posted on the day of the examination of the case. This probably results from the fact that common courts of law examine many more cases than adjudicating committees for violation of public finance discipline and posting the information about trials a week before their date, especially in big courts would result in great technical and organizational difficulties.

Regards the presence of the accused party at the trial, the discussed regulation is closer to known norms of the Code of Civil Proceedings or the administrative and judicial proceedings, rather than the criminal proceedings or the proceedings in misdemeanor cases. The act on liability for violation of public finance discipline and more precisely the article 121 section 2 states that the presence of the accused party at the trial or the presence of his/her lawyer is not mandatory, which only means that the if the accused party or his/her defendant fails to appear at the court this shall not obstruct the justice in the situation when the committee possesses evidence that these entities have been properly notified of the trial date. The accused party and his/her defendant shall be notified about the trial in a way that ensures the delivery of the notification within at least 7 days before the date of the trial. The *ratio legis* of this regulation is creating the possibility for the accused to prepare for the trial, ensuring him/her the possibility of personal participation in the trial or potential use of a defense lawyer during the trial or taking legal advice.

[31] Other rules apply to other form of civil proceedings id est non-contentious proceedings. In cases that are adjudicated in non-contentious proceedings the legislator imposes on the court the obligation to make specific decisions and what follows the court shall examine the relevant evidence in order to determine the circumstances. The civil proceedings are adjudicated as contentious proceedings in which applies the adversarial principle and as non-contentious proceedings only if the regulations provide so.

[32] In the civil proceedings the court is not entitled to take into account the state of limitation of the claim and may accept it only if the accused party raises such a defense. Polish civil law allows a possibility to pursue a claim that is time-barred in legal proceedings.

In order to properly prepare for the trial it is appropriate that the accused party becomes familiar with case records. The provisions that regulate this have been included in the article 173 of the act. The regulation entitles the accused party and his defense lawyer to familiarize themselves with the case records, make notes or draw up copies at each stage of the proceedings (after the initiation of the investigation proceedings by the public finance auditor). The person who is being proceeded is also entitled to this right. The differentiation between the terms "the accused party" and "the person who is being proceeded" results from the fact that not every person who is proceeded is the accused. The accused status is given from the moment of submitting to the committee the motion for penalty against a particular person. However, it is possible that the person who is proceeded during the further explanatory proceedings led by the public finance auditor shall be declared non guilty and the motion for penalty against the person will not be filed.

The guaranteed by the article 173 right to draw up copies comprises also drawing copies in electronic form or with the use of a digital camera or a mobile scanner. The case records can be however accessed only at the office of the authority that conducts the proceedings.

A written record shall be taken of the course of proceedings. The written record of the proceedings shall be taken by the court clerk under supervision of the chairman of the committee. It means that the chairman decides about what information shall be included in the minutes since it should contain information relevant to the case, that is listed in the article 123 section 1:

1. date and place of the trial and a reference to people participating in it;
2. the course of the trial, and in particular the statements and conclusions of the participants;
3. information about the evidence disclosed and included in the brief of evidence;
4. the contents of the decisions and orders issued in the course of proceedings and if the decision or order was given without a trial to be held - the information that they were issued;
5. if necessary determining other circumstances concerning the course of the trial.

Only the situations listed in point 5 require some comment, because all the other cases, which are listed in the regulation are clear. Other circumstances relevant for the conduct of the trial, which should be recorded in the minutes, for example are written recording of a situation when the witness in the trial reads the answers to questions from a sheet of paper or if he or she answers only after a long pause, if the witness answered the question only after a hint from the accused party or if a particular person cries, speaks with a trembling voice or behaves in a strange way. Recording of the above-mentioned circumstances may be relevant to proper examination of the evidence gathered and adjudication. The role of the minutes is inasmuch important that the members of the adjudicating committee, especially in long-lasting cases may not remember all the details of the trial, which took place a few months earlier. The properly prepared minutes, including all the relevant circumstances, is crucial for the adjudicating committee of the second instance, the members of which, of course, did not participate in the trials of primary instance.

If the written record of the trial but also of the session does not reflect the actual course of the proceedings the parties may file a motion for correction of minutes. The legal basis for this, as well as for correction of the minutes ex officio is the article 171 of the act. This regulation does not impose any time restriction for the correction, however due to the correction procedure (motion for correction of minutes is to be approved or dismissed by the chairman of the adjudicating committee, after the hearing of the court clerk who indicates the

factual course of the recorded actions) it is reasonable that the correction is made possible in the shortest time from the preparation of the minutes.

Even in the case of justified absence of the accused party or defense lawyer at the court it is possible to conduct examination of evidence, first of all if it is primarily the oral evidence. The conditions for such a proceedings are specified in the article 126 of the act. The chairman of the committee is obliged to inform the accused party and his or her defense lawyer about the proceedings and enable them to express opinion about the examined evidence.

If the accused party requests to grant him or her the right to question the witnesses who were already examined they should be once again summoned to the hearing. Due to this, the use of option provided in the article 126 should be only as by way of exception, because the questioning of a witness whose testimony is essential for the case should be for sure repeated since it is very likely that the accused party will ask questions that in his/her opinion are relevant to the case. The right to defense is also expressed in the fact that the accused party can observe how the witness testifies and if necessary submit a motion for reflecting it in the minutes. This may be significant for the examination of the credibility of witness testimony. The right to defense is not only an opportunity to question the witness, but also the possibility to participate in the examination of this evidence and control the correctness of the conduct of evidentiary proceedings. However, in some situations, especially when a particular witness will not provide any information that would be pronounced as relevant to the case, then the use of the option provided in the article 126 of the act will help to shorten the proceedings.

Similar regulations, namely the possibility of examination of evidence in case of justified absence of the accused party, are included in the code of proceedings in petty offence cases and more specifically in the article 71 § 2 of the act. This provision states that the court may, if it deems it appropriate, conduct evidentiary proceedings and more precisely question witnesses who attended the hearing. At the next trial, the evidence will be re-examined only if it is requested by the party that was absent during the previous hearing.

As for the regulations in the Code of Criminal Proceedings and the Code of Civil Proceedings there is no such a possibility.

A very interesting situation may be observed when the adjudication authority uses the possibility indicated in the article 126 of the act and questions a relevant for the case witness despite the fact that the accused party is absent at the courtroom and when accepting of the motion submitted by the accused party for re-questioning of the witness is impossible, for example cause of the death of the witness or very difficult due to the fact that the witness has left for another country and plans to stay there for a long time. If such a situation takes place to my mind primacy should be given to the right of the accused party to defense and if no other evidence apart from the evidence examined during the absence of the accused party allows for making decisions that would be unfavorable to the accused then the presumption of innocence principle should prevent making such a decision.

The most problematic situation take places if the witness is questioned when the accused party is absent in the court room and the re-examination of the oral evidence is impossible despite the motion of the accused party and it is later discovered that the witness was corresponding with another witness in order to complement their testimonies. In my opinion, the aspects indicated in the above paragraph also require that no factual findings should be made or no examination of the credibility of the evidence should be done with the use of evidence that was examined when the accused party despite his or her previous motion could not be present in the court room. In such a situation, the authority that conducts the proceedings should examine the remaining part of the evidence (without the evidence that cannot be re-examined despite the motion submitted by the accused party). I present

arguments giving primacy to constitutional presumption of innocence principle (article 76 of the act).

The act on the liability for violation of public finance discipline also contains regulations determining the course of the trial. These regulations virtually do not differ from these regulating other proceedings. After calling the hearing takes place to check the presence of all the people who turned up. It is important that the written record of the hearing includes the information about the presence of other people than the summoned. It may in fact happen that the person who should be questioned during the next hearing is present at the court room. In such a case the person must leave the court room so as not to become familiar with the circumstances that shall be later the subject matter of her/his testimony.

If it happens that among the audience in the court room is present a person who shall be later questioned during the next hearing then the questioning shall be possible but the information about the presence of such a witness should be recorded by the court clerk and then considered when examining the testimony of this witness.

After verifying the presence the chairman orders that all the people except the parties and the audience (if it is an open session) leave the courtroom. Witnesses are called in a particular order so that they do not hear what their predecessor testified. Witnesses are called after performing the following actions: reading of the motion for penalty by the public finance auditor or giving explanations by the accused party (if wants to give explanations – article 76 section 2 of the act). After hearing of the accused party the chairman of the adjudicating committee orders the examination of evidence. The provisions of the article 127 section 3 gives the possibility to limit the evidentiary proceedings if the accused party confirmed the alleged charges and moreover, the explanations given by the accused party do not indicate that the factual situation is different than the one presented by the accused party. This limitation of evidentiary proceedings consists in the discontinuation of the further examination of evidence.

If the evidentiary proceedings is not limited, then during the proceedings before the adjudication committee all the evidence that was included in the motion for penalty or motion for evidence submitted by the parties in the course of proceedings should be examined (unless there are grounds for dismissing of the motions for evidence listed in the article 89 section 3) and ex officio these that in the opinion of the adjudication committee are essential for determining the factual situation.

In two cases, namely, when the accused party by exercising his right refuses to give explanations or testifies differently than before, that is, in relation to explanations that he/she gave before, the earlier explanations that stand in contradiction with the present explanations can be read. The article 129 section 2 establishes an exception to the principle of direct examination of evidence. The accused party has the right, not the obligation to respond or to take a position on the passages that are being read and can therefore refuse to answer the questions of the chairman and other members of adjudicating committee[33].

It should be strongly emphasized that it is not permitted to read the minutes including the testimony of the accused party made in the capacity of a witness. Then he/she was not instructed about his/her rights as the accused party and therefore reading of such minute would constitute a violation of his/her rights to defense. The testimony submitted by the accused party made in the capacity of a witness cannot be taken into consideration in any

[33] See commentary to the article 129 of the act, [w:] K. BOROWSKA, A. KOŚCIŃSKA-PASZKOWSKA, Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz, Warszawa 2010, published in the computer software Lex Polonica.

extent, whether as a basis to determine the factual situation or to examine the explanations given as the accused party.

Until the adjudication in the first instance, it is possible to change the legal classification of the offense alleged to the accused party. In accordance with the article 131 the chairman should notify the parties when the evidence provides reasonable grounds for the existence of such a possibility. However, if the accused party and his/her defense lawyer are not present during the hearing then the hearing should be adjourned and the absent should be notified in writing about the possibility of classification of the act on a different legal basis.

The Main Adjudicating Committee in its adjudication of 12 November 2009 stated that the change of legal classification is the change of the legal picture of the same factual event. Change of the legal qualification however cannot not involve a change of the object and subject scope of the proceedings - there must be the identity of the act[34]. However, in the adjudication of the Main Adjudicating Committee of 27 January 2011 it was rightly noted that the discussed legal institution aims to expand the right of the accused party to defense[35].

Once all the evidence was examined, the chairman should ask the parties if they would like to submit any other motions for evidence. If the both parties give a negative answer the chairman should close the evidentiary proceedings and accord the right to speak to the parties. The provision in the article 133 section 2 of the act establishes the order in which the parties shall have the right to speak. The prosecutor is the first to speak, then the defense lawyer and finally the accused party. If it occurs that after the parties have spoken, the prosecutor is given an additional right to speak, then also the defense lawyer and the accused party should have an additional right to speak, of course if they want to exercise this right. The presented order of speaking is a derivative of the right to defense - the accused party always has the right to say the last word in the hearing.

The parties usually do not discuss any new factual circumstances since if the party notices any new factual circumstances he/she should take the determined evidentiary actions in order to prove these circumstances. Presentation of argumentation of the parties before the committee for the examination of evidence is the moment when their credibility and meaning for the case is assessed but also in some cases it is presentation of legal argumentation. The adjudication panel already at the stage of hearing of the argumentation of the parties must at least develop the initial opinion on the legitimacy of charges since by granting the right to speak to the parties and earlier by closing of the evidentiary proceedings took a stand that all the issues relevant to the proceedings have been already explained. It should be reminded that in the proceedings for violation of public finance discipline adjudicating committees are obliged to accept evidence that is essential for the determination of the factual situation of the case.

After hearing of the argumentation of the parties the hearing is closed and then the principle is that after a closed session in which participate only the adjudicating committee and the court clerk the judgment is given. If, however, after hearing of the argumentation of the parties the adjudicating panel decides that the case is complicated and time is needed to decide about the judgment, then under the article 136 of the act the adjudication may be postponed until not later than seven days after the hearing has been declared closed.

After the closing of evidentiary proceedings and after the presentation of the argumentation of the parties it is possible to resume the evidentiary proceedings if it turns out that it is

[34] Adjudication of the Main Adjudicating Committee of 12 November 2009 , ref. No. BDF/4900/64/64/09/2231, published in the computer software Lex Polonica.

[35] Adjudication of the Main Adjudicating Committee of 27 January 2011 , ref. No. BDF/4900/62/69/10/1657, published in the computer software Lex Polonica.

necessary to supplement it (§ 23 of the regulation of Council of Ministers on the operation of bodies adjudicating in cases for violation of public finance discipline and authorities that can perform the function of prosecutor[36]).

The course of the session, the way the voting and the adjudication should be performed is determined in the articles 134 and 135 of the act and § 24 and 25 of the abovementioned regulation. § 24 section 2 specifies that the during voting the members of the adjudicating panel, starting from the youngest members, express their views. The chairman of the adjudicating committee is always the last to vote, regardless of his or her age[37].

When the judgment has been made the chairman announces the decision. After the announcement of the decision the chairman explains the reasons for the judgment, even if none of the parties is present in the courtroom.

The justification of the judgment in the proceedings in cases for violation of public finance discipline should be distinguished from the operative part of the decision even though always after issuing of the decision, a justification of the decision is prepared. This should be done within 21 days from the date of announcement of the judgment and it is a merely indicative time-limit. Justification is a separate document, in which the committee presents `the arguments which lie at the root of the presented decision and the reasons for adjudication of particular issues[38].

In the discussed proceedings a model which is known from court proceedings (civil, criminal, petty offence or administrative and judicial proceedings), where the decision is a separate part of the justification has not been adopted. In administrative proceedings regulated by the Code of Administrative Proceedings justification is both part of the administrative decision and the operative part of the decision.

The model adopted in the act on liability for violation of public finance discipline is in a way intermediate between the aforementioned proceedings. It should be noted that in judicial rulings and doctrine some discrepancies in terminology are found, however, the issue concerning the nature of justification of the judgment of the adjudicating committee is not very complicated. To provide a few examples of such discrepancies, it should be noted that the commentary to the act by T. Robaczyński, P. Grysek that has been quoted already a few times in this paper included a view that the justification of the decision is not an integral part of it, and the Main Adjudicating Committee in its judgment of 25 November 2010 took a stand that the articles 135 and 137 of the act on liability for violation of public finance discipline in a clear way specify that the operative part of the judgment and its justification are two separate elements that constitute an integral decision taken by the committee. The opinion was shared by the commentators, especially in view of the decision of the Main Adjudicating Committee of 4 June 2001, which stated that in case of conflict between the operative part of the judgment and the justification, decisive is the operative part of the judgment[39]. If the operative part and justification constitute an integral whole then the decisive content of the issued decision should be introduced with the use of its interpretation and not only by giving primacy to the operative part.

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[36] Journal of Law No. 136, item 1143 with later amendments.

[37] To read about the course of the session see T. ROBACZYŃSKI, P. GRYSEK, Dyscyplina finansów … op.cit. – commentary to the article 134 of the act.

[38] See T. ROBACZYŃSKI, P. GRYSEK, Dyscyplina finansów … op.cit. – commentary to the article 134 of the act.

[39] Adjudication of the Main Adjudicating Committee of 4 June 2001, ref. No. DF/GKO/Odw.-41/53/01, published in the computer software Lex and also quoted in the commentary to the article. 135 of the act by K. Borowska, A. Kościńska-Paszkowska, Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz, Warszawa 2010, published in computer software Lex Polonica.

According to the article 137 section 2 the justification of judgment shall include the facts and circumstances taken into consideration by the adjudication panel that have been recognized as credible. Other important argumentation is indicating the evidence that in the opinion of the committee is not credible or relevant to determination of the factual situation, explanation why this evidence was assessed by the committee as not credible or why it could not be used for the determination of the factual situation. This element of the justification is very important since it informs that the motion for evidence submitted by the party has not been ignored but considered in detail. The factual value of the justification to a significant extent depends on the correct interpretation of the legal basis for the adjudication id est presentation of relevant regulations and in particular their interpretation for the factual situation of the case that has been determined. If the accused party was judged as guilty in the justification should also be included the circumstances that the adjudicating committee took into consideration when imposing the penalty on the accused party or the potential waiving of the penalty.

Justification satisfying the above conditions can not only cause that the parties will not appeal against the issued ruling since they will be convinced of its correctness, but also in the event of an appeal it will allow the Main Adjudicating Committee to properly assess the issued ruling.

In compliance with § 4 of the decree of Council of Ministers on the operation of entities adjudicating in cases for violation of public finance discipline and the authorities that are competent to perform the function of the prosecutor, the chairman of the adjudicating committee already at the stage of appointing of the members of the committee panel should indicate a person that shall be obliged to prepare the justification of the issued ruling. The sections 2 of § 4 indicate that the chairman while performing this action should take into consideration the knowledge possessed by the members of the adjudication committee (namely in what area the particular member specializes in), the experience useful for the examination of particular type of cases and also the caseload of the adjudicating committee, which is also important for the factual quality of the justification since the member handling a great number of cases in this particular period may not be able to prepare a high quality justification. The quality of the justification is essential and therefore the Main Adjudicating Committee will not be able to examine the adjudication in appeal proceedings if it does not meet the criteria listed in the article 137 section 2 of the act.

The justification should be signed by the chairman of the committee, regardless of the fact whether it was him/her or another member who prepared the justification. The justification can be signed by another member of the adjudicating committee only if the committee chairman could not sign the justification himself/herself. In such a case the reason for the lack of signature of the committee chairman should be indicated. Such a situation may take place for example when due to long-term illness or another random incident the chairman of the committee could not sign the justification.

IV. CONCLUSIONS

The most important rules for proceedings in cases for violation of public finance discipline are similar to these that apply to petty case proceedings and criminal proceedings. Sometimes, however, some similarities of this proceedings to other to other proceedings, especially civil proceedings can be observed. The basic rules for proceedings in cases for violation of public finance discipline, first of all with the principle of the presumption of innocence find their legitimacy in the Constitution of the Republic of Poland and are common to all proceedings regarding the acts prohibited by law. The provisions of the act discussed in the present paper have not been so extensively described in the available literature like criminal proceedings or

even proceedings in petty offence cases. This probably results from the fact that the number of cases adjudicated on the basis of these provisions is much smaller than the number of criminal cases or those adjudicated in accordance with the Code of Petty Offence Proceedings.

Due to the fact that the similarity of regulations is justified one can make use of achievements of the doctrine of criminal proceedings and proceedings in petty offence cases but should do it carefully so the legal interpretation of the provisions of the act does not lead to erasing of the existing differences.

As it is rightly indicated by T. Robaczyński and P. Gryska in the introduction to the quoted commentary to the act on liability for violation of public finance discipline, this legislation represents the first comprehensive regulation for the issue of liability for the irregularities in the management of public funds, the liability, which as indicated above, was introduced to the Polish legal system in 1958.

The existing differences in relation to other existing proceedings and unfortunately the legislative errors found in the discussed act provoke reflection on the binding regulations and an attempt to determine on their basis new laws, which is not always a simple but undoubtedly an interesting process.

KĽÚČOVÉ SLOVÁ

disciplína vo verejných financiách, hospodárenie vo verejných fondoch, disciplinárne konanie

KEY WORDS

public finance discipline, managing public funds, disciplinary proceeding

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