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THE DEGREE OF AN ACT'S HARMFULNESS TO PUBLIC FINANCES UNDER THE ACT OF 17 DECEMBER OF 2004 ON LIABILITY FOR BREACHING THE PUBLIC FINANCE DISCIPLINE

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Abstract. An act's harmfulness to public finances is graded. The legislator does not specify this harmfulness in greater detail and only relies on an example of a list of premises which should be taken into account when determining its degree. At the same time, the legislator decided that only a marginal degree of harmfulness of an act is a basis to refuse to initiate or to discontinue proceedings in a given case. Stating that the degree of harmfulness of an act is not significant, is significant or gross obliges authorities adjudicating in cases for breaches of public finance discipline to draw specific consequences against the infringer. The author focuses here on a discussion of vagueness of the "degree of an act's harmfulness to public finances" and refers to the premises of assessment of this degree as well as problems that arise in this context at the stage of application of law in the decision-issuing practice. It was deemed necessary to mostly rely on the practical meaning of the concepts discussed, which affected the study's methodology. The author intends to point out potential problems when interpreting under-defined terms in the Act on liability for breaching the public finance discipline, to determine the meaning of "an act's harmfulness to public finances" in the pursuit of values encoded in regulations of this act and to demonstrate practical application of the measure in question. The study's methodology involves mainly an analysis of universal legislation and judicial decisions of the Chief Adjudicating Committee in matters of breaches of public finance discipline and of first instance committees. It was also necessary to analyse the relevant law in force and commentary on it, limited to the views of domestic legal scholars.

Keywords: breach of public finance discipline, harmfulness of an act

INTRODUCTION

Be it a historical or a comparative law angle, one cannot imagine a correctly functioning legal and social system that would eliminate the existence of expressions and terms that are under-defined in law.[1]

[1] Judgment of the Constitutional Tribunal of 9 October 2015, ref. no. OSK 70/06, OTK–A 2007, No. 9, item 103.

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One of the values protected in the Act of 17 December 2004 on liability for breaching the public finance discipline includes[2] governance and security of public finances. In a general approach, the public finance discipline should be understood as an obligation to observe legally-prescribed rules related to disposing of public finances and funds coming from public resources given to entities listed in Article 9 of the Act of 27 August 2009 on public finances.[3] The legislator rightly condemns unlawful acts naming them in Articles 5–18c of the Discipline Breach Act as violations of the public finance discipline. It is because they are acts that are harmful to public finances. If guilt cannot be unequivocally declared, then a person is released from liability even if the premises for an act stipulated in the Discipline Breach Act are met formally.[4]

The Discipline Breach Act conditions the right to hold a person liable for breaching the public finance discipline on a certain degree of harmfulness of an unlawful act which is prescribed specific legal effects. Pursuant to a general rule expressed in Article 28(1) of the Discipline Breach Act, there is no liability if the degree of this act's harmfulness to public finances is negligent. Therefore, the starting point here if the fact that a negligent degree of an act's harmfulness to public finances does not exclude the fault of the infringer but is only a negative premise for further procedure in the matter.

When juxtaposed with a vague meaning of the "degree of an act's harmfulness," it is a valid, interesting and pragmatic research area. All the more so since the legislator lays down a few qualifiers of this degree, such as: "negligent," "non-negligent," "significant" and "gross."

1. PREMISES TAKEN INTO ACCOUNT WHEN ASSESSING THE DEGREE OF AN ACT'S HARMFULNESS TO PUBLIC FINANCES

A decision of an authority that adjudicates in matters for violations of the public finance discipline must not be discretionary [Cieślak 2019]. When assessing the degree of harmfulness of an act penalized under the Discipline Breach Act various premises (factors, aspects) are taken into consideration. These aspects, associated with circumstances of a specific matter, may be general, based on the criterion of a financial effect or lack thereof. To clarify the above, they may also be assigned to a specific type of a breach of the

[2] Act of 17 December 2004 on liability for breaching the public finance discipline, Journal of Laws of 2021, item 289 as amended [hereinafter: Discipline Breach Act].

[3] Act of 27 August 2009 on public finances, Journal of Laws of 2021, item 305 as amended.

[4] Decision of the Chief Adjudicating Committee in matters of breaches of the public finance discipline [hereinafter: Committee] of 20 January 2014, BDF1/4900/93/98/13/RWPD–95446, https://www.gov.pl/web/finanse/artykul-17-ust-1b-pkt-1 [accessed: 14.04.2022] and Decision of the Committee of 21 May 2018, BDF1.4800.7.2018, Legalis no. 1890118.

public finance discipline (Article 17 and 17a of the Discipline Breach Act) [Kościńska-Paszkowska 2012; Lipiec-Warzecha 2012].

General premises cover the gravity of the violated obligations, the manner and circumstances of violating them and also effects of such a breach. When assessing the degree of harmfulness that triggers financial effects, the magnitude of such effects is taken into account. These premises include for example how much of the public funds has been depleted, the amounts of public funds that have not been paid or returned to the appropriate account of the state budget, a local government unit or another unit of a public finance sector as well as the amount of public funds administered without authorisation or exceeding this authorisation or misusing this authorisation, and also commitments made without authorisation or exceeding this authorisation and the amount of interest, fines or fees paid or the interest paid out.

On the other hand, when assessing the degree of harmfulness to public finances of a breach that does not carry financial effects, the following are taken into account in particular: the importance of the responsibilities violated and the manner or circumstances of this violation, in this case: violation of the public finance discipline set forth in Article 17 and 17a – the manner of violating the principle of fair competition or the principle of equal treatment of subcontractors.

The decisions of committees adjudicating in matters regulated under the Discipline Breach Act present quite a clear position that the "Regulation of Article 28(1) of the Act of 17 December 2004 on liability for breaching the public finance discipline (Journal of Laws of 2013 item 168 as amended) stipulates harmfulness to public finances not only in the financial dimension but also in a potentially financial dimension and, importantly, the reprehensible sanctioning of wrong practices and violations of legally specified principles that are binding for units of the public finance sector."[5]

Therefore, any further analysis should be rooted in an assumption that the legislator acts rationally and has intentionally regulated the degree of an act's harmfulness to public finances in a vague and exemplary manner.

2. VAGUENESS OF THE "DEGREE OF AN ACT'S HARMFULNESS TO PUBLIC FINANCES"

The legislator does not specify normatively what must be understood by the public finance discipline and its violation [Kościńska-Paszkowska 2012].

[5] Decision of the Committee of 18 July 2013, BDF1.4900.38.43.13.RWPD–37774, Legalis no. 1655544, similar: Decision of the Committee of 17 September 2012, BDF1.4900.72.72.12.2074, Legalis no. 1657051, Decision of the Committee of 19 November 2007, DF/GKO–4900–46/50/07/1918, Legalis no. 185760.

From the point of view of the Discipline Breach Act these are elementary concepts. For many terms reference was made to the meaning given to certain legal issues in the Public Finance Law (Article 2 of the Discipline Breach Act). This is the case, i.a. for "public finances" which must be understood as processes associated with the gathering of public funds and disposing of them.[6]

The Discipline Breach Act also lacks a definition of an act's harmfulness to public finances and an express distinction based on clear criteria of individual degrees of this harmfulness [Borowska 2015, 23–24]. Such a legal measure must be seen as intentional action of a rational legislator who shifts the obligation to establish facts here onto the authorities that adjudicate in a given case (regulations of the Discipline Breach Act express what its creator (legislator) wanted to say in this way).

An under-defined expression should be understood as a situation where the "dictionary content of a given expression is not complete, it is not a set of constitutive features or it is a set of such features but one of them is non-diagnostic" [Zieliński 2002, 163]. The need to apply under-defined terms in the text of a legislative act does not raise doubts. However, we must each time assess the nature of such regulations because it will often determine the rules of interpretation of these terms. It must be emphasised in this context that the Discipline Breach Act regulates a special kind of liability that enables the achievement of preventive goals and also serves as a retaliatory effect on the perpetrator (repression).

Interpretation of an under-defined expression under general regulations of the Discipline Breach Act must, therefore, be strict and correspond to rigorous principles applied in a repressive law. An expanding and a narrowing interpretation of under-defined terms in the Discipline Breach Act are equally inadmissible. By using these terms, the legislator increases flexibility of a legislative act, that is adjusts its provisions to the "environment" in which it functions and at the same time agrees to reach outside the legal system in the law application process [Śliwa 2010, 261]. The legislator rightly resigns from a legal definition of "an act's harmfulness to public finances." It must be borne in mind that the Discipline Breach Act specifies a bountiful catalogue of acts that constitute violations in questions, while the rule specified in Article 28 of the Discipline Breach Act will be – potentially – applicable in each of the violations specified in Articles 5–18c of the Discipline Breach Act. This is why, as has been noted in legal commentary, "it is not possible to specify a clear research model and objective criteria or boundaries in this situation"

[6] Article 3 of the Public Finances Act shows that these include in particular: gathering of public revenues and incomes; spending of public resources; financing state budget's loan needs; making commitments that engage public funds; managing public resources; managing government debt; settling of accounts with the European Union's budget. Not all of these processes were covered in the Discipline Breach Act.

[Tomczak 2021] and apart form that, it may prove pointless from the axiological point of view. The legislator should, first and foremost, make sure that law-applying authorities have effective tools to maintain governance and security in public finances.

In the context of under-defined terms used in the Discipline Breach Act, we must refer to the need (resulting from the principle of the democratic rule of law) to create correct, precise and clear regulations. Correctness of a provision means its correct construction from the linguistic and logical point of view and is a basic condition that allows the provision to be assessed in the aspect of the other two criteria – clarity and precision.[7] Provisions of the law should be clear and understandable to all addressees. These addressees may expect the rational legislator to create legal norms that do not raise doubts as to the content of obligations imposed and rights granted.[8] Precision, on the other hand, should be expressed in the specific nature of obligations imposed and rights granted so that their content is clear and allows them to be enforceable.[9] Therefore, in a democratic rule of law the legislator should provide a law that will optimally benefit the implementation of normatively and socially desirable goals. Values encoded in provisions of the law must, thus, be reflected in positive law and result from it because, as socially acceptable values, they will also serve a correct interpretation of positive law. An absence of under-defined terms in the Discipline Breach Act could mean that the type-classification of the legal assessment is done already at the stage of abstractly created law, therefore the role of authorities adjudicating in matters of breaches of the public finance discipline would be limited to the "subsumptive automation."[10] In this context, the lack of a legal definition of "an act's harmfulness to public finances" seems to be axiologically justified.

Taking the above into consideration, it is worth noting that there are attempts made in judicial decisions to specify "an act's harmfulness to public finances" where these attempts are based on specific circumstances of the case. A belief expressed in the decision of the Committee of 14 November 2013 is worth noting here. It demonstrates that harmfulness of an act is a broader concept, because next to the concept of damage in the substantive understanding, we take into account the gravity of the responsivities infringed, how and in what circumstances they were violated, general and specific frequency of their violation, effects of this violation, and a preventive effect of a possible

[7] Judgement of the Constitutional Tribunal of 3 December 2009, ref. no. Kp 8/09, OTK–A 2009, No. 11, item 164.
[8] Ibid.
[9] Judgement of the Constitutional Tribunal of 21 March 2001, ref. no. K 24/00, OTK ZU 2001, No. 3, item 51.
[10] Judgement of the Constitutional Tribunal of 9 October 2015, ref. no. OSK 70/06, OTK–A 2007, No. 9, item 103.

punishment, both in a general and specific aspect.[11] We cannot equate the terms "harmfulness" and "damage" because the fact that the breach of discipline did not result in any damage to public finances or in a loss in material interests does not have to mean that the harmfulness to public finances was negligent [Lipiec-Warzecha 2012].[12] However, this does not change the fact that in the current realities of casuistic regulation of individual breaches of the public finance discipline, adoption of a legal definition of "an act's harmfulness to public finances" may turn out not only impossible, but even unnecessary and may deepen dysfunctions in the liability system regulated in the Discipline Breach Act.

3. DEGREE OF AN ACT'S HARMFULNESS AS SEEN IN EXAMPLES OF PREMISES – REVIEW OF JUDICIAL DECISIONS

One of the most frequent criteria of assessment of the degree of an act's harmfulness to public finances is the time criterion. Adjudicating committees do not present a uniform stance in this area. For example, in its decision of 28 February 2019,[13] the Committee claimed that failure to account for a subsidy in the time period prescribed (Article 9(2) of the Discipline Breach Act) violates the principle of open public finances, thus distorting public finance governance. This is why it was decided that the degree of this harmfulness is not negligent, though also not significant. Given the above, between the negligent degree of an act's harmfulness to public finances (which means that Article 78(1)(7) of the Discipline Breach Act must be applied) and the warning adjudicated when determining that the degree of an act's harmfulness to public finances is not significant (Article 35 of the Discipline Breach Act), the Committee found "room" for resigning from imposing a punishment (Article 36(1) of the Discipline Breach Act). It linked the "degree of this breach" with its condition which "is not negligent though also not significant."

However, at the same time, the Committee concluded that despite failing to meet the obligation to obtain the minister's written permission for prolonging the deadline for settling accounts for the subsidy, this settlement was carried out, albeit with delay. The Committee believed that given the circumstances of the case, a delay of 22 days cannot be considered excessively long. In another decision, a delay of "a few days" in "individual months" was attributed a negligent degree of harmfulness to public finances.[14] It was also emphasized

[11] Decision of the Committee of 14 November 2013, BDF1.4900.86.91.13.RWPD–88736, Legalis no. 1657044.
[12] Decision of the Committee of 4 July 2011, BDF1/4900/46/52/11/1593, Legalis no. 1445560.
[13] Decision of the Committee of 28 February 2019, BDF1.4800.2.2019, Legalis no. 2285915.
[14] Decision of the Committee of 22 September 2005, DF/GKO/Odw.–32/43/2005/327, Legalis no. 268191.

that a delay in the payment of social insurance contributions did not exceed 4 days in individual months and a 22-day delay applied to the nominal amount of PLN 54.26 (Article 16(1) of the Discipline Breach Act). The time factor was decisive in declaring a negligent degree of an act's harmfulness to public finances also in the decision of the Committee of 25 January 2016.[15] It was emphasized at that that the entity charged took the initiative to repair the trespasses of the financial plan immediately (within 2 days), whereby they were only passing, short-lived.

The adjudicating committees, guided by Article 28(2–3) of the Discipline Breach Act, often notice no provisions to discontinue proceedings in such cases under Article 78(1)(7) in connection with Article 28(1) of the Discipline Breach Act. For example, a nearly two-year delay in conducting internal audit in a unit of a public finance sector was considered a persistent violation (Article 18a of the Discipline Breach Act).[16] On the other hand, in a different case[17] (act under Article 6(1) of the Discipline Breach Act), a delay between 4 and 16 days applied to 18 violations (in the amounts ranging between PLN 30 and PLN 4,516.56 (PLN 12,704 in total)). In the opinion of the Committee, these behaviours were not incidental and were a long-term occurrence (January–October, total of 133 days of delay). Therefore, it was not possible to discontinue proceedings in this case while the adjudicating committee decided that due to the act's negligent harmfulness to public finances, it is reasonable to impose the penalty of a warning.

Another criterion that serves the assessment of the degree of harmfulness of an act expressly articulated in Article 28(2) and (3) of the Discipline Breach Act is the financial effect that differs depending on the circumstances of a specific case. In this context, we must bear in mind the rule prescribed by Article 26(1) of the Discipline Breach Act, according to which a breach of the public finance discipline will not apply to an act or an omission specified in Article 5–16 of the Discipline Breach Act whose subject involves funds that do not exceed the minimum amount on one occasion and its total during a financial year for more than one action or omission. Such a situation took place in the decision of the Committee of 22 September 2005 quoted above.

However, financial effects of individual unlawful acts that demonstrate the legitimacy of discontinuing proceedings are different sum-wise. For example, in the Committee's decision of 3 September 2015[18] it was PLN 24,494.19 (Article 11(1) of the Discipline Breach Act) and in the decision of 25 January

[15] Decision of the Committee of 25 January 2016, BDF1.4800.151.2015, Legalis no. 1640622.
[16] Decision of the Committee of 10 June 2013, BDF1/4900/37/42/13/RWPD–37545, Legalis no. 1350056.
[17] Decision of the Committee of 11 December 2014, BDF1/4900/98/99/14, https://www.gov.pl/attachment/a76de653-a501-4bc2-af85-5cf5588a7e8d [accessed: 14.04.2022].
[18] Decision of the Committee of 3 September 2015, BDF1.4800.88.2015, Legalis no. 1651395.

2016 the authorities recorded the amount of PLN 10,174.20 that exceeded the financial plan[19] (Article 15(1) of the Discipline Breach Act). In another case (violation of Article 6(1) of the Discipline Breach Act) it was decided that PLN 1,901.05 was a relatively low amount that was transferred to the State Treasury with a delay and the final decision in the case was affected by the fact that the party charged paid the due interest as part of his "own payment" (PLN 4.72) [Gontarczyk-Skowrońska 2013, 45–46].[20] In this case too it was emphasized that an act's harmfulness to public finances was negligent. In case BDF1/4900/88/99/10/2396[21] it was decided that the act's harmfulness to public finances was negligent because the amount relating to the commitment made exceeding authorisation was low – approximately 0.44% of the total expenditure plan of a given unit (Article 1 of the Discipline Breach Act). The analysis of judicial decisions of committees adjudicating in cases for breaches of the public finance discipline shows at the same time that the degree of an act's harmfulness to public finances cannot be defined only in the framework of specific amounts of depletions but reference must also be made to amounts that a given entity has at its disposal.[22]

The current body of decisions of adjudicating committees shows that the number of violations too is important when establishing the degree of an act's harmfulness to public finances. Case BDF1/4900/82/83/09/2805[23] points to the fact that since the person charged performed his obligation to transfer the revenues to the budget timely on a few dozen cases but one, imposing any penalty on them for the violation is pointless (Article 6(2) of the Discipline Breach Act). On the other hand, acts that are frequently repeated (acts specified in Article 16(1) of the Discipline Breach Act) despite applying to not great amounts, point to a situation in which the degree of harmfulness for public finances is not negligent.[24] The number of violations has not always been considered a significant circumstance from the point of view of the measure stipulated in Article 28(1) of the Discipline Breach Act. Sometimes we saw a clear ruling out of the linking of an effect and the degree of an act's harmfulness to public finances with the number of violations committed. It was seen in the case closed with the Committee's decision of 5 September 2002.[25]

[19] Decision of the Committee of 25 January 2016, BDF1.4800.151.2015, Legalis no. 1640622.
[20] Decision of the Committee of 4 March 2010, BDF1/4900/3/3/10/75, 286994.
[21] Decision of the Committee of 8 November 2010, BDF1/4900/88/99/10/2396, Lex no. 794046.
[22] Decision of the Committee of 28 July 2014, BDF1.4900.68.68.RN–16.14, Legalis no. 1651680.
[23] Decision of the Committee of 10 December 2009, BDF1/4900/82/83/09/2805, Legalis no. 292310.
[24] Decision of the Committee of 6 April 2009, BDF1/4900/21/20/09/727, Legalis no. 268206.
[25] Decision of the Committee of 5 September 2002, DF/GKO/Odw.–50/67/2002, Lex no. 80073.

Other examples of circumstances in which the degree of an act's harmfulness to public finances is declared negligent include: a) efforts made by the persons charged, whereby the correct financial standing of the entity is restored quickly (Article 11 and 15 of the Discipline Breach Act);[26] b) school's interest, preventing depletion of public funds, negligent weight of the violated obligations, holiday period that made it difficult to amend the financial plan, efforts to prevent failure to exercise the will of donors (Article 15 of the Discipline Breach Act);[27] c) making an additional expense by mistake and repairing the error immediately (incidental, one-off violation, no adverse effects for the entity's financial management (Article 15 of the Discipline Breach Act);[28] d) preventing purchasing of unnecessary equipment and making a non-earmarked expense (Article 17(3) of the Discipline Breach Act).[29]

On the other hand, the following were considered behaviours that are harmful to public finances to a significant degree: non-observance of the principle of fair competition (Article 17(6) of the Discipline Breach Act),[30] failure to observe the principle of equal treatment of contractors (Article 17(1) of the Discipline Breach Act),[31] distorting public finance governance (Article 18(1) of the Discipline Breach Act),[32] exceeding planned expenditure by 21% (Article 11(1) of the Discipline Breach Act),[33] or constructing one's own rules on financial settlements with the state budget and making deductions in a way that goes beyond statutory regulations (Article 6(1) of the Discipline Breach Act).[34]

The highest degree of an act's harmfulness to public finances is the act's grossness. According to a belief expressed in judicial decisions, we may say that acts or omissions are gross if these violations are easy to detect, apparent, indisputable and far-reaching. In such a case, an analysis of the behaviour (action or omission) of the entity charged in the context of an order or prohibition resulting from the hypothesis of the violated legal norm, points to their obvious non-compliance.[35]

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[26] Decision of the Committee of 28 November 2005, DF/GKO/Odw.–60/79–81/2005/517, Legalis no. 268061.

[27] Decision of the Committee of 14 October 2013, BDF1.4900.41.46.13.RWPD–41864, Legalis no. 1655542.

[28] Decision of the Committee of 25 January 2016, BDF1.4800.151.2015, Legalis no. 1640622.

29 Decision of the Committee of 2 December 2013, BDF1.4900.64.69.13.RWPD, Legalis no. 1657062.

[30] Decision of the Committee of 7 July 2014, BDF1.4900.16.18.14, Legalis no. 1651402.

[31] Decision of the Committee of 18 March 2019, BDF1.4800.8.2019, Legalis no. 2285917.

[32] Decision of the Committee of 24 September 2012, BDF1.4900.67.67.12.1889, Legalis no. 1657057.

[33] Decision of the Committee of 5 October 2006, DF/GKO–4900–61/76/06/1755, Lex no. 1724661.

[34] Decision of the Committee of 19 October 2015, BDF1.4800.104.2015, Legalis no. 2094435.

[35] Decision of the Committee of 27 September 2018, BDF1.4800.27.2018, Legalis no. 1893359.

This review of judicial decisions issued in cases of violations of the public finance discipline demonstrates that assigning a rigid definitional framework to "degrees of an act's harmfulness to public finances" and to the "harmfulness" itself could have a limiting effect on the adjudicating committees and ultimately make the liability system under analysis less effective.

CONCLUSIONS

A system that lacks under-defined terms would have to be not only highly causal, for which the legislator would be responsible, but it would also rule out any margin of freedom in decision-making when assessing specific cases of application of the law. Such an inflexible system would have to lead to unfair decisions. Type-categorisation of a legal assessment would always be done already at the stage of an abstractly created law. Such a legal vision would not only be insubstantial, but in a broader approach, it would be alien to provisions of the Constitution of the Republic of Poland of 2 April 1997.[36] This is why, given the frequent doubts resulting from the decision-making practice of the adjudicating committees, the general under-defined nature of an act's harmfulness to public finances and its "degrees" may be an expression of the legislator's pragmatism. Of course, we cannot rule out a situation where at the stage of application of the law the interpretative discretion is violated, but we cannot forget that Article 169 of the Discipline Breach Act allows submission of a complaint to an administrative court, which will serve to verify the correctness of actions taken by adjudicating panels in individual adjudicating committees (or possibly heads of adjudicating committees).

An analysis of a few dozen decisions shows that adjudicating committees take into account premises specified in Article 28 of the Discipline Breach Act and each time refer them to the circumstances of a given case. The postulate of adequacy of legal measures to existing needs of decision-making practice is implemented intentionally and legitimately. This helps achieve axiological assumptions of the Discipline Breach Act by satisfying not only the preventive objectives assigned to this act, but also a social sense of justice. One needs to remember that caring for the public interest, for the financial stability of the public finances sector and for the governance and security of this area of state's operation is essential in promoting appropriate civic attitudes and in strengthening citizens' trust to the law given.

There are divergent interpretations of under-defined terms in judicial decisions. It is unavoidable as it is inscribed in the risk of the principle of independence of members of adjudicating panels resulting from Article 45 of the

[36] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

Discipline Breach Act. It needs to be borne in mind that members of adjudicating committees issue decisions within the boundaries specified by the statute and on the basis of a conviction following from the assessment of evidence. Therefore, such assessment should be objective [Kołakowski 2022, 29–30]. Importantly, these members independently settle the arising legal issues and are not bound by decisions of other authorities save for final court judgments.

This is due to their independence in deciding in cases of violations of the public finance discipline and is only subject to provisions of the law. It is also worth emphasizing that the principle of interpreting irremovable doubts to the benefit of the charged persons as much as possible applies to proceedings for breaches of the public finance discipline. However, where different interpretations of a provision are possible and where these interpretations are equal in their grammatical wording and are not contrary to other regulations of a given legal act (and also the entire branch of law), then application of one of them cannot be seen an unlawful behaviour).[37]

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[37] Decision of the Committee of 23 June 2016, BDF1.4800.10.2016, Legalis no. 1514678.