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SURVEY ON DISSENTING OPINIONS IN THE JURISPRUDENCE OF COLLEGIAL PUBLIC FINANCE BODIES IN POLAND[1]

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Abstract

Dissenting opinions to the rulings of state bodies are submitted very rarely. The purpose of this article was to identify the reasons for this phenomenon in case of rulings of collegial public finance bodies, such as committees adjudicating on cases of violation of public finance discipline (including joint adjudication committee, inter-ministerial adjudication committee, adjudication committee at the Chief of Staff of the Prime Minister Chancellery, regional adjudication committees at regional accounting chambers, the Main Adjudication Committee) and rulings of local government appeal boards adjudicating on tax matters. The research was conducted using the Computer-Assisted Web Interview research technique. The research material included 67 questionnaires completed by a group of employees-adjudicators of the above-mentioned bodies. Their analysis led to the following research findings which explained why dissenting opinions to the decisions of collegial public finance authorities are submitted so seldom: rare occurrence of controversies among the members of the adjudicating panel, personality traits of the members of these bodies, and more specifically, striving to ensure their independence and a sense of collegiality. The shape of the procedural provisions governing the rules for submitting dissenting opinions cannot be seen as one of such reasons.

KEYWORDS

dissenting opinions, public finance body, adjudicating committee, local government appeals board, Computer-Assisted Web Interview, CAWI

SŁOWA KLUCZOWE

zdania odrębne, organ finansowy, komisja orzekająca, samorządowe kolegium odwoławcze, Computer-Assisted Web Interview, CAWI

1. INTRODUCTION

A dissenting opinion is one of the components of the application of public finance law. It is a statement, an act of will of one of the members of the adjudicating panel who disagrees with the majority opinion of the remaining members of the body in question. The submission of a dissenting opinion is a procedural act and to be effective, it must take place within the time and form provided for by the legal provisions.[2]

[2] See J. Bratoszewski, *Zdanie odrębne w procesie karnym*, Warszawa 1973, p. 42, 43.

For proceedings in cases of violation of public finance discipline, the legal basis of this institution is Article 134 sec. 2 of the Act of 17 December 2004 on Liability for Violation of Public Finance Discipline,[3] 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 § 25 sec. 1 of the Regulation of the Council of Ministers of 5 July 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,[4] "the chairman of the adjudicating panel announces the decision and gives the justification for it, even if none of the parties is present in the courtroom. If a dissenting opinion has been submitted, the chairman of the adjudicating panel shall also inform about it". In turn, in the case of tax proceedings conducted by local government appeal boards, the legal basis for the institution of a dissenting opinion is Article 17 sec. 4 of the Act of 12 October 1994 on local government appeal boards,[5] according to which "a member of the adjudicating panel that has been outvoted has the right to submit a dissenting opinion when signing the decision, justifying it in writing within 7 days from the date of the meeting".

The institution of dissenting opinions has not been the subject of many scientific studies, although there are publications on this subject.[6] However, it needs to be emphasized that the existing studies concern dissenting opinions issued to court judgments. So far, no research study has been published on dissenting opinions delivered to decisions made by administrative bodies (especially by collegial public finance bodies). In Poland, rather no reactive research has been conducted on the adjudicators in the bodies referred to in the title of this paper with regard to dissenting opinions.

The above considerations justify the choice of the topic of this study.

2. SAMPLING SCHEME AND RESEARCH METHODOLOGY

The fundamental research goal was to find out why dissenting opinions to decisions made by the collegial public finance bodies are delivered so rarely. This

[3] Consolidated text of Journal of Laws of 2021, item 289, as amended, further LVPFD.

[4] Consolidated text of Journal of Laws of 2019, item 189, as amended, further Regulation of the CM.

[5] Consolidated text of Journal of Laws of 2018, item 570, as amended, further LGAP.

[6] A detailed review of the literature is presented, *inter alia,* P. Kowalski, *Funkcje zdań odrębnych od wyroków sądów administracyjnych w sprawach podatkowych*, "Przegląd Sądowy" 2022, No. 6, pp. 66–71; M. Wojciechowski, *Spory sędziowskie. Zdania odrębne w polskich sądach*, Gdańsk 2019, pp. 57–62.

goal could be achieved by solving the main research problem formulated in the following question: what are the main reasons for the rare submission of dissenting opinions to decisions of collegial public finance bodies? The findings in this area were preceded by a pilot documentary study in which we identified how many decisions had been issued by collegial public finance bodies. We found out that dissenting opinions are extremely rare.[7]

The main research problem was used to formulate the research hypothesis, which reads as follows: the basic reasons why dissenting opinions are rarely given in the collegial public finance bodies include a small number of controversies in the judicial process, personality traits of the members of such bodies, and the procedural provisions regulating the rules for submitting dissenting opinions.

The subjects of the research were members of adjudicating panels in Polish collegiate public finance bodies, such as commissions adjudicating in cases of violation of public finance discipline and local government appeal boards adjudicating in tax matters, and the subject of the research was the concept of dissenting opinions submitted to the rulings of the above-mentioned bodies.

'Public finance body' is a term proposed by C. Kosikowski which defines "a body performing the tasks entrusted to the state or local government relating to specific individual legal and financial rights and obligations of subjects engaged in passive legal and financial relations".[8] The author juxtaposes this concept with 'public finance management bodies', which "perform managerial functions in managing public finance in its entirety or its individual elements". [9]

Due to the fact that the research problem concerns the application of law in individual legal and financial relationships, public finance management bodies, e.g., the Monetary Policy Council and dissenting opinions submitted to its resolutions, were excluded from the scope of the research. The subject of the research was limited to two types of collective public finance bodies, because in other cases the law does not allow a dissenting opinion to be delivered (e.g., to decisions of the regional accounting chamber in cases other than the violation of public finance discipline). Moreover, the vast majority of other public finance bodies are single-person ones (e.g., the head of the tax office, the Minister of Finance), which inherently excludes the possibility of submitting dissenting opinions.

The research was conducted using the survey method. At the very beginning, we assumed that the study would cover the entire population, i.e., all adjudicat-

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[7] The authors found that in the period 2004–2020, members of local government appeal boards in tax matters and members of commissions adjudicating in cases of violation of public finance discipline issued about 44 rulings with dissenting opinions. Detailed research results and methodology is described in M. Bogucka, M. Budziarek, M. Kapusta, P. Kowalski, *Dissenting opinions in the jurisprudence of collegial public finance bodies in Poland – documentary research,* Manuscript under editor evaluation.

[8] C. Kosikowski, *6.2. Funkcje i klasyfikacja administracji finansów publicznych*, (in:) *Finanse publiczne i prawo finansowe*, C. Kosikowski, E. Ruśkowski (ed.), Warszawa 2003, p. 163.

[9] *Ibidem*, p. 163.

ing committees and local government appeal boards according to their material and local competence, including 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), adjudicating committee at the Chief of Staff of the Chancellery of the Prime Minister, 16 regional adjudicating committees at regional accounting chambers, the Main Adjudicating Committee and 49 local government appeal boards. However, in the course of the research, the concept changed and a decision was made to carry out partial (non-representative) research. The type of sampling should be defined as a combination of contingency sampling and snowball sampling. The reasons for this change are described in greater detail in point 3.

Computer Assisted Web Interview (CAWI) was chosen as a research technique. "It is a quantitative data acquisition technique in which respondents fill in a questionnaire on a website. The website provides its users with all necessary assistance. Therefore, the data may be acquired remotely from respondents and without the mediation of an interviewer who is not burdened with the time-consuming process of data entry typical of the pen & paper technique".[10] The following research tools for CAWI were selected: a questionnaire created in the LimeSurvey software, the server of the University of Lodz, where the questionnaire was stored – https://ankiety.uni.lodz.pl/, IBM SPSS Statistics and Microsoft Excel and Word as software for analyzing the material obtained from the survey and the presentation of research results. The obtained research data are analyzed using descriptive statistics methodology and the legal-dogmatic method. Due to the lack of representativeness of the research sample, statistical inference methods were not used.[11]

3. RESEARCH PROCESS

Data collection began in December 2022, when information about the research project was sent to e-mail addresses of collegial public finance bodies (71 in total). The e-mails were addressed to the chairmen of these bodies and included a request for consent to participate in scientific research using an online survey and to provide all members of the adjudicating panels (current or former) with

[10] E. Frączek, A. Plichta, P. Plichta, D. Winiszewska, *Evaluation of the suitability of study visits to external companies as a strategy for familiarizing students with a business environment*, "Technical Transactions" 2015, No. 4-M, p. 40.

[11] J. Wiktorowicz, M. Grzelak, K. Grzeszkiewicz-Radulska, *Analiza statystyczna z IBM SPSS Statistics*, Lodz 2020, p. 36.

a link to the survey via a business e-mail or in any other form of their choice. The e-mails sent to the local government appeal boards contained a reservation that only those who adjudicate in panels examining cases under the Tax Ordinance Act of 29 August 1997[12] were asked to complete the questionnaire. That was due to the broad material scope of jurisdiction of local government appeal boards, which, as a rule, adjudicate on general administrative matters.

All 71 authorities agreed to participate in the research and receive a link to the survey. The consent was expressed either in e-mails sent in response to our request or in phone calls. The survey was available for completion until the end of February 2023. It was filled in by 67 respondents (44 members of adjudicating committees and 23 members of local government appeal boards).

It was impossible to assess the response rate, mainly due to the fact that there were also requests to send the link to the survey to the e-mail addresses of former adjudicators. In addition, even if an attempt was made to calculate the response rate, one could only determine the approximate number of all members adjudicating in the examined bodies in cases in question, due to the fact, e.g., that not all adjudicators in local government appeal boards deal with tax matters.

The composition of the adjudicating committees is determined by range. The Main Adjudicating Committee consists of a chairman, one or two deputies and from 15 to 21 members (Article 43(2) LVPFD). On the other hand, other adjudicating committees are composed of a chairman, one or two deputies and from 5 to 21 members of the committee (Article 43(1) LVPFD).

For local government appeal boards, there are different rules for determining the composition of the adjudicating body in public finance matters. The Regulation of the Prime Minister on the maximum number of full-time members of local government appeal boards of 8 September 1999[13] specifies the maximum number of full-time members of each local government appeal board. Their total number is 940. The Regulation does not specify a minimum number of full-time members. On the other hand, the number of non-full-time members of each of the local government appeal colleges is determined separately for each of them by their general assembly, and the main limitation in this respect is the college's budget.[14] Each of the colleges, in addition to dividing the members into full-time and non-full-time ones, sets up teams to examine specific categories of cases, determining their number and competence separately. There does not necessarily have to be a team dealing exclusively with tax matters. In addition, sometimes there are specific situations when, due to the large or even huge impact of cases

[12] Consolidated text of Journal of Laws of 2022, item 2651, as amended, further TOA.

[13] Consolidated text of Journal of Laws of 1999, No. 74, item 828, as amended, further Regulation PM.

[14] M. Frączkiewicz, M. Trelikowska, *Art. 4*, (in:) M. Frączkiewicz, M. Trelikowska (eds.), *Ustawa o Samorządowych Kolegiach Odwoławczych. Komentarz*, Legalis/el. 2019. Thesis 4.

of a certain type, more adjudicating members are entrusted with cases that they usually do not deal with (e.g., tax cases).

The survey consisted of 18 questions, including one about the type of the body without specifying the local or material jurisdiction. The questions were divided into 4 groups: basic questions for all respondents (8 questions), questions for members of adjudicating committees (4 questions), questions for members of local government appeal boards (4 questions), and additional questions for all respondents (2 questions). As a rule, questions were asked according to the following scheme: a closed question, an open question allowing to justify the answer given to the previous question (hereinafter an open question), a closed question, an open question, etc.

A larger number of demographic questions was abandoned to ensure maximum anonymity of the respondents. The more questions regarding personal data, the greater the probability of identifying the respondent, especially in smaller cities where only a few members adjudicate. In addition, the authors of this study, due to their professional experience, knew that without ensuring maximum anonymity, the number of completed questionnaires would be much smaller. Additional protection of anonymity was ensured by the following elements: disabling the collection of the user's IP address and no need to provide an e-mail address when completing the questionnaire. 58 respondents completed the questionnaire in electronic form while 9 respondents printed it out and completed it manually, and then sent it using the postal service to the address of the university after prior anonymization.

The analysis and interpretation of the survey results began in March 2023. The survey results were exported from LimeSurvey to a file with an xls extension. The file was supplemented with data contained in the printed questionnaires. The xls format was the basis for creating the dataset in SPSS Statistics. This dataset was coded before it was created and a codebook was created. After obtaining the research results, the questionnaire, report from the LimeSurvey software and scans of manually completed questionnaires were entered into the repository.[15]

4. RESEARCH RESULTS

The questions indicated in Table 1 were answered by all respondents. The responses used a 7-point Likert scale, which was coded. Q2 codes: 1=Definitely not, 2=No, 3=Probably not, 4=No opinion, 5=Probably yes, 6=Yes, 7=Definitely yes. Q4 Codes: 1=Never, 2=Very Rarely, 3=Rarely, 4=Sometimes, 5=Frequently,

[15] *Zdania odrębne w orzecznictwie kolegialnych organów finansowych, 1/GNZPA/2022, IDUB UŁ "Granty dla zwiększenie potencjału aplikacyjnego" (dataset)*, https://repozytorium.uni.lodz.pl/xmlui/handle/11089/46749 (accessed 13 May 2023).

6=Very Often, 7=Always. Measures of location, such as the mean, the median and the mode were used.[16] When calculating the average, a 7-point Likert scale with created intervals (interval=0.85) was used. The codes correspond to the following intervals: 1=1.00-1.85, 2=1.86-2.71, 3=2.72-3.57, 4=3.58-4.43, 5=4.44-5.29, 6=5.30-6.15, 7=6.16-7.00.[17]

Table 1: Frequency table for variables: Question 2: Do we need a dissenting opinion from decisions of collegial public finance bodies as a legal concept? (Q2), Question 4: How often have there been situations in which a submission of a dissenting opinion was contemplated but finally abandoned? (Q4)

N	Valid	67	67
	Missing	0	0
Mean		5.40	1.63
Median		6.00	1.00
Mode		6	1

Source: own study.

The average for variable Q2 is 5.40, which means that, according to the respondents, the institution of dissenting opinions from decisions of collegial public finance bodies is necessary (interval 6). The median and mode values are also 6.

These findings are worth juxtaposing with examples of the respondents' answers to open-ended questions. Respondents were coded in the form of 'R+id', where 'R' is the Respondent and 'id' is the 'id number' automatically generated by the LimeSurvey. Arguing in favor of the dissenting opinion, respondents most often emphasized the independence of jurisprudence and the free assessment of evidence (R33: *It gives the Committee members an opportunity to adjudicate in accordance with their own assessment of the evidence*; R18: *implementation of the principle of free assessment of evidence, independence of members of collegiate bodies*; R20: *Expression of independence of jurisprudence*, *the possibility of marking an objection in a situation where the member who was voted out absolutely does not agree with the decision taken*; R15: *The right to a different position than that of other members of the adjudicating body*; R21: *Allows you to express your own assessment of the facts and evidence*; R51: *A possibility of expressing one's own opinion in the event of legal, ethical and moral doubts.*

[16] Variables Q2 and Q4 are variables measured on an ordinal scale, but in practice, in the case of a Likert scale, they can sometimes be treated as variables on a quantitative scale, hence, apart from the median and mode, the mean (see J. Wiktorowicz, M. Grzelak, K. Grzeszkiewicz-Radulska, *Analiza,* pp. 103-104 and the literature therein).

[17] At this point and in the following parts of the study, the following range criteria were used: J. L. Pimentel, *Some Biases in Likert Scaling Usage and its Correction*, "International Journal of Sciences: Basic and Applied Research" 2019, Vol. 45, p. 189.

The essence of collegiality was also emphasized: (R78: *collegiality of the body and sometimes diversified jurisprudence*, R82: *collegiality cannot be tantamount to the requirement of unanimity*, R88: *the possibility of submitting a dissenting opinion is an attribute of collegial adjudication*, R94: *strengthening collegiality*).

In the case of variable Q4, the average is 1.63, which means that the respondents practically never witnessed situations in which submitting a dissenting opinion was contemplated. The median and mode values are also 1.

Due to the low values of measures of location, the respondents, as a rule, did not answer the open question (Q5). Few answers correspond to the answers suggested for Q6, which is discussed in more detail below.

Table 2: Frequency table for sets of variables in response to Question 6: What are the main reasons for rare submission of dissenting opinions by members of the public finance bodies? (Q6)

	Responses		% of cases
	N	%	
Striving for unanimity (reaching a consensus among the members of the body, strengthening collegiality)	48	31.4	71.6
Ensuring legal protection to the party to the proceedings by reaching a unanimous decision at the cost of a member of the body who does not agree with the rest of the college (primacy of the principle of the predictability of the law)	6	3.9	9.0
Obligation to draft a justification for a dissenting opinion (additional workload)	28	18.3	41.8
Little doubt as to the facts/evaluation of evidence or interpretation of the law throughout the proceedings (public finance cases are not complicated)	17	11.1	25.4
A ruling without a dissenting opinion appears to have greater legal and social authority	11	7.2	16.4
The sense of alienation of the member of a public finance body as a result of submitting a dissenting opinion	3	2.0	4.5
The fact that there are two or more divergent lines of reasoning in the case law or doctrine on the matter under consideration	16	10.5	23.9
A dissenting opinion is not binding *de iure* (the feeling that writing the justification is "art for art's sake")	13	8.5	19.4
A dissenting opinion is not even *de facto* binding (it is of no interest to a higher instance authority or an administrative court, or to the parties to the proceedings)	10	6.5	14.9
No opinion	1	0.7	1.5
Total	153	100.0	228.4

Source: own study.

In Q6, respondents could select more than one answer to indicate reasons for the rare submission of dissenting opinions. The research showed that 48 respondents believe that the main reason for it is the desire to issue a unanimous ruling. Other reasons include: the obligation to draft a justification for a dissenting opinion (28), little doubt regarding the determination of the facts or the interpretation of legal provisions (17), or the very fact of the existence of two lines of reasoning in the case law regarding the issue under consideration (16). On the other hand, the smallest number of respondents indicated the sense of alienation (3) or the primacy of the principle of the predictability of the law (6) as the causes of the examined phenomenon. Detailed results are presented in Table 2.

The above results are consistent with the answers to question 5, which were given by those who wanted to submit a dissenting opinion but eventually gave up the idea. R28 indicated that *another member of the committee presented an argument that convinced me*, R96 stated that *after analyzing and explaining the issue, he/she accepted the arguments presented by the other members of the panel*, R90 decided that *good cooperation within the adjudicating panel was important to me and the decision was adopted anyway despite the opposition*. On the other hand, in their answers to question 5, other respondents specified what they meant by the amount of work involved in giving a dissenting opinion. They stated, *inter alia*, that it included *additional effort without remuneration* (R22); *lack of time* (R74); and *the need to perform additional work to produce a written justification* (R68).

Table 3: Frequency table for the variable Question 7: Can a dissenting opinion be submitted both in the event of a dispute as to the facts/evaluation of the evidence and a dispute regarding the interpretation of the law? (Q7)

	Frequency	%	Valid [%]	Cumulative [%]
A dissenting opinion may be submitted in both cases	38	56.7	56.7	56.7
A dissenting opinion may be submitted only in the event of a dispute as to the facts/evaluation of the evidence	2	3	3	59.7
A dissenting opinion may be submitted only in the event of a dispute regarding the interpretation of the law	20	29.9	29.9	89.6
No opinion	7	10.4	10.4	100.0
Total	67	100.0	100.0	

Source: own study.

More than half of the respondents in Q7 supported the position that a dissenting opinion may be delivered to a decision of a public finance body when the dispute concerns the facts, assessment of evidence and interpretation of the law. However, it is noteworthy that almost 30% of the respondents disagreed with the above and assumed that a dissenting opinion may be submitted only in the event of a dispute as to the interpretation of the law. The latter position was substantiated as follows: *the assessment of the evidence should be unambiguous and unanimous. In the event of doubts in this regard, the hearing should be adjourned and the parties requested to supplement the evidence. A dissenting opinion can only be submitted with regard to the interpretation of the law* (R22); *if the determination of the facts or the assessment of the evidence raise doubts, they should be resolved in favor of the accused, as required by the law. There is no need to submit a dissenting opinion on this issue* (R25); *the basis for issuing a decision is the facts of the case established beyond any doubt. If there are any doubts as to the facts, the committee should consider the case until these doubts can be unequivocally resolved* (R35); *theoretically, it can be complex in both cases, however, in my opinion, it should not be used when assessing the facts (it does not apply to its legal classification), especially since the appellate body may order supplementary evidence proceedings* (R98).

In turn, the arguments in favor of the first answer were as follows: *it is the assessment of the facts/evidence or the interpretation of the law that may lead to other conclusions that are important when deciding on the guilt of the accused or its absence and the final verdict. Therefore, in my opinion, a separate opinion may concern both the assessment of the facts/evidence and the interpretation of the law* (R32); *a dissenting opinion should concern the contentious issue, and these may concern both the facts/evaluation of the evidence and the interpretation of the law* (R38); *a factual error in the findings may result from irregularities in the application of the law, including, for example, the recognition that it is necessary to accept (or not) that there are doubts that must be resolved in favor of the accused, or the issue of the completeness of the evidence or its assessment, so it may be necessary to signal one's dissent in terms of both, the interpretation of the law and factual findings* (R46); *a judgment is a legal assessment of the established facts. A dissenting opinion is in fact a judgment and therefore should include an assessment of how the facts were established as well as that of legal reasoning* (R65); *law is a social science and is subject to interpretation by those who apply it, the aforesaid concerns in particular the general clauses. Evidence assessment may also vary between different law enforcement practitioners* (R108).

Questions intended for members of local government appeal boards (N=23) concerned the deadline for submitting a justification for a dissenting opinion. The starting point was Article 17 sec. 4 LGAB. Respondents were asked two questions to find out their views on the length of the deadline and when it starts to run. Details are presented in the tables below.

Table 4: Frequency table for the variable Question 9: Is the time limit for drafting the justification for a dissenting opinion from the decision of the board sufficient (7 days)? (Q9)

	Frequency	%	Valid [%]	Cumulative [%]
The deadline for drafting the justification for a dissenting opinion is sufficient	6	26.1	26.1	26.1
The deadline for drafting the justification for a dissenting opinion is not sufficient and should be 14 days	7	30.4	30.4	56.5
The deadline for drafting the justification for a dissenting opinion is not sufficient and should be 30 days	5	21.7	21.7	78.3
No opinion	5	21.7	21.7	100.0
Total	23	100.0	100.0	

Source: own study.

Table 5: Frequency table for the variable Question 11: Is the moment when the time limit for drafting the justification for a dissenting opinion from the decision of the board starts to run set properly (the day of the sitting)? (Q11)

	Frequency	%	Valid [%]	Cumulative [%]
The moment when the deadline for drafting the justification for a dissenting opinion starts to run is set properly	14	60.9	60.9	60.9
The moment when the deadline for drafting the justification for a dissenting opinion is not set properly and the deadline should start running from the date when the decision is issued	4	17.4	17.4	78.3
The moment when the deadline for drafting the justification for a dissenting opinion is not set properly and should start running from the date the ruling is delivered to the party	1	4.3	4.3	82.6
No opinion	4	17.4	17.4	100.0
Total	23	100.0	100.0	

Source: own study.

It follows from the above that the respondents' opinions on the deadline for submitting a dissenting opinion are distributed more or less symmetrically (ratio of votes 6:7:5:5). Moreover, only 30% of respondents decided that the deadline should not be 7 but 14 days. Interesting arguments can be found in the statements of those who support the 7-day deadline. R11 stated that *in order to submit a dissenting opinion, it is generally necessary to have the documents and read* *them carefully. They are also needed by the reporting member of the panel, who is sometimes a non-full-time member. Therefore, 7 days is a period that will not extend the time needed to draft the justification of the decision too much*. R71 observed that *if someone has specific doubts, expressing them in writing should not take too long, besides, the longer one waits to draft a justification, the more difficult it is to recall all key aspects.*

A greater asymmetry of answers occurs in the case of Q9. As many as 60% of the respondents stated that the moment the time limit starts running is set properly and only 5 people believed it should start at a different moment. The respondents justified their decisions in various ways. Among other things, it was stated that *the deadline is clear* (R71); *in my opinion, it is set properly as it is at the sitting that the final decision is taken* (R88); *the moment must be set somehow* (R94). There were also arguments in support of the thesis suggesting that the time limit should start to run from the date the decision is issued. R91 decided that *assuming that the time limit for drafting the justification starts to run from the date of issuing the judgment, one may argue against the motives presented in its justification*. In turn, R98 stated that *after the sitting, a justification is drafted that can convince the dissenting member about the correctness of the decision. Therefore, the time limit for delivering a dissenting opinion should be counted from the moment when the decision with justification is issued.*

Contrary to the LGBA, legal provisions governing the proceedings for violation of public finance discipline do not specify the time limit for drawing up a dissenting opinion and its justification. Article 134 LVPFD and § 25 sec. 1 of the Regulation of the CM does not specify such a deadline, providing only for the right to submit a dissenting opinion, marking this fact in the judgment, attaching the justification for a dissenting opinion to the case files and the duty of the presiding member of the panel to inform about the submission of a dissenting opinion. As a result, questions that the respondents were asked concerned the assessment of the currently binding legal system.

Questions included in Table 6 were answered by the respondents – members of the adjudicating committees. A 7-point Likert scale was used which was coded. Q9[1] codes: 1=Strongly negative, 2=Negative, 3=Rather negative, 4=No opinion, 5=Rather positive, 6=Positive, 7=Strongly positive. Codes Q11[1]: 1=Strongly disagree, 2=Disagree, 3= Somewhat disagree, 4=No opinion, 5=Somewhat disagree , 6=Agree, 7=Strongly agree. We used the same methods of analysis as for Q2 and Q4.

Table 6: Frequency table for variables: Question 9[1]: What is your opinion about the fact that the applicable legal provisions governing the institution of a dissenting opinion submitted to decisions of the adjudicating bodies in cases of violation of public finance discipline do not specify the deadline for drafting a justification for a dissenting opinion? (Q9[1]), Question 11[1]: Anna Kościńska-Paszkowska presented the view that the justification for a dissenting opinion should be drafted within the time limit for the drafting of the justification for the ruling.[18] Do you agree with this view? (Q11[1])

		Q9[1]	Q11[1]
N	Valid	44	44
	Missing	23	23
Mean		3.39	5.82
Median		3.00	6.00
Mode		4	6

Source: own study.

The mean in question 9[1] is 3.39, which means that the respondents do not see the absence in the provisions of the deadline for submitting a justification for a dissenting opinion as positive. The median value was 3 and the mode value was 4.

A rather negative assessment was expressed in the following way: *if the outvoted person exercises the right to submit a dissenting opinion, he/she should have a concrete deadline for writing the justification for a dissenting opinion. Ideally, it should be a final deadline laid down in the law* (R22); *the lack of an unambiguous deadline for the drafting of a dissenting opinion makes the process even more difficult* (R58); *lack of clarity on this matter in the above-mentioned provisions* (R64); *the deadline should be clearly regulated* (R65); *there remains uncertainty as to the justification for the dissenting opinion, which may be essential for the maintenance of the rights of a party to the proceedings* (R67); *a member of the adjudicating panel should have a time limit stipulated in law for drafting a justification for a dissenting opinion, because the absence of such a time limit may mean that it could be drafted practically any time. The position expressed by the member of the panel who submitted a dissenting opinion may be important for how a given decision is assessed, its possible review in appeal proceedings, as well as it may affect the position of other members of the committee* (R106).

The responses also included voices in favor of the lack of legal provisions that would stipulate the time limit: *the provisions in this regard are clear and easy to apply* (R35); *guided by the procedural economy, in my opinion, the absence of a precise determination of the deadline does not pose a significant threat to the*

[18] A. Kościńska-Paszkowska, Art. 134, (in:) *Odpowiedzialność za naruszenie dyscypliny finansów publicznych. Komentarz*, A. Kościńska-Paszkowska (ed.), LEX/el. 2021, Thesis 3.

system of public finance discipline and can be logically resolved by means of a simple conclusion about the date when the documentation of the hearing should be ready to ensure the judicial and administrative control of the decision taken (R56); *the provisions of the act specify the time limit for the drafting of the justification for the decision. Justification of a dissenting opinion is a kind of justification for a decision issued by a member of the adjudicating committee whose position is different from that of other members of the committee* (R36).

In turn, the average in question 11[1] is 5.82, which means that the respondents agree with the view expressed by A. Kościńska-Paszkowska that the justification of a dissenting opinion should be filed within the time limit prescribed for the drafting of the justification for a judgment.[19] The median and mode values are 6.

A handful of responses to the open question, as a rule, only uphold this view.

5. SUMMARY

The aim of the article was to find out why dissenting opinions to decisions made by the collegial public finance bodies are delivered so rarely. In the opinion of the authors, this assertion has been reflected in the study. In addition, the CAWI research methodology allowed us to validate the research hypothesis put forward at the beginning, which was partly confirmed.

Firstly, one of the main reasons why dissenting opinions to decisions made by collegial public finance bodies are delivered so rarely is the limited number of controversies.

This is suggested primarily by the low value of the measures of location (mean, median and mode = 1) as to the question of the frequency of situations in which submitting a dissenting opinion was contemplated but eventually given up. In the opinion of the respondents, such situations, as a rule, did not occur, which means that either a dissenting opinion was not submitted or it was supposed to be submitted, but eventually it was abandoned. Since the approximate number of rulings to which dissenting opinions were given over the period 2004-2020 is known (44),[20] it can be conservatively assumed that a dispute in a public finance body is extremely rare.

This part of the hypothesis may be confirmed by the answers marked by the respondents as the reason for the rare submission of dissenting opinions. As many as 48 respondents indicated that the main reason for the above is the wish to take

[19] A. Kościńska-Paszkowska, Art. 134, *op. cit*., Thesis 3.

[20] See more M. Bogucka, M. Budziarek, M. Kapusta, P. Kowalski, *Dissenting opinions in the jurisprudence of collegial public finance bodies in Poland – documentary research,* Manuscript under editor evaluation.

a unanimous decision and 17 indicated little doubt as to the facts/evaluation of the evidence or legal reasoning while examining the case as the reason for this phenomenon.

The choice of answers may lead to the conclusion that no disputes arise in the adjudicating panel. A dispute in the adjudicating panel may occur at a certain stage of the adjudication process and then disappear before its conclusion, i.e., voting and signing the ruling. A member of the panel willing to vote differently from the others may be persuaded by other members to change his position (as indicated by R28 or R96). On the other hand, little doubt regarding the cases under consideration directly implies that a dispute will not arise.

Secondly, one of the main reasons for the rare submission of dissenting opinions in the collegial public finance bodies could be the personality traits of their members and, more specifically, striving for independence and a sense of collegiality.

Independence as a personality trait was emphasized when arguing in favor of allowing for a dissenting opinion. This is indicated by the quoted statements of R20, R15, R21 and R51, which suggest that the possibility of submitting a dissenting opinion is the guarantee of independence of the jurisprudence. It should be noted that such a position was supported by high values of measures of location in question 2 (mean, median and mode = 6).

On the other hand, the wish of members of these bodies to maintain collegiality is visible in the answers to question number 6. Forty-eight respondents, who explained the rare occurrence of dissenting opinions with the desire for reaching unanimity, thus stressed the importance of collegiality in adjudication. Additionally, it was expressed in open questions (R78, R82, R88, R94).

Thirdly, the shape of procedural provisions governing the principles of submitting dissenting opinions cannot be considered as one of the main reasons for the rare submission of opinions that differ from the decisions of collegial public finance bodies.

With regard to the provisions applicable to the justification of dissenting opinions by local government appeal boards, the statements made by these bodies show a rather cautious approval of the deadline for the drafting of the justification, both in terms of its length and the time when it starts running. Doubts, if any, concerned its length. The statements of some of the respondents may contribute to the discussion on the possible amendment and, consequently, the extension of the deadline under Article 17 sec. 4 LGAB.

When it comes to the provisions on the justification of dissenting opinions by adjudicating committees, the situation is totally different as the deadline for drafting the justification is not laid down in the law. The majority opinion about it is negative (mean, median = 3). So, also in this case, it is worth taking into consideration the postulates of the respondents regarding the possible introduction to the LVPFD of the time limit for drafting the justification for a dissenting opinion.

On the other hand, the respondents unequivocally (mean, median and mode = 6) agree with the view present in the doctrine of public finance law that – in the light of applicable regulations – the justification for a dissenting opinion should be drafted within the time limit provided for the drafting of the justification for the judgment – which could be used as a counterargument proving that there is no need to amend the existing regulations.

In view of the above, one cannot conclude that procedural provisions in their current shape restrict adjudicators from submitting dissenting opinions.

Obviously, the above analysis is not exhaustive as to the issues related to the institution of dissenting opinions referred to in the title. However, in the opinion of the authors, it has led to several important conclusions. The authors are aware of the limitations resulting from a relatively narrow research sample. However, due to the novelty aspect of the study, the survey may be repeated in the future on a larger sample.

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